

**Ofcom Consultation on the Broadcasting Code Review: Commercial Communications in Radio Programming  
September 2010**

**Response from the Children's Food Campaign**

**Introduction**

The Children's Food Campaign aims to improve young people's health and well-being through better food – and food teaching – in schools and by protecting children from junk food marketing. We are supported by over 150 national organisations. The Children's Food Campaign is co-ordinated by Sustain: the alliance for better food and farming (for more information see [www.childrensfoodcampaign.org.uk](http://www.childrensfoodcampaign.org.uk)).

**Our concerns**

In the Department of Culture, Media and Sport's consultation which closed on 8 January 2010, the Children's Food Campaign opposed product placement of high fat, salt or sugar (HFSS) food and drink products on television because it would increase children's exposure to marketing for these products. A diet rich in HFSS foods increases the risk of a wide range of non-communicable diseases, including those directly related to overweight and obesity. Figures published in 2008 by the National Child Measurement Programme in England shows that by the time children reach Year 6 (age 10-11), almost one-third, 32.6%, are overweight or obese.<sup>1</sup>

Marketing for HFSS foods contradicts all the messages about healthy eating that children receive, undermining their ability to choose better food and their parents' efforts to feed them healthily. Food marketing has been shown to have an impact on children's food preferences, purchase behaviour and consumption at both brand and category levels and these effects are independent of other factors. Such marketing works by directly influencing children's food preferences, and also, more powerfully, by indirectly influencing what family and friends consider to be a 'normal' diet.<sup>2</sup>

Evidence from the US suggests that manufacturers of HFSS food and drink products would, in the absence of regulation, be likely to take advantage of product placement to promote their products. Figures from the first six months of 2008 show that Coca-Cola was the company paying for the most placements on television, accounting for more than 30% of all placements by the top ten companies paying for product placement<sup>3</sup>. There is good reason to believe that companies producing HFSS food and drinks would also seek similar opportunities should there be liberalisation in radio regulations.

By its nature, product placement allows marketing to be integrated into programmes, and is not always recognisable. As a result, it would be even more problematical (and probably impossible) for parents to protect their children from product placement marketing of HFSS products, compared to the already difficult challenges they face

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<sup>1</sup> NHS (2008) *National Child Measurement Programme. 2007/08 school year headline results. December 2008*. NHS Information Centre

<sup>2</sup> Hastings et al. (2003) *Does food promotion influence children? A systematic review*. Food Standards Agency

<sup>3</sup> Nielsen (2008) *News release: Product placements decline by 15% in first half, Nielsen reports*. New York

from children's exposure to traditional spot advertising. Studies show that children are particularly susceptible to embedded brand messages because these operate at a subconscious level. Research suggests that initiatives which aim to counter-balance the influence of such marketing, such as addressing children's media literacy, are ineffective<sup>4</sup>.

We therefore welcome provisions in the Regulations that prohibit product placement of "food or drink high in fat, salt or sugar" on television, and the clarification in this consultation that "HFSS products are defined by the nutrient profiling scheme which was devised by the UK's Food Standards Agency for use by Ofcom."

We understand that this is a wide ranging consultation, but this submission limits its comments to the issues of food and diet, which are the remit of our campaign. It also builds on our response to last year's consultation on the DCMS Consultation on Product Placement on Television and complements our response to Ofcom's parallel consultation on commercial references in television programming.

## **Consultation questions**

### ***Option A: 'Do nothing' and maintain the principle of separation***

#### ***Question 1***

*a) Do you consider that Option A should be adopted by Ofcom?*

Advertisers are currently able to target radio listeners with marketing for HFSS products through both spot advertising and sponsorship credits, and children lack even the limited protection of Ofcom's regulations from such marketing afforded to them in their television viewing. Anecdotal evidence from parents suggests that children are exposed in their daily lives to considerable amounts of radio advertising, including for HFSS products, and that this has an impact on their food preferences. For example, a number of parents have complained to the Children's Food Campaign about a particular radio advertisement for Nutella (which contains 55% sugar). One parent reported that, after regularly hearing this advert on breakfast radio, her son began requesting it as an alternative to less sweet spreads.

We therefore consider that the current regulations are inadequate, and wish to see better protection than that provided by the BCAP Code. However, of the four options proposed in this consultation, Option A is our preferred alternative.

*b) If so, do you wish to comment on Option A?*

Option A would avoid further commercialisation of the media environment in which children grow up, a factor which contributes to less healthy diets and associated health problems. As the consultation document identifies, the AVMS Directive does not apply to radio, and there is therefore no need to change regulation in this area.

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<sup>4</sup> Russell, C.A. (2002) Investigating the effectiveness of product placement in television shows: The role of modality and plot connection congruence on brand memory and attitude. *Journal of Consumer Research*, 29, pp.306-318; Law S.; Braun, K.A. (2000) I'll have what she's having: Gauging the impact of product placement on viewers. *Psychology & Marketing*, 17, pp.1059-1075; Moore, E.S., Lutz, R.J. (2000) Children, advertising, and product experiences: A multi-method inquiry. *Journal of Consumer Research*, 27, pp.31-48; D'Astous, A., Chartier, F. (2000) A study of factors affecting consumer evaluations and memory of product placements in movies. *Journal of Current Issues and Research in Advertising*, 22, pp.31-40; Auty, S., Lewis C. (2004) *Psychology & Marketing*. 21 (9) pp.699-716

*c) If not, please explain why. You may wish to respond to this under Question 2 below under 'Alternative approaches'.*

Please see our response under Question 2: 'Alternative approaches'

### **Alternative approaches**

#### **Question 2**

*a) Do you wish to suggest an alternative approach in relation to the regulation of commercial communications on radio?*

Yes

*b) If so please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008).*

The Children's Food Campaign believes that children should be protected from unhealthy food marketing, whatever marketing technique is used. We welcome the development and introduction of the Food Standards Agency's nutrient profiling model, which allows the differentiation between healthy food and drink products (which marketers should continue to be permitted to promote to children) and less healthy/HFSS products (the marketing of which children should be protected from). The Campaign seeks legislation which would protect children from the marketing of HFSS products according to this model and therefore advocates a 9pm watershed for spot advertising and sponsorship for these products on both television and radio. In addition, we consider that commercial references for HFSS products in radio programming should be prohibited at all times, consistent with the Audiovisual Media Services (Product Placement) Regulations 2010 for television.

#### **Option B: Maintains the principle of separation but provides a defined set of exemptions**

#### **Question 3**

*a) Do you consider that Option B should be adopted by Ofcom?*

No

*c) If not, please explain why. Again, if you responded to the 2009 Code Consultation you may wish to refer Ofcom to your 2009 response.*

This option would allow for advertising messages that were a "basic invitation to purchase". Without a prohibition on messages for HFSS products, there would be increased opportunities for marketers to target listeners, including children, with marketing for HFSS products.

Should Ofcom proceed with this option, we would press for the prohibition of HFSS products being included within the exemptions for the requirement for separation.

***Option C: Allows the integration of commercial communications and programming (except in relation to spot ads)***

***Question 4***

*a) Do you consider that Option C should be adopted by Ofcom?*

No

*b) If not, please explain why.*

This option would allow for promotion of products without a prohibition on messages for HFSS products, and would therefore increase opportunities for marketers to target listeners, including children, with marketing for HFSS products.

*c) Do you agree with our approach to the issue of additional prohibitions or restrictions? Do you agree with our approach to a proposed review period? In particular do you wish to comment on the criteria which could govern a future review?*

We disagree with Ofcom's approach to the issue of additional prohibitions with regard to HFSS products. Should Ofcom proceed with this option without a prohibition for HFSS products, this would lack consistency with the prohibition of product placement of HFSS products on television, and would have the potential to expose child and adult listeners to additional marketing for HFSS products.

Should this option be adopted, we agree that Ofcom should keep a watching brief, but recommend that two years is a considerable length of time before a review, and that a one year period is more appropriate, given the substantial changes proposed.

We agree that such a review should cover the need for additional prohibitions, particularly for HFSS products, and the impact of the changes on child audiences.

*d) Do you agree with our proposed approach prohibiting commercial references in programming primarily aimed at children and the related guidance we propose?*

We disagree with Ofcom's proposed approach prohibiting commercial references in programming primarily aimed at children because this affords inadequate protection given the limited amount of programming primarily aimed at children relative to the amount of radio programming to which they are exposed.

We draw Ofcom's attention to the Written Ministerial Statement on Television Product Placement made on 9 February 2010 regarding product placement on television: "...children's viewing is not confined to children's programmes. An alternative to a ban on placement of HFSS foods and alcohol might have been restrictions of some kind on their placement in shows which have a large child audience, or which are shown before the watershed. But this would be complex to administer and would not provide the certainty which the Government seeks. In the circumstances we intend to legislate for a complete bar on placing these products. This is an important aspect of the cautious approach that we need to take." We advise that Ofcom takes the same approach to commercial references in radio, should it proceed with this option.

***Option D: Allows the integration of commercial communications and programming (including in relation to spot ads)***

***Question 5***

*a) Do you consider that Option D should be adopted by Ofcom?*

No

*b) If not, please explain why.*

Option D would open up the possibility of many more opportunities for listeners, including children, to be exposed to HFSS marketing. The principle of separation is, as the consultation document notes, “key to achieving transparency for spot ads” and its loss therefore “could give rise to uncertainty and the potential for confusion amongst...listeners”. It raises the question as to how “consumer protection...would be achieved and maintained”.

This would be particularly acute in the case of children, who, as the consultation document further notes, “would not be afforded the protection currently provided by the separation between editorial and commercial communications”.

We would further be concerned that radio output could cease to be regulated under Ofcom and the Broadcasting Code and be subject solely to the ASA’s self-regulatory BCAP Code. We have substantial concerns regarding the content and enforcement of the BCAP Code and would not be happy with this being used as a regulation tool for the advertising of foods and drinks on radio.

Should Ofcom proceed with this option, we would seek for HFSS products to be excluded from commercial communications on radio.