

ADVERTISING AND MARKETING

New ASAI rules on advertising high fat, salt and sugar food and drink products

On 1 December 2021, the Advertising Standards Authority for Ireland's (ASAI) new rules and guidance on the advertising and marketing of 'high fat, salt and sugar' (HFSS) food and drink products to children will come into effect.

The new ASAI rules, which will form part of the existing ASAI Code, restrict marketing communications for HFSS products being targeted at children under the age of 15 through the selection of media or the context in which they appear. While the ASAI Code is not legally binding, compliance with its provisions is considered best practice and highly recommended.

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Notably, the Broadcasting Authority of Ireland’s Children’s Commercial Communications Code (the **BAI Code**), which regulates Irish-licensed broadcast media, already contains rules restricting the marketing of HFSS products to children.

The introduction of the new ASAI rules for non-broadcast media will see a welcome alignment on the approach advertisers are expected to take when marketing and advertising HFSS products in different media in Ireland. However, it is worth noting that the new ASAI rules are far more detailed and prescriptive than the rules under the BAI Code.

Concerns about the advertising and marketing of HFSS products in non-broadcast media is not a new phenomenon. In 2016, the then government published ‘*A Healthy Weight for Ireland - Obesity Policy and Action Plan, 2016 - 2025*’. This set out 60 different actions aimed at dealing with the increased prevalence of obesity amongst children and adults in Ireland.

One of these actions was the publication by the Department of Health of voluntary codes of practice for advertising and marketing in non-broadcast media, outdoor media, print media, cinemas and sponsorship. This was an attempt to catch-up with the BAI Code which had introduced similar provisions in August 2013. However, while the voluntary codes were detailed in their provisions, they lacked a regulatory body to oversee compliance and investigate complaints.

In recognition of this apparent gap, the ASAI announced on 2 June 2021 their intention to introduce new rules into the ASAI Code aimed at dealing with the advertising and marketing of HFSS products to children.

Summary of the new HFSS rules

The new rules will restrict the marketing and advertising of HFSS products to children under 15 in non-broadcast media in the following ways:

- Marketing communications for HFSS products should not be placed in media which are targeted at children, or where more than 50% of its audience are children
- Locations which are primarily used by children should be kept free from all forms of marketing communication for HFSS products (e.g. registered crèches, pre-schools, nurseries, schools)
- Where marketing communications for HFSS products are permitted they are subject to media-specific placement rules including maximum thresholds for “each medium” (e.g. in cinema, print media and digital/social media, only 25% of the total advertising space can be allocated to HFSS products). Additional rules for each medium are set out in the ASAI’s Guidance Note on HFSS Food and Non-Alcoholic Beverages (the **Guidance Note**).

“The Guidance Note provides that “all parties in the advertising chain” are responsible for ensuring compliance with the new HFSS rules.

- Marketing communications for HFSS products that are targeted at children in non-broadcasting media cannot include promotional offers or competitions (although this is subject to certain limited exceptions). There are also restrictions on the use of licensed characters and celebrities popular with children.
- The new rules include a ban on commercial sponsorship involving HFSS products for events that are of particular appeal to children of primary school age (this will come into effect on 1 December 2022). According to the Guidance Note, existing sponsorship agreements will be allowed until they expire.

Responsibility for compliance with the new HFSS rules

The Guidance Note provides that “all parties in the advertising chain” are responsible for ensuring compliance with the new HFSS rules.

In particular, advertisers are obliged to ensure that when seeking to place an advertisement for a food product on a non-broadcast medium they assess the product against the Nutrient Profiling Model (the **NPM**) appended to the ASAI Code. This mirrors a similar provision in the BAI Code. Advertisers are directed to the ‘NPM – Technical Guidance’, published by the UK Department of Health in 2011, available on the BAI website, for further information on how to assess food products.

For food products which are not HFSS products, the advertiser must produce a signed certificate stating this to be the case. A copy of the HFSS certificate should be provided to the media outlet with whom the advertiser is seeking to place the advertisement. Failure to provide a HFSS certificate to the media outlet will lead to the product being automatically classified as a HFSS product.

The Guidance Note states that media outlets should have a system in place to differentiate between HFSS and non-HFSS products so that the placement of advertisements comply with the ASAI Code. They should also ensure that they have received a HFSS certificate from the advertiser before placing any advertisements for food or drink products.

Compliance and future monitoring

Following the implementation of the new rules on 1 December 2021, the ASAI have stated that they will actively monitor compliance for the first six months. Any complaints that are received during this time are likely to be assessed in the same way as other potential breaches of the ASAI Code and will also be added to the ASAI’s monitoring structure. The ASAI has signalled that it will publish a more detailed presentation in due course to provide further insights on its expectations.

The future of HFSS marketing in the EU

Looking beyond Ireland, further developments as regards the advertising and marketing of HFSS products can be expected in the come years.

Notably, numerous European organisations have called on the EU Parliament to introduce legislation which will uniformly govern the marketing of ‘unhealthy’ foods to children across the EU. In particular, the European Public Health Alliance has released a ‘blueprint’

Directive on the Protection of Children from the Marketing of Nutritionally Poor Food.

It will be interesting to see if HFSS advertising and marketing will in fact appear on the EU’s legislative agenda in the near future, especially given the EU Parliament’s recent resolutions in its ‘Farm to Fork Strategy’. In its resolution of 20 October 2021, the Parliament welcomed the Commission’s intention to launch measures which include setting maximum levels of sugar, fats and salt in certain processed foods. It urged the Commission to focus on food for children. It sought for an effective EU-wide regulatory approach be adopted to tackle the exposure of children and adolescents to advertising and marketing of HFSS products on broadcast and digital media.

We are continuing to monitor developments in this area and will keep you updated. In the meantime if you have any queries, or would like more information on this topic, please contact Katie O’Connor, Partner, Mairéad O’Brien, Associate, Denise Daly Byrne, Associate, or Róise Nic Ghráinne, Associate.



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