

ASA System response to the CMA's formula and follow-on formula market study

1. Background and introduction

- 1.1.** This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the 'ASA system.'
- 1.2.** The ASA system is providing this written submission in response to the CMA's interim report on infant formula and follow-on formula.
- 1.3.** The ASA is the UK's independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for over 60 years and the Broadcast Advertising Code (written and maintained by BCAP) for 19, with our remit further extended in 2011 to include companies' advertising claims on their own websites and in social media spaces under their control.
- 1.4.** We are the UK's independent frontline regulator of ads by legitimate businesses and other organisations in all media, including online. Our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation, and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.
- 1.5.** As the UK's frontline advertising regulator, the ASA brings together different statutory, co-regulatory and self-regulatory enforcement mechanisms so they appear seamless to people and businesses. Our system involves the active participation of a range of legal backstops in the consumer protection landscape. We work closely with a network of partners including the Competition and Markets Authority, Information Commissioner's Office, Ofcom, Trading Standards, the Gambling Commission, the Medicines and Healthcare products Regulatory Agency and the Financial Conduct Authority.
- 1.6.** We call our model of partnering with businesses and other regulators 'collective ad regulation.' The ASA's independence and the buy-in and support we receive through collective ad regulation delivers faster, more flexible, more joined-up and proportionate regulation.
- 1.7.** The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don't mislead, harm, or seriously offend their audience. The inclusion of the rules in the UK Advertising Codes has enormous benefits for responsible businesses and for consumers, who benefit from the protection the rules afford.

2. Consultation Response (Part 1)

- 2.1.** The ASA recognises that the formula milk market is filled with an array of brands and variety of milks, which can be overwhelming for new parents. However, [Section 15](#)

of the CAP Code, which reflects the [law](#), contains clear and straightforward rules that govern the claims advertisers can and cannot make about formula milk.

- 2.2.** It is important that advertisers are aware that, with certain exceptions, the advertising of infant formula milk is prohibited - as set out under [Rule 15.10](#) of the Code. This includes both direct and indirect advertising.
- 2.3.** While advertisers are permitted to advertise follow-on formula milk, they must take care to advertise in such a way that allows consumers to make a clear distinction between infant and follow-on formula products, so as to avoid any risk of confusion between the two - as set out in [Rule 15.11](#) of the Code. When marketing their products, advertisers should be mindful of image choices and the use of phrases that are ambiguous or could be open to interpretation.
- 2.4.** The ASA understands there is a legitimate market for baby milk formula and associated products. Even so, we expect advertisers to act responsibly and avoid positioning formula feeding as having benefits that are [equivalent to](#), superior to, or cannot be achieved through, breastfeeding. Similarly, ads which promote bottle-feeding or compare their products to breastfeeding, including by suggesting that bottle-feeding fosters stronger bonding or a less stressful family atmosphere, are likely to breach the Code.
- 2.5.** The ASA broadly supports the provisional findings and potential measures to address the CMA's emerging concerns in the interim report, particularly clarifying and monitoring the existing regulations.
- 2.6.** However, we do not agree with the wording in Section 6.53, specifically that the CAP Code takes a 'permissive' approach to interpreting the DHSC guidance on Regulation 2016/127. We believe the reader could misinterpret this to think that the ASA takes a lenient approach. Instead, we ask that you amend this to reflect that CAP's remit goes beyond the statutory definition of 'advertising' and that we consider a broader range of communications as advertising compared to the legal definitions.