



Broadcasting Authority of Ireland

General Commercial Communications Code

Guidance Notes

The purpose of this document is to provide guidance (and direction in the case of product placement) on the rules contained in the General Commercial Communications Code. The document should not be regarded as a complete or authoritative statement of law. These notes are, with the exception of direction in respect of product placement rules, non-binding and are provided to assist broadcasters, advertisers and the general public to interpret and apply the Code.

The Broadcasting Authority of Ireland accepts no responsibility or liability in respect of any guidance/direction that may be given and reserves the right to revise and review any guidance/direction provided. Broadcasters should, as part of their own internal copy clearance procedures, make their own independent assessment after taking their own advice and making inquiries/research as appropriate. This document does not purport to explain all the relevant provisions of the Code or give an exhaustive list of possible applications. This is an organic document and will be added to from time to time as the need becomes apparent.

Comments on the guidance notes may be emailed to codes@bai.ie or forwarded by post to:

**Guidance Notes,
Broadcasting Authority of Ireland,
2-5 Warrington Place, Dublin 2.**



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Introduction

Section 42 of the Broadcasting Act, 2009, provides that:

- (1) The Authority shall prepare, and from time to time as occasion requires, revise, in accordance with this section, a code or codes governing standards and practice (“broadcasting code”) to be observed by broadcasters.
- (2) Broadcasting codes shall provide –
 - (h) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within paragraph (g), protect the interests of the audience.

The General Commercial Communications Code (“the Code”) has been developed by the Broadcasting Authority of Ireland in accordance with its statutory obligations. This Code replaces the BCI General Advertising Code.

Jurisdiction

The Code shall apply to broadcasters within the jurisdiction of the Republic of Ireland. It shall not apply to other services commonly received in this State but licensed in the United Kingdom or in other jurisdictions.

Complaints

Any viewer or listener can refer a complaint to the Broadcasting Authority of Ireland or directly to the relevant broadcaster if they are not happy with the manner in which a broadcaster is complying with this Code. Further information is available on www.bai.ie, by emailing complaints@bai.ie or by phoning the BAI on **01 6441200**.

Guidance

Further information on this Code is provided in Guidance Notes available on www.bai.ie. The Authority does not provide broadcasters, advertisers or the general public with a copy clearance service.

Broadcasters are advised to introduce appropriate internal mechanisms to ensure that compliance with the Code is maintained. While suggestions in this regard are made in this document, broadcasters are best placed to decide the mechanisms that are most appropriate for their service and its audience.



Broadcasters should also note that the Children's Commercial Communications Code will also apply, in relevant circumstances, to commercial communications broadcast on their radio and television services.

When requested, the BAI will provide general guidance regarding the provisions of this Code. However, the BAI only provides more specific guidance to broadcasters in relation to atypical commercial communications. This will only happen when such requests are accompanied by a script of the commercial communication. In the interest of clarity, the following guidelines will apply from June 10th 2010-

- Requests for advice from broadcasters must be submitted in writing or email and include the complete text and, where relevant, audio/video copy of the commercial communication in question.*
- The submission should clearly state the section/s of the Code, which the broadcaster believes are relevant, and set out the specific question about which the broadcaster would like a view. Queries which are submitted without a text or comment will not be considered.*
- The BAI is mindful of the short timeframes under which broadcasters operate and will endeavour to provide an initial response to the query as soon as possible. However, broadcasters should note that this could take up to two working days or longer if the query requires more detailed consideration or in instances where additional information is required. Failure to provide a script and comment will delay this process.*
- The BAI will, following consideration of the script and comment, set out its guidance on the matter. In certain circumstances, interested parties may be invited to make follow-up submissions within an agreed timeframe. In such instances, the BAI will take a final view on the matter following consideration of any additional submissions.*
- In certain circumstances, broadcasters may be requested to refrain from airing the communication under consideration.*
- It has been the experience of the BAI that the answer to many requests from broadcasters for guidance have been provided in the Guidance Notes accompanying the Code. For this reason, broadcasters should only request guidance following a review of the relevant section of the Guidance Notes.*
- Broadcasters are reminded that it is, in the large majority of instances, a matter for them as to whether or not to broadcast a commercial communication. Accordingly, the BAI accepts no liability for any decision (or consequences arising) made by broadcasters to defer the airing of a commercial communication pending receipt of guidance from the BAI.*

The effective date of this Code is June 10th 2010.



1. **Objectives of the Code**

- To ensure that the public can be confident that commercial communications are legal, honest, truthful, decent and protect the interests of the audience.
- To ensure that commercial communications do not impinge on the editorial integrity of broadcasts.
- To provide clear guidance to broadcasters as to the standards to which commercial communications shall adhere.
- To provide guidance to the general public on the standards they can expect from commercial communications on broadcasting services.
- To provide broadcasters with a simple, flexible and comprehensive code that does not impede in an unwarranted manner their right to communicate commercial messages.

2. **Definitions**

Key to this Code and any code or set of rules is a common understanding of the terms used within that code. For this reason, this Code contains a set of definitions of the types of commercial communications which the Code governs.

Except where definitions are provided, the terms used in the Code should be interpreted in accordance with their natural and ordinary common meaning and/or their meaning in a broadcasting context.

Commercial Communication

Images with or without sound and radio announcements which are designed to promote, directly or indirectly, the products, services or image of a natural or legal entity pursuing an economic activity. Such images and radio announcements accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, advertising, sponsorship, teleshopping and product placement but do not include public service announcements and charity appeals broadcast free of charge.



Advertising

Images with or without sound and radio announcements broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of products or services, including immovable property, rights and obligations, in return for payment.

Sponsorship

Any contribution made by a public or private undertaking or natural person not engaged in providing radio or television services or in the production of sound broadcasting or audio visual works, to the financing of television and/or radio programmes with a view to promoting its name, its trade mark, its image, its activities or its products.

Misleading Commercial Communications

Commercial communications that contain any element of spoken or visual presentation which misleads or is likely to mislead, either directly or by implication, by act or omission, with regard to the merits of the product or service promoted or its suitability for the purpose recommended and which, by reason of its misleading nature, is likely to prejudice the interests of individuals or a competitor.

Comparative Commercial Communications

Commercial communications that contain explicit or implicit identification of a competitor or products or services offered by a competitor.

Surreptitious Commercial Communications

Commercial communications that contain the representation in words or pictures of products, services, the name, the trade mark or the activities of a producer of products or a provider of services in programmes when such representation is intended by the broadcaster to serve as a commercial communication and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.

Subliminal Commercial Communications

Commercial communications that include any technical device, which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, members of an audience without their being aware or fully aware of what has been done.



Teleshopping

A direct offer broadcast to the public with a view to the sale, purchase, rental or supply of products or the provision of services, including immovable property, rights and obligations, in return for payment.

Television Product Placement

Any form of commercial communication on television consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme, in return for payment or for similar consideration.

Virtual Advertising

An advertising technique which allows broadcasters to electronically insert virtual advertising messages or sponsorship announcements into a television programme by altering the broadcast signal itself.

Interactive Advertising

An advertising technique which allows the viewer/listener to interact with the television or radio broadcast by actively choosing the advertising content to which s/he wishes to be exposed to for as long as s/he wants. Interactive advertising allows the viewer/listener to provide information directly to the broadcaster/advertiser by means of a return path, and/or participate in an interactive environment which is separate to the broadcast content.

Split-screen Advertising

An advertising technique which allows the simultaneous presentation of editorial content and commercial information on the same screen, divided into two or more parts.

Child/Children

For the purpose of this Code, the terms 'Child' and 'Children' refer to any person under 18 years of age.



Exclusions

The following announcements shall not constitute advertising:

- Informational announcements about upcoming programmes on broadcast services, including the date and time of transmission of the named programme(s), and including 'trailer' excerpts and/or a brief description of programme content, once such announcements do not contain advertising content.
- Information announcements of forthcoming concerts, recitals or performances, whether intended for broadcast or not, given by the National Symphony Orchestra, the RTÉ Concert Orchestra, and other RTÉ performing groups or of any other comparable groups which are employed by or under contract to RTÉ or employed by or under contract to a sound broadcasting contractor or a television broadcasting contractor licensed in the State.
- Announcements of outside broadcasting events or of non-broadcast events organised in whole or in part by the broadcaster if the public are allowed entry free of charge.

The excluded announcements will not count towards advertising minuteage. Broadcasters should note that they may, where relevant, be required to comply with:- the General Principles and Rules applying to all Commercial Communications detailed in Section 3 of this Code; other sections of the Code (e.g. sponsorship); the BCI Code of Programme Standards may also be required, where relevant (e.g. programme trailers, and; any other relevant regulations.

The broadcaster may credit the sponsor in accordance with the rules contained under Section 6 of this Code in the case of announcements of outside broadcasting events and announcements of non-broadcast events linked to a sponsorship arrangement.



3. General principles and rules applying to all commercial Communications

While there are specific rules in respect of certain types of commercial communications, all commercial communications, regardless of the techniques used or the product or service promoted, are required to comply with the principles detailed in this section of the Code.

3.1 Protecting the Individual and Society

This principle is intended to ensure that commercial communications aimed at the public are legal, honest, decent, truthful and protect the interests of audiences. A key element of this principle is a requirement that advertising, sponsorship, teleshopping, product placement and any other type of commercial promotion must not mislead the public either directly or indirectly. Claims made in commercial communications must be true and devoid of exaggeration.

While advertisers have a responsibility under law to ensure that commercial communications are not misleading, legislation and this Code extends this responsibility to broadcasters. In this context, broadcasters should develop mechanisms to satisfy themselves to a reasonable degree that the details, claims, etc., made in a commercial communications are legal, honest, decent and truthful. The BAI recommends that broadcasters keep records of any relevant information received in this regard.

1. All commercial communications shall be prepared with a sense of responsibility both to the individual and to society and shall not prejudice the interests of either. All commercial communications shall be legal, honest, decent, truthful and protect the interests of the audience.
2. All commercial communications shall comply with applicable Irish and European legislation. This includes, but is not restricted to, the *Broadcasting Act, 2009* and *Directive 89/552/EEC as amended by Directive 97/36/EC and Directive 2007/65/EC (Audiovisual Media Services Directive)*.

A non-exhaustive list of legislation pertaining to commercial communications is contained in the Appendix of the Code. It is recommended that broadcasters familiarise themselves with relevant legislative provisions and with changes in legislation introduced from time-to-time.

3. Surreptitious, subliminal and misleading commercial communications are prohibited.

Definitions for each of these three types of commercial communication are provided above in Section 2.



4. All pertinent details of an offer contained in a commercial communication shall be stated in a clear and understandable manner. Disclaimers and asterisked or footnoted information included/required in commercial communications shall not contradict more prominent aspects of the message and shall be located and presented in such a manner as to be clearly visible and/or audible.

Broadcasters should take measures to ensure that the principal offer contained in a commercial communication, or any other significant information, is not contained solely in footnoted text or taglines at the end of a commercial communication on radio.

It is not the BAI's current practice to prescribe standards in respect of the placement and size of on-screen taglines or other information included as part of commercial communications on radio and television. The BAI may review this approach in circumstances where it is not satisfied that a discretionary, broadcaster-led approach to the implementation of this rule proves effective.

In the interests of best practice, and where practicable, broadcasters should consider using plain language which is easily understood by listeners and viewers. Where information is spoken, it is recommended that this be done at an appropriate speed so that the content of any additional information provided can be clearly understood. In terms of on-screen messages, broadcasters should be mindful of the varying abilities of the public in terms of their physical and educational ability to read on-screen text. Broadcasters should also take into consideration the time required to read the specific text and matters of readability, including the contrast between the text and the background picture onto which it is placed.

5. Comparative commercial communications containing direct or implied comparisons with other products or services are permissible provided they objectively compare products or services meeting the same needs or intended for the same purpose. Points of comparison shall be based on facts that can be substantiated. The subject matter of a comparison shall not be chosen in such a way as to confer an artificial or unfair advantage to a promoter of a product or service.
6. Broadcasters shall be mindful of the potential for sound effects in commercial communications to distract and/or alarm viewers and listeners. Particular care shall be taken when including sound effects such as sirens, horns, ringing phones and screeching tyres. They shall not be included at the beginning of a commercial communication.

This rule is intended to avoid the potentially hazardous distractions that can be caused by the use of sound effects at the beginning of a commercial communication when their use could cause confusion. While the potential for distraction arising from the use of sound effects is greater in the case of commercial communications on radio, distraction may also occur in the case of television.



Accordingly, this rule applies to both radio and television. This rule applies regardless of the placement of the commercial communication in a commercial break i.e. whether at the beginning, middle or end of a commercial break.

3.2 Offence, Harm and Human Dignity

This principle is intended to set out basic standards in relation to commercial communications in light of the offence and harm that commercial communications can potentially cause to viewers and listeners.

1. Commercial communications shall not prejudice human dignity, cause harm or cause serious or widespread offence.
2. Commercial communications shall not include, support or condone discrimination against any person or section of the community, in particular on the basis of age, gender, marital status, membership of the Traveller Community, family status, sexual orientation, disability, race or religion.
3. Commercial communications shall not be offensive to religious or political beliefs, or encourage behaviour prejudicial to the protection of the environment or to health or safety.
4. Commercial communications shall be appropriately scheduled with regard to the time of broadcast, type of programme, channel/service type, nature of the product or service being promoted and the likely composition of the audience.

This rule is intended to recognise the role of context as a key factor that can determine the level of offence and/or harm that can be caused by commercial communications. These contextual factors are also those that will be taken into account when assessing compliance/complaints in respect of commercial communications. While they may provide a reasonable justification for the content and scheduling of commercial communications, the contextual factors are intended to serve as a guide for broadcasters, in order to avoid undue offence and all harm.



5. Commercial communications shall not cause moral, mental or physical detriment to children, and shall comply with the following criteria for their protection:
- They shall not directly exhort children to buy or hire a product or a service by exploiting their inexperience or credulity;
 - They shall not directly encourage children to persuade their parents, guardians or others to purchase the products or services being promoted;
 - They shall not exploit the special trust children place in parents, guardians, teachers or other persons;
 - They shall not unreasonably show children in dangerous situations.

Broadcasters are reminded that in addition to this Code, compliance is also required with the Children's Commercial Communications Code.

6. Individual living persons shall not normally be portrayed or referred to in commercial communications without their permission. However, references to living persons may normally be made in commercial communications for books, films, radio or television programmes, newspapers, magazines etc., which feature the persons referred to in the communication, provided they are not offensive or inaccurate.

The intent of Rule 3.2(6) is to protect the dignity of individuals and to respect their commercial rights. The rule is in two parts. The first part prohibits references to, or portrayals of living individuals in commercial communications without their permission. In practice, it means that in general any reference to an individual which takes the form of a caricature or an impersonation which has not been approved by the person in question is not permitted.

References of this nature, which have the approval of the person in question, are permitted and broadcasters should secure or request relevant documentation to demonstrate that the approval of the relevant person(s) has been granted to advertisers. Broadcasters should note that impersonations of fictional characters are not restricted once they comply with the Code.

The second part of the rule recognises that it is legitimate to refer to individual living persons in order to provide factual information about the contents of a publication, such as a book or newspaper, in which they feature e.g. "This week in the Saturday Review we speak to Daniel Day Lewis". Such references do not require the permission of the person in question but must comply with the first part of the rule. All references of this nature shall not be offensive or inaccurate.



7. Commercial communications shall not be calculated to induce unwarranted fear on the part of the viewer or listener.

This rule is intended to ensure that any appeal to fear in a commercial communication is justified in the context of the product, service or activity promoted in the communication. For instance, it may be appropriate for a commercial communication in respect of drink driving to contain images that are calculated to induce a reasonable fear of the consequences of such activity. However, broadcasters should be mindful of the potential for viewers or listeners to identify with such matters and of the vulnerability of children. For this reason, broadcasters should consider the appropriate content and scheduling of communications that could cause distress.

3.3 Transparency

The principle of Transparency is concerned with ensuring that all commercial communications aimed at the public are apparent to them. It obliges broadcasters to ensure that the distinction between editorial content and commercial communications is clear and identifiable.

1. Commercial communications shall operate on a principle of transparency. Any commercial arrangement within programming shall be readily recognisable as such and the listener/viewer shall be made aware of such an arrangement.
2. Presenters and other on-air personnel shall not advertise or endorse products or services during editorial content.

Broadcasters should exercise particular care when competitions and outside broadcast are conducted. It has been the BAI's experience that information in relation to competitions and the manner in which interviews with sponsors are conducted can result in advertising content and product or service endorsement taking place. For example, presenters or guests inappropriately describing the products and services of a sponsor, providing price information and encouraging purchase are likely to result in breaches of the Code. In this respect, broadcasters should ensure that competitions comply, where relevant, with the rules under the heading of sponsorship (Section 6), and rules in respect of television product placement (section 7).

This rule applies even where no payment or similar consideration is in place in respect of the topic under discussion. This rule is not intended to limit legitimate editorial comment where products or services may be reviewed and about which opinions (positive or negative) may be given. For example, comment in the context of a consumer type programme or a review of cultural matters (books etc) is legitimate once the restrictions of the Code are adhered to.



3. Advertisers, sponsors and providers of placed products or services shall not exercise any editorial influence over the content or scheduling of programmes.

It has been the experience of the BAI that an inappropriate influence on the content of programmes is often evident from the inclusion of advertising content and/or where undue prominence afforded to a product, service, facility etc., referenced in a programme. In this regard, the following is a non-exhaustive guide to some of the factors that will be taken into account by the BAI in determining whether a reference within a programme to a product, service, facility etc., constitutes undue prominence:

- *Whether its inclusion is editorially justified;*
- *The manner in which the presence of products, services or facilities is presented in the programme, including, among other things, via the movements of the camera and the shots taken*
- *Explicit references to the virtues or positive effects of products, services etc.;*
- *The evocation or reproduction of advertising content or slogans.*
- *The accumulated presence of a product, service, facility across the scheduled duration of the programme taking also into account the presence of relevant product, services, facilities in ad breaks;*

4. Commercial communications shall not include the words 'guarantee' or 'guaranteed', 'warranty' or 'warranted' unless a legal guarantee/warranty is available to the purchaser. No commercial communication shall contain a direct or implied reference which purports to take away or diminish the legal rights of a purchaser.

This rule is intended to prevent the casual use of the term 'guarantee' during commercial communications and requires the use of the terms 'guarantee', 'warranty' and similar terms to have a firm legal basis. In practice, a guarantee or warranty etc., must be available to the purchaser of the product and service promoted in instances where the advertising copy references 'guarantees', 'warranties' or similar terms. It is recommended that broadcasters request a copy of the relevant guarantee or warranty as part of negotiations with the advertiser. Such evidence will also assist broadcasters address complaints regarding commercial communications coming within this rule.

5. Commercial communications may make use of testimonials. Such testimonials shall be genuine, relevant and contemporary and shall relate to the person giving the testimonial. Documentary evidence of testimonials shall be available to the broadcaster.



A testimonial is a statement given by an individual reflecting their genuine views about the product or service promoted e.g. where an individual speaks about weight loss s/he achieved via a particular product or services. Where a testimonial is genuine but presented by an actor, broadcasters are advised to make this clear in the communication in order to ensure compliance. The use of advertising copy to give the impression of a testimonial but where the testimonial is not genuine will be contrary to the Code.

6. Commercial communications shall not describe products or services as 'free' unless the products or services are supplied at no cost or at no extra cost (other than actual postage or carriage) to the recipient.

A trial may be described as 'free' even if the customer has to pay for the costs of returning the goods, provided this is made clear in the communication.

7. Commercial communications shall not feature persons regularly presenting news programmes, except for commercial communications promoting appeals by registered charities or public service campaigns for safety, health, education, etc.

Examples of news programmes include top-of-the-hour news bulletins and extended news bulletins e.g. TV3 News, RTE Six One News, Today FM Lunchtime News. This rule does not prohibit presenters of current affairs programmes or of weather, entertainment, traffic items, etc., being featured in commercial communications once they do not also present news programmes.

3.4 Compliance

1. Broadcasters must observe the provisions of the Code.
2. The principles of this Code are indivisible, that is, all commercial communications shall conform to all of the principles.

Broadcasters should note that a commercial communications may be required to comply with more than one principle or rule. An example of a commercial communication that would have to comply with more than one rule would be one for a cosmetic surgery service.

Such a communication will be required to comply with the specific rules in relation to cosmetic surgery (Section 8.2 (12) & (13)) but also the General Rules for Medicines, Medical Treatments, Products and Services and Cosmetic Treatments and Services (Section 8.2) as well as the General Rules applying to all Commercial Communications (Section 3). It may, in certain instances, also have to comply with the rules in respect of slimming. Where it entails the use of Botox or a similar prescription or prohibited product, it would not be permitted further to Section 9. Broadcasters are, therefore, advised to consider the totality of the Code's provisions and not to apply any single rule in too narrow or focused way.



3. Commercial communications shall be considered in whole and in context against the principles and rules contained in this Code. The following contextual factors shall apply:-
 - Time of broadcast
 - Type of programme
 - Channel/service type
 - Nature of the product or service
 - Likely composition of the audience listening to, or watching, the programme
4. Broadcasters shall comply with the spirit as well as the letter of the Code.

4. General rules pertaining to advertising and teleshopping

These rules are intended to recognise the specific characteristics of advertising and teleshopping as opposed to sponsorship or television product placement. Unless otherwise indicated, the rules will apply to both television and radio advertising.

Broadcasters should note that programmes predominantly predicated – in terms of both the content itself and the funding of that content – on the promotion of premium-rate telecommunication services are classified by the BAI as teleshopping. Such programming must comply with this section of the Code and with Section 8.9 in respect of the use of premium-rate telecommunication services. Broadcasters are advised to read guidance in respect of competitions in instances where they are scheduling quiz-type content that is predominantly predicated on the use of premium-rate services. This guidance on competitions is provided under Section 6 of the Guidance Notes.

1. The general principles and rules pertaining to all commercial communications shall apply to advertising and teleshopping.
2. Without prejudice to the use of split-screen, virtual or interactive advertising techniques, advertising and teleshopping segments shall operate on a principle of separation, whereby commercial content in advertising breaks and teleshopping segments shall be separate from programme content.



3. The insertion of advertising and teleshopping shall not affect the editorial integrity and value of programming. Advertising and teleshopping segments shall be inserted into programmes in such a way that takes into account the natural breaks in, and the duration and nature of, the programme, while ensuring that the rights of the rights holders are not prejudiced.
4. The transmission of films made for television (excluding series, serial and documentaries), cinematographic works and television news and current affairs programmes may be interrupted by advertising and teleshopping segments once for each scheduled period of at least 30 minutes.
5. Advertising or teleshopping segments shall not be inserted in any television broadcast of news and current affairs programmes, documentaries or religious programmes when their scheduled duration is less than 30 minutes.
6. Advertising or teleshopping segments shall not be inserted in any broadcast of a religious service.
7. In television broadcasts, isolated advertising and teleshopping spots, other than in the transmission of sports, shall remain the exception.
8. Teleshopping shall not feature medicines (including prescription medicines), medical products, treatments and services and cosmetic treatments and services.
9. Teleshopping shall not exhort children to contract for the sale or rental of products and services.



10. Advertising breaks and teleshopping segments shall be signalled by visual or audio means. Such means shall not contain any commercial communication.

The manner in which this rule is given practical effect is currently a matter for broadcasters. In practice, it may involve the presenter simply stating that a commercial break is about to take place. It may also involve the placement of an intermediary screen-shot between the end of the programme segment and the advertising/teleshopping break or by broadcasting a station jingle prior to the advertisement/teleshopping break.

As the rule prohibits the inclusion of commercial communications in the announcement signalling the advertisement/teleshopping break, a sponsorship announcement shall not constitute an appropriate visual or audio means for signalling the advertising/teleshopping break.

11. Broadcasters shall take all reasonable measures to ensure that advertisements do not sound louder than adjacent programming. Broadcasters shall establish clear limits on the use of compression, limiting and equalisation as these apply to advertisements provided to broadcasters by third parties.

The means by which the objective contained in this rule is achieved is currently a matter for broadcasters.

5. Rules pertaining to specific advertising techniques

There are three specific advertising techniques addressed under this section of the Code. These are split-screen, virtual and interactive advertising. While these techniques are not common at present on services licensed in the Republic of Ireland, they are expected to become more prevalent in the coming years. Definitions for each type of advertising technique are included under the “Definitions” section above. Broadcasters should note that the rules have been revised to reflect the new definition of interactive advertising. The definition and related rules will apply, where relevant, to any future interactive advertising carried on digital radio. Broadcasters should also note that these three types of commercial communications are prohibited by the Children’s Code on Commercial Communications.

1. The general principles and rules applying to all commercial communications and, where relevant, the general rules pertaining to advertising and teleshopping shall apply to split-screen, virtual and interactive advertising. Additional rules in relation to split-screen and interactive advertising are set out hereunder.



Split-Screen Advertising

Split-screen advertising consists of the simultaneous or parallel transmission of editorial content and advertising content. For example, an advertising spot may appear in a window during the transmission of a programme in such a way that two separate images are visible on the screen. Provided the space set aside for advertising is not excessive, this technique enables the viewer to continue to watch the editorial programme during the transmission of an advertising spot. The split-screen technique is generally used for broadcasting relatively short advertising spots and, to date occurs primarily in sports programming. This type of advertising is permitted subject to compliance with the Code.

Split-screen advertising will count towards advertising minutage in the same way as a traditional advertisement e.g. a 30-second split-screen advertising spot will constitute 30 seconds of advertising time. Advertising time is not calculated in relation to the proportion of the screen devoted to the commercial communication.

2. Split-screen advertising is permitted during natural breaks and during end credits. Split-screen advertising may also be inserted during long-form sports programmes which do not have a natural break e.g. Formula 1 Racing.
3. Split-screen advertising shall not exceed 50% of screen space and only one split-screen advertisement shall appear at any given time.
4. Split-screen advertising is not permitted in news or current affairs programmes, feature films or broadcasts of religious services.

Interactive Advertising

Interactive advertising allows the viewer/listener to supply information directly to the broadcaster via a return path e.g. telephone line and/or to interactively explore a chosen environment for as long as s/he wishes. Generally speaking, interactive advertising tends to be initiated by the audience on the basis of an advertisement broadcast. For this reason, the regulation of advertising which can lead to an interactive environment is deemed by the BAI to be both appropriate and necessary.

5. Interactive advertising shall not bring the viewer/listener immediately/directly to products or services that are advertised. Viewers/listeners shall be warned by appropriate means that they are about to enter a commercial interactive environment not governed by this Code. This shall be done via a two-step process whereby the viewer/listener shall be able to access the interactive content only after the second step.



6. Rules pertaining to Sponsorship

The rules in this section of the Code are intended to ensure that the distinction between advertising and sponsorship is clear to broadcasters and to viewers and listeners. This distinction is recognised in both Irish and European broadcasting legislation. This distinction is important as there are limits to the amount of advertising that can be broadcast and, in the absence of a clear distinction, it would be difficult for the BAI to assess compliance with these limits, for broadcasters to ensure compliance and for the public to distinguish between sponsorship and advertising.

Sponsorship arrangements include:-

- *The provision of direct funding by the sponsor e.g. where a sponsor provides funding and is the named sponsor of the programme.*
- *Through in-kind investment in the form of the provision of facilities or services from the sponsor (e.g. in outside broadcasts).*
- *The supply of products and services, including prizes.*

Radio

All sponsorship arrangements on radio must comply with this section of the Code.

Television

This section of the Code will apply to sponsorship on television in the case of:-

- *Direct funding arrangements e.g. where a sponsor provides funding and is the named sponsor of the programme;*
- *In-kind investments and the supply of products and services (including prizes) that do not constitute free of charge product placement. See Section 7 for further details.*

1. Sponsorship shall not constitute advertising as defined by this Code.
2. A sponsorship announcement or reference shall not directly encourage the purchase or rental of a product or service, in particular by, inter alia, making special promotional references to a product or service, by the inclusion of advertising copy, prices, endorsements or calls to action, or by affording undue prominence to a product or service of the sponsor.



Sponsorship stings/taglines

- *Broadcasters are permitted to rotate sponsorship stings/taglines once individual stings/taglines comply.*
Individual Sponsorship stings/taglines may contain: i) the sponsor's name; ii) appropriate reference to a single product or service of the sponsor; iii) a generic branding slogan which does not include advertising content, and; iv) contact details e.g. address, phone number, website, once it does not constitute advertising content.
 - *Examples of content that individual sponsorship taglines/stings should not contain includes: i) reference to more than one product or service; ii) references to prices, sales, discounts, special offers, test drives, money back offers etc; iii) advertising copy i.e. copy that encourages purchase and copy used in advertisement campaigns of the sponsor; iv) calls to actions i.e. an invitation to take a specific action typified by words and phrases such as 'check out our website for great offers' 'get a free bet in this week's edition', 'talk to our advisor' 'take a test drive today' or equivalent words or phrases.*
 - *Contact details should be restricted to neutral, factual information e.g. "more information on www...", "You'll find us on the Long Mile Road" etc. Contact details should not be linked to a call to action e.g. "phone", "visit" or contain advertising copy or content.*
 - *Sponsorship stings/taglines must not afford undue prominence to a product or service of the sponsor.*
 - *There is no prohibition on the inclusion during ad breaks of advertisements for a programme sponsor. However, care be taken to ensure sufficient separation between formal programme sponsorship announcements scheduled before or at the end of advert breaks and adverts for the products and services of the sponsor carried in a separate advertisement break.*
3. Viewers and listeners shall be clearly informed of the existence of a sponsorship agreement.

Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product or service or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or the end of the programmes.

Sponsor logos shall not be shown during the editorial segments of television documentaries. (This restriction comes into place from January 1st, 2011).



Broadcasters must ensure that sponsorship announcements directly identify the relationship between the sponsored item and the sponsor so that the viewer or listener is clear about the relationship between the sponsored item and the sponsor e.g. 'In association with', 'brought to you by', 'sponsored by', 'with', 'with thanks to' etc.

In addition, broadcasters must ensure that the inclusion of sponsor logos in programming is appropriate and does not impact on the integrity of the programmes in question.

The restriction on the use of sponsor logos in editorial segments of documentaries comes into effect from January 1st 2011. There is no restriction prior to this date.

4. Programme material shall not be sponsored by a sponsor(s) involved in the manufacture, supply or provision of a product or service that is not permitted to be promoted under this Code.

This means, for example, that sponsorship announcements, including competitions, may not include references to prescription drugs or cigarettes or other prohibited products or services. A list of restricted products and services is included in Section 9 below. Other products and services are restricted by Irish and European legislation and the appendix to this Code contains a non-exhaustive list of legislation.

5. Programmes shall not be sponsored by a sponsor(s) whose products or services are not permitted to appeal to the typical audience for that programme or during which it would not be permitted to promote.

This rule is of particular relevance to alcohol sponsorship but is not limited to this type of sponsorship alone. Broadcasters can make appropriate decisions in this regard by being familiar with the audiences for the different day parts and programmes on the service. Broadcasters are also reminded of the requirement to comply with the sponsorship requirements included in the Alcohol Marketing Code of Practice

6. The sponsorship of programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription.
7. News, current affairs, religious services and religious programmes shall not be sponsored on television.



8. News programmes shall not be sponsored on radio.

These rules prohibit sponsorship of news programmes on radio and television. News programmes are main news bulletins, including, extended news bulletins e.g. TV3 News, RTÉ Six One News, Today FM Lunchtime News etc. It does not prohibit sponsorship of weather, entertainment and traffic items on radio or television or sponsorship of current affairs or religious programmes on radio.

9. The information provided in respect of, and the mechanism used to participate in, sponsored competitions shall not constitute advertising.

In this regard, the inclusion in competitions of questions related to the products or services of the sponsor are problematic. In addition, mechanisms that, for example, require audiences to visit the premises, websites of sponsors, or to purchase the products or services of the sponsor in order to participate in the competition, are also problematic.

More generally, competitions may contain short factual descriptions of prizes that are on offer but shall not contain advertising content. This includes a prohibition on references that directly encourage the purchase or rental of a product or service, in particular by, inter alia, making special promotional references to a product or service, by the inclusion of advertising copy, prices, endorsements or calls to action, or by affording undue prominence to a product or service of the sponsor.

Competitions

The Principle of Protecting the Individual and Society (and other Section 3 principles) applies to competitions. In this regard, broadcasters should take steps to ensure that competitions are prepared and undertaken with a sense of responsibility, both to the individual and to society. Competitions must be legal, honest, decent and truthful, must not be misleading and must protect the interests of the audience. All pertinent information regarding the competition must be provided to the viewer or listener. In addition, competitions must comply with the rules in respect of premium-rate telecommunication services (Section 8.9) where such services are utilised.

The BAI recommends that broadcasters take the following steps to ensure that the requirements of the Code are met:-

- *Individuals entering competitions should have a fair chance of winning the competition. Accordingly, broadcasters should ensure that the methodology used to reach a correct answer to the competition is clear and unambiguous and explained on-air, even where no winner emerges upon completion of the competition. This is particularly important where the solution is cryptic or complex.*
- *Broadcasters should be mindful when running competitions that there may, in certain circumstances, be more than one possible correct answer. In such circumstances, a viewer or listener will have a reasonable expectation of having a chance at winning the competition (or one element of the competition) in instances where an alternative answer is correct.*



- *Presenters should not mislead audiences about the complexity of a competition by stating, for example that the competition is easy, when in fact the competition is difficult or cryptic. In addition, broadcasters are advised to ensure that the answer is reasonable based on the manner of its presentation.*
 - *Broadcasters should take steps to ensure that the means by which the winner of the competition is selected is fair, especially where the winner is picked at random from those correctly answering a competition question.*
 - *In the case of repeat programmes containing competitions that have finished, the BAI advises broadcasters to take steps to notify viewers and listeners to repeat programmes that the competition has closed. Where a listener or audience member can enter the competition via a repeat programme, broadcasters are advised to ensure that such entries will be included in the competition.*
 - *Where a technical issue arises in respect of the competition, such that it will affect the fairness of the competition, broadcasters are advised to take steps to notify the audience and amend the competition process accordingly e.g. by carrying the competition over to another day.*
 - *The BAI recommends that broadcasters draw up and make available terms and conditions that may apply to a particular competition. The BAI recommends broadcasters to state on-air any key terms that would void an entry or prohibit a winner from taking-up the prize e.g. age limits or time limits in the case of travel prizes.*
10. The value of sponsored competition prizes may be generally stated. However, prices shall not be quoted.

For example, “We got a car to give away all this week worth over €10,000” would be acceptable but references to the price of the car would not be acceptable.

7. Television Product Placement

The product placement rules only apply to television. These rules apply to the placement, under certain circumstances, of products, services, facilities etc., in television programmes produced by broadcasters and/or programmes commissioned by the broadcaster but produced independently. Products and services are generally placed in television programmes as either production props, locations, facilities or prizes.



1. Product placement is prohibited unless permitted as specified in the Code.

This rule prohibits the inclusion in television programmes of products and services in return for payment. The Authority will review the prohibition on paid placement within 12-months. Television broadcasters are solely responsible for ensuring compliance and are accordingly advised to put in place mechanisms to ensure that programmes commissioned by the broadcaster but produced by third parties do not include paid placement and that they are in a position to verify that this is the case.

2. Product placement is permitted where there is no payment but the provision only of certain products and services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

For the purpose of this Code, the provision of products and services free of charge will only constitute product placement where the provision is of significant value, as defined from time-to-time by the Authority.

*This rule recognises that the provision of products, services, facilities etc., for use in a programme is legitimate in order to ensure programme realism and/or in order to defray programme costs and/or in order to add value for viewers. The product placement rules will only apply where the **cumulative value** of all the products, services, facilities etc., featured in an **individual** programme is of 'significant' value. At this time, significant value is over €5,000 per programme. This value will be subject to review from time to time. For the purpose of this Code, the value of each individual item included in a programme should be calculated on the basis of its:*

- *Retail rental/hire value in instances where the broadcaster does not have permanent use of the product, service or facility supplied;*
- *Its retail purchase value in instances where the broadcaster has permanent use of the product, service or facility supplied and in the case of competition prizes.*

Where the cumulative value of all the products, services etc., in an individual television programme is below the 'significant value', the provision of products, services, facilities etc., must comply with rules applying to sponsorship. Broadcasters should nevertheless note that no payment may be received for the inclusion of such products, services etc., in a television programme.

Broadcasters shall take particular care in the case of news and current affairs programming to ensure that this type of placement does not impact on the integrity of such programming.



3. Programmes that contain acceptable product placement shall meet all of the following requirements:-
- (a) their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster and the placement therein shall be editorially justified;
 - (b) their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster;
 - (c) they shall not directly encourage the purchase or rental of products or services in particular by making special promotional references to those products or services and the placement therein shall not constitute advertising as defined in this Code;
 - (d) they shall not give undue prominence to the products or services in question;

The following are some of the factors that will be taken into account by the BAI in determining whether a reference within a programme to a product, service, facility etc., provided without payment constitutes undue prominence:-

- *Whether its inclusion is editorially justified;*
 - *The manner in which the presence of products, services or facilities is presented in the programme, including, among other things, via the movements of the camera and the shots taken;*
 - *Explicit references to the virtues or positive effects of products, services;*
 - *The evocation or reproduction of advertising content or slogans.*
 - *The accumulated presence of the product and service across the scheduled duration of the programme taking also into account the presence of relevant products, services, facilities in ad breaks;*
- (e) Programmes containing product placement shall be appropriately identified, in a manner stipulated from time to time by the Authority, at the start and the end of the programme, and when a programme resumes after an advertising break or a teleshopping segment.



The requirements of (e) do not apply when broadcasting television programmes that have neither been produced nor commissioned by the broadcaster or a company affiliated to the broadcaster.

Television programmes (other than exempted programmes) that include acceptable product placement must comply with the following notification requirements:-

2010 familiarisation period

- *From the 10th June until 31st December 2010, broadcasters are required to include before programmes featuring acceptable product placement a separate full screen announcement stating: "The following broadcast contains product placement". This announcement should be simultaneously accompanied by a logo that includes the initials "PP". The purpose of this approach is to familiarise viewers with the logo to be used to denote product placement in a programme.*
- *The PP logo will also appear at the beginning of the programme and when the programme recommences after an advertising break. The names and products/services of providers of placed items may not be included in any part of the announcement at the beginning of the programme or alongside the logo during the programme. However, the name of the providers and the products, services etc. provided must be identified in closing credits of the programme.*

2011

- *From 1st January 2011, the PP logo will appear at the beginning of the programme and when the programme recommences after an advertising break. The names and products/services of providers of placed items may not be included alongside the logo at the beginning of, and during the programme. However, the name of the providers and the products, services etc. provided must be identified in closing credits of the programme.*

Announcement/Logo Design

The visual design of the PP logo to be used on an ongoing basis, and the visual design of the full screen message to be used at the beginning of the programme (between June and end December 2010), is a matter for the broadcaster. However, broadcasters must notify the BAI in writing of the logo and full screen message that they intend to use, prior to its introduction on-air. In addition, the logo must not be altered without prior notification to the BAI.

The BAI reserves the right to review and request amendments to the approach taken by the broadcaster in instances where it is of the view that it does not meet the spirit and/or letter of the requirements and broadcasters must comply with any changes requested.



4. Product placement shall not be permitted:-

- For products and services prohibited by this Code;
- Where the provider of placed products/services is also the sponsor of the programme in which the products/services feature. (This restriction comes into place from January 1st, 2011).

5. Product integration and thematic placement are not permitted.

Product integration entails specifically tailoring programme content (including storylines) around a product, service or facility provided to the broadcaster. Product integration is generally, but not exclusively, evident in a programme by virtue of the undue prominence afforded to the placed item as well as the lack of editorial justification for the placement and the manner of its placement.

Thematic placement is similar to product integration except this form of placement does not necessarily entail the integration of products, services, facilities etc., but rather the tailoring of programme content (including storylines) around a specific theme e.g. beliefs, policies, aims and objectives of the placer. Thematic placement is generally, but not exclusively, evident in a programme by virtue of the undue prominence afforded, a lack of editorial justification and the manner of its placement. This rule does not prohibit the legitimate coverage of themes in a programme but rather instances where the editorial responsibility has been subordinated to the interests of the placer of the theme.

6. Broadcasters shall comply with directions, issued from time to time by the Authority, in respect of this section of the Code.

In this regard, television broadcasters that carry acceptable product placement must comply with direction provided in these notes regarding the audience notification requirements detailed above and the implementation of rules in line with the significant value criteria. In addition, broadcasters that include product placement must keep a record of the programmes in which placement occurs, the placement in each programme and the 'value' of each individual placement. This information should be available to the BAI upon request in the context of compliance monitoring or in instances where a complaint is investigated.



8. Rules pertaining to specific products and services

This section of the Code contains a number of rules pertaining to commercial communications for specific products and services. The rules are included in order to provide additional protection to the public since false or misleading commercial communications of this nature can have serious consequences. Commercial communications for these products and services will also have to comply with the principles and rules pertaining to all commercial communications and any other relevant rules contained in the Code. In a number of cases, the rules in this section highlight the role of 'competent agencies'. Competent agencies are statutory bodies responsible for implementing Irish and European legislation. These include the Food Safety Authority of Ireland, Comreg and the Irish Medicines Board.

8.1 Alcohol

1. Commercial communications for alcoholic drinks shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.
2. Commercial communications for alcoholic drinks shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative, tranquilizer or a means of resolving personal conflicts.
3. Commercial communications for alcoholic drinks shall not place emphasis on high alcohol content as being a positive quality of the beverages.
4. Commercial communications for alcoholic drinks shall not create the impression that consumption of such beverages contributes towards sexual attraction and success or social success.
5. Commercial communications for alcoholic drink shall not link the consumption of alcohol to enhanced physical performance or to driving.
6. Commercial communications for drinks which contain alcohol content of 25% AbV and above are not permitted e.g. vodka, whiskey, tequila, rum, gin, brandy, etc.

This rule is not intended to prohibit commercial communications for liqueurs once such products do not contravene other rules of this section of the Code, in particular Rule 8.1.11. This rule does not prohibit references to spirit brands where the reference is incidental i.e. where a brand prohibited from being promoted is separately associated with an event being advertised, such as in the case of the Jameson Dublin International Film Festival or the Hennessy Gold Cup.



This is because the communication is not, in these instances, for Jameson or Hennessey, but rather a film festival and a horse race respectively. However, in such instances, the images or audio should not contain any branding for the prohibited alcohol e.g. corporate colours, bottle labels, fonts etc. The rule does not prohibit the promotion of sub-brand drinks where the alcohol content is below 25% AbV and where these drinks are not alco-pops or drinks of a similar nature.

7. Commercial communications for alcoholic drinks shall not be aimed specifically at children or, in particular, depict children consuming these beverages.
8. Commercial communications for alcoholic drinks shall not encourage children or other non-drinkers to begin drinking – it shall be cast towards brand selling and identification only.
9. Broadcasters shall ensure that commercial communications for alcoholic drinks are not transmitted in or around programmes primarily intended for children whether as viewers or listeners and shall take account of the age profile of the viewers to ensure they are communicated, so far as it is possible, to adults.
10. Commercial communications for alco-pops and products of a similar nature are not permitted.
11. All commercial communications for alcoholic drinks shall comply with the relevant voluntary codes of practice for alcohol radio and television marketing, communications and sponsorship recognised by the *Department of Health and Children*.

This code is the Alcohol, Marketing, Communications and Sponsorship Codes of Practice. A copy of the code can be viewed on the IAPI website (www.iapi.ie). Further information for radio broadcasters is available at www.ibireland.ie.

8.2 Medicines, Medical Treatments, Products and Services and Cosmetic Treatments and Services.

The fact that serious harm may result to the individual from exaggerated, misleading or unwarranted claims necessitates the maintenance of a very strict standard in relation to the advertising of Medicines, Medical Treatments, Products and Services and Cosmetic Treatments and Services on radio and television.



Medicines

For the purpose of this Code, a 'medicine' is defined further to Directive 2001/83/EC, as amended by Directive 2004/27/EC, as:-

Any substance or combination of substances presented as having properties for treating or preventing disease in human beings or any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

In cases of doubt, where taking into account all its characteristics, a product may fall within the definition of a medicinal product and within a definition covered by other EU legislation, the product should be considered a medicinal product. Where a given product comes clearly under the definition of other product categories, in particular food, food supplements, medical devices, biocides or cosmetics then the rules pertaining to medicines will not apply.

Further information on the classification of medicines can be found on the website of the Irish Medicines Board as follows:

[http://www.imb.ie/images/uploaded/documents/ADV-G0003 Guide to the Definition of a Human Medicine v1.pdf](http://www.imb.ie/images/uploaded/documents/ADV-G0003_Guide_to_the_Definition_of_a_Human_Medicine_v1.pdf)

This definition includes prescription-only medicines and medicines available from the pharmacy or shop counter that can be sold only once a Product Authorisation License has been granted by the Irish Medicines Board or the EU Commission. It also includes medicines that are subject to any other licensing or certification requirements, including homeopathic and traditional herbal medicines.

This definition does not include foods which make health or nutritional claims except those making medicinal claims including those classified as medicines and which have received or require a Product Authorisation License from the Irish Medicines Board or the EU Commission or are subject to any other licensing or certification requirements. Foods making health or nutritional claims, other than those licensed as medicines or requiring licensing, certification etc., must comply with the rules under Section 8.4 of this Code.

Medical Treatment, Product or Service

For the purpose of this Code, a medical treatment, product or service is defined as a treatment, product or service intended to prevent, cure or alleviate a medical complaint, condition, symptom or disease. This includes medical devices but does not include foods that make health or nutritional claims and foods except those making medicinal claims.

Cosmetic Treatments and Services

For the purpose of this Code, Cosmetic treatments and services are defined as elective surgical and non-surgical procedures intended for aesthetic purposes only.

Broadcasters should note that commercial communications for prescription-only medicines are not permitted. In addition, commercial communications of this nature that are directed exclusively or principally at children are prohibited.



General Rules

1. Commercial communications coming within the scope of this section of the Code shall comply with all relevant Irish and European legislation.

The Appendix to this code includes a non-exhaustive guide to applicable legislation.

2. Commercial communications shall not contain recommendations by health professionals or recommendations by persons who, because of their celebrity, could encourage the use of medicines, medical treatments, products and services and/or cosmetic treatments and services.

Commercial communications shall not contain statements which give the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented whether actually or by implication, as being qualified to give such advice or recommendation.

Rule 8(2) does not prohibit statements of professional advice or recommendation in respect of toothpastes that constitute cosmetic and not medicinal products.

3. Commercial communications shall not make reference to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist. No reference shall be made to doctors unless such reference can be used with propriety in the context of the commercial communication.
4. Commercial communications shall not contain the unwarranted and indiscriminate use of such words as "safe", "without risk", "harmless", or terms of similar meaning. In addition, exaggerated claims are not permitted, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of medicines, medical treatments, products and services and cosmetic treatments and services.
5. Commercial communications for medicines, medical treatments, products and services and cosmetic treatments and services intended to treat any serious complaint, condition, symptom or disease, which should rightly receive the attention of a registered medical practitioner, are not permitted.



This rule and the rules under this section do not prohibit commercial communications for vaccination campaigns that have been approved by the Minister for Health and Children. In addition, the rules do not prohibit commercial communications for disease awareness campaigns. In the case of disease awareness campaigns, the communication should be focused on awareness-raising and should focus on the medical condition and its recognition rather than on the treatment options. Awareness campaigns which broadcasters deem to have the intention of promoting, directly or indirectly, a prescription drug should not be broadcast. Campaigns that exaggerate the nature of prevalence of a condition should not be carried.

6. Commercial communications containing offers to diagnose, or treat by correspondence, any serious complaint, condition, symptom or disease are not permitted.

Correspondence in this context includes any communication using phone (including SMS), post, fax, email, via the internet and by any other form of electronic means.

7. No commercial communication shall be calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, symptom, or disease.
8. No commercial communication shall falsely claim or suggest that a medicine, medical treatment, product or service, or a cosmetic treatment or service being promoted is in the form in which it occurs in nature or falsely claim that its value lies in its being "natural".
9. The unnecessary, indiscriminate, irrational and/or excessive use of medicines, medical treatments, products and services and cosmetic treatments and services shall not be encouraged either directly or indirectly.
10. References to a prize, competition or similar scheme are not permitted in commercial communications for medicines, medical treatments, products and services and cosmetic treatments and services.

This rule prohibits broadcasters offering Medicines, Medical Treatments, Products and Services and Cosmetic Treatments and Services as prizes in a competition.



Medicines

11. Commercial communications for medicines shall comply with the general rules pertaining to commercial communications for medicines, medical treatments, products and services and cosmetic treatments and services. They shall also comply with the terms of any Product Authorisation Licence, including the Summary of Product Characteristics, as issued by the relevant competent authority.

Commercial communications shall comply with any other relevant rules and regulations issued by the relevant competent authority and with Irish and European legislation.

Commercial communications for medicines are only permissible once a Product Authorisation License or other form of registration/certification has been granted. Authorisation is granted by either the Irish Medicines Board (www.imb.ie) or the EU Commission. The Product Authorisation License includes an SPC (Summary of Product Characteristics) which indicates the purpose for which the medicine has been licensed. Commercial communications must not contradict the details of the SPC. Similarly, the commercial communication should not contradict the terms of the Registration provided.

Cosmetic Treatments and Services

A non-exhaustive list of surgical procedures includes: lipo-sculpture/liposuction; breast augmentation and reduction; penile enhancement; circumcision; ear correction surgery; fat removal; tummy tuck; lip, calf, cheek and chin implants.

A non-exhaustive list of non-surgical procedures includes: semi-permanent make-up; laser skin rejuvenation; non-surgical uplift; microdermabrasion; tattoo removal; laser hair removal; Botox injections.

These lists are provided as a guide only. Some treatments and services may be prohibited from being advertised by legislation or other rules under the Code e.g. Botox is prohibited as it is available on prescription only. Gastric banding and gastric balloons are for the treatment of clinical obesity and are prohibited by Rule 8.2.5. Cosmetic treatments and services do not include cosmetic products (lipstick etc.) and such products are regulated by Rule 8.5. For the purpose of this Code, corrective eye surgery does not constitute cosmetic surgery.



Surgical and non-surgical

12. Commercial communications for surgical and non-surgical cosmetic treatments and services shall comply with the general rules pertaining to commercial communications for medicines, medical treatments, products and services and cosmetic treatments and services.

Surgical

13. Commercial communications for surgical cosmetic treatments and services may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed an encouragement to use the treatment or service. Information detailing special offers, discounts, references to credit facilities available or any other promotional offers intended to encourage the use of cosmetic treatments or services of this nature are not permitted.

Hypnosis, Hypnotherapy, Psychology, Psychoanalysis or Psychiatry

14. Commercial communications for hypnosis, hypnotherapy, psychology, psychoanalysis or psychiatry shall comply with the general rules pertaining to commercial communications for medicines, medical treatments, products and services and cosmetic treatments and services.
15. Commercial communications of this nature may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed an encouragement to use the product or service. Information detailing special offers, discounts or any other promotional offers intended to encourage the use of treatments, products or services of this nature are not permitted.



8.3 Smoking Aids

Commercial communications for products or services purporting to assist people to quit smoking shall indicate clearly that the product or service is only effective in conjunction with the positive application of the consumer's will power.

Commercial communications of this nature must make clear the indispensable role of willpower in effecting the ability of an individual to quit smoking. These communications shall not indicate that a cure will be brought about by the product or service but should focus rather on the potential role of the product or service in assisting people to quit smoking.

Commercial communications of this nature cover a range of products and services including medicines and services offering hypnosis, hypnotherapy, psychology, psychoanalysis or psychiatry with a view to assisting people to quit smoking. Please note that where the product or service is medical in nature, it will be required to comply with section 8.2.

8.4 Foods (including beverages)

1. Commercial communications containing health and nutritional claims made for foods shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by the competent authorities responsible for the implementation of such legislation.

For the purpose of this Code, a 'nutrition claim' means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to: -

(a) the energy (calorific value) it:-

- (i) provides,*
- (ii) provides at a reduced or increased rate, or*
- (iii) does not provide; and/or*

(b) the nutrients or other substances it:-

- (i) contains,*
- (ii) contains in reduced or increased proportions, or*
- (iii) does not contain;*

For the purposes of this Code, a 'health claim' means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health (for example, "aids digestion").



2. Commercial communications for 'follow-on' infant formula shall not suggest, either directly or by implication, the superiority of this product to breastfeeding and shall clearly indicate the unsuitability of this product for infants under six-months.

For the purpose of this Code, Follow-on Infant Formula is defined as foodstuffs intended for particular nutritional use by infants aged six months and over and satisfying by themselves the nutritional requirements of infants of this age.

8.5 Cosmetic Products

Commercial communications for cosmetic products shall comply with all relevant Irish and European legislation.

For the purpose of this Code, a cosmetic product is defined as any substance or preparation intended to be placed in contact with the various external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity, with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance and/or correcting body odours and/or protecting them or keeping them in good condition.

A non-exhaustive list includes the following:-

Creams emulsions, lotions, gels and oils for the skin (hands, face, feet, etc.); Face masks (with the exception of peeling products); Tinted bases (liquids, pastes, powders); Make-up powders, after-bath powders, hygienic powders, etc; Toilet soaps, deodorant soaps, etc; Perfumes, toilet waters and eau de Cologne; Bath and shower preparations (salts, foams, oils, gels, etc.); Depilatories; Deodorants and anti-perspirants; Hair care products; Shaving products (creams, foams, lotions, etc.); Products for making up and removing make-up from the face and the eyes; Products intended for application to the lips; Products for care of the teeth and the mouth; Products for nail care and make-up.

8.6 Slimming Treatments, Products and Services

Commercial communications shall not contain any offer of a treatment, product or service for slimming (i.e. weight reduction, limitation or control) which:-

- (a) is in itself likely to lead to harmful effects, and;
- (b) is not directly associated with the following of a properly designed diet, and;
- (c) does not clearly state the manner in which slimming will be achieved.



Any product that makes a claim related to weight reduction, limitation or control must comply with this section of the Code. This includes surgical procedures, diets, exercise regimes and any other treatment, product or service which purport to bring about weight reduction, limitation or control or which will provide guidance in this regard. Communications of this nature may have to comply with a number of sections of the Code.

In practice, the manner in which weight loss will be achieved should be clearly stated in the communication. In addition, the communication should make clear that the treatment, product or service will only be effective in conjunction with a properly designed diet. It is a matter for the broadcaster to decide how this is conveyed. In practice it could be conveyed by way of a tagline or in the body of commercial copy.

Broadcasters should satisfy themselves to a reasonable degree that the claims made in communications of this nature can be substantiated. Broadcasters are reminded that commercial communications for slimming treatments, products, services or establishments are prohibited in commercial communications governed by the Children's Code on Commercial Communications. Broadcasters are asked to take a responsible approach to slimming advertising which may be viewed by children but which would not come within the scope of the Children's Code.

8.7 Financial Services and Products

The rules under this heading apply to commercial communications for all financial services and products. This includes, credit arrangements, hire purchase, leasing, loans (including mortgages), savings and investments, insurance and money-lending.

1. Commercial communications for financial services and products shall be presented in terms which do not mislead, whether by exaggeration, omission or in any other way.
2. Commercial communications for financial services and products shall comply with relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by the competent authorities responsible for the implementation of such legislation.

Commercial Communications for financial services and products are required to comply with the Financial Regulator's Consumer Protection Codes. These documents can be viewed on the Financial Regulator's website www.financialregulator.ie.



8.8 Betting Services

Commercial communications that seek to promote services to those who want to bet are acceptable.

Commercial communications of this nature may contain the address of the service provider and factual descriptions of services available but shall not contain anything, which could be deemed to be an encouragement to bet. Information detailing special offers, discounts, inducements to visit any betting establishment (including on-line), references to betting odds available or any promotional offer intended to encourage the use of services of this nature are not permitted.

In addition to the limitations on information detailed in the rule, this rule prohibits free bets as prizes in competitions as these are deemed an encouragement to bet. This rule does not apply to the National Lottery which is exempted under The National Lottery Act, 1986 or to other lotteries granted licences further to this Act e.g. Rehab bingo.

Broadcasters should take particular care during interviews with representatives of betting services in editorial content. References by presenters or guests to the products and services of a sponsor, including betting odds, special offers etc., will breach the Code. The rule does not apply to spread betting/spread trading where the product/service being promoted is a service that is regulated by the financial regulator. However, broadcasters should note that a commercial communication that promotes a betting service alongside a spread betting/trading service will be required to comply with the betting rules.

8.9 Premium-rate Telecommunication Services

1. Commercial communications for premium-rate telecommunication services shall clearly state all charges for accessing these services in terms which do not mislead, whether by exaggeration, omission or in any other way.
2. All commercial communications for premium-rate telecommunication services shall comply with all relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by the competent authorities responsible for the implementation of such legislation.



Programme elements utilising premium-rate services must comply with the relevant regulations issued by the competent authority in respect of the promotion and operation of premium rate telecommunication services. Broadcasters should note that, further to the Communications Regulation (Premium Rate Service and Electronic Communications Infrastructure) Act, 2010, the competent authority in this area is now Comreg. This role was previously held by Regtel.

Broadcasters should note that programming predominantly predicated on the use of premium-rate telecommunications services will constitute teleshopping. Therefore, it must comply with the teleshopping rules included in this Code, as well as rules under this section and any other relevant section.

8.10 Fortune Tellers, Psychic Services etc.

1. Commercial communications for fortune tellers, psychic services etc., are acceptable where the service is evidently for entertainment purposes only and this is made clear in the communication.
2. Claims that future events may be predicted, other than as a matter of opinion, are not permitted.
3. Claims to make contact with deceased persons are not permitted.
4. Claims pertaining to matters of health, cures, curing and/or healing are not permitted.

The rules under this section of the Code are intended to set out the basic requirements for commercial communications for fortune tellers, psychic services as well as other similar services.

The rules apply to both 'traditional' fortune tellers and services of this nature provided via premium-rate telecommunications services e.g. SMS text messages, premium line phone services. Where such services are provided via a premium-rate telecommunication provider, the service must also comply with the rules contained under section 8.9 of the Code.

Communications of this nature cannot make claims to foretell the future as a statement of fact as such claims cannot be substantiated and are therefore misleading and prohibited.



9. ***Prohibited Communications***

In addition to other classes of commercial communications, those coming within the recognised character of, or specifically concerned with, the following are not acceptable:-

- Products, treatments or services that are only available on medical prescription.
- Cigarettes and tobacco.
- Infant formula.

Infant Formula is defined as foodstuffs intended for particular nutritional use by infants during the first 6-months of life and satisfying by themselves the nutritional requirements of infants of this age.

- Advertisements prohibited further to Section 41(3) of the Broadcasting Act, 2009.¹
- Advertisements prohibited further to Section 41(4) of the Broadcasting Act, 2009.²

Political Advertisements

Section 43(1) prohibits advertisements directed towards a 'political end'. The BAI, in the absence of a definition of 'an advertisement directed towards a political end', defines it with reference to a key High Court judgement - Colgan vs. the IRTC (1998) as an advert directed towards:

- *furthering the interests of a particular political party, or;*
- *procuring changes in the laws of this country, or countering suggested changes in those laws, or;*
- *procuring changes in the laws of a foreign country or countering suggested changes in those laws, or;*
- *procuring a reversal of Government policy or of particular decisions of Governmental authorities in this country or countering suggested reversals thereof, or;*
- *procuring a reversal of Governmental policy or of particular decisions of Governmental authorities in a foreign countries or countering suggested reversals thereof.*

¹ Advertisements directed towards a political end & advertisements that have any relation to an industrial dispute.

² Advertising that addresses the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religious or religious organisation.



As such, the legislation is not restricted solely to adverts which further the interests of a political party nor is it restricted to political matters relating to the jurisdiction of the Republic of Ireland.

In determining whether a communication may contravene the statutory prohibition, the BAI is of the view that it is reasonable for broadcasters to take into account the following three factors:-

- *The content of the advert;*
- *The context in which the advert is broadcast;*
- *The aims and objectives of the advertiser and of the advertising campaign.*

It is the BAI's experience to date that one or more of the three factors may play a determining role in deciding whether an advert complies with the statutory prohibition. In certain circumstances, the current political context may have a strong bearing in determining whether an advert complies. In other circumstances the text may be fundamentally problematic even if the advertiser is not political or exclusively political in nature. Advertisements that advance the interests of organisations whose sole or predominant purpose is of a political nature have a higher potential to fall foul of the prohibition e.g. political parties, special interest lobby groups etc.

Industrial disputes

Section 41(3) also prohibits advertisements that have any relation to an industrial dispute.

Religious Advertisements

Section 41 (4) of the 2009 Act prohibits advertisements which address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religious or religious organisation.

Broadcasters should be aware that other classes of commercial communication are prohibited, limited or otherwise restricted by legislative or regulatory provisions. A guide to these provisions is contained in the Appendix and this guide should not be deemed exhaustive.



10. Appendix

The following is a non-exhaustive guide to the principal legislation which may restrict, control or otherwise affect commercial communications in Ireland. This is provided for guidance only and it is entirely a matter for individual parties to ascertain any relevant legislative provisions that may apply in each case.

Broadcasting Legislation:

Broadcasting Authority Act, 1960
Broadcasting Authority (Amendment) Act, 1976
Broadcasting and Wireless Telegraphy Act, 1988
Broadcasting Act, 1990
Broadcasting Act, 2009

Other National Legislation:

Adoption Acts 1952 to 1998.

Animal Remedies Act 1993.

Animal Remedies (Control of Sale) Regulations 1985-1991 (S.I. 258/1985, S.I. 244/1991).

Betting Act 1931.

Building Societies Act 1989 as amended by 2006 Act.

Central Bank and Financial Services Authority of Ireland Act, 2003 and 2004.

Central Bank Acts 1942-1998.

Censorship of Films Acts, 1923-1992.

Censorship of Publications Acts, 1929-1967.

Censorship of Publications Regulations 1980 (S.I. 292/1980).

Child Trafficking and Pornography Act, 1998.



Child Trafficking and Pornography (Amendment) Act, 2004.

Companies Acts 1963-2009

Consumer Credit Act 1995.

Consumer Credit Act 1995 (Section 28) Regulations, 1996 (S.I. 245/1996).

Consumer Protection Act, 2007.

Consumer Information (Advertisement for Concert or Theatre Performances) Order 1997 (S.I. 103/1997).

Consumer Information (Advertisements)(Disclosure of Business Interest) Order 1984 (S.I. 168/1984).

Consumer Information (Advertisement for Airfares) Order, 2000 (S.I. 468/2000).

Consumer Information (Miscellaneous Goods)(Marking) Order, 1984 (S.I. 178/1984).

Copyright Act 1963.

Copyright and Related Rights Act 2000 and 2004.

Credit Union Act 1997.

Criminal Justice (Theft and Fraud Offences) Act 2001.

Data Protection Acts 1988 and 2003.

Dairy Products Acts 1924 to 1947

Defamation Act 2009.

Defence Acts 1954 to 2007.

Employment Agency Act 1971.



Employment Agency Regulations 1972 to 1993 (S.I. 27/1971, S.I. 255/1972, S.I. 49/1993).

Employment Equality Acts 1998 and 2004.

Gaming and Lotteries Acts 1956 to 1979.

Hallmarking Act 1981.

Health (Foods for Particular Nutritional Uses) Regulations 1991 (S.I. 331/1991).

Hire Purchase and Credit Sale (Advertising) Order 1961 (S.I. 183/1961).

Industrial and Commercial Property (Protection) Acts 1927 to 1958.

Industrial Research and Standard Acts 1961 and 1979.

Insurance Acts 1909 to 2000

Investment Intermediaries Act 1995.

Licensing Acts 1833 to 2004.

Investor Compensation Act 1998.

Medicinal Products (Control of Advertising) Regulations 2007 (S.I. 541/2007)

Medical Preparations (Labelling and Package Leaflets) Regulations 1993-1999 (S.I. 71/1993, S.I. 440/1994, 187/1999).

Medical Preparations (Licensing, Advertisement and Sale) Regulations 1984 to 1994 (S.I. 210/1984, S.I. 347/1989, S.I. 70/1993, S.I. 439/1994).

Medicinal Products (Prescription and Control of Supply) Regulations 2003 as amended (S.I. 540/2003).

Medicinal Products (Licensing and Sale) Regulations 1998 (S.I. 142/1998) and 2001.

Merchandise Marks Act, 1970.



Metrology Act 1996.

Milk and Dairies Acts 1935 and 1956.

Occasional Trading Act 1979 as amended by the Casual Trading Act 1995.

Official Languages Act 2003.

Opticians Acts 1956 and 2003.

Package Holidays and Travel Trade Act 1995.

Prices and Charges (Tax-Inclusive Statements) Order 1973 (S.I. 9/1973).

Public Health (Tobacco) Acts 2002 to 2009.

Red Cross Acts 1938 to 1954.

Sale of Goods and Supply of Services Act 1980.

Solicitors Acts 1954-2002 Solicitors (Advertising) Regulations 2002 (S.I. 518/2002).

Solicitors Acts 1954-2002.

Stock Exchange Act 1995.

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991-2009 (S.I. 326/1991, S.I. 215/2000, S.I. 243/2009).

Tourist Traffic Acts 1939 To 1970.

Trade Marks Acts 1996.

Trustee Savings Banks Acts 1989 and 2001.

Unit Trusts Act 1990.



Rights

Equal Status Acts 2000 to 2004.

Equality Act 2004.

European Convention on Human Rights Act 2003.

Prohibition on Incitement to Hatred Act 1989.

European-Based Legislation

Council Directive 2007/65/EC (Audiovisual Media Services Directive)

Council Regulation (EC) No. 2200/96 as amended by 2699/2000 and European Communities (Fruit and Vegetables) Regulations 1997 (S.I. 122/1997).

European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003 as amended (S.I. 83/2003).

Electronic Commerce (Directive 2000/31/EC) Regulations 2003 (S.I. 68/2003).

European Communities (Definition, Description and Presentation of Spirit Drinks) Regulations 1995 (S.I. 300/1995).

European Communities (Definition, Description and Presentation of Aromatised Wines, Aromatised Wine-Product Cocktails) 1998 (S.I. No. 254/1998).

European Communities (Classification, Packaging and Labelling of Pesticides) Regulations 1994 (S.I. 138/1994).

European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. 624/2001).

European Communities (Co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006 (S.I. 290/2006).

European Communities (Cosmetic Products) Regulations 1997-2006 (S.I. 87/1997, S.I. 213/1998, S.I. 150/2000, S.I. 203/200, S.I. 373/2006).

European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. 853/2004).



European Communities (Distance Marketing) of Consumer Financial Services) (Amendment) Regulations 2005 (S.I. 63/2005).

European Communities (Food Supplement) Regulations 2003 (S.I. 539/2003).

European Communities (Infant Formulae and Follow-on Formulae) Regulations 1998 to 2000 (S.I. 243/1998, S.I.446/2000).

European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2000 and 2002 (S.I. 92/2000, S.I. 483/2002).

European Communities (Life Assurance) Framework Regulations 1994 (S.I. 360/1994).

European Communities (Misleading Advertising) Regulations 1988 (S.I. 134/1988).

Directives on Misleading and Comparative Advertising – 84/450/EEC, 97/55/EC, 05/29/EC.

European Communities (Names and Labelling of Textile Products) Regulations 1998 (S.I. 245/1998).

European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. 359/1994).

European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. 639/2002).

European Communities (Pesticides Residues) (Feeding Stuffs) Regulations 1992 (S.I. 40/1992).

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001 (S.I. 207/2001).

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) (Amendment) Regulations 2005 (S.I. 71/2005).



European Communities (Protection of Geographical Indication and Designations of Origin for Agricultural Products and Foodstuffs) Regulations 1995 and 1999 (S.I. 148/1995, S.I. 275/1999).

European Communities (Supply of Information on the Origin Identification and Destination of Bovine Animals) Regulation 1999 (S.I. 258/1999).

European Communities (Television Broadcasting) Regulations 1999 (S.I. 313/1999).

European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003 (S.I. 211/2003) (as amended).

Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/2005).

Means of Distance Communications (Amendment) Regulations 2005 (S.I. 71/2005).

Poisons (Control of Residues in Foods of Animal Origin) Regulations 1985 and 1986 (S.I. 257/85, S.I. 236/86).

Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. 324/2005).

European Communities (Directive 1924/2006) on Nutrition and Health Claims Made on Foods.

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