



Broadcasting Authority of Ireland Children's Commercial Communications Code

Guidance Notes & Direction in respect of product placement and commercial communications for food (including HFSS food)

The purpose of this document is to provide guidance (and direction in the case of product placement and HFSS food products and services) on the rules contained in the Children's 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 the product placement and HFSS food 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 info@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 –
 - (g) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, protects the interests of children having particular regard to the general public health interests of children.

The Children’s Commercial Communications Code (“the Code”) has been developed by the Broadcasting Authority of Ireland in accordance with its statutory obligations.

Scope

The Code shall apply specifically to commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children’s programmes i.e. children’s commercial communications.

Jurisdiction

Broadcasters within the jurisdiction of the Republic of Ireland must comply with the provisions of the Code. 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 may make a complaint if they are dissatisfied with the manner in which a broadcaster is complying with this Code. Further information on the complaints process is available on www.bai.ie or by phoning 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 and the general public with a copy clearance service.

Guidance

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 General 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 apply:

- *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 September 2nd 2013.

1. Objectives

The objectives of the Code are:

- To offer protection for children from inappropriate and/or harmful commercial communications;
- To acknowledge the special susceptibilities of children and ensure that commercial communications do not exploit these susceptibilities;
- To ensure that commercial communications are fair and present the product or service promoted in a way that is easily interpreted by children and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being promoted, and;
- To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from commercial communications on Irish broadcasting services.



2. Definitions

Guidance

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.

- (a) **Child** refers to any person under 18 years of age and references to **Children** should be construed accordingly.

The Code recognises the principle that children of different ages require different levels of protection. In order to give this principle practical effect, the Code stipulates general principles that apply to children's commercial communications and also stipulates a number of protections that apply to children under 6 years of age, those under 13 years of age and those under 15 years of age. The provisions that apply to each of these age groups are clearly marked.

Guidance

For example, where it is indicated that a rule applies to those under 15 years of age (U/15) the rule will apply in the case of any commercial communication that is broadcast during a programme where the majority of those watching are under 15 years of age and/or where the target audience for the programme is this age group. The rule will also apply to any commercial communication for a product or services of particular interest to this age group, even where it is not broadcast during a children's programme.

- (b) For the purpose of this Code, the definitions for the following types of commercial communications contained in the **General Commercial Communications Code** will apply:-
- Advertising;
 - Sponsorship;
 - Misleading, Comparative, Surreptitious and Subliminal Commercial Communications;
 - Teleshopping;
 - Television Product Placement;
 - Virtual, Interactive and Split-screen Advertising.



- (c) **Commercial Communications** are 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 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.
- (d) **Children's Commercial Communications** are commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes.

Guidance

In determining whether a product/service is of particular interest to children, broadcasters are advised to consider, on a case-by case basis whether:-

- *The product/service being promoted is one that is of exclusive interest to children i.e. something that only under-18 years olds would be interested in e.g. a Fisher Price Toy, Barbie Dolls.*
- *The creative approach is such that the promotion is clearly intended to target children even in instances where the item promoted is not of exclusive interest to children.*

Broadcasters and advertisers should note that while the Code applies to communications for products, services, etc., of particular interest to children that are broadcast during children's programmes, it also applies to communications for products, services, etc., of particular interest to children broadcast in adult viewing times.

- (e) **Children's Advertising, Children's Sponsorship and Children's Product Placement** are advertising, sponsorship and product placement (as defined in the General Commercial Communications Code) that promote products, services or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes.



- (f) **Children’s programmes** are programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age. Where provisions of the Code are categorised as pertaining to those under 15 years, those under 13 years or those under 6 years of age, these provisions will apply to (i) commercial communications targeting these age groups, (ii) commercial communications broadcast during programmes where over 50% of the audience are of these age groups.
- (g) **HFSS foods** are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the BAI.¹

Guidance

Technical guidance on how to assess foods for the purpose of this Code is provided in a separate document entitled ‘Nutrient Profiling Model – Technical Guidance’. This is available on the BAI’s website www.bai.ie. For the avoidance of doubt, HFSS foods include both food and drink products and services. Section 11 of the Code details the specific rules applying to the promotion to children of HFSS food via commercial communications. Broadcasters should note that the general rules of the Code also apply to commercial communications for these products/services. Cheese products e.g. block of cheddar, brie etc, are exempted and do not have to be scored using the model. Commercial communications for cheese products must comply with the Diet and Nutrition rules set out in section 11 (other than those applying to HFSS food) and with the general rules of this Code. This exemption does not apply to products where cheese is an ingredient e.g. pizza, sandwich.

- (h) **Programme characters** are characters and personalities from children’s programmes currently broadcast on indigenous services and used to promote products or services in children’s commercial communications. In this instance ‘currently’ means regular programming that is due for return in the next broadcast season.

Guidance

Broadcasters should noted that this definition and the rule on the use of programme characters set out in section 13 apply to programme characters included in programme produced in Ireland but also to programme characters included in programming acquired and broadcast.

¹ An overview of the Nutrient Profiling Model and how to apply it is provided in Appendix 2.



- (i) **Licensed characters** are characters and personalities that are licensed to feature in a commercial communication but which have no direct association with the product or service promoted. Licensed characters include characters and personalities from a cinema release, video game, amongst others.

Guidance

This definition does not apply to equity brand characters i.e. characters originally devised for marketing purposes, such as those associated with some breakfast cereals e.g. Tony the Tiger, Snap Crackle and Pop. Notwithstanding this, the use of such characters are governed by the Code and must be used responsibly in accordance with the Diet and Nutrition rules and the general rules of the Code.

3. Scheduling

A children's programme is defined with reference to the type of programme and/or the profile of those watching or listening to that programme i.e. programmes that have an audience profile of which over 50% are under 18 years of age. When scheduling children's commercial communications, broadcasters shall comply with guidelines issued by the BAI and updated from time to time.

Guidance

A children's programme is defined with reference to the profile of those watching or listening to that programme. Therefore, a children's programme is one commonly referred to as such and/or a programme where over 50% of those watching the programme are under 18 years of age. In the case of long running programmes, broadcasters should take an average of the audience figures over a reasonable period of time in determining whether the programme is a children's programme or not.

There may be exceptional circumstances where regular programmes, which are not ordinarily classified as children's programmes, might attract an audience of which over 50% of those watching are children. Broadcasters are expected to anticipate the likelihood of this happening in view of the content of the programme, the previous history of the programme, the impact of upcoming storylines or cameo appearances that may attract over 50% viewership by children, and apply the provisions of the Code accordingly.

Audience profiling will be the primary means of implementing the provisions of the Code. In the case, however, of once-off programming or short series, it may not always be possible to predict the audience profile of those watching the programme. In these instances, broadcasters should refer to the indicative scheduling guidelines below. These are indicative times during which particular age groups most usually watch television.



In scheduling commercial communications and making an assessment as to their appropriateness, broadcasters are requested to assess this in light of the likely age group watching at that time.

Indicative scheduling guidelines

When audience profiling is not possible, broadcasters should use the following guidelines:

- *If broadcasters, using reasonable judgement, consider, that a particular commercial communications is inappropriate for children under 6 years of age, having regard in particular to the provisions of this Code, then it should not be broadcast during and between children's programmes which target that age group.*
- *If broadcasters, using reasonable judgement, consider, that a particular commercial communications is inappropriate for children under 13 years of age, having regard in particular to the provisions of this Code, then it should not be broadcast during and between children's programmes which target that age group.*
- *If broadcasters, using reasonable judgement, consider that a particular commercial communication is inappropriate for or likely to cause distress to children under 15 years of age, having regard in particular to the provisions of this Code, then it should be broadcast after 9pm.*
- *If broadcasters, using reasonable judgment, consider that a particular commercial communication contains material of a sexual or violent nature not suitable for children under 18, having regard in particular to the provisions of this Code, then a post 11pm restriction must be considered.*

This Code predominantly impacts on television rather than radio broadcasters by virtue of the predominance of children's consumption of television over radio and the adult appeal of much of radio content. Nevertheless, the Code applies to radio broadcasters. While radio broadcasters have access to JNLR results, they do not currently have access to the range of audience profiling currently available to television broadcasters. In this context, radio broadcasters should at a minimum ensure that commercial communications that are of particular interest to children and communications broadcast during children's programmes as commonly referred to, comply with the Code. Radio broadcasters should also review any additional audience information available to them in determining if a commercial communication comes within the scope of this Code.

4. Compliance and Assessment

1. Broadcasters shall observe the provisions of the Code.



2. Children's commercial communications shall be considered in whole and in context against the provisions 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;
 - Target audience of the product or service;
 - Likely composition of the audience listening to, or watching, the programme.

3. Broadcasters shall comply with the spirit as well as the letter of the Code.

Guidance

Broadcasters should be mindful of all the provisions of this Code, as a commercial communication may be required to comply with one or more applicable provision. For example, while Section 11 specifically addresses the area of Diet and Nutrition, communications of this nature will also have to comply with a range of other rules in the Code depending on the specifics of the promotion.

5. Social Values

1. Children's commercial communications shall not cause moral, mental or physical detriment to children.

2. Children's commercial communications shall not reflect a range of values which are inconsistent with the moral or ethical standards or diversity of contemporary Irish society. They shall respect human dignity and not discriminate on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. Nor shall they be offensive to religious or political beliefs or encourage behaviour which is damaging to the environment. They shall respect the principle of equality and avoid gender stereotyping and any exploitation or the demeaning of men, women or children. **U/18**



3. Except where indicated otherwise, children's commercial communications coming within the scope of this Code must comply with Sections 3.1, 3.2 and 3.3 of the General Commercial Communications Code. **U/18**

Guidance

Broadcasters are advised to review the guidance notes on the General Code on Commercial Communications for more information on the requirements of this rule. This guidance addresses the principles of Protection the Individual and Society (Section 3.1), Offence Harm and Human Dignity (Section 3.2) and Transparency (Section 3.3). The application of these rules in the General Code to communications covered by the Children's Code is intended to ensure consistency in the application of rules to commercial communications in general.

6. Inexperience and Credulity

1. Children's commercial communications shall not take advantage of the natural credulity and sense of loyalty of children. They must not by implication, omission, ambiguity or exaggerated claim, mislead or deceive or be likely to mislead or deceive children, abuse their trust or exploit the lack of knowledge of children. They shall not exploit or, without justifiable reason, play on fear. **U/18**

Factual Presentation

Children's commercial communications shall:

2. Clearly indicate what parts, elements or accessories are included as part of the normal purchase of the product or service and differentiate between those which are only available at extra cost. **U/18**
3. Ensure that on-screen messages and 'small print' are clear, simple and legible and remain on screen for a sufficient length of time to enable a child to read it. **U/15**

Guidance

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. Nevertheless, broadcasters are advised to take steps to develop internal guidelines suitable to meet the objective of this rule. It is anticipated that adverts produced by agencies will conform to internal guidelines developed.



The development of internal guidelines will assist in the consistent application of standards necessary to ensure compliance and will also demonstrate broadcaster commitment to the requirements of this rule in the context of any assessment of compliance undertaken by the BAI.

The BAI reserves the right to introduce specific requirements on factual presentation of on-screen information should it reach the view that the measures implemented by broadcasters are not in line with the requirements of the Code.

4. Give children an indication of the actual size of the product. **U/15**
5. Clearly indicate when batteries are required for the operation of the product and whether these are supplied with the product. **U/15**
6. Clearly indicate when a product has to be assembled and what age level is generally required to assemble the product. **U/15**
7. Avoid the use of language, special effects or imaginative scenes which could confuse the child or have them believe that the product or service has capabilities or characteristics that it does not have in reality. **U/15**
8. Children's commercial communications shall not, in the case of toys or children's possessions, make direct comparisons between existing and 'improved' versions/models of the product, even when the statements or claims are valid.² **U/15**
9. State orally any on-screen messages or small print in order to ensure that children of this age understand the message. **U/6**

Guidance

The BAI's review of this Code indicated that this requirement was not implemented consistently. Accordingly, broadcasters are asked to review any relevant output to ensure compliance.

² These are products that persons under 15 years of age could ordinarily be expected to possess.



Price of product/service

With regard to how the price of a product or service is presented in children's commercial communications, the following rules shall apply:

10. The price, when given, shall be in euro and be inclusive of VAT or any other extra or related charges. **U/18**
11. If the price is dependent on the purchase of another item, then this must be made clear in the commercial communication. **U/18**
12. If there are a number of products or services in the children's commercial communication and the price of an item/or items is highlighted, then it must be made clear that the price refers to this item/items only. **U/18**
13. Children's commercial communications that refer to 'free gifts' or offers must specify any and all qualifying terms and conditions, e.g. any time limit, how many products need to be bought, how many wrappers need to be collected etc. Children's commercial communications must not offer prizes or rewards to children for attracting new purchasers for the product or service. **U/18**
14. The price shall be presented in clear, simple and legible font and where appropriate be voiced as part of the audio. **U/15**
15. The language used in presenting the price shall not minimise its cost, e.g. through the use of words such as 'only' or 'just'. **U/15**
16. Expensive toys shall state the price in the children's commercial communication. A toy will not be regarded as expensive if it, plus any essential accessories, are generally available at a retail price below a figure specified by the Authority from time to time. This figure is currently €30 but is subject to review. **U/15**

7. Undue Pressure

1. Children's commercial communications shall not directly encourage or exhort children to ask adults to buy them the products or services being promoted. **U/18**



2. Children's commercial communications should not imply that possession or use of a product or service will make the child or his/her family superior, either physically, socially or psychologically. **U/18**
3. Children's commercial communications shall not imply that the child or his/her family will be inferior or open to ridicule or contempt if they do not possess a particular product or service. They should not imply that the product or service is affordable to all families. **U/18**
4. Children's commercial communications must be particularly careful to avoid the implication that possession or use of a product or service will contribute to or detract from the child's popularity or acquisition of friends. **U/18**
5. Children's commercial communications should not make the child feel inferior, disloyal or doubtful about their self-image. **U/18**

8. Special Protection for Children

Children Endorsing Products/Services

1. The use of children to comment on or endorse products or services in children's commercial communications is only permitted for products and services that they could reasonably be expected to use and would usually be interested in themselves.

Children may appear in children's commercial communications for adult products if their appearance is as a natural element in the depicted environment or necessary to explain or demonstrate the use of the product or service. **U/18**

Sexualisation of Children

2. Children's commercial communications shall not portray a child in a sexually provocative manner or provoke anxiety in children over their bodily appearance. **U/18**



Privacy and Provision of Information

3. Children's commercial communications shall not ask children to submit private information or details regarding themselves, their family or friends, unless the commercial communication is as part of a campaign that relates to their safety, health or wellbeing. When this practice is used, children's commercial communications should state, where reasonable, that children must seek adult approval before sending the information. **U/18**

Adults pretending to be Children

4. The use of adults pretending to be children in children's commercial communications must not be offensive to the dignity of children. **U/18**

9. General Safety

1. Children's commercial communications shall not encourage children to enter into unsafe situations or strange places or to talk to strangers. **U/18**
2. Children's commercial communications shall not show children in morally or physically dangerous situations or behaving dangerously in the home or outside, including street and road scenes, except when the sole purpose of the commercial communication is to promote safety. **U/18**
3. Children's commercial communications shall show children using appropriate safety equipment and respecting all applicable safety rules, when engaged in activities that require such and with adult supervision where appropriate, for example, as passengers in vehicles, pedestrians, cyclists, when rollerblading, skateboarding, swimming, watersports or horse riding. **U/18**
4. Children's commercial communications should not show children using the internet without appropriate adult supervision. **U/18**



5. Children's commercial communications should not unreasonably show children using or close to dangerous substances or dangerous equipment, for example, matches, gas appliances, petrol, certain household substances or in possession of, or administering medicines unless under appropriate adult supervision. **U/15**

Behaviour

6. Children's commercial communications shall not encourage children to engage in, or be portrayed engaging in, anti-social behaviour, in particular bullying, taunting or teasing other children, unless the sole purpose of the commercial communication is to discourage such behaviour. **U/18**
7. Children's commercial communications should not disparage education or condone aggression or greed as admirable qualities. **U/18**

10. Violence

1. Children's commercial communications should not generally, as a principle, include violence or include scenes that will cause distress to children. **U/18**
2. In instances where the inclusion of violent scenes may be necessary as part of a public service message or in order to demonstrate the product or service, broadcasters must schedule responsibly so as to ensure that such children's commercial communications do not cause distress to children of this age group. **U/6**

11. Diet and Nutrition

1. Children's commercial communications shall be responsible in the manner in which food is portrayed. They should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits such as immoderate consumption, excessive or compulsive eating. **U/18**
2. Children's commercial communications representing mealtimes should clearly and adequately depict the role of the product or service within the framework of a balanced diet. **U/18**



Guidance

The rule only applies in the case of mealtimes. Mealtime should be interpreted in its common-sense meaning, namely, the hour at which a meal is habitually or customarily eaten and the foods generally associated with these periods of the day i.e. breakfast, lunch and dinner times. It is a matter for the advertisers/broadcasters to determine whether the commercial communication includes a representation of mealtime. This is because they are familiar with and responsible for producing and/or clearing the communication and the content.

Content that would indicate mealtime includes: the presence of family; the setting for the meal e.g. at home and at a dining, kitchen table; the type of food and its association with mealtime e.g. breakfast cereal; the time of day (where evident); whether the food promoted is substantial and would constitute a meal; etc. Clearly, food and drink not intended to constitute a meal are not covered by this rule i.e. snacks.

3. Children's commercial communications must not contain any misleading or incorrect information about the nutritional value of a product. They must not make misleading or incorrect comparisons between foods. They must not imply that particular foods are a substitute or replacement for fruit and/or vegetables. **U/18**

Children's commercial communications for HFSS food products and/or services.

The following rules shall apply to children's commercial communications for HFSS food products and/or services.

Guidance

These rules apply to commercial communications for HFSS food products and/or services. HFSS foods are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the BAI. The rules prohibit the promotion of such foods in children's programming as defined by this Code. In addition, children's communications for HFSS food products and/or services that are broadcast outside of children's programme and which are of particular interest to children must comply with a number of content rules. Specifically, the Code restricts the use of celebrities, licensed or programme characters in such commercial communications. Health and nutrition claims and promotional offers are also restricted. The rules apply to food products and services. This includes commercial communications promoting brands.

In terms of assessing whether a commercial communications is for a HFSS food product and/or service broadcasters are advised to take into account the following additional considerations:-



- *Whether the commercial communication refers to or prominently features an identifiable HFSS food product and/or service. In the case of commercial communications where a HFSS product is included as a recipe or presented in a basket of goods, broadcasters should assess whether the presence of the product in the communication is predominant.*
- *Whether the commercial communications encourages the purchase of a specific HFSS food product and/or service.*
- *Whether the commercial communication refers to or features a brand name that is synonymous with a specific HFSS product and/or service. That name could be featured on other products or product variants but is inextricably linked to a specific HFSS product.*

Broadcaster should note that commercial communications for cheese products are exempted from the rules pertaining to HFSS food products and services e.g. a block of cheddar. As such, they may be promoted during children's programmes. Such commercial communications must nevertheless comply with the Diet and Nutrition rules and with the general rules of the Code. The exemption does not apply in the case of products where cheese is a recipe.

Direction in respect of Children's commercial communications for cheese

Children's Commercial communications for cheese products must be accompanied by the following on-screen message:-

"Children should consume no more than a small matchbox size piece of cheese a day and lower fat choices are more suitable."

Broadcasters should also note that, subject to Rule 6(9), all taglines must be spoken where the commercial communication is broadcast during a programme for those under-6 years of age or where the product/service is likely to be of particular interest to this age group on account of the product/service promoted or by virtue of the content of the communication.

4. Commercial communications for HFSS food products and/or services shall not be permitted in children's programmes as defined by this Code. **U/18**

Direction in respect of HFSS food products/services during children's programmes

*Further to rule 4, children's commercial communication promoting a food or drink product and/or service assessed as HFSS further to the Nutrient Profiling Model (as adopted by the BAI) should not be aired during children's programmes as defined by this Code. In this regard, broadcasters are required to ensure the appropriate scheduling of any script supplied to it for a food product/service where it is intended to be broadcast during children's programming as defined by the Code. Specifically, broadcasters must receive from advertisers a Nutrition Profile Certificate. This will certify that the food or drink commercial communication being broadcast during the children's programme **is not for a HFSS food product and/or service** and it therefore appropriate for scheduling during such programming.*



A template certificate is provided on the BAI's website. Broadcasters can tailor the certificate to meet their procedures. However, any amended form must include information contained on the template. In the event of a complaint, a broadcaster will be required to provide a copy of the certificate in its response to the BAI to the complaint made.

Guidance

The remainder of the HFSS food rules contained in section 11 apply to children's commercial communications that are broadcast outside of children's programmes i.e. commercials for a HFSS food product and/or service that are deemed to be of particular interest to children. In determining whether a product is of particular interest to children, broadcasters are advised to consider, on a case-by case basis whether:-

- *The food product and/or service being promoted is one that is of exclusive interest to children.*
- *The creative approach is such that the promotion is clearly intended to target children via content such as the theme, visuals and language used, even in instance where the item promoted is not of exclusive interest to children.*

Direction in respect of HFSS food products/services outside of children's programmes

*In order to meet the content rules pertaining to requirement for HFSS food, broadcasters must be in a position to determine whether the food product and /or service being promoted to children is a HFSS food and therefore subject to content restrictions. For this reason, a Nutrition Profile Certificate should be requested from advertisers who wish to promote food to children outside of children's programming. This will certify that the children's commercial communication for food broadcast outside of children's programmes **is not for a HFSS food product and/or service** and it therefore not subject to the HFSS content rules.*

5. Children's commercial communications for HFSS food products and/or services shall not include licensed characters. **U/18**

Guidance

A licensed character is defined in section 2 of the Code. Such characters may not be included in children's commercial communications assessed by the Nutrient Profiling Model as a HFSS food. This rule does not apply to equity brand characters i.e. characters originally devised for marketing purposes, such as those associated with some breakfast cereals e.g. Tony the Tiger, Snap Crackle and Pop. Notwithstanding this, the use of such characters are governed by the Code and must be used responsibly in accordance with the Diet and Nutrition rules and the general rules of the Code.



6. Children's commercial communications for HFSS food products and/or services shall not include health and nutrition claims. **U/13**

Guidance

The BAI General and Commercial Communications Codes include rules in respect of health and nutrition claims. Broadcasters should familiarise themselves with the relevant Irish and European legislation governing this type of commercial communication, in particular, Regulation (EC) No 1924/2006 on nutrition and health claims made on foods (the EU regulation) and related legislation.

The EU Regulation is mandatory and seeks to protect consumers from misleading or false claims. Specific conditions of use associated with authorised health and nutrition claims are determined at a European level. The EU Register of health and nutrition claims (the EU Register) lists all authorised health and nutrition claims as well as non-authorised health claims that have been rejected. It is available at: <http://ec.europa.eu/nuhclaims/>.

Further to rule 6, where a product/service is assessed as an HFSS food and where it is a children's commercial communication of particular interest to primary and pre-school children (i.e. those under the age of 13), it may not include a health or nutrition claims.

In determining whether a product is of particular interest to children of this age, broadcasters are advised to consider, on a case-by case basis whether:-

- *The food product and/or service being promoted is one that is of exclusive interest to these children i.e. something that only under-13 years olds would be interested in.*
- *The creative approach is such that the promotion is clearly intended to target children of this age group via content such as the themes, visuals and language used, even in instance where the item promoted is not of exclusive interest to children.*

Further to the EU regulation, 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;*



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").

Broadcasters should also note the definition of a 'Reduction of disease risk claim' included in EU regulation. This means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.

Further information on nutrition claims is available on the website of the Food Safety Authority of Ireland (www.fsai.ie).

7. Children's commercial communications for HFSS food products and/or services shall not include promotional offers. **U/13**

Guidance

A promotional offer is a marketing technique used to encourage the sale of a product or service. Promotional offers include gifts, collectibles and prizes that can be attained directly via the purchase of the product or service or an offer that can be attained via the collection of tokens or coupons following more than one purchase of a food product and/or service.

This rule prohibits the inclusion of promotional offers in children's commercial communications for HFSS food products and/or services where the commercial is for a product and/or service that is of particular interest to pre-school or primary school children i.e. those under 13 years of age. In determining whether a product/service is of particular interest to children of this age, broadcasters are advised to consider, on a case-by case basis whether:-

- The food product and/or service being promoted is one that is of exclusive interest to these children i.e. something that only under-13 years olds would be interested in.
- The creative approach is such that the promotion is clearly intended to target children of this age group via content such as the themes, visuals and language used, even in instance where the item promoted is not of exclusive interest to children.

Fast Food and Confectionery

8. All children's commercial communications for fast food products, outlets and/or brands must display an acoustic or visual message stating 'should be eaten in moderation and as part of a balanced diet'. 'Fast food' is defined as 'food coming under the recognised character of fast food and/or inexpensive cooked food which is prepared and served quickly and is readily accessible for purchase by children'.



It is not the intention of the definition to include prepared and convenience foods or food which is purchased for preparation and cooking in the home. Fast food in this instance does not refer to the actual amount of time required to cook the food but rather the speed and ease with which the food can be procured and consumed. **U/18**

9. Children's commercial communications for confectionery products must display an acoustic or visual message stating that 'snacking on sugary foods and drinks can damage teeth.' 'Confectionery' in this instance includes sugar, honey, preserves, chocolate covered bars (excluding biscuits), non-chocolate confectionery – e.g. cereal bars – and artificial sweeteners³. Carbonated drinks are included, with the exception of water. **U/18**

Guidance

Broadcasters should note that, further to section 15, the promotion of slimming products or services is prohibited by this Code. Therefore, commercial communications for slimming food products and/or services (including diet drinks) cannot be included in children's programming, or promoted to children outside of children's programming. This does not prohibit the promotion of such drinks to adults outside of children's programmes. Children's commercial communications for fast food and confectionery that are assessed by the Nutrient Profiling Model (as adopted by the BAI) as HFSS will not be permitted in children's programming.

Celebrities

10. Children's commercial communications shall not portray or refer to celebrities or sports stars to promote food or drink products (including HFSS food products and/or services), unless the commercial communication is part of a public health or education campaign. Celebrities in this instance are defined as persons who are widely acclaimed, or honoured and/or known to children. It does not include those persons or characters that become known to children solely as a result of their participation in commercial communications. **U/15**
11. Broadcasters shall comply with directions, issued from time-to-time by the Authority, in respect of this section of the Code. **U/18**

³ This definition of 'confectionery' is in accordance with the Food Safety Authority of Ireland. Samples are classified by EU category as defined by the European Communities. See Food Safety Authority of Ireland (2001), Guidance Note on the EU Classification of Food No. 2, p.15. For further clarification on the foodstuffs identified, see FSAI (2001) - Appendix 1, p.44. A copy of the FSAI, Guidance Note on EU classification of foods is available here: http://www.fsai.ie/resources_and_publications/guidance_notes.html



12. Parental Responsibility

Parents and guardians have primary responsibility for children but those responsible for commercial communications (including broadcasters) should support the parent/guardian relationship with children by scheduling responsibly and by not undermining the authority, responsibility or judgement of parents or guardians in the content of children's commercial communications. This includes the use of plot lines that encourage children to deceive or manipulate adults into purchasing or providing the product or service promoted.

Children's commercial communications shall not suggest that a parent, guardian or adult who purchases or provides a product or service for the child, is better, more intelligent or more generous than one who does not. **U/18**

13. Programme Characters

Characters and personalities from children's programmes which are currently broadcast on indigenous services shall not be used to promote products or services (including HFSS food products and/or services) in children's commercial communications. In this instance 'currently' means regular programming that is due for return in the next broadcast season.

This provision does not apply to children's commercial communications for products, events or services, directly associated with programmes in which the characters or personalities normally appear.

In the case of children's commercial communications for products, events or services directly associated with the children's programme, these must not be broadcast for two hours prior to the beginning and following the end of the programme in question. **U/18**

Guidance

This rule means that characters and personalities from children's programmes currently broadcast on indigenous services cannot promote products, services, etc that are not directly associated with the programme in which the characters feature e.g. DVDs, books, Dolls etc.



14. Children's Advertising, Children's Sponsorship and Children's Product Placement

1. Except where otherwise indicated, children's advertising, children's sponsorship and children's product placement falling within the scope of this Code shall comply with Section 4 (Rules pertaining to Advertising & Teleshopping) Section 6 (Rules pertaining to Sponsorship) and Section 7 (Television Product Placement) of the General Commercial Communications Code. **U/18**

Guidance

Broadcasters should note that the rules and direction provided in the General Code on Commercial Communications in respect of permitted television product placement also applies to placement coming within the scope of this Code. Further details are provided in the Guidance Notes accompanying the General Code on Commercial Communications, to which broadcasters should refer. Broadcasters should note that paid product placement is prohibited by the BAI Children's Commercial Communications Code.

2. Children's Advertising shall be clearly separate from programme content and must not include excerpts from children's programmes that might blur the distinction between advertising and programme content. **U/18**
3. Christmas themed children's advertising may not be broadcast prior to November 1st each year. Christmas themed children's advertising refers to advertising that contains references, either visual or acoustic, to Christmas. **U/18**
4. A children's programme of less than 30 minutes scheduled duration may not be interrupted by advertising. Programmes with a scheduled duration of 30 minutes or greater may be interrupted by advertising once for each scheduled period of 30 minutes. **U/18**
5. Sponsor logos may not be shown during the editorial segments of Children's Programmes. **U/18**
6. Sponsors of Children's Programmes may not place their product and/or services in the sponsored programme. **U/18**



15. Prohibitions and Restrictions

1. Sections 8 and 9 of the General Commercial Communications Code detail prohibitions and restrictions on a range of products and services. Except where otherwise indicated, these prohibitions and restrictions shall apply to commercial communications falling within the scope of this Code. **U/18**

2. In addition to the prohibitions and restrictions listed in the General Commercial Communications Code, children's commercial communications containing the following are prohibited:-
 - Betting and Gaming services or products (except the National Lottery as permitted by the National Lottery Act 1986).
 - Slimming products and services (slimming being defined as weight reduction, limitation or control).
 - Introduction and dating services.
 - Services of a sexual nature.
 - Teleshopping.
 - Split-screen, interactive and virtual advertising.
 - Paid product placement.
 - Surgical and non-surgical cosmetic procedures.
 - Fortune Tellers, psychics etc.

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 to this Code and this guide should not be deemed to be exhaustive. **U/18**

Guidance

The General Code on Commercial Communications prohibits the promotion of: products, service and treatments only available on prescription; cigarettes and tobacco, infant formula; advertisements prohibited further to sub-sections 41(3) & (4) of the Broadcasting Act 2009. This General Code also includes rules restricting the promotion of: medicines, medical treatments, products and services; foods (including beverages); financial services and products, and; premium-rate telecommunication services. Broadcasters are also reminded of the requirement to comply with the Alcohol, Marketing, Communications and Sponsorship Code of Practice. A copy of this Code is available to view at www.iapi.ie. Further information on alcohol advertising for radio broadcasters is available at www.ibireland.ie. Broadcasters are advised to review the guidance notes on the General Code on Commercial Communications for more information on the restrictions contained under this heading.



**APPENDICES TO CHILDREN'S
COMMERCIAL COMMUNICATIONS CODE**



1. Related Legislation

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

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 Acts 2003 and 2004.

Central Bank Acts 1942-1998.

Censorship of Films Acts 1923-1992.

Censorship of Publications Acts 1929 to 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 Acts 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 2008.

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 to 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 1988.

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 2010/13/EU (Audiovisual Media Services Directive)

S.I. No. 258/2010 (European Communities (Audiovisual Media Services) Regulations 2010).

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.



2. Nutrient Profiling Model

For the purpose of this Code, the Nutrient Profiling Model developed by the UK Food Standards Agency should be used to assess whether commercial communications is for a product or service that is high in fat, salt or sugar and therefore subject to restrictions and regulation. There are three steps to working out the overall score of a food or drink.

i) Work out total 'A' points

A maximum of ten points can be awarded for each nutrient.

Total 'A' points = (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium). The following table indicates the points scored, depending on the amount of each nutrient in 100g of the food or drink:

Points Allocation 'A' Nutrients

Points	Energy (kJ)	Sat Fat (g)	Total Sugar (g)	Sodium (mg)
0	≤ 335	≤ 1	≤ 4.5	≤ 90
1	>335	>1	>4.5	>90
2	>670	>2	>9	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27	>540
7	>2345	>7	>31	>630
8	>2680	>8	>36	>720
9	>3015	>9	>40	>810
10	>3350	>10	>45	>900

If a food or drink scores 11 or more 'A' points then it cannot score points for protein unless it also scores 5 points for fruit, vegetables and nuts.



ii) Work out total 'C' points

A maximum of five points can be awarded for each nutrient/food component.

Total 'C' points = (points for % fruit, vegetable & nut content) + (points for fibre [either NSP or AOAC]) + (points for protein)

The following table indicates the points scored, depending on the amount of each nutrient/food component in 100g of the food or drink:-

Points Allocation 'C' Nutrients:

Points	Fruit, Veg and Nuts (%)	N&P Fibre (g)	Or AOAC Fibre ⁴ (g)	Protein (g)
0	≤40	≤0.7	≤0.9	≤1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5	>80	>3.5	>4.7	>8.0

iii) Work out overall score

- If a food scores **less than 11 'A' points** then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total 'C' points (fruit, veg and nuts + fibre + protein)

- If a food scores **11 or more 'A' points** but scores 5 points for fruit, vegetables and nuts then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total 'C' points (fruit, veg and nuts + fibre + protein)

⁴ One or other of the dietary fibre columns should be chosen to how the fibre content of the food or beverage was calculated by the manufacturer.



- If a food scores **11 or more 'A' points, and less than 5 points for fruit, vegetables and nuts**, then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total points for fibre + points for fruit, vegetables and nuts (not allowed to score for protein)

A **food** is classified as 'less healthy' where it scores **4 points or more and is subject to the restrictions in the Code.**

A **drink** is classified as 'less healthy' where it scores **1 point or more and is subject to the restrictions in the Code.**

For further detail on the application of this model, please refer to separate guidance provided by the BAI and published on www.bai.ie.



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