

**BCI General Advertising Code
Guidance Notes
10th April 2007**

*The purpose of this document is to provide guidance on the **BCI General Advertising Code**. The document should not be regarded as a complete or authoritative statement of law. These guidance notes are non-binding and are provided to assist broadcasters, advertisers and the general public to interpret and apply the **BCI General Advertising Code**. The BCI accepts no responsibility or liability in respect of any guidance that may be given and reserves the right to revise and review any guidance provided. Broadcasters must 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. 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.

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

***BCI General Advertising Codes-Guidance Notes,
Broadcasting Commission of Ireland,
2-5 Warrington Place, Dublin 2.***

i) Legislation

The **BCI General Advertising Code** has been developed further to Section 19(1)(b) of the Broadcasting Act, 2001 which requires the BCI to develop:-

(b) a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service (other than advertising and other activities as aforesaid falling within paragraph (c) [Children's Advertising]).

*Commercial communications, other than those governed by the **BCI Children's Advertising Code**, are required to comply with all the principles and any relevant rules contained in the **BCI General Advertising Code**. Please note that this does not mean that there are no rules in the Code in respect of children and commercial communications- rules in this regard are detailed in Section 3 of the Code under the heading of **Offence, Harm and Human Dignity**.*

*The **BCI Children's Advertising Code** can be viewed on the BCI website. Printed copies are also available on request from the BCI's offices. The BCI can be contacted by email (info@bci.ie), by phone (01 644 1200) or by post (2-5 Warrington Place, Dublin 2).*

ii) Jurisdiction

All broadcasters licensed in the Republic of Ireland and/or those who make use of a frequency or satellite capacity or up-link situated in the Republic of Ireland are required to comply with the **BCI General Advertising Code**. In practical terms, the Code shall apply to RTÉ radio and television services, TG4 and national, regional, local and community radio and television services licensed further to the provisions of the Radio and Television Act, 1988 and/or the Broadcasting Act, 2001, including temporary and institutional services (where appropriate).

Advertising, including advertising targeting Irish consumers, broadcast on services licensed in the United Kingdom or in other jurisdictions, are not required to comply with this Code e.g. advertising on BBC, BSkyB, ITV, Channel 4. This is because of the 'country of origin' principle within the **Television Without Frontiers Directive**, which is the key piece of European legislation governing television broadcasting services throughout Europe. This principle means that television stations must obey the rules laid down in the country in which they are licensed, in other words the country in which they 'originate'.

iii) Compliance

Broadcasters coming within the jurisdiction of the Code are obliged to comply with the provisions of this Code. Consequently, they should take steps to ensure that all relevant staff members are familiar with the provisions of this Code. Appropriate mechanisms should also be put in place by broadcasters 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 which are most appropriate for their service and its audience.

The BCI does not provide broadcasters, advertisers and the general public with a copy clearance service for commercial communications. For this reason, advertisers should contact the relevant broadcaster(s) and/or advertising agencies regarding copy clearance for forthcoming commercial campaigns.

Compliance with this Code will be assessed by the BCI with reference to the statutory provisions, the provisions of the Code and the procedures, practices and policies of the BCI, including the **BCI Compliance Policy (2006)**. This document may be accessed on the BCI's website and is also available on request from the BCI's offices.

Complaints in respect of any alleged breach of this Code will be adjudicated upon by the Broadcasting Complaints Commission (BCC). The BCC can be contacted by email (info@bcc.ie), by phone (01 676 1097) or by fax (01 676 0948). Complaints may also be made online (www.bcc.ie).

iv) **Guidance**

When requested, the BCI is happy to provide general guidance for broadcasters, advertisers and the public regarding the provisions of this Code. However, the BCI only provides more specific guidance in relation to atypical commercial communications when such requests are accompanied by supporting documentation, such as a script. In the interest of clarity, the guidelines for those seeking advice in relation to such material are as follows: -

- 1. Requests for advice must be submitted in writing or email and include the complete text and, where relevant, audio/video copy of the commercial communication in question.*
- 2. The submission should clearly state the section/s of the Code, which the broadcaster believes are relevant, and set out the reasons why it believes the commercial communication in question complies or may not comply with the Code. **Queries which are submitted without a text or comment will not be considered.***
- 3. The BCI 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 is especially complex. **Failure to provide a script and/or comment will delay this process.***
- 4. The BCI response will set out the BCI's view in relation to the submission but interested parties will be invited to make follow-up submissions within an agreed timeframe. Following this the BCI will take a final view on the matter.*
- 5. While a commercial communication is under consideration, broadcasters will normally be requested to refrain from airing the communication.*
- 6. These procedures come into effect from 10th April 2007.*
- 7. Scripts can be sent by post or emailed to: codes@bci.ie.*

1. *Objectives of the BCI General Advertising Code*

- To ensure that the public can be confident that commercial communications (i.e. advertising, sponsorship and teleshopping and other forms of commercial promotion) are legal, honest, truthful and decent.
- 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.
- 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.

These objectives are intended primarily to recognise the right of the public to honest, legal, truthful and decent commercial communications and to inform them that broadcasters are required to recognise this right. The objectives also highlight the need for a common understanding between broadcasters and the public about the standards that are expected of commercial communications.

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, the Code contains a set of definitions of the types of commercial communications which the Code governs. In addition, a number of terms are also defined. The definitions have been drawn from a number of sources including the **Ministerial Code** which the **BCI General Advertising Code** replaces, the current **Television Without Frontiers Directive** and definitions devised by the BCI as part of the development of its **Children's Advertising Code**.*

Commercial Communication

Any form of announcement on radio and television coming within the recognised character of advertising, sponsorship and teleshopping and any other form of commercial promotion.

Advertising

Any form of announcement broadcast in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of products or services, including immovable property, activities, rights and obligations, in return for payment.

Child/Children

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

Sponsorship

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

Misleading advertising

Advertising which contains 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 advertised 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 advertising

Advertising that contains explicit or implicit identification of a competitor or products or services offered by a competitor.

Surreptitious advertising

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 to serve advertising and might mislead the public as to its nature. Such representation is deemed to be intentional if it is done in return for payment or similar consideration.

Subliminal advertising

Advertising that includes 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.

Product Placement

The inclusion of, or a reference to, a product or service within a programme in return for payment or similar consideration to the programme maker or broadcaster for the specific purpose of promoting that product or service.

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

Exclusions

*Announcements included in the list of exclusions below will not constitute advertising once they do not contain any advertising content. Therefore, they will not count towards advertising minuteage. This does not mean that they do not have to comply with any standards. Rather, such announcements will be required to comply with the **General principles and rules applying to all commercial communications** detailed in Section 3 of this Code and, where relevant, other sections of the Code and with the **BCI Code of Programme Standards** (where relevant e.g. programme trailers).*

Broadcasters should also be aware that announcements falling within the broad parameters of those excluded below must not contain references to products or services which are prohibited under Section 9 of this Code or prohibited otherwise by Irish or European legislation.

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.
- Air-time given free of charge to any registered charity to make appeals.
- Public service announcements, including warnings about public safety and health that are not broadcast in return for payment or for similar consideration.
- 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.

This exclusion applies regardless of whether the public is granted free entry or is required to pay a fee to view the performance.

- 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 broadcaster may credit the sponsor providing facilities, for example the commercial outlet providing the facilities for the outside broadcast, at the beginning and/or the end of the programme and at prudent intervals during the programme on an informational basis.

In the case of non-broadcast events jointly sponsored by the broadcaster and one or more commercial concern, the broadcaster may credit the joint sponsor(s) in broadcast announcements.

In both of these cases, sponsorship acknowledgements shall comply with the sponsorship rules contained in this code.

This exclusion only applies when the public are allowed entry to the event free of charge. It does not extend to paid events including those where the broadcaster has made a contra deal for tickets or other similar commercial promotional arrangements.

3. *General principles and rules applying to all commercial communications*

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

Protecting the Individual and Society

This principle is intended to ensure that commercial communications aimed at the public are legal, honest, decent and truthful. A key element of this principle is a requirement that advertising, sponsorship, teleshopping and any other type of commercial promotion must not mislead the public either directly or indirectly about the qualities, price, terms, etc., contained within a commercial communication.

While advertisers have a responsibility under law to ensure that commercial communications are not misleading, this responsibility extends to broadcasters. Broadcasters should develop mechanisms to satisfy themselves that the details, claims, etc, made in a commercial communications are legal, honest, decent and truthful.

3.1 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 and truthful.

3.1.1 All commercial communications shall comply with applicable Irish and European legislation. This includes, but is not restricted to, the *Broadcasting Authority Act, 1960*, the *Radio and Television Act, 1988*, the *Broadcasting Act, 2001* and the EU Directive 89/552/EEC as amended by EU Council Directive 97/36/EC (*Television Without Frontiers Directive*).

A non-exhaustive list of legislation is contained in the Appendix of the Code. For more details in this regard, please refer to the guidance provided under the Appendix.

3.1.2 Commercial communications shall not 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 being promoted or its suitability for the purpose recommended.

3.1.3 Commercial communications shall not contain inaccurate or misleading claims, statements, illustrations or representations, either direct or implied.

3.1.4 Commercial communications shall not omit relevant information in a manner that, in the result, is misleading or is likely to mislead. This means that all pertinent details of an offer shall be stated in a clear and understandable manner.

3.1.5 Disclaimers and asterisked or footnoted information 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.

In general, broadcasters should take measures to ensure that the principal offer contained in a commercial communication or any other significant information which is likely to impact on an audience member's understanding of the communication is not contained solely in footnoted text.

- 3.1.6 Commercial communications that are required to carry a tagline or on-screen message shall do so in a way that is clearly visible and/or audible.

It is not the BCI's general practice to describe standards in respect of the placement and size of on-screen taglines or other information. However, in the interests of best practice, where practicable, broadcasters should consider using plain language which is easily understood by listeners and viewers. 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 such as the contrast between the text and the background picture onto which it is placed.

- 3.1.7 Broadcasters shall be mindful of the potential for sound effects to distract and/or alarm viewers and listeners. Particular care shall be taken when including in commercial communications 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 to a viewer and, in particular, a listener to a commercial communication. This rule prohibits the use of sirens, horns, ringing phones, screeching tyres and other sound effects which could reasonably be expected to distract, at the beginning of all commercial communications, regardless of their placement in the commercial break.

- 3.1.8 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.

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. This section of the Code includes general rules intended to highlight a general requirement to avoid undue offence and all harm. There is also a specific requirement to exercise due care in respect of the particular offence and harm that can arise from inappropriate commercial communications which contain discriminatory material or material which offends religious or political beliefs.

The rules under this section also highlight the requirement to be particularly careful to avoid harm to children. General issues pertaining to human dignity, including the dignity of children, and issues pertaining to health and safety are also highlighted.

- 3.2 Commercial communications shall not prejudice human dignity, cause harm or serious or widespread offence.
- 3.2.1 Commercial communications shall not 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.
- 3.2.2 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.
- 3.2.3 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 which can determine the level of offence and/or harm that can be caused by inappropriate commercial communications. These contextual factors are also those which will be taken into account by the BCI and the BCC 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 also intended to serve as a guide for broadcasters so as to avoid undue offence and all harm.

3.2.4 Commercial communications shall not cause moral or physical detriment to children, and shall therefore comply with the following criteria for their protection:

- They shall not directly exhort children to buy a product or a service by exploiting their inexperience or credulity;
- They shall not directly encourage children to persuade their parents or others to purchase the goods or services being advertised;
- They shall not exploit the special trust children place in parents, teachers or other persons;
- They shall not unreasonably show children in dangerous situations.

These rules shall apply to all commercial communications other than those governed by the *BCI Children's Advertising Code*.

*This rule derives from Article 16 of the **Television Without Frontiers Directive** and is intended to ensure that the dignity of children is respected, that their health and safety is taken into consideration and that they are protected from offence and harm.*

*As noted, these rules will apply to all commercial communications **not** governed by the **BCI Children's Advertising Code**.*

3.2.5 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.

This rule is intended 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 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.

The second part 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. 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.

- 3.2.6 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 which 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 of communications of this nature to identify with such matters and of the vulnerability of children. For this reason, broadcasters should give consideration to the appropriate scheduling of communications which could cause distress.

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 in a programme consumed by a viewer or listener is clearly and identifiably separate from the commercial communications which may be broadcast during or between programmes.*

This requirement is reflected in a number of rules contained in the remainder of the Code including the separation requirements detailed in advertising rules 4.1 and 4.2, the prohibitions on surreptitious and subliminal advertising (4.9), the prohibition on product placement (3.3.9) and the sponsorship rules (Section 7).

- 3.3 Commercial communications shall operate on a principle of transparency. Any commercial arrangement within programming shall be identifiable as such and the listener/viewer shall be made aware of such an arrangement.

- 3.3.1 Presenters and other on-air personnel shall not advertise or endorse products or services during editorial content.

This rule prohibits presenters and any other on-air personnel (including reporters and regular guests or contributors) from advertising or endorsing any products or services during their programme (including products or services with which they have a vested interest). Broadcasters have a responsibility to ensure that guests do not promote their products or services on-air.

Broadcasters should exercise particular care when competitions are featured on-air. It has been the BCI's experience that descriptions of competition prizes and the mechanisms used to enter the competition may lead to advertising content and product or service endorsement taking place during competition announcements. In this respect, broadcasters should ensure that competitions comply with the rules under the heading of sponsorship (Section 7), including rules in respect of competitions (Section 7.7).

- 3.3.2 Advertisers or sponsors shall not exercise any editorial influence over the content of programmes.

This is particularly important during outside broadcasts sponsored by a commercial interest. Other than acknowledging the sponsor of the outside broadcast in line with the sponsorship rules contained in section 7 of this Code, reports from outside broadcasters must not include content which describes the products or services of the sponsor in a manner which constitutes advertising. Content which breaches the sponsorship rules are likely to constitute advertising and will count towards advertising minuteage.

- 3.3.3 Commercial communications shall not include the words 'guarantee' or 'guaranteed', 'warranty' or 'warranted' unless a legal guarantee/warranty is available to the broadcaster and the purchaser. No commercial communication shall contain a direct or implied reference which purports to take away or diminish the statutory or common law 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.

- 3.3.4 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. The use of an actor or actress to give the incorrect impression of a testimonial is likely to be classified as misleading and therefore contrary to the Code. In such instances, broadcasters are advised to make clear the use of an actor or actress in the communication so that the audience is aware that the communication does not contain a genuine testimonial. Please note that Rule 8.2.2 prohibits testimonials by health professionals or by persons who, because of their celebrity, could encourage the use of medicines, medical treatments, products and services and/or cosmetic treatments and services. In addition, this rule prohibits testimonials 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.

- 3.3.5 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.

- 3.3.6 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.

News programmes are defined as main news bulletins, including extended news bulletins e.g. TV 3 News, RTÉ Six One News, Today FM Lunchtime News. It does not prohibit presenters of current affairs programmes or of weather, entertainment, traffic news items, etc., being featured in commercial communications.

- 3.3.7 The practice known as product placement is prohibited.

Incidental references to products or services in a programme are legitimate where their inclusion within the programme is editorially justified. Broadcasters shall ensure their inclusion does not result in undue prominence being provided to the product or service during the programme.

For television, the inclusion of products or services in a programme acquired from outside the Republic of Ireland and films made for cinema are not considered product placement provided that no broadcaster regulated in the state and involved in the broadcast of that programme or film directly benefits from the arrangement.

Product placement is deemed to be a form of surreptitious advertising which is prohibited by the Code (see rule 4.9). In addition to setting out this prohibition, the rule is intended to clarify instances which are not classified as product placement.

The rule recognises that product placement may occur in programming which is sourced from other jurisdictions and from which the broadcaster licensed in the Republic derives no income. In this instance, the rule provides that broadcasters should not be liable for this product placement. However, any programme containing product placement over which the broadcaster has a degree of control and for which the broadcaster received payment or similar consideration may not be broadcast.

The rule also requires broadcasters to take measures to ensure that products and services featured in a programme are not given undue prominence since to do so would give the impression that a product placement arrangement is in place. Where undue prominence of a product or service takes place, it will not be unreasonable for a member of the public to believe that advertising is taking place. This may result in the broadcaster dealing with an unnecessary complaint which is time consuming and avoidable.

Assessment

*The principle of **Assessment** sets out the manner in which compliance with the **BCI General Advertising Code** will be made. In practice, this principle will be used by the Broadcasting Complaints Commission (BCC) when assessing complaints by members of the general public. It will also be used by the BCI when assessing radio and television content for compliance with the Code.*

- 3.4 Commercial communications shall be assessed with reference to the principles and rules contained in this Code. The principles are indivisible, that is, all commercial communications shall conform to all of the principles.

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, a commercial communication for cosmetic surgery will be required to comply with the specific rules in relation to cosmetic surgery but also the general rules for **Medicines, medical treatments, products and services and cosmetic treatments and services** as well as the **General Rules applying to all commercial communications**. It may in certain instances also have to comply with the rules in respect of slimming and where it entails the use of botox, it would have to comply with the section on **Prohibited communications** as Botox is a prescription only drug. Broadcasters are, therefore, advised to consider the totality of the Code's provisions and not to apply any single rule in too narrow or focussed way.*

3.4.1 Commercial communications shall be assessed 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

3.4.2 The Code is intended to be applied in the spirit as well as in the letter.

4. *General rules pertaining to all advertising*

*These rules are intended to recognise the specific characteristics of advertising as opposed to sponsorship. The majority of the rules incorporate the relevant provisions of the **Television Without Directive** which pertain to advertising. Unless otherwise indicated, the rules will apply to both television and radio advertising.*

Broadcasters should be aware that the proportion of permitted time given over to advertising is subject to maximum limits and is regulated by legislative and other provisions.

In practice, all commercial services licensed further to the provisions of the Radio and Television Act, 1988 and the Broadcasting Act, 2001 are permitted a maximum of ten minutes of advertising per hour and are subject to a daily limit of 15% of broadcast output. Community radio and television services licensed further to the provisions of the 1988 Act and the 2001 Act are permitted a maximum of six minutes of advertising per hour. In both instances, compliance is based on the clock hour. Special Event and Institutional services licensed under Section 8 of the 1988 Act are not permitted to broadcast any advertising, however, sponsorship is permitted.

Further to Sections 31 and 49 of the Broadcasting Act, 2001, advertising minuteage limits for RTE services and TG4 are set by the relevant Minister with oversight for these services.

- 4.1 Advertising shall operate on a principle of separation, whereby commercial content in advertising breaks between and within programmes shall be separate from programme content.

This rule provides that viewers and listeners should be aware that they are viewing or listening to either programming or advertising content. The rule reflects the principle of Transparency.

- 4.2. The insertion of advertising shall not affect the editorial integrity and value of programming. Advertising 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.

In addition to ensuring a clear separation between programming and commercial content, this rule emphasises the need to ensure that programme content is not distorted for commercial purposes. It requires broadcasters to ensure an appropriate balance between the rights of advertisers and other commercial promoters and the rights of viewers and programme makers and the integrity of the programme.

- 4.3 In the case of feature films and films made for television, provided their scheduled duration is more than 45 minutes, they may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.
- 4.4 For television programmes other than those referenced in 4.3 above, a period of at least 20 minutes should elapse between each successive break within the programme.
- 4.5 Advertising shall not be inserted in any broadcast of a religious service.
- 4.6 Advertising 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.
- 4.7 In television broadcasts, isolated advertising shall remain the exception.
- 4.8 Advertising breaks 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 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 break or by broadcasting a station jingle prior to the advertisement break.

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

- 4.9 Each of the following is prohibited:
- Surreptitious advertising
 - Subliminal advertising
 - Misleading advertising

Definitions for each of these terms are set out under the “Definitions” (section 2).

- 4.10 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 a matter for broadcasters.

5. Rules pertaining to specific advertising techniques

There are three specific advertising techniques identified under this section of the Code. 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 “Definitions” (section 2). These rules are only of relevance to television broadcasters.

5.1 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 minuteage 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.

- 5.1.1 The general principles and rules applying to all commercial communications and, where relevant, the general rules pertaining to all advertising shall apply to split-screen advertising.
- 5.1.2 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.
- 5.1.3 Split-screen advertising shall not exceed 50% of screen space and only one split-screen advertisement shall appear at any given time.
- 5.1.4 Split-screen advertising is not permitted in news or current affairs programmes, feature films or broadcasts of religious services.

5.2 Virtual Advertising

The general principles and rules applying to all commercial communications and, where relevant, the general rules pertaining to all advertising shall apply to virtual advertising.

5.3 Interactive Advertising

Interactive advertising allows the viewer to supply information directly to the broadcaster via a return path or to interactively explore a chosen environment for as long as s/he wishes. Generally speaking, interactive advertising tends to be initiated by the viewer on the basis of an advertisement broadcast in a television programme. For this reason, the regulation of advertising which can lead to an interactive environment is deemed by the BCI to be both appropriate and necessary. It is important to state that the rules under this Code will only apply to interactive advertising and shall not be applicable to interactive content itself, which is governed by other EU and Irish legislative provisions.

5.3.1 The general principles and rules applying to all commercial communications and, where relevant, the general rules pertaining to all advertising shall apply to interactive advertising.

5.3.2 Interactive advertising shall not bring the viewer immediately/directly to products or services that are advertised. Viewers shall be warned by appropriate optical and acoustic means that they are about to enter a commercial interactive environment not governed by the *BCI General Advertising Code*. This shall be done by means of an intermediate screen which appears at the first click, and the viewer shall be able to access the interactive content *only* after a second click.

5.3.3 Interactive advertising shall not bring the viewer immediately/directly to products or services for commercial communication which are prohibited under this Code.

6. Rules pertaining to teleshopping

Broadcasters should be aware that the proportion of permitted time given over to teleshopping is subject to maximum limits and is regulated by legislative and other provisions.

*The maximum amount of teleshopping content permitted on television services/channels **not** exclusively devoted to commercial content of this nature is three hours in any given broadcast day.*

6.1 The general principles and rules applying to all commercial communications and, where relevant, the general rules pertaining to advertising shall apply to teleshopping.

- 6.2 Advertising segments devoted to teleshopping by a channel *not exclusively* devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes. The maximum number of segments per day shall be eight. The segments shall be clearly identified as teleshopping segments by optical and acoustic means.
- 6.3 Chapters I, II, IV, V, VI, VIa and VII of the *Television Without Frontiers Directive* shall apply to channels *exclusively* devoted to teleshopping.
- 6.4 Teleshopping featuring medicines which require a Product Authorisation Licence and teleshopping for medical products, treatments and services and cosmetic treatments and services are prohibited.

The Product Authorisation Licence is the licence granted by either the Irish Medicines Board or the EU Commission and is required before a medicine can be marketed. Further details on Product Authorisation Licences are provided in the guidance detailed under section 8.2.

- 6.5 Teleshopping shall not exhort children to contract for the sale or rental of products and services.

7. Rules pertaining to Sponsorship

The sponsorship rules will permit on-air acknowledgements of sponsors to include references to the products or services of the sponsor once these references do not constitute advertising. In this regard, a sponsorship announcement which contains advertising copy, product descriptions, a call to action, endorsements, and references to attributes or prices (except where required) will constitute advertising. In practice, this means that a programme may now be sponsored for example by the 'Ford Focus' or by 'eircom Broadband' whereas such announcements would have previously constituted advertising. Contact details are permitted and generic slogans will be allowed once these slogans comply with the sponsorship rules.

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 BCI to assess compliance with these limits, for broadcasters to ensure compliance and for the public to know the legal requirements in this area.

The rules in this section of the Code are not intended to change the definition or weaken the distinction between advertising and sponsorship. They are intended to clarify how broadcasters can refer appropriately to sponsors in practice and do not represent a significant departure from previous guidelines issued.

7.1 Sponsorship may occur through the provision of direct funding by the sponsor or through investment in kind through the provision of facilities or services from the sponsor (e.g. in outside broadcasts) or through the supply of products and services including prizes.

7.2 Sponsorship shall not constitute advertising as defined in this Code. Sponsorship announcements shall not make promotional references to the products and/or services of the sponsor which contain advertising copy, product descriptions, endorsements, attributes or a call to action. Generic branding slogans are permitted. Prices shall only be quoted when their inclusion is required by statute.

An example of a situation where citation of prices or price related information may be necessary is where the sponsorship relates to a provider of a premium-rate telecommunication service e.g. Weather Dial.

7.3 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 advertised under this Code.

This means, for example, that sponsorship announcements, including competitions, may not include references to prescription drugs or cigarettes.

7.4 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 advertise.

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.

7.5 News, current affairs and religious programmes shall not be sponsored on television.

7.6 News programmes shall not be sponsored on radio.

This rule prohibits sponsorship of news programmes. News programmes are defined as main news bulletins, including extended news bulletins e.g. TV 3 News, RTÉ Six One News, Today FM Lunchtime News etc. It does not prohibit sponsorship of weather, entertainment, traffic news items, current affairs or religious programmes on radio.

Competitions

The rules under this section recognise that some factual descriptions of prizes on offer are necessary as part of a competition announcement. However, these descriptions shall not contain advertising copy, endorsements, attributes or a call to action.

- 7.7 Unless otherwise indicated in this paragraph, competitions shall comply with the sponsorship rules in this section.

Competition announcements may contain short factual descriptions of prizes but shall not contain advertising copy, endorsements, attributes or a call to action.

The mechanism used to participate within the competition i.e. information concerning what the viewer or listener must do to enter and/or win the prize, shall not contain advertising content.

For example, the question should not promote the attributes of the sponsor's product or service. Equally, the mechanism to enter the competition should not include or require a call to action to purchase a product or service of the sponsor as a means of entering the competition.

Where the prize is of a monetary nature e.g. a voucher, the value may be stated. However, prices shall only be quoted when their inclusion is required by statute.

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. Rules of this nature are quite common in other jurisdictions. 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. In such instances, further information is provided.

8.1 **Alcohol**

*The rules under this heading are drawn primarily from the **Television Without Frontiers Directive**. In addition, they reflect issues arising from the BCI's consultation process that informed the Code and the agreement between broadcasters, the advertising industry, drinks manufacturers and the Department of Health and Children to introduce voluntary codes of practice in respect of the promotion of alcohol.*

- 8.1.1 Commercial communications for alcoholic drinks shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.
- 8.1.2 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.
- 8.1.3 Commercial communications for alcoholic drinks shall not place emphasis on high alcohol content as being a positive quality of the beverages.
- 8.1.4 Commercial communications for alcoholic drinks shall not create the impression that consumption of such beverages contributes towards sexual attraction and success or social success.
- 8.1.5 Commercial communications for alcoholic drink shall not link the consumption of alcohol to enhanced physical performance or to driving.
- 8.1.6 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 and beers once such products do not contravene other rules of this section of the Code, in particular Rule 8.1.10. This rule does not prohibit references to spirit brands where the reference is incidental e.g. Jameson Dublin Film Festival, Hennessy Gold Cup, since the communication is not, in these instances, for Jameson or Hennessy, but rather a film festival and a horse race respectively. However, where the reference is incidental, the images or audio should not contain any branding for the prohibited alcohol e.g. corporate colours, bottle labels, fonts etc.

- 8.1.7 Commercial communications for alcoholic drinks shall not be aimed specifically at children or, in particular, depict children consuming these beverages.
- 8.1.8 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.
- 8.1.9 Broadcasters shall ensure that commercial communications for alcoholic drinks are not transmitted in or around programmes primarily intended for children and/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.
- 8.1.10 Commercial communications for Ready-to-Drink Products (RTDs) such as alco-pops, and products of a similar nature are not permitted.

- 8.1.11 All commercial communications for alcoholic drinks shall comply with the relevant voluntary codes of practice for alcohol radio and television advertising and sponsorship recognised by the *Department of Health and Children*.

*In 2005, the Minister for Health and Children launched new voluntary Codes of Practice which have been agreed between that department and representatives of the advertising, drinks and media communications industries. These codes relate to alcohol advertising and young people and set out policies with regard to the advertising of alcohol. The voluntary codes define a young person as those under the age of 18. All broadcasters coming within the jurisdiction of the **BCI General Advertising Code** will be required to comply with **The Voluntary Code of Practice** as it relates to radio and television. In practice, broadcasters will be required to comply with the following:-*

- 1. No commercial communications for alcohol will be aired in any programming where more than 33% of the audience is under the age of eighteen years. This should be assessed by broadcasters with reference to audience profile figures, JNLR figures, audience interaction as well as the likely audience for a given programme.*
- 2. No commercial communication for alcohol will be placed in any programming specifically aimed at children or young people.*
- 3. On a twice yearly basis, each station will submit a list of programmes to the BCI that do not carry commercial communications for alcohol.*

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

General Rules

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.

*For the purpose of this Code, a **medicine is defined** as any substance or combination of substances presented as having properties for treating or preventing disease in human beings and 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.*

This definition includes prescription only medicines and medicines available from the pharmacy or shop counter which may only be sold once a Product Authorisation License has been granted by the Irish Medicines Board or the EU Commission and medicines which are subject to any other licensing or certification requirements set down by both bodies. This definition does not include foods which make health or nutritional claims except 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 set down by both bodies. Foods making health or nutritional claims, other than those licensed as medicines, are regulated by Rule 8.4 of this Code.

*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 does not include foods which make health or nutritional claims and foods of this nature are regulated by Rule 8.4 of this Code.*

*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.*

- 8.2.1 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 list of pertinent legislation.

- 8.2.2 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.

This rule prohibits commercial communications containing recommendations by health professionals including doctors, dentists, midwives, pharmaceutical chemists, nurses and other relevant health professionals. This rule includes a prohibition on statements of approval by the health professional.

This rule also prohibits recommendations of any medicines, medical treatments, products and services and cosmetic treatments and services by celebrities.

To avoid misunderstanding about the status of the presenter of a commercial communication of this nature, it may be necessary to make clear during the communication that the presenter is not a professionally qualified person.

- 8.2.3 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.

- 8.2.4 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.

- 8.2.5 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.

Illnesses of this nature include those detailed in Schedule 1 of the Medical Preparations (Advertising) Regulations 1993 and 1996 (S.I. 76/1993, S.I. 308/1996). These regulations can be viewed on www.irishstatutebook.ie.

This rule and the rules under this section do not prohibit commercial communications for vaccinations. Furthermore, the rules do not prohibit commercial communications for disease awareness campaigns. In both instances, 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 are viewed as intended to promote a prescription drug will be prohibited.

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

Correspondence is defined as any communication transmitted by phone (including SMS), post, fax, email and via the internet.

- 8.2.7 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.

- 8.2.8 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 that its value lies in its being "natural".

- 8.2.9 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.

- 8.2.10 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 as prizes to listeners or viewers products, services or treatments coming within the scope of this section of the Code.

Medicines

- 8.2.11 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 *Irish Medicines Board* or the *EU Commission*. Commercial communications shall comply with any other relevant rules and regulations issued by the *Irish Medicines Board* or the *EU Commission* and with Irish and European legislation.

Commercial communications for medicines are only permissible once a Product Authorisation License or other form of registration 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 (surgical and non-surgical)

- 8.2.12 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.
- 8.2.13 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.

A non-exhaustive list of surgical procedures includes liposculpture/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 is for the treatment of clinical obesity and is 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.

Hypnosis, Hypnotherapy, Psychology, Psychoanalysis or Psychiatry

- 8.2.14 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.
- 8.2.15 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 smoking aid 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)

For the purpose of this Code, 'foods' are defined as any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. They include drink, chewing gum and any substance, including water, intentionally incorporated into food during its manufacture, preparation or treatment.

- 8.4.1 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 this legislation, in particular the *Food Safety Authority of Ireland*.

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.

- 8.4.2 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.*
- *Products for external intimate hygiene.*
- *Sunbathing products.*
- *Products for tanning without sun.*
- *Skin-whitening products, Anti-wrinkle products.*

8.6 Slimming Treatments, Products and Services

8.6.1 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 slimming 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 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 during children's advertising. Broadcasters are asked to take a responsible approach to slimming advertising which may be viewed by children but which would not constitute children's advertising.

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 and insurance, including, but not restricted to, financial services and products regulated by the Financial Regulator and the Office of the Director of Consumer Affairs.

- 8.7.1 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.
- 8.7.2 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 this legislation, in particular the *Irish Financial Services Regulatory Authority* and the *Office of the Director of Consumer Affairs*.

Further information on the Office of the Director of Consumer Affairs can be found here: - www.odca.ie.

Commercial Communications for financial services and products are required to comply with the Financial Regulator's Consumer Protection Code, in particular section 7. This document can be viewed on the Financial Regulator's website www.financialregulator.ie

8.8 Betting Services

- 8.8.1 Commercial communications that seek to promote services to those who want to bet are acceptable.
- 8.8.2 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.

8.9 Premium-rate Telecommunication Services

- 8.9.1 Commercial communications for premium rate telecommunication services shall state clearly all charges for accessing these services in terms which do not mislead, whether by exaggeration, omission or in any other way.
- 8.9.2 All commercial communications shall comply with the Code of Practice issued by the Regulator of Premium Rate Telecommunication Services (Regtel) as set down from time to time.

Premium-rate telecommunication services are those services as defined in the Regtel Code of Practice. This Code of Practice can be viewed on www.regtel.ie. Broadcasters should also put in place measures to ensure that the use of premium-rate services during competitions, voting etc., complies with the Regtel Code of Practice.

8.10 Fortune Tellers, Psychic Services etc.

- 8.10.1 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.
- 8.10.2 Claims that future events may be predicted, other than as a matter of opinion, are not permitted.
- 8.10.3 Claims to make contact with deceased persons are not permitted.
- 8.10.4 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 which 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 directed towards a political end or which have any relation to an industrial dispute.

While the term 'political end' includes political parties, the prohibition included in this rule is broader and extends to activities with the purpose of influencing legislation or executive action by legislatures at home or abroad.

Where there is a risk that a commercial communication could breach the prohibition, broadcasters should seek guidance. In determining whether a communication may breach this prohibition, the content of the communication, the current political context and the aims and objectives of the organisation placing the communication may be taken into account.

- Advertisements directed towards a religious end. This shall not be construed as preventing the broadcasting of a notice of the fact-
 - i) that a particular religious newspaper, magazine or periodical is available for sale or supply, or
 - ii) that any event or ceremony associated with any particular religion will take place,

if the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion 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 non-exhaustive list of these provisions is contained in the Appendix to this Code.

10. Appendix

The following is a non-exhaustive list of the principal legislation which may restrict, control or otherwise affect advertising in Ireland. This list is for guidance only and it is entirely a matter for each person to ascertain any relevant legislative provisions that may apply in each case.

The relevant legislative provisions can be viewed at the following websites:

www.irishstatutebook.ie
<http://eur-lex.europa.eu/en/index.htm>

Broadcasting Legislation:

Broadcasting Act, 1990

Broadcasting Act, 2001 (*ss.18-19, s.49, s.65*)

Broadcasting Authority Act, 1960 (*s.20*)

Broadcasting Authority (Amendment) Act, 1966

Broadcasting Authority (Amendment) Act, 1976 (*s.14, s.19*)

Broadcasting Authority (Amendment) Act, 1979

Broadcasting Authority (Amendment) Act, 1993

Broadcasting and Wireless Telegraphy Act, 1988 (*s.5*)

Radio and Television Act, 1988 (*s.10*)

Other National Legislation:

Adoption Act 1952 : (*s.41*)

Animal Remedies Act 1993 (*s.1, ss.4- 6, s. 8*)

Animal Remedies (Control of Sale) Regulations 1985-1991 (S.I.258/1958; (*s.2*)
S.I.244/1991)

Betting Act 1931- (*s.32*)

Building Societies Act 1989 as amended by 2006 Act - 1989 Act (*s.17, s.42*)

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

Central Bank Acts 1942-1998 – 1942 Act – (*s.41*); 1971 Act – (*s.7, s.22, s.27*) 1989
Act – (*s.9, s.39, s.43, s.55, s.104, s.123,s.136*)

Censorship of Films Acts, 1923-1992 – 1925 Act- (*ss. 2-5*); 1971 Act – (*s.39*)

Censorship of Publications Acts, 1929-1965 – 1929 Act – (*s.10, s.16, s.17*); 1946 Act
(*s.9, s.14*)

Censorship of Publications Regulations 1980 (S.I. 292/1980) (*s.14*)

Child Trafficking and Pornography Act, 1998 (*s.5*)

Child Trafficking and Pornography (Amendment) Act, 2004

Companies Acts 1963-2004- 1963 Act-*s.179*; 1983 Act – (*s.21*; *s.56*); 1990 Act – (*s.259*)

Consumer Credit Act 1995- (*s.20*; *ss.21-28*; *s.35*; *s.35*; *s357*; *s.135*; *s.141*)

Consumer Credit Act 1995 (Section 28) Regulations, 1996 (S.I. 245/1996) (*s.2*; *s.3*)

Consumer Information Act 1978 (*ss.5 - 8*, *s.11*; *s13*; *s.17*; *s.22*)

Consumer Information (Advertisement for Concert or Theatre Performances) Order, 1997 (S.I. 103/1997) (*s.4*)

Consumer Information (Advertisements) (Disclosure of Business Interest) Order, 1984 (S.I. 168/1984) (*s.2*)

Consumer Information (Advertisement for Airfares) Order, 2000 (S.I. 468/2000) – (*s.3- 6*)

Consumer Information (Miscellaneous Goods) (Marking) Order, 1984 (S.I. 178/1984) –(*ss.4-5*)

Copyright Act 1963 (*ss.2-6*, *ss.8-9*; *ss.17-19*; *s.21(6)*)

Copyright and Related Rights Act 2000 as amended (*s.54*; *s.94*)

Credit Union Act 1997 (*s.10*; *s.86*)

Criminal Justice (Theft and Fraud Offences) Act 2001 (*Parts 4 & 5*)

Data Protection Act 1988 – (*s.2*; *s.16*)

Dairy Produce Act, 1924 (*s.33*; *s.41*)

Defamation Act 1961- (*s.15.*)

Defence Act 1954 – (*s.256*; *s.312*)

Employment Agency Act, 1971 – (*s.2*)

Employment Agency Regulations, 1972-1993 (S.I. 27/1971, S.I. 255/1972 – (*s.12-13*), S.I 49/1993)

Employment Equality Acts 1998 and 2004 – 1998 Act – (*s.2*, *s.10*); 2004 Act – (*s.3*; *s.5*)

Gaming and Lotteries Acts 1956 – 1979 (*s.4*; *s.21*; *s.22*)

Hallmarking Act 1981 (*s.5*)

Health (Foods for Particular Nutritional Uses) Regulations, 1991 (S.I. 331/1991) – (*ss.3-7*)

Hire Purchase Acts 1946 and 1960 1946 Act – (*ss. 3-4*) 1960 Act – (*s.6*)

Hire Purchase and Credit Sale (Advertising) Order 1961 (S.I. 183/1961)- (*ss.3-4, ss.6-8*)

Industrial and Commercial Property (Protection) Acts 1927-1958 1927 Act – (*s.155, s.184;*) 1958 Act – (*s.3*)

Industrial Research and Standard Acts 1961 and 1979 – 1961 Act – (*s.23, s.26*)

Investment Intermediaries Act 1995 – (*s.2, s.9, s.23, s.24, s.29*)

Licensing Acts 1833 – 2004 – 1988 Act – (*s.45*); 2000 Act – (*s.31*)

Investor Compensation Act 1998 – (*s.38*)

Medical Preparations (Advertising) Regulations, 1993 and 1996 (S.I. 76/1993)- (*s.2, ss.4-6, s.8-10, s.15*) (S.I. 308/1996) (*s.3*)

Medical Preparations (Labelling and Package Leaflets) Regulations 1993-1999 (S.I. 71/1993 – (*ss. 3-6*); S.I. 440/1994 – (*s.3*), S.I. 187/1999)

Medical Preparations (Licensing, Advertisement and Sale) Regulations 1984 to 1994 (S.I. 210/1984 - (*s.2, s.4, s.5, s.13*); S.I. 347/1989; S.I. 70/1993; S.I. 439/1994)

Medical Preparations (Advertising and Sale) Regulations 1958 (S.I. 135/1958) (*ss.4-5*)

Medicinal Products (Prescription and Control of Supply) Regulations 2003 (S.I. 540/2003) – (*s.5*)

Medicinal Products (Licensing and Sale) Regulations, 1998 (S.I. 142/1998) *s.3*

Merchandise Marks Acts, 1887 - 1970 Act - 1931 Act – (*s.16, s.20, s.21*)

Metrology Act 1996- (*s.13, s.23, ss.28-29*)

Moneylenders Act 1933 (*s.8 -10*)

Milk and Dairies Acts 1935- (*ss.37 – 38*) - and 1956

Occasional Trading Act 1979 (*s.2, s.7*) as amended by the Casual Trading Act 1995, (*s.2 - s.5; s.16*)

Official Languages Act 2003 – (*s.9*)

Opticians Act 1956 (*s.52*) and 2003 Act

Package Holidays and Travel Trade Act 1995-(*s.2*)

Patents Act 1992 - (*s.53, s.77, s.112*)

Prices Acts 1958 to 1972 -1958 Act – (*s.3, s.19, s.22*) 1972 Act – (*s.5*)

Prices and Charges (Tax-Inclusive Statements) Order 1973 (S.I. 9/1973) (*s.3-4*)

Public Health (Tobacco) Acts 2002 – (*ss.33-36*) and 2004 Act (*ss.5-7, s.9*)

Pyramid Selling Act 1980- (*s.2*)

Red Cross Acts 1938 to 1954 - 1938 Act – (*ss.4-5*) 1954 Act – (*ss. 8-9*)

Sale of Goods and Supply of Services Act 1980: (*s.10, s.11, s.12, s.30, s.41.*)
Solicitors (Advertising) Regulations 2002 (S.I. 518/2002)
Solicitors Acts 1954 – 2002 – 1994 Act – (*s.69*); 2002 Act – (*ss.4-6*)
Stock Exchange Act 1995 (*ss.31-32.*)
Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act,
1978.(*s.2*)
Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion)
Regulations, 1991-2000 (S.I. 326/1991) (*s.6, ss.8-11, ss.12-20, ss.22-24*) (S.I.
215/2000)
Tourist Traffic Acts 1939 as amended by 1957, 1966 and 1970 Acts – 1939 Act -
s.33-37; 1957 Act - (*s.10*); 1966 Act –(*s.2*), 1970 Act – (*s.6*)
Trade Marks Acts 1996 (*s.14, s.21, s.92*)
Trustee Savings Banks Acts 1989 and 2001 – 1989 Act – (*s.27*)
Unit Trusts Act, 1990, (*s.10*)
Waste (Electrical and Electronic Equipment) Regulations 2005 (S.I. 340/2005) (*s.11,*
s.34)

Rights:

Defamation Act, 1961 (*ss.14 – 16*)
Equal Status Act 2000 to 2004 – 2000 Act – (*s.5, s.12*)
Equality Act 2004 (*s.2, s.5*)
European Convention on Human Rights Act 2003- (*s. 3, Schedule 1 Article 10*)
Prohibition of Incitement to Hatred Act 1989 – (*ss.2-3*)

European – based legislation:

Council Regulation (EC) No. 2200/96 as amended by 2699/2000 and European
Communities (Fruit and Vegetables) Regulations, 1997 (S.I. 122/1997) (*s.4*)
European Communities (Authorisation, Placing on the Market, Use and Control
of Plant Protection Products) Regulations 2003 as amended – S.I. 83/2003 – (*s.4,*
s.7, s.22, s.23)
Electronic Commerce (Directive 2000/31/EC) Regulations 2003 (S.I. 68/2003) –(
ss.7-8, s.13)
European Communities (Definition, Description and Presentation of Spirit Drinks)
Regulations, 1995 (S.I. 300/1995) (*s.3*)

European Communities (Definition, Description and Presentation of Aromatised Wines, Aromatised Wine-Product Cocktails) 1998 (S.I. No. 254/1998), (*s.4, s.6*)

European Communities (Classification, Packaging and Labelling of Pesticides) Regulations, 1994 (S.I. 138/1994) (*s.4, s.7*)

European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. 624/2001) (*s.5*)

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, *ss.8-10*, S.I. 213/1998, S.I. 150/2000, S.I. 203/2000, S.I. 373/2006)

European Communities (Distance Marketing) of Consumer Financial Services Regulations 2004 (S.I. 853/2004) (*s.20*)

European Communities (Distance Marketing) of Consumer Financial Services (Amendment) Regulations 2005 (S.I. 63/2005) (*s.5(3) 4(5)*)

European Communities (Food Supplement) Regulations 2003 (S.I. 539/2003) (*s.3, s.6, s.18*)

European Communities (Infant Formulae and Follow-on Formulae) Regulations, 1998 to 2000 (S.I. 243/1998) (*ss.8-10*), S.I.446/2000 –(*s.3*)

European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 2000 and 2002 (S.I. 92/2000 – (*s.2, s.4, s.6, s.10, s.14*), S.I. 483/2002 – (*s.4, s.9, s.10, s.14*))

European Communities (Life Assurance) Framework Regulations, 1994 (S.I. 360/1994) (*s.55*)

European Communities (Misleading Advertising) Regulations, 1988 (S.I.134/1988)- (*s.5*)

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) (*s.3, s.5*)

European Communities (Non-Life Insurance) Framework Regulations, 1994 (S.I. 359/1994- (*s.38*))

European Communities (Requirements to Indicate Product Prices) Regulations, 2002 (S.I. 639/2002) (*s.4*)

European Communities (Pesticides Residues) (Feeding Stuffs) Regulations, 1992 (S.I. 40/1992) (*s.4*)

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations, 2001 (S.I. 207/2001) (*s.4*)

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.6*), S.I. 275/1999 – (*s.4*))

European Communities (Supply of Information on the Origin Identification and Destination of Bovine Animals) Regulation, 1999 (S.I. 258/1999) – (*s.3*)

European Communities (Television Broadcasting) Regulations, 1999 (S.I. 313/1999) (*s.3*)

EU Directives 89/552/EEC (SI 251/1991- (*s.4*)) and 97/36/EC (SI 313/1999 - Television Without Frontiers – (*Chapter 4*))

European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003 (S.I. 211/2003) (*s.91, s.94*)

Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/2005) (*s.2(1) et seq.*)

Poisons (Control of Residues in Foods of Animal Origin) Regulations, 1985 and 1986 (S.I. 257/85 (*s.12*), S.I. 236/86)

Prospectus (Directive 2003/71/EC) Regulations, 2005 (S.I. 324/2005)- (*Part 12*)

10th April 2007