

BAI General Commercial Communications Code

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Introduction

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

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

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

Jurisdiction

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

Complaints

Any viewer or listener 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 or the general public with a copy clearance service.

The effective date of this Code is September 2nd 2013.

1. Objectives of the Code

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

2. Definitions

Commercial Communication

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

Advertising

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

Sponsorship

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

Misleading Commercial Communications

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

Comparative Commercial Communications

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

Surreptitious Commercial Communications

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

Subliminal Commercial Communications

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

Teleshopping

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

Television Product Placement

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

Virtual advertising

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

Interactive advertising

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

Split-screen advertising

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

Child/Children

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

HFSS foods

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

Exclusions

The following announcements shall not constitute advertising:

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

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

- 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.

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

3.1 Protecting the Individual and Society

1. All commercial communications shall be prepared with a sense of responsibility both to the individual and to society and shall not prejudice the interests of either. All commercial communications shall be legal, honest, decent, truthful and protect the interests of the audience.
2. All commercial communications shall comply with applicable Irish and European legislation. This includes, but is not restricted to, the *Broadcasting Act, 2009*, *Directive 2010/13/EU (Audiovisual Media Services Directive)* and *S.I. No. 258/2010 (European Communities (Audiovisual Media Services) Regulations 2010)*.
3. Surreptitious, subliminal and misleading commercial communications are prohibited.
4. All pertinent details of an offer contained in a commercial communication shall be stated in a clear and understandable manner. Disclaimers and asterisked or footnoted information included/required in commercial communications shall not contradict more prominent aspects of the message and shall be located and presented in such a manner as to be clearly visible and/or audible.
5. Comparative commercial communications containing direct or implied comparisons with other products or services are permissible provided they objectively compare products or services meeting the same needs or intended for the same purpose. Points of comparison shall be based on facts that can be substantiated. The subject matter of a comparison shall not be chosen in such a way as to confer an artificial or unfair advantage to a promoter of a product or service.
6. Broadcasters shall be mindful of the potential for sound effects in commercial communications to distract and/or alarm viewers and listeners. Particular care shall be taken when including sound effects such as sirens, horns, ringing phones and screeching tyres. They shall not be included at the beginning of a commercial communication.

3.2 Offence, Harm and Human Dignity

1. Commercial communications shall not prejudice human dignity, cause harm or cause serious or widespread offence.
2. Commercial communications shall not include, support or condone discrimination against any person or section of the community, in particular on the basis of age, gender, marital status, membership of the Traveller Community, family status, sexual orientation, disability, race or religion.
3. Commercial communications shall not be offensive to religious or political beliefs, or encourage behaviour prejudicial to the protection of the environment or to health or safety.
4. Commercial communications shall be appropriately scheduled with regard to the time of broadcast, type of programme, channel/service type, nature of the product or service being promoted and the likely composition of the audience.
5. Commercial communications shall not cause moral, mental or physical detriment to children, and shall comply with the following criteria for their protection:
 - They shall not directly exhort children to buy or hire a product or a service by exploiting their inexperience or credulity;
 - They shall not directly encourage children to persuade their parents, guardians or others to purchase the products or services being promoted;
 - They shall not exploit the special trust children place in parents, guardians, teachers or other persons;
 - They shall not unreasonably show children in dangerous situations.
6. Individual living persons shall not normally be portrayed or referred to in commercial communications without their permission. However, references to living persons may normally be made in commercial communications for books, films, radio or television programmes, newspapers, magazines etc., which feature the persons referred to in the communication, provided they are not offensive or inaccurate.
7. Commercial communications shall not be calculated to induce unwarranted fear on the part of the viewer or listener.

3.3 Transparency

1. Commercial communications shall operate on a principle of transparency. Any commercial arrangement within programming shall be readily recognisable as such and the listener/viewer shall be made aware of such an arrangement.
2. Presenters and other on-air personnel shall not advertise or endorse products or services during editorial content.
3. Advertisers, sponsors and providers of placed products and services shall not exercise any editorial influence over the content or scheduling of programmes.
4. Commercial communications shall not include the words 'guarantee' or 'guaranteed', 'warranty' or 'warranted' unless a legal guarantee/warranty is available to the purchaser. No commercial communication shall contain a direct or implied reference which purports to take away or diminish the legal rights of a purchaser.
5. Commercial communications may make use of testimonials. Such testimonials shall be genuine, relevant and contemporary and shall relate to the person giving the testimonial. Documentary evidence of testimonials shall be available to the broadcaster.
6. Commercial communications shall not describe products or services as 'free' unless the products or services are supplied at no cost or at no extra cost (other than actual postage or carriage) to the recipient.
7. Commercial communications shall not feature persons regularly presenting news programmes, except for commercial communications promoting appeals by registered charities or public service campaigns for safety, health, education, etc.

3.4 Compliance & Assessment

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

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

4. *General rules pertaining to advertising and teleshopping*

1. The general principles and rules pertaining to all commercial communications shall apply to advertising and teleshopping.
2. Without prejudice to the use of split-screen, virtual or interactive advertising techniques, advertising and teleshopping segments shall operate on a principle of separation, whereby commercial content in advertising breaks and teleshopping segments shall be separate from programme content.
3. The insertion of advertising and teleshopping shall not affect the editorial integrity and value of programming. Advertising and teleshopping segments shall be inserted into programmes in such a way that takes into account the natural breaks in, and the duration and nature of, the programme, while ensuring that the rights of the rights holders are not prejudiced.
4. The transmission of films made for television (excluding series, serial and documentaries), cinematographic works and television news and current affairs programmes may be interrupted by advertising and teleshopping segments once for each scheduled period of at least 30 minutes.
5. Advertising or teleshopping segments shall not be inserted in any television broadcast of news and current affairs programmes, documentaries or religious programmes when their scheduled duration is less than 30 minutes.
6. Advertising or teleshopping segments shall not be inserted in any broadcast of a religious service.

7. In television broadcasts, isolated advertising and television spots, other than in the transmission of sports, shall remain the exception.
8. Teleshopping shall not feature medicines (including prescription medicines), medical products, treatments and services and cosmetic treatments and services.
9. Teleshopping shall not exhort children to contract for the sale or rental of products and services.
10. Advertising breaks and teleshopping segments shall be signalled by visual or audio means. Such means shall not contain any commercial communication.
11. Broadcasters shall take all reasonable measures to ensure that advertisements do not sound louder than adjacent programming. Broadcasters shall establish clear limits on the use of compression, limiting and equalisation as these apply to advertisements provided to broadcasters by third parties.

5. *Rules pertaining to specific advertising techniques*

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

Split-Screen Advertising

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

Interactive Advertising

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

6. *Rules pertaining to Sponsorship*

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

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

Sponsor logos may not be shown during the editorial segments of television documentaries.

4. Programme material shall not be sponsored by a sponsor(s) involved in the manufacture, supply or provision of a product or service that is not permitted to be promoted under this Code.
5. Programmes shall not be sponsored by a sponsor(s) whose products or services are not permitted to appeal to the typical audience for that programme or during which it would not be permitted to promote.

6. The sponsorship of programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription.
7. News, current affairs, religious services and religious programmes shall not be sponsored on television.
8. News programmes shall not be sponsored on radio.
9. The information provided in respect of, and the mechanism used to participate in, sponsored competitions shall not constitute advertising.
10. The value of sponsored competition prizes may be generally stated. However, prices shall not be quoted.

7. *Television Product Placement*

1. Product placement is prohibited unless permitted as specified in the Code.
2. Product placement may be permissible:
 - (a) In return for payment or similar consideration i.e. Paid Product Placement;
 - (b) Where there is no payment but the provision only of certain products and services free of charge, such as production props and prizes, with a view to their inclusion in a programme i.e. Free Product Placement.

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

3. The general principles and rules pertaining to all commercial communications, the restrictions and prohibitions pertaining to specific classes of commercial communications as set down in this Code and the restrictions and prohibitions in Irish and European laws, shall apply to product placement.

4. Programmes that contain permitted product placement shall meet all of the following requirements:-

- (a) their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster and the placement therein shall be editorially justified;
- (b) their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster;
- (c) they shall not directly encourage the purchase or rental of products or services in particular by making special promotional references to those products or services and the placement therein must not constitute advertising as defined in this Code;
- (d) they shall not give undue prominence to the products or services in question;
- (e) Viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified, in a manner stipulated from time-to-time by the Authority, at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

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

5. Product integration and thematic placement are not permitted.

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

Paid Product Placement (Permitted programme genres)

7. Paid product placement is only permitted in cinematographic works, television films, sport, dramas, including one-off dramas, drama series and serials (excluding docu-dramas) and light entertainment programmes (excluding talk/chat shows that regularly include such proportion of news and current affairs content as specified by the BAI).

8. *Rules pertaining to specific products and services*

8.1 Alcohol

1. Commercial communications for alcoholic drinks shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light.
2. Commercial communications for alcoholic drinks shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative, tranquilizer or a means of resolving personal conflicts.
3. Commercial communications for alcoholic drinks shall not place emphasis on high alcohol content as being a positive quality of the beverages.
4. Commercial communications for alcoholic drinks shall not create the impression that consumption of such beverages contributes towards sexual attraction and success or social success.
5. Commercial communications for alcoholic drink shall not link the consumption of alcohol to enhanced physical performance or to driving.
6. Commercial communications for drinks which contain alcohol content of 25% AbV and above are not permitted e.g. vodka, whiskey, tequila, rum, gin, brandy, etc.
7. Commercial communications for alcoholic drinks shall not be aimed specifically at children or, in particular, depict children consuming these beverages.
8. Commercial communications for alcoholic drinks shall not encourage children or other non-drinkers to begin drinking – it shall be cast towards brand selling and identification only.
9. Broadcasters shall ensure that commercial communications for alcoholic drinks are not transmitted in or around programmes primarily intended for children whether as viewers or listeners and shall take account of the age profile of the viewers to ensure they are communicated, so far as it is possible, to adults.
10. Commercial communications for alco-pops and products of a similar nature are not permitted.

11. All commercial communications for alcoholic drinks shall comply with the relevant voluntary codes of practice for alcohol radio and television marketing, communications and sponsorship recognised by the Department of Health and Children.

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

General Rules

1. Commercial communications coming within the scope of this section of the Code shall comply with all relevant Irish and European legislation.
2. Commercial communications shall not contain recommendations by health professionals or recommendations by persons who, because of their celebrity, could encourage the use of medicines, medical treatments, products and services and/or cosmetic treatments and services.

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

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

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

Medicines

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

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

Cosmetic Treatments and Services

Surgical and non-surgical

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

Surgical

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

Hypnosis, Hypnotherapy, Psychology, Psychoanalysis or Psychiatry

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

8.3 Smoking Aids

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

8.4 Food (including HFSS food)

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

HFSS food

3. A maximum of 25% of sold advertising time and only one in four advertisements for HFSS food products and/or services products are permissible across the broadcast day.

8.5 Cosmetic Products

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

8.6 Slimming Treatments, Products and Services

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

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

8.7 Financial Services and Products

1. Commercial communications for financial services and products shall be presented in terms which do not mislead, whether by exaggeration, omission or in any other way.

2. Commercial communications for financial services and products shall comply with relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by the competent authorities responsible for the implementation of such legislation.

8.8 Betting Services

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

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

8.9 Premium-rate Telecommunication Services

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

8.10 Fortune Tellers, Psychic Services etc.

1. Commercial communications for fortune tellers, psychic services etc., are acceptable where the service is evidently for entertainment purposes only and this is made clear in the communication.
2. Claims that future events may be predicted, other than as a matter of opinion, are not permitted.

3. Claims to make contact with deceased persons are not permitted.
4. Claims pertaining to matters of health, cures, curing and/or healing are not permitted.

9. *Prohibited Communications*

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

- Products, treatments or services that are only available on medical prescription.
- Cigarettes and tobacco.
- Infant formula.
- Advertisements prohibited further to Section 41(3) of the Broadcasting Act, 2009.²
- Advertisements prohibited further to Section 41(4) of the Broadcasting Act, 2009.³

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

² Advertisements directed towards a political end & advertisements that have any relation to an industrial dispute.

³ Advertising that addresses the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religious or religious organisation.

**APPENDICES TO THE GENERAL
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 is provided for guidance only and it is entirely a matter for individual parties to ascertain any relevant legislative provisions that may apply in each case 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 Act, 2003 and 2004.

Central Bank Acts 1942-1998.

Censorship of Films Acts 1923-1992.

Censorship of Publications Acts 1929-1967.

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

Child Trafficking and Pornography Act 1998.

Child Trafficking and Pornography (Amendment) Act 2004.

Companies Acts 1963-2009.

Consumer Credit Act 1995.

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

Consumer Protection Act, 2007.

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

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

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

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

Copyright Act 1963.

Copyright and Related Rights 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 2004.

Investor Compensation Act 1998.

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

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

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

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

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

Merchandise Marks Act 1970.

Metrology Act 1996.

Milk and Dairies Acts 1935 and 1956.

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

Official Languages Act 2003.

Opticians Acts 1956 and 2003.

Package Holidays and Travel Trade Act 1995.

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

Public Health (Tobacco) Acts 2002 to 2009.

Red Cross Acts 1938 to 1954.

Sale of Goods and Supply of Services Act 1980.

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

Solicitors Acts 1954-2002.

Stock Exchange Act 1995.

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

Tourist Traffic Acts 1939 to 1970.

Trade Marks Act 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 |

3. 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.

