

Advertising Standards Authority for Ireland



# Manual of Advertising Self-Regulation

with the

Code of Standards for Advertising, Promotional and  
Direct Marketing in Ireland (6th Edition)

Effective from 1 January 2007



## The Essence of Good Advertising

All marketing communications should be legal, decent, honest and truthful.

All marketing communications should be prepared with a sense of responsibility both to the consumer and to society.

All marketing communications should conform to the principles of fair competition as generally accepted in business.

## The Essence of the Code

The Code is applied in the spirit as well as in the letter.

The Code rules are indivisible; advertisers should comply, where appropriate, with all rules.



## Introduction

by Edward McCumiskey B.L.

*Chairman of ASAI*

In this the Authority's 25th year, I am pleased to introduce the revised and combined "Code of Standards for Advertising, Promotional and Direct Marketing in Ireland". In this publication the two existing Codes have been combined and the provisions of the Code have been extended to reflect better the correct current mix of marketing communications and the standards expected in the advertising industry today. The publication also includes the procedures and structures that set out the scope of and rules for the operation of the Code, together with details of the Authority's governance.

This new publication is based on a very extensive consultative process, including for the first time a public consultation element. As in the past, the Code is closely based on the principles of the Codes of the International Chamber of Commerce and it was timely that a review of those Codes was finalised in June 2006. This served to assist and inform our own review, particularly in relation to the use of new marketing techniques, which this edition of the Code will encompass.

The Code is administered primarily in the interests of consumers. We therefore value very highly the excellent working relationship between the ASAI and the Director of Consumer Affairs. We appreciate the advice and assistance which that Office has extended to us in the operation of the Codes. In addition, the participation of four nominees of the Director of Consumer Affairs in the Complaints Committee of ASAI enhances public confidence in the system.

The Code supplements the law, fills gaps where the law does not reach and generally provides a relatively simple and less

expensive means of resolving disputes than by civil litigation. In many cases, advertising self-regulation ensures that litigation is not necessary. Although advertisers, promoters, agencies, media and others may still wish to consult lawyers, the successful operation of self-regulation improves compliance with the law in areas covered by both the Code and the law.

The strength of the self-regulatory system lies in the support and commitment of all sectors of the advertising industry - advertisers and promoters, advertising agencies, direct marketing interests, sales promotion consultants, media independents and the various media - print, radio and television, cinema, outdoor and Internet. Everybody in advertising shares an interest in seeing that advertisements and promotions are welcomed and trusted by those to whom they are addressed. Unless the commercial message is accepted and believed, it cannot be successful. An advertisement or promotion which misleads or offends brings discredit on everyone involved and on the advertising industry as a whole.

All advertising interests see the freedom to advertise as part of the basic freedom of expression. They believe that the best way to safeguard this freedom is to ensure that it is exercised in a responsible manner. I am confident that the publication of the new edition of the Code will ensure that self-regulation continues to operate effectively in Ireland to the benefit of the industry and the consumer.



# Manual of Advertising Self-Regulation

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## 1. Scope and Application

- 1.1 The primary objective of the Code is the regulation of commercial marketing communications in the interest of consumers.
- 1.2 For the purposes of the Code:
  - (a) a word importing the singular shall be read as also importing the plural, and a word importing the plural shall be read as also importing the singular;
  - (b) “person” should be construed as including legal persons and groups, as appropriate;
  - (c) every word importing the masculine gender should be construed as if it also imported the feminine gender unless the contrary intention appears. Every word importing the feminine gender should be construed as if it also imported the masculine gender unless the contrary intention appears.
- 1.3 The following definitions apply to the Code and to the procedures for its implementation:
  - (a) the Authority means the Advertising Standards Authority for Ireland;
  - (b) a marketing communication includes but is not limited to advertising, as well as other techniques such as promotions, sponsorships and direct marketing, and should be interpreted broadly to mean any form of communication produced directly by or on behalf of advertisers intended primarily to promote products, to influence the behaviour of and/or to inform those to whom it is addressed;
  - (c) advertising or advertisement includes but is not limited to a form of marketing communication



carried by the media, usually in return for payment or other valuable consideration;

- (d) an advertiser includes anyone disseminating marketing communications, including promoters and direct marketers; references to advertisers should be interpreted as including intermediaries and agencies unless the context indicates otherwise;
- (e) a product can encompass goods, services, facilities, opportunities, fundraising, prizes and gifts;
- (f) a consumer is anyone who is likely to see or hear a particular marketing communication;
- (g) a child is anyone under 18 years of age;
- (h) a claim can be direct or implied, written, verbal or visual;
- (i) promotional marketing practices, including sales promotions, are those marketing techniques which involve the provision of direct or indirect additional benefits, usually on a temporary basis, designed to make goods or services more attractive to purchasers;
- (j) a promoter is any person or body by whom a sales promotion is initiated or commissioned;
- (k) an intermediary is any person or body, other than the promoter, responsible for the implementation of any form of sales promotional activity.

#### 1.4 The Code applies to:

- (a) marketing communications in newspapers, magazines and other printed publications, including “free sheets”;
- (b) marketing communications in posters and other promotional media in public places, including moving images;

- (c) marketing communications in brochures, leaflets, circulars, mailings, fax transmissions, e-mails and text transmissions;
- (d) marketing communications broadcast on television or radio or screened in cinemas;
- (e) marketing communications carried on electronic storage materials and all other electronic media and computer systems;
- (f) promotional marketing and sales promotions;
- (g) advertisement features.

1.5 The Code does not apply to:

- (a) statutory, public, Garda and other official notices;
- (b) material published as a matter of record only;
- (c) flyposting;
- (d) packages, wrappers, labels, tickets, timetables and menus, unless they advertise another product or a sales promotion or are recognisable in a marketing communication;
- (e) point-of-sale displays, except those covered by the promotional marketing rules or when part of a wider advertising campaign;
- (f) marketing communications whose principal purpose is to express the advertiser's position on a political, religious, industrial relations, social or aesthetic matter or on an issue of public interest or concern;
- (g) classified private advertisements, including those on-line;
- (h) press releases and other public relations material;
- (i) the content of books and editorial material

- in media;
- (j) oral communications, including telephone calls;
  - (k) works of art;
  - (l) specialised marketing communications addressed to the medical, veterinary and allied professions;
  - (m) the content of premium rate services;
  - (n) marketing communications in foreign media (complaints are normally dealt with by the self-regulatory authority in the country of origin of the media);
  - ~~(o) website content, other than sales promotions and marketing communications in paid for space;~~
  - (p) sponsorship (marketing communications that refer to a sponsorship are covered by the Code).

**\* Section 1.5(o) has been deleted because the Board of the ASAI amended the remit of the Code to include marketing communications on advertiser own websites.**

1.6 The Code is applied in accordance with the following criteria:

- (a) An invitation from the Authority to comment on a complaint does not mean that the Authority accepts the complainant's view. Each case is considered on its merits.
- (b) The Code rules are indivisible; advertisers should comply, where appropriate, with all rules.
- (c) Compliance with the Code is assessed in the light of a marketing communication's probable effect when taken as a whole and in context. Particular attention is paid to:
  - the characteristics of the likely audience,
  - the media by means of which the marketing communication is communicated,

- the location and context of the marketing communication,
  - the nature of the advertised product and the nature, content and form of any associated material made available or action recommended to consumers.
- (d) The Code is primarily concerned with the content of advertisements, promotions and direct marketing communications and not with terms of business or products themselves. Some rules, however, go beyond the content, for example, those that cover the administration of sales promotions, the suitability of promotional items and the delivery of products ordered through an advertisement.
- (e) The Code does not deal with contractual relationships between advertisers and consumers. It does not presume to judge whether a product represents value for money nor does it seek to regulate terms of business.
- (f) The Authority does not act as an arbitrator between conflicting ideologies.
- (g) No legal advice can be given or should be presumed in communications from the Authority (Board, Complaints Committee or Secretariat).
- (h) The judgement of the Advertising Standards Authority for Ireland on any matter of interpretation of the Code is final.
- 1.7 Procedures for the implementing of the Code and information on the Authority and its structures are set out in Chapter 2.

## 2. General Rules

### Principles

- 2.1 Marketing communications should be legal, decent, honest and truthful.
- 2.2 Marketing communications should be prepared with a sense of responsibility to consumers and to society.
- 2.3 Marketing communications should respect the principles of fair competition generally accepted in business.
- 2.4 The Code is applied in the spirit as well as in the letter.
- 2.5 A marketing communication should not bring advertising into disrepute.
- 2.6 Primary responsibility for observing the Code rests with advertisers. Others involved in the preparation and publication of marketing communications, such as agencies, media and other service providers, also accept an obligation to abide by the Code.
- 2.7 A marketing communication may be found to be in breach of the Code if the advertiser/promoter fails to respond, or unreasonably delays responding, to the Authority. Likewise, advertisers/promoters may be found to have contravened the Code if they do not respond, or unreasonably delay their response, to the Authority.
- 2.8 The Authority will observe requests to treat in strict confidence any truly confidential material supplied unless the Courts or an official agency acting within its statutory powers compel its disclosure.

## Substantiation

- 2.9 Before offering a marketing communication for publication, advertisers should satisfy themselves that they will be able to provide documentary evidence to substantiate all claims, whether direct or indirect, expressed or implied, that are capable of objective assessment. Relevant evidence should be sent without delay if requested by the Authority and should be adequate to support both detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of advertisers should be provided without delay if requested by the Authority from an agency or relevant third party.
- 2.10 Marketing communications should not present statistics in such a way as to exaggerate the validity of an advertising claim, or give the unjustified impression that there is validity to the claim.
- 2.11 Marketing communications should not:
- (a) misuse, mischaracterise or misleadingly cite any technical data, e.g. research results or quotations from technical and scientific publications;
  - (b) use scientific terminology or vocabulary in such a way as to falsely or misleadingly suggest that an advertising claim has scientific validity.
- 2.12 If there is a significant division of informed opinion about any claim made in a marketing communication, the claim should not be portrayed as universally accepted.

- 2.13 Marketing communications should not exaggerate the value, accuracy or usefulness of claims contained in books, tapes, videos, DVDs and the like that have not been independently substantiated.

### **Legality**

- 2.14 Advertisers have primary responsibility for ensuring that their marketing communications are in conformity with the law. A marketing communication should not contain anything that breaks the law or incites anyone to break it, nor omit anything that the law requires. The determination as to whether or not a marketing communication is legal is primarily a matter for the courts or other appropriate regulatory authorities.

### **Decency and Propriety**

- 2.15 A marketing communication should contain nothing that is likely to cause grave or widespread offence.
- 2.16 Marketing communications should respect the dignity of all persons and should avoid causing offence on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the traveller community.
- 2.17 Marketing communications should respect the principle of the equality of men and women. They should avoid sex stereotyping and any exploitation or demeaning of men and women. Where appropriate, marketing communications should use generic terms that include both the masculine and feminine gender; for example, the term 'business executive' covers both men and women.

- 2.18 To avoid causing offence, marketing communications should be responsive to the diversity in Irish society and marketing communications which portray or refer to people within the groups mentioned in 2.16 should:
- (a) respect the principle of equality in any depiction of these groups;
  - (b) fully respect their dignity and not subject them to ridicule or offensive humour;
  - (c) avoid stereotyping and negative or hurtful images;
  - (d) not exploit them for unrelated marketing purposes;
  - (e) not ridicule or exploit religious beliefs, symbols, rites or practices.
- 2.19 Advertisers should take account of public sensitivities in the preparation and publication of marketing communications and avoid the exploitation of sexuality and the use of coarseness and undesirable innuendo. They should not use offensive or provocative copy or images merely to attract attention. Marketing communications that may be considered by some to be distasteful, might not necessarily conflict with 2.15 above. Nevertheless, advertisers are urged to consider public sensitivities before using potentially offensive material.
- 2.20 The fact that a product is offensive to some people is not in itself sufficient basis for objecting to a marketing communication for the product. Advertisers should nevertheless avoid causing offence in such marketing communications.
- 2.21 Compliance with the Code is assessed on the basis of the standards of taste, decency and propriety generally accepted in Ireland, taking account of the characteristics of the likely audience, the media by means of which the





marketing communication is communicated, the location and context of the marketing communication, the nature of the advertised product and the nature, content and form of any associated material made available or action recommended to consumers.

**Honesty**

- 2.22 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.
  
- 2.23 The design and presentation of marketing communications should allow them to be easily and clearly understood. Where footnotes or “small print” sections are used, they should be of sufficient size and prominence and easily legible; where appropriate they should be linked to the relevant part of the main copy.

**Truthfulness**

- 2.24 A marketing communication should not mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.
  
- 2.25 Obvious untruths or deliberate hyperbole that are unlikely to mislead, incidental minor inaccuracies and unorthodox spellings are not necessarily in conflict with the Code provided they do not affect the accuracy or perception of the marketing communication in any material way.
  
- 2.26 Claims such as “Up to” and “From” should not exaggerate the value or the range of benefits likely to be achieved in practice by consumers.

**Matters of Opinion**

2.27 Advertisers may state an opinion about the quality or desirability of a product provided that it is clear that what they are expressing is their own opinion rather than a matter of fact and there is no likelihood of consumers being misled about any matter that is capable of objective assessment. Assertions or comparisons that go beyond subjective opinions should be capable of substantiation.

**Fear and Distress**

2.28 A marketing communication should not cause fear or distress without good reason such as the encouragement of prudent behaviour or the discouragement of dangerous or ill-advised actions. In such cases the fear aroused should not be disproportionate to the risk.

**Safety**

2.29 A marketing communication should not encourage or condone dangerous behaviour or unsafe practices except in the context of promoting safety.

**Violence and Anti-Social Behaviour**

2.30 A marketing communication should contain nothing that condones or is likely to provoke violence or anti-social behaviour, nuisance, personal injury or damage to property.

**Portrayal of Persons or Property**

2.31 Advertisers are reminded that persons who do not wish to be associated with the marketing communication may take legal action against them.

2.32 Subject to the exceptions referred to in 2.33 below, advertisers should have written permission in advance from living persons portrayed or referred to in a

marketing communication. Permission is also required before any person's house or other possessions can be featured in a manner which identifies the owner to the public.

2.33 Exceptions include:

- (a) the use of crowd scenes or property depicted in general outdoor locations, or where the purpose of the marketing communication is to promote a product such as a book, newspaper article, broadcast programme or film of which the person concerned is a subject;
- (b) in the case of people with a public profile, references that accurately reflect the contents of books, newspaper articles, broadcast programmes, films or other electronic communications etc. may be acceptable without permission.

2.34 Marketing communications should not exploit the public reputation of persons in a manner which is humiliating or offensive. Marketing communications should not claim or imply an endorsement where none exists.

2.35 References to deceased persons should be handled with particular care to avoid causing offence or distress.

## Testimonials and Endorsements

- 2.36 Advertisers who use testimonials should be able to provide relevant supporting documentation and they should hold signed and dated proof for any testimonials they use; such information should be provided to the Authority immediately on request. Testimonials by persons named or depicted in a marketing communication may be used only with the prior permission of those persons and only where such permission still holds.
- 2.37 Testimonials may be misleading if the formulation of the product or its market environment changes significantly. They should therefore relate to the product as currently offered.
- 2.38 Testimonials do not constitute substantiation and the opinions expressed in them should be supported, where necessary, with independent evidence of their accuracy. Claims based on a testimonial should conform to the Code.
- 2.39 Endorsements by fictitious or historical characters should not be presented as though they were genuine testimonials.
- 2.40 References to research tests, trials, professional endorsements, research facilities and professional journals should be used only with the permission of those concerned and they should be relevant and current. All such tests, trials and endorsements should be signed and dated. Any establishment referred to should be under appropriate professional supervision.

**Prices**

- 2.41 If a price is stated in a marketing communication, it should relate to the product depicted or specified in the marketing communication. Care should be taken to ensure that prices and illustrated products match.
- 2.42 Except in marketing communications addressed primarily to the trade, prices quoted should normally include VAT and other taxes, duties or inescapable costs to the consumer. Where applicable, the amounts of any other charges, such as those arising from the method of purchase or payment, should be stated. (Where marketing communications are addressed to the trade and quote a VAT-exclusive price, it should be clear that the price is VAT-exclusive).
- 2.43 If the price of one product is dependent on the purchase of another, the extent of any commitment required of consumers should be made clear.
- 2.44 If the cost of accessing a message or service, or communicating with the advertisers, is greater than the standard rate, this should be made clear in any marketing communications.

**Availability of Products**

- 2.45 Advertisers should be in a position to meet any reasonable demand created by their advertising. If a product proves to be available in insufficient quantity, advertisers should take immediate action to ensure that any further marketing communications are amended or withdrawn.
- 2.46 Where there is limited availability of some or all of the products advertised, apart from indicating that there may be other terms and conditions which apply,

advertisers;

- (a) should not exaggerate the availability of any of those products; and
- (b) should be able to demonstrate that there is a reasonable supply or proportion of each of the various products available.

2.47 Products should not be advertised as a way of gauging possible demand unless the marketing communication makes this clear.

2.48 Advertisers should not use the technique of switch selling, where sales staff criticise the advertised product or suggest that it is not available and recommend purchase of a more expensive alternative. Advertisers should not place obstacles in the way of purchasing the product or delivering it promptly.

### **Comparisons**

2.49 Comparisons are permitted in the interests of public information and vigorous competition. They can be explicit or implied and can relate to advertisers' own products or those of their competitors.

2.50 Comparisons should be fair and should be so designed that there is no likelihood of a consumer being misled. In any marketing communication that uses comparisons, the basis of selection should be clear and the elements of comparison should not be unfairly selected in a way that gives the advertisers an artificial advantage.

2.51 A claim that any product is superior to others should only be made where there is clear evidence to support the claim. Wording which implies superior or superlative status such as "number one", "leading",

"largest" and the like should be capable of substantiation with market share data or similar proof.

- 2.52 Advertisers should not unfairly attack or discredit other businesses or their products.

### **Guarantees**

- 2.53 Where a marketing communication refers to a guarantee, the full terms of the guarantee should be available for consumers to inspect before they are committed to purchase. Any substantial limitations (e.g. one year; parts only) should be clearly indicated in the marketing communication.
- 2.54 “Guarantee” when used in a colloquial sense should not cause confusion about consumers' statutory rights.

### **Exploitation of Goodwill**

- 2.55 Advertisers should not exploit or make unfair use of the goodwill attached to the name, trademark, brand, slogan or marketing communications campaign of any other person.

### **Imitation**

- 2.56 A marketing communication should not so closely resemble another as to be likely to mislead or cause confusion.

### **Recognisability**

- 2.57 A marketing communication should be designed and presented in such a way that it is clear that it is a marketing communication.
- 2.58 An advertisement feature, announcement or promotion published or electronically broadcast in exchange for a payment or other reciprocal arrangement where the

content is controlled by the advertiser should comply with the Code. It should also be clearly identified and distinguished from editorial matter.

- 2.59 The identity of the advertiser, product or service should be apparent. This does not apply to marketing communications with the sole purpose of attracting attention to communication activities to follow (so-called “teaser advertisements”).
- 2.60 Marketing communications should, where appropriate, include contact information to enable the consumer to get in touch with the advertiser without difficulty.
- 2.61 Marketing communications should not misrepresent their true purpose. Marketing communications should not be presented as, for example, market research or consumer surveys if their purpose is marketing, i.e. the promotion of a product.
- 2.62 Marketing communications which solicit a response constituting an order for which payment will be required (e.g. an entry in a publication) should make this clear.
- 2.63 Marketing communications soliciting orders should not be presented in a form which might be mistaken for an invoice, or otherwise falsely suggest that payment is due.



### **3. Promotional Marketing Practices**

#### **Introduction**

- 3.1 The provisions relating to promotional marketing practices regulate the nature and administration of those marketing techniques which involve the provision of direct or indirect additional benefits, usually on a temporary basis, designed to make goods or services more attractive to purchasers. The provisions cover, amongst others, such forms of promotion as:
- premium offers,
  - reduced price and free offers,
  - the distribution of vouchers, coupons and samples,
  - personality promotions,
  - charity-linked promotions,
  - prize promotions.
- 3.2 The provisions are designed primarily to protect the public but they also apply to trade promotions and incentive schemes and to the promotional elements of sponsorship.
- 3.3 Sales promotions should be conducted equitably, promptly and efficiently and should be seen to deal fairly and honourably with consumers. Promoters should avoid causing unnecessary disappointment.

#### **Protection of Consumers**

- 3.4 Promoters should have proper regard for normal safety precautions. Promotional products and samples should be distributed in such a way as to avoid the risk of harm to consumers. Special care should be taken when sales promotions are addressed to children or where products intended for adults may fall into the hands of children. Literature accompanying promotional items should contain any necessary safety warnings.

- 3.5 Sales promotions should be designed and conducted in a way that respects the right of consumers to a reasonable degree of privacy and freedom from annoyance.
- 3.6 Consumers should be told before entry if participants may be required to become involved in any of the promoters' publicity or advertising, whether it is connected with the sales promotion or not. Prizewinners' interests should not be compromised by the publication of excessively detailed information.

### **Suitability**

- 3.7 Promoters should not offer promotional products which are of a nature likely to cause offence or products which, in the context of the promotion, may reasonably be considered to be socially undesirable.

### **Availability**

- 3.8 Promoters should be able to demonstrate that they have made a reasonable estimate of the likely response and that they are capable of meeting that response. This applies in all cases except prize promotions, where the number of prizes to be awarded should be made clear to participants.
- 3.9 Phrases such as “subject to availability” do not relieve promoters of the obligation to take all reasonable steps to avoid disappointing participants.
- 3.10 If promoters are unable to meet demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside their control, products of a similar or greater quality and value or a cash payment should normally be substituted.



### Quality

- 3.11 Promoters should ensure that promotional products meet satisfactory standards of safety, durability and performance in use. Where appropriate, such matters as guarantees and aftersales service should be clearly explained.

### Presentation

- 3.12 The presentation of sales promotions and the associated publicity should not mislead consumers.
- 3.13 All supporting advertising material should conform both to the law and to the general and sectoral rules of the Code, as appropriate. In particular, descriptions of promotional products should not overstate their quality, availability, uses or value.
- 3.14 The fact that promotional products may be acquired free of charge does not dispense with the need for a full and correct description.

### Terms of the Promotion

- 3.15 The terms in which a promotion is presented should be clear, complete and easy for the consumer to understand. The following points should be clearly explained:
- (a) how to participate, including any conditions and costs;
  - (b) the promoters' full name and business address in a form that can be retained by consumers;
  - (c) the closing date prominently displayed; where the final date for purchase of the promoted product differs from the closing date for the submission of claims or entries, this should be made clear to participants;

- (d) any proof-of-purchase requirements; this information should be emphasised, for example by using bold type, separating it from other text or using a different colour. A requirement to purchase more than one unit of a product to participate in a promotion ideally should be stated on the front of any label or material carrying details of the promotion;
- (e) any geographical or personal restrictions;
- (f) any necessary permissions (e.g. those of parents or guardians);
- (g) any limit on the number of applications permitted;
- (h) any limit on the number of promotional products or prizes that an individual consumer or household may claim or win;
- (i) any other factor likely to influence consumers' decisions or understanding about the promotion.

- 3.16 Any terms or conditions, the effect of which is either:
- to exclude some consumers from the opportunity to participate
  - or
  - to impose requirements that are likely to affect a consumer's decision whether or not to participate,
- should be clearly and prominently stated so as to be clear to the consumer before any commitment is made.

### **Administration**

- 3.17 Sales promotions should be conducted under proper supervision and with adequate resources. Promoters and intermediaries should not give consumers any justifiable grounds for complaint.

- 3.18 Promoters should allow ample time for each phase of the promotion: notifying the trade, distributing the goods, issuing rules where appropriate, collecting the wrappers and the like, judging and announcing the results.
- 3.19 Promoters should fulfil applications within 30 days unless:
- (a) participants have been told in advance that it is impractical to do so;
  - (b) participants are informed promptly of unforeseen delays and are offered another delivery date or an opportunity to recover any money paid for the offer.
- 3.20 When damaged or faulty goods are received by a consumer, promoters should ensure either that they are replaced without delay or that a refund is sent immediately. The promoters are entitled to seek the return of the faulty goods and, if possible, the original packaging, at their expense. The full cost of replacing damaged or faulty goods should fall on promoters. If any applicant does not receive goods, promoters should normally replace them free of charge.

### Free Offers

- 3.21 An offer should be described as free only if consumers pay no more than:
- (a) the minimum, unavoidable cost of responding to the promotion, e.g. the current public rate of postage, the cost of telephoning up to and including the national rate or the minimum, unavoidable cost of sending an e-mail or SMS text message,
  - (b) the actual cost of freight or delivery;

- (c) the cost, including incidental expenses, of any travel involved if consumers collect the offer.

In all cases consumers' liability for such costs should be made clear and there should be no additional charges for packaging or handling.

- 3.22 Marketers should not attempt to recover their costs by reducing the quality or composition of a product by imposing additional charges or inflating incidental expenses or by increasing the price of any other product that must be purchased as a pre-condition of obtaining a free item.
- 3.23 A trial should not be described as free if the consumer is expected to pay the cost of returning any goods, unless this requirement is made clear to the consumer when the offer is made.
- 3.24 Where an offer appears on a product, and when benefiting from that offer requires several purchases of the product, the need to make additional purchases should be clearly indicated.
- 3.25 Where an offer covers two or more items, of which only one is free, it should be made clear to the consumer what is offered free and what they must pay for.
- 3.26 Where unsolicited samples or gifts are distributed through a promotion, it should be made clear that the consumer is under no obligation to buy or return the items.

### **Promotions with Prizes**

- 3.27 Promotions involving prizes are subject to legal requirements and promoters are strongly advised to seek expert legal advice.

- 3.28 Entry conditions should be clearly worded and should set out the following details:
- (a) the closing date;
  - (b) any age, eligibility or geographical restrictions;
  - (c) any restrictions on the number of entries or prizes;
  - (d) any requirements for proof of purchase;
  - (e) any permissions required (e.g. from parent or employer);
  - (f) the criteria for judging entries;
  - (g) a full and accurate description of the prizes;
  - (h) any limitations imposed on acceptance of the prizes and any duties or obligations on the part of the winners (e.g. in regard to post-event publicity);
  - (i) whether a cash alternative can be substituted for any prize;
  - (j) how and when winners will be notified of results;
  - (k) how and when results will be published (see 3.32);
  - (l) where appropriate, who owns the copyright of the entries;
  - (m) whether and how entries will be returned.
- 3.29 Complex rules should be avoided and promoters should not need to supplement conditions of entry with additional rules. If further rules cannot be avoided participants should be informed how to obtain them; the rules should contain nothing that would have influenced a consumer against making a purchase or participating. Participants should always be able to retain entry instructions and rules.

- 3.30 The closing date should be clearly stated in each advertisement, on each entry form and on the outer surface of any relevant pack, wrapper or label. This date should not be changed unless circumstances outside the reasonable control of the promoters make it unavoidable.
- 3.31 A poor response or a low level of entries is not an acceptable basis for extending the duration of a promotion or withholding prizes unless the promoters have explicitly reserved their right to do so at the outset. An exception to this is where, in a promotion involving a collection or redemption mechanic, a poor response may be an acceptable basis for extending the promotion for a reasonable duration.
- 3.32 Promoters should either publish or make available on request details of the name and county of residence of major prizewinners. Promoters should bear in mind the risk of theft or harassment that may arise if the details given are sufficient to allow the address of a winner of a prize of substantial value to be pinpointed.
- 3.33 Unless otherwise stated in advance, prizewinners should receive their prizes no more than six weeks after the promotion has ended.
- 3.34 If the selection of winning entries is open to subjective interpretation, an independent judge, or a panel including one member who is independent of the competition's promoters and intermediaries, should be appointed. Those appointed to act as judges should be competent to judge the subject matter of the competition. The identity of judges should be made available to the Authority on request.



- 3.35 Where a prize promotion involves any form of draw, promoters should ensure that tokens, tickets or numbers are allocated on a fair and random basis. An independent observer should supervise the draw to ensure that individual entries enjoy equal chances.
- 3.36 When prize promotions are widely advertised, promoters should ensure that entry forms and any goods needed to establish proof of purchase are widely available.
- 3.37 The distinction between a prize and a gift should always be clear to consumers. Gifts offered to all or most participants in a promotion should not be described as prizes. If promoters offer a gift to all entrants in addition to giving a prize to those who win, particular care is needed to avoid confusing the two.
- 3.38 Promoters should not exaggerate the likelihood of consumers winning a prize.

### **Advertisement Promotions**

- 3.39 Advertisement promotions should be designed and presented in such a way that they can easily be distinguished from editorial material.
- 3.40 Features, announcements or promotions that are published in exchange for a payment or other reciprocal arrangement where their content is controlled by the promoter should comply with the Code.

- 3.41 Publishers announcing reader promotions on the front page or cover should ensure that consumers know whether they will be expected to buy subsequent issues of the publication or if any financial contribution is required. Major qualifications that may significantly influence consumers in their decision to purchase the publication should appear on the front page or cover.

### **Charity-linked Promotions**

- 3.42 Promotions claiming that participation will benefit a charity or good cause should:
- (a) name the charity or good cause that will benefit, and be able to demonstrate that those benefiting consent to the advertising or promotion;
  - (b) define the nature and objectives of the charity or cause unless that information is already widely available;
  - (c) specify the extent and the nature of the advantage to be gained by the charity or cause;
  - (d) state if the promoters have imposed any limitations on the contribution they will make;
  - (e) not limit consumers' contributions; any extra money collected should be given to the named charity or cause on the same basis as contributions below that level;
  - (f) not exaggerate the benefit to the charity or cause derived from individual purchases of the promoted product;
  - (g) make available on request a current or final total of contributions made.

**Promotions and the Trade**

- 3.43 Promotions and incentive schemes should be designed and implemented to take account of the interests of everyone involved and should not conflict with the duty of employees to their employer or their obligation to give honest advice to consumers.
- 3.44 Promoters should secure the prior agreement of employers or of the manager responsible if they intend to ask for assistance from, or offer incentives to, any other company's employees. Promoters should observe any procedures established by companies for their employees, including any rules for participating in promotions. In the case of a trade incentive scheme that has been advertised rather than individually targeted, employees should be advised to obtain their employer's permission before participating.
- 3.45 It should be made clear to those benefiting from an incentive scheme that they may be liable for tax.

**Data Protection**

- 3.46 Attention is drawn to the requirements of the Data Protection Act, 1988, in regard to the collection, processing, keeping, use and disclosure of personal data.

**Other Requirements**

- 3.47 Attention is drawn to the Gaming and Lotteries Act, 1956. (Promoters should note that a prize promotion which involves purchase requires a test of skill; otherwise it may contravene the Gaming and Lotteries Act, 1956.)

## 4. Distance Selling (Mail Order and Direct Response)

### Introduction

This Section sets out the rules governing transactions for goods or services in which the buyer and the seller, having been brought into communication through a marketing communication, conduct their business without meeting face-to-face.

- 4.1 Mail order and direct response marketing communications are not acceptable unless:
- (a) the name and full address of the advertiser is stated in the marketing communication (in the case of a print marketing communication this should be separate from any response coupon),
  - or
  - (b) arrangements have been made for enquirers to be informed by media of the name and full address of the advertiser.

A separate address for orders may also be given. This need not be a full address but may be a Freepost or Box Number.

- 4.2 Distance selling marketing communications should:
- (a) include the main characteristics of the products;
  - (b) include the price, including any VAT, taxes payable, and other inescapable costs to the consumer, and payment arrangements;
  - (c) provide information on how to access the advertiser's details if the offer is sent by Short Message Service (SMS) or Wireless Application Protocol (WAP) and all details cannot be included in the communication.

- 4.3 Orders should be fulfilled within 30 days, except:
- (a) where security is provided for purchasers' money through an independent scheme;
  - (b) for goods such as plants and made-to-measure products, where the estimated time of delivery should be made clear;
  - (c) where a series of goods is to be dispatched in sequence; in such cases only the first delivery need be made within 30 days but the period within which subsequent deliveries will be made should be stated.
- 4.4 Goods supplied should conform to any relevant and accepted standard and to the description given in the marketing communication.
- 4.5 Advertisers should refund all money promptly (and at the latest within 30 days of notice of cancellation being given) when:
- (a) consumers have not received their goods or services; alternatively, advertisers may, if asked, provide a replacement;
  - (b) goods are returned because they are damaged or faulty or are not as described, in which case the advertisers should bear the cost of their return, provided that the consumer gives notice within a reasonable period of time;
  - (c) consumers cancel within seven clear working days after delivery; consumers should assume that they can try out goods unless the marketing communication says otherwise; such goods nevertheless should be returned undamaged;
  - (d) an unconditional money-back guarantee is given and the goods are returned within a reasonable period;

- (e) goods that have been returned are not received back, provided consumers can produce proof of posting.
- 4.6 Advertisers do not have to provide a full refund on:
- (a) perishable, personalised or made-to-measure goods provided all contractual and statutory obligations to the consumer are met;
  - (b) goods that can be copied, unless they fall under 4.5(a), (b) or (c), with the exception of audio or video recordings or computer software if unsealed by the consumer.
- 4.7 When an advertiser offers to supply goods on approval, the consumer will be expected (subject to 4.5 (b) above) to bear the cost of return of unwanted goods unless the advertiser has undertaken to refund such costs.
- 4.8 Advertisers should be in a position to meet any reasonable demand created by their advertising. If a product proves to be available in insufficient quantity, advertisers should take immediate action to ensure that any further marketing communications are amended or withdrawn.
- 4.9 If advertisers intend to call on respondents personally, this should be made clear in the marketing communication or in a follow-up letter. Advertisers should provide a reply-paid postcard or telephone contact to allow consumers an adequate opportunity to refuse a home visit.
- 4.10 Advertisers, when using media primarily targeted at children, should not promote products that are unsuitable for children.

- 4.11 Goods and, where applicable, samples should be packaged in such a way as to be suitable for delivery to the customer. Particular care should be taken when packaging products that may fall into the hands of children.

### **Media Requirements**

- 4.12 Advertisers should be aware that media may, in respect of cash - with - order marketing communications, require special undertakings over and above the requirements set out in this Section. Media may also require undertakings that advertisers have adequate arrangements to handle all orders efficiently.

### **Data Protection**

- 4.13 Attention is drawn to the requirements of the Data Protection Acts, 1988 and 2003, in regard to the collection, processing, keeping, use and disclosure of personal data.

### **Other Regulatory Requirements**

- 4.14 Attention is also drawn to the requirements of the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001 (S.I. No. 207 of 2001).

## Sectoral Rules

The Sectoral Rules which follow are additional to the General Rules, promotional marketing rules and distance selling rules of the Code.

The Code rules are indivisible; advertisers should comply, where appropriate, with all rules.



## 5 Children

- 5.1 For the purposes of the Code, a child is someone aged under 18.
- 5.2 The Authority acknowledges that parents and guardians have primary responsibility for children.
- 5.3 Children lack adults' knowledge, experience and maturity of judgement. Marketing communications addressed directly or indirectly to children or marketing communications likely to be seen or heard by a significant proportion of them should have regard to the special characteristics of children and the ways in which they perceive and react to marketing communications.
- 5.4 The way in which children perceive and react to marketing communications is influenced by their age, experience and the context in which the message is delivered; marketing communications that are acceptable for young teenagers will not necessarily be acceptable for younger children. The Authority will take these factors into account when assessing marketing communications.
- 5.5 Marketing communications should contain nothing that is likely to result in physical, mental or moral harm to children or that is likely to frighten or disturb them, except to promote safety or in the public interest. In principle and subject to the qualifications above, the following rules apply.
  - (a) Children should not be portrayed in a manner that offends against accepted standards of good taste and decency.

- (b) They should not be encouraged to enter into unsafe situations or strange places or talk to strangers, e.g. for the purpose of making collections or accumulating labels, wrappers or coupons.
- (c) They should not be shown in morally or physically dangerous situations or behaving dangerously in the home or outside. Children should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety.
- (d) They should not be encouraged to engage in, or be portrayed engaging in, anti-social behaviour; where they appear as pedestrians or cyclists they should be seen to observe the Rules of the Road. Special attention should be paid, where relevant, to the use of child car seats and the wearing of car seat-belts and safety helmets.
- (e) Younger children in particular should not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include matches, petrol, gas, medicines and certain household substances, as well as certain electrical appliances and machinery, including agricultural equipment.
- (f) An open fire in a domestic scene should always have a fireguard clearly visible when a young child is included in the scene.
- (g) Given that children may imitate what they see in marketing communications, they should not be encouraged to copy any practice that might be unsafe.

- 5.6 Marketing communications addressed to children should not exploit the loyalty, credulity, vulnerability or lack of experience of children. For example:
- (a) They should not be made to feel inferior or unpopular for not buying an advertised product.
  - (b) They should not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy a particular product.
  - (c) Marketing communications should not undermine the authority, responsibility or judgement of parents, guardians or other appropriate authority figures. Marketing communications should not include any appeal to children to persuade their parents or other adults to buy advertised products for them.
  - (d) A product that is part of a series should be clearly indicated as such and marketing communications should include the method of acquiring the series.
- 5.7 Marketing communications addressed to children:
- (a) should not feature products that are unsuitable for those children;
  - (b) should not exaggerate what is attainable by an ordinary child using the product and should not make it difficult to judge the actual size, characteristics and performance of any product advertised;
  - (c) should not ask them to disclose personal information about themselves or their families without having first obtained permission from their parents or guardians;
  - (d) should not minimise the price of products by the use of such words as "only" or "just".

- 5.8 Advertisers should take particular care when packaging products that may fall into the hands of younger children.

### **Food and Beverages**

- 5.9 Marketing communications for food and beverages addressed to children:
- (a) should not denigrate a healthy lifestyle or encourage an unhealthy lifestyle or unhealthy eating or drinking habits; marketing communications representing mealtime should clearly and adequately depict the role of the product, where appropriate, within the framework of a balanced diet; snack foods should be clearly represented as such, and not as substitutes for meals;
  - (b) should not mislead children as to the potential benefits from consumption of the product, either physically, socially or psychologically.
- 5.10 Marketing communications for food and beverages representing any material characteristics of the product including size and, content, as well as nutritional and health benefits, should be accurate and should not mislead children concerning any of those characteristics, or the intended use of the product.

### **Promotions**

- 5.11 In addition to complying with the provisions set out in Section 3 - Promotional Marketing Practices, promotions addressed to or likely to attract children:
- (a) should not offer promotional products that are unsuitable for distribution to children;
  - (b) should be carried out responsibly, taking into account the location in which the promotion is conducted;

- (c) should make it clear that parental permission is required if prizes and incentives might cause conflict between children and their parents; examples include animals, bicycles, outings, concerts and holidays;
- (d) should allow a sufficient timeframe for participation in a manner that will reflect moderate consumption of a product;
- (e) should clearly explain the number and type of any additional proofs of purchase needed to participate;
- (f) should contain a prominent closing date;
- (g) should not exaggerate the value of prizes or the chances of winning them;
- (h) should not exploit children's susceptibility to charitable appeals.

6. **Food and Non-Alcoholic Beverages**
- 6.1 Marketing communications for food and non-alcoholic beverages should not encourage or condone excess consumption. They should not encourage an unhealthy lifestyle or unhealthy/unbalanced eating or drinking habits.
- 6.2 Marketing communications for food and non-alcoholic beverages should not show people who choose a healthy active lifestyle in a negative manner.
- 6.3 Marketing communications for food and non-alcoholic beverages representing any material characteristics of the product, including size and content, as well as nutritional and health benefits, should be accurate and should not mislead consumers concerning any of those characteristics, or the intended use of the product.
- 6.4 Nutritional and health-benefit claims and health-related comparisons made in marketing communications for food and non-alcoholic beverages:
  - (a) should be accurate and should not mislead;
  - (b) should have a sound scientific basis and be conveyed in a manner that is consistent with the nature and scope of the evidence;
  - (c) should be based on an objectively supportable and clearly understandable basis.

## 7. Alcoholic Drinks

- 7.1 Marketing communications for alcoholic drinks (i.e. those that exceed 1.2% alcohol by volume) should be socially responsible and should not exploit the young or the immature. They should neither encourage excessive drinking nor present abstinence or moderation in a negative way.
- 7.2 Marketing communications which depict or refer to alcohol may be considered under the rules of this Section, whether or not alcohol is the main product being marketed.
- 7.3 Advertisers should be aware that there are other requirements that alcohol marketing communications must comply with and their attention is drawn to the list under Other Requirements at 7.9.

### Social Dimension

- 7.4 Marketing communications may refer to the social dimension or refreshing attributes of a drink, but:
- (a) should not imply that alcohol can improve physical performance or personal qualities or capabilities;
  - (b) should not imply that the presence or consumption of alcohol can contribute to social, sporting or business success or distinction or that those who do not drink are less likely to be acceptable or successful than those who do;
  - (c) should not suggest, by word or allusion that the presence or consumption of alcohol can contribute towards sexual success or make the drinker more attractive. Advertisers should take account of public sensitivities regarding coarseness and sexual innuendo in marketing communications for alcohol;

- (d) should not portray drinking alcohol as a challenge nor should it be suggested that those who drink are brave, daring or tough;
  - (e) should not link in any way the presence or consumption of alcohol to aggressive or anti-social behaviour.
- 7.5 Marketing communications should not suggest that a product can mask the effects of alcohol in tests on drivers; marketing communications for breath-testing devices should include a prominent warning on the dangers of drinking and driving.

### Children

- 7.6 Marketing communications should not be directed at children or in any way encourage them to start drinking. Accordingly:
- (a) Anyone depicted in an alcohol marketing communication should be aged over 25 and should appear to be over 25.
  - (b) Aspects of youth culture and treatments that are likely to appeal to children should not be used. Treatments should not portray adolescent, juvenile, childish or immature behaviour.
  - (c) Marketing communications should not feature personalities or characters (real or fictitious) that would have a particular appeal to children in a way that would encourage them to drink.
  - (d) Alcohol marketing communications should not be placed in media primarily intended for children. Advertisers should take account of the age profile so that marketing communications are communicated, so far as is possible, to adults. In this context the Authority will take account of the voluntary codes



agreed by the Department of Health and Children, the drinks industry and the media as detailed under Other Requirements at 7.9.

### Health and Safety

- 7.7 In the interests of health and safety:
- (a) Marketing communications should not show, imply or encourage immoderate or irresponsible drinking or regular solitary drinking. This applies to the amount of drink, the numbers drinking or the way drinking is portrayed. The buying of a large round of drinks should not be depicted or implied.
  - (b) Marketing communications for alcohol should not portray drinking games or sessions or show or imply pub or club crawls.
  - (c) Abstinence or moderation should not be presented in a negative light.
  - (d) Marketing communications may not suggest, or commend, or make fun of over-indulgence or its after-effects.
  - (e) Marketing communications should not claim that alcohol has therapeutic qualities or that it is a stimulant, a mood-changer or a sedative, or that it is a means of boosting confidence or resolving personal conflict.
  - (f) Advertisers should ensure that low-alcohol drinks (i.e. those that contain 2.8% alcohol by volume or less) are not promoted in a way that encourages inappropriate consumption.

- (g) Marketing communications should not depict any association with activities or locations where drinking alcohol would be unsafe, unwise or unacceptable. In particular, marketing communications should not associate the consumption of alcohol with operating machinery, driving, any activity relating to water or heights, or any other occupation that requires concentration in order to be done safely.
- (h) With the exception of drinks below 2.8% alcohol by volume, which are subject to the provisions of 7.7(f) above, factual information can be given about the alcoholic strength of a particular drink but it should not be the principal theme of any marketing communication. Drinks should not be promoted as being more intoxicating or presented as preferable because of their higher alcohol content.

7.8 Sales promotions involving alcohol that require multiple purchases should take care not to promote excessive consumption.

### **Other Requirements**

- 7.9 Attention is drawn to a number of other requirements, in addition to those in this Code, which apply to the marketing of alcohol in Ireland:
- All campaigns by drinks manufacturers solely or mainly for alcohol carried in Irish media must carry Central Copy Clearance Ireland approval.
  - The voluntary codes agreed between the Department of Health and Children, the drinks industry and the media in relation to television, radio, cinema and outdoor/ambient media.



- Codes of standards, practices and prohibitions in advertising, sponsorship, and other forms of commercial promotion in broadcasting service, regulated by the Broadcasting Commission of Ireland.
- Code for Sponsorships by Alcohol Drinks Companies.
- Intoxicating Liquor Acts, 1998 - 2003.

## 8. Health and Beauty

- 8.1 Claims about health and beauty products and treatments should be backed by substantiation including the results of practical trials on human subjects of sufficient rigour, design and execution as to warrant general acceptance of the results.
- 8.2 No reference should be made to tests, trials or endorsements by any college, hospital, clinic, laboratory or similar establishment unless there exists a bona fide establishment corresponding to the description used and it is under the effective supervision of a registered medical practitioner or other appropriate professional. Reference to such establishment should be made only with the express permission of the appropriate authorities.
- 8.3 Marketing communications for health and beauty products or treatments should not include representations of individuals which give the impression of professional advice or recommendations unless such persons are suitably qualified.
- 8.4 Any scientific information in a marketing communication should be presented in an accurate manner. Scientific terminology should be appropriate, clearly communicated and be capable of being readily understood by the audience to whom it is directed.
- 8.5 Marketing communications should not offer any product or treatment for serious or prolonged ailments or for conditions requiring the attention of a registered medical or other qualified practitioner.

- 8.6 Marketing communications for a health product or treatment:
- (a) should not contain any offer to diagnose, advise, prescribe or treat by correspondence (correspondence includes by phone, post, internet, email and fax);
  - (b) should not encourage indiscriminate, unnecessary or excessive use of the product or treatment;
  - (c) should not suggest that the product or treatment is safe or effective merely because it is “natural”, nor should it refer to the omission of any ingredient in a way that suggests that the ingredient is unsafe or harmful;
  - (d) should not employ words, phrases or illustrations that claim or imply the cure of any ailment, disability, illness or disease, as distinct from the alleviation or relief of symptoms;
  - (e) should not claim that the product has no side effects unless such claims are fully substantiated;
  - (f) should not cause unwarranted anxiety or suggest that any product or treatment is necessary for the maintenance of health;
  - (g) should not use unfamiliar scientific terms for common conditions.
- 8.7 Advertisers inviting consumers to diagnose their own minor ailments should not make claims that might lead to a mistaken diagnosis.

- 8.8 Advertisers offering individual treatments, particularly those that are physically invasive, may be asked to provide, prior to publication, full details of the treatments together with information about those who would supervise and administer them. Consumers should be encouraged to take independent medical advice before committing themselves to significant treatments.
- 8.9 Marketing communications for any products offering to deter the habit of smoking should make it clear that they offer only assistance, are not cures and that any success will necessarily be dependent on the willpower of the user.
- 8.10 Marketing communications for a medicinal product should not contain an offer to refund money to dissatisfied customers.
- 8.11 Claims about the effect that a cosmetic has on or in the skin should distinguish between the composition of the product and any effects caused by the mode of application, such as massage.
- 8.12 References to the relief of symptoms or the superficial signs of ageing are acceptable if they can be substantiated. Unqualified claims such as “cure” and “rejuvenation” are not generally acceptable.
- 8.13 Marketing communications should not suggest that a product or treatment will achieve success in every case or that the outcome can be other than dependent on the particular circumstances of the individual person.

### **Vitamins, Minerals and Food Supplements**

- 8.14 Marketing communications should not suggest or imply that a well balanced diet needs to be augmented by vitamins or minerals on a regular basis. Advertisers may offer supplements as a safeguard and may refer to the vitamin and mineral content of a particular product but should not suggest that there is a widespread vitamin or mineral deficiency. Marketing communications should not imply that supplements will guard against dietary deficiency, elevate mood or enhance performance and supplements should not be promoted as a substitute for a healthy diet. Marketing communications should not claim that a food supplement is capable of preventing, treating or curing disease.
- 8.15 Marketing communications may promote vitamin and mineral supplementation to certain categories of people, e.g. those who eat nutritionally inadequate meals, the elderly, children and adolescents, convalescents, athletes in training, those who pursue physically very active occupations or recreations, women of child-bearing age and dieters.
- 8.16 Although there may be some depletion of vitamin stores during illness, a marketing communication should not suggest that the replacement of such vitamins will influence the speed or extent of recovery. The prescribing of vitamins and minerals in such cases is a matter for a doctor and self-medication should not be encouraged.

**Hair and Scalp**

- 8.17 Marketing communications should not claim that a particular product or treatment can prevent baldness or slow it down, arrest or reverse hair loss, stimulate or improve hair growth, nourish hair roots, strengthen the hair or improve its health (as distinct from its appearance) unless the claim can be substantiated in accordance with the requirements of 8.1 above.
- 8.18 Hair transplantation and re-positioning should both be regarded as physically invasive treatments - (see 8.8 above).

**Alternative and Complementary Medicine**

- 8.19 Marketing communications for alternative and complementary products and services, including those for natural, herbal and traditional remedies, are subject to the requirements of the Code.

**Other Requirements**

- 8.20 The advertising of medical preparations and cosmetic products is governed by a number of other codes and Statutory Regulations, some of which are listed in Appendix II.



## Medical Preparations (Advertising) Regulations, 1993 - 1996 (under review)

### Schedule 2

#### ***Requirements in the advertising of a medical preparation to the general public***

1. *Format of the advertisement:*  
The advertisement must be set out in such a way that it is clear that the message conveyed is an advertisement.
  
2. *The advertisement shall contain:*
  - (a) A clear identification by name that the product being advertised is a medical preparation, as well as by the common name if the product contains only one active ingredient;
  - (b) The information necessary for the correct use of the medical preparation;
  - (c) A warning to read carefully the instructions on the package leaflet or on the outer packaging, as the case may be.
  
3. *The advertisement shall not contain any material which:*
  - (a) gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail;
  - (b) suggests that the effects of taking the medicine are guaranteed, are unaccompanied by side effects or are better than, or equivalent to, those of another treatment or medical preparation;
  - (c) suggests that the health of the subject can be enhanced by taking the medicine;
  - (d) suggests that the health of the subject could be affected by not taking the medicine; this prohibition shall not apply to vaccination campaigns;

- (e) is directed exclusively or principally at children;
- (f) refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity, could encourage the consumption of medical preparations;
- (g) suggests that the medical preparation is a foodstuff, cosmetic or other consumer product;
- (h) suggests that the safety or efficacy of the medical preparation is due to the fact that it is natural;
- (i) could, by a description or detailed representation of a case history, lead to erroneous self diagnosis;
- (j) refers, in improper, alarming or misleading terms, to claims of recovery;
- (k) uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medical preparation on the human body or parts thereof;
- (l) mentions that the medical preparation has been granted a marketing authorisation.

## 9. Slimming

- 9.1 A programme in which the intake of energy is lower than its output is the main self-treatment for achieving weight loss. Any claims made for the effectiveness of a slimming plan, method or product should be backed by rigorous practical trials on human subjects. Testimonials do not constitute substantiation and the opinions expressed in them should be supported where necessary by independent evidence.
- 9.2 Claims that long-term slimming, weight loss or inch loss can be achieved either generally or from specific areas of the body by any means other than dieting (e.g. by expelling water, speeding up the metabolism, using mechanical devices, wearing garments or applying substances to the skin) should not be made unless they can be substantiated. Slimming claims in respect of an unproven weight-loss method cannot be justified merely by offering a diet or exercise scheme with it.
- 9.3 Advertisers should be able to show that their diet plans are nutritionally well balanced. These will be assessed in relation to the subjects who would be using them.
- 9.4 Vitamins and minerals do not contribute to weight loss, but can be offered to slimmers as a safeguard against any nutritional shortfall when dieting.
- 9.5 A marketing communication should not suggest that persons of normal weight\* need to slim.
- 9.6 "Crash diets" should not be advertised because of the danger that such diets can pose to the health of dieters not under medical supervision.

- 9.7 A marketing communication should not offer treatment specifically for conditions that require medical treatment, such as obesity, anorexia and bulimia.
- 9.8 Marketing communications for products and services in this category should not suggest that to be underweight\* is acceptable or desirable. Where testimonials or case histories are used, they must not refer to subjects who are or appear to be underweight.
- 9.9 Marketing communications for diet aids such as low-calorie foods, food substitutes, appetite depressants and meal replacements should make it clear that they can be effective only as part of a calorie-controlled diet. Prominence should be given to the role of the diet, and marketing communications should not give the impression that particular methods cannot fail or that dieters can eat as much as they like and still lose weight.
- 9.10 Advertisers should not make general claims that specific amounts of weight can be lost within a stated period. Claims that individuals have lost specific amounts of weight should be compatible with good medical and nutritional practice, should give details of the time period and should not be based on unrepresentative experiences.
- 9.11 Individual variability must be taken into account when considering what constitutes good medical and nutritional practice for weight loss in adults who are overweight\*. In general, weight loss greater than 1 kilogram (2.2lb) per week in those who are overweight would not be considered compatible with good medical or nutritional practice.

- 9.12 Both physical and passive exercise operate slowly to improve muscle tone and this can have an effect on body shape. An improvement in posture may also benefit the figure. Advertisers should be able to substantiate any claims that such methods used alone or in conjunction with a diet plan can lead to weight or inch loss. Marketing communications for intensive exercise programmes should encourage users to check with a doctor before starting.
- 9.13 Marketing communications for adult weight-reduction regimes or establishments should neither be directed at, nor contain anything that will appeal particularly to, children.

**\*Note: For the purposes of the Code, the following definitions will apply:**

- normal weight means a Body Mass Index between 18.5 and 24.9;
- underweight means a Body Mass Index of below 18.5;
- overweight/Pre-Obese means a Body Mass Index between 25 and 29.9;
- obese means a Body Mass Index of over 30.

*Source: The Report of the National Taskforce on Obesity, 2005*

## 10. Financial Services and Products

- 10.1 Marketing communications for financial services and products should be prepared with care and with the conscious aim of ensuring that members of the public fully grasp the nature of any commitment into which they may enter as a result of responding to a marketing communication. Advertisers should not take advantage of people's inexperience or gullibility.
- 10.2 Marketing communications which invite a response by mail should contain the full address of the advertiser separate from any response coupon.
- 10.3 Marketing communications should indicate the nature of the contract being offered and provide information on any limitations on eligibility, any charges, expenses or penalties attached and the terms on which withdrawal may be arranged. Alternatively, where a marketing communication is short or is general in its content, free explanatory material giving full details of the offer should be made available before a binding contract is entered into.
- 10.4 When a marketing communication contains any forecast or projection, it should make clear the basis on which the forecast or projection is made, explaining, for example:
  - whether reinvestment of income is assumed;
  - whether account has been taken of any applicable taxes;
  - whether any penalties or deductions will arise on premature realisation or otherwise.



- 10.5 Marketing communications should make it clear that the value of investments is variable and, unless guaranteed, can go down as well as up. If the value of the investment is guaranteed, details should be included in the marketing communication.
  
- 10.6 Marketing communications should specify that past performance or experience does not necessarily give a guide for the future. Any examples used should not be unrepresentative.

**Statutory and Other Regulatory Requirements**

- 10.7 Marketing communications for financial products and services, including investment opportunities, deposits and credit facilities, are subject to a number of statutory requirements, including those of the Financial Regulator and the Office of the Director of Consumer Affairs, some of which are listed in Appendix II.

## 11. Employment and Business Opportunities

- 11.1 Advertisers and media should distinguish clearly between offers of employment, business opportunities and training courses.

### **Employment**

- 11.2 Employment marketing communications should correspond to genuine vacancies and should not require interested respondents to send money for further details. Terms and conditions should not be misrepresented and any earnings forecast should be realistic. If income is earned from a basic salary and commission, or commission only, this should be made clear.

### **Business Opportunities**

- 11.3 Marketing communications for business opportunities should not mislead participants as to:
- (a) the nature of the work involved;
  - (b) the amount of support available;
  - (c) the extent of any financial investment required;
  - (d) the potential earnings.

Where a marketing communication does not contain the name and address of the advertiser, it is the responsibility of media to be satisfied as to the advertiser's identity and bona fides.

### **Homework Schemes**

- 11.4 Marketing communications for homework schemes in which respondents make articles, perform services or offer facilities at or from home should contain a clear description of the work and should make clear whether the homeworker will be an employee of the company or will be self-employed. Any forecast of earnings should be based on the experience of current homeworkers. If



it is a new scheme, no realistic forecast of earnings can be made and none should be given in the marketing communication. Where a marketing communication does not contain the name and address of the advertiser, it is the responsibility of media to be satisfied as to the advertiser's identity and bona fides.

- 11.5 Details of charges imposed by the advertiser for machines, components or raw materials should be available to respondents before they are committed to any scheme.
- 11.6 If the advertiser intends to buy back the goods produced by the homemaker, all relevant information should be supplied before any binding obligation or investment is made by the respondent. Homemakers should know if there are any limitations that might affect their decision to accept the advertiser's offer before being committed to participate.

### **Training Courses**

- 11.7 Marketing communications for training and instruction courses should make no promise of employment unless a job is guaranteed. The duration of the course and the level of attainment needed to embark on it should be made clear.

### **Directories**

- 11.8 Marketing communications for directories giving details of employment or business opportunities should indicate plainly the nature of what is being offered.

## 12. Environmental Section

- 12.1 Environmental claims should not be used without qualification unless advertisers can provide convincing evidence that their product will cause no environmental damage.
- 12.2 Qualified claims and comparisons may be acceptable if advertisers can demonstrate that their product provides an improvement in environmental terms either against their competitors' or their own previous products.
- 12.3 The basis of any claim should be explained clearly and should be qualified where necessary. Unqualified claims may mislead if they omit significant information.
- 12.4 Where there is a significant division of scientific opinion or where evidence is inconclusive this should be reflected in any statements made in the marketing communication. Advertisers should not suggest that their claims command universal acceptance if this is not the case.
- 12.5 If a product has never had a demonstrably adverse effect on the environment, marketing communications should not imply that the formulation has been changed to make it safe. It is legitimate, however, to make claims about a product whose composition has been changed or has always been designed in a way that omits chemicals known to cause damage to the environment.
- 12.6 The use of extravagant language should be avoided, as should bogus and confusing pseudo-scientific terms. If it is necessary to use a scientific expression, its meaning should be clear.



- 12.7 Symbols may imply environmental claims in themselves. They should be simple and used in such a way that they do not convey false impressions about the characteristics of goods or services.
  
- 12.8 Marketing communications for waste collection services should include:
  - (a) the name of the permit holder or the waste collection permit register number; and
  - (b) the name of the local authority that issued the same.

### 13. Occasional Trading

- 13.1 Marketing communications by persons engaged in occasional trading, including one-day sales, should contain the advertiser's name and full, verifiable permanent address (not a Box Number or an accommodation address).
- 13.2 Descriptions such as “liquidation sale”, “closing down sale”, “emergency sale” should be capable of substantiation.
- 13.3 An advertiser should not misrepresent the nature or status of an event through the use of headlines such as "Public Announcement" or the inclusion of references to Customs or other official authorities.
- 13.4 It is the responsibility of media to be satisfied about the advertiser's true identity and bona fides.

## 1. Advertising Self-Regulation

1. Advertising self-regulation means the strict adherence by the advertising industry to standards drawn up by and on behalf of all advertising interests. It involves the enforcement of those standards through the commitment and cooperation of advertisers, agencies and media.
2. The Advertising Standards Authority for Ireland (ASAI) is the independent self-regulatory body set up and financed by the advertising industry and committed to promoting and enforcing the highest standards of marketing communications, that is, advertising, promotional marketing and direct marketing, in the public interest.
3. Commercial marketing communications in the media and sales promotions should be legal, decent, honest and truthful. The rules to ensure this are set out in the Code of Standards for Advertising, Promotional and Direct Marketing in Ireland (6th Edition), (the Code), drawn up by the Board of the ASAI following detailed consultation with all relevant interests, including advertisers, agencies and media, the public, consumer representatives and Government Departments.
4. Primary responsibility for observing the Code rests with advertisers, promoters and direct marketers. Others involved in the preparation and publication of marketing communications and in the design and execution of mail order operations and sales promotions also have an obligation to adhere to the Code. It is a condition of membership of the ASAI that a Member will not knowingly or recklessly publish a marketing communication or undertake a promotion that does not comply with Code requirements.

5. The role of the media is of particular importance in checking and deciding on the acceptability of marketing communications under the Code. The fact that a marketing communication conforms to the Code is not, however, a guarantee that it will be accepted. While the media will refuse to publish a marketing communication which contravenes the Code, they are under no obligation to publish every marketing communication offered.
6. All relevant parties are encouraged and recommended to include in their contracts, other agreements and arrangements, and in their standard and/or published terms and conditions pertaining to advertising and other marketing communications, a statement, term or condition indicating that the provisions of the Code and, in particular (but without limitation), any decisions, adjudications or rulings made by the Authority, the Board, the Complaints Committee, the Secretariat or any officer of the Authority, will be adhered to.
7. The ASAI is concerned with the content of commercial marketing communications in the media and with the design and execution of sales promotions. The Code is not concerned with whether a marketing communication or promotion is otherwise good or effective. Outside of the matters dealt with in the Code, the ASAI does not concern itself with, nor does it presume to judge, for example, whether something ought to be bought or is good value at the price, nor is it involved in the regulation of terms of business.

8. The ASAI has no mandate to act as a censor or an arbiter of public morals. In assessing complaints involving considerations of decency and propriety, it is guided by the standards that are observed generally throughout Irish society.
9. The Code is administered primarily in the interests of consumers.

### **Copy Advice Service**

10. Advertisers, agencies, media and promoters can obtain copy advice from the ASAI on whether a proposed marketing communication or sales promotion conforms to the Code. This advice is communicated confidentially, is non-binding and is also given free of charge. It is not definitive advice as to whether or not a proposed marketing communication or sales promotion would, if complained about, lead to a finding by the Complaints Committee that it did not conform to the Code. Rather, it is an authoritative opinion, given by the Secretariat, which does not bind the ASAI Complaints Committee.
11. The ASAI will be in no way liable for any consequences which flow from a decision to heed or ignore copy advice provided by the Secretariat.
12. There may be occasions when a media owner is concerned that a proposed marketing communication which is not subject to the Code may cause offence. The Secretariat will, on request, give informal advice in such cases.

## 2. Self-Regulation and the Law

1. There is a large body of law governing advertising. Neither this Section nor Appendix II purport to comprehensively or accurately set out that body of law. Nevertheless, the following will be of general guidance in describing the wider background against which the ASAI operates.
  
2. The Consumer Information Act, 1978, makes it an offence to publish any advertisement that is likely to mislead and thereby cause loss, damage or injury to members of the public to a material degree. At the time of publication, under the European Communities (Misleading Advertising) Regulations, 1988, it is open to any person to apply to the High Court for an order prohibiting the publication of misleading advertising. There are also statutory requirements affecting the advertising of certain products and services, including alcohol, tobacco, medicinal products and credit services, and in relation to the advertising of employment opportunities. The provisions of the Gaming and Lotteries Act, 1956, are relevant to sales promotions involving prizes. In addition, the Trade Marks Act, 1996, and the law of passing off are relevant with respect to comparative advertising. This legislation provides a valuable statutory back-up to the ASAI. A list of statutes, statutory instruments and other codes affecting advertisements and promotions is contained in Appendix II.
  
3. At the time of publication, it is anticipated that the Unfair Commercial Practices Directive will be transposed into Irish law in 2007 by a single Act. This Act will consolidate and replace some of the current consumer legislation, including the Consumer Information Act, 1978, and, in the context of business



to consumer advertising (but not business to business advertising), the European Communities (Misleading Advertising) Regulations, 1988. In particular, this Act will introduce a general prohibition on unfair commercial practices, which will add a new element to consumer protection legislation in Ireland.

4. Direct marketing advertising is also subject to regulation under Irish law. The Data Protection Acts, 1988 – 2003, apply in this area if the direct marketing is directed to an identifiable person. If the direct marketing is made by electronic means such as fax or e-mail, the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations, 2003, must be complied with.
5. The ASAI is not a law enforcement body and does not provide legal advice. The self-regulatory system is subordinate to and complements legislative controls on advertising and sales promotions and provides an alternative, low-cost and easily accessible means of resolving disputes. It encourages, and provides a means for, the acceptance of standards of practice which in a number of areas go beyond those which are required by law, while not constraining reasonable expressions of freedom of speech. It provides a flexible and sensitive means of dealing with matters of taste and decency that might be difficult to judge in law but which can fundamentally affect consumer confidence in, and receptiveness to, advertising, as well as the reputation of the advertising industry. It does not prejudice consumers' or advertisers' rights under law.



6. The procedures and the adjudications of the ASAI do not prejudice any party's protection under the law. The ASAI does not wish to duplicate the work of other regulatory bodies and complaints are not normally pursued if they involve matters that should be resolved in the Courts or if any of the parties has initiated legal action with a view to commencing, or has commenced, litigation or another alternative dispute resolution process. A decision of the ASAI does not deprive a consumer or an advertiser of the right to take further action or prejudice any rights under the law.

### 3. Scope and Coverage

1. The Code administered by ASAI is based on the principles established by the International Chamber of Commerce. These require that all marketing communications
  - should be legal, decent, honest and truthful
  - should be prepared with a sense of responsibility to consumers and to society
  - should respect the principles of fair competition generally accepted in business.
2. The Code applies to most commercial marketing communications and to sales promotions that promote the sale of goods or services. See Section 1 of the Code for full details.
3. The Code contains a set of General Rules and these are supplemented by additional requirements for particular products or sectors. In general terms, the rules are designed to ensure that marketing communications do not mislead or cause general offence.
4. The same principles apply to sales promotions such as special offers involving vouchers, coupons or samples, reduced price or free offers, prize promotions and competitions. The detailed rules for such schemes are set out in the promotional marketing rules of the Code.
5. The Code is applied in the spirit as well as in the letter.
6. The Code is as set out in Chapter 1 of the Manual of Advertising Self-Regulation.

## 4. Complaints Procedure

### How to make a complaint

1. The ASAI accepts complaints from any person or body who considers that a marketing communication may be in breach of the Code. The ASAI may also investigate issues identified through its monitoring programme. A complaint should normally be in writing and should state briefly the grounds of the complaint. To assist in both the processing and speedy resolution of complaints it is essential to:
  - Write to ASAI (or use the on-line complaints form) with full name and postal address, stating briefly the grounds for the complaint;
  - Include a copy of the marketing communication if possible, or the particulars of the marketing communication, including dates and the media involved;
  - Give the name of the product and the promoter and copies of any labels, leaflets or entry forms involved in the case of a sales promotion or direct mail activity.
2. **Complaints are investigated free of charge. To the extent permitted by law, the identity of an individual consumer complainant remains confidential unless a commercial or other interest is involved in making a complaint. Complainants may be asked to confirm that they have no such interest.**

### Complaints by Competitors

3. The ASAI is not an arbitration service for disputes between commercially interested parties. These disputes are best resolved by direct discussions between the parties or through their appropriate trade associations. There may be circumstances where it will not be possible for the Authority to reach a conclusion, for

example, where the Authority cannot complete a report or adjudication without commenting negatively on a third party who is not the subject of the complaint. The option of applying to the Courts for an injunction under the European Communities (Misleading Advertising) Regulations, 1988, is always available.

4. An intra-industry complaint may be investigated by the ASAI where the interests of consumers are involved. In such cases, complainants may be required to substantiate their complaints. The identity of the complainants is revealed to the advertiser or promoter and both parties are named in the published Case Report. The Authority has the option of issuing a statement rather than a formal decision where this is appropriate.

#### **How complaints are resolved by the ASAI**

5. The complaint is evaluated initially by the ASAI Secretariat to determine whether it comes within the terms of reference of the ASAI and whether there is a *prima facie* case for investigation.
6. Where a complaint falls outside the terms of reference of the ASAI, e.g. because it does not relate to the content of a marketing communication, or where there is no apparent case for investigation, the complaint will not be pursued and the reason will be explained to the complainant. Where possible, the ASAI will help the complainant to contact the most appropriate source of assistance.
7. Complaints will normally not be pursued if the matter is already the subject of simultaneous legal action or where legal action with a view to litigation, or litigation (or some other alternative dispute resolution process)

has been initiated. Similarly, the ASAI does not wish to duplicate the work of other regulatory bodies. Where it would be more appropriate for a complaint to be investigated or dealt with by other bodies, the ASAI will endeavour to provide relevant information or will endeavour to direct the complainant to the most appropriate body.

8. Where the Secretariat determines that there is a *prima facie* case for investigation, an investigation is commenced and the advertiser or promoter (or the advertising/promotional marketing agency involved) is informed of the complaint and invited to comment on it in relation to the Code. They are required to respond, and to submit substantiation where necessary, within such period as the Secretariat may request, normally within ten days. **The timeframe set by the Secretariat will be strictly enforced.**
9. On receiving the response, the Secretariat, where it considers that circumstances warrant it, prepares a summary of the case. This will include any facts or advice that the Secretariat has gathered. It will include the Secretariat's Recommendation to the Complaints Committee in relation to what the Committee's decision might be on the marketing communication's compliance with the Code and whether the complaint should be upheld. It may also recommend other courses of action to the Committee.
10. A marketing communication may be found to be in breach of the Code if the advertiser/promoter fails to respond or unreasonably delays responding to the ASAI. Likewise, advertisers/promoters may be found to have contravened the Code if they do not respond, or unreasonably delay their response, to the ASAI.

11. The complainant and the advertiser/promoter or agency are provided with a copy of the Secretariat's Recommendation and are given an opportunity to express any further views on the matter at that stage within a period which the Secretariat may specify, before referral to the Complaints Committee.
12. The case, including any views received on the Recommendation, is then submitted by the Secretariat to the independent Complaints Committee, which decides whether or not the Code rules have been contravened.
13. Details of the case, including the name of the advertiser/promoter and agency and the Complaints Committee's conclusion, but not the name of a consumer complainant, are set out in a Case Report which normally is released to media for publication and posted on the ASAI website, at the discretion of the Committee.
14. A marketing communication which has contravened the rules of the Code is required to be amended or withdrawn. In the case of a sales promotion, the promoter may be requested to make the necessary changes to the way the promotion is communicated or conducted and, where appropriate, may also be asked to recompense any consumers who have been adversely affected.
15. **Notwithstanding the above, the investigation procedure and the consideration by the Complaints Committee may be accelerated or otherwise varied where circumstances warrant. If a case is considered by the Secretariat, in its absolute discretion, to be particularly grave, the Secretariat may request interim**

**action by the advertiser/promoter or agency, including the immediate amendment or withdrawal of a marketing communication or promotion pending completion of the investigation and adjudication by the Complaints Committee.**

### **Cross-Border Complaints**

16. Complaints about marketing communications that appeared in foreign media do not come within the remit of the Code. The ASAI is, however, a member of the European Advertising Standards Alliance (EASA) (see Section 6, page 85, for information about EASA). EASA supervises the operation of the Cross-Border Complaints System. Under this system, a complaint received by the ASAI or other national advertising self-regulatory body about a marketing communication that was published/broadcast in another member country is referred to the appropriate national self-regulatory body for consideration under their Code. This ensures that a consumer can have redress against misleading or offensive advertising originating anywhere in Europe.

### **Review System**

17. In exceptional circumstances, the Complaints Committee can be asked to reconsider its adjudication. Requests for review must be submitted within 21 days of issue of the adjudication on the form provided for that purpose. Full details of the review system are included in Appendix I and the review application form is available from the Authority. The decision of the Complaints Committee stands while the matter is being reviewed.



**Enforcement and Sanctions**

18. Publication of the Case Reports of the Complaints Committee, including names of advertisers, promoters and agencies involved, is an important element of the self-regulatory system. A marketing communication which breaks the rules must be withdrawn or amended and the media will refuse to publish a marketing communication which fails to conform to Code requirements.
19. A Member who does not accept ASAI decisions may be disciplined by the Board and may be subject to penalties, including fines and/or suspension of membership.

**Compulsory Copy Advice**

20. The ASAI may require advertisers whose marketing communications persistently and/or gravely breach the Code to have some or all of their proposed marketing communications subjected to Copy Advice until the ASAI is satisfied that future communications are likely to comply with the Code.
21. In particular, if an advertiser seems to have deliberately flouted the Code with the intention of generating complaints, PR and subsequent notoriety, the ASAI can request the advertiser and the media to submit for a stated period any of the advertiser's proposed marketing communications to check their compliance with the Code.

## 5. ASAI Structure, Function and Funding

1. ASAI is incorporated under the Companies Acts as a Company Limited by Guarantee and not having a Share Capital. There are three categories of membership - Advertiser Members, Media Members and Agency Members plus an independent Chairman appointed by the Board.
2. The Board of ASAI consists of fifteen Members - the Chairman and four Advertiser Members, four Agency Members and six Media Members. The Board is responsible for managing the business of the Authority and for drawing up and implementing the Code and reviewing and amending it from time to time. The Board is also empowered to exercise a disciplinary function over Members of ASAI.
3. The Complaints Committee of the ASAI has the following functions:
  - (a) To consider and adjudicate on complaints submitted by the public, by a Member, by a Government Department/Agency or by any other person or body of persons, in the light of the Code;
  - (b) To initiate corrective action where necessary and to issue appropriate directives;
  - (c) Where corrective action or a directive issued pursuant to (b) above is not complied with or is ignored, the Complaints Committee shall notify the Board in writing.
4. The Complaints Committee is appointed by the Board and comprises persons with a background in the advertising industry and others, including members nominated by the Director of Consumer Affairs. The structure of the Committee ensures that the majority of

members are not employed in the advertising industry. These lay members have an interest and expertise in relevant areas such as consumer protection, child and adolescent welfare and community issues. The Committee at present comprises an independent Chairperson and thirteen members. The composition of the Complaints Committee and the participation of nominees of the Director of Consumer Affairs and other independent members ensures the objectivity of the complaint investigation procedure and provides assurance that the system is operated with special regard to the interests of consumers. The members of the Complaints Committee, each acting in an individual capacity, consider each case on its merits, taking account of the characteristics of the likely audience, the media by means of which the marketing communication is communicated, the location and context of the marketing communication, the nature of the advertised product and the nature, content and form of any associated material made available or action recommended to consumers.

5. The Chief Executive/Secretary implements the policies and decisions of the Authority, acts as Secretary to both the Board and the Complaints Committee and administers the complaints investigation service, the Copy Advice service and the monitoring of marketing communications.
6. The Board is empowered to exercise a disciplinary function over a Member of ASAI in the event that a report is made by the Complaints Committee or on receipt of notice of any allegation made against or circumstance involving a Member. The Board performs its disciplinary function at a special meeting of the Board called for that purpose. Having heard the

relevant parties to the complaint, the Board makes a ruling and may in its discretion, (a) fine the Member such sum as it considers proper, (b) suspend the Member from all or any of the privileges of membership or (c) expel the Member from membership of the Authority.

### **Funding**

7. The ASAI does not receive funds directly or indirectly from any Government source. The system is financed entirely by the advertising industry. The main income source is an annual subscription from advertiser members, collected and remitted by their advertising agencies or media-buying companies by means of a levy of 0.2% (€2 per €1000) of media spend. The distribution of the cost across the industry ensures that all sectors of advertising participate in the support of the system but that none exercise any special influence over its operations. This independent status of the ASAI is a key factor in maintaining public and consumer confidence in the advertising self-regulatory system.
8. Audited accounts of the ASAI are published with the Annual Report, copies of which are available on request and on the ASAI website - <http://www.asai.ie>.

## 6. The European Dimension

### European Advertising Standards Alliance (EASA)

1. The ASAI is a founder member of the European Advertising Standards Alliance (EASA). EASA is a non-profit organisation based in Brussels which brings together 27 national European and non-European advertising self-regulatory organisations (SROs) and 14 organisations representing the advertising industry in Europe – advertisers, agencies and various forms of media, including television, radio, press and outdoor poster advertising.
2. EASA is the single authoritative voice of advertising self-regulation whose mission is to promote responsible advertising through best practice in self-regulation across the European Union for the benefit of consumers and business. EASA's objectives are to promote, support and extend self-regulation, develop best practice, handle cross-border complaints and provide information and research.

### Promoting Self-Regulation

3. EASA is committed to extending effective advertising self-regulation across the European Union. In June 2004, all EASA's industry members signed a Self-Regulatory Charter in front of members of the European Commission, committing the advertising industry to increased moral and financial support for self-regulatory systems across Europe. The Charter outlines 10 concrete commitments related to SRO codes and operations as well as geographical and media coverage and consumer awareness. Since then, EASA has worked to implement these commitments across the European Union and especially to set up and train advertising self-regulatory systems in the new Member States.

### **Cross-Border Complaints**

4. EASA supervises the operation of the Cross-Border Complaints System, details of which are set out in Section 4, on page 80.
  
5. In addition, EASA is an active member of the Rogue Trader Prevention Taskforce, which implements strategies to combat advertising scams across Europe. As such, EASA works closely with national authorities to share information and consolidate efforts to tackle rogue trader activity.

### **EU Legislation**

6. For advertising self-regulation to maintain and further develop its role in ensuring consumer protection, it must be accepted and recognised by Member States as complementary to existing legislation. EASA works closely with the European Commission and Parliament to ensure that new legislation affecting the advertising industry provides scope for and gives recognition to self-regulation. EASA is particularly active in consultation with the Commission and Parliament on the revision of the Television without Frontiers Directive. EASA, along with NGOs and European Commission representatives, participated in three dedicated advertising roundtables with the European Commission Health & Consumer Protection Directorate-General, chaired by Robert Madelin, Director-General, in late 2005/early 2006. The roundtables explored the existing and potential benefits of advertising self-regulation and a report on the issue was released by the Director-General in July 2006.

### Expertise

7. As the single authoritative voice of advertising self-regulation in Europe, EASA provides expertise to EU and international bodies, including the WHO, OECD and UNEP. EASA is also an active member of the International Chamber of Commerce (ICC), on whose global code of advertising all SRO codes are based, and currently co-chairs the ICC taskforce on code revision and consolidation.
  
8. For further information on EASA and European advertising self-regulation, visit the EASA website [www.easa-alliance.org](http://www.easa-alliance.org) or e-mail [library@easaalliance.org](mailto:library@easaalliance.org). Address: 10-10a Rue de la Pépinière, B-1000, Brussels, Belgium. Tel: +32 (0) 2513 7806. Fax: +32 (0) 2513 2861.

## Appendix I Review System

In exceptional circumstances, the Complaints Committee can be asked to reconsider its decisions (“Decisions”). Reviews of Decisions will be conducted on the basis of, and in accordance with, the principles, structures and procedures set out below.

### **Review Panel**

A Review Panel (“the Panel”) consisting of three members will be appointed by the Board of the Authority and will hold office for five years. Members of the panel can be reappointed for one further term of five years, but will not, thereafter, be eligible for reappointment.

The Panel will comprise a Chairman and two ordinary members.

The Chairman of the Panel will be independent of the advertising industry and the Authority. One ordinary member will have a background in the advertising industry and the remaining ordinary member will have a consumer, or non-advertising-industry, background.

### **Basis of Review**

Applications for a review can be made to the Panel on one or more of the following grounds:

- new, fresh or additional relevant evidence has become available, which could have a significant bearing on the Decision concerned (in such cases, an explanation as to why such evidence was not previously available and/or provided, will be required);
- and/or



- the Decision concerned was clearly and manifestly in error, having regard to the provisions of the Code, wholly irrational, or clearly made against the weight of the evidence before the Complaints Committee at the time of the making of the Decision;  
and/or
- there was a substantial flaw in the process by which the Decision was reached.

The onus is on the applicant for a review (“the Applicant”) to make out a sufficiently arguable case in relation to any of the aforementioned grounds which is/are the subject of the relevant application for a review.

No review will proceed if the point at issue is the subject of simultaneous or contemplated legal action between anyone directly involved .

### **Application for a Review**

An application for a review (“Application”) will only be accepted from the parties to the original complaint and must be submitted on the designated application form (“Application Form”). Any one of the parties to the original complaint may apply for a review of a Decision. Such requests should be sent within 21 days of the date on the ASAI’s letter of notification of the Decision. The Review Panel may waive this 21 day time limit if they judge it fair and reasonable to do so.

For consumer applicants, there will be a nominal charge of €30, and in the case of advertisers the fee will be €5,000. These charges will be reimbursed if the Decision is ultimately substantially altered in favour of the applicant, or reversed, by the Complaints Committee.

## Review Procedure

Having received the Application Form and any submissions forwarded by the Secretariat, the Panel will first decide whether the application should be accepted. When an Application for a review is accepted by the Panel, the Secretariat will forward a copy of the Application Form to the other parties to the original complaint and seek submissions from such parties in relation to the Application.

Any submissions received will then be forwarded by the Secretariat to the Panel.

The Panel will then consider all the submissions concerned. The Panel may, in addition, seek or obtain such further information and submissions as it thinks appropriate, fair and reasonable in the circumstances. Having considered the foregoing, and taking into account the fact that the onus is on the applicant to make out a sufficiently arguable case, it will then decide as follows:

- That the Application does not meet any of the three grounds for review set out above. The Panel may find, in this regard,
  - that the new, fresh or additional evidence is not relevant, or sufficiently relevant, and/or that the said evidence could not have a significant bearing on the Decision concerned, and/or that the explanation for the previous non-availability and/or non-provision of the said evidence is unsatisfactory; and/or
  - that no arguable case has been made that the Decision concerned was clearly and manifestly in error, having regard to the provisions of the Code, wholly irrational, or clearly made against the weight of the evidence before the Complaints Committee at the time of the making of the Decision;

and/or

- that no arguable case has been made that there was a substantial flaw in the process by which the Decision concerned was reached,

and that, accordingly, no further action will be taken on foot of the Application.

Or

- That one or more of the three grounds set out above has been met. The Panel may find, in this regard,

- that the new, fresh or additional evidence appears to be relevant, or sufficiently relevant, and/or that the said evidence could have a significant bearing on the Decision concerned, and that the explanation for the previous non-availability and/or non-provision of the said evidence is satisfactory;

and/or

- that an arguable case has been made that the Decision concerned was clearly and manifestly in error, having regard to the provisions of the Code, wholly irrational, or clearly made against the weight of the evidence before the Complaints Committee at the time of the making of the Decision;

and/or

- that an arguable case has been made that there was a substantial flaw in the process by which the Decision concerned was reached,

and that the case should be referred back to the Complaints Committee to be reconsidered accordingly.

In either case, the Panel will set out the reasoning for its decision, and the decision will be communicated by the Secretariat to all parties involved.

For the avoidance of doubt, for the purpose of arriving at a decision as to whether an arguable case has been made that a Decision was clearly and manifestly in error, having regard to the provisions of the Code, or wholly irrational, the Panel will not be bound by any interpretation by the Complaints Committee of any provision of the Code which formed part of the Decision concerned.

There is no appeal from a decision of the Panel and, as provided for at Paragraph 17 of the Complaints Procedures, the Decision of the Complaints Committee will stand, pending the outcome of the reconsideration by the Complaints Committee of the Decision concerned.

Where a case has been referred back to the Complaints Committee, the Committee will have regard to the decision and reasoning of the Panel and will, as it considers appropriate,

- affirm or vary the Decision,

or

- annul the Decision and, if appropriate, make such decision as it considers proper in relation to the matter concerned,

in accordance with the Code.

The Complaints Committee's decision on a reviewed and reconsidered Decision is final.

The Secretariat will advise all relevant parties of the Decision of the Complaints Committee. Adjudications that are revised following a review will be published on the ASAI website at [www.asai.ie](http://www.asai.ie).

## Appendix II Statutes, Statutory Instruments and Other Codes

### **Statutes, Statutory Instruments and Other Codes listed by sponsoring Departments or organisations affecting Advertising and Promotional and Direct Marketing**

The following list is not exhaustive and is for guidance only.

#### **Department of Agriculture, Food and Rural Development**

Animal Remedies Act, 1993

European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products Regulations, 2001 (S.I. No. 624/2001)

#### **Department of Arts, Sport and Tourism**

Tourist Traffic Acts, 1939 to 2003

#### **Department of Communications, Marine and Natural Resources**

Broadcasting Act, 1990

Broadcasting Act, 2001

Broadcasting Authority Acts, 1960 - 1993

European Communities (Electronic Communications Network and Services) (Data Protection and Privacy) Regulations, 2003 (S.I. 535/2003)

European Communities (Television Broadcasting) Regulations, 1999. These regulations implement EU Directive 89/552/EEC as amended by EU Council Directive 97/36/EC (Television without Frontiers) (S.I. No. 313 of 1999).

Radio and Television Act, 1988

### **Department of Enterprise, Trade and Employment**

Charges (Hairdressing) Display Order, 1976 (S.I. 156/1976)

Consumer Credit Act, 1995

Consumer Information Act, 1978

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. No. 168/1984)

Consumer Information (Advertisement for Airfares) Order, 2000 (S.I. No. 468/2000)

Consumer Information (Diesel and Petrol) (Reduction in Retail Price) Order, 1997 (S.I. No. 179/1997)

Copyright and Related Rights Act, 2000

Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising

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

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

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

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 Communication) (Amendment) Regulations, 2005 (S.I. No. 71/2005)

Occasional Trading Act, 1979

Pyramid Selling Act, 1972

Retail Price (Beverages in Licensed Premises) Display Order, 1999 (S.I. 263/1999)

Retail Price (Diesel and Petrol) Display Order, 1997 (S.I. 178/1997)

Retail Price (Food in Catering Establishments) Display Order, 1984 (S.I. 213/1984)

Sale of Goods and Supply of Services Act, 1980

Trade Marks Act, 1996

### **Department of the Environment, Heritage and Local Government**

Local Government (Planning and Development) Acts, 1963 - 1993

Local Government (Planning and Development) Regulations, 1994

Planning and Development Act, 2000

Waste Electrical and Electronic Equipment (WEEE) Regulations, 2005 (S.I. 340/2005)

**Department of Finance**

Building Societies Act, 1989

Central Bank Acts, 1942 - 1989

Consumer Credit Act, 1995

Consumer Credit Act, 1995 (Section 28) Regulations, 1996  
(S.I. 254 /1996)

Copyright Act, 1963

Credit Unions Act, 1997

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

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

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

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

Investment Intermediaries Act, 1995

Investor Compensation Act, 1998

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

Stock Exchange Act, 1995

Trustee Savings Banks Act, 1989

Unit Trusts Act, 1990

**Department of Health and Children**

Adoption Acts, 1952 - 1998

European Communities (Cosmetic Products) Regulations,  
1997 - 2000 (S.I. 87/1997; S.I. No. 213/1998;  
S.I. No. 150/2000; S.I. No. 203/2000; SI 373 of 2006)



- European Communities (Food Supplements) Regulations, 2003 (S.I. 539/2003)
- European Communities (Infant Formulae and Follow-on Formulae) Regulations, 1998-2000 (S.I. 243/1998; S.I. No. 446/2000)
- Health (Foods for Particular Nutritional Uses) Regulations, 1991 (S.I. 331/1991)
- Medical Preparations (Advertising) Regulations, 1993 and 1996 (S.I. No. 76/1993)
- Medicinal Products (Prescription and Control of Supply) Regulations, 2003 (S.I. No. 540/2003)
- Opticians Acts, 1956 and 2003
- Public Health (Tobacco) Acts, 2002 and 2004
- Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations, 1994 - 2000
- Voluntary code to limit the exposure of young people to alcoholic drink advertising in cinemas
- Voluntary code to limit the exposure of young people to alcoholic drink advertising on outdoor/ambient media
- Voluntary code to limit the exposure of young people to alcoholic drink advertising on radio
- Voluntary code to limit the exposure of young people to alcoholic drink advertising on television

### **Department of Justice, Equality and Law Reform**

- Betting Act, 1931
- Censorship of Publications Acts, 1929 – 1967
- Censorship of Publications Regulations, 1980 (S.I. No. 292/1980)
- Data Protection Acts, 1988 and 2003
- Employment Equality Acts, 1998 and 2004



Equal Status Acts, 2000 to 2004

Gaming and Lotteries Act, 1956

Licensing Acts, 1833 to 2004, (in particular the Intoxicating Liquor Act, 1988, the Intoxicating Liquor Act, 2000, and the Intoxicating Liquor Act, 2003)

Solicitors Acts, 1952-2002

Solicitors (Advertising) Regulations, 2002

### **Department of Transport**

Package Holidays and Travel Trade Act, 1995, and the regulations made under it

### **OTHER CODES**

Animal and Plant Health Association - Code of Practice for the Animal Health Industry with guidelines for TV and Radio advertising

Broadcasting Commission of Ireland - Children's Advertising Code

Broadcasting Commission of Ireland - General Advertising Codes

Irish Association of Investment Managers - Code of Advertising Practice

Irish Brokers Association - Code of Conduct for Insurance Intermediaries

Irish Direct Marketing Association - Code of Practice on Direct Marketing

Irish Direct Marketing Association - Code of Practice on Data Protection

Irish Direct Marketing Association - Code of Practice on Telemarketing

- Irish Financial Services Regulatory Authority - Advertising Requirements applicable to Credit Institutions, issued in accordance with Section 117(1) of the Central Bank Act, 1989
- Irish Financial Services Regulatory Authority - Handbook for Authorised Advisors, issued under Section 37 of the Investment Intermediaries Act, 1995
- Irish Financial Services Regulatory Authority - Handbook for Restricted Activity Investment Product Intermediaries, issued under Section 37 of the Investment Intermediaries Act, 1995
- Irish Financial Services Regulatory Authority - Handbook for Investment and Stockbroking Firms, issued under Section 31 of the Stock Exchange Act, 1995, and Section 23 of the Investment Intermediaries Act, 1995
- Irish Financial Services Regulatory Authority - Interim Code of Practice for Insurance Undertakings, issued under Section 117 of the Central Bank Act, 1989
- Irish Insurance Federation - Code of Practice on Advertising and Sales Material
- Irish Mail Order Association - Code of Practice on Catalogue Mail Order Trading
- Irish Pharmaceutical Healthcare Association - Code of Standards of Advertising Practice for the Consumer Healthcare Industry
- MEAS - Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks.
- Regulator of Premium Rate Telecommunications Services - REGTEL Code of Practice
- The Dental Council - Guidelines on Public Relations and Communications
- The Medical Council - Guide to Ethical Conduct (Advertising and the Media)



### The Opticians Board - Rules relating to Advertising

**NOTE:** Advertisers and promoters should also comply with any relevant Codes of Practice approved from time to time by the Director of Consumer Affairs.

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