



Code of Standards for Advertising and Marketing Communications in Ireland



7th Edition
Effective from 1st March 2016

The Essence of Good Advertising

All marketing communications should be legal, decent, honest and truthful and should not mislead the consumer.

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.

CHAIRMAN'S FOREWORD

This 7th edition of the Advertising Standards Authority for Ireland (ASAI) *Code of Standards for Advertising and Marketing Communications in Ireland* is the result of a comprehensive review undertaken by the ASAI. Since its introduction in January 2007, the current Code (6th edition), with some well publicised amendments in the remit for digital media, has stood the test of time, serving both consumers and industry.

We live, however, in a world of ever-changing communication channels and platforms. It seems, particularly in all digital areas, that new, innovative and immediate means of creating and delivering persuasive yet responsible communications are challenging all elements of the advertising and marketing professions. Against this background, we have undertaken the widest consultative process in the history of the ASAI. Public advertising campaigns on radio, in press, outdoor and on-line were launched with the help and advice of agency and media partners, to whom we are particularly grateful.

The ensuing consultation process, including direct communications with selected stakeholders, resulted in the receipt of an impressive number of submissions from the public, Government departments and agencies of state, NGO's, professional representative bodies and all areas of the industry.

The output of this process is the 7th edition of the Advertising Standards Authority for Ireland's Code of Standards for Advertising and Marketing Communications and it is being published in the best interests of consumers, all involved in advertising and Irish society in general. It is compatible with current legislation in Ireland and the EU and, through the co-operation of the ASAI with statutory regulators and state agencies, the combination of self-regulation and statutory legislation can be used to the best advantage of consumers and responsible advertisers.

The ever changing complexities of modern-day Irish business and Irish society will require regular inspection and appraisal of the Code. Hence, we envisage the need for an ongoing process of additions, amendments and strengthening, as required, over the coming years. This is necessary to ensure that the Code of Standards for Advertising and Marketing Communications in Ireland will remain, at all times, credible and relevant.

Finally, I would like to acknowledge the dedication and professionalism of all those involved in the work of the review process. They include members of the Board, the Complaints Committee, industry experts and, most significantly, the staff of the ASAI who, together with our legal researcher, directed and supported the complex task of research, consultation and rewriting.

Sean O'Meara,
CHAIRMAN.

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INTRODUCTION
TO ADVERTISING
SELF-REGULATION
AND THE ASAI

SELF-REGULATION

1. Advertising self-regulation in Ireland has existed for over 30 years since the Advertising Standards Authority for Ireland (the “ASAI”) was established by the advertising industry in 1981.
2. Advertising self-regulation means the strict adherence by the advertising industry to standards drawn up by and on behalf of all advertising interests and operated in the interests of consumers. It involves the enforcement of those standards through the commitment and cooperation of advertisers, agencies and media.
3. Marketing communications in the media and sales promotions should be legal, decent, honest and truthful and should not mislead the consumer. The rules to ensure this are set out in this Code of Standards for Advertising and Marketing Communications in Ireland (7th Edition) (“the Code”).
4. The Code recognises the right of advertisers and individuals to freedom of expression. However, this freedom must be balanced with the right of others to not be offended or misled by marketing communications. The application of the Code seeks to balance these rights in a fair and impartial manner.
5. If a marketing communication expresses an opinion and that marketing communication is within remit, the ASAI will, where necessary, adjudicate on that marketing communication if the opinion is objectively verifiable.
6. 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.
7. Media play an important role in applying the provisions of the Code. While the media will refuse to publish a marketing communication that contravenes the Code, they are under no obligation to publish every marketing communication offered and will exercise discretion in each case. The fact that a marketing communication conforms to the Code is not a guarantee that it will be accepted.

THE ASAI

8. The ASAI is an independent self-regulatory body, financed by the advertising industry, that is committed to promoting and enforcing the highest standards of marketing communications in the public interest.
9. The ASAI administers the Code, including investigating complaints made regarding alleged breaches of the Code and providing Copy Advice and Monitoring services. (For details of the Complaints Procedures and Copy Advice and Monitoring Services see Page 116, Page 124 and Page 125.)
10. The ASAI is concerned with the content of 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.
11. The ASAI has no mandate to act as a censor of public morals. In assessing complaints involving considerations of decency and propriety, the ASAI is guided by the standards that are observed generally throughout Irish society.
12. The Code is administered primarily in the interests of consumers.

THE EASA

13. The ASAI is a founder member of the **European Advertising Standards Alliance** (the “EASA”).
14. The EASA is a non-profit organisation based in Brussels which brings together 38 national European and non-European advertising self-regulatory organisations (SROs) and 16 organisations representing the advertising industry in Europe.
15. The EASA is the single authoritative voice on advertising self-regulation issues and promotes high ethical standards in commercial communications by means of effective self-regulation, while being mindful of national differences of culture, legal and commercial practice. These standards are promoted, for example, via EASA’s Advertising Self-Regulatory Charter and EASA’s Best Practice Recommendations.

16. The EASA is inherently a European association. However, as advertising issues are becoming more and more global it has set up an International Council with the nine non-European members to discuss and respond to these issues.

SELF-REGULATION AND THE LAW

17. There is a large body of law governing advertising (a non-exhaustive list of which can be found on www.asai.ie).
18. 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 intends to provide 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.
19. 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.

Further information on advertising self-regulation, the ASAI and the operation of the system is available at www.asai.ie.

RESPONSIBILITY CLAUSE

20. 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 ASAI will be adhered to.



THE CODE OF
STANDARDS FOR
ADVERTISING
AND MARKETING
COMMUNICATIONS
IN IRELAND



THE CODE OF STANDARDS FOR ADVERTISING AND MARKETING COMMUNICATIONS IN IRELAND

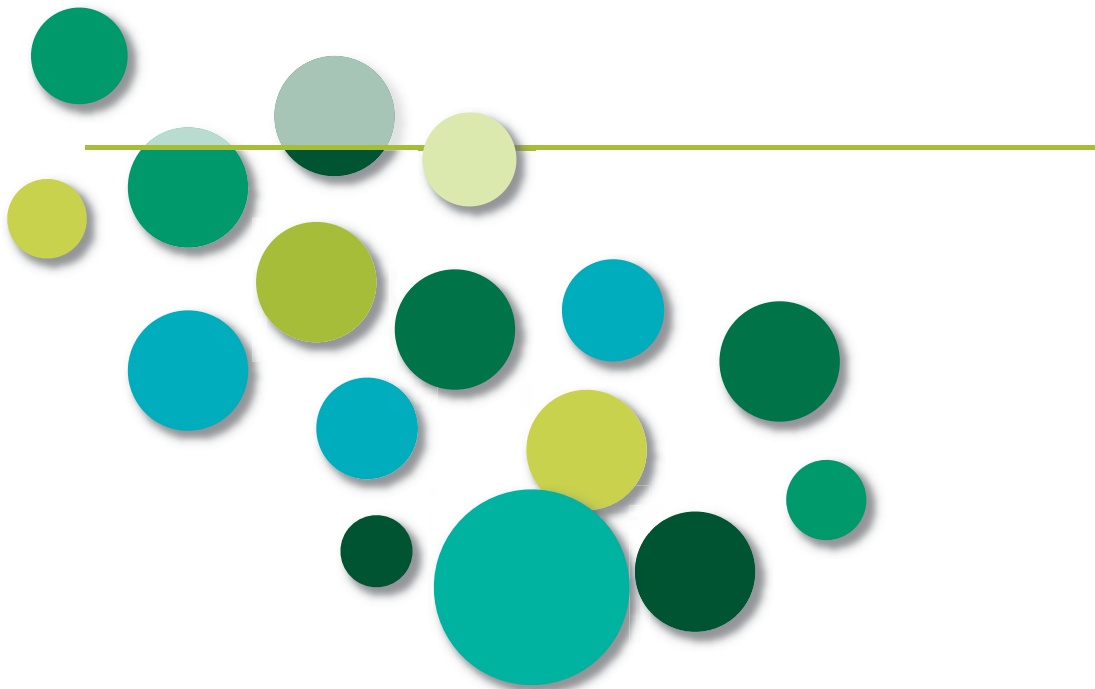
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Section 1:

DEFINITIONS



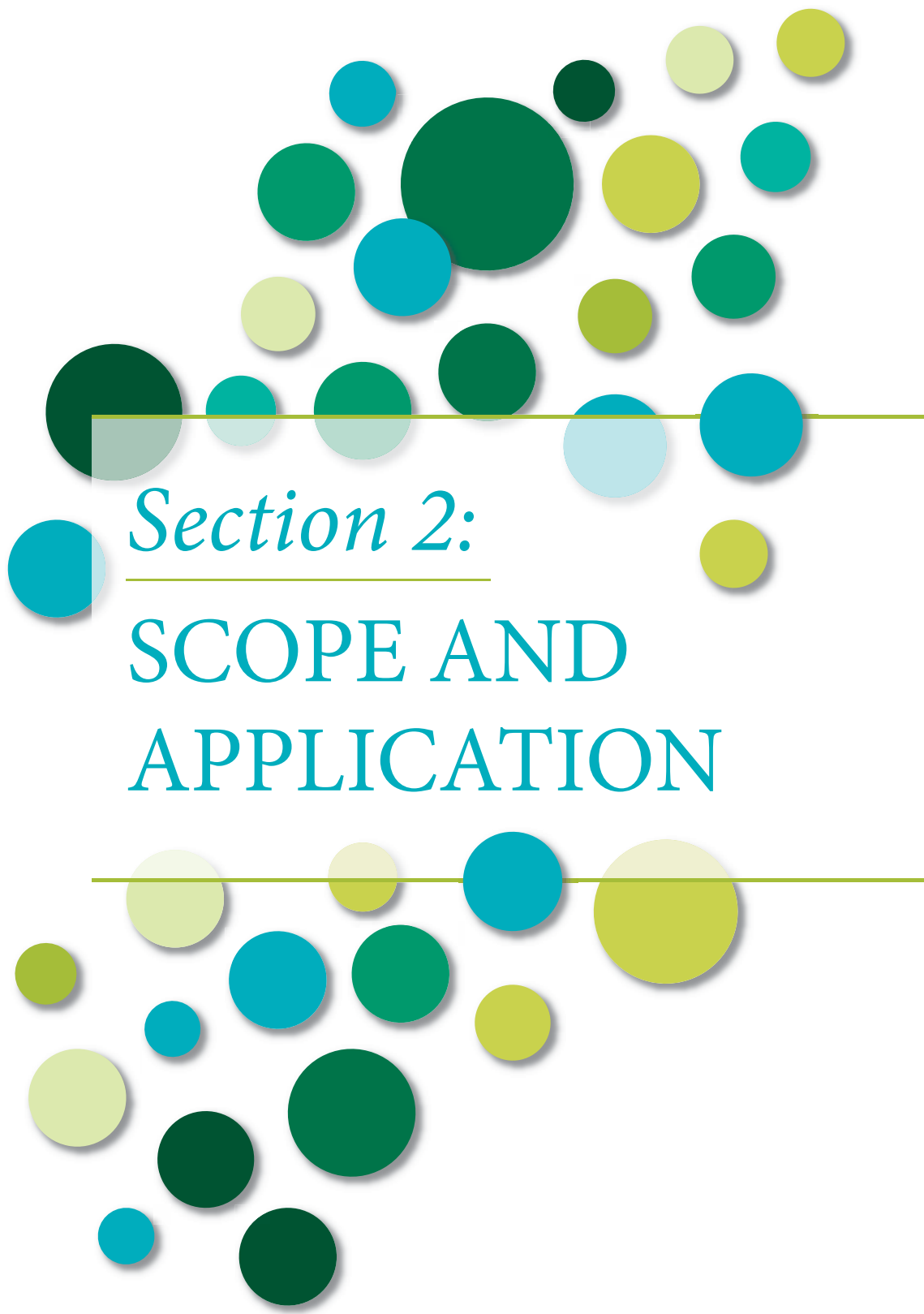
SECTION 1: DEFINITIONS

- 1.1** The following definitions apply to the Code and to the procedures for its implementation:
- (a)** The ASAI means the Advertising Standards Authority for Ireland, the Board, the Complaints Committee, the Review Panel and the Executive.
 - (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 or in a space that would generally be provided for in return for payment.
 - (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, whether in the course of business or not.
 - (g)** Unless otherwise stated in a particular provision, for the purposes of the Code, a child is anyone under 18 years of age.
 - (h)** A claim can be direct or implied, written, verbal or visual. The name of a product can constitute a claim.
 - (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.

- (l) Viral advertising is an email, text or other non-broadcast marketing communication designed to stimulate significant circulation by recipients to generate commercial or reputational benefit to the advertiser. (Viral advertisements are usually put into circulation (“seeded”) by the advertiser with a request, either explicit or implicit, for the message to be forwarded to others. Sometimes they include a video clip or a link to website material or are part of a sales promotion campaign.)
- (m) Investor relations material is information about an organisation (including its goods or services) addressed to the financial community, including shareholders and investors, as well as others who might be interested in the company’s stock or financial stability.
- (n) An advertorial is 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.
- (o) An advergame is an electronic game to promote a product or brand by the brand/product owner.

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 a reference to a gender should be construed as if it also imported any other gender, unless the contrary intention appears. This includes people who have a gender identity different to the gender assigned at birth and those people who wish to portray their gender identity in a different way to the gender assigned at birth.



Section 2:

SCOPE AND
APPLICATION

SECTION 2: SCOPE AND APPLICATION

- 2.1** The primary objective of the Code is to regulate commercial marketing communications in the interest of consumers ensuring, so far as possible, that all marketing communications are prepared with a sense of responsibility both to the consumer and to society.
- 2.2** The Code applies to:
- (a)** Marketing communications in newspapers, magazines and other printed publications, including free distribution newspapers and magazines.
 - (b)** Marketing communications in posters and other promotional media in public places, including moving images and digital screens.
 - (c)** Marketing communications in brochures, leaflets, circulars, mailings, fax transmissions, emails and text transmissions.
 - (d)** Marketing communications broadcast on television or radio or screened in cinemas or with video, DVD or Blu-ray.
 - (e)** Marketing communications carried on any digital and electronic storage materials, media and/or computer systems including, but not limited to, online advertisements in paid-for space (including banner or pop up advertisements and online video advertisements); paid-for search listings; preferential listings on price comparison sites; viral advertisements; in-game advertisements; commercial classified advertisements; advergames that feature in-display advertisements; advertisements transmitted by Bluetooth; advertisements distributed through web widgets and online sales promotions and prize promotions.
 - (f)** Promotional marketing and sales promotions.
 - (g)** Advertorials.
 - (h)** Marketing communications in non-paid-for space online, under the control of the advertiser or their agent, including but not limited to advertisers' own websites, that are directly connected with the supply or transfer of goods, services, facilities, opportunities, prizes and gifts or which consist of direct solicitations for donations.

- 2.3** 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 (Section 5) 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 online.
 - (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 (which is regulated by **ComReg**) as opposed to marketing communications for premium rate services, which the Code does apply to.
 - (n) Marketing communications in foreign media. Direct marketing communications that originate outside Ireland and sales promotions and marketing communications on non-Irish websites, if targeted at Irish consumers, are subject to the jurisdiction of the relevant authority in the country from which they originate if that authority operates a cross border complaint system. If it does not, the ASAI will take what action it can. Most members of the European Union, and many non-European countries, have a self-regulatory organisation that is a member of the EASA. The EASA co-ordinates the cross-border complaints system for its members (which includes the ASAI).

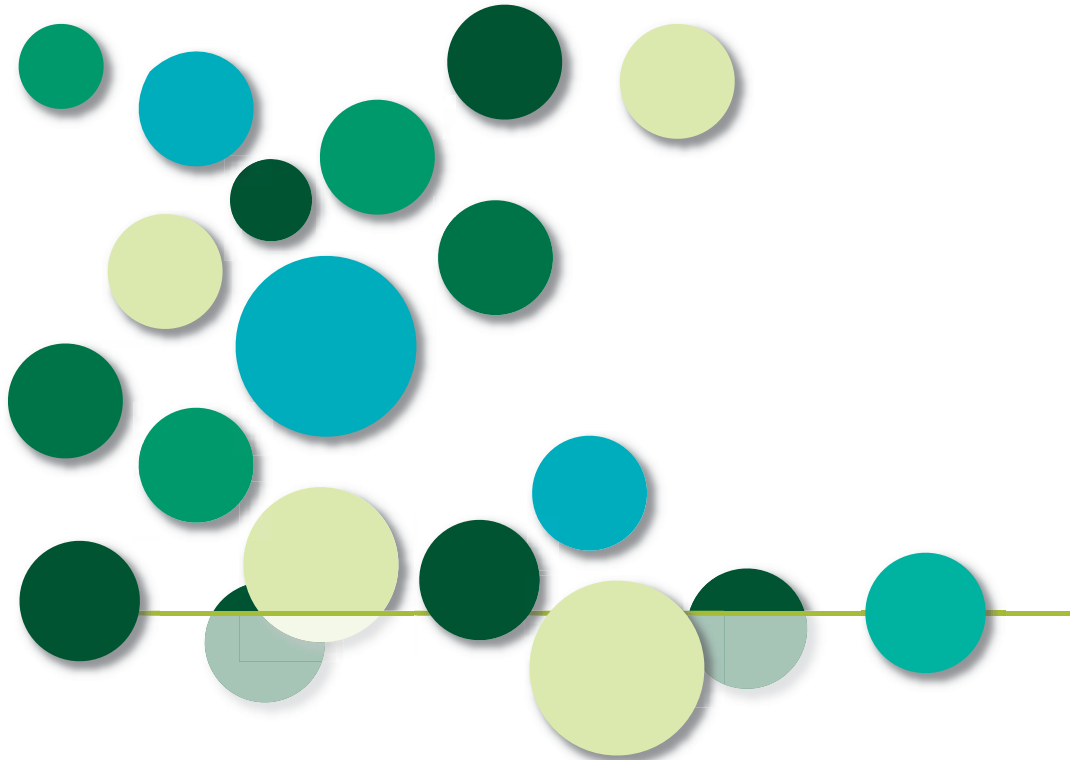
- (o) Sponsorship (marketing communications that refer to a sponsorship are covered by the Code).
- (p) Investor relations and corporate material.
- (q) Website content not covered by 2.2(e) and 2.2(h), including but not limited to editorial content, news or public relations material, corporate reports and natural listings on a search engine or a price-comparison site.
- (r) Heritage advertising, where that advertising is not part of the advertiser's current promotional strategy and is published in an appropriate context. In the event that an advertisement or marketing communication is the subject of a recent Complaints Committee adjudication, then Section 3.9 of the Code may be invoked to bring such heritage advertising or marketing communications within remit.

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

- (a) An invitation from the ASAI to comment on a complaint does not mean that the ASAI 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.

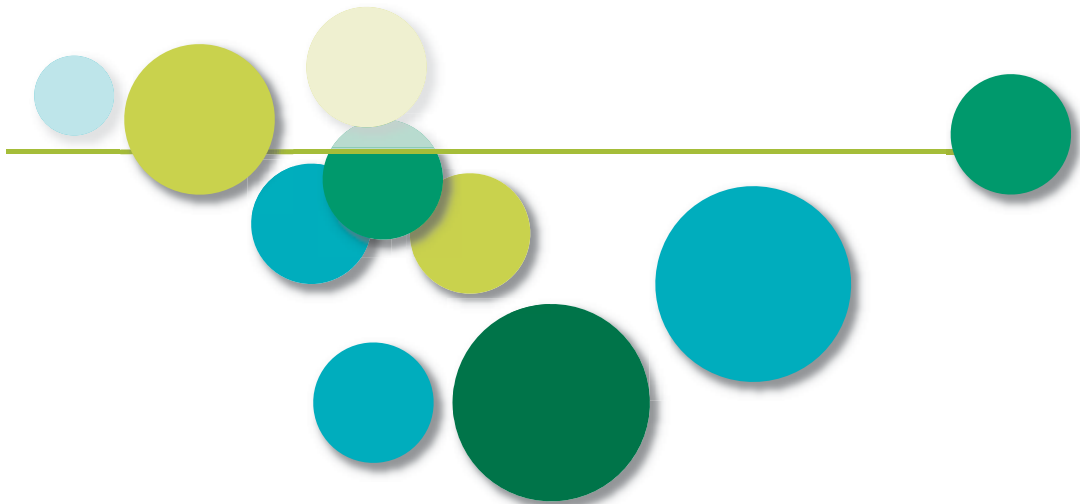
- (e) The Code does not deal with contractual relationships between advertisers and consumers. It does not presume to judge whether a product represents value for money nor does it seek to regulate terms of business.
- (f) The ASAI does not act as an arbitrator between conflicting ideologies.
- (g) No legal advice can be given or should be presumed in communications from the ASAI.
- (h) The judgement of the ASAI on any matter of interpretation of the Code is final.

2.5 Procedures for the implementation of the Code are set out in Appendix I.



Section 3:

GENERAL RULES



SECTION 3: GENERAL RULES

Principles

- 3.1** Primary responsibility for observing the Code rests with advertisers. Advertisers cannot disclaim responsibility where they have caused, directly or indirectly, advertising to be created by direct agents or other third parties on their behalf. Others involved in the preparation and publication of marketing communications, such as agencies, media, affiliates and other service providers, also accept an obligation to abide by the Code.
- 3.2** Marketing communications should be legal, decent, honest and truthful.
- 3.3** Marketing communications should be prepared with a sense of responsibility to consumers and to society.
- 3.4** Marketing communications should respect the principles of fair competition generally accepted in business.
- 3.5** The ASAI will take into account the impression created by marketing communications as well as specific claims. It will adjudicate on the basis of the likely effect on consumers, when taken as a whole or in context, not the advertiser's intention.
- 3.6** A marketing communication should not bring advertising into disrepute.
- 3.7** Marketing communications should not glamorise products that are otherwise not permitted, by law, to be advertised.
- 3.8** The media play an important role in applying the provisions of the Code. While the media will refuse to publish a marketing communication that contravenes the Code, they are under no obligation to publish every marketing communication offered and will exercise discretion in each case. The fact that a marketing communication conforms to the Code is not a guarantee that it will be accepted.
- 3.9** The Code is applied in the spirit as well as in the letter.
- 3.10** 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.

- 3.11** The ASAI 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.
- 3.12** The full name and geographical business address of advertisers should normally be provided without delay if requested by the ASAI from an agency or relevant third party.
- 3.13** Rules in Section 18 relate to Online Behavioural Advertising (OBA), and apply only to OBA third parties as defined in Section 18. If the ASAI is unable to identify the relevant OBA third party, the advertiser – on behalf of whom the OBA advertisement is delivered to web users – must, in good faith, co-operate with the ASAI to help determine the identity of the OBA third party.

Legality

- 3.14** 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 a matter for the courts or other appropriate regulatory authorities.
- 3.15** Advertisers should not state or imply that a product can legally be sold if it cannot. It is not a matter, however, for the ASAI to determine whether a product can or cannot be legally sold in Ireland.

Decency and Propriety

- 3.16** Humour and satire are natural and accepted features of the relationship between individuals and groups within society. Humorous and satirical treatment of people and groups of people is acceptable, provided that, taking into account generally prevailing societal standards, the portrayal is not likely to cause grave or widespread offence, or to cause hostility, contempt, abuse or ridicule.
- 3.17** Marketing communications should respect the dignity of all persons and should avoid causing offence on grounds of gender, marital or civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community.
- 3.18** Marketing communications should respect the principle of equality of men and women. They should avoid gender stereotyping and any exploitation or demeaning of men or women. Where appropriate, marketing

communications should use generic terms that include both the masculine and feminine gender; for example, the term “business executive” can be used to refer to both men and women.

3.19 To avoid causing offence, marketing communications should be responsive to the diversity in Irish society and marketing communications which portray or refer to minority groups or vulnerable people 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.

3.20 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 be in breach of the Code. Nevertheless, advertisers are urged to consider public sensitivities before using potentially offensive material.

3.21 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.

3.22 Compliance with the Code is assessed on the basis of the standards of taste, decency and propriety generally accepted in Ireland. In this regard, attention is drawn to Section 2.4(c).

Fear and Distress

3.23 A marketing communication should not cause fear or distress without good reason, such as for example, 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

- 3.24 (a)** A marketing communication should not encourage or condone dangerous behaviour or unsafe practices.
- (b)** Where the purpose of a marketing communication is to promote safety it may be acceptable to portray dangerous behaviour or unsafe practices.

Violence and Anti-Social Behaviour

- 3.25** A marketing communication should not contain anything that condones, or is likely to provoke, bullying, violence or antisocial behaviour, nuisance, personal injury or damage to property.

Portrayal of Persons or Property

- 3.26** Advertisers are reminded that persons who do not wish to be associated with a marketing communication may take legal action against them.

- 3.27** Subject to the exceptions referred to in 3.28 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.

- 3.28** Exceptions where permission may not be required 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.

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

- 3.30** References to deceased persons in marketing communications should be handled with particular care to avoid causing offence or distress.

Recognisability

- 3.31** A marketing communication should be designed and presented in such a way that it is clear that it is a marketing communication.

- 3.32** Marketing communications should not misrepresent their true purpose. Marketing communications should not be presented as, for example, market research, consumer surveys, user-generated content, private blogs, or independent reviews if their purpose is marketing, i.e. the promotion of a product.
- 3.33** Advertorials should be clearly identified, should be distinguished from editorial matter and should comply with the Code.
- 3.34** 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”).
- 3.35** Marketing communications should, where appropriate, include contact information to enable the consumer to get in touch with the advertiser without difficulty.
- 3.36** Marketing communications that solicit a response constituting an order for which payment will be required should make the fact that payment will be required clear.
- 3.37** Marketing communications soliciting orders should not be presented in a form which might be mistaken for an invoice, or otherwise suggest that payment is due when this is not the case.

Other Regulatory Requirements

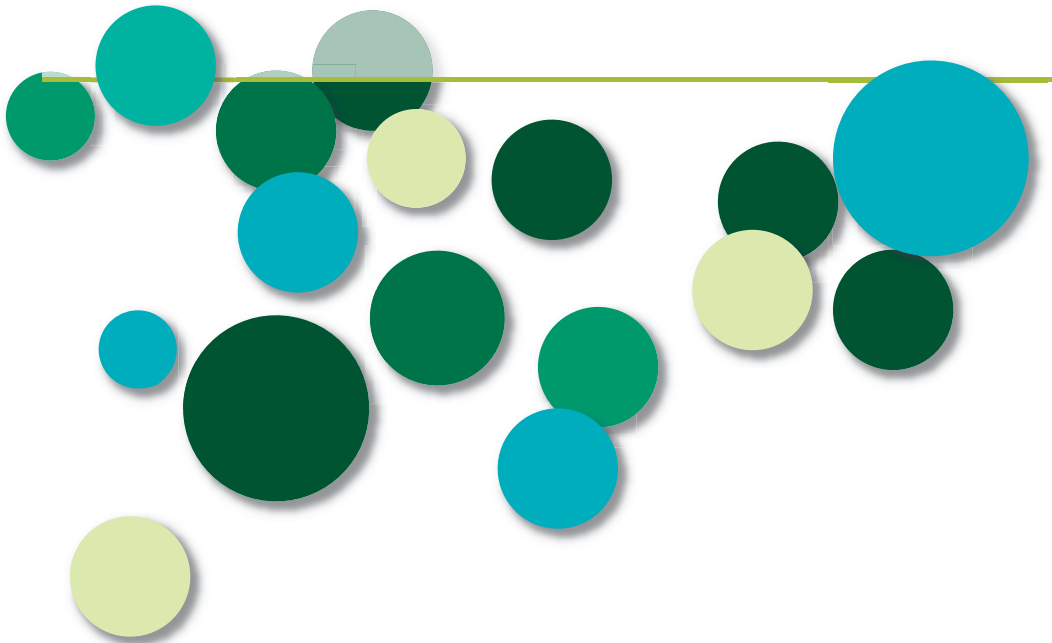
Data Protection

- 3.38** Attention is drawn to the requirements of the Data Protection Acts, **1988** and **2003**, and the ePrivacy Directive (**S.I. No. 336/2011**) in regard to the collection, processing, keeping, use and disclosure of personal data.



Section 4:

MISLEADING
ADVERTISING



SECTION 4: MISLEADING ADVERTISING

Truthfulness

- 4.1 A marketing communication should not mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.
- 4.2 Obvious untruths, exaggeration (“puffery”) 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.
- 4.3 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.

Honesty

- 4.4 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.
- 4.5 The design and presentation of marketing communications should allow them to be easily and clearly understood.
- 4.6 Disclaimers, asterisked, footnoted or “small print” information should not contradict more prominent aspects of the message. Such information should be of sufficient size and/or prominence and be located and presented in such a manner as to be clearly and easily legible and/or audible; where appropriate such information should be linked to the relevant part of the main copy.
- 4.7 Whether the presentation of information is insufficient or likely to mislead depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the advertiser takes to make that information available to the consumer by other reasonably accessible means.

Matters of Opinion

- 4.8 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.

Substantiation

- 4.9** A marketing communication should not contain claims – whether direct or indirect, expressed or implied – which a consumer would be likely to regard as being objectively true unless the objective truth of the claims can be substantiated.
- 4.10** Before offering a marketing communication for publication, advertisers should satisfy themselves that they will be able to provide documentary evidence to substantiate all claims that consumers are likely to regard as objective. Relevant evidence should be sent without delay if requested by the ASAI and should be adequate to support both detailed claims and the overall impression created by the marketing communication.
- 4.11** 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.
- 4.12** Marketing communications should not present statistics in such a way as to exaggerate the validity of an advertising claim nor give the unjustified impression that there is validity to the claim.
- 4.13** Marketing communications should not:
- (a) misuse, mischaracterise or misleadingly cite any technical data, e.g. research results or quotations from technical and scientific publications;
 - or
 - (b) use scientific terminology or vocabulary in such a way as to suggest falsely or misleadingly that an advertising claim has scientific validity.
- 4.14** 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.

Testimonials and Endorsements

- 4.15** 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 ASAI 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.

- 4.16** 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.
- 4.17** 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.
- 4.18** Endorsements by fictitious or historical characters should not be presented as though they are genuine testimonials.
- 4.19** 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.
- 4.20** Marketing communications should not display a trust mark, quality mark or equivalent without the necessary authorisation. Marketing communications should not claim that the advertiser (or any other entity referred to), the marketing communication or the advertised product has been approved, endorsed or authorised by any public or other body if it has not. Such a claim should not be made without complying with the terms of the approval, endorsement or authorisation from the relevant body. It shall not be for the ASAI to determine this, but evidence will be accepted from the relevant body.
- 4.21** Advertisers should not refer in a marketing communication to Copy Advice received from the ASAI or imply endorsement by the ASAI.

Prices

- 4.22** 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.
- 4.23** 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.)

- 4.24** 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.
- 4.25** If the cost of accessing a message or service, or communicating with the advertiser, is greater than the standard rate, this should be made clear in any marketing communications.
- 4.26** If a marketing communication involves a claim or creates an impression that a product was previously offered at a different price or at a particular price, it should be the case that the product was in fact previously offered at the specified price openly and in good faith and for a reasonable period of time.

Free Offers

See Sections 5.22 to 5.28 in Section 5: Promotional Marketing Practices.

Availability of Products

- 4.27** Advertisers should be in a position to meet any reasonable demand created by their advertising. If a product proves to be unavailable for any reason, or only available in insufficient quantity to meet demand, advertisers should take immediate action to ensure that any further marketing communications are amended or withdrawn.
- 4.28** 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 should:
- (a)** not exaggerate the availability of any of those products, and
 - (b)** be able to demonstrate that there is a reasonable supply or proportion of each of the various products available.
- 4.29** Products should not be advertised as a way of gauging possible demand unless the marketing communication makes this clear.
- 4.30** 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

- 4.31** 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. Marketing communications that do not identify a specific competitor can still be considered to contain an implicit comparative claim as a comparison could be made with all competition within an industry, for example, unqualified superlative claims.
- 4.32** Comparisons should be fair and should not give rise to a 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.
- 4.33** 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”, or similar – should be capable of substantiation with market share data or similar proof.
- 4.34** Marketing communications should not unfairly attack, discredit or denigrate other businesses or their products, trademarks, trade names or other distinguishing marks.

Exploitation of Goodwill

- 4.35** Marketing communications should not exploit or make unfair use of the goodwill attached to the name, trademark, trade name, other distinguishing mark, brand, slogan or marketing communications campaign of any other entity or person.

Imitation

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

Guarantees

- 4.37** 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 and all potentially substantial limitations or exclusions (such as, for example, one year; parts only) should be clearly indicated in the marketing communication.

- 4.38** “Guarantee” when used in a colloquial sense should not cause confusion about consumers’ statutory rights.
- 4.39** Marketing communications should not claim or imply that after-sales service is available in a European Economic Area (EEA) member state in which the advertised product or such a service is not available for sale.
- 4.40** If a marketing communication (in a language other than an official language of the EEA state where the trader is located) offers after-sales service but the after-sales service is not available in the language of the marketing communication, the advertiser should explain this to the consumer before the contract or agreement to purchase is concluded.



Section 5:

PROMOTIONAL
MARKETING
PRACTICES

SECTION 5: PROMOTIONAL MARKETING PRACTICES

Introduction

5.1 The provisions relating to promotional marketing practices regulate the nature and administration of those marketing techniques that involve the provision of direct or indirect additional benefits, usually on a temporary basis, designed to make goods or services more attractive to consumers. 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
- competitions.

5.2 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.

5.3 Promoters are responsible for all aspects and all stages of their promotions.

5.4 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.

Presentation

5.5 The presentation of sales promotions and the associated publicity should not mislead consumers.

5.6 All supporting advertising material should conform both to the law and to the Code. In particular, descriptions of promotional products should not overstate their quality, availability, uses or value.

Protection of Consumers

5.7 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.

- 5.8** 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.
- 5.9** 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. Prize-winners' interests should not be compromised by the publication of excessively detailed information.

Suitability

- 5.10** Promoters should not offer promotional products that 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

- 5.11** 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.
- 5.12** Phrases such as "subject to availability" do not relieve promoters of the obligation to take all reasonable steps to avoid disappointing participants.
- 5.13** 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 type and similar or greater quality and value, or a cash payment, should normally be substituted.

Quality

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

Terms and Conditions of the Promotion

5.15 The terms and conditions 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 promoter's full name and business address in a form that can be retained or continually accessed by consumers.
- (c) The closing date for entry or the submission of claims should be 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 should, normally, 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 (such as, for example, those of parents or guardians).
- (g) Any limit on the number of applications permitted.
- (h) Any limit on the number of promotional products that an individual consumer or household may claim or win.
- (i) Any other factor likely to influence consumers' decisions or understanding about the promotion.

5.16 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.

5.17 Marketing communications that include a promotion and are significantly limited by time or space should include as much information about significant terms and conditions as practicable and should direct consumers clearly to an easily accessible alternative source where all terms and conditions of the promotion are prominently stated. Participants should be able to retain this information or easily access it throughout the promotion.

Administration

- 5.18** Sales promotions should be conducted under proper supervision and with adequate resources. Promoters and intermediaries should not give consumers any justifiable grounds for complaint.
- 5.19** 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.
- 5.20** Promoters should fulfil applications within 30 days, unless
- (a) participants have been told in advance that it is impractical to do so, or
 - (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.
- 5.21** When damaged or faulty goods are received by a consumer, promoters should ensure either that such goods 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 provide them at no extra cost to the consumer.

Free Offers

- 5.22** An offer should be described as free only if consumers pay no more than any one or more of the following:
- (a) The minimum, unavoidable cost of responding to the promotion, such as, for example, the current public rate of postage, the cost of telephoning up to and including the standard national rate or the minimum, unavoidable cost of sending an email or SMS text message or other digital communication.
 - (b) The actual cost of freight or delivery.
 - (c) The cost, including incidental expenses, of any travel involved if consumers collect the product or service offered.

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

- 5.23** Advertisers should not attempt to recover their costs by reducing the quality or composition of a product, by imposing additional charges, by 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.
- 5.24** 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.
- 5.25** 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.
- 5.26** 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.
- 5.27** 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.
- 5.28** The fact that promotional products may be acquired free of charge does not dispense with the need for a full and correct description of the products.

Promotions with Prizes

- 5.29** Promotions involving prizes are subject to legal requirements and promoters are strongly advised to seek expert legal advice.
- 5.30** 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 (such as, for example from parent or employer);
 - (f) the criteria for judging entries;
 - (g) a full and accurate description of the prizes;

- (h) any limit on the number of prizes that an individual consumer or household may claim or win, any limitations imposed on acceptance of the prizes and any duties or obligations on the part of the winners (such as, for example, 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 5.34);
- (l) where appropriate, who owns the copyright of the entries;
- (m) whether and how entries will be returned;
- (n) whether the consumer may be liable to pay tax as a result of winning a prize.

5.31 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 and in such an event, the rules should contain nothing that would have influenced a consumer against making a purchase or participating. Participants should always be able to retain or easily access entry instructions and rules.

5.32 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.

5.33 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, in certain cases, be an acceptable basis for extending the promotion for a reasonable duration.

5.34 Promoters should either publish, or make available on request, details of the name and county of residence of prize-winners. 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 identified.

- 5.35** Unless otherwise stated in advance, prize-winners should receive their prizes no more than six weeks after the promotion has ended.
- 5.36** 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 ASAI on request.
- 5.37** 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.
- 5.38** When prize promotions are widely advertised, promoters should ensure that entry forms and any goods needed to establish proof of purchase are widely available.
- 5.39** 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. An individual who has been given a gift should not be included in a list comprising prize-winners.
- 5.40** Promoters should not exaggerate the likelihood of consumers winning a prize.
- 5.41** Promoters should:
- (a)** Specify the number and nature of available prizes or gifts, if applicable. If the exact number cannot be predetermined, a reasonable estimate of the number and a statement of their nature should be made.
 - (b)** Distinguish those prizes that could be won, including estimated prize funds, from those prizes that will be won by one individual at the end of the promotional period.
 - (c)** State whether prizes are to be awarded in instalments, and
 - (d)** State whether prizes are to be shared among prize-winners.
- 5.42** Promoters should not claim or imply that consumers are more lucky, fortunate or successful than they are. In particular, promoters should

not use terms such as “finalist” or “final stage” in a way that implies that consumers have progressed, by chance or skill, to an advanced stage of a promotion if they have not.

- 5.43** Promoters should not claim or imply that the consumer has already won or will win, (including conditionally on carrying out a particular act) a prize or other equivalent benefit if the consumer must incur a cost to claim the prize or benefit if this is not the case, or if the prize or benefit does not exist.
- 5.44** Promoters should not claim that consumers must respond by a specified date or within a specified time if they need not.

Advertisement Promotions

- 5.45** Advertisement promotions should be designed and presented in such a way that they can easily be distinguished from editorial material.
- 5.46** 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.
- 5.47** Publishers announcing reader promotions on the front page or cover should ensure that consumers are informed whether they will be expected to buy subsequent issues of the publication or if any financial contribution is required. Qualifications that may significantly influence consumers in their decision to purchase the publication should appear on the front page or cover.

Charity-linked Promotions

- 5.48** Promotions claiming that participation will benefit a charity or good cause should:
- (a)** Identify 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. In this regard, any extra money collected should be given to the identified 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

- 5.49** 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.
- 5.50** 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 in advance by the advertiser to obtain their employer's permission before participating.
- 5.51** It should be made clear to those benefiting from an incentive scheme that they may be liable for tax.

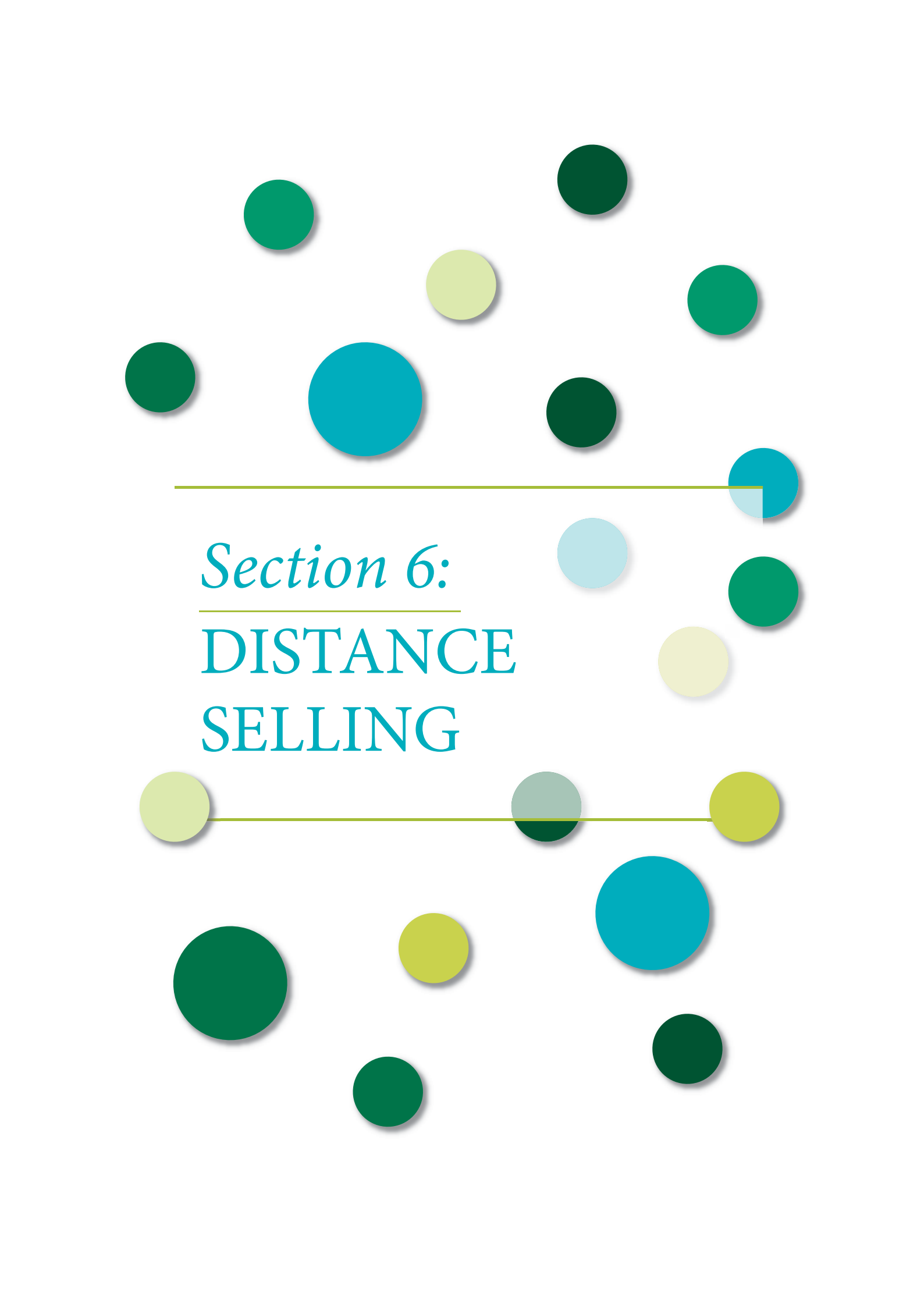
Other Regulatory Requirements

Data Protection

- 5.52** Attention is drawn to the requirements of the Data Protection Acts **1988** and **2003** and the ePrivacy Directive (**S.I. No. 336/2011**) in regard to the collection, processing, keeping, use and disclosure of personal data.

Gaming and Lotteries

- 5.53** 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.)



Section 6:
DISTANCE
SELLING

SECTION 6: DISTANCE SELLING (MAIL ORDER, DIRECT RESPONSE AND ONLINE SELLING)

Introduction

This Section sets out the rules governing transactions for goods or services in which the consumer and the advertiser, having been brought into communication through a marketing communication, conduct their business without meeting face-to-face. In this Section of the Code (and only this Section) “consumer” does not include those acting in the course of their business.

6.1 In the case of mail order and direct response marketing communications:

- (a) the name and full address of the advertiser should be included in the marketing communication (in the case of a print marketing communication this should be separate from any response coupon),
- or,
- (b) appropriate arrangements should be in place 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 Freepost or a Box Number.

6.2 Distance selling marketing communications should:

- (a) Include the main characteristics of the products.
- (b) Specify the price, including any VAT, taxes payable, and other inescapable costs to the consumer, and should include details of any applicable delivery costs 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 other electronic delivery system and it is not possible for all details to be included in the communication.

6.3 Orders should be fulfilled within 30 days, subject to the following exceptions/limitations:

- (a) Where security is provided for purchasers’ money through an independent scheme.
- (b) In the case of 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 made clear at the outset.
- 6.4** Goods supplied should conform to any relevant and accepted standard and to the description given in the marketing communication.
- 6.5** 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. If they prefer to wait, consumers should be given a firm dispatch date or fortnightly progress reports. 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 fourteen clear working days after delivery (subject to the requirements in 6.7); 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.
- 6.6** If the consumer exercises their right of cancellation in respect of goods which are not damaged or faulty, they shall not incur any charges or penalties for so doing, except the direct cost of returning the goods.
- 6.7** 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 6.5 (a), (b) or (c), with the exception of audio or video recordings or computer software if unsealed by the consumer.
 - (c) Betting, gaming or lottery services provided all contractual and statutory obligations to the consumer are met.

- 6.8** When an advertiser offers to supply goods on approval, the consumer will be expected (subject to 6.5 (b) above) to bear the cost of return of unwanted goods unless the advertiser has undertaken to refund such costs.
- 6.9** If the consumer exercises their right of cancellation as listed above, the advertiser shall be obliged to reimburse any sums paid by the consumer without deduction of costs, interest or penalties (other than the direct cost of returning any goods). However, unless there is agreement between the advertiser and the consumer to the contrary, the consumer may not exercise the right of cancellation referred to above in respect of a distance contract:
- (a)** For the provision of services if performance has begun, with the consumer's agreement, before the end of the cancellation period referred to in the preceding paragraphs.
 - (b)** For the supply of goods and services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier.
- 6.10** Advertisers should be in a position to meet any reasonable demand created by their advertising. If an insufficient quantity of a product proves to be available, advertisers should take immediate action to ensure that any further marketing communications are amended or withdrawn.
- 6.11** 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 or email contact to allow consumers an adequate opportunity to refuse a home visit.
- 6.12** Advertisers, when using media primarily targeted at children, should not promote products that are unsuitable for children.
- 6.13** 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.
- 6.14** Advertisers should not imply that consumers have already ordered the marketed product when they have not done so and, in particular, they should not include in marketing material an invoice or similar document that seeks payment.
- 6.15** Advertisers should not ask consumers to pay for, or return, unsolicited products, except for substitute products.

Media Requirements

6.16 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.

Other Regulatory Requirements

Data Protection

6.17 Attention is drawn to the requirements of the Data Protection Acts, **1988** and **2003**, and the ePrivacy Directive (**S.I. No. 336/2011**) in regard to the collection, processing, keeping, use, and disclosure of personal data.

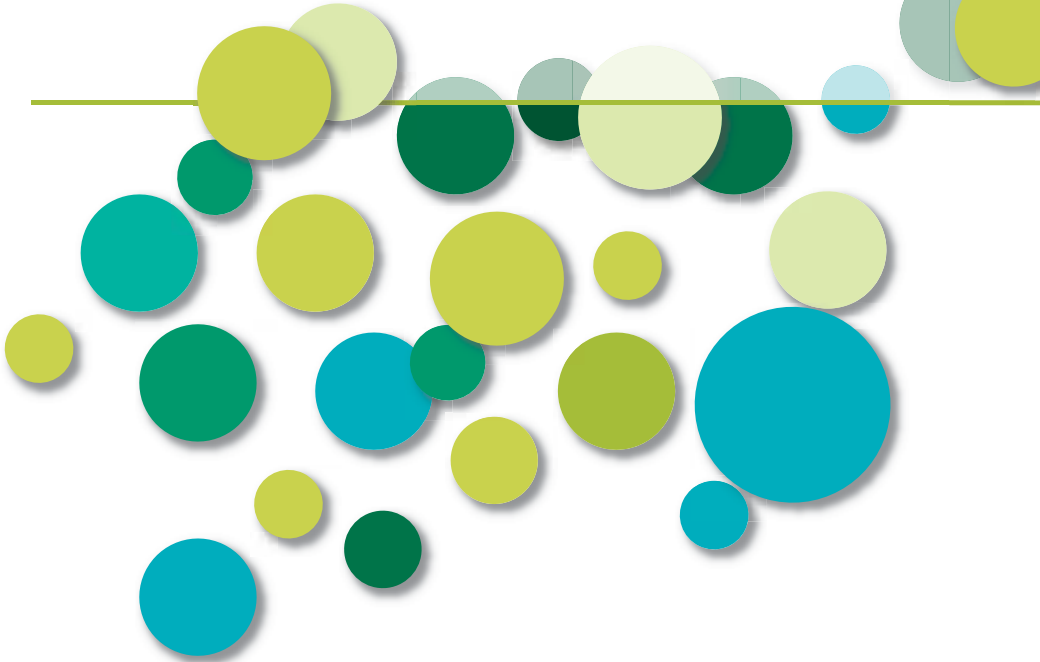
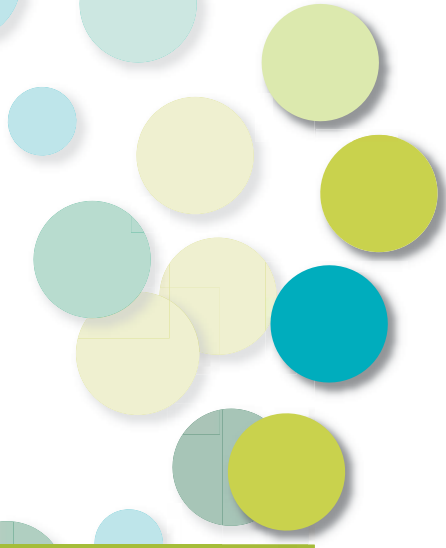
EU Legislation Regarding Distance Contracts

6.18 Attention is also drawn to the requirements of European Union (Consumer Information, Cancellation and other Rights) Regulations, 2013 (**S.I. No. 484/2013**).



Section 7:

CHILDREN



SECTION 7: CHILDREN

- 7.1** The ASAI acknowledges that parents and guardians have primary responsibility for children.
- 7.2** 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.
- 7.3** 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. For example, marketing communications that are acceptable for young teenagers will not necessarily be acceptable for younger children. The ASAI will take these factors into account when assessing marketing communications and their compliance with the Code.
- 7.4** 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)** Children should not be encouraged to enter into unsafe situations or strange places or talk to strangers, including, for example, for the purpose of making collections or accumulating labels, wrappers or coupons.
 - (c)** Children 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)** Children should not be encouraged to engage in, or be portrayed engaging in, anti-social behaviour or bullying.
 - (e)** Where children 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.

- (f) 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.
- (g) An open fire in a domestic scene should always have a fireguard clearly visible when a young child is included in the scene.
- (h) Given that children may imitate what they see in marketing communications, they should not be encouraged, whether directly or indirectly, to copy any practice that might be unsafe.

7.5 Marketing communications addressed to children should not exploit the loyalty, credulity, vulnerability or lack of experience of children. For example:

- (a) Children or their family should not be made to feel inferior or unpopular for not buying an advertised product.
- (b) Children or their family 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 in all such cases, marketing communications should include the method of acquiring the series.

7.6 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 children 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”.

- (e) Should make it clear if extra items are needed to use the product (for example, batteries) or to produce the result shown or described (for example, paint, dolls clothes).

Promotions and Children

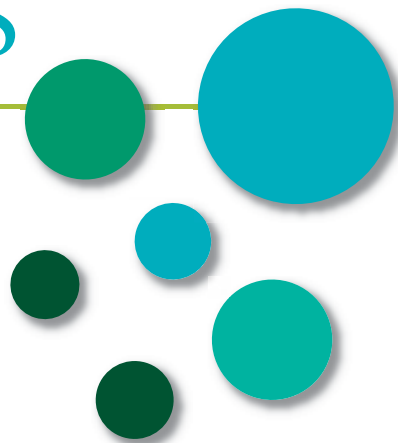
7.7 In addition to complying with the provisions set out in Section 5: Promotional Marketing Practices, promotions addressed to or likely to attract children:

- (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 expensive and/or inappropriate prizes and incentives might cause conflict between children and their parents.
- (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.



Section 8:

FOOD AND
NON-ALCOHOLIC
BEVERAGES



SECTION 8: FOOD AND NON-ALCOHOLIC BEVERAGES

These rules apply to all marketing communications for food products and should be read in conjunction with the relevant legislation:

- 1) **Regulation (EU) No. 1169/2011** of the European Parliament and of the Council of 25 October, 2011, on the provision of food information to consumers as amended, including **Commission Implementing Regulation (EU) No. 1337/2013** and its implementing legislation in Ireland, European Union (Provision of Food Information to Consumers) Regulations, 2014 (**S.I. No. 556/2014**).
- 2) **Regulation (EC) No. 1924/2006** on nutrition and health claims made on foods (the EU Regulation) together with the amending legislation. They apply to all marketing communications for food products.

The EU Regulation on nutrition and health claims is mandatory and seeks to protect consumers from misleading or false claims. It came into force in July, 2007, but was subject to a series of complex transitional periods (see www.fsai.ie). Specific conditions of use associated with authorised health and nutrition claims are determined at a European level. The **EU Register** of nutrition and health claims (the EU Register) lists all authorised nutrition and health claims as well as non-authorised health claims that have been rejected.

Some transitional periods still apply, for instance, those affecting trademarks or brand names in use prior to 1 January, 2005. In addition, there are certain claims which the European Commission has placed “on hold” whilst discussions take place on the best way forward for these types of claims. Claims that are on hold are subject to an extended transition period and are still permitted for use.

The ASAI encourages advertising industry stakeholders to take advice on the effect of the EU Regulation.

Definitions

8.1 For the purposes of the rules in this Section:

- (a) “Nutrition claim” means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:
 - (i) the energy (calorific value) it provides; provides at a reduced or increased rate; or does not provide; and/or
 - (ii) the nutrients or other substances it contains; contains in reduced or increased proportions; or does not contain.

- (b) “Health claim” means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.
- (c) “Reduction of disease risk claim” means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.

8.2 References to food apply also to non-alcoholic beverages and food supplements.

8.3 Marketing communications for food should not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is no such validity, and should not use scientific terms to ascribe validity to an advertising claim which is not valid.

Diet and Lifestyle

8.4 Marketing communications for food should not encourage or condone excess consumption. They should not encourage an unhealthy lifestyle or unhealthy/unbalanced eating or drinking habits.

8.5 Marketing communications for food should not show people who choose a healthy active lifestyle in a negative manner.

8.6 Marketing communications for food should not disparage good dietary practice or the selection of options that accepted dietary opinion recommends should form part of the average diet.

8.7 Marketing communications for food representing any material characteristics of the product, including size and content, should be accurate and should not mislead consumers concerning any of those characteristics, or the intended use of the product.

Nutrition and Health Claims

8.8 Only nutrition claims listed in the updated **Annex of the EU Regulation** (as reproduced in the EU Register) may be used in marketing communications.

Only health claims listed as authorised in the **EU Register**, or claims that would have the same meaning to the consumer, may be used in marketing communications.

- 8.9** Marketing communications that contain nutrition or health claims should be supported by documentary evidence substantiating that they meet the conditions of use associated with the relevant claim, as specified in the **EU Register**.
- 8.10** Claims should be presented clearly and without exaggeration.
- 8.11** References to general benefits of a nutrient or food for overall good health or health-related well-being are acceptable only if accompanied by a specific authorised health claim.
- 8.12** A comparison may only be made between foods of the same category, taking into consideration a range of foods of that category. The difference in the quantity of a nutrient and/or the energy value shall be stated and the comparison shall relate to the same quantity of food.
- 8.13** Comparative nutrition claims shall compare the composition of the food in question with a range of foods of the same category, which do not have a composition which allows them to bear a claim, including foods of other brands.
- 8.14** The following are not acceptable in marketing communications for food products:
- (a)** Claims that state or imply health could be affected by not consuming a food.
 - (b)** Claims that state or imply a food prevents, treats or cures human disease. Reduction of disease risk claims are acceptable if authorised by the European Commission.
 - (c)** Health claims that refer to the recommendation of an individual health professional. Health claims that refer to the recommendation of an association are acceptable only if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics.
 - (d)** References to changes in bodily functions that could give rise to, or exploit, fear in the audience.
 - (e)** Claims of a nutrition or health benefit that give rise to doubt about the safety or nutritional adequacy of another product.
 - (f)** Health claims that refer to a rate or amount of weight loss.

8.15 Marketing communications for food should not mislead as to the nutritive value of any food.

Children

8.16 In addition to all other rules in this Section, 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.

8.17 Marketing communications should not disparage good dietary practice or the selection of options that accepted dietary opinion recommends should form part of the average diet.

8.18 Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

Promotional offers

8.19 Marketing communications featuring a promotional offer should be prepared with a due sense of responsibility.

8.20 Marketing communications for food products that are targeted through their content directly at pre-school or primary school children should not include a promotional offer, subject to the exceptions listed below:

- (i) Marketing communications for fresh fruit and/or fresh vegetables;
- (ii) Marketing communications carried in media subject to the BAI Children's Commercial Communications Code for products characterised by that code as being permitted to be advertised to children;
- (iii) Point of sale displays, packages, wrappers, labels, tickets, timetables and menus.

See Guidance Note on Food and Non-Alcoholic Beverages on www.asai.ie

8.21 Additionally, for children under 16:

- (a) Except those for fresh fruit or fresh vegetables, marketing communications should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive.
- (b) Marketing communications featuring a promotional offer should ensure a significant presence for the product.
- (c) Marketing communications featuring a promotional offer linked to a food product of interest to children should avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption.
- (d) Marketing communications should not encourage children to eat more than they otherwise would.
- (e) Marketing communications for collection-based promotions should not seem to urge children or their parents to buy excessive quantities of food.

Licensed Characters and Celebrities

- 8.22** (a) Licensed characters and celebrities popular with children should always be used with a due sense of responsibility.
- (b) Marketing communications for food products that are targeted through their content directly at pre-school or primary school children should not include licensed characters or celebrities popular with children, subject to the exceptions listed below:
- (i) Marketing Communications for fresh fruit and/or fresh vegetables;
 - (ii) Marketing Communications carried in media subject to the BAI Children's Commercial Communications Code for products characterised by that code as being permitted to be advertised to children;
 - (iii) Point of sale displays, packages, wrappers, labels, tickets, timetables and menus;
 - (iv) The prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell;
 - (v) Licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or similar.

See Guidance Note on Food and Non-Alcoholic Beverages on www.asai.ie

Nutrition and Health Claims

8.23 Claims referring to children's development and health are acceptable if authorised by the European Union (see Section 8.8).

Pressure to Purchase

8.24 Although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them.

Food Supplements, including Vitamins and Minerals

8.25 Advertisers should ensure that claims for dietary supplements and other vitamins and minerals comply with the requirements of the EU Regulations.

8.26 Marketing communications that contain nutrition or health claims should be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim as specified in the [EU Register](#).

8.27 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.

8.28 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.

8.29 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.

Infant and Follow-on Formula

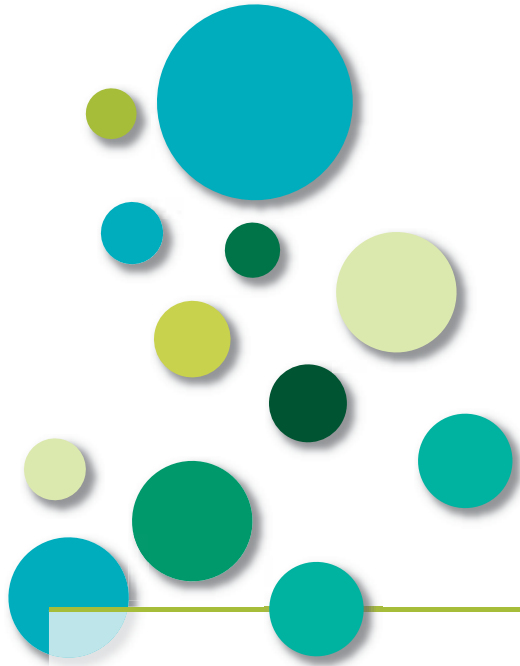
8.30 These rules should be read in conjunction with the relevant legislation including the ‘European Communities (Infant Formulae and Follow On Formula) Regulations, 2007’ (**S.I. No. 852/2007**).

8.31 Marketing communications for infant formula are prohibited unless they appear in scientific publications, or are for the purposes of trade before the retail stage, or are a publication for which the intended readers are not the general public.

8.32 Marketing communications should not confuse between infant formula and follow-on formula.

8.33 Marketing communications for follow on formula addressed to the general public should:

- (a) Be designed to provide the necessary information about the appropriate use of the products so as not to discourage breast-feeding.
- (b) Not use the terms ‘humanised’, ‘maternalised’, ‘adapted’ or similar terms.



Section 9:

ALCOHOLIC

DRINKS



SECTION 9: ALCOHOLIC DRINKS

The rules in this Section are designed to ensure that the content of alcohol advertising and promotion is consistent with the need for demonstrating responsibility and moderation in consumption, and that it does not encourage consumption by children.

The rules in this Section apply to marketing communications for alcoholic drinks and to marketing communications that feature, or refer to, alcoholic drinks.

Alcoholic drinks are defined as those that exceed 1.2% alcohol by volume. They include products that are classified as foodstuffs rather than drinks for the purposes of licensing or customs and excise legislation, or even if they appear to be gaseous, solid or heavily textured (or can be made to be, for example by freezing or shaking), rather than liquid.

Where stated, exceptions are made for low-alcohol drinks (those that contain 2.8% alcohol by volume or less). But, if a marketing communication for a low-alcohol drink could be considered to promote a stronger alcoholic drink, or if the drink's low-alcohol content is not stated clearly in the marketing communications, all the rules in this Section apply.

If a soft drink is promoted as a mixer, the rules in this Section apply in full.

These rules are not intended to inhibit responsible marketing communications that are intended to counter problem drinking or inform consumers about alcohol-related health or safety themes. Marketing communications of that type should not, however, be likely to promote an alcohol product or brand.

- 9.1** 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.
- 9.2** Marketing communications which depict or refer to alcohol, or to a specific alcohol brand or company, may be considered under the rules of this Section, whether or not alcohol is the main product being marketed.
- 9.3** Advertisers should be aware that there are other requirements that alcohol marketing communications should comply with and their attention is drawn to the list under Other Requirements at 9.12.

- 9.4** Marketing communications for alcohol should include a responsibility message to drink alcohol responsibly.

Social Dimension

- 9.5** Marketing communications may refer to the social dimension or refreshing attributes of a drink, but:

- (a) Should not state, depict or imply that the presence or consumption of alcohol can improve physical performance or personal qualities or capabilities.
- (b) Should not state, depict or 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 state, depict or 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 and should not state, depict or suggest that those who drink are brave, daring or tough.
- (e) Should not link in any way the presence or consumption of alcohol to aggressive, unruly, irresponsible or anti-social behaviour.

- 9.6** 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

- 9.7** Marketing communications should not be directed at children or in any way encourage them to start drinking.

- (a) Anyone depicted in an alcohol marketing communication should be aged over 25 and should appear to be over 25.
 - (i) The preceding rule may not apply if the marketing communication shows an image of people attending an over 18s ticketed event which appears either on the advertiser's owned media (such as, for example, an advertiser's own website) or on an advertiser's

social media page provided such media are accessed through a secure and appropriate Age Verification System and provided the person depicted:

- appears to be clearly over 18 years of age
 - is not playing a significant role
 - cannot be seen consuming alcohol
 - does not appear to be under the influence of, or have consumed, alcohol prior to the events depicted in the marketing communication.
- (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 use or refer to identifiable heroes or heroines of the young. See Guidance Note on Alcohol Marketing Communications at www.asai.ie.
- (d) Marketing communications should not feature personalities or characters (real or fictitious) that would have a particular appeal to children.
- (e) Alcohol marketing communications should not be placed in media primarily intended for children. Advertisers should take account of the audience's age profile so that marketing communications are communicated, so far as is possible, to adults. In this context the ASAI will have regard to the **Alcohol Marketing, Communication and Sponsorship Codes of Practice**, agreed by the Department of Health, the drinks industry, and the media as detailed under Other Requirements at 9.12.
- (f) Digital media, including apps, that primarily promote an alcohol brand should be age gated through a secure and appropriate Age Verification System. See Guidance Note on Alcohol Marketing Communications at www.asai.ie.

Health and Safety

9.8 In the interests of health and safety:

- (a) Marketing communications should only depict or imply the responsible and moderate consumption of alcoholic drinks.

- (b) Marketing communications should not show, imply or encourage immoderate or irresponsible drinking or regular solitary drinking. This applies to the amount of alcohol, the numbers drinking or the way drinking is portrayed. The buying of a large round of drinks should not be depicted or implied.
- (c) Marketing communications for alcohol should not portray drinking games or sessions, or show or imply pub or club crawls.
- (d) Abstinence or moderation should not be presented in a negative light.
- (e) Marketing communications should not attempt to influence non-drinkers of any age to drink or to purchase alcoholic drinks.
- (f) Marketing communications may not suggest, or commend, or make fun of over-indulgence in respect of alcohol or its after-effects.
- (g) 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 or can be transformative of an individual or a situation or that it is a means of boosting confidence or resolving personal conflict.
- (h) Marketing communications should not depict any direct association with the consumption of alcoholic drinks and activities or locations where drinking alcohol would be unsafe, unwise or unacceptable. Where consumption is shown or implied it should not be represented as having taken place before or during engagement of the activity in question.
- (i) 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.
- (j) Factual information can be given about the alcoholic strength of a particular drink. However, with the exception of low-alcohol drinks (i.e. those that contain 2.8% alcohol by volume or less) 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.
- (k) 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.

Promotions

9.9 Terms and conditions for promotions involving alcohol should make it clear:

- (a) That entry is restricted to those 18 years of age and older.
- (b) That prizes and/or gifts will only be awarded to those 18 years of age or older.

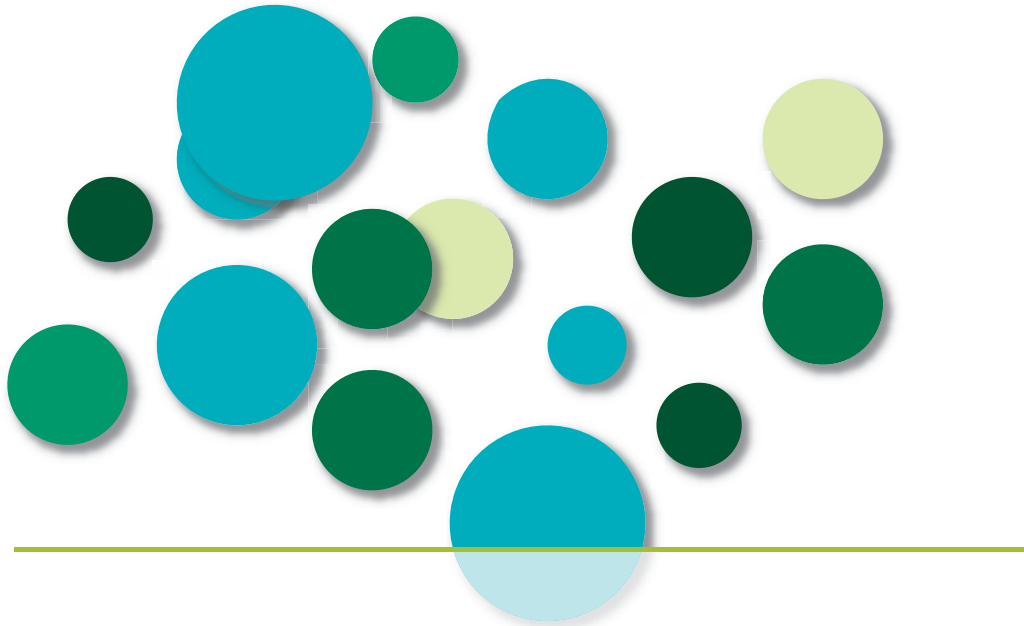
9.10 Marketing communications or promotions should not combine alcohol with a gift that has particular appeal to under-18s.

9.11 Promotions involving alcohol that require multiple purchases should not promote excessive consumption.

Other Requirements

9.12 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 should carry **Copy Clear** approval.
- The **voluntary codes** agreed between the Department of Health, 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 Authority of Ireland**.
- **Code for Sponsorships by Alcohol Drinks Companies**.
- Intoxicating Liquor Acts, 1988 – 2008.
- **Responsible Retailing of Alcohol in Ireland Code**.



Section 10:

GAMBLING



SECTION 10: GAMBLING

10.1 This Section applies to any marketing communication which:

- (a) promotes any gambling service or product; or
- (b) promotes the name, familiarity or reputation of gambling companies whether or not a gambling product is shown or referred to.

10.2 The rules in this Section do not, however, apply to the marketing communications of the National Lottery, which are within remit of the **National Lotteries Act, 2013**. Such marketing communications are within remit of the other rules of the Code.

10.3 The rules in this Section apply to, amongst other things, marketing communications for “play for money” gambling products and marketing communications for “play for free” gambling products that offer the chance to win a prize or explicitly or implicitly direct the consumer to a “play for money” gambling product, whether on-shore or off-shore.

10.4 Any marketing communication that depicts or refers to gambling may be considered under the rules of this Section, whether or not gambling is the main product or service being marketed.

10.5 The spirit as well as the letter of the rules in this Section apply.

10.6 Gambling is defined as

- (a) gaming
- (b) betting
- (c) lotteries
- (d) bingos
- (e) amusement arcade games.

10.7 Gaming is defined as playing for a stake in a game of chance for a monetary prize or other form of reward, and includes the playing of games available in casinos.

10.8 Betting is defined as making or accepting a bet (including when made or accepted through a betting service or a betting exchange) on:

- (a) the outcome of a race, competition or other event or process, including virtual events,

- (b) the likelihood of something occurring or not occurring, or
 - (c) whether or not something is true,
- and includes pool betting.

10.9 Unless they portray or refer to gambling, this Section does not apply to marketing communications for non-gambling leisure events or facilities (such as, for example, hotels, cinemas, bowling alleys or ice rinks) that are in the same complex as, but separate from, gambling events or facilities.

10.10 All marketing communications for gambling services or products shall contain a message to encourage responsible gambling and shall direct people to a source of information about gambling and gambling responsibly.

10.11 These rules are not intended to inhibit marketing communications to counter problem gambling where they are responsible and unlikely to promote a brand or type of gambling.

10.12 Marketing communications for gambling should not:

- (a) Portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm.
- (b) Suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression.
- (c) State or suggest that gambling may be a way to solve financial or personal issues, or represent it as an alternative source of income or substitution for working.
- (d) Portray gambling as indispensable or as taking priority in life; for example, over family, friends or professional or educational commitments.
- (e) Suggest that gambling can enhance personal qualities including for example, that it might improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration.
- (f) Suggest peer pressure to gamble or disparage abstention from gambling.
- (g) Link gambling to seduction, sexual success or enhanced attractiveness.
- (h) Portray gambling in a context of toughness or link it to resilience or recklessness.
- (i) Suggest gambling is a rite of passage.

- (j) Suggest that solitary gambling is preferable to social gambling.
- (k) State or imply a promise of winning or portray unrealistic outcomes.

10.13 Winning claims, success rate claims and profitability claims should be factual and capable of substantiation. Neither the chances of winning nor the size of the prize should be exaggerated.

10.14 Marketing communications should not state or imply that a player's skill can influence the outcome of a game unless the skill can actually be demonstrated to affect the outcome of the game.

10.15 Marketing communications for events or facilities that can be accessed only by entering gambling premises should make that condition clear.

Children

10.16 Marketing communications should not harm or exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children.

10.17 Marketing communications should not:

- (a) Be likely to be of particular appeal to children, especially by reflecting or being associated with youth culture.
- (b) Make direct use of signs, symbols, drawings, fictitious characters or real people of primary or particular appeal to children.
- (c) Depict adolescent, juvenile or loutish behaviour.
- (d) Contain endorsements by recognisable figures who would be regarded as heroes or heroines of the young.
- (e) Feature children, except in an incidental manner.
- (f) Feature anyone who is, or seems to be, under 25 (18-24) years old, unless those individuals feature only to illustrate specific betting selections or options where that individual is:
 - (i) the subject of the bet offered,
 - (ii) is in a team that is the subject of the bet offered, or
 - (iii) is part of an event which is the subject of a bet offered.

The image or other depiction used must show them in the context of the bet and not in any gambling role.

- (g) Be directed at those aged below 18 years through the selection of media

or context in which they appear, or be placed in or through media, or parts of media, that are specifically intended for children (inserts, supplements, special (radio and TV) programmes, cinema films, etc.).

- (h) Be displayed within 100 meters of a school entrance.
- (i) Induce a child to regard gambling as a natural element of his or her leisure time/activities.

10.18 The following marketing communications may include children, provided they are accompanied by an adult and are socialising responsibly:

- marketing communications for family entertainment centres, travelling fairs, horse racecourses and dog race tracks;
- marketing communications for non-gambling leisure facilities that incidentally refer to separate gambling facilities, for example, as part of a list of facilities on a cruise ship.



Section 11:

HEALTH
AND BEAUTY



SECTION 11: HEALTH AND BEAUTY

The rules in this Section are designed to ensure that marketing communications for medicines, medical devices, treatments, health-related products and beauty products receive the necessary high level of scrutiny. The rules apply to marketing communications and not the products, which are regulated by health regulators such as the Health Products Regulatory Authority (HPRA) www.hpra.ie, the European Medicines Agency (EMA), www.ema.europa.eu, and the Department of Health, www.health.gov.ie.

- 11.1** Claims about health and beauty products and treatments should be backed by substantiation. Where relevant, this should include the results of robust and reputable trials on human subjects, of sufficient rigour, design and execution as to warrant general acceptance of the results.

Medicinal or medical claims and indications may be made for a medicinal product that is authorised by the HPRA or EMA, or for a CE-marked medical device. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings.

Secondary medicinal claims made for cosmetic products as defined in the appropriate European legislation should be backed by substantiation. These are limited to any preventative action of the product and may not include claims to treat disease.

- 11.2** 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.
- 11.3** 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.
- 11.4** Marketing communications for health and beauty products or treatments should not include representations of individuals that give the impression of professional advice or recommendations unless such persons are suitably qualified and have relevant and recognised qualifications.

11.5 Advertisers should not discourage essential treatment for conditions for which medical supervision should be sought. For example, they should not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional. Accurate and responsible general information about such conditions may, however, be offered.

Health professionals are considered suitably qualified if they are regulated by a statutory body recognised by the Irish State.

11.6 Marketing communications for medical services should not cause unwarranted or disproportionate anxiety or suggest that any product or treatment is necessary for the maintenance of health.

11.7 (a) Advertisers offering individual treatments, particularly those that are physically invasive, may be asked by the media and the ASAI at any time to provide full details of the treatments, together with information about those who would supervise and administer them. Practitioners should have relevant and recognised qualifications. Consumers should be encouraged to take independent medical advice before committing themselves to significant treatments, including those that are physically invasive.

(b) Marketing communications for individual treatments should take care not to minimise, trivialise or create unrealistic expectations, in particular in the use of photographs.

11.8 Marketing communications for a health and beauty product or treatment:

(a) Should not encourage consumers to use a product or treatment to excess and should hold substantiation before suggesting their product or therapy is guaranteed to work, is absolutely safe, or is without side effects (subject to 11.19 for Medicinal Products).

(b) 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.

(c) Should not use unfamiliar scientific terms for common conditions.

11.9 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.

- 11.10** 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.
- 11.11** Advertisers inviting consumers to diagnose their own minor ailments should not make claims that might lead to a mistaken diagnosis.
- 11.12** Marketing communications for any products offering to deter the habit of smoking or other addictions 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.

Medicinal Products

- 11.13** Title VIII of European Directive 2001/83/EC (as amended) concerns “The Advertising of Medicinal Products for Human Use” and has been implemented in Ireland by the Medicinal Products (Control of Advertising) Regulations, 2007 (**S.I. No. 541/2007**). Advertisements for medicinal products must comply with the requirements of these Regulations and any conditions contained in the marketing authorisation, certificate, licence or traditional herbal registration for the advertised product.

For more information on the advertising of medicinal products, see the HPRA’s website www.hpra.ie.
- 11.14** Medicines should have an authorisation from the HPRA or under the auspices of the EMA before they are advertised. Marketing communications for medicines should conform with the authorisation and the product’s summary of product characteristics.
- 11.15** Marketing communications should not suggest that a product is “special” or “different” because it has been granted an authorisation by the HPRA or under the auspices of the EMA.
- 11.16** Prescription-only medicines may not be advertised to the public.
- 11.17** Marketing communications for medicinal products should not contain any offer to diagnose, advise, prescribe or treat by correspondence (correspondence includes by phone, post, internet, email and fax).
- 11.18** Marketing communications for medicines should not imply, directly or indirectly, that a medical consultation or surgical operation is unnecessary.

- 11.19** Marketing communications for a medicine should not claim that its effects are guaranteed, that it is absolutely safe or without side-effects, or as good as or better than those of another identifiable product.
- 11.20** Marketing communications for a medicine should not claim that a product is able to cure illness, dysfunction or malformations if this is not the case.
- 11.21** Marketing communications should not refer, in improper, alarming or misleading terms, to claims of recovery.
- 11.22** Marketing communications should not use, in improper, alarming or misleading terms, images of changes in the human body caused by disease, injury or a medicinal product.
- 11.23** Marketing communications should not suggest that using or avoiding a product can affect normal health. This rule does not apply to vaccination campaigns provided such campaigns have been approved by the Minister for Health.
- 11.24** Marketing communications for a medicine should not be addressed to children.
- 11.25** Marketing communications for medicinal products should not contain material that refers to a recommendation by scientists, health professionals or celebrities.
- 11.26** Marketing communications should not suggest that a medicinal product is either a food or a cosmetic.
- 11.27** Marketing communications for medicinal products should not present a description or detailed representation of a case history that could lead to erroneous self-diagnosis.
- 11.28** Marketing communications for a medicinal product should not contain an offer to refund money to dissatisfied customers.
- 11.29** Marketing communications which include a product claim for a medicinal product (including legible on-pack product claims within a pack shot) should include the name of the product, an indication of what it is for, text such as “Always read the label” and the common name of the sole active ingredient, if it contains only one.
- 11.30** Illustrations of the effect or action of a product should be accurate.

- 11.31** Marketing communications for a medical device should be consistent with its intended purpose.
- 11.32** Consumer prize promotions for medicinal products should not encourage or require purchase of the products which would be greater than that associated with a rational use of the product and should not encourage the unnecessary purchase of the product.
- 11.33** Marketing communications should not offer free samples of medicinal products.
- 11.34** Marketing communications for a traditional herbal medicinal product should include mandatory information as required under [S.I. No. 541/2007](#).
- 11.35** Marketing communications for a homeopathic medicinal product should include mandatory information as required under [S.I. No. 541/2007](#).
- 11.36** Homeopathic medicinal products should be registered in Ireland. Any product information given in the marketing communication should be confined to what appears on the label. Marketing communications should include a warning to consult a doctor if symptoms persist.

Alternative and Complementary Medicine

- 11.37** 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.

Counselling Services

- 11.38** Marketing communications for counselling services for unplanned pregnancies should not mislead in any way as to the nature or scope of the counselling service being offered.

Hair and Scalp

- 11.39** 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 11.1 above.
- 11.40** Hair transplantation and repositioning should both be regarded as physically invasive treatments (see 11.7 above).

Cosmetics

11.41 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.

11.42 Non-users of a cosmetic product should not be shown in a negative light.

11.43 Marketing communications should not claim that a product has been authorised or approved by a competent authority within the EU.

Note: Attention is drawn to the requirements of the **Guidelines to Commission Regulation (EU) No. 655/2013** laying down common criteria for the justification of claims used in relation to cosmetic products.

Other Regulatory Requirements

11.44 The advertising of medicinal products and cosmetic products is governed by a number of other codes and Statutory Regulations, some of which are listed on www.asai.ie.

A decorative graphic featuring a collection of circles in various sizes and colors (teal, green, yellow, and light blue) scattered across the page. Two horizontal lines, one above and one below the text, intersect the circles. The text is centered between these lines.

Section 12:
SLIMMING

SECTION 12: SLIMMING

This Section applies to marketing communications for weight control and slimming foodstuffs, aids (including exercise products that make weight-loss or slimming claims), clinics and other establishments, diets, medicines, treatments, and the like. The specific rules in this Section are in addition to those in other parts of the Code including Section 8: Food and Non-Alcoholic Beverages, and Section 11: Health and Beauty which may be relevant.

- 12.1** A programme in which the intake of energy is lower than its output is the main self-treatment for achieving weight loss.
- 12.2** Any claims made for the effectiveness of a slimming plan, method or product should be backed by reputable and robust practical trials on human subjects. Testimonials do not constitute substantiation and the opinions expressed in them should be supported, where necessary, by independent evidence.
- 12.3** Claims that long-term slimming, weight loss or inch loss can be achieved either generally or (subject to the exception at 12.4) from specific areas of the body by any means other than dieting such as, for example, 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.
- 12.4** Marketing communications for surgical clinics, establishments and the like, that comply with rule 11.7, may claim that weight or fat can be lost from specific parts of the body. Such marketing communications should not refer to the amount of weight that can be lost.
- 12.5** Slimming claims in respect of an unproven weight-loss method cannot be justified merely by offering a diet or exercise scheme with it.
- 12.6** 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.
- 12.7** Vitamins and minerals do not contribute to weight loss but can be offered to slimmers as a safeguard against any nutritional shortfall when dieting.
- 12.8** A marketing communication should not suggest that persons of normal weight* need to slim.

- 12.9** “Crash diets” should not be advertised because of the danger that such diets can pose to the health of dieters when undertaken without medical supervision.
- 12.10** A marketing communication should not offer treatment specifically for conditions that require medical treatment, such as obesity, anorexia and bulimia.
- 12.11** 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.
- 12.12** 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.
- 12.13** 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.
- 12.14** 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.
- 12.15** 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.
- 12.16** Marketing communications for adult weight-reduction regimes or establishments should neither be directed at, nor contain anything that will appeal particularly to, children.

12.17 Health claims in marketing communications for food products that refer to a rate or amount of weight loss are not permitted.

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

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

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



Section 13:

FINANCIAL
SERVICES AND
PRODUCTS

SECTION 13: FINANCIAL SERVICES AND PRODUCTS

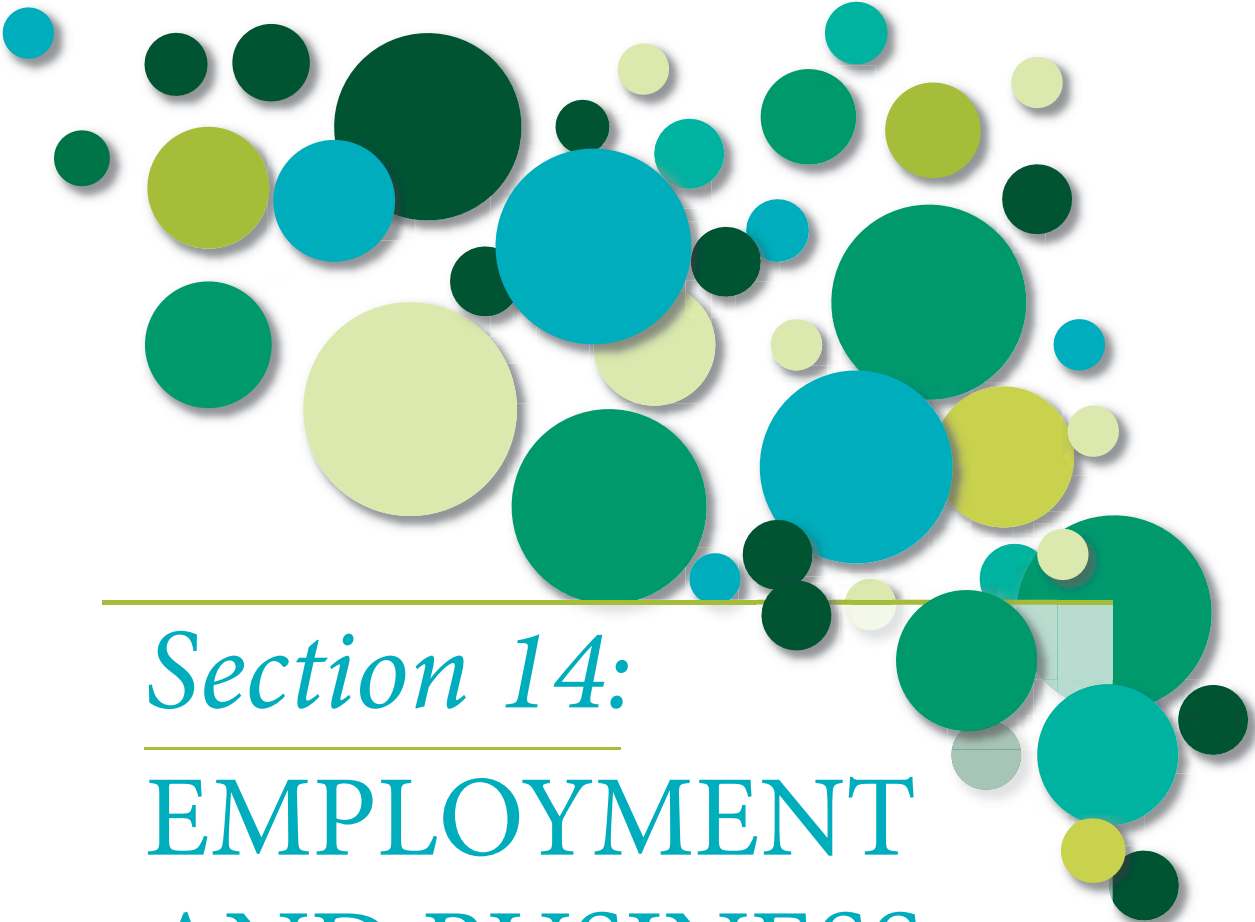
The Central Bank of Ireland has primary and statutory responsibility for the regulation of advertising for Financial Services and Products, and their requirements are set out in the **Consumer Protection Code 2012**.

All marketing communications are, however, also subject to the rules of the ASAI Code and the ASAI will, where appropriate, examine complaints submitted that refer, in general or in particular, to the provisions of the ASAI Code.

If, however, the ASAI considers that because of the particular provisions of the Central Bank Code or the substance of the complaint that the matter should more properly be dealt with by the Central Bank, complainants will be advised accordingly.

- 13.1** 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.
- 13.2** Marketing communications which invite a response by mail should contain the full address of the advertiser separate from any response coupon. Finance marketing communications should make clear the advertiser's identity and geographic address and that information should be given in a form that can be retained by customers or continually accessed by them.
- 13.3** 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, or should be readily accessible, before a binding contract is entered into.

- 13.4** 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.
- 13.5** Marketing communications should make it clear in a prominent manner 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.
- 13.6** 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.



Section 14:

EMPLOYMENT
AND BUSINESS
OPPORTUNITIES

SECTION 14: EMPLOYMENT AND BUSINESS OPPORTUNITIES

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

Employment

14.2 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.

14.3 Vacancies should be accurately described with sufficient detail to ensure that respondents are aware of the scope and duties likely to be involved, and whether the position is for temporary or permanent work.

14.4 Employment agencies and employment businesses should make clear in their marketing communications their full names and contact details.

Business Opportunities

14.5 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

14.6 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 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.

- 14.7** 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.
- 14.8** 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 be fully informed in advance as to the existence and content of any limitations that might affect their decision to accept the advertiser's offer before being committed to participate.
- 14.9** Advertisers should not exaggerate the support available to homemakers.

Training Courses

- 14.10** 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

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

A decorative graphic consisting of several circles in shades of teal, green, and yellow, scattered around two horizontal lines. The circles vary in size and are positioned both above and below the lines. The text is centered between the two lines.

Section 15:

ENVIRONMENTAL
CLAIMS

SECTION 15: ENVIRONMENTAL CLAIMS

15.1 The following definitions apply in this Section:

- (a) “Environment” includes but is not limited to, ecosystems and their constituent parts, including people and communities, natural and physical resources, and the qualities and characteristics of locations, places and areas.
- (b) “Environmental claim” means, but is not limited to, any statement, symbol or graphic that indicates an environmental aspect of a service, product, component or packaging, and includes references to sustainability, recycling, carbon neutrality, energy efficiency, use of natural products or impact on animals and the natural environment.
- (c) “Environmental impact” means any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organisation’s activities or products.
- (d) “Lifecycle” means consecutive and interlinked stages of a product from raw material acquisition or generation of natural resources to final disposal or use, and recycling.

15.2 Environmental claims should not be used without qualification unless advertisers can provide substantiation that their product will cause no environmental damage. Absolute claims should be supported by a high level of substantiation.

15.3 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. Qualified claims should also be capable of substantiation.

15.4 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.

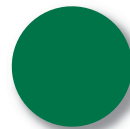
15.5 The basis of any claim should be explained clearly and should be qualified where necessary. Unqualified claims may mislead if they omit significant information.

- 15.6** Advertisers should base environmental claims on the full lifecycle of the advertised product, unless the marketing communication states otherwise, and should make clear the limits of the lifecycle. If a general lifecycle claim cannot be justified, a more limited claim about specific aspects of a product might be justifiable. Advertisers should ensure claims that are based on only part of the advertised product's lifecycle do not mislead consumers about the product's total environmental impact.
- 15.7** 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.
- 15.8** Marketing communications should not mislead consumers about the environmental benefit that a product offers; for example, by highlighting the absence of an environmentally damaging ingredient if that ingredient is not usually found in competing products or by highlighting an environmental benefit that results from a legal obligation if competing products are subject to that legal obligation.
- 15.9** 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.
- 15.10** Symbols may imply environmental claims in themselves. They should be simple and used in such a way that they do not convey false/incorrect impressions about the characteristics of goods or services. Such signs and symbols should not be used in such a way as to suggest official approval or third-party certification when no such approval or certification has been given.
- 15.11** 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 same.
- 15.12** Marketing communications for waste oil burners should include a statement that the operator should have a licence to operate that oil burner.



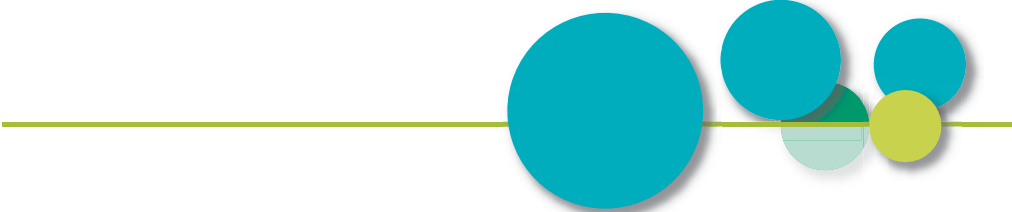
Section 16:

OCCASIONAL
TRADING



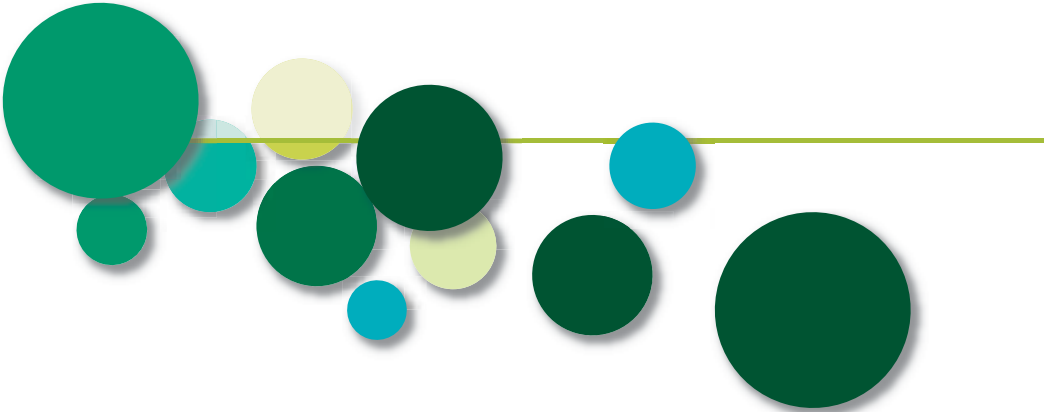
SECTION 16: OCCASIONAL TRADING

- 16.1** 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).
- 16.2** Descriptions in marketing communications such as "liquidation sale", "closing-down sale" or "emergency sale" should be capable of substantiation.
- 16.3** 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.
- 16.4** It is the responsibility of media to be satisfied about the advertiser's true identity and bona fides.



Section 17:

E-CIGARETTES



SECTION 17: E-CIGARETTES

For the purposes of this Section “electronic cigarette” means a product that is intended for inhalation of vapour via a mouth piece, or any component of that product, including but not limited to cartridges, tanks or e-liquids. The rules in this Section apply to marketing communications for, and which refer to, electronic cigarettes including but not limited to e-shisha and e-hookah products, whether or not they contain nicotine, and to products which in the opinion of the ASAI are sufficiently similar to electronic cigarettes and such products so as to warrant application of the rules set out in this Section.

The majority of e-cigarettes are currently sold as consumer goods, however advertisers may seek a medicines licence for their product from the **Health Products Regulatory Authority** (HPRA). The rules in this Section also apply to marketing communications for electronic cigarettes which are authorised by the HPRA. For products authorised as medicines, the rules in Section 11: Health and Beauty also apply.

Depending on the formulation of their product and the means by which it is supplied, advertisers may have obligations relating to their advertising under chemical classification, labelling and packaging legislation. Advertisers are encouraged to take legal advice to ensure compliance with the law.

Tobacco Products Directive

Directive 2014/40/EU (on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC) is now in force but has not yet been given effect in Irish law. The Irish Government is required to transpose its provisions by 20 May 2016, with a further transitional period for non-compliant e-cigarette products until 20 November 2016. Those provisions include restrictions on advertising.

- 17.1** Marketing communications for e-cigarettes should be socially responsible.
- 17.2** Marketing communications should not contain anything which promotes any design, imagery or logo style that might reasonably be associated in the audience’s mind with a tobacco brand.
- 17.3** Marketing communications should contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.

- 17.4** Marketing communications should make clear that the product is an e-cigarette and not a tobacco product.
- 17.5** Marketing communications should not contain health or medicinal claims unless the product is authorised for those purposes by the HPRA. E-cigarettes may be presented as an alternative to tobacco but advertisers should do nothing to undermine the message that quitting tobacco use is the best option for health.
- 17.6** Advertisers should not use health professionals or celebrities to endorse electronic cigarettes.
- 17.7** Marketing communications should state clearly if the product contains nicotine. They may include factual information about other product ingredients.
- 17.8** Marketing communications should not encourage non-smokers or non-nicotine-users to use e-cigarettes.
- 17.9** Marketing communications should not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.
- 17.10** People shown using e-cigarettes or playing a significant role should neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but should be obviously not using e-cigarettes.
- 17.11** Marketing communications should not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.



Section 18:

ONLINE
BEHAVIOURAL
ADVERTISING



SECTION 18: ONLINE BEHAVIOURAL ADVERTISING

The Rules in this Section relate to Online Behavioural Advertising (OBA) aiming to secure transparency and control for consumers in the use by any OBA third party (see definition) of OBA. The rules require an OBA third party to provide notice to web users in or around an online display advertisement if they are undertaking OBA. The notice should link to a relevant mechanism whereby a web user can opt out of the collection and use of web viewing behaviour data for OBA purposes by that third party, or that third party and other parties. These rules are integral to a pan-European initiative – the European Advertising Standards Alliance (EASA) **Best Practice Recommendation** and an **EU industry Framework**. Further information can be found at www.asai.ie.

Definitions

- 18.1 (a)** Online Behavioural Advertising (OBA) means: the collection, over a period of time, by a third party of web viewing behaviour data from a particular computer or device which takes place across multiple web domains not under common control, and which is used by the third party to deliver advertising to that particular computer or device based on the preferences or interests inferred from the data by the third party's technology. (These preferences or interests are often categorised into "interest segments" which are then used to target multiple web users with a specific preference or interest.)
- OBA does not include the activities of Web Site Operators (First Party), Ad Delivery or Ad Reporting, or contextual advertising (such as, for example advertising based on the content of the web page being visited, a consumer's current visit to a web page, or a search query).
 - OBA encompasses behavioural re-targeting whereby display advertisements may be served to consumers who have shown a previous interest in a product but may not have made a purchase.
- (b)** An "OBA third party" is an organisation that engages in OBA (i.e. collects and uses web viewing behaviour data for the purposes of OBA) via websites other than those that it or an entity with which it is under common control owns or operates.
- (c)** Explicit Consent means an individual's freely given, specific and informed explicit action in response to a clear and comprehensible notice regarding the collection and use of data for OBA purposes.

- (d) A Web Site Operator is the owner, controller or operator of the website with which the web user interacts.
- (e) Entities or web sites under Common Control include ones that Control, for example parent companies, are Controlled by, such as subsidiaries, or are under Common Control, such as group companies. They also include entities that are under a written agreement to process data for the controlling entity or entities, and do such processing only for and on behalf of that entity or entities and not for their own purposes or on their own behalf.
- (f) Ad Reporting is the logging of page views on a web site or the collection or use of other information about a browser, operating system, domain name, date and time of the viewing of the web page or advertisement, and related information for purposes including, but not limited to:
 - statistical reporting in connection with the activity on a web site(s);
 - web analytics and analysis; and
 - logging the number and type of ads served on a particular web site(s).
- (g) Ad Delivery is the delivery of online advertisements or advertising-related services using Ad Reporting data. Ad Delivery does not include the collection and use of Ad Reporting data when such data is used to deliver advertisements to a computer or device based on user preferences or interests inferred from information collected over time and across sites not under Common Control.
 - The use of Ad Reporting data is not covered by this exception when it is used in a way that matches the definition of OBA. In other words, where a company collects Ad Reporting data across multiple web domains it does not own or operate and uses such data to create interest segments and to deliver ads which are targeted according to these interest segments, it does serve OBA as defined by the European Advertising Standards Alliance Best Practice Recommendation on Online Behavioural Advertising and is therefore expected to comply with the obligations accordingly.

Application of Rules

18.2 The rules in this Section do not apply to: contextual advertising; web analytics; ad reporting or ad delivery; the collection and use of information for behavioural advertising by web site operators on their own website(s) or the use of OBA in rich media, in-stream videos online or on mobile devices.

Rules

18.3 To ensure that consumers are made aware of, and can exercise choice over, the collection and use of information for the purposes of OBA, OBA third parties must:

- (a) Give a clear and comprehensive notice about the collection and use of web viewing behaviour data for the purposes of OBA on their own website, including how a web user can opt out from having web viewing behaviour data collected and used for this purpose. The notice should also link to a relevant mechanism that allows the consumer to opt out of the collection and use of web viewing behaviour data for OBA purposes by that third party and other third parties.
- (b) Give a clear and comprehensive notice that they are collecting and using web viewing behaviour data for the purposes of OBA, either in or around the display advertisement delivered using OBA. The notice should link to a relevant mechanism whereby a web user can opt out of the collection and use of web viewing behaviour data for OBA purposes by that third party or that third party and other third parties.
- (c) Not create interest segments specifically designed for the purpose of targeting OBA to children aged 12 or under.
- (d) Not create or use OBA segments relying on the use of sensitive personal data¹ without obtaining a web user's Prior Explicit Consent.

18.4 Third parties that use technology to collect and use information about all or substantially all websites that are visited by web users on a particular computer in order to deliver OBA to that computer must obtain explicit consent from web users before doing so.

Compliance Section

18.5 Rules in this Section apply only to OBA third parties as defined. If the ASAI is unable to identify the relevant third party, the advertiser – on behalf of whom the OBA advertisement is delivered to web users – must, in good faith, co-operate with the ASAI to help determine the identity of the third party.

¹ Sensitive Personal Data means personal data as to (a) the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject, (b) whether the data subject is a member of a trade union, (c) the physical or mental health or condition or sexual life of the data subject, (d) the commission or alleged commission of any offence by the data subject, or (e) any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings. Source: www.dataprotection.ie

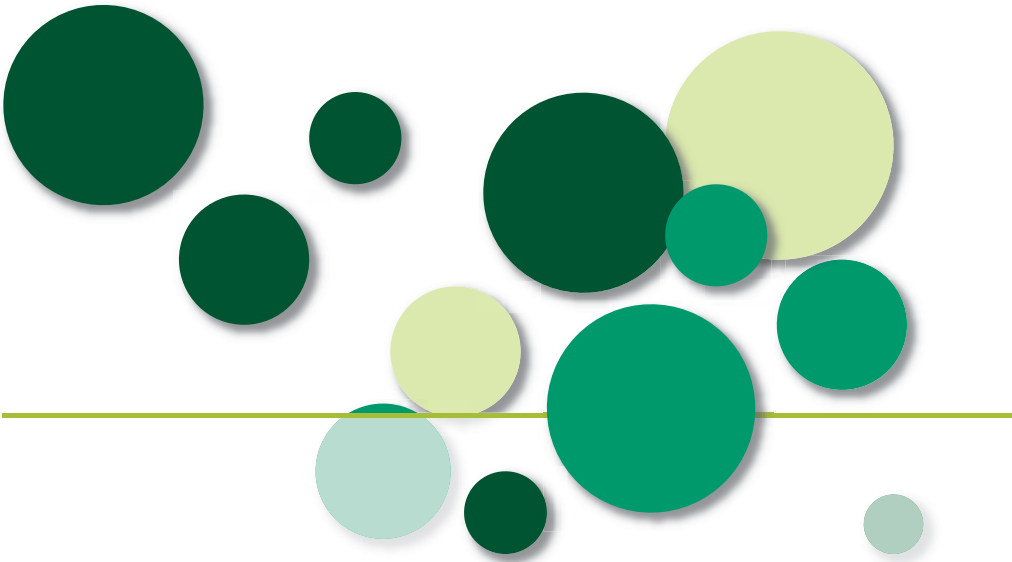
OBA and the Law

18.6 Advertisers and OBA third parties must take account of privacy and data protection laws applicable in Ireland. The relevant legislation in Ireland is the **European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations, 2011**.

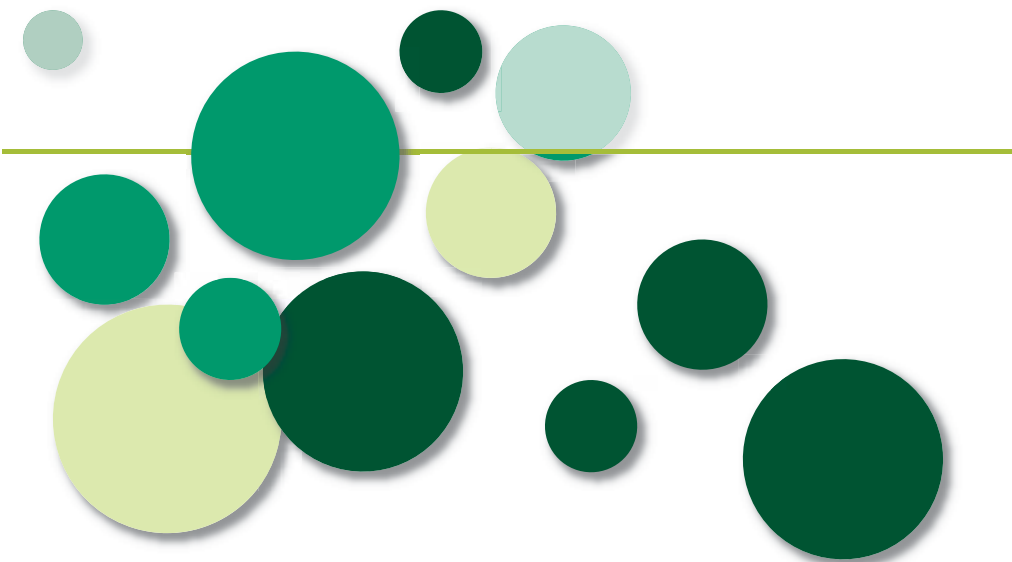
18.7 Guidance from the **Office of the Data Protection Commissioner** is available on the application of the legislation. Companies are encouraged to seek their own legal advice to ensure compliance with privacy and data protection legislation.

OBA Complaints Procedure

The rules and procedures for the making and resolution of OBA complaints are set out at Appendix 1, Part B.



APPENDICES



APPENDIX I

Part A – General 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 set out in a reasonable amount of detail 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 your full name and postal address, setting out in a reasonable amount of detail the grounds for the complaint.
 - Include a copy of the marketing communication if possible, or the particulars of the marketing communication, including dates when seen or heard and the media involved.
 - Give the name of the product and, in the case of a sales promotion or direct mail activity, the promoter and copies of any labels, leaflets or entry forms involved.
 - State clearly at the outset, in the complaint form or written complaint, if a party making a complaint is a competitor of the advertiser/promoter or other entity involved in the marketing communication complained of.
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.
4. An intra-industry complaint may be investigated by the ASAI where the interests of consumers are involved and, subject to the other provisions of the Code, a decision by the ASAI whether or not to investigate a complaint in such circumstances is a matter entirely within its discretion. In cases where the ASAI does exercise its discretion to decide to investigate, complainants may be required to substantiate their complaints. The identity

of the complainant is revealed to the advertiser or promoter and both parties are named in the published Case Report. The ASAI has the option of issuing a statement rather than a formal decision where this is appropriate.

5. Where in the course of an investigation of an intra-industry complaint the ASAI decides that it is necessary for it to obtain independent expert opinion, the complainant shall be liable for the cost/fees involved and will be required to discharge same before the investigation can continue. For the avoidance of doubt, if the complainant does not pay such costs/fees, the investigation will be terminated and the parties informed.

How Complaints Are Resolved by the ASAI

6. The complaint is evaluated initially by the ASAI Executive to determine whether it comes within the terms of reference of the Code and whether there is a prima facie case for investigation.
7. Where a complaint falls outside the terms of reference of the ASAI, for example, 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.
8. The ASAI does not wish to unnecessarily duplicate the work of other regulatory bodies. Where it would be more appropriate for a complaint to be investigated or dealt with by another body, the ASAI will endeavour to provide relevant information or will endeavour to direct the complainant to the most appropriate body.
9. The Code does not prejudice consumers' or advertisers' rights under law. Complaints will normally not be pursued if:
 - (a) The same issue in the complaint, or the same subject matter of the complaint, involve matters that have been resolved in the Courts.
 - (b) Any party to a complaint, or a third party, has initiated legal action with a view to commencing, or has commenced, litigation or another alternative dispute resolution process which relates to a complaint, or the subject matter of a complaint.
10. The decision whether or not to pursue a complaint is a matter at the sole discretion of the ASAI.

11. Where the Executive 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 Executive may request, normally within ten days.
12. On receiving the response, the Executive, where it considers that circumstances warrant it, prepares a summary of the case. This will include any facts or advice that the Executive has gathered. It will include the Executive'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.
13. There may be circumstances where it will not be possible for the ASAI to reach a conclusion; for example, where the ASAI cannot complete a report or adjudication without commenting negatively on a third party that is not the subject of the complaint.
14. The ASAI has the option of issuing a statement rather than a formal Decision, where this is appropriate, and the option to do so is at the sole discretion of the Complaints Committee.
15. 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.
16. The complainant and the advertiser/promoter or agency are provided with a copy of the Executive's Recommendation and are given an opportunity to express any further views on the matter at that stage within a period which the Executive may specify, before referral to the Complaints Committee.
17. In some cases, particularly those involving extensive or complex data, the number of steps involved may be extended before a draft Case Report is submitted to the Committee for a decision.
18. The case, including any views received on the Recommendation, is then submitted by the Executive to the independent Complaints Committee, which decides whether or not the Code rules have been contravened.

19. 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, at the discretion of the Committee, is released to media for publication and posted on the ASAI website www.asai.ie.
20. 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.
21. 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 Executive, in its absolute discretion, to be particularly grave, the Executive 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

22. 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). 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.

Enforcement and Sanctions

23. 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.

- 24.** 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

- 25.** The ASAI Board 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.
- 26.** In particular, if an advertiser seems to have deliberately flouted the Code with the intention of generating complaints, PR and subsequent notoriety, the ASAI Board 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.

Review System

- 27.** In exceptional circumstances, the Complaints Committee can be asked to reconsider its Decisions. Reviews of Decisions will be conducted on the basis of, and in accordance with, the principles, structures and procedures set out in Appendix IV. Requests for review must be submitted within 21 days of issue of the adjudication using the form provided for that purpose. The Decision of the Complaints Committee stands while the matter is being reviewed.

Part B – OBA Complaints Procedure

1. Only complaints which are in writing, and set out on the dedicated **OBA Complaints Form** available on the ASAI website will be accepted and processed.
2. The ASAI Executive will initially check to ensure that they have received sufficient information to identify the parties involved as well as any other information considered necessary for an assessment of the complaint. Where they have not, the Executive will contact the complainant setting out the additional information required, and explain that without it they will be unable to proceed with the complaint.
3. The Executive will also explain, that if, in the future, the complainant sees another example of OBA that they wish to complain about, what steps they might take (e.g. screenshot the page, etc) in order to capture the information that will permit the ASAI to assess the complaint and where necessary initiate an investigation.

Informal Resolution

4. Where, in the opinion of the Executive, sufficient information has been provided setting out the complaint, the Executive will initially send a copy of the complaint and attachments to the relevant OBA Third Party. A response will be requested within ten calendar days.
5. The OBA Third Party can:
 - bring themselves into compliance; or
 - demonstrate to the satisfaction of the ASAI Executive that there is not a prima facie case for investigation.
6. In such cases, the complainant will be informed and the complaint closed. The complaint will be recorded as ‘Informally Resolved’.
7. If the OBA Third Party does not respond to the Executive or the Executive, acting in its sole discretion, considers there is a prima facie case for investigation, the complaint will be escalated to the Formal Resolution procedure.

Formal Resolution

8. A formal investigation will be conducted in accordance with the general procedures for resolving complaints set out at Appendix I, Part A, and references to ‘advertiser’ will, for the purposes of Appendix I, Part B, be taken as referring to ‘OBA Third Party’.
9. In the event of a conflict arising between the general complaints procedures at Appendix I, Part A and these OBA specific procedures, in dealing with OBA complaints these procedures will take precedence.

Enforcement and Sanctions

Publication – ‘Name and shame’

10. In accordance with Appendix I, Part A, Clause 19 following a decision of the Complaints Committee details of the case including the name of the OBA Third Party and the Complaints Committee’s conclusion, but not the name of a consumer complainant are set out in a Case Report which is, at the discretion of the Committee, released to media for publication and posted on the ASAI website www.asai.ie.

Additional Sanctions

11. If an OBA Third Party demonstrates grave, deliberate and / or persistent non-compliance with the Code it may be subject to some or all of the sanctions listed below. (Non-exhaustive examples of when these sanctions might be triggered are given in the FAQs on the ASAI website www.asai.ie.)
12. In this regard, the ASAI Complaints Committee may recommend to the Board of the ASAI that specific additional sanction or sanctions be applied.
13. In such an event, the ASAI Executive will advise the parties to the complaint of the Complaints Committee’s recommendation and invite submissions from them before the matter is submitted to the Board for consideration. The Complaints Committee decision and recommendation will not be published while the matter is being considered by the Board.
14. The Board will consider the Committee’s recommendation taking account of all factors that they consider relevant as well as any submissions received. The Board acting in its sole discretion will decide whether to apply the additional sanction/sanctions recommended by the Complaints Committee.
15. In cases where the Board considers that additional sanction/sanctions should be applied, they will instruct the ASAI Executive who will advise the parties of the Board’s decision.

16. The Case Report will then be published and will include the referral to the Board by the Complaints Committee and the Board's decision.

Removal of the European Interactive Digital Advertising Alliance (EDAA) 'Trust Seal'

17. The Board may following a recommendation of the Complaints Committee, decide to apply the additional sanction of contacting the EDAA requesting that the EDAA arrange for the removal of the EDAA 'Trust Seal' of an OBA Third Party.
18. In this regard, once the ASAI has informed the EDAA of the request for the application of the sanction, the EDAA will, within two business days, inform the independent certification providers (ICP) to remove the 'Trust Seal' with immediate effect. This will be a mandatory action and, as such, neither the EDAA nor ICP can refuse, at this stage, to comply with the ASAI decision and request.

Withdrawal of OBA Icon

19. The Board may following a recommendation of the Complaints Committee, decide to apply the additional sanction of contacting the EDAA requesting that the EDAA arrange for the withdrawal of the OBA Icon of an OBA Third Party.
20. In this regard, once the ASAI has informed the EDAA of the request for the application of the sanction, the EDAA will withdraw the OBA Third Party's right to use the OBA Icon thus terminating the licensing agreement.

Referral to Relevant Regulator

21. The Board may following a recommendation of the Complaints Committee, decide to apply the additional sanction of referring an OBA Third Party to the relevant regulator (in this case the Office of the Data Protection Commissioner). This sanction will only be applied in cases where the Board, acting in its sole discretion, decides that an OBA Third Party has demonstrated deliberately obstinate and defiant non-compliance with the Code, its OBA rules and adjudications of the Complaints Committee, including non-cooperation with the ASAI's complaints handling process.

APPENDIX II

Copy Advice

- 1.** 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. Copy advice is communicated confidentially, is non-binding and is given free of charge. It is not definitive advice as to whether a proposed marketing communication or sales promotion would, if later complained about, lead to a finding by the Complaints Committee that it did or did not conform to the Code. Rather, it is an authoritative opinion, given by the Executive, which does not bind the ASAI.
- 2.** The ASAI will be in no way liable for any consequences that flow from a decision to heed or ignore Copy Advice.
- 3.** There may be occasions when an advertiser, a media owner or agency is concerned that a proposed marketing communication, which is not subject to the Code, may cause offence. On request, the ASAI will give informal advice in such cases.
- 4.** Copy Advice is not provided to unrelated third parties.

APPENDIX III

Monitoring

- 1.** The ASAI regularly conducts monitoring exercises of individual marketing communications to assess compliance with the Code requirements. Such exercises can be conducted on specific media or a mix thereof. They can also be focussed on a particular industry or area of economic activity. Initially, this is carried out on an informal basis with the advertiser/promoter being asked for comments within a specific time frame. Failure to respond to the Compliance Monitor's request for information may result in the matter being passed to the Executive for a formal investigation, as per their normal investigation procedures.
- 2.** The ASAI Monitoring Service also monitors compliance with all of the Complaints Committee's adjudications.

APPENDIX IV – REVIEW SYSTEM

Review Panel

A Review Panel (“the Panel”) consisting of three members will be appointed by the Board of the ASAI. Each Member will hold office for a term of five years or for such shorter period of time as the Board of the Authority in its discretion considers appropriate. Members of the panel can be appointed for a further term/terms provided always that the maximum cumulative period of time which a member may serve is ten years and, for the avoidance of doubt, any member who has served for 10 years will not 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 ASAI. 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);
- The Decision concerned was clearly and manifestly in error having regard to the provisions of the Code, was wholly irrational, or clearly made against the weight of the evidence before the Complaints Committee at the time of the making of the Decision;
- 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 strong case in relation to any of the aforementioned grounds that 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. For advertiser applicants the fee will be €5,000 (save for registered charities in respect of whom the fee will be €2,000) and for applicants involved in competitive complaints, 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 Executive, the Panel will first decide whether the application should be accepted. When an application for a review is accepted by the Panel, the Executive 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 Executive 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 strong case, it will then decide as follows

Either

That the application does not meet any of the three grounds for review set out above. The Panel may find, in this regard,

- that it is not satisfied on the balance of probabilities that the new, fresh or additional evidence is 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 satisfactory; and/or

- that it is not satisfied on the balance of probabilities 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 it is not satisfied on the balance of probabilities 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 it is satisfied on the balance of probabilities that one or more of the three grounds set out above has been met. The Panel may find, in this regard,

- that it is satisfied on the balance of probabilities that the new, fresh or additional evidence is 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 it is satisfied on the balance of probabilities 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 it is satisfied 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 the Panel's decision, and the decision will be communicated by the Executive to all parties involved.

For the avoidance of doubt, in reaching its decisions 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 under review.

There is no appeal from a decision of the Panel and, as provided for at Paragraph 27 of the Complaints Procedures, the decision of the Complaints Committee will stand, pending the outcome of the reconsideration by the Complaints Committee (if applicable).

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

- affirm or vary its original decision,

Or

- annul its original decision and make such decision as it considers proper in relation to the matter concerned.

In either case, the decision of the Complaints Committee is final.

The Executive 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 www.asai.ie.

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An Index will be available online.



Code of Standards for Advertising and Marketing Communications in Ireland

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