

**BIRD & BIRD**

**THE EVOLUTION OF NEW ADVERTISING  
TECHNIQUES**

**UNITED KINGDOM**

**UNITED KINGDOM**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## 1. Definitions

### ➤ **broadcaster :**

- **advertising:** **The ITC code of Advertising Standards and Practice (CASP)** mentions that it applies to any item of publicity inserted in breaks or in between programmes, whether in return for payment or not, including publicity by licencees themselves.
- **Sponsoring :** **The Code of Programme Sponsorship** defines sponsorship in par.1.1 as follows: "a programme is deemed to be sponsored if any part of it's costs of production or transmission is met by an advertiser with a view to promoting its own or another's name, trade mark, image, activities, products or other direct or indirect commercial interest". A sponsor is defined as "any organisation or person other than the broadcaster or television producer who is sponsoring the programme in question with a view to promoting their goods or services. This definition extends to those who are otherwise supplying or funding the programme".
- **tele-shopping : Directive**

## 2. Advertising

### a) **Rules on insertion in and between programmes**

The rules on insertion are similar to the rules provided in the Directive, but are more detailed. For example guidance is given on the use of "natural breaks" or "intervals" in programmes

The ITC rules also apply the 20 minutes principle for breaks in a programme. A shorter interval is acceptable only when the interests of the audience are better served. Also for films the rules are identical to the rules of the Directive TVWF.

Special rules apply for the terrestrial channels (3,4 and 5) : programmes of up to 20 minutes may not be interrupted; programmes up to 44 minutes may contain 1 break, 49-59 minutes: 2 breaks ....The maximum duration of a break is 3, min and 50 sec of which no more than 20 seconds can be programme promotion. A special regime applies for sporting and similarly structured events.

## **b) Rules on the maximum amount of advertising**

For terrestrial broadcasters the total amount of advertising in 1 day must not exceed 7 minutes per hour (between 6pm and 11pm the maximum is 7,5 minutes per hour and between 7am-9am: total amount of 16 minutes).

For the other services the limits provided in the Directive TVWF apply.

## **3. Tele-shopping**

The definition and the rules on teleshopping spots, programmes and channels are identical to the rules provided in the Directive TVWF.

For terrestrial services however a very strict regime is provided for teleshopping spots: these channels may run long-term advertisements, including teleshopping, but it will count towards the daily maximum (7 min/hour).

## **4. Sponsoring**

A core principle in the rules on sponsorship is the preservation of programme integrity. Also a clear distinction between advertising and sponsor credits has to be observed in order to ensure that credits are not used as a means of extending allowable advertising minutage.

Sponsors must be clearly identified at the beginning and/or end of the programme. Bumper credits (entering or leaving a commercial break) are also allowed. Credits may be oral and/or visual.

The CPS provides that there must be no sponsor credits within programmes.

**Front sponsor credits** must not be integrated within any part of the programme (title sequence is an exception from this rule, provided that the sequence does not include, nor is preceded by any part of the programme itself).

**End and bumper credits** may overlap the programme for not more than 5 seconds.

**Front credits** must not exceed 15 seconds for a single sponsor and 20 for more than one.

**Each bumper or end credit** must not be more than 10 seconds in length (even in case of multiple sponsorship).

**Front credits and, in case of their lack, end credits** must identify the sponsor and explain its connection with a programme.

The principal purpose of sponsor credits must be to create an association between the sponsor and the actual programme being sponsored.

The link between the programme and sponsor must be reflected in the sponsor's credits. Any use of the sponsor's product must help to reflect the link between sponsor and programme.

Credits must not include any extracts from advertising campaigns that have been transmitted on ITC licensed services within the last three years.

Credits must not contain any direct exhortations to purchase or rental of the sponsor's goods/services. They may not include specific references to the attributes, benefits or prices of those products/services.

Expressions that suggest the sponsor has compromised the licensee's broadcasting responsibilities are not acceptable.

A programme may also include technical information services at reduced or no charge in return for an on screen acknowledgement.

## **5. Product Placement - Surreptitious advertising**

The ITC Rules define product placement as " the inclusion of, or reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or ITC licensee. Such technique is prohibited.

**The ITC Programme Code** prohibits undue prominence of commercial products or services in programmes. Exceptionally, reference to advertising is allowed when limited to what can clearly be justified by the editorial needs of the programme.

Where their use is clearly justified editorially, products may be acquired at no or less costs if such acquisition is clearly justified editorially. A basic text acknowledgement of max.5 seconds may be included in the end credits.

Programme support material (publications, off-air activities or theme music) is also allowed. A sponsor credit must be limited to a simple factual audio and/or visual reference (max. 15 seconds).

Advertising must not refer to the use or appearance of any product in any programme.

## **6. New advertising techniques**

### **a) split screen techniques**

There are no specific rules on split screen techniques but ITC accepts a limited form. During the advertising break, information on programmes can be given in a text banner (not animated).

### **b) virtual advertising**

In November 2000 the ITC issued guidelines concerning virtual advertising:

Rules:

1. The use of virtual advertising must be made transparent to viewers, either at the beginning or end of any broadcast using the system and explanatory credits should explain the purpose of the system.
2. Systems may not be used to place advertising additional to that which is at an event,
3. Systems may be used to replace advertising on moving objects.
4. The use of systems should not result in discernible degradation in picture quality.
5. The licensee must have the contractual right to refuse to carry an electronically altered signal.
6. The licensee must not in any way be involved in selling virtual advertising.

### **c) interactive advertising (digital television)**

In February 2001 the ITC issued a guidance note on interactive television services. A distinction is made between "dedicated interactive services" (services accessed directly (through EPG) of which the content is usually not linked to a programme) and "enhanced programme services" (advertising enhancement exists when commercial material is accessed directly or indirectly from a linear programme).

Rules:

- 1 The ITC licensee is required to retain full editorial responsibility
  - (a) for any interactive icons the licensee has caused to be present during the course of editorial programmes;
  - (b) for all editorial programme enhancements, whether on initial or subsequent enhancement screens;
  - (c) for all advertising contained on the first screen accessed after the first choice to interact; and
  - (d) for all screens containing enhancements – whether advertising or editorial programming – over which they exercise control.
- 2 The status of different types of content should be transparent to the viewer.

- 3 Advertisements appearing in conjunction with programme enhancements must  
(a) be clearly distinguishable as advertisements; and  
(b) be recognisably separate from all editorial content.
- 4 Where a viewer will incur any cost through choosing to interact (eg from a telephone call), this cost must be made clear.
- 5 No interactive icon present during the course of editorial programming may  
(a) be commercially branded; or  
(b) be moved or placed by the broadcaster in conjunction with any part of the editorial content, if the resulting interactivity to which it leads contains commercial information related to the editorial.
- 6 A choice to interact is not the same as a choice to receive advertising or offers for sale. No choice to interact with editorial programming may take a viewer at the first click to a site dedicated wholly to advertising content. On the intermediate screen editorial content may be coupled with links to commercial content, but there should be a clear indication that the next click will take the viewer into advertisements or offers for sale.
- 7 Interactive options may contain information about products related to the editorial content of a programme such as books, video or music. But these options must be treated as advertising rather than editorial material.
- 8 Within any programme enhancement, advertising which is not specifically selected by the viewer must not predominate over programme material. (max 1/3 of screen)
- 9 No advertisement or other commercial content contained on an enhancement may be for a product or service that could not be transmitted in and around the programme in the linear environment.

**d) Other new techniques**

The ITC received requests for licensing all advertising channels (a channel including property advertised for sale and a BMW channel of short narrative films featuring their cars). Licences could not be granted since these projects do not meet the criteria of self promotion or teleshopping channels.

## **Radio**

Radio is controlled and regulated by the Radio Authority. All advertising and sponsoring is submitted to the Advertising and Sponsorship Code. The rules on content of advertising and sponsoring are similar to the ITC rules. There are no detailed rules on insertion of advertising as existing for TV. There are no rules on frequency of insertions and their maximum duration.



## Internet/Mobile Phone

There is no specific regulation on advertising for these media. The self-regulatory codes of the Advertising Standards Authority apply to almost all non-broadcast media.

### A. Internet

There is on this moment no urgent need for specific regulation. General consumer protection regulation applies, as well as the e-commerce Directive, rules on data protection... ITC is not intervening at this moment and leaves control to self-regulatory bodies (the Internet Watch Foundation; ASA)

### B. Mobile phone

Data protection is ensured by the Data Protection Act 1998, the Telecommunications Regulations 1999 and 2000, and the Freedom of Information Act 2000.

**The Telecommunications Regulations 1999** allows the telecommunications service provider to use personal data for the marketing of its own services, if the subscriber has given consent. The company collecting the data is also legally required to inform the individual that the information given may be passed on to "associated companies" or "other carefully selected companies". The individual can opt out from this further use of their personal data.

Conform the **Data Protection Act 1998** the company responsible for the data is in theory allowed to sell this information to third parties, but there is a legal requirement to inform the individual of this possibility.

Conform the **Telecommunications Regulations** a person shall not use, or instigate the use of publicly available telecommunications services and a subscriber to such services shall not permit his line to be used where the called line is that of a subscriber who has previously notified the caller that such unsolicited calls should not be made.

There is also a Code of Practice elaborated and applied by the Wireless Marketing Association.

**UNITED KINGDOM**

**- REPORT -**

**This report has been drafted by Bird & Bird**

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# TELEVISION

## I. ADVERTISING

### A. General rules

#### 1. General consumer protection regulation

##### Control of misleading advertisements regulations 1988.

These regulations were made on 23 May 1983 under the European Communities Act 1972, section 2(2), and came into force on 20 June 1988. They implement EEC Council Dir. 84/450 relating to misleading advertising.

They impose a duty upon the Director General of Fair Trading (in his case the duty is a non-mandatory one and arises only if a complaint is referred to him by the ASA, the Independent Television Commission, the Radio Authority and the Welsh Authority to consider complaints on misleading advertising unless “the complaint appears to be frivolous or vexatious”).

The Regulations do not apply to investment advertising and certain advertisements referred to in section 58(1)(d) of the Financial Services Act 1986 (Reg. 3 (1)(a)-(b)).

Once the Director General of Fair Trading is satisfied that the complaint is genuine and that the advertisement concerned is misleading he may, if he considers it appropriate, make an application to the Court for an injunction preventing publication or continued publication of the advertisement (Reg. 5).

##### Sale of goods act 1979

The Sale of Goods Act 1979 came into force on 1 January 1980 and applies to all contracts of sale of goods made on or after 1 January 1980, including those to people dealing as consumers. As such it forms a major part of the legislative framework concerned with consumer protection.

The Act does not deal with advertising specifically

##### Consumer protection act 1987

The Act received its Royal Assent on 15 May 1987. It is divided into three main parts dealing with:

- Part I; liability for damage caused by defective products;

- Part II; safety of goods; and
- Part III; misleading price indications.

Again, the Act does not deal with advertising specifically. However Part III of the Act, which came into force on 1 March 1987 (by virtue of the Consumer Protection Act 1987 (Commencement No 3) Order 1988, SI 1988/2076) makes it an offence to give a misleading price indication in respect of goods, services, accommodation or facilities, or to fail to correct any such misleading price indication (section 20). Section 21 lists five ways in which a price may be considered to be misleading including that it is less than in fact it is or that the price quoted is incomplete and there will be “additional charge(s)”.

Therefore, any misleading price indications will fall within the legislative ambit of the Act as well as within the appropriate self-regulatory or statutory codes of practice.

Parts I and III do not apply to Northern Ireland.

## **2. Audiovisual regulation by the ITC**

The **Independent Television Commission (ITC)** is the regulatory body responsible for licensing and regulating terrestrial, cable and satellite commercial channels in the UK.

Pursuant to the Broadcasting Act 1990, the ITC is empowered to draw up and enforce a code of standards in television advertising and sponsorship. The BBC is governed by a Royal Charter and does not carry any advertising but advertising and sponsoring are permitted on BBC Worldwide. BBC World and BBC Prime fall within the remit of the ITC.

The ITC applies several Codes containing rules on advertising, sponsorship and tel-shopping: The Code of Advertising Standards and Practice, the ITC Code of Programme Sponsorship and the Rules on the Amount and Scheduling of Advertising. These Codes are applied in the spirit as well as in the letter.

The ITC Codes have to be observed by TV broadcasters and other entities licensed by the ITC. ITC licenses 3 terrestrial channels in the UK, namely channel 3 (ITV), 4 and 5. Moreover, ITC licenses other services such as teletext or DBI Ltd. (commercial additional service) and numerous satellite & cable broadcasters, as well as regional broadcasters.

### **The ITC Code of advertising standards and practice (“CASP”)**

#### a) General principles

The Code contains general principles to be observed in advertising: all advertising should be legal, decent, honest and truthful and may not mislead, cause serious offence or lead to harm (cfr Directive TV Without Frontiers (hereinafter referred to as TVWF), art. 22,1)

Important rules on the content of advertising are for example:

- i) advertisements must not be **misleading** i.e. it must not mislead about the product or service advertised nor about its suitability for the recommended purpose (par.24); it refers also to the prices mentioned in the advertisement; specific rules are set out regarding instalment payment (par.25);
- ii) advertisements must not get involved into any political, industrial nor any other public **dispute or controversy** (par.10);
- iii) advertisements must not offend against **good taste**, decency, public feeling nor respect for human dignity (par.13); (the Directive – art.12)
- iv) advertisements must not be excessively **noisy**, strident and studio transmission powers must not be increased while emitting advertisements (par.9);
- v) special rules are elaborated as regards religious and charity advertising (respectively par.11 and 12);
- vi) special rules refer to **portraying of individuals** - authorization of the person is necessary; in any event the advertisement must not be offensive nor defamatory (par.15);
- vii) advertisements must not play on **fear** nor exploit the **superstitious** (respectively par. 16 and 17);
- viii) some **products** cannot be an object of advertising (for example products supposed to mask the effects of alcohol);
- ix) special standards are elaborated in relation to the use of animals in commercials;
- x) **comparative** advertisements are allowed as far as it is in the interest of competition and public information, but they must be fair and not misleading (par.26) and they must not attack nor discredit, either directly or indirectly, products or services of the competitors (par.27).
- xi) **appendix 1 to the ITC code of advertising standards and practice** includes a set of detailed rules on advertising and children (persons aged 15 years and under are considered as children for the purpose of this Code)

b) Relevant definitions

The ITC Codes do not contain a list of definitions, but in the preliminary remark of the Code of Advertising Standards and Practice it is mentioned that the Code applies to “any item of publicity inserted in breaks or in between programmes”, whether in return for payment or not, including publicity by licensees themselves (par.4).

c) General rules on duration and insertion in TV programming

*Identification principle*

The Code states that advertisements must be “**clearly distinguishable and recognizably separate**” from regular programmes (par.5.a.). Specific rules are contained in the ITC Rules on the Amount and Scheduling of Advertising, par. 3.1. Art. 10.1 of the Directive is almost literally repeated, since the rules state that breaks must be “identified both in vision and/or sound at both the beginning and end of the break”. (Directive TVWF – art.10.1)

The ITC Code provides in specific rules (par.5.b.) to ensure that advertisements, sponsorship credits and programmes (and programme promotions) are clearly distinguished. Advertisements and programme promotions must be clearly distinguishable as such and separated from programmes. Situations, performances and styles reminiscent of programmes” must not be used in the advertisements in a misleading way.

In marginal cases the acceptability of such an advertisement may depend on the positive indication that it is an advertisement. Where an advertisement imitates or parodies a particular programme it must not appear in the breaks in or adjacent to that programme.

The ITC Code states that advertisements must not include extracts from recent (last 2 years) or current (still running) programme material, or incorporate programme titles, logos, sets or theme music, except in the case of advertisements for products and services which are based on the programme concerned, or advertisements in which such products or services are offered as promotional items. In either of these cases the advertisement, as a whole, must not be presented as though it were an extract from or promotion for the programme. Any programme extracts must not appear to be endorsements of the products and services advertised. Such advertisements must not appear in breaks within or immediately before episodes or editions of the programme concerned but may appear in the break immediately following, provided it is not first in break (par.5.c.).

The Code also explains that the fact that an advertiser sponsors a programme does not create the right to include programme-related material in advertisements where it would be contrary to the above mentioned rule. There may be a simple factual reference to the sponsor in which case a full scheduling restriction will apply. Advertisements by a sponsor which do not refer to the programme or the sponsorship in any way may appear in the breaks adjacent to the sponsored programme provided they are clearly distinguished in content, style and presentation from the sponsorship credits.



Par.4.2.7. of the Rules on the amount and scheduling of advertising provides rules concerning the appearance of well known persons or performers in advertisements. In order to maintain a clear distinction between programmes and advertisements, and to minimize any risk of confusion between the two, advertisements featuring a well known personality or performer, or a person who takes a leading role in a programme, must not be scheduled in breaks in or adjacent to that programme (also cartoons and puppets are covered by this rule).

Paragraph 5.e. prohibits use of the term of “programmes” and “News Flash” in the advertisements.

According to paragraph 5.g. advertisements must not refer to the use or appearance of any product in any programme.

Section 7 of the ITC Rules on the amount and scheduling of advertising contains specific rules for the identification of "Long advertisements". Par.7.1.1. states that any advertisement that lasts longer than one minute should be carefully assessed to ensure that there is no risk of confusion with programme material. Except where the style makes it fully apparent that it is an advertisement, any "long advertisement" must be flagged as such at the beginning and at the end. (7.1.2.) Where an advertisement adopts a programme style (interview, cookery demonstration...) there must be in addition a 5 second reminder to viewers of it's advertising nature in every full minute of duration and a 3 second reminder in any part minute over 20 seconds.

### *Insertion between programmes*

The ITC Rules are based on the general principle, that advertisement breaks must be inserted **between** the programmes.

### *Insertion in programmes*

The ITC Rules state (par.5.1) that breaks within programmes may be taken only at a point **where some interruption would occur** in any case. These so called natural breaks may not damage the integrity or value of the programme.

Section 6 of the Rules contains guidance to recognize natural breaks. It defines "natural break" as "a point at which some interruption of the programme continuity would in any case occur were the programme not to be interrupted by advertising.

- i) in case of **drama and situation comedy**, a break may only take place if there is a clearly marked and dramatically significant lapse of time in the action or there is a complete change of scene, with a significant break in the continuity of the action or, in case of adaptation of stage plays, the original intervals in it may be regarded as natural breaks;

- ii) in case of **documentaries and discussion programmes**, a break can be taken only, if there is a change of topic or exposition, at the end of any filmed inserts in live documentaries or when new participants are introduced;
- iii) in case of **light entertainment**, a break is possible only at the end of an act or of a sequence;
- iv) in case of **pieces of music**, a break is normally allowed at the end of a musical composition, a set, between the acts of an opera or a ballet; moreover breaks are not allowed between movements of a symphonic or similar work, segments of a series of pieces usually heard continuously nor in case an audience does not normally leave their seats;
- v) for **children's programmes** the rules on drama and entertainment apply;
- vi) in case of **outside broadcasts** other than sport events, breaks may be taken when the commentator moves to a new item;
- vii) in case of **programmes with prizes**, a break may be taken when one of the competitors leaves the scene and before a new one is introduced; otherwise a break may appear at the end of a complete round of questions only;
- viii) if a programme has been **purchased from overseas**, pre-existing breaks can be taken only if the above mentioned conditions have been met;
- ix) if the licensee relays a **live programme feed from an overseas broadcaster**, the break pattern of the originating broadcaster may be taken; Where advertising inserted by the originating broadcaster is also taken, the ITC licensee should be able to block or otherwise replace the transmission of any material that does not comply with the ITC Codes and Rules;

In case of **programmes made up of autonomous parts**, breaks may occur in between these parts only (par.5.2). In sports programmes and similarly structured events or performances containing intervals, breaks may be taken only in the intervals (par.5.3).

- breaks may be taken during intermissions of the particular sport ;
- in live coverage of long continuous events, breaks may be taken when the focus of coverage shifts from one point to another; breaks may also be taken adjacent to cut away discussions or background film insert sequences;
- in case of previously recorded programmes, break points should be put in such a manner as to avoid the impression that some part of the event has been omitted to accommodate advertising.

In accordance with art.10 Directive TVWF, breaks in programmes containing just one spot shall remain the exception.

### ***Prohibition and particular separations***

The ITC Rules prohibit insertion of advertising in the following programmes (par.3.2) :

- a **religious service** or other devotional programme
- a formal **Royal ceremony** or occasion
- a programme designed and broadcast for reception in **schools**
- a programme for **children** of less than 30 minutes duration (cfr Directive TVWF)
- a programme of live transmission of **Parliamentary proceedings**, including coverage of Committees, of half an hour scheduled duration or less;
- a **religious programme, a documentary or a news or current affairs programme** of less than 30 minutes duration (cfr Directive TVWF)

Par.3 provides for special regulations on **30 sec. buffers** following religious services and Royal ceremonies and a prohibition on advertising following epilogues and other religious items if they appear before a closedown.

Section 4 of the ITC Rules contains general rules (par.4.1) and specific provisions (4.2 and 4.3) concerning **particular separations** of advertisements and programmes. Generally, the ITC expects its licensees to have careful and responsible approach to what kind of advertisements they put in the adjacent of certain programmes in order to avoid inappropriate juxtaposition or unintended interaction between the content of the advertisements and the content of a broadcast.

Par.4.2.1. mentions a series of products/services which cannot be advertised in or adjacent to children's programs or programmes directed at or likely to appeal to audiences below the age of 18/16/10 (for example alcoholic drinks, bingo, religious subject matter, slimming products, matches, medicines, liqueur chocolates).

Advertising for merchandise based on children's programmes must not be broadcast in any of the two hours preceding or succeeding the relevant programme (par.4.2.2.).

Alcoholic drinks (from 1.2%) may not be advertised in or between religious programmes.

### ***Duration and Frequency***

The ITC Rules state in par.5.4 that there must be **20 minutes** between each subsequent internal advertisement breaks (Directive TVWF). A slightly shorter interval is acceptable only where the interests of viewers would be better served by taking a break earlier.

However in such cases the programme must not contain more internal breaks than would be permissible by strict application of the 20-minute principle.

Par.5.5 refers to feature films or made for television films (excluding series, serials, light entertainment and documentaries) which may not carry an internal break for advertisements if their total duration does not exceed 45 minutes. If the total scheduled duration is more than 45 minutes, the film can be interrupted once for every full period of **45 minutes** and once more if the duration exceeds by 20 minutes any 2 or more complete periods of 45 minutes. (example: 46-89 min.: 1 break, 90-110 minutes:2, 111-135 minutes: 3, ... )

Paragraph 5.6 contains special provisions concerning terrestrial Channels 3-5 :

1. In programmes of up to 20 minutes duration : no breaks.
2. In programmes of:

21-44 minutes	1 break
45-59 min.	2 break
60-89 min.	3 breaks etc
3. When inserting additional breaks in existing programmes licensees should take care of section 6 when selecting a "natural break" point;
4. The maximum duration of any break within a programme is 3 minutes 50 seconds, of which no more than 3,5 minutes may be advertising and no more than 20 seconds may be programme promotion;
5. Exceptions on these rules may be permitted by the ITC provided that these are justified for programming reasons;
6. A special regime is introduced in reference to certain **sporting and similarly structured events**, in case of which limited departures from the general pattern are allowed, but:
  - there must be natural breaks of brief duration;
  - the distribution of advertising in such intervals must regard the interests of good programme presentation;
  - it will be preferable for not all intervals to carry advertising.

### ***Duration***

The ITC regulation distinguishes different rules for terrestrial (Channels 3,4 and 5) and other broadcasters.

## Average total amount per hour

Par. 1.1 of the ITC Rules is split up in two subparagraphs, either referring to different types of broadcasters:

- i) par.1.1.1 refers to terrestrial broadcasters channels 3-5 : the total amount of advertising in any one day must not exceed an average of **7 minutes** per hour of broadcasting; simultaneously, in the periods between 6pm and 11pm the maximum is 7,5 minutes per hour and between 7am and 9am the total amount must not exceed 16 minutes;

Transfers of advertising time from one day to another are permissible only exceptionally and where such is necessary in the interests of good programme presentation.

For the purposes of this rule a day's broadcasting is deemed to commence at 6am and run for the following 24 hours.

- ii) par.1.1.2 refers to other services than those mentioned above and mentions a maximum average of **9 minutes** (15%) per hour of broadcasting; this number can be increased by **further 3 minutes** (5%) devoted exclusively to teleshopping spots. In any one clock hour there must be no more than 12 minutes of advertising spots and/or teleshopping spots. (art.18 Directive TVWF)

In par.2.1 the ITC Rules specify what is understood under the term of “advertising items” for the purpose of calculating advertising time :

- all items of publicity broadcast on behalf of someone other than the licensee in breaks in or between programmes, apart from public service announcements, charity appeals provided these are broadcast free of charge, announcements required by the BSC (Broadcasting Standard Commission), information to viewers in accordance with the ITC requirements.
- publicity by the licensees themselves except information to viewers about or in connection with programmes.

The notes mention :

- i) publicity addressed by the licensees themselves to potential advertisers are regarded as an advertising item;
- ii) cross-promotion of programmes within terrestrial Channel 3 does not count as an advertising item;
- iii) on channels 3-5 all items of publicity are taken into account for the purposes of the rules on maximum duration of center breaks

- iv) for the purposes of regulation of advertising content there is no exemption for any items referred to in i) and ii) above;
- v) the ITC Programme Code regulates the issue of promotion of the licensee's own goods and services;

Par.2.2. states that intervals of more than 5 minutes between programmes do not count towards the broadcasting time from which entitlement to advertising minutage is calculated (for example interludes, slides with programme details, technical breakdowns).

d) Surreptitious advertising

The ITC codes do not provide a definition of surreptitious advertising.

However the ITC Programme Code in par.10.6 prohibits **undue prominence** of commercial products or services in programmes. Par.10.6(i) mentions as a general rule that advertisements must be broadcast during the paid for advertising-time.

### **Exceptions**

There are however some **exceptional circumstances** allowing to derogate from this rule:

- i) in case it is necessary in the news or another factual programme to refer to a particular advertisement (not exceeding however the necessity);
- ii) for an entertainment programme it is allowed to use the extracts from advertisements in accordance with the following conditions:
  - minimum six weeks must have past since the advertisement in question was transmitted in paid-for time in the UK;
  - no advertisement must be shown for a product which appears in advertising during or around the programme or series;
  - brand names and logos should be hidden as far as possible;
  - the choice and range of advertisements may not be influenced by marketing considerations.

e) Coverage of events

Par.19 of the ITC Rules concerning Advertiser Involvement in Programmes (hereafter: AIP) refers to events. Par. 19.2.1. states that in all cases, visual or oral reference to any advertising or branding at the event must be limited to what can clearly be justified by the editorial needs of the programme. Branding which seems to be deliberately positioned for the cameras should be avoided as much as possible.

There should be no oral reference to the sponsor's business, product or service during the coverage of the event (19.2.2.). Where it is not otherwise apparent from the coverage of the event, there may be a brief reference to the event sponsor during the programme. Alternatively a basic end credit may be included with the end credits of the programme, with the exception of event sponsors prohibited from programme sponsorship

In a note the attention is drawn to the fact that the ITC does not have the intention to impose detailed restrictions on advertising at events, but seeks to ensure that a licensee's primary responsibility is to cover the activity at the event itself, and not any incidental advertising.

## **B. Rules applicable to advertising for Specific products**

### **1. Alcohol**

Television advertising for alcoholic beverages is permitted providing it complies with the following criteria:

- i) advertisements must not be directed at people under 18 or use treatments likely to appeal to them. Children must not be shown in the advertising and in case of alcoholic beverages of maximum 1,2% of alcohol the persons shown must be and appear to be at least 18 years old. For all other advertisements they must be and appear to be **25**.
- ii) Personalities whose example people under 18 are likely to follow or who appeal to them may not feature in the advertising;
- iii) Advertisements must not imply that consumption of alcohol is essential to social success or that refusal of drinking is a sign of weakness.
- iv) Advertisements must not claim therapeutic, stimulant or sedative **qualities** of alcohol or offer it as a tranquilizer or suggest that physical performance can be improved by drinking;
- v) Advertisements must not suggest that a drink is to be preferred because of higher alcohol content;
- vi) it must not encourage **immoderate consumption**;
- vii) nothing in the advertisement may link drinking with **driving** or with the use of potentially dangerous machinery;

- viii) advertising must not suggest that regular **solitary drinking** is acceptable or that it results in resolving personal problems;
- ix) advertisements must not suggest drinking to be an essential attribute of **masculinity**;
- x) advertisements must not show alcoholic beverages in a **working environment**;
- xi) advertising must not employ **humour** in a way that it causes circumvention of the mentioned rules.

Moreover, the Code prohibits broadcasting of advertisements of alcoholic beverages in or adjacent to children's programmes.

This regulation is more detailed than art.15 Directive TVWF.

## **2. Tobacco**

Par.18 of the ITC Code **prohibits** all forms of television advertising for all tobacco products. (Directive TVWF – art.13)

Coverage of tobacco sponsored events, or events at which there is branding, signage or advertising for any tobacco company, must be consistent with the current rules and legislation in place at the time of the event.

## **3. Medicines**

Par.43 of the ITC Code refers to its **Appendix 3** which provides more detailed rules in the field of advertising for medical products and services.

As a general rule advertising for medicines for human use available only on prescription is prohibited (art.14 Directive TVWF).

Par.10 of the Appendix lists the unacceptable medical products and services, for instance: treatment of alcoholism or psychiatry.

According to Par.11 medical specialists must not be depicted to encourage the use of certain products or services.

Advertising for medical products and treatments must mention the following:

- i) the **name** of the product and its active **ingredient**;
- ii) the **indication**;
- iii) the necessity of **reading the label** or the leaflet.



Furthermore, promotion by **well-known persons or celebrities** is prohibited.

The advertisements must not be directed at persons under the **age of 16**.

The Appendix also contains rules to avoid self-diagnosis.

It also prohibits guarantees (for example claiming that recovery is guaranteed), incomplete information, encouraging overdose ... Comparisons are strictly forbidden in this type of advertising.

A similar strict regime applies to dietary supplements and slimming products.

#### **4. Cars**

The ITC Code states in par.21 that:

- i) advertisements may not encourage or **condone dangerous**, inconsiderate or competitive driving practices or breaches of the Highway Code;
- ii) references to acceleration must not suggest exceeding the **speed limits** nor must there be any suggestion of excitement or aggression.

The ITC **Guidance Note No.4** regulates this issue as well (last edition issued in 1998 and consisting of 7 detailed paragraphs).

#### **5. Media**

In 2002 the ITC adopted a new set of rules on promotions and cross promotions which came into effect on January 11, 2002.

The overall aims of the new rules on programme, channel and related service promotion are to reach a balanced outcome allowing benefits to be gained, while minimising the potential disbenefits. Benefits include:

- Information to viewers about programmes and related services likely to be of interest to them; and
- Increased understanding about digital television, and progress towards digital switchover.

The disbenefits could include:

- Irritation among viewers about the amount and nature of promotions;
- The impact on editorial integrity if informative promotions included within programmes become advertising; and

- Competition concerns, if promotions are used as advertising for channels or platform service providers in a way that might threaten competition.

The new rules are set out in full below:

1. *ITC licensees may, outside advertising time, and subject to the following rules,*
  - *promote programmes, events and strands being shown by that licensee, and*
  - *make reference to any other channel or related service (such as a website) that they provide.*
2. *Promotions outside advertising time should provide information of value to viewers and should avoid creating significant viewer annoyance. The amount of promotion on all ITC-licensed channels will be periodically reviewed by the ITC, such reviews being informed by surveys of viewer attitudes and an assessment of the extent to which such promotions might affect competition in the relevant television market.*
3. *To promote fair and effective competition while ensuring continuing informational benefits for viewers, there will be special restrictions for Channel 3 licensees, Channel 4 and Channel 5:*
  - a) *Promotions for other channels and related services provided by these licensees, such as websites, are permitted, but must not give an excessive amount of airtime to a particular channel, service, or suite of channels/services.*
  - b) *Specific promotions for any particular platform service provider, including ITV Digital, will not be permitted, outside of paid for advertising minutage, although generic promotions for digital television are allowed*
  - c) *Short, factual, generic mentions of the platform on which a promoted channel or service can be found will be permitted (e.g., DTT, DSat, Cable).*
  - d) *If a programme or service is carried on all main platforms, platform service providers can be mentioned by name (e.g. Sky, ITV Digital, Telewest etc) providing such mentions are of a factual nature and are non-discriminatory (i.e. all main service providers carrying the programme or service must be mentioned).*

- e) *Licensees may broadcast outside advertising minutage material promoting digital television generically, i.e. without favouring particular service operators.*
  - f) *Promotions outside advertising minutage may not include any information on prices of products or services.*
  - g) *These rules remain subject to the existing restriction for Channels 3, 4 and 5 that promotional material shown in centre breaks must not exceed 20 seconds per break.*
4. *Channel 3 licensees will be allowed to make non-financial arrangements for the promotion on the ITV network of 'ITV-branded' programmes, channels and related services in ITV regions where such services are available.*
  5. *The primary place for cross-promotions and other promotions is within promotional airtime and not programmes. In-programme promotions should not compromise the editorial integrity of the programmes within which they are placed by any means, or lead to advertising substituting for programme content. In-programme mention of other programmes or services:*
    - *must provide information likely to be of value to the viewers of the programme containing the promotion,*
    - *must not constitute a call to make a specific purchase.*
  6. *Where it is of general interest to viewers and consistent with the style of the programme, it will be acceptable for programmes to contain:*
    - *Short factual references to forthcoming programmes/content of obvious interest on the same channel or other channels (e.g. it would be acceptable for one sport programme to be promoted on another).*
    - *Mentions of and visual references to interactive features which might enhance viewer enjoyment of the current and upcoming programmes on the same or related channels.*
    - *Editorial features about forthcoming programmes on the same or related channels, which are of value to viewers in their own right.*
  7. *Additionally, certain multi-item programmes of more than one hour's duration (including sport, provided the action is not interrupted) may*

*include taped material that is relevant to the subject matter of the programme.*

*NB Material allowed for in this section will not be deemed to be in breach of Section 8.4 of the ITC Programme Code.*

8. *Programme end-credits will not be defined as falling within the definition of in-programme time for the purposes of these rules.*

### **Guidance**

9. **Special guidance for digital channels**

*Digital channels which can be shown to have market power in their relevant market will, if requested by a particular distribution platform, be expected to provide a feed clean of interactive icons referring to the interactive service, if that interactive service is not available on the platform concerned. It is not intended that this rule will supersede the existing BSkyB undertaking to the OFT on this subject.*

### **Definitions**

10. *To be considered as 'provider' of another channel or service, a promoting channel must hold or be beneficially entitled to at least 30 per cent of the shares in the promoted channel or service, or possess 30 per cent or more of the voting power in the promoted channel or service.*
11. *Since the public view and general industry opinion are the best indicators of whether or not levels of promotion are 'excessive', and since these tend to change over time, no further definition of this term is believed to be useful at the current time. The ITC will monitor and respond to feedback, surveys and complaints which indicate significant changes in these opinions.*

## **6. Politics and religion**

The ITC Code of Advertising Standards & Practice states in rule 10 that no advertisement may be inserted by or on behalf of any body whose objects are wholly or mainly of a political nature, and no advertisement may be directed towards any political end. No advertisement may have any relation to any industrial dispute and no advertisement may show partiality as respects matters of political or industrial controversy or relating to current public policy.

In Appendix 5, the ITC Code of Advertising Standards & Practice contains special rules applicable for Religious Advertising. The rules apply for all advertising submitted by

any body with objects wholly or mainly of a religious nature or which is directed towards any religious end. They also apply to advertising having a similar connection to systems of belief or philosophies of life.

According to these rules advertising is acceptable for the purpose of promoting events, describing an organisation's activities and offering publications or other merchandise. No advertising is acceptable from bodies which practice illegal behavior or whose rites or other forms of collective observance are not accessible to the general public.

In principle religious advertising may not include appeals for funds and must not be used to expound religious doctrine. Furthermore the rules concern: denigration, use of fear, benefit claims, miracle working, counseling, free offers, guarantee of privacy, acts of worship, identification of the advertiser, exhortation to change religious behavior.

The rules provide specific protection for minors and vulnerable categories of viewers. Religious advertising may not be designed to appeal particularly to people under 18 and no such advertisement may be broadcast in breaks in or immediately before or after programmes principally directed at audiences under 18.

## **II. TEleshopping**

### **1. Definition**

A definition of teleshopping is provided in par.8.1. of the ITC Rules on the amount and scheduling of advertising, according to which, teleshopping is a “form of advertising involving the broadcast of direct offers to the public with a view to the supply of goods or services, including immovable property, or rights and obligations, in return for payment”. Par 8.1. specifies that teleshopping offers of any kind must contain a direct offer for sale to the public within the teleshopping transmission itself. Where the offer for sale is only contained elsewhere (for example in a text service) the material cannot be qualified as "teleshopping".

There are **3 types** of teleshopping broadcast possible:

- i) channels fully devoted to teleshopping, i.e. channels containing exclusively teleshopping;
- ii) teleshopping windows, i.e. extended teleshopping features with a minimum uninterrupted duration of 15 minutes;
- iii) teleshopping spots, inserted in breaks during programmes (mixed with advertising spots or exceptionally isolated teleshopping spots are permitted);

## **2. Rules on duration and insertion in TV programmes**

### a) General rules

The ITC Rules on the amount and scheduling of advertising contain a special Section 8, devoted to teleshopping and self-promotional channels.

As a general rule it is mentioned that teleshopping transmissions must be clearly recognizable and distinguishable from other broadcast and that the ITC Code of Advertising Standards applies in full to any kind of teleshopping broadcast. The specific rules on "Long advertisements" also apply to teleshopping.

Where a teleshopping service is transmitted between other services or in intervals between two parts of one service, both licencees must make it clear in sound and in vision when their respective services begin and end.

### b) Duration and insertion

Specific rules are laid down in relation to the duration of teleshopping transmissions and their insertion in TV programming.

Par.8.1.1, 2 and 3, applicable to teleshopping in "other services", i.e. services other than terrestrial, mention :

**Teleshopping spots** - up to **5%** of daily transmission time above the spot advertising maximum of 15% of transmission time may be devoted to teleshopping spots; this 5% may be increased by any balance of 15% of transmission time not devoted to spot advertising (Directive TVWF art.18);

**Teleshopping windows** - conditions for teleshopping windows broadcast on the channels not wholly devoted to teleshopping:

- no more windows than **8 per day** (Directive TVWF art.18a);
- the overall duration may not exceed **3 hours** per day (Directive TVWF art.18a);
- teleshopping windows must not be interrupted by other material (advertising, teleshopping spots or editorial); advertising and teleshopping spots can however be inserted between windows;
- teleshopping windows can be composed of a set of teleshopping spots as long as they are presented as single entities and identified as such in listings of any kind;
- windows must be **identified** in vision and in sound at the beginning and at the end of the window and their commercial nature must be clear (Directive TVWF art.18a);

- windows must be separately identified in published programme listings.

For terrestrial services the rules are more restrictive:

- i) there is no additional air-time for teleshopping on Channels 3-5 between midnight and 6am. These channels may run long-term advertisements, including teleshopping but it will count towards the daily maximum referred to in par.1.1.1(a), which is of 7 minutes per average hour;
- ii) any long-term advertisements exceeding 7 minutes listings must be separately identified in published programme listings;
- iii) moreover, licensees are reminded that any advertising other than a teleshopping feature of a minimum duration of 15 minutes will count towards the 12 minutes maximum per any given clock hour.

**Teleshopping channels or channels devoted exclusively to teleshopping** - channels exclusively devoted to teleshopping can be licensed by the ITC. For this type of channel the above mentioned rules and maximum-duration **do not apply**. However, the rules on maximum duration of advertising are applicable here.

### **3. Other rules applicable to tele-shopping**

The general rules of the Code of advertising standards are also applicable, **as well as the rules on distance selling**.

The European Directive on Distance Selling was implemented in the UK by The Consumer Protection (Distance Selling) Regulations 2000 (the “Regulations”).<sup>1</sup> The Regulations came into force in the UK on 31 October 2000 and give extended protection to consumers who conclude contracts by means of distance communications (e.g. who shop by phone, mail order, via the Internet or digital TV). The Regulations only apply to consumer contracts. They do not apply to business to business transactions. In addition, certain types of contracts are excluded from the scope of the Regulations.

The Regulations are designed to protect consumers who purchase goods or services by means of distance communication by ensuring that they have full and accurate information about the products or services they purchase and by giving them a cooling off period during which a contract concluded by means of distance communication can be cancelled. The Regulations also protect consumers against credit card fraud.

Contracts concluded by means of distance communication will not be enforceable unless the supplier has provided the following information to the consumer prior to the conclusion of the contract:

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<sup>1</sup> The Consumer Protection (Distance Selling) Regulations 2000 (SI 2000 No. 2334), transpose into UK law the European Directive 97/7/EC on the protection of consumers in respect of distance contracts.

- the identity of the supplier and, where the contract requires payment in advance, the supplier's address;
- a description of the main characteristics of the goods or services;
- the price of the goods or services including all taxes;
- delivery costs where appropriate;
- the arrangements for payment, delivery or performance;
- the existence of a right of cancellation except in the cases referred to in regulation 13 (see Exceptions on the right to cancel in section 4 below);
- the cost, if any, of using the means of distance communication;
- the period for which the offer or the price remains valid; and
- where appropriate, the minimum duration of the contract.

The information listed in section 2 above must be confirmed to the consumer in writing or in another durable medium either prior to the conclusion of the contract or, at the latest, at the time of delivery of the goods or performance of the services.

It would appear that the most efficient way to fulfil this obligation is to put all of the information required in an e-mail that confirms and accepts a user's order. The Department of Trade and Industry has confirmed that e-mail is classed as a "durable medium" for the purposes of the Regulations.<sup>2</sup>

In addition to confirmation of the information set out in section 2 above, the supplier must also provide:

- the supplier's address to which complaints may be sent;
- information on after sales services and guarantees; and
- the conditions for canceling the contract where it is of an unspecified duration or a duration exceeding one year.

The Directive provides that the information set out in this paragraph 3 need not be sent to consumers who order services that are supplied on only one occasion.

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<sup>2</sup> "A Guide for Business to Consumer Protection (Distance Selling) Regulations 2000", Department of Trade and Industry, October 2000.



The consumer has the right to cancel the contract by giving notice in writing to the supplier during the applicable cancellation period. The cooling off period allows the consumer to examine the goods and/or to consider the nature of the services he has ordered before he decides to keep the goods or accept the services.

The consumer does not have the right to cancel certain types of contracts, for example contracts for the supply of newspapers, periodicals or magazines, contracts for gaming and lottery services....

The Regulations state that the consumers must give notice of cancellation in writing, (including by fax or e-mail). Notice cannot be given by telephone. The notice can be sent either to the supplier or to another person notified to the consumer for this purpose. The effective date of cancellation will be the date when the consumer sends the cancellation notice. The consumer must be reimbursed the cost of the goods or services within 30 days of the effective date of cancellation and any credit agreement is then automatically cancelled as well. The consumer is entitled to retain any goods that have been delivered to him until he receives a refund.

If goods have been provided, the supplier should inform the consumer, within 21 days of cancellation, that the consumer must take reasonable care of the goods until the goods are sent back.

#### **4. Rules applicable to specific products**

The requirements of the ITC Code of Advertising Standards & Practice apply in full to teleshopping spots, windows or channels.

### **III. SPONSORSHIP**

#### **1. Definition**

The ITC issued a separate Code of Programme Sponsorship (hereinafter “CPS”), regulating sponsorship.

The CPS defines sponsorship in par. 2 as follows: "a sponsored programme is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another's name, product or service”.

A sponsor is defined as “any organisation or person other than the broadcaster or television producer who is sponsoring the programme in question with a view to promoting their goods or services. This definition extends to those who are otherwise supplying or funding the programme”.

The CPS is also applicable to acquired programmes (including those from outside the UK). Films made for cinema and coverage of sporting or other events taking place outside the UK, however, may deviate from the Code where this is unavoidable.

## **2. General Rules**

The ITC code of Advertising Standards and Practice should be applied to sponsorship credits.

A core principle is the preservation of programme integrity. No sponsor is permitted any influence on either the content or the scheduling of a programme in such a way as to affect the editorial independence and responsibility of the broadcaster (par.4.1).

Thirdly, the CPS states that a clear distinction should be maintained between advertising and sponsor credits, in order to ensure that credits are not used as a means of extending allowed advertising time.

## **3. Which programmes can be sponsored?**

Programmes that can be sponsored:

- i) Individual programmes and series of programmes;
- ii) “showcases” or theme programme blocks provided all the programmes are eligible for sponsorship by the sponsor;
- iii) Some specialist news reports
- iv) Substantive programme strands may be sponsored (there may be no sponsor credits in the programme itself)

The following may not be sponsored :

- any other element of the programme service
- a whole television channel

Programmes that cannot be sponsored :

- news programmes
- current affairs programmes

Certain sponsors cannot sponsor certain programmes:

- consumer advice programmes : these cannot be sponsored by advertisers whose business involves the marketing or provision of products of the type featured
- masthead programming : magazines sharing the name of an advertiser may not supply masthead programming
- merchandising and licensing arrangements : programmes may enter into merchandising arrangements to produce products based on programme characters or other programme-elements, but these companies may not fund any programme with which they are involved in this way.

#### **4. Identification**

Sponsors must be clearly identified at the beginning and/or end of the programme. Bumper credits (entering or leaving a commercial break) are also allowed. Credits may be oral and/or visual.

#### **5. Insertion and duration**

Par.10.1 of the CPS provides that there must be **no sponsor credits within** programmes.

**Front sponsor credits** must not be integrated within any part of the programme (title sequence is an exception from this rule, provided that the sequence does not include, nor is preceded by any part of the programme itself).

**End and bumper credits** may overlap the programme for not more than 5 seconds.

**Front credits** must not exceed 15 seconds for a single sponsor and 20 for more than one.

**Each bumper or end credit** must not be more than 10 seconds in length (even in case of multiple sponsorship).

**Front credits and, in case of their lack, end credits** must identify the sponsor and explain its connection with a programme.

The principal purpose of sponsor credits must be to create an association between the sponsor and the actual programme being sponsored.

The link between the programme and sponsor must be reflected in the sponsor's credits. Any use of the sponsor's product must help to reflect the link between sponsor and programme.

Credits must not include any extracts from advertising campaigns that have been transmitted on ITC licensed services within the last three years.

Credits must not contain any direct exhortations to purchase or rental of the sponsor's goods/services. They may not include specific references to the attributes, benefits or prices of those products/services.

Expressions that suggest the sponsor has compromised the licensee's broadcasting responsibilities are not acceptable.

## **6. Informational services**

A programme may include technical information services (ex. timing) electronically generated directly on screen at reduced or no charge in return for an on-screen acknowledgement to the technical provider, which may appear when the information is displayed (par.20).

## **7. Rules applicable to specific products**

The requirements of the ITC Code of Advertising Standards & Practice apply in full to sponsoring messages.

More-over some sponsors are prohibited or restricted:

The following are not allowed to sponsor television programmes :

- political bodies
- manufacturers of tobacco products
- those who cannot advertise on television

There are also restrictions for certain sponsors:

- pharmaceutical producers must not make any reference to medical treatments or medicinal products available only on prescription;
- other restrictions refer to betting, gaming and bookmaking

Concerning media, The ITC Code of Programme sponsorship contains a special rule for "masthead programmes". A masthead programme is a programme made or funded by a periodical, newspaper, book or information software publisher. These programmes are permitted provided:

- programmes are not a television version of a specific edition of the parent publication
- there are no references within the programme specifically to the parent publication or to any other articles or other matter in that publication. Internal references to the

programme title should only be used sparingly. Any visual references should be minimal;

These rules are designed to limit the exposure a masthead brand is given within a programme.

#### **IV. SELF-PROMOTION**

##### **1. Definition**

- i) Par. 8.2 of the ITC Rules on the Amount and Scheduling of Advertising contains a definition of self-promotional activities referred to as “a particular kind of advertising in which the broadcaster promotes its own products, services or channels”;
- ii) channels devoted exclusively to self-promotion are, according to this provision, permitted and “their self-promotional content is not subject to the quantitative limits on advertising” contained in the ITC Rules. However, advertising for other than the broadcaster’s own products or services are subject to these rules.

##### **2. General rules**

The **ITC Code of Advertising Standards** is fully applicable to self-promotional channels. Such channels, according to the ITC General Note, must not contain any other programmes than promotion of the broadcaster's own goods and services. This type of channel cannot contain conventional programme elements such as news, sports, films, documentaries...

#### **V. OTHER TECHNIQUES**

##### **1. Product Placement**

###### a) Definition

The ITC Rules on AIP par.15.1. give a definition of a product placement as “the inclusion of, or reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or ITC licensee (or any other representative or associate of either)”.

The text immediately adds that this technique is not allowed.

Par.15.2 however states that where their use is clearly justified editorially, products and services may be acquired at no or less than full costs. Provision of the article must not be conditional on any specific agreement as to the manner of its appearance in the programme.

If the programme is not prohibited from sponsorship, a “basic text acknowledgement” of a duration of maximum 5 seconds may be included within the end credits, but only if the identity of the product is not apparent from the programme.

Par.10.6 of the ITC Programme Code prohibits "undue prominence" of commercial products/services in programmes. In particular, any reference to such a product or service must be limited to what can clearly be justified by the editorial requirements of the programme itself. An impression of external commercial influence on the editorial process must be avoided. In no circumstances may the manner of appearance of a product be the subject of negotiation or agreement with the supplier.

Moreover, par.21 of the Rules on AIP refers to the concept of **programme support material**.

Permitted programme support material are “publications, off-air activities or recorded theme music available in actual programme content”.

Par.21 CPS excludes from sponsored support material, programmes that cannot be sponsored. If a sponsor is prohibited or restricted from programme sponsorship, he is restricted or prohibited from sponsoring support material also.

The sponsor may be identified when details of how to get the support material are given. The **sponsor credit must be limited** to a simple, factual audio and/or visual reference concerning sponsor’s identity and such credits may last no longer than 15 seconds. Support material credits must be separate from, and not integrated with, the programme sponsor credits. A brief visual display of the sponsor’s trade mark or registered logo may be included with the sponsor’s name.

## **2. Co-production - Co-Financing**

The actual CPS does not contain any specific provisions on so-called "advertiser supplied programmes". However the rules on programme sponsoring apply.

## **3. Merchandising**

Par.5 © of the ITC Code on ASP mentions that advertisements may not include extracts from recent or current programme material, or incorporate programme titles, logos, sets or theme music, **except in case of advertisements for products or services which are based on the programme concerned, or advertisements in which such**

**products/services are offered as promotional items.** In either of these cases the advertisement, as a whole, must not be presented as if it were an extract from or a promotion for the programme. Any programme extracts must not appear to be endorsements of the products/services. Such advertisements must not appear in breaks within or immediately before the programme concerned but may appear in the break immediately following, provided it is not first in the break.

Par. 4.4.2 of the ITC Rules on ASA prohibits advertisements for **merchandise based on children's programme** to be broadcast in any of the two hours preceding or succeeding episodes or editions of the relevant programme.

## **VI. NEW ADVERTISING TECHNIQUES**

### **1. Virtual Advertising**

In November 2000 an ITC **Guidance Note** was issued concerning virtual advertising. The act is only a guideline but the ITC Rules on AIP mention in par.19.2.4. (section on coverage of events) that the use of electronic imaging systems during broadcast coverage of an event must comply with the ITC guidance in force at the time.

In a preliminary note the Guidance note mentions that it is designed to aid licensees in their interpretation of the ITC CPS and that it aims to reflect current practice in the application of the Code (so it must be read in conjunction with the detailed rules of the Code).

Attention is drawn to the fact that these guidelines have been developed for preliminary trials and may be varied in future in line with experience and future developments.

#### a) Definition

The Guidance note gives a short explanation on the technique of "virtual advertising" and its use :

*" Electronic imaging systems, such as EPSIS or Imadgine, have been developed to expand the potential market for event sponsors by altering (or adding) the received broadcast of advertising at events to suit different markets. For example, one sponsor of an international event could target different markets by advertising different brands for each receiving country. Another event could sell advertising space ten times over to different sponsoring companies for each receiving nation.*

*Virtual advertising works by altering the broadcast signal itself. As a result, special precautions must be taken to ensure that the broadcaster does not lose the editorial control of the television signal."*

b) Rules

7. The use of virtual advertising must be made transparent to viewers, either at the beginning or end of any broadcast using the system. At least until such time as the general public understand their use, explanatory credits should explain the purpose of the system (example: "This broadcast uses electronic imaging to replace some of the actual advertising billboards at the sports arena with advertising aimed at the UK market").
8. Systems may not be used to place advertising additional to that which is at an event, nor to place advertisements on unused billboards or other sites. Moving imagery can only be used on virtual billboards that replace actual animated advertising billboards.
9. Subject to guideline 2, systems may be used to replace advertising on moving objects.
10. "Virtual advertising" for tobacco products is not allowed.
11. The use of systems should not result in discernible degradation in picture quality. It must not lead to failure in compliance with the ITC Technical Performance Code, as far as Channels 3, 4 and 5 are concerned.
12. The licensee must have the contractual right to refuse to carry an electronically altered signal and such right should be exercised at his reasonable discretion.
13. The licensee must not in any way be involved in selling virtual advertising to advertisers or their agents.

**2. Interactive Advertising**

In February 2001 the ITC issued a guidance note as a first step towards the regulation of interactive television services. It should be read alongside the ITC's existing rules for the regulation of content, and in particular the Programme Code, the Advertising Code and the Rules on the Amount and Scheduling of Advertising.

The ITC conducted an in-depth consultation on the regulation of interactive television services during the course of 2000. This generated a total of 32 responses, some very detailed. The ITC also engaged in a series of bilateral discussions with interested parties. Almost all the participants recognised the complexity of the issues, and the fast-moving nature of the market place. There was also a general recognition of the importance of ensuring that regulatory burdens on this new and important market should be as light as possible. But many respondents also highlighted the need to ensure that the existing protection of viewers of linear television services – especially in relation to the separation



of commercial content from programmes, and the protection of children – remains adequately safeguarded.

a) Definition

The Guidance note distinguishes 2 methods enabling the viewers to interact with TV programmes :

- \* by **changing the content which appears on the screen** – for example to access background information, to change camera angles, to view more than one picture at a time, or to view associated text at the same time as a main picture;
- \* by **providing information to the broadcaster through a return path**, usually a telephone line – for example to order a product, to exercise ‘votes’ on options provided by a programme or to participate in an on-screen quiz show.

It is important to note that these services are **available only to members of the public with digital equipment, whether satellite, cable or digital terrestrial**, while many of the digital TV projects are still at the pilot stage.

**A separate but related development has been the growth of Internet-via-TV services**. These provide access to the full World Wide Web rather than to content moderated by the broadcaster – such web access is not normally edited, except to the extent necessary to make text legible on a TV screen. This kind of service uses the TV essentially as a computer screen, in connection with a set-top box providing a function similar to a PC. The ITC had made it clear that it does not intend to regulate the Internet, however viewers get access to it, and pure Internet-via-TV services lie outside the scope of the actual guidance note.

**The ITC’s general approach to interactive TV services**

The ITC is clearly of the opinion that TV and the internet are different media that cannot be subject to the same regulation.

The guidance note mentions: "*Interactive TV services differ substantially from the Internet – in that they are provided in the context of TV programmes and content put out by familiar broadcasting organisations. This is an environment in which the viewer has considerable trust, underpinned by well-developed and widely respected standards for all forms of content. This trust is important to broadcasters and advertisers, as well as to viewers.*"

The guidance note seems to be a first trial to regulate the interactive services and the ITC will continue to study the subject by close monitoring of market developments, the establishment of a forum for ongoing discussion with licensees on all the main issues,

research into viewers' experience of, and reactions to, interactive television services, where appropriate in co-operation with the interested parties.

The ITC bases its approach on three general principles:

"Viewers have a major interest in the development of a dynamic and innovative market in interactive services.

*Regulation must not impose unnecessary costs or restraints, and must be confined to dealing with clear viewer detriments. In no circumstances should the financial or opportunity cost of regulation be allowed to outweigh the benefits.*

We should build on existing audience expectations.

*Where content comes unbidden into the home as part of a linear TV service, viewers do not make active choices other than which channel to watch – and they make no active choices at all about advertising which by its nature is unscheduled from the viewer's perspective. Viewers' reactions are based on a clear set of expectations about the level of protection provided by the current system.*

*By contrast, where viewers are 'pulling' content, having chosen an interactive option, they are by definition exercising control over it. Their expectations, as a result, can be different.*

The current distinction between programmes and advertising is important to viewers and should be safeguarded.

*Viewers need to be clear when they are being sold to, and TV programmes should be free of commercial interference. This applies to all programmes, but special safeguards are applied to news, current affairs, consumer advice and children's programmes. Interactivity may well provide valuable and welcome enhancements to programmes; but it must not prejudice the fundamental principle of separation of programmes from advertising."*

The ITC's overall approach will be a light touch one and ITC is of the opinion that 'new regulation' is not necessary – "the main need is to identify which elements of existing content regulation should be retained for the interactive environment, and which can be disappplied". The ITC's main regulatory concern is to ensure that viewers are clear about what kind of environment they are in, and that programme integrity is effectively maintained.

The ITC guidance note distinguishes two main categories of interactive services : dedicated interactive services and enhanced programming.

## **Dedicated interactive services**

The ITC Guidance note defines these services as "*services accessed in their own right, usually through an electronic programme guide. Typically they consist of electronic 'shopping malls' and entertainment services such as betting and gaming. Their content is not usually linked to specific programmes. Some of these services operate entirely within a 'walled garden' controlled by the broadcaster; others may be linked to a form of full Internet access.*"

Viewer detriments can arise from any content on these services which is **misleading, offensive or harmful**. These are similar to the detriments which can arise from linear services, including teleshopping channels. The ITC notes that it has not been aware of any significant problem in the early stages of development of these services and expects that the level of protection should be rather less than in linear services, taking into account the deliberate choice of the viewer.

The ITC also mentions the fact that it has become increasingly difficult to distinguish between interactive material chosen by viewers from within a 'walled garden' and material from the generality of the Internet, which means that there are risks of distorting the market between the two types of service when detailed regulation would be imposed on the first only. According to the ITC one to one transactions are matters for trading standards officers and the Courts.

As far as the broadcasters responsibility is concerned, the ITC proposes to set two requirements :

### **\* Broadcasters' own content**

Where broadcasters provide content of their own, eg as part of a portal to an Electronic High Street, this lies clearly within their responsibility and control. Such content falls within the scope of an ITC licence, and will be expected to conform to ITC content rules. Any material the ITC considers misleading, offensive or harmful should be removed on notification.

### **\* Transparency of different types of content**

Viewers must not be misled about the regulatory regime that applies to any interactive/internet content they may access, for example they must not believe it is subject to ITC Codes (and consequently the broadcaster's responsibility) when it is not.

If a content provider on a dedicated service provides programming – an example could be a supermarket chain providing a cookery programme for users of an electronic shopping

mall - this provider has to be considered as a licensee in the same way as conventional TV companies, and would thus be subject to ITC licensing requirements.

### **Enhanced programme services**

The ITC defines these as services which provide for interaction with a linear programme.

Three cases are distinguished:

#### **\* Editorial enhancements to programmes**

These arise where **non-commercial content** such as background to news, sports events or dramas is accessed from the programme concerned.

#### **\* Advertising enhancements to programmes**

These arise where **commercial material is accessed, either directly or indirectly, from a linear programme, eg for goods or services related to the editorial content**. They can be combined with editorial enhancements for example where viewers are given access in the first instance to screens offering a combination of editorial material and banner ads.

#### **\* Advertising enhancements to advertisements**

These are **enhancements accessed through an advertisement (or a sponsorship credit)**, eg to get more information about a product or where to buy it.

The ITC notes that "*these enhancements are different from dedicated interactive services since they start from conventional linear programmes. The decision to interact will usually have been made after the decision to watch the programme, so the viewer may well regard the interactivity as an extension of the programme. Also, accessing the interactivity is likely to involve fewer viewer deliberate choices which may increase the expectation of a level of protection closer to that in the linear environment. There are also significant concerns – widely recognised by respondents to our consultation – about the possible impact of interactive services on the integrity of linear programmes, for example if commercial content is entirely unchecked. The ITC agrees with these concerns, and in general sees no persuasive argument that the protection of programme integrity is any less important in the interactive environment than in the linear one.*"

"At the same time, there is no dispute that some degree of commercial exploitation of links with programmes will be needed if the costs of providing interactive enhancements are to be met."

ITC, as a regulator, takes into account the economic aspects of new techniques, as well as the benefits for the public, and is aware of the fact that new regulation should not act as a brake on their development and financing.

Therefore the ITC considers that the establishment of a set of simplified ground rules based on elements of the existing Codes should provide sufficient protection.

These rules concern 3 basic principles :

**\* Licensees' general responsibility**

Licensees remain obliged to comply with the Programmes and Advertising Codes. The rules of these Codes extend to all enhancements over which the licensee exercises control, and to any interactive icons present in a programme or advertisement.

**\* Viewer transparency**

Licensees will not be expected to take responsibility for material over which they have no editorial control, but differences of status must be transparent to viewers. For example, viewers must be told any costs of choosing to interact (eg telephone calls).

**\* Commercial content linked to programmes**

The ITC Programme Code prevents undue prominence of products appearing in programmes, and parallel concerns arise with interactive enhancements. Interactive icons themselves should not be branded, and should not be used in a way that encourages undue prominence of a product appearing in a linear programme.

**The ITC also sets specific requirements on the separation of advertisements from programmes in the interactive environment:**

The first is to prevent viewers from proceeding straight from a programme to a single advertisement. An intermediate 'first click' screen should offer at least some non-commercial material, as well as links to commercial content if appropriate.

The second form of separation is transparency of advertising content – advertising material should be distinguishable as such.

The third form of separation is between specific categories of programmes and specific advertisements. The ITC rules on separation between specific categories of programmes and specific advertising apply also to interactive advertising content accessed through such programmes.

In addition, the ITC has set more specific requirements for interactive enhancements to three especially sensitive categories of programme – news and current affairs, consumer advice programmes, and children’s programmes, which are close to the existing rules for linear programmes.

**\* News and current affairs**

No interactive advertisements should be provided for products or services referred to in the relevant section of a news or current affairs programme, and there should be no interactive ads of any kind providing offers for sale.

**\* Consumer advice programmes**

No direct offers for sale may be made for products or services reviewed in a consumer advice programme.

**\* Children’s programmes**

Existing restrictions on advertising within children’s programmes in the linear environment (eg of alcohol, slimming products, medicines, adult films and also of offers for sale of any kind) also apply in the interactive environment.

The rules set out in the annex to the guidance note are as follows (Notes included in the original text) :

**Licensees’ general responsibility.**

***1 The ITC licensee is required to retain full editorial responsibility***

***(a) for any interactive icons the licensee has caused to be present during the course of editorial programmes;***

***(b) for all editorial programme enhancements, whether on initial or subsequent enhancement screens;***

***(c) for all advertising contained on the first screen accessed after the first choice to interact; and***

***(d) for all screens containing enhancements – whether advertising or editorial programming – over which they exercise control.***

*Note:*

*The ITC takes the view that advertising exposed as a direct result of choosing programme enhancement material has not been requested by the viewer and so is the equivalent of advertisements appearing during linear programmes. This ‘first click’ content is*

*therefore subject to the same compliance requirements as an advertisement in the breaks in linear programmes. Beyond the 'first click', this rule applies only to content clearly designed as a programme enhancement and within the licensee's own control.*

### **Viewer Transparency**

**2. *The status of different types of content should be transparent to the viewer. Where access is provided to content that has a connection with the programme or which looks like editorial material but over which the licensee cannot assert editorial control, the viewer must not be misled into believing that such material is within the licensee's control.***

*Note:*

*The ITC recognises that links may be provided to material which resides eg on an Internet site or a third party server. It does not expect licensees to exert control over such content.*

**3 *Advertisements appearing in conjunction with programme enhancements must***

***(a) be clearly distinguishable as advertisements; and***

***(b) be recognisably separate from all editorial content.***

**4 *Where a viewer will incur any cost through choosing to interact (eg from a telephone call), this cost must be made clear.***

### **Commercial content linked to programmes.**

**5 *No interactive icon present during the course of editorial programming may***

***(a) be commercially branded; or***

***(b) be moved or placed by the broadcaster in conjunction with any part of the editorial content, if the resulting interactivity to which it leads contains commercial information related to the editorial.***

*Note:*

*This rule does not prevent the icon being branded with the identity of the editorial content provider or the interactive service provider. Nor is it intended to prevent all offers for sale linked to a programme or the provision of a moveable icon in circumstances where it could provide a link to genuine editorial support material. Its aim is to prevent the presentation of interactive options in a way which could prejudice programme integrity, e.g. by encouraging the production of programmes designed purely as vehicles for selling products.*

*Licensees should also be reminded of the ITC rules on undue prominence (Programme Code Rule 10.6). These limit references to products or services to what can be justified by the editorial requirements of the programme itself, and set the requirement that no impression be created of external commercial influence on the editorial process.*

*The rule applies only to the activities of broadcasters – it does not apply to any icons placed on the screen eg by equipment manufacturers.*

**6** *A choice to interact is not the same as a choice to receive advertising or offers for sale. No choice to interact with editorial programming may take a viewer at the first click to a site dedicated wholly to advertising content. When the viewer first chooses to interact with editorial, the destination must therefore offer some editorial programme enhancements. These may be coupled with links to commercial content, but there should be a clear indication that the next click will take the viewer into advertisements or offers for sale.*

**7** *Interactive options may contain information about products related to the editorial content of a programme such as books, video or music. But these options must be treated as advertising rather than editorial material.*

*Note:*

*This is not designed to prevent licensees making references to such material in and around programmes under the terms of Section 10.3 of the ITC Programme Code.*

**8** *Within any programme enhancement, advertising which is not specifically selected by the viewer must not predominate over programme material.*

*Note:*

*The ITC recognises that it is difficult to quantify screen area exactly but as a general rule will expect licensees to ensure that commercial messages do not fill more than one third of the screen in these circumstances.*

**9** *No advertisement or other commercial content contained on an enhancement may be for a product or service that could not be transmitted in and around the programme in the linear environment.*

#### **News and current affairs programmes**

**10** *No advertisement on an enhancement screen to a news or current affairs programme may be for, or contain any reference to, an advertiser, product or service referred to in, or otherwise connected with, the editorial content of that part of the programme where the interactive prompt resides.*

*Note:*



*For example, if a news or current affairs programme referred to a given advertiser then that advertiser may not advertise on any screen, or be referred to in any other advertisement, that will be seen if the viewer opts to interact with the news or current affairs programme.*

**11** *No direct offers for sale may be provided on an enhancement screen to a news or current affairs programme.*

### **Consumer advice programmes**

**12** *Where a programme includes reviews or advice on products or services, no direct offers for sale of the products or services reviewed may be provided on an enhancement screen to the programme concerned.*

*Note:*

*This restriction is designed to exclude invitations to viewers to click into a direct offer for sale linked to the content of a 'what to buy' consumer advice programme. It does not exclude the provision of access to information about relevant products or services, or about the company concerned, nor does it exclude the provision of access to screens providing offers for sale provided these are not linked to the editorial content of the programme.*

### **Children's programmes**

**13** *No advertisement or other commercial content contained on an enhancement to a children's programme, or programme likely to have a significant child audience, may be for any product or service that could not be transmitted in or adjacent to that programme in the linear environment.*

*Note:*

*This means in particular that advertisements on enhancements to this class of programme may not contain direct offers for sale.*

## **3. Split Screen Techniques**

The ITC tolerates the use of split screen techniques on analogue television, but under strict conditions. During an advertising break textual information on a Tv-programme in text only is permitted.

On digital interactive television the use of split screen techniques in the interactive environment is permitted to a larger extent. TV programme and other commercial content have to be separated but the separation can be spatial and does not have to be temporal.

# RADIO BROADCASTING

## I. ADVERTISING

In the UK the rules applicable to advertising distributed by radio are contained in the advertising and sponsorship code of the Radio Authority. The Radio Authority's Advertising and Sponsorship Code is based on the requirements of the Broadcasting Act 1990, section 90 & 93. The Code applies to all advertisements and sponsor messages on all services (with the exception of digital additional services) licensed by the Radio Authority.

The Radio Authority may require advertising and sponsorship which does not comply with the Code to be withdrawn or suspended. The Authority can impose sanctions, ranging from a warning, an apology or a correction, to a fine or suspension of a license.

### A. General rules

#### 1. Relevant definitions

Par. 1 of the Advertising and Sponsorship Code (hereinafter: "ASC") provides for a definition of advertising :

**Advertising** "refers to any items, including spot advertisements, sponsor credits and promotions with advertisers, which are broadcast in return for payment or other valuable consideration to a licensee or which seek to sell to listeners any products or services";

This rule excludes promotions of radio stations' **own-branded activities, goods and events** which enhance listener involvement and are not designed to make a profit or promote commercial partnerships;

#### 2. Licensees

The Radio Authority currently licenses **3 national and 253 local** radio stations. The Authority has awarded 14 local digital multiplex licences, and the first national commercial digital radio multiplex anywhere in the world came on air in the UK in November 1999.

#### 3. Compliance and clearance

Compliance with requirements is the **ultimate responsibility of each licensee**. All **advertisements must be cleared in advance** of broadcast

- i) by the Radio Advertising Clearance Centre in case of the so-called “special categories” of advertisements, or
- ii) by the relevant staff at the station concerned.

Special categories are enumerated in par.4.7 of the ASC.

#### **4. Principal rules**

Radio advertising should be **legal, decent, honest and truthful**.

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

Licensees must guarantee that advertisements comply fully with all legal requirements.

#### **5. Rules on insertion of advertising in and between radio-programmes**

##### **Transparency and clear separation of advertising**

Advertising must be **clearly distinguishable** from programming. More detailed rules are set out in section 2, rule 1.

Licensees must ensure that the distinction between advertising and programming is clear. Legitimate presence of a commercial product in a programme is however acceptable.

Advertisements of similar style and format to programme editorial must be separated from programming by other material such as a jingle or by scheduling in the middle of a break. However, advertisers may make references to programming they sponsor within advertisements for their products..

Advertising messages for a station's own commercial activities, or collaboration with a commercial partner, may be broadcast but must be clearly distinguishable as advertising and should not be presented in such a way as to suggest to listeners that the information is impartial editorial.

Particular care has to be taken in case of expressions and sounds associated with news bulletins.

Furthermore, rule 8 contains some more rules on scheduling of advertising.

Scheduling of advertising is the ultimate **responsibility of each licensee**. Advertising must be scheduled appropriately and in accordance with the rules of ASC.

Licensees must exercise responsible judgements when scheduling categories of advertisement which may be **unsuitable** for children and younger people, for those listening to religious programmes and around sensitive programming or news items.

The station's **actual** rather than targeted **audience profile** must be taken into account while scheduling advertising.

Advertisements for alcoholic drinks, sensational newspapers/magazines/websites (or their content) and violent or sexually explicit material must not be broadcast in and around programmes aimed particularly at those aged below 18, or around religious programming.

Particular care is required for the following categories:

- i) divination and the supernatural;
- ii) sexual material;
- iii) sanitary protection products;
- iv) family planning products and services;
- v) anti-AIDS and anti-drugs messages;
- vi) solvent abuse advice.

For the purpose of this rule, the Radio Authority generally considers that children and younger people are those aged below 16.

Special attention should be paid in case where advertisements or their scheduling could be perceived as **insensitive** because of a tragedy currently in news or current affairs programmes.

## **6. Frequency and maximum amount per day**

There are no explicit rules on frequency of insertions or their maximum amount per day, per hour or per within any given clock hour.

The Code contains several rules on the content of advertising (and sponsoring messages)  
:

## **7. Other rules**

### **Unreasonable discrimination**

Licensees must not unreasonably discriminate against or in favour of any particular advertiser. They are entitled, however, to **refuse** broadcasting of advertisements they object for legal or moral reasons.

### **Superlative claims**

Particular care has to be taken in reference to superlative claims. If a given claim is measurable, it has to be **justified**.

### **Environmental claims**

Central copy clearance is required. Sound factual **evidence** must support such claims.

All categorical statements such as “environment friendly” are inappropriate.

### **Fair comparison**

Comparative advertising **is permissible** as long as it serves the interests of vigorous competition and public information, provided that :

- i) the principles of fair competition are respected;
- ii) advertisements are not misleading about either product;
- iii) points of comparison are based on fairly selected facts which can be substantiated;
- iv) comparison chosen does not give the advertiser an artificial advantage over his competitor;
- v) it compares goods or services meeting the same needs
- vi) it objectively compares one or more material, relevant, verifiable and representative features
- vii) it does not create confusion
- viii) it complies with rules concerning denigration. ...etc

### **Denigration**

Advertisement must not **attack or discredit** other products or services, people, advertisers or advertisements either directly or indirectly.

### **Good taste, decency and offence to public feeling**

Each station is expected to **exercise responsible judgements** and to take account of the sensitivities of all sections of its audience when deciding on the acceptability or scheduling of advertisements, since “standards of taste are subjective and individual reactions can differ considerably” as it is stated in rule .9.

Where research on individual stations shows that a significant number of listeners, such as those aged below **16 years**, are present at certain times, stations must schedule sensitive advertisements accordingly.

In particular:

- i) offensive and profane language must be avoided;
- ii) salacious, violent or indecent themes, or sexual innuendo or stereotyping likely to cause serious or general offence, should be avoided;
- iii) references to minorities should not be stereotypical, malicious, unkind or hurtful;
- iv) references to religious or political beliefs should not be offensive, deprecating or hurtful;
- v) disabled people should not be demeaned or ridiculed;

- vi) all pieces of films, music, websites ...with titles and/or themes, being salacious, violent or sexual , require careful consideration;
- vii) humour should not be used in order to circumvent the intention of the foregoing rules.

### **Harm**

Advertising must not harm listeners nor exploit, either personally or financially, their vulnerability. No advertising is acceptable from those who practise or advocate illegal or harmful, or potentially harmful behaviour.

No advertisements may encourage or condone behaviour which is harmful or prejudicial to health and safety.

### **Children and young listeners**

Children (defined as those aged below 16 years) and young listeners are treated with particular attention. Rule **11** contains specific conditions and rules applicable to advertisements likely to be heard by children.

### **Sexual discrimination**

Sexual discrimination is **illegal** (with a few exceptions enumerated in Sex Discrimination Acts 1975 and 1986), either in the field of employment, education and training, the provision of accommodation, goods, facilities or services.

### **Racial discrimination**

It is **illegal** for an advertisement to discriminate on grounds of race. Exceptions to this rule are derived from The Race Relations Act 1976.

Moreover, advertisements must not include any material which might reasonably be construed by ethnic minorities to be hurtful or tasteless.

### **Protection of privacy and exploitation of the individual**

Advertising must not claim or imply an **endorsement where none exist**.

Advertisers are urged to obtain written prior permission from persons portrayed, referred or allude to. If they did not obtain any, they must ensure that featured persons are not portrayed in an offensive, adverse or defamatory way.

### **Political, industrial and public controversy**

Certain conditions have to be fulfilled in case of controversial materials:

## **Superstition and appeals to fear**

Advertisements must not be superstitious and must not, without justifiable reasons, play on fear.

## **Price claims and VAT**

Advertisements indicating a price must comply with all relevant requirements of the **Consumer Protection Act 1987**. In addition, the quoted price must **include VAT** except in case of business-to-business advertising, where it must be clear that the prices are VAT- exclusive.

## **Testimonials**

Rules in reference to testimonials:

- i) they must be genuine;
- ii) they must not be misleading;
- iii) they must be supported by satisfactory documentary evidence;
- iv) they must not be obtained from children.

## **Guarantees**

Words “guarantee”, “warranty” and similar **must not be used** unless the licensee can confirm that the terms of the guarantee are available for inspection if required and are outlined in the advertisement or are made available to the purchaser in writing at the points of sale or with the products.

## **Use of the word “free”**

Use of this word is exclusively **reserved** for products supplied at no cost or no extra cost (other than postage and carriage) to the recipient.

## **Distance selling**

A large number of provisions is mentioned in relation to distance selling:

- i) unless the name and full address of the advertiser is given in the advertisement, the licensee must be able to provide for them;
- ii) licensees must be satisfied that the advertiser can meet any reasonable demand created by the advertising (for instance, this concerning assurances of adequate stock);
- iii) advertisers must be able to fulfil orders within a certain delivery period as laid down in the advertisement (normally this term should not exceed 28 days)...etc

### **Premium rate telephone services**

Advertisements including such services must comply with the **Independent Commission for the Supervision of Standards of Telephone Information Services' Code of Practice**. In particular:

- i) pricing information should be described as costs per minute at all times or as the total maximum cost of the complete message;
- ii) the identity and the address of either the service provider or the information provider must be stated in the advertisement;
- iii) advertisements for non-live or message exchange services which normally last over 5 minutes must include a warning that use of this service might involve a long call.

### **Competitions, lotteries, betting and gaming**

Advertisements for betting and gaming including bookmakers, betting companies, tipsters and gaming machines are **prohibited**, except for situations specifically dealt with in this provision.

Advertisements for competitions are acceptable.

### **Presenters in advertising**

Station presenters/newsreaders are permitted to voice advertisements provided there is a proper **distinction** between the programming material and the advertising material they deliver.

However, they may not advertise products which may be seen to compromise the impartiality of their programming role.

### **Sound effects**

Advertisements must not include any sounds likely to create a **safety hazard**.

## **B. Rules for Specific categories of products**

### **1. Alcoholic drinks (rule 11)**

In case of advertisements regarding alcoholic drinks, central copy clearance is required.



Rules laid down in this paragraph are applicable to **all alcoholic drinks** including low alcoholic drinks unless specifically stated otherwise.

### **Scheduling of advertisements for alcohol**

These advertisements **must not be broadcast** in or around religious programming or programming aimed particularly at those aged below 18 years.

### **Protection of younger listeners**

- i) alcoholic drinks advertising **must not be aimed at**, or use treatments likely to be of particular appeal to, those aged below **18 years**;
- ii) alcoholic drinks advertising must not include any personality whose example is likely to be followed by, or who has a particular appeal to, those aged below 18 years;
- iii) advertisements for alcoholic drinks must only use voiceovers of those who are, and sound as if they are, at least **25 years** of age (18 in case of drinks containing less than 1,2% alcohol by volume);
- iv) **children's voices** must not be heard in advertisements for alcoholic drinks.

### **Unacceptable treatments**

- i) advertisements must not imply that drinking is essential to **social success** or acceptance or to social occasion's success, or that refusal is a sign of weakness;
- ii) advertisements must not imply that drinking contributes towards **sexual success** or attractiveness;
- iii) advertisements must not imply acceptability of regular **solitary drinking** or that drinking results in resolving personal problems nor must they suggest that drinking is an essential part of the daily routine or that it can bring a positive change in mood;
- iv) advertisements must not suggest or imply that drinking constitutes an essential attribute of (any) **gender**; references to daring or bravado are not acceptable;
- v) alcoholic drinks must not be advertised in a context of aggressive, dangerous, anti-social or **irresponsible behaviour**;
- vi) advertisements must not foster, depict or imply **immoderate** or irresponsible drinking or drinking at speed; references to buying rounds of drinks are unacceptable;

- vii) advertisements must not suggest therapeutic or sedative **qualities** of alcohol nor offer it as a tranquilliser or source of nourishment /goodness or link the product to illicit drugs; they must neither suggest that alcohol improves **physical performance**;
- viii) advertisements must not suggest that a drink is preferable because of its higher **alcohol content** or intoxicating effect nor must it place undue emphasis on alcoholic strength.

### **Safety**

Nothing may link drinking with **driving** or with use of other potentially dangerous machinery (except in drunk driving messages) or with work and other unsuitable environment.

### **Sales promotions**

Advertisements for sales promotions must not contain sales promotions (including competitions) which appear to promote **excessive** consumption.

### **Cut-price offers**

References to “cut-price” or “happy hour drinks” must be considered with caution. If they encourage **excessive** drinking, they are unacceptable.

## **2. Tobacco**

Advertisements for cigarettes, cigarette tobacco and papers, but not cigars and pipe tobacco, are prohibited.

## **3. Medicines**

Central copy clearance is required.

Advertisements for products subject to licensing under the Medicines Act 1968 must comply with the requirements of the Act, regulations made under it and any conditions contained in the current marketing authorization.

Since advertisers and their products and services in this category require very close scrutiny, whenever a proper assessment from an independent expert is required, such advice must be sought before seeking clearance.

Products or treatments available only on prescription cannot be advertised.

### **Mandatory information**

Advertisements for medicinal products must include the following information:

- i) the name of the product and the indication(s);
- ii) the name of the active ingredient if there is only one;
- iii) as far as necessary, the information needed for the proper use of the product;
- iv) wording such as “always read the label”.

### **Unacceptable references**

Unless the Medicines Control Agency requires so, the advertisements must not mention that the product has been granted a marketing authorization or contain any reference to the MCA or the European Commission.

### **Medicines and children**

Advertisements must not be directed exclusively or principally at children (for this purpose, those aged below 16 years).

### **Conditions requiring medical advice**

Advertisements must not offer any product or service for which qualified medical advice should be sought or give the impression that a medical consultation or a surgical operation is not necessary.

### **Services or clinics offering advice and/or treatments in medical or personal welfare or other health matters**

Advertisers will only be acceptable if they can provide suitable bona fides. Advertising must also comply with the rules of relevant professional bodies.

### **Advice by Correspondence**

Advertising for services offering one-to-one advice by correspondence on medical matters will only be acceptable where:

- i) such advice is given by qualified health professionals;
- ii) professional Codes they refer to are recognized by the Radio Authority.

No advertisement may contain any offer for prescription or treatment by correspondence.

### **Unacceptable impressions of professional support and advice**

The following are unacceptable:

- i) presentations of medical professionals, which give the impression of professional advice or recommendation;
- ii) statements giving the impression of professional advice;
- iii) references to approval of, or preference for, a product or its ingredients or their use by medical professionals;

### **Homeopathic medicinal products**

Advertisements for homeopathic medicines are acceptable provided they comply with all European and UK requirements in that matter.

In particular:

- i) advertised products must be registered in the UK;
- ii) advertisements may not include medicinal or therapeutic claims or refer to a particular ailment;
- iii) advertisements must include wording such as “always read the label”.

### **Celebrities**

Celebrities must not be included in the advertisements of medical products requiring legal marketing authorization.

### **Cure**

Unless otherwise allowed by its marketing authorization, words or phrases which claim or imply the cure of any ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable.

### **Tonic**

Unless otherwise allowed by its marketing authorization, the word “tonic” is not acceptable for products making health claims.

### **Unacceptable descriptions**

Advertisements must not suggest that any medical product is a foodstuff, cosmetic or other consumer product.

### **Self-diagnosis**

Advertisements must not lead to erroneous self-diagnosis.

### **Guarantee efficacy**

Advertisements must not claim or imply guaranteed effects of the product.

### **Side effects**

Save in case of absence of specific side effects, advertisements must not suggest that the effects of taking the product are unaccompanied by side effects.

### **“Natural” products**

Advertisements must not suggest that the safety or efficacy of a certain product is due to the fact that it is “natural”.

### **Claims of recovery**

Advertisements for medicinal products must not claim recovery in an improper, alarming or misleading way.

### **Appeals to fear or exploitation of credulity**

- i) advertisements must not cause unwarranted anxiety of those who suffer or may suffer;
- ii) advertisements must not falsely suggest the necessity of the product for the maintenance of health or the retention of physical or mental capacities.

### **Encouragement of excess**

Advertisements must not encourage or imply indiscriminate, unnecessary or excessive use of any product or treatment.

### **Exaggeration**

Advertisements must not make any exaggerated claims.

### **Comparisons**

Advertisements of medical products or treatments must not suggest that the effects of the product are better or equivalent to those of another identified or unidentifiable medicinal product or treatment.

### **Analgesics**

No simple or compound analgesics must be advertised for the direct relief of tension or stress. In such advertisements there must be no references to depression.

## **Sales promotions**

Products requiring a marketing authorization must not contain references to sales promotions.

## **Jingles**

Jingles may be used but must not contain any medical/health claim.

## **4. Cars**

Par.18 ASC refers to motor vehicles.

Advertisements for motor vehicles must not encourage or condone illegal, dangerous, inconsiderate or competitive driving practices or breaches of the Highway

References to the power or acceleration in advertisements must not imply exceeding speed limits and there should be no suggestion of excitement or aggression.

Safety claims must not exaggerate the consumers' benefit. Safety claims must be supported by evidence.

## **5. Media**

The Code does not contain any specific rule on advertising for other media.

## **6. Politics and Religion**

According to the Advertising and sponsoring Code advertising must not show undue partiality in matters of political or industrial controversy or relating to public policy. Is also forbidden : advertising by bodies whose objects are entirely or mainly of a political nature. No advertising must be directed towards any political end.

Concerning Religion, faith and related systems of belief the Code provides in a set of rules which are very similar to the rules of the ITC (see above under Television).

## **II. SPONSORSHIP**

### **A. General Rules**

#### **1. Definition**

- i) Pursuant to par.3.1, a programme or promotion is sponsored if it is broadcast in return for payment or other valuable consideration to a Licensee. All sponsorships must conform to ASC provisions;
- ii) Sponsor credits are designed to be short branding statements, which may contain legitimate advertising.

## **2. General Principles**

### **Transparency**

Listeners must be able to recognize sponsored programming without any risk of confusion. Links between programming and the sponsor's commercial activities must be clear to the listeners.

### **Editorial control and responsibility – co-production**

The Licensee must be responsible for, and must have editorial control of, the sponsored programming.

However, sponsors may contribute to the content of most sponsored programming and promotions.

In any case contributions must adhere to the rules of ASC.

### **Promotion of the sponsor's product or service**

- i) sponsorships by some specific categories of sponsors require central copy clearance;
- ii) claims which demand substantiation require local copy clearance or, in case of special categories, central copy clearance;
- iii) all sponsorship must comply fully with the ASC requirements;
- iv) the nature of the sponsor's involvement must be clear to the listeners.

### **Sponsor credits**

During sponsored items and trails, credits must contain:

- i) the programming or promotion title and name;
- ii) the sponsor's name;
- iii) a clear expression of the sponsor's contribution (if not self-evident);
- iv) a brief identification of the sponsor's commercial activities.

Advertising slogans may be used.

At least one sponsor credit must be broadcast either at the beginning or end of every sponsored item. In case of longer sponsored items, insertion during the items as appropriate and depending on the degree of transparency required.

In principle there are credits about every 20 minutes, but circumstances may demand otherwise.

### **Sponsor's spot advertisements**

Sponsors may buy advertising spots in and around the programmes they sponsor.

However, the principle of transparency and separation between the advertisement and the programme must be met.

### **Prohibited sponsors**

Advertisers prohibited from advertising, may not sponsor programming.

In principle all programming may be sponsored. There are some exceptions however:

i) news bulletins and any news desk presentation.

Moreover, positioning of all sponsorships/commercials must be careful enough to avoid the impression that the news bulletin or the station's news output is sponsored.

iii) Sponsors are permitted to pay for, but prohibited from contributing to, the programming content of the following output, provided the chosen sponsor's business interests do not prejudice, or appear to prejudice, the impartiality of the programming content:

- speech programming and features with a current affair background rather than news desk presentation;
- business/financial news or comment (but not commercially specific financial advice).
- sponsorships credits for programming aimed particularly at those aged below 18 years and for religious output must be copy cleared centrally. Special care should be taken as for the type of sponsors and their activity, ex. alcohol, sexual material .

### **Limited sponsorship by betting and gaming companies**

i) all sponsorship proposals must be copy cleared centrally;

ii) certain restrictions and limitations are applicable in this field:

- bookmakers or betting companies must not sponsor programming concerned with betting, tips, horse or greyhound racing coverage or the results bulletins of such racing;



- gaming companies must not sponsor competitions or features which closely resemble the gaming that takes place in casinos;
- neither gaming companies nor gambling brands must sponsor programming specifically aimed at children (those aged below 18 years);
- no advertising in sponsor credits of betting and gaming companies is permitted, only a factual statement of the company's business;

### **Masthead programming**

Stations may use the names of non-news print or web publications for sponsored programming which is similar to that featured in the publication, subject to the ASC requirements.

Alternatively, “Masthead” material may be broadcast as long advertisements, provided this is made totally clear with regularity appropriate to the degree of transparency required.

## **III. Other Advertising Techniques**

### **1. Product Placement**

#### **Definition**

Product placement means the gratuitous reference to a product or service within programming.

#### **Rule**

Product placement or undue prominence are prohibited. Any reference to products or services must be limited to what can clearly be justified by the editorial requirements of the programming itself.

Legitimate objective coverage of a commercial product or service in programme editorial is acceptable.

## **IV. RADIO REGULATION FOR THE 21<sup>st</sup> CENTURY**

The Radio Authority published a paper on "radio regulation for the 21<sup>st</sup> century" in June 2000. The Radio Authority argues that a new regulatory structure should be put in place for broadcasting and telecommunications taking into account technical convergence. However the Authority believes that radio will remain a distinct medium in the future, while other media, such as television, are more affected by the implications of technical

convergence. Therefore the Radio Authority is of the opinion that sectoral regulation needs to be maintained for radio.

The paper proposes the establishment of an overarching converged regulator for media and telecommunications, including a new specific Radio Regulator which should allow a flexible evolution of a new regulatory approach for radio.

The Authority proposes to reduce regulation in a number of areas : for example cable, satellite radio, internet radio and other telephony based radio services should remain unlicensed.

A new regulatory structure should be put in place for broadcasting and telecommunications:

- a vertically integrated single regulator to be established (referred to as "Thin OFCOM model") to ensure proper co-ordination, while retaining necessary sectoral regulation;
- establishment of an over-arching commission supervising vertically separated functions
- in any new structure sectoral regulation has to be maintained for radio; a Radio Regulator should be awarded specific tasks, including licensing and content regulation, taking into account the commercial well-being of the radio industry
- the BBC to be externally regulated
- **through voluntary co-regulation, to establish consumer protection through advertising and sponsorship codes for Internet, cable and satellite services and related radio-services using new technologies, all of which should be unlicensed**

Concerning the evolution of digital radio and internet and mobile telephony related radio services, the Authority mentions its expectations for the future:

According to the Authority existing evidence suggests that terrestrially broadcast radio will remain the dominant means of delivery through the next decade. **While new technologies are readily available, there is no indication that they will automatically replace the existing radio technology.** Unlike the internet and other services dependent mainly on fixed links, terrestrial radio broadcasting offers mobility and portability. Unlike mobile telephony services, terrestrial radio is free for consumers, and relatively cheap for broadcasters to reach the mass audiences. Research in the UK showed that radio listening remains constant in Internet -capable households, in contrast to the decline of television viewing. Evidence shows that the Internet stimulates radio-listening. There has been a significant growth of Internet sites linked to existing radio services and of dot com advertising on contemporary radio.

Nevertheless the Authority is of the opinion that **the fundamental economics of free-to-air radio (one-to-many) will remain hugely more favourable than wired services (one-to-one) for the foreseeable future. Moreover, the conservatism which characterises radio listening indicates that consumer behaviour will change much more slowly than changes in available technology.**

The Authority while making these predictions admits that there remains uncertainty about the speed of take-up of **digital radio**. The specific purchase of sets to receive Internet radio or mobile-telephony-delivered audio is unlikely to be a major element for 10 or 15 years at least. The wide patronage of existing analogue radio services sees 9 out of ten people in the UK listening to radio for 3 hours a day in average (+ 1 billion listening hours each week!). This leads the Authority to think that by 2010 80% of all radio listening will still be to terrestrial services, whether delivered by analogue or digital transmissions.

On the topic of **technical convergence** (defined as the ability of all platforms and networks to carry all services) the Authority is of the opinion that convergence of radio shows very different characteristics from that of television and telecommunications. Radio operates alongside the internet, not in opposition to it. The Authority also expects that consumer behaviour and existing patronage suggest that consumer take up of new radio technologies will be slow. Unlike the situation in respect of television and telecommunications, there is a little industry drive towards radical convergence. The Authority takes the view that radio convergence of a type that will fundamentally change listener behaviour will take place in the decade after 2010, and only after significant changes in market behaviour for other media and further development of audio technology.

**The Authority summarises the aims of future radio regulation as follows:**

- manage the balance between the public interest and the commercial interest in the use of the scarce radio spectrum;
- reduce levels of inappropriate sectoral regulations as changes in the social, technological and political environment make such reduction appropriate, and to increase levels of co-regulation;
- to facilitate the introduction and development of digital terrestrial radio broadcasting;
- to apply radio solutions to radio problems;

Concerning economic regulation, the Authority is of the opinion that **services distributed on platforms which are not subject to spectrum scarcity**, including the Internet, cable and satellite services, do not require sectoral regulation and do not need to be licensed. The Authority suggests that all such new non licensed services should be encouraged to adopt a model of co-regulation in respect of consumer protection for

commercial activities and hopes that such unlicensed services may voluntarily adopt the programming and advertising Codes. In this situation the Radio Regulaor would carry out a complaints function but with limited power to sanction (in the manner of the Advertising Standards Authority in relation to print media).

As for the **licensing of digital radio services** the Authority does not propose any significant changes.

**Five possible regulatory structures for broadcasting and telecommunications** (mixed regulation, complete deregulation, bi-cameral regulation of content and infrastructure, a horizontally integrated single regulator or OFCOM, a vertically integrated OFCOM).

## **REGULATIONS CONCERNING ADVERTISING VIA INTERNET, CINEMA AND MOBILE PHONES**

### **1. Competent Authority**

In the UK there is no specific regulation for advertising distributed through the internet, in cinemas and by mobile phone. This does not mean these advertising messages are not regulated since general consumer protection regulation, regulation on misleading advertising, specific regulation for particular categories of products, regulation on distance selling etc ...apply to advertising no matter the medium used.

There is no specific regulator for the internet, cinema and mobile telephony (as far as advertising is concerned). The self-regulatory codes of the Advertising Standards Authority (ASA) apply to almost all non-broadcast media (both for TV and radio a specific regulator exists).

However it seems that ITC might be considered as the competent authority for the internet. The ITC's powers under the Broadcasting Act 1990 extend to television programmes on the internet and to advertisements which contain still or moving pictures. It seems that the ITC will not apply these powers at present, although in the area of programmes the ITC is contributing to the self-regulatory system which is being established for the internet through the Internet Watch Foundation. The ITC is also participating in an experts group (Incore) which is hoping to develop a content rating and filtering system designed to enable users to control more easily what they and their children access.

UK advertising in paid for space on the internet and in commercial e-mail currently remains within the ASA's remit.

Provision of the internet via TV sets in conjunction with television services which are licensed and regulated by the ITC may raise issues. The ITC is examining which elements of the ITC Codes en regulations would be appropriate to apply to these services.

The White Paper "A new future for Communications" (December 2000) states under section 6 : "The ASA self-regulatory system currently regulated advertising in the cinema and on videos and on the internet. While these media overlap with the ambit of the new communications regulator, the existing self-regulatory systems work well in these media where there is a greater degree of user-selection and less immediacy. We would expect these self-regulatory systems to remain."

### **2. The British Codes of Advertising Sales and Promotion**

The **British Codes of Advertising Sales and Promotion** (hereinafter "the Codes") apply to several media, excluded Tv and radio, but including :

- i) electronic and printed material;
- ii) cinema and video commercials;
- iii) non-broadcast electronic media. (...)

(for the complete list consult par. 1.1 of the Codes)

However, the Codes do not apply to (art.1.2.i) inter alia: “oral communications, including telephone calls”.

Therefore it can be assumed that the Codes refer to advertising via **internet and cinema**, whereas they do not apply to advertising via mobile phones. Although it could be possible that the codes do apply to SMS messages and WAP applications as those are not "oral" communications.

### **Relevant definitions**

#### **Par. 1.3. contains a definition of**

- i) a **product**, encompasses “goods, services, ideas, causes, opportunities, prizes or gifts” (subparagraph “a”);
- ii) a **consumer**, is “anyone who is likely to see a given advertisement or promotion”(subparagraph “b”).

### **Criteria**

The Codes specify that "conformity with the Codes is assessed according to the advertisement's probable impact when taken as a whole and in context. This will depend on the medium in which the advertisement appears, the audience and their likely response, the nature of the product and any additional material distributed to consumers.

It is also clearly indicated that " the Codes do not have force of law and their interpretation will reflect their flexibility. The Codes operate alongside the law; the Courts may also make rulings on matters covered by the Codes".

### **A. General rules**

There is a separate section of the Codes concerning the basic principles. Detailed explications on the most important principles of legality, decency, honesty and veracity, are included in subsequent paragraphs.

Principles enumerated in par.2 of the Codes are following

- i) all advertisements should be **legal, decent, honest and truthful**;
- ii) all advertisements should be prepared with a sense of **responsibility** to consumers and to society;

- iii) all advertisements should respect the principles of **fair competition** generally accepted in business;
- iv) no advertisement should bring advertising into **disrepute**;
- v) advertisements must **conform** with the Codes and primary responsibility for observing the Codes falls on advertisers; however all others involved in preparing and publishing advertisements are also obliged to abide the Codes;
- vi) any unreasonable **delay** in responding to the ASA's enquiries may constitute a breach of the Codes;
- vii) the ASA will on request of the interested party treat in **confidence** any genuinely private or secret material supplied unless statutorily empowered authorities compel otherwise;
- viii) the Codes are applied in the **spirit as well as in the letter**.

In addition to the principles mentioned above, the Code provides for a set of other rules. These concern more detailed advertising standard setting.

### **Matters of opinion**

Par.8.1 stipulates that in order to present a view about any matter, advertisers must make it clear that they are expressing their opinions instead of stating the facts.

### **Fear and distress**

Pursuant to par.9.1 advertisements must not cause any fear or distress without good reason.

### **Safety, violence and anti-social behaviour**

By virtue of par.10.1, advertisements should not show or encourage unsafe practices except in the context of promoting safety. Particular care should be taken in case of advertisements addressed to or depicting children and young people.

Pursuant to par.11.1, advertisements should not condone or being likely to provoke violence or anti-social behaviour.

### **Political advertising**

Political advertising is not subject to the Codes but advertisers are urged to make their identity clear.

### **Protection of privacy**

By virtue of par.13, advertisers should not unfairly portray or refer to people in an adverse or offensive way.

## **Testimonials and endorsements**

Pursuant to par.14, if advertisers use testimonials, they should hold signed and dated proof.

## **Prices**

Par.15, concerning prices stipulates that any stated price should be clear and should relate to the product advertised. If advertisements are addressed to the public, their quoted prices should include VAT and other non-optional taxes.

## **Free offers**

Free offers can be made conditional on the purchase of other items provided consumer's liability for any costs is clear.

## **Availability of products**

By virtue of par.17, advertised products should be available. If stocks are limited, it should be made clear.

## **Guarantees**

Pursuant to par.18, the word "guarantee" should not be used in a way that could cause confusion about consumer's legal rights.

## **Comparisons**

By virtue of par.19, comparisons are **permitted** in the interests of vigorous competition and public information. They should be clear and fair.

## **Denigration**

Pursuant to par.20, advertisers should abstain from unfairly attacking or discrediting other businesses or their products.

## **Exploitation of goodwill and imitation**

By virtue of par.21 and 22, advertisers should not make unfair use of the goodwill attached to a trade mark, name, brand or advertising campaign of any other organisation. Advertisements should not resemble each other so closely that it would mislead or cause confusion.

## **Identification and recognition of advertisements**



Advertisers, publishers and owners of other media should ensure that advertisements are designed and presented in such a way that it is clear that they are advertisements.

Features, announcements or promotions that are disseminated in exchange for a payment or other reciprocal arrangement should comply with the codes if their content is controlled by the advertisers. They should also be clearly identified as such.

Advertisers are not obliged to identify themselves unless required by law, except for following situations:

- i) advertisements with written response mechanisms;
- ii) advertisements for one day sales, homework schemes and the like;
- iii) distance selling advertisements with telephone response;
- iv) advertisements for business opportunities.

## **B. Specific products**

### **1. Alcoholic drinks**

#### **Definition**

According to the definition laid down in par.46.1, **alcoholic drinks** are those exceeding **1,2%** alcohol by volume.

Par.46.13 states that **low alcoholic drinks** contain **0,5 - 1,2%** alcohol by volume.

#### **Rules on advertising**

- i) Advertisements should not contain anything that is likely to lead people to adopt styles of drinking that are **unwise**;
- ii) Advertisements should be **socially responsible** and should not encourage excessive drinking. They should not suggest that regular solitary drinking is advisable. Finally, care should be taken not to exploit the young, the immature, or those who are mentally or socially vulnerable;
- iii) Advertisements should not be directed at **people under 18** through the selection of media, style and presentation, content or context. No media should be used if more than 25% of its audience is under 18.
- iv) People shown drinking should not be, nor should they look **under 25**. If younger models are shown in an advertisement for alcohol it should be clear that they are not drinking;
- v) Characters likely to **appeal to people under 18** can be shown provided that they are not encouraged to drink;

- vi) Advertisements should not suggest that any alcoholic drink enhances mental; physical or sexual **capabilities, popularity, masculinity or femininity or sporting achievements or has positive influence** on any personal relationship or social events;
- vii) Information on **high alcohol content** should not be a dominant theme or presented as an advantage;
- viii) A **brand preference** may be promoted as a mark of the drinker's good taste and discernment;
- ix) Drinking alcohol should not be presented as a **challenge**;
- x) Nothing in the advertisement should promote **excessive drinking**;
- xi) Advertisements should not depict activities or locations where drinking alcohol would be **unsafe or unwise**;

In addition, by virtue of par.10.2, consumers should not be encouraged to **drink and drive**.

### **Rules on low alcohol drinks advertisements**

Low alcohol drinks advertisements should not be promoted in a way that encourages their **inappropriate consumption** and should not depict activities that require complete sobriety.

## **2. Tobacco**

A separate Cigarette Code has been issued concerning tobacco advertising.

### **Scope of application**

The Code **applies** to advertisements for

- i) cigarettes and their components;
- ii) hand-rolling tobacco;
- iii) cigarette papers, filters and wrappings;
- iv) any product if the advertisement features a cigarette or pack design of a recognisable brand available in the UK;
- v) teasers
- vi) special offers, competitions and other sales promotions
- vii) products displaying the colours, livery, insignia or name of a cigarette brand in a way that promotes smoking rather than these other branded products.

The Code **does not apply** to advertisements for

- i) cigars, cheroots, cigarillos, pipe tobaccos or snuff;
- ii) herbal cigarettes and tobaccos;
- iii) cigarette holders, matches, lighters and the like except when covered by the rules above;

- iv) schemes, events or activities sponsored or supported financially by manufacturers of products listed above even where such advertisements are for sports sponsorship;
- v) advertisements and promotions addressed to the trade in media not targeted at the public;

### **Rules on tobacco advertisements**

The rules should be observed in the spirit as well as the letter.

Advertisements for cigarettes or hand-rolling tobacco should have a signed, dated and numbered certificate of clearance from CAP before being displayed or published.

A set of rules is laid down in art. 66 and includes the following.

Important are the following rules (for the full text consult the Code):

- i) no advertisement should **incite people to start smoking** or to **increase consumption**
- ii) advertisements should never suggest that smoking is **safe, healthy, natural, necessary for relaxation and concentration, popular or appropriate in all circumstances**;
- iii) no more than **half of those shown in groups** should be smoking; smoking should not be shown in public places where it is usually not permitted;
- iv) smoking should not be associated with **social, sexual, romantic or business success**, though the choice of a particular brand may be linked to taste and discernment;
- v) advertisements should not contain any **testimonials or endorsements** from well-known people or celebrities;
- vi) no heroic figures or fashion trend should be featured in a way that would appeal to those who are **adventurous or rebellious**, particularly the young;
- vii) no advertisements should play on the **susceptibilities** of those who are physically or emotionally vulnerable, particularly the young or immature;
- viii) anyone shown smoking should be, and clearly be seen to be, **over 25**;
- ix) no advertisement should exaggerate the **pleasure of smoking**, claim that it is daring or glamorous to smoke or that it enhances people's femininity or masculinity, appearance or independence;
- x) advertisements must not suggest a healthy or wholesome style of life;
- xi) advertisements should not associate smoking with **sport** or active or outdoor games.

### **3. Medicines**

## Scope of application

A separate title under the section "Health & Beauty Products and Therapies" is devoted to medicines. The Medicines Act 1968 and its regulations, as well as regulations implementing European Community Directive 92/28/EEC govern the advertising and promotion of medicines and the conditions of ill health that they can be offered to treat.

Medicines must have a **prior marketing authorisation** from the Medicines Control Agency before they are advertised and any claims made for products must conform with the authorisation.

## Rules

A set of rules is provided for in par.50. These rules only apply to advertising directed at the public, excluded is any advertising addressed only to professionals.

The most important rules are as follows (consult the Code for the full text) :

- i) **prescription-only** medicines may not be advertised to the public;
- ii) advertisement should include
  - the **name** of the product;
  - the **indication(s)** ;
  - **a warning** such as "Always read the label";
  - the common name of the active **ingredient** if there is only one.
- iii) there should be no suggestion that the medicine is either a **food or a cosmetic**;
- iv) advertisers must not use **fear or anxiety to promote a product**, nor should they suggest that using or avoiding a product can affect normal good health;
- v) illustration of the **effect or action** of a certain product should be accurate;
- vi) advertisements should not be addressed to **children**;
- vii) **celebrities** or health professionals should not be used;
- viii) **comparison** of effects with other products is prohibited;
- ix) **homeopathic** medicinal products must be registered in the UK.

## 4. Motoring

## Scope of application

Par.48 does not deal exclusively with cars, but refers to **motor vehicles or accessories**.

## Rules

Par. 48 contains a set of rules (the rules are reproduced in a summarised form, for the complete text consult the Code) :

- i) advertising for motor vehicles, fuel or accessories should not portray or encourage **anti-social behaviour**;
- ii) advertisements should not make **speed or acceleration** claims the predominant message;
- iii) advertisements should not encourage **irresponsible** driving or breaking the law;
- iv) vehicles should not be depicted in **dangerous** or unwise situations in a way that would encourage irresponsible driving;
- v) particular care should be taken in **cinema advertisements and those in electronic media** where the moving image may give the impression of **exceptional speed**; vehicles should be seen not to exceed UK speed limits;
- vi) when making **environmental claims**, advertisers should conform with the specific rules on Environmental claims;
- vii) **prices** quoted should correspond to the vehicles illustrated;
- viii) **safety claims** should not exaggerate the benefit to consumers;

## 5. Distance selling

The Codes provide in a specific set of rules on distance selling.

The Codes consider distance selling as offering goods and services to consumers without the buyer and seller meeting face-to-face. Advertisers, promoters and all others involved in handling responses must observe the Codes.

According to the rules the **advertisements with written response mechanisms (ex. postal, fax or e-mail)** should state the full name and address of the advertisers outside the coupon or other response mechanism so that it can be retained by consumers. A separate address for orders may also be given; this need not be a full address but could, for example, be a Freepost address or PO Box number.

**Advertisements containing a telephone response mechanism** need only state the full name and telephone number; consumers calling should be told the full address on request.

Unless obvious from the context, **advertisements should include :**

- a. the main **characteristics** of the product/service
- b. the amount and number of any **transport charges**
- c. any **VAT**
- d. a statement that the **goods can be returned**, if applicable
- e. any **limitations** on the offer and any conditions.

Apart from the Codes which provide in self-regulatory rules, advertising in general (no matter the medium) must also observe applicable statutes and regulations, for example The Consumer Protection Act (1987), The Control of Misleading Advertisements Regulations (1988), The Consumer Protection (Distance Selling) Regulations 2000, Data Protection Act (1984-1998)... etc.

Remarks :

The Codes also provide in other specific rules for children, environmental claims, health, beauty products, slimming, distance selling, database practice, employment and business opportunities, financial services and products, betting and gaming.

There are no specific rules on the amount or scheduling of advertising applicable for cinema, internet or mobile phone.

## **6. Other relevant regulation**

### **Data Protection**

Data protection is ensured by the Data Protection Act 1998, the Telecommunications Regulations 1999 and 2000, and the Freedom of Information Act 2000.

**The Telecommunications Regulations 1999** allows the telecommunications service provider to use personal data for the marketing of its own services, if the subscriber has given consent. The company collecting the data is also legally required to inform the individual that the information given may be passed on to "associated companies" or "other carefully selected companies". The individual can opt out from this further use of their personal data.

Conform the **Data Protection Act 1998** the company responsible for the data is in theory allowed to sell this information to third parties, but there is a legal requirement to inform the individual of this possibility.

### **Use of telephone for direct marketing purposes**

Conform the **Telecommunications Regulations** a person shall not use, or instigate the use of publicly available telecommunications services and a subscriber to such services shall not permit his line to be used where :

- the called line is that of a subscriber who has previously notified the caller that such unsolicited calls should not be made on that line
- the called line is that of a subscriber registered in the specific register held by the operator for subscribers that refuse to receive unsolicited calls for direct marketing purposes;

A call on a subscriber's line shall not be treated as unsolicited if the subscriber has notified the caller that he does not object to calls for direct marketing purposes.

### **7. Self-regulation**

The Wireless Marketing Association has elaborated a Code of Practice which sets out best practice guidelines for wireless marketing. Wireless marketing is defined as "any commercial communication (including communications transmitted by non-profit making bodies such as political parties, charities and voluntary organisations) to, or designed to be accessed by, wireless devices (mobile phone, PDA).

The Code contains some general principles stating that all advertising must be clear and unambiguous, legal, decent, honest and truthful.

Permission to communicate in the form of the transmitted data must be solicited from the recipient in advance and he must have the possibility to easily opt-out.

The Code also contains rules to ensure privacy and security and remembers that relevant UK data protection legislation has to be observed.

In case of complaints and continuing non-compliance with the Code a member can be expelled from the WMA.