

IRELAND

**STUDY ON THE IMPACT
OF ADVERTISING AND TEleshopping
ON MINORS**

- I. INTRODUCTION**
- II. SUMMARY**
- III. REPORT**

I. INTRODUCTION

The study on the impact of TV advertising and teleshopping on minors was carried out by International Research Associates (**INRA**) in collaboration for legal issues with the lawfirm **Bird & Bird** , for the 18 Member States of the European Union and the European Economic Area, and, for each country, in collaboration with a national lawfirm. For Ireland the study was carried out by the lawyers office **McCann FitzGerald, Dublin**.

The aim of the study was to identify and describe the national provisions on advertising provided in legislation, regulation and self-regulatory codes, which are applied to advertising in each State for the protection of minors. In addition, the national system for the handling of complaints was described fully, covering administrative, legal and self-regulatory measures.

For most countries it was possible to identify and to comment upon official proposals of law. In this respect, the information received from professional associations in the advertising sector was very helpful, as were the comments made by national authorities, who had been sent the draft reports by the Directorate General Education and Culture.

Finally in each national report the consultants indicated the way in which the provisions of the TVWF Directive (unofficial consolidated version), have been implemented in national legislation concerning TV advertising and teleshopping directed at minors. Nevertheless, in view of the objectives of the Commission and to enable comparison, the reports also cover other media such as radio, press, outdoor advertising, cinema, and Internet.

The study was carried out, realised and presented using an identical layout for each of the countries studied to achieve a harmonised readable approach, and facilitate comparison .

Therefore, as well as the main definitions and general rules in the field of advertising and teleshopping directed at minors, each national report contains the regulation by sector and by media, as well as an identification of specific marketing techniques. Moreover, each national report is preceded by a summary which gives the essential characteristics of the

country in question. An Excell table has been drawn up, using the same layout for each country, as well as a comparative table for the 18 States studied.

Finally a report has been drawn up on European and international regulation and self-regulation concerning advertising directed at minors.

II. SUMMARY

The Irish Codes of Standards based on the Broadcasting Act of 1990 implement the TVWF Directive and were modified in 1999. Proposals have been made with a view to changing the system but so far no changes have been made.

1. Definitions

A person attains majority in Ireland when he attains the age of 18. Before that date, the person is described as a minor (*Age of Majority Act*).

According to Common law, the current age of criminal responsibility is 7 years. However, the *Children Bill* 1999 (proposal of law on a new juvenile justice system) contains provisions to raise it to 12.

2. Regulation

a. General

The Consumer Information Act regulates misleading advertisements. The Code of standards, practices and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services (the “Code of standards”), issued by the Ministry for Arts, Heritage, Gaeltacht and the Islands, stipulates, as a general principle, that all broadcasting should be legal, honest, decent and truthful.

b. Media

Advertising on radio and television is also regulated by statute: the *Broadcasting Authority Act* and the *Radio and Television Act*.

The Code of Standards contains specific provisions relating to sponsorship on television and radio. These provisions go further than the Television without Frontiers Directive.

c. Specific provisions

Advertising for **alcoholic drinks** may be accepted by broadcasters, provided it complies fully with the criteria defined by the Code of standards (the advertising must not encourage drinking, can not be transmitted in or around programmes intended for young persons, etc). However, spirit based alcoholic drinks (whisky, gin, vodka, brandy, etc) are not advertised on radio or television in accordance with a voluntary code.

The Irish legislation goes further than the Television without Frontiers in this area.

The Tobacco Act stipulates that it is an offence to sell, or make available any tobacco product to a person under the age of 16 years, whether for his own use or otherwise.

The Code of standards prohibits all forms of advertising for cigarettes, cigars and other tobacco products on radio and television (in accordance with the TVWF Directive). Other forms of tobacco advertising are strictly limited.

The Tobacco Products Regulation 2000 prohibits the publication and distribution (unless exempted) of any newspaper, periodicals and magazines containing advertising for tobacco products.

Advertising for Drugs and Health products for human consumption is strictly and precisely regulated by the Medical Preparations Regulations. No medical preparation which is prescription only or is controlled may be advertised.

Advertising regarding Cosmetics, contraceptives, health and safety, food stuffs, promotion of commercial products through schools, toys, financial services, video work and films, are all strictly regulated by specific legal provisions.

d. Other advertising techniques

A self-regulatory code contains rules on Direct response and Mail ordering to protect consumers.

3. Proposals of law

The Broadcasting Bill, 1999

This Bill, which contains provisions relating to teleshopping, is currently going through the Dail. The Bill will have passed all stages in the Parliament in March, 2001. .

The Broadcasting Commission will be able to take into account any relevant instrument made by or relevant guidelines issued by any body in which are vested functions in relation to the welfare of children. It will also be able to conduct research with respect to advertising, teleshopping material and sponsorship and other forms of commercial promotion which relate to matters likely to be of direct or indirect interest to children.

4. Self regulation

The *Advertising Standards Authority for Ireland (ASAI)* is a self-regulatory body established by the advertising industry since 1981. It is committed to draw up and implement the highest standards of advertising and sales promotion through the *Code of Advertising Standards* and the *Code of Sales Promotion Practice*. These Codes are based on the Codes established by the ICC (International Chamber of Commerce). It is a condition of membership of ASAI that a member shall not publish an advertisement that

does not comply with Code requirements. The self-regulatory system complements legislative control on advertising and sales promotions.

The Code of Advertising standards requires, inter alia, honest, true and decent advertisements, which avoid sexism and stereotyping, respect vulnerable persons, do not cause fear or distress, violence or anti-social behaviour and protect privacy. The advertisers ensure that their advertisements are legal. Specific protection is provided for advertisements on health and beauty, slimming, alcoholic drinks and financial services and products. Regarding children, the Code provides rules for their protection, conforming to the “classical” protection in advertisement matters. The Code includes rules providing that advertisements should contain nothing that is likely to result in physical, mental or moral harm to children and should not exploit their loyalty.

On the European level, ASAI is a founder member of the European Advertising Standards Alliance (the Alliance), which promotes the principle of efficient national self-regulation of advertising.

5. Handling of complaints

Authorities

Judicial procedure

The Consumer Information Act established in 1978 the office of the Director of Consumer Affairs. The Director can request persons engaging in misleading practices to refrain from such practices, or, if necessary, institute proceedings in the High Court in relation to offences under the *Consumer Information Act*.

Administrative procedure

The Office of Ombudsman was established by the Ombudsman Act. It delineates the powers of the Ombudsman as regards the examination and investigation of complaints made to him and defines the Ombudsman’s reporting relationship with the Dail (parliament) and Seanad (Senate).

Self regulation

Regarding self-regulation, the Complaint Committee of the ASAI is appointed by its board for considering and dealing with complaints submitted by the public, by a member of ASAI, by a Government department or by any other person. ASAI is not, however, a law enforcement body and complaints are not pursued if they concern matters that should be resolved in the Courts. On the European level, the Alliance has established a cross-border complaint procedure to ensure that a complaint from a consumer anywhere in Europe can be effectively investigated and dealt with, even if the medium involved originated in another country.

A complaints procedure relating to advertisements which appear on radio or television was set out by the Broadcasting Authority Acts. The Broadcasting Complaints Commission may investigate and decide if an advertisement contravened the *Codes of standards* (see above).

Complaints on advertising and children represented in 1998 2% of the total number of complaints and 3% in 1999.

I. REPORT
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I. DEFINITIONS

Minors

Age of Majority Act, 1985

Section 2 states that a person attains full age when he attains the age of eighteen years or upon his marriage.

Section 3 provides that “A person who is not of full age may be described as a minor instead of as an infant.

According to common law, the current age of criminal responsibility is seven years. However, the Children Bill 1999 contains provision to raise this to twelve years.

In relation to liability for torts, case law states that a child over seven years is liable for the torts he commits, provided there is not a question of intention involved in the tort and provided it does not arise out of contract. However, despite this case law, there is no rule of law which automatically exempts from liability children under seven or indeed any fixed age.

Legal entitlement to contract

The general rule at common law is that a minor’s contract is voidable. Voidable has two meanings in this context; firstly, certain contracts are valid unless repudiated by the infant. Secondly, some contracts are voidable in the sense that unless the infant affirms them within a reasonable time of coming of age the transaction does not bind him. Certain contracts entered into by minors are valid at common law, these include contracts for necessities and beneficial contracts of service.

Protection of Youth

The Childcare Act 1991

The focus of the Act is on the promotion of the welfare of children. It imposes a specific statutory duty on health boards to identify children, up to the age of eighteen, who are not receiving adequate care and protection and the promotion of their welfare, through the provision of “child care and family support services”.

The Act states that, with due regard to the rights of parents, a health board shall

- (i) regard the welfare of the child as the first and paramount consideration;

- (ii) give due consideration, having regard to his/her age and understanding, to the wishes of the child and
- (iii) have regard to the principle that it is generally in the best interests of the child to be brought up in his/her own family.

A separate unit within the Department of Health and Children has been formed to deal with legislation affecting children.

Criminal Evidence Act, 1992

Part III amended the law in relation to evidence in criminal proceedings by making it easier for witnesses to give evidence in physical or sexual abuse cases by providing for evidence to be given by them by live television link. The evidence of a witness under seventeen years of age may be given by live television link in those cases, unless the court sees good reason to the contrary. Wigs and gowns are no longer to be worn by the judge or by the barristers or solicitors concerned when the evidence is being given by live television link and questions to children are to be conveyed through a competent intermediary appointed by the court.

The Children Act, 1997

This Act introduces a comprehensive range of measures to safeguard the interests of the child by encouraging alternative dispute resolution mechanisms in guardianship, custody and access disputes and providing for the appointment of a guardian ad litem (a guardian appointed by the court for the purposes of the proceedings) and separate legal representation.

Public sex offences

Child Trafficking and Pornography Act 1998

Section 5 of the Act provides that any person who knowingly produces, distributes, prints or publishes any child pornography, knowingly imports, exports, sells or shows any child pornography, knowingly publishes or distributes any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, prints, publishes, imports, exports, sells or shows any child pornography, encourages or knowingly facilitates any activity mentioned above or knowingly possesses any child pornography for the purposes of distributing, publishing, exporting, selling or showing it shall be guilty of an offence. The Act's definition of child pornography includes any visual or audio representation or description of a child who is engaged in explicit sexual activity.

Abuse of confidence

Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services drawn up by the Minister for Arts, Heritage, Gaeltacht and The Islands under Section 4 of the Broadcasting Act 1990

Article 14 of the Code, states that Advertising shall not exploit the special trust minors place in parents, teachers or other persons. This code applies to all television and radio broadcasters.

II. REGULATION

1. Classification by Media

1.1. All Media

Consumer Information Act, 1978

Section 7 states that it is an offence to give a false or misleading indication of prices in the promotion of goods. When a retailer advertises marked-down prices of goods, indications as to the former price must connote, unless the contrary is expressed, that the goods involved were offered openly at the former price within the preceding 3 months for not less than 28 successive days.

Section 8 states that it is an offence to publish or cause to be published misleading advertisements in relation to the promotion of goods. An advertisement is misleading in this context if it is likely to mislead and thereby cause loss, damage or injury to members of the public to a material degree.

It is a defence to the above offences to show that

- (i) the offence was due to a mistake, or to reliance on information supplied to the accused, or to the act or default of another person;
- (ii) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.

An extra duty of care exists in respect of any business which engages in comparative advertising to ensure that the comparative prices quoted are accurate.

In summary, retailers must display the selling price of all products for sale as well as the unit price of products which are sold either loose or in bulk. They must not give false or misleading indications of prices in promoting their goods. If they engage in comparative advertising, they must ensure that the comparative prices quoted are accurate. The sale or advertising for sale of grocery goods below cost price is strictly prohibited.

1.2. Television

Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services drawn up by the Minister for Arts, Heritage, Gaeltacht and The Islands under Section 4 of the Broadcasting Act 1990

The Minister for Arts, Heritage, Gaeltacht and the Islands made the first revision to the codes on 7 October 1999. The revision was made to implement certain provisions of Directive 97/36/EC (Television without Frontiers) relating to the new definition of advertising and the application of restrictions applying to advertising and teleshopping.

According to this Code, the general principle which governs all broadcasting is that it should be legal, honest, decent and truthful. Advertising shall not –

- (i) prejudice respect for human dignity
- (ii) include any discrimination on grounds of race, sex or nationality
- (iii) be offensive to religious or political beliefs, or
- (iv) encourage behaviour prejudicial to the protection of the environment.

Furthermore, advertising shall not be misleading or shall not prejudice the interest of consumers.

Broadcasting Authority Act, 1960

Radio and Television Act, 1988

As well as the general guidelines, advertising on television is also regulated by statute.

In the case of advertising on one of the three national television channels (i.e. those run by Radio Telefis Eireann, namely RTE 1, Network 2 and TG4), all advertising must comply with the following legislation :

- (i) Section 20 of the Broadcasting Authority Act 1960 (as amended);
[As amended section 20 states: “Advertisements.
20.-
 - (1) The Authority may broadcast advertisements, may fix charges and conditions for such broadcasts and, in fixing the charges, may provide for different circumstances and for additional special charges to be made in special cases.
 - (2) The Authority may reject any advertisement presented for broadcast in whole or in part.
 - (3) The Authority shall not accept any advertisement, which is directed towards any religious or political end or has any relation to any industrial dispute.

(6) Charges and conditions referred to in subsection (1) of this section may be fixed subject to variations benefiting advertisers who use the Irish language in their advertisements.

(7) A power under this section to fix charges and conditions shall be construed as including a power to cancel or vary any charges or conditions fixed under such power and, where charges or conditions are cancelled, to fix other charges or conditions in lieu of those cancelled.

(8) In this section references to advertisements shall be construed as including references to advertising matter in sponsored programmes, that is to say, programmes supplied for advertising purposes by or on behalf of an advertiser".]

- (ii) Codes drawn up and amended, from time to time, by the Minister for Arts, Heritage, Gaeltacht and The Islands under Section 4 of the Broadcasting Act 1990, (the current edition of this code was issued by the Minister on 11 May 1995.);
- (iii) The provisions of Articles 10 to 16, inclusive and Article 18(3) of Directive 89/552/EEC; and
- (iv) Additional restrictions imposed by statute on various types of advertising. It shall be the duty of the Authority to ensure that advertising accepted complies with the law in all its forms.

In the case of a sound broadcasting service or television programme service contracted under the Radio and Television Act, 1988 (i.e. all radio stations and the only other Irish television station TV3) ;

- (i) Section 10 of the Radio and Television Act, 1988; As amended, Section 10 states “
 - (1) Programmes broadcast in a sound broadcasting service provided pursuant to any sound broadcasting contract may include advertisements inserted therein.
 - (2) The Commission shall draw up, from time to time, as it thinks proper, a code governing standards and practice in advertising and every sound broadcasting contractor shall comply with the code in respect of advertisements broadcast by it.
 - (3) No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute.

- (4) The total daily times for broadcasting advertisements in a sound broadcasting service provided pursuant to a sound broadcasting service contract shall not exceed a maximum of 15 per cent. of the total daily broadcasting time and the maximum time to be given to advertisements in any hour shall not exceed a maximum of ten minutes.
- (5) In this section, references to advertisements shall be construed as including references to advertising matter contained in sponsored programmes, that is to say, in programmes supplied for advertisement purposes by or on behalf of an advertiser.
- (6) It shall be the duty of the Commission to ensure that sound broadcasting contractors comply with the requirements of *subsections (2), (3) and (4)*.
- (a) Codes drawn up and amended, from time to time by the Minister for Arts, Heritage, Gaeltacht and The Islands under section of the Broadcasting Act, 1990, (the current edition of this code was issued by the Minister on 11 May 1995.) ;
- (b) The provisions of Articles 10 to 16 inclusive and Article 18(3) of Directive 89/552/EEC; and
- (c) Additional restrictions imposed by statute on various types of advertising. It shall be the duty of the broadcaster to ensure that advertising accepted complies with the law in all its forms.

Broadcasting Bill, 1999

Teleshopping

The new Bill contains provisions, which will govern teleshopping. This Bill is going before the Dail committee in October 2000. However, as of yet there are no specific provisions in this regard in Irish law.

Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services drawn up by the Minister for Arts, Heritage, Gaeltacht and The Islands under Section 4 of the Broadcasting Act 1990

The Code contains specific provisions relating to sponsorship on television and radio. In the Code, Sponsorship is defined as “any contribution made directly or indirectly by a public or private undertaking not engaged in television and/or radio broadcasting activities or in the production of audio-visual works, to the financing of television or

radio programmes with a view to promoting its name, its trademark, its image, its activities or its product.”

Under the Code, it is the broadcaster’s responsibility to ensure that editorial integrity is not influenced by the presence of sponsorship. A sponsor

- (i) must not be involved in the manufacture, supply or provision of a product which is listed as unacceptable by this Code
- (ii) must not be associated with a programme which addresses an audience to which its commercials are not permitted to appeal (e.g. alcoholic drink sponsorship of youth programmes is not permitted) or during which it would not be permitted to advertise.
- (iii) Should not have an involvement in the editorial content of the programme or appear to do so.

Sponsorship of news, current affairs and religious programmes is prohibited.

Sponsors must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or end of programmes.

The Irish legislation on sponsorship goes further than the Television Without Frontiers Directive.

1.3. Radio

See section on television above, same rules apply to radio.

1.4. Press

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations, 1991

Part III of these Regulations state that a person engaged in the manufacture, importation, distribution or sale of tobacco products shall not incur expenditure on sponsorship unless such expenditure has been approved by the Minister for Health and Children and shall not exceed an amount as determined, from time to time, by the Minister.

Sponsored events shall be advertised only

- (i) in newspapers, magazines or other similar publications, other than comics, comic supplements or any other publications or material directed primarily at persons under the age of 18 years

- (ii) at the place where the event or activity is taking place but not on or along a public road, and
- (iii) internally in premises which are points of retail sale of tobacco products.

The Regulations go on to state that a person engaged in the manufacture, importation, distribution or sale of tobacco products shall not engage in the sponsorship of events or activities in which the participants are mainly under eighteen years of age or where the members of the audience are likely to be predominantly under that age.

1.5. Posters

See section on Press above, the same rules apply to Posters.

1.6. Cinema

No specific legislation in this area.

1.7. Internet

No specific legislation in this area.

2. Specific Rules: Classification by Sector

2.1. ALCOHOL

2.1.1. General Rules

Provision of alcohol to persons under the age of eighteen years

The Intoxicating Liquor Act, 1988

Part IV of the Act contains the main provisions relating to persons under the age of eighteen years. Section 31 prohibits the sale of intoxicating liquor by the holder of a licence of licensed premises to persons under the age of eighteen. It also states that such licence holders shall not permit the consumption of alcohol by persons under the age of eighteen on the licensed premises or off the licensed premises other than in a private residence. It shall be a defence to prove that the person to whom the liquor was sold produced an age card (issued under Section 40 of the Act).

Section 32 prohibits the provision by other persons of intoxicating liquor for persons under the age of eighteen. Section 33 prohibits the purchase and consumption (in any other place other than a private residence) of intoxicating liquor by persons under the age of eighteen.

Section 34 states that the holder of a license of any licensed premises shall not allow a child to be in the bar at any time unless accompanied by a parent or guardian, and subject to certain other exceptions.

The Intoxicating Liquor Act, 2000 introduces new measures in relation to under-age drinking, in particular:

Section 13 of the Act introduces a new penalty for offending licence holders in an effort to strengthen the legislative provisions against the supply or sale of intoxicating liquor to under-age persons. It provides that where a conviction for such an offence is upheld in the District Court that in addition to any penalty imposed the court *shall* make an order for the temporary closure of the premises in question for a period not to exceed seven days for a first offence and not to be less than seven days or more than thirty days in relation to a second or subsequent offence.

The defence of “reasonable belief” is abolished, and an obligation is imposed on licensees to be satisfied as to the age of a person before supplying alcohol as the only defence now open is proof that an age card was furnished which showed the person as over eighteen years.

Persons over fifteen and under eighteen are permitted to work in licensed premises but only as lounge persons serving to tables and are not permitted behind the bar or to serve from behind the bar.

Section 17 provides that the name of the owner, and the address, of premises to which an on-licence or an off-licence is attached shall be clearly indicated on a label affixed to any container in which intoxicating liquor is sold for consumption off the premises. A licensee who contravenes this section is guilty of an offence and liable to a fine of £250 in the case of a first offence or £500 in the case of any subsequent offence.

2.1.2. Rules on Advertising and Alcohol

A. General

Intoxicating Liquor Act 1988

Section 45 provides for restrictions on advertisements relating to functions in clubs. It states that a person shall not publish, or cause to be published, any advertisement drawing attention to any function to be held on the premises of a registered club. Subsection (2) provides that this shall not apply to “

- (a) the publication of a notice inside the premises of the registered club in which the function is to be held, or

(b) any advertisement in so far as it relates to a function involving any sport, game or physical recreation which does not take place outside the hours during which excisable liquor may be supplied or consumed on the club premises in accordance with the club rules, or

(c) any circular issued by a registered club to its club members.”

Subsection (3) provides that where there is a contravention of subsection (1) then ”

(a) the registered club,

(b) every person entered in the register of clubs as an official or member of the committee of management or governing body of the club at the time the advertisement is published, and

(c) any person who published the advertisement or caused it to be published, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—

(i) £300, in the case of a first offence, or

(ii) £500, in the case of a second or subsequent offence.”

Subsection (4) provides for certain defences to a prosecution under this section:”

(a) it shall be a defence for a person mentioned in subsection (3) (b) of this section to prove that the advertisement was issued without his consent or connivance or that he exercised all due diligence to prevent the publication of any such advertisement, and

(b) it shall be a defence for a person mentioned in subsection (3) (c) of this section to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement in question for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would constitute an offence under the said subsection (1).”

An “advertisement” is stated to include every form of advertising, whether in a publication or by the display of notices or by means of circulars or by an exhibition of photographs or a cinematograph film, or by way of sound broadcasting or television or by inclusion in a cable programme service.

B. By Media

2.1.2.1. Television

Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services drawn up by the Minister for Arts, Culture and the Gaeltacht in the exercise of his powers under Section 4(1) of the Broadcasting Act, 1990.

Chapter 1, Section 1.3 provides that “The codes contained herein are applicable to both radio and television advertising where practically appropriate.”

Chapter 15 provides that the advertising of alcoholic drink may be accepted by broadcasters provided it complies fully with the following criteria:

- (i) “Alcoholic drink advertising must not encourage young people or other non-drinkers to begin drinking – it must be cast towards brand selling and identification only.
- (ii) This code recognises a voluntary code whereby spirit based alcoholic drinks (i.e. whiskey, gin, vodka, brandy, etc.) are not advertised on radio or television. The code is framed on the assumption that this situation will continue.
- (iii) This code will apply to all other alcoholic drinks, i.e., beers, wines, sherries, fortified wines, vermouths, liqueurs, etc.
- (iv) Where soft drinks are promoted as mixers this code will apply in full. When promoted as refreshments in their own right soft drinks are not subject to this code, but due care should be exercised if bar or similar locations are used.
- (v) Broadcasters will ensure that alcoholic drink advertisements are not transmitted in or around programmes primarily intended for young viewers or listeners; advertisers are required to take account of the age profile of the viewers and listeners so that advertisements are communicated, so far as it is possible, to adults.
- (vi) Advertising shall not encourage immoderate consumption of alcohol or present abstinence in a negative light.
- (vii) Advertisements shall not claim that alcohol has therapeutic qualities of that it is a stimulant, a sedative, tranquilliser or a means of resolving personal conflicts.
- (viii) Advertising shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

- (ix) Advertisements for alcoholic drink may not be aimed specifically at minors or, in particular, depict minors consuming these beverages.
- (x) The advertising of alcoholic drinks should not create the impression that consumption of such beverages contributes towards sexual attraction and success, or social success.
- (xi) Advertisements shall not link the consumption of alcohol to enhanced physical performance or to driving.”

The Irish Legislation in this area goes further than the Television Without Frontiers Directive.

2.1.2.2. Radio

See section on television above, same rules apply for radio.

2.1.2.3. Press

No specific legislation in this area.

2.1.2.4. Posters

No specific legislation in this area.

2.1.2.5. Cinema

No specific legislation in this area.

2.1.2.6. Internet

No specific legislation in this area.

2.2. TOBACCO

2.2.1. General Rules

Tobacco (Health Promotion and Protection) Act 1988

It is an offence under section 3(1) of the Act to sell, offer to sell, or make available in relation to the sale of any other product, any tobacco product to a person under the age of 16 years, whether for his own use or otherwise. It is also an offence to sell to any person, acting on behalf of a person under the age of 16 years, any tobacco products.

2.2.2. Rules on Advertising and Tobacco Products

A. General

See section 20 of the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations, 1991

The Regulations govern the advertising of tobacco generally and consequently are also applicable to minors.

Article 8 states that tobacco products may not be advertised save in the following places :

- internally in premises which are points of retail sale of tobacco
- products, provided that such advertising is not by means of visual electronic media or by sound;
- in duty free zones at airports and ferryboats by means of permanent signs; and
- on packages of tobacco products.

Article 10 limits what may appear on an advertisement for a tobacco product, where such advertisement is permitted.

B. By Media

2.2.2.1. Television

Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services drawn up by the Minister for Arts, Culture and the Gaeltacht in the exercise of his powers under Section 4(1) of the Broadcasting Act, 1990.

Section 13 of the current Code, drawn up by the Minister on 11 May 1995 prohibits all forms of advertising for cigarettes, cigars and other tobacco products. All television and sound broadcasters must comply with this code. The ban is general and therefore also applies to minors.

Section 21.2 of *The Code* states that Programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is prohibited by *The Code*. Therefore, by virtue of section 13 above, no programmes may be sponsored by tobacco product manufacturers. Again this ban is general and consequently also applies to minors.

The Irish Legislation in this area mirrors the Television Without Frontiers Directive.

2.2.2.2. Radio

See section on television above, same rules apply to radio.

2.2.2.3. Press

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (Amendment) (No 2) Regulations 2000

The Minister for Health and Children, in this statutory instrument, prohibited the publication in the State of any newspaper, periodicals or magazines, containing any advertisement for tobacco products. It is also prohibited to distribute in the State, whether by wholesale, by retail, or gratuitously, newspapers, periodicals or magazines which contain advertisements for tobacco products. Notwithstanding this overall ban, a press distributor may apply to the Minister for a written exemption from these provisions in respect of any foreign newspaper, periodical or magazine. In order to grant such an exemption, the Minister must be satisfied that the publication complies with certain criteria, e.g. that the circulation of the publication is below a specified number. Notably, one of the criteria for an exception in this regard is that the newspaper, periodical or magazine is not published mainly for sale or distribution to persons under 18 years of age.

Section 21 of the 1991 Regulations provides that a person engaged in the manufacture, importation, marketing, advertising, distribution or sale of tobacco products shall not incur expenditure on sponsorship unless such expenditure has been approved by the Minister and shall not exceed an amount as determined, from time to time, by the Minister. Furthermore, section 20 provides that a person engaged in the manufacture, importation, distribution or sale of tobacco products shall not engage in the sponsorship of events or activities in which the participants are mainly under eighteen years of age or where the members of the audience are likely to be predominantly under that age. Where such sponsorship takes place, the sponsored events and activities shall be advertised only :

- (i) in newspapers, magazines or other similar publications, other than comics, comic supplements or any other publications or material directed primarily to persons under the age of 18 years,
- (ii) at a place where the event or activity is taking place but not on or along a public road and
- (iii) internally in premises which are points of retail sale of tobacco products.

2.2.2.4. Posters

See Section 20 of The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations, 1991 (set out above).

2.2.2.5. Cinema

No specific legislation in this area.

2.2.2.6. Internet

No specific legislation in this area.

2.3. DRUGS AND HEALTH

2.3.1. General Rules

There are no specific legislative provisions regarding the sale of medical preparations to minors.

2.3.2. Rules on Advertising and Drugs and Health

A. General

The Medical Preparations (Advertising) Regulations, 1993

2.3.2.1. DRUGS FOR HUMAN CONSUMPTION :

The Irish legislation in respect of advertising and medical preparations, gives effect to EC Council Directive 92/28 on the advertising of medicinal products for human use.

Under section 4 of the 1993 Regulations, a person shall not advertise a medical preparation in respect of which a product authorisation (a licence) has not been granted. Where such authorisation exists, a person who advertises the medical preparation in question shall ensure that all parts of his advertising complies with the particulars listed in the summary of the product characteristics (which is contained in the product authorisation) in respect of that medical preparation. He must also ensure that the advertising of the medical preparation shall encourage the rational use of the medical preparation by presenting it objectively and without exaggerating its properties and the advertisement shall not be misleading.

Section 5 goes on to provide that a person shall not advertise any medical preparation which may not be sold without a prescription or is a controlled drug under the Misuse of Drugs Act 1977.

Furthermore, section 6 states that a person shall not publish or take any part in the publication of an advertisement referring to any medical preparation in a manner which

might lead to the use of such preparation in the diagnosis, prevention or treatment in human beings of an ailment, infirmity, injury or defect set out in the Schedule to the act.

Sections 5 and 6 do not apply to advertisements which are published in such a manner and insofar as was reasonably necessary to bring it to the notice of certain persons including: health professionals, nurses, trainee health professionals and nurses and members of the Government.

The regulations differentiate between advertising to health professionals and to the general public.

A person who advertises a medical preparation to the general public shall ensure that such advertising conforms with the following requirements:

1. Format of the advertisement

The advertisement must be set out in such a way that it is clear that the message conveyed is an advertisement.

2. The advertisement shall contain

- (i) A clear identification by name that the product being advertised is a medical preparation, as well as by the common name if the preparation contains only one active ingredient;
- (ii) The information necessary for the correct use of the medical preparation;
- (iii) A warning to read carefully the instructions on the package leaflet or on the outer packaging, as the case may be;

3. The advertisement shall not contain any material which:

- (i) gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail;
- (ii) suggests that the effects of taking the medicine are guaranteed, are unaccompanied by side effects or are better than or equivalent to those of another treatment or medical preparation;
- (iii) suggests that the health of the subject can be enhanced by taking the medicine;
- (iv) suggests that the health of the subject could be affected by not taking the medicine, this prohibition shall not apply to vaccination campaigns;

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

In relation to advertising to health professionals, a strict procedure is also laid down.

Section 16 of the Regulations state that the Minister for Health and Children may approve of any code of practice or any part of any code of practice for the purpose of providing practical guidance with respect to the requirements or prohibitions of any of the provisions of these Regulations. Currently, the Minister has given his approval to the section of the ASAI Code of Advertising Standards of Ireland, which refers to Health and Beauty. The provisions of this Code will be referred to later.

2.3.2.2. FOOD STUFFS

A. General

Health (Foods for Particular Nutritional Uses) Regulations, 1991.

The law regarding the advertising of food is governed by these regulations which limit what may be contained in advertisements relating to food. The restrictions are general and there are no provisions specifically relating to children.

B. By Media

2.3.2.2.1. *Television*

As stated above, no medical preparation which is prescription only or is a controlled drug under the Misuse of Drugs Act, 1977 may be advertised. In the case of an advertisement to the general public which is intended solely as a reminder, that person so advertising the medical preparation shall include, in the case of advertising by way of sound recording, sound broadcasting or television

- (i) the name of the product and
- (ii) advice to read carefully the information notice accompanying the medical preparation.

The Irish legislation in this area goes further than the Television Without Frontiers Directive.

Health and Safety

Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services drawn up by the Minister for Arts, Culture and the Gaeltacht in the exercise of his powers under Section 4(1) of the Broadcasting Act, 1990.

Section 11 of the current Code, states that advertisements should not encourage behaviour prejudicial to health or safety. Advertisements should not without justifiable reason depict or describe situations which show dangerous practises or a disregard for safety. Special care should be taken in advertisements directed towards or depicting children. This code applies to all television and radio broadcasters.

2.3.2.2.2. *Radio*

See section on television above, same rules apply to radio.

2.3.2.2.3. *Press*

Drugs:

In the case of an advertisement to the general public which is intended solely as a reminder, that person so advertising the medical preparation shall include, in the case of a written advertisement

- (i) the number of the product authorisation and
- (ii) the name and address of the holder of the product authorisation.

Contraceptives:

The Health (Family Planning) Regulations, 1992

These Regulations govern the advertising and display of contraceptives. They state that a person may only advertise contraceptives, other than contraceptive sheaths, or may only display contraceptives where such relates to family planning services, is arranged by or on behalf of the Minister or is reasonably necessary for informing healthcare professionals. A person may advertise or display contraceptive sheaths if the advertisement or display is associated with the sale of contraceptive sheaths. Furthermore, a person may take part in the publication of an advertisement or notice in relation to contraceptive sheaths if:

- (i) the publication of the advertisement or notice is conducted only through a printed publication, and
- (ii) the publication of the advertisement or notice is such only as is reasonably necessary to inform persons about the benefits of the product, and
- (iii) the publication does not appear in a publication apparently directed primarily to persons under 17 years of age.

Cosmetics:

European Communities (Cosmetic Products) Regulations, 1997

Advertising in relation to Cosmetics is governed by these regulations, which state that a person shall not place a cosmetic product on the market if the text, names, trade marks, pictures, and figurative and other signs employed in the labelling, presentation for sale and advertising of the product suggest a characteristic which the product in question does not possess. Any reference to testing on animals which is included with or appears on the container or packaging of a cosmetic product or which appears in any advertising or promotional material relating to a cosmetic product must state clearly whether or not such tests have been carried out and, if they have, whether they relate to the cosmetic product itself, to any of its ingredients or to both.

There is no specific provision regarding minors.

2.3.2.2.4. Posters

No specific legislation in this area.

2.3.2.2.5. Cinema

No specific legislation in this area.

2.3.2.2.6. Internet

No specific legislation in this area.

2.4. VEHICLES

2.4.1. General Rules

Road Traffic (Licensing of Drivers) Regulations, 1989

These Regulations implement EC Directive 80/1263/ EEC under which vehicles are categorised for driver licensing purposes and the minimum age of the licensee is prescribed.

<u>Description of Vehicle</u>	<u>Minimum Age of Licensee</u>
Motorcycles	18
Cars	17
Trucks	18
Buses	21
Motorcycles not over 125 c.c.	16
Trucks not over 7,500 kg laden	18
Minibuses	21
Work Vehicles/Tractors	16

2.4.2. Rules on advertising and vehicles

A. General

There are no specific provisions regarding advertising for vehicles targeting minors.

B. By Media

2.4.2.1. Television

No specific legislation in this area.

2.4.2.2. Radio

No specific legislation in this area.

2.4.2.3. Press

No specific legislation in this area.

2.4.2.4. Posters

No specific legislation in this area.

2.4.2.5. Cinema

No specific legislation in this area.

2.4.2.6. Internet

No specific legislation in this area.

2.5. EDUCATION

2.5.1. General Rules

Education (Welfare) Act, 2000

Section 17 provides that the parent of a child shall cause the child to attend a recognised school on each school day.

“Child” is defined, for the purposes of the Act, as a person resident in the State who has reached the age of six years but has not reached the age of sixteen years or has not completed three years of post-primary education, whichever occurs later, but does not include a person who has reached the age of eighteen years.

In practice, over half of all four-year olds and almost all five-year olds attend infant classes in primary school.

The Act also provides for the establishment of a register of all children receiving education in a place other than in a recognised school and for the assessment of the education that is being provided in this way. (Section 14)

2.5.2. Rules on advertising and schools

A. General

Department of Education Circular 38/91

The Minister for Education has issued to the Management Authorities and Principals of National Schools in Ireland, three circulars relating to the marketing and promotion of commercial

products through schools. Describing such marketing and promotion as “undesirable practice”, the Minister requests that school authorities to take whatever steps may be necessary to eliminate such activities. The Minister also requests that schools formulate agreed school policies in relation to commercial promotions.

B. By Media

2.5.2.1. Television

No specific legislation in this area.

2.5.2.2. Radio

No specific legislation in this area.

2.5.2.3. Press

No specific legislation in this area.

2.5.2.4. Posters

No specific legislation in this area.

2.5.2.5. Cinema

No specific legislation in this area.

2.5.2.6. Internet

No specific legislation in this area.

2.6. TOYS AND OBJECTS FOR CHILDREN

2.6.1. General Rules

European Communities (Safety of Toys) Regulations, 1990.

The definition of a toy is stated in these Regulations and is as follows: "toy" means a product or material designed or clearly intended for use in play by children of less than 14 years of age other than a product or material specified in Annex I of the Council Directive 88/378/EEC which is set out in the First Schedule.

2.6.2. Rules on Advertising and Toys.

A. General

There are no specific regulations governing the advertisement of toys and objects for children.

B. By Media

2.6.2.1. Television

Section 14 of the current *Code of standards, practice and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services*, states generally under the heading of "Advertising and Children's Programmes" that:

- (i) Advertisers must exercise the utmost care and discrimination with regard to the content and presentation of advertisements transmitted during breaks within or near or adjacent to programmes designed for children.
- (ii) Advertisements shall not exhort children to buy a product or service by exploiting their inexperience or credulity.
- (iii) Advertising shall not exploit the special trust minors place in parents, teachers or other persons.
- (iv) Advertisements shall not directly encourage minors to persuade their parents or others to purchase or make enquiries about the goods or services being advertised.
- (v) Advertisements shall not unreasonably show children in dangerous situations.

The Irish Legislation in this area mirrors that contained in the Television Without Frontiers Directive.

2.6.2.2. Radio

See the section on television above, the same rules apply to radio.

2.6.2.3. Press

No specific legislation in this area.

2.6.2.4. Posters

No specific legislation in this area.

2.6.2.5. Cinema

No specific legislation in this area.

2.6.2.6. Internet

No specific legislation in this area.

2.7. Financial Services

2.7.1. General Rules

2.7.1.1. Banking access for minors

There is no specific legislation in respect of the capacity of minors to engage in banking, however a bank account is a contract and the legislation regarding a minor's ability to contract would apply. According to the Institute of Bankers in Ireland, a minor may open an account, deposit and withdraw money. A deposit account may be maintained at any stage for a customer who is a minor. Withdrawals can also take place once the customer has the capacity to understand the nature of the transaction.

2.7.1.2. Rules on advertising and Financial Services

A. General

Advertising by credit institutions is regulated by the Central Bank of Ireland, under various statutes which give the Central Bank a supervisory role over their activities. Only those institutions authorised under statute, together with certain exempted bodies, may advertise for deposits. Under EU legislation, credit institutions authorised in other

Member States may also advertise for deposits provided the Central Bank has been notified of their intention to do so.

Advertisements for deposits and other savings products should, under Central Bank requirements contain the following details

- (i) the equivalent annual rate for each interest rate quoted
- (ii) the minimum term and the minimum amount required for a specific rate of interest
- (iii) whether the rate quoted is inclusive or exclusive of Deposit Interest Retention Tax.

Irish legal tender notes are protected by the Copyright Act 1963 , the Forgeries Act 1913 and the Central Bank Acts, 1942-1998. No Irish Legal Tender notes may be reproduced in whole or in part in any advertisements without prior permission in writing of the Central Bank.

Consumer Credit

Consumer Credit Act, 1995

This Act governs the advertising of credit services. Part II of the act deals with “Advertising and Offering of Financial Accommodation”. In general, an advertisement in which a person offers to provide or arrange the provision of credit shall, if mentioning a rate of interest, contain a clear and prominent statement of the APR (Annual percentage rate of charge) and no other rate of interest shall be included in the advertisement. Also where such is applicable the advertisement shall specify any conditions the offer of credit is subject to, state any security requirements and indicate any restrictions which may apply.

B. By Media

2.7.1.2.1. *Television*

No specific legislation in this area.

2.7.1.2.2. *Radio*

No specific legislation in this area.

Gaming and Lotteries Act, 1956

Section 14 states that gaming carried on at an amusement hall or funfair shall not be unlawful gaming if, among other things, no person under sixteen years of age is permitted to play.

Betting Act, 1931

Section 29 provides that it shall not be lawful for any person to send or bring into any registered betting office any person under the age of eighteen years other than persons ordinarily resident in such premises and officers of the Minister for Posts and Telegraphs entering such premises in the course of their duty as such officers.

Section 23 provides that no licensed bookmaker shall make a bet or engage in a betting transaction with a person under the age of eighteen years whether such person is acting on his own behalf or as agent for another person.

2.8.2. Rules on Advertising and Leisure

A. General

There is no general legislation in this area.

B. By Media

2.8.2.1. Television

Video Recordings Act 1989

Section 3 provides that the Official Censor shall, on application to him in relation to a video work, grant to the person making the application a certificate declaring the work to be fit for viewing unless he is of opinion that the work is unfit for viewing because

- (a) the viewing of it
 - (i) would be likely to cause persons to commit crimes, whether by inciting or encouraging them to do so or by indicating or suggesting ways of doing so or of avoiding detection, or
 - (ii) would be likely to stir up hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation, or

(iii) would tend, by reason of the inclusion in it of obscene or indecent matter, to deprave or corrupt persons who might view it,

or

(b) it depicts acts of gross violence or cruelty (including mutilation and torture) towards humans or animals.

Section 4 of the Act was amended in 1996 and now reads as follows:

- (1) When granting a supply certificate the Official Censor shall determine, and shall include in the certificate a statement indicating, to which of the following classes the video work concerned belongs:
- (a) fit for viewing by persons generally,
 - (b) fit for viewing by persons generally but, in the case of a child under the age of 12 years, only under parental guidance,
 - (bb) fit for viewing by persons aged 12 years or more,
 - (c) fit for viewing by persons aged 15 years or more,
 - (d) fit for viewing by persons aged 18 years or more,

and for the purposes of this Act the class specified in paragraph (a) of this subsection is the highest classification and that specified in paragraph (d) of this subsection is the lowest classification and that specified in paragraph (b) of this subsection is higher than that specified in paragraph (bb) and that specified in paragraph (bb) is higher than that specified in paragraph (c) of this subsection and references in this Act to classification or higher classification or lower classification shall be construed accordingly.

Section 7 –Censorship of films Act, 1973

Section 5 states that no picture shall be exhibited in public by means of a cinematograph or similar apparatus unless and until the Official Censor has certified that the whole of such picture is fit for exhibition in public.

Section 7 states that when an application for certification is made to the Official Censor, he shall certify that the picture to which the application relates is fit for exhibition in public, unless he is of opinion that such picture or some part thereof is unfit for general exhibition in public by reason of its being indecent, obscene or blasphemous or because the exhibition thereof in public would tend to inculcate principles contrary to public morality or would be otherwise subversive of public morality.

A limited certificate may be granted by the Official Censor which may attach special conditions or may authorise exhibition of the picture only in the presence of persons who are members of a certain class or age-group.

2.8.2.2. Radio

No specific legislation in this area.

2.8.2.3. Press

No specific legislation in this area.

2.8.2.4. Posters

No specific legislation in this area.

2.8.2.5. Cinema

See section on television above, in relation to Video Recordings and Films, the same rules apply to cinema.

2.8.2.6. Internet

No specific legislation in this area.

2.9. ARMS / VIOLENCE

2.9.1. General Rules

Firearms Act, 1925

Section 2(1) provides that it shall be unlawful, subject to certain exceptions, for any person to have in his possession, use, or carry any firearm or ammunition save in so far as such possession, use, or carriage is authorised by a firearm certificate granted under this Act and for the time being in force.

Section 8 declares that certain persons are to be disentitled to hold a firearm certificate and this includes any person under the age of fifteen years.

2.9.2. Rules on advertising and Arms/violence

A. General

There are no provisions relating specifically to advertising of firearms.

B. By Media

2.9.2.1. Television

No specific legislation in this area.

2.9.2.2. Radio

No specific legislation in this area.

2.9.2.3. Press

No specific legislation in this area.

2.9.2.4. Posters

No specific legislation in this area.

2.9.2.5. Cinema

No specific legislation in this area.

2.9.2.6. Internet

No specific legislation in this area.

3. PROPOSALS OF LEGISLATION ON ADVERTISING DIRECTED AT CHILDREN

The Broadcasting Bill, 1999

This Bill, which contains provisions relating to teleshopping, is currently going through the Dail. The Bill defines teleshopping as “material which when transmitted will consist of a direct offer to the public for sale or supply of goods or other property, whether real or otherwise, or services”. It also provides that the Minister for Arts, Heritage, Gaeltacht and The Islands may issue codes and standards relating to teleshopping. The Bill is due to go before the Dail Committee in October 2000. It is expected that the Bill will have passed all stages in the Parliament in March 2001.

The Broadcasting Bill when enacted will enable the Minister for Arts, Heritage, Gaeltacht and the Islands to make the question of advertising directed at children its priority and to report back to her within one year. The Broadcasting Commission of Ireland will be able to take into account any relevant instrument made by or relevant guidelines issued by any

body in which are vested functions in relation to the welfare of children. It will also be able to have regard to any research which it considers appropriate and will be able to conduct research with respect to advertising, teleshopping material and sponsorship and other forms of commercial promotion which relate to matters likely to be of direct or indirect interest to children.

The Children Bill, 1999

This is a blueprint for the development of a new juvenile justice system. It was prepared with the co-operation of the Department of Justice, Equality and Law Reform, the Department of Health and Children and the Department of Education and Science. If passed, the Bill will raise the age of criminal responsibility from seven years of age to twelve years.

Constitutional Review Group Recommendations

The Constitutional Review Group is a group set up to make suggestions in relation to possible amendments of our Constitution. Their Report recommends that in line with the UN Convention on the Rights of the Child the Irish Constitution should include an express statement that in all actions concerning children the best interests of the child should be a paramount consideration. The Review Group further suggested that an express guarantee of certain rights of the child related to family life should be included in any revision of the relevant provisions of the Constitution. These recommendations are being considered by an All Party (Oireachtas) Committee which has been set up by the Houses of Parliament to undertake a full review of the Constitution to establish those areas where constitutional change may be desirable or necessary.

III. SELF-REGULATION

1. General Rules regarding the ASAI

1.1. The Self-Regulatory System in Ireland

The Advertising Standards Authority for Ireland (ASAI) is a self-regulatory body established by the advertising industry in 1981. It states that it is “committed in the public interest to promoting the highest standards of advertising and sales promotion through the Code of Advertising Standards and the Code of Sales Promotion Practice”. Most advertisers in Ireland are members of the ASAI. The following are the relevant provisions from the current code:

1.2. ASAI: Legal Status and Structure

ASAI is incorporated under the Companies Acts as a Company Limited by Guarantee and not having a Share Capital. There are three categories of membership - Advertiser Members, Media Members and Agency Members and an independent Chairman appointed by the Board. The Board of ASAI consists of thirteen members - the Chairman and four Advertiser members, four Agency members and four Media members. It is responsible for managing the business of the Authority and for drawing up and implementing the Codes and reviewing and amending them from time to time. The Board is also empowered to exercise a disciplinary function over Members of ASAI. The Complaints Committee is appointed by the Board and comprises persons involved in advertising and persons independent of advertising including members nominated by the Director of Consumer Affairs. The Committee is responsible for considering and dealing with complaints submitted by the public, by a Member of ASAI, by a Government Department or by any other person or body of persons. The Committee may initiate corrective action where necessary and may issue appropriate directives. Where such corrective action or directive is not complied with the Complaints Committee may submit a report in the matter to the Board for consideration of disciplinary action. The composition of the Complaints Committee and the participation of nominees of the Director of Consumer Affairs and other independent members ensures the objectivity of the complaint investigation procedure and provides assurance that the system is operated with special regard for the interests of consumers. The Chief Executive/Secretary implements the policies and decisions of the Authority, acts as Secretary to both the Board and the Complaints Committee and administers the pre-publication vetting service and the monitoring of advertisements.

1.3. Codes

The two Codes administered by ASAI - the Code of Advertising Standards and the Code of Sales Promotion Practice - are based on the Codes established by the International Chamber of Commerce. They require that all commercial advertisements and promotions

- *should be 'legal, decent, honest and truthful'*
- *should be prepared with a sense of responsibility to consumers and to society*
- *should respect the principles of fair competition generally accepted in business.*

The Codes are applied in the spirit as well as in the letter.

Primary responsibility for observing the Codes rests with advertisers and promoters who have a duty to ensure that their claims are fair and honest and do not cause offence. Others involved in the preparation and publication of advertisements and in the design and execution of mail order operations and sales promotions also have an obligation to abide by Code provisions. It is a condition of membership of ASAI that a Member shall not publish an advertisement or undertake a promotion that does not comply with Code requirements.

The role of media is of particular importance in checking and deciding on the acceptability of advertisements under the Code. The fact that an advertisement conforms to the Code is not, however, a guarantee that it will be accepted. Media will refuse an advertisement which contravenes the Code but are under no obligation to publish every advertisement offered.

The central concern of ASAI is with the content of commercial advertisements and the design and execution of sales promotions. The Codes are not concerned with whether an advertisement or promotion is good or effective. They do not presume to judge whether what is offered is worth buying or worth the price asked nor do they attempt to regulate terms of business.

1.4. Self-Regulation and the Law

The self-regulatory system complements legislative controls on advertising and sales promotions and provides an alternative, low-cost and easily accessible means of resolving disputes. It encourages acceptance of standards of practice which in a number of areas go beyond what is required by law. It provides a flexible and sensitive means of dealing with matters of taste and decency that are difficult to judge in law but which can fundamentally affect consumer confidence in advertising.

The Codes require that advertisements and promotions should satisfy all relevant legal requirements. ASAI is not, however, a law enforcement body and does not provide legal advice. Complaints are not pursued if they concern matters that should be resolved in the

Courts or if any of the parties has initiated or is contemplating legal action. Similarly, ASAI does not duplicate the work of other regulatory bodies.

The Consumer Information Act, 1978, makes it an offence to publish any advertisement that is likely to mislead and thereby cause loss, damage or injury to members of the public to a material degree. There are also statutory requirements affecting the advertising of certain products and services, including tobacco, medical preparations, credit services and employment agencies. The provisions of the Gaming and Lotteries Act, 1956, are relevant to sales promotions involving prizes. Under the European Communities (Misleading Advertising) Regulations, 1988, it is open to any person to apply to the High Court for an Order prohibiting the publication of misleading advertising. These Regulations provide a valuable statutory back-up to ASAI. (A list of Statutes, Statutory Instruments and other Codes affecting advertisements and promotions is contained in the Appendix).

1.5. Self-Regulation at European Level

ASAI is a founder member of the European Advertising Standards Alliance, a Brussels-based organisation comprising the self-regulatory bodies of EU Member States and a number of other European countries. The main objective of the Alliance is to promote the principle of efficient national self-regulation of advertising, mindful of differences of culture and commercial practice, and to demonstrate that self-regulation systems can operate effectively in the interests of both the industry and consumers in the context of the European Single Market.

The Alliance has established a cross-border complaints procedure to ensure that a complaint from a consumer anywhere in Europe can be effectively investigated and dealt with, even if the medium involved originated in another country. A consumer in Ireland who wishes to complain about an advertisement carried in an external medium or a sales promotion originating abroad should complain direct to ASAI which will arrange for the complaint to be processed by the self-regulatory body of the country of origin of the medium.

1.6. Scope and Application

The primary objective of the Code is the regulation of commercial advertisements in the consumer interest.

For the purposes of the Code

- (i) an advertisement is defined as a paid-for communication addressed to the public or a section of it, the purpose being to influence the behaviour of those to whom it is addressed. It is characteristic of an advertisement that an advertiser pays a third party to communicate his message;

- (ii) a product can encompass goods, services, facilities, opportunities, fund raising, prizes and gifts;
- (iii) a consumer is anyone who is likely to see a particular advertisement or
- (iv) a claim can be direct or implied, written, spoken or visual;
- (v) references to advertisers should be interpreted as including promoters unless the context indicates otherwise;
- (vi) where for the sake of clarity and brevity the singular form of a word is used this should be construed as including legal persons and groups as appropriate;
- (vii) every word importing the masculine gender should be construed as if it also imported the feminine gender unless the contrary intention appears. Every word importing the feminine gender should be construed as if it also imported the masculine gender unless the contrary intention appears.

The Code applies to:

- (i) advertisements in newspapers, magazines and other printed publications, including 'free sheets',
- (ii) posters and aerial advertisements,
- (iii) brochures, leaflets, circulars, mailings and facsimile transmissions,
- (iv) commercials broadcast on television or radio or screened in cinemas,
- (v) advertisements carried on audiotapes, videotapes, viewdata services and other electronic and computer systems,
- (vi) sales promotion material,
- (vii) advertisement features and promotions.

The Code does not apply to

- (i) statutory, public, Garda and other official notices,
- (ii) material published as a matter of record only,
- (iii) flyposting,
- (iv) packages, wrappers, labels and tickets unless they advertise another product or a sales promotion or are recognisable in an advertisement,
- (v) point-of-sale displays,

- (vi) advertisements whose principal purpose is to express the advertiser's position on a political, religious, industrial relations, social or aesthetic matter or on an issue of public interest or concern,
- (vii) classified private advertisements,
- (viii) press releases and other public relations material,
- (ix) the content of books and editorial material in media,
- (x) private correspondence,
- (xi) oral communications by telephone,
- (xii) works of art,
- (xiii) specialised advertisements addressed to the medical and allied professions.

The Code is applied in accordance with the following criteria:

- (i) An invitation from the Authority to comment on a complaint does not mean that the Authority accepts the complainant's view. Each case is considered on its merits.
- (ii) The Code rules are indivisible; advertisers must conform, where appropriate, with all rules.
- (iii) Conformity with the Code is assessed in the light of an advertisement's probable effect when taken as a whole and in context. Particular attention is paid to:
 - the characteristics of the likely audience,
 - the media by means of which the advertisement is communicated,
 - the location and context of the advertisement,
 - the nature of the advertised product and the nature, content and form of any associated material made available or action recommended to consumers.
- (iv) The Code does not deal with contractual relationships between advertisers and consumers. It does not presume to judge whether a product represents good value for money nor does it seek to regulate terms of business.
- (v) ASAI does not act as an arbitrator between conflicting ideologies.

- (vi) No legal advice can be given or should be presumed in communications from the Authority (Board, Complaints Committee or Secretariat).
- (vii) The judgment of the Advertising Standards Authority for Ireland on any matter of interpretation is final.

2. Classification by Media

2.1. Television

Scope and Application

2.1.1. Principles

All advertisements should be legal, decent, honest and truthful. All advertisements should be prepared with a sense of responsibility to consumers and to society. All advertisements should respect the principles of fair competition generally accepted in business. The Code is applied in the spirit as well as in the letter. An advertisement should not bring advertising into disrepute. Primary responsibility for observing the Code rests with advertisers. Others involved in the preparation and publication of advertisements such as agencies and media also accept an obligation to abide by the Code. Any unreasonable delay in responding to ASAI's enquiries may be considered a breach of the Code. The Authority will observe advertisers' requests to treat any material they supply in strict confidence unless the Courts or an official agency acting within its statutory powers compel its disclosure.

2.1.2. Substantiation

Before offering an advertisement for publication, advertisers should be able to provide documentary evidence to substantiate all claims, whether direct or implied, that are capable of objective assessment. Relevant evidence should be sent without delay if requested by the Authority and should be adequate to support both detailed claims and the overall impression created by the advertisement. If there is a significant division of informed opinion about any claim made in an advertisement it should not be portrayed as universally accepted. Where claims contained in books, tapes, videos and the like cannot be independently substantiated, advertisements should not exaggerate the value or usefulness of what is claimed.

2.1.3. Legality

Advertisers have primary responsibility for ensuring that their advertisements are legal. An advertisement should not contain anything that breaks the law or incites anyone to break it, nor omit anything that the law requires.

2.1.4. Taste & Decency

An advertisement should contain nothing that is likely to cause grave or widespread offence. Particular care should be taken to avoid causing offence on grounds of age, disability, gender, race, religion, sex or sexual orientation.

Advertisers should take account of public sensitivities in the preparation and publication of advertisements and avoid the exploitation of sexuality and the use of coarseness and undesirable innuendo. They should not use offensive or provocative copy or images merely to attract attention. The fact that a product is offensive to some people is not in itself sufficient basis for objecting to an advertisement for the product. Advertisers should nevertheless avoid causing offence in such advertisements. Compliance with the Code is assessed on the basis of the standards of taste, decency and propriety generally accepted in Ireland, taking account of the product involved, the media used, the location and context in which the advertisement is placed and the characteristics of the audience addressed.

2.1.5. Sexism and Stereotyping

Advertisements should respect the principle of the equality of men and women and the dignity of all persons. Advertisements should recognise and reflect women's role in society and should avoid stereotyping, taking account of the following considerations:

- (i) Women as well as men pursue a wide range of contemporary occupations, hobbies, recreational activities and interests.
- (ii) Both women and men take major purchasing decisions in the workplace and at home.
- (iii) Men and women perform and share household management and domestic tasks.

Advertisements should where appropriate use generic terms that include both the masculine and feminine gender; for example, the term 'business executive' covers both men and women.

2.1.6. Vulnerable Persons

Advertisements which portray or refer to persons with disabilities or to persons who are vulnerable by reason of age or other condition or circumstance -

- (i) should fully respect the dignity of such persons and not undermine their confidence or independence;

- (ii) should avoid stereotyping or other insensitive approaches which could promote negative images or prove hurtful or distressing to such persons or their families;
- (iii) should not subject such persons to ridicule or offensive humour;
- (iv) should not exploit disability, age or other condition for unrelated commercial purposes.

2.1.7. Honesty

Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers. The design and presentation of advertisements should allow them to be easily and clearly understood. Where footnotes are used they should be of sufficient size and prominence and easily legible; where appropriate they should be linked to the relevant part of the main copy.

2.1.8. Truthfulness

An advertisement should not mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise. Obvious untruths or deliberate hyperbole that are unlikely to mislead, incidental minor inaccuracies and unorthodox spellings are not necessarily in conflict with the Code provided they do not affect the accuracy or perception of the advertisement in any material way. Claims such as 'Up to' and 'From' (e.g. "Up to x miles per gallon" and "Prices from as low as y") should not exaggerate the value or the range of benefits likely to be achieved in practice by consumers.

2.1.9. Matters of Opinion

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

2.1.10. Fear and Distress

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

2.1.11. Safety

An advertisement should not encourage dangerous behaviour or show unsafe practices except in the context of promoting safety. Particular care should be taken with advertisements directed at or depicting children.

2.1.12. Violence and Anti-Social Behaviour

An advertisement should contain nothing that condones or is likely to provoke violence or anti-social behaviour.

2.1.13. Protection of Privacy

Subject to the exceptions referred to in 2.31 below, advertisers should have written permission in advance from anyone portrayed or referred to in an advertisement. Permission is also required before anyone's house or other possessions can be featured in a manner which identifies the owner to the public. Exceptions include the use of crowd scenes or property depicted in general outdoor locations or where the purpose of the advertisement is to promote a product such as a book or film of which the person concerned is a subject. Advertisements should not exploit the public reputation of persons in a manner which is humiliating or offensive. Advertisements should not claim or imply an endorsement where none exists. Advertisers are reminded that persons who do not wish to be associated with the advertised product may take legal action against them. References to deceased persons should be handled with particular care to avoid causing offence or distress.

2.1.14. Testimonials and Endorsements

Advertisers who use testimonials should be able to provide relevant supporting documentation to ASAI. Testimonials by persons named or depicted in an advertisement may be used only with the prior permission of those persons. Testimonials may be misleading if the formulation of the product or its market environment changes significantly. They should therefore relate to the product as currently offered. Testimonials do not constitute substantiation and the opinions expressed in them should be supported, where necessary, with independent evidence of their accuracy. Claims based on a testimonial should conform with the Code. Endorsements by fictitious or historical characters should not be presented as though they were genuine testimonials. References to tests, trials, professional endorsements, research facilities and professional journals should be used only with the permission of those concerned. Any establishment referred to should be under appropriate professional supervision.

2.1.15. Prices

If a price is stated in an advertisement, it should relate to the product depicted or specified in the advertisement. Care should be taken to ensure that prices and illustrated products match. Except in advertisements addressed exclusively to the trade, prices quoted should include VAT. It should be immediately apparent whether any prices quoted exclude other taxes, duties or inescapable costs. If the price of one product is dependent on the purchase of another, the extent of any commitment required of consumers should be made clear.

2.1.16. Free Offers

An offer should be described as free only if consumers pay no more than:

- (i) the current public rate of postage;
- (ii) the actual cost of freight or delivery;
- (iii) the cost, including incidental expenses, of any travel involved if consumers collect the offer.

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

Advertisers should not attempt to recover their costs by reducing the quality or composition, by imposing additional charges or inflating incidental expenses or by increasing the price of any other product that must be purchased as a pre-condition of obtaining a free item.

2.1.17. Availability of Products

Except where supplies of a product are subject to an inherent limitation (e.g. theatre seats), or where it is clear from the advertisement that there is a limit on availability, advertisers should be in a position to meet any reasonable demand created by their advertising. If a product proves to be available in insufficient quantity, advertisers should take immediate action to ensure that any further advertisements are amended or withdrawn. Products should not be advertised as a way of gauging possible demand unless the advertisement makes this clear. Advertisers should not use the technique of switch selling, where sales staff criticise the advertised product or suggest that it is not available and recommend the purchase of a more expensive alternative. Advertisers should not place obstacles in the way of purchasing the product or delivering it promptly.

2.1.18. Comparisons

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

there is no likelihood of a consumer being misled. The basis of selection should be clear and the elements of comparison should not be unfairly selected in a way that gives the advertisers an artificial advantage. A claim that any product is superior to others should only be made where there is clear evidence to support the claim. Wording which implies superior or superlative status such as "number one", "leading", "largest" and the like should be capable of substantiation with market share data or similar proof. Advertisers should not unfairly attack or discredit other businesses or their products. The only acceptable use of broken or defaced competitive products in advertisements is in the illustration of comparative tests, and the nature and results of these should be clear.

2.1.19. Guarantees

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

2.1.20. Exploitation of Goodwill

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

2.1.21. Imitation

An advertisement should not so closely resemble another as to be likely to mislead or cause confusion.

2.1.22. Recognition

An advertisement should be designed and presented in such a way that it is immediately apparent that it is an advertisement. A political advertisement should be recognisable as such and the identity and status of the advertiser should be clear. An advertisement feature, announcement or promotion published in exchange for a payment or other reciprocal arrangement where the content is controlled by the advertiser should comply with the Code. It should also be clearly identified and distinguished from editorial matter.

2.1.23. Other Requirements

Advertisements relating to credit must comply with the requirements of consumer credit legislation in regard to the showing of the Annual Percentage Rate of Charge (APR) and with any other relevant statutory requirements. Advertisers should also comply with any relevant Codes of Practice approved from time to time by the Director of Consumer Affairs.

2.1.24. Health and Beauty

Claims about health and beauty products and treatments should be backed by substantiation including the results of practical trials on human subjects of sufficient rigour, design and execution as to warrant general acceptance of the results. No reference should be made to tests, trials or endorsements by any college, hospital, clinic, laboratory or similar establishment unless there exists a bona fide establishment corresponding to the description used and it is under the effective supervision of a registered medical practitioner or other appropriate professional. Reference to such establishment should be made only with the permission of the appropriate authorities. An advertisement should not offer any product or treatment for serious or prolonged ailments or for conditions requiring the attention of a registered medical or other qualified practitioner.

An advertisement for a health or beauty product or treatment:

- (i) should not contain any offer to diagnose, advise, prescribe or treat by correspondence;
- (ii) should not encourage indiscriminate, unnecessary or excessive use of the product or treatment;
- (iii) should not suggest that the product or treatment is safe or effective merely because it is 'natural' nor should it refer to the omission of any ingredient in a way that suggests that the ingredient is unsafe or harmful;
- (iv) should not employ words, phrases or illustrations that claim or imply the cure of any ailment, disability, illness or disease, as distinct from the alleviation or relief of symptoms;
- (v) should not contain any claim to provide rejuvenation, that is to prevent, retard or reverse the changes brought about by or associated with increasing age;
- (vi) should not cause unwarranted anxiety or suggest that any product or treatment is necessary for the maintenance of health;
- (vii) should not suggest that a product or treatment will achieve success in every case or that the outcome can be other than dependent on the particular circumstances of the individual person;
- (viii) should not use unfamiliar scientific terms for common conditions.

Advertisers offering individual treatments, particularly those that are physically invasive, may be asked to provide prior to publication full details of the treatments together with information about those who would supervise and administer them. Consumers should be encouraged to take independent medical advice before committing themselves to

significant treatments. Advertisements for any products offering to deter the habit of smoking should make it clear that they offer only assistance, are not cures and that any success will necessarily be dependent on the willpower of the user. An advertisement for a medicinal product should not contain an offer to refund money to dissatisfied customers. Claims about the effect that a cosmetic has on or in the skin should distinguish between the composition of the product and any effects caused by the mode of application, such as massage.

2.1.25. Vitamins, Minerals and Food Supplements

An advertisement should not suggest or imply that a well balanced diet needs to be augmented by vitamins or minerals on a regular basis. Advertisers may offer supplements as a safeguard and may refer to the vitamin and mineral content of a particular product but should not suggest that there is a widespread vitamin and mineral deficiency. Advertisements should not imply that supplements will guard against dietary deficiency, elevate mood or enhance performance and supplements should not be promoted as a substitute for a healthy diet. An advertisement may promote vitamin and mineral supplementation to certain categories of people, e.g. those who eat nutritionally inadequate meals, the elderly, children and adolescents, convalescents, athletes in training, those who pursue physically very active occupations or recreations, women of child-bearing age and dieters.

Although there may be some depletion of vitamin stores during illness, an advertisement should not suggest that the replacement of such vitamins will influence the speed or extent of recovery. The prescribing of vitamins and minerals in such cases is a matter for a doctor and self-medication should not be encouraged.

2.1.26. Hair and Scalp

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

2.1.27. Alternative and Complementary Medicine

In the absence of any statutory regulation of alternative and complementary medicine, advertisements for such services should conform with the requirements of this Code.

3. Slimming

A programme in which the intake of energy is lower than its output is the main self-treatment for achieving weight loss. Any claims made for the effectiveness of a slimming plan, method or product should be backed by rigorous practical trials on human subjects. Testimonials do not constitute substantiation and the opinions expressed in them should be supported where necessary by independent evidence.

Claims that long-term slimming, weight loss or inch loss can be achieved either generally or from specific areas of the body by any means other than dieting (e.g. by expelling water, speeding up the metabolism, using mechanical devices, wearing garments or applying substances to the skin) should not be made unless they can be substantiated. Slimming claims in respect of an unproven weight loss method cannot be justified merely by offering a diet or exercise scheme with it.

Advertisers should be able to show that their diet plans are nutritionally well balanced. These will be assessed in relation to the subjects who would be using them. Vitamins and minerals do not contribute to weight loss, but can be offered to slimmers as a safeguard against any shortfall when dieting.

An advertisement should not suggest that persons of normal weight need to slim. "Crash diets" should not be advertised because of the danger that such diets can pose to the health of dieters not under medical supervision. An advertisement should not offer treatment for conditions that require medical treatment, such as obesity and anorexia.

Advertisements for diet aids such as low-calorie foods, food substitutes, appetite depressants and meal replacements should make it clear that they can be effective only as part of a calorie controlled diet. Prominence should be given to the role of the diet, and advertisements should not give the impression that particular methods cannot fail or that dieters can eat as much as they like and still lose weight.

Advertisers should not make general claims that specific amounts of weight can be lost within a stated period. Claims that individuals have lost specific amounts of weight should be compatible with good medical and nutritional practice, should give details of the time period and should not be based on unrepresentative experiences.

Both physical and passive exercise operate slowly to improve muscle tone and this can have an effect on body shape. An improvement in posture may also benefit the figure. Advertisers should be able to substantiate any claims that such methods used alone or in conjunction with a diet plan can lead to weight or inch loss. Advertisements for intensive exercise programmes should encourage users to check with a doctor before starting.

4. Children

An advertisement should contain nothing that is likely to result in physical, mental or moral harm to children:

- (i) Children should not be portrayed in a manner that offends against accepted standards of good taste and decency.
- (ii) They should not be encouraged to enter strange places or talk to strangers e.g. for the purpose of making collections or accumulating labels, wrappers, coupons and the like.
- (iii) They should not be shown in hazardous situations or behaving dangerously in the home or outside. Children should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety.
- (iv) They should not be portrayed engaging in anti-social behaviour; where they appear as pedestrians or cyclists they should be seen to observe the Rules of the Road.
- (v) They should not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include matches, petrol, gas, medicines, certain household substances as well as certain electrical appliances and machinery, including agricultural equipment.
- (vi) An open fire in a domestic scene should always have a fireguard clearly visible when a child is included in the scene.

An advertisement should not exploit the loyalty, vulnerability or lack of experience of children:

- (i) They should not be made to feel inferior or unpopular for not buying the advertised product.
- (ii) They should not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy a particular product.
- (iii) They should not be encouraged to make a nuisance of themselves to parents or others with the aim of persuading them to buy the advertised product.

An advertisement addressed to children:

- (i) should not feature products that are unsuitable for children;

- (ii) should make it easy for them to judge the actual size, characteristics and performance of any product advertised;
- (iii) should not exaggerate what is attainable by an ordinary child using the product.

Note: See also Paragraph re Alcoholic Drinks.

5. Alcoholic Drinks

Advertisements for alcoholic drinks (i.e. those that exceed 1.2% alcohol by volume) should be socially responsible and should not exploit the young or the immature. They should neither encourage excessive drinking nor present abstinence or moderation in a negative way. An advertisement may refer to the social dimension or refreshing attributes of a drink but

- (i) should not emphasise the stimulant, sedative or tranquillising effects of a drink or imply that it can improve physical performance,
- (ii) should not imply that drinking is necessary to social or business success or distinction or that those who do not drink are less likely to be acceptable or successful than those who do,
- (iii) should not suggest that any drink can contribute towards sexual success or make the drinker more attractive to the opposite sex.

Advertisements should not portray drinking as a challenge nor should it be suggested that those who drink are brave or daring. Advertisements should not be directed at young people or in any way encourage them to start drinking. Accordingly:

- (i) Anyone depicted in an alcohol advertisement should appear to be over twenty five.
- (ii) Advertisements should not feature real or fictitious characters who are likely to appeal particularly to people under eighteen in a way that would encourage them to drink.

The social consequences of drinking should be recognised:

- (i) Advertisements should not suggest that a product can mask the effects of alcohol in tests on drivers; advertisements for breath testing devices should include a prominent warning on the dangers of drinking and driving.
- (ii) Immoderate drinking and regular solitary drinking should not be encouraged. Buying of large rounds should not be depicted or implied.
- (iii) Advertisements should not depict activities or locations where drinking alcohol would be unsafe or unwise. In particular,

(a) advertisements should not associate the consumption of alcohol with operating machinery, driving, any activity relating to water or heights, or any other occupation that requires concentration in order to be done safely.

(b) Factual information can be given about the alcoholic strength of a particular drink but it should not be the principal theme of any advertisement. Drinks should not be promoted as being more intoxicating or presented as preferable because of their higher alcohol content.

Advertisers should ensure that low alcohol drinks (i.e. those that contain 1.2% alcohol by volume or less) are not promoted in a way that encourages their inappropriate consumption.

6. Financial Services and Products

Advertisements for financial services and products should be prepared with care and with the conscious aim of ensuring that members of the public fully grasp the nature of any commitment into which they may enter as a result of responding to an advertisement. Advertisers should not take advantage of people's inexperience or gullibility. Advertisements which invite a response by mail should contain the full address of the advertiser separate from any response coupon. Advertisements should indicate the nature of the contract being offered and provide information on any limitations on eligibility, any charges, expenses or penalties attached and the terms on which withdrawal may be arranged. Alternatively, where an advertisement is short or is general in its content, free explanatory material giving full details of the offer should be made available before a binding contract is entered into. When an advertisement contains any forecast or projection, it should make clear the basis on which the forecast or projection is made explaining, for example

- (i) whether reinvestment of income is assumed
- (ii) whether account has been taken of any applicable taxes
- (iii) whether any penalties or deductions will arise on premature realisation or otherwise.

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

6.1. Radio

See section above on television, the same rules apply to radio.

6.2. Press

See section above on television, the same rules apply to press.

6.3. Posters

See section above on television, the same rules apply to posters.

6.4. Cinema

See section above on television, the same rules apply to cinema.

6.5. Internet

See section above on television, the same rules apply to the internet.

IV. SPECIAL MEANS OF COMMUNICATION

1. Direct Marketing

The ASAI Code contains sections relating to Direct Response / Mail Ordering . The provisions are general and therefore apply to minors.

1.1. Distance Selling

(Mail Order and Direct Response)

The Code sets out the rules governing transactions for goods or services in which the buyer and the seller, having been brought into communication through an advertisement, conduct their business without meeting face-to-face.

Mail order and direct response advertisements are not acceptable unless

- (i) the name and full address of the advertiser is stated in the advertisement (in the case of a print advertisement this should be separate from any response coupon),or
- (ii) arrangements have been made for enquirers to be informed by media of the name and full address.

A separate address for orders may also be given. This need not be a full address but may be a Freepost or Box Number. Orders should be fulfilled within 28 days except:

- (i) where security is provided for purchasers' money through an independent scheme;
- (ii) for goods such as plants and made-to-measure products where the estimated time of delivery should be made clear;
- (iii) where the advertisers make clear that they do not intend to begin production unless a sufficient response is received;
- (iv) where a series of goods is to be dispatched in sequence; in such cases only the first delivery need be made within 28 days but the period within which subsequent deliveries will be made should be stated.

Goods supplied should conform to any relevant and accepted standard and to the description given in the advertisement. Advertisers should refund all money promptly when:

- (i) consumers have not received their goods or services; alternatively advertisers may, if asked, provide a replacement;

- (ii) goods are returned because they are damaged or faulty or are not as described, in which case the advertisers should bear the cost of their return;
- (iii) unwanted goods are returned undamaged within fourteen working days of being received by the consumer; consumers should assume that they can try out goods unless the advertisement says otherwise;
- (iv) an unconditional money-back guarantee is given and the goods are returned within a reasonable period;
- (v) goods that have been returned are not received back, provided consumers can produce proof of posting.

Advertisers when using youth media should not promote products that are unsuitable for children. They should take particular care when packaging products that may fall into the hands of children.

V. HANDLING OF COMPLAINTS

1. SELF-REGULATION

1.1. The Advertising Standards Authority of Ireland

The system of self-discipline operating in the advertising industry is governed by numerous codes and rules which aim to promote the highest standards of advertising, which in some areas go beyond what is required by law. Primary responsibility for observing the Codes rests with advertisers and promoters who have a duty to ensure that their claims are fair and honest and to not cause offence. The self-regulatory system complements legislative controls on advertising and provides an alternative, low-cost and easily accessible means of resolving disputes.

1.1.1. Description of the ASAI

The ASAI is the self-regulatory body established by the advertising industry in 1981. It is a condition of membership of ASAI that a Member shall not publish an advertisement or undertake a promotion that does not comply with Code requirements.

The thirteen-member board of ASAI is empowered to exercise a disciplinary function over members of ASAI. The Complaints Committee is appointed by the Board and comprises persons involved in advertising and persons independent of advertising including members nominated by the Director of Consumer Affairs. This ensures the objectivity of the complaint investigation procedure. The Committee is responsible for considering and dealing with complaints submitted by the public, by a Member of ASAI, by a Government Department or by any other person or body of persons. The Committee may initiate corrective action where necessary and may issue appropriate directives. Where such corrective action or directive is not complied with the Complaints Committee may submit a report in the matter to the Board for consideration of disciplinary action.

The following are the relevant paragraphs of the ASAI Code which set out the complaints procedure.

1.1.2. Complaints Procedure

The Codes of Advertising Standards and Sales Promotion Practice are administered primarily in the interests of consumers and complaints are investigated free of charge. Issues identified through monitoring may also be investigated. Complaints of an intra-industry nature may be pursued where the interests of consumers are clearly involved but ASAI does not have general responsibility for arbitrating on disputes between commercially interested parties. Disputes between competitors should be resolved by direct discussion between the parties or their advertising agencies or sales promotion

consultants or through the appropriate industry machinery e.g. the services of the Institute of Advertising Practitioners in Ireland (IAPI), the Association of Advertisers in Ireland (AAI), the Irish Institute of Sales Promotion Consultants (IISPC) or other appropriate professional bodies or trade associations. Aggrieved parties also have the option of applying to the Courts under the Misleading Advertising Regulations mentioned above.

In investigating complaints and enforcing the Codes, ASAI has no mandate to act as a censor or as arbiter of public morals. In assessing complaints involving considerations of taste, decency and propriety, it is guided mainly by the standards that are observed generally throughout Irish society. The members of the Complaints Committee - men and women, advertising experts, consumer representatives and independent members, each acting in an individual capacity - consider each case on its merits taking account of the particular product advertised, the characteristics of the audience addressed, the nature of the medium used, the location and context in which the advertisement is displayed and the nature and level of public reaction.

A complaint should be in writing and should state briefly the grounds of the complaint. In the case of a print advertisement it should be accompanied by a copy of the advertisement. For other media (radio, television, cinema, outdoor) particulars of the advertisement should be provided. Where a sales promotion is involved, the complainant should give the name of the product and/or promoter and if possible provide copies of any labels, leaflets, etc., involved.

The complaint is evaluated initially by the Secretariat to determine whether it is within the terms of reference of ASAI and whether there is a case for investigation. Where there is a case to answer, the advertiser or promoter (or the agency involved) is informed of the complaint and invited to comment. In the light of the response the Secretariat prepares a summary of the case and a draft recommendation to the Complaints Committee as to whether the complaint should be upheld. Both the complainant and the advertiser/promoter or agency are provided with a copy of the Secretariat summary and recommendation and have an opportunity to express their further views in the matter at that stage.

The complaint is then considered by the Complaints Committee which decides whether or not Code rules have been contravened. Details of the case including the name of the advertiser/promoter and agency and the Committee's conclusion are set out in a Case Report which is released to media for publication. An advertisement which is adjudged to have contravened the rules is required to be amended or withdrawn. In the case of a sales promotion, the promoter is requested to make the necessary changes to the way the promotion is advertised or conducted and, where appropriate, may also be asked to recompense any consumers who have been adversely affected.

Advertisers/promoters may be found to have contravened the Code if they do not respond or unreasonably delay their response to ASAI.

The identity of an individual consumer complainant is not disclosed. Where an intra-industry complaint is pursued, the name of the complainant is conveyed to the advertiser/promoter and published in the Case Report.

The investigation procedure may be accelerated where circumstances warrant and if a case is particularly grave the Secretariat may request interim action pending completion of the investigation.

Where a complaint falls outside the terms of reference of ASAI, e.g. because it does not relate to advertisement content or where there is no apparent case to answer, the complaint is not pursued and the reasons are explained to the complainant. Where possible, ASAI will help the complainant to contact the most appropriate source of assistance.

1.1.3. Enforcement and Sanctions

Details of cases dealt with by the Complaints Committee are published in ASAI Case Reports. These reports keep the public and the industry informed about ASAI and its activities and are an important element in the operation of the self-regulatory system. Advertisers, promoters and agencies find that publicity about failure to adhere to the Codes is unpalatable and such publicity represents one of the main sanctions for Code contravention.

The Board is empowered to exercise a disciplinary function over a Member of ASAI in the event that a report is made by the Complaints Committee or on receipt of notice of any allegation made against or circumstance involving a Member. The Board performs its disciplinary function at a special meeting of the Board called for that purpose. Having heard the parties to the complaint the Board makes a ruling (which is written into a Rulings Book kept by the Board) and may in its discretion (a) fine a Member such sum as it considers proper, (b) suspend the Member from all or any of the privileges of membership or (c) expel the Member from the Authority.

1.1.4. Pre-Publication Vetting Service

Advice on a proposed advertisement or sales promotion may be obtained from the ASAI Secretariat if there is a doubt whether it may contravene Code provisions. This service is free of charge. The advice given is confidential and is of an advisory rather than a binding nature but it provides a valuable early warning system that can help to avoid the waste of resources on the production of advertising or the introduction of promotions that may conflict with the relevant Code standards.

1.1.5. Number and evolution of complaints and important decisions on advertising and children

From 1999/89 to 1995/96 the annual number of complaints rose from 252 to 522. In 1996/97 496 complaints were made. In 1997/98 this number was reduced and 430 complaints were made. In 1998/99 the number increased again to 495. In 1999/2000 a record number of 787 complaints were received, largely due to a television commercial for the ASAI which was shown in the summer of 1999. There was no specific information available on numbers of complaints relating to advertising and children.

1.2. Broadcasting Complaints Commission

Section 18B of the Broadcasting Authority Act, 1960 to 1999 sets out the complaints procedure relating to advertisements which appear on radio or television. Under this section the Broadcasting Complaints Commission may investigate and decide:-

“a complaint that an advertisement so specified contravened the *Codes of standards, practice and prohibitions in advertising, sponsorship and other forms of promotion in broadcasting services* or the broadcast in particular circumstances of advertising”.

1.2.1. Procedures and Sanctions

The complaints procedure is set out in Section 18B of the Broadcasting Act, 1960 (as inserted by Section 4 of the Broadcasting Authority (Amendment) Act, 1976):

- (1) Subject to the provisions of this section, the Commission may investigate and decide any of the following complaints
 - (a) a complaint that in broadcasting news given by it and specified in the complaint, the Authority did not comply with one or more of the requirements of section 18 (1) of this Act (inserted by section 3 of the Broadcasting Authority (Amendment) Act, 1976),
 - (b) a complaint that in broadcasting a programme so specified, the Authority either did not comply with one or more of the said requirements or were in breach of the prohibition contained in section 18 (1A) of this Act (inserted by the said section 3),
 - (c) a complaint that by broadcasting matter so specified, the Authority failed to comply with the requirements of section 31 (1) of this Act (inserted by section 16 of the Broadcasting Authority (Amendment) Act, 1976) as regards an order made under the said section 31 (1) and so specified,

- (d) a complaint that on an occasion so specified, there was an encroachment by the Authority contrary to section 18 (1B) of this Act (inserted by the said section 3),
 - (e) a complaint that an advertisement so specified contravened a code drawn up by the Authority governing standards and practice in broadcast advertising or prohibiting either certain methods of advertising in broadcasting or the broadcast in particular circumstances of advertising.
 - (f) a complaint that the Authority failed to comply with the requirements of subsection (1) or subsection (1A) of section 18 of this Act (inserted by the said section 3) in relation to a matter so specified which is a matter mentioned in paragraph (c) of the said subsection (1).
- (2) A complaint described in subsection (1) of this section may be made to the Commission by any person in writing but, if the complaint is a complaint other than one described in paragraph (f) of the said subsection (1), it shall only be considered by the Commission if the following provisions are complied with, namely;
- (a) prior to its being made to the Commission, the complaint is made to the Authority in writing and is received by the Authority not more than thirty days after—
 - (i) in case the complaint relates to one broadcast or to two or more unrelated broadcasts, if it relates to one broadcast, the date of the broadcast, or if it relates to two or more such broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts, and
 - (ii) in case the complaint relates to two or more related broadcasts of which at least two are made on different dates, the later or latest of those dates,
 - (b) the complaint is received by the Commission not sooner than thirty days after the day on which it is sent by the complainant to the Authority and is so received not later than—
 - (i) in case within the period of thirty days beginning on the day on which the complaint is so sent by him, the complainant receives from the Authority a statement in writing of its decision on the complaint, thirty days after the receipt by him of the statement, and
 - (ii) in any other case, sixty days after the day on which the complaint is sent by the complainant to the Authority.

- (3)
 - (a) Subject to subsection (2) of this section, the Commission may, after consultation with the Authority, make rules of procedure as regards complaints described in paragraph (f) of subsection (1) of this section.
 - (b) Where the Commission makes rules under this section, the Commission shall give public notice of the making of the rules in such manner as the Minister shall approve and the Commission shall make a copy of such rules available to any person on request.
- (4) When the Commission proposes to investigate a complaint made under this section, the Commission shall afford to the Authority an opportunity to comment on the complaint.
- (5) Where a complaint is made to the Commission and a person employed by the Authority requests, for reasons specified by him, the Commission to afford him an opportunity to comment on the complaint, if, having considered the reasons so specified, the Commission is satisfied that an interest of the person, being an interest which the Commission considers relevant to the person's employment by the Authority, may, because of the complaint, be adversely affected, the Commission shall afford to the person such an opportunity.
- (6) When the Commission proposes to consider a complaint described in subsection (1) (e) of this section, the Commission shall afford to the relevant advertiser an opportunity of making to the Commission submissions in relation to the relevant advertisement.
- (7) As soon as may be after they decide on a complaint made under this Act, the Commission shall send to the person making the complaint and to the Authority a statement in writing of their decision on the complaint.
- (8) In case the Commission decide on a complaint described in subsection (1) (e) of this section, as soon as may be after their decision, the Commission shall, (in addition to complying with the requirement of subsection (7) of this section) send to the person with whom the Authority agreed to broadcast the relevant advertisement .(if he is not the complainant) a statement in writing of their decision.
- (9) When the Authority receives a statement of a decision from the Commission pursuant to subsection (7) of this section, the Authority shall, not later than fourteen days after its receipt, inform the Commission in writing whether or not the Commission's decision is accepted by the Authority.

- (10) The consideration by the Commission of a complaint made to it under this Act shall be carried out by the Commission in private.
- (11) Unless it considers it inappropriate the Commission shall, as soon as may be publish particulars of its decision on a complaint in such manner as it considers suitable and where it considers that the publication should be by the Authority, or should include publication by the Authority, the particulars shall be published by the Authority in such manner as shall be agreed between the Commission and the Authority.
- (12) As regards proceedings under this section, the Commission shall not have any power to award to any party costs or expenses.
- (13) A person shall not act as a member of the Commission in relation to any matter with respect to which he has a material financial or other beneficial interest.
- (14) Subsection (1) of this section shall not apply to a complaint which, in the opinion of the Commission, is frivolous or vexatious, nor, unless the Commission considers that there are special reasons for investigating the complaint (which reasons shall be stated by the Commission when giving its decision), shall that subsection apply to a complaint which is withdrawn.

1.2.2. Number and Evolution of Complaints

No statistics available relating to advertising and children.

2. ADMINISTRATIVE PROCEDURE

2.1. Description of the Office of the Ombudsman

Ombudsman Act 1980

The Act provides for the establishment of the Office of Ombudsman and sets down the procedures and conditions governing the Appointment of the Ombudsman. The Act also delineates the powers of the Ombudsman as regards the examination and investigation of complaints made to him and defines the Ombudsman's reporting relationship with the Dail (Parliament) and Seanad (Senate).

Appointment is made by the President on the passing of a resolution by both Houses of the Oireachtas recommending the person concerned. The Ombudsman holds office for a period of six years. He may be relieved of his office at his own request by the President or he may be removed from office by the President only for stated misbehaviour, incapacity or bankruptcy and then only on resolutions passed by both Houses of the Oireachtas. He

must vacate the office on reaching the age of 67 years. The Ombudsman is independent in the performance of his functions

2.2. Complaints Procedure

The Ombudsman can investigate an action taken by or on behalf of a Department of State or other person or body specified in Part I of the First Schedule to the Act (being an action taken in the performance of administrative functions) where a complaint has been made to him by a person or on his own initiative and having carried out a preliminary examination of the matter it appears to him

- (i) that the action has adversely affected the person, and
- (ii) that the action or decision was or may have been:
 - taken without proper authority
 - taken on irrelevant grounds
 - the result of negligence or carelessness
 - based on erroneous or incomplete information
 - improperly discriminatory
 - based on an undesirable administrative practice
 - otherwise contrary to fair or sound administration.

The purpose of the preliminary examination stage is two-fold:

- (i) to establish in a quick and informal way whether a formal investigation is warranted, and
- (ii) to enable complaints to be resolved with the minimum of formality, particularly in more straightforward cases.

Investigations must be conducted in private. The procedure for conducting an investigation is such that the Ombudsman himself considers appropriate. When conducting an investigation or a preliminary examination the Ombudsman may call for relevant papers or persons.

2.3. Enforcement and Sanctions

The Ombudsman is empowered to make recommendations only; his findings are not binding. When the Ombudsman carries out an investigation he must inform the complainant of the result of the investigation. He must also indicate how the body complained against has responded to any recommendation he may have made.

Where it appears to the Ombudsman that the response to a recommendation which he has made is not satisfactory he may make a special report on the matter to the Oireachtas.

Before the Ombudsman makes a finding or criticism adverse to any person or body in a report or recommendation he must afford that person or body concerned an opportunity to consider the matter and make representations in relation to it to him. The Ombudsman must make an annual report on the performance of his functions to the Houses of the Oireachtas.

2.4. Scope

Excluded from examination or investigation by the Ombudsman are cases:

- where the matter is before the Courts
- where the aggrieved person has a statutory right of appeal to the courts
- where there is a right of appeal to an independent appeal body
- related to recruitment or terms or conditions of employment
- relating to aliens or naturalisation
- relating to pardon or to remission of prison sentences or other court penalties
- relating to the administration of prisons.

The Ombudsman may be requested in writing by a Minister of the Government not to investigate a particular case. In such circumstances the Ombudsman must cease his investigation.

The Ombudsman Act (First Schedule) (amendment) Order 1984 states that, with effect from 1 April, 1985, local authorities, health boards, and An Post would be within the Ombudsman's remit.

With regard to health boards, the Order excludes from its remit

- (i) persons when acting on behalf of health boards and (in the opinion of the Ombudsman) solely in the exercise of clinical judgement in connection with the diagnosis or illness or the care or treatment of a patient, whether formed by the person taking the action or by any other person, or
- (ii) health boards when acting on the advice of persons acting as aforesaid, being actions of health boards that, in the opinion of the Ombudsman, were taken solely on such advice.

The extended remit of the Ombudsman also excludes local authorities "when performing reserved functions within the meaning of the County Management Acts, 1940 to 1955, or reserved functions within the meaning of any of the Acts relating to the management of a county borough".

2.5. Number and Evolution of Complaints

During 1997, a total of 3,929 complaints were made. During 1998, a total of 3,779 complaints were made. During 1999, a total of 3,986 complaints were made. Statistics on complaints relating to advertising and children were not available.

3. JUDICIAL PROCEDURE

3.1. Description of the Office of the Director of Consumer Affairs (ODCA)

Section 9 Consumer Information Act 1978

This Act established the office of the Director of Consumer Affairs, a new position within the Civil Service. The Director is independent in the performance of his functions.

The functions of the Director are:

- (a) to keep under general review practices or proposed practices in relation to the advertising of, and the provision to members of the public of information in relation to and descriptions of goods, services, accommodation and facilities,
- (b) to carry out examinations of any such practices or proposed practices where the Minister requests him to carry out examinations or where the Director considers that, in the public interest, such examinations are proper,
- (c) to request persons engaging in or proposing to engage in such practices that are, or are likely to be, misleading to members of the public in a material matter, to discontinue or refrain from such practices,
- (d) to institute proceedings in the High Court for orders requiring persons engaging or proposing to engage in such practices that are, or are likely to be, misleading to members of the public in a material matter to discontinue or refrain from such practices,
- (e) to request persons engaging in or proposing to engage in such practices to make such alterations of or deletions from, or provide such definitions of, expressions that are, or are proposed to be, used in or in connection with such practices as would, in the opinion of the Director, increase the precision of, or the amount of information contained in, the expressions, or facilitate the understanding of the expressions,
- (f) to encourage and promote the establishment and adoption of codes of standards in relation to such practices,

- (g) to ensure that the provisions of any legislation providing for the protection of consumers that, in his opinion, should be brought to the attention of the public are brought to the attention of the public and for this purpose to publicise those provisions in such manner and to such extent as he thinks appropriate.
- (h) without prejudice to the powers or functions of any other prosecuting authority to bring or prosecute proceedings in relation to offences under the Acts or this Act.

3.2. Procedure and Sanctions

Where proceedings are instituted by the Director pursuant to subsection (d) and the Director has, prior to the institution of the proceedings, made a request under subsection (c) to the persons concerned and the request has not been complied with, the Director may, at the discretion of the High Court, be granted an order by that Court in the appropriate terms referred to in subsection (d) if the practices or proposed practices that are the subject of the proceedings are, or are likely to be, misleading to members of the public in a material matter.

Section 8(3) provides that the Director may, upon giving notice of the application to any person against whom the order the subject of the application is sought, apply to the High Court for, and may, at the discretion of that Court, be granted, an order prohibiting the publication, or the further publication, of an advertisement the publication of which is or would be a contravention of subsection (1) of this section (is misleading).

3.3. Number and evolution of important cases on advertising and children

There is no important case-law in this area as yet. However, the ODCA received 414 inquiries relating to advertising in 1998 and 275 in 1999.

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