

Section Ten: Commercial Communications in Radio Programming

(Relevant legislation includes, in particular, sections 319(2)(f), (i) and (j), 319(4)(e) and (f) and 321 of the Communications Act 2003, regulation 3(4)(d) of the Consumer Protection From Unfair Trading Regulations 2008, section 21(1) of the Financial Services and Markets Act 2000, paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005, Article 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.)

Clause 49 of the BBC Agreement makes provision for licence fee-funded BBC services to be partially funded by certain alternative means of finance. As this section applies to BBC UK broadcasting services funded by the licence fee and BBC on demand programme services (“BBC ODPS”), such content must comply with the rules in this Section.

This section of the Code applies to radio only (including audio-only programming on BBC ODPS).

Code Section Nine (Commercial References in Television Programming) applies to television only.⁹ Radio and television are subject to different legislative requirements and terminology is therefore specific to radio in this Code section.

Principles

To ensure the transparency of commercial communications as a means to secure consumer protection.

Rules

General Rules

- 10.1 Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners.
- 10.2 Spot advertisements must be clearly separated from programming.
- 10.3 No commercial reference, or material that implies a commercial arrangement, is permitted in or around news bulletins or news desk presentations.

9. Including audiovisual programming on BBC ODPS.

This rule does not apply to:

- reference to a news supplier for the purpose of identifying that supplier as a news source;
- specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming;
- the use of premium rate services (e.g. for station/broadcaster surveys); and
- references that promote the station/broadcaster's own products and/or services (e.g. the programme/station/broadcaster's website or a station/broadcaster's event).

- 10.4 No commercial reference, or material that implies a commercial arrangement, is permitted on radio services primarily aimed at children or in children's programming included in any service.

This rule does not apply to:

- credits for third party association with either programming or broadcast competition prize donation;
- the use of premium rate services (e.g. for broadcast competition entry); and
- references that promote the station/broadcaster's own products and/or services (e.g. the programme/station/broadcaster's website or a station/broadcaster's event).

- 10.5 No commercial arrangement that involves payment, or the provision of some other valuable consideration, to the broadcaster may influence the selection or rotation of music for broadcast.

- 10.6 No programming may be subject to a commercial arrangement with a third party that is prohibited from advertising on radio. This rule does not apply to electronic cigarettes and refill containers which are subject to Rule 10.6(a).

- (a) Sponsored programming with the aim or direct or indirect effect of promoting electronic cigarettes and/or refill containers is prohibited.

- 10.7 Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting.
- 10.8 Commercial references that require confirmation or substantiation prior to broadcast must be cleared for broadcast in the same way as advertisements.

Programming

Programming comprises all broadcast material other than spot advertisements.

Spot advertisements

Spot advertisements comprise advertising broadcast in commercial breaks.

Commercial arrangement

A commercial arrangement is a contract, or any other formal understanding, between a broadcaster (or any agent or employee of the broadcaster) and a third party (or third parties).

Examples of a commercial arrangement include programming sponsorship, competition prize donation and premium rate service provision. Programming that is subject to a commercial arrangement will therefore generally include payment and/or the provision of some other valuable consideration in return for a commercial reference (whether promotional or not).

Commercial reference

For the purposes of this section of the Code, a commercial reference is a reference in programming to a brand, trademark, product and/or service that:

- is subject to a commercial arrangement; or
- promotes the station/broadcaster's own products or services.

Meaning of "sponsor" (see Rule 10.6(a))

"Sponsor" means any public or private undertaking or individual (other than a broadcaster or programme producer) who contributes to the costs of programming with a view to promoting the name, image, products, services, trade marks or activities of that undertaking or individual.

Meaning of “sponsored programming” (see Rule 10.6(a))

“Sponsored programming” means programming (including a programme, channel, programme segment or block of programmes) that has had some or all of its costs met by a sponsor and includes advertiser-funded programmes.

Meaning of “electronic cigarette” (see Rules 10.6 and 10.6(a))

A product that (i) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether it is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), but (ii) is not a medical product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

Meaning of “refill container” (see Rules 10.6 and 10.6(a))

A receptacle that (i) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette, but (ii) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

Transparency

Listeners should know when material is broadcast in return for payment or other valuable consideration. Signalling is the means by which transparency is achieved.

Transparency of a commercial arrangement should be achieved through the appropriate signalling of a brand, trademark, product and/or service of a third party (or third parties) that has paid for broadcast exposure – by, for example: including a sponsorship credit; reference to the donor of a prize; the promotion of a premium rate number for listener interaction in programming.

Signalling

Broadcasters are required to give, at appropriate times, clear information within programming, to inform listeners of any commercial arrangement affecting that programming.

Appropriate signalling is therefore essential in complying with Rule 10.1. There are four aspects to consider when assessing what signalling is appropriate, to ensure compliance:

- Wording – this must be clear, to ensure immediate transparency of the commercial arrangement;
- Positioning – transparency of the commercial arrangement generally requires signalling at the outset of each instance of broadcast material subject to it;
- Frequency – longer output that is subject to a commercial arrangement may require signalling at appropriate intervals;
- Identity (of the third party) – transparency of the commercial arrangement requires the third party's relevant title to be stated on air.

Broadcasters should ensure that broadcast material appearing either to be a station campaign or to provide any independent assessment of products/services is genuinely independent and not subject to a commercial arrangement. Signalling commercial references in, for example, consumer advice/affairs programming therefore requires particular care, as it is essential that the broadcast of paid-for promotions of goods and services is not presumed to be independent observation/comment.

Specialist factual strands

Specialist factual strands in or around news bulletins or news desk presentations might include, for example, travel, sport, finance and weather.

Factual programming, including matters of political or industrial controversy and matters relating to current public policy

Broadcasters should note that all programming must comply with Section Five of the Code. Commercial references broadcast under such an arrangement are also subject to Section 7 of The Broadcasting Committee of Advertising Practice UK Code of Broadcast Advertising. In addition, broadcasters are reminded that Rule 2.2 applies to **all** factual programming (i.e. factual items must not materially mislead the audience).

Commercial references that require confirmation or substantiation

Examples include, but are not limited to: complex factual claims (including those that are capable of objective substantiation); market leadership claims; special offer prices; comparisons with competitors; superlative claims; claims and offers involving significant limitations and exclusions; “free” claims; testimonials; endorsements; and claims that may be of particular interest to children.

Controlled Premium Rate and similar services

Note:

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

- 10.9 Any use of controlled premium rate telephony services in programming must comply with the Code of Practice and any additional broadcast-related requirements issued by PhonepayPlus.
- 10.10 The cost to listeners for using controlled premium rate telephony services, or other communications services for which the revenue generated is shared between relevant parties, must be made clear to them and broadcast as appropriate.

Note:

Licensees should refer to guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16).

Charity appeals

10.11 Fund-raising activity broadcast on behalf of a charity (or emergency appeal) is only permitted if:

- it is broadcast free of charge;
- it does not contain any commercial reference that is subject to a commercial arrangement with the relevant charity (or emergency appeal); and
- the broadcaster has taken reasonable steps to satisfy itself that:
 - the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
 - the organisation concerned is not prohibited from advertising on radio.

Appeals for funds for programming or services

10.12 Broadcasters may broadcast appeals for donations to make programming or fund their service. Listeners must be told the purpose of the appeal and how much it raises. All donations must be separately accounted for and used for the purpose for which they were donated.

Financial promotions and investment recommendations

10.13 When broadcasting financial promotions and investment recommendations broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

Financial promotion

A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion)).

Investment recommendation

An investment recommendation occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer.