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ANNEX I

COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES
CONSIDERED UNFAIR

Misleading commercial practices

- (1) Claiming to be a signatory to a code of conduct when the trader is not.
- (2) Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
- (3) Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
- (4) Claiming that **a trader (including his commercial practices) or** a product has been approved, endorsed or authorised by a public or private body when **he/it** has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
- (5) Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
- (6) Making an invitation to purchase products at a specified price and then:
 - (a) refusing to show the advertised item to consumers, or
 - (b) refusing to take orders for it or deliver it within a reasonable time, or
 - (c) demonstrating a defective sample of it,with the intention of promoting a different product (bait and switch).
- (7) Falsely stating that **a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time**, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
- (8) Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
- (9) Stating or otherwise creating the impression that a product can legally be sold when it cannot.
- (10) Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
- (11) Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (*advertorial*). This is without prejudice to Council Directive 89/552/EEC ⁽¹⁾.
- (12) Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.
- (13) **Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.**

⁽¹⁾ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23). Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

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- (14) Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
- (15) Claiming that the trader is about to cease trading or move premises when he is not.
- (16) Claiming that products are able to facilitate winning in games of chance.
- (17) Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.
- (18) Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.
- (19) Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
- (20) Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
- (21) Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.
- (22) ***Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.***
- (23) ***Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.***

Aggressive commercial practices

- (24) Creating the impression that the consumer cannot leave the premises until a contract is formed.
- (25) Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.
- (26) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation. This is without prejudice to Article 10 of Directive 97/7/EC and Directives 95/46/EC⁽¹⁾ and 2002/58/EC.
- (27) Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, ***or failing systematically to respond to pertinent correspondence***, in order to dissuade a consumer from exercising his contractual rights.
- (28) Including in an advertisement a direct ***exhortation*** to children ***to buy advertised products or*** to persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC ***on television broadcasting***.
- (29) Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC (inertia selling).

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31). Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

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(30) Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

(31) Creating the *false* impression that the consumer has already won, **will win, or will on doing a particular act win**, a prize **or other equivalent benefit, when in fact either:**

— **there is no prize or other equivalent benefit, or**

— **taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.**

ANNEX II

COMMUNITY LAW PROVISIONS SETTING OUT RULES FOR ADVERTISING AND COMMERCIAL COMMUNICATION

Articles 4 and 5 of Directive 97/7/EC

Article 3 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾

Article 3(3) of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of a right to use immovable properties on a timeshare basis ⁽²⁾

Article 3(4) of Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers ⁽³⁾

Articles 86 to 100 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use ⁽⁴⁾

Articles 5 and 6 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') ⁽⁵⁾

Article 1(d) of Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit ⁽⁶⁾

Articles 3 and 4 of Directive 2002/65/EC

Article 1(9) of Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses ⁽⁷⁾

Articles 12 and 13 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ⁽⁸⁾

Article 36 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ⁽⁹⁾

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

⁽²⁾ OJ L 280, 29.10.1994, p. 83.

⁽³⁾ OJ L 80, 18.3.1998, p. 27.

⁽⁴⁾ OJ L 311, 28.11.2001, p. 67. Directive as last amended by Directive 2004/27/EC (OJ L 136, 30.4.2004, p. 34).

⁽⁵⁾ OJ L 178, 17.7.2000, p. 1.

⁽⁶⁾ OJ L 101, 1.4.1998, p. 17.

⁽⁷⁾ OJ L 41, 13.2.2002, p. 20.

⁽⁸⁾ OJ L 9, 15.1.2003, p. 3.

⁽⁹⁾ OJ L 345, 19.12.2002, p. 1. Directive as amended by Council Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).