[ES] The CNMC clarifies identification requirements for branded content in on-demand audiovisual programmes

IRIS 2026-4:1/12

Helena Suárez
ECIJA

On 12 February 2026, the Spanish National Commission for Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* – CNMC) adopted a decision concerning the identification of commercial communications in on-demand audiovisual services. The regulator imposed a sanction on a national audiovisual media service provider for making available a programme containing disguised advertising, in breach of Article 122.3 of the General Audiovisual Communication Act (*Ley General de Comunicación Audiovisual* – LGCA).

The case concerned a non-linear audiovisual programme addressing menopause and women's health issues, which was offered through a video-on-demand platform. According to the information displayed in the catalogue, the programme was "offered by" a food brand whose products are marketed in relation to cholesterol reduction. The programme remained available between July 2024 and May 2025.

Following a period of preliminary investigation, the CNMC requested and reviewed a recording of the programme. During this assessment, the regulator identified multiple references to the sponsoring brand throughout the programme, including verbal mentions, visual elements linked to the brand's identity and references to a study conducted by the brand. The programme adopted an informational and educational tone and did not include explicit purchase recommendations.

Article 122.3 LGCA prohibits surreptitious audiovisual commercial communications. This provision defines such communication as the verbal or visual presentation of goods, services, names, trademarks or activities with an intentional promotional purpose that may mislead the public as to the nature of the presentation. The provision transposes the corresponding prohibition contained in Article 9(1)(a) of Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 (Audiovisual Media Services Directive – AVMSD).

Under Article 158.15 LGCA, infringement of this prohibition is classified as a serious administrative offence. Articles 9 and 155 LGCA confer supervisory and sanctioning powers on the CNMC with respect to national audiovisual media service providers, including providers of on-demand audiovisual media services. In line with the technology-neutral approach of the AVMSD, the same rules apply

© European Audiovisual Observatory (Council of Europe) 2026

irrespective of whether content is disseminated through linear broadcasting or on-demand services.

The CNMC examined whether the programme constituted disguised advertising and whether the commercial nature of the content had been sufficiently identified. The media service provider argued that transparency was ensured through generic labels displayed on the programme page, indicating that the content was sponsored and offered by the brand. It further argued that the programme should be regarded as informational, as it did not explicitly promote the purchase of any product or highlight specific commercial benefits.

The CNMC rejected these arguments. It noted that the references relied upon by the provider were displayed outside the audiovisual content itself and were not sufficiently clear or prominent to ensure that viewers were aware, throughout the viewing experience, that they were consuming advertising content. In particular, the programme included no explicit in-content indication identifying it as advertising.

Referring to Article 136.1 LGCA, the regulator recalled that a legible on-screen indication must be displayed whenever the characteristics of the commercial communication may give rise to confusion as to its nature. In the present case, the CNMC considered that such confusion existed, given the integration of brand references into the programme’s editorial narrative.

In assessing the existence of a promotional purpose, the CNMC conducted a contextual analysis of the programme as a whole. The decision highlights a combination of elements, including repeated verbal references to the brand and to a study promoted by it, the visual presence of the brand’s logo, the use of colours and decorative elements associated with the brand’s advertising, the thematic focus on cholesterol and cardiovascular risks linked to the promoted product category, and the participation of a contributor who had previously appeared in advertising campaigns for the same brand.

Taken together, these elements were considered to demonstrate a promotional intent. Although the programme also contained informational content, the CNMC concluded that the commercial communication was embedded within the editorial content in a manner that was not immediately recognisable to viewers.

The decision includes observations relevant to the use of branded content formats in audiovisual services. While acknowledging that such formats are widely used and not prohibited as such, the CNMC emphasised that they remain fully subject to the rules governing commercial communications laid down in the LGCA and the AVMSD.

© European Audiovisual Observatory (Council of Europe) 2026

According to the regulator, when branded content is integrated into programming in a way that may mislead viewers as to its commercial nature, clear identification is required. The on-demand character of the service does not reduce or modify this obligation. The CNMC confirmed that the transparency and recognisability requirements applicable to linear audiovisual media services also apply to non-linear services.

Following the proposal for resolution, the audiovisual media service provider acknowledged responsibility for the infringement and opted for early payment of the fine, in accordance with Article 85 of the Spanish Administrative Procedure Act. As a result, the proposed sanction was reduced by 40%.

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026