

COSMETIC ADVERTISING CODE OF PRACTICE

– SOUTH AFRICA

1. INTRODUCTION

The South African cosmetics industry recognizes the importance of responsible advertising and marketing communication in order to inform consumers regarding the properties and benefits of their products.

This code is supplementary to The code of Advertising Practice as administered by the Advertising Regulatory Board (herein after referred to as ARB).

For the purposes of this code, category specific requirements take precedence over general principles prescribed in the ARB Code.

The industry through this charter commits to ensuring their advertising and communication

- Complies with prevailing legislation
- Is sincere, truthful and not misleading
- Allows consumers to make informed choices
- Acts in a socially responsible manner

2. REGULATORY FRAMEWORK

- a. Cosmetics are regulated by the Department of Health through the Foodstuff, Cosmetic & Disinfectant Act (Act 54 of 1972) and corresponding regulations.
- b. Advertising in South Africa is self-regulated through a self-regulatory body, The Advertising Regulatory Board. ARB decisions are governed by the Codes of Practice which are based on the International Code of Advertising Practice. Included in the Code of Practice are industry specific codes of practice
- c. This Cosmetic Code is compiled and managed by the cosmetic industry, through the Cosmetic, Toiletry & Fragrance Association of South Africa and submitted to the ARB for inclusion in their code.
- d. Advertising is also considered in the Consumer Protection Act (Act 68 of 2008). Cosmetic advertising is required to conform to the requirements of this Act.

3. REFERENCES

- a. CTFA Bridging the gap compendium
- b. Draft regulations relating to Labelling, advertising and composition of cosmetics, R. 1469, 22 December 2017
- c. Foodstuffs, Cosmetics & Disinfectant Act (Act 54 of 1972)
- d. SANS 1557 Sunscreen products
- e. Standards Act (Act 8 of 2008)
- f. Advertising Regulatory Board Code of Practice www.arb.org.za
- g. Consumer Protection Act (Act 68 of 2008)

4. SCOPE

- a. This code is relevant to advertising and marketing communication of cosmetic products aimed at the consumer.
- b. This code is aimed at communication of properties, benefits and efficacy of cosmetic products.
- c. This code applies to all elements of claims including text, symbols, visual representations, figures, names and trademarks.
- d. This code only applies to cosmetic products as defined in the Foodstuff, Cosmetic and Disinfectant Act (Act 54 of 1972), as follows:
 - i. “Cosmetic” “means any article, preparation or substance (except a medicine as defined in the Medicines and Related Substances Act (Act 101 of 1965) intended to be rubbed, poured, sprinkled or sprayed on or otherwise applied to the human body, including the epidermis, hair, teeth, mucous membranes of the oral cavity, lips and external genital organs, for purposes of cleansing, perfuming, correcting body odours, conditioning, beautifying, protecting, promoting attractiveness or improving or altering the appearance, and includes any part of ingredient of any such article or substance”
 - ii. This definition in 4.d. specifies 6 functions pertaining to cosmetic products, namely
 1. To clean
 2. To perfume
 3. To change appearance
 4. To correct body odours
 5. To protect
 6. To keep in good condition
 7. If a product does not have at least one of the functions listed above as its primary purpose, then it is not a cosmetic.
 - iii. The field of application of cosmetics is
 1. The epidermis
 2. The hair system
 3. The nails
 4. The lips
 5. The external genital organs
 6. The teeth
 7. The mucous membranes of the oral cavity
 - iv. Products intended to be ingested, inhaled or applied to body parts not covered by the above definition are not considered to be cosmetics
 - v. Mechanism of Action of cosmetics must have the typical characteristics of:
 1. Temporary action;
 2. Improvement of appearance in all fields of application;
 3. To be used regularly to maintain the effect; or

4. The effect is aimed at grooming and enhancing the appearance in all fields of application as per the definition of a cosmetic.

5. GENERAL PRINCIPLES

- a. All advertisers of cosmetic products shall adhere to the principles of truthfulness, honesty, fairness, legal compliance, scientific substantiation and the provision of clear messages to the consumer to allow for informed decision making.
- b. Any cosmetic claims whether implicit or explicit must be supported by adequate and appropriate evidence (scientific substantiation) to demonstrate product performance.
- c. As per Section 4. Scope of this Code, all claims must fall within the scope of cosmetic products as described.

6. SUBSTANTIATION

- a. **'Scientific substantiation'** means substantiation based on statistically valid data, employing a validated, proven scientific method, that is compliant with recognized standards and/or best practices where relevant and applicable to the claim being made. Such substantiation is inclusive of but not limited to, sensory data generated by expert panels.

7. SPECIFIC CLAIMS

a. Unacceptable Claims

- i. Claims that are not substantiated (5.b and 6) or claims that are not worded in a cosmetic sense.
- ii. In general, cosmetic claims for products used on mucous membranes other than the oral cavity.
- iii. Claims suggesting permanent effects.
- iv. The term "Cosmeceutical" is not permitted with reference to cosmetic products. Similar terms are not allowed.
- v. Claims that convey the impression, through its overall presentation and symbols, that the cosmetic product contains medicinal properties (such as healing or curative properties) or that the product should be used restrictively due to its potency or the effect is aimed at treatment or relief of a disease condition.
- vi. Claims implying physiological action are not allowed, except where the physiological action falls within the scope of a cosmetic. As such, it is possible to refer to the mechanism of action of a product or its ingredients (such as physiological action) if the mechanism relies on scientific substantiation and the main claim of the product is related to a cosmetic effect.
- vii. The words "skin bleacher", "skin lightener", or "skin whitener" or claims that convey the impression of skin bleaching, skin lightening, or skin whitening are prohibited.

b. Use of “Natural” / “Natural Products”

- i. A cosmetic product can be claimed in its entirety to be “Natural” or “Naturally Occurring” only if its content of natural origin is within the criterion of SANS 16128-1 and SANS 16128-2 and is greater than or equal to 95%.
- ii. Claims for “Natural” or similar claims for specific ingredients can only be made within the guidelines of SANS 161281- and SANS161281-2.

c. Organic Cosmetic Product

- i. Claims for Organic products or ingredients must be able to be proved by one of the following
 1. Certification of the product or ingredient by an accredited body.
 2. For a product, that it can be proven that it contains 100% of certified ingredients from organic farming.
 3. For an ingredient, that it can be proven that the specific ingredient is sourced from organic farming.
 4. That the product or claimed organic ingredients meets the criteria specified in SANS/ISO 16128-1 and SANS/ISO 16128-2.

d. Use of the word “Pure”

- i. Use of the word “Pure” requires substantiation and the ingredients referred to would have to be of a cosmetic grade or higher.

e. Non-content or “free from” claims

- i. Non content claims are allowed providing the following criteria are respected
 1. It is not the main argument of the product but provides relevant information to consumers who may wish to avoid certain ingredients due to allergies or based on religious beliefs.
 2. It is not disparaging to competitors or specific ingredients.
 3. It does not imply a risk or danger to health or the environment.
 4. It is fair and not misleading specifically with respect to the ingredient or ingredients for which the claim is being made.
 5. The claim cannot be made for ingredients which are forbidden for use in cosmetics (e.g. Hydroquinone free when hydroquinone is forbidden in cosmetic products).
 6. Where the claim is made, the product must not contain the ingredient and the ingredient must not be released during normal foreseeable use of the product or its shelf-life.
 7. For a free-from a category of ingredients, it must be substantiated that all the individual ingredients are additionally free from the specified category of ingredients.

f. Claims made for ingredients

- i. Mention of ingredients is allowed on the condition the ingredient/s are present in the product.
- ii. Mention of Properties related to a specific ingredient are allowed (e.g. contains moisturising shea butter) if these properties themselves are proven.
- iii. Any properties assigned to an ingredient cannot be claimed for the entire product unless it can be validated that:
 1. The product itself has those properties which are substantiated **or**
 2. The quantity of the ingredient in the product is present at an effective level to provide these properties. This must be substantiated.

g. Hypoallergenic Claims

- i. Hypoallergenic claims may be made to qualify products designed to minimise possible allergy risks.
- ii. The product must not contain known sensitizers, allergens or precursors of allergens or sensitizers.
- iii. The product must not contain ingredients for which there is no known information, or which is under the scrutiny of an international scientific body, regarding its sensitising potential.
- iv. The claim should be verified and confirmed by scientific substantiation.

h. Sensitive Skin claims

- i. The claim is allowed under the following conditions of validation
 1. The volunteers included in the study under normal conditions of use reported a history of functional symptoms of skin sensitivity and discomfort (e.g. tingling, warmth, tightness, redness, itchiness)
 2. These volunteers did not report an increase of mentioned symptoms during the study

i. Secondary Anti-bacterial / Anti-germ claims

- i. Primary cosmetics can have secondary functions, for example a body wash or soap with secondary anti-bacterial or anti-fungal functions and claims. Claims for these secondary functions can only be made in a cosmetic sense and must be scientifically substantiated.
- ii. Primary cosmetics that have secondary anti-bacterial or anti-fungal functions may only make secondary germ reduction claims such as washes away germs, reduces germs or hygiene wash.
- iii. A product that makes explicit anti-bacterial and anti-fungal claims falls outside the scope of the definition of a cosmetic.

8. PARTICULAR PRODUCTS

a. Hair products

i. General claims

1. Medical terms shall not be used to describe specific conditions of the hair and scalp. For example, the following terms should be used “excess oil” instead of “seborrhoea”; “dandruff” instead of “pityriasis” or “seborrheic dermatitis” and “hair loss” instead of “alopecia”
2. Any claim that a hair care product can cure or permanently prevent a specific condition of the hair or scalp that is a symptom of disease, is prohibited
3. All claims made shall be clear that the effect is only observed with regular use and is not permanent, e.g. thickens or adds volume
4. The following claims can be made provided that they have been scientifically substantiated:
 - a. The hair roots can be fed or nourished;
 - b. The hair can be strengthened or repaired;
 - c. A specific ingredient can be absorbed into the hair;
 - d. A product has multiple functions

ii. Anti-Hair loss

1. Claims purporting to diminish, slow down, limit or prevent hair loss are allowed but must not imply a permanent result.
2. The following claims are prohibited:
 - a. Any claims that imply the product can cure or permanently prevent hair loss including claims stating restoring hair growth, preventing hair loss, baldness, or thinning of hair, which occurs as a result of a medical condition.

iii. Anti-dandruff

1. A product that alleviates dandruff shall not claim or imply that the condition can be prevented or cured permanently. The product must address that effective control is dependent on regular use.
2. The claims can address the cosmetic effects of the product (e.g. alleviates itching, reduction in visible flakes etc.).

iv. Split ends

1. The product cannot claim a permanent cure to split ends. It should be indicated that the effect is visible with regular use

v. Hair colour modifiers (temporary colour, semi-permanent colour and permanent colour)

1. Claims of durability of the hair colour effect made on all types of hair colouring products must be substantiated.

b. Anti-cellulite or similar products

- i. All advertising shall encourage a healthy lifestyle. Claims implying no dieting or exercise are needed are prohibited.

- ii. Claims shall focus on improvement or the cosmetic improvement in the appearance and condition of the skin.
- iii. Claims referring to removal of cellulite, slimming and weight loss are prohibited.
- iv. Claims advertising permanent effects are not allowed.

c. Sunscreens (products containing sunscreens suitable for topical use, for the protection of human skin against solar UVA and UVB rays)

- i. The category of protection shall be accurately portrayed on the label and in advertising.
- ii. Claims for UV protection must be qualified with reference to UVA or UVB protection or both.
- iii. “Water resistant” and “Very Water resistant” claims are allowed but require validation.
- iv. All claims for SPF (UVB), UVA, Broad-spectrum should be validated according to SANS 1557 and labelling indications should follow the guidelines in SANS 1557.
- v. Claims for SPF can only be made as specified in SANS 1557.
- vi. The claims “waterproof” and/or “sweat resistant” are prohibited for sunscreen products.
- vii. Claims shall not be made or imply 100% protection from UV radiation, e.g. block, sunblock, sun blocker or total protection.