

PROCEDURES AND REMEDIES

1. Before lodging a formal complaint

- 1.1 When disputing parties belonging to a member organisation of the ASA are involved in a dispute, it is recommended that an attempt be made to resolve the matter prior to lodging a formal complaint with the ASA.
- 1.2 It is recommended that the procedure should progress as follows:
 - 1.2.1 The complaint should be conveyed to the advertiser or agent, requesting a response by a specified date. A reasonable period, as determined by the circumstances, should be allowed.
 - 1.2.2 It is customary to copy the ASA with such correspondence BUT it must be emphasised that the ASA will NOT TAKE ANY ACTION until a formal complaint is lodged, as such correspondence will not be accepted as a formal complaint.
 - 1.2.3 Should the matter be resolved between the disputing parties, the ASA should, as a matter of courtesy, be informed.
 - 1.2.4 Nothing in this section shall be interpreted as preventing anyone from lodging a formal complaint with the ASA where no attempt to resolve the matter with the advertiser beforehand was made.

2. Avoidance of conflict

Where the complainant has lodged a complaint or dispute, or instituted an action with or in any other regulatory body or in a court, and where the subject matter of that complaint, dispute or action is substantially the same as the subject matter of a complaint lodged by that complainant with the ASA, the ASA will decline to consider and deal with the complaint.

3. Lodging of complaints with the ASA

- 3.1 All formal complaints lodged with the ASA, except those relating exclusively to the imposition of sanctions in terms of Clause 14 of the Procedural Guide or the enforcement of ASA rulings in terms of Clause 15 of the Procedural Guide, must meet the following criteria:
 - 3.1.1 The complaint must be in writing.
 - 3.1.2 The identity and contact details of the complainant(s) must be disclosed to the ASA. When lodging a consumer complaint, the identity or passport numbers of the complainant(s) must also be disclosed.
 - 3.1.3 The grounds on which the complaint is based must be clearly stated. If possible, the sections of this Code to which the complaint relates, should be identified. Should the complainant not be able to do so, the ASA will consider the complaint in terms of the sections it regards as relevant and deal with the complaint as if it had been lodged in terms of those sections.
 - 3.1.4 The advertisement to which the complaint relates must, in the case of print media, be attached, if possible. In the case of other media, details of the advertiser, medium, and a description of the advertisement must be provided, and, if possible, the time and date of transmission (in regard to broadcast media) and nature and location (in regard to outdoor advertising).
 - 3.1.5 The address, contact name and number of the offending advertiser or of the advertising practitioner acting on the advertiser's behalf should be included, if possible.
 - 3.1.6 Consumer complaints will be dealt with free of charge.
 - 3.1.7 Competitor complaints will be subject to a non-refundable filing fee.
- 3.2 All formal complaints relating exclusively to the imposition of sanctions in terms of Clause 14 of the Procedural Guide, or the enforcement of ASA rulings in terms of Clause 15 of the Procedural Guide, must meet all the criteria set out in Clause 3.1 above, excluding the provisions of Clauses 3.1.4, 3.1.6 and 3.1.7.
- 3.3 The advertising complained against must be current and/or have been published within the last 90 days of lodging the complaint.

4. Complaints may be submitted as follows:

- 4.1 By delivery, to the ASA at Ebony & Ivory Building, 5 Seventh Ave, Parktown North.
- 4.2 By electronic mail, to complaint@asasa.org.za.
- 4.3 Responsibility for establishing receipt by the ASA of a complaint lies with the complainant.

5. Documentation submitted to the ASA

- 5.1 All documentation submitted to the ASA must, as far as possible—
 - 5.1.1 be strictly relevant to the complaint being considered;
 - 5.1.2 contain background information only if same is essential;
 - 5.1.3 be set out in a manner that is clear and concise;
 - 5.1.4 systematically set out the basis for the complaint; and
 - 5.1.5 be limited, as far as possible, to factual allegations and to the expression of opinions in a manner that is not emotive, derogatory or insulting.
- 5.2 Should any part of the documentation submitted to the ASA be confidential, as defined in Clause 5 of Section I, it should be clearly identified and marked as such and annexed separately to the documentation. A non-confidential summary of the documentation must also be submitted.
- 5.3 The Directorate will evaluate, at its absolute discretion, whether or not documentation marked confidential qualifies as confidential in terms of Clause 5 of Section I, and shall inform the party that submitted the documentation accordingly.
 - 5.3.1 Should the Directorate find that the documentation is not confidential in terms of Clause 5 of Section I, the party that submitted such documentation will be given an opportunity to withdraw such documentation.
 - 5.3.2 Should the Directorate find that the documentation submitted as confidential qualifies as confidential in terms of Clause 5 of Section I, and if the Directorate is not satisfied with the non-confidential summary submitted in terms of Clause 5.2, the Directorate may request a new non-confidential summary of the documents in question.

6. General principles applicable to representations at ASA hearings

Representations made to the ASA, or its Committees, in regard to complaints received by the ASA, will be subject to the following conditions:

- 6.1 Representation, personal or otherwise, should be brief and to the point.
- 6.2 Where issues and submissions have been canvassed in correspondence with the ASA, or its Committees, parties may assume that the ASA, or Committees' members, as the case may be, are aware of these issues and need not repeat them in representations made subsequently.
- 6.3 Representation serves the purpose of summarising and/or clarifying issues only, and should be limited to such purpose.
- 6.4 All relevant and/or necessary documents and/or material information should be circulated or made available to the other party and the ASA at least 5 (five) days before the hearing.
- 6.5 Where representations are allowed in person or through a representative, such representations will normally be limited to 10 (ten) minutes per party. Should additional time be required, a written request must be submitted to the Directorate within a reasonable period prior to the hearing.

7. Legality

- 7.1 Where the alleged contravention of a law forms the only, or one of, the bases for a complaint, and the Directorate is unable to decide the complaint without resolving the question of whether or not a law has been contravened, the Directorate shall refer the complaint to the Advertising Appeals Committee, from which bodies an appeal to the Final Appeal Committee will lie.
- 7.2 The Directorate shall call on the party or parties to such dispute to submit legal representations on the question of the alleged contravention to the Advertising Appeals Committee before the decision as to whether or not the law in question has been contravened is made.

8. The role of the Directorate in regard to contraventions of the Code

- 8.1 The Directorate shall have the primary responsibility for ensuring compliance with the Code.
- 8.2 The Directorate shall consider all possible breaches of the Code, brought to its attention by a formal complaint. On receipt of a complaint, or where the Directorate otherwise decides to consider an issue, it shall—
- 8.2.1 Consider the complaint and decide whether the complaint is—
- 8.2.1.1 vexatious taking into account factors such as malicious motive and bad faith; or
- 8.2.1.2 *prima facie* without merit; and if so, inform the complainant of its decision and of the fact that the ASA will not entertain the complaint. Should the complainant thereafter amplify the basis of its complaint, the Directorate may, at its discretion, formally investigate the complaint.
- 8.2.2 Call on the party, against whom a complaint has been made (who shall be referred to as the respondent), to respond to the complaint within the time periods set out below:
- 8.2.2.1 in the case of consumer complaints, the respondent shall generally be given five days to respond to the complaint; and
- 8.2.2.2 in the case of competitor complaints, the respondent shall generally be given three days to respond.
- 8.2.2.3 If the complaint or issue requires the provision of substantiation by the respondent, the Directorate shall call for such substantiation and shall specify the time period for its provision. The respondent will generally be given 48 hours to provide substantiation.
- 8.2.2.4 However, the Directorate may specify a lesser time period that it decides is appropriate in the circumstances, having regard to the urgency of the complaint, the nature of the factual claim, the medium through which it was made, and the extent to which the claim has been repeated

and can be expected to be repeated after receipt of the complaint.

- 8.2.2.5 Where the respondent requests an extension of the time period specified by the Directorate and the respondent has undertaken to withdraw the advertising that is the subject of the complaint with immediate effect, within the deadlines specified in Clause 15.3 of the Procedural Guide, the Directorate may specify a longer time period that it decides is appropriate in the circumstances, having regard to the urgency of the complaint, the nature of the factual claim, and the medium through which it was made. The Directorate may also, at its discretion, require the respondent to withdraw the advertising that is the subject of the complaint with immediate effect, and until such time as the response is submitted to the Directorate.

Where the complaint relates to packaging, and the respondent has requested an extension to respond to the complaint, the Directorate may shorten the period for withdrawal of the packaging (refer Clause 15.3.7 of the Procedural Guide) if the Directorate finds that the packaging has contravened the Code.

- 8.3 Any representations provided to the ASA will be made available to the complainant at the request of the complainant, subject to the provisions of this Code dealing with confidentiality.
- 8.4 The written advice to the respondent calling on it to respond to a complaint or to provide substantiation must inform the respondent that, if an adverse ruling is made against the respondent, the Directorate may issue an Ad Alert in respect of the advertisement.
- 8.5 On receipt of the written representations by the parties and depending on the urgency, complexity, and novelty of the subject matter of the complaint, the Directorate shall, at its own discretion, either make a ruling on the complaint or refer the complaint to the appropriate committee for consideration. If, in response to a complaint, the respondent voluntarily undertakes to withdraw or amend the advertising complained of, and notwithstanding the fact that the advertising has run its course, the Directorate may, at its own discretion, record the voluntary undertaking as a ruling.

- 8.6 Where the Directorate rules on a complaint, it shall give written reasons for its ruling if required to do so by any party to the complaint.
- 8.7 Where a complaint is referred to a committee for consideration, the complaint will be referred to the Advertising Appeals Committee.
- 8.8 Where, as a result of the complexity or novelty of the complaint, the Directorate cannot rule on the complaint without outside assistance, but where the urgency of the complaint nevertheless makes it impractical for the complaint to be referred to the Advertising Appeals Committee, the Directorate shall be entitled to co-opt up to four persons, at its discretion, either drawn from the advertising industry or who have expertise in the subject matter of the complaint.
- 8.9 Any party who feels aggrieved by a ruling of the Directorate may, within ten days of the date on which such party is informed of the ruling, appeal to the Advertising Appeals Committee.
- To cover the cost of the First Appeal, both the appellant and respondent to the First Appeal will be required to lodge a sum of money, in an amount to be advised by the ASA, with the Directorate. Consumers or organisations serving the public interest lodging appeals are not required to pay for the cost of an appeal.
- The Chairperson of the Advertising Appeals Committee may, either at the conclusion of the First Appeal hearing or within a reasonable period thereafter, award the cost of the First Appeal against any or other of the parties, in such proportion as the Advertising Appeals Committee may determine.
- Where payment is required, such appeal will not be considered to be lodged until such time as proof of payment is received by the ASA.
- 8.10 The notice of appeal must, within ten days on which such a party is informed of the ruling, be given in writing and must be communicated to the ASA in any manner acceptable for the lodging of complaints. The notice of the appeal should set out concisely the grounds of appeal.
- 8.11 The other party or parties to the matter will be entitled to reply to the notice of appeal within 10 days of the date of receipt thereof.
- 8.12 A copy of any reply submitted in response to the appeal will be provided to the aggrieved party.

- 8.13 Where an aggrieved party has lodged an appeal to the Advertising Appeals Committee, the ruling of the Directorate must be adhered to, until such time as that ruling is reversed or suspended in terms of Clause 9.12.
- 8.14 The Directorate may perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental, or supplementary to the performance of any of its functions but will not extend to the suspension of rulings. Should circumstances arise where good and valid reasons justify a departure from usual procedure, these will be taken into account, but always at the discretion of the Directorate.

9. Consideration of complaints by the Advertising Appeals Committee

- 9.1 The Advertising Appeals Committee will consider and rule on all consumer complaints either referred to it by the Directorate or on appeal by any party who feels aggrieved by a ruling made by the Directorate.
- 9.2 All relevant documentation and representations submitted by the parties to a complaint, as well as any ruling by the Directorate made in relation to that complaint, together with the reasons given for that ruling, and the appeal documentation, where applicable, will be provided to the Committee members.
- 9.3 The Advertising Appeals Committee shall, at its discretion, be entitled to co-opt up to four persons who have expertise in the subject matter of the complaint.
- 9.4 The complainant and the respondent, and their respective advertising agencies, shall be entitled to appear before the Advertising Appeals Committee. A corporate entity that is a party to a complaint may be represented by any of its employees or directors, but may not be represented by independent contractors.
- 9.5 Outside legal representation shall not be permitted except in exceptional circumstances.
- 9.6 Appearance before the Advertising Appeals Committee shall be limited to a maximum of three persons per party. The names and designations of such persons should be submitted to the ASA not less than 24 hours prior to the hearing.
- 9.7 Rulings of the Advertising Appeals Committee shall, as soon as possible after the meeting, be conveyed in writing to the parties concerned. Written reasons for any ruling must be provided at the request of any party.

- 9.8 Any party who feels aggrieved by a ruling of the Advertising Appeals Committee shall have the right to appeal to the Final Appeal Committee against such ruling, in accordance with the appeal procedure set out in this Code. An appeal must be lodged by the appellant within twenty days from receipt of the ruling.
- 9.9 Where an appeal is lodged, the ruling of the Committee must be adhered to, until reversed by the Final Appeal Committee.
- 9.10 The Chairman or Committee may perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental, or supplementary to the performance of any of its functions including the suspension of rulings. Should circumstances arise where good and valid reasons justify a departure from usual procedure, these will be taken into account, but always at the discretion of the Chairman or Committee.
- 9.11 On appeal, the Advertising Appeals Committee will be entitled to consider all clauses initially before the Directorate, notwithstanding the fact that the appellant may have limited its appeal to only one or more clauses, excluding others that were originally considered.
- 9.12 Application for suspension of a ruling must be made as soon as possible but by no later than the date for filing of the Appeal.
- 9.12.1 In the event that the suspension is granted, the time that has elapsed between the Directorate ruling and the filing of the request for suspension will, at the discretion of the Advertising Appeals Committee, be deducted from the deadline subsequently set for withdrawal of the material. In other words and by way of example, if the request for suspension relates to packaging, which has a three month withdrawal period, is received after 5 days from the ruling, the Advertiser will have 2 months and 25 days to remove the packaging after the Appeal, if unsuccessful. However, if the request for suspension is only received after one month, the Advertiser will only have 2 months to remove the packaging after the Appeal, if unsuccessful.
- 9.12.2 The Advertising Appeals Committee may, on good cause shown, order a longer withdrawal period, but this clause sets out the default position.

10. Condonation for late filing

- 10.1 Except where otherwise indicated, all deadlines set by the Code are expected to be strictly adhered to.

- 10.2 In the event that a party fails to meet a deadline, an application for condonation for late filing must be made at the same time as the filing of the next step.
- 10.3 The application in terms of Clause 10.2 must set out the reasons for late filing and, where relevant, prospects of success.
- 10.4 The application in terms of Clause 10.2 will be submitted to the Chair of the Committee that the matter is before, for decision.
- 10.5 The decision of the Chair will be recorded in writing and regarded as a ruling.

11. Breaches of rulings

- 11.1 Any party, including but not limited to the parties to the original matter, may submit an allegation that a ruling of the ASA is not being adhered to.
- 11.2 Such an allegation must, as far as is possible, comply with the requirements of Clause 3 of the Procedural Guide, and must clearly set out the nature of the breach.
- 11.3 The advertiser will be given 5 (five) working days to respond to the breach allegation. Such response should include where relevant, but is not limited to, records of steps taken to address the ruling, affidavits from those involved and, in the case of packaging, clear records as to stock production with reference to the ruling.
- 11.4 The matter will then be referred to the Chair of the Committee that made the decision that is alleged to have been breached. In other words, and by way of example, an allegation that a decision made by the Advertising Appeals Committee is being breached will be referred to the Advertising Appeals Chair; an allegation regarding a Directorate ruling to the Head of the Directorate, and so forth.

12. Final appeals against rulings of the Advertising Appeals Committee

- 12.1 An appeal lodged against a ruling of the Advertising Appeals Committee shall be considered by the Final Appeal Committee.
- 12.2 Notwithstanding the provisions of the previous sub-section, the Directorate, together with the Chairperson of the Final Appeal Committee and two Final Appeal Committee members, shall be entitled to reject an appeal if, after due consideration of all

- circumstances and factors, it is found by unanimous decision that the appeal is either—
- 12.2.1 an unfounded or frivolous appeal in the event of a clear and direct contravention of the Code; or
 - 12.2.2 a malicious or wilful appeal.
- 12.3 Any request for an accelerated appeal will be granted at the sole discretion of the Chairperson of the Final Appeal Committee, who will, if such request is granted, determine the procedure.
 - 12.4 Notice of appeal must be given in writing and must be communicated to the ASA in a manner acceptable for the lodging of complaints. Notice of an appeal must reach the ASA within twenty days of notification of the decision appealed against.
 - 12.5 The notice of appeal should set out concisely the grounds of appeal and should be accompanied by the ruling against which the appeal is being lodged and any reasons given for that ruling, as well as all written representations and documentation submitted to the Committee making that ruling.
 - 12.6 To cover the costs of the appeal, both the appellant and the respondent to the appeal will be required to lodge a sum of money, in an amount to be advised by the ASA, with the Directorate. Consumers or organisations serving the public interest lodging appeals are not required to pay for the cost of an appeal. The Chairperson of the Final Appeal Committee may, either at the conclusion of the appeal hearing or within a reasonable period thereafter, award the cost of the appeal against any one or other of the parties, on an applicable High Court Scale, or in such proportion as the Committee may determine.
 - 12.7 A copy of the appeal documents will be submitted to the respondent within three days of receipt by the ASA.
 - 12.8 The respondent will be entitled to reply to the appeal documents within ten days of the date of receipt thereof.
 - 12.9 A copy of any reply submitted by the respondent in reply to the appeal will be provided to the appellant within three days from the date of receipt thereof by the ASA, and at least five (5) days before the appeal is considered.
 - 12.10 The appellant shall be required to prepare twelve copies of all documentation, and shall be required to ensure that all documentation is paginated. Where the documentation exceeds fifty pages, the appellant shall be required to prepare an index.

- 12.11 The parties and/or their legal representatives will be entitled to appear before the Final Appeal Committee. Should the Appellant wish to submit Heads of argument, a copy thereof will be submitted at least three (3) days before the Appeal is considered. Twelve (12) copies of Heads of Argument be submitted to the ASA. Should the respondent wish to submit Heads of Argument, twelve (12) copies thereof be submitted to the ASA at least two (2) days before the Appeal is considered.
- 12.12 The Final Appeal Committee will, where possible, consider an appeal within four weeks of the date on which the appeal was lodged.
- 12.13 The Final Appeal Committee will, where possible, deliver its ruling within two weeks of consideration of the appeal and will, if requested by either party, give written reasons for its ruling.
- 12.14 The Final Appeal Committee may refer any matter back to the Advertising Appeals Committee for reconsideration or for such action as the Final Appeal Committee may determine.
- 12.15 The Final Appeal Committee may, at its discretion, co-opt up to four persons who have expertise in the subject matter of a specific complaint, or to serve for such period as the Final Appeal Committee may decide.
- 12.16 The Final Appeal Committee shall not be confined to the record of the proceedings of the Committee that made the original ruling.
- 12.17 The Final Appeal Committee shall be entitled to call for additional representations from the parties on any subject matter relevant to the complaint.
- 12.18 The Final Appeal Committee shall be entitled to procure expert evidence and research, and to order one or more of the parties to pay the costs thereof.
- 12.19 The Chairman or Committee may perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the performance of any of its functions. Should circumstances arise where good and valid reasons justify a departure from usual procedure, these will be taken into account, but always at the discretion of the Chairman or Committee.
- 12.20 Application for suspension of a ruling must be made as soon as possible but by no later than the date for filing of the Appeal.

- 12.20.1 In the event that the suspension is granted, the time that has elapsed between the Directorate ruling and the filing of the request for suspension will, at the discretion of the Final Appeal Committee, be deducted from the deadline subsequently set for withdrawal of the material. In other words and by way of example, if the request for suspension relates to packaging, which has a three month withdrawal period, is received after 5 days from the ruling, the Advertiser will have 2 months and 25 days to remove the packaging after the Appeal, if unsuccessful. However, if the request for suspension is only received after one month, the Advertiser will only have 2 months to remove the packaging after the Appeal, if unsuccessful.
- 12.20.2 The Final Appeal Committee may, on good cause shown, order a longer withdrawal period, but this clause sets out the default position.

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14. Sanctions

The decision making bodies of the ASA may impose the following sanctions:

- 14.1 order the withdrawal of an advertisement in its current format;
- 14.2 direct the advertiser, when the ASA has found that an advertisement is in breach of the Code, to submit the proposed amendment, original advertisement and relevant ASA ruling to the ACA Advisory Service for pre-publication advice;
- 14.3 direct the respondent to submit all future advertising to the ACA Advisory Service, at the cost of the respondent, prior to publication thereof.
 - 14.3.1 This sanction may only be imposed if more than one adverse ruling against the respondent has been made by the ASA in a period of 12 months.
 - 14.3.2 This sanction is normally imposed for a period of six months.
 - 14.3.3 In deciding whether this sanction should be imposed and the period for which it is to be imposed, the following factors will be taken into consideration:
 - 14.3.3.1 The number of adverse rulings within the period mentioned in Clause 14.3.1 above.

- 14.3.3.2 What action the respondent took to ensure that the advertising ruled against within the period mentioned in Clause 14.3.1 conforms to the Code.
- 14.3.3.3 The extent of exposure of the advertising ruled against within the period mentioned in Clause 14.3.1.
- 14.3.3.4 Whether the respondent, in the opinion of the ASA, deliberately circumvented and/or flagrantly disregarded the Code.
- 14.3.3.5 Whether the respondent's conduct is likely to bring advertising into disrepute or is likely to reduce the confidence in advertising as a service to the industry and/or the public.
- 14.3.3.6 The number of times that the sanction of pre-clearance has been imposed on the respondent.
- 14.3.4 Prior to the imposition of this sanction, the respondent must be afforded an opportunity of making representations on the imposition thereof;
- 14.4 adverse publicity, including the publication of the names of defaulters;
- 14.5 order the respondent to publish a summarised version of the ruling as proposed by the ASA, in all or some of the media in which the advertising complained of appeared or media considered appropriate by the ASA, and the cost of such publication will be for the respondent. Where the respondent refuses to pay for the costs of the publication of the summarised version of the ASA's ruling, the ASA may order the withdrawal of all advertising space in respect of the respondent, until such time as these costs have been paid;
- 14.6 where a person, against whom a ruling has been made, fails to adhere to the ruling, the Directorate shall, either of its own accord or in response to a complaint concerning such non-adherence received from any person, be entitled, at its discretion, to—
 - 14.6.1 impose on the defaulting person any of the sanctions provided for in Clause 14 of the Procedural Guide, which sanction can be either in addition to, or as a substitute for, any sanction previously imposed on such person; or
 - 14.6.2 refer the issue of non-adherence, for further consideration, to the Committee; and

- 14.7 where a matter has been referred to a Committee in terms of Clause 14.6.2 above, that Committee shall, after consideration of the matter, be entitled to impose a sanction provided for in Clause 14 of the Procedural Guide on the defaulting party, which sanction shall be either in addition to or as a substitute for any sanction previously imposed on such person.
- 14.8 Advertising undermining ASA sanctions
- 14.8.1 Advertising by any person against whom a ruling has been made by the Directorate or ASA Committees that is calculated to, or that has the effect of, undermining the ruling shall constitute a contravention of the Code.
- 14.8.2 Any person may submit a complaint in respect of such advertising in accordance with the procedure contained in Clause 3.3 of the Procedural Guide and such complaint will be dealt with accordingly.

15. Enforcement of rulings

- 15.1 The responsibility for adherence to a ruling made by the Directorate or ASA Committees lies with the person against whom such ruling has been made.
- 15.2 Once a ruling has been given by the Directorate or ASA Committees, it shall be the responsibility of the complainant to monitor whether or not the ruling is adhered to and carried into effect.
- 15.3 Where an advertisement is to be withdrawn in terms of a ruling, the advertisement shall be withdrawn as soon as possible, but no later than as set out below:
- 15.3.1 Newspapers – immediately as deadlines permit.
- 15.3.2 Radio – immediately as deadlines permit.
- 15.3.3 Television – immediately as deadlines permit.
- 15.3.4 Magazines – immediately as deadlines permit.
- 15.3.5 Outdoor – two weeks or as determined otherwise by the ASA.
- 15.3.6 Pamphlets, posters and leaflets – as determined by the ASA.
- 15.3.7 Packaging – three months or as determined otherwise by the ASA.
- 15.3.8 Internet – two weeks or as determined otherwise by the ASA.

- 15.4 Should the respondent ignore a reasonable request for co-operation, the ASA will issue an Ad Alert to its members (including newspapers, magazines, radio, television and the Printing Industries Federation).
- 15.5 Offending advertising is to be withdrawn from every medium in which it appears, notwithstanding that the complaint did not specifically refer to that particular medium.

16. Arbitration

- 16.1 Where the complainant is dissatisfied with the ASA's decision that the documentary evidence submitted by the respondent supports the claims objected to, the complainant may request, within twenty days of the date on which the complainant is informed of the ruling, that the dispute be referred to arbitration, provided that the complainant submits documentation in accordance with the requirements of Clause 4.1 of Section II:
 - 16.1.1 Disproving the objectively ascertainable descriptors, claims or comparisons objected to; or
 - 16.1.2 Providing documentary evidence in support of inadequacies as to the validity of the research commissioned by the advertiser.
- 16.2 The Respondent in the arbitration matter will be entitled to reply to the Arbitration request within 10 days of the date of receipt thereof.
- 16.3 The arbitration shall be conducted in the following manner:
 - 16.3.1 The parties shall appoint the arbitrator by agreement. Failing agreement, the arbitrator shall be appointed by the ASA. In appointing an arbitrator the ASA may call on the assistance of an appropriate independent body active in the industry to which the dispute relates, to advise on the suitability of an arbitrator.
 - 16.3.2 The arbitration shall be held as quickly as possible after it has been requested, but within a reasonable period, normally within four weeks.
 - 16.3.3 The arbitrator shall determine the procedure and conduct of the arbitration in a manner that is procedurally fair to all parties.
 - 16.3.4 The ASA will be entitled to recover the reasonable costs in relation to the arbitration from the parties concerned.
 - 16.3.5 The ASA shall, in consultation with the arbitrator, determine the costs relating to the arbitration.

- 16.3.6 The parties shall be required to lodge a sum of money, in an amount to be advised by the ASA, with the Directorate. The ASA shall notify the parties, in writing, that should there be a shortfall in the arbitration costs, the parties shall be liable to pay such costs.
- 16.3.7 The ASA, in consultation with the arbitrator, shall either at the conclusion of the arbitration or within a reasonable period thereafter, award the cost of the arbitration against any one or other of the parties.
- 16.3.8 A party against whom no costs order is made will be entitled to recover any costs lodged with the ASA in accordance with this section.
- 16.4 The Directorate may, on good cause shown, condone non-compliance with the twenty-day period referred to in clause 16.1 or give such further directions concerning the conduct of the arbitration as it deems appropriate.
- 16.5 All parties shall exhaust the internal remedies provided by the Code before resorting to any relief or order from any court.

