

COSMETIC ADVERTISING CODE OF PRACTICE – SOUTH AFRICA

2022

1. INTRODUCTION

The South African cosmetics industry recognizes the importance of responsible advertising and marketing communication in order to inform consumers about the efficacy and safety of the products they purchase.

The industry, through the Cosmetic Advertising Code of Practice [the "Cosmetic Code"], commits to ensuring that their advertising and communication:

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

2. REGULATORY FRAMEWORK

- a. Cosmetics are regulated by the Department of Health through the Foodstuffs, Cosmetics and Disinfectants Act (Act 54 of 1972) and all associated regulations pertaining thereto.
- b. Advertising in South Africa is regulated through a self-regulatory body, the Advertising Regulatory Board (ARB). ARB decisions are governed by the South African Code of Advertising Practice [the "ARB Code"], which is based on the International Code of Advertising Practice, and includes an industry-specific code for cosmetic products, under Appendix B
- c. The Cosmetic Code is compiled and managed by the cosmetic industry, through the Cosmetic, Toiletry & Fragrance Association of South Africa (CTFA) and submitted to the ARB for inclusion in the ARB Code on an annual basis.
- d. In any matters associated with cosmetic advertising, the Cosmetic Code should always be considered along with the ARB Code.
- e. Advertising is also regulated by the Consumer Protection Act (Act 68 of 2008) and the Consumer Goods and Services Ombudsman ["the CGSO"] enforces the Consumer Goods and Services Industry Code of Conduct by receiving and dealing with consumer goods complaints by a consumer free of charge.

3. REFERENCES

- a. Latest available version of the CTFA Bridging the gap compendium
- b. Draft regulations relating to Labelling, Advertising and Composition of Cosmetics, R.1469, 22 December 2017
- c. Foodstuffs, Cosmetics & Disinfectants Act (Act 54 of 1972)
- d. SANS 1557:2019 - Sunscreen products
- e. Advertising Regulatory Board Code of Advertising Practice www.arb.org.za
- f. Consumer Protection Act (Act 68 of 2008)

4. SCOPE

- a. The Cosmetic Code is designed to provide guidance on the advertising and marketing of cosmetic products, specifically with respect to the consumer being well informed about the products they purchase.
- b. The Cosmetic Code is concerned with the communication of the safety and efficacy of cosmetic products. For other general claims not covered by the Cosmetic Code, the ARB Code should be referred to
- c. The Cosmetic Code applies to all aspects of claims including text, symbols, visual representations, figures, names and trademarks
- d. The Cosmetic Code only applies to cosmetic products as defined in the Foodstuffs, Cosmetics and Disinfectants (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”
- e. This definition specifies 6 functions pertaining to cosmetic products, namely
 - i. To clean
 - ii. To perfume
 - iii. To change appearance
 - iv. To correct body odours
 - v. To protect
 - vi. To keep in good condition
 - vii. If a product does not have at least one of the functions listed above as its primary purpose, then it is not a cosmetic
- f. The field of application of cosmetics is
 - i. The epidermis
 - ii. The hair system
 - iii. The nails
 - iv. The lips
 - v. The external genital organs
 - vi. The teeth
 - vii. The mucous membranes of the oral cavity
- g. Products intended to be ingested, inhaled or applied to body parts not covered by the above definition are not considered to be cosmetic products
- h. Mechanism of Action
 - i. Temporary action;

- ii. Improvement of appearance in all fields of application;
- iii. To be used regularly to maintain the effect or;
The effect is aimed at grooming and/ or enhancing the appearance in all fields of application, as per the definition of a cosmetic product

5. GENERAL PRINCIPLES

- a. The Draft Regulations Relating to the Labelling, Advertising and Composition of Cosmetics, Article 11 which relates to claims, are informative
- b. Any cosmetic claims, whether implicit or explicit, must be supported by adequate and appropriate substantiation to demonstrate the veracity of product efficacy and/ or performance
- c. As per Section 4 (SCOPE) of the Cosmetic Code, all claims must fall within the scope of cosmetic products as described therein
- d. The advertising and marketing of cosmetic products must comply with the ARB Code.

6. SUBSTANTIATION

“Substantiation” means:

- a. Substantiation, in accordance with the requirements of the ARB Code, that may be provided as indicated in 6(b) and/or 6(c) below.
- b. Documentary evidence, in accordance with the requirements of the ARB Code, based on statistically valid data, emanating from proven scientific methods, that are compliant with recognized standards and/or best practices and applicable to the claim(s) being made. Such substantiation is inclusive of, but not limited to, sensory data generated by expert panels.
- c. Substantiation based on survey data, in accordance with the requirements of the ARB Code, applicable to the claim(s) made.

7. SPECIFIC CLAIMS

a. Unacceptable Claims

- i. Claims that are not substantiated, or claims that are not worded in a cosmetic sense
- ii. Claims for products used on mucous membranes, other than the oral cavity
- iii. Claims suggesting permanent effects
- iv. The term “Cosmeceutical”, or any other similar term, is not permitted for use in the advertising of cosmetic products
- v. Claims that convey the impression, whether directly, impliedly, or through their overall execution and/or the use of symbols, that the cosmetic product provides medicinal benefits (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 stating or implying a physiological action, the mechanism of which does not fall within the scope of that accepted for a cosmetic product as per Section 4 (SCOPE) of the Cosmetic Code, are not permitted.
- 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 not permitted

- viii. The words “clinically proven” are not permitted, unless scientifically substantiated, using internationally accepted protocols which are scientifically robust, statistically significant and relate to the context in which the claim is being made
- ix. (a) Claims for products referring to endorsements by a medical practitioner shall only be permitted if:
 - 1. Such endorsements must not breach any medical and/or legal code of ethics;
 - 2. The medical practitioner is suitably qualified to endorse the claim in question;
 - 3. Such endorsement is made on the basis of adequate substantiation in accordance with the requirements of the ARB Code;
 - 4. Such endorsement is provided in written format, confirmed and signed by the medical practitioner concerned.

Note: It is strongly recommended that advertisers obtain advice regarding the conformity of advertising material with the provisions of R.908 of 27 May 1977 Regulation - Labelling and Advertising.

- (b) 1. The claim “recommended by doctors”, or any other similar claim and/or pictorial representations implying that medical practitioners, paramedical or scientific specialists recommend a product’s use are prohibited, unless established on the basis of adequate and appropriate substantiation in accordance with ARB Code.

Note: It is strongly recommended that advertisers obtain advice regarding the conformity of advertising material with the provisions of R.908 of 27 May 1977 Regulation - Labelling and Advertising.

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

- i. Claims for natural products or ingredients must be able to be substantiated by one of the following:
 - 1. A cosmetic product can be claimed in its entirety to be “Natural” or “Naturally Occurring” only if its content is of natural origin as prescribed by the definitions contained in SANS 16128-1 and SANS 16128-2, or any other internationally accredited equivalent standard
 - 2. Claims for “Natural” or similar claims for specific ingredients may be made within the guidelines contained in SANS 16128-1- and SANS 16128-2, or any other internationally accredited equivalent standard
 - 3. Companies should also be transparent to consumers and should not imply that this type of product is safer than other cosmetics just because they are making ‘natural’ claims

c. Use of “Organic” / “Organic Products” and “Organic Ingredients”

- i. Claims for organic products or ingredients must be able to be substantiated by one of the following:
 - 1. A cosmetic product can be claimed in its entirety to be “Organic” only if it can be proven that it contains ingredients from organic farming, as prescribed by the definitions contained in SANS 16128-1

and SANS 16128-2, or any other internationally accredited equivalent standard

2. Claims for “Organic” or similar claims for specific ingredients may be made only if sourced from organic farming, as prescribed within the guidelines contained in SANS 16128-1- and SANS 16128-2, or any other internationally accredited equivalent standard
3. Companies should also be transparent to consumers and should not imply that this type of product is safer than other cosmetics just because they are making ‘organic’ claims

d. Use of the Word “Pure”

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

e. Non-content or “free from” Claims

- i. Non content claims are permitted providing the following criteria are respected:
 1. It is not the main argument of the product but provides relevant information to consumers
 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 already forbidden for use in cosmetic products (e.g. “hydroquinone-free” when hydroquinone is forbidden in cosmetic products)
 6. Where the “free-from” claim is made, the product must not contain the ingredient and the ingredient must not be released during normal foreseeable use of the product during its prescribed shelf-life
 7. For a “free-from” claim for a category of ingredients, it must be substantiated that all the individual ingredients are additionally free from the category of ingredients being specified

f. Claims Made for Ingredients

- i. Mention of ingredients is permitted
- ii. The ingredients for which claims are made must be present in the product
- iii. Claims that relate to benefits provided by a specific ingredient(s) are only permitted if substantiated in respect of the concentration in which that ingredient(s) is/are contained in the product.
- iv. Claims that state or imply a benefit of a specific ingredient, which do not fall within the scope of that accepted for a cosmetic product as per Section 4 (SCOPE) of the Cosmetic Code, are not permitted.
- v. Benefits assigned to a specific ingredient, or specific ingredients, cannot be claimed for the entire product, unless it can be substantiated that the ingredient is present at a proven effective level and the product itself provides the benefits which are being claimed.

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 any ingredient for which there is no known allergenic information, or for which the ingredient(s) is the subject of the scrutiny of an international scientific body, with respect to its allergenic potential
- iv. The hypoallergenic claim should be substantiated by scientifically sound and statistically valid data

h. Sensitive Skin Claims

- i. The claim of “sensitive skin” is permitted under the following conditions:
 1. The volunteers included in the applicable study report a history of functional symptoms of skin sensitivity and discomfort (e.g. tingling, warmth, tightness, redness, itchiness) with use of normal products, under normal conditions of use
 2. These volunteers did not report any adverse events, or increase in any of the abovementioned symptoms during the study period concerned

i. Claims relating to bacteria, fungi and viruses

- i. Cosmetic products may possess secondary germ protection functions in addition to their primary function, as defined in Section 4(d) of the Cosmetic Code, and a germ protection benefit may be considered as a secondary claim. Claims for such a secondary benefit can only be made in a cosmetic sense
- ii. Anti-bacterial, anti-fungal and anti-viral claims are not permitted for use on a cosmetic product
- iii. Similarly, claims such as “bacteria”, “fungus”/“fungi” or “virus” are not permitted for use on a cosmetic product

8. SPECIFIC PRODUCT CATEGORIES

a. Hair products

i. General claims

1. Medical terms are not permitted to describe specific conditions of the hair and scalp. For example, the following terms should be used:
 - a. “excess oil” instead of “seborrhoea”;
 - b. “dandruff” instead of “pityriasis” and “seborrheic dermatitis” and
 - c. “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 not permitted
3. Claims shall be clear that the effect is only observed with regular use of the product in question and is not permanent, e.g. thickens or adds volume
4. The following claims are permitted 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 that contains a specific ingredient has an effect on the hair or scalp;
 - e) a product has multiple functions

ii. Anti-Hair loss

1. Claims purporting to diminish, slow down, limit or prevent hair loss are permitted but they must not imply a permanent effect
2. The following claims are not permitted:
 - a. Any claims that imply the product can cure or permanently prevent hair loss, including any claims of restoring hair growth, preventing hair loss, baldness, or thinning of hair, which occur 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 permanently cured. The product must communicate that effective control is dependent on regular use.
2. Claims should communicate the cosmetic effects of the product (e.g. reduction in visible flakes etc.)

iv. Split ends

1. A product cannot claim a permanent cure to repair split ends and it should be indicated that this effect is only visible with regular use

b. Anti-cellulite or similar products

- i. All advertising shall encourage a healthy lifestyle. Claims implying that an appropriate diet and exercise regimen is not needed in conjunction with the use of the product, are not permitted
- ii. Claims shall focus on the cosmetic improvement in the appearance and condition of the skin
- iii. Claims referring to removal of cellulite, slimming and weight loss are not permitted
- iv. Claims advertising permanent effects are not permitted
- v. The following is a list of examples of permitted claims:
 1. Improves the appearance of cellulite
 2. Minimises or reduces the appearance of dimpled skin or orange peel

3. Smooths over cellulite
 4. Firms and tones the skin
 5. Makes skin appear smooth
 6. Redefines the appearance of the skin
 7. Improves the contour of the skin
- vi. The following is a list of examples of claims that are not permitted:
1. Reduces, eliminates or cures cellulite
 2. Boosts the metabolism
 3. Inhibits dietary fat absorption
 4. Melts, breaks up, blocks, removes or soaks up fat
 5. Detoxification or lymphatic drainage
 6. Any claim promising weight loss, slimming or centimetre and/or dimension loss
 7. Any other physiological change that is not regarded as a benefit that may be provided by a cosmetic product

c. Sunscreens

- i. The category of sun protection shall be accurately portrayed on the label and in any associated advertising, in accordance with the requirements of SANS 1557:2019
- ii. Claims for SPF can only be made as specified in accordance with the requirements of SANS 1557:2019, or any other internationally accepted equivalent standard
- iii. All claims for SPF (UVB), UVA and broad-spectrum should be substantiated in accordance with the requirements of SANS 1557:2019, or any other internationally accepted equivalent standard
- iv. Labelling indications should be executed in accordance with the requirements of SANS 1557:2019, or any other internationally accepted equivalent standard
- v. “Water resistant” and “very water resistant” claims are permitted but require substantiation in accordance with the requirements of SANS 1557:2019, or any other internationally accepted equivalent standard
- vi. The claims “waterproof” and/or “sweat resistant” are not permitted for sunscreen products.
- vii. Claims that state, or imply, 100% protection from UV radiation (e.g. block, sunblock, sun blocker or total protection) are not permitted
- viii. Claims implying “all day protection” are not permitted