

# Procedural Guide

## PROCEDURES AND REMEDIES

### 1. Before lodging a formal complaint

When parties 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 ARB. Nothing in this section will be interpreted as preventing anyone from lodging a formal complaint with the ARB 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 ARB, the ARB will decline to consider and deal with the complaint.

### 3. Lodging of complaints with the ARB

3.1 All formal complaints lodged with the ARB 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 ARB. 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 ARB 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 ARB 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 electronic mail, to [complaint@arb.org.za](mailto:complaint@arb.org.za).
- 4.2 By using the online complaint form at [www.arb.org.za](http://www.arb.org.za).
- 4.3 Responsibility for establishing receipt by the ARB of a complaint lies with the complainant.

#### **5. Documentation submitted to the ARB**

- 5.1 All documentation submitted to the ARB 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 ARB 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 will 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 the 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.
- 5.4 Documentation which does not meet or follow the above criteria and processes will not be regarded as confidential. Parties are alerted that all correspondence with the ARB that does not fall within the above criteria may, at any time and at the discretion of the ARB, be shared with the other party.
- 5.5 Parties are alerted that the decisions of the ARB are published on the ARB website in the interests of transparency. This will include the name of the complainant(s) and the Advertiser.

## **6. General principles applicable to representations at ARB hearings**

Representations made to the ARB, or its Committees, in regard to complaints received by the ARB, 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 ARB, or its Committees, parties may assume that the ARB, 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 ARB 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 may 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.
- 7.3 Nothing in this clause, or in Clause 3.3 of Section II, must be read as implying that the ARB may seek to enforce regulations or laws. This task falls on the relevant regulator. The ARB may only enforce the Code.

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

- 8.1 The Directorate has the primary responsibility for ensuring compliance with the Code.
- 8.2 The Directorate must consider all possible breaches of the Code, brought to its attention by a formal complaint. On receipt of a complaint, 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 ARB 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 five days.
- 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.
- 8.2.3 Where the respondent requests an extension of the time period specified by the Directorate, the Directorate may specify a longer time period for response 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 ARB 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 will, at its own discretion:
  - 8.5.1 Attempt to resolve the matter between the parties without the need for a formal decision; or
  - 8.5.2 Make a ruling on the complaint; or
  - 8.5.3 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 will give written reasons for its ruling.
- 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 is 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 is aggrieved by a ruling of the Directorate may appeal to the Advertising Appeals Committee. The process for an appeal is set out in Clause 9 below.
- 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 Any party who feels aggrieved by a ruling of the Directorate may, within ten days of the date on which that party is informed of the ruling, appeal to the Advertising Appeals Committee.
- 9.2 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 ARB, 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 this 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 ARB.
- 9.3 The notice of appeal must be given in writing and must be communicated to the ARB electronically. The notice of the appeal should set out concisely the grounds of appeal.
- 9.4 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.
- 9.5 A copy of any reply submitted in response to the appeal will be provided to the aggrieved party.
- 9.6 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.
- 9.7 The Advertising Appeals Committee will consider and rule on all 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 will, 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, are 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 is not permitted except in exceptional circumstances.
- 9.6 Appearance before the Advertising Appeals Committee is limited to a maximum of three persons per party. The names and designations of these persons should be submitted to the ARB not less than 24 hours prior to the hearing.
- 9.7 Rulings of the Advertising Appeals Committee will, as soon as possible after the meeting, be conveyed in writing to the parties concerned.
- 9.8 Any party who feels aggrieved by a ruling of the Advertising Appeals Committee has the right to appeal to the Final Appeal Committee against such ruling, in accordance with the appeal procedure set out in Clause 12 below.
- 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.

9.13 While the parties are entitled to bring any interlocutory applications appropriate in order to enforce their rights, parties are reminded that self-regulation is, by its nature, intended to be quick, cheap and solution-driven. Parties who lodge interlocutory applications merely to frustrate the process are acting contrary to the spirit of the Code. Parties may, at the discretion of the Chair of the AAC or FAC, as relevant, be penalised for this behavior by forfeiting the refundable portion of their appeal fee.

9.14 Interlocutory decisions made by the Head of the Directorate or the Chair of the AAC are not appealable.

## **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.

10.6 it will be at the discretion of the Chair whether the application for condonation is heard prior to the merits, or concurrently with the merits.

## **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 ARB 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 will be considered by the Final Appeal Committee. An appeal from the Advertising Appeals Committee must be lodged by the appellant within twenty days from receipt of the ruling.
- 12.2 Where an appeal is lodged, the ruling of the Committee must be adhered to, until reversed by the Final Appeal Committee.
- 12.3 The Directorate, together with the Chairperson of the Final Appeal Committee and two Final Appeal Committee members, will 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—
  - 12.3.1 an unfounded or frivolous appeal in the event of a clear and direct contravention of the Code; or
  - 12.3.2 a malicious or wilful appeal.
- 12.4 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.
- 12.5 Notice of appeal must be given in writing and must be communicated to the ARB electronically. Notice of an appeal must reach the ARB within twenty days of notification of the decision appealed against.
- 12.5 The notice of appeal should set out concisely the grounds of appeal.
- 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 ARB, 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 those costs against any one or other of the parties 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 of the documents or the lodging of the appeal fee, whichever is the later, by the ARB.
- 12.8 The respondent will be entitled to reply to the appeal documents within twenty 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 ARB, and at least five (5) days before the appeal is considered.
- 12.10 The appellant must prepare twelve copies of all documentation, and must ensure that all documentation is paginated. Where the documentation exceeds fifty pages, the appellant must 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 must be submitted to the ARB. Should the respondent wish to submit Heads of Argument, twelve (12) copies thereof be submitted to the ARB 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 written ruling within two weeks of consideration of the appeal.
- 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 will not be confined to the record of the proceedings of the Committee that made the original ruling.
- 12.17 The Final Appeal Committee will be entitled to call for additional representations from the parties on any subject matter relevant to the complaint.
- 12.18 The Final Appeal Committee will 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 Advertising Appeals Committee 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.

### **13. . . . .**

### **14. Sanctions**

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

14.1 order the withdrawal of an advertisement in its current format;

14.2 direct the advertiser, when the ARB has found that an advertisement is in breach of the Code, to submit the proposed amendment, original advertisement and relevant ARB ruling to the ACA Advisory Service for pre-publication advice;

14.3 direct the advertiser 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 ARB 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 ARB, 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 ARB, in all or some of the media in which the advertising complained of appeared or media considered appropriate by the ARB, 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 ARB's ruling, the ARB 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 is, either of its own accord or in response to a complaint concerning such non-adherence received from any person, 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 that made the decision; 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 ARB sanctions
- 14.8.1 Advertising by any person against whom a ruling has been made by the Directorate or ARB Committees that is calculated to, or that has the effect of, undermining the ruling constitutes 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 ARB Committees lies with the entity against whom such ruling has been made.
- 15.2 Once a ruling has been given by the Directorate or ARB Committees, it is 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. Removal of existing published material is not required.
- 15.3.2 Radio – immediately as deadlines permit.
- 15.3.3 Television – immediately as deadlines permit.
- 15.3.4 Magazines – immediately as deadlines permit. Removal of existing published material is not required.
- 15.3.5 Outdoor – two weeks or as determined otherwise by the ARB.
- 15.3.6 Pamphlets, posters and leaflets – as determined by the ARB.
- 15.3.7 Packaging – three months or as determined otherwise by the ARB. This applies to dissemination of new packaging, and does not require on-shelf

removal.

- 15.3.8 Internet – immediately as deadlines permit or as determined otherwise by the ARB.
- 15.4 Should the respondent ignore a reasonable request for co-operation, the ARB 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 ARB'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 will be conducted in the following manner:
  - 16.3.1 The parties will appoint the arbitrator by agreement. Failing agreement, the arbitrator will be appointed by the ARB. In appointing an arbitrator the ARB 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 must 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 will determine the procedure and conduct of the arbitration in a manner that is procedurally fair to all parties.
  - 16.3.4 The ARB will be entitled to recover the reasonable costs in relation to the arbitration from the parties concerned.
  - 16.3.5 The ARB will, in consultation with the arbitrator, determine the costs relating to the arbitration.
  - 16.3.6 The parties will be required to lodge a sum of

money, in an amount to be advised by the ARB, with the Directorate. The ARB shall notify the parties, in writing, that should there be a shortfall in the arbitration costs, the parties will be liable to pay such costs.

16.3.7 The ARB, in consultation with the arbitrator, will 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 ARB 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.