

## Section II General principles

### 1. **Offensive advertising**

- 1.1 No advertising may offend against good taste or decency or be offensive to public or sectoral values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
- 1.2 Advertisements should contain nothing that is likely to cause serious or wide-spread or sectoral offence. The fact that a particular product, service or advertisement may be offensive to some is not in itself sufficient grounds for upholding an objection to an advertisement for that product or service. In considering whether an advertisement is offensive, consideration will be given, *inter alia*, to the context, medium, likely audience, the nature of the product or service, prevailing standards, degree of social concern, and public interest.

### 2. **Honesty**

Advertisements should not be so framed as to abuse the trust of the consumer or exploit their lack of experience, knowledge or credulity.

### 3. **Unacceptable advertising**

#### 3.1 ***Fear***

Advertisements must not, without justifiable reason, play on fear.

#### 3.2 ***Violence***

Advertisements must not contain anything which might lead or lend support to acts of violence, including gender-based violence, nor should they appear to condone such acts.

#### 3.3 ***Legality***

Advertisements must not contain anything which might lead or lend support to criminal or illegal activities, nor should they appear to condone such activities.

#### 3.4 ***Discrimination***

No advertisements may contain content of any description that is discriminatory, unless, in the opinion of the ARB, such discrimination is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

Refer to Section I, definitions.

### 3.5 **Gender**

Gender stereotyping or negative gender portrayal must not be permitted in advertising, unless in the opinion of the ARB, such stereotyping or portrayal is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

### 3.6 **Sounds in radio advertisements**

Advertisements must not include sounds that are likely to create a safety hazard, for example, to those listening to the radio while driving.

## 4. **Truthful presentation**

### 4.1 **Substantiation**

4.1.1 Before advertising is published, advertisers must hold in their possession documentary evidence as set out in Clause 4.1, to support all claims, whether direct or implied, that are capable of objective substantiation.

4.1.2 Documentary evidence, whether in the form of survey data or any other documentation, must be up to date and current, and must have market relevance.

4.1.3 Survey data submitted as documentary evidence must conform to the following:

4.1.3.1 The survey must emanate from a SAMRA Accredited Marketing Researcher or an entity acceptable to the Southern African Marketing Research Association, and

4.1.3.2 The accuracy of the claims based on the survey must be confirmed by a SAMRA Accredited Marketing Researcher or an entity acceptable to the Southern African Marketing Research Association.

4.1.3.3 The onus is on the advertiser to obtain confirmation from SAMRA that any researcher or entity is accredited or acceptable, as the case may be.

4.1.4 Documentary evidence, other than survey data, must emanate from or be evaluated by a person/entity, which is independent, credible, and an expert in the field to which the claims relate and be acceptable to the ARB. In the case of documentary evidence, other than survey data, such expert may, if appropriate, be, but is not limited to, a SAMRA Accredited Researcher.

4.1.5 . . . . .

- 4.1.6 Claims based on research conducted by publications must clearly state the source in advertising.
- 4.1.7 Upon payment of the administrative fee, determined by the ARB from time to time, the Directorate may consider new substantiation submitted after a ruling has been made by the ARB rejecting substantiation or upholding a complaint based on substantiation.
- 4.1.8 Once a ruling has been made by the ARB accepting substantiation, the complainant may either–
- 4.1.8.1 appeal against the acceptance in the ruling on the evidence in terms of clause 4.1 of Section II; or
  - 4.1.8.2 call for arbitration in terms of clause 16 of the Procedural Guide.

## 4.2 **Claims**

### 4.2.1 Misleading claims

Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.

### 4.2.2 Puffery

Value judgments, matters of opinion or subjective assessments are permissible provided that–

- it is clear what is being expressed is an opinion;
- there is no likelihood of the opinion or the way it is expressed, misleading consumers about any aspect of a product or service which is capable of being objectively assessed in the light of generally accepted standards.

The guiding principle is that puffery is acceptable when an expression of opinion, but unacceptable when viewed as an expression of fact.

### 4.2.3 Hyperbole

Obvious untruths, harmless parody or exaggerations, intended to catch the eye or to amuse, are permissible provided that they are clearly to be seen as humorous or hyperbolic and are not likely to be understood as making literal claims for the advertised product.

### 4.2.4 Expert opinion

Where informed opinion is claimed in support of a product, such opinion must be substantiated by independent evidence.

### 4.2.5 Statistics and scientific information

Advertisements should not misuse research results or quotations from technical and scientific literature. Statistics should not be so presented as to imply that they have a greater validity than is the case. Scientific terms should not be misused, and scientific jargon and irrelevancies should not be used to make claims appear to have a scientific basis they do not possess.

#### 4.2.6 Headlines

Headlines to advertising should not mislead in any way and it is not acceptable to contend that a misleading impression conveyed by a headline has been corrected in the body copy of the advertisement.

When a statement contained in a headline of printed advertising is asterisked to refer to an explanatory footnote, the type-size used in the footnote must not be smaller than that used in the substantive copy of the advertisement.

#### 4.2.7 Truthful presentation

Where material information is superimposed on screen, the print must be clearly visible and remain on screen long enough to be easily read by the hypothetical reasonable viewer.

### 4.3 ***The value of goods***

4.3.1 So far as is relevant, the following provisions apply to claims as to the value of services or facilities offered by way of advertisements as well as to the value of goods–

4.3.1.1 Consumers should not be led to overestimate the value of goods whether by exaggeration or through unrealistic comparisons with other goods or other prices.

4.3.1.2 The advertiser should be ready to substantiate any claim he makes as to the value in cash terms of goods offered by him at a lower price or free; and any saving to the consumer claimed to result from the offer of goods at a price lower than their actual value.

### 4.4 ***Use of the word "free"***

4.4.1 Products should not be described as "free" where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, a clear statement that this is the case should be made in the advertisement.

- 4.4.2 Where a claim is made that, if one product is purchased, another product will be provided "free", the advertiser should be able to show that he will not be able immediately and directly to recover the cost of supplying the "free" product whether in whole or in part.
- 4.4.3 In particular, advertisers should in these circumstances make no attempt to recover the cost to them of the product by such methods as the imposition of packaging and handling charges, the inflation of the true cost of delivery, freight or postage, an increase in the usual price of the product with which the "free" product is offered, a reduction in its quality, or otherwise.
- 4.4.4 A trial may be described as "free", although the consumer is expected to pay the cost of returning the goods, provided that the advertiser has made clear his obligation to do so.
- 4.4.5 Advertisements offering "free" goods must indicate if such goods are only received subject to purchase.

#### 4.5 **"Up to . . ." and "from . . ." claims**

- 4.5.1 Claims, whether as to prices or performance, which use formulas such as "up to 10 kilometres per litre" or "prices from as low as R5" are not acceptable where there is a likelihood of the consumer being misled as to the availability of the benefits offered. Such claims should not be used—
  - 4.5.1.1 where the price or other advantage claimed bears no relation to the prevailing level of prices or benefits, and in particular where it does not apply to the goods or services actually advertised or to more than an insignificant proportion of them;
  - 4.5.1.2 where they apply only to spoiled or imperfect goods, or to goods or services which are in some respect less complete or subject to greater limitations than the bulk of those on offer.

### 5. **Price comparisons**

#### 5.1 ***By manufacturers***

An advertiser may wish to claim that his prices are lower than those of his competitors. Such claims are generally acceptable subject to the provisions of clause 7 Section II of the Code.

#### 5.2 ***Co-operative advertising***

Where a manufacturer inserts the name of a retailer the advertisement will be deemed to be a "retail" advertisement

and not that of a manufacturer and will need to comply with the conditions below governing retail advertisements.

### 5.3 ***By retailers***

Retailers will be permitted to quote price comparisons/or specific discounts in advertising provided that the following conditions are complied with–

5.3.1 Satisfactory documentary evidence of the price reduction is held available and can be provided on request.

5.3.2 A single price reduction or discount may be advertised for a maximum period of three months.

### 5.4 ***Sale advertising***

Special sale prices may be advertised on the understanding that satisfactory documentary evidence of all the claimed price reductions is held, available to be furnished on request.

### 5.5 ***Corporate slogans***

The provisions of Clauses 5.1 to 5.4 will not apply to corporate slogans, themes, statements, etc relating to pricing.

## **6. Disparagement**

6.1 Advertisements should not attack, discredit or disparage other products, services, advertisers or advertisements directly or indirectly.

6.2 Comparisons highlighting a weakness in an industry or product will not necessarily be regarded as disparaging when the information is factual and in the public interest.

6.3 In considering complaints under this Clause, the ARB shall take cognisance of what it considers to be the intention of the advertiser.

## **7. Comparative advertising**

7.1 Advertisements in which factual comparisons are made between products and/or services are permitted provided that–

7.1.1 all legal requirements are adhered to. Attention is drawn to the provisions of the Trade Marks Act 1994 of 1993;

7.1.2 only facts capable of substantiation are used as governed by Section II Clause 4.1;

7.1.3 one or more material, relevant, objectively determinable and verifiable claims are made;

7.1.4 the claims are not misleading or confusing as governed by Section II Clause 4.2;

7.1.5 no infringement of advertising goodwill takes place

as governed by Section II Clause 8;

- 7.1.6 no disparagement takes place as governed by Section II Clause 6;
- 7.1.7 the facts or criteria used are fairly chosen. In this assessment the following will, inter alia, be taken into account–
- the significance of the facts or criteria used;
  - the relevance and representativeness of the facts or criteria used; and
  - whether the basis of the comparison is the same.
- 7.1.8 products or services compared must have the same or similar characteristics and must be intended for the same, or similar, purpose;
- 7.1.9 the contextual implication be strictly limited to the facts;
- 7.1.10 where claims are based on substantiated research, the express consent as to the accuracy and scope of such claims be obtained from the relevant research body;
- 7.1.11 the advertiser accepts responsibility for the accuracy of the research and claims.
- 7.2 It should be noted that reference to claims above includes all visuals and aural representations.
- 7.3 Group comparisons and comparisons which identify competitors by implication are acceptable subject to the criteria contained in this clause.
- 7.4 The guiding principle in all comparisons is that products and/or services should be promoted on their own merits and not on the demerits of competitive products.
- 7.5 In considering matters raised under this clause, cognisance will be taken of the intention of the advertiser.
- 7.6 It is strongly recommended that advertisers obtain advice regarding the conformity of advertising material with all the provisions of clause 7 especially the Trade Marks Act before placing a comparative advertisement.

## **8. Exploitation of advertising goodwill**

- 8.1 Advertisements may not take advantage of the advertising goodwill relating to the trade name or symbol of the product or service of another, or advertising goodwill relating to another party's advertising campaign or advertising property, unless the prior written permission of the proprietor of the advertising goodwill has been obtained.

Such permission shall not be considered to be a waiver of

the provisions of other clauses of the Code.

- 8.2 Parodies, the intention of which is primarily to amuse and which are not likely to affect adversely the advertising goodwill of another advertiser to a material extent, will not be regarded as falling within the prohibition of paragraph 8.1 above.

In considering matters raised under this clause consideration will be given to, *inter alia*, the likelihood of confusion, deception and the diminution of advertising goodwill. Furthermore, whether the device or concept constitutes the "signature" of the product or service, is consistently used, expended throughout media and is prominent in the mind of the consumer.

## **9. Imitation**

- 9.1 An advertiser should not copy an existing advertisement, local or international, or any part thereof in a manner that is recognisable or clearly evokes the existing concept and which may result in the likely loss of potential advertising value. This will apply notwithstanding the fact that there is no likelihood of confusion or deception or that the existing concept has not been generally exposed.
- 9.2 The provisions of Clause 9.1 above shall apply for a period of two years from the date of last usage of the advertising, packaging or labelling concerned.

In considering whether or not an infringement has taken place consideration will be given to, *inter alia*, the extent of exposure, period of usage and advertising spend, whether the concept is central to the theme, distinctive or crafted as opposed to in common use. Furthermore the competitive sphere will also be taken into account.

In considering international campaigns, consideration will be given to, *inter alia*, the undue imitation thereof by local advertisers. This, however, will only apply if the advertiser is committed to start trading in the local market within a reasonable period of time.

## **10. Testimonials**

### **10.1 *To be genuine***

Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience over a reasonable period of the person giving it. Testimonials or endorsements which are obsolete or otherwise no longer applicable (eg where there has been a significant change in formulation of the product concerned) should not be used.

### **10.2 *Conformance to the Code***

Testimonials themselves should not contain any statement or implication contravening the provisions of this Code and should not be used in a manner likely to mislead.

### **10.3 *Efficacy claims***

Testimonials should not contain any claims to efficacy which cannot justifiably be attributed to the use of the product, and any specific or measurable results claimed should be fairly presented. Where "before" and "after" claims are made, they should be capable of substantiation, expressed and illustrated in such a way as to permit a fair comparison to be made.

#### 10.4 ***Amendment***

Where any testimonial contains an expression which conflicts with this Code, the advertiser may, with the written approval of the person giving the testimonial, amend it so as to remove the source of conflict.

#### 10.5 ***Foreign residents***

Testimonials from persons resident outside South Africa are not acceptable unless their address and/or country of residence are given to the ARB or the medium involved which may decide whether such details must be used in the advertisement.

#### 10.6 ***Fictitious characters***

Particular care should be taken to ensure that advertisements based on fictitious characters are not so framed as to give the impression that real people are involved; in particular they should not contain "testimonials" or "endorsements" which may give such an impression.

#### 10.7 ***Copies for inspection***

Advertisers and their agencies should hold ready for inspection by the ARB, copies of any testimonials used in advertising. Such copies should be signed and dated by the persons providing the testimonials and should confirm what is said in any advertisement.

### **11. Protection of privacy and exploitation of the individual**

11.1 Advertisements should not, except in the circumstances noted in 11.2 portray or refer to, by whatever means, any living persons, unless their express prior permission has been obtained. Advertisers should also take care not to offend the religious or other susceptibilities of those connected in any way with deceased persons depicted or referred to in any advertisement.

11.2 This ruling does not apply-

11.2.1 to the use of crowd or background shots in which individuals are recognisable, provided that neither the portrayal, nor the context in which it appears is defamatory, offensive or humiliating. However, an advertiser should withdraw any such advertisement if a reasonable objection is received from a person depicted;

11.2.2 to advertisements for books, films, radio or television

programmes, press features and the like, in which there appear portrayals of, or references to, individuals who form part of their subject matter;

11.2.3 to police or other official notices;

11.2.4 to occasions when in the ARB's opinion the reference or portrayal in question is not inconsistent with the subject's right to a reasonable degree of privacy and does not constitute an unjustifiable commercial exploitation of the individual's fame or reputation.

11.3 Particular attention is drawn to the Merchandise Marks Act 17 of 1941.

## **12. Identification of advertisements**

12.1 Advertisements should be clearly distinguishable as such whatever their form and whatever the medium used. When an advertisement appears in a medium which contains news, editorial or programme matter it should be so designed, produced and presented that it will be readily recognised as an advertisement.

12.2 In print media, wherever there is any possibility of confusion, the material in question should be headed conspicuously with the words ADVERTISEMENT or ADVERTISEMENT SUPPLEMENT, and should be boxed in or otherwise distinguished from surrounding or accompanying editorial matter.

12.3 In Electronic Media particular care should be taken to clearly distinguish between programme content and advertising. Where there is a possibility of confusion, advertising should be clearly identified in a manner acceptable to the ARB.

12.4 For Social Media, the provisions of Appendix K should be considered and adhered to.

## **13. Safety**

Advertisements should not without reason, justifiable on educational or social grounds, contain any visual presentation or any description of dangerous practices or of situations which show a disregard for safety. Special care should be taken in advertisements directed towards or depicting children or young people.

## **14. Children**

### **14.1 *Children and safety***

#### 14.1.1 General principle

14.1.1.1 Advertisements addressed to or likely to influence children should not contain any statement or visual presentation which might result in harming them, mentally, morally, physically or emotionally.

14.1.1.2 The aim of the general principle is:

- that children should not be brought under the impression that it is acceptable and safe to be in certain surroundings; and
- that the depiction of a particular activity or circumstances in such a way would not have the likely effect that children would attempt to emulate it with the concomitant risk of physical, moral or mental harm or that the impression is created that it is acceptable to act in a certain manner.

14.1.2 Instances where the above principle may apply are, *inter alia*, the following:

An advertisement:

- which encourages children to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels or the like;
- where children appear to be unattended in street scenes unless they are obviously old enough to be responsible for their own safety, and where they are shown to be playing in the road unless it is clearly shown to be in a play area or other safe area, in street/traffic scene where they are seen to disobey traffic rules;
- where children are seen leaning dangerously out of windows or over bridges, or climbing dangerous cliffs;
- where small children are shown climbing up to take things from a table above their head or where medicines, disinfectants, antiseptics or caustic substances are shown within reach of children without close parental supervision, or where unsupervised children are shown using these products in any way;
- where children are being shown using matches or any gas, paraffin, petrol, mechanical or mains powered appliances in such a way which could lead to their suffering injury.

14.1.3 Possible justification of depicting children in dangerous situations would be:

- advertising promoting safety or safe practices; or
- clearly surrealistic activities which could be perceived as such by the child as likely viewer, would be excluded.

## 14.2 ***Children's credulity and lack of experience***

#### 14.2.1 General principles

Advertisements should not exploit the natural credulity of children or their lack of experience and should not strain their sense of loyalty.

#### 14.2.2 Instances where the above principle may apply are, *inter alia*, the following:

- for a commercial product or service which contains any appeal to children which suggests in any way that unless the children themselves buy or encourage other people to buy the product or service, they will be failing in some duty or lacking in loyalty toward some person or organisation, whether that person or organisation is the one making the appeal or not;
- which leads children to believe that if they do not own the product advertised they will be inferior in some way to other children or that they are liable to be held in contempt or ridicule for not owning it;
- dealing with the activities of a club where children meet is allowed provided there is a clear statement that the club is carefully supervised in the manner of the behaviour of the children and the company they keep and that there is no suggestion of the club being a secret society;
- offering a free gift, where the gift is not "free" in a literal sense, ie where it is available without a consideration. If a condition applies, ie "free with . . .". This fact should be stated as well as any other conditions that will apply if the free gift is not deliverable immediately if the main conditions, eg the purchase of something, is met. The gift should be portrayed in such a manner that its size can be determined by showing it in relation to some common object.

#### 14.3 ***Portrayal of children***

Children should not be portrayed as sexually appealing, provocative or in any manner which involves any form of sexual innuendo.

#### 14.4 ***Use of children in advertising***

In using children in advertising attention is drawn to the provisions of Sections 43, 44 and 55(6)(b) of the Basic Conditions of the Employment Act of 1997.

### **15. Guarantees**

15.1 "Guarantee" and "warranty" are used by advertisers in two

distinct senses:

to describe a formal written undertaking, often with legal force, to reimburse a purchaser for the cost of the product itself, or the cost of having it put right in the event of defects becoming apparent; and

more generally, as an alternative to "promise" and without any formal (particularly legal) obligation being intended to be understood.

Because the possibilities of confusion are considerable, the advertiser is under an obligation to be as clear as possible as to the sense in which he uses these words.

- 15.2 Advertisements should not contain any reference to "guarantee" or "warranty" which take away or diminish any rights which would otherwise be enjoyed by consumers; purport so to do; or may be understood by the consumer as so doing.
- 15.3 Where an advertisement expressly offers, in whatever form, a guarantee or warranty as to the quality, life, composition, origin, duration, etc. of any product, the full terms of that guarantee should be available in printed form for the consumer to inspect – and, normally, to retain – before he is committed to purchase.
- 15.4 Where a phrase such as "money back guarantee" is used, it will be assumed that a full refund of the purchase price of the product will be given to dissatisfied consumers, either throughout the reasonably anticipated life of the product or within such period as is clearly stated in the advertisement. On mail order advertisements see further Appendix D.
- 15.5 There is no objection to the use of "guarantee" etc. in a colloquial sense provided there is no likelihood of a consumer supposing that the advertiser in using the word is expressing a willingness to shoulder more than his purely legal obligations.

## **16. Money-back undertakings**

- 16.1 Neither "guarantee" nor "warranty" nor any word derived from either, should be used in an advertisement to describe or refer to an undertaking, the substance of which is merely to refund the price of a product within a brief trial period to dissatisfied purchasers. Where such an undertaking is given in an advertisement the time within which claims must be made by consumers should be clearly stated and should make due allowance for the time taken for delivery and return of the product.
- 16.2 ***Time limit on money-back offers***

Where an advertiser, in an advertisement, makes an offer to refund part of the purchase price of a product under certain conditions, the period for which the offer is valid shall be stipulated in the advertisement.

## **17. Use of the word "new" in advertising**

- 17.1 The word "new" or words implying "new" may be used in all media, packaging, posters, billboards, etc for any entirely new product or service marketed or sold during a given 12-month period.
- 17.2 It may also be used to advertise any change or improvement to a product, service or package, provided that the change or improvement is material and can be substantiated and defined.
- 17.3 The maximum use of the word "new" or words implying "new" in the above prescribed context shall be confined to a 12-month period calculated from date of proven first usage in an advertisement. In exceptional circumstances, the ARB may agree to an extension of the 12-month period.
- 17.4 To avoid consumer confusion:
  - 17.4.1 In electronic, print and outdoor media, the "new" message must first be exposed no later than 90 days after "date of proven first usage" of the product/service to which the "new" message applies. Thereafter, the message may be exposed continuously or intermittently for a period not exceeding 12 months from the "date of proven first usage" of the product/service.
  - 17.4.2 On packaging of physical products, the "new" message should be applied to the package from the "date of proven first usage" and should be used continuously for the period that the advertiser wishes to expose the "new" message but for no more than 12 months from the date of proven first usage" of the product.
- 17.5 The provisions of clauses 17.1, 17.2, 17.3 and 17.4 above shall apply, *mutatis mutandis*, to advertisements and to packaging announcing any change or improvement in a product, service or package without the word "new" being used.

## **18. Use of animals in advertising**

Advertisers must satisfy the ARB that no animal is caused pain or distress in the course of making any advertisement and no advertisement may contain anything that might reasonably be thought to encourage or condone cruelty or irresponsible behaviour towards animals.

The use of animals in circumstances other than "natural" is subject to independent supervision and/or approval by Animal Welfare Organisations such as the Council of the SPCA or Animal Anti-Cruelty League.

## **19. Pricing policy**

When any indication of cost is given in an advertisement regard should be had for the following provisions:

### 19.1 **Quotation**

The selling price at which the goods will be sold to the purchaser against immediate payment must be quoted in full.

### 19.2 **Inclusiveness**

Such selling price must include all necessary or incidental costs without which the product cannot or may not be purchased, such as a deposit for a container. Where impracticable to include such costs in the quoted price the consumers' liability to pay such costs must be stated prominently and in a font size not less than that of half the purchase price. (Refer to Clause 30 (Cellular telephones) of Section III.)

#### **The advertised price for travel packages must clearly communicate:**

19.2.1 Where the price may fluctuate due to currency fluctuation or other external factors the nature and possible extent of this fluctuation.

19.2.2 Where the advertised price is only available through a specific channel (e.g. on a specific airline).

19.2.3 Validity of sales period if seasonal rates apply.

19.2.4 Where compulsory payments to a third party cannot be collected by the advertiser in advance of the trip.

19.2.5 Airline and Travel Agency price advertising should mention any obligation service fee or administration fee payable by the consumer.

### 19.3 **Clarity**

If reference is made in an advertisement to more than one product, or more than one version of a single product, it should be clear to which product or version any quoted price relates. If a product is illustrated, and a price quoted in conjunction with the illustration, advertisers should ensure that what is illustrated can be purchased for the price shown.

### 19.4 **VAT**

Attention is drawn to the provisions of Sections 64 and 65 of the Value-Added Tax Act 89 of 1991.