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# CODE OF ADVERTISING PRACTICE v2021.1

## Preface

1. The Advertising Regulatory Board (also known as the ARB) is an independent body set up and paid for by the marketing communication industry to ensure that its system of self-regulation works in the public interest.
2. The ARB's objects, visions, missions and powers (including those of its various committees) are outlined in the Memorandum of Incorporation (the Mol).
3. The ARB has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order a ruling against the non-member or sanction it. The ARB is, however, entitled to consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published, to determine on behalf of its members whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.
4. The Code of Advertising Practice ("the Code") is the guiding document of the ARB. The Code is based upon the International Code of Advertising Practice, prepared by the International Chamber of Commerce. This is internationally accepted as the basis for domestic systems of self-regulation, it forms the foundation of this Code in which the basic principles laid down in the International Code are related to the particular circumstances of advertising in South Africa. The Code is drawn up by the ARB with the participation of representatives of the marketing communication industry, and is amended from time to time to meet the changing needs both of the industry and of our society.
5. This Code is supplemented by individual codes which are determined by the various member organizations or industry stakeholders, or negotiated with governmental institutions. These individual codes are reflected in the Appendices to the Code. All such codes conform to the general principles laid down by this Code and differ only in detail where the individual needs are to be met.
6. Members of the ARB are required to adhere to this Code. The following organizations are members of the ARB:
  - 6.1. Association for Communication and Advertising
  - 6.2. Marketing Association of South Africa
  - 6.3. IAB South Africa
  - 6.4. National Association of Broadcasters
  - 6.5. Pet Food Industry Association of Southern Africa
  - 6.6. AWARE.ORG
7. All advertising on electronic broadcast media is subject to the Electronic Communications Act No. 36 of 2005. In terms of this Act all electronic broadcasters must adhere to the Code as determined and administered by the ARB.

8. The Code is administered by the Directorate and ARB Committees drawn from the constituent member bodies and, where applicable, consumer organizations. Powers are vested in the Directorate and ARB Committees, as set out in the MoI and the Code.
9. The interpretation of the Code is vested in the Directorate and ARB Committees.
10. The ARB maintains, where possible, close contact with government departments, consumer organizations, relevant NGOs and trade associations.
11. Advertising is a service to the public and, as such, should be informative, factual, honest, decent and its content should not violate any of the laws of the country. All entities bound by the Code must neither prepare nor accept any advertising which conflicts with the Code and must withdraw any advertising which has subsequently been deemed to be unacceptable by the ARB, Advertising Appeals Committee or Final Appeal Committee.

## Section I – Introduction

### 1. Preamble:

This clause is for introductory purpose only and in terms of which complaints cannot be lodged.

- 1.1. All advertisements should be legal, decent, honest and truthful.
- 1.2. All advertisements should be prepared with a sense of responsibility to the consumer.
- 1.3. All advertisements should conform to the principles of fair competition in business.
- 1.4. No advertisement should bring advertising into disrepute or reduce confidence in advertising as a service to industry and to the public.

### 2. Scope

- 2.1. **Commercial advertising** - The primary object of this Code is the regulation of commercial advertising. It applies therefore (except as expressly provided further on) to all advertisements for the supply of goods or services or the provision of facilities by way of trade, and also to advertisements other than those for specific products which are placed in the course of trade by or on behalf of any trader.
- 2.2. **Non-commercial advertising** - In addition the Code applies, so far as is appropriate, to advertisements by government departments and agencies and to those by other non-commercial organisations and individuals.
- 2.3. **Political advertising** - The provisions of paragraphs 2.1 and 2.2 above must not be interpreted to bring political advertisements into the sphere of the ARB's functions. As in the case of any advertisement, the individual medium must determine whether any political advertisement presented to it is acceptable.
- 2.4. **Controversial subjects/Advocacy advertising** - To the extent that any advertisement:
  - 2.4.1. expresses an opinion on a matter which is the subject of controversy; and

- 2.4.2. that controversy involves issues within the areas, broadly defined, of public policy and practice, then that opinion will not be subject to the provisions of the Code relating to misleading claims except that All advertisements which contain such controversial statements should:
- 2.4.3. be readily recognisable as advertisements;
- 2.4.4. cause no confusion as to the identity or status of the advertiser;
- 2.4.5. whenever such information is not readily available state the advertiser's address and telephone number.

### **3. Interpretation**

- 3.1. This Code is to be applied in the spirit, as well as in the letter.
- 3.2. In assessing an advertisement's conformity to the terms of this Code, the primary test applied will be that of the probable impact of the advertisement as a whole upon those who are likely to see or hear it. Due regard will be paid to each part of its contents, visual and aural, and to the nature of the medium through which it is conveyed.
- 3.3. In assessing the impact of the advertisement, the ARB may consider, inter alia:
  - 3.3.1. the surrounding circumstances;
  - 3.3.2. that the language used in the advertisement as a whole may justify departure from the literal meaning thereof; and
  - 3.3.3. survey data, conforming to the requirements of Clause 4.1 of Section II, indicating the probable impact as a whole upon those who are likely to see or hear it.
- 3.4. The ARB will consider public sensitivity and social concern in interpreting advertising.
- 3.5. In advertising aimed at, featuring or likely to influence children, it should be realized that because of the credulity and lack of experience of a child, the interpretation of the Code as embodied in Section I, Clause 3 will be interpreted narrowly, as children would be likely to attach a more literal meaning to advertising. In the interpretation of this Clause, the word "children" will also include "young people".
- 3.6. When objections in respect of advertisements that were amended resulting from an ARB ruling are received, both the original and amended version will be taken into consideration.
- 3.7. Where the overall impression of the advertisement as a whole is in doubt, the ARB may, at the cost of the advertiser concerned, call for a consumer reaction test by independent research, acceptable to the ARB.
- 3.8. The Code binds advertisers, advertising practitioners and media owners.
- 3.9. In determining whether an advertisement is in breach of the provisions of the Code, it is not the quantity of complaints that is determinative, but the validity of the complaints.

- 3.10. The Code gives effect and is subject to the Constitution of the Republic of South Africa, 1996.
- 3.11. In so far as there is a conflict between the wording of the hard copy of the Code published by LexisNexis and the online version of the Code published at [www.arb.org.za](http://www.arb.org.za), the online version will prevail.

#### 4. Definitions

In this Code, unless the context otherwise indicates

- 4.1. “Advertisement” means any visual or aural communication, representation, reference or notification of any kind
  - 4.1.1. which is intended to promote the sale, leasing or use of any goods or services; or
  - 4.1.2. which appeals for or promotes the support of any cause. Promotional content of display material, menus, labels and packaging also fall within the definition. Editorial material is not an advertisement, unless it is editorial for which consideration has been given or received. The word “advertisement” applies to published advertising wherever it may appear. It does not apply to editorial or programming publicity.
- 4.2. “Advertising Regulatory Board” or “ARB ” means the Advertising Regulatory Board, a non-profit company registered according to the company laws of South Africa, which carries on business as a self-regulatory body in the advertising industry. “ARB” includes the Directorate, Advertising Appeals Committee, and Final Appeal Committee.
- 4.3. “Advertising Appeals Committee” is constituted in terms of Clause 13 of the Mol, and means the committee adjudicating on appeals or referred complaints in terms of Clause 9 of the Procedural Guide.
- 4.4. “Appeal”
  - 4.4.1. “Appeal” means an appeal against a ruling of the ARB Directorate or the Advertising Appeals Committee.
  - 4.4.2. “First Appeal” means an appeal against a ruling made by the ARB Directorate.
  - 4.4.3. “Final Appeal” means an appeal against a ruling made by the Advertising Appeals Committee.
- 4.5. “Advertiser” means the entity, commercial or otherwise, at whose instance the advertising appears, or stands to benefit commercially from the advertising.
- 4.6. “ARB Committee/Committees” collectively describes the Advertising Appeals Committee, and the Final Appeal Committee.
- 4.7. “Broadcast medium” means the holder of a broadcasting license granted within the meaning of the Electronic Communications Act No. 36 of 2005.

- 4.8. "Children" means persons who are under the age of 18, or who are portrayed as, or who appear to be, under the age of 18.
- 4.9. "The Code" means the Code of Advertising Practice, as amended by the ARB from time to time, and includes all appendices to the Code and the Procedural Guide.
- 4.10. "Competitor complaints" means complaints lodged by or on behalf of a commercial entity or individual with a commercial interest concerning compliance with the Code by a commercial entity.
- 4.11. "Consumer" refers to any person who is likely to be reached by or exposed to an advertisement. This includes an end consumer, user or trade customer.
- 4.12. "Consumer complaints" means complaints lodged by members of the public or organizations regarding consumer related matters, concerning compliance with the Code by an advertisement or advertiser.
- 4.13. "Day" means any day but excludes Saturdays, Sundays and national holidays as well as any period during which the ARB offices are completely closed, and in the calculation of a period of days as prescribed by the Code or as determined by the ARB, day will have this prescribed meaning.
- 4.14. "The Directorate" means the CEO and the staff of the ARB, acting individually or collectively.
- 4.15. "Discrimination" means:
  - 4.15.1. advertising that directly or indirectly imposes burdens, obligations or disadvantages on, or withholds benefits, opportunities or advantages from a particular person or group on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or any other analogous ground.
  - 4.15.2. advertising where a person or group is negatively stereotyped or portrayed in a manner that exploits or demeans, or restricts and entrenches their role in society.
  - 4.15.3. And "discriminate" and "discriminatory" have corresponding meanings.
- 4.16. "Electronic media" means advertising published by way of electronic means, and includes, inter alia, broadcast media.
- 4.17. "Final Appeal Committee" is constituted in terms of Clause 14 of the Mol, and means the committee adjudicating on appeals in terms of Clause 12 of the Procedural Guide.
- 4.18. "Gender stereotyping" means advertising that portrays a person or persons of a certain gender in a manner that exploits, objectifies or demeans.
- 4.19. "Members" means the organizations, institutions and entities which are members of the ARB in good standing at any given time. Clause 3 of the Preface to the Code contains a list of members of the ARB. An organization, institution or entity that has joined the ARB but that has not yet been included in Clause 3 shall, nevertheless, be considered to be a member. If the membership of an organization, institution or entity has been terminated for any reason, that body is

not a member notwithstanding the fact that its name may not yet have been removed from Clause 3.

- 4.20. "Memorandum of Incorporation" or 'Moi" means the memorandum of incorporation of the ARB.
- 4.21. "Negative Gender Portrayal" means advertising that portrays a person or persons of a certain gender in a manner that restricts and entrenches the role of persons of such gender in society or sections of society.
- 4.22. "Parties" means the entities between whom a dispute has arisen, i.e. a complainant or complainants and an advertiser, or advertisers responsible for creating the disputed advertising. An advertiser who is not a member of the ARB will be invited to partake in ARB proceedings voluntarily, but may decline or ignore this invitation if it so chooses. The Directorate and/or any of ARB's Committees shall not be a party to the dispute before any of ARB's Committee(s).
- 4.23. "Product" includes goods, services, activities and facilities.
- 4.24. "Retailer" means an entity carrying manufacturers' goods, and that acts as an intermediary between the public and manufacturers.
- 4.25. "Scientific substantiation" means substantiation based on statistically valid data, employing a validated, proven scientific method and applicable to the claim being made.
- 4.26. "Survey data" means a method or procedure for collecting information from a sample of people (i.e. primary data) by asking them questions.

## **5. Confidentiality**

- 5.1. The ARB will refuse to disclose any record, document or other information, whether in respect of its own proceedings or otherwise in its possession, where such record, document or information contains
  - 5.1.1. trade secrets of any party;
  - 5.1.2. financial, commercial, scientific or technical information, other than trade secrets, of any party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that party; or
  - 5.1.3. information supplied in confidence by a party, the disclosure of which could reasonably be expected
    - 5.1.3.1. to put that party at a disadvantage in contractual or other negotiations; or
    - 5.1.3.2. to prejudice that party in a commercial competition.
- 5.2. The ARB will refuse a request for access to a record, document or other information if its disclosure would constitute an action for breach of a duty of confidence owed in terms of an agreement.

## **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 offense. 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**

- 2.1. 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. *[Intentionally blank – a legacy numbering issue]*
- 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;
    - 4.2.2.1. it is clear what is being expressed is an opinion;
    - 4.2.2.2. 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 kilometers 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;
  - 7.1.7.1. the significance of the facts or criteria used;
  - 7.1.7.2. the relevance and representativeness of the facts or criteria used;
  - 7.1.7.3. 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 adversely affect 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 labeling 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 (e.g. 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:
      - 14.1.1.2.1. that children should not be brought under the impression that it is acceptable and safe to be in certain surroundings; and
      - 14.1.1.2.2. 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:
    - 14.1.2.1. which encourages children to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels or the like;
    - 14.1.2.2. 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

- 14.1.2.3. 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;
        - 14.1.2.4. 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;
        - 14.1.2.5. 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:
        - 14.1.3.1. advertising promoting safety or safe practices; or
        - 14.1.3.2. 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:
    - 14.2.2.1. 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 organization, whether that person or organization is the one making the appeal or not;
    - 14.2.2.2. 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;
    - 14.2.2.3. 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 behavior of the children and the company they keep and that there is no suggestion of the club being a secret society;
    - 14.2.2.4. offering a free gift, where the gift is not "free" in a literal sense, i.e. where it is available without a consideration. If a condition applies, i.e. "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, e.g. 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 the 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 behavior 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 15 (Cellular telephones and mobile networks) 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.

## **Section III – Specific Categories of advertising**

### **1. Charitable causes**

**1.1.** Advertisements claiming that the purchase of a product will support some charitable or good cause are acceptable provided the following details are included in the advertisement;

- 1.1.1. amount of donation;
- 1.1.2. name of charity or good cause;
- 1.1.3. duration of the campaign.

## **2. Commemorative and other items produced in limited editions**

- 2.1.** The number of articles to be produced in any limited edition should be stated in all advertising and promotional material containing any claim that the edition is limited. Where an edition is limited by the number of persons applying within a given period, it should be described as an edition limited by time, and the advertiser should offer to inform all purchasers of the number of articles eventually produced.
- 2.2.** Advertisements for articles made of precious metal should state the amount and the fineness of the metal involved in the pieces on offer.
- 2.3.** Advertisements which make claims about the investment potential of the articles on sale should also make it clear that there can be no guarantee of any future increase in value.

## **3. Collectibles and limited editions**

- 3.1.** A “collectible” is an item offered not, or not solely, on the basis of its practical utility but on the basis of its claimed artistic merit, rarity and/or potential for increase in value.
- 3.2.** Great care should be taken in the advertising of “collectibles” so as to avoid prospective purchasers being misled about the scarcity or about the current or future value of the items offered.
- 3.3.** In particular, advertisers are under an obligation not to exploit any lack of knowledge among the general public as to the nature and extent of the market for items of the kind
- 3.4.** advertised or about the criteria for assessment employed within the market. (See also Section III 2.3.)
- 3.5.** The two most common methods of limitation imposed upon special editions of articles are by pre-announced number, or by application or subscription within a stated period of time. Where an advertiser claims either directly or by implication that an edition of any item is subject to a limitation of any kind, the nature of the limitation must be immediately evident from the description used in the advertising material.

## **4. Competitions**

### **4.1. General**

- 4.1.1. The ARB may, in respect of any advertisement for a competition, require that substantiation, in the form of acceptable legal advice that the competition is legal, be furnished.
- 4.1.2. The value of prizes referred to in advertising must include VAT.

### **4.2. Fund-raising competitions**

- 4.2.1. Advertisements for competitions intended to collect contributions from the public or raise funds, or drawing attention to such competitions, shall only be published if
  - 4.2.1.1. the competition conforms to the relevant legislation;
  - 4.2.1.2. the prizes offered are already available or guaranteed;
  - 4.2.1.3. the prizes will be awarded irrespective of the number of entries received and that the competition will not be canceled once the advertisement has been published;
  - 4.2.1.4. A closing date for entries is stipulated as well as a date by which the name of the prize-winners will be published in at least one major regional or national publication.

## **5. Educational courses**

- 5.1. Advertisements for educational courses should not mislead as to the status or extent of recognition of the qualification that can be obtained.
- 5.2. Descriptions such as “recognised”, “officially approved” or words having or implying similar meaning shall not be used without qualification unless related to qualifications recognised by;
  - 5.2.1. bodies or Institutions such as Matriculation Boards, Universities, Technikons etc; and
  - 5.2.2. bodies or Professional Institutions which have the credentials to do so and are representative of a particular field of endeavor. In all other cases where the word “recognised”, “officially approved” or similar words which imply status or extent of recognition are used in an advertisement they shall be followed, wherever they appear and in the same print and type size, by an unambiguous description of the bodies that have granted such recognition. Where international recognition is claimed the rules stated above shall also apply and it will not be sufficient to claim that the course is also offered in other countries. It will be incumbent on the advertisers to furnish the ARB with acceptable evidence in support of these claims if required.
- 5.3. Unrecognized degrees or qualifications should not be offered nor should the value of recognised degrees be misrepresented.

- 5.4.** The Correspondence Colleges Act 59 of 1965 and the regulations promulgated thereunder must be consulted with the preparation of advertisements for correspondence colleges.

## **6. Financial advertising**

### **6.1. Financial advertising**

- 6.1.1. Advertisements addressed to the general public for capital or financial products or services or financial information should, in addition to scrupulously observing the other provisions of this Code, so far as they are relevant, take special care to ensure that the public are fully aware of the nature of any commitment into which they may enter as a result of responding to the advertisement.
- 6.1.2. In this connection the advertiser should remember that the complexities of finance may well be beyond many of those to whom the opportunities they offer appeal, and that, therefore, the advertiser bears a particular responsibility to ensure that advertisements in no sense take advantage, wittingly or not, of the lack of experience or knowledge or the credulity of those to whose attention it is likely to come.

- 6.2.** Business opportunities - Advertisements covered by clauses 6.2.1, 6.2.2 and 6.2.3 must reflect the full physical address of the advertiser or the Micro Finance Regulatory Council Registration Number as well as the advertiser's telephone number.

#### **6.2.1. Self-employment opportunities**

- 6.2.1.1. Advertisements for self-employment opportunities may not be phrased, in a manner which is likely to lead to the opportunity being confused with part time or normal employment.
- 6.2.1.2. Advertisements offering instructional courses should not contain misleading promises of employment nor exaggerate the opportunities of employment or remuneration claimed to be open to those taking such courses.
- 6.2.1.3. Advertisements for self-employment opportunities may not require any money to be sent prior to full information about the schemes being supplied to the consumer.
- 6.2.1.4. If a finance scheme or package is offered which can readily be identified or is not clearly set out in the advertisement, full details of the scheme shall be furnished to the medium concerned before the advertisement is published.
- 6.2.1.5. If an advertisement is placed by an agent its contact details, and the name of the principal should be stated in the advertisement.
- 6.2.1.6. Advertisements shall not require those interested to send money for further details (even for postage cost though requests for a stamped self-addressed envelope is acceptable).

- 6.2.2. Financial assistance and debt consolidation
  - 6.2.2.1. Advertisements offering loans or to consolidate debts must state whether the advertiser is a moneylender or broker for a moneylender.
  - 6.2.2.2. The Minister of Trade and Industry in terms of Act 71 of 1988 declared that it is illegal to charge an upfront fee when a promise to obtain a loan on behalf of a client is made. Refer to Government Gazette No 777 of 18 August 1995.
- 6.2.3. Brokerage of installment take-overs
  - 6.2.3.1. Advertisements by brokers offering to arrange installment take-overs or delegations, without the consent of the financial institution involved, will not be permitted. Advertisers wishing to offer such services will be required to provide proof that such consent has been given before the advertisement is placed.
- 6.3.** Employment training and courses of instruction
  - 6.3.1. Advertisements for situations vacant
    - 6.3.1.1. must be in respect of genuine vacancies the existence of which can be fully substantiated if required by the ARB.
    - 6.3.1.2. must not misrepresent either working or living conditions, or nett remuneration after mandatory deductions.
  - 6.3.2. The preceding rule does not prevent the offer for sale of directories and the like, provided the advertisement is clear as to what is offered.
  - 6.3.3. Advertisements offering training or other instruction courses shall
    - 6.3.3.1. make no unconditional offers of further employment (whether or not by the advertiser) or of future remuneration for those taking the course;
    - 6.3.3.2. if appropriate, make clear the actual duration of the course and the level of prior attainment needed to derive benefit from it;
    - 6.3.3.3. not offer unrecognised degrees or qualifications nor misrepresent the value of certificates of competency or other forms or recognition of due completion of the courses or training offered;
    - 6.3.3.4. advertisements offering correspondence courses may only be placed by colleges registered with the Correspondence Colleges Council of SA; and
    - 6.3.3.5. the Correspondence Colleges Act 59 of 1965 and the regulations promulgated thereunder must be consulted with the preparation of advertisements for correspondence colleges.
- 6.4.** Work-from-home schemes
  - 6.4.1. Advertisements for schemes in which a person is invited to make articles at home for remuneration shall;
    - 6.4.1.1. contain an adequate description of the work to be done and the conditions imposed on the above worker;
    - 6.4.1.2. clarify whether the home-worker is to be employed by the advertiser, or will be self-employed; and

- 6.4.1.3. not indicate what level of earnings should be attainable unless acceptable substantiation is available.
  - 6.4.2. If the advertiser levies a charge for starter kits or components, or offers to buy back the goods produced by the home-workers, relevant information should be included in the advertisement, particularly as to any limitations which may affect the homemaker's decision to accept the advertiser's offer.
- 6.5.** Interest rates payable to bank customers
  - 6.5.1. Any reference to the interest rates applicable to a financial product must always be directly followed by the description "per annum" or "per year".

## **7. Franchise schemes**

- 7.1.** Franchise scheme means a scheme where a company, firm or individual, known as a "franchisor", gives to a person, known as a "franchisee", the right, often exclusive, to sell specified products or other specified services in return for an initial payment, a percentage of the profits (or a royalty), or any other consideration.
- 7.2.** Advertisements by franchisors seeking franchisees are not acceptable unless the franchisor has provided all the information required by media in advance of publication. Such advertisement should not mislead, directly or by implication, as to the support available or the likely reward for the investment and work required. For the Franchisor or the Franchisor's agent (if any) the advertisement must state:
  - 7.2.1. name of senior executive;
  - 7.2.2. full title of the company; and
  - 7.2.3. the street address of the company.
  - 7.2.4. These requirements apply to both display and "smalls" advertisements.

## **8. Furniture advertising**

- 8.1.** Advertisements for suites of furniture which depict items additional to those offered, but which are not included in the price, shall clearly state that these items are excluded.
- 8.2.** In particular advertisements for bedroom suites should, when a base and mattress are depicted in the advertisement but are not included in the price, clearly state that these items are excluded.

## **9. Imported products**

- 9.1.** No advertisement shall give the impression that a product is imported when it is, in fact, manufactured in South Africa. Similarly, no product may create the impression that it is manufactured in South Africa when it is in fact imported.

## **10. Inclusive tours**

- 10.1.** Advertisements for inclusive tours should be so framed as to avoid disappointment to the consumer. In the interests of such protection the medium concerned may determine and require publication of information covering;
- 10.1.1. the firm or organization responsible for the tour;
  - 10.1.2. the means of transport, whether charter or scheduled (including whenever possible name of carrier, type and class of aircraft or other means of transport);
  - 10.1.3. destination and itinerary;
  - 10.1.4. exact duration of the tour and of the stay at each locality;
  - 10.1.5. the type and standard of accommodation and meal facilities offered;
  - 10.1.6. any special arrangements offered (entertainments, sightseeing, etc);
  - 10.1.7. the total price of the tour as advertised (at least minimum and maximum prices) and those items which are included therein (airport taxes and other fiscal charges, incidental transportation, portage, tips, etc);
  - 10.1.8. cancellation conditions;
  - 10.1.9. The number of days indicated in the traveling time include both the date of departure and arrival.

## **11. Motor vehicle advertising**

- 11.1.** It is accepted that standardized and controlled fuel consumption testing is applied across the motor vehicle sector in a manner that does not typically represent real-world driving conditions. When advertisers claim fuel consumption figures which were obtained using such methodologies and results, it should be made patently clear that such standardized, controlled testing was used, and that the claimed consumption does not necessarily represent real-world consumption, but is quoted for comparison purposes only.
- 11.2.** Advertisements making claims of successes in motor sport shall not be submitted for publication until the claims have been approved by AA Motorsport.
- 11.3.** Advertisements offering motor vehicles on a lease or rental basis should include full details on the payments to be made and the basis on which the residual value will be determined if ownership of the vehicle is obtained at the end of the agreement. The price stated in such advertising must be a true reflection of the actual price to be paid by the lessee or hirer.

## **12. Property advertising**

**12.1.** Information furnished - Advertisements for fixed property, whether for sale or for rent, should not mislead or exaggerate on such matters as;

- 12.1.1. the land itself and any buildings erected or to be erected thereon;
- 12.1.2. the size of the land, availability of services, fixtures and amenities in the buildings and the suburb or location;
- 12.1.3. the legal title and formalities;
- 12.1.4. rights and servitudes of any kind;
- 12.1.5. local authority and town planning requirements;
- 12.1.6. taxes, rates and other duties;
- 12.1.7. the price, terms of payments and loan facilities;
- 12.1.8. claiming extraordinary conditions of sale like "deceased estate", "owner transferred", "owner going overseas", "owner already bought elsewhere";
- 12.1.9. making reference to Municipal valuation, Building Society valuation, cost price or replacement value;
- 12.1.10. mentioning the name of a specific architect, builder or designer.

**12.2.** Restrictions on transfer

- 12.2.1. When immediate transfer of the property into the name of the purchaser is not possible, this should be clearly mentioned in the advertisement in specific terms i.e. "Transfer available on proclamation" or "Transfer available on opening of a Sectional Titles Register".
- 12.2.2. On no account should the advertiser estimate the time required for such transfer to become available.

**12.3.** Estate agents

- 12.3.1. No estate agent shall by means of an advertisement, canvass clients or offer property for sale or to let unless he, in that advertisement, publishes his name and the fact that he is an estate agent, and if applicable, the name of his employer or the estate agent he represents. Refer to the Estate Agent Act 112 of 1976.

## **13. Smoking deterrents**

**13.1.** No advertisement will be accepted for any smoking deterrent unless the advertiser makes clear that the product offers only assistance and not a cure, and that its success will be dependent upon the willpower of the user.

## **14. Exploitation of superstition or beliefs**

**14.1.** Advertisements for products or treatments with unproven supernatural properties including those for achieving health, wealth or happiness should only appear in

media where the following disclaimer clearly appears, legibly and boldly. The claims made [on this page/in this programme/ on this poster/ on this billboard] have not been scientifically proven. The advertised outcomes claimed are not guaranteed.

**14.2.** The onus for compliance with this clause lies both with the advertiser and the medium carrying the advertising.

**14.3.** The following media specific requirements apply:

14.3.1. In the case of print, the disclaimer will appear in a frame around either the advertisement or the page that carries the advertisement.

14.3.2. In the case of television, the disclaimer will appear on a clearly legible banner for the duration of the commercial.

14.3.3. In the case of radio, the disclaimer must be read before the commercial.

14.3.4. In the case of out-of-home, the disclaimer will appear along the bottom of the billboard or poster in a clearly legible format.

14.3.5. In media that is not specified, the disclaimer must be applied in a reasonable manner that would ensure that the reasonable consumer is aware of it.

## **15. Cellular telephones and mobile networks**

**15.1.** Advertisements for post-paid cellular telephone services in all media must prominently state;

15.1.1. the minimum total monthly costs at which that contract can be entered into; and

15.1.2. the time period for which the contract is valid.

**15.2.** If, at the time of submitting an advertisement for publication, the advertiser is aware that the minimum total monthly cost will vary during any period of the contract period by other than the regulated tariff increases, the following must be stated in the advertisement, all with equal prominence -

15.2.1. the initial minimum total monthly cost and time period for which it is valid; and

15.2.2. the subsequent minimum total monthly cost and time period for which it is valid.

**15.3.** Any direct or indirect claims of Mobile Network superiority must be properly couched to ensure transparency and avoid ambiguity. In particular, when Mobile Network superiority is being claimed or implied, such claims should be phrased in a manner that immediately alerts consumers as to the nature of the superiority being claimed. By way of illustration: Claim being made: "South Africa's favorite network": Because "favorite" presupposes subjective opinion, consumers are immediately alerted to the true nature and intention of the claim. Assuming adequate evidence exists, this claim would be permissible. Claim being made: "South Africa's best network" Because "best" could incorporate either objectively proven superiority or subjective opinion, the claim requires adequate qualification

to be incorporated into the claim. Possible solutions would be: “South Africa’s best loved network” (subjective context). “South Africa’s best performing network” “South Africa’s best network for downloads” (objective context).

- 15.3.1. When parity or superiority is claimed or implied in relation to real-world network performance, the following mandatory criteria apply:
  - 15.3.1.1. The advertiser must produce at least one independent report or benchmarking study conducted by an authority that complies with the provisions of Clause 4.1 of Section II (Substantiation).
  - 15.3.1.2. This independent report or benchmarking study must measure actual network performance across all South African Networks.
  - 15.3.1.3. Modeled or simulation-based reports will not be considered acceptable.
  - 15.3.1.4. The independent substantiating entity referred to above must confirm that the advertiser had no influence over the methodology and analysis adopted during the benchmarking exercise.
- 15.3.2. when parity or superiority is claimed or implied in relation to subjective measures such as, inter alia, consumer preference, such claims should be phrased in a manner that provides instant clarity. Words such as “voted the best” or “most liked” are recommended for this purpose. Such claims would remain subject to substantiation as per Clause 4.1 of Section II of the Code.
- 15.3.3. it will not be acceptable to provide clarity or context by means of body copy or disclaimers when the initial claim is not suitably qualified or contextualized.
- 15.3.4. In the event that the entity relied on to substantiate such claims as contemplated in clauses 15.3.1 and 15.3.2 above issues a new report, affected advertisers must remove all redundant claims within the deadlines stipulated in the Code. The requirements of Clause 15.3.4 will not apply if the affected advertiser retains its position of superiority / parity in the newest report.

## **16. Non-availability of advertised products**

- 16.1. Advertisements should not be submitted for publication unless the advertiser has reasonable grounds for believing that it can supply any demand likely to be created by the advertising.
- 16.2. In particular, no attempt should be made to use the advertising of unavailable or non-existent products as a means of assessing likely public demand.

## **17. Crypto Assets**

- 17.1. Advertisements must expressly and clearly state that investing in crypto assets may result in the loss of capital as the value is variable and can go up as well as down.
- 17.2. The wording should be, or should communicate the same, as the following example: “Investing in Crypto assets may result in the loss of capital.”
- 17.3. Advertisements must comply with Clauses 2 and 4.2.1 of Section II In particular:
  - 17.3.1. The overall message of the advertisement must not contradict the warning statements set out in Clause 17.1 above.
  - 17.3.2. An advertisement for a particular crypto asset service or product must explain the relevant product or service in a way that is easily understandable for the intended target audience.
  - 17.3.3. Advertisements must give a balanced message about the returns, features, benefits and risks associated with the product or service.
  - 17.3.4. Rates of return, projections and forecasts must be supported by adequate substantiation that complies with the requirements of Clause 4.1 of Section II. It must be communicated how any rate of return, projection or forecast is calculated and what significant conditions apply.
  - 17.3.5. Information presented about past performance must make it clear that the past performance is not indicative of future performance. Any historical period or past performance should not be presented in such a way that it creates a favorable impression of the advertised product or service.
- 17.4. Advertisements by crypto asset service providers who are not registered credit providers should not encourage the purchase of crypto assets on credit. This does not preclude advertisements providing information about the payment methods offered by crypto asset service providers.
- 17.5. Where influencers or ambassadors are used to promote a crypto asset product or service, the requirements of Appendix K must be complied with. In particular, the influencer or ambassador may share factual information only. Influencers and ambassadors may not offer advice on trading or investing in crypto assets and may not promise benefits or returns.

## **18. Intermediation Services**

- 18.1. On intermediation services, search platforms and any similar digital platforms, where businesses pay for a particular rank position, or a boost in their ranking, on the search results page, this constitutes a form of advertising and must be clearly identifiable to the average user through appropriate labels such as: 12.5.1 ‘Sponsored’, 12.5.2 ‘Promoted’ or 12.5.3 ‘Ad’.

## **Section IV - Identification of editorial style print advertisements**

1. There is an obligation on all concerned with the preparation and/or publication of a print advertisement to ensure that anyone who looks at the advertisement is able to see, without reading it closely, that it is an advertisement and not editorial matter.
2. In the case of a single advertisement occupying a whole page or part of a page, the following guidelines are laid down;
  - 2.1. The word ADVERTISEMENT should stand alone at the head of the advertisement in such size and weight of type as to be easily seen.
  - 2.2. If the advertisement occupies less than half a page, it should be boxed in completely; or if half-page or more, separated from any adjacent matter by a distinct border.
  - 2.3. Particular care should be taken wherever the size and style of type in the advertisement is the same as, or closely resembles that of the editorial matter.
3. Where paid-for space is in the style of editorial, whether paid for by the same or different advertisers, particular care is needed to ensure that no part can be mistaken for editorial matter.
4. As a general rule, where an advertisement or series of advertisements paid for by the same organisation or by organisations under the same control extends over more than one page, the word ADVERTISE- MENT should be printed at the head of each page in such a way that a reader cannot fail to see it. Similarly, where a supplement is paid for wholly by an advertiser or advertisers, it should normally be headed in bold letters with the words ADVERTISING SUPPLEMENT, and carry the word(s) ADVERTISEMENT or ADVERTISING SUPPLE- MENT at the head of each page.
5. No guidance can cover every case. It may not be enough merely to follow to the letter what is said above. It may also be necessary to look again at each advertisement to see whether it is clearly distinguishable from the editorial content of the publication in which it appears and if not to take steps to ensure that it is.

## **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 to the ARB.
  - 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, and the ARB will not be entitled to add additional sections of the Code it may consider relevant to the complaint. Should the complainant not identify the relevant sections of the Code, 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, or a reasonably clear copy thereof, must be attached, if possible. Should the Complainant not be able to provide a copy, it must provide details of the advertiser, including (where relevant) a URL, the medium, a description of the advertisement 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.
  - 5.2.1. Documentation which does not meet or follow the above criteria and processes may, at the discretion of the ARB, not be regarded as confidential.
  - 5.2.2. Parties are alerted that all correspondence lodged 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.
- 5.3. 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.
- 5.4. 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 summarizing and/or clarifying issues only, and should be limited to such purpose.
- 6.4. The legal principle of *audi alteram partem* remains essential in all ARB proceedings. The opportunity to make representations at ARB hearings may not be exploited to add new arguments or new evidence not previously canvassed or submitted as part of a complaint or response. The ARB and its relevant committees retains sole discretion to reject any representations made in terms of Clause 6, should such submissions prejudice either party unfairly by ignoring the *audi alteram partem* principle.
- 6.5. 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.
- 6.6. 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 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. The complainant does not have a right of reply, unless at the sole discretion of the Directorate, the complainant should be afforded an opportunity to reply to any of the respondent's submissions specifically identified by the Directorate. Should a complainant otherwise submit a reply, the Directorate shall not take this into account in its deliberations of the complaint without affording the other party an opportunity to address such an unsolicited reply.
- 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.
- 8.10. 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. Any appeal must be submitted in writing, and must be communicated to the ARB electronically. Should such an appeal be subject to a filing fee in terms of Clause 9.2 below, the party seeking to appeal the Directorate ruling must ensure that proof of payment of this fee is received by the ARB within ten days of the date on which that party is informed of the ruling.
- 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 organizations 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 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. Where payment is required in order to oppose a competitor appeal, a response received in terms of Clause 9.3 will not be considered to be lodged until such time as proof of payment is received by the ARB.
- 9.4. A copy of any reply submitted in response to the appeal will be provided to the aggrieved party.
- 9.5. 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.
- 9.6. 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.
- 9.7. All relevant documentation and representations submitted by the parties to a complaint, any ruling by the Directorate made in relation to that complaint, together with the reasons given for that ruling, the appeal documentation, where applicable, and any documentation submitted in accordance with Clause 6.4 of the Procedural Guide, will be provided to the Committee members.
- 9.8. 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.
- 9.9. 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.
- 9.10. Outside legal representation is not permitted except in exceptional circumstances, and at the absolute discretion of the Chairperson of the Advertising Appeals Committee.
- 9.11. 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.
- 9.12. An appeal to the Advertising Appeals Committee is considered to be a “wide” appeal. With this in mind:
  - 9.12.1. The Advertising Appeals Committee will not be confined to the record of the proceedings before the Directorate.
  - 9.12.2. The Advertising Appeals Committee may, at the discretion of the Chairperson, call for additional representations from the parties on any subject matter relevant to the complaint.
  - 9.12.3. The Advertising Appeals Committee may, at the discretion of the Chairperson, procure expert evidence and research, and to order one or more of the parties to pay the costs thereof.
- 9.13. Rulings of the Advertising Appeals Committee will, as soon as possible after the meeting, be conveyed in writing to the parties concerned.

- 9.14. 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.
- 9.15. The Chairperson 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 as set out in the Mol, 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 Chairperson or Committee.
- 9.16. 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 any clauses that were originally considered by the Directorate, but not appealed.
- 9.17. 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.
  - 9.17.1. 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.
  - 9.17.2. The Advertising Appeals Committee may, on good cause shown, order a longer or shorter withdrawal period, but this clause sets out the default position.
- 9.18. 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 Chairperson of the AAC, be penalized for this behavior by forfeiting the refundable portion of their appeal fee.
- 9.19. Interlocutory decisions made by the Head of the Directorate or the Chairperson 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 Chairperson of the Committee that the matter is before, for decision.
- 10.5. The decision of the Chairperson will be recorded in writing and regarded as a ruling.
- 10.6. It will be at the discretion of the Chairperson 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 Chairperson 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 Chairperson; 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. Any appeal must be submitted in writing, and must be communicated to the ARB electronically. Such an appeal must be lodged by the appellant within twenty days from the date on which that party is informed of the ruling. Should such an appeal be subject to a filing fee in terms of Clause 12.2 below, the party seeking to appeal the Advertising Appeals Committee ruling must ensure that proof of payment of this fee is received by the ARB within twenty days of the date on which that party is informed of the Advertising Appeals Committee ruling.

- 12.2. 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.
- 12.3. Where an appeal is lodged, the ruling of the Committee must be adhered to, until reversed by the Final Appeal Committee.
- 12.4. 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;
  - 12.4.1. an unfounded or frivolous appeal in the event of a clear and direct contravention of the Code; or
  - 12.4.2. A malicious or wilful appeal.
- 12.5. 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.
- 12.6. The notice of appeal should set out concisely the grounds of appeal.
- 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. Where payment is required in order to oppose a competitor appeal, a response received in terms of Clause 12.8 will not be considered to be lodged until such time as proof of payment is received by the ARB.
- 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 a 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. However, the principle of audi alteram partem as highlighted in Clause 6.4 above remains applicable.
- 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 Chairperson 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, as set out in the Code and MoI. 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 Chairperson 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.
  - 12.20.3. 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 Chairperson of the FAC be penalized for this behavior by forfeiting the refundable portion of their appeal fee.

13. *[Intentionally blank – legacy numbering issue]*

## 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 summarized 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 summarized 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 nonadherence 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 cooperation, 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 noncompliance 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.

### **Motor Advertising Advisory note**

The ARB has noted a marked increase in complaints about advertising of motor vehicles, and hereby issues a guideline checklist for advertisers to ensure that they are complying with Clause 4.2.1 of Section II and Clause 11 of Section III.

- You Can use “from” prices, and use the basic model as starting price;
- But then you **MUST** have the basic model available.
- If the ad is for a specific model, then that is the version that must be pictured;
- But if the ad is for the range, you can use an example from the range.
- If there is a large deposit, a large balloon or a compulsory buy back to get the advertised price, these **MUST BE INCLUDED**;
- You must also include the interest rate that the price was calculated on and that interest rate **MUST** be achievable by a reasonable number of consumers.
- If stocks are **LIMITED**, you must say so!

You can find out more about the ARB, read the code and read old decisions at [www.arb.org.za](http://www.arb.org.za). Queries can be sent to [info@arb.org.za](mailto:info@arb.org.za). We do not offer pre-clearance advice.