

## Advertising Code of Practice

*Gail Schimmel*

The Advertising Regulatory Board recently passed a number of significant changes to the Code of Advertising Practice. Practitioners need to be aware of these changes, which particularly impact procedure. The correct version of the Code is the one on the website at [www.arb.org.za](http://www.arb.org.za), and the changes outlined in this article are not exhaustive, so regard should always be had to the actual Code.

### Some general changes are:

- The references to “ASA” have been changed to “ARB”.
- All the Guidelines have been removed.
- Appendix A (Alcohol) and Appendix B (Cosmetics) have been completely updated in line with the changes brought by their respective industry bodies.
- Certain appendixes have been removed.
- The Procedural Guide has been tightened and rearranged.

### Practitioners should particularly note the following procedural changes:

- Whereas before, in a Final Appeal, the Appellant had 20 days to appeal and the Respondent had 10 days to respond, both parties now have 20 days. The relevant change is to Clause 12.8 of the Procedural Guide.
- Clause 8.2.2 of the Procedural Guide now allows that ALL responses are due within 5 days. This is a change from 3 days for competitor matters, and 2 days for substantiation.
- Clause 7.3 of the Procedural Guide now offers important clarity on the issue of the ARB’s role in relation to regulations: “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.”
- Clause 8.5.1 of the Procedural Guide now formally empowers the Directorate to “[a]ttempt to resolve the matter between the parties without the need for a formal decision”.
- In response to a spate of interlocutory procedures being invoked in recent matters, the following clauses have been added to the Procedural Guide:

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

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

- Clarification is given as to the process on confidential material as set out in Clause 5 of the Procedural Guide:

“5.4 Documentation which does not meet or follow the above criteria and processes will not be regarded as confidential. Parties are alerted that all correspondence with the ARB that does not fall within the above criteria may, at any time and at the discretion of the ARB, be shared with the other party.

5.5 Parties are alerted that the decisions of the ARB are published on the ARB website in the interests of transparency. This will include the

name of the complainant(s) and the Advertiser.”

- The deadlines in Clause 15.3 have been clarified with regard to removal of advertising already in the market. The deadline for removal of internet advertising has also been shortened.
- Lastly, a new clause has been added to Section II – Clause 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.”*

**Would you like to have input on the next version of the Code?**

**EMAIL:**  
**info@arb.org.za** with your *proposals*

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