

1. Preamble

Note: This clause is for introductory purpose only and in terms of which complaints can not 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 shall not be interpreted to bring political advertisements into the sphere of the ASA's functions. As in the case of any advertisement the individual medium shall determine whether any political advertisement presented to it is acceptable.

2.4 *Controversial subjects/Advocacy advertising*

To the extent that any advertisement:

- expresses an opinion on a matter which is the subject of controversy; and

- that controversy involves issues within the areas, broadly defined, of public policy and practice, then that opinion shall not be subject to the provisions of the Code relating to misleading claims except that—

All advertisements which contain such controversial statements should:

- be readily recognisable as advertisements;
- cause no confusion as to the identity or status of the advertiser;
- 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 ASA 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 ASA 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 realised 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 ASA 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 ASA may, at the cost of the advertiser concerned, call for a consumer reaction test by independent research, acceptable to the ASA.
- 3.8 The Code binds advertiser, advertising practitioner and media owner, but the principal responsibility for observing its terms lies with the advertising practitioner when the services of a practitioner are retained.
- 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.asasa.org.za, the online version will prevail.

4. Definitions

- 4. 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 Standards Authority” or “ASA” means the Advertising Standards Authority of South Africa, a non-profit company registered according to the company laws of South Africa, which carries on business as a voluntary regulatory body in the advertising industry. “ASA” includes the Directorate, Advertising Standards Committee, Advertising Industry Tribunal and Final Appeal Committee.
 - 4.3 “Advertising Standards Committee” means the committee adjudicating on consumer complaints and/or appeals.
 - 4.4 “Advertising Industry Tribunal” means the committee adjudicating on competitor complaints and/or appeals.

- 4.5 “Appeal”
- 4.5.1 “Appeal” means an appeal against a ruling of the ASA Directorate, Advertising Standards Committee or Advertising Industry Tribunal.
- 4.5.2 “First Appeal” means an appeal against a ruling made by the ASA Directorate.
- 4.5.3 “Final Appeal” means an appeal against a ruling made by the Advertising Standards Committee or Advertising Industry Tribunal.
- 4.6 “Appeal Committee” means the committee adjudicating on appeals against rulings from the Advertising Standards Committee and Advertising Industry Tribunal.
- 4.7 “Advertiser” means the entity, commercial or otherwise, at whose instance the advertising appears, or stands to benefit commercially from the advertising.
- 4.8 “ASA Committee/Committees” collectively describes the Advertising Standards Committee, the Advertising Industry Tribunal, and the Appeal Committee.
- 4.9 “Broadcast medium” means the holder of a broadcasting licence granted within the meaning of the Electronic Communications Act No. 36 of 2005.
- 4.10 “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.
- 4.11 “The Code” means the Code of Advertising Practice of the ASA, as amended by the ASA from time to time, and includes all appendices to the Code and the Procedural Guide.
- 4.12 “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.
- 4.13 “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.
- 4.14 “Consumer complaints” means complaints lodged by members of the public or organisations regarding consumer related matters, concerning compliance with the Code by an advertisement or advertiser.

- 4.15 “Day” means any day but excludes Saturdays, Sundays and national holidays as well as the period from 25 December to 1 January, and in the calculation of a period of days as prescribed by the Code or as determined by the ASA, day will have this prescribed meaning.
- 4.16 “The Directorate” means the Executive Director and the staff of the ASA, acting individually or collectively.
- 4.17 “Discrimination” means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly—
- imposes burdens, obligations or disadvantages on; or
 - withholds benefits, opportunities or advantages from;
 - any person on one or more of the following grounds:
 - 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;
- and “discriminate” and “discriminatory” shall have corresponding meanings.
- 4.18 “Electronic media” means advertising published by way of electronic means, and includes, *inter alia*, broadcast media.
- 4.19 “Gender stereotyping” means advertising that portrays a person or persons of a certain gender in a manner that exploits, objectifies or demeans.
- 4.20 “Manufacture” means an entity manufacturing tangible consumer goods, be it fast moving package goods, durables, non-durables, or industrial goods, which are marketed to consumers.
- 4.21 “Members” means the organisations, institutions and entities which are members of the ASA in good standing at any given time. Clause 3 of the Preface to the Code contains a list of members of the ASA. An organisation, institution or entity that has joined the ASA but that has not yet been included in Clause 3 shall, nevertheless, be considered to be a member. If the membership of an organisation, institution or entity has been terminated for any reason, that body shall not be a member notwithstanding the fact that its name may not yet have been removed from Clause 3.

- 4.22 “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.
- 4.23 “Non-member advertiser” an advertiser that is not a member of the ASA or the ASA’s member association’s member, and such an advertiser is not advertising in any of the ASA’s media member at the time the complaint is lodged.
- 4.24 “Parties” means a complainant and a respondent in a complaint. The Directorate and/or any of ASA’s Committees shall not be a party to the dispute before any of ASA’s Committee(s).
- 4.25 “Product” includes goods, services, activities and facilities.
- 4.26 “Retailer” means an entity carrying manufacturers’ goods, and acts as an intermediary between the public and manufacturers.
- 4.27 “Scientific substantiation” means substantiation based on statistically valid data, employing a validated, proven scientific method and applicable to the claim being made.
- 4.28 “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 ASA 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 a third party;
 - 5.1.2 financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
 - 5.1.3 information supplied in confidence by a third party, the disclosure of which could reasonably be expected—
 - (a) to put that third party at a disadvantage in contractual or other negotiations; or
 - (b) to prejudice that third party in commercial competition.
- 5.2 The ASA 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 to a third party in terms of an agreement.