

# Section I

## Introduction

[v2021.1]

### 1. Preamble

Note: 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:

- 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 will 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 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 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 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 advertiser, advertising practitioner and media owner.
- 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 MoI, 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 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 licence 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 organisations 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:
- 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.
  - 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.

and “discriminate” and “discriminatory” has 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 MoI, 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 organisations, 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 organisation, 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 organisation, 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 -
- (a) to put that party at a disadvantage in contractual or other negotiations; or
- (b) to prejudice that party in 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.