



# THE DUTCH ADVERTISING CODE

WITH INFORMATION ABOUT THE WORKING PROCEDURES OF THE

**ADVERTISING CODE COMMITTEE**  
**AND THE BOARD OF APPEAL**



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## **Dutch Advertising Code Authority**

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The information contained in this document shows the current situation as per 1 september 2017. For additional information or changes after this date, you can contact the secretariat of the Stichting Reclame Code (Dutch Advertising Code Authority) or consult the website [www.reclamecode.nl](http://www.reclamecode.nl).

Please note that this document containing the Dutch Advertising Code has been translated into English for your convenience. The (written and oral) complaint procedure of the Advertising Code Committee and Board of Appeal is conducted in Dutch. Furthermore, all official documents (statutes, regulation, etc.) are only available in Dutch.

No rights can be derived from the content of this document. Should the contents differ from the original Dutch Advertising Code or Regulation concerning the Advertising Code Committee and Board of Appeal, which tribunals have been implemented in accordance with article 2 par 2 of the Statutes of the Stichting Reclame Code, the content of the original Dutch Advertising Code or Regulation prevails. The original Regulation (Reglement) is available in Dutch only on [www.reclamecode.nl](http://www.reclamecode.nl) under the button Stichting Reclame Code.

## HOW IT WORKS, BRIEFLY SUMMARIZED

1. The complaint is submitted via the online complaint form or by mail.
2. Anonymous complaints will not be considered.
3. The chairman assesses whether the complaint qualifies for consideration. If this is not the case, the chairman can immediately dismiss the complaint or set it aside. The complainant will be informed in writing of (the reasons for) this decision. The complainant may object to this decision.
4. If the complaint is qualified for consideration, the advertiser receives a copy of the complaint and has 14 days to provide a written defence.
5. A copy of the statement of defence of the advertiser is sent to the complainant.
6. Once the defence has been received, the chairman will decide whether he/she will assess the complaint. If that is the case, the chairman can dismiss or uphold the complaint. The unsuccessful party may object to the decision.
7. If the chairman decides that the plenary Advertising Code Committee should assess the complaint, a date will be set on which the complaint will be assessed by the Advertising Code Committee. The parties may be present.
8. The handling of the complaint by the Advertising Code Committee is public, unless one of the parties puts forward compelling objections.
9. The Advertising Code Committee makes its decision in writing and sends this to both parties.
10. The Advertising Code Committee may dismiss or uphold the complaint.
11. The parties can submit a written appeal against the decision of the Advertising Code Committee to the Board of Appeal.
12. All decisions of the Advertising Code Committee and the Board of Appeal are accessible by third parties.

Further information on the handling of a complaint can be found in chapter 7.

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# WORKING PROCEDURES OF THE ADVERTISING CODE COMMITTEE & THE BOARD OF APPEAL

## 1. THE ADVERTISING CODE AUTHORITY

Since 1963 the Advertising Code Authority (ACA) has been the body dealing with the self-regulating system of advertising. Self-regulation means that the advertising industry (advertisers, advertising agencies and the media) formulates the rules with which advertising must comply. These rules should be in line with what is going on in society: they may be formulated in cooperation with consumer representatives and shall be comprehensible and practical and above all, they shall guarantee responsible advertising. These rules are part of the Dutch Advertising Code.

Anyone who feels that an advertisement violates the Dutch Advertising Code may submit a complaint to the Advertising Code Committee. This independent body decides after a transparent and swift procedure whether an advertisement conflicts with the Advertising Code. In the case of violation of the Code, the Committee will uphold the complaint and recommend the advertiser(s) involved to discontinue such a way of advertising. The Committee may also decide to uphold the complaint without giving a recommendation to the advertiser, for example if the advertiser proves that appropriate measures have been taken in response to the complaint in order to comply to the Dutch Advertising Code. For legitimate complaints about advertising in which an idea/concept is propagated, the Committee will suffice with an "opinion without commitment".

The Compliance department will check whether the advertiser has put the recommendation into effect (see chapter 14). This monitoring shows that the enforcement is very effective. More information about the effectiveness of enforcement can be found on [www.reclamecode.nl](http://www.reclamecode.nl) under "Compliance".

In this way, the Advertising Code Authority encourages sensible and responsible advertising. This process is in the best interest of the consumer - increasing the confidence in advertising- as well as of the advertiser -encouraging honest competition and operational management. At the same time, the ACA reduces the pressure on laying down the rules for advertisers in detailed laws and limits the risk of advertising bans.

It is advisable to consult the Regulation of the Advertising Code Committee and the Board of Appeal on the website [www.reclamecode.nl](http://www.reclamecode.nl). What follows is intended only as a simplified representation of the content of the Regulation. In the event of differences, the text of the Regulation applies.

## 2. THE DUTCH ADVERTISING CODE

The Dutch Advertising Code (hereinafter: the Advertising Code) is divided into a General Section and a Section of Special Advertising Codes. The General Section contains a body of rules with which all advertising should comply. The former stipulates, among other things, that advertisements may not be misleading or untrue. This section also contains a number of subjective standards, one of which stipulates that advertising must not be gratuitously offensive or at odds with good taste and decency. Apart from the General Section, the Special Codes may apply to advertising for specific products and services.

The Advertising Code applies to all advertising irrespective of the medium used, unless explicitly stipulated otherwise in the Code. Article 1 of the Dutch Advertising Code contains an explanation of what is meant by 'advertising'. The text of this article can be found in the provisions of the Dutch Advertising Code.

### 3. AFFILIATED ORGANIZATIONS

The following organizations are affiliated with the Advertising Code Authority. They all have a representative in the board of the Advertising Code Authority.

- 1. Bond van Adverteerders (BvA):** [www.bva.nl](http://www.bva.nl) (Association of Dutch Advertisers)
- 2. Dutch Dialogue Marketing Association (DDMA):** [www.ddma.nl](http://www.ddma.nl)
- 3. Federatie Nederlandse Levensmiddelen Industrie (FNLI):** [www.fnli.nl](http://www.fnli.nl)  
(Federation of the Dutch Food Industry)
- 4. Interactive Advertising Bureau in the Netherlands (IAB):** [www.iab.nl](http://www.iab.nl)
- 5. Thuiswinkel.org** [www.thuiswinkel.org](http://www.thuiswinkel.org) (Dutch Home Shopping Organization)
- 6. NDP Nieuwsmedia (NDP News Media):** [www.ndpnieuwsmedia.nl](http://www.ndpnieuwsmedia.nl)
- 7. Magazine Media Associatie:** [www.mma.nl](http://www.mma.nl)
- 8. Rijwiel en Automobielen Industrie Vereniging (RAI Vereniging):**  
[www.raivereniging.nl](http://www.raivereniging.nl) (Dutch Association for Bicycle and Motorcar Industries, Automotive Department)
- 9. Stichting Ether Reclame (STER):** [www.ster.nl](http://www.ster.nl) (Organization for Ether Advertising)
- 10. Stichting Regionale Publieke Omroep:** [www.stichtingrpo.nl](http://www.stichtingrpo.nl) (Organization for Regional Public Broadcasting) &  
**Organisatie van Lokale Omroepen in Nederland (OLON):** [www.olon.nl](http://www.olon.nl)  
(Organization of Local Broadcasters in the Netherlands)
- 11. Screenforce:** [www.screenforce.nl](http://www.screenforce.nl) (Dutch foundation for knowledge and promotion of linear and non-linear video advertising)
- 12. Vereniging van Communicatie Adviesbureaus (VEA):** [www.vea.nl](http://www.vea.nl) (Association of Communication Consultancy Agencies)
- 13. Klanten Service Federatie (KSF):** [www.klantenservicefederatie.nl](http://www.klantenservicefederatie.nl) (Customer Service Federation)
- 14. Consumentenbond (CB):** [www.consumentenbond.nl](http://www.consumentenbond.nl) (Consumers' Association)

#### Other Organizations

VNO NCW is involved in the Advertising Code Authority only as an observer and is not represented on the Board. Pursuant to the Dutch Media Act, all media institutions producing advertising messages are compulsorily affiliated with the Advertising Code Authority.

Special Advertising Codes were drawn up in consultation with the following organizations:

- 1. Dutch Dialogue Marketing Association (DDMA)**
- 2. Dutch home shopping organization (Thuiswinkel.org)**
- 3. Federation of the Dutch Food Industry (FNLI)**
- 4. National Association for the Exploitation of Casino Games and the members of the VAN Slot Machine Sector Organization (VAN)**
- 5. Dutch Association for Bicycle and Motorcar Industries, Automotive Department (RAI)**
- 6. Postfilter Association (Postfilter)**
- 7. United Manufacturers of Shag and Cigarettes (VSK) and the Dutch Cigar Industry Association (NVS)**
- 8. Organization for the Moderate Use of Alcohol (STIVA)**
- 9. Bakery and Sugar Industry Association (VBZ)**
- 10. Customer Service Federation (KSF)**
- 11. General Dutch Association of Travel organizations (ANVR)**
- 12. Board of Airline Representatives in the Netherlands (BARIN)**
- 13. Keuringsraad KOAG/KAG**
- 14. The Dutch Cosmetics Association (NCV)**

### 4. ADVERTISING CODE COMMITTEE & BOARD OF APPEAL

The Advertising Code Committee, and if relevant, the Board of Appeal, must determine whether or not advertisements comply with the rules of the Dutch Advertising Code.

The AC Committee and the Board of Appeal are put together in the following way:

- one member appointed by the organizations of Advertisers affiliated with the Advertising Code Authority;
- one member appointed by the Association of Communication Consultancies affiliated with the ACA;
- one member appointed by the media organizations affiliated with the Advertising Code Authority;
- one member appointed by ACA on the recommendation of the Selection Committee of the Consumers' Association, and
- one independent chairman, being a judge, a lawyer or other person with judicial experience, appointed by the ACA.

Members and chairmen are appointed and reappointed by the Advertising Code Authority. Appointment of the members representing the organizations of advertisers, communication agencies and media will take place in consultation with these organizations.

## 5. COMPLAINT SUBMISSION

All complaints must be submitted via the **electronic complaint form** (see [www.reclamecode.nl](http://www.reclamecode.nl)) or **by post**.

A complaint must be provided with reasons and supported by documentation if possible.

If a complaint is submitted by post, then the complaint should contain at least the following information:

- whether the complaint submitted as a private person or in the course of his profession/business
- name, address and place of residence, if possible a telephone number and e-mail address
- against which advertisement the complaint is addressed
- where and when the advertising message was seen/heard
- with respect to the advertisement that is complained about:
  - in the case of a complaint about an advertisement on an internet site the page(s) against which the objection is lodged shall be printed (e.g. with print screen<sup>1</sup>) and submitted to the Committee. Per page shall be indicated which phrase or part thereof is objected against.
  - if the complaint regards a printed advertising message, the advertisement concerned should be submitted to the Committee
  - where the objection concerns an audio-visual advertisement, it should be depicted as clearly as possible in order to retrieve the advertisement from the media-institution.
  - an advertisement distributed by a medium for outdoor advertising as for example a bus shelter, billboard or hoarding should be described as clearly as possible in order to retrieve the advertisement concerned from the advertiser.
  - Complaint motivation: why the complainant thinks the advertisement in question violates the Advertising Code.

The Committee may require the complaint and accompanying enclosures to be submitted in eight-fold.

The **postal address** for submitting a written complaint is:

Stichting Reclame Code  
Attn. Reclame Code Commissie  
Postbus 75684  
1070 AR Amsterdam

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1 Print screen= Print Scrn and open a program like Paint or Word, click the right mouse knob and PASTE. Print and/or save the contested page.

## 6. THE CHARGES FOR SUBMITTING A COMPLAINT, OBJECTION OR APPEAL

### I. For consumers, church, ideological, charitable, cultural, scientific or other organizations and institutions established in the Netherlands for the common benefit:

#### there is no charge for submitting a complaint, unless:

- the chairman has set aside the complaint, and the complainant has filed an objection to the decision. In this case he is charged a fee of € 15 (\*1)
- the complainant files an appeal to a decision of the Advertising Code Committee with the Board of Appeal. In this case he is charged a fee of € 30 (\*2)
- the chairman considers that the complaint is made in the interests of the operation of a business or profession or for the commercial interests of an organization. In such case, that which is set out below under II will apply mutatis mutandis.

(\*1) If the objection or appeal is considered well-founded, the sum is refunded.

(\*2) In case the appeal is considered well-founded the sum is refunded.

### II. Companies/Organizations and individuals submitting a complaint, acting in a professional capacity and/or on behalf of their company

#### for submitting a complaint € 1000 is charged, unless it concerns:

- companies having paid a financial contribution, upon request of the Advertising Code Authority, and whose contribution amounts to a minimum of € 1000 per year. In this case submitting a complaint is free of charge.
- companies having paid a financial contribution, upon request of the Advertising Code Authority, and whose contribution is less than € 1000 per year. In this case € 250 fee is charged for submitting a complaint .

#### For an appeal against a decision by the Advertising Code Committee with the Board of Appeal is charged a € 500 \* fee, unless it concerns:

Companies having paid a financial contribution, upon request of the Advertising Code Authority. In this case € 250\* fee is charged for submitting a complaint.

\* The fee charged for lodging an appeal will be used to cover the administration costs of the Advertising Code Authority, and also in case the party appellant withdraws the appeal, after he has considered the statement of the opposing party.

No complaint-filing fee is outstanding by the advertiser for the assessment of an objection to a Chairman's Allowance.

## 7. COMPLAINT HANDLING

See below the summary of the procedure according to the Regulation<sup>2</sup>.

### I. Admissibility criteria

After a complaint is submitted, this is assessed firstly for admissibility. This includes checking that the name and address are correct (anonymous complaints will not be considered) and whether the complaint is sufficiently substantiated. Adequate documentation should be provided, if possible. These are important requirements because an advertiser must be able to defend itself against the complaint.

### II. Chairman's direct dismissal/setting aside without a defence

Not every admissible complaint is handled by the entire Advertising Code Committee. The chairman of the Committee can set aside a complaint if he feels that

- the Committee will not allow the complaint;
- the complaint should not be handled by the Committee, but pursuant to the procedure for cross-border advertising, should be sent on to another EASA member (see chapter 13).

If a complaint is set aside by the chairman, the complainant is informed to this effect in writing. If the complainant feels that the complaint was wrongly set aside, he can lodge an objection with the entire Advertising Code Committee (see chapter 9).

### III. Chairman's decision after possibility of defence by the advertiser

If the chairman does not use his authority to reject a complaint directly, the advertiser is always asked to provide a written response. In principle, the advertiser is given 14 days within which to file an objection against the complaint. The defence is always sent to the complainant. Upon receipt of the defence or if the advertiser does not wish to conduct a defence, the chairman may then decide to assess the complaint himself. If that is the case, the chairman may make the following statements:

#### A. Rejection of the complaint by the chairman

A rejection can occur for the same reasons as mentioned above under II. The complainant may file an objection against the rejection by the plenary Advertising Code Committee (see chapter 9).

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2 If the procedures below differ from the Regulation, the text of the Regulation will be considered as the only correct one.



## B. Upholding of the complaint by the chairman

The chairman may decide that the complaint can be upheld if he considers that the Committee will uphold the complaint and:

- the party against whom the complaint is made has not made use of the opportunity to put forward a written defence;
- the party against whom the complaint is made has acknowledged the complaint or;
- the chairman continues to hold this opinion after receipt of the defence.

The upholding of the complaint takes place in the manner set out in chapter 8. The chairman may not, however, distribute the ruling as an 'Alert'. If the complaint is upheld by the chairman, the advertiser may object to this decision to the plenary Advertising Code Committee (see chapter 9).

## IV. Advertising Code Committee

If the chairman himself does not decide on the case, the plenary Committee will assess the file in a meeting. This takes place after the advertiser has conducted its defence. In some cases, the Committee may provide the parties the opportunity to make further written comments. Documents must always be in the possession of the Committee at least 7 days prior to the meeting. If desired, the complainant and the advertiser can provide their views orally at the meeting. The meetings are public, if one or both parties gives an oral presentation. Either party may make reasoned objections to a public hearing. A request to have the hearing behind closed doors is granted only if there are serious reasons. The chairman of the Committee will decide on such a request. The parties may request that the hearing take place behind closed doors at the hearing at the latest. The Committee may take investigative measures. The deliberations regarding the complaint are not public. The Committee will make its decision in writing and this is sent to the parties (see chapter 8).

## V. Urgent matters

If the chairman of the Committee considers that a case is urgent, he may decide that it will be assessed by the Committee within 14 days (article 8 par. 1 Regulation). In this case, there is a shorter appeal period.

## VI. Provisions for identical complaints

If a number of complaints of the same nature or scope are submitted regarding a certain advertisement, the chairman may decide that these will not be taken into consideration and that it is sufficient to assess the complaints that can be considered representative of all submitted complaints. The website of ACA can specify which advertisement this regards. Once the Committee has made its decision, this will be published on the website. The complainants whose complaint is not considered separately, will be sent the decision after it has become final.

# 8. DECISIONS ON COMPLAINT TAKEN BY THE ADVERTISING CODE COMMITTEE AND THE BOARD OF APPEAL

The Advertising Code Committee may determine a complaint unjustified (rejection/not upheld), or determine the complaint justified (upheld). Upheld means that the Committee judges the advertising message to be contrary to the Dutch Advertising Code. The Committee then makes a 'recommendation' which means that the Committee recommends to discontinue this way of advertising. If the complaint is directed against advertising which propagates concepts, the Committee delivers an 'opinion without commitment'. Thus, the decision of the Committee may contain a rejection, a recommendation or an 'opinion without commitment'.

Furthermore, as the circumstances warrant, the Committee may ask the secretariat to distribute a decision as an ALERT which means that the secretariat will take care that the decision is brought to the attention of the public by means of a press release in associated media, to interested individuals or organizations and via placement on [www.reclamecode.nl](http://www.reclamecode.nl).

N.B. Regardless of whether the Advertising Code Committee has ordered the distribution of its decision as an ALERT- all decisions taken by the Committee may always be made available to third parties.

N.B. All decisions are put in an online database (accessible to third parties). Moreover, all decisions may be included in printed or digital publications of the Advertising Authority.

Pursuant to the Media Act, all media institutions producing advertising messages are associated with the Advertising Authority. They are bound to discontinue distributing an advertising message denounced by the Advertising Code Committee and/or the Board of Appeal.

When the complaint is upheld by the Committee, it can moreover

- set conditions on the broadcast time of the radio and/or TV commercial submitted for evaluation;
- allow the party whose advertisement is found to violate the Advertising Code, a term during which the recommendation of the Committee is to be complied with;
- impose measures as described in the contracts concluded between the Advertising Code Authority and the organizations in consultation with which a Special Advertising Code was drawn up.

After 14 days, any decision by the Advertising Code Committee is irrevocable.

In urgent cases the decision is irrevocable after 7 days. If the complainant and/or advertiser disagree with the decision, an appeal can be lodged within 14 days and 7 days respectively with the Board of Appeal. See chapter 11 for a description of the appeal procedure.

# 9. OBJECTION TO A CHAIRMAN'S DECISION

Should the chairman of the Advertising Code Committee dismiss the complaint and should the complainant disagree with this rejection, he can lodge an objection, giving reasons, within 14 days with the entire Committee. This means that the notice of objection must be in the possession of the Committee within 14 days after the date the complaint was dismissed.

There is a charge for handling an objection to the dismissal of a complaint (see chapter 6 for the amount). This fee must likewise be in the possession of the ACA within 14 days.

If the Chairman of the Advertising Code Committee has upheld the complaint and recommended the advertiser to discontinue the distribution of the advertisement concerned and should the advertiser disagree with this decision, the advertiser can lodge an objection, giving reasons, within 14 days with the entire Committee. No fee is charged for handling an objection to a chairman's allowance.

## 10. OBJECTION TO REJECTION OF AN ADVERTISEMENT BY AN ORGANIZATION AFFILIATED UNDER THE MEDIA ACT

As explained in chapter 8 all media-institutions which distribute advertising under the Media Act are affiliated with the Advertising Code Authority. If a media-institution considers an advertisement offered to it impermissible under the Dutch Advertising Code for broadcasting or distribution, it should bring this decision in writing, giving reasons, to the attention of the advertiser with due speed. The same applies when it comes to a premature termination of a commercial that is already being broadcasted. Within seven days the advertiser can lodge a protest to this decision with the chairman of the Advertising Code Committee. The media-institution can respond to this protest within seven days. If both parties want a quick judgment, the terms may be shortened at their request so that the chairman can come to a decision as soon as possible. An objection to this decision must be lodged with the entire Advertising Code Committee.

## 11. APPEAL PROCEDURE

Should the complainant and/or advertiser fail to agree with the decision of the Advertising Code Committee, they can lodge an appeal with the Board of Appeal. The appellant shall ensure that his appeal is in the possession of the Board of Appeal within 14 days, and in urgent cases, within 7 days after the decision was taken. The appellant's appeal is due to a financial contribution to SRC. See chapter 6 for the height of the complaint fee. This contribution must be paid within 14 days following a request made by the Board. Only after that the Board takes the appeal into consideration.

The appeal shall contain the following information:

- a. the name and address of the appellant;
- b. the date and file number of the decision under appeal;
- c. the objections to the decision.

The appeal shall be filed in eight-fold upon request of the Board of Appeal .

A copy of the appeal is sent to the opposing party, which is allowed 14 days to put forward a defence. If considered necessary by the Board of Appeal, each party may respond in writing to the statements of the other party. Both parties can orally explain their standpoint at the hearing of the Board of Appeal. The decision of the Board of Appeal is sent to all parties, thereby definitively concluding the procedure.

## 12. DECISION ON AN APPEAL

The Board of Appeal can consider the appeal wholly or partly well-founded and wholly or partly quash the decision of the Advertising Code Committee, consider the appeal wholly or partly unfounded and wholly or partly uphold the decision of the Advertising Code Committee and/or refer the case back to the Advertising Code Committee.

## 13. CROSS-BORDER ADVERTISING

The Advertising Code Authority is affiliated to the European Advertising Standards Alliance (EASA) at Brussels (website [www.easa-alliance.org](http://www.easa-alliance.org)). EASA objectives include ensuring that complaints about advertisements are handled swiftly and effectively. To realize this target EASA established the cross-border complaint submission procedure. By definition, a complaint involving cross-border advertising is one submitted by an individual or organization about an advertisement which appears in the Netherlands but originates in another country.

A complaint involving cross-border advertising shall be submitted in writing or via the electronic complaint form to the secretariat of the ACA. If possible, the advertisement and any other information on which the complaint is based shall also be submitted. See chapter 5 for the requirements for lodging a complaint. The chairman of the Advertising Code Committee determines whether the complaint concerns cross-border advertising and should this be the case, and he finds no grounds for handling the complaint himself, it is referred to the EASA member, which is responsible for further examination and handling of the complaint. Should the complaint subsequently be handled, the rules of the EASA-member apply. Complainant is informed by the secretariat of the ACA on the further development of the procedure.

## 14. COMPLIANCE

The Compliance Department is an independent department within the Advertising Code Authority. This department examines whether advertisers comply with the decision of the (chairman of the) Advertising Code Committee or the Board of Appeal in the event of an infringement. If the advertiser pronounces that he will not comply with the ruling or does not respond to the request of the Compliance Department, then this can be published on the ACA website under the heading 'Non-compliant'. In this way, 'non-compliance' by the advertiser is also brought to the attention of third parties, including the government regulators.

## 15. FINANCING OF THE ADVERTISING CODE AUTHORITY

The ACA is funded by the advertising industry. The choice has been made to use a financing system where the advertiser (being the first link in the chain of advertiser>advertising agency>media) finances the self-regulation. The financing of the ACA is based on a system of apportionment of the costs, where advertisers contribute 0,025 % of their gross media spending to the ACA (system drawn up by Nielsen), € 250 per € 1 million. Pursuant to art. 19 of the Dutch Advertising Code an advertising organization or institution shall, at request of the chairman of the Committee, produce a valid proof of payment of the financial contribution as stipulated each year by the ACA. Further explanation of the financing of the ACA is to be found on the web site ACA Financial Contribution, via [www.reclamecode.nl](http://www.reclamecode.nl).

# THE DUTCH ADVERTISING CODE

## A. GENERAL

**1.** Advertising is defined as: any form of public and/or systematic direct or indirect commendation of goods, services and/or ideas by an advertiser or, either wholly or partly, on behalf of him, with or without the help of a third party. The solicitation of services is also defined as advertising.

The advertiser is an organization or a person, not being a consumer.

### Explanation of Article 1

The different forms of advertising include e.g.: teleshopping, telemarketing, sponsorship, product placement, packaging, labeling, direct marketing and buzz-marketing.

It is important that the description of an (organized) mechanism may be given, by means of which the direct or indirect commendation of goods, services and/or ideas is taking place or has taken place.

The requirement of systematic commendation is needed in order to prevent all so-called one-to-one announcements, as for example, an individual promotion talk, from being regarded as 'advertising'. A one-to-one announcement may be regarded as advertising if it has been established that the statement was a standard statement and not specifically aimed at the individual receiver.

Announcements which lack any element of commendation do not fall within the definition of this article.

Examples are purely factual statements such as opening times, and purely factual statements about the policy (or changes in policy) of public authorities or private sector companies.

Also announcements about goods, services and/or ideas, in which there is no question of inducement or influencing by the advertiser, do not fall within the definition of this article. A promotional announcement made by an advertiser may therefore be called advertising \*

\* The Advertising Code Authority and /or the Board of Appeal shall establish whether such announcements may be imputed to an advertiser. This may be the subject of a special advertising code and will depend on the question whether the advertiser can actually exert influence on the announcement(s) and if not, whether the advertiser has made or makes sufficient effort beforehand to take care that the announcement will meet the requirements of the Dutch Advertising Code.

The total message plays a role in assessing the element of commendation. Not only is the text a matter of concern, but also size, lay-out, use of colour and so forth. The mere statement of a name of the advertiser may in itself constitute advertising (e.g. sponsor panels).

The definition does not stipulate that the commendation is a paid advertisement. Although payment is usually the case, from the point of view of the public it makes no difference whether an advertisement is placed free of charge or for payment.

**2.** Advertising must be in accordance with the law, the truth, good taste and decency.

### Explanation of article 2

The provisions subject to this article include those in the Audiovisual Media Services Directive, which provide that advertising must not offend human dignity and that advertising may not contain or promote any type of discrimination on the basis of gender, race or ethnic descent, nationality, religion or philosophy, handicap, age or sexual orientation.

With the criteria "good taste and decency", an assessment must be made based on current social views as to whether the communication exceeds permissible limits, also in light of the manner in which it is published and its effect on the public as a result. A communication published in such a way that the public cannot avoid being confronted with it will be deemed to exceed permissible limits earlier than communications published in other ways. The frequency at which the communication is seen and the situation of the communication must also be weighed.

**3.** An advertisement shall not contravene the public interest, public order or morality.

**4.** An advertisement shall not be gratuitously offensive or constitute a threat to mental and/or physical public health.

**5.** The form and content of an advertisement shall not undermine confidence in advertising.

**6.** Without justifiable cause, an advertisement shall not arouse feelings of fear or superstition.

**7.** Advertising shall not be dishonest. Advertising is considered to be dishonest if it contravenes with the requirements of professional devotion, and if it substantially disrupts or may disrupt the economic behaviour of the average consumer reached, or targeted, as regards to the product. Misleading and/or aggressive advertising is considered to be (by any means) dishonest.

### Explanation of article 7

If an advertisement is targeted at a specific group of consumers, it shall only be considered dishonest if the advertisement interferes with the economic behaviour of the average member of this group. Advertisements which the advertiser could reasonably suspect to be disrupting the economic behaviour of a specific, clearly recognizable group of consumers, i.e. consumers who are easily susceptible to that type of advertising or to the corresponding products, because of a mental or physical handicap, their age or credulity, are judged from the perspective of the average member of that group. This does not affect the common legitimate advertising practice of overstatements and statements which are not to be taken literally.

Serious disruption of economic consumer behaviour means using advertising to impair the consumer's ability to make a well-informed decision which causes the consumer to make a transaction which he otherwise would not have made.

'Professional devotion' is defined as the level of proficiency and care that may be reasonably expected from a dealer towards the consumer, in accordance with honest practice and/or the standard of good faith within the dealer's market sector.

A decision on a transaction means a decision made by a consumer as to whether or not he will purchase a product and how and under what conditions he will purchase the product: whether he will pay for it in one lump sum or in installments, keep the product or dispose of it, or execute a contractual right in relation to the product, irrespective of whether or not he will conclude a transaction.

## **8. Misleading advertising**

**8.1** When assessing whether or not an advertisement is misleading, all characteristics and conditions, the factual context, the limitations of the means of communication, and the public for which it is intended are to be taken into consideration.

**8.2** All advertising including incorrect information, or information that is unclear or ambiguous for the average consumer in respect of one or more elements as listed in points a to g hereunder, and which would consequently entice or may entice the average consumer to make a decision on a transaction which he would otherwise not have made, is considered to be misleading:

- a. The existence or the nature of the product;
- b. The most important features of the product, such as availability, advantages, risks, design, composition, accessories, service and complaint handling, process and date of production or execution, delivery, suitability for use, quantity, specification, geographic or commercial origin, results to be expected, or the results and essential features of tests and controls performed.
- c. The extent of the obligations of the advertiser, the motives for advertising and the nature of the sales process, the explanation of a symbol in connection with direct or indirect sponsoring, or acknowledgment of the advertiser or the product;
- d. The price or the way the price is calculated, or an explicit price advantage;
- e. Necessary services, spare parts, replacement or repair;
- f. The quality, characteristics and rights of the advertiser or his agent, like for example his identity, his assets, qualifications, status, acknowledgment, affiliation, connections; his industrial, commercial or intellectual rights of ownership or the prizes, awards and decorations he has won;
- g. The legal rights of the consumer, including the right of replacement or refund, or the risks he might run.

**8.3** Advertising is also regarded as misleading if it entices or may entice the average consumer to make a decision on a transaction he would not otherwise have made. Misleading advertising includes:

- a. Marketing of a product in a way that could lead to confusion with products, trademarks, business names and other distinguishing characteristics of a competitor;
- b. Non-observance of a code of behaviour by the advertiser, who bound himself to this code, in so far as the obligation is verifiable and the advertiser declares himself as bound to this code;
- c. Omitting essential information, keeping information concealed, supplying information, in an unclear, incomprehensible, ambiguous way or supplying the information in an untimely fashion.

### **Explanation of article 8.3**

In case the medium used for advertising has its limitations in space or time, these limitations as well as the measures taken by the advertiser to supply the information in another way, will be taken into account when deciding whether information has been omitted. Essential information consists among other things of all information the advertiser has to provide pursuant to the law.

## **8.4 Invitation to purchase**

In case an advertisement serves as an invitation to purchase, which does not relate to a distance contract or off premise contract, the following information shall be supplied:

- a. The principal characteristics of the product, to the extent that is suitable for the medium and the product;
- b. The geographical address and the identity of the advertiser, in particular his business name, and, as the case may be, the geographical address and the identity of the advertiser on behalf of whom he is acting;
- c. The price, including taxes, or, if the product is such that the price thereof cannot reasonably be determined beforehand, the way the price is determined and, if the case may be, all supplementary freight costs, delivery or postage costs, or if these costs cannot reasonably be determined beforehand, the fact that these supplementary costs will possibly have to be paid;
- d. The method of payment, delivery, execution and the complaint handling procedures, in case they deviate from the requirements of professional devotion;
- e. The rights of withdrawal and annulment, where products and transactions with rights hereof are concerned.

### **Invitation to purchase in relation to a distance contract or off premises contract**

If the invitation to purchase in advertising relates to a distance contract or off premises contract, instead of the abovementioned information, the following essential information shall be provided in a clear and comprehensible manner:

- f. the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- g. the identity of the trader, such as his trading name;
- h. the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
- i. the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
- j. the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
- k. the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;
- l. where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with the law, as well as the model withdrawal form set out in Annex I(B) of Directive 2011/83/EU;
- m. the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- n. where applicable, the minimum duration of the consumer's obligations under the contract;

### **Additional requirements for the invitation to purchase in connection with a distance contract**

If the invitation to purchase advertising in related subject with a distance contract, in addition to the obligations sub f. to n, the following obligations.:

- o. the information provided for under f. to n. shall be made available to the consumer in a way appropriate to the means of distance communication used. In so far as that information is provided on a durable medium, it shall be legible.
- p. the consumer shall be made aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for under f., i., m. and n.
- q. the electronic ordering process shall be arranged in such a way that the consumer can only accept an offer after it has been made absolutely clear that the order implies an obligation to pay.  
If the acceptance is done by activating a button or a similar function, there is compliance with the previous sentence if when placing the order it is made clear in words that cannot be misunderstood and in an easily legible manner that the acceptance implies an obligation to pay towards the advertiser.  
A button or similar function shall therefore be labelled in an easily legible manner with an unambiguous formulation from which it is made clear that placing the order entails an obligation to pay the advertiser. This can be done by the phrase "order with obligation to pay"
- r. In case of a means of distance communication which allows limited space or time to display the information, the advertiser shall provide, on that particular means, prior to the conclusion of such a contract, at least the information regarding the main characteristics of the goods or services, the identity of the advertiser, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to under f., g., i., l. and m. The other information referred to under h., j., k. and n. shall be provided by the advertiser to the consumer in an appropriate way in accordance with what is stated above under o.
- s. When using the phone with a view to concluding a distance contract with a consumer, the advertiser shall, at the beginning of the conversation, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, and the commercial purpose of the call.

### **Explanation of article 8.4**

An invitation to purchase is defined as a commercial message stating the characteristics and the price of the product in a way suitable for the medium used, and thus enabling the consumer to make a purchase. If the advertisement contains an answering or ordering mechanism, it is always considered to be an invitation to purchase. In case such a mechanism is missing, it depends on the circumstances whether there is a matter of an invitation to purchase. A key factor is whether the consumer can base a decision about the transaction on the information in the advertisement.

If the advertisement states an (upward of) price, the consumer usually has sufficient information to decide to make a transaction.

**8.5** The methods of advertising which are considered misleading under all circumstances are referred to in Annex 1 of the Dutch Advertising Code.

### **Explanation of article 8.5**

The methods of advertising as referred to in Annex 1 of the Dutch Advertising Code are misleading under all circumstances. Therefore it is not necessary to consider whether they are misleading for the average consumer, or if the economic behaviour of the average consumer is or may be substantially disrupted.

**9.** Testimonials, commendations or statements by experts that are used in advertisements shall be based on the truth and tally with the latest accepted scientific views.

**10.** Scientific terms, statistical data and quotations shall be used with the utmost care in advertisements intended for the general public, in order to obviate confusion of ideas. If use is made of statistics which are valid only within certain limits, such limits shall be stated clearly. No technical terms, descriptions, illustrations or pictures that are manifestly intended to suggest in a quasi scientific or misleading manner the presence of non-existent properties of goods or services, shall be used.

### **11. Recognizable advertising**

**11.1** An advertisement shall be recognizable as such by virtue of its lay-out, presentation, content or otherwise, taking into account the public for which it is intended.

**11.2** Advertisements in audio-visual media shall be clearly distinct from the rest of the programming by optical and/or acoustic means. The use of subliminal techniques is prohibited. The use of elements from a broadcast programme in advertising is also prohibited in the event it can be reasonably assumed that the viewers or listeners would be misled or confused by it.  
The appearance in advertising of people who may be deemed, by virtue of their participation in broadcast programmes, to have influence or instil confidence in certain sections of the public is prohibited.

### **Explanation of article 11**

The term audio-visual media particularly refers to programmes broadcast on radio and TV. Subliminal techniques refer to techniques which employ inserted images and/or sounds of very brief duration in an attempt to influence viewers or listeners, possibly without their knowledge or ability to perceive them.

**12.** If a 'guarantee' is mentioned in an advertisement, the scope, content and duration of the guarantee shall be made clear, in accordance with the relevant medium.

**13.** Comparative advertising is defined as any form of advertising in which a competitor, or goods or services provided by a competitor, are mentioned explicitly or implicitly. Comparative advertising is permitted - as far as the comparison is concerned- provided it:  
a. is not misleading according to the spirit of the Dutch Advertising Code.  
b. compares products or services that meet the same demands or are intended for the same purpose;  
c. compares objectively one or more essential, relevant, checkable and representative characteristics of these goods or services, such

- as price;
- d. does not lead to the advertiser being confused with a competitor, or the brands, trademarks, other distinguishing characteristics, goods or services of the advertiser being confused with those of a competitor;
  - e. does not harm the good name or make disparaging remarks about the brands, trademarks, other distinguishing characteristics, goods or services, activities or circumstances of a competitor;
  - f. concerns in the case of products with a designation of origin, products with the same designation;
  - g. leads to no unfair advantage resulting from the familiarity of a brand, trade name or other distinguishing characteristics of a competitor or the origin designation of competitive products; and
  - h. does not present goods or services as an imitation or copy of goods or services with a protected trademark or protected trade name.

Any comparison that refers to a special offer shall indicate clearly and unambiguously the end and, should the special offer not yet apply, the beginning of the period during which the special price or other specific conditions apply, or state that the special offer continues as long as stocks last or services can be provided.

#### **14. Aggressive advertising**

**14.1** Aggressive advertising is prohibited. An advertisement is considered to be aggressive in the event that, taking into account all its properties and circumstances, the actual context, the limitations of the means of communication and the public at which it is aimed, it considerably restricts or may restrict the freedom of choice and the freedom of action of the average consumer with regard to the product, by means of intimidation practices, pressure, including physical violence, or improper manipulation, as a result of which the consumer is enticed or may be enticed to make the decision to conclude a transaction, which decision he would not have taken otherwise.

**14.2** The methods of advertising which are considered aggressive under all circumstances are referred to in Annex 2 of the Dutch Advertising Code.

#### **Explanation of article 14**

Improper manipulation is defined as taking advantage of a dominant position in order to put pressure on the consumer even without the use of violence or threat of violence, in such a way that the consumer's capacity to take a well-informed decision is considerably reduced. The methods of advertising as referred to in Annex 2 of the Dutch Advertising Code are considered aggressive under all circumstances. Therefore it is not necessary to consider whether they are aggressive in respect of the average consumer, or if the economic behaviour of the average consumer is or may be substantially disrupted.

**15.** At the request of the Advertising Code Committee or the Board of Appeal the advertiser shall demonstrate the correctness of the advertisement, should this be disputed for good reasons.

**16.** The Dutch Advertising Code shall not only be applied according to the letter of its provisions but according to its spirit as well.

**17.** In the case of Special Advertising Codes, the General Section of the Dutch Advertising Code shall remain fully in force.

**18.** Companies as well as consumers have the right to submit a complaint about violations of the Dutch Advertising Code with the Advertising Code Authority. This means that where in this part of the General Code reference is made to consumers, corporate bodies are also covered. Neither consumers nor companies may submit a complaint about article 19 DAC.

NB The general part of the Dutch Advertising Code became operative on 1 February 2008 and will be applicable to advertising messages that have been published after 12 December 2007. The quotation title is: NRC

NB : After Annex 2 the old and new articles of the Dutch Advertising Code are included in a table of concordance (before (old) and after (new) 1 February 2008) as well as the corresponding articles of the Unfair Commercial Practices Directive (UCPD).

**19.** At the request of the President of the Advertising Code Committee, organizations and institutions which publish advertisements are bound to submit a valid proof of payment of the financial contribution, yearly stipulated by the Advertising Code Authority.

#### **Explanation of article 19**

The financial contribution is based upon a percentage of the advertiser's gross media expenses. The Board of the Advertising Code Authority decides each year the percentage that applies. In addition, the yearly contribution per concern is maximized to € 30,000. Furthermore, an advertiser, not being part of a concern and having no more than € 1 million gross per year media- expenses, is not bound to pay a contribution for the year concerned.

This article came into effect on 15 January 2010 and applies to contribution requests made after this date.

Since the year 2010 a 0.025 percentage has been determined (= € 250 per € 1 million media expenses) and the contribution is based upon the gross media expenses in the year passed, as produced by Nielsen. The Advertising Code Authority itself upholds the obligation to pay. See [www.reclamecode.nl](http://www.reclamecode.nl) for further information.

#### **Annex 1**

Advertising is considered misleading under all circumstances in the event of:

1. Claiming to have signed a code of conduct, when this is not the case.
2. Attaching a confidence label, a quality label or similar label without having been granted the required permission.

#### **Explanation of 1 and 2**

This means, for example, that an advertiser may only use the logo of an employers' organization if he is entitled to do so, and, that an advertisement may not suggest that the advertiser is a member of an employers' organization or associated with an arbitration board if this is not the case.

3. Claiming that a Code of Conduct is acknowledged by a public or other authority, when this is not the case.
4. Claiming that an advertiser (and his advertisement) or a product is recommended, acknowledged or approved by a public or private organization, when this is not the case; or claim such a thing when the terms of the recommendation, acknowledgment and/or



- approval are not met.
5. Offering products for a certain price without mentioning that there are good reasons to suspect that the advertiser might not be able to deliver these products or similar products for the mentioned price, nor have another advertiser deliver them, during a certain period and in quantities, which are reasonable, taking into account the product itself, the range of the advertising campaign for this product and the price offered (bait).
  6. Offering a product for a mentioned price and subsequently:
    - (a) Refusing to show the consumer the offered product; or
    - (b) Refusing to accept an order or refusing to deliver the product within a reasonable term; or
    - (c) Showing a defective example of the product with the intention to commend another product ('bait and switch').
  7. Deceptively claiming that the product will be available for a limited period of time or only under special conditions for a limited period of time, to urge the consumer to make an immediate decision and not give him a chance or enough time to make an informed decision.
  8. Claiming or otherwise suggesting that a product may be sold legally, when this is not the case.
  9. Presenting legal consumer rights as distinguishing features of the advertiser's offer.
  10. Using an editorial, paid by the advertiser, for advertising a product, when this is not made clear to the consumer in the text or in easily identifiable images or sounds (advertorial).
  11. Making incorrect statements with regard to the nature and extent of the life-threatening danger to the consumer and his family, in the event that he does not buy the product.
  12. Promoting a product that resembles a product produced by a certain manufacturer in such a way as to purposely give the impression that the product has indeed been fabricated by this manufacturer, when this is not the case.
  13. Initiating, managing or promoting a pyramid system whereby a consumer's ability to realize compensation after his initial payment results exclusively from his introduction of new consumers into the system, rather than from the sale or use of products.
  14. Claiming that the advertiser is about to stop his business or move to another place, when this is not the case.
  15. Claiming that certain products may facilitate the winning of games of chance.
  16. Claiming falsely that a product may cure illnesses, ailments or malformations.
  17. Supplying incorrect information about market circumstances or the possibility to obtain the product with the intention to make the consumer buy the product on terms less favourable than the normal market terms.
  18. Claiming within the context of an advertisement that a contest is being organised or prizes offered, without actually presenting the announced prizes or a reasonable alternative.
  19. Calling a product 'free of charge', 'for nothing' or 'at no cost available' if the consumer has to pay something else instead of the inevitable costs, in order to respond to the offer and collect the product or have it sent for.
  20. Including an invoice or similar request for payment in advertising material to create the impression that the consumer has already ordered the commended product, when this is not the case.
  21. Deceptively claiming or creating the impression that the advertiser is not acting on behalf of his business, company, trade or profession, or deceptively pretending to be a consumer.
  22. Deceptively creating the impression that for a certain product service is available in another member state rather than in the state where the product is sold.

## Annex 2

'Under all circumstances aggressive advertising' is defined as:

1. Putting persistent and undesirable pressure in telephone calls, faxes, e-mail or other means of communication.
2. Creating the deceptive impression that the consumer has already won a prize, will definitely win a prize or, upon performing a certain action, win a prize or benefit equally, while in fact: there is no question of winning a prize or benefiting equally, or if taking steps to qualify for a prize or benefit equally otherwise, is subject to payment by the consumer of a certain amount or of the herewith related costs.
3. Acting contrary to art. 2 Introduction and sub a and b of the Code for Advertising Directed at Children and Young People (as included in the Dutch Advertising Code).

## TABLE OF CONCORDANCE UNFAIR COMMERCIAL PRACTICES (UCP) (2005/29/EG)

DAC per 1-2-2008	DAC (old)	UCP	Remarks
<b>Art 1</b>			
<b>Art 2</b>			
<b>Art 3</b>			
<b>Art 4</b>			
<b>Art 5.</b>	Art 5.		
<b>Art 6</b>	Art 6		
<b>Art 7</b>	Art 7 repealed	Article 5 par. 1, 2a and 2b and 4	Explanation of article 7 DAC new = article 2 par. e, h, k and article 5 par. 3 UCPD
<b>Art 8.1</b>		Article 7 par. 1	
<b>Art 8.2</b>		Article 6 par. 1 sub a to g incl. Article 7 par. 2	
<b>Art 8.3</b>		Article 6 par. 2 sub a and b Article 7 par. 2	Explanation of art 8 par. 3 DAC new = article 7 par. 3 UCPD

<b>Art 8.4</b>		Article 7 par. 4	Explanation of art. 8 par. 4 DAC new = article 2. i UCPD
<b>Art 8.5</b>		Article 5 par. 5	
<b>Art 9.</b>	Art 8		
<b>Art 10</b>	Art 9		
<b>Art 11</b>	Art 10		The concept of radio/television commercials has been adjusted. The rules for television now apply to audio-visual media (radio and TV). Article has been clarified by supplementary par. 1 and 2
<b>Art 12</b>	Art 11		
<b>Art 13</b>	Art 14		
<b>Art 14.1</b>		Article 8	
<b>Art 14.2</b>			
<b>Art 15</b>	Art 15		
<b>Art 16</b>	Art 17		
<b>Art 17</b>	Art 18		
<b>Art 18</b>	adjusted		Included to explicitly specify that these rules apply to B2B as well as B2C
<b>Annex 1</b>		Annex 1 UCPD	
<b>1 to 7 incl.</b>		1 to 7 incl.	
<b>8 to 22 incl.</b>		9 to 23 incl.	
<b>Annex 2</b>		Annex 1 UCPD	
<b>1</b>		26	
<b>2</b>		31	
<b>Art 2 Introduction, par. a and b CCY</b>		28	CCY= Advertising Code directed at Children and Young People (=Special Advertising Codes SAC)
	Art 12, 13 en 16 repealed		N.B. Art 13 and 16 are "empty" articles. Art 12 is included in UCP articles.

#### TABLE OF CONCORDANCE AUDIOVISUAL MEDIA SERVICES DIRECTIVE

<b>Audiovisual Media Services Directive (2007/65/EG)</b>	<b>Dutch Advertising Code</b>
Article 3 par 1 a	Article 11.2
Article 3 par 1 b	Article 11.2
Article 3 par 1 c sub i) and ii)	Article 2 + new explanation*
Article 3 par 1 c sub iii)	Article 4 and article 6
Article 3 par 1 c sub iv)	Code for Environmental Advertising
Article 3 par 1 e	Advertising Code for Alcoholic Beverages
Article 3 par 1 f	Special Advertising Code a.
Article 3 par 1 g	Code for Advertising directed at Children and Young People
Article 3 par 2	Advertising Code for Food Products
<b>Audiovisual Media Services Directive (2010/13/EU)</b>	<b>Dutch Advertising Code</b>
Article 9 par 1 sub g	Article 2 Advertising directed at Children and Young People

\* The explanation of article 2 was added on 17 August 2009.



## B. SPECIAL ADVERTISING CODES

Where in these codes is referred to advertising, this is held to be advertising as defined in article 1 of the General part of the Dutch Advertising Code.

### a. KOAG/KAG Approval Board 2012

In the case of complaints about advertisements evaluated by the Inspection Board for the Commendation of Health Products (KAG) the Advertising Code Committee or Board of Appeal can take into account the decision of the KAG.

### b. Courses

Advertisements for courses shall provide a faithful picture of the institution that organizes the course and under whose auspices the course is given, as well as of the course itself. The advertising shall refrain from any suggestion of results which cannot reasonably be expected and the mentioning of non-recognized 'degrees'.

### c. Contests 2012

Advertisements in printed and electronic media announcing a contest shall contain at least the following information:

- a. name and complete address of the organizer of the contest;
- b. the number of prizes and a description from which their monetary value is known or can easily be derived;
- c. the latest date of submission of the contest form;
- d. any exclusions from participation;
- e. date of results and manner in which they are to be announced.
- f. in case special conditions apply to be able to participate in a contest, a short description of those conditions.

### d. Loans, Investments and Real Estate

#### *Loans and investments*

Advertisements for forms of saving, loans and/or investments shall contain no claims which can mislead the general public regarding the terms of the loan or securities on offer, actual or estimated earnings, or the terms of interest payments and redemption.

#### *Real Estate*

Advertisements for transactions concerning real estate shall contain no misleading or grossly exaggerated claims concerning ownership or the transfer of ownership of the land and the premises which are, or will be built on it and related matters such as materials, facilities, location, required (statutory) formalities, rights, price and financing options. Exceptional care shall be exercised in advertising for real estate located abroad.

### e. Outwork

Advertisements for outwork shall give a faithful description of the work concerned and state the expected remuneration. When proposals are made to charge for the use of machinery or raw materials or parts, or when the advertiser proposes purchasing the goods made by the outworker, the advertisement shall contain all relevant information. The name and address of the advertiser shall be stated in full.

### f. Tobacco Products

Radio and television advertisements of tobacco products are prohibited, except for advertising in tobacco shops or in a tobacco sales outlet with a lockable entrance door in a grocery shop or department store, clearly separated from the rest of the shop (for specific definitions and exceptions see section 5 of the Dutch Tobacco Law).

# ADVERTISING CODE FOR ALCOHOLIC BEVERAGES 2014

## GENERAL PROVISIONS

### Field of application

The Advertising Code for Alcoholic Beverages applies to advertising for alcoholic beverages and for non-alcoholic beverages in so far as these are commended for consumption in combination with alcoholic beverages. This Code applies to all advertising intended specifically for the Netherlands.

### Definitions

In this Code, the following definitions apply:

**Promotional Advertising Communication:** an advertising communication for an alcoholic beverage in which the commendation predominantly concerns the conditions for supply to the consumer, e.g. price, duration of the promotional period, etc.

**Active Internet Marketing:** advertising that is actively distributed or enabled on and/or via the Internet by the advertiser, or completely or partially on his behalf.

Active Internet Marketing includes, among other things:

- advertising actively sent by the advertiser to selected recipients;
- advertising on or via an Internet platform, including a social media platform, by the advertiser, as well as advertising by a third party completely or partially on behalf of the advertiser, in so far as this involves an Internet platform over which the advertiser has some degree of control of or influence on the display or the content of the communication.

**Alcoholic Beverage:** a beverage that, at a temperature of twenty degrees Centigrade, contains more than one-half percent (0.5%) alcohol by volume.

**The Industry:** the part of the business community that is involved in the production, import, distribution, sale and provision of alcoholic beverages.

**Catering Industry Promotions:** promotions in catering establishments or at events or parties, in which a promotional team (whether or not dressed in the look & feel of the brand), engaged by a producer or importer, enables the attending public to be introduced to one or more of a manufacturer's or importer's branded products.

**Youth Broadcasting Station:** a broadcasting station of which over 25 % of the total viewing and listening public are minors. The percentage of minors in the viewing and/or listening audience is determined based on the weighted average of the viewer and listener figures as compared to the station's entire programme. The percentage must be measured based on a viewer and listener survey generally accepted in the market. Each year, based on a survey by an independent agency, the industry determines which broadcasters are to be designated as youth broadcasting stations.

**Merchandising:** articles carrying the brand name and/or figurative mark of an alcoholic beverage that can be obtained in return for payment by consumers via the retail channel or via a member of the industry.

**Minors:** individuals under 18.

**Under-the-cap Promotion:** a promotion organised by the advertiser in which consumers can obtain winning codes or similar codes by opening a non-resealable packaging (bottles with caps, cans), with which they can compete for prizes.

**Premium:** a gift article carrying the brand name and/or figurative mark of an alcoholic beverage that a consumer receives with the purchase of an alcoholic beverage in the retail or catering channel or within the context of a catering industry promotion.

**Printed Communications:** advertising in newspapers, magazines, periodicals, bills, flyers or posters, including billboards, scaffolding banners, bus shelters and multi-purpose advertising installations, with the focus on an alcoholic beverage, or brand or manufacturer thereof.

**Product Placement:** the inclusion of or reference to a product, service, brand or logo in return for payment or other valuable consideration within the context of a programme or a component of the media offering similar to a programme.

**Advertising for Alcoholic Beverages:** any public and/or systematic direct or indirect commendation of alcoholic beverages and non-alcoholic beverages in so far as these are commended for consumption in combination with alcoholic beverages by an advertiser or completely or partially on his behalf, either with or without the aid of third parties. Advertising is also understood to include services.

**Sampling:** an occasion initiated by a member of the industry, in accordance with the conditions drawn up to that end, as described in the explanation to Article 27, in which an alcoholic beverage is offered free of charge for consumption on the spot at a trade fair, during a catering industry or event promotion or at another location that meets the applicable statutory requirements.

**Sponsoring:** financial support by a member of the industry.

**Thematic Advertising Communication:** an advertising communication that is not an advertising communication for an alcoholic beverage in which the commendation predominantly materialises by means of product characteristics, image, atmosphere and the desired consumption setting.

**Trade Fair:** an occasion at which an alcoholic beverage is brought to the attention of predominantly professional providers by a member of the industry in a Business-to-Business (B2B) setting.

## GENERAL

### Article 1 - Amount

Because irresponsible consumption of alcoholic beverages may cause problems, restraint must be observed in all advertising for these beverages. Advertising for alcoholic beverages may not display, suggest or encourage excessive or otherwise irresponsible consumption.

#### Explanation Article 1

Excessive or otherwise irresponsible consumption includes in any event, but is not limited to:

- visibly emptying a full glass in one go
- portraying a glass that is at least twice the size of a standard-sized glass (a standard-sized glass for beer contains 250 ml; for wine 100 ml and for distilled spirits 35 ml) for the category of the relevant alcoholic beverage
- portraying an extraordinary-size packaging, e.g. a bucket or similar object, from which multiple individuals can beverage directly, for example by using straws. Portraying a pitcher is solely permitted within the context of the contents of the pitcher being poured into multiple glasses.

An under-the-cap campaign is not permitted, unless the following conditions are met:

1. Consumers cannot participate only by opening non-resealable packaging (bottles with caps, cans with lips), but can also participate via an alternative means, which is clearly communicated (e.g. visiting a website, etc.).
2. The alternative for participation mentioned in paragraph 1 is reasonably proportionate to participation by means of purchasing and opening an alcoholic beverage in non-resealable packaging.

### Article 2 - Abstinence

Advertising for alcoholic beverages may not portray abstinence from alcohol consumption or moderate alcohol consumption in a negative manner, nor may advertising for alcoholic beverages be derogative towards any non-alcoholic beverage.

### Article 3 - Alcoholic Nature

#### Paragraph 1

Advertising for alcoholic beverages may not cause confusion as to the alcoholic nature and alcoholic percentage of the beverage.

#### Paragraph 2

Advertising for an alcoholic beverage, including its brand name, type name and packaging, may not create the impression that the beverage is a soft drink, lemonade or other non-alcoholic beverage.

### Article 4 - Alcohol Percentage

Advertising for alcoholic beverages may not suggest that the alcohol percentage in itself is a favourable characteristic. Nor may it be suggested that risks diminish as the alcohol percentage decreases.

### Article 5 - Good Taste and/or Decency

Advertising for alcoholic beverages may not be contrary to good taste or decency and may not prejudice human dignity or integrity.

## CLAIMS

### Article 6 - Claims

Advertising for alcoholic beverages may not:

#### Paragraph 1

refer to the uninhibiting effect of alcoholic beverages, such as reducing or removing feelings of anxiety and inner or social conflicts.

#### Paragraph 2

refer to the possible health benefits of consuming alcoholic beverages.

#### Paragraph 3

suggest that the consumption of alcoholic beverages will improve physical or mental performance.

#### Paragraph 4

suggest that the consumption of alcoholic beverages has a positive effect on sporting performance.

### Article 7 - Professional Performance

Advertising for alcoholic beverages may not suggest that the consumption of alcoholic beverages has a positive effect on professional performance.

#### Explanation Article 7

People may not be displayed consuming alcoholic beverages at the workplace or if there is a direct connection to the workplace. If the setting is to be a working environment, it must be clear that the work has ended. An indirect connection is permitted - e.g. consuming alcoholic beverages at the end of the work day in an area other than the workplace, such as a canteen or recreational area.

### Article 8 - Social and/or Sexual Success

Advertising for alcoholic beverages may not create the impression that a causal connection exists between the consumption of alcoholic beverages and achieving social and/or sexual success. Such impression of such a causal connection can also be created by suggesting that alcohol is consumed without actually showing the alcoholic beverage or its consumption.

More in particular, communications as described in the explanation to Article 8 are prohibited (which list is not exhaustive).

## Explanation Article 8

### Social success

- communications in which one or more individuals are portrayed in “before” and “after” situations, where one or more persons evidently have inadequate social and/or interpersonal skills in the “before” situation and, after consumption of an alcoholic beverage, have such social and/or interpersonal skills in the “after” situation;
- communications in which an individual receives a promotion at work as a result of alcohol or its consumption;
- communications in which an individual clearly acquires improved social status as a result of alcohol or its consumption.

### Sexual success

- communications portraying a situation in a bar, discotheque or party, in which others are only willing to dance with the lead character in the communication after he or she has consumed an alcoholic beverage (and evidently did not want to before then);
- communications in which individuals are portrayed in “before” and “after” situations, in which successfully flirting with or picking up someone in a catering establishment or obtaining sexual favours is shown to be a direct result of alcohol or its consumption;
- communications in which an individual removes his or her clothes, adopts a more provocative stance or clearly makes his or her willingness to engage in sex known to either another person in the communication or to the viewer, in which this conduct is clearly a result of alcohol or its consumption;
- communications in which a man removes all of his clothes or allows these to be removed or is completely naked, even if this is not clearly the result of alcohol or its consumption;
- communications in which a woman removes her clothes or allows these to be removed until she is topless or completely naked, even if this conduct is not clearly the result of alcohol or its consumption.

Note: In itself, portraying one or more individuals who are (already) socially or sexually successful does not violate Article 8 of the Advertising Code for Alcoholic Beverages.

## VULNERABLE GROUPS

### Article 9 - Pregnant Women

Advertising for alcoholic beverages may not specifically target pregnant women.

### Article 10 - Minors

Advertising for alcoholic beverages may not specifically target minors. More in particular, communications as described in the explanation to Article 10 are prohibited.

### Explanation Article 10

Prohibited advertising communications within the context of Article 10 of the Advertising Code for Alcoholic Beverages include, but are not limited to:

- communications making use of teenage idols;
- communications/promotions making use of promotional items - e.g. toy figures, stuffed animals, toy cars, games, stickers, buttons, football cards, beach toys or school-related items - in so far as these specifically target minors;
- music specifically targeting teenagers that can be downloaded free of charge;
- communications making use of music specifically targeting teenagers;
- communications in which use is made of teenage language;
- communications in which use is made of situations that refer to teenage behaviour: rebellious behaviour, an infatuation, school parties, finals;
- communications in which Sinterklaas or Santa Claus is portrayed, in so far as these specifically target minors;
- communications using design that is popular at such time among minors.

### Article 11 - Minors

Advertising for alcoholic beverages may not portray individuals who are or appear to be evidently younger than 18. For advertising communications in which use is made of enacted situations with scripts and models hired by or on the instructions of the advertiser, no individuals who are or who evidently appear to be younger than 25 may be portrayed.

### Explanation Article 11

On social network sites like Facebook and other sites with photographs showing individuals who have not been hired by the advertiser, in which the content of the site is managed by or on behalf of the advertiser and over which the advertiser has editorial control, the individuals portrayed must be 18 or older.

### Article 12 - Minors

Advertising for alcoholic beverages may not suggest that the consumption of alcoholic beverages is a sign of maturity and that abstinence from consuming alcohol is a sign of immaturity.

### Article 13 - Minors

Offering premiums or causing their offering to minors during catering industry promotions is prohibited.

## HIGH-RISK SITUATIONS

### Article 14 - Risky Behaviour

Advertising for alcoholic beverages may not reflect situations that solicit or encourage risky, violent or aggressive behaviour.

### Explanation Article 14

Communications may display risky behaviour to a certain extent, providing such risk is reasonably limited and the advertising communication does not promote copying the risky behaviour.

### **Article 15 - Drugs**

Advertising for alcoholic beverages may not show any kind of acceptance of, association with or reference to illegal substances.

### **Article 16 - Events: Public Order**

Advertising for alcoholic beverages within the context of events is prohibited if it must reasonably be suspected that this would be conducive to disturbance of the public order and/or disturbance of the relevant event.

### **Article 17 - Events: Risk of Personal Injury**

Advertising for alcoholic beverages within the context of events is prohibited if it can reasonably be suspected that this would create a risk of personal injury to participants and/or visitors.

### **Article 18 - Traffic**

#### **Paragraph 1**

Advertising for alcoholic beverages may not create any connection between the consumption of alcoholic beverages and actively participating in traffic with any means of transport whatsoever.

#### **Paragraph 2**

When a commendation for alcoholic beverages is displayed on any means of transport, the means of transport must also display a clearly legible warning against active participation in traffic after consuming alcohol.

An exception is made for means of transport used to transport alcoholic beverages, such as lorries, tap equipment technicians and technical service vehicles for the catering industry.

## **SPECIFIC FORMS**

### **Article 19 - Sports and Event Sponsoring**

#### **Paragraph 1**

The brand name of an alcoholic beverage may be linked to an event.

#### **Paragraph 2**

Sponsoring may be displayed on physical carriers within the context of an event, provided that Articles 10, 16, 17, 21 and 30 are complied with.

#### **Paragraph 3**

Advertising within the context of an event by means of physical carriers is permitted, provided that Articles 10, 16, 17, 21 and 30 are complied with.

#### **Paragraph 4**

Regarding the content of the advertising communications used in paragraphs 1 through 3, all rules of this Code apply in the event of sports and event sponsoring.

### **Article 20 - Free Supply**

#### **Paragraph 1**

With the exception of tasting activities in licensed shops and sampling during catering industry promotions, advertising is prohibited in which alcoholic beverages are supplied to private consumers free of charge or for less than half of the regular sales price of the alcoholic beverage by a member of the industry or with the active participation of a member of the industry.

#### **Paragraph 2**

The value of a premium offered may not be more than half of the total value of the purchased product including the premium acquired.

#### **Explanation Article 20**

For paragraph 1, this means that the discount may be no more than 50% of the regular sales price. The word "free" or its synonyms (e.g. "gift" or "treat") may not be used in the communication.

For grocery packages and prizes in contests and/or promotions, no alcoholic beverages may be given away either, even if the word "free" or any one of its synonyms are not used.

## **CARRIER (MEDIUM)**

### **Article 21 – Minors: events**

Advertising for alcoholic beverages in any form whatsoever may not reach an audience comprised for more than twenty-five percent (25%) of minors. The reach is determined over a representative measurement period that is determined based on the specific circumstances of the case (including the location, the medium, the impact and the proportionality) and using reach figures that are as objective as possible.

The standard for determining the reach of advertising communications is the reach survey generally accepted in the market or, if this is unavailable, other sound and representative proof.

The visitor figures apply as the standard for the reach of events. The burden of proof in respect of the reach is borne by the advertiser, who must base such proof on viewer or listener figures generally accepted in the market or other sound and representative proof. For websites and their pages, the user profile must be made plausible.

Article 21 does not apply to advertising communications that are part of the regular street scene or to incidental situations that cannot be influenced by the advertiser. The regular street scene is understood to include all situations that can be reasonably expected in the street scene and that are also permitted pursuant to this Code, for example lightboxes depicting the brands sold or on tap on the building fronts of bars and/or restaurants, and advertising on bus shelters. Incidental situations are situations of a one-off nature, for example a Sinterklaas parade in part of a city centre or village, but also, for example, a situation in which a promotional team is moving from one catering establishment to another without actively advertising and accidentally encounters a group of minors.

#### **Explanation Article 21**

More in particular, communications that are part of the regular street scene include, but are not limited to, communications in which the brand name and/or logo is depicted on items such as coasters, tap handles, parasols, flags, bartender clothing and/or banners that may reasonably be expected at a point of sale or mobile tap during events or fairs for the purpose of identifying the product and brand.

#### **Article 22 – Minors: radio and tv**

Advertising for alcoholic beverages may not be broadcast on radio or television immediately prior to, during or immediately after programmes that are heard or viewed for more than twenty-five percent (25%) by minors, according to viewer or listener figures generally accepted in the market.

#### **Article 23 – Minors: youth channels**

##### **Paragraph 1**

Advertising for alcoholic beverages is prohibited on youth broadcasting stations.

##### **Paragraph 2**

Advertising for alcoholic beverages is prohibited in magazines that specifically target minors.

##### **Paragraph 3**

Advertising for alcoholic beverages is prohibited on websites that specifically target minors.

#### **Article 24 – Active Internet Marketing**

##### **Paragraph 1 - Additional Effect**

In addition to the provisions of the Dutch Advertising Code, the provisions of this article apply to active Internet marketing.

##### **Paragraph 2 - Age Indication in Image Advertising via the Internet**

Advertising originating with the advertiser that is wholly or partially compiled of still or moving images and that is intended for distribution via the Internet, by the advertiser or otherwise, must clearly display the educational slogan referred to in Article 33(2).

##### **Paragraph 3 - Communications on an Internet Platform Controlled by the Advertiser**

a) Advertising placed on an Internet platform controlled to some extent by the advertiser must satisfy the Dutch Advertising Code irrespective of the party placing it.

b) If a party other than the advertiser places advertising on the aforementioned platform:

- the advertiser must also, in addition to paragraph 3(a), have ascertained that the person placing the advertising is at least 18, unless:
- this person must have stated that he or she is at least 18.

c) If the statement referred to in paragraph 3(b), second dash, is lacking and/or in case there is doubt as to whether the person is at least 18, the advertiser shall ensure that this person cannot place communications. If no selection or access control is possible in respect of an Internet platform, the advertiser must indicate at a clearly observable spot that the content of and placing on that Internet platform is meant exclusively for persons who are at least 18.

##### **Paragraph 4 - Communications Distributed by the Advertiser**

With active Internet marketing in which the recipient can be selected, including but not limited to advertising via email, posts on a social media account of a party other than the advertiser or direct marketing based on digital profiles linked to a cookie:

- a) a minimum age of 18 must be applied as effective selection criterion, or another selection criterion must be applied from which this minimum age ensues, unless
- b) the recipient has stated to be at least 18.
- c) If the statement referred to in paragraph 4(b) is lacking, the advertiser shall ensure that no more than 25% minors are reached as provided in Article 21.

##### **Paragraph 5**

Before making advertising comprised of placing or responding to a communication on a social media account other than that of the advertiser, the advertiser must have ascertained that the owner of that social media account is at least 18. If this has not proven to be the case or if it is impossible to do so, placing a communication is prohibited.

#### **Explanation Article 24**

“Liking” the advertiser on any post, status, photograph or other communication by third parties or “re-tweeting” is currently prohibited for that reason unless it can be demonstrated that the owner of the relevant social media account is at least 18. For example, the account may be the official account of a company or a well-known natural person. If a natural person is involved who is not well-known, the advertiser must be reasonably able to determine, using information on his profile page, that the person involved is 18 or older.

Note: obviously, the rules based on legislation and regulations within the context of privacy and the protection of personal data (as currently laid down in the Personal Data Protection Act, the Telecommunications Act and the Distribution of Advertising by e-mail Code, among others) apply as well, including the consent requirement, drawing attention to and providing the option of unsubscribing, and the information obligations, to the extent applicable.

### **Article 25 - Websites**

With websites where the brand name or trade name of the alcoholic beverage is part of the domain name, visitors must be asked via an age check on the home page or prior to the first page on the website being visited whether they are 18 or older. The age check must at least consist of entering or clicking on the visitor's date of birth (day/month/year). Access to the website (or page if the visitor is directed there) may only be provided if the visitor has indicated that he or she is at least 18 at the time of the age check.

### **Article 26 - Catering Industry Promotions**

#### **Paragraph 1**

The commendation of alcoholic beverages by catering industry promotional teams may not target minors. Commendation in this manner is prohibited at locations where more than twenty-five percent (25%) of the audience at that time consists of minors.

#### **Paragraph 2**

During catering industry promotions, alcoholic beverages may not be offered free of charge.

#### **Paragraph 3**

During catering industry promotions, selling alcoholic beverages for less than half of their regular sales price is prohibited. In addition, no more than one beverage may be offered to each client at a discount.

#### **Paragraph 4**

Sampling may be organised during catering industry promotions.

#### **Paragraph 5**

Catering industry promotions must be performed by individuals who are at least 18.

### **Explanation Article 26**

If a catering industry promotion has the form of a sampling then:

- the sampling may only be held in catering establishments with an Alcohol and Catering Industry licence or at events for which an exemption has been granted within the context of Article 35 of the Alcohol Licensing and Catering Act;
- sample servings may only be used of 2 cl for distilled spirits, 5 cl for wine and 7.5 cl for beer and cider;
- each individual may only be allowed to taste a maximum of one unit of one brand of an alcoholic beverage. If multiple variations of one brand are being promoted during a promotional activity, each individual may taste a total of at most three units. If multiple brands of one type are being promoted during a promotional activity, each individual may taste a total of at most three units. If multiple types are being promoted during a promotional activity, each individual may taste a total of at most three units. All of the alcoholic beverages to be tasted must be different in these cases;
- beer, wine and distilled spirits may not be tasted together;
- all members of the promotional team, dressed in the look & feel of the alcohol brand if desired, must be at least 18.

### **Article 27 - Sampling in a Licensed Shop**

#### **Paragraph 1**

Sampling alcoholic beverages in a licensed shop is permitted pursuant to Article 13 of the Alcohol Licensing and Catering Act. In addition to the statutory conditions, the conditions below in paragraphs 2 and 3 apply.

#### **Paragraph 2**

Promotional teams are explicitly prohibited from allowing consumers to taste in a licensed shop.

#### **Paragraph 3**

Promotional teams, dressed in the look & feel of the alcohol brand if desired, may - if the relevant licensed shop-owner has granted permission - be present in a licensed shop to give product information and to draw attention to the sampling. These promotional activities must be performed by individuals who are at least 18.

### **Article 28 - Outdoor Advertising and Cinema Advertising**

#### **Paragraph 1**

Advertising for alcoholic beverages is prohibited on billboards, on scaffolding banners, in bus shelters and on multi-purpose advertising installations located within the sight of rehab clinics or educational institutions of which the majority of the visitors are minors and when located along motorways or other roads outside of built-up areas.

#### **Paragraph 2**

Advertising for alcoholic beverages may not be shown in cinema halls prior to children's movies, family movies with a synchronised translation in Dutch or movies shown during a children's matinee or in school viewings. In respect of all other movies: alcohol advertising may only be shown if no more than twenty-five percent (25%) of the audience are minors.

### **Article 29 - Expositions and Tours**

Visiting an exposition or tour in a brewery / distillery / vineyard is prohibited for individuals under 18, unless:

1. they are accompanied by an adult during the visit;
2. the exposition or tour predominantly focuses on the production process and/or the craftsmanship and/or the affiliation with a town or region, and in which, therefore, less predominant focus is placed on commending alcoholic beverages;
3. the consumption of alcoholic beverages on site must always be held in a location that is physically separated from the exposition or tour area, with the exception of allowing the tasting of intermediate and/or finished products of the brewing / distillation / fermentation process in small amounts and as a manner of explanation. All applicable laws and rules, in particular those regarding the age limit for the supply of alcoholic beverages, must be observed.

## SPECIFIC FORMS OF ADVERTISING

### Article 30 - Sports

#### Paragraph 1

Advertising for alcoholic beverages may not be carried on the person of an individual sportsman or sports team.

#### Paragraph 2

Advertising for alcoholic beverages may not be carried on means of transport and/or attributes used by the sportsman or sports team when actively participating in sports.

#### Paragraph 3

Hiring athletes who actively participate in sports on the highest adult level (European or World Championships and Olympic Games) by or on behalf of the advertiser for radio, cinema and television commercials and printed communications is prohibited when use is made of enacted situations with scripts. Portraying these athletes on packaging and labels is also prohibited.

#### Paragraph 4

Packaging for alcoholic beverages may not portray active participation in sports.

#### Paragraph 5

Active participation in sports may be portrayed in advertising communications, but only to portray the context of celebrating the performance after the performance.

### Article 31 - Trade Fairs

Participants in trade fairs are permitted to introduce their products to buyers during a trade fair. The conditions mentioned in Article 26 do not apply to this.

### Article 32 - Tap Equipment

The members of the industry are prohibited from making professional tap equipment available free of charge or for a symbolic consideration at gatherings, events and festivities. events and festivities.

## EDUCATIONAL SLOGAN

### Article 33 - Educational Slogan

#### Paragraph 1

For advertising for alcoholic beverages broadcast on television, in cinemas, theatres and closed-circuit television, each communication must in any event carry the educational slogan referred to in paragraph 2, which must be clearly legible.

#### Paragraph 2

Every advertisement for alcoholic beverages must display an educational slogan: "Geen 18, geen alcohol" ("no alcohol under 18"). This slogan may be used in combination with "Geniet, maar drink met mate" ("Enjoy, but drink with moderation").

#### Paragraph 3

For all printed advertising and for commercials for alcoholic beverages on websites and social network sites, each communication must in any event carry the educational slogan "Geen 18, geen alcohol" as referred to in paragraph 2. Communications displayed on the Internet that are no longer part of a current campaign are exempted.

For promotional advertising in the retail channel, a slogan other than that mentioned in paragraph 2 may be used. Prior to the first use of another slogan, permission must be obtained from the retail trade Code Contact and from STIVA.

#### Paragraph 4

Advertising communications for alcoholic beverages in the form of a banner must in any event carry the educational slogan "Geen 18, geen alcohol" as referred to in paragraph 2. This does not apply to banners that are less than or equal to 120 pixels in width and 60 pixels in height.

#### Paragraph 5

For all forms of advertising mentioned in this article, guidelines for the display of the educational slogan can be found in the explanation.

### Explanation Article 33

Displaying the educational slogan "Geen 18, geen alcohol" is mandatory for advertising for alcoholic beverages on television, in cinemas, in print and in commercials for on the Internet.

In assessing complaints about the use (or lack) of the new slogan the efforts that the advertiser does (or did) to match its operations to the new slogan will be taken into account.

The following guidelines apply:



## Printed Communications

### Type of Communication

The requirements for the use of the educational slogan “Geen 18, geen alcohol” and “Geniet, maar beverage met mate” apply to the following printed communications: advertising in newspapers, magazines, flyers and posters, including billboards, scaffolding banners, bus shelters and multi-purpose advertising installations) with the focus on an alcoholic beverage, or brand or manufacturer thereof.

### Slogan Font

Arial Italic

### Slogan Format

Dependent on the dimensions of the communication (width x height).

For paper sizes up to A5, the headline must be displayed in a size similar to the body text of the communication. For larger paper sizes, the following requirements apply to the font size of the slogan:

- A5 (210 x 148 mm): font size 9
- A4 (210 x 297 mm): font size 12
- A3 (420 x 297 mm): font size 16
- A2 (420 x 594 mm): font size 20
- A1 (841 x 594 mm): font size 24
- A0 (841 x 1189 mm): font size 30
- bus shelter/multi-purpose advertising installations (1160 x 1710 mm): font size 150

For deviating paper sizes larger than A4, the font size of the slogan is determined based on which paper size is the closest to the aforementioned standard sizes.

### Slogan Position

The slogan must be sufficiently isolated as compared to the typeset body text and positioned horizontally, so that it draws sufficient attention.

### Slogan Layout

The slogan must clearly contrast with the background colour, making use of positive (black) and negative (white) as much as possible.

## Television, Cinema and Internet Commercials

### Slogan font

Arial Italic

### Slogan font size

If the screen ratio is 16:9 - standard broadband ratio - the educational slogan must be displayed in font size 26.

### Slogan Duration

The slogan must be on screen for at least five seconds. Tag-ons and tag-forwards must also display the educational slogan for five seconds. If the tag-on or tag-forward is shorter than five seconds, the slogan must be displayed for the entire duration of the communication.

### Slogan position

The slogan must be displayed horizontally at the bottom of the screen, in the title save area.

### Slogan Layout

The slogan must clearly contrast with the background colour, making use of positive (black) and negative (white) as much as possible.

### Slogan Timing

The slogan may not be displayed simultaneously with a pack-shot, disclaimer or pay-off. The slogan must furthermore be sufficiently isolated as compared to the typeset body text so that it draws sufficient attention.

## Internet Banners

### Type of Communication

The requirements for the use of the educational slogan “Geen 18, geen alcohol” and “Geniet, maar beverage met mate” apply to all types of banners. This does not apply to banners that are less than or equal to 120 pixels in width and 60 pixels in height.

### Slogan Font

Arial Italic

### Slogan Format

Font size 11

### Slogan Position

The slogan must be sufficiently isolated as compared to the typeset body text and positioned horizontally, so that it draws sufficient attention.

### **Slogan Layout**

The slogan must clearly contrast with the background colour, making use of positive (black) and negative (white) as much as possible.

### **Clause 34 – Retail and Catering Industry Alert**

If the packaging of alcoholic beverages has been found to violate the Advertising Code for Alcoholic Beverages by means of an irrevocable ruling of the Advertising Code Committee, STIVA will take the following measures:

- 1) Contact the manufacturer
- 2) Contact the importer (if applicable)
- 3) If the ruling is not complied with, STIVA may issue a “retail alert”. This means that STIVA will warn the relevant industry organisations for supermarkets, licensed shops and the catering industry that the relevant packaging violates the Advertising Code for Alcoholic Beverages.

### **Entry into force**

This Code enters into force as from 1 January 2014.

A transition period of 3 months applies to articles 1, 8, 14, 19, 24, 27 and 30. This period ends on 1 April 2014.

A transition period of 6 months applies to article 34. This period ends on 1 July 2014.

# LETTER BOX ADVERTISING, DOOR-TO-DOOR SAMPLING AND DIRECT RESPONSE ADVERTISING CODE

## GENERAL PROVISIONS

### Article 1

In this Code the following definitions apply:

**a. letter box advertising:** means all advertising material which is distributed through the letter box or post office box, whether by direct mail or door-to-door, which does not form an integral part of another medium such as newspapers or magazines;

**b. door-to-door sampling:** means the distribution of goods or samples by direct mail or door-to-door free of charge;

**c. direct response advertising:** all advertising in which the goods, services or information offered can be obtained directly from the provider by means of a written, electronic or telephone response;

**d. advertiser:** the party who orders letter box advertising, door-to-door sampling or direct response advertising to be sent to promote sales of his goods or services or to propagate his concepts;

**e. distributor:** a party who, either on instructions or otherwise, distributes or causes to be distributed letter box advertising, direct response or sampling material;

**f. extended transaction:** a transaction relating to a series of goods and/or services for which the delivery and purchase obligations extend over a period of time.

### Article 2

The advertiser shall identify himself in letter box advertising, door-to-door sampling and direct response advertising in such a way that he is easily recognisable and actually accessible to the recipient. The name and address of the advertiser shall be stated in the offer, for which purpose mention of a post box number is not sufficient.

## CONTENT AND HANDLING OF THE OFFER

### Article 3

The goods and/or services that are offered shall be depicted and/or described clearly and truthfully.

### Article 4

Every offer shall contain a brief, simply formulated summary of the rights and obligations attached to acceptance of the offer, in particular concerning cash price, the costs and conditions for paying in instalments, any postal charges and other conditions such as whether or not the offer is on approval without obligation, so recipient knows what is on offer and which are his rights and obligations should he accept the offer.

### Article 5

As regards vouchers, cash premium coupons and savings stamps, the advantage or reduction for the recipient shall be easily identifiable and verifiable by him, and the offer's term of validity and any other restrictions shall be indicated.

### Article 6

The advertiser undertakes to take back damaged premiums or goods and to replace them with new specimens.

## UNSOLICITED GOODS

### Article 7

The sending of unsolicited goods is prohibited if:

- a. it is stated or suggested that the recipient is obliged to pay unless he refuses the goods or returns them;
- b. the recipient obtains the impression that he is obliged to accept the goods.

## RIGHT OF RETURN

### Article 8

Where the expression 'on approval without obligation' or 'no good, money back,' or similar expressions are used, the advertiser shall be obliged to accept the returned goods unconditionally during the period specified in the offer.

### Article 9

Unless the offer expressly stipulates otherwise, the recipient shall be entitled to return goods ordered by him as a result of direct response advertising, letter box advertising or door-to-door sampling within seven days or so much later as stipulated in the offer, without further obligation on his part, unless explicitly stated otherwise.

**Article 10**

When returning goods in the cases referred to in Articles 8 and 9, any sums already received by the advertiser shall be returned within 30 days of the date the returned goods are received.

## EXTENDED TRANSACTION

**Article 11**

The recipient shall be entitled to dissolve an extended transaction entered into by him if the goods delivered fail to meet his justified expectations, subject to any termination rules agreed for this purpose.

## DISTRIBUTION AND DELIVERY

**Article 12**

The distributor is obliged to ensure that advertising material distributed by direct mail or door-to-door reaches the recipient in good order, subject to the provisions of article 14.

**Article 13**

This article was withdrawn on 1 April 1993.

**Article 14**

Should the recipient state in writing that he does not want addressed advertising, the advertiser shall ensure that this wish is honoured unconditionally, as soon as possible and in any case within a period of three months of receipt of the request.

**Article 15**

Samples of goods shall be safely packaged when delivered to the recipient. The advertiser shall remain responsible for the distribution of the samples.

**Article 16**

Samples and other material which may constitute a danger to physical health in the event of internal or external use shall be handed over by the distributor only to adults and only in person.

**Article 17**

Since 1 January 2006 this article is part of the Advertising Code directed at Children and Young People.

**Article 18**

When distributing advertising material, employees of a distributor shall be able on request to identify the distributor for whom they are working.

Note: For possible prohibitions on the distribution of unaddressed advertising material and products containing alcohol see the respective Special Advertising Codes.

This Code became operative on 1 April 1993.

# ADVERTISING CODE FOR THE USE OF THE POSTAL FILTER 2015

## Introduction

The objective of this special advertising Code is to inform consumers, companies and organizations in a uniformed way about the use of the National Register of Deceased Persons and the National Postal Register of the Postal Filter Authority.

## Article 1. Definitions

**In this Code the following definitions apply:**

- 1. Postal filter authority :** this organization is located in Amsterdam; it is responsible to and in control of both the National Register of Deceased Persons and the National Postal Register; (further: Postal filter).
- 2. National Register of Deceased Persons:** the register in which the personal data of deceased persons is filed.
- 3. National Postal Register:** the register where personal data of persons who do not want to be contacted by Direct Mail is filed;
- 4. Advertiser/Client:** the legal person or natural person who, acting in the course of his profession or business, distributes Advertising or causes Advertising to be distributed.
- 5. Person:** a natural person, not acting in the course of his profession or business.
- 6. Advertising:** any public commendation of goods, services or ideas (together referred to as: products). The solicitation of services is also considered advertising, with the exception of market research.
- 7. DirectMail:** any unsolicited Advertising, with the exception of market research, which is addressed (with and without initials and/or first name and/or surname) and physically sent by post to a person, which is not an integrated part of another medium, as newspapers and magazines<sup>1</sup>.
- 8. Prospect:** a person with whom an Advertiser/Client does not have an existing customer relationship<sup>2</sup> and whose contact data has been used by an Advertiser/Client, either directly or via a third party.

## Article 2. Recording in the Register of Deceased Persons

Any heir or directly involved person can have the name of a deceased relative entered into the National Register of Deceased Persons in order to prevent an Advertiser/Client from making use of the deceased persons personal data to send advertising material (via [www.postfilter.nl](http://www.postfilter.nl)).

## Article 3. Recording in the National Postal Register

Any person who does not want to receive advertising material via Direct Mail can for this purpose enter his name in the National Postal Register(via[www.postfilter.nl](http://www.postfilter.nl)).

## Article 4. Period of Registration

**4.1** A Person's data is recorded in the National Register of Deceased Persons for a 10 year period.

**4.2** A Person's data is recorded in the National Postal Register for a 5 year period.

## Article 5. The Use of personal Data by Advertisers/Clients

**5.1** An Advertiser/Client should always check the National Register of Deceased Persons before making use of the addresses of Persons (clients) and/or Prospects in order to send Direct Mail. It is not permitted to contact a Person and/or Prospect whose personal data has been recorded in the National Register of Deceased Persons.

**5.2** An Advertiser/Client should always check the National Postal Register before making use of the addresses of Prospects in order to send Direct Mail. It is not permitted to contact a Prospect whose personal data has been recorded in the National Postal Register.

**5.3** Consultation of the National Register of Deceased Persons and the National Postal Register mentioned in the articles 5.1 and 5.2, has to take place no longer than maximum 6 weeks before the Direct Mail is actually sent.

## Article 6. Complaints

**6.1** A Person who thinks that an Advertiser/Client is acting in violation of this Code may submit a complaint in writing or per e-mail, to the Advertiser/Client concerned.

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1 Advertisements and advertising supplements that belong to another medium, such as newspapers and magazines, which are sent to a subscriber or existing client/contact together with such other media, fall outside the scope of Postal Filter Authority and this Code.

2 This means that where reference is made to an (existing) consumer relationship, it is also meant that the personal data has been collected within the scope of a product or service purchased.  
The way in which or under what circumstances the person concerned has permitted the Advertiser/Client to record his/her data to be used for Direct Mail may be taken into account, for example within the framework of a gift or a request for information in the past.

**6.2** The Advertiser/Client shall investigate the complaint and inform the complainant about the results of the investigation within 2 weeks of receipt of the complaint.

**6.3** The Complainant who is not notified promptly pursuant to the previous section of this article, or who is not satisfied with the resolution of his complaint may lodge a complaint with the Advertising Code Authority pursuant to the articles and Regulation of this Authority. Should a prompt response by the Advertiser/Client not occur, the complaint shall be submitted by the complainant no later than two weeks after the elapse of the period stipulated in the previous section and in the case of an objection to a given response, within two weeks after receipt of that response, unless the complainant can demonstrate that this could not reasonably have been expected of him.

**6.4** Should a complaint be allowed, the sanctions referred to in Articles 17 and 18, of the Regulation concerning the Advertising Code Committee and the Board of Appeal shall apply.

#### Article 7. Legal Right to Object

This Code does not prevent the Advertisers/Clients from offering a Person the possibility to not receive Direct Mail. Article 14 of the Letter box advertising, Door-to-Door Sampling and Direct Response Advertising Code applies in this case.

#### Article 8. Coming into force and Evaluation and/or Amendment of the Code

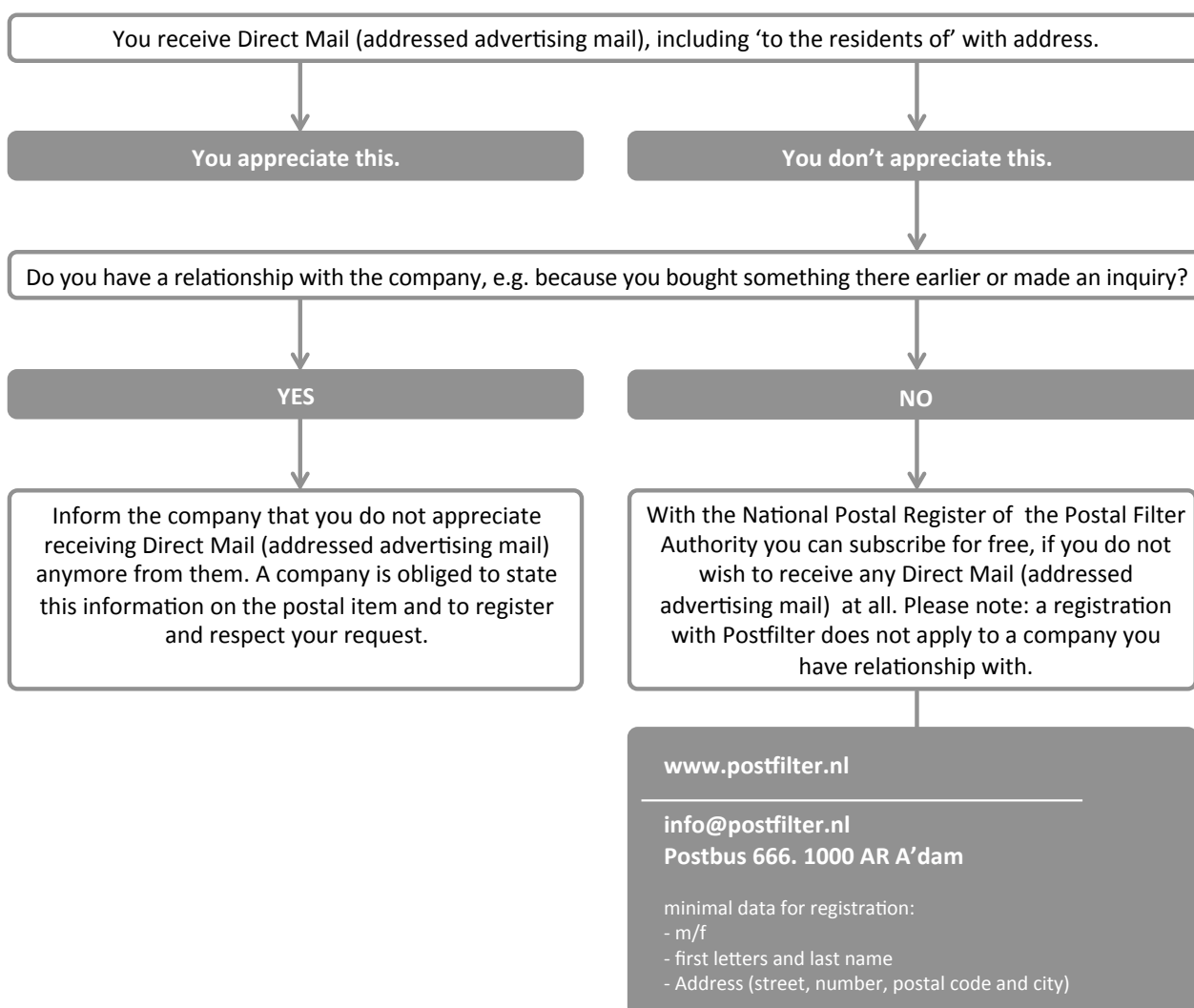
This code became operative on 1 January 2011 and has been modified on 1 January 2015.

It shall be evaluated every year and revised if necessary.

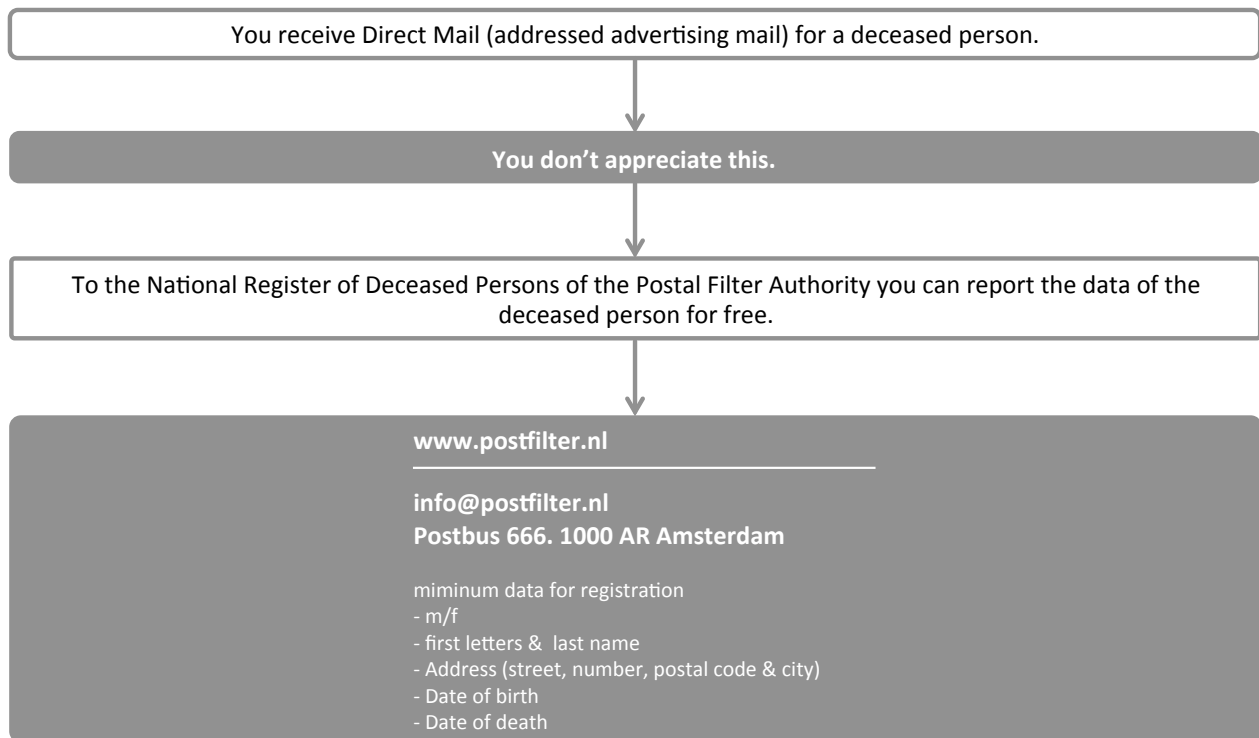
This Code may also be revised earlier if there is a sufficient cause to do so.

#### For consumers – Flowchart for filtering Direct Mail (addressed advertising mail) for consumers

You receive direct mail (addressed advertising mail), but does not appreciate this (incl. 'To the residents of' with address). Use the following checklist and you can quickly see what your rights are as a consumer.

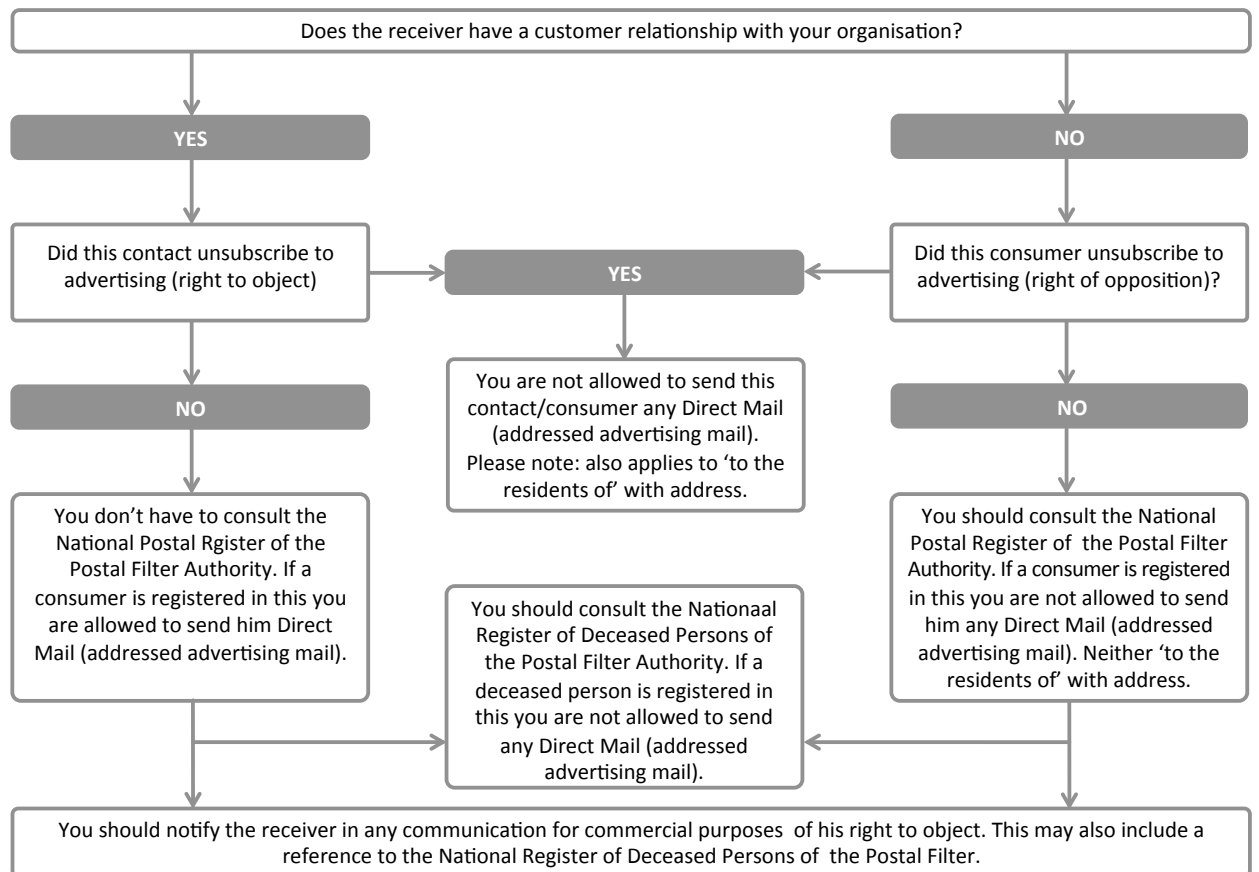


You receive Direct Mail (addressed advertising mail) in the name of a deceased person, but does appreciate this. Use the following checklist and you can quickly see how to prevent this.



**For companies - Flowchart for sending Direct Mail (addressed advertising mail)**

You want to send Direct Mail (addressed advertising mail) and want to comply with laws and regulations. Use the following checklist and you can quickly see what you need to do. Please note: this also applies for 'to the residents' with address.



For more information about consulting the National Register of Deceased Persons and the National Postal Register: [www.postfilter.nl](http://www.postfilter.nl).

# CODE FOR THE DISTRIBUTION OF UNADDRESSED PRINTED ADVERTISEMENTS

## DEFINITIONS AND GENERAL PROVISIONS

### Article 1.1. In this Code the following definitions apply:

**a. Advertising:** any public and/or systematic direct or indirect commendation of goods, services or ideas (together referred to as: products). The soliciting of services is also considered advertising.

**b. Advertising printed matter:** any printed matter which consists wholly or partly of advertising, with the exception of free distribution newspapers (free local papers).

**c. Samples:** goods or samples of goods which are distributed without any consideration, for the purpose of commending them.

**d. Unaddressed advertising printed matter:** printed advertising and/or samples which are distributed door-to-door free of charge without mention of the address (or post office box) of the recipient.

**e. Free local papers:** unaddressed printed matter which is distributed door-to-door free of charge at regular intervals in a geographically limited area and of which at least 10% of the contents consists of information and news, but no advertising, about the area of distribution in question, and which in addition also contains advertising messages.

### f. Sender:

- in the case of unaddressed printed advertising material: the person or persons mentioned as sender on the unaddressed printed advertising material;
- in the case of free local papers: the publisher mentioned in the paper concerned.

**g. Distributor:** the organization which distributes - or causes to be distributed - the unaddressed printed advertising material or the free local papers on behalf of the sender.

### Explanation of Article 1.1.a

The term 'advertising' as defined in the Code means any public and/or systematic direct or indirect commendation irrespective of its origin. Thus no distinction is made whether an advertising message comes from a government agency, a non-profit organization or a company.

If the message has no character of commendation, it is not considered advertising. This is the case, for example, in the distribution of purely factual information, which is generally also designated by the word 'information'. Whether or not a given message is advertising, is determined ultimately by the Advertising Code Committee and the Board of Appeal. The expression 'soliciting of services' refers to the recruitment of personnel or outworkers.

### Explanation of Article 1.1.d

Advertising is unaddressed if the address of the recipient (post office box or home address) and city is not stated. It is not important whether a name is included in an address; printed advertising that is addressed to "the occupant of" a specific address is therefore considered to be "addressed".

It shall be borne in mind, however, that such printed matter does fall within the scope of the Advertising Code for the Use of the Postal Filter and article 14 of the Code Letterbox Advertising, Door-to-door Sampling and Direct Response Advertising, so that the person who has registered himself with the National Register of Deceased Persons or respectively the Post Register has reported in writing to the sender that he does not wish to receive unaddressed advertising shall also not receive printed matter that does not state his name but is directed to his address.

### Explanation of Article 1.1.e

A free local paper differs from other newspapers in that it contains news and information about the area where it is distributed, besides advertising and possibly more general news. The relatively low percentage of 10% has been chosen deliberately.

### Article 1.2.

The sender shall identify himself as such, so that he is readily accessible to the recipient. The name and address of the sender shall be mentioned in the unaddressed printed advertising and free local paper; the mention of a post office box number alone is not sufficient.

## 2. Stickers

**2.1** The following stickers fall within the scope of this Code:

**Sticker A:** "NO UNADDRESSED PRINTED ADVERTISING MATERIAL, NO FREE LOCAL PAPERS" (NO/NO)

**Sticker B:** "NO UNADDRESSED PRINTED ADVERTISING MATERIAL, FREE LOCAL PAPERS ACCEPTED" (NO/YES)

as elaborated in the models included in Annex 1 of this Code.

**2.2** The purpose of sticker A: by putting sticker A on or in the immediate vicinity of his letter box the occupant or user of the building concerned indicates that he does not wish to receive unaddressed printed advertising material or free local papers.



**2.3** The purpose of sticker B: by putting sticker B on or in the immediate vicinity of his letter box the occupant or user of the relevant building indicates that he does not wish to receive unaddressed printed advertising material but does wish to receive free local papers in his letter box.

### **3. Compliance with stickers**

**3.1** Senders and distributors shall, both individually and in mutual consultation take all measures and provisions which are necessary:

- to ensure compliance with the wishes stated on the stickers referred to in Annex 1;
- for the further enforcement and implementation of this Code.

**3.2** Senders and distributors shall keep count of the number of stickers used (or cause this to be done) and shall match the number of items of unaddressed printed advertising material and free local papers to this figure.

### **4. Distribution and Publicising of Stickers**

**4.1** The parties to this Code shall ensure that enough A and B stickers as referred to in Annex 1, are available to the public free of charge.

#### **Explanation of Article 4.1**

The distribution of stickers is arranged through the municipality and by way of the special telephone number 0900-2025095 (25 cents per minute). The sticker can be collected by the recipient of unaddressed printed advertising and/or free local papers at the town hall or at municipal agencies that have a public function and have been designated by the municipality.

The quantity of stickers at a given location shall match the size of the population in the municipality concerned. The sticker can also be ordered by the recipient of unaddressed printed advertising material and/or free local papers by telephone, after which the stickers will be sent.

**4.2** Parties to this Code shall ensure that the meaning and availability of the stickers is clearly brought to the attention of the public.

#### **Explanation of Article 4.2**

A PR plan has been developed for the introduction of the sticker system, which is intended to bring the sticker system effectively to the attention of interested parties.

### **5. Complaints**

Any person who thinks he received unaddressed printed advertising material and/or free local papers in spite of the sticker being attached may complain in writing to this effect to the sender and/or distributor. The recipient of the complaint is obliged to investigate the complaint and to inform the complainant in writing within four weeks of the results of this investigation. Should the complaint be addressed to the sender, the latter shall, on first request, disclose the name and address of the distributor.

#### **Explanation of Article 5**

The right to complain applies to the stickers referred to in Annex 1. For resolution of complaints, contact should first be made by telephone with the sender or distributor. If the complainant desires to submit a complaint to the Advertising Code Authority, as provided in Article 6, he should complain in writing to the sender or distributor. In this case, both sender and distributor shall be assumed to be parties to the procedure as stipulated in Article 6.1. In the event of a procedure with the Advertising Code Authority, the complainant shall be able to submit a copy of the written complaint sent to the sender and/or distributor.

### **6. Supervision and Sanctions**

**6.1** Any complainant who has not been informed in time pursuant to Article 5 or considers the handling of his complaint unsatisfactory may then lodge a complaint with the Advertising Code Authority in accordance with its Articles and Regulation. In the absence of a prompt response by the sender (or distributor, as the case may be) the complaint shall be lodged no later than four weeks after the lapse of the period described in article 5 and, in the event of an objection to a response received, within four weeks of receipt of the response, unless complainant can demonstrate that he could not reasonably have met this deadline.

#### **Explanation of Article 6.1**

The point of departure is that the complainant has four weeks for the second step of the complaint procedure. Should he exceed this period, he shall demonstrate that he was prevented from responding in time by, for example, illness, holidays or otherwise.

**6.2** Should a complaint be allowed, the sanctions referred to in Articles 17 and 18, of the Regulation concerning the Advertising Code Committee and the Board of Appeal shall apply.

**6.3** Should a complaint be allowed, the Advertising Code Committee or the Board of Appeal may indicate whether the infringement of the Code is to be attributed to the sender or the distributor or both.

### **7. Entry into Force**

This Code went into force 1 January 1993 and was revised 1 January 2004.

## **ANNEX 1**



Available at the local government offices or call 0900-2025095 (€0.25 p.m.)

# CODE FOR DISTRIBUTION OF ADVERTISEMENTS BY E-MAIL 2012

## 1. General provisions

**1.1** This Code applies to the distribution of unsolicited advertising messages by e-mail.

**1.2** The following definitions apply to this Code:

- a. Advertising by e-mail:** the public commendation by e-mail of goods, services or concepts, as well as the solicitation of services. This does not include sending an invitation exclusively for participating in a research study for historical, statistic or scientific purposes.
- b. Advertiser:** the person (individual practicing a profession or on behalf of a company or corporation) who has instructed to send an advertisement by e-mail or who makes it possible that an advertisement is sent via e-mail to a platform for which the advertiser is responsible. An advertiser who sends unrequested advertisements per e-mail to his own (client) database is considered to be the owner of a database pursuant to this Code;
- c. Recipient:** the person to whom advertising by e-mail is directed;
- d. Owner of a Database:** the party who has control over a database of e-mail addresses. The owner of a database who distributes unsolicited advertising messages by e-mail about his own products or services to his own client's database, is also considered an advertiser pursuant to this Code.
- e. Disclosure to third parties:** the publication of e-mail addresses or putting e-mail addresses at the disposal of a third party with a view to sending advertising messages by e-mail to those addresses. An executor who acts by order of the owner of a database or by order of an advertiser is not considered a third party.
- f. Label:** brand and/or company name of the owner of a database under which permission for the distribution of unsolicited advertising by e-mail is obtained.

### 1.3

- a.** E-mail advertising is in principle permitted if the recipient of the e-mail advertising has actively granted permission in advance to the owner of the database or if the database owner has obtained the e-mail address within the scope of a sale to or donation by the recipient and is used for offering similar products or services ( including asking for donations by idealistic or charitable institutions), as long as no use is made of the possibility to unsubscribe in the same way as meant in article 5 of this Code (the Right to Object). The obligation will not be met solely by including either a provision in the General Terms and Conditions or a privacy statement.
- b.** The Advertiser is obliged to make sure that the database owner and other intermediate parties called in by the advertiser observe the provisions of this Code and the applicable legislation and Regulation among which - but not limited to- the fact that the database owner has obtained the necessary permission to send advertising messages by e-mail.

**1.4** The content of the advertising message sent by e-mail shall comply with the general rules set by the Advertising Code Authority.

### 1.5

- 1.** If e-mail advertising is sent via a platform which falls under the liability of the advertiser (tell a friend) on the initiative of a natural person not acting in the exercise of his profession or company, to a personal relation of that natural person, the advertiser is obliged to mention that natural person in the "From"- field.
- 2.** If e-mail advertising is sent in accordance with article 1.5 par. 1, the "Reply to" - field must contain the e-mail address of the natural person on whose initiative the e-mail was sent.

### Explanation of the 'Tell-a-friend' systems

The Code makes further requirements to commercial e-mails sent by Tell-a-Friend systems. In 'Tell-a-friend' systems the controller of a website sends e-mail on the initiative of and on behalf of an internet user to a recipient who has not given his prior consent to send him a once-only message (in the name of the sender).

The Code requires that the name of the friend be introduced in the 'From-field' and that the recipient may directly reply to the friend. In this way the recipient may directly report to the friend (who is the sender) whether he appreciates these messages or not. The joint Ruling over the Tell a Friend-system by the Dutch Data Protection Authority and the OPTA remains in full force.

## 2. Identity and identification

**2.1** Advertising by e-mail shall be clearly identifiable as such by lay-out, presentation, content or otherwise.

**2.2** The advertiser shall take care that the database owner identifies himself in each e-mail in such a way that he is easily and actually accessible to the recipient of the e-mail by means of the contact data of the database owner. At least his name, postal address and contact data shall be specified or an active link shall refer to these data.

**2.3** The database owner must include his label in the "From" field. At the same time, his e-mail must contain an active reply-address in the Reply to- field, where a response will be received.

## 3. Technical e-mail information

**3.1** The maximum total size of attachments used for advertising by e-mail is 150 Kb.

**3.2** Should an advertising message sent by e-mail include a URL to a directly downloadable file, the size and type of the file to be downloaded shall be given in the e-mail.

#### **4. Compilation of e-mail addresses**

**4.1.a.** In the event the database owner is compiling e-mail addresses, the advertiser shall take care that the person whose address is compiled shall clearly and in a simply accessible manner be informed about the following points:

- a. the e-mail address will be used for sending advertising messages;
- b. the identity of the owner(s) of the database; and
- c. whether the database owner compiles the e-mail addresses for his own use, or simultaneously on behalf of a third party, or for disclosure to a third party.

**4.1.b.** The obligation set forth in article 4.1.a. will not be met by solely including either a provision in the General Terms and Conditions or a privacy statement.

#### **5. The Right of Objection**

**5.1** The advertiser shall take care that the recipient is given the opportunity, in each message, to inform the database owner, free of charge and in a simple electronic way, that he wants to discontinue the use of his e-mail address for the distribution of advertising messages. This Right of Objection must be made possible in a simple, clear and preferably uniform manner. The database owner shall take care of immediate compliance with the request.

**5.2** The recipient must have the opportunity to effectuate the discontinuation as mentioned in art. 5.1. at least for the label, product, or service for which the e-mail address was compiled. Discontinuation may refer to several or all labels, products or services.

#### **6. Complaints and supervision**

**6.1** Anyone who has the impression of having received e-mail advertising messages that conflict with this Code may submit a complaint in writing and/or via the electronic complaint form ([www.reclamecode.nl](http://www.reclamecode.nl)) with the Advertising Code Committee in compliance with the articles and Regulation of the Advertising Code Authority.

**6.2.** The complaint must contain the name, address and place of residence and e-mail address of the complainant and if possible also copies of the complete e-mail message(s) (including the so called 'headers') whereupon the complaint was based.

**6.3.** The Advertising Code Committee or Board of Appeal may, should the complaint be allowed, indicate to which party the infringement of the provisions of this Code can be attributed.

#### **7. Evaluation and entry in force**

**7.1** This code was drawn up and introduced to the Advertising Code Authority by:

- Dutch Dialogue Marketing Association (DDMA)
- E-mail Marketing Association Netherlands (EMMA-NL)
- Dutch Home shopping organization

The content of this Code was drawn up in collaboration with the VNO NCW, (a merger of the Federation of Netherlands Industry and Employers (VNO) and the Dutch Federation of Christian Employers (NCW) and SME Netherlands.

**7.2** This Code is stipulated for a period of five (5) years and is in principle repeatedly extended for one year. At the end of each term, or earlier if there is a reason to do so, the Code will be evaluated by the Parties who have introduced this Code and by the Advertising Code Authority.

**7.3** This Code was revised on 30 August 2011 and has become operative on 1 January 2012.

# ADVERTISING CODE FOR TELEPHONE INFORMATION SERVICES

## 1. Definitions

**In this Advertising Code the following definitions apply:**

**Information services:** Services which are accessible through an information number.

**Information number:** A number (or numbers and letters) with a prefix of 0800, 0900, 0906 or 0909 pursuant to Article 3c of the Number Plan for (ISDN) telephone services based on Article of the Telecommunications Act.

**Number plan:** The Number plan for (ISDN) telephone services as it is established by the minister of Transport and Public Works on the basis of Article 4.1 of the Telecommunications Act and published in the Dutch Government Gazette.

**Service code:** The first four digits of the information number by which a category of information services of the Number plan is determined.

**Paid number:** An information number for which a fee is charged to the number caller by the telecommunication service or by the information service as the case may be.

**Free number:** An information number for which no fee is charged by the telecommunications service or by the information service as the case may be.

**Telephone charge:** The rate that the providers of telecommunications facilities charge to number users for obtaining access to information services.

**Number caller:** The party who obtains access to an information service by dialling an information number.

**Number user:** The party who provides information service through an information number.

**Number holder:** The party to whom the body, as referred to in article 2 of the Law on the Independent Post and Telephone Authority (OPTA) has assigned an information number.

## 2. Aim and Reach

This Advertising Code is intended to promote the identification and reliability of advertising messages in which telephone information services are included.

## 3. Demarcation of 0800 Information Services

It is not permitted to mention a rate or charge a fee in an advertisement for providing information services under the 0800 service code.

## 4. Demarcation of 0900 Information Services

It is not permitted to offer information services under the 0900 service code in an advertisement if such services may be considered as:

- a. information services of an erotic or pornographic nature;
- b. information services that refer directly or indirectly to services of an erotic or pornographic nature;
- c. information services clearly intended to extend the duration of the call;
- d. information services that provide amusement;
- e. information services for which no fee is charged by the telecommunications service, nor by the information service.

## 5. Demarcation of 0909 Information Services

It is not permitted to offer information services under the 0909 service code in an advertisement if such services may be considered as:

- a. information services of an erotic or pornographic nature;
- b. information services that refer directly or indirectly to services of an erotic or pornographic nature;
- c. information services not primarily intended to provide or exchange socially relevant information, but to extend the duration of the call;
- d. information services for which no fee is charged by the telecommunications service, nor by the information service.

## 6. Demarcation of 0906 Information Services

Taking into account the other articles of this Advertising Code, it is permitted to offer information services under the 0906 service code in an advertisement as long as paid numbers are used.

## 7. Rules Applicable to all Information Services

**7.1** In an advertisement the information number shall be clearly and unambiguously indicated.

- a. In the case of a visual message (including TV) unambiguity means that the service code and the rest of the information number under which the service is provided are clearly separated by a sign;
- b. The provisions of a) shall not apply if, in addition to a self-chosen mention, the service code is in any case clearly specified in the same message, followed by a hyphen and the word 'number';
- c. For exclusively audio messages, unambiguity means that a clear pause is made between the service code and the rest of the information number under which a service is provided.

### **Explanation of Articles 7.1.b. and 7.1.c.**

Identification of an information service as such is threatened when the service code in the advertising message is not expressed unambiguously. The deviation in b) is intended for number users because a deviating notation benefits the capacity to remember the number. The harm done to the recognisability of the service in this way is compensated by separate mention of the constituent parts of the number, such as '09 06 59 56 (0906 number).

When the message is audio, as on the radio or telephone, the service codes shall, pursuant to c), be communicated as one word, hence 'O-eight hundred,' 'O-eight-O-O,' 'O-nine hundred,' or 'O- nine-O-O,' 'O-nine-O-six,' or 'O-nine-O-nine,' after which the rest of the information number may be spoken after a short pause.

**7.2** On 1 January 2006 this article was included in the Children's and Young People's Advertising Code.

**7.3** A number holder shall provide on request the name and address and place of residence of a number user, for which, if desired the number holder may charge the requester a reasonable fee.

**7.4** Should various services be offered through an information number in an advertising message, the provisions of the service code of this information number shall apply to all such services.

### **8. Rules for paid numbers**

**8.1** In all advertising messages and preceding the start of an information service provided through paid numbers, the rate charged per minute or per call shall be given for the information service and the transmission hereof, should the transmission rate not be included in the rate for the information service.

**8.2** Mention of the rate shall be free and unambiguous and clearly legible and/or comprehensible.

**8.3** Terms such as 'free' and 'free of charge' or words of similar import shall not be used in advertising messages concerning the paid information number.

**8.4** The information service shall comply with the claims of the advertising message.

### **Explanation of Article 8.1**

It should be clear for the number caller which rate or rates are charged for the use of the information services. This can be made clear through quotation of a total rate per minute or per call in which the telephone rate is included (such as 'this information number costs 45 euro cents per minute). Another possibility is to quote the rate of the information service per minute or per call with a separate referral to (part of) the telephone rate (such as 'plus the charge for use of the mobile phone). It is prohibited to quote a rate for the information service without mentioning that there is in addition a full or partial telephone charge, when this is in fact the case.

### **9. Coming into Force**

This Code became operative on 1 January 2004.

# ADVERTISING CODE FOR GAMES OF CHANCE OFFERED BY LICENSEES, BY VIRTUE OF THE BETTING AND GAMING ACT 2015

## 1. SCOPE

Advertising the games of chance provided by Licensees under the Dutch Betting and Gaming Act is, without prejudice to the general section of the Dutch Advertising Code, subject to the following special advertising code. This code applies without prejudice to advertising games of chance of the licensees by beneficiaries.

## DEFINITIONS

The following should be understood to mean in this code:

**Beneficiary:** (co-)party, receiving the benefit of the result of a game of chance;

**Game(s) of Chance:** a game in which there is the opportunity to compete for prizes and premiums, where winners are randomly selected and, generally speaking, chances to win are not influenced by the players;

**Games of Chance Provider:** organization, licensed under the Dutch Betting and Gaming Act;

**Minors:** persons who have not yet reached the age of 18.

**Games of Chance Advertising:** advertising within the meaning of Article 1 of the Dutch Advertising Code directed at or resulting in the increase of the renown of Games of Chance Providers and getting persons interested in participating in Games of Chance.

## 2. IDENTITY OF GAMES OF CHANCE PROVIDER

The Games of Chance Provider ensures that it is clear that any Games of Chance Advertising originates from a Games of Chance Provider.

## 3. DISHONEST ADVERTISING

Games of Chance Advertising shall not be dishonest within the meaning of Article 7 of the Dutch Advertising Code. Inter alia not in respect of the elements stated below:

**a. the characteristics or chances of winning a prize in the Games of Chance provided. Dishonest in this case is for instance:**

1. suggesting that a participant already won a prize or will win a prize by performing a certain action, when he only has a chance to win.
2. suggesting that by merely activating a code a participant has an extra chance to win, whereat it is not made clear that the activating involves that the participant buys an extra lottery ticket;
3. suggesting that a draw is made every hour while every hour winners are announced the draw of whom took place at another time;
4. suggesting that a prize will always be won, whereas the draw can also be of unsold lottery tickets;
5. causing or leaving ambiguity whether a draw or benefit only applies to new participants or also to existing participants;
6. suggesting that a specific sum of money can be won with each participation or lottery ticket, whereas such sum can only be won if an option is bought in addition;
7. offering free participation whereat it is not sufficiently clearly stated that one can only participate for free if consent is given for being contacted by phone by the Games of Chance Provider.

**b. the commitment of the participant such as the payment obligation, the number of draws or the form of contract. Dishonest in this case is for instance:**

1. not or not sufficiently clearly stating what the duration of the participation is and/or whether it concerns, for instance, a one-time participation, a short-term subscription which ends by law (whether or not as introduction) or a subscription until further notice.
2. giving ambiguous information about the prize of a lottery ticket.

**c. the benefits for the participant. Dishonest in this case is for instance:**

- designating a product, service or lottery ticket as free or as gift:
- without specifying in the offer that the participant only gets such a product, service or lottery ticket for free if he decides to purchase it; and/or
  - if its value has been discounted in the sum to be paid by the participant for the compulsory purchase; and/or
  - if it is not or not sufficiently clear that a free lottery ticket or participation automatically converts into paid participation.

## 4. SENSIBLE PARTICIPATION

1. Games of Chance Advertising shall only be directed at sensible participation and getting persons interested in the offered Game of Chance.
2. Games of Chance Advertising shall not induce excessive participation. This is the case inter alia when:
  - a. setting excessive participation as an example or trivializing this;
  - b. suggesting that participation in Games of Chance can be a solution to financial or other problems.

Excessive participation is understood to mean risky gaming behaviour which may lead to gaming addiction.

3. Free counters for casino games or slot machines shall not be distributed through national newspapers or free local papers with a national reach.
4. Without prejudice to that provided in this code or elsewhere in the Dutch Advertising Code, information shall be given in a manner sufficiently visible to the consumer with each individual canvassing or advertising activity about:
  - a. the minimum age for participation in a Game of Chance;
  - b. as per July 1, 2015 the slogan 'Speel bewust' (Play consciously) has been introduced;
  - c. the internet page of the Games of Chance Provider.

On the internet page of the Games of Chance Provider information can be obtained and perused regarding:

- I. the specific features of the Games of Chance provided;
  - II. the costs of participation;
  - III. other obligations related to participation or winning a prize;
  - IV. the ban on participation by Minors;
  - V. how to participate in a sensible way in games of chance, the risk of addiction to games of chance and where to find assistance in case of addiction to games of chance;
  - VI. what the risks are of excessive participation in Games of Chance;
  - VII. the form of participation: does it concern a one-time participation or a subscription;
  - VIII. the manner of terminating the participation in Games of Chance;
  - IX. the manner in which the participant can easily unsubscribe to addressed advertising mail with the provider;
  - X. the guarantee of privacy of the prize winners;
  - XI. the manner in which winners of big prizes can get independent advice about financial and legal matters;
  - XII. the development of the game, the (statistical) chances to win the different prizes, unless this is not feasible in practice, the determination of profit, the possible withholding of games of chance tax;
  - XIII. the notice participants who have given permission for payment by direct giro of banking debit, can expect one month ahead, about a price increase or other changes in the game conditions;
  - XIV. volume and allocation of the profits of the Games of Chance. This point does not apply to operators of slot machines
5. Owners of a presence license for games of chance machines shall not advertise any Games of Chance provided by them under Article 30c(1)(a) of the Dutch Betting and Gaming Act.

## 5. COOPERATION OF PARTICIPANTS IN ADVERTISING

1. Prize winners are not obliged to cooperate in any form of Games of Chance Advertising. Nor shall it be suggested in Games of Chance Advertising that this would be any different.
2. Games of Chance Providers can ask prize winners to cooperate of their own free will.

## 6. VULNERABLE GROUPS

1. Games of Chance Advertising shall not be specifically directed at socially vulnerable persons.

### Explanation:

A Games of Chance Provider shall not specifically target for instance Minors and persons he knows to present characteristics of risky gaming behaviour, e.g. because such persons are known to the provider as having an active ban on entry or participation in Games of Chance by reason of gaming problems. Socially vulnerable persons cannot be prevented from being faced with unaddressed advertising. In that case paragraph 3 of this article applies to such advertising.

2. Socially vulnerable persons are in any case Minors, games of chance addicts and persons presenting risky gaming behaviour.
3. Games of Chance Advertising does not take advantage of the specific weaknesses or needs of socially vulnerable persons.
4. In Games of Chance Advertising no products or services of third parties are used which are specifically directed at and appeal to (groups of) socially vulnerable persons.

### Explanation:

Advertising combined with products e.g. for young persons is not allowed. What comes to mind are football cards combined with lottery

tickets. It concerns specific targeting of the product or service at such a group. A supplementary condition is that the product must also appeal to such group.

5. Games of Chance Advertising shall not be directed at Minors. This is usually complied with by not depicting persons who are or seem to be younger than 18 years, without need, in Games of Chance Advertising. If it is allowed to sell lottery tickets and they are actually sold by Minors (such as at Scouting Netherlands, Jantje Beton and the Grote Clubactie) it is allowed to depict such Minors save this does not promote participation by Minors in the Game of Chance.
6. No Games of Chance shall be advertised by means of and relating to media specifically directed at Minors, or parts of such media (inserts, annexes, special radio and television shows, cinema movies etc.).
7. Games of Chance Providers are not allowed to sponsor activities of third parties or radio and/or television shows with the exception of a neutral reference to sponsorship of media offering, mainly or explicitly directed at Minors, save the sponsorship is exclusively meant to motivate Minors to commit themselves in the interest of their organisation, school, club or association to the canvassing of adult participants in Games of Chance.
8. Games of Chance Advertising is not allowed on billboards, swanks, bus shelters and municipal advertising columns and objects with a similar purpose placed within (sight of) training institutes mainly attended by Minors. Games of Chance Providers shall exclude such locations in their contracts with operators of outdoor advertising.

**Explanation:**

If such advertising is placed in the proximity of a field on which incidentally an event for Minors takes place, then the advertising does not have to be removed.

9. No sampling shall take place to Minors or at gatherings which are mainly or exclusively attended by Minors.
10. Without prejudice to that stated elsewhere in this code, the owner of the license for organizing a casino under Article 27h(1) of the Dutch Betting and Gaming Act and the owners of a license under Article 30c(1)(b) of the Dutch Betting and Gaming Act shall not make any advertising specifically directed at persons older than 18 years but younger than 24 years.
11. Linear television services shall not include any Games of Chance Advertising between 6:00 a.m. and 7:00 p.m. In order to avoid any misunderstanding: neither in the form of teleshopping messages. However, contrary to this a neutral reference to the sponsorship of media offering is allowed during such time.

## 7. ENTRY INTO EFFECT

This Code has been reviewed and entered into effect as from 1 January 2015.

The Code applies to advertising Games of Chance provided by licensees under the Dutch Betting and Gaming Act applicable at the time of entry into effect of this Code.

If said Act is amended and (new) licensees are allowed also to provide distance games of chance, the code will be evaluated and the scope and content will be laid down in more detail in consultation with all the licensees under the new Act.



# CODE FOR ENVIRONMENTAL ADVERTISING

## Article 1. Applicability

This Code applies to all environmental claims, in other words, to all advertising messages referring implicitly or explicitly to environmental factors connected with the production, distribution, consumption or waste processing of goods, or with related services ( hereinafter known collectively as 'products').

### Explanation of Article 1

The Code applies to the entire life cycle of all goods and services, i.e. from production (including the processing of raw materials) up to and including waste processing. Whether the Code is applicable in borderline cases is a matter to be decided by the Advertising Code Committee and the Board of Appeal. It should be borne in mind that each advertising message is assessed in terms of the General Code, even if it is not classified as an environmental claim and the Code for Environmental Advertising is therefore not applicable.

## Article 2. No misrepresentation

Environmental claims shall contain no statements, pictures or suggestions that may mislead the consumer concerning environmental aspects of the products recommended or the contribution of the advertiser to maintaining and promoting a clean and safe environment in general.

### Explanation of Article 2

Article 2 is also broadly formulated. An advertisement can be misleading not only because of factual statements but also through pictures or suggestions, or precisely because information or warnings are lacking. What matters ultimately is the total impression created by the advertising message.

In practice, the misleading element of advertisements is often the fact that minor advances are represented too emphatically as a breakthrough. Marginal improvements should be presented as such. Also see articles 4 and 5.

The article barring misleading advertising messages always applies, regardless of the fact whether environmental claims violate one or more other articles. Assessment is always made in terms of the other articles in addition to assessment in terms of article 2, since environmental claims may under no circumstances be misleading.

## Article 3. Demonstrability

All environmental claims shall be demonstrably correct. The burden of proof rests with the advertiser. The more absolute the formulation of the claim is the more stringent are the requirements with respect to evidential material.

### Explanation of Article 3

Freedom of communication means that businesses and private individuals are under obligation, in the event of complaints, to subsequently account for statements they have made and, if necessary, demonstrate that a communicated message is correct. The burden of proof therefore lies with the advertisers.

The more absolute the environmental claim, the more stringent is the requirement of evidential material. Absolute claims therefore require heavily convincing evidential material. Using current technology, it is unlikely that evidence can be produced to show that the products are absolutely harmless to the environment. This is why great restraint is needed in relation to absolute claims. It should be realized in this connection that expressions such as 'environmentally friendly', 'clean', 'green' and 'good for the environment', if used without further substantiating evidence are likely to be interpreted quickly by the public as absolute claims.

Absolute claims, however, are not prohibited. An advertiser who can demonstrate that its absolute claim is correct should be permitted to use this claim.

It should also be noted that the Code for Environmental Advertising also applies to advertising messages that warn against environmental effects of particular goods or services. Advertising messages of this kind that are couched in absolute terms likewise demand very convincing evidential material.

## Article 4. Constituent parts and aspects

Should environmental claims relate exclusively or virtually exclusively to particular constituent parts or aspects of the products recommended, this limitation shall be stated clearly.

## Article 5. Absence or reduction of constituent parts

An environmental claim that relates to the absence or reduction of constituent parts that are environmentally harmful is permissible only in the following cases:

- if any replacement parts are less environmentally harmful and
- if no wrongful assertion or suggestion is made that comparable products do possess these environmentally harmful constituent parts.

## Article 6. Comparisons

This article was withdrawn as of 1 October 2000.

## Article 7. Designations and symbols

Environmental designations and symbols shall not be used unless the origin of the designation or symbol is clear and no confusion can arise on the meaning of the designation or symbol.

### **Explanation of Article 7**

The debate on environmental hallmarks, designations and symbols is presently in full swing. Hallmarks issued by recognised institutions (which satisfy for example the requirements of the Council for Certification) could constitute important evidential material in demonstrating the correctness of an environmental claim.

In this article the possibility is left open that entrepreneurs (companies) introduce and use their own environmental symbols and the like. The symbols shall, however, comply with two criteria: the origin shall be clear and confusion about the meaning of the symbols shall be excluded.

The origin of the symbols can be made clear by mention thereof in the advertisement or by the use of a generally known symbol. The meaning of the symbol shall be clarified by the advertisement itself or otherwise by generally accessible information.

### **Article 8. Scientific works**

Quotations from, and reference to scientific works shall be representative and verifiably correct. Should the scientific works not be generally accessible, the advertiser shall submit such works on request when a complaint is handled.

### **Article 9. Testimonials**

Testimonials used in environmental claims shall be based on the expertise of the person or body giving them.

### **Explanation of Article 9**

Famous football players may know a lot about football and housewives should be well qualified to assess whether a particular brand of margarine fries meat to the right shade of brown, but the opinions of a footballer or a housewife on the environmental aspects of certain products are not based on the expertise required for making an assessment.

Such quotations are therefore very likely to be misleading and must be avoided. The speaker quoted should be an expert in the field he is talking about.

### **Article 10. Waste processing, collection and recycling**

Environmental claims that relate to (separate) refuse collection and/or waste processing are permissible only if the recommended method of collection or processing is sufficiently available to the target group for which the environmental claim is intended. Environmental claims which relate

to the recycling of products or parts of products are permissible only if a sufficient proportion of the recommended products or parts are actually recycled.

### **Explanation of Article 10**

A particular problem that can occur nowadays is that (separate) refuse collection and/or waste processing and/or recycling is feasible in theory but (still) not sufficiently available in practice. The authorities have an important task in this connection, but industry too has responsibilities. In a number of industries, consultations are already being held with the authorities about the problem of waste and/or rules have been introduced or covenants concluded.

These often provide for a phased approach. Such an approach and its success in practice are important criteria in determining whether facilities will be available to 'a sufficient extent'.

As always, an important factor is how absolute the possibilities of waste processing, separate collection and recycling are presented.

### **Article 11. Environmentally unfriendly behaviour**

Advertising messages shall not set as an example environmentally unfriendly behaviour that is avoidable, nor shall such behaviour be encouraged.

### **Explanation of Article 11**

The Code is intended to ensure and encourage a justified use of environmental claims. A logical corollary here is that advertisers refrain from needlessly encouraging or setting examples of behaviour that causes gratuitously damage to the environment, such as pictures of environmentally harmful waste being discarded in the countryside. The article is not intended to prohibit advertisements for products that are to some extent harmful to the environment, since ultimately that refers to almost all products. It is also not intended to make the provision of factual product information impossible.

### **Article 12. Government rules**

Notwithstanding the provisions of the paragraphs 1 through 11, environmental claims are permissible if they comply with specific advertising rules issued by government authorities in connection with environmental issues.

### **Explanation of Article 12**

This article is intended to prevent the accumulation of rules. The Code does no longer apply if the government has introduced specific rules concerning advertising on environmental matters.

This Code became operative on 1 January 1991 and was revised on 1 October 2000.

# CODE FOR PASSENGER CARS

## I. PURPOSE

The purpose of this Special Advertising Code is to attune advertising messages to government policy on traffic safety, the environment and energy savings. Policy of the automotive sector is not only aimed at ensuring that new cars are produced as safe, environmentally sound and economical as possible, but also at encouraging that they are used in a way which is as safe, environmentally sound and economical as possible.

## II. GENERAL PROVISIONS

### Area of Application

This Special Advertising Code applies to the advertising and other sales promoting activities for new passenger cars.

### This Code maintains the following definitions:

- a. **The sector:** members of the Automobile division of the RAI Association.
- b. **Passenger cars:** cars intended for the transport of up to eight persons (not including the driver) as stipulated in the Automobile Transport Act, and driven by an internal combustion engine.
- c. **Advertising messages:** see the definition of advertising, as stated in Article 1 of the General Code.

## III. PROVISIONS CONCERNING ADVERTISING MESSAGES

All advertising messages used in the automotive sector shall comply with the Code for Environmental Advertising. Furthermore, the following stipulations apply:

### Article 1

In advertising messages speed, acceleration and engine power shall not be used as arguments to promote sales. Any mention of engine power shall be in kilowatts (kW).

### Article 2

#### Par. 1

Any fuel consumption figures shall exclusively be mentioned in accordance with Ministerial Order on Labelling of Energy Use (Bulletin of Acts and Orders 2000-475).

#### Par. 2

An advertising message shall contain information about the energy consumption of the car models referred to in the advertisement. This information complies with the requirements of Annex 3 of the abovementioned Decree if:

The average fuel consumption and the average CO<sub>2</sub>-emissions according to the official test cycle are represented as follows:

- horizontally, with regards to the written commercial message;
- at the bottom of the message, and separated from other written statements;
- in a font that is clearly readable and with a normal spacing;
- in a way that the statements are in clear contrast with the background;
- in a type size that minimally equals the smallest type size of the information given in the advertising message, where for each character (except subscript or superscript\* and other special characters)

the following minimal sizes apply:

\*) = a way of printing, where the characters are printed approx. two third above (super) or under (sub) the baseline.

1) For advertising in print, such as newspapers, magazines, leaflets:

- for advertising size smaller than A5: 1,5mm
- for advertising size starting at A5: 3mm
- for advertising size starting at A3: 4mm
- for advertising size starting at A2: 5mm
- other formats: in relation to the standards, mentioned here above.

2) For posters:

- For size A3: 5 mm
- For size A2: 7,5 mm
- For size A1: 4 mm
- For size 'abribus': 25 mm
- For posters 16 m<sup>2</sup>: 70 mm
- For posters 20 m<sup>2</sup>: 75 mm
- For posters 36 m<sup>2</sup>: 100 mm
- For other sizes: in relation to the standards, mentioned here above.

3) For websites the following provisions apply:

- The fuel consumption data and the CO<sub>2</sub>-emissions are consistently mentioned on the web pages which show a survey of the detailed technical (motor) characteristics of the displayed vehicle.

- On the website or websites of the car make involved a general overview is displayed with a table (or similar presentation form), in which all the fuel consumption data and CO<sub>2</sub>-emissions of the vehicle gamma of the same make are reported in a easily readable and simply printable format, which makes it easy to compare the different versions and models.
- On each page of the car make website it is easy to click a link to the survey table, mentioned here above, by means of a specific button, a menu or similar way of linking.
- On banners, IMU's, skyscrapers and other similar advertising formats on other website(s) than the one of the own car make, the fuel consumption data and CO<sub>2</sub>-emissions are also clearly readable; or it is possible to directly click and go to a webpage where these data may be found and printed. As to the so called 'viral' campaigns, the abovementioned data are given on the landing page, on which the consumer arrives after a click-through.

The given fuel consumption data and CO<sub>2</sub>-emissions represent the values of the displayed model in the displayed version (with manual gear box/automatic gearbox/ petrol engine/ diesel engine etc.).

In case the advertisement does not refer to a specific version, but to a whole range of vehicles of the same model or the same make, then both the minimum and maximum parameter values of the average fuel consumption and CO<sub>2</sub>-emissions according to the official test cycle of the vehicle range the advertisement refers to are stated.

The official fuel consumption is represented in kilometres per litre and litres per 100 kilometres for petrol, LPG or diesel (or in m<sup>3</sup> per 100 kilometres and kilometres per m<sup>3</sup> for natural gas). The official specific CO<sub>2</sub>-emission is represented in grammes per kilometre rounded off to the nearest whole number.

### **Article 3**

Advertising shall not appeal to, or elicit aggressive, environmentally-unfriendly or unsafe traffic behaviour. Terms which commend the car as an environmentally-friendly product shall be avoided in advertising messages. Qualifications concerning contributions to or the promotion of a clean environment shall under no circumstances be used in an absolute sense.

### **Article 4**

The use of terms which commend the car as an absolutely safe product shall be avoided in advertising messages.

This code became operative on 1 May 1994 and was revised on 1 January 2004 and 1 October 2009.

The commencing date of the revised advertising code for passenger cars is 1 October 2009.

# ADVERTISING CODE FOR TRAVEL OFFERS 2014

## I. APPLICABILITY

### 1. The Dutch market

This Code applies to advertising communications and invitations to purchase directed at the Dutch market for travel services.

### 2. Dutch Advertising Code

In addition to the provisions from this Code, all other provisions of the Dutch Advertising Code are applicable.

## II. DEFINITIONS

- Participating Industry Organisations:** These are ANVR, BARIN, HISWA Vereniging and KNV Busvervoer; these industry organisations are representative of the various sub-industries, i.e.: the travel industry, aviation, water recreation and the touring industry. Rail transporter NS International B.V., using the brand name NS Hispeed, also complies with this Code.
- Travel Service (not limitative):** transport, accommodation or other touring service unrelated to transport or accommodation that constitutes a significant part of the travel, or a combination of these (also collectively referred to in this Code as: services).
- Advertising Communication:** every public and/or systematic, direct or indirect commendation of travel services (also see Article 1 of the Dutch Advertising Code).
- Invitation to Purchase:** a commercial message that communicates the characteristics and the price of the travel service in a manner made suitable for the medium used and thus enables the consumer to make a purchase (also see Article 8.4 of the Dutch Advertising Code).

### Explanation

If the advertising contains a response or ordering mechanism, it always constitutes an invitation to purchase. If no such mechanism exists, whether the communication is an invitation to purchase will depend on the circumstances of the case. Decisive is whether the consumer can make a decision about a transaction based on the information. If the advertising mentions a travel service with a (starting from) price, the consumer will normally have sufficient information to decide about a transaction.

- Provider:** the person that, in the course of its business or professional activity, provides travel services to consumers, as well as any person acting in his name or for his account.
- Party:** one or more travellers who conclude a travel, transport or accommodation agreement simultaneously by means of one booking or booking form.

## III. MENTION OF PRICE IN AN ADVERTISING COMMUNICATION

### 1. General requirements

Providers are required to use correct and clear prices in their advertising communications. They publish their prices, whether or not specified, including the fixed, unavoidable costs (i.e. additional and inseparable from the service) known at the time of publication that must be paid for the service offered. With regard to unavoidable costs, the level of which cannot be calculated in advance because they depend on the consumer's choice, the advertising communication must specify immediately beside or under the price advertised, in a transparent manner, the additional costs per booking and their amount or, if the amount cannot be indicated in advance, how the consumer can calculate the amount of those costs.

### Explanation

- The foregoing entails that at the time of the publication, known fixed, unavoidable costs should be included in the price itself. With regard to the variable and unavoidable costs, the consumer must be able to see the extra costs and their amount at a single glance. If the amount of the variable, unavoidable costs cannot be specified with the price, how these costs can be calculated must be stated in any event.
- Here, depending on the medium used (advertisement, banner, radio or TV commercial, poster, etc.), a specification of the total price is usually not possible or useful. Specification is only required (see Article IV, paragraph 2) if the communication is a purchase invitation (see Article II, paragraph 4). At that time it will be possible to consult the terms and conditions before concluding the agreement.
- A non-exhaustive summary of fixed and unavoidable (additional) costs is:
  - Transport costs (to destination and back)
  - Airport tax
  - GIS (Noise Insulation Schiphol) charge
  - Air passenger tax
  - Fuel charge
  - Security charges
  - Cost of accommodation (for the entire period)
  - Cost of food and/or beverages (breakfast only, half or full board, all-inclusive, depending on what is being offered)
  - Charges related to the payment method, if prescribed (e.g. credit card)
  - Tourist tax or accommodation tax (unless this cannot be calculated in advance; in that event, the communication must state that these must be paid on location)
  - Cost of mandatory excursions.
  - Mandatory costs per accommodation unit, for example for cleaning and/or linens

The aforementioned costs must always be included in the price itself and cannot be made dependent on certain choices made by the consumer.

- d) There may also be unavoidable costs, the amount of which is dependent on the choices made by the consumer in the invitation to purchase phase. These are costs such as booking fees if these vary per sales channel, for example. Either these costs will not be fixed or they cannot be determined at the time of publication.

## 2. Industry-specific provisions regarding misleading

In addition to the general provisions in Articles 7 and 8 of the Dutch Advertising Code regarding misleading, it is in any event misleading when:

- 2.1 The term "tax" is used for costs that the provider does not have to pay to the government, either directly or through the airport / harbour / camping / owner of the accommodation.
- 2.2 A discount is initially given on the price of a travel service and that discount is undone in part or in full later by charging costs that are not fixed, but unavoidable.
- 2.3 Starting-from prices are offered per person for accommodations such as hotels, apartments and bungalows without stating the number of persons beside the price if that number deviates from the standard of two persons.
- 2.4 Flights are offered based on one-way travel while the flight may only be booked as a round trip.
- 2.5 Costs for correcting errors made by the consumer in the booking are not clearly stated if costs are charged for this.

## 3. Special offers

Special promotional prices and promotional offers must be recognisable as such in the advertising communication, stating the applicable terms and conditions.

# IV. MENTION OF PRICE IN AN INVITATION TO PURCHASE

1. Providers required to use correct and clear prices in their invitations to purchase in the same manner as in advertising communications pursuant to Article III paragraph 1 of this Code. An invitation to purchase must contain the information stated in Article 8.4 of the Dutch Advertising Code.
2. Simultaneously with the final price of the flight, providers must also specify the cost elements of which that price is comprised, i.e. taxes, airport fees and other charges for security or fuel, as well as the applicable terms and conditions.
3. Optional surcharges on the price must be stated in a clear, transparent and unambiguous manner at the beginning of every booking process, and must be accepted on an opt-in basis.

### Explanation

Articles 2 and 3 reflect Article 23 of the Regulation (EC) no. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) and (the implementation of) Article 22 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

# V. AVAILABILITY

1. Providers must ensure reasonable availability of the services offered in their advertising communications at the price stated.

### Explanation

Providers must refrain from offering services if there is a sound suspicion that they cannot provide those services or cause them to be provided during a period and in a quantity that is reasonable, taking the service, the scope of the advertising made for the service and price offered into account (no loss leaders).

2. Advertising communications for services that are no longer available must be discontinued immediately.

# VI. BURDEN OF PROOF

If contested, providers must plausibly demonstrate the accuracy and availability of their offer. They must plausibly demonstrate, for example, whether or not certain costs (and their amount) were known at the time of the booking.

# VII. ENTRY INTO FORCE

1. This Code entered into force on 1 April 2007 and was revised for the last time on 1 January 2014. This Code applies to communications made public after 1 January 2014.
2. For travel guides printed under the previous Code that are valid for a period running beyond 1 January 2014, the following transitional arrangement applies: the old Code applies until 1 November 2014 only for those guides, it being understood that the travel offers must satisfy the applicable statutory requirements (Unfair Commercial Practices Act, EU Regulation 1008/2008).
3. No transitional arrangement applies for (print) advertisements, posters/billboards, offers via radio or TV and/or Internet.
4. This Code will be evaluated every two years.

# ADVERTISING CODE FOR TOBACCO PRODUCTS

## DEFINITIONS

- 1.1 Tobacco products:** products meant for smoking, snuffing, sucking or chewing and which consist, may be partially, of tobacco.
- 1.2 Young people:** persons under the age of eighteen years.
- 1.3 Inventory:** shelves for tobacco products, including counters and coves in tobacco shops and separate tobacco outlets.
- 1.4 Sponsoring:** any public or private financial contribution to an activity or event, which is targeted to or will result in making more widely known or promoting a tobacco product.
- 1.5 Tobacco outlet:** any place where tobacco products are for sale or otherwise not free of charge.
- 1.6 Tobacco specialist shop:** an establishment, being a shop or part thereof, with its own lockable entrance, in which a total range of tobacco products of at least 90 brands is for sale or otherwise not free of charge and:
- with a floor area of at least 10 m<sup>2</sup>, or
  - with a floor area of less than 10 m<sup>2</sup>, but which was registered before 1 January 2001 as a tobacco shop at the Chamber of Commerce.

## AREA OF APPLICATION

- 2.** This Advertising Code applies to advertising and sponsorship insofar as permitted in compliance with the Dutch Tobacco Act of 18 April 2002 and insofar as it is exclusively or also consumer-oriented.

## GENERAL PROVISIONS

- 3.** Advertisements shall contain no testimonials by a well-known person unless the reputation of this person relates to tobacco.
- 4.1** Advertisements shall contain the health warning "Smoking causes death", as laid down in the Labelling Decree for Tobacco Products, (Bulletin of Acts and Orders 2002-83).
- 4.2.1** The health warning is applied in accordance with the specifications for health warnings on tobacco products packaging, as laid down by law. The wording of the above mentioned health warning must cover 15 % of the total surface of the advertisement.
- 4.2.2** The wording of the articles 4.1 and 4.2.1. does not apply to the advertising messages on the inventory of tobacco products outlet points.
- 5.1** Advertising messages shall not stimulate the use of tobacco products or encourage the start of smoking, nor make an example of or trivialize modest use.
- 5.2.** Advertising messages shall not give the impression, that the use of tobacco products has a stimulating or a calming effect.

## HEALTH

- 6.1** Advertisements shall in no way establish a positive link between the use of tobacco products and health. The following, however, may be stated, without causing confusion and without creating the impression that the use of tobacco products cannot lead to undesirable consequences:
- a. the content of tar, nicotine and carbon monoxide, as it shall be stated on the packets of cigarettes and shag, according to the law;
  - b. the customary designations used by the manufacturer for the tar, nicotine and carbon monoxide content, provided the actual content is indicated and insofar the packets shown are not contrary to the legal provisions for tobacco products themselves;
  - c. the customary designations used by the manufacturer for describing taste, quality or composition, insofar the packets shown are not contrary to the legal provisions for tobacco products themselves;

## SPORTS

- 7.** Advertisements shall not demonstrate any connections between smoking and the practice of sports.

## YOUNG PEOPLE

- 8.1** Advertisements shall not be intended to influence young people to form a favourable impression of the commended product.
- 8.2** Advertisements shall contain no representations or commendations which appeal specially to young people.

**8.3** Advertisements shall depict no persons under the age of 30.

**8.4** Advertisements shall establish no connection between smoking and maturity or immaturity, i.e. not create the impression that smoking is a sign of maturity and not-smoking, a sign of immaturity.

## **AUDIOVISUAL MEDIA**

**9.** It is not permitted to convey advertising messages in electronic audiovisual media that appeal specifically to young people.

## **COMING INTO FORCE AND TRANSITIONAL PERIOD**

**10.** This code came into force on 7 November 2002 and is valid for an indefinite period.



# ADVERTISING CODE FOR TEXT MESSAGING SERVICES

## Basic principles

The objective of this Special Advertising Code is to establish clear advertising criteria for SMS (Text Messaging) Services in order to prevent misleading End Users concerning the nature and price of the services.

## Article 1. Field of Application

**1.1** Advertising for SMS (Text Messaging) Services is, without prejudice to what is stipulated in the general part of the Advertising Code and the Code for Advertising directed at Children and Young People, subject to this Advertising Code.

**1.2** This Advertising Code will apply to advertising for SMS (Text Messaging) Services specifically aimed at the Netherlands.

**1.3** This Advertising Code will not apply to the content of SMS (Text Messaging) messages that follow registration for an SMS Service and which relate to confirming and/or implementing the agreement with the End User and contain no new or other recommendations of products or services<sup>1</sup>. This Advertising Code will also not apply to free SMS (Text Messaging) Services<sup>2</sup>.

**1.4** This Advertising Code will not prejudice existing statutory and self-regulation obligations, particularly obligations based on the regulatory framework relating to privacy protection, unfair business practices and remote sales.

## Article 2. Definitions<sup>3</sup>

The following definitions apply to this Code:

**Provider of SMS (Text Messaging) Services:** The provider of the SMS (Text Messaging) Service or Services with whom the End User concludes the agreement relating to purchasing the SMS (Text Messaging) Service or Services<sup>4</sup>.

**Registration Screen:** The Internet screen<sup>5</sup> that enables the End User to make a purchase from a Subscription Service and contains a response or order mechanism for that purpose, for example the input field for the mobile phone number. Screens or other advertisements for SMS (Text Messaging) Services that contain a Short Code are also considered to be Registration Screens.

**Subscription Service or Subscription:** SMS (Text Messaging) Service where the End User receives more than one paid SMS message and for which registration and unregistration are required or which is purchased by the End User for a certain period to be determined in advance. The paid SMS (Text Messaging) messages have a periodic recurrent character, which expressly includes the '1 to many Chat Services'.

**Affiliate:** A business or person, not being the Provider of the SMS (Text Messaging) Services, which or who advertises the Provider's SMS (Text Messaging) Services on its/his/her own initiative and which or who in many cases decides how, where and with what advertising means it/he/she advertises<sup>6</sup>.

**Banner:** A graphical advertisement on a web page that makes it possible to click through to a preliminary screen and/or a Registration Screen.

**Chat Service:** An SMS (Text Messaging) Service of a possibly long-term character because the End User/Users continues/continue to chat.

**1:1 Chat Service:** An SMS (Text Messaging) Service in which an SMS (Text Messaging) message is sent to one (1) End User (with their permission) as a result of which a reply may be received from one (1) End User.

**1: to many Chat Service:** An SMS (Text Messaging) Service in which a message is sent to several End Users (with their permission) as a result of which a reply may be received from several End Users.

**Content (item):** Content of an SMS (Text Messaging) Service, including but not limited to ring tones, real tones, wallpapers, sounds, games, quizzes, full track music and text services, including horoscopes, Chat Services and jokes, for the mobile phone.

**Credit:** A credit for an End User with which to order a Content item.

**End User:** User of a fixed or mobile connection with which SMS (Text Messaging) Services can be purchased.

**Fictitious persons:** Persons who provide certain services professionally under a different identity.

**Operators:** Network providers via whose network End Users can purchase SMS (Text Messaging) Services.

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- 1 In the ruling of 4 July 2007 in file 07.0299, the ACC decided that insofar as an SMS (text message) does not contain recommendations of goods or services, there is no advertising.
  - 2 An SMS (Text messaging) Service consisting first of a free offer or free period followed immediately by an offer or period for which payment must be made will be considered a paid (Text Messaging) SMS Service and will be covered by this Advertising Code.
  - 3 The definitions are in line as far as possible with the definitions in the SMS Service Provision Code of Conduct.
  - 4 In the SMS (Text Messaging) Service Provision Code of Conduct, the SMS Service Provider is designated as the Content Provider.
  - 5 An Internet screen will not include a mobile Internet screen (unless SMS (Text Messaging) Services are offered there that are charged to the End User via premium SMS (Text Messaging)). This is described separately in the Paid Mobile Internet Services Code of Conduct [Gedragscode voor Betaalde Mobile Internet-diensten]; this can be found at [www.smsgedragscode.nl](http://www.smsgedragscode.nl).
  - 6 An Affiliate is a common term in the Internet world for a third party, which chooses to advertise the products of others itself. The Affiliate has concluded an agreement either directly with the Text Messaging Service Provider, or with the media office or media agent of the Provider.

**Pop-up:** A clickable (small) window that opens when a certain Internet page is loaded or clicked on.

**Promotional Offer:** The allocation, by way of promotion, of temporary added value to an SMS (Text Messaging) Service, including a reduction or an increase in the number of Content items and/or Credits for an SMS (Text Messaging) Service, and other gifts, savings offers, competitions or the provision of another advantage.

**Short Code:** A short number used by the provider of the SMS Service for registration and deregistration for the service and for distributing the Content to the End User.

**SMS Service:** A One-Off SMS (Text Messaging) Service (including a 1:1 Chat Service) and/or a Subscription Service with which Content is provided to an End User.

**SMS Service Provider:** The party that has concluded an agreement with Operators for the purpose of supplying or routing SMS (Text Messaging) Services (also referred to as Gateway or SMS (Text Messaging) Broker).

**Voice-over:** A spoken message during a TV commercial.

**Preliminary Screen:** A screen or screens on the Internet displayed prior to the Registration Screen without a Short Code or other possibility for discontinuing SMS (Text Messaging) Services being given<sup>7</sup>.

### Article 3. Misleading

**3.1** Advertisements for SMS (Text Messaging) Services may not contain statements, images, suggestions or omissions as a result of which the End User may be misled concerning the nature and characteristics of the services and products offered or the price and the way in which it is calculated, and may also not be misleading within the meaning of Article 8 of the Advertising Code.

**3.2** Advertising is not permitted for a product or service, whether or not this is free, that requires the End User - in order to acquire what is offered - to subscribe to another Subscription Service, unless the obligation to subscribe to that other Subscription Service is stated in every communication with at least the same emphasis as the advertisement concerned for a product or service, whether or not that product or service is free.

**3.3** If an advertisement, Preliminary Screen, and/or Registration Screen advertises a Subscription Service, the fact that a Subscription Service is concerned must always be stated with at least the same emphasis as the advertisement for the product or service itself.

**3.4** Advertising is not permitted in which an SMS (Text Messaging) Service is offered in a way that results in the SMS (Text Messaging) Service seeming to have a character other than the actual character, e.g. by suggesting that a prize has been won, a game is being played, or that membership of or affiliation to a club is involved.

**3.5** In the case of Chat Services, the SMS (Text Messaging) Service Provider should inform the End User, clearly and unequivocally, of the possible long-term character and the related recurring costs.

### Article 4. Minimum requirements for all types of advertising for SMS (Text Messaging) Services

**4.1** Advertising for one or more specific SMS (Text Messaging) Services - irrespective of the type and medium - should comply with Article 3 of this Advertising Code and should always contain the following information, which should be stated clearly and unequivocally:

- a. whether or not it is a Subscription Service or a One-Off Service;
- b. if a Subscription Service is involved, a statement of any minimum duration of the subscription and an explanation of how the Subscription Service can be terminated;
- c. the most important characteristics of the service, including at least the name of the product, the product specification, and if an Artwork is involved, for example as referred to in Appendix 1(4), in the Artwork also a product illustration and the price and the frequency of the service (if applicable);
- d. in the case of a Chat Service: whether the Chat will be with one or more persons;
- e. in the case of an adult Chat Service, the minimum age of 18 for use; if applicable, the following must be stated 'fictitious persons - no arrangements possible';
- f. what costs are associated with the SMS (Text Messaging) Service, in the case of a One-Off SMS (Text Messaging) Service per item and in the case of a Subscription Service on a weekly basis, for example 6€/week, 4 items/week. If payment is effectuated on a monthly basis, the price and the number of items should be specified on a monthly basis;
- g. in the case of Credits, the type of products that can be purchased must be made clear, and the number of Credits;
- h. in the case of a Chat Service, the price per message must be stated, as well as the maximum number of messages to be received for each chat message sent;
- i. reference to the website address of the Provider of the SMS (Text Messaging) Service. This website should at least contain: the name under which the Provider is registered with the Chamber of Commerce (including any trade name that is used) and the business address of the SMS (Text Messaging) Service Provider, the costs of the SMS (Text Messaging) Service, how to terminate the SMS (Text Messaging) Service, the contact details of the customer service (e-mail address and phone number), Chamber of Commerce number, VAT number, the general terms and conditions for the SMS (Text Messaging) Service, a list of suitable phones (if applicable), and the privacy statement. The above information should be available in a clearly legible and easily accessible manner<sup>8</sup>.

**4.2** No abbreviations may be used when stating the price, with the exception of the official euro sign and 'incl. VAT'.

**4.3** If an SMS(Text Messaging) Service or part thereof is offered free, the word 'free' or another word with the same meaning may only be used if the service is actually being offered independently free of charge. This is also the case if the service is free in the case of

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<sup>7</sup> A Preliminary Screen is an advertisement if goods and services are recommended on it. If one can also subscribe via a Short Code on that Preliminary Screen, then it is a Registration Screen.

<sup>8</sup> 'Easily accessible' is understood to mean within 2 clicks from the homepage.

a subscription, but the subscription can be terminated immediately after receipt of the free service before the subscription actually commences. The End User should be referred to this possibility.

**4.4** Contrary to Article 4.3. of this Advertising Code, for other gifts, savings offers, competitions or the provision of another advantage it is permissible to use the word 'free' or another word with the same meaning if in every advertisement in which such a word is used it is stated with the same emphasis that the 'free' service or the 'free' product is free only when purchasing the SMS (Text Messaging) Service. The most important characteristics of the SMS (Text Messaging) Service in connection with which the 'free' service or the 'free' product is offered must also be clearly stated. To prevent misunderstanding: a service or product is not 'free' and may also not be stated to be 'free' if it is linked to an SMS (Text Messaging) Service for which higher costs are charged than for the same SMS (Text Messaging) Service without the 'free' service or the 'free' product. The burden of proof as regards the (higher) costs lies in this connection with the SMS (Text Messaging) Service Provider.

#### **Article 5. Obligatory logo**

**5.1** The Provider of the SMS Service is obliged to display - in every advertisement on TV, in print, or on the Internet - the fixed logo included in Appendix 3 and downloadable from [www.smsgedragscode.nl](http://www.smsgedragscode.nl). The logo must be positioned to the top left or top right in every advertisement and must be fully visible without it being necessary to scroll the web page.

**5.2** The logo is not obligatory if the medium used for the advertisement is unsuitable for placing a logo, as in the case of a radio commercial or televoting ('televoting' is a One-Off Service with a means of voting in which an End User can give his/her opinion remotely during a television broadcast by means of an SMS (Text Messaging) message).

#### **Article 6. Supplementary requirements for Promotional Offers in combination with SMS (Text Messaging) Services or advertising for SMS (Text Messaging) Services.**

**6.1.** Article 3.4 of this Advertising Code will not prejudice the fact that Promotional Offers may be made in combination with SMS (Text Messaging) Services or advertising for SMS (Text Messaging) Services.

**6.2.** In any advertisement for a Promotional Offer in combination with an SMS Service or advertising for an SMS Service, the fact that an SMS Service is concerned must always be stated with at least the same emphasis as the advertisement for the Promotional Offer.

#### **Article 7. Supplementary requirements for Internet advertising**

##### **Internet advertising in general**

**7.1** The provisions of this Article will not prejudice the fact that Internet advertising must also comply with the requirements of Articles 3, 4 and 5 of this Advertising Code.

**7.2** Providers of SMS (Text Messaging) Services may not advertise SMS (Text Messaging) Services on web sites that by their nature are clearly aimed, wholly or partly, at young persons aged below 16.

**7.3** The minimum age for ordering an SMS (Text Messaging) Service is sixteen (16), unless it is ordered with the consent of the young person's parents (or legal representative)<sup>9</sup>.

##### **Registration Screen**

**7.4** An SMS (Text Messaging) Service may not be started if a Registration Screen has not been clearly shown that meets all the conditions imposed on the basis of this Advertising Code and the law.

**7.5** If a Registration Screen complies in full with the template as included in Appendix 1 to this Advertising Code, is fully visible<sup>10</sup> on every screen using the most common resolution standard and is also not misleading in some other way, the Registration Screen will be considered to be in accordance with the requirements of this Advertising Code.

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9 The parties that drew up this Advertising Code decided on a minimum age of 16 for ordering SMS (Text Messaging) Services. Young persons aged up to 16 may only order SMS (Text Messaging) Services if a parent (or legal representative) has granted consent for the SMS Service to be ordered.

10 Fully visible' means that the entire screen, including all conditions, is directly visible on the screen in the case of the most common resolution standard. If the Registration Screen is not entirely visible on certain computers as a result of the resolution of the computer and/or the Internet browser used and the End User must scroll down in order to view the entire image, even though the SMS (Text Messaging) Service Provider has used the most common resolution standard, the SMS (Text Messaging) Service Provider cannot be blamed for the Registration Screen not being entirely visible. See in this respect the decision of the Advertising Code Committee of 4 July 2007 in dossier 07.0299.

**7.6** If the template in Appendix 1 of this Advertising Code is not used, the Registration Screen, in addition to the information referred to in Articles 4 and 5 of this Advertising Code, must at least contain the following information in a clearly legible and unequivocal manner, which must be completely visible on the computer screen:

- a. the information as stated in field 6 in the template included in Appendix 1 to this Advertising Code.
- b. the name under which the Provider is registered with the Chamber of Commerce (including any trade name that is used) and the business address of the SMS (Text Messaging) Service Provider, the Chamber of Commerce number, and the VAT number;
- c. the telephone and e-mail details of the SMS (Text Messaging) Service Provider's customer service;
- d. a reference to the general delivery conditions, as well as a privacy statement and details of where these can be found;
- e. a statement that the SMS (Text Messaging) Service Provision Advertising Code and the SMS (Text Messaging) Service Provision Code of Conduct apply;
- f. the other information as stated in fields 7 and 8 in the template included in Appendix 1 to this Advertising Code.

**7.7** If a Subscription Service is involved, it must be clearly and legibly stated in the subscription title of the Registration Screen that a Subscription Service is involved. The statement must have at least the same emphasis as the rest of the text in the subscription title as presented in field 2 in the template as included in Appendix 1 to this Advertising Code.

**7.8** The same conditions as for the Registration Screen apply to screens/pages after the Registration Screen. Reference must also be made to the confirmation of registration that the End User receives by SMS ((Text Messaging).

**7.9** The 'Artwork' and the 'Call to action' within the meaning of field 4 and field 5, respectively, in the template as included in Appendix 1 to this Advertising Code will in all cases be related to the SMS (Text Messaging) Service itself. In the case of a Promotional Offer, reference to the Promotional Offer is only permissible with a maximum of the same emphasis as the advertising for the SMS (Text Messaging) Service itself.

### **Banners and pop-ups**

**7.10** A banner or pop-up that is intended solely to draw attention (a 'teaser') to the sale of products and/or services need not comply with all the requirements for advertising set in this Advertising Code. A banner or pop-up must in any case comply with the requirements of Articles 3.1. and 3.2. of this Advertising Code. For the rest, it will be determined in each case whether the banner or pop-up is contrary to this Advertising Code, depending on the circumstances and with due observance of reasonableness and fairness and the size of the banner or pop-up<sup>11</sup>.

**7.11** A banner or pop-up may not mention a Short Code.

### **Article 8. Supplementary requirements for TV commercials and print**

**8.1** The provisions of this Article will not prejudice the fact that the types of advertising referred to in this Article must also comply with the requirements of Articles 3, 4 and 5 of this Advertising Code.

#### **TV commercials**

**8.2** If a TV commercial complies in full with the template as included in Appendix 2 to this Advertising Code and is not misleading, the commercial will be considered to be in accordance with the requirements of this Advertising Code.

**8.3** If the template in Appendix 2 to this Advertising Code is not used for the TV commercial, the commercial must at least contain the information as included in Article 5 of this Advertising Code and Article 4 of Appendix 2.

**8.4** In a Voice-over, which must be clearly understandable, it must be stated in the case of a Subscription that that is the case, and the total costs in euros per week in the context of the Subscription Service must be given. In the case of a One-Off Service, only the costs for that service need be stated in the Voiceover, as referred to in Article 4.1(f) of this Advertising Code, with the exception of televoting in the context of a TV programme in which the presenter calls on viewers to vote and the price is clearly visible on the screen without abbreviations.

**8.5** In the case of a Chat Service, the Voice-over, which must be clearly understandable, must state 'fictitious persons - no arrangements possible';

**8.6** It is obligatory for the conditions on television, as described in Article 4 of Appendix 2 Template TV-commercials, to be visible on the screen throughout the whole of the commercial for the SMS (Text Messaging) Service. If the Artwork contains information about a Promotional Offer, the Artwork for the Promotional Offer must be displayed with no more emphasis than the advertisement for the SMS (Text Messaging) Service itself.

**8.7** Commercials for SMS (Text Messaging) Services may not be broadcast on television immediately before, during, or immediately after programmes that by their nature are clearly aimed at children or programmes for which, according to generally accepted market viewing figures, more than forty percent (40%) of the viewers are aged below 16.

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<sup>11</sup> Banners, links or pop-ups do not enable the End User to make a purchase and are in themselves not an invitation to purchase. In the case of banners, links or pop-ups, there is no answer or ordering mechanism involved or a situation in which the End User can initiate a transaction.

## Print

**8.8** In addition to the information referred to in Articles 4 and 5, in accordance with Article 7.6 of this Advertising Code, an advertisement in print must also contain the following information:

- a. the information as stated in field 6 in the template included in Appendix 1 to this Advertising Code.
- b. the name and business address of the SMS (Text Messaging) Service Provider, the Chamber of Commerce number and the VAT number;
- c. the telephone and e-mail details of the SMS (Text Messaging) Service Provider's customer service;
- d. a reference to the general delivery conditions, as well as a privacy statement and details of where these can be found;
- e. a statement that the SMS (Text Messaging) Service Provision Advertising Code and the SMS (Text Messaging) Service Provision Code of Conduct apply;
- f. the other information as stated in fields 7 and 8 in the template included in Appendix 1 to this Advertising Code.

If a Subscription Service is involved, it must be clearly and legibly stated that a Subscription Service is involved with at least the same emphasis as any advertising text according to the provisions of Article 7.7 of this Advertising Code.

**8.9** In the case of a text or line advertisement in print that cannot consist of more than 5 lines of text or no more than 140 characters, Articles 5 and 8.8 of this Advertising Code will not apply. In that case, only the requirements of Articles 3 and 4 of this Advertising Code must be fulfilled.

## Article 9 Supplementary requirements for teletext, radio and SMS (Text Messaging)

**9.1** The provisions of this Article will not prejudice the fact that the types of advertising referred to in this Article must also comply with the requirements of Articles 3 and 4 of this Advertising Code.

**9.2** Commercials for SMS (Text Messaging) Services may not be broadcast on radio immediately before, during, or immediately after programmes that by their nature are clearly aimed at children or programmes for which, according to generally accepted market listening figures, more than forty percent (40%) of the listeners are aged below 16.

## Article 10. Affiliates

**10.1** With regard to marketing with the aid of Affiliates, SMS (Text Messaging) Service Providers will be obliged:

- a. to contractually oblige Affiliates (e.g. by means of general conditions or a regulation), on pain of appropriate measures, to comply with the relevant regulatory framework, including the Dutch Advertising Code, as well as this Advertising Code and the SMS (Text Messaging) Service Provision Code of Conduct<sup>12</sup>;
- b. to provide Affiliates with this Advertising Code and the SMS (Text Messaging) Service Provision Code of Conduct;
- c. to respond actively to violations of the regulatory framework referred to under a. and to make every effort to avoid possible violations by Affiliates;
- d. to respond actively to violations of Article 7.2 of this Advertising Code and to make every effort to avoid possible violations by Affiliates;
- e. to oblige Affiliates to retain and have accessible their advertising messages for one (1) year and to provide it, at the first request, to members of the Mobile Services Codes of Conduct Foundation [Stichting Gedragscodes Mobiele Diensten] and/or the Compliance Office for the purposes of the handling of complaints and enforcement.

**10.2** If the Advertising Code Committee and, in the case of an appeal, the Board of Appeal have concluded that an Affiliate has violated this Advertising Code or the Dutch Advertising Code, the Provider of the SMS (Text Messaging) Services will (again) draw the Affiliate's attention to its/his/her obligation to comply with the regulatory framework and instruct the Affiliate to comply with the decision. If the Affiliate nevertheless fails to comply with the decision and advertises contrary to the decision, the Provider of the SMS (Text Messaging) Services will end the contractual relationship with the Affiliate in question and prohibit the Affiliate from continuing advertising the SMS Services of the Provider. Also other Providers of SMS (Text Messaging) Services will be obliged to exclude the Affiliate concerned in such a case.

**10.3** If an SMS (Text Messaging) Service Provider has fulfilled its/his/her obligations pursuant to paragraphs 1 and 2 of the present Article 10, the Provider will have made the maximum efforts that may be reasonably expected of it/him/her to ensure that Affiliates comply with the rules.

## Article 11 Complaints

**11.1** Any party that believes that an advertisement of an SMS (Text Messaging) Service Provider is contrary to this Advertising Code may submit a complaint in writing or by e-mail to the Provider in question. The SMS (Text Messaging) Service Provider will be obliged to investigate the complaint and to inform the complaining party within three (3) working days of the result of this investigation.

**11.2** A complaining party that is not informed within three working days or that considers the settlement of its/his/her complaint to be unsatisfactory may submit a complaint to the Advertising Code Authority, in accordance with the Articles and rules of this authority.

## Article 12. Entry into force

**12.1** This revised Advertising Code (first version 1 April 2009) will enter into force on 15 May 2011; no transitional arrangement will apply. This means that before 15 May 2011 SMS (Text Messaging) Service Providers must have adjusted their existing advertisements, their general conditions, and their rules for Affiliates to bring them into line with this Advertising Code.

**12.2** In principle, this Code has been adopted for two years and will be extended in each case by a period of two years.

**12.3** In principle, this Advertising Code will be evaluated every two years.

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<sup>12</sup> The same obligation is included in the SMS Service Provision Code of Conduct.

## APPENDIX 1 ADVERTISING CODE FOR SMS SERVICES

The diagram illustrates a registration screen template with the following numbered fields:

- 1 Advertentie benoeming
- 2 Subscriptie Titel
- 3 Titel
- 4 Artwork
- 5 Call to action
- 6 Minimale Leeftijd
- 7 Subscriptie Info
- 8 Voorwaarden
- 9 Additionele Informatie Links

### 1 Registration Screen Template

Statement of advertisement (Advertentie benoeming)

If the Registration Screen can be seen on or via a banner placed on a site, **(advertisement)** or **(publicity)** must be stated here.

Font: Arial Minimum Font size: (14.0 PTS/72DPI)

Colour: there must be a clear contrast between the background colour and the Font colour so that the name can be read clearly (yellow on orange, blue on green, grey on black, light blue on dark blue, etc. are not permitted).

### 2 Subscription Title (Subscriptie Titel)

This is obligatory and must in the case of a Subscription Service at least be described as follows: [Subscribe now....or In the case of this subscription followed by a possible advertising text]. Font: Minimum Font size: (20.0 PTS/72 DPI), and in any case no smaller than 1/2 of the Font size of the Title (point 3). A minimum applies to the Font, to the effect that it must not be any smaller than 20.0 PTS/72 DPI, measured according to a standard Arial Font.

For example: if the Title (point 3) is 80 PTS/72 DPI in size, the Subscription Title (point 2) must be at least 40 PTS/72 DPI in size.

PTS= points DPI= dots per inch

Colour: there must be a clear contrast between the background colour and the Font colour so that the subscription title can be read clearly (yellow on orange, blue on green, grey on black, light blue on dark blue, etc. are not permitted).

### 3 Title

This may be the description of the product, the brand name and/or the sales offer (discount or free). Needless to say, the title may also be a combination of the various terms (product+brand+offer).

Font: A minimum applies to the Font, to the effect that it must not be any smaller than 40.0 PTS/72 DPI, measured according to a standard Arial Font. The Font for the title must also be the same as the Font for the subscription title.

#### **4 Artwork**

This refers to the material that visually supports the campaign and consists of the price and frequency of the product, the product name, the product illustration and the product description. This may be placed to the left or right of the Call to action as described in point 5 of Appendix 1. The Artwork contains information about the SMS Service that is offered. If the Artwork contains information about a Promotional Offer, the Artwork for this Promotional Offer must be displayed with no more emphasis than the advertisement for the SMS Service itself.

#### **Price and frequency of the product:**

It must be stated unambiguously which costs will be involved in the SMS Service on a weekly basis, as well as the number of content/credit items that will be received on a weekly basis, for instance: €6/week, 4 items/week (+ SMS and download costs). No abbreviations may be used when stating the price. If payment for content is made on a monthly basis, the price and the number of content/credit items should be specified on a monthly basis.

Font: Arial Minimum Font size: (14.0 PTS/72DPI)

Colour: there must be a clear contrast between the background colour and the Font colour so that the price and frequency of the product can be read clearly (yellow on orange, blue on green, grey on black, light blue on dark blue, etc. are not permitted).

#### **5 Call to action**

This is the text with the action required to order the product or to receive product information. The Call to action may be placed to the left or right of the Artwork.

1. This may be an example or sample of the product.
2. The End User should insert his or her 06 (mobile) number here.
3. Confirm by pressing on 'send'.

The call to action will in all cases be related to the SMS Service. Reference to the Promotional Offer is only permissible with a maximum of the same emphasis as the advertising for the SMS Service itself.

#### **6 Minimum age/suitable phones (if applicable)**

The following should be stated here:

- Are you younger than 16? Ask your parents' permission
- Click here to see if your phone is suitable for this service (this link must link to a list of suitable phones)

Font: Arial Minimum Font size: (14.0 PTS/72DPI)

Colour: there must be a clear contrast between the background colour and the Font colour so that the minimum age/suitable phones can be read clearly (yellow on orange, blue on green, grey on black, light blue on dark blue, etc. are not permitted).

There may only be a single space between the Artwork and text 7 and between texts 7 and 8, so that the advertisement appears as a unit.

#### **7 Conditions (Voorwaarden)**

The most important conditions that apply to the SMS (Text Messaging) Service must be stated here. This includes in any event the following conditions:

1. If a paid Subscription Service is involved, this must be indicated in the following way: This is a paid Subscription Service.
2. It must be stated unambiguously which costs will be involved in the SMS (Text Messaging) Service on a weekly basis, as well as the number of content/credit items that will be received on a weekly basis, for instance: €6/week, 4 items/week (+ SMS (Text Messaging) and download costs). No abbreviations may be used when stating the price. If payment for content is made on a monthly basis, the price and the number of content/credit items should be specified on a monthly basis.
3. Any minimum duration of the subscription. (The minimum duration is one week; you will therefore always pay for at least one week).
4. Explanation of how the subscription can be halted. (Want to unsubscribe? SMS (send the message) STOP to 'Short Code').
5. No right of withdrawal or consideration period will apply (if that is the case, that right or that period must be stated).
6. Contact details (telephone and e-mail data of the SMS (Text Messaging) Service Provider's customer service, as well as the name and business address of the SMS (Text Messaging) Service Provider, the Chamber of Commerce number and the VAT number.
7. General conditions, including a link to the general conditions.
8. A statement that the SMS (Text Messaging) Service Provision Advertising Code and the SMS (Text Messaging) Service Provision Code of Conduct apply;
9. A statement that the prices given include VAT.

It must be possible for the End User to save the above conditions to a permanent data medium. Font: Arial Minimum Font size (12.0 PTS/72DPI).

Colour: Information must be stated in black letters on a white background.

#### **8 Additional information links**

These are links or references to extra information relating to the service offered.

The following information must at least be included here:



1. General conditions and any specific conditions<sup>13</sup> etc.
2. Privacy statement.
3. SMS (Text Messaging) Code of Conduct.

It must be possible for the End User to save the above conditions to a permanent data medium.

Font: Arial Minimum Font size (12.0 PTS/72DPI).

Colour: Information must be stated in black letters on a white background.

### **9 Presentation of the logo as stipulated in Article 5 of this Advertising Code**

The conditions referred to above are detailed in the following example:

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<sup>13</sup> The General Conditions or the Specific Conditions of the SMS Service Provider should state the visiting address of the SMS Service Provider.





**Summary of the minimum Pixels and obligatory Fonts:**

NO. 1. Name of advertisement:

Font: Arial Minimum Font size: (14.0 PTS/72DPI)

NO. 2. Subscription title:

Font: Minimum Font size: (20.0 PTS/72 DPI), and in any case no smaller than 1/2 of the font size of the Title (point 3). A minimum applies to the font, to the effect that it must not be any smaller than 20.0 PTS/72 DPI, measured according to a standard Arial font.

NO. 3. Title:

Font: A minimum applies to the font, to the effect that it must not be any smaller than 40.0 PTS/72 DPI, measured according to a standard Arial font. The font for the title must also be the same as the font for the subscription title.

NO. 4. Artwork:

Price and frequency of the product

Font: Arial Minimum font size: (14.0 PTS/72DPI)

NO. 6 Minimum age/suitable phones (if applicable) Font: Arial Minimum font size: (14.0 PTS/72DPI)

NO. 7. Conditions:

Font: Arial Minimum font size (12.0 PTS/72DPI)

NO. 8. Additional information links:

Font: Arial Minimum font size (12.0 PTS/72DPI)

PTS= points

DPI= dots per inch

## APPENDIX 2 ADVERTISING CODE FOR SMS (TEXT MESSAGING) SERVICES

### TV commercials template

#### 1. TV commercials submission format

In order to ensure that the conditions referred to under 3. can be read clearly, irrespective of the way in which they are broadcast and the channel, commercials should be supplied to TV channels in the correct format (16:9 or 4:3). The channel's broadcast equipment determines the format to be supplied. If a channel broadcasts commercials in 16:9, the commercial should be supplied to the channel in 16:9. If a channel broadcasts commercials in 4:3, the commercial should be supplied to the channel in 4:3. It is not permitted to supply 16:9 commercials to a channel that broadcasts in 4:3 and vice versa.

#### 2. Artwork

This refers to the material that visually supports the campaign and consists of the price and frequency of the product by means of the logo as described in Article 5 of this Advertising Code, the product name, the product illustration and the product description. The Artwork contains information about the SMS (Text Messaging) Service that is offered. If the Artwork contains information about a Promotional Offer, the Artwork for this Promotional Offer must be displayed with no more emphasis than the advertisement for the SMS (Text Messaging) Service itself.

#### 3. Colour of conditions in TV commercials

The conditions must be stated as a white text on a black background.

#### 4. Stating the conditions

**4.1** The text of the conditions must be able to be read clearly throughout the whole of the TV commercial and must contain at least the following information:

1. Reference to a website giving a list of suitable phones (if applicable) and the conditions for this service (Conditions and suitable phone: www.zzzz.nl).
2. In the case of a Subscription Service, an explanation of how the subscription can be halted (Want to unsubscribe? SMS (send a message) STOP to 'Short Code').
3. Applicable SMS (Text Messaging) and download costs.
4. Minimum age (Are you younger than 16? Ask your parents' permission).
5. Presentation of the logo as stipulated in Article 5 of this Advertising Code.
6. In the case of a Subscription Service, a statement of the number of content items per week/month.
7. No right of withdrawal will apply (if that is the case, that right must be stated).

**4.2.a** In a Voice-over, which must be clearly understandable, it must be stated in the case of a Subscription that that is the case, and the total costs per week in the context of the subscription must be given. In the case of a One-Off Service, only the costs for that service need be stated in the Voice-over, as referred to in Article 4.1(f) of this Advertising Code. In the case of a minimum duration for the subscription, the Voice-over must state 'Subscription, minimum cost X euros per week'.

**4.2.b** In the case of a Chat Service, the Voice-over - in addition to the costs referred to in Article 4.1(f) of this Advertising Code - must state (if applicable) 'fictitious persons - no arrangements possible';

**4.3** With regard to the size of the conditions, the following rules apply:

For 4:3 format commercials:

Font: ARIAL REGULAR

Minimum Font size must be: 20 pixels

Space between the lines (Leading) must be at least: 20

Space between the letters (Tracking) must be at least: 0

For 16:9 format commercials:

Font: ARIAL REGULAR

Minimum Font size must be: 23 pixels

Space between the lines (Leading) must be at least: 20

Space between the letters (Tracking) must be at least: 0

The above rules are detailed in the following examples:

For 4:3



For 16:9



#### 4.4 Specific text conditions for Chat Services

1. Supplementary to Article 4.1 of this Appendix, the following addition will apply: 'fictitious profiles - no arrangements possible' for Chat Services.
2. Contrary to Article 4.1.4 of this Appendix, a minimum age of 18 applies for adult Chat Services.
3. Contrary to Article 4.3 of this Appendix, a minimum permitted Font of 20 for 16:9 format commercials with Arial or similar applies to all text conditions for Chat Services.

## APPENDIX 3 LOGO

### 1. Lay-out of the logo

'Subscription' or 'One-Off' must be indicated in the upper half of the logo. In the lower half of the logo, the costs per week or per month must be shown in the case of a Subscription Service. In the case of a One-Off Service, the costs per item or per chat must be shown. The ratio between the above-mentioned upper and lower halves must be 1:1; no deviation from this ratio is permissible. The general lay-out will be as shown in Figure 1 below. The ratio of length to height is fixed (5:3); no deviation from this ratio is permissible. The minimum length is 30 mm and the minimum height is 18 mm. In the case of print advertising in a format larger than A4, the above-mentioned size of the logo will be proportionately larger the larger the format of the print advertising. In the case of print advertising smaller than A4 format, the minimum size will apply as stimulated above.

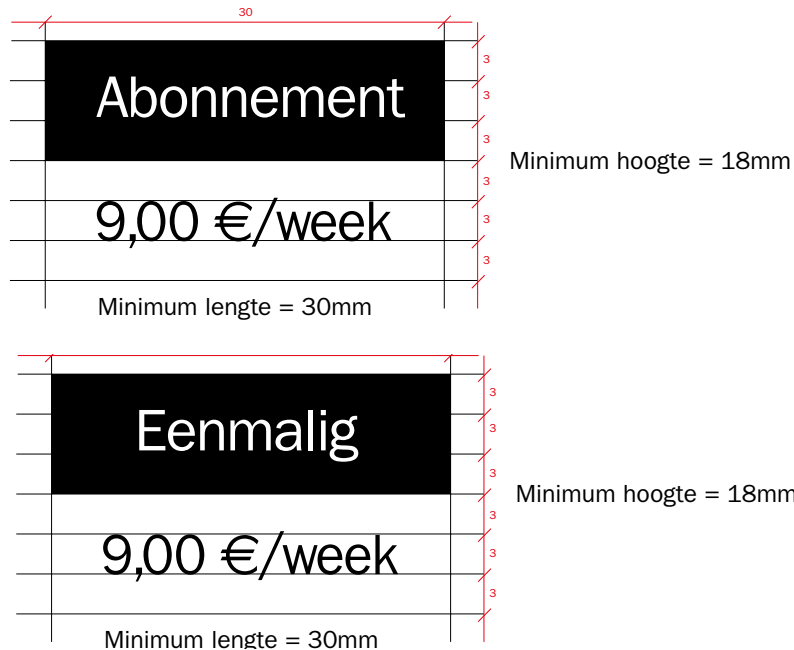


Figure 1: Lay-out of the logo

Arial will be used for the font; this may never be less than 8 points. The ratio in the logo between the week price versus subscription or One-Off is fixed as 50/50. 'Subscription' or 'One-Off' must be indicated at the top.

No abbreviations may be used when stating the price. The price must be indicated in one of the following ways, depending on the service offered:

#### Subscription

Option i: 6.00 €/week

Option ii: If payment for content is made on a monthly basis, the price should be specified on a monthly basis. 6.00 €/month

#### One-Off

Option I: The price should be specified per content item: 2.00 €/item

Option II: In the case of Chat Services, the price should be specified per chat: 2.20 €/chat

### 2. Colour options for the het logo

There must be a clear contrast between the background colour and the logo colour so that the logo can be read clearly. The colour of the logo must be as shown in Figure 2 below.

	Type 1	Type 1	Type 3
Frame	Black	Black	Black
Text	White	White	Black
Background	Black	Blue	Yellow

The colour code is as follows (R/G/B)

White 255/255/255 Black 0/0/0 Yellow PMS yellow Blue PMS 2945

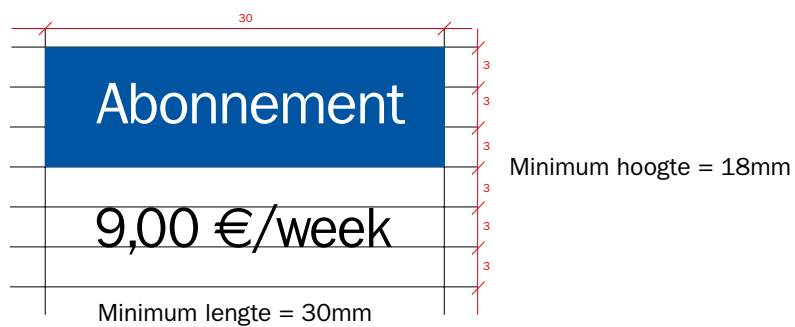
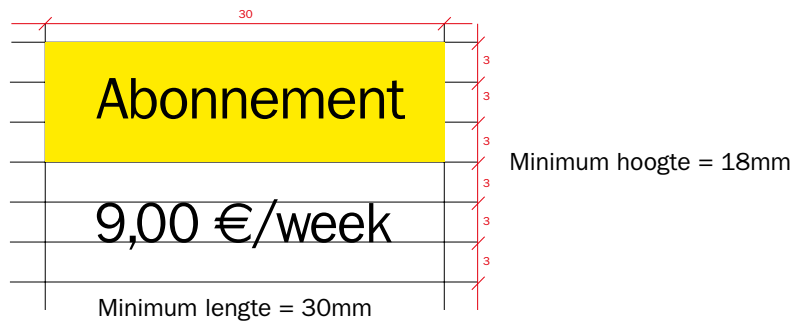
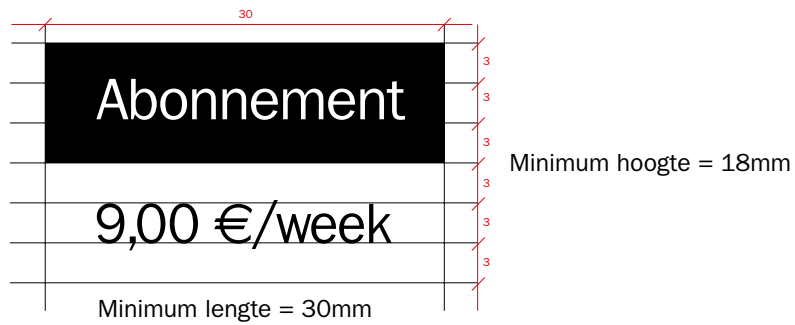


Figure 2: Colour options

**3. Positioning of the logo**

The logo must be positioned to the top left or top right in every advertisement and must be fully visible (in the case of a web page, without it being necessary to scroll the web page).

**4. Use of the logo on mobile Internet**

The minimum dimensions for the logo do not apply when it is used on mobile Internet. In the case of advertising on mobile Internet, however, the logo must be clearly visible without scrolling being necessary.

# ADVERTISING CODE SOCIAL MEDIA

The background and an explanation of the creation of this code is included in an annex to this code.

## 1. Scope

The Advertising Code Social Media (“the Code”) pertains to Advertising through Social Media.

## 2. Definitions

In this Code, the following terms are defined as follows:

- a. **Advertising through Social Media:** advertising within the meaning of Article 1 of the Dutch Advertising Code in connection with Social Media Marketing.
- b. **Advertiser:** the party encouraging the Distributor to create and/or publish Advertising through Social Media and/or the party that advertises by placing advertising on social media and/or by (causing the) modification of communications on social media.
- c. **Distributor:** the party that has a Relevant Relationship with the Advertiser and distributes Advertising through Social Media. A Distributor may be a natural person or legal person.  
Distributor is understood not to include a manager of social network sites and forums that facilitate communication between participants and takes a neutral stance regarding content.

### Explanation

For example bloggers, vloggers and/or online content creators can be considered as Distributor.

- d. **Relevant Relationship:** the relationship between the Advertiser and the Distributor directed at (causing the) distribution of Advertising through Social Media, in return for payment or any benefit, that might affect the credibility of Advertising through Social Media.
- e. **Social Media Marketing:** a marketing activity by an Advertiser that is directed at causing Distributors to communicate about a product or brand, whether or not on the instructions of the Advertiser, and at (causing the) modification of third-party communications via social media on behalf of an Advertiser.

## 3. Disclosure and Recognisability of a Relevant Relationship

- a. Advertising through Social Media must be clearly recognisable as such.
- b. If a Distributor receives compensation in money or in kind from the Advertiser, this must be explicitly communicated in the communication.
- c. The requirements referred to at a. and b. can be met in any event if the content and nature of the Relevant Relationship is disclosed clearly and in an easily accessible manner, e.g. by means of layout and/or presentation. The content and nature of the Relevant Relationship is in any event clearly recognisable if designed in accordance with the suggestions in the explanation to this article.

### Explanation

If an advertiser offers the Distributor any benefit, or chance thereof, for distributing Advertising via Social Media and that benefit affects the credibility of the relevant communication, the relationship between the Advertiser and the Distributor must be clear.

**Example I:** a consumer is paid (in euro or in kind) to review a new product and write about it on a web log. In compliance with the regulations, the review itself must mention the fact that the blogger is being paid for the product review.

This can be done by ending the blog post as follows: “Disclaimer: this printer / telephone / tablet was given to me free of charge by HP / Apple / Samsung for testing.”

If a micro-blog communication is involved, a hash tag may be used. If the product is sponsored, #spon is used; for an advertisement, #adv.

**Example II:** A vlogger makes a video weblog (vlog) about a particular product or service, and in return receives a compensation in money or in kind. This vlog is distributed via Social Media. The payment of the compensation in cash or any other benefit that has created a relevant relationship with the Advertiser, may have been received before, during, or after the creation of the vlog. In the vlog itself and/or in a clearly visible place in the title/description of the vlog, it should be mentioned that the vlogger receives, or has received a compensation in money or in kind from the Advertiser.

Examples of the manner in which a Relevant Relationship can be correctly disclosed to visitors are given below. The list is not exhaustive. Other methods are also possible.

### Personal web logs

- I received name of product from brand name\_\_\_\_\_
- Brand name\_\_\_\_\_sent me name of product.
- Company / brand name\_\_\_\_\_encouraged me to post this message.

### Review / theme web logs

- I received name of product from brand name\_\_\_\_\_for a review.
- I was paid for a review by brand name\_\_\_\_\_
- Company / brand name\_\_\_\_\_encouraged me to post this message.

### Responses in on-line forums

- I received name of product from brand name\_\_\_\_\_
- I was paid by brand name\_\_\_\_\_
- Company / brand name\_\_\_\_\_encouraged me to post this message.
- I am employed by [or represent] brand name\_\_\_\_\_

### Micro-blogs

Use a hash tag, for example:

- #spon (sponsored)
- #paid (paid)
- #sample (sample)
- #adv (advertisement)
- #prom (promoted)

### Status updates on social networks

- I received name of product from brand name\_\_\_\_\_
- I was paid by brand name\_\_\_\_\_
- Company / brand name\_\_\_\_\_encouraged me to post this message.

If status updates are restricted by a number of characters, we recommend that the Relevant Relationship between the Advertiser and the Distributor be disclosed using the method described for micro-blogs.

### Video and photo communities

The Relevant Relationship between the Advertiser and the Distributor can be disclosed with the description of the content placed in the manner set out below.

- I received name of product from brand name\_\_\_\_\_
- I was paid by brand name\_\_\_\_\_
- Company / brand name\_\_\_\_\_encouraged me to post this message.

### Podcast

The Relevant Relationship between the Advertiser and the Distributor can be disclosed with the description of the content placed and stated in the podcast itself in the manner set out below.

- I received name of product from brand name\_\_\_\_\_
- I was paid by brand name\_\_\_\_\_
- Company / brand name\_\_\_\_\_encouraged me to post this message.

## 4. Ban on Manipulation

- Modifying posts or other communications on social media such that the average consumer may be misled is prohibited.
- If the Advertiser modifies posts or other communications on social media or causes such modification to commend a product, service or activity of the Advertiser or a third party, the Advertiser must disclose this in a clear and accessible manner.
- If posts or other communications on social media are modified, selected or compared within the context of commending a product of the Advertiser or a third party, the Advertiser must do everything necessary to clearly mention the nature of the Relevant Relationship.
- The Advertiser is furthermore prohibited from systematically creating and/or using false or non-existent identities in bulk to communicate about a product and/or service through social media.

### Explanation

The Advertiser is also required to make this known when displaying content generated by consumers in a selective manner, as a result of which only positive communications are presented.

**Example:** When micro-blog posts are displayed on an (owned) platform and the Advertiser publishes positive communications there, the Advertiser must clearly indicate this. For example by indicating that it concerns a selection of positive reactions. Naturally, paragraph a of this article continues to apply: such clarity does not necessarily mean that the result of the selection cannot be misleading.

**Example:** An advertiser opts to post or cause posts about a product or service using false or non-existent identities. In that case, the recipient is incorrectly informed about the Distributor's identity and the Relevant Relationship with the Advertiser, which is prohibited.

The distinction between paragraphs b and c is that, in paragraph b, the Advertiser modifies posts himself while, in paragraph c, this is done by a third party. If the third party has a Relevant Relationship with the Advertiser, the third party must mention it.

If he discovers that the Relevant Relationship wrongly does not exist, the Advertiser must point this out to the third party and ensure, to the extent possible, that this relationship is mentioned as yet.

**NOTE** Teasers are permitted unless the teaser might induce the average consumer to make a decision about a transaction that he would not otherwise have made.

## 5. Children

Advertisers are prohibited from directly encouraging children aged 12 or under to advertise for products or services on social media.

## 6. Duty of care / Advertiser's responsibility towards the Distributor and third parties

- The Advertiser is required:
  - to inform the Distributor of the contents of this Code;
  - to require the Distributor working on his instructions to comply with the relevant law and regulations, including the Dutch Advertising Code and this Code (for example by drawing up rules);
  - if the Distributor is permitted to use third parties: to draw the Distributor's attention to the fact that such third parties must also comply with the obligations referred to at b.;
  - to actively endeavour to hold the Distributor to the obligations referred to at b. and c. and to actively take measures against the

violations referred to at b. and c.

2. The Advertiser cannot excuse himself from the obligations referred to at 1. based on the mere fact that the Distributor is not working on his instructions.
3. If the Advertiser has satisfied the foregoing obligations, the Advertiser has made the best endeavours that may reasonably be expected from him to ensure that the Distributors comply with the rules.
4. The Advertiser and Distributor each bear their own responsibility for compliance with Articles 3, 4 and 5 of this Code. When a complaint is acknowledged, the Advertising Code Committee and, on appeal, the Board of Appeal can designate the party to which non-compliance with this Code is attributable.

#### **7. Miscellaneous Provisions**

The provisions of this Code do not prejudice the provisions of the Dutch Advertising Code, in particular the provisions about misleading advertising in Articles 7 and 8 of the Dutch Advertising Code and the recognisability of advertising referred to in Article 11.1 of the Dutch Advertising Code.

#### **8. Evaluation and Entry into Force**

- a. This Code enters into force on 1 January 2014.
- b. Each year after its entry into force, this Code will be evaluated and amended if necessary.

## **ANNEX TO THE ADVERTISING CODE SOCIAL MEDIA - EXPLANATION**

The Advertising Code Social Media makes a start in regulating advertising and marketing activities by means of social media. This code is intended to promote transparency in Social Media Marketing by disclosing the relationship between the Advertiser and the party distributing the advertising communication. Developments in this channel are still in flux, which is why this code will be regularly evaluated and amended if necessary.

Characteristic of Social Media Marketing is that the distribution of the advertising message is not performed by one or more parties instructed by an advertiser, but by distributors (consumers and legal persons) who have (sometimes but) usually not been directly instructed by the advertiser, but have been encouraged by the advertiser.

In order to enable the recipient (consumers and businesses) to correctly recognise an advertising message via Social Media Marketing, he must, in a number of cases, be aware of the nature of the relationship between the advertiser and the distributor. The consumer need not be aware of relationships that do not affect the credibility of the advertising message.

A relationship of which the consumer must be aware is referred to in this code as a Relevant Relationship. A double assessment is always made: there must be some benefit and that benefit must affect the credibility of the relevant communication.

In any event, a Relevant Relationship exists when there is a contract, sponsoring or an offer of products free of charge to consumers accompanied by a request to post something about the free product. It is irrelevant, for example, whether the advertiser contacts a distributor to convince him or her to write a positive story about the advertiser. Sending reviewer's copies is also irrelevant when sent to a reviewer. Nor will there be a Relevant Relationship with journalists doing their work in accordance with their journalistic codes.<sup>1</sup>

Consumers may already be aware or deemed to be aware of a Relevant Relationship. If such is not the case, the relationship must be disclosed with the communication. Another requirement of a Relevant Relationship is that there must be some benefit for the distributor that the advertiser has linked to the distribution of the communication. This may be a material advantage (money or goods), but can also consist of extra "followers", "friends" or publicity.

If a Relevant Relationship ensues from an agreement, the advertiser must obligate the distributor to comply with this Code, for example by including a provision in the contract, employment agreement or the terms and conditions of the promotion. If there is no agreement, the advertiser must explicitly draw the attention of distributors to this Code when inviting them to provide their opinion of its products. If a social media campaign generates not only commendations but critical communications as well, the advertiser is still accountable under this Code.

The advertiser also bears responsibility when communications are made in violation of this Code but the advertiser is able to remove these, for example because they are posted on its website or websites related to it.

The advertiser must furthermore ensure that the impression created about a product or service by blog posts is not misleading. On its own media, therefore, the advertiser must disclose every type of selection or modification of posts. Obviously, the advertiser may utilise posts elsewhere, apart from the forum on which they were posted, in its own discretion, naturally to the extent permitted under the Dutch Advertising Code. The issue is avoiding the suggestion of an open forum where one does not exist.

The Advertising Code Social Media is part of the Dutch Advertising Code. If complaints are received, it is ultimately up to the Advertising Code Committee to determine in each case whether communications published through social media can be categorised as advertising, for which the advertiser is responsible.

The provisions in this Code are in addition to the statutory provisions from the Dutch Civil Code, the Personal Data Protection Act and the Telecommunications Act and, as indicated, the Dutch Advertising Code's self-regulation. The off-line and on-line communication media's own rules must also be respected in so far as these are not contrary to the provisions of this Code and the Dutch Advertising Code. If they are, this Code and the Dutch Advertising Code prevail and the advertiser cannot escape its responsibilities under this Code and the Dutch Advertising Code by invoking such rules.

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1 Under certain circumstances, advertising can also exist without a Relevant Relationship (cf. advertising for medicinal products).



## I. PROVISIONS CONCERNING TELEMARKETING

The CTM applies to telephone conversations between telemarketers and consumers, where only consumers with a Dutch telephone number are approached.

### Article 1.

The following definitions apply to this Code:

#### Telemarketing:

The systematic and methodical use of telephone conversations to commend unsolicited consumer goods, services or concepts; this also includes the solicitation for services. This does not, however, include the use of the telephone conversation for participation in research projects for historical, statistical or scientific purposes;

#### Telemarketing agency:

The organization/organizational division that is occupied (among other things) with telemarketing;

#### Telemarketer:

The person who does the actual telemarketing telephoning;

#### Advertiser:

The company, institution or (non-profit) organization that carries out telemarketing activities itself or farms them out to telemarketing agencies;

#### Consumer:

A natural person. In the wording of this Code, this also includes a natural person acting in the exercise of his profession or business;

#### Telemarketing conversation:

The telephone conversation in which telemarketing is practiced.

#### Specific call-back appointments:

An appointment with a specific subject, date and time-indication, made by the telemarketer with the consumer if the telemarketing call is at an inconvenient time.

#### Do-not-Call Registry:

A database in which consumers who do not wish to receive unsolicited telemarketing conversations can record their particulars.

#### Right to Object:

The consumer's right, included in the Dutch Telecommunication Act, to lodge an objection directly with the advertiser against further use of his contact data by the advertiser for telemarketing purposes.

#### Elimination of double entries:

A comparison of the database used for telemarketing with the Do-not-Call Registry and the advertiser's own suppression list (Right of Objection list).

#### Interactive Voice Response (IVR)

The system that may be used to actively inform the Consumer during every telemarketing conversation about the Right to Object and the Do-not-Call Registry and which facilitates immediate inclusion in the Do-not-Call Registry.

### Article 2

Telemarketing conversations by the advertiser are permitted, unless the consumer has directly notified the Advertiser through the Right of Objection his desire not to be called.

### Article 3

#### Par. 1

Telemarketing conversations by the Advertiser are permitted, unless the Consumer has indicated through the Do-not-Call registry his desire not to be called.

#### Par. 2

The first paragraph does not apply insofar as:

the contact data has been obtained by the Advertiser in connection with the sale of a product or service or in connection with a donation to an idealistic or charitable organization, and

If the advertiser uses this contact data for telemarketing in relation to its own similar products, services or donations to the idealistic or charitable organization.

### Article 4.

#### Par. 1

Upon the start of every telemarketing conversation the telemarketer shall ask, after having clarified the commercial, idealistic or charitable objective of the conversation, whether he has phoned at a convenient time.

**Par. 2**

If the telemarketer has phoned at a convenient time he shall state who the advertiser is and what the purpose of the conversation is, if this has not become clear from the commercial, idealistic or charitable objective.

**Par. 3**

If the telemarketer, in view of the offer, anticipates that the conversation will take longer than five minutes, the telemarketer must indicate the probable duration of the conversation.

**Article 5****Par. 1**

Should the call be at an inconvenient time, the telemarketer shall end the conversation.

**Par. 2**

Before ending the telemarketing conversation if it is at an inconvenient time, the telemarketer is allowed to ask if he may call back at another more convenient time. In the event that the consumer does not make a specific appointment to call, then article 12 applies in full should the telemarketer make another attempt to call the consumer for a telemarketing conversation.

**Explanation**

The telemarketer is allowed to ask if he can call the consumer back at a convenient time. Preferably, the telemarketer makes a specific appointment to call back, and the Telemarketing agency will endeavour to keep the appointment. If no specific appointment is made, then the telemarketer must make the consumer aware of his Right of Objection and the Do-not-Call Registry and offer him the opportunity to be included in the Do-not-Call Registry.

**Article 6**

If the consumer indicates that he wishes to end the conversation prematurely, the telemarketer shall comply immediately.

The telemarketer must always comply with the provisions of article 12, unless the consumer himself ends the conversation prematurely.

**Article 7**

The telemarketer is not permitted:

to speak unsolicited into a telephone answering machine or voice mail system or other peripheral equipment of the consumer; to redirect the IVR (see art. 13) to a telephone answering machine or voice mail system.

**Article 8**

The use of automatic calling systems without human interference for the purpose of conveying messages with a commercial, idealistic or charitable character using telemarketing, is not permitted unless:

the advertiser has obtained prior permission from the consumer, in accordance with the legal requirements.

the contact data was obtained by the advertiser within the framework of the sale of a product, service or donation to an idealistic or charitable organization, and as long as the contact data is used by the advertiser for telemarketing its own similar products, services or donations to an idealistic or charitable organization.

**Article 9.****Par. 1**

Telemarketing conversations may be held only between 9 a.m. and 10 p.m. on working days, and from 10 a.m. to 4 p.m. on Saturdays. Telemarketing is not permitted outside these hours, on Sundays or on public holidays.

**Par. 2**

Telemarketing conversations are not allowed on 5 December, 24 December and 4 May, after 18.30 hrs.

**Par. 3**

Telemarketing agencies may deviate from the provisions of paragraphs 1 and 2 of this article, if it concerns a specific call-back appointment.

**Article 10**

A dishonest and misleading approach is not allowed. The content of the articles 7 and 8 of the Dutch Advertising Code fully applies.

**Article 11**

It is not allowed to make an offer to a consumer, whom the telemarketer knows to be, could reasonably have known to be or ought to know to be 16 or under.

**Article 12**

In every telemarketing conversation, the consumer should be made aware of the Right of Objection and the Do-not-Call Registry and will be offered the opportunity for inclusion in the Do-not-Call Registry, unless during the first conversation a specific call-back appointment is made, in which the consumer is reminded of his rights.

**Article 13****Par. 1**

In the event that use is made of an Interactive Voice Response-system (IVR) in order to comply with the provisions of article 12, the telemarketer shall, during the telemarketing conversation, announce clearly and unambiguously that the consumer may opt-out of telemarketing through the IVR.

### Explanation

The use of the IVR system during a telemarketing conversation in order to present the Right of Objection and the Do-not-Call registry is permitted, on the condition that the use of IVR is unambiguously announced by the Telemarketer. It must be made clear to the consumer that he can opt-out of telemarketing through IVR. This can be done by using the following example sentence:

***“Mr/Mrs [NAME], thank you very much for your time. I will now inform you of your rights in telemarketing. If you remain on the line, a recorded text will present the Right of Objection and the Do-not-Call Registry. Have a nice day.”***

### Par. 2

If use is made of an IVR, the consumers can make use of the following options:

1. the Right of Objection against telemarketing by the advertiser for the consumer in question, and
2. Inclusion in the Do-not-Call Registry with partial deregistration and inclusion in the Do-not-Call Registry with total deregistration, without partial deregistration.

### Par. 3

If the consumer indicates during the telemarketing conversation that he does not want to be called in future by the advertiser (Right of Objection) or desires to make use of the facility to register in the Do-not-Call Registry and at the same time indicates that he does not want to make use of the IVR system, the IVR shall not be used and the telemarketer must manually handle the requests.

## II. PROVISIONS WITH REGARD TO TELEPHONE CALLS REQUESTED

### Article 14.

The following definition applies to this code:

#### Requested call:

A conversation with a commercial, charitable or idealistic objective that the consumer has unambiguously and explicitly requested.

### Article 15

A requested call by the advertiser is allowed.

### Article 16

In the event of a requested call to a consumer by the advertiser, article 4 par. 1 up to and including 3, article 9 par. 3, 10 and 18 of this Code shall apply immediately.

### Article 17

In the case of a requested call, the advertiser shall inform the consumer, upon his request, when and how the consumer requested the advertiser for the telemarketing conversation.

## III. COMPLAINT HANDLING CTM

### Article 18

#### Par. 1

Any person who considers himself approached by telephone in a way that conflicts with this Code can complain to the advertiser or the telemarketing agency in writing, by telephone or e-mail.

In that case, it shall be assumed that the advertiser as well as the telemarketing agency is party to the proceedings as stipulated in the second paragraph of this article. The recipient of the complaint is obliged to investigate the complaint and to notify the complainant within four weeks on the results of this investigation. If the complaint is directed to the advertiser, he shall disclose at the earliest request the name and address of the telemarketing agency.

#### Par. 2

Any complainant who is not notified promptly pursuant to the previous paragraph of this article, or who is not satisfied with the resolution of his complaint may lodge a complaint with the Advertising Code Authority, pursuant to the articles and Regulation of this Authority. Should a prompt response by the advertiser (or the telemarketing agency) be lacking, the complaint shall be lodged with the Advertising Code Authority by the complainant no later than four weeks after the elapse of the period stipulated in the previous paragraph and in the case of an objection to a given response, within four weeks after receipt of that response, unless the complainant can demonstrate that this could not reasonably have been expected of him.

## IV. ENTRY INTO FORCE CTM

### Article 19

This Code shall enter into force as from 1 July 2012 and will be evaluated after one year and periodically revised if necessary.

# ADVERTISING CODE FOR FIELD MARKETING

## I. DEFINITIONS AND SCOPE

This Code applies to advertising relating to sale and promotion off-premise.

### Article 1

In the present code the following is understood to mean:

- a. Advertiser (Sender):**  
A company, institution or (non-profit) organization advertising through Field Marketing either under its own control or through an Agency.
- b. Consumer:**  
A natural person not acting in the performance of a profession or business.
- c. Field Marketing:**  
Planned and systematic commendation of goods, services or ideas outside the own sales area, in public spaces or Door2Door. Field Marketing comprises presentation, promotion, activation and direct sales involving standard content not aimed at the individual recipient. This does not cover collection .
- d. Direct Sales:**  
Field Marketing aimed at executing an agreement with a consumer. Direct Sales is also understood to mean recruiting subscribers and donors.
- e. Promotion**  
Field Marketing aimed at making products tangible or visible without any Direct Sales taking place, such as handing out printed advertising (flyering), gathering personal data of prospects (Lead Generation), sampling and recruiting at fairs and events.
- f. Sales Area:**
  - 1. any immovable retail premises where the trader carries out his activity on a permanent basis, or
  - 2. any movable retail premises where the trader carries out his activity on a usual basis.

### Explanation

The Advertising code for Field Marketing regards advertising relating to sales and promotion off-premise. In such a situation additional information requirements and possibly a withdrawal period apply, because a Consumer is not prepared for such a sales pitch. This is the case of Street Marketing and Door2Door recruiting taking place in the street. However, this is also the case of the dealer having a temporary stand at a fair, an event or at another dealer's home. I.e. not being the place where he usually performs his activities.

- g. Street Marketing**  
Field Marketing which takes place in public spaces.
- h. Door2Door Recruitment**  
Field Marketing through home visits
- i. Field Marketing Agency:**  
The organization (or organizational unit) involved (inter alia) in Field Marketing by order of the Advertiser.
- j. Field Marketer:**  
The person professionally involved in Field Marketing

## II. GENERAL

### A. Advertising Recognition

#### Article 2

##### Paragraph 1

When starting a Field Marketing pitch the Field Marketer shall clearly communicate the commercial, idealistic or charitable objective of the pitch to the Consumer.

##### Paragraph 2

If this does not appear from the commercial, idealistic or charitable objective the Field Marketer shall specify to the Consumer who the Advertiser is and what the objective is of the pitch.

### Article 3

#### Paragraph 1

Field Marketers shall carry a valid Dutch ID upon them and

- a. a clearly visible badge or pass stating the name of the Advertiser and/or the Field Marketing Agency and his or her name, or
- b. Field Marketers shall wear recognizable clothing which clearly shows by order of what Advertiser they work. This can be done for instance by affixing the logo of the Advertiser on the clothing.

#### Paragraph 2

In the event of recruitment for charitable institutions the Field Marketer shall meet the conditions in a. and b.

#### Paragraph 3

Upon being asked by the Consumer, the Field Marketer shall communicate what Field Marketing Agency he works for.

## B. Performance

### Article 4

- a. Unfair and misleading approachment is not allowed. That laid down in Articles 7 and 8 of the Dutch Advertising Code applies in full.
- b. The special advertising codes of the Dutch Advertising Code fully apply, to the extent that they are relevant to Field Marketing by reason of the product/service to be advertised and/or by reason of the target group, in particular the provisions regarding promotions in the Advertising Code for Alcoholic Beverages (RVA) and the Advertising Code for Games of Chance (RVK).
- c. During the performance of Field Marketing activities, the Field Marketer shall:
  - not mislead the consumer.
  - not approach the consumer in an aggressive manner.
  - approach the consumer for a pitch with two Field Marketers maximum.
  - only address the consumer once upon passing.
  - cease the approach as soon as the Consumer unambiguously indicates not to be interested.
  - not block or obstruct the passers-by flow or the pavement.

### Article 5

#### Paragraph 1

In Field Marketing pitches the inexperience and/or vulnerability (e.g. by reason of age and/or knowledge of the Dutch language) of the Consumer shall not be taken advantage of. If, in reasonableness, it must be clear that the Consumer does not have the capacity or will to engage in a conversation or enter into a supply agreement or does not sufficiently understand the content or purport of the talk or the agreement, the recruiting shall be ceased.

#### Paragraph 2

No Field Marketing shall be carried out in retirement/nursing homes/apartments, or locations where the Advertiser, the Field Marketing Agency and/or the Field Marketer (should) know not to find the public having the capacity and/or will to enter into an agreement.

## C. Age Restrictions

### Article 6

#### Paragraph 1

It is not allowed to gather personal data from Consumers the Field Marketer knows, could know or should know to be under 16 years of age, save permission of the parent or legal guardian.

#### Paragraph 2

It is not allowed to conclude a Direct Sales deal with Consumers the Field Marketer knows, could know or should know to be minors.

#### Paragraph 3

- a. It is not allowed to hand out product samples to Consumers under 13 years of age save permission of the parent or supervisor.
- b. It is not allowed to hand out product samples with an age restriction to Consumers the Field Marketer knows, could know or should know to be minors.

## D. Recruiting Times

### Article 7

#### Paragraph 1

Street Marketing takes place in the designated location and during the designated times in conformity with national or municipal regulations, or within set opening hours of fairs or events.

## Paragraph 2

- a. Door2Door recruiting shall exclusively be made from 9:00 a.m. to 9:00 p.m. on working days and from 10:00 a.m. to 10:00 p.m. on Saturdays, save otherwise provided in sector-specific regulations or guidelines. Outside said hours, on Sundays and on Public Holidays Door2Door recruiting is not allowed.
- b. On 5 December, 24 December and 4 May Door2Door recruiting is not allowed after 7:00 p.m.  
Door2Door Field Marketing Agencies may derogate from that provided in paragraphs 1 and 2 of this article, if it concerns a specific recall appointment with the Consumer.

## Supplementary Provisions for Direct Sales

### Article 8

If the Field Marketing activity aims at effecting Direct Sales or a donation agreement with a Consumer, then the Field Marketer shall give the Consumer in a clear and understandable way the information of Article 8.4 Dutch Advertising Code prior to entering into the agreement.

## E. Supplementary Provisions for Door2Door Recruiting

### Article 9

#### Paragraph 1

Field Marketers shall respect all unambiguous statements of the Consumer which indicate or show that he does not want any Door2Door sales, including in any case the existing do-not-ring-the-doorbell stickers<sup>2</sup>, by which the occupant specifies not to want any Door2Door sales.

#### Paragraph 2

At the request of the Consumer the Field Marketer shall give information about how the Consumer can obtain a do-not-ring-the-doorbell sticker.

## F. Complaints Handling

### Article 10

#### Paragraph 1

Anyone who believes to have been approached by a Field Marketer in violation of this Code can file a complaint in writing or by email with the Advertiser or with the Field Marketing Agency. In that case it is assumed that both the Advertiser and the Field Marketing Agency are parties to the proceedings stated in the second paragraph of this article. The recipient of the complaint is held to investigate the complaint and to inform the complainant, as soon as possible but by four weeks at the latest, about the outcome of such investigation.

#### Paragraph 2

If the complaint primarily concerns aggressive approach by a Field Marketer, impermissible recruiting times or any other obtrusive way of approach, the complainant shall first file this complaint with the Field Marketing Agency, if known. If such a complaint is addressed to the Advertiser, then the latter shall communicate to the complainant the name and address of the Field Marketing Agency at first request.

#### Paragraph 3

The complainant who was not timely informed in conformity with paragraph 1 of this article, or finds the handling of his complaint unsatisfactory, may next file a complaint with the Stichting Reclame Code [Dutch Advertising Code Foundation], in conformity with the Articles of Association and regulations of said foundation. Failing a timely response by the Advertiser (or Field Marketing Agency) the complaint shall be filed within four weeks after expiry of the term cited in the preceding paragraph and in case of objection to a response as given within four weeks after receipt of such response, with the Stichting Reclame Code, save the complainant makes it likely that in reasonableness he cannot be expected to do so.

#### Paragraph 4

The Reclame Code Commissie [Dutch Advertising Code Committee] or College van Beroep [Board of Appeal] may specify when allowing a complaint, whether the breach of this Code can be attributed to the Advertiser and/or the Field Marketing Agency.

This Code becomes effective as from 1 January 2016.

<sup>2</sup> This Code recognizes the following stickers:



# ADVERTISING CODE FOR FOOD PRODUCTS 2015

## I. GENERAL PROVISIONS

### Field of application

This Code applies to all advertising for food products specifically intended for the Dutch market.

### Definitions

- a. **Food(s):** any industrially prepared and, as a rule packaged food products and drinks intended for the use by consumers.
- b. **Children:** minors who have not yet reached the age of 13.
- c. **Portion size:** size of a portion related to weight and/or volume.
- d. **Children's Idol:** persons, as well as comic characters and/or animated figures, well known by their role in television programs which are specifically intended and/or developed for children. Comic characters and/or animated figures developed by the advertiser himself do not fall within the definition of a children's idol.
- e. **Point-of-Sale material:** Advertising messages available at a Point-of-Sale.

## II. ADVERTISING MESSAGES

### General

1. In an advertising message for food, statements referring to taste, portion size and a possible contribution of the commended food to a healthy eating pattern shall be correct and complete.

2. In addition to the provisions of this code, the present laws and rules concerning labelling, nutritional value indications, and food and health claims apply to an advertising message for food products.

### 3.

#### Par. 1. Health claims

a. Health claims as defined in Article 2(5) of the EU Regulation 1924/2006 (hereinafter the Claims Regulation) are exclusively allowed if they:

- are stated as authorised claim in the annex to EU Regulation 432/2012 including subsequent amendments or
- as authorised claim in Commission Regulations which confirm the claims allowed under Article 13(5) and Article 14 of the Claims Regulations or
- fall under a transitional measure by reason of which the use is provisionally permitted.

It is prohibited to use health claims which were rejected by the European Commission or which do not fall under a transitional measure.

### Explanation

All the authorised and rejected claims are stated in a Community register cited in Article 20 of the Claims Regulation. Said register is exclusively available in the English language and can be found at: [https://ec.europa.eu/food/safety/labelling\\_nutrition/claims\\_en](https://ec.europa.eu/food/safety/labelling_nutrition/claims_en)  
The European Commission did not yet take a decision on health claims regarding botanical substances since they were not yet assessed by the EFSA. Said health claims fall under the transitional term referred to in Article 28(5) of the Claims Regulation. They can be used until a final decision will be taken. The claims to which said transitional term applies can be found at: <http://registerofquestions.efsa.europa.eu/roqFrontend/questionsListLoader?panel=NDA&foodsectorarea=26>

b. Instead of the phrasing by which the claim is officially described as authorised claim in the regulations cited in a. it is also allowed to use other phrasing in commercial communications provided it meets the following two (cumulative) conditions:

- the phrasing reflects the health relationship on which the authorised health claim is founded
- the phrasing is understandable to the consumer.

### Explanation

For the sake of the assessment of the question whether these two conditions have been met, the Stichting Bewoording Gezondheidsclaims (Dutch Foundation on Phrasing of Health Claims) developed a review basis consisting of a guideline document and an indicative list of phrasing examples. The guideline document and the indicative list can be consulted (in Dutch only) through the digital version of this code at [www.reclamecode.nl/nrc/](http://www.reclamecode.nl/nrc/).

c. Under the conditions of Article 10(3) of the Claims Regulation references to general, non-specific benefits of a nutrient or food for overall health or health-related well-being are allowed. The reference concerned must be accompanied in that case by a specific health claim which is authorised by a regulation as cited in a) of this paragraph.

d. It goes for health claims that all the relevant elements and data must be provided, including the conditions of use which show that the Claims Regulation is complied with. Furthermore the further labelling requirements as stated in Article 10(2) of the Claims Regulation and the other requirements of this regulation must be met.

#### Par. 2. Nutritional claims

As far as nutritional claims, as defined in art. 2 par. 4 of the Regulation on Claims, are concerned, the criteria on which the claim is based shall be met as listed in the Annex of the Regulation on Claims.

4. Commendation of a food product by referring to a certain quality which does not have a distinctive capacity within the relevant group of products is not allowed if the referral is intended to distinguish the Food Product from other products in the same group in a misleading manner.

### Explanation

However, it is allowed to refer to a GENERAL feature. E.g. "Product X is naturally fat free", as this refers to a common feature of all products in the category. The addition 'naturally' is explicitly for this purpose included in the Regulation of Claims.

**5.** If in an advertisement a food product is shown as part of a meal, the entire meal shown shall comply with the Guidelines for Good Food.

### Explanation

The Guidelines for Good Food can be found at

<https://www.gezondheidsraad.nl/nl/taak-werkwijze/werkterrein/gezonde-voeding/richtlijnen-goede-voeding-2006>.

**6.** Advertisements shall neither show excessive consumption, nor explicitly encourage excessive consumption of any food product. Furthermore, such behaviour shall not be held up as an example and/or be justified. Usual price or volume actions are not considered as explicit encouragement or excessive consumption.

**7.** An advertisement for food with a lower energy value than the original product may not lead to higher consumption of that product than of the food product with the original, higher energy value.

## Children

### 8. Par. 1.

Advertising for food products intended for children of 12 years and younger is not permitted. This means that

- a. Media carriers which according to the generally accepted research of the reach are specifically aimed at children of 12 years and younger shall not contain advertising for food products.
- b. Media carriers which are not specifically aimed at children of 12 years and younger, shall only contain advertising for food products if, according to the generally accepted research of the reach, the public for whom the advertising is intended consists of less than 25% of children of 12 years and younger .

### Par. 2. Exceptions to par. 1:

- a. Advertisements for food products realized in cooperation with the government and/or other approved authorities in the field of nutrition, health and/or physical exercise, intended for children of 12 years and younger.

### Explanation

'An approved authority' means, on one hand, national authorities such as the government itself (for example the Ministry of Health, Welfare and Sport VWS, the ministry of Economic Affairs EZ, the ministry of Social Affairs and Employment SZW), the Netherlands Nutrition Centre, the National Institute for Sports and Exercise, the Netherlands Olympic Committee-Netherlands Sports Federation (NOC-NSF), approved patients organizations such as the Dutch Heart Association, the Diabetes Association in the Netherlands and/or the Netherlands Obesity Association and professional associations in the healthcare sector, such as the Netherlands Dieticians Association and the Netherlands Society of General Practitioners; and, on the other hand, international and European authorities, such as e.g. the World Health Organization and the European Commission.

- b. Packaging and point-of-sale material.
- c. Advertising for food products directed at children of 7 to 12 years old which meets the nutritional criteria as included in the table with the associated portion size list which can be consulted through the digital version of this code at [www.reclamecode.nl/nrc](http://www.reclamecode.nl/nrc) (only in Dutch). Articles 9-11 of this code apply to this exception. At the request of the Stichting Reclame Code an advertiser shall submit the complete label of the product which a complaint relates to.

**9.** An advertisement for food products which are associated with certain television and/or radio programme specifically intended for Children, shall not be broadcast in the advertising blocks during or immediately after that programme.

**10.** A children's idol is not allowed to actively commend a food product and/or related 'premiums' (free gifts) or services in advertisements, specifically aimed at children.

**11.** In an advertisement specifically aimed at Children, the commendation of a food product shall not make the impression that consumption of the commended food renders them a higher status and greater popularity within their age group than the consumption of any other food product.



## SOME SPECIFIC FORMS OF COMMERCIAL COMMUNICATIONS AT SCHOOLS

**12.** It is not allowed to advertise foodstuff in playgroups, day-care centers, after-school childcare centers and at schools for primary education. The only exception is an informational advertising campaign realized in cooperation with the government and/or other approved authority in the field of nutrition, health and/or physical exercise.

### Explanation

By way of illustration: sampling is considered as advertising.

**13.** At schools for secondary education no promotional activities shall be held which are only intended to motivate the students to excessively consume the commended food product at that time.

**14.** At schools for secondary education only the regular packages of a food product shall be commended and offered for sale, and not the maximum, king size etc. versions.

**15.** With respect to sponsoring the most recent version of the 'Schools for primary and secondary education and sponsoring' Covenant applies.

### Explanation

The Covenant can be found at <https://www.rijksoverheid.nl/documenten/convenanten/2009/02/24/convenant-scholen-voor-primair-en-voortgezet-onderwijs-en-sponsoring>

### Date of commencement and evaluation

This Code became operative on 2 June 2005 and was amended as per 1 February 2010 and amended once more as from 1 January 2015\*. For the current advertising messages regarding Article 8 a transitional period of 6 months maximum shall apply and/or till the existing media year contracts shall expire.

The Code shall be evaluated after 2 years and if necessary revised.

\*The Consumers Association does not agree with the Special Advertising Code for food products that was amended as per 1 January 2015. The Consumers Association does not agree with the Code as to the following: the specification of the nutritional criteria and the exclusion of packaging and POS material.

A Special Advertising Code, approved by the Board of the Advertising Code Authority without the endorsement of the Consumers Association has the same force as the other special advertising codes.

# CODE FOR ADVERTISING DIRECTED AT CHILDREN AND YOUNG PEOPLE

**Code for advertising messages specifically directed at children and minors/young people, wholly or partly.**

## **Preamble**

The way in which children and minors/young people perceive and/or react to advertising depends on their age, experience and the way the advertisement is brought to their attention. An advertising message appropriate for minors/young people is not necessarily appropriate for children.

When making advertising directed at children and minors/youths, the recognisability of the advertising communication is important. In addition to the general rule, the manner in which this is fleshed out is explained per medium in Chapter III.

The Advertising Code Committee and the Board of Appeal will take this into account when they have to decide whether this code has been violated.

In addition to this code all other provisions of the Dutch Advertising Code will remain in full force regarding advertising which is specifically directed at children and minors/young people, wholly or partly.

## I. DEFINITIONS

**Minor/young person:** person under the age of 18

**Child:** person of 12 and under

**Parent/caretaker:** the legal representative of the minor/young person.

**Advertising directed at children:** advertising which is specifically directed at children, wholly or partly.

**Letterbox advertising:** all advertising material which is distributed through the letter box or post office box, whether by direct mail or door-to-door, which does not form an integral part of another medium such as newspapers or magazines;

**Door-to-door sampling:** the distribution of goods or samples by direct mail or door-to-door free of charge;

**Distance contract:** contract which is concluded exclusively by the use of one or more forms of distance communication technology, as part of the distance sales or service system, set up by the seller or service provider.

**Tele-shopping:** a television programme where direct offers are made to the public to the effect of supplying products on payment of costs.

**Tele-marketing:** the systematic use of a telephone conversation to commend consumer goods, services or concepts; this also includes the solicitation for services;

**Digital and Audio(-Visual) media:** all media that are digital and/or audio(-visual) and therefore not on paper, for example TV, Internet, SMS and e-mail as well as CD-ROMs and computer software.

**Social Media:** on-line platforms where users provide all or part of the content, with or without (minimal) intervention by one or more editors. Examples of social media include weblogs, forums, social networks like Hyves, Facebook and LinkedIn, and services like Twitter.

**Posts:** interactive messages of any kind (including response to such messages) that can be placed on social media.

**Virtual / On-line World:** a world simulated by a computer in which users can interact. The interaction may be based on an economic element (such as Second Life), a social element (such as Habbohotel) or a game element (such as World of Warcraft), or combinations of these elements. Characteristic of a virtual world is that the user may shape his or her identity and/or appearance.

**Game and In-game Advertising:** advertising made in or by means of a game (digital game and/or contest) in which either an advertising communication appears in the game or the game itself is the advertising communication.

## II. GENERAL PROVISIONS REGARDING THE CONTENT OF THE ADVERTISING COMMUNICATION

### **Article 1**

Advertising directed at children shall not contain words, sounds or pictures which may somehow mislead children about the qualities and properties of the product offered.

### **Explanation of article 1**

Advertising directed at children shall take into account their comprehension and expectations, especially regarding the playing pleasure, the size and the performance of the offered product.

## Article 2

### Par. 1

- a. Advertising directed at children may not cause any moral or physical damage and should therefore comply with the following criteria for the benefit of their protection: it shall not encourage them to buy a certain product by exploiting their lack of knowledge or their credulity;
- b. it shall not directly incite their parents or others to buy the products advertised.
- c. it shall not abuse the trust of children in parents, teachers or others;
- d. it shall not depict children in hazardous situations.

### Par. 2

Pursuant to the Audiovisual Media Services Directive, if an advertisement falls within the scope of application of this Directive then the word 'children' should be read as 'minors' in this article.

## Article 3

Advertising directed at children shall not suggest that the possession of or use of a certain product confers on them a physical or social advantage vis-à-vis other children, nor shall not being in possession of a certain product in any way confer the opposite effect.

## III. IDENTIFICATION OF THE ADVERTISING

### General

Advertising shall be identifiable as such, by its layout, presentation content or otherwise, especially having in view the public for which it is intended (see article 11, Dutch Advertising Code).

### (Youth) magazines or other printed matter

#### Article 4a

An advertisement (incl. the so-called advertorial) in a youth magazine or in other printed matter with a reach of over 25 % of children, shall be headed by the word 'advertisement' of 12 point size.

#### Explanation

The reach is calculated according to a reach survey generally accepted in the market.

### Digital and Audio(-Visual) Media

#### Radio and television

#### Article 4b

Advertising on radio and TV shall be clearly separated from the rest of the programmes by optical and/or acoustical means. (see article 11 of the Dutch Advertising Code)

#### Internet

#### Article. 5

##### Par. 1 banner and pop-up

If an advertisement directed at children, is made visible on a website (= a banner) or via a website (=pop-up), the advertisement shall bear the word 'advertising message' or 'advertisement', clear and at a single glance perceptible. Should the message be smaller than 150 x 50 pixels, then the abbreviation 'adv.' may be used. The provisions of this article also apply to banners and pop-ups on social media.

##### Par. 2 hyperlink

If an advertising message contains a hyperlink, the page made visible by the hyperlink shall not contain any messages conflicting with this code.

##### Par. 3 social media

- Advertising in posts and other advertising that is not a banner or pop-up on social media used by children must be clearly recognisable by optical, virtual and/or acoustic means appropriate for children's capacity to understand.

##### Par. 4 virtual world

- Advertising in a virtual world in which children are present must be clearly recognisable by optical, virtual and/or acoustic means appropriate for children's capacity to understand.

##### Par. 5 game and in-game

- Game and In-game advertising must be clearly recognisable by optical, virtual and/or acoustic means appropriate for children's capacity to understand and must distinguish itself from the game.
- Game and In-game advertising must clearly and unambiguously state in the game and before the game can be started, by means appropriate for children's capacity to understand, that the game or parts of the game constitute advertising and for which advertiser.

##### Par. 6

Advertisers are prohibited from directly encouraging children to advertise on their behalf.

### Explanation

Encouragement as referred to in par. 6 occurs, for example, when a child is offered any kind of benefit whatsoever in return for advertising (e.g. by "liking" a web page or Facebook page, or by forwarding messages). This may include, for example:

- being allowed to download certain items or compete in a competition
- offering additional options in the virtual world and/or game/in-game
- offering items free of charge or at a discount so that children can maintain or improve their status or position in the virtual world.

Making a sponsored item available for no consideration is also prohibited if the child must pay for a similar item that is not sponsored (e.g. downloading wallpapers).

### E-mail

#### General

- The advertiser is obliged to make sure that the recipient has given permission for sending him advertising messages by e-mail, or has ordered before a similar product as a client of the advertiser. (see art. 1.3 E-mail Code 2012)
- Advertising by e-mail shall be clearly identifiable as such. Identification shall be made possible by the combination of sender's address and subject. (see art. 2.1 through 2.3 E-mail Code 2012)

Identification shall be made possible by the combination of sender's address and subject. (see art. 2.1 E-mail Code)

### Article 6.

- In the case of an advertisement directed at children via e-mail, any advertisement in the e-mail shall bear the word 'advertising message' or 'advertisement', clear and at a single glance perceptible.
- Should the message be smaller than 150 x 50 pixels, than the abbreviation 'adv.' may be used.
- In case the e-mail itself represents the advertising message, the word 'advertisement' shall be mentioned at the top of the body.

### SMS (Short message service- Text Messaging)

#### Article 7

In case an advertisement is directed at children via SMS (Text Messaging), the message shall mention the word 'adv', clearly and at a single glance perceptibly.

## IV. SPECIAL STIPULATIONS FOR ADVERTISING MESSAGES SPECIFICALLY DIRECTED AT CHILDREN AND MINORS/YOUNG PEOPLE, WHOLLY OR PARTLY

- Content of the advertising message
- Personal details
- Providing services
- Specific products

## A. CONTENT OF THE ADVERTISING MESSAGE

### Letterbox advertising, door-to-door sampling and sales promotions

#### Article 8.

It is forbidden to send or cause to send children addressed advertising material, which is held to possibly cause damage to the mental health of children.

#### Article 9

In the case of a distance contract (unlike tele-shopping), the seller or service provider shall urge a child to ask permission of his parents to make an agreement. The seller or service provider shall take all measures which can be reasonably expected from him, to make sure that this permission was given.

#### Article 10

In the case of tele-shopping children shall not be encouraged to make an agreement to buy or hire products.

#### Article 11

Persons starring in audiovisual programmes, who are for that reason held to have influence on children and enjoy their confidence, are not allowed to star in audiovisual advertising.

## B. PERSONAL DETAILS

### Article 12.

#### Par. 1

When collecting personal details of a child, all effort shall be made to inform the child and/or his parent(s) of the purpose of collecting these data. Should commercial material be used, directed at the child or should otherwise a child's details be deliberately collected, the aforementioned information shall be clear, easily accessible and comprehensible for children.

#### Par. 2

In adherence with the law, specific forms of elaborating personal details of a minor/young person under 16 require that the permission of the parent/caretaker be granted.

#### Par. 3

If a game, prize or any other activity is offered with a sales promotional purpose, the child shall not be required to disclose any other personal details than strictly necessary for that purpose.

## C. SERVICE PROVIDING

### Telephone information services

### Article 13.

Advertising messages for telephone information services of an erotic or pornographic nature, implicitly or explicitly referring to services of that nature, shall not (also) be directed at minors nor use them for this purpose. Minors shall not directly or indirectly be encouraged by means of advertising messages to make use of these information services and such messages shall not refer to minors.

### Telemarketing

### Article 14

A marketer (the person who is professionally involved in telemarketing) shall make no offers to consumers whom he knows or could have known to be a minor (see Article 9 Telemarketing Code).

## D. SPECIFIC PRODUCTS

The Dutch Advertising Code includes a number of Specific Advertising Codes which contain provisions referring to children and minors. The following Specific Advertising Codes are involved:

- Alcoholic Beverages
- Cosmetic Products
- Fieldmarketing
- Self-Care Medical Products
- Games of Chance offered by Licensees
- Text Messaging Services
- Social Media
- Tobacco products
- Telemarketing
- Food Products

This Code became operative on 1 november 2013.

# ADVERTISING CODE FOR ADVERTISING MEDICINE TO THE GENERAL PUBLIC 2015

1. The following definition apply to this Code:

**Advertising to the general public:** advertising of medicines, in view of its content and the way it is expressed, aimed also at others than professionals: doctors, pharmacists, dentists, midwives (obstetricians), nurses and chemists.

2. Beyond the scope of this Code fall:

- The information leaflet and the labels
- A letter or e-mail message sent to comply with a request for information about medicines
- Information concerning health and illness in men

**Explanation:**

Text on labels, in the information leaflet and on the packaging is laid down by law and reviewed and approved by the Dutch Medicines Evaluation Board Agency (MEB Agency). Therefore, it can never be under discussion within the framework of this Code, or the Board of Supervision.

3. Public advertising for medicines is prohibited:

- a. If they are exclusively available on prescription
- b. If they are available without prescription, but contain substances as referred to in list I and II of the Opium Act.
- c. If the advertising message is not provided with a valid approval stamp, issued by the Inspection Board for the Advertising of Medicinal Products to the General Public, pursuant to the Articles.

**Explanation:**

Pursuant to the Medicines Act, all non-prescription medication may be advertised regardless of the availability. Therefore, this applies not only to the Pharmacy and Chemists-only-Medicine and General Sales Medicines, but also to the over-the-counter remedies of the Pharmacy-only medicine category. The medication mentioned under b) was added in accordance with the Medicines Act. The item under c) formerly belonged to the special Advertising Code sub a.

4. Advertising of medicines, for which the marketing authorization required by law has not been granted, is prohibited.

5. Advertising of homeopathic medicines without approved therapeutic indications is prohibited.

**Explanation:**

For homeopathic medicines registered with the Medicines Evaluation Board (MEB) based on Article 42, paragraph 3 of the Medicines Act, there is no therapeutic indication. Unlike the homeopathic medicines registered in accordance with Article 42, paragraph 4 of the Medicines Act by therapeutic indication, a leaflet was not required for this "classical homeopathica". These homeopathica are therefore not considered appropriate to be used entirely on its own authority. Therefore advertising of these products is not allowed

6. An advertising message may not contravene the I-B-1- text from the medicine's register file. Neither may it contravene the text in the information leaflet and/or on the package.

**Explanation:**

The I-B-1- text is the summary of the registration file approved by the Dutch Medicines Evaluation Board Agency. In this document a description is given of the clinical and pharmaceutical characteristics of the medicine relevant for the medical practice. The therapeutic characteristics in the advertisement attributed to the medicine must be in accordance with the I-B-1-text. This does not mean, however, that the indications should be copied literally from the I-B-1-text, since the I-B-1-text is written in professional language. The text for the information leaflet and the package, approved by the Dutch Medicines Evaluation Board Agency, has been transcribed into understandable language for the layman.

The rule of non-conflicting with the I-B-1-text also applies, should other views be published in the scientific literature. Only when the Dutch Medicines Evaluation Board Agency has approved the new views in the I-B-1-text, they may be mentioned in an advertisement.

Characteristics of a medicine not directly related to the therapeutic effect are in principle not depicted in the I-B-1-text. Should one wish to mention such characteristics in an advertisement they must be plausible and shall never conflict with the I-B-1-texts. Examples are: "pills made easy to swallow", "with a taste of thyme", or "easy to rub on".

7. Advertising that does not stimulate the rational use of a medicine is prohibited.

It is therefore not permitted to:

- Hand out samples of medicines free of charge;
- To make direct or indirect price offers, hand out coupons or organize 'refund campaigns';
- To make the purchase of the medicine a condition to participate in competitions and games and to receive small presents.

**Explanation:**

The distribution of small presents is only permitted as long as there is no obligation to purchase and the words: 'no purchase obligation' is incorporated in a readable font in the corresponding advertisement. This text must also comply with the current Code.

8.1 An advertisement shall contain at least:

- The name of the medicine;
- The generic name of the active substance should the medicine contain only one active substance;
- The indications and contraindications;
- An explicit request to read the information leaflet, as the case may be the text on the outer package.

**Explanation:**

The name of a medicine is understood to mean the name entered in the register which is usually the brand name and the mode of administration, or the strength of the medicine.

Advertising shall contain at least the most important therapeutic indication(s) and contraindications, as it is necessary to know beforehand what the medicine can be used for and who should not use it. This fits well with the existing legal obligation for the over-the-counter medicines to mention indications and contraindications on the outer package. The essential use information is to be mentioned in the information leaflet and/or on the package. Advertising messages shall refer to the instructions for use.

**8.2** Contrary to paragraph 1, the generic name of the active substance does not have to be mentioned in a radio broadcast advertisement.

**Explanation:**

A difficult generic name used in a radio broadcast advertisement may lead to conflicts with Article 10 of the Dutch Advertising Code.

**8.3** As to homeopathic medicines: in the registered indication must be explicitly stated that a homeopathic medicine is concerned. Therefore, this shall be mentioned in all advertising messages, except in radio broadcast advertising.

**8.4** Where traditional herbal medicines are concerned, shall be clearly mentioned that it is a traditional herbal medicine and that the indications are exclusively based on an already long existing use.

**8.5** In the commendation of homeopathic medicines, contrary to paragraph 1b the active substance does not have to be mentioned if a mother tincture or a single dilution is concerned.

**8.6** Contrary to par. 1c and 1d, non-written advertising messages may contain the mention: 'Please read the information on the package before buying', instead of the contraindications. Should either the total instructions for use, or an encouragement to read the information leaflet before use, be mentioned on the outer package, then the requirements stated in par. 1 sub d are met at the same time.

**Explanation:**

For years and years, radio and TV broadcast has been considered inappropriate (too casual) to pass on information or contraindications. Since the contraindications are mentioned on the outer package, the consumer is encouraged explicitly to read these and also to realise whether the medicine is the right one for him to use.

If the contraindications of a medicine are well-known, only the most important of these shall be included in a written advertising message (see explanation art. 9.1). Only very specific small groups of patients are supposed to be informed about certain contraindications of active substances (e.g. in the case of renal and liver failure). In this case mention of contraindications is not required. This does not refer to e.g. 'patients using anticoagulants' and 'patients suffering from stomach diseases'.

The contraindication 'allergy for one of the substances' needs not to be mentioned. This also applies to the contraindication 'allergy for the active substances', provided that the rest of the text makes clear which active substances the medicine contains (e.g. a packshot, on which the active substances are mentioned in a legible manner).

If some forms of commendations are considered too casual or too small to properly convey the information about contraindications (e.g. wobblers), then the standard phrase 'read the information leaflet before use' shall be replaced by the text 'Read the indications on the package before you buy this medicine'. In this case, the mention of contraindications can be left out.

All obligatory information pursuant to art. 9 shall be clearly readable. In television commercials the information shall be visible as long as it takes a consumer to read the information aloud.

**8.7** Contrary to par. 1a through 1d the advertising message needs to contain only the name of the medicine and if applicable: the generic name, should the only purpose be to remember the name or the brand name of the medicine.

**Explanation:**

If the only purpose of the advertising message is to remember the name this does not mean that the advertising may consist exclusively of the name. Designations that may reinforce the recollection, such as: 'trusted' are very well in line with that purpose. However, as soon as different ways of use or other product qualities are given, the advertising message is no longer considered just a recollection advertisement. A recollection advertisement for an Over-the-counter medicine with the same name as a medicine on prescription may be contrary to art. 4.a.

**9.** An advertisement for a medicine must give an objective description and shall not mislead the public.

**Explanation:**

Advertising for medicines shall be true and factual, shall not exaggerate the good qualities and shall not, directly or indirectly, incite to unnecessary or excessive use of that medicine. Therefore, claims as 'the best' are not permitted.

**10.** Advertising messages shall not make use of terrifying or misleading depictions of changes of the human body as a result of illness or harm, or of the effects of the medicine in the human body.

**11.** The advertisement shall be made in such a way that the message comes across to the public as an advertising message and that it is made perfectly clear that a medicine is concerned. The medicine may not be compared with a food product, cosmetic product or other consumer goods.

**Explanation:**

Should medicines be advertised simultaneously with food products, health care products, self-care medical products, cosmetic products or other consumer goods, the medicines must be positioned separately and it should be clear which claim relates to which product. Moreover, in case of a medicine it shall be explicitly stated that a 'medicine' is the issue at stake, and the same rule applies to a 'health care product' or a medical 'over-the-counter aid'.

**12.** In medicine advertising messages no mention shall be made of the reimbursement status.

**Explanation:**

Should the reimbursement status be advertised, it might stimulate people not to buy the product themselves, but to request prescription.

**13.** Advertising shall not mention or suggest by its wording or pictures that use of the medicine will make medical examination or medical treatment no longer necessary.

**Explanation:**

Therefore, the following are prohibited:

- Suggestions that medical examination or surgery is not necessary;
- Offering a personal diagnosis, advice, prescription or treatment per letter or, otherwise, "at a distance";

"At a distance" may also be understood as: with the help of the current electronic variations as 0800/0900 telephone numbers, e-mail, internet, text messaging etc.

**14.** Prohibited are suggestions as:

- The normal good constitution may be seriously affected, should the medicine not be used.
- A person's normal good constitution may improve by the use of the medicine.

**15.** Advertising may not contain information, which might lead to a wrong self-diagnosis by the description or detailed presentation of the development of an illness.

**16.** Advertising shall not refer to recovery statements in a misleading manner.

**17.** Testimonials shall be a correct account of the user experience.

**Explanation:**

As to the healthy user whose experience is reported, the provision of art. 19 explicitly applies.

**18.** Advertising is not permitted to contain a direct or indirect commendation of scholars, professional health care workers or people well-known to the public who might stimulate the use of medicines as a result of their being well-known and having a good reputation.

**Explanation:**

Professional health care workers are in this case: physicians, pharmacists, chemists, midwives, obstetricians, nurses and dentists. The background of this provision is that the general public has a special confidence in scholars and health care professionals, which causes their commendations to carry disproportionately great weight.

An indirect reference may be the mention or depiction of items that are strongly associated with them (such as e.g. doctors' white coats, or the Aesculapius staff), the name of institutions where they work (university, clinic, institute, laboratory, etc.) or the kind of work they do (research, diagnostics).

It is yet not so that the items associated with the scholars and health care professionals shall never appear in advertisements to the general public. The reference to a commendation is at stake here and there is no question of such a reference, should be mentioned for example that 'research' has demonstrated that X % of the population sometimes suffers from symptoms Y. Also the mention that a certain medicine is now available without prescription does not contravene the purport of this provision.

The expression 'people well-known to the public' refers to persons who are not scholars nor health care professionals indeed, but enjoy a certain confidence among the public at large: e.g. actors, who are famous for their role as a doctor, or persons with great authority and power.

**19.** An advertising message may never state or suggest that medicines are safe.

**Explanation:**

However, the word 'confidence' may be used, if relevant.

**20.** Advertising messages shall not mention, or by its wording or depiction suggest, that the safety or effectiveness of the medicine is a result of a natural substance.

**Explanation:**

The fact that a medicine is 'natural' or of 'natural origin' may only be used in relation to safety or effectiveness if it is proven correct and relevantly distinctive of other similar products.

**21.** Advertising messages may not mention, or by its wording or depiction suggest that the medicine does not produce any side-effects. The absence of a specific, recognizable to the user side-effect may be mentioned.

**Explanation:**

A specific side-effect the absence whereof may be relevant to a possible user, refers to a well-known side-effect in other medicines of the same product group.

These side-effects must be clinically relevant, which is manifest in the I-B-1 text of the other similar medicines. As far as the recognisability is concerned: the criterion is also, that the user experiences the side-effect as unpleasant, e.g. perceptible changes in the blood.



**22.** Advertising may not be exclusively or primarily aimed at children.

**Explanation:**

'Being aimed at children' is defined as: encourage children to buy or to use the medicine, or cause children to persuade their parents/ caretakers to purchase the medicine. Advertising for the use of medicines for children shall exclusively be aimed at their parents/ caretakers. Children are defined as persons under the age of 12. This provision does therefore not refer to teenagers and adolescents. Otherwise, the provisions in the Children's and Youth's Advertising Code remain in full force.

**23.** Secondary characteristics of the medicine shall not be used in an advertisement as the primary reason to purchase.

**Explanation:**

Secondary characteristics are defined as other than the registered therapeutic characteristics.

The distinction between medicines and other products is the therapeutic efficacy, which should be the primary reason for use. Other product characteristics are subsidiary to the therapeutic efficacy, but may be of importance to the user: as e.g. the taste of the medicine. Mention of the taste as an advantage of the product shall, however, be done in a way that makes it subordinate to the therapeutic efficacy. Otherwise there will be a risk of misuse or misunderstanding of the product's nature (see also art. 12).

Other secondary characteristics which may be a product asset are e.g. the user-friendliness and the absorption speed. Apart from the fact that these characteristics may not contravene the I-B-1 - text (see art. 7) these product assets may also be solely put forward in a way subsidiary to the therapeutic characteristics.

**24.** It is not allowed to guarantee the therapeutic efficacy in an advertising message.

**Explanation:**

Use of expressions as 'long term effects', 'money-back guarantee' and 'guaranteed efficacy' are not allowed.

**25.** In an advertisement, it is not allowed to mention or suggest in wording or depiction that the efficacy is better than or equal to the efficacy of another medicine or medical treatment.

**Explanation:**

The following advertising messages are not allowed:

- Advertising messages in which is stated that a medicine does not contain a certain active/effective ingredient which is used in other medicines.
- Advertising messages in which dissatisfaction with competing products is expressed.
- Advertising messages in which a medicine is denoted as unique, unless is indicated which characteristic is unique and only if this is demonstrably correct and significantly deviant from similar medicines.

**26.** Any implicit or explicit comparison with other medicines shall be demonstrably correct and may not denigrate the value of other substances or preparations. To comparisons further apply the following conditions:

- No use of brand names;
- Comparable products shall be used;
- The comparison must relate to all relevant characteristics.

**27.** In medicine advertising to the public, medicines shall no longer than 2 years after introduction be depicted as 'new' and besides, this may be done solely if the depiction is done in connection with the name of the medicine.

This code is since 2011 part of the Dutch Advertising Code and has been amended on 1 January 2015

# ADVERTISING CODE FOR SELF-CARE MEDICAL PRODUCTS

1. In this Code the following is understood to mean:

**Self-Care Medical Product:** medical product in a pharmaceutical form having a physical effect, as far as intended to be used by the public itself without the intervention of a health professional.

**Explanation:**

It is clear from the definition above that in-vitro diagnostic products are not covered by the Code. The Code regards self-care medical products in a pharmaceutical form (liquids, capsules, tablets, creams, ointments, shampoos, lotions, sprays, powders, etc.) having a physical effect. This mode of operandus distinguishes self-care medical products from medicines. In fact, the latter have a pharmacologic, metabolic or immunologic effect.

**Advertising:** advertising within the meaning of Article 1 of the Dutch Advertising Code for a self-care medical product as defined in this code which, by reason of its content and the manner in which it is expressed, apparently, is also intended for individuals not being professionals, such as physicians, pharmacists, dentists, obstetricians, nurses and drugstore-owners.

**Volatile Media:** radio, television and any other medium not suited (too volatile) for communicating the situation in which the use of the self-care medical product is advised against.

2. This Code does not cover:

- the data in labelling and directions of use laid down by law;

**Explanation:**

The labelling, directions of use and exterior packaging are advertisement carriers. And so, the Code applies to this. The law requires specific data to be stated on it. That is why within the context of this code or the supervision they can never be questioned.

3. The Advertising Code Committee takes into account a valid admission stamp issued by the Keuringsraad Openlijke Aanprijzing Geneesmiddelen (KOAG - Dutch Inspection Board of Public Advertising of Medical Products), on the basis of its bylaws.

**Explanation:**

All communications for self-care medical products (including packaging and directions of use) can acquire an admission stamp. As to the packaging and directions of use of a self-care medical product classified in risk class 1 the supplementary condition for obtaining a valid admission stamp applies that the 'CE Check' must have been passed. The CE check is a check by an expert of the plausibility of:

- the legal status of the product as self-care medical product;
- the classification specified by the manufacturer as class I;
- the clinical, scientific substantiation of the claims required by law.

4. It is prohibited to advertise self-care medical products which do not meet the legal conditions of the Dutch Act on Self-Care Medical Products and the Decree on Self-Care Medical Products.

5. Advertising is only allowed for self-care of indications that can be diagnosed by the user himself without the intervention of a physician or were once diagnosed by a physician or as supplementary self-care for indications diagnosed by a physician and treated with other medical products.

6. A commercial communication shall not be contrary to the information in the enclosed directions of use and on the packaging.

**Explanation:**

Advertising has a goal different from the instructions of use. That is why they are of a different nature. However, they should not be contradictory, if so, false expectations can be created on the part of the consumer or Article 4 of this Code can be violated in another sense.

7.

**7.1** It is prohibited to provide, unsolicited, free samples of self-care medical products intended for weight control and/or slimming. It is also prohibited to provide 'for free' public packs of such products. However, this is allowed for all other types of self-care medical products.

**Explanation:**

Self-Care medical products for weight control (slimming products and meal substitutes) shall not be used by anybody without consulting a physician. For this reason it is prohibited to provide, unsolicited, free samples of self-care medical products intended for weight control and/or slimming. Supply of commercial packs "for free", i.e. which are supplied by a retailer at a highly reduced price (almost) for free to an individual consumer is also prohibited.

**7.2** It is prohibited to state the degree or rate of the weight one could lose per time unit in respect of self-care medical products intended for weight control and/or slimming. Nor shall they involve a competitive element.

**Explanation:**

Mention of the weight unit per time unit is not allowed, because this suggests that this effect will always occur in everybody to such a degree.

## **8.**

**8.1** Advertising comprises in any case:

- a. the name of the self-care medical product;
- b. the mention "self-care medical product";
- c. the most important purposes of use and the situations in which the use is advised against;
- d. an explicit request to read the instructions of use.

### **Explanation:**

It should be clear that it concerns a self-care medical product.

Advertising comprises in any case the major purposes of use and the situations in which the use is advised against. After all, the purchase decision requires to know what the self-care medical product can be used for and who should not use it. This is in line with the mention of the major therapeutic indications and contra-indications required for self-care medical products. In this, the situations in which the use is advised against, shall be in conformity with the contra-indications. In commercial communications reference shall be made to such instruction of use. All the mentions required under Article 8 should be clearly legible. It goes for television commercials that they must be displayed for such a long time that the consumer can read them aloud.

**8.2** In derogation of paragraph 1 the situations in which the use of the self-care medical product is advised against do not have to be stated in volatile media.

### **Explanation:**

Since year on end, radio and television commercials have been considered unsuitable (too volatile) to communicate the situation in which the use of the medical product is advised against. Since such information is stated in the directions of use, the consumer is also induced, with an express exhortation to read this, to verify whether the self-care medical product is suitable to be used by him. Such exhortation should be clearly legible or audible. It goes for television commercials that they must be displayed for such a long time that the consumer can read them aloud.

**8.3** In derogation of para. 1 a-d the commercial communication only has to include the name of the self-care medical product, if the only goal is to remind of the name.

### **Explanation:**

Reminder advertising has the sole aim to remind of the name and in general consists exclusively of mentioning the name in the communication.

Designations which can reinforce the reminding value, such as "familiar" fully comply with such aim. However, as soon as use options or any other product characteristics are stated, it does not concern exclusive reminder advertising anymore.

**9.** Advertising for a self-care medical product shall give an objective presentation of facts and shall not mislead.

### **Explanation:**

Advertising for a self-care medical product shall be truthful and shall not exaggerate its characteristics. Furthermore, claims such as 'the best' are not allowed, because they are hardly ever demonstrably correct.

**10.** Commercial communications for self-care medical products shall not use in a deterring or misleading manner presentations of changes in the human body caused by a disease or injury. Nor are such presentations allowed for the use of the self-care medical product.

### **Explanation:**

It is not allowed to use in advertising of self-care medical products any images which are deterrent and terrifying, in that case it does not concern self-care anymore. Pictures should fall within the scope of the self-care medical product.

**11.** The advertising shall be reproduced in such manner that the message comes across as advertising to the public, and it is completely clear to the public that it concerns a self-care medical product. It is not allowed to identify the self-care medical product with a medicine, health product, food product, cosmetic product or any other consumer good.

### **Explanation:**

Upon simultaneous recommendation of self-care medical products with a medicine or health product, cosmetic product or any other consumer good they shall be positioned individually and it shall be clear what claim regards what product. Since it is only allowed to make pharmaceutical/medical claims for medicines and self-care medicinal products and precisely not for health products, it is important to make a specific distinction in this.

Furthermore, as to the self-care medical product it shall be expressly stated that it concerns a "self-care medical product", as to the medicine that it concerns a "medicine" and as to the health product that it concerns a "health product".

**12.** Upon advertising self-care medical products it shall not be stated that self-care medical products can be reimbursed on doctor's prescription.

### **Explanation:**

If the reimbursement status is advertised, then consumers are induced not to buy the product themselves, but to have it prescribed to them.

**13.** Advertising shall neither state nor suggest by its phrasing or pictures that the use of the self-care medical product renders a medical examination or a medical treatment unnecessary.

**Explanation:**

That is why the following is prohibited:

- statements which show that a medical examination or procedure is unnecessary;
- to offer a “distance” personal diagnosis, advice, prescription or treatment by letter or otherwise.

“Distance” may also include contemporary electronic versions such as 0800/0900 phone lines, email, internet, sms and the like.

**14.** Suggestions are prohibited which suggest that:

- normal good health can be affected if the self-care medical product is not used;
- normal good health of a person can be improved by using the self-care medical product.

**15.** Advertising shall not comprise any statements which by means of description or detailed presentation of a disease history could result in an incorrect self-diagnosis.

**16.** Advertising shall not refer in a misleading manner to declarations of being cured.

**17.** Testimonials shall be a correct presentation of the experience of the user.

**Explanation:**

As to the healthy user whose experience is presented, the provision of Article 18 expressly applies.

**18.** Advertising shall not comprise, directly or indirectly, a recommendation of scientists, health care professionals or persons known to the public who could promote the use of self-care medical products by means of their renown and reputation.

**Explanation:**

Health care professionals in this respect are physicians, pharmacists, drugstore owners, obstetricians, nurses and dentists. The background of this provision is that the public has a special trust in scientists and professionals implying that a recommendation by them will get disproportionately much weight.

An indirect reference can consist of stating or reproducing matters strongly associated with them (for instance white coats or the staff of Aesculapius), the designation of the institutions they work for (university, clinic, institute, laboratory, etc.) or the kind of work they perform (research, diagnostics).

This does not mean that such matters associated with scientists and health care professionals are never allowed in advertising. After all, it concerns the reference to a recommendation. For instance, there is no such reference if it is stated that “research” has shown that X% of the population occasionally suffers from disorder Y.

“Persons known to the public” concern persons who although they are not scientists or professionals themselves, do enjoy a certain trust of the public, for instance actors known for playing a specific doctor character or persons of much authority.

**19.** A commercial communication shall neither state nor suggest that (self-care) medical products are safe. However, it is allowed, within a relevant context, to explain on the word ‘safe’ and the safety of the product, if such relevant context is clearly stated.

**Explanation:**

Accordingly, it is allowed to state “safe when used in conformity with the directions of use”.

**20.** Advertising shall neither state nor suggest by its phrasing or pictures that the safety or efficacy of the (self-care) medical product is due to the fact that the materials and/or substances used are “natural” or of “natural origin”.

**Explanation:**

It is only allowed to state the fact that the materials and/or substances used in a (self-care) medical product are “natural” or of “natural origin” in relation to safety or efficacy if this has been proven to be correct and is relevantly distinct from similar products.

**21.** Advertising shall neither state nor suggest by its phrasing or pictures that the (self-care) medical product does not have any adverse effects. It is allowed to state the lack of a specific adverse effect which can be recognized by the user, if this is distinct and demonstrable.

**Explanation:**

A specific adverse effect the lack of which can be relevant to the potential user concerns a known adverse effect of similar products. In that case, such adverse effect shall be recognizable to the user and clinically relevant. The adverse effect concerned should be stated in the official documentation of such similar products.

**22.** Advertising of a self-care medical product shall not be directed at children.

**Explanation:**

“Directed at children” is also understood to mean the exhortation of children to buy or use the (self-care) medical product or to induce children to persuade their parents/care-takers to buy it. Advertising of use of (self-care) medical products for children shall be specifically directed at their parents/care-takers. Children are understood to mean persons of 12 years or younger. And so this provision does not apply to young adults. Besides, the provisions in the Code for advertising directed at Children and Young People apply in full.

**23.** The therapeutic use shall be presented as primary reason for use in advertising of self-care medical products. Any secondary characteristics of the (self-care) medical product shall not be used as primary reason to buy.

**Explanation:**

The distinction between (self-care) medical products and other products is the use for a medical indication. This shall be the primary

reason of use. Any other product characteristics are secondary to such medical indications, but can be important to the user. The taste of the (self-care) medical product is an example of this. Stating the taste as product benefit shall, however, be done in a manner which renders it secondary to such medical indication. If not, there is a risk of abuse or misunderstanding as to the nature of the product (see also Article 11).

**24.** A commercial communication shall not give any guarantee as to the efficacy.

**Explanation:**

The use of for instance: “permanent effect” and “efficacy guaranteed” are not allowed.

**25.** Advertising shall not comprise any derogatory statements about other products, services or ideas, or suggest so by means of its phrasing or pictures.

**26.** Any implicit or explicit comparison with other (self-care) medical products or other products shall be demonstrably correct and shall not depreciate such other products. Furthermore, the following conditions apply to comparisons:

- no use of brand names;
- it shall concern similar products;
- the comparison shall relate to all relevant characteristics.

**27.** Public advertising shall not designate (self-care) medical products as new 2 years after their launch and moreover only if such designation is made in connection with the name of the product.

This code is part of the Dutch Advertising Code since 1 January 2015.

# ADVERTISING CODE FOR COSMETIC PRODUCTS

## 1. General Provisions

### Scope

The present advertising code applies to advertising in the sense of Article 1 of the Dutch Advertising code for cosmetic products specifically targeted at cosmetic products marketed in the Netherlands. This code does not alter the rules of Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products and the Commission Regulation (EU) No 655/2013 of 10 July 2013 laying down common criteria for the justification of claims used in relation to cosmetic products. Nor does this code alter the misleading advertising rule as stated in Articles 7 and 8 of the general part of the Dutch Advertising Code.

### Definitions

- a. Cosmetic products: any substance or mixture within the meaning of (EC) Regulation 1223/2009 intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours.
- b. Minor: individual under the age of 18.
- c. Child: individual of 12 and younger.
- d. Claim regarding cosmetic products: communication with the principal goal of informing end users about the characteristics and qualities of the products.

## 2. General Conditions

The following conditions apply to claims:

### Paragraph 1

Claims that state that the product has been authorized or approved by a competent authority within the European Union are not allowed.

### Paragraph 2

Claims which convey the idea that a product has a specific benefit when this benefit is mere compliance with minimum legal requirements are not allowed.

### Paragraph 3

If a product states that it contains a specific ingredient, said ingredient must actually be contained.

### Paragraph 4

Claims referring to the properties of a specific ingredient shall not imply that the finished product has the same properties when it does not.

### Paragraph 5

Presentations of a product's performance shall not go beyond the available supporting evidence.

### Paragraph 6

Claims shall not attribute to the product concerned specific (i.e. unique) characteristics if similar products possess the same characteristics.

### Paragraph 7

If the action of a product is linked to specific conditions, such as use in association with other products, this shall be clearly stated.

### Paragraph 8

Claims shall not denigrate any ingredients used in a legal manner.

### Paragraph 9

Claims shall be clear and understandable to the average end user of the cosmetic product.

## 3. Evidential Support of Likelihood of Claimed Effect

### Paragraph 1

Claims regarding cosmetic products, both explicitly and implicitly, shall be substantiated with adequate and verifiable evidence, if necessary, including assessments by experts and any other information which is comprised in the Product Information File as referred to in Article 11 of (EC) Regulation 1223/2009. This requirement does not apply if the average consumer understands that it clearly concerns exaggeration which will not be taken literally by him or if it concerns statements of an abstract nature. When assessing whether the claimed effect is adequately substantiated and its likelihood is proven, account shall be taken of Commission Regulation (EU) No 655/2013 of 10 July 2013 laying down common criteria for the justification of claims used in relation to cosmetic products and the associated Directives .

### Paragraph 2

When substantiating claims account shall be taken of the state of the art. The acceptability of a claim shall be assessed on the basis of evidential support of all studies, data and information available depending on the nature of the claim and the general common knowledge of the end users.

### Paragraph 3

Where studies are used as evidence, they shall be relevant to the product and the benefit the product claims. Moreover, the studies shall follow well-designed, well-conducted methodologies (valid, reliable and reproducible) and shall respect ethical considerations.

**Paragraph 4**

Next to the information stated in the preceding paragraphs an advertiser shall be able to submit statements of one or more experts as evidence of the claimed effect based on such information, in the event of challenge of the claimed effect. Such statement(s) shall give insight into the manner of review by the expert(s) of the data and the relationship of the expert(s) with the advertiser.

If the Advertising Code Committee does not find the statement(s) of the expert(s) adequate or sufficiently convincing, it can require further substantiation and/or give the advertiser an order for further proof.

**Paragraph 5**

The level of evidence or substantiation to be furnished shall be consistent with the type of claim being made, in particular for claims where lack of efficacy may cause a safety problem.

**Paragraph 6**

A claim extrapolating (explicitly or implicitly) ingredient properties to the finished product shall be supported by adequate and verifiable evidence, for instance by demonstrating the presence of the ingredient at an effective concentration.

**4. Pictures****Paragraph 1**

To communicate brand identity and the specific benefits of the product pre- and post-production techniques (digital techniques) for embellishing pictures are in principle allowed in commercial communications on the following conditions:

- (a) The advertiser shall ensure that the presentation of the performance of an advertised product is not misleading. Not misleading are considered the use of a clearly exaggerated or styled picture without any serious meaning or being purely illustrative and the use of techniques for embellishment, regardless of the product or the advertised effect.
- (b) Digital techniques shall not alter any pictures of models in such manner that an unrealistic presentation is made of the results to be achieved with the product.
- (c) Models and digital techniques used in commercial communications shall not suggest that a specific body-shape is preferable, or promote extreme thinness.
- (d) Digital techniques, such as photo-shopping, shall not suggest that the product has characteristics or functions it does not have.

**5. Testimonials and Expert Statements****Paragraph 1**

Testimonials and expert statements shall meet Articles 9 and 10 of the Dutch Advertising Code, as well as the provisions of the Advertising Code for Social Media.

**Paragraph 2**

Testimonials cannot individually serve as substantiation of the efficacy of the product.

**Paragraph 3**

It is allowed to use testimonials of celebrities and consumers, if such testimonials are presented as a personal opinion or impression of the product, and do not (also) suggest a special expertise. Testimonials shall not be seen as evidence of efficacy of the product; this can only be decided on the basis of adequate and appropriate evidence.

**Paragraph 4**

Reference to expert statements in advertising is only allowed if such experts can actually state or testify regarding the field in which they are considered experts.

**6. Environment**

If claims are made regarding the environment, then the Code for environmental advertising also applies.

**7. Children and Minors****Paragraph 1**

If the advertising is directed, in full or in part, at a child or minor, then the Code for advertising directed at Children and Young People also applies in full.

**Paragraph 2**

Advertising is allowed for cosmetic products which are specially developed for minors, if they do not contribute to precocious sexual awareness of minors.

**Entry into Effect and Evaluation**

This code enters into effect on 1 January 2015. The code will be evaluated in two years time.

## C. GENERAL RECOMMENDATIONS

Over the years the Advertising Code Committee has made a number of general recommendations on the following topics:

- a. recruitment campaigns for salesmen/distributors
- b. magnetic health bracelets
- c. use of the words 'comparable store sale price'
- d. statement of gross or net measurements
- e. the use of superlatives
- f. guarantees
- g. the use of the term 'recommended price'
- h. advertising for branches
- i. pictures of the product concerned
- j. lodging agencies
- k. personnel advertisements (withdrawn)
- l. children's fireworks

N.B. On 5 June 1996 the authority of the Advertising Code Committee to make general recommendations was withdrawn. Currently rules shall only be formulated by the administrative body of the Advertising Code Authority.

### a. Recruitment campaigns for salesmen/distributors

In the opinion of the Advertising Code Committee, advertisements used to recruit salesmen or distributors sometimes wrongly create the impression that applicants are being recruited for a job with prospects of a very attractive salary when in fact the work will be performed on a commission basis, whether or not the potential employee has been obliged to first make an advance investment or purchase, frequently entirely at his own risk.

For this reason, the Committee recommends advertisers and media to ensure that such advertisements:

1. clearly state:
  - a. the future relationship between the advertiser and the salesman/distributor: in particular, it must be explicitly stated whether or not this person will be working as an employee.
  - b. whether or not an investment or purchase has to be made by the salesman/distributor and if so, the size of the investment.
2. mention potential earnings with the greatest caution. Raising unreal expectations will be avoided. The Committee requests that parties concerned take the above into account and do not place advertisements that do not meet the requirements.  
(November 1973)

### b. Magnetic health bracelets

It has become clear to the Advertising Code Committee that magnetic health bracelets are increasingly advertised.

The majority of these advertisements state that the bracelets are beneficial to one's health and that wearing the bracelets has a beneficial effect on certain diseases, such as rheumatism, high and low blood pressure, neuralgia, lumbago, headache, nervousness and fatigue.

The advertisements in question, also often refer to a certificate, issued by the Ministry of Public Health in the country of origin.

The Committee holds that this form of advertising is contrary to the Dutch Advertising Code, as a link between wearing the bracelet and the health of the wearer has not been scientifically established and it has also not been sufficiently established that the governmental certificates in question guarantee the beneficial effect of the bracelets.

The Committee recommends that advertisements advertising such magnetic bracelets should not be placed or should be refused if a link is made between health and medical grounds for wearing these bracelets and where governmental certificates are mentioned, unless these advertisements are provided with a valid authorization stamp issued by the Inspection Board for the Public Commendation of Registered Drugs (KOAG) and the Inspection Board for the Commendation of Health Products (KAG).

(September 1974)

### c. Use of the words 'comparable store sale price'

It has become clear to the Advertising Code Committee that advertisements and catalogues for products or free gifts ('premiums') that are not actually being sold in stores indicate the 'comparable store sale price' and specify the price in decimals. The Committee holds that this form of advertising is contrary to Article 7 of the Dutch Advertising Code, as it is impossible to determine the exact comparable store price of products that are not being sold in stores. Wherever a comparable store sale price of such products or premiums is mentioned, the value shall be given in round figures preceded by the word 'approximately'.

The Committee recommends that advertisements that do not comply with the above should not be placed or should be refused, as the case may be.

(February 1975).

### d. Statement of gross or net measurements

It has become clear to the Advertising Code Committee that advertisements indicating the volume or weight of the products offered, e.g. for refrigerators or deep freezers, fail to mention whether the given measurements are gross or net measurements.

The Committee considers this form of advertising wrong and contrary to the Dutch Advertising Code. The Committee recommends that advertisements that mention volume or weight should clearly indicate whether the measurements are gross or net measurements and advertisements that do not comply with the above should be refused or not placed.

(September 1975)

### e. Use of superlatives

The Advertising Code Committee took cognizance of the fact that in many advertisements where a price is mentioned the advertiser often states that its product is "the cheapest", "the least expensive" or as having "the lowest" prices in comparison to those of its competitors.



Given the fact that in almost all cases, it will be physically impossible for an advertiser to perform a validity check and to produce evidence thereof, such a statement will almost always be misleading.

The Committee therefore recommends that advertisements, which use superlatives with respect to price, are not placed or are refused, as the case may be.

(October 1975)

#### **f. Guarantees**

The Advertising Code Committee is regularly confronted with advertisements containing the words "guarantee" or "guaranteed" while the scope, purport, conditions and significance of the guarantee are not expressed in accordance with article 12 of the Dutch Advertising Code. This made the Committee address this earlier by drawing attention to this article and explicitly insisting on compliance herewith in its general recommendation of October 1974. Although the Committee has noticed increasing compliance with this article, advertisements in which the words "guarantee" or "guaranteed" are not or not sufficiently substantiated are still repeatedly submitted to the Committee.

In this context, it has become clear to the Committee that the meaning of the words: "scope, purport, conditions and significance of the guarantee" is not always fully understood. For this reason, the Committee thinks it is necessary to bring this matter to the attention of advertisers, advertising agencies and the media again.

The Committee will focus on the main issue, which is the existing legal obligation of the supplier to provide a reliable product, and that the word "guarantee" may not be used to reduce legal obligations or pretend that compliance with these legal obligations is an additional service.

The Committee stipulates the following with respect to the explanation of and compliance with article 12 of Dutch Advertising Code:

1. it is misleading to refer to a guarantee when primarily referring to a scheme intended to restrict the obligation of a producer or supplier to warrant the reliability of its products or its services;
2. likewise, the word 'guarantee' or 'guaranteed' may not be used in advertisements if it only intends to emphasize an essential quality of a product or service that is supposed to be an implicit quality of this product or service. Therefore, the producer or supplier does not hereby undertake an obligation in addition to those obligations it already has pursuant to the law, i.e. the obligation to provide sound, practicable goods or services;
3. if advertisements refer to a 'guarantee' without any further explanation, this should mean that the buyer has the right to a full guarantee with unrestricted cover for all parts and features of the product; any limitation in respect of the scope and significance of the guarantee shall therefore be explicitly mentioned;
4. the scope of the guarantee applies to the parts or features of the product or service covered by the guarantee;
5. the purport and scope of the guarantee shall mean how and the extent to which defects are remedied and damage repaired, respectively;
6. the terms and conditions of the guarantee shall always be stated. (March 1976)

#### **g. Use of the term 'recommended price'**

The Advertising Code Committee took cognizance of the fact that the concept 'recommended price' is increasingly being used in advertisements, where the statement is made that the advertiser in question is offering the product at a certain percentage below the 'recommended price'. Quite often though, it appears that no recommended price is set by the producer of the product in question. In light of the fact that the average consumer will understand the 'recommended price' as being the price set by the producer or importer of the product and recommended to retailers, it is misleading to use the term 'recommended price' if it does not apply to the price set by the producer, but instead the price set by, for example, the branch committee or by the advertiser itself.

The Committee therefore recommends that advertisements used or placed in the future only use the term 'recommended price' if an official list of prices recommended by the producer of the advertised product exists and if the consumer is granted inspection of these lists, on request. (March, 1976)

#### **h. Advertising for branches**

The Advertising Code Committee recommends that companies and organizations that make use of several outlets for offering their products or services, take such measures that in the event advertisements are placed which refer to all outlets, the products or services in question are made fully available or deliverable at all these outlets, subject to specific and cited exceptions.

#### **Explanation**

The Advertising Code Committee regularly receives complaints concerning advertisements by companies making use of several outlets for their products or services where the offer in question appears not to be or not to be fully available at one or more of the outlets. In some cases, this may be a matter of poor organization, but it may also be caused by inadequately trained and accountable personnel at the location.

Although the Committee is usually prepared to accept that these advertisements were placed in good faith and understands the problems connected with setting up several outlets, the Committee believes that it should point out that the public can usually only check the content of an advertisement in one of the outlet points visited and naturally does not have to take into account any organizational aspects.

The Committee also deems it a matter of impermissible negligence, or to be misleading or another infringement of the code if the commendation of products or services in advertisements in one or more outlets of an organization does not or does not fully comply with the conditions or only complies under different conditions.

Furthermore, the Committee holds the view that organizational problems or other aspects of alleged force majeure may not be invoked if these advertisements did not expressly exclude these outlets in the offer or the supply, as the case may be. (November 1977)

#### **i. Pictures of the product offered**

The Advertising Code Committee recommends that if a product offered in an advertisement is accompanied by a picture (which intends to illustrate the product in question), the picture should give an exact reproduction of the product as advertised in words (designation or description).

It has become clear to the Committee that advertisements frequently contain pictures of products that do not or do not fully match the characteristics of the products in question. The Committee deems this conduct impermissible. Invoking the non-availability of the appropriate picture, a misunderstanding or a failure of the advertising agency called in or the publisher is deemed unacceptable by the Committee.  
(April 1978)

#### **j. Accommodation agencies**

The Advertising Code Committee recommends that persons or organizations, acting professionally as an intermediary in the conclusion of housing tenancy agreements, mention their name and - if this is not yet part of the name - mention the words: "accommodation agency", "housing agency" or "rental housing agency" in their advertisements.

#### **Explanation**

The Advertising Code Committee regularly receives complaints about the fact that advertisements - whether or not described in detail - give the impression that a private person is offering or requesting accommodation when in fact it is an accommodation agency, offering or requesting living space for third parties. According to the Advertising Code Committee, such advertisements are contrary to the provisions of article 7 of the Dutch Advertising Code.  
(February 1982)

#### **k. Personnel advertisements (withdrawn)**

#### **l. Children's fireworks**

Several advertisements in which fireworks, e.g. sparklers and snaps, are referred to as "Children's fireworks" or "Children's packages" have been submitted to the Advertising Code Committee. In these advertisements these types of fireworks are described as "harmless", "safe for small children", "definitely harmless" or "may be held by small children". However, it has become clear to the Advertising Code Committee, that many accidents happen while setting off these 'children's fireworks' and that the use of the word 'children's' and/or the statement that the fireworks may be safely lit by children, is the main reason why they are not handled with proper care. The Committee therefore recommends that advertisers, including persons who provide texts advertising fireworks to advertisers, omit any indication or suggestion of safety or harmlessness and the Committee also asks them to consider making explicit mention in the recommendation or on the packaging material of this apparently safe firework, that special care is required when setting off the fireworks. Some advertisements use the wording 'approved fireworks'. However, any suggestion regarding such approval shall be omitted if an independent body has not inspected these fireworks.  
(October 1985)