

ADVERTISING STANDARDS
BODY
OF
KENYA

Code Of Advertising Practice & Direct Marketing

[Code of Advertising Practice
And
Direct Marketing]

Code Of Advertising Practice & Direct Marketing

Complied by: NKIROTE K. MWORIA (Advocates) & DOUGLAS J. MANGO (Lawyer)
Authentication by: John M. Ohaga (Advocate)

Produced by: The marketing Society of Kenya (MSK) and the Association of Practitioners in Advertising (APA)

Cover Design: Moffat Maina

Cover Print Courtesy: Ashok Sheth

Printing by: Copy and Bind Bureau

Copyright ©2003 Marketing Society of Kenya and Association of Practitioners in Advertising.

ADVERTISING STANDARDS
BODY
OF
KENYA

[The Code of Advertising Practice
And

Code Of Advertising Practice & Direct Marketing
Direct Marketing]

April, 2003

Complied by:

NKIROTE K.MWORIA AND

DOUGLAS J.MANGO

A. The Code of Advertising Practice	Page
I. Preface to the code	viii
II. Preamble	xiii
III. Scope	1
1.1 Commercial Advertising.....	1
1.2 Non-commercial Advertising.....	1
1.3 Political Advertising.....	1
1.4 Advocacy Advertising.....	2
IV Interpretation.....	3
V Definitions.....	7
VI Advertising Principles: Basic Principles.....	11
7.0 Legality.....	12
8.0 Decency.....	12
9.0 Honest.....	12
10.0 Truthfulness.....	13
10.1 Substantiation.....	13
10.3 Claims.....	14
10.12 The value of Goods.....	18
10.13 Use of the word “free”.....	20
10.20” Up to...” and “from...” claims.....	21
10.21 Direct Supply.....	22
10.22 Wholesale.....	22
10.23 Fresh.....	22

Code Of Advertising Practice & Direct Marketing

Page

VII Advertising Principles: General.....	23
11.0 Disparagement of advertisers.....	23
12.0 Comparative advertising.....	23
13.0 Testimonials.....	23
14.0 Use of the word “new” in an advertisement.....	26
15.0 Prices	27
15.1 Price policy.....	27
15.2 Price comparisons.....	28
16.0 Guarantees and warranties.....	29
17.0 Money-back undertakings.....	30
VIII Advertising Principles: Legal.....	31
18.0 Advertising Good will.....	31
19.0 Imitation.....	31
20.0 Protection of privacy and exploitation of the individual.....	32
21.0 Advertisements aimed at children.....	33
22.0 Safety.....	36
23.0 Use of animals in advertising.....	37
24.0 Recognition of an advertisement.....	37
IX Specific Categories of Advertising.....	40
1. Advocacy, Charitable and Political.....	40
2. Antiseptics and Household Care Product.....	43
(a) Antiseptics.....	44
(b) Germicides.....	44

Code Of Advertising Practice & Direct Marketing

Page	
	(c) Disinfectants..... 44
	(d) Detergents and soaps..... 45
3.	Betting Tipsters and Gaming..... 47
4.	Beverages..... 49
	(a) Alcoholic drinks..... 50
	(b) Non-alcoholic beverages..... 54
5.	Breast milk substitutes and baby teats..... 57
6.	Cigarettes, related products and smoking deterrents..... 59
7.	Competitions..... 66
8.	Contraceptives..... 67
9.	Cosmetics..... 69
	(a) Anti-ageing(Anti-wrinkle)product..... 75
	(b) Anti-perspirants and Deodorants..... 76
	(c) Cosmetics cellulite products..... 78
	(d) Skin-lightening products..... 79
	(e) Hair and scalp products..... 80
	(f) Toothpaste and similar products..... 83
10.	Educational courses..... 85
11.	Financial..... 86
12.	Foodstuff and food additives..... 89
13.	Imported products..... 91
14.	Mail order..... 92

Page	
15. Medicinal and related products.....	98
16. Miracle healing.....	110
17. Motor vehicles and automation.....	111
18. Real estate and furniture advertising.....	113
19. Slimming.....	115
20. Timesharing.....	120
21. Tours and travel.....	122
22. Unit trusts.....	124

Appendices to the code

1. Advertisements containing Environmental-related claims.....	125
2. Advertisements containing general health related claims.....	128
3. Use of standardization and market research in advertising.....	131
4. References to diseases in advertising.....	133
5. Miscellaneous provisions.....	138

B. Direct Marketing Code.....	139
-------------------------------	-----

C. Procedural guideline (complaint/dispute resolution).....	149
---	-----

D. ASBK’s Interchange of opinion on objectionable advertising.....	164
--	-----

E. Indices

<i>I Acts of parliament and other regulations affecting advertising.....</i>	165
--	-----

II Committee decisions amending the code

<i>III Subject index.....</i>	170
-------------------------------	-----

Code Of Advertising Practice & Direct Marketing

A.CODE OF ADVERTISING PRACTICE

I *Preface*

1. Since the inception of the Marketing Society of Kenya, Advertising Code of Practice in 1992, there have been significant changes in the communications environment and increased competitiveness in the market which sometimes blurs the moral judgement, or otherwise of the industry players.
2. To the effect, the Advertising industry in Kenya, through the initiative of the Marketing Society of Kenya (MSK) and the Association of Practitioners in Advertising (APA) have initiated a review process that is intended to lead to an adoption of a comprehensive and up-to-date Advertising Code of Practice and Guiding Principles for the Kenyan Market and later for the entire East African Market.

Thus this Kenyan Code of Advertising Practice covers the following aspects of advertising:-

Code Of Advertising Practice & Direct Marketing

- General rules in Advertising Practice that include moral issues amidst the three markets.
 - All media and communication channels.
 - Guiding principles and recommended complaints procedures.
3. In this regard, the code establishes an Advertising Standards Body for Kenya (ASBK) whose principal organ shall be the Advertising Standards Board (ASB).

4. This Body is an independent body set up by the marketing and advertising industry to ensure that its system of self-regulation works in an efficient and sufficient manner and that its principal activities do not work in any way whatsoever, against the public interest.
5. The management of the Body shall be vested in the ASB which shall be nominated by a joint sitting of the MSK and APA councils and shall comprise of:
 - a) Five members nominated as above by virtue of their knowledge and experience in matters relating to marketing, advertising, media and/or the wider communications industry.
 - b) Two members nominated by reason of their professional expertise in matters relating to administration, banking, law or accounting. Such professional shall be of no less than seven (7) years standing in their field of expertise.
 - c) The Board shall at its first elect a Chairman and appoint Secretary from amongst its members.
6. The ASB shall have all powers necessary for the performances of its functions under this Code and shall serve for terms of one (1) year at a time. The members shall also meet from time to time as they deem necessary to carry out their functions and at the very least shall hold an annual general meeting for the purpose of dispensing with annual reporting and approval of finances.
7. The Code of Advertising Practice is the guiding document of the ASBK. The Code is based upon the International Code of Advertising Practice (ICAP), prepared by the International Chamber of Commerce.

Code Of Advertising Practice & Direct Marketing

The ICAP is internationally accepted as a basis for domestic systems of self-regulation. It forms the foundation of this Code in which the basic principles laid down in the ICAP are related to the particular circumstances of advertising in Kenya. The Code is drawn up and embraced by representatives of the marketing, communication and media industry, and is amended from time to time as provided by the code itself to meet the dynamic needs of the industry and our society.

8. The subscribers to this authority are required to adhere to this Code. The following individuals and organizations are members of the ASB:-

- Association of Practitioners in Advertising

- Marketing Society of Kenya

Code Of Advertising Practice & Direct Marketing

- Any other individuals or organizations whose names appear at the subscribers books of registry at the secretariat

9. This Code is supplemented by individual codes which are determined by the various subscribers as provided for in this Code, so far as they do not contravene subscribers as provided for in this Code, so far as they do not contravene the key principles enacted by this Code and can therefore only differ in detail where individual needs are to be met. These individual codes are reflected in the appendices to the Code.

10. The Code binds the advertiser, the practitioner in advertising, the facilitator in the creation of advertisements and providence of data, statistics and information to be relied upon for the production of advertising and the medium involved in publication or broadcasting of the advertiser's message to the public.

11. As advertising is a service to the public, it should conform to the basic principles of advertising and its content should not violate any of our national laws.

12. Three reasons may be advanced for the need for regulatory code in addition to such legislation:

a) First, legislative controls are not intended to distinguish between advertisements which live up to the best professional standards and those which do not. The finer detail and complexity is the concern of the advertising industry itself. To this end, the industry has voluntarily adopted this Code of Conduct to maintain the standards of dealing and honest trading in advertising that the consumer is entitled to expect. The industry believes that professional regulations, voluntarily applied, can ensure the elimination of deceptive or harmful practices more expediently and at less cost than legislative intervention, and that such regulations are also more easily adaptable to changing economic and social conditions.

b) The second reason for a self-regulatory code is that those who are bound by it agree to observe it both in spirit and in the letter, and not to circumvent it by dubious ingenuity. Continued observance to the provisions of the Code does much to advance the standing of advertising as an essential element in the marketing of goods and services and thus promoting goodwill and understanding between advertisers and the consumers.

c) Third, a code of practice can maintain standards in an area of communication which defies legal definition, that of good manners and taste. Advertisers are expected at all times to be scrupulous in their respect for individual privacy and personal susceptibilities.

13. ASB procedures are designed in such a way as to assist any person who wishes to complain about an advertisement (consumers, competitors, agencies, industry bodies and associations, etcetera). Adherence to these procedures will ensure effective and timely resolution of complaints. The procedures are designed to grant all concerned a fair and equal opportunity to be heard without fear or bias. The Procedural Guide to the Code forms an integral part of the Code.

14. This Code of Practice shall hereinafter be amended to suit the exigencies of the market and a comprehensive review shall be undertaken after every decade.

Code Of Advertising Practice & Direct Marketing

We the PRACTITIONERS OF ADVERTISING AND MARKETING in Kenya RECOGNISE that advertising has become a pivotal component of product and service marketing in the global economy;

ACKNOWLEDGE that it is imperative that the Kenyan market has robust Code of Advertising Practice that governs and provides a tangible framework under which all professional parties in the marketing process forge a responsible attitude;

HONOUR those who have endured aches and pains to ensure a rudimentary framework of rules to govern the essentials of the process of selling by effect, and those who have facilitated constant review and update of these rules in the bid to ensure relevancy, sustenance and applicability without the possibility of rendering these rules outlived in usefulness and function;

Code Of Advertising Practice & Direct Marketing

RESPECT those who have worked, tirelessly, to build and develop the economies of our countries up to the competitive and dynamic levels that we have reached today;

BELIEVE that a Kenyan Code of Advertising Practice belongs to all who live in Kenya, united by it in all our ethnic, cultural, religious and economic diversity, that the morality, principles and ethical beliefs behind this code are shared as one in this country;

REITERATE that the freedom to advertise is a fundamental right of speech and expression protected under the constitution of Kenya and as such the practice of advertising is a constitutional right is exercised within the ambits of the constitution bereft of intruding into the limitations expressed in the letter and the spirit of the constitution;

Code Of Advertising Practice & Direct Marketing

EMPHASISE that this Code functions to play a fundamental part in ensuring a responsible attitude by all professional parties in the marketing process especially towards the protection of the often vulnerable consumer and the community at large as well as in combating unfair competition methods and in harmonizing and facilitating business practices;

ASSURE that this Code further constitutes a key element in the general philosophy of self regulation in an initiative by the marketers in preference to governmental measures whenever possible to ensure an internal mechanism of dispute resolution and self governance by the stakeholders themselves who are better placed to understand the disputes and intricacies within the industry;

ASSERT that the purpose of formulating this Code is to exchange and safeguard the freedom of choice for business between different marketing methods and

further encourage a free flow and trade of goods and services especially within the East Africa region and largely between other countries in the region and in the world;

ADMIT AND ACKNOWLEDGE that the Code serves three main purposes, namely, to protect the customer, to ensure professionalism among advertisers and to lay a foundation in the building of competitive regional advertising and marketing trends and values;

RECOGNISE that the Code is designed primarily as a self discipline measure amongst the marketing region, laying down criteria for professional conduct while at the same time bringing awareness to the public of the self-imposed limitations and restraints accepted by those using or working in advertising

Code Of Advertising Practice & Direct Marketing

REASSURE that in the spirit of honesty and truthfulness, we do not seek to encourage soft and gutless advertising, and neither are we looking for mere entertainment; we still want advertising with selling teeth in it;

ACCEPT the jurisdiction of the Courts of Law in matters beyond the hierarchy of the mechanisms of ASBK and also above all are bound by this document and acknowledge the use of this document as a strong reference document by the municipal courts within the framework of the law in the event that the internal dispute resolution mechanisms and arbitration methods fail;

COMPLEMENT AND SUPPLEMENT rather than, replace or substitute, the legislations that exist to protect consumers from dishonest and fraudulent trading practices;

WE, the subscribers, therefore, adopt this Code of Practice as the supreme self-regulatory code for Kenya so as to:

IMPROVE upon the handling of unfairness and the impropriety of the past and establish regional advertising based on ethical practices, fair competition, representation of true facts, consumer sensitivity and protection of their interests and practical and straightforwardness in building of brands and strategic skills;

LAY the foundation for internal self-regulation of this significant free unnecessary and unwarranted governmental interference and intervention;

BUILD a united and effective Kenyan advertising industry governed and regulated by this one ultimate code, and in unison ensuring the adherence of the basic principles and fundamental rules enacted by this Code;

ENCOURAGE the sharing of benefits that accrue in the world of advertising amongst the subscribers to the Code and the building of modern advertising methods and concepts;

FACILITATE the cost-cutting and relationship-building culture of mediation, conciliation and arbitration as means of alternative as means of alternative dispute resolution rather than the avenue of Courts of Law, which cultivates acrimony, enmity and extravagant competition and discourages meaningful growth as well as the development of the advertising industry;

Advertising is here to stay and self-regulation is a manifest for its effective interplay.

“It matters not how strait the gate, how charged with punishment the scroll. I am the master of my fate; I am the captain of my soul”

INVICTUS

Code Of Advertising Practice & Direct Marketing