

CHAPTER 3

SECTOR-BASED ADVERTISING

Sector-based advertisements are the object of a special chapter but the provisions of Chapters 1 and 2 also apply to them. Chapter 3 therefore approaches domains where advertising, besides common obligations, should follow certain recommendations due to the sensitiveness of each of these sectors.

SECTION 1: TOBACCO

ARTICLE 51: TOBACCO AND TOBACCO BY-PRODUCTS

Government Notice (GN) No. 62 of 1999 forbids any form of advertising and sponsoring of tobacco and tobacco by-products.

SECTION 2: ALCOHOL

ARTICLE 52: ADVERTISING OF ALCOHOLIC BEVERAGES

In Mauritius presently, no advertising of alcoholic beverages is authorised in the media as per Government Notice No.1 of 2009 'The Public Health Act': Regulations made by Minister under Section 193 of the Public Health Act.

The AAA had recommended a responsible approach to such advertising in restricted and strictly controlled media. The AAA will continue to discuss this issue in a very open-minded way with the authorities concerned.

- i) Advertisements for alcoholic drinks are prohibited .
- ii) Any sponsorship related to an alcoholic drink or brand name associated with an alcoholic drink is not allowed. (see regulations within Public Health Act)

SECTION 3: TOYS

ARTICLE 53: PROTECTION OF THE CONSUMERS OF TOYS

Besides the application of the principles set in article 23 of the present Code, advertisements relating to toys being, as a matter of fact, almost exclusively intended for children, should subject themselves to the following recommendations:

- The messages must give a truthful and exact presentation of the toys;
- The messages must not create any confusion as regards the real content of the boxes or packaging of the toys. In the eventuality that the objects displayed do not correspond to the real content, the message must comprise clear indications in this respect (for example: the number of boxes neces-

- sary for the displayed scenes, accessories or batteries sold separately, etc.);
- The toys must be shown or advertised in a real game situation, allowing an appreciation of their true characteristics (performance, speed, durability, solidity...);
 - The advertisement must not, as well, mislead the consumer on the dimension of the toy(s). For example, it must show the toy in a real situation, close to an object whose size is commonly known;
 - The advertising must clearly indicate when some complementary elements must be bought separately (for example: electric batteries, paint...);
 - It is better to recall, on screen and/or with sound, the minimum age of the child for whom the toy is intended;
 - The advertisement must not make any value judgement on the prices of toys or on the potential purchase that may result.

SECTION 4: EMPLOYMENT OPPORTUNITIES

ARTICLE 54: GENERALITIES

Any advertisement pertaining to an employment opportunity should include unambiguous indications regarding the nature of the job advertised and on the identity of the intermediary or the Post Office Box number that will have ordered the publication of the advert.

Some job advertisements require more caution than others due to their specific character. It is the case regarding opportunities in the field of temporary employment and work-from-home schemes.

ARTICLE 55: TEMPORARY EMPLOYMENT

Advertisements on behalf of one or several temporary employment companies and employment opportunities originating from these companies should expressly state the company name and their nature as businesses offering temporary work.

ARTICLE 56: WORK-FROM-HOME SCHEMES

The attention of advertising agencies and media is drawn to the fact that advertising offering work from home can correspond only to random and hypothetical offers and must therefore only be published with utmost reservation and total cognizance of the professional quality of the advertiser.

Such advertisements should include an adequate description of the modalities of the work on offer.

When a sum of money is or will be asked from the job-seeker, the amount should be specified in the advertisement. Thus, when the aim of the advertisement is not to actually offer employment, but to entice the public to acquire, at a costly price, a guide, catalogue or manual, or to join a list or directory, the advertisement should not, in any case, appear in the "EMPLOYMENT" section.

SECTION 5: PROPERTY ADVERTISING

ARTICLE 57: CONTRACT AND PRICE

If reference is made, in an advertisement, to the legal nature of the contract, it must be specified whether it is a contract for a promotion, the sale of a building to be erected, the sale or transfer of subscription of units or shares, or the contract to erect an individual house.

Any price indication must be clear on what it includes and what is excluded. Overall graphic representations of the construction must be accompanied by an indication enabling to know whether the project is in its current or future state.

ARTICLE 58: INFORMATION FURNISHED

If reference is made to the surface area, it can only be usable area, with the exclusion of any other term. The surface area of annexes can be specified separately as well as surfaces convertible in the future. When the number of rooms is mentioned, a distinction must be made between main rooms and annexes.

If reference is made to collective social, cultural, sports, commercial facilities or green spaces... or to access to such facilities, the advertisement should specify the expected date of realization of the said installations, their geographic location, their main characteristics as well as the scheme of future use.

The distances between the property and any urban, cultural, commercial, social or sports facilities must be expressed in real terms: either in linear distance on the ground using existing routes,

— or in average duration of the trip while specifying the mode of transport.

The designation, description or graphic representation of a property must not, in any case, lead to an erroneous assessment of benefits, surface area or geographic location mentioned.

SECTION 6: FOODSTUFFS

ARTICLE 59: GENERAL FOODSTUFFS

Article 59-1: Basic consumer goods

No mandatory message is requested for the advertising of such products. It is however recommended that advertisers base their advertising campaigns on 'consumer care' and healthy use arguments so that such products are distributed and consumed in a manner that ensures consumer respect and protection.

Such advertisements should not show or present basic consumables as likely to be intended for a special diet.

The advertiser is, in any case, accountable for his/her advertisement and has the obligation to justify his/her allegations.

Article 59-2: Special foods

Such commodities are identifiable by the allegations made in advertising messages referring to them. There is a need to establish a classification.

a) nutritional allegations and the nutriments - Definitions

Is considered as presenting a nutritional allegation any advertising message that enunciates, suggests or implies that some foodstuff possesses special nutritional properties due to the energy (calorie value) and/or the nutriments that it provides at a reduced or increased level, or does not provide.

Proteins, glucides, lipids, fibres (as well as the constituents of these macronutriments), vitamins and minerals constitute nutriments.

b) nutritional allegations relating to quality

There are three sorts of allegations of this type:

- allegations referring to the relation between some foodstuff and a healthy diet;
- dietary allegations for people with a disrupted metabolism, in incidental physiological conditions, for infants or small children;
- allegations referring to the physiological role of the nutriments.

c) nutritional allegations relating to quantity

Here also, three groups of allegations are distinguished:

- Negative or relative nutritional allegations, that is, referring to the absence of energy or of nutriment in the products or to the non- addition of nutriments;
- comparative nutritional allegations (low-fat);
- absolute nutritional allegations (rich in...).

A non-exhaustive list of such commodities can be established as follows: baby food, dietary food intended for special medical purposes, food low in sodium or without gluten, food low in or without cholesterol, nutrition adapted to intense muscular exercise especially for sportspersons, nutrition destined to people with a disrupted glucidic metabolism.

For such special foods, mentioning the product's characteristics is a sales argument that is systematic and recommended. However, the advertiser remains accountable for his/her allegations as regards any false or misleading advertising (remember that the advertiser's silence on some characteristics of the product can be considered as misleading). The advertiser must also be in a position to justify his/her allegations at any time.

Article 59-3: Breast milk substitutes

Is forbidden any advertisement and/or promotion targeting the general public and relating to the following products intended for infants aged 0 to 4 months: breast milk substitutes, including preparations for infants; other lacteal products, foods and drinks, including food complements given by the feeding bottle, when they are marketed or presented in any other manner as appropriate, with or without modification, to partially or totally replace breast milk (reference to article 5-1 of the International Code of Marketing of Breast Milk Substitutes which was adopted by the World Health Organization in 1981).

ARTICLE 60: GENERAL RULES REGARDING ADVERTISING INTENDED FOR MINORS

Advertising must not encourage minors to eat and nibble all day long, at any time, or to consume titbits before going to bed.

Advertising must not suggest that 'junk foods' consumption can replace a balanced meal.

SECTION 7: PHARMACEUTICAL AND PHARMACEUTICAL PRODUCTS

ARTICLE 61: GENERAL MEDICINE, HUMAN AND ANIMAL

Advertising not must undermine the protection of public health.

No medicine can be the object of advertising unless an authorization for sale is delivered by the Government as well as an authorization to advertise delivered by the Pharmacy Board at the Ministry of Health.

The definition of the medicine is given by the Pharmacy Act (Act 60 of 1983).

ARTICLE 62: PARA-PHARMACEUTICAL PRODUCTS

Article 62-1: Vocabulary

Certain recommendations regarding the advertising vocabulary relating to such products or methods must be taken into account.

The term 'new' and its derivatives must be used only when there has been a real modification of the product, its directions for use or packaging. The advertisement must specify precisely the level of the novelty.

The term 'natural' will be used only for products that do not contain any synthetic product (with the exception of preservatives, flavours and propellers).

Article 62-2: Testimonials and guarantees

Besides the prescribed obligations in Section 5 of Chapter 2 of the present Code (Studies and Opinions), the people and situations represented before and after treatment can be reproduced by image and/or sound only if the recording conditions are identical as regards the situation, reproduction scale, presentation and staging of the people, objects, setting, point of view and other elements of comparison. Consequently, it is strongly advised not to use any phototechnical means or other manipulation and editing techniques to deteriorate the situation before and to embellish it after the treatment. Furthermore, 'before/after' representations are to be prohibited if they cannot be supported by proofs.

The doctor's title and any other academic or university qualification, whatever the nationality of the holder and whatever the context of the advertisement in which it is used, must be accompanied by the name of the discipline to which the title refers.

The term 'diploma' must also be accompanied either by the discipline in which it was conferred or the name of the institution that delivered it, to enable the identification of the activity covered by the diploma.

Article 62-3: Cosmetics

Is considered a cosmetic product any non-medicinal preparation intended for body, skin and beauty care and be in contact with the various superficial parts of the human body, the skin, the pilous and capillary systems, the nails, the lips and external genital organs, the teeth, buccal membranes, in view exclusively or mainly to clean, perfume, protect them in order to keep them in good shape, to change their aspect or to rid them of body odour.

Advertising of such products must not attribute characteristics other than those relating to cosmetology to these products.

It is recommended that the advertisement does not convey the message that such products have properties and functions enabling them to reach objectives other than those to correct the appearance and care for the hygiene of the person.

Advertising should also not present such products in forms and aspects likely to prevent specific pathological situations, that is, as having curative or preventive properties.

Advertising regarding baldness and hair regrowth must not be done in a manner that would lead to believe that the result is certain, fantastic and/or permanent.

Advertising pertaining to suncare products must indirectly or directly recommend not to get exposed at times of maximum sunshine and will have to specify that abusive exposure is harmful to the health, especially for children.

Articles 62-4: Slimming products

The medical profession considering that obesity is a disease and that thinness is the consequence either of a disease, specialized treatment or change in the diet, no reference can be made to these two terms, as well as to weight loss, regarding a cosmetic slimming product.

The use of the word 'to slim' is acceptable to express an improvement in the aesthetic appearance without ambiguity in the expression.

Advertising for slimming products cannot refer to a decrease in measurements and/or the period within which results will be achieved except if the advertiser is in a position to prove such allegations.

SECTION 8: THE OCCULT

ARTICLE 63: DEFINITIONS AND PRINCIPLES

The occult refers to any method, treatment or procedure that would call upon the irrational, clairvoyance, sibylline and/or esoteric practices and that would be proposed to the consumer in order to solve his/her problems, whatever they may be. Practices aiming at predicting the future, including 'horoscopes services', are also considered as occult sciences.

No advertising for the occult sciences must mention:

- Implicit or explicit guarantees of results;
- Promises that are impossible to keep and the ability to master chance;
- Magic, witchcraft;

- Influences on the free will (bewitchment) or feelings of others (return of affection);
- Special aptitudes requiring a title or in-depth knowledge (health, justice...);
- Realized prediction when it cannot be proved by a published and commonly acknowledged document;
- Personal horoscopes when these have not been the object of an individual study.

SECTION 9: FINANCIAL AND LEGAL SERVICES AND PRODUCTS

ARTICLE 64: LOAN AND CREDIT FACILITIES

Article 64-1: Definition

The present article relates to all eventual credits and sureties usually granted by physical persons or legal entities, in return for payment including hire purchase, leasing, sales or service provisions whose payment is spread, deferred, or in instalments.

Article 64-2: Recommended messages

The advertisement should specify the identity of the lender, the nature, object and duration of the proposed operation as well as the total cost and, if necessary, the effective credit rate.

The advertisement should also specify the amount, in rupees, of repayments due by redemption dates or, if that is not possible, the means to calculate it. This amount should include the cost of insurance when the latter is compulsory.

The advertisement should indicate, for operations over limited periods, the number of redemption dates.

In any case, the advertisement must not play down the financial implications for the consumer.

The advertisement will not be able to present credit offers as an increase in purchasing power.

Articles 64-3: Legibility of the messages

All messages must be legible and understandable to an average consumer. For a perfect perception, the colour, sound, size and positioning of characters must be chosen according to the medium and received in normal reading, hearing or visualizing conditions.

ARTICLE 65: INVESTMENTS

Article 65-1: Recommendations

Advertising relating to the investment of funds to constitute deposits, savings plans or to acquire units, shares, debentures, will have to specify the name and the corporate legal status of the management company, the nature, object and duration of the proposed commitment.

The messages in favour of such investments should indicate the deadline to obtain the promised final interest.

The advertisement must pay special attention to the declaration of profits and avoid being misleading.

It is recommended to the advertising agencies and media not to accept creating or publishing any advertisement relating to financial products and/or services unless the advertisers are officially recognized organizations or institutions.

Lack of caution from their part could lead them to advertise for a business attempting at swindling and therefore act as accomplices.

Article 65-2: The Stock Market

Advertising in favour of the activities on the Stock Market must first submit itself to the provisions of the Stock Exchange Act (No. 38) 1988, which deals – in a more specific manner – with the provisions set in Chapters 1 and 2 of the present Code (Identification of the advertiser, false advertising, comparative advertising, responsibility and procedure).

ARTICLE 66: LEGAL ASSISTANCE

It is strongly inadvisable to engage in advertising pertaining to consultations, drafting of legal documents or assistance in legal matters in all media except the print media.

This recommendation does not apply to government and public services, associations, professional unions and other non-profit organizations. It is not applicable, as well, to companies providing pieces of information, information or services secondarily or incidentally comprising pieces of legal information.

ARTICLE 67: INSURANCE

Articles 67-1: Definition of advertising relating to insurance

It is strongly inadvisable to use the term ‘insurance’ in advertising if it does not comply in a cumulative manner with the following requirements:

- cover of a risk, danger or probable occurrence of an event,
- the insured person’s responsibility,
- the insurance’s responsibility in case of realization of the risk, danger or event,
- a contract based on a disclosed forward-looking plan.

Articles 67-2: Advertising concerning the institution

When an advertisement refers to past performances of the insurance firm or company basing itself on figures, it is recommended to specify the type of contract concerned and the period referred to.

Besides, any advertisement in favour of insurance products and/or services must subject themselves to the provisions of the Insurance Act in its most recent version and of any other code of conduct for insurance companies, agents and intermediaries introduced by the regulatory body.

SECTION 10: HARMFUL SUBSTANCES AND PREPARATIONS

ARTICLE 68: DEFINITIONS AND CLASSIFICATION

Substances here means chemical elements and their compounds as they

present themselves in their natural state or as produced by the industry, eventually containing any additive necessary to offer them for sale. Preparations are mixtures or solutions composed of two substances or more.

Are considered as harmful substances or preparations all the elements appearing in the following classification:

- explosive substances and preparations, that can explode if exposed to a flame or that are more sensitive to shock and friction than common products;
- comburant substances and preparations that, when put in contact with other substances, notably with flammable substances, present a strong exothermic reaction;
- substances and preparations that can heat up and finally catch fire in the presence of air at a normal temperature and without energy supply;
- solid substances and preparations that can easily catch fire by a brief action of an inflammation source and that continue to burn or to consume themselves after the inflammation source has been taken away;
- gaseous substances and preparations that are flammable in the presence of air at a normal pressure;
- substances and preparations that, in contact with water or humid air, develop easily flammable gas in dangerous quantities;
- very toxic substances and preparations that, after inhalation, ingestion or skin penetration, present extremely serious, serious risks or even risks limited in seriousness, acute or chronic risks and even death;
- corrosive substances and preparations that, in contact with living tissue, can act destructively on the latter;
- irritant non-corrosive substances and preparations that, in immediate, extended or repeated contact with the skin or membranes, can cause an inflammatory reaction;
- carcinogenic substances and preparations that, by inhalation, ingestion or skin penetration, can cause cancer or increase its frequency;
- teratogenic or mutagenic substances and preparations;
- anti-parasitic substances and preparations for agricultural or horticultural purposes;
- harmful substances and preparations are neither medicines nor cosmetic or personal hygiene products.

Insecticides and pesticides for domestic use as well as household products do not belong to the classification of harmful substances or preparations presented in the previous sub-article.

However, it is strongly recommended to insert in advertisements relating to pesticides and insecticides intended for household use, as well as in advertisements relating to household products, the health warning: “A utiliser avec les précautions d’usage”/“Caution”.

ARTICLE 69: RECOMMENDED MESSAGES

The superimposed message “DANGEREUX – RESPECTEZ LES PRECAUTIONS D’EMPLOI”/“DANGEROUS – USE WITH PRECAUTION” is recom-

mended for all the substances and dangerous preparations. It is recommended to mention: “Lire attentivement la notice”/“Please read the notice carefully” and “Tenir hors de portée des enfants”/“Keep out of reach of children”.

ARTICLE 70: PROHIBITIVE, RESTRICTIVE OR PRESCRIPTION MEASURES

For hygiene or public health reasons, the advertising of these substances and preparations can be subjected to special prohibitive, restrictive or prescription measures by an act of Government.

SECTION 11: LAND MOTOR-VEHICLES

ARTICLE 71: DOMAIN AND LIMITATIONS

Advertising arguments based on the fuel consumption of land motor-vehicles as well as on its speed must be derived from real and clear performances and must never put consumers, and especially minors, in dangerous situations. It is recommended not to evoke the engine’s reserve of power or braking possibilities to encourage speeding, but to present them as safety elements whose effects vary according to the quality and state of the roads, atmospheric conditions and the driver’s reflexes, in order to contribute to develop the users’ sense of responsibility.

Furthermore, advertising should not lead to think that the qualities of the land motor-vehicles regarding security allow the trespassing of elementary rules of caution that any driver must respect.

Advertising must not present, in normal conditions of use, land motor-vehicles in contravention of the Highway Code or safety requirements and must not lead the drivers to aggressive, violent behaviour or behaviour endangering other road users.

The present recommendations do not apply to hyperbolic advertisements that present to the public, in order to hold its attention, an unusual, completely unreal and totally imaginary spectacle where the land motor-vehicle would be presented in an eccentric and very unusual position and in conditions absolutely unfamiliar to this product’s common purposes.

Special caution is required for advertisements relating to two-wheeled motorized vehicles that minors are allowed to drive.

The advertisement for a two-wheeled motorized vehicle must not in any case refer to ‘kits’ and/or means likely to modify the technical characteristics of the products.

When an advertisement discloses the price of a land motor-vehicle, the land motor-vehicle on display must be the one to which apply the posted or advertised price while specifying if this price is “inclusive of tax” or “before tax”. It is preferable for the advertisement not to disclose the price of the basic range unless it is preceded by the message “as from”.

Lastly, it is recommended not to conduct advertising representing directly or indirectly an all-terrain land motor-vehicle in conflict with the respect and protection of the environment.

SECTION 12: ENERGY

ARTICLE 72: ENERGY-SAVING

Advertising relating to liquid and gaseous hydrocarbons, electricity and any energy source must not be incoherent with the authorities' policy regarding energy.