

CHAPTER 2

THE DIFFERENT TYPES OF ADVERTISING

SECTION 1: FALSE OR MISLEADING ADVERTISING

ARTICLE 25: DEFINITION

Is prohibited any advertisement comprising any form of allegations, indications or presentations that are false or likely to mislead when these pertain to one or many of the elements hereafter: existence, nature, composition, substantial qualities, useful constituents content, type, origin, quantity, manufacturing method and date, expiry date, properties, prices and conditions of sale of the goods or services advertised, terms of use, purposes and processes of the sale or service provision, significance of the advertiser's commitment, identity, qualities or aptitudes of the manufacturers, dealers, promoters or providers.

ARTICLE 26: MAIN FORMS OF FALSE OR MISLEADING ADVERTISING

Article 26-1: The difference between false and misleading advertising

False advertising implies positive deception, it actually implies identifiable and verifiable lies, that is, an objectively false announcement while misleading advertising is subjectively appraised for it can be analyzed in an advertisement likely to mislead the consumer.

Article 26-2: The different false and misleading advertising methods

- The positive method does not entail any commentary for it is obvious and easily identifiable.
- Advertising based on the obvious: any advertisement attributing properties to products or services as being exclusively theirs is misleading if the stated properties are common to most products or services of the type, or if these are habitual or prescribed properties.
- Silence can also be analyzed in a misleading advertisement as it conceal substantial qualities of the product or service, for example, to the consumer.
- Promises on the future without limitation in time as regards the prices of the services and products (for example: we will never be beaten on price; we will always be the cheapest; we will always offer credit facilities and unbeatable prices...) must always be verifiable and is binding on the advertiser.
- The typographic method of misleading advertising is also very important (size of lettering, referencing using asterisks, corrections). Additional information must therefore be clear and legible. Hyperbolic advertising is not considered as false or misleading. Here, it is a matter of advertisements that present to the public, in order to hold its attention, an unusual, completely unreal and totally imaginary spectacle.
- The product or service will be presented in an eccentric and very unusual situation, with conditions of use absolutely unfamiliar to the product or service; all these fictitious characteristics cannot escape the average

consumer's notice and thus cannot mislead him/her. In practice, hyperbolic advertising finds expression in parody or emphasis, fiction or humour, fantasizing, poetry or dramatization by means of real visuals or animation. This list is not exhaustive; false or misleading advertising can take many other forms and is still reprehensible.

ARTICLE 27: ELEMENTS TO WHICH THE DEFINITION APPLIES

The definition of false or misleading advertising aims relates to an entire set of elements that can constitute the point of departure of the reprehensible action. Furthermore, combination of deceit over several elements is possible.

Article 27-1: Existence, nature and composition

The product or service promoted must really exist, with the same characteristics and in the same conditions as advertised.

For the lie or deceit on the nature of the good or service to exist, it must be different from the product or service advertised; it must be different in the properties that essentially constitute it.

Goods and services advertised must be as presented by the advertiser, that is, comprising such and such essential elements or parts.

Article 27-2: Substantial qualities and useful constituents content of a product

These qualities are those that the advertisement will attribute to a product or service. Whether the advertisement is misleading or not results from the existence or absence of qualities advertised. These qualities are the ones that are presented to a person when contracting, and in the absence of which he/she would doubtlessly not have contracted or would have contracted under different terms.

The deceptive allusion to the presence in a product or service of a substance or characteristic having healing or other curative virtues constitutes false advertising on the useful constituents content. Reference is hence made here only to useful qualities.

Article 27-3: Type, origin and quantity

The advertisement must be clear regarding the geographic origin and the product or service type, that is, its commercial origin (wholesaler or retailer, crafted or industrial...).

The advertisement is misleading even if the origin mentioned is partially exact (problem of mounted parts).

Generally, the advertiser is bound to present the product or service in its exact dimensions and quantities.

Article 27-4: Manufacturing method and date, expiry date

This article concerns especially products for which freshness, as well as a specific manufacturing process, is important, that is manufacturing 'know-how'.

Erroneous reference to the ancient character of a product, for example, falls in

this category and has become frequent because of the craze for hand-crafted products, according to the processes of yesteryear or made 'as in bygone days'.

If this appears in the advertisement, manufacturing and expiry dates must be affixed by the producer of the product or service and will have to comply with legal freshness standards.

Article 27-5: Prices and terms of sale

For the action to be considered reprehensible, the means used must really have been of nature to mislead the consumer regarding the final price that he/she will have to pay. In addition, the advertiser must respect the content of his/her advertising messages regarding to prices of goods and services, guarantees and after-sales services, terms of payment or credit, direct sales or factory prices...

However, expenses or remunerations corresponding to exceptional additional services expressly requested by the consumer, and whose cost has been previously agreed upon, can be added to the advertised sum.

Any advertisement must be appraised on its own merits and in an objective manner, notwithstanding any information provided at a later time.

It is incumbent upon the advertiser to modify or arrange for modification of advertised prices by the advertising agency or the medium, as soon as those prices rise.

The message 'anniversary' price (or its equivalent) necessarily implies that the products or services on offer in this context are sold at reduced prices. Advertising outside points of sale for products or services at reduced prices or sold at discounted prices must specify the significance of the reduction, either in absolute value or as a percentage of the base price, the products or services concerned, the conditions upon which the advertised advantages are granted and the duration of the promotional offer.

Article 27-6: Terms of use and results

The advertiser must be clear in the presentation of his/her product or service to enable the consumer to understand its use.

It is considered reprehensible to present as mandatory under the law or regulations, a device whose use is only optional. The advertiser cannot make promises as regards results that he/she will not be able to keep, except in the case of hyperbolic promises.

Results that can be expected from the use of the product or service provision are taken into account in comparison with what an average consumer (defined in article 28 of the present Code) can expect.

Article 27-7: Purposes and processes of the sale

This article aims at protecting consumers as regards specific advertisements that could give the impression to the public that they will benefit from exceptional conditions regarding sales after fires, floods, customs seizures, bankruptcies or before repair works... Such advertisements must be clear regarding this aspect too.

Article 27-8: Identity, qualities or aptitudes of the manufacturers, dealers, promoters or providers

The advertiser must not use false assents, titles, diplomas, powers, or false competences, identities or qualities. A professional from a given economic sector will not be able to present him/herself as an ordinary person. Sometimes, under conditions strictly defined by the law, such an offence may constitute fraud or deceit.

ARTICLE 28: THE BASE CONSUMER

The base consumer is one whose way of looking at things corresponds to that of the average consumer, having a degree of judgement and practical sense equivalent to the average consumer. He/she is considered as being normally intelligent, educated and attentive.

ARTICLE 29: RESPONSIBILITY

Article 29-1: The advertiser's capacity

The advertiser for whom the advertisement is published is responsible and principally accountable for the false or misleading nature of his/her advertisement. If it is a legal entity, the responsibility is incumbent upon its directors. The advertiser has the obligation to verify the content of the advertisement, its genuineness and clarity, before publication. The offence is constituted as soon as the advertisement is done, received or perceived in Mauritius. Here, the term responsible advertiser must be taken in its strict sense, that is, the one who gives the instructions to publish an advertisement.

Article 29-2: Absence of the moral element

False or misleading advertising exists even when the advertiser acts in good faith. He/she therefore has the obligation to verify the accuracy of the messages that he/she wishes to appear in his/her advertisement. In any case, false or misleading advertising will have to be rectified.

Article 29-3: The agencies' responsibility

It is the responsibility of the agencies designing the advertising arguments from the elements provided by the advertiser to request from the latter sound justifications of their allegations, notably when these appear suspicious or doubtful.

SECTION 2: SUBLIMINAL AND STEALTH ADVERTISING

ARTICLE 30: SUBLIMINAL ADVERTISING

Subliminal advertising here means advertising that, by stimulation techniques whose intensity is at the limit of perception by the senses, can act on the targeted audience without being consciously perceived.

Advertising must not use subliminal techniques. This ban corresponds to the principle of respect of human dignity and freedom, which implies that the targeted subject must be aware that the message that he/she is receiving is an

advertising message. This is a human rights requirement. The interdiction of subliminal advertising is also closely linked to the requirement that all forms of advertising must be identified as such.

ARTICLE 31: STEALTH ADVERTISING

Stealth advertising is the verbal or visual presentation of goods, services, name, brand or activities of a producer of goods or service provider in audio-visual programmes, when such presentation is made with a strictly advertising aim, and this, outside spaces provided for.

Stealth advertising of products or services subjected to an advertising ban is forbidden.

Advertising of all products or services linked with products and services subjected to an advertising ban and bearing the name, brand or advertising emblem of the latter is subjected to the same restrictions as advertising of products or services subjected to the advertising ban.

Advertising of products or services linked to products or services subjected to an advertising ban must not by its graphics, presentation or use of the advertising emblem, evoke the products or services subjected to the advertising ban.

Such an advertising ban also applies to the advertisers and the media.

SECTION 3: COMPARATIVE ADVERTISING

The possibility of comparison in advertising is found within an overall mechanism with public interest, information and therefore consumer protection, as purpose. It is to be noted that, in countries where comparative advertising already exists, consumer organizations themselves have fought for its legalization.

ARTICLE 32: THE PRINCIPLE OF FREEDOM

Advertising comparing goods and services while having recourse either to the quotation or representation of the trade, commercial or service brand of others, the quotation or representation of the corporate, social or commercial name or sign of others, that is, the quotation or representation of their main principal activity and known to others as such, is authorized.

Is equally considered as comparative advertising any advertising that refers to a competitor without naming it directly but which, by the text and/or images used, enables the base consumer to recognize the said competitor.

ARTICLE 33: CONDITIONED FREEDOM

Such authorization is valid only if the comparative advertisement fulfils six cumulative obligations:

- The comparative advertisement must be loyal, truthful, correct and not disparaging.
- It must not be of nature to mislead the consumer.
- It must limit itself to an objective comparison that limits itself to the essen-

tial, significant, relevant and verifiable characteristics.

— It must concern goods or services that are alike in nature and characteristics.

—The presentation of the products or services must be equitable. The advertisement must allocate an equivalent space and/or air time to the different products or services represented. It must also use images, sounds, writings or other communication means of an identical quality that will represent the compared products or services in an identical setting.

—These products or services must be available on the market in question.

ARTICLE 34: PRICE COMPARISONS

When the comparison relates to prices, the advertisement must fulfil four cumulative conditions in addition to the six general obligations:

— Identical products and characteristics;

— Identical terms of sale;

— Indication of the duration of the advertised price's stability;

— Sale by different businesses or commercial concerns.

ARTICLE 35: GENERAL LIMITATIONS

Comparative advertising has recourse to individual or collective opinions or assessments. It excludes any personal assessment based on elements such as aesthetics, taste or appeal of a product or of a service.

Testimonials that are subjective in nature as well as polls cannot be taken into account. On the other hand, comparative tests are admitted provided that reference is made to the source, which must be scientific and accepted by the Government or acknowledged for its seriousness and reliability.

No comparison can have as main aim to draw advantage of the notoriety attached to a brand. The comparison cannot, as well, represent products or services as the imitation or replicas of products or services of a previously registered trademark.

For products holding a label of origin (Appellation d'origine contrôlée [A.O.C.]), comparison is authorized only if all the products concerned hold the same classification. Are mainly concerned by this label agricultural products and foodstuffs of a duly established notoriety and whose quality and characteristics are due to the geographic environment, comprising natural and human factors. The A.O.C. rests upon a production technique guaranteed by a set of ancestral specifications and on the existence of a production area. Comparative advertising is forbidden regarding the Financial Stock Market sector (The Stock Exchange Act 1988).

ARTICLE 36: THE ADVERTISER'S OBLIGATIONS

The advertiser for the account of whom comparative advertising is published must be able to prove the accuracy of his/her allegations, indications or presentations.

If the medium maintains the advertisement although the professional concerned is not agreeable, the latter can then have recourse to justice to prevent

its broadcasting or to seek redress, if he/she hasn't taken any action before publication.

ARTICLE 37: ABSENCE OF THE RIGHT OF REPLY

The right of reply of the professional(s) concerned does not apply to the domain of comparative advertising. It only represents an option for which the media keep their freedom of choice.

SECTION 4: SPONSORSHIP

ARTICLE 38: DEFINITION AND DOMAIN

In the present article, we will treat only sponsorship of products and services other than tobacco and alcohol. Endorsement is any contribution of a business or of a public or private person to the financing of any project, in order to promote its name, brand, image, activities or realizations.

ARTICLE 39: LIMITATIONS

Article 39-1: Limitations of the sponsored projects

The content of the projects cannot, in any case, be influenced by the sponsor in ways likely to undermine the editorial independence of any print media, radio or television service.

Articles 39-2: Identification of the sponsor

The sponsored projects must clearly be identified as such in the beginning and/or at the end of broadcasting/publication. This identification can be done by mentioning the sponsor's name, designation, corporate name, sector of activity, brands, product(s) or by image factors and distinctive signs that are usually associated to him/her/it such as an acronym, logotype and signature tune.

However, when the sponsoring is destined to finance a game show or contest, the sponsor's products or services can be graciously offered to the participants as prizes.

During the sponsored broadcast and in the trailer, mentioning the sponsor is possible only to the extent that it is selective and discreet, limiting itself to recall the sponsor's contribution and not resorting to any means other than those mentioned in the present article.

SECTION 5: STUDIES AND OPINIONS

ARTICLE 40: TESTS

Prior to the use of any result, any advertiser must ensure having obtained the consent of the practitioner who carried out the tests.

Advertising referring to tests pertaining to the advertised products or services is authorized. However, the prerequisite to be fulfilled is that it is a test undertaken by a neutral and renowned testing institution, using indisputable testing methods, and that the consumer is presented with an accurate overall picture

as regards the basis, established using very precise criteria.

In fact, any advertisement as a rule must specify the name of the promoter and practitioner undertaking the tests, the date on which they were carried and the size of the sample. As a rule, the duration of use of the allegations is limited to 12 months but it can be renewed upon justification.

No presentation of amounts must lead to suppose that the stated result relates to a sample other than the one that was the object of the study.

Furthermore, the conditions in which these tests have been carried out and the results obtained must be clearly explained in an elaborate document before the initial publication of the advertisement and forwarded to the medium in question if requested.

In any case where the tests are carried out in the advertiser's own laboratories without external supervision, the advertisement must specify that the tests were undertaken by the advertiser, mentioning the exact conditions of study. If the advertiser has the duty to carry out tests on his/her premises to establish the quality and characteristics of the products or services that he/she intends to sell to consumers, this does not authorize him/her to liken the said tests to other studies that should have been carried out by other official scientific bodies and which would have increased the reliability of the said products and services in the eyes of the consumer.

ARTICLE 41: TESTIMONIALS

By testimonial, the Code here means a direct or indirect statement emanating from an identified physical person having used the product or service presented in the message and whose affirmations on the said product or service reflect his/her experience and opinion.

Testimonials can be made either by recognizable persons due to their notoriety or persons whose identity and/or position are specified. Fictitious messages are therefore not concerned here.

Article 41-1: Content of the messages

Objective allegations must be truthful and verifiable. Subjective allegations must respect the main principles that govern the present Code.

A testimonial from a physical person having notoriety or competence related to the product or service in question is also authorized but under certain conditions:

Professionals advocating or recommending the products or services must be designated, by wearing a badge for example, as the advertiser's technicians or spokespersons in order to avoid misleading the consumer on the competences of the professional featuring in the advertisement.

This designation will have to be clear and legible for the consumer.

Article 41-2: Appendix

Only testimonials emanating from medical, pharmaceutical, veterinary, dental or other medical or paramedical professions are to be prohibited.

This rule does not apply to messages comprising caricatured and imaginary

scenes for which any form of medical guarantee is unfounded because of the nature of the product or service presented.

This rule does not apply as well when public interest demands it (problems with lice or epidemics in schools or elsewhere...).

ARTICLE 42: POLLS

Any advertisement referring to a poll must specify the nature of the sample, the wording of the question(s) whose answer(s) are used, the date on which it was carried out and the names of the mandating promoters and the mandated polling organizations or institutes.

The advertiser must keep the whole of the information at the disposal of any person who would make a request in this sense.

No amount presented must lead to suppose that the stated result concerns a geographic zone or sample other than those that have been the object of the poll.

The duration of use of the results of the poll is limited in time considering the uses, current events and the publication of new results. Generally, a study cannot be exploited in advertising beyond a year after its publication.

SECTION 6: PROMOTIONAL ACTIVITIES

ARTICLE 43: DEFINITIONS

A promoter is any person, corporation or organization by whom or for the account of whom is launched the promotional activity.

The term “addressee” refers to any person, corporation or organization targeted by any sales promotion, whether it is the end-consumer or a professional user.

The main product is the product, service and/or commodity being the subject of a promotion.

The term ‘complementary benefit’ in the present Code means any product, service, commodity or combination of these, offered for promotional purposes.

ARTICLE 44: WORDING AND DESIGNATION

The advertisements must be clear, precise and rigorous to enable consumers to properly understand the nature of what is proposed to them. In particular, the promotional offer must never lead the participant to think that he/she won one of the prizes as long as he/she has not effectively won.

The message giving information on the prizes to be won must specify the nature and number of main prizes.

The prizes must be presented in such a manner that no confusion can exist in the minds of participants as regards their value.

ARTICLE 45: BASIC PRINCIPLES

Any promotion will be designed, worded and realized in a manner that avoids

justified disappointment or any other legitimate motive of discontent.

The control of promotions and the fulfilment of any resulting obligation must be prompt and effective.

The terms and conduct of any promotion must be equitable towards all participants. Any factor liable to affect the decision to participate or not in a promotion will be presented in a manner that enables the addressee to think things over before engaging in any purchase required to participate.

ARTICLE 46: GENERAL RULES

Promotions must be conceived in a manner not to abuse or to exploit the eventual lack of experience or knowledge of the target audience.

Promotions must be conceived in a manner that enables addressees to clearly assess the terms of the offer.

The promoter must ensure that:

- a) complementary benefits are available in sufficient quantity to meet the demand in a reasonably brief period of time. In case of inevitable delay, the addressees must be notified and necessary measures taken to adjust the advertisement to the actual offer;
- b) faulty articles or non-conforming services will be replaced or give rise to an appropriate financial compensation; expenses incurred to this effect will be immediately refunded upon request;
- c) any complaint will be efficiently and properly treated.

Promotions must respect the privacy of consumers and must not be the cause of annoyance or harassment for anyone.

Promotions will be conceived and realized respecting normal safety conditions, to ensure that neither the addressees, nor any other person are exposed to any risk.

Promotions that are addressed to children and adolescents, or that are of nature to influence them, will be conceived in a manner that doesn't take advantage of their natural gullibility or immaturity. In addition, such promotions will be conceived in a manner not to cause any mental, moral or physical harm to children or adolescents, and not to test their loyalty towards their parents and/or those that are responsible for their education.

ARTICLE 47: SPECIFIC RULES

The presentation of promotions must enable the addressee to take into account all details relevant to the promotional offer, before purchasing the main product.

Assessment of such a comprehensive presentation is based on the whole advertising campaign, not on an isolated advertisement, and this for technical reasons.

In particular, the presentation must specify:

- a) the means to use or obtain the promotional offer;
- b) any prescribed time to benefit from the promotional offer;
- c) any limitation as regards geographic zone, quantity of promotional articles or other complementary benefits, or any other quantity limitations. In case of a

quantity limitation, any advertisement must specify that the promotional offer will run while stocks of complementary benefits last.

Advertising will have to stop when complementary benefits are out of stock.

- d) the value of any voucher or stamp offered, when cash payment is possible;
- e) any expenses, including transport, delivery or postage costs, and the terms of payment;
- f) the name of the promoter;
- g) an address to which complaints can be sent.

Promotions involving a comparison with another product must respect the provisions of the present Code regarding comparative advertising.

The main responsibility in implementing promotions, whatever the nature or content, is always incumbent upon the promoter.

The proof of verifiable facts required to establish that the promotion is in conformity with the provisions of the present Code must be made available by the promoter and ready to be produced upon anyone's request.

SECTION 7 : OTHER ADVERTISING METHODS

ARTICLE 48: PRODUCT PLACEMENT AND PRODUCTION ARRANGEMENTS

Product placement consists in the presentation of goods or services produced or marketed by a business in programmes or articles that are not of commercial nature, in particular variety shows, audiovisual and film works and press articles. In return for this service, the media receives a contribution that enables it to partly finance its production.

Product placement can either refer to the appearance of an actual commercial product in a film, programme or article, or refer to the placement of all characteristic elements of a business (services, logotypes, acronyms, image factors). These can either appear on the screen or be mentioned orally or in writing.

As a matter of principle, product placement is authorized provided that the producer, the director of the work or show or the editor keep their total creative independence.

Provision will be made, in the stipulated placement contract between the producer of the work/media and the advertiser, for the different conditions under which the product or service appear in the work or media as well as the sums and modes of payment of these placements.

In production arrangements, the advertisers are directly associated with a project to produce an audiovisual or film work. The advertising message that will be displayed in the work is thus certain to appear in the programme.

This form of advertising is also authorized provided that the producer and the director of the work keep their total creative independence.

ARTICLE 49: TELEPHONE ADVERTISING

Advertising and canvassing carried out over the phone on behalf of the adver-

tiser will have to subject themselves to the set of rules set forth in the present Code as well as to its spirit.

Children must not, in any case, be the object of any commercial appeal over the phone.

Telephone messages must enable the persons who are being called to understand right from the outset of the conversation the advertising and/or commercial aim of the advertisement as this type of advertising not must mislead, abuse, take advantage of the lack of experience or knowledge of the person being called.

Telephone advertising must not lead to confusion with a market survey, opinion poll or other.

The message must not in any case disparage directly or indirectly a competing business, product or service.

ARTICLE 50: ELECTRONIC ADVERTISING

Article 50-1: Definitions

Electronic advertising consists in a visual and/or oral presentation of goods, services, name, brand or activities of a producer of goods or services provider using a computer medium (internet, for example) or electronic (an information terminal, for example).

In this type of advertising, it is important, in the first place, to protect the user. The user is the person who handles the computer or electronic medium and for whom the advertisement is internal to the medium's screen.

Article 50-2: Principles

Electronic advertising must subject itself to the set of rules set forth in the present Code as well as to its spirit.

The legality of the advertisement will be assessed according to its country of origin. Only advertisements produced and published from Mauritius will therefore be validly governed by the rules set forth in the present Code.

Article 50-3: Information

The advertiser must always clearly indicate his/her name, corporate name and all his/her contact details to enable the users of the advertisement to contact the advertiser without difficulty.

The advertiser must state even before the beginning of the message the applied rate for the communication if this rate is higher than the standard rate. This information mechanism regarding the rate must enable the user not to access the advertisement if he/she wishes so and without incurring the financial burden of the surcharge.

Article 50-4: Data banks

If the aim of the advertisement is to collect the user's personal information, the advertiser must state, from the outset of the advertisement, the purposes for which such information is collected. The advertiser must not, in any case, use the collected data for some use incompatible with the main purpose. The

advertiser will have to take reasonable measures to protect the information and respect its confidentiality.

The advertiser must offer the possibility to the user not to disclose his/her personal information.

Article 50-5: Specific recommendations

Electronic advertising must encourage parents or guardians of underage users to participate and/or supervise the electronic activities of these minors.

Electronic advertising must encourage children to obtain the authorization of their parents and/or guardians before disclosing any personal information.