
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE AND INDUSTRY**NOTICE 449 OF 2016****NATIONAL CONSUMER COMMISSION**

I, Mr. Ebrahim Mohamed, the Commissioner of the National Consumer Commission, hereby publish a proposed industry code and ombudsman scheme for public comment in terms of section 82(3)(a) of the Consumer Protection Act 68 of 2008 (Act No. 68 of 2008).

The proposed industry code was received from the Advertising Standards Authority of South Africa (ASASA). The code incorporate the recognition of an ombudsman scheme for alternative dispute resolution of complaints. In accordance with section 82(3)(a) and (b) of the Act No. 68 of 2008, the National Consumer Commission is required to publish the proposed industry code for public comment and consider any submissions made during the public comment period.

The National Consumer Commission is also required to consult with the relevant industry and relevant accredited consumer protection groups. The Commission is empowered to revise the proposed industry code and then make recommendations to the Minister of Trade and Industry for accreditation of the industry codes and the ombudsman scheme.

The general public, industry groups and any other interested party is accordingly invited to submit written comments, quoting the following reference

number (**NCC/GN/ASASA2/16**) to: The National Commissioner, National Consumer Commission c/o Mr. Jeremiah Modiba, 8th Bauhinia Street, Building No. 12, Berkley Office Park, Techno Park Centurion 0157 or email: j.modiba@thencc.org.za. The commentary period will run for sixty (60) business days effective from the date of publication.



Mr. E Mohamed

Commissioner: National Consumer Commission

Date: 20/July 2016

THE ADVERTISING AND MARKETING INDUSTRY CODE OF PRACTICE

PROPOSED BY:

The Advertising and Marketing Industry

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1. PREAMBLE

- 1.1 The Advertising and Marketing industry proposes this Advertising and Marketing Industry Code of Practice (hereinafter “the Code”) to regulate interaction between and among persons conducting business within the Advertising and Marketing Industry in South Africa.
- 1.2 The Code further provides the basis for the arbitration and resolution of disputes within the industry or between industry participants and / or between subscribers to the Code and consumers.
- 1.3 This Code is prepared in terms of section 82 of the Consumer Protection Act 68 of 2008 (hereinafter “the Act”).
- 1.4 This Code specifically deals with the resolution of complaints of prohibited conduct and the failure to comply with required conduct in respect of advertising and marketing of goods and services to consumers as provided for and envisaged by and within the scope of the Act.
- 1.5 The Code gives effect and is subject to the Constitution of the Republic of South Africa 1996 and it is accredited in terms of the Act.
- 1.6 This Code may be reviewed and / or supplemented from time to time as the need arise.

2. DEFINITIONS

- 2.1 In this Code, unless inconsistent with or otherwise indicated by the context, the following words and expression will have the meanings set out below:

“ACA Advisory Service(s)” means advisory services in the form of copy advice or pre-clearance on advertisements provided by the Association for Communications and Advertising at the advertiser’s cost;

“accredited consumer protection group” means a consumer protection group that has been accredited by the Commission in terms of section 78 for the purposes contemplated in that section or elsewhere in the Act;

“advertisement” has the meaning given to it in terms of section 1 of the Consumer Protection Act 2008; but, does not include editorial or programming publicity, unless it is editorial for which consideration has been given or received;

“Administrative fee” means a fee that may be imposed for administration purposes, as determined from time to time, by the Advertising Standards Authority of South Africa;

“Advertising and Marketing activities” includes, but not limited to, **conceptualisation**, preparation, publication or display or communication of advertising and / or marketing messages in whatsoever format and on whatsoever platform;

“Advertising and Marketing Industry” means the sector within which marketers / advertisers, advertising agencies, media buyers and media owners perform advertising and marketing activities;

“Advertising agencies” means entities that develop advertising campaigns thereby combining their creative and research expertise on behalf of marketers or advertisers;

“Advertising Standards Committee” means a first level consumer appeal body of the Advertising Standards Authority of South Africa;

“Advertising Industry Tribunal” means a first level competitor appeal body of the Advertising Standards Authority of South Africa;

“alternative dispute resolution agent” has the meaning given to it in terms of section 1 of the Act;

“apply” has the meaning given to it in terms of section 1 of the Act;

“ASASA” means the Advertising Standards Authority of South Africa, an independent body set up by the advertising and marketing industry to ensure that its system for self-regulation works in the public interest;

“business” has the meaning given to it in terms of section 1 of the Act;

“business day” means days from Monday to Friday excluding public holidays in the Republic of South Africa;

“child” means a person under the age of thirteen years;

“clearly” has the meaning given to it in terms of section 1 of the Act;

“Commission” means the National Consumer Commission established by section 85 of the Act;

“complainant” means a person who has filed an advertising dispute or complaint with the ASA.

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“consumer” has the meaning given to it in terms of section 1 of the Act;

“consumer protection group” means an entity promoting the interests or protection of consumers as contemplated in section 77 of the Act;

“Directorate” means the investigating and adjudicating unit with the ASASA that receives, assesses and adjudicates on consumer and competitor complaints on daily basis ;

“electronic communication” has the meaning given to it in terms of section 1 of the Act;

“Final Appeal Committee” means the final appeal body, for both the consumer and industry, of the Advertising Standards Authority of South Africa;

“goods” has the meaning given to it in terms of section 1 of the Act;

“juristic person” has the meaning given to it in terms of section 1 of the Act;

“Marketers or Advertisers” means all entities, including but not limited to retailers, suppliers, wholesalers, distributors, manufactures, producers, importers and distribution agents, that provide, market, advertise, offer to supply goods and services to the consumer;

“Media” means newspapers, magazines, television, radio, cinema, billboards, wall paintings, posters, menus, packaging and online.

“Media owners” means persons who own media platforms that carry advertising and / or marketing messages;

“Minister” means the member of the Cabinet responsible for consumer protection matters;

“ombud with jurisdiction” has the meaning given to it in terms of section 1 of the Act;

“parties” means the Consumer and Marketer or any person authorised or appointed by the marketer to represent it in the adjudication process;

“person” includes a juristic person;

“prescribed” has the meaning given to it in terms of section 1 of the Act ;

“price” has the meaning given to it in terms of section 1 of the Act;

“promote” has the meaning given to it in terms of section 1 of the Act;

“public regulation” has the meaning given to it in terms of section 1 of the Act ;

“regulation” means a regulation made under the Act;

“regulatory authority” has the meaning given to it in terms of section 1 of the Act;

“respondent” means a person or firm against whom a complaint or application has been initiated in terms of this Code;

“retailer” has the meaning given to it in terms of section 1 of the Act;

“rulings” means the outcome of the adjudication on advertising complaints in terms of this Code;

“service provider” means a person who promotes, supplies or offers to supply any service;

“supplier” means a person who markets any goods or services;

“supply chain”, with respect to any particular goods or services, means the collective of all suppliers who directly or indirectly contribute in turn to the ultimate supply of those goods or services to a consumer, whether as a producer, importer, distributor or retailer of goods, or as a service provider;

“Participant/s or Subscriber/s” means any entity within the industry that participate or subscribe to this Code, including retailers, suppliers, wholesalers, distributors, manufactures, producers, importers, service providers, marketing and advertising agencies, media owners and their agents;

“Tribunal” has the meaning given to it in terms of section 1 of the Act;

“visual representation” has the meaning given to it in terms of section 1 of the;

“young people” means persons between the ages of 14 and 35 years;

- 2.2 Unless the context clearly indicates otherwise, all words and expressions in the Code not expressly defined in the Code will have the meaning as ascribed to them in the Act.
- 2.3 No provision of this Code must be interpreted to preclude a consumer from exercising any rights under the Act, any other law or the common law.

3. INTERPRETATION

3.1 In this Code all references to:

3.1.1 a singular noun will be deemed to include the plural and vice versa;

3.1.2 a masculine gender will be deemed to include the other genders and vice versa;

3.1.3. the provision of any law will be deemed to include amendment or substitution thereof that will be effected from time to time;

3.2 All sections' headings and arrangements contained in this Code are intended for reference purposes only and will not affect or be taken into account in the interpretation of any of the paragraphs or sections to which they relate.

3.3. This Code should be interpreted in a manner that gives effect to its letter and spirit.

3.4 In interpreting adherence to the Code, the ASASA will –

3.4.1. Primarily consider the probable impact of the advertisement as a whole and in context upon the recipients.

- 3.4.2. Pay due regard to each part of its contents, visual and oral, and to the nature of the medium through which it is conveyed.
- 3.4.3 Consider public sensitivity and social concerns.
- 3.5 In assessing the impact of an advertisement, the ASASA may consider, *inter alia* -
 - 3.5.1 the surrounding circumstances;
 - 3.5.2 that the language used in the advertisement as a whole may justify departure from the literal meaning thereof; and
 - 3.5.3 survey data, conforming to the requirements of Clause 7.1.3 hereunder, indicating the probable impact as a whole upon those who are likely to see or hear it.
- 3.6 In advertising aimed at, featuring or likely to influence children, the Code will be interpreted narrowly due to the credulity and lack of experience of a child and as children would be likely to attach a more literal meaning to advertising.
- 3.7 In interpreting objections received to advertising amended as a result of the ruling, both the original and amended version will be taken into consideration.
- 3.8 When interpreting the Code, ASASA may refer to the relevant Sectoral Advertising Guidelines in Schedule 1 Annexure to the Code.

4. PURPOSE AND OBJECTIVES

- 4.1 This is an Industry Code prepared by the Industry for the advertising and marketing Industry.
- 4.2. This Code -
 - 4.2.1. Regulates the interaction between participants or subscribers in the advertising and marketing industry and consumers; and
 - 4.2.2. Provides for an alternative dispute resolution mechanism for the effective and timely resolution of complaints and / or disputes between industry participants and / or industry participant and a consumer/s; and
 - 4.2.3. Provides for a consistent, accessible and efficient system of consensual resolution of disputes arising from transacting with consumers.
- 4.3 This Code is designed to –
 - 4.3.1 Protect consumers from unconscionable, unfair, unreasonable unjust or otherwise improper trade practices; deceptive, misleading, unfair or fraudulent conduct; and

- 4.3.2. Reduce and / or avert any disadvantages experienced by consumers in accessing the supply of any goods or services and / or promoting fair business practices; and
 - 4.3.3. Raise the standards of good conduct in the Industry without endangering the vitality and growth of business;
 - 4.3.4. Generate growth in the Industry by increasing the level of confidence for all Participants;
 - 4.3.5. Offer guidance to Participants in the Industry as to the implementation of and the compliance with the Act and what constitutes fair marketing practices to be followed when operating within the Industry;
 - 4.3.6. Educate Consumers as to their rights and redress available to them should a Participant breach the Act or the Code; and
 - 4.3.7. Provide for a scheme of alternative dispute resolution as described in section 82 (6) of the Act.
- 4.4 The Participants within the Industry are required to pursue the objectives as set out in section 3 of the Act, especially to:
- 4.4.1. Reduce and ameliorate any disadvantages experienced by Consumers in accessing the supply of any Goods and Services;
 - 4.4.2. Promote fair business practices;
 - 4.4.3. Protect Consumers from:
 - 4.4.3.1. Unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
 - 4.4.3.2. Deceptive, misleading, unfair or fraudulent conduct.
 - 4.4.4. Provide for a consistent, accessible and efficient system of consensual resolution of Disputes arising from consumer transactions.
- 4.5 The Code contains reference to certain principles, practices and legislation and for the purposes of application these need to be referred as to their interpretation and application where quoted in the Code.
- 5. APPLICATION, SCOPE AND PARTICIPANT(S)**
- 5.1 This Code applies to all advertising and marketing industry participants and / or subscribers unless they are already regulated elsewhere by public regulation, or where a complaint falls

within the jurisdiction of an Ombud with jurisdiction, or an Industry Ombud accredited in terms of section 82(6) of the Act.

- 5.2 The advertising and marketing industry participation and / or subscription consists of marketers and / or advertisers, advertising or media or advertising agencies, media buyers and media owners.
- 5.3 It is mandatory for all advertising and marketing industry participants and / or subscribers to comply with the provisions of this Code, to register with the ASASA in accordance with the procedures provided on the ASASA website from time to time, and contribute towards the funding of the ASASA in accordance with the funding model as set out in clause 6 below.
- 5.4 The Code shall not be construed as to diminish consumer's rights under the Act or any other law but is shall enhance the consumers rights to be equivalent to or better than the provisions of the Act.
- 5.5 The Minister hereby recognises ASASA as an existing ombud scheme adequately situated and equipped in terms of Section 82(6) entrusted with the responsibility of managing this Code.

6. POWERS OF THE ASASA

- 6.1 The ASASA shall adhere to the Terms of Reference in this Code.
- 6.2 Participants shall contribute to the funding of the operations of the ASASA by means of levy collection as determined by the industry from time to time.
- 6.3 Such levy shall be collected by the levy collection agency established by the industry for purposes of collecting and funding the operations of the ASASA.
- 6.4 The participants agree that a special levy may be raised when deemed necessary by the Board of the ASASA to provide for anticipated expenditure incurred by the ASASA due to increased case load or any other reason acceptable to the Board.
- 6.5 The ASASA shall ensure an ethical complaints handling process.

7. OBLIGATIONS OF PARTICIPANTS

- 7.1 A The participants are required to pursue the objectives as set out in Section 3 of the Act and the purpose of this Code, and especially to ensure that advertising and marketing is informative, factual, honest and that its contents do not violate any of the laws of the country, through ensuring the following requirements are adhered to -

7.1 Substantiation

- 7.1.1. Before advertising is published, advertisers shall hold in their possession documentary evidence as set out in this Clause 7.1, to support all claims, whether direct or implied, that are capable of objective substantiation.
- 7.1.2 Documentary evidence, whether in the form of survey data or any other documentation, shall be up to date and current, and shall have market relevance.
- 7.1.3 Survey data submitted as documentary evidence shall conform to the following:
- 7.1.3.1 The survey shall emanate from an entity approved by, or acceptable to, the Southern African Market Research Association;
 - 7.1.3.2 The accuracy of the claims based on the survey shall be confirmed by an entity approved by, or acceptable to, the Southern African Market Research Association.
 - 7.1.3.3 Where the survey does not meet the requirements of either clause or clause such survey shall be evaluated by the Southern African Marketing Research Association to confirm the accuracy of the claims based on the survey. The advertiser shall bear the costs of such evaluation.
- 7.1.4 Documentary evidence, other than survey data, shall emanate from or be evaluated by a person/entity, which is independent, credible, and an expert in the field to which the claims relate and be acceptable to the ASASA.
- 7.1.5 Claims based on research conducted by publications must clearly state the source in advertising.
- 7.1.6 Upon payment of the administrative fee, determined by the ASASA from time to time, the Directorate may consider new substantiation submitted after a ruling has been made by the ASASA rejecting initial / original substantiation or upholding a complaint based on substantiation. New substantiation may only be filed / submitted on a once-off basis.

7.2 Claims

7.2.1 Misleading claims

Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.

7.2.2. Value judgments, matters of opinion or subjective assessments are permissible provided that:

7.2.2.1 it is clear what is being expressed is an opinion;

7.2.2.2 there is no likelihood of the opinion or the way it is expressed, misleading consumers about any aspect of a product or service which is capable of being objectively assessed in the light of generally accepted standards.

7.2.3 The guiding principle is that puffery is true when it is an expression of opinion, but false when viewed as an expression of fact.

7.2.4 Hyperbole

Obvious untruths, harmless parody, intended to catch the eye or to amuse, are permissible provided that they are clearly to be seen as humorous or hyperbolic and are not likely to be understood as making literal claims for the advertised product.

7.2.5 Expert opinion

Where informed opinion is claimed in support of a product, such opinion must be substantiated by independent evidence.

7.2.6 Statistics and scientific information

Advertisements should not misuse research results or quotations from technical and scientific literature. Statistics should not be so presented as to imply that they have a greater validity than is the case. Scientific terms should not be misused and scientific jargon and irrelevancies should not be used to make claims appear to have a scientific basis they do not possess.

7.2.7 Headlines

Headlines to advertising should not mislead in any way and it shall not be acceptable to contend that a misleading impression conveyed by a headline has been corrected in the body copy of the advertisement. When a statement contained in a headline of printed advertising is asterisked to refer to an explanatory footnote, the type-size used in the footnote shall not be smaller than that used in the substantive copy of the advertisement.

7.2.8 Truthful presentation

Where material information is super-imposed on screen, the print shall be clearly visible and remain on screen long enough to be easily read by the hypothetical reasonable viewer.

7.3 The value of goods

7.3.1 As far as is relevant, the following provisions apply to claims as to the value of services or facilities offered by way of advertisements as well as to the value of goods:

7.3.1.1. Consumers should not be led to overestimate the value of goods whether by exaggeration or through unrealistic comparisons with other goods or other prices.

7.3.1.2. The advertiser should be ready to substantiate any claim he makes as to the value in cash terms of goods offered by him at a lower price or free; and any saving to the consumer claimed to result from the offer of goods at a price lower than their actual value.

7.4 Use of the word "free"

7.4.1 Products should not be described as "free" where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, a clear statement that this is the case should be made in the advertisement.

7.4.2 Where a claim is made that, if one product is purchased, another product will be provided "free", the advertiser should be able to show that he will not be able immediately and directly to recover the cost of supplying the "free" product whether in whole or in part.

7.4.3 In particular, advertisers should in these circumstances make no attempt to recover the cost to them of the product by such methods as the imposition of packaging and handling charges, the inflation of the true cost of delivery, freight or postage, an increase in the usual price of the product with which the "free" product is offered, a reduction in its quality, or otherwise.

7.4.4 A trial may be described as "free", although the consumer is expected to pay the cost of returning the goods, provided that the advertiser has made clear his obligation to do so.

Advertisements offering "free" goods shall indicate that such goods are only received subject to purchase.

7.5 "Up to..." and "from..." claims

7.5.1 Claims, whether as to prices or performance, which uses formulas such as "up to 10 kilometres per litre" or "prices from as low as R5" are not acceptable where there is a likelihood of the consumer being misled as to the availability of the benefits offered. Such claims should not be used:

7.5.1.1 where the price or other advantage claimed bears no relation to the prevailing level of prices or benefits, and in particular where it does not apply to the goods or services actually advertised or to more than an insignificant proportion of them;

7.5.1.2 where they apply only to spoiled or imperfect goods, or to goods or services which are in some respect less complete or subject to greater limitations than the bulk of those on offer.

7.6 Direct supply

Except in the case of a manufacturer who distributes to the public directly, claims that goods are available "*direct from the manufacturer*" and the like are not acceptable where the advertiser cannot substantiate the implication that the consumer will benefit, in terms of cash or otherwise, from the elimination of one stage or more in the normal process of distribution.

7.7 Wholesale

No advertisement should state or imply that goods offered for retail sale are being offered at wholesale prices unless the advertiser can prove that the prices in question are not higher than those at which goods are currently sold to retailers or other classes of trade buyers.

7.8 Fresh

The word "*fresh*" must not be used in such a manner as to mislead or confuse the consumer.

7.9 Price comparisons by manufacturers

An advertiser may wish to claim that his prices are lower than those of his competitors.

7.10 Co-operative advertising

7.10.1 Where a manufacturer inserts the name of a retailer, the advertisement will be deemed to be a "retail" advertisement and not that of a manufacturer and will need to comply with the conditions below governing retail advertisements.

7.10.2 Retailers will be permitted to quote price comparisons/or specific discounts in advertising provided that the following conditions are complied with—

7.10.2.1 Satisfactory documentary evidence of the price reduction is held available and can be provided on request.

7.10.2.2 A single price reduction or discount may be advertised for a maximum period of three months.

7.10.3 Special sale prices may be advertised on the understanding that—

7.10.3.1 Sale advertising with price comparisons will be restricted to a maximum of one period of three weeks per calendar quarter, and with a minimum of two months between any two sale campaigns for the same advertiser.

7.10.3.2 Satisfactory documentary evidence of all the claimed price reductions is held available to be furnished on request

7.10.4 The provisions of Clauses 5.10.1 to 5.10.3 will not apply to corporate slogans, themes, statements, relating to pricing.

7.11 Identification of advertisements

7.11.1 Advertisements should be clearly distinguishable as such whatever their form and whatever the medium used. When an advertisement appears in a medium which contains news, editorial or programme matter it should be so designed, produced and presented that it will be readily recognised as an advertisement.

7.11.2. In print media, wherever there is any possibility of confusion, the material in question should be headed conspicuously with the words ADVERTISEMENT or ADVERTISEMENT SUPPLEMENT, and should be boxed in or otherwise distinguished from surrounding or accompanying editorial matter.

7.11.3. In Electronic Media particular care should be taken to clearly distinguish between programme content and advertising. Where there is a possibility of confusion, advertising should be clearly identified in a manner acceptable to the ASA.

7.12 Use of the word "new" in advertising

7.12.1 The word "new" or words implying "new" may be used in all media, packaging, posters, billboards, for any entirely new product or service marketed or sold during a given 12-month period.

7.12.2. It may also be used to advertise any change or improvement to a product, service or package, provided that the change or improvement is material and can be substantiated and defined.

7.12.3. The maximum use of the word "new" or words implying "new" in the above prescribed context shall be confined to a 12-month period calculated from date of proven first usage in an advertisement. In exceptional circumstances, the ASA may agree to an extension of the 12-month period.

7.12.4. To avoid consumer confusion

7.12.4.1. In electronic, print and outdoor media, the "new" message must first be exposed no later than 90 days after "date of proven first usage" of the product/service to which the "new" message applies. Thereafter, the message may be exposed continuously or intermittently for a period not exceeding 12 months from the "date of proven first usage" of the product/service.

7.12.4.2. On packaging of physical products, the "new" message should be applied to the package from the "date of proven first usage" and should be used continuously for the period that the advertiser wishes to expose the "new" message but for no more than 12 months from the date of proven first usage" of the product.

7.13. The provisions of clauses 17.12.1, 17.12.2, 17.12.3 and 17.12.4 above shall apply, *mutatis mutandis*, to advertisements and to packaging announcing any change or improvement in a product, service or package without the word "new" being used.

7.14. Pricing

When any indication of cost is given in an advertisement, regard should be had for the following provisions:

7.14.1. *Quotation* - The selling price at which the goods will be sold to the purchaser against immediate payment must be quoted in full.

7.14.2. *Inclusiveness* - Such selling price must include all necessary or incidental costs without which the product cannot or may not be purchased, such as a deposit for a container.

Where impracticable to include such costs in the quoted price the consumers' liability to pay such costs must be stated prominently and in a font size not less than that of half the purchase price.

7.14.3 The advertised price for travel packages must clearly communicate:

7.14.3.1 Where the price may fluctuate due to currency fluctuation or other external factors the nature and possible extent of this fluctuation.

7.14.3.2. Where the advertised price is only available through a specific channel (e.g. on a specific airline).

7.14.3.3. Validity of sales period if seasonal rates apply.

7.14.3.4. Where compulsory payments to a third party cannot be collected by the advertiser in advance of the trip.

7.14.3.5. Airline and Travel Agency price advertising should mention any obligation service fee or administration fee payable by the consumer.

7.15 Clarity

If reference is made in an advertisement to more than one product, or more than one version of a single product, it should be clear to which product or version any quoted price relates. If a product is illustrated, and a price quoted in conjunction with the illustration, advertisers should ensure that what is illustrated can be purchased for the price shown.

7.16 VAT

Attention is drawn to the provisions of Sections 64 and 65 of the Value-Added Tax Act 89 of 1991.

8. CONSUMER AND INDUSTRY AWARENESS

8.1 The participants or subscribers to this Code are required to:

8.1.1 Establish an effective internal complaints-handling process that is accessible and understandable to all consumers which includes but is not limited to:

8.1.1.1 process of internal-complaints handling;

8.1.1.2 design of the internal-complaints handling procedure;

8.1.1.3 monitoring processes for the internal-complaints handling procedure and effectiveness;

- 8.1.2 Display prominently on all their trading premises by means of a prescribed notice and on their website that states that they have subscribed to this Code and are bound by it;
- 8.1.3 The prescribed notice must provide consumers with the contact details of the ASASA;
- 8.1.4 Ensure that a copy of this Code and/or a summary of it and their internal complaints handling procedure is made available to any consumer upon request and/or the consumers are directed as to where to obtain a copy of the Code and/or their internal-complaints handling procedure;
- 8.1.5 Ensure that the relevant staff and agents in their business have adequate knowledge of the Act and the regulations issued under it, including the Code and their own inter-complaints procedure;
- 8.1.6 Endeavour to resolve complaints and disputes in accordance with the law, the spirit and provisions of this Code as expressed under Chapter 3 and with regard to their own internal-complaints handling procedure
- 8.1.7 Ensure that they, their staff members and their agents refrain from influencing or attempting to influence or harassing the ASASA, staff of the ASA or any consumer.
- 8.2 The ASASA will determine a strategy for conducting awareness and education of the Code and the contents thereof by introduction and/or facilitation and/or distribution of information brochures, guidelines and workshops as agreed to and as can be reasonably funded from time to time by the ASASA, which includes the following:
 - 8.2.1 the continued expansion of the electronic communication through the ASASA website and other social networking sites on which the accredited industry Code will be displayed;
 - 8.2.2 the continued update of related matters on the accredited industry Code on the ASASA website;
 - 8.2.3 Partnering with other relevant bodies on awareness campaigns.
- 8.3 The ASASA will produce annual reports on the implementation and application of the Code. These reports will be available to all participants or subscribers and any other interested parties;
- 8.4 The application of the Code will be reviewed annually by the Board to ensure that the Standards of the Code meet identified objectives and the current consumer expectations are effective. This review will be distributed to the National Consumer Commission (hereinafter "the NCC").

9. JURISDICTION AND OPERATING PROCEDURES FOR THE ASASA

9.1 The role of the Directorate in regard to contraventions of the Code

- 9.1.1 The Directorate shall have the primary responsibility for ensuring compliance with the Code.
- 9.1.2 The Directorate shall consider all possible breaches of the Code brought to its attention by a formal complaint or in any other way acceptable to the Directorate. On receipt of a complaint, the Directorate shall decide whether the complaint is-
 - 9.1.2.1 vexatious taking into account factors such as malicious motive and bad faith; or

- 9.1.2.2 *prima facie* without merit; and if so, inform the complainant of its decision and of the fact that the ASASA will not entertain the complaint. Should the complainant thereafter amplify the basis of its complaint, the Directorate may, at its discretion, formally investigate the complaint.
- 9.1.3 Call on the party, against whom a complaint has been made (who shall be referred to as the respondent), to respond to the complaint within the time periods set out below:
- 9.1.3.1 in the case of consumer complaints, the respondent shall generally be given five days to respond to the complaint; and
- 9.1.3.2 in the case of inter-participants complaints, the respondent shall generally be given three days to respond.
- 9.1.3.3 If the complaint or issue requires the provision of substantiation by the respondent, the Directorate shall call for such substantiation and shall specify the time period for its provision. The respondent will generally be given 48 hours to provide substantiation.
- 9.1.3.4 However, the Directorate may specify a lesser time period it decides is appropriate in the circumstances, having regard to the urgency of the complaint, the nature of the factual claim, the medium through which it was made, and the extent to which the claim has been repeated and can be expected to be repeated after receipt of the complaint.
- 9.1.3.5 Where the respondent requests an extension of the time period specified by the Directorate and the respondent has undertaken to withdraw the advertising that is the subject of the complaint with immediate effect, within the deadlines specified in this Clause 9.1.3, the Directorate may specify a longer time period that it decides is appropriate in the circumstances, having regard to the urgency of the complaint, the nature of the factual claim, and the medium through which it was made.
- 9.1.4 Any representations provided to the ASASA will be made available to the complainant at the request of the complainant, subject to the provisions of this Code dealing with confidentiality.
- 9.1.5 The written advice to the respondent calling on it to respond to a complaint or to provide substantiation must inform the respondent that, if an adverse ruling is made against the respondent, the Directorate may issue an Ad Alert in respect of the advertisement.

- 9.1.6 On receipt of the written representations by the parties and depending on the urgency, complexity, and novelty of the subject matter of the complaint, the Directorate shall, at its own discretion, either make a ruling on the complaint or refer the complaint to the appropriate committee for consideration. If, in response to a complaint, the respondent voluntarily undertakes to withdraw or amend the advertising complained of, or notwithstanding the fact that the advertising has run its course, the Directorate may also, at its own discretion, either record the voluntary undertaking as a ruling.
- 9.1.7 Where the Directorate rules on a complaint, it shall give written reasons for its ruling if required to do so by any party to the complaint.
- 9.1.8 Where a complaint is referred to a committee for consideration, the complaint will be referred to the Advertising Standards Committee if, in the Directorate's own discretion, it is a consumer complaint, and to the Advertising Industry Tribunal if, in the Directorate's own discretion, it is a competitor complaint.
- 9.1.9 Where, as a result of the complexity or novelty of the complaint, the Directorate cannot rule on the complaint without outside assistance, but where the urgency of the complaint nevertheless makes it impractical for the complaint to be referred to either the Advertising Standards Committee or Advertising Industry Tribunal, the Directorate shall be entitled to co-opt up to four persons, at its discretion, either drawn from the advertising industry or who have expertise in the subject matter of the complaint.
- 9.1.10 Any party who feels aggrieved by a ruling of the Directorate may, within ten days of the date on which such party is informed of the ruling, appeal to the Advertising Standards Committee, in respect of consumer complaints, or to the Advertising Industry Tribunal, in respect of competitor complaints, against such ruling.

To cover the cost of the First Appeal, both the appellant and respondent to the First Appeal will be required to lodge a sum of money, in an amount to be advised by the ASASA, with the Directorate. Consumers or organisations serving the public interest lodging appeals are not required to pay for the cost of an appeal.

The Chairperson of the Advertising Standards Committee or Advertising Industry Tribunal may, either at the conclusion of the First Appeal hearing or within a reasonable period thereafter, award the cost of the First Appeal against any or other of the parties, in such proportion as the Advertising Standards Committee or Advertising Industry Tribunal may determine.

Where payment is required, such appeal will not be considered to be lodged until such time as proof of payment is received by the ASASA.

- 9.1.11 The notice of appeal must, within in ten days on which such a party is informed of the ruling, be given in writing and must be communicated to the ASASA in any manner acceptable for the lodging of complaints. The notice of the appeal should set out concisely the grounds of appeal.
- 9.1.12 The other party or parties to the matter will be entitled to reply to the notice of appeal within 10 days of the date of receipt thereof.
- 9.1.13 A copy of any reply submitted in response to the appeal will be provided to the aggrieved party.
- 9.1.14 Where an aggrieved party has lodged an appeal to the Advertising Standards Committee or the Advertising Industry Tribunal, the ruling of the Directorate must be adhered to, until such time as that ruling is reversed.
- 9.1.15 The Directorate may perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental, or supplementary to the performance of any of its functions but will not extend to the suspension of rulings. Should circumstances arise where good and valid reasons justify a departure from usual procedure, these will be taken into account, but always at the discretion of the Directorate.

9.2 Consideration of complaints by the Advertising Standards Committee

- 9.2.1 The Advertising Standards Committee will consider and rule on all consumer complaints either referred to it by the Directorate or on appeal by any party who feels aggrieved by a ruling made by the Directorate.
- 9.2.2 All relevant documentation and representations submitted by the parties to a complaint, as well as any ruling by the Directorate made in relation to that complaint, together with the reasons given for that ruling, and the appeal documentation, where applicable, will be provided to the Committee members.
- 9.2.3 The Advertising Standards Committee shall, at its discretion, be entitled to co-opt up to four persons who have expertise in the subject matter of the complaint.
- 9.2.4 The complainant and the respondent, and their respective advertising agencies, shall be entitled to appear before the Advertising Standards Committee. A corporate entity that is

a party to a complaint may be represented by any of its employees or directors, but may not be represented by independent contractors.

- 9.2.5 Outside legal representation shall not be permitted except in exceptional circumstances.
- 9.2.6 Appearance before the Advertising Standards Committee shall be limited to a maximum of three persons per party. The names and designations of such persons should be submitted to the ASASA not less than 24 hours prior to the hearing.
- 9.2.7 Rulings of the Advertising Standards Committee shall, as soon as possible after the meeting, be conveyed in writing to the parties concerned. Written reasons for any ruling must be provided at the request of any party.
- 9.2.8 Any party who feels aggrieved by a ruling of the Advertising Standards Committee shall have the right to appeal to the Final Appeal Committee against such ruling, in accordance with the appeal procedure set out in this Code. An appeal must be lodged by the appellant within twenty days from receipt of the ruling.
- 9.2.9 Where an appeal is lodged, the ruling of the Committee must be adhered to, until reversed by the Final Appeal Committee.
- 9.2.10 The Chairman or Committee may perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental, or supplementary to the performance of any of its functions including suspension of rulings. Should circumstances arise where good and valid reasons justify a departure from usual procedure, these will be taken into account, but always at the discretion of the Chairman or Committee.
- 9.2.11 On appeal, the Advertising Standards Committee will be entitled to consider all clauses initially before the Directorate, notwithstanding the fact that the appellant may have limited its appeal to only one or more clauses, excluding others that were originally considered.

9.3 Consideration of complaints by the Advertising Industry Tribunal

- 9.3.1 The Advertising Industry Tribunal will consider and rule on all competitor complaints either referred to it by the Directorate or on appeal by any party who feels aggrieved by a ruling made by the Directorate.
- 9.3.2 All documentation and representations submitted by the parties to a complaint, as well as any ruling by the Directorate made in relation to that complaint, together with the reasons

given for that ruling, and the appeal documentation, where applicable, will be provided to the Tribunal members.

- 9.3.3 The Advertising Industry Tribunal shall, at its discretion, be entitled to co-opt up to four persons who have expertise in the subject matter of the complaint.
- 9.3.4 The complainant and the respondent, and their respective advertising agencies, shall be entitled to appear before the Advertising Industry Tribunal. A corporate entity that is a party to a complaint may be represented by any of its employees or directors, but may not be represented by independent contractors.
- 9.3.5 Outside legal representation shall not be permitted except in exceptional circumstances.
- 9.3.6 Appearance before the Advertising Industry Tribunal shall be limited to a maximum of three persons per party. The names and designations of such persons should be submitted to the ASASA not less than 24 hours prior to the hearing.
- 9.3.7 Rulings of the Advertising Industry Tribunal shall, as soon as possible after the meeting, be conveyed in writing to the parties concerned. Written reasons for any ruling must be provided at the request of any party.
- 9.3.8 Any party who feels aggrieved by a ruling of the Advertising Industry Tribunal shall have the right to appeal to the Final Appeal Committee against such ruling, in accordance with the appeal procedure set out in this Code. An appeal must be lodged by the appellant within twenty days from receipt of the ruling.
- 9.3.9 Where an appeal is lodged, the ruling of the Tribunal must be adhered to, until reversed by the Final Appeal Committee.
- 9.3.10 The Chairman or Committee may perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental, or supplementary to the performance of any of its functions including suspension of rulings. Should circumstances arise where good and valid reasons justify a departure from usual procedure, these will be taken into account, but always at the discretion of the Chairman or Committee.
- 9.3.11 On appeal, the Advertising Industry Tribunal will be entitled to consider all clauses initially before the Directorate, notwithstanding the fact that the appellant may have limited its appeal to only one or more clauses, excluding others that were originally considered.
- 9.4 **Final appeals against rulings of the Advertising Standards Committee or Advertising Industry Tribunal**

- 9.4.1 An appeal lodged against a ruling of the Advertising Standards Committee or Advertising Industry Tribunal shall be considered by the Final Appeal Committee.
- 9.4.2 Notwithstanding the provisions of the previous sub-section, the Directorate, together with the Chairperson of the Final Appeal Committee and two Final Appeal Committee members, shall be entitled to reject an appeal if, after due consideration of all circumstances and factors, it is found by unanimous decision that the appeal is either-
- 9.4.3 an unfounded or frivolous appeal in the event of a clear and direct contravention of the Code; or
- 9.4.4 a malicious or wilful appeal.
- 9.4.5 Any request for an accelerated appeal will be granted at the sole discretion of the Chairperson of the Final Appeal Committee, who will, if such request is granted, determine the procedure.
- 9.4.6 Notice of appeal must be given in writing and must be communicated to the ASASA in a manner acceptable for the lodging of complaints. Notice of an appeal must reach the ASASA within twenty days of notification of the decision appealed against.
- 9.4.7 The notice of appeal should set out concisely the grounds of appeal and should be accompanied by the ruling against which the appeal is being lodged and any reasons given for that ruling, as well as all written representations and documentation submitted to the Committee or the Tribunal making that ruling.
- 9.4.8 To cover the costs of the appeal, both the appellant and the respondent to the appeal will be required to lodge a sum of money, in an amount to be advised by the ASASA, with the Directorate. Consumers or organisations serving the public interest lodging appeals are not required to pay for the cost of an appeal. The Chairperson of the Final Appeal Committee may, either at the conclusion of the appeal hearing or within a reasonable period thereafter, award the cost of the appeal against any one or other of the parties, on an applicable High Court Scale, or in such proportion as the Committee may determine.
- 9.4.9 A copy of the appeal documents will be submitted to the respondent within three days of receipt by the ASASA.
- 9.4.10 The respondent will be entitled to reply to the appeal documents within ten days of the date of receipt thereof.

- 9.4.11 A copy of any reply submitted by the respondent in reply to the appeal will be provided to the appellant within three days from the date of receipt thereof by the ASASA, and at least five (5) days before the appeal is considered.
- 9.4.12 The appellant shall be required to prepare twelve copies of all documentation, and shall be required to ensure that all documentation is paginated. Where the documentation exceeds fifty pages, the appellant shall be required to prepare an index.
- 9.4.13 The parties and/or their legal representatives will be entitled to appear before the Final Appeal Committee. Should the Appellant wish to submit Heads of argument, a copy thereof will be submitted at least three (3) days before the Appeal is considered. Twelve (12) copies of Heads of Argument be submitted to the ASASA. Should the respondent wish to submit Heads of Argument, twelve (12) copies thereof be submitted to the ASASA at least two (2) days before the Appeal is considered.
- 9.4.14 The Final Appeal Committee will, where possible, consider an appeal within four weeks of the date on which the appeal was lodged.
- 9.4.15 The Final Appeal Committee will, where possible, deliver its ruling within two weeks of consideration of the appeal and will, if requested by either party, give written reasons for its ruling.
- 9.4.16 The Final Appeal Committee may refer any matter back to the Advertising Standards Committee or Advertising Industry Tribunal for reconsideration or for such action as the Final Appeal Committee may determine.
- 9.4.17 The Final Appeal Committee may, at its discretion, co-opt up to four persons who have expertise in the subject matter of a specific complaint, or to serve for such period as the Final Appeal Committee may decide.
- 9.4.18 The Final Appeal Committee shall not be confined to the record of the proceedings of the Committee or Tribunal that made the original ruling.
- 9.4.19 The Final Appeal Committee shall be entitled to call for additional representations from the parties on any subject matter relevant to the complaint.
- 9.4.20 The Final Appeal Committee shall be entitled to procure expert evidence and research, and to order one or more of the parties to pay the costs thereof.
- 9.4.21 The Chairman or Committee may perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the performance of any of its functions. Should circumstances arise where good and valid reasons justify a

departure from usual procedure, these will be taken into account, but always at the discretion of the Chairman or Committee.

10. MAINTAINING THE INDEPENDENCE OF THE ASASA

- 10.1 The ASASA is an independent body established to regulate advertising disputes within the advertising and marketing industry.
- 10.2 The ASASA is controlled by the Board of the Directors appointed in terms of its Memorandum of Incorporation in terms of the Companies Act.
- 10.3 The ASASA acts independently and objectively in resolving disputes and is not influenced by anybody in making its decisions.
- 10.4 The independence of the ASASA is further assured by the fact that the employees of ASASA are:
 - 10.4.1 entirely responsible for the handling and determination of complaints;
 - 10.4.2 accountable only to the Board; and
 - 10.4.3 adequately resourced to carry out their respective functions.

11. THE ROLE AND FUNCTIONS OF THE ASASA

- 11.1 In addition to clause 9 above, the ASASA shall:
 - 11.1.1 determine whether or not a complaint falls within the ASASA jurisdiction, and refer complaints that would more appropriately be dealt with by another body to those bodies;
 - 11.1.2 decline to deal with or discontinue dealing with those matters that do not fall within the ASASA jurisdiction; or in which the complaint does not allege any facts which, if true, would constitute grounds for a remedy under the Code or the Act;
 - 11.1.3 Request or summon, a retailer, supplier, wholesaler, distributor, manufacture, producer, importer, service provider or any advertising and marketing industry participants and / or subscribers /agent involved in a complaint or dispute to provide any information to the ASASA which in the view of the ASASA relates to that complaint and it is necessary for resolution of a matter;
 - 11.1.4 Inform complainants of the further options available to them if their complaints are not resolved following the assistance provided by the ASASA;
 - 11.1.5 Report any interference or attempt to influence or harass the ASASA or its staff or any consumer by a supplier, advertising and marketing industry participants and / or subscribers and / or their staff members and their agents to the Commission.

- 11.1.6 Compile an Annual report within 6 (six) months of the close of its financial year regarding the operations and effectiveness of the ASASA and make the report available to stakeholders, including the National Consumer Commission, through the ASASA website and other suitable means. The report must include data regarding;**
- 11.1.6.1 complaint type;**
 - 11.1.6.2 business complained;**
 - 11.1.6.3 the type and frequency of the complaint;**
 - 11.1.6.4 how the complaint was resolved;**
 - 11.1.6.5 time taken to deal with complaints;**
 - 11.1.6.6 type of sanction(s) imposed; and**
 - 11.1.6.7 Financial statement and audit reports.**
- 11.1.7 Collect data about the origins and cause of the complaint, and identify systematic trends and recurring problems which industry members need to address, make recommendations to the industry as to how to deal with these as well as identify ways of increasing compliance;**
- 11.1.8 Classify and analyse all complaints in order to identify systematic, recurring and single incident and trends.**
- 11.1.9 In the event a complaint is lodged against the exempted entities or members, such complaints will be referred directly to the National Consumer Commission or to the applicable recognised statutory body empowered to deal with complaints affecting the exempted entities or members.**
- 11.2 Nothing contained in this document precludes the ASASA from developing internal rules, forms and procedures that are not in conflict with the provisions of the Code or the Act.**

12. PROCEDURES FOR LODGING A COMPLAINT

- 12.1 Before lodging a formal complaint, when disputing parties belonging to a member organisation of the ASASA are involved in a dispute, the consumer is required to attempt resolving the matter directly with the advertising and marketing industry participants and / or subscribers prior to lodging a formal complaint with the ASASA.**
- 12.2 The procedure to be followed is as follows:**
- 12.2.1 The complaint and the required outcome should be conveyed to the advertiser or agent, requesting a response by a specified date. A reasonable period, as determined by the circumstances for the response, should be allowed.**

12.2.2 The ASASA will not take any action until a formal complaint is lodged with the ASASA provided the matter could not be resolved directly between the advertising and marketing industry participant and the consumer or between participants.

12.2.3 Nothing in this section shall be interpreted as preventing anyone from lodging a formal complaint with the ASASA where no attempt to resolve the matter with the advertiser beforehand was made.

13.3 Lodging of complaints with the ASASA

13.3.1 All formal complaints lodged with the ASASA, must meet the following criteria:

13.3.1.1. The complaint must be in writing.

13.3.1.2. The identity and contact details of the complainant(s) must be provided to the ASASA.

13.3.1.3. When lodging a consumer complaint, the identity or passport numbers of the complainant(s) must be disclosed.

13.3.1.4. The grounds on which the complaint is based must be clearly stated. If possible, the sections of this Code to which the complaint relates, should be identified. Should the complainant not be able to do so, the ASASA will consider the complaint in terms of the sections it regards as relevant and deal with the complaint as if it had been lodged in terms of those sections.

13.3.1.5 The advertisement to which the complaint relates must, in the case of print media, be attached, if possible. In the case of other media, details of the advertiser, medium, and a description of the advertisement must be provided, and, if possible, the time and date of transmission (in regard to broadcast media) and nature and location (in regard to outdoor advertising).

13.3.1.6 The address, contact name and number of the offending advertiser or of the advertising practitioner acting on the advertiser's behalf should be included, if possible.

13.3.1.7 The advertising complained against must be current and/or have been published within the last 90 days of lodging the complaint.

13.4 Complaints may be submitted as follows:

13.4.1 By delivery, to the ASASA at Willowview, Burnside Island Office Park, 410 Jan Smuts Avenue, Craighall Park, Johannesburg;

13.4.1.1. By post, to PO Box 41555, Craighall, 2024;

13.4.1.2. By telefacsimile, to (011) 781-1616; or

13.4.1.3. By electronic mail, to complaint@asasa.org.za.

13.4.2. Responsibility for establishing delivery of the complaint with the ASASA lies with the complainant.

13.5 Documentation submitted to the ASASA

13.5.1 All documentation submitted to the ASASA must, as far as possible-

13.5.1.1. be strictly relevant to the complaint being considered;

13.5.1.2. contain background information only if same is essential;

13.5.1.3. be set out in a manner that is clear and concise;

13.5.1. 4. systematically set out the basis for the complaint; and

13.5.1. 5. be limited, as far as possible, to factual allegations and to the expression of opinions in a manner that is not emotive, derogatory or insulting.

13.6 Should any part of the documentation submitted to the ASASA be confidential, as defined in this Code, it should be clearly identified and marked as such and annexed separately to the documentation.

13.7 The Directorate will evaluate, at its absolute discretion, whether or not documentation marked confidential qualifies as confidential in terms of this Code, it shall inform the party that submitted the documentation accordingly.

13.8 Should the Directorate find that the documentation is not confidential in terms of this Code, the party that submitted such documentation will be given an opportunity to withdraw such documentation.

13.9 Should the Directorate find that the documentation submitted as confidential qualifies as confidential in terms of this Code, the Directorate may request a non-confidential summary of the documents in question.

13.10 General principles applicable to representations at ASASA hearings-

13.10.1 Representations made to the ASASA, or its Committees, in regard to complaints received by the ASASA, will be subject to the following conditions:

13.10.1.1 Representation, personal or otherwise, should be brief and to the point.

13.10.1.2 Where issues and submissions have been canvassed in correspondence with the ASASA, or its Committees, parties may assume that the ASASA, or Committee members, as the

case may be, are aware of these issues and need not repeat them in representations made subsequently.

- 13.10.1.3 Representation serves the purpose of summarising and/or clarifying issues only, and should be limited to such purpose.
- 13.10.2 All relevant and/or necessary documents and/or material information should be circulated or made available to the other party and the ASASA at least 5 (five) days before the hearing.
- 13.10.3 Where representations are allowed in person or through a representative, such representations will be limited for each party. Should additional time be required, a written request must be submitted to the Directorate within a reasonable period prior to the hearing.

14. SANCTIONS

- 14.1 The Directorate, the Advertising Standards Committee, the Advertising Industry Tribunal and the Final Appeal Committee shall be entitled to require of the advertiser:
 - 14.1.1. To withdraw or amend the advertisement in its current format.
 - 14.1.2 To submit the proposed amendment, original advertisement and relevant ASASA ruling to the ACA Advisory Service for pre-publication advice.
 - 14.1.3 Order the advertising and marketing industry participant to publish a summarised version of the ruling as decided by the ASASA, in all or some of the media in which the advertising complained of appeared or media considered appropriate by the ASASA, and the cost of such publication will be for the respondent.
- 14.2 Prior to the imposition of these sanctions, the respondent /advertising and marketing industry participant must be afforded an opportunity to make representations in respect thereof.
- 14.3 Should advertiser / advertising and marketing industry participant not agree to / implement the requirements of the ASASA, such advertiser's conduct will be referred to the Commission to be dealt with in terms of the Act.

15. CONFIDENTIALITY

- 15.1 The ASASA will refuse to disclose any record, document or other information, whether in respect of its own proceedings or otherwise in its possession, where such record, document or information contains ...

- 15.1.1 trade secrets of a third party;
- 15.1.2 financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
- 15.1.3 information supplied in confidence by a third party, the disclosure of which could reasonably be expected –
 - 15.1.3.1 to put that third party at a disadvantage in contractual or other negotiations; or
 - 15.1.3.2 to prejudice that third party in commercial competition.
- 15.2 The ASASA shall refuse a request for access to a record, document or other information if its disclosure would constitute an action of breach of a duty of confidence owed to a third party in terms of an agreement.

- 15.3 Pursuant to any other law, personally identifiable information should be kept confidential and protected, unless disclosure is required by law, or prior consent to disclosure is obtained, in writing, from the person concerned.
- 15.4 In the event the ASASA determines the information should not be treated as confidential, the ASA shall inform the party that requested the information be treated as confidential that the ASASA is not entitled to use the information to reach a decision adverse to the party to whom the confidential information is denied, unless the party consents to that information being provided to the other party.

SECTORAL ADVERTISING

ALCOHOL ADVERTISING

The participants do not encourage irresponsible drinking.

BASIC RULES

1. Commercial communication may not feature or encourage irresponsible, risky or excessive drinking.
2. Commercial communication may not present abstinence or moderate consumption in a negative light.
3. Commercial communication may not be directed at persons under the age of 18 years, and no one depicted in the act of drinking in commercial communication may be younger than 25. Persons under the age of 18 may be depicted where it would be usual for them to appear, e.g. in family scenes or in background crowds, but it may not, in any way, be suggested that they have or are about to consume alcohol beverages.
4. Commercial communication may not employ images or icons that have unique appeal to children.
5. Commercial communication may not imply that alcohol beverage consumption is essential to business and/or social success or acceptance or that refusal to consume is a sign of weakness.
6. Commercial communication may not be suggestive of sexual indulgence or permissiveness, portray nudity or present an improper portrayal of near nudity, present any situation derogatory to the virtue of either sex or claim or suggest that alcohol beverages can contribute directly to sexual success or seduction.
7. Commercial communication may not induce people in an improper manner to prefer a drink because of its higher alcohol content or intoxicating effect. Factual information on alcohol strength may be included for the guidance of consumers.

8. Commercial communication may not claim that alcohol beverages have curative qualities, or offer it as a performance enhancer, stimulant, sedative or tranquilliser.
9. Commercial communication may not depict or include pregnant women.
10. Commercial communication may not suggest the consumption of alcohol beverages under circumstances that are generally regarded as irresponsible, inadvisable, improper or illegal, e.g. preceding or during any operation requiring sobriety, skill or precision.
11. Commercial communication may not suggest any association with aggressive, violent or anti-social imagery or behaviour, illicit drugs or drug culture.

RULES RELATING TO PROMOTIONS

1. Events and competitions directed primarily at persons under the age of 18 may not be linked to any alcohol beverage brand or product through sponsorship. It should be stated specifically that persons under the age of 18 are ineligible to participate in events and competitions aimed at promoting a brand or product.
2. Product launches and promotions may not include activities which encourage excessive or irresponsible consumption such as "boat races" or "down-downs".
3. Consumers who attend promotions must be encouraged to assume personal responsibility for their decision to drink or not to drink.
4. Extended promotions and tastings may not be confined to the consumption of alcohol beverages alone. Appropriate snacks or meals should be available.
5. On-campus promotions by participants will be arranged in a manner which meets with the approval of the university authorities and when in doubt proof of age will be requested to ensure that alcohol beverages are not served to those under the legal drinking age.
6. Participants may not run promotions which encourage increased consumption over a limited period of time, such as "two for the price of one" promotions. Price, however, may be used in on-premise promotional activity provided that it is directly linked to the trial of a specific brand or product.

RULES RELATING TO PACKAGING

1. In order to promote the responsible use of alcohol beverages, packaging of the highest practical quality, which leaves absolutely no doubt as to the fact that the product contains alcohol, must be used.
2. Packaging which improves the convenience of storage, transport and serving is acceptable, provided that it does not encourage the impression that alcohol is a bulk commodity.
3. Labels, which tend to degrade alcohol beverages by using colloquial names such as dop, booze and grog may not be used.
4. The alcohol strength of a product may not be used as the principal subject of a label. The packaging of alcohol beverages may not be directed at persons under the age of 18 and may not have unique appeal to children.
5. Labels may not convey sexual innuendo.

MEDIA RULES

Regardless of any regulations which may already be applied by media owners, participants subscribe to the following—

1. **Advertisements may not be transmitted in the commercial breaks immediately before, during or immediately after children's programmes on television or radio.**
2. **Advertisements will not be placed in any medium aimed specifically at children.**
3. **TELEVISION: In addition to 1 and 2 above, the following rules apply to advertisements in the television medium**
 1. Programmes with a verifiable 30% or more viewership of persons under the age of 18 may not contain alcohol beverage advertisements. (the so-called 70/30 rule).
 2. Alcohol beverage advertisements may not be flighted between 14h00 and 17h00 on Monday to Friday.

3. Alcohol beverage advertisements may not be flighted before 12h00 on Saturday and Sunday.
4. In the case of sporting events where the main sponsor is an alcohol beverage company, the 70/30 rule outlined in 1 above will still apply for the flighting of alcohol beverage advertisements.
5. All alcohol beverage advertisements on television will contain the statement: "Not for sale to persons under the age of 18". The minimum specifications for this statement are—
 1. Arial bold is to be used as the standard font
 2. True Type Title casing is to be used
 3. The statement must be visible and legible and placed at the bottom of the advertisement
 4. A white block with black rule at the top of the block is to be used as a holding device for the underage line.
 5. The block should be 10% of the height of the advertisement
 6. The statement is to run as one unbroken line.
 7. The whole duration of any TV ad should have the statement in the above format.
 8. "Enjoy Responsibly" or a similar message may be included as part of the underage statement depending on the execution and providing it does not detract from the underage statement.
4. **RADIO: In addition to 1 and 2 above, the following rules apply to advertisements in the radio medium.**
 1. As the current measurement of listenership only profiles an audience of 15 years and above, the industry assume that such a profile serves as a proxy for those under 15 years of age.
 2. For alcohol beverage advertisements on radio, the 70/30 rule will apply.
 3. No alcohol beverage advertisements will be broadcast between 06h00 and 09h00 and between 14h00 and 17h00 Mondays to Fridays and between 08h00 and 12h00 on weekends.
 4. In addition to the rules above, airings must take into account the programme's appeal to youth based on verifiable profile data, the

programme presenter's profile and the profile of the audience call-ins. All advertisements on radio will contain the statement: "Not for sale to persons under the age of 18". The minimum specifications for this statement are—

1. The last 5 seconds of any radio ad should feature the underage statement read in a voiceover in the same language as the main message.
2. The voice should be clear, audible and unrushed and may be different voice to that used in the main message.
3. "Enjoy Responsibly" or a similar message may be included as part of the underage statement depending on the execution and providing it does not detract from the underage statement.

5. CINEMA: In addition to 1 and 2 above, the following rules apply to advertisements in the cinema medium.

1. The 70/30 rule will apply and the participants will ensure that compliance with this rule is achieved through contractual arrangements between members and cinema owners.
2. Cinema advertisement selling companies will be required to submit film titles to ASASA with a qualitative assessment of the audience profile in terms of the 70/30 rule.
3. All alcohol beverage advertisements in the cinema will contain the statement: "Not for sale to persons under the age of 18". The minimum specifications for this statement are same as for Television.

6. PRINT: In addition to 1 and 2 above, the following rules apply to advertisements in the print medium.

1. The 70/30 rule will apply.
2. The proxy for the age profile will be the same as used for the radio medium.
3. All advertisements in print will contain the statement: "Not for sale to persons under the age of 18". The minimum specifications for this statement are—
 1. Arial bold is to be used as the standard font

2. True Type Title casing is to be used
 3. A white block with black rule at the top of the block is to be used as a holding device for the underage statement
 4. The block must be 10% of the height of the advertisement
 5. The block must be at the bottom of the advertisement and must run the entire width of the advertisement
 6. Where the advertisement covers more than a page, for example a four page foldout, the statement must be displayed on each page
 7. "Enjoy Responsibly" or a similar message may be included as part of the underage statement depending on the execution and providing it does not detract from the underage statement.
- 7. OUTDOOR: As viewership age profiles are not available for this medium, the following rules will apply:**
1. No billboards advertising an alcohol beverage brand or product will be placed within 200 meters of schools, community centres and churches.
 2. In the case of building wraps and billboards larger than Super 96 size, no alcohol beverage advertisement will be placed within 500 metres of schools, community centres and churches.
 3. All alcohol beverage advertisements in outdoor media will contain one of the statements (on an equivalent basis): "Not for sale to persons under the age of 18" or "Be Responsible. Don't Drink and Drive". The minimum specifications for these statements are—
 1. Arial bold is to be used as the standard font
 2. True Type Title casing is to be used
 3. A white block with black rule at the top of the block is to be used as a holding device for the underage statement
 4. The block should be 10% of the height of the advertisement
 5. The block must be at the bottom of the advertisement and must run the entire width of the advertisement however for large formats such as landscape wraps the underage statement must appear at 20 metre intervals on every wrap face

6. "Enjoy Responsibly" or a similar message may be included as part of the underage statement depending on the execution and providing it does not detract from the underage statement.

8. ADVERTORIALS:

1. All advertorials to carry the underage statement as specified for print.

COSMETICS

Six functions pertaining to cosmetic products, namely-

- 3.2.1 to clean;
- 3.2.2 to perfume;
- 3.2.3 to change the appearance;
- 3.2.4 to correct body odours;
- 3.2.5 to protect;
- 3.2.6 to keep in good condition.

If a product does not have at least one of these as its primary purpose, it is not a cosmetic. However, primary cosmetics can also have secondary functions, e.g. a body wash with an anti-bacterial/anti-fungal secondary function, where the primary purpose complies with 3.2. However claims for these secondary functions can only be made in a cosmetic sense.

3.3 It would be noted that the field of application of cosmetics remains as before-

- 3.3.1 the epidermis;
- 3.3.2 the hair system;
- 3.3.3 the nails;
- 3.3.4 the lips;
- 3.3.5 the external genital organs;
- 3.3.6 the teeth;
- 3.3.7 the mucous membranes of the oral cavity.

3.4 Products which are intended to be ingested, inhaled or applied to body parts not covered by the definition are not cosmetics.

4. The use of words in a cosmetic context and in a medicinal context:

- 4.1 The cosmetic context has the typical characteristics of- temporary action improvement of the appearance of the skin to be used regularly to maintain the effect the effect is aimed at grooming and enhancing the appearance of the skin texture.
- 4.2 The medicinal context has the typical characteristics of- permanent or drastic effects after completion of a treatment healing or curative aspects to be used restrictively because of the potency of the treatment the effect is aimed at treatment of or relieving a disease condition.
- 4.3 The use of a medical symbol is not allowed on a cosmetic product.
5. Unacceptable claims
 - 5.1 Unacceptable claims are claims that are used and not substantiated, or claim statements not worded in a cosmetic sense.
 - 5.2 In general, no cosmetic claims for products used on mucous membranes (except the mouth) will be allowed.
 - 5.3 Claims suggesting permanent effects of cosmetics may not be used, e.g. permanent improvement, reversal of deterioration, etc.
 - 5.4 The term "cosmeceutical" is not permitted with reference to cosmetic products as it is misleading. Any similar term would also not be permitted.
6. Non-content claims should be allowed with the following restriction-
 - 6.2.1 It is relevant for the product category (any XXX-free claim is not acceptable when XXX is either forbidden or would not form part of a relevant cosmetic composition).
 - 6.2.2 It is an "information claim" (with this in mind, one can accept that people being intolerant to an ingredient may want to find such ingredient-free products).
 - 6.2.3 It is not linked to any benefit (including safety benefit) of the product.
7. Hydroxy acids used as chemical exfoliators
 - 7.1 Alpha Hydroxy Acids Products containing Alpha Hydroxy Acids shall carry the Sun Alert statement. Sun Alert: "Because this product may make your skin more sensitive to the sun, be certain that you apply a broad spectrum sunscreen of at least SPF 15 while using this product, and for a week after you discontinue use" excluding all rinse-off hair preparations.
 - 7.2 Beta Hydroxy Acids Products that contain Beta Hydroxy Acids at concentrations above 0.5 % shall carry the Sun Alert statement. Sun Alert: "Because this product may make your skin more sensitive to the sun, be certain that you apply a broad spectrum sunscreen of at least SPF 15 while using this product, and for a week after you discontinue use" excluding all rinse-off hair preparations.
 - 7.3 Other Hydroxy Acids Products that contain Other Hydroxy Acids shall carry the Sun Alert statement. Sun Alert: "Because this product may make your skin more sensitive to the sun, be certain that you apply a broad spectrum sunscreen of at least SPF 15 while using

this product, and for a week after you discontinue use" excluding all rinse-off hair preparations.

8. Cosmetic cellulite products

8.1 A healthy lifestyle must be encouraged. To advocate no dieting and no exercise is prohibited.

8.2 Claims should clearly focus on improving the appearance of the condition of the skin.

8.4 Scientific Substantiation shall be required for all finite claims such as those listed in 8.5.

8.5 The following are examples of claims that shall be allowed-

8.5.1 Improves the appearance of cellulite

8.5.2 Minimises or reduces the appearance of dimpled skin/orange peel

8.5.3 Smooth over cellulite

8.5.4 Firms and tones the skin

8.5.5 Makes skin appear more smooth

8.5.6 Redefines the appearance of the skin

8.5.7 Improves the contours of the skin.

8.5.8 Claims that make reference to the removal of cellulite, weight loss or slimming and those that claim a physiological action are not allowed.

8.6 The following are examples of claims that shall NOT be allowed-

8.6.1 Reduces or eliminates cellulite

8.6.2 Boosts metabolism

8.6.3 Inhibits dietary fat absorption

8.6.4 Melts fat

8.6.5 Soak up fat

8.6.6 Breaks down fatty cells

8.6.7 Blocks fat

8.6.8 Detoxification

8.6.9 Lymphatic drainage

8.6.10 Removes fat

8.6.11 Causes weight loss or slimming

8.6.12 Causes or leads to centimetre or dimension loss.

9. Skin lightener products

9.1 No advertisement/label for a cosmetic product may claim that it does not contain an ingredient which is not normally permitted in cosmetics, for example "hydroquinone-free" or "steroid-free".

9.2 To be able to claim skin-lightening without clinical trials, a cosmetic product must contain a broad-spectrum sunscreen which produces a validated SPF of at least 15. The SPF must appear on the label and in advertisements.

9.3 Products claiming skin lightening that do not incorporate UV filters to meet the above requirements shall carry a warning- Sun Alert: "Because this product may make your skin more sensitive to the sun, be certain that you apply a broad spectrum sunscreen of at least SPF 15 while using this product, and for a week after you discontinue use", and have acceptable scientific substantiation for the safe and effective use of the product.

9.4 A product may not claim to alter the appearance of the skin to any shade lighter than its normal constitutive pigmentation.

10. Hair and scalp products

An advertisement shall not claim or imply that a hair care product can cure or permanently prevent a specific condition of the hair or scalp that is a symptom of disease. The advertisement shall state that the condition can be alleviated by regular use of the product.

Medical terms shall not be used to describe a specific hair condition or condition of the scalp. An advertisement for a hair care product shall use words that are familiar to the consumer, such as-

10.1."excess oil" instead of "seborrhoea";

10.2."dandruff" instead of "pityriasis"; and

10.3."hair loss" instead of "alopaecia".

11. Claims relating to baldness/hair loss/thinning hair/hair growth

11.1 A product claiming to delay avoidable hair loss, with regular use, and not because of treatment of disease, may fall under the definition of a cosmetic, and would require suitable scientific substantiation.

11.2 Hair and Scalp Claim

An advertisement shall not claim or imply the following, unless it can be scientifically substantiated that:

11.2.1 the hair roots can be fed or nourished;

11.2.2 the hair can be strengthened or repaired;

11.2.3 a specific ingredient can be absorbed into the hair;

11.2.4 a product that contains a specific ingredient has an effect on the hair or scalp;

11.2.5 a product has multiple functions, e.g. a 2-in-1 shampoo; or

11.2.6 an anti-dandruff product alleviates dandruff with regular use.

11.3 Dandruff Claims

A product that alleviates dandruff shall not claim or imply that the condition can be prevented permanently, but shall state that effective control is dependent on regular use. Such advertisement shall not imply or exaggerate its claim of the effectiveness of the product.

11.4 Fine Hair

A product that thickens or adds volume to fine hair may be advertised. However, the advertisement shall state that the increase in volume, or the thickening of the hair, is superficial and not permanent.

11.5 Split Ends

A product that is used to mend split ends shall state that the process is not permanent.

11.6 Colour Preparations Claims for the durability of the product shall be substantiated-

11.6.1 temporary colour changes the colour of the hair, but only lasts until the hair is washed;

11.6.2 semi-permanent colour temporarily changes the colour of the hair and is gradually removed by the repeated washing of the hair;

11.6.3 permanent colour permanently changes the colour of the hair shaft.

11.7 UV Protection Products claiming UV filters must indicate clearly that only the hair/hair colour would be protected and not the scalp. Hair care products cannot claim/display an SPF number.

12. Sunscreen products

Products containing sunscreens, suitable for topical use, for the protection of human skin against the adverse effects of solar UVA and UVB rays, whether primary or secondary in nature must comply with the following provisions-

12.1 UV Protection Claims

No claim for protection against radiation other than UVA or UVB is permitted. Claims for UV protection must be qualified with the reference to UVA or UVB protection or both.

12.2 SPF Claims

12.2.1 Primary and secondary sunscreen products may not claim or imply sun protection or a sun protection factor (SPF) number unless approved by an authority acceptable to the ASASA, when tested in accordance with SANS 1557, ISO 24444 or any other internationally accredited test method.

12.2.2 Such claims must be validated by an in vivo SPF test certificate. Products shall be tested for SPF value according to- SANS 1557 (South African Bureau of Standards); ISO in vivo SPF test method (International Standards Organisation), or any other internationally accredited test method.

12.2.3 Such claims for sunscreen wipes must be labelled with the statement "Contains SPF (Number) sunscreen".

12.2.4 Any SPF claim below 6 or greater than 50+ is not allowed.

12.2.5 Such claims for primary sunscreens must be accompanied by the following directions- "Apply before exposure", "Apply generously" or "Reapply frequently".

12.3 UVA Claims

12.3.1 For a product for which UVA protection is claimed, documented test results from an acceptable authority shall be available to substantiate the claim.

12.3.2 Sunscreen products containing only UVA filters shall carry a warning that they do not protect against the burning rays of the sun.

12.4 Broad Spectrum Claims

12.4.1 Claims for broad spectrum UV protection must be qualified with reference to both UVA and UVB to the exclusion of other UV's. If UVA and UVB sun protection is claimed, documented UVA test results and in vivo SPF test results from an authority acceptable to ASASA shall be available to substantiate the claim.

12.4.2 Sunscreens for which broad-spectrum protection is claimed, shall be labelled with the SPF and the ratio of UVA: UVB shall be at least 0,4:1.

12.5 Classification Claims

12.5.1 Such claims must be in keeping with the product's protection classification (low, moderate, high, very high) and shall only be labelled according to the table below-

<u>Category</u>	<u>Labelled SPF</u>
Low	6, 10
Medium	15, 20, 25
High	30, 40, 50
Very High	50+

12.5.2 Broad Spectrum Claim: A product shall be considered to provide broad spectrum protection if the mean critical wavelength is 370nm or greater after irradiation as determined using an internationally accredited test method.

12.5.3 When specific protection claims are made, or the inclusion of UV filters is stated or implied, the SPF number shall be stated on the container or label of the product and shall be clearly indicated.

12.6 Water Resistance/Sweat Resistance/Waterproof:

12.6.1 Any sunscreen claiming "water resistant" must, when tested after 2 x 20 minutes of activity in water, have an SPF of at least 50% of the SPF value determined before activity in water.

12.6.2 Any sunscreen claiming "very water resistant" must, when tested after 4 x 20 minutes of activity in water, have an SPF of at least 50% of the SPF value determined before activity in water.

12.6.3 Water resistant and very water resistant are the only claims/ terms that are allowed and they must be accompanied by the following statement: "reapply after perspiring, swimming or towel drying".

12.6.4 The claim "waterproof" is not permitted.

12.6.5 The claim "sweat resistant" is not permitted.

12.7 Non-irritation claim

If an irritation related claim is made, adequate scientific substantiation shall be provided in the form of documented test results from an acceptable authority.

12.8 Block out or similar claims

Claims shall not be made or imply 100% protection from UV radiation, e.g. block, sunblock, sunblocker or total protection.

12.9 All day protection and extended protection claims

A sunscreen product shall not claim or imply that a single application can provide all day protection, or similar

DIRECT MARKETING

1. Campaign Limitations

1.1 Marketers must not participate in any campaign involving the disparagement or exploitation of any person or group on the grounds of race, colour, ethnicity, religion, national origin, gender, sexual orientation, marital status or age.

1.2 Marketers must not participate in the dissemination of unsolicited material that is sexually explicit, vulgar or indecent in nature, except where required to do so by law, such as common carrier.

1.3 Marketers must not participate in the dissemination of any material that unduly, gratuitously and without merit exploits sex, horror, mutilation, torture, cruelty, violence or hate, except where required to do so by law, such as common carrier.

1.4 Marketers should avoid undercover or word-of-mouth marketing initiatives that encourage consumer or business to believe that the marketers' agents are acting independently and without compensation when they are not.

1.5 Marketing communications that appear to be genuine bills, invoices or government documents must not be used.

1.6 Timeliness

Descriptions and promises must reflect actual conditions, situations and circumstances existing at the time of the promotion.

1.7. Disclosures

1.7.1 Prior to consumer buying opportunity, marketing offers must provide all the information necessary for reasonable consumer or business to make an informed purchase decision. Marketers must take reasonable steps to ensure that consumer or business agreement to enter contract is fully informed and intentional. Precise disclosures will vary by product or service being marketed, but must include the—

1.7.1.1 exact nature of what is being offered;

1.7.1.2 price, including all additional charges such as delivery or handling costs;

1.7.1.3 terms of payment;

1.7.1.4 consumers or business' commitment and any ongoing obligation in placing an order; and

1.7.1.5 delivery arrangements including shipping terms and delivery times.

The following additional disclosures must be made either with the offer, or, provided the customer or business can return goods or refuse services, with the shipment—

1.7.1.6 other order-related charges (such as handling charges, services charges, surcharges, etc.);

1.7.1.7 late payment penalties;

1.7.1.8 return and cancellation policies and procedures;

1.7.1.9 substitution policies;

1.7.1.10 guarantees and warranties; and

1.7.1.11 marketer contact information.

1.7.2 For business-to-business transactions, all information necessary for reasonable business to make an informed purchase decision, including the disclosures described in 1.7.6 must be presented at the time of the original offer and agreement. In the case of an on-going relationship, the information must be presented again only when there is material change.

1.7.3 material change to an agreement requires new consent.

1.7.4 disclosures of offers must be clear, comprehensive and prominent. They must present all items material to purchase decision and be available in form which permits consumer or business to access hard copy of the information.

1.7.5 Full and fair disclosure of the terms of the offer includes not just wording, but the manner of presentation of the price, terms and conditions and customer commitments and obligations. Information that, by the use of photography, artwork, type size, colour, contrast, placement, verbal description, audio-visual portrayal or other means, materially distorts the clarity of the offer or exceptions to it must not be used.

1.7.6 Fulfilment Practices

Specific requirements concerning shipment timing, delays, back-orders, substitutions, cancellation provisions, complaint handling, refund practices and written confirmations are dependent on the nature of the agreement. In addition to legal compliance, marketers should adopt practices of maximum transparency in notifying consumers and businesses about their order status and delivery timing.

1.7.6.1 Shipment: Goods offered must be shipped within 30 days of the receipt of property completed order or within any shorter period that may be prescribed by applicable law or within the time limit stated in the original agreement.

1.7.6.2 Delay: If delivery will be delayed, the consumer or business must be advised within 30 days of the receipt of the order or within any shorter period that may be prescribed by an applicable law or within the time limit stated in the original agreement.

1.7.6.3 Order Cancellation: Marketers must give consumers or businesses the right to cancel an order for goods which cannot be delivered within 30 days or any shorter period that may be prescribed by an applicable law or within the time stated in the original agreement, without cost or obligation to the consumer or business.

1.7.6.4 Substitution: Any substitution of goods to those originally offered and ordered must be disclosed to the consumer or business and must be of the same or better quality, or be approved by the consumer or business before shipment. The consumer or business must be informed that they have the right to accept or reject goods substituted, without additional obligation or cost, including return shipping cost.

1.7.6.5 Guarantees and Warranties: Any guarantee provided with the provision of goods or services must clearly identify the name and address of the guarantor and duration of such guarantee. Any valid request under the terms of guarantee for repair, replacement, refund or other remedy must be honoured promptly.

1.7.7 Automatically Billed Products or Services

1.7.7.1 Automatically billed products or services plans, in which the consumer or business agrees to receive and be billed for products or services on continuing basis, are permitted. The marketer must clearly inform the consumer or business of all material terms and obligations in the original marketing communication, including whether there is right to cancel.

1.7.7.2 Any material change in the products or services offered to consumer or business that has previously consented to be automatically billed for those products or services must require the marketer to obtain new consent. Such new consent may be inferred from the consumer or business's acceptance or use of the products or services, provided that the consumer or business has meaningful opportunity to decline the services without incurring cost or further obligation.

1.7.7 Section 21 of the Act applies unordered Products and Services

1.8 Opt-Out Opportunity

Recognising that consumer can opt-out of receiving marketing communications at any time, marketers must present consumers, including current customers, an easy-to-see, easy-to-understand and easy-to-execute opportunity to decline further marketing, the use of their name or other information, at least once every three years. Marketers must always inform the consumers of the charge of opting out. The consumer cannot be charged more than the cost of transmission of the opting out after network charges.

1.9 Section 33 of the Act applies catalogue marketing.

1.10 Section 35 applies to customer loyalty programmes.

1.11 Section 38 of the Act applies to transacting with minors.

1.12 **Endorsement:** Except where the endorser is identified as an expert or is generally recognised celebrity (whose sole connection with the marketer is the payment of fee for the endorsement), any material connection between the endorser and the marketer must be disclosed. Results, experiences or findings of the endorser must be generally representative of the results to be expected by the average consumer or business. Alternatively, the marketer must clearly and conspicuously explain that the experiences or findings are not typical of the experiences of the average consumer or business.

1.13 **Infomercials and Transparency:** Infomercials (direct response commercials over 12 continuous minutes in length) must be preceded and followed by clear or prominent video and oral announcement that the presentation is paid commercial message. This announcement must identify the product or service being offered and the marketers identity. The video announcement must also be presented prior to each ordering opportunity. For those infomercials intended for adults only, the opening disclaimer must notify viewers that it contains content intended for adults. This notification must be provided in both audio and video.

1.13 **Direct Response Radio:** As local medium that reflects community standards, marketers should take the local environment into consideration, including the programming environment, the station's format and the composition of the station's audience.

1.14 **Telephone/fax Marketing** These standards of practice apply to all forms of commercial solicitation relating to the purchase of products or services, or requests for charitable donation. conveyed by telephone and/or cell phone (also known as telemarketing),

including the presentation of offers by means of telephone facsimile (also known as fax). 10.4.1 Calling and Faxing Hours: Marketers must limit the hours of outbound telemarketing or faxing to the hours of 08:00 a.m. to 8:00 p.m. weekdays and 09:00 a.m. to 1:00 p.m. Saturdays. Restrictions refer to the time zone of the called party. Calling or faxing must not be undertaken on statutory holidays.

- 1.15 Word-of-mouth marketing: Also sometimes referred to as "buzz" marketing, word-of-mouth marketing is capturing the attention of consumers and the media to generate favourable word of mouth about brand, product, service or organisation.

Advertising of Timesharing

- 7.1 Programmes that include the offer or distribution to consumers of gift incentives, which includes certificates, coupons, vouchers, cheques, stamps or any other documents representing something of value, visits to a timeshare resort or attendance at any activity involving the alteration or promotion of timesharing interests, must, over and above the relevant statutory requirements, comply with the following requirements—

Any restrictions or conditions relating to the granting of the gift, or the redemption or use of the certificates, must be fully disclosed and precisely described at the time when such gift is offered to the public

Lengthy delays, onerous procedures, or other restricting conditions that have the purpose or effect of delaying the granting of the gift incentive or of discouraging its redemption or use, may not be imposed.

Should the public be required to pay any money in order to make effective use of the gift incentive, certificate or document thus distributed (including for example a "reservation or administration fee"), such condition must be disclosed at the outset. No consideration or money may be made payable or accepted until the potential purchaser is made aware of all the terms, conditions and obligations upon which receipt of the benefit is contingent.

7.2 Whether or not any payments are involved, all terms, conditions and obligations upon which receipt of the benefits are contingent must be clearly explained to the recipient and, in particular, must clearly disclose:

the purpose and approximate duration of the promotional activity;

whether participation in a sales presentation relating to a timesharing interest or tour of the timeshare resort is necessary in order to receive the benefit;

whether any purchase is necessary in order to receive the benefit;

whether any additional costs/payments are necessary in order to make a gift usable.

7.3 Additional or different restrictions or conditions may not be imposed subsequent to the original approach.

8. Gift incentive promotions

Advertising or promotional material that offers gifts or awards as incentives for visiting timeshare resorts or attending sales presentations concerning timesharing schemes shall conform to the following conditions:

8.1. Any terms, conditions and obligations upon which the gift is contingent, must be clearly explained and conspicuously set out by the member so as to leave no reasonable probability that the terms of the offer might be misunderstood.

8.2. The description of the gifts offered shall be accurate and shall not, by omission, ambiguity, or otherwise, have the capacity to mislead as to the size, volume, value, quality, quantity or other material attribute of the gift.

8.3. Unless a competition is conducted, gifts or awards shall not be referred to as prizes.

8.4. Whenever gifts or awards of differing values are offered, a fair ratio between the more expensive gifts and those of lesser value shall be maintained.

8.5. When called upon to do so, the advertiser shall furnish evidence, in a form stipulated by the ASA— 8.5.1 that the gifts or awards offered are guaranteed or immediately available; and

8.5.2 of the number of gifts or awards of each type which have been awarded in a stipulated period of time.

8.6. The advertiser shall display prominently, at each point of sale where the gift incentive promotion is in operation, a list of the recipients of awards worth more than R500,00 and a declaration of the total number of gifts awarded in the preceding three months. This information must also be made available to the public on request.

8.7. If gifts or awards may be substituted by gifts or awards of equal or greater value, this fact must be disclosed in the advertising or promotional material.

8.8. If gifts or awards cannot be presented at the time they are awarded, or are too bulky to be transported by passenger vehicle, they must be delivered to the recipient within 30 days, without further cost, time or travel on the recipient's part.

Advertising Containing Environmental Claims

1. All environmental claims and statements made in advertising should provide accurate information, meaningful to the consumer and based on recognised scientific standards and principles.
2. Advertisements should not contain vague, incomplete or irrelevant statements about environmental matters, nor should it impair public confidence in the efforts made by the business community to improve its ecological standards.

1.3 Absolute claims and statements

- 1.3.1 Advertisements containing unqualified claims and statements about environmental matters will be interpreted as meaning "100%", and shall be subject to substantiation. The same principle will apply to descriptions such as ". . . free" or "contains no . . ." which will be assumed to claim total absence of the stated substance.
- 1.3.2 Corporate claims in advertising may refer to specific products or actions, but may not imply that they extend to the company's performance functions as a whole, unless this can be substantiated.
- 1.3.3 Advertisements should clearly indicate whether the claims made relate to the products or packaging, and in the absence of such indication shall be considered to be referring to both.
- 1.3.4 Advertisements containing general statements such as "environmentally friendly" or "ozone friendly" or "green", or graphics or symbols designed to convey a similar environmental message, will not be permitted unless qualified by a description of the benefit conferred, e.g. "ozone friendly – free from CFC's".
- 1.3.5 Environmental signs or symbols used in advertising should clearly indicate their source and should not imply official approval.
- 1.4 **Recyclable**
- Advertisements may not by using the Mobius Loop symbol or in any other way claim that the product is recyclable, merely because it is technically capable of being recycled, unless facilities, which are reasonably accessible, exist for collection and recycling.
- 1.5 **Degradable**
- 1.5.1 No advertisement may make claims for the degradability of the packaging material unless the claim can be substantiated.
- 1.5.2 Advertising claims about the degradability of products disposed of through the sewage systems may only be made if the by-products of degradation and the product in question do not contain substances which are known to be damaging either to the environment or the sewage collection and treatment facilities.
- 1.6 **Ozone friendly**
- 1.6.1 No product or packaging may claim to be "ozone friendly" if at any point in its manufacture, packaging, use or degradation it uses or is likely to emit chlorofluorocarbons.
- 1.6.2 Advertisements which claim to indicate in any other way that a product does not contain any substance which will or may have an adverse or detrimental effect on the ozoneosphere ("ozone layer") shall not be acceptable unless the ASA is satisfied that the product falls within the class of product—
- 1.6.2.1 in which chlorofluorocarbons ("freons") are or have in the past commonly been used as inert dispensing agents or as solvents or refrigerants; or

1.6.2.2 which is generally perceived by the consumer public as being a product which contains such substances.

Pet Food Advertising

1. Definitions and terms

1.1. Terms employed in this appendix are consistent in meaning with equivalent terms as is defined in terms of SANS 909:2015 and the Code, unless expressly defined hereunder

1.1.1. **“all life stages”**: gestation, lactation, weaning, growth, adult and senior life stages of an animal;

1.1.2. **“carrier”**: a substance used to dissolve, dilute, disperse or otherwise physically modify a feed additive in order to facilitate its handling, application or use without altering its technological function and without exerting any technological effect themselves;

1.1.3. **“complementary pet food”**: a pet food which is either a treat or is a fresh, frozen or canned meat or fish product that does not meet all the daily feeding requirements of a pet animal;

1.1.4. **“complete pet food”**: a pet food which contains all the necessary nutrients in the correct amounts and proportions for a given physiological need of the pet as established by a recognised authority in pet nutrition and which meets the total daily requirements of a pet animal as specified by these guidelines;

1.1.5. **“compound pet food”**: means a mixture of at least two feed materials, whether or not containing feed additives, for oral animal feeding in the form of complete or complementary feed;

1.1.6. **“dry pet food”**: pet food with a moisture content of 14% or less;

1.1.7. **“feed additives”**: substances, micro-organisms or preparations, other than feed material and pre-mixtures, which are intentionally added to feed or water in order to perform, in particular, one or more of the following functions:

1.1.7.1. favourably affect characteristics of feed;

1.1.7.2. favourably affect characteristics of animal products;

1.1.7.3. favourably affect the colour of ornamental fish and birds;

1.1.7.4. satisfy the nutritional needs of animals;

1.1.7.5. favourably affect the environmental consequences of animal production;

1.1.7.6. favourably affect animal production, performance or welfare, particularly by affecting the gastro-intestinal flora or digestibility of feeding stuffs;

1.1.7.7. have a coccidiostatic or histomonostatic effect.

1.1.8. **“feed ingredient”**: a product of vegetable or animal origin, in its natural state, fresh or preserved, and a product derived from the industrial processing thereof, and an organic or inorganic substance, whether or not containing additives, which is intended for use in oral animal feeding, either directly as such or after processing, in the preparation of animal feeds or as a carrier of premixtures. Feed ingredient has the same meaning as

ingredient, raw material, feed material, feedstuff or any words of similar connotation;

- 1.1.9. **“feed materials”**: products of vegetable or animal origin, whose principal objective is to meet animals nutritional needs, in their natural state, fresh or preserved, and products derived from the industrial processing thereof, and organic or inorganic substances, whether or not containing feed additives, which are intended for use in oral animal feeding either directly as such, or after processing, or in the preparation of compound feed, or as carrier of pre-mixtures;
- 1.1.10. **“family”**: means a group of products which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product the nutritional adequacy of which has been substantiated;
- 1.1.11. **“fresh”**: meat: not preserved by salting, canning or dehydrating;
- 1.1.12. **“fresh”**: other: newly made, produced or gathered/harvested; not stale; not preserved through the use of preservatives;
- 1.1.13. **“GMO”**: an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination;
- 1.1.14. **“immediate container”**: means, in relation to a pet food, a container which is in direct contact with the pet food. Hereinafter, in these guidelines, the word **“container”** shall have a corresponding meaning to **“immediate container”**;
- 1.1.15. **“ingredient statement”**: means a collective and contiguous listing on the label of the ingredients of which the pet food is composed;
- 1.1.16. **“label”**: when used as a noun, means any written, printed or graphic representation attached to an immediate container of a pet food or produced on an immediate container in any possible manner and which states the details required in terms of these guidelines for the particular pet food contained therein;
- 1.1.17. **“labelling”**: means all labels and other written, printed or graphic matter on pet food or any of its containers or wrappers or accompanying such pet food;
- 1.1.18. **“moist pet food” / “wet pet food”**: pet food with a moisture content of 60% or more.
- 1.1.19. **“nutrition claim”**: any claim which states, suggests or implies that a feed has particular beneficial nutritional properties due to:
- 1.1.19.1. the energy (calorific value) it -
- 1.1.19.1.1. provides at a reduced or increased rate, or
- 1.1.19.1.2. does not provide, and/or
- 1.1.19.2. the nutrients or other substances it -
- 1.1.19.2.1. contains,

1.1.19.2.2. contains in reduced or increased proportions or
1.1.19.2.3. does not contain.

- 1.1.20. **“natural”**: a feed or ingredient derived solely from plant, animal or mined sources, either in its unprocessed state or having been subject to physical processing, heat processing, rendering, purification, extraction, hydrolysis, enzymolysis, or fermentation, but not having been produced by or subject to a chemical synthetic process and not containing any additives or processing aids that are chemically synthetic except in amounts as might occur unavoidably in good manufacturing practices;
- 1.1.21. **“nutrient”**: a substance which conveys nourishment to an animal;
- 1.1.22. **“particular nutritional purpose”**: the purpose of satisfying the specific nutritional needs of certain pets whose process of assimilation, absorption or metabolism could be temporarily impaired or is temporarily or irreversibly impaired and are, therefore, able to derive benefit from ingestion of pet foods appropriate to their condition;
- 1.1.23. **“pet animal”**: an animal belonging to a species normally nourished and kept, but not consumed, by humans, except an animal bred for fur;
- 1.1.24. **“pet food”**: any product intended for oral feeding to pet animals whether processed, partially processed or unprocessed, including dog chews, feed materials and compound feed;
- 1.1.25. **“pre-mixtures”**: mixtures of feed additives or mixtures of one or more feed additives with feed materials or water used as carriers, not intended for direct feeding to animals;
- 1.1.26. **“processing aids”**: any substance not consumed as a food or feed component by itself, intentionally used in the processing of raw materials, food or their ingredients/components, to fulfil a certain technological purpose during treatment or processing and which may result in the unintentional but technically unavoidable presence of residues of the substance or its derivatives in the final product, provided that these residues do not present any health risk and do not have any technological effect on the finished product;
- 1.1.27. **“registration holder”**: the juristic person to whom the Registrar has issued a certificate of registration;
- 1.1.28. **“registration number”**: the number given by the Registrar once a product has been registered and under which a product may be sold;
- 1.1.29. **“sell”** and **“sold”**: shall have the same meaning as **“sell”** as defined in the Act;
- 1.1.30. **“semi-moist pet food”**: pet food with a moisture content of 14% or more and less than 60%;
- 1.1.31. **“the Act”**: the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act 36 of 1947);

- 1.1.32. **“the Department”**: the National Department of Agriculture in the South Africa;
- 1.1.33. **“treat”**: when used as a noun, means a complementary pet food product that is intended by the manufacturer to be fed to cover less than 15% of the daily energy intake of the animal for which it is intended.

2. Product Name

- 2.1. When used as part of a pet food name or statement of identity, the name of a specific ingredient must not create the impression that there is a greater proportion of that ingredient than is actually contained in the product.
- 2.2. Terms such as *“burger”, “chunk”, “patty”, “cubes”, “meatballs”, “rissoles”, “croquettes”, “slice”* or any other similar terms must not be used to describe a product or an ingredient thereof which does not have substantially the shape, form or composition so represented when it is sold to the retail purchaser.

3. Misleading Claims

- 3.1. Pet food advertising must not bear a statement of identity, a vignette, graphic, or any other representation, pictorial or otherwise, that could likely mislead or deceive consumers with respect to the composition, form, suitability, quality, flavour, performance, method of manufacture or intended use of the product or any of its ingredients.
- 3.2. Advertising of pet food shall not mislead consumers -
- 3.2.1. as to the intended use or characteristics of the feed, in particular, the nature, method of manufacture or production, properties;
- 3.2.2. by attributing to the feed effects or characteristics that it does not possess or by suggesting that it possesses special characteristics when in fact all similar feeds possess such characteristics;
- 3.2.3. if, despite the representation being literally true, it is likely to be misinterpreted by consumers or is misleading through the omission of relevant facts.
- 3.3. *“Authentic”, “real”, “true”, “genuine”, etc.*
- 3.3.1. The use of terms such as *“authentic”* and related terms like *“real”, “genuine”, “true”, etc.* should only be used in the following circumstances:
- 3.3.1.1. to emphasise the geographic origin of a product, for example where it might be confused with other products of the same name that do not originate from that location, provided that the product has the characteristics traditionally associated with the product from that geographic origin;
- 3.3.1.2. to describe the recipe used to make a product, the origin of which is specified;
- 3.3.1.3. to emphasise the purity of single varieties of component(s) where such purity is essential to deliver specific characteristics.

- 3.3.2. The use of terms such as *“authentic”* and related terms like *“real”*, *“genuine”*, *“true”*, etc. should not be used to mislead consumers (for example, the use *“real”* to emphasise the presence of fish pieces when they are present only at a low percentage level).
- 3.3.3. A claim, if based on a pre-existing but previously undisclosed aspect, shall be presented in a manner that does not lead consumers to believe that the representation is based on a new process or product modification (for example saying *“now with added calcium”* when the product has always contained calcium).
- 3.4. *“Fresh”*
- 3.4.1. The term *“fresh”* may be used to describe pet food components that have not been subjected to any treatment except maintaining the cold chain. Treatments such as cooking, drying, freezing, hydrolysis, or similar processes, or the addition of salt, curing agents, natural or synthetic chemical preservatives or other processing aids exclude the component(s) from being called *“fresh”*.
- 3.5. *“Natural”*
- 3.5.1. The term *“natural”* should be used only to describe pet food components (derived from plant, animal, micro-organism or minerals) to which nothing has been added and which have been subjected only to such physical processing as to make them suitable for pet food production and maintaining the natural composition.
- 3.5.2. Bleaching, oxidation by chemical, chemical treatment and similar processes exclude use of the term *“natural”*.
- 3.5.3. Feed materials and additives containing or derived from GMOs also exclude use of the term *“natural”*.
- 3.5.4. If a compound pet food contains only feed materials, additives and carriers meeting the above sections, it may be described as *“natural”* as long as it has not been subjected to processes other than those acceptable processes for *“natural components”*.
- 3.5.5. The terms *“made with natural ...”* may be used provided that the natural components are clearly identified.
- 3.5.6. If a compound pet food contains only feed materials/additives/carriers meeting the above sections, but also contains vitamins and minerals from non-natural source, the following claim shall be allowed: *“made with natural component(s), with added vitamins and minerals”*.
- 3.6. A statement on a pet food label stating *“new”*, *“improved”* or a similar designation shall be substantiated and shall also comply with the provisions of the Advertising and Marketing Industry Code of Practice.
- 3.7. *“No added...”, “without added...”, “formulated without”, “made without”, “Free ...” / “free from”*.
- 3.7.1. These negative claims or claims on absence should not directly, indirectly or implicitly

- 3.7.1.1. be used if all similar goods in the same category, class, or all pet food, do not contain the substance in question;
- 3.7.1.2. give the impression that products containing that particular substance / feature are dangerous, unless factual and in the public interest, unless permissible by law.
- 3.8. Enriched or fortified terms used on a pet food label require that the food must contain 25% and 15% more than the nutrient requirements for enriched and fortified respectively.
- 3.9. Calorie terms such as "*light*", "*less*", "*reduced*" or terms and words of similar connotation must be substantiated against a standard maintenance diet in the advertiser's own product range.
- 3.10. Fat-content-related terms such as "*lean*", "*less*", "*reduced fat*" or terms and words of similar connotation must be substantiated against a standard maintenance diet in the advertiser's own range.

4. Endorsements, Testimonials and Awards

- 4.1. A pet food advertiser must not, directly or indirectly, by way of endorsement, testimonial, award, advertising, labelling, brand, trade name or otherwise, make any false or misleading representation:
 - 4.1.1. that a product or ingredient thereof -
 - 4.1.1.1. has been prepared according to the formula, direction or personal supervision of;
 - 4.1.1.2. is prescribed by;
 - 4.1.1.3. is the first choice of;
 - 4.1.1.4. has been inspected, guaranteed, recognised, approved or used by;
 - 4.1.1.5. meets or exceeds the specifications or standards of; or
 - 4.1.1.6. is otherwise endorsed by, a particular individual or class of individuals, such as a governmental or non-governmental agency; professionals such as veterinarians or chemists; or organisations, breeders, kennels, sportsmen, hunt clubs or animal hospitals, when such is not the case.
 - 4.1.2. that a product is the recipient of a bona fide merit award or seal of approval when such is not the case.
- 4.2. Data justifying claims of this type, in compliance with provision of the Advertising and Marketing Industry Code of Practice, as the case may be, must be kept on file, by the company responsible for making such a claim, and be made available to the ASASASA upon written request, normally within 48 hours.

5. Health Claims

- 5.1. Health claims may not extend to medicinal or therapeutic claims, for example, the

words “cure”, “restore”, “heal”, “diagnose”, “mitigate”, “treat” or “prevent disease” must not be used. Health claims relating to aiding or assisting medicinal or therapeutic claims are, however, permissible.

- 5.2. Adequate and proper tests must confirm the benefit of the nutritional link to the health claim.
- 5.3. Current data confirming the health claim(s), in compliance with Advertising and Marketing Industry Code of Practice, should be kept on file with the manufacturer and must be made available to the ASASA upon written request, normally within 48 hours. Bags of pet food purchased for testing purposes shall comply with clause 7 below.

6. Nutrient Claims

- 6.1. Nutrient statements must be accurate, verifiable, and not misleading.
- 6.2. If the label of a pet food product calls prominent attention to a nutrient, outside of the ingredient panel, then a guarantee of the nutrient must appear in the on-pack guaranteed analysis statement.
- 6.3. If nutrient claims are made in promotional materials but not on the label of the product, then the guaranteed analysis section of the label does not need to reflect this ingredient. Bags of pet food purchased for testing purposes shall comply with clause 9 below.
- 6.4. The PFI will advise the ASASA, upon request, whether the nutritional claims are accurate in terms of SANS 909:2015. Bags of pet food purchased for testing purposes shall comply with clause 7 below.

7. Procedure: Sampling and testing of pet food

- 7.1. When an advertiser is required to test its product in order to comply with substantiation in term of the Advertising and Marketing Industry Code of Practice, as set out above, it shall do so by purchasing bags of pet food for testing purposes:
 - 7.1.1. Two identical sealed bags are to be purchased at the same retail outlet; and the Batch ID and/or Manufacturing Date shall be as close to each other as reasonably possible.
 - 7.1.2. The two bags must remain sealed.
 - 7.1.3. Two sealed bag shall be transferred to the designated laboratory for analysis.
 - 7.1.4. The purchaser may be required, at the discretion of the ASASA, to complete and
 - 7.1.5. sign an affidavit before a commissioner of oaths as proof of purchase of the bags referred to above.
- 7.2. When a complainant elects to call for an arbitration in terms of Advertising and Marketing Industry Code of Practice, and the complainant elects to test bags of pet food in support of its call for arbitration, the following procedure shall be used:

- 7.2.1. Three identical sealed bags are to be purchased at the same retail outlet; and the Batch ID and/or Manufacturing Date shall be as close to each other as reasonably possible.
- 7.2.2. The bags must remain sealed.
- 7.2.3. One sealed bag shall be transferred to the designated laboratory for analysis.
- 7.2.4. The purchaser shall deliver the other two bags to a representative of the PFI, who will retain the other two bags; one for further testing if needed, and the other to be supplied to the ASASA, if so required.
- 7.2.5. The purchaser may be required, at the discretion of the ASASA, to complete and sign an affidavit before a commissioner of oaths as proof of purchase of the bags, and compliance with the procedure, referred to above.