

Section II

THE GENERAL PRINCIPLES OF ADVERTISING

GUIDING PRINCIPLES OF THE CODE

1. Legal

- 1.1 Advertisers have primary responsibility for ensuring that their products and advertisements are legal.
- 1.2 Advertisements should comply with the law and should not incite anyone to break it.
- 1.3 Advertisers must not state or imply that a product can legally be sold if it cannot.
- 1.4 Advertisements should not contain anything which might lead or lend support to criminal, illegal or reckless activities, nor should they appear to condone such activities.
- 1.5 Advertisers must ensure advertisements are placed on legitimate platforms which are in compliance with the law.

2. Truthful Presentation

- 2.1 All descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation, and advertisers and advertising agencies are required to hold such substantiation ready for scrutiny without delay to the Advertising Standards Malaysia.

3. Social Responsibility

- 3.1 Advertisements should not without justifiable reason play on fear exploit misfortune or suffering.
- 3.2 Advertisements should not exploit consumers who are superstitious.
- 3.3 Advertisements should not contain anything which might lead or lend support to acts of violence or anti-social behaviour, nor should they appear to condone such acts.
- 3.4 Advertisements should respect human dignity and should not incite or condone any form of discrimination, including that based upon ethnic or national origin, religion, gender, age, disability or sexual orientation.
- 3.5 Advertisements should not disparage or cause unfair comparison.

4. Honesty

- 4.1 Advertisements should not be framed so as to abuse the trust of the consumer or exploit his lack of experience or knowledge.

5. Decency

- 5.1 Advertisements should not contain statements or visual presentations offensive to the standards of decency prevailing among those who are likely to be exposed to them.

TYPES OF ADVERTISEMENTS

1. Claims

- 1.1 Advertisements should not contain any statements or visual presentation which directly or by implication, omission, ambiguity, or exaggerated claim, that is likely to mislead the consumer about the product advertised, the advertiser, or about any other product or advertiser, in particular with regard to:
 - (i) Characteristics such as nature, composition, method and date of manufacture, fitness for purpose, range of use, quantity, and commercial or geographical origin.
 - (ii) Value or total price actually to be paid.
 - (iii) Other terms of purchase, such as hire purchase and credit sale.
 - (iv) Conditions of delivery, exchange, return, repair and maintenance
 - (v) The terms of any guarantee.
 - (vi) Copyright and industrial property rights such as patents, trademarks, designs and models, and trade names.
 - (vii) Official or other recognition of approval, awards or medals, prizes or diplomas.
 - (viii) Scientific, statistical, or other research data quoted in advertisements should be neither misleading nor irrelevant.
- 1.2 It is seldom possible to substantiate general claims by an advertiser that his product is of superlative quality (best, finest) in a manner which is universally acceptable. Such claims, however, are permissible under this Code, provided that their inclusion in an advertisement does not create a false impression concerning any quality possessed by the product which is capable of assessment in the light of generally accepted standards of judgment.
- 1.3 Obvious hyperbole, which is intended to attract attention or to amuse, is permissible provided that it is not likely to be taken as a positive claim to superior or superlative status.

- 1.4 Where a substantial division of informed opinion exists or may reasonably be expected to exist, as to the acceptability of any evidence which is required to substantiate a claim in an advertisement, it should neither state nor imply that the claim is universally true or that it enjoys universal support, nor that it represents anything other than the advertiser's opinion or of such other authorities as may be named.
- 1.5 Advertisements should not misuse research results or quotations from technical and scientific literature. Statistics should not be presented so as to imply that they have greater validity than is the case. Scientific terms should not be misused, and scientific jargon and irrelevances should not be used to make claims appear to have scientific basis they do not possess.
- 1.6 Where advertisement claims are expressly stated to be based on, or supported by, independent research or assessment, the source and the date of this should be indicated. Where this is not possible, for whatever reason, such claims to independent support should not be made. Where a claim relating to research or testing is based on the advertiser's own work or work done at his request, it should be clear from the text of the advertisement that such is the basis of the claim.

2. Value of Goods

- 2.1 So far as is relevant, the following provisions apply to claims as to the value of service or facilities offered by way of advertisement as well as to the value of goods.
- 2.2 Consumers should not be led to overestimate the value of goods whether by exaggeration or through unrealistic comparisons with other goods or prices.
- 2.3 Advertisers should be ready to substantiate any claim made as to the value in cash terms of goods offered at a lower price or given free; and any saving to the consumer claimed to result from the offer of goods at a price lower than their actual value.
- 2.4 Substantiation should be by reference to the actual price(s) of identical goods, or goods of a directly comparable kind and quality, which are generally available.
- 2.5 Where a comparison is made between the respective cash values or prices of goods which are not identical, the advertiser should clearly indicate that this is the case.
- 2.6 Reference to recommended retail prices will not be accepted as substantiation for

value of saving claims in the absence of information of the kind required in 4.3.4 as to the price at which the goods are currently on general sale.

- 2.7 In calculating a notional retail value of goods which is exclusive to him, or for which no direct standard of comparison exists, the advertiser should add to the cost of the goods to him a reasonable mark-up only, bearing in mind the widespread availability of many goods at substantial discounts. He should also make clear that the advertised goods are available from him only and that consequently the value claimed is his own assessment and does not relate to the actual cost of similar goods.

3. Use of the Word “Free”

- 3.1 Products should not be described as “free” where there is any cost to the consumer, aside from, the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, then this must be clearly stated in the advertisement.
- 3.2 Where a claim is made that the purchase of one product includes another product to 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.
- 3.3 In particular, an advertisement in these circumstances should not make an attempt to recover the cost to the advertiser of the product by such methods as the imposition of packing and handling charges; inflating 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 quantity.
- 3.4 A trial may be described as “free” although the consumer is expected to pay the cost of returning the goods, provided that the advertisement makes this clear.

4. “Up to...” and “from...” claims

- 4.1 Claims, whether as to prices or performance, which use formulae such as ‘up to X km per litre’ or ‘prices from as low RMX.XX’ are not acceptable where there is a likelihood of the consumer being misled as to the availability or as to the applicability of the benefits offered. Such claims should not be used:
- (i) When the price or other advantage claimed bears no relation to the general 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.
- (ii) When the claims apply to spoilt 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 not on offer.

5. Direct Supply

- 5.1 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, usually in cash terms, from the elimination of one stage or more than in the normal process of distribution.

6. Wholesale

- 6.1 No advertisement should state or imply that goods offered for retail are being offered at wholesale prices unless the advertiser can prove that the prices in question are not higher than those which are currently sold to the retail trade.
- 6.2 For the purpose of this ruling, a wholesaler is defined as a merchant who purchases stocks for supply to retailers and other classes of trade buyers.

7. Comparisons

- 7.1 Advertisements containing comparisons with other advertisers, or other products are permissible in the interest of vigorous competition and public information, provided they comply with the terms of the Code.
- 7.2 The subject matter of a comparison should not be chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is truly the case.
- 7.3 Points of comparison should be based on facts which can be substantiated and should not be unfairly selected. In particular:
 - (i) The basis of comparison should be the same for all the products being compared and should be clearly stated in the advertisement so that it can be seen that like is being compared with like.
 - (ii) Where items are listed and compared with those of competitors' products, the list should be complete or else the advertisement should make clear that the items are only a selection.

8. Disparagement and Denigration

- 8.1 Advertisements should not attack or discredit other products, advertisers or advertisements directly or by implication.
- 8.2 An advertisement should not contain derogatory remarks or innuendoes about any person or organisation. It must not criticise, directly or by inference, the Government of any country.

- 8.3 Advertisements should not contain any statement that either expressly or by implication disparage any profession, products, service or advertiser in an unfair or misleading way.

9. Exploitation of Name or Goodwill

- 9.1 Advertisements should not make unjustifiable use of the name or any initials of any firm, company or institution.
- 9.2 Advertisements should not take unfair advantage of the goodwill attached to the trade name or symbol of another firm or its products, or the goodwill acquired by its advertising campaign.
- 9.3 Attention is drawn to the provision governing the use of the Malaysian Arms and Flag, and the National Anthem. Details may be obtained from the offices of the Prime Minister or the Ministry of Arts, Culture and Heritage.

10. Imitation

- 10.1 Advertisements should not be so similar in general layout, copy, slogans, visual presentation, music or sound effects to other advertisements as to be likely to mislead or confuse.
- 10.2 Particular care should be taken in the packaging and labelling of goods to avoid causing confusion with competing products.

11. Testimonials

- 11.1 Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience over a reasonable period of time of the person giving it. Testimonials or endorsements which are obsolete or otherwise no longer applicable, (e.g. where there has been a significant change in formulation of the product concerned) should not be used.
- 11.2 Testimonials per se should not contain any statement or implication contravening the provisions of this Code and should not be used in a manner likely to mislead.
- 11.3 Testimonials should not make any claim to efficacy which cannot justifiably be attributed to the use of the product. Any specific or measurable results claimed should be fairly presented. Where 'before' and 'after' claims are made, they should be expressed and illustrated in such a way as to permit a fair comparison to be made.
- 11.4 Where any testimonial contains an expression which conflicts with this Code, the advertiser may amend the testimonial so as to remove the source of conflict,

provided that, in so doing, he does not distort the sense of original views expressed by the person giving the testimonial.

- 11.5 Testimonials from persons resident outside Malaysia are not acceptable unless an indication of their address and country of residence is given in the advertisement.
- 11.6 Particular care should be taken to ensure that advertisements based upon fictitious characters are not framed so as to give the impression that real people are involved; in particular they should not contain 'testimonials' or 'endorsements' which may give such an impression. Where an illustration of a person is used in conjunction with a testimonial implying personal endorsement of the product, that person should be the person giving the testimonial.
- 11.7 Advertisers and their agencies should hold ready copies of any testimonials used in advertising for inspection by the Advertising Standards Malaysia. Such copies should be signed and dated by the persons providing the testimonials, and should confirm what is said in any advertisement. When an advertisement containing a testimonial is submitted for the first time for publication, a copy of the testimonial statement should accompany the advertisement, for the publisher's retention.
- 11.8 Where a testimonial is given by a person with professional qualifications, care should be taken that in indicating those qualifications the advertiser does not cause the person giving the testimonial to transgress any regulations of the professional institution(s) to which he belongs.

12. Protection of Privacy and Exploitation of the Individual

- 12.1 Advertisements should not, except in circumstances noted in 10.2 portray or refer to by whatever means, any living person, unless their express prior permission has been obtained. This requirement applies to all persons, including public figures and foreign nationals. Advertisers should also take care not to offend the religious or other susceptibilities of those connected in any way with deceased persons depicted or referred to in any advertisement.
- 12.2 This ruling does not apply to:-
 - (i) The use of crowd background shots in which individuals are recognizable, provided that neither the portrayal, nor the context in which they appear, is defamatory, offensive or humiliating. However, an advertiser should withdraw any such advertisements if a reasonable objection is received from a person depicted;
 - (ii) Advertisements for books, films, radio or television programmes, press

features and the like in which there appear portrayals or references to individuals who form part of their subject matter;

(iii) To police or other official notices; and

(iv) The rare occasions when in the opinion of ASA the reference and portrayal in question is not inconsistent with the subject's right to a reasonable degree of privacy, and does not constitute an unjustifiable commercial exploitation of his fame or reputation.

13. Safety

- 13.1 Advertisements should not, without justifiable reason, show or refer to dangerous practices or manifest a disregard for safety. Special care should be taken in advertisements directed towards or depicting children or young people.

14. Guarantees

- 14.1 Advertisements should not contain any reference to a 'guarantee' or 'warranty' which takes away or diminishes any rights which would otherwise be enjoyed by consumers; purport so to do; or may be understood by the consumer as so doing.
- 14.2 Where an advertisement expressly offers, in whatever form, a guarantee or warranty as to the quality, life, composition, origin, duration, etc. of any product, the full terms of that guarantee should be available in printed form for the consumer to inspect and, normally, to retain before he makes the purchase.
- 14.3 Even if there is a money back undertaking, (for which see 13 below) words like 'guarantee', 'guaranteed', should not be used merely to emphasise that a factual description is true, e.g. 'guaranteed pure orange juice;' ' guaranteed to contain 20% protein.' Nor should the words be used merely for descriptive purpose. E.g. guaranteed goodness; guaranteed satisfaction. Otherwise the term is validly used in cases where a material, remedial action is offered in addition to that already required by law or accepted trade practice, or where it is clearly used colloquially, not importing any obligation. e.g. guaranteed to brighten the dullest room.
- 14.4 Phrases such as 'satisfaction guaranteed', 'unconditionally guaranteed' and the like which are not specific as to terms, duration and limitation on availability, may be used only where a full refund will be given, at the option of the purchaser, throughout the reasonably anticipated life of the product, against any defect or damage arising as a result of the fault of the manufacturer or retailer.

15. Money-Back Undertakings

- 15.1 Neither guarantee or warranty, nor any word derived from either should be used in an advertisement to describe or refer to an undertaking, the substance of which is merely to refund the price of a product within a brief trial period to dissatisfied purchasers. Where such an undertaking is given in an advertisement the time within which claims must be made by the consumer should be clearly stated and should make due allowance for the time taken for delivery and return of the product.

16. Stridency

- 16.1 No advertisements should use disturbing or irritating sound effects where sound is incorporated.

17. Sensitivities

- 17.1 No advertisement should make any irrelevant references to any name, incident, concept or religious significance.
- 17.2 No advertisement should contain statements or suggestions which may offend the religious, political, sentimental or racial susceptibilities of any community.
- 17.3 No attempt should be made to exploit any abnormal national or international events or conditions.

18. Subliminal Advertising

- 18.1 No advertisements may include any technical device which, by using images of very brief duration or by any other means, exploits the possibilities of conveying a message to, or otherwise influencing the minds of members of an audience without their being aware, or fully aware, of what has been done.

19. Outdoor

- 19.1 Posters or billboards (except those under the auspices of government or other recognized bodies) are prohibited, if such posters and billboards:
- (i) depict murder, scenes of terror, horror or acts of violence;
 - (ii) are calculated to demoralize, or could be held to extenuate crime or incite its commission;
 - (iii) depict or refer to indecency, obscenity, nudity or striptease;
 - (iv) are likely, through wording, design or possible defacement, to offend the travelling public.

20. Identification of Advertisements

- 20.1 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 recognized as an advertisement.
- 20.2 There is an obligation on all concerned with the preparation and/or publication of an advertisement to ensure that anyone who looks at the advertisement is able to see, without looking at it closely, that it is an advertisement and not an editorial matter.
- 20.3 In the case of a single advertisement, the following guidelines should apply:
- (i) If the advertisement occupies less than half a page, it should be boxed- in completely; if half-page or more, it should be separated from any adjacent matter by a distinct border.
 - (ii) By-lines of staff journalists should not be used. It is, however, permissible to publish by-lines of experts and well-known public figures.
 - (iii) Particular care should be taken wherever the size and style of type in the advertisement is the same as, or closely resembles, that of the editorial matter.
- 20.4 Where paid-for space is in the style of an editorial, whether paid for by the same or different advertisers, particular care is needed to ensure that no part can be mistaken for editorial matter. The word **ADVERTISEMENT** should stand alone, at the head of the advertisement in such size and weight and type as to be easily seen.
- 20.5 As a general rule, where an advertisement or series of advertisements paid for by the same organization or by organizations under the same control extends over more than one page, the word **ADVERTISEMENT** should be printed at the head of each page in such a way that a reader cannot fail to see it. Similarly where a supplement is paid for wholly by an advertiser or advertisers, it should normally be headed in bold letters with the words **ADVERTISING FEATURE**, and carry the word(s) **ADVERTISEMENT** or **ADVERTISING FEATURE** at the head of each page.
- 20.6 No guidance can cover every case. It may not be enough merely to follow to the letter what is said above. It may also be necessary to re- look at each advertisement to ensure it is clearly distinguishable from the editorial content of the publication.

21. Switch Selling

- 21.1 Direct sale advertising is that placed by an advertiser with the intention that the products or services advertised, or some other products or services, should be sold or provided at the home of any person responding to the advertisement.
- 21.2 Direct sale advertisements are not acceptable without adequate assurances from the advertiser and his advertising agency that the products advertised will be available at the price stated in the advertisement within a reasonable time to be specified by the advertiser from stock sufficient to meet potential demand; and that sales representatives when calling upon persons responding to the advertisement will demonstrate and make available for sale the products advertised.
- 21.3 It will be taken as prima facie evidence of misleading and unacceptable bait advertising for the purpose of switch selling if an advertiser's salesman seriously disparages or belittles the cheaper article advertised or indicate unreasonable delays in obtaining delivery or otherwise places difficulties in the way of its purchase.²⁰ Unsolicited Home Visits
- 21.1 Where it is the intention of an advertiser to send a representative to call on respondents to his advertisement such fact must be apparent from the advertisement or from any particulars subsequently supplied; and the respondent must be given an adequate opportunity to refuse any such call.

22. Inertia Selling

- 22.1 If it is established that an advertiser is using his advertisements as a means to supply unsolicited goods, for which payment is later, demanded, his advertisement should no longer be accepted.

23. Non-Availability of Advertised Products

- 23.1 Advertisements should not be submitted for publication unless the advertiser has reasonable grounds to believe that he can supply any demand likely to be created by his advertising.
- 23.2 In particular, no attempt should be made to use the advertising of unavailable or non-existent products as a means of assessing likely public demand, should such a product be offered in the future.
- 23.3 Where it becomes clear that an advertised product is not available, (in circumstances where the public are not likely to assume from advertising its ready availability) immediate action should be taken to ensure that future advertisements for the product are promptly amended or withdrawn.