

ICC ADVERTISING AND MARKETING COMMUNICATIONS CODE

Building
consumer trust
through responsible
marketing

Preface

The International Chamber of Commerce (ICC) is uniquely positioned to provide insightful guidance on marketing and advertising around the globe. As the world business organization, whose membership is composed of thousands of enterprises from all sectors and regions, ICC has been a major rule-setter in marketing and advertising since 1937 when it issued the first ICC Code on Advertising Practice.

Over the years, the ICC Code has served as the inspiration of self-regulatory codes and building block for self-regulatory structures around the world. These self-regulatory systems have built trust with consumers by assuring them of advertising that is honest, legal, decent and truthful as well as quick and easy redress when transgressions occur.

The Code also has served business and society by providing ethical guidelines that create a level playing field and minimise the need for legislative or regulatory restrictions. As new practices and technologies have evolved, ICC has revised and extended the scope of the Code to assure its usefulness and relevance. This revision is in line with changes in behaviour resulting from the ongoing digital revolution and sets a gold standard for modern rule-making.

We believe this 2018 edition of the ICC Advertising and Marketing Communications Code will continue to build trust with consumers and acceptance for the role of self-regulation around the world.

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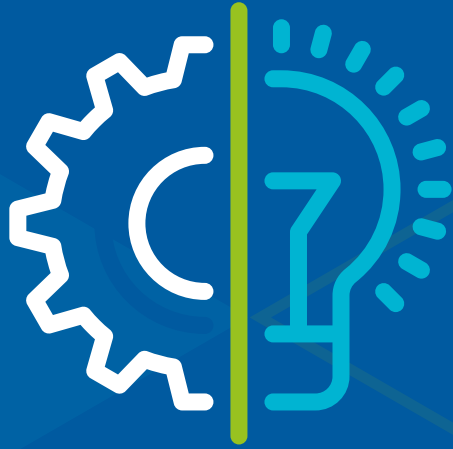
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INTRODUCTION

Responsible advertising and marketing communications

Advertising and other forms of marketing communications are vital means of communicating between marketers and customers. They help to create efficient markets, both nationally and internationally, promote economic development, and bring significant benefits for both consumers and companies, as well as for society in general.

Responsible advertising and marketing communications, based on widely supported self-regulatory codes of conduct, are an expression of the business community's recognition of its social obligations. The fundamental value of self-regulation lies in its ability to create, enhance and preserve consumer trust and confidence in the business communities behind it, and thereby in the marketplace itself. Effective self-regulation is also an instrument for the protection of individual companies' goodwill and reputation.

The first ICC advertising code was issued in 1937 to provide a globally acceptable framework for responsible creativity and communication. The Code still remains today the global reference point for advertising and marketing communications standards. Independent systems of self-regulation have been successfully applying the ICC Code, which has been continually developed and refined in response to societal, technological and economic changes. The use of properly implemented advertising and marketing communications codes is acknowledged and accepted in all major markets as industry best practice and a recognized means of providing additional consumer protection. Self-regulation is a tried and tested system which has served responsible business well, for the benefit of consumers all over the world.

This Code reflects ICC strategic priorities around fostering growth, innovation, the digital economy, and sound governance. It specifically responds to the priority for promoting the rule of law and sound governance, notably by:

- ▶ shaping a predictable and clear international regulatory environment for companies to conduct business in a sustainable and responsible way
- ▶ developing voluntary rules and self-regulatory instruments to help companies meet their legal obligations and to promote good business practice
- ▶ contributing to building a coherent international regulatory framework for world business

10th Code Revision—significant changes

The rapid evolution of technology and technologically-enhanced marketing communications and techniques means that producing responsible marketing communications that are trusted in a digital world has never been more important for companies in preserving their 'license to operate'.

For this reason, the 10th revision addresses both the Code's usability and its applicability to technology enhanced marketing communications and techniques. It sets a gold standard for modern rule-making in our digital world.

Significant changes include:

- ▶ addressing in Chapter C direct marketing and digital marketing communications by combining previous code Chapters C and D
- ▶ clearer transparency and disclosure concerning commercial versus editorial and user-generated content
- ▶ clearer application to all mediums and platforms including social media, mobile, virtual and marketing communications using artificial intelligence

- ▶ applicability to other participants in the marketing eco-system, including market influencers, bloggers, vloggers, affiliate networks, data analytics and ad tech companies¹ as well as those responsible for preparing algorithms for marketing communications

The drafting of the Code has been informed by legal developments and major pieces of legislation around the world, such as in the area of consumer protection, privacy and fair competition. The Code is designed to establish a sound ethical framework to govern marketing practices worldwide based on twin goals of fostering consumer fairness and trust, and the freedom of commercial communications. For obvious practical reasons, the Code cannot reference those legal instruments that may be relevant in a given situation and jurisdiction.

Review

The ICC Marketing and Advertising Commission will continue to regularly review this Code to ensure it continues to remain relevant in a dynamic legal, social and technological environment.

The Code and the law

Codes of conduct and legislation pursue different objectives and may not share the same scope. There is, however, usually a fairly large interface and their respective fields of application may coincide to a larger or smaller extent. This Code sets standards of ethical conduct and hence cannot, and indeed should not, reflect specific legal requirements, nor is it intended as an instrument of law enforcement but rather a mark of professional diligence. However, the Code embraces the principle of legality in Article 1 of the Code in that all marketing communications should be legal, decent honest and truthful. It follows that it can never be in accordance with good business standards to break the law. But the fact that a communication is legal does not necessarily mean it is also ethically acceptable or appropriate. Therefore marketers and other parties need to make sure their marketing communications activities observe applicable laws and regulations in a market, as well as the relevant provisions of the Code.

Purpose of the Code

The ICC Code is intended primarily as an instrument of self-regulation for marketing communications; however, its provisions may also be useful for non-commercial forms of advertising and communication and it may be used by the Courts as a reference document within the framework of applicable legislation. ICC recommends its adoption and use worldwide.

The Code is intended to achieve the following objectives:

- ▶ to demonstrate responsibility and good practice in advertising and marketing communications across the world
- ▶ to enhance overall public confidence in marketing communications; to respect privacy and consumer preferences; to ensure special responsibility as regards marketing communications and children and teens
- ▶ to safeguard the freedom of expression of those engaged in marketing communications (as embodied in article 19 of the United Nations International Covenant of Civil and Political Rights)
- ▶ to provide effective practical and flexible solutions to consumer protection issues; to minimise the need for detailed governmental and/or inter-governmental legislation or regulations

¹ Ad tech companies provide i.a. technical tools and solutions for the delivery or placement of digital advertising.

Code Structure and interaction with related codes

The ICC Code is constructed as an integrated system of ethical rules. There are **General Provisions and Definitions** which apply without exception to all marketing communications; these should be read in conjunction with the more detailed provisions and specific requirements set out in the relevant chapters:

- ▶ Chapter A—Sales Promotion
- ▶ Chapter B—Sponsorship
- ▶ Chapter C—Direct Marketing and Digital Marketing Communications
- ▶ Chapter D—Environmental Claims in Marketing Communications

The Code should also be read in conjunction with other current ICC codes, principles and framework interpretations in the area of marketing and advertising:

- ▶ ICC International Code of Direct Selling
- ▶ ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics
- ▶ ICC Principles on Responsible Deployment of Electronic Product Codes
- ▶ ICC Framework for Responsible Food and Beverage Communications
- ▶ ICC Framework for Responsible Environmental Marketing Communications
- ▶ ICC Framework for Responsible Marketing Communications of Alcohol

ICC Marketing Code—www.iccwbo.org/MarketingCode

ICC's Marketing Code webpage provides the latest texts of this and other ICC marketing codes and framework guidance. This gives quick access to all relevant Code provisions with regard to a specific subject or issue. It also provides relevant ICC statements or guidance issued with regard to the interpretation of the Code e.g. on native advertising and on children. The web page includes official locally translated versions of the Code, additional tools and resources, and access to an online training course.

Scope and application

This tenth edition of the Code covers all marketing communications, regardless of form, format or medium. Marketing communications are to be understood in a broad sense (see definitions) but obviously do not extend indiscriminately to every type of corporate communication. For instance, the Code may not apply to corporate public affairs messages in press releases and other media statements, or to information in annual reports and the like, or information required to be included on product labels. Likewise, statements on matters of public policy fall outside the scope of this code. Corporate Social Responsibility (CSR) programmes as such are not covered by the Code; however, when a CSR statement appears as a claim in a marketing communication, the Code is applicable. The Code also applies to marketing communication elements of a CSR programme, for example where a sponsorship is included in such a programme. Finally, communications whose primary purpose is entertaining or educational and not commercial, like the content of television programmes, films, books, magazines or video games, are not intended to be covered by this code.

The Code's standards of ethical conduct should be observed by everyone concerned with marketing communications. Responsibility for the observance of the rules of conduct laid down in the Code rests with the marketer whose products are the subject of the marketing communications, with the communications practitioner or agency, and with the publisher, media owner or contractor. The responsibility to observe the Code also applies to other participants in the marketing eco-system. See Article 23.

Implementation of the Code will vary depending on individual circumstances: it may be applied by self-regulatory organisations set up for the purpose, as well as by individual companies, agencies, media, etc.

The Code is to be applied against the background of whatever legislation may be applicable.

Cross-border communications—origin and jurisdiction

Before engaging in cross-border marketing communications, marketers need to consider what rules would be applicable. There are basically two principles: either the rules of the country from where the message or activity originates apply, or those of the country (or countries) receiving it. As a matter of policy ICC favours the principle of origin in the field of marketing communications, and recommends it for the application of self-regulatory rules. However, the question of jurisdiction, i.e. what country (state or region) would have legal authority and what national laws would be applicable in a given case, is de facto a complicated matter. Marketers are therefore urged to assess the legal situation regarding where they target their marketing communications, and to familiarize themselves with the rules and regulations of the various relevant jurisdictions.

When applied in different countries or specific markets, ICC global codes enhance harmonization and coherence, yet they are flexible enough to accommodate variations in culture and societal rules and norms. Legislation and regulation are not always consistent across borders, and in such cases marketers are expected to adhere to local rules.

Interpretation

The ICC Code is to be interpreted in the spirit as well as to the letter. It applies to marketing communications in their entirety, including all words and numbers (spoken and written), visual treatments, music and sound effects, and material originating from other sources. Because of the different characteristics of the various media, e.g. press, television, radio and other broadcast media, outdoor advertising, films, digital interactive media, social media, direct mail, electronic messaging, telephone, etc., marketing communications which are acceptable for one medium may not necessarily be acceptable for another. Communications should be judged by their likely impact on the reasonable consumer, having regard to the characteristics of the targeted group and the medium used.

This means that marketing communications should be assessed having regard to the knowledge, experience and discriminatory ability of the typical consumer to whom it is directed, as well as social, cultural and linguistic factors. For example, when judging communications addressed to children, their natural credulity and inexperience should always be taken into account. Consumers in general are assumed to have a reasonable degree of experience, knowledge and sound judgment, and to be reasonably observant and prudent. Professional or otherwise qualified groups are presumed to have an appropriate level of specialised knowledge and expertise in their field of operations.



I.
**GENERAL
PROVISIONS AND
DEFINITIONS ON
ADVERTISING AND
MARKETING
COMMUNICATIONS**

Definitions

The following general definitions apply throughout the Code. Terminology relating to a specific chapter or subsection is defined in that chapter or sub-section.

For the purposes of this Code, the term:

- ▶ **“advertising”** or **“advertisement”** means any form of marketing communications carried by the media, usually in return for payment or other valuable consideration
- ▶ **“children”** refers to consumers aged 12 years and under²
- ▶ **“consumer”** means any person who can reasonably be expected to be affected by marketing communications, whether as an individual or as a trade customer or user
- ▶ **“digital interactive media”** refers to the full range of media, platforms and tracking technologies, including mobile, video, addressable TV, social media, Internet of Things (IoT), wearables, and cross-device tracking, and associated algorithms
- ▶ **“marketing communications”** includes advertising as well as other techniques, such as promotions, sponsorships as well as direct marketing and digital marketing communications, and should be interpreted broadly to mean any communications produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour
- ▶ **“mobile”** refers to mobile phones and wireless devices (such as, but not limited to, portable game consoles, tablets, wrist watches, etc.) which a user can call from and interact with, which require a subscriber identity module card or personal identifier for the user
- ▶ **“marketer”** refers to persons or companies, including advertisers, sales promoters and direct marketers, who or on whose behalf marketing communications are published or disseminated for the purpose of promoting their products or influencing consumer behaviour
- ▶ **“offer”** means any presentation or solicitation for the sale or purchase of products
- ▶ **“personal data”** means any information relating to an identifiable individual and does not include anonymized or pseudonymized information
- ▶ **“preference service”** (“Robinson List”) means the administration and operation of a suppression file of consumers who have registered a wish not to receive unsolicited direct and digital marketing communications using a specific medium, against which marketing lists are matched
- ▶ **“product”** refers to anything that constitutes the subject of an advertisement; this usually means physical products (goods) or services, but is not restrictive: where appropriate the Code may be applied more widely, e.g. to concepts
- ▶ **“research”** which includes all forms of market, opinion and social research and data analytics, is the systematic gathering and interpretation of information about individuals and organisations. It uses the statistical and analytical methods and techniques of the applied social, behavioural and data sciences to generate insights and support decision-making by providers of goods and services, governments, non-profit organisations and the general public³
- ▶ **“teens”** means those individuals aged 13–17 years

2 ICC toolkit: Marketing and Advertising to Children provides more details regarding research on age 12 as a reference age for the application of rules on marketing, advertising and data collection involving children. Local laws may define “children” differently.

3 ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics

ARTICLE 1—BASIC PRINCIPLES

All marketing communications should be legal, decent, honest and truthful.

All marketing communications should be prepared with a due sense of social and professional responsibility and should conform to the principles of fair competition, as generally accepted in business.

No communication should be such as to impair public confidence in marketing.

ARTICLE 2—SOCIAL RESPONSIBILITY

Marketing communications 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.

Marketing communications should not without justifiable reason play on fear or exploit misfortune or suffering.

Marketing communications should not appear to condone or incite violent, unlawful or anti-social behaviour.

Marketing communications should not play on superstition.

ARTICLE 3—DECENCY

Marketing communications should not contain statements or audio or visual treatments which offend standards of decency currently prevailing in the country and culture concerned.

ARTICLE 4—HONESTY

Marketing communications should be so framed as not to abuse the trust of consumers or exploit their lack of experience or knowledge.

Relevant factors likely to affect consumers' decisions should be communicated in such a way and at such a time that consumers can take them into account.

ARTICLE 5—TRUTHFULNESS

Marketing communications should be truthful and not misleading.

Marketing communications should not contain any statement, claim or audio or visual treatment which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead the consumer, in particular, but not exclusively, with regard to:

- ▶ characteristics of the product which are material, i.e. likely to influence the consumer's choice, such as: nature, composition, method and date of manufacture, range of use, efficiency and performance, quantity, commercial or geographical origin or environmental impact
- ▶ the value of the product and the total price to be paid by the consumer
- ▶ terms for the delivery, provision, exchange, return, repair and maintenance
- ▶ terms of guarantee

- ▶ copyright and industrial property rights such as patents, trade-marks, designs and models and trade names
- ▶ compliance with standards
- ▶ official recognition or approval, awards such as medals, prizes and diplomas
- ▶ the extent of benefits for charitable causes

ARTICLE 6—SUBSTANTIATION

Descriptions, claims or illustrations relating to verifiable facts in marketing communications should be capable of substantiation. Claims that state or imply that a particular level or type of substantiation exists must have at least the level of substantiation advertised. Substantiation should be available so that evidence can be produced without delay and upon request to the self-regulatory organisations responsible for the implementation of the Code.

ARTICLE 7—IDENTIFICATION AND TRANSPARENCY

Marketing communications should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement, including so-called “native advertising”, appears in a medium containing news or editorial matter, it should be so presented that it is readily recognisable as an advertisement and where appropriate, labelled as such.

The true commercial purpose of marketing communications should be transparent and not misrepresent their true commercial purpose. Hence, a communication promoting the sale of a product should not be disguised as, for example, market research, consumer surveys, user-generated content, private blogs, private postings on social media or independent reviews.

ARTICLE 8—IDENTITY OF THE MARKETER

The identity of the marketer should be transparent. Marketing communications should, where appropriate, include contact information to enable the consumer to get in touch with the marketer without difficulty.

The above does not apply to communications with the sole purpose of attracting attention to communication activities to follow (e.g. so-called “teaser advertisements”).

ARTICLE 9—USE OF TECHNICAL/SCIENTIFIC DATA AND TERMINOLOGY

Marketing communications should not:

- ▶ misuse technical data, e.g. research results or quotations from technical and scientific publications
- ▶ present statistics in such a way as to exaggerate the validity of a product claim
- ▶ use scientific terminology or vocabulary in such a way as falsely to suggest that a product claim has scientific validity

ARTICLE 10—USE OF “FREE” AND “GUARANTEE”

The term “free”, e.g. “free gift” or “free offer”, should be used only:

- ▶ where the offer involves no obligation whatsoever, or
- ▶ where the only obligation is to pay the delivery costs which should not exceed the cost estimated to be incurred by the marketer, or
- ▶ in conjunction with the purchase of another product, provided the price of that product has not been increased to cover all or part of the cost of the offer

Where free trial, free subscription and similar offers convert to paid transactions at the end of the free period, the terms and conditions of the paid conversion should be clearly, prominently and unambiguously disclosed before the consumer accepts the offer. Likewise, where a product is to be returned by the consumer at the end of the free period it should be made clear at the outset who will bear the cost for that. The procedure for returning the product should be as simple as possible, and any time limit should be clearly disclosed. See also Article C12 Right of withdrawal.

Marketing communications should not state or imply that a “guarantee”, “warranty” or other expression having substantially the same meaning, offers the consumer rights additional to those provided by law when it does not. The terms of any guarantee or warranty, including the name and address of the guarantor, should be easily available to the consumer and limitations on consumer rights or remedies, where permitted by law, should be clear and conspicuous.

ARTICLE 11—COMPARISONS

Marketing communications containing comparisons should be so designed that the comparison is not likely to mislead, and should comply with the principles of fair competition. Points of comparison should be based on facts which can be substantiated and should not be unfairly selected.

ARTICLE 12—DENIGRATION

Marketing communications should not denigrate any person or group of persons, firm, organisation, industrial or commercial activity, profession or product, or seek to bring it or them into public contempt or ridicule.

ARTICLE 13—TESTIMONIALS

Marketing communications should not contain or refer to any testimonial, endorsement or supportive documentation unless it is genuine, verifiable and relevant. Testimonials or endorsements which have become obsolete or misleading through passage of time should not be used. The sponsored nature of an endorsement or testimonial should be made clear through an appropriate disclosure if the form and format of the communication would not otherwise be understood to constitute a sponsored message.

ARTICLE 14—PORTRAYAL OR IMITATION OF PERSONS AND REFERENCES TO PERSONAL PROPERTY

Marketing communications should not portray or refer to any persons, whether in a private or a public capacity, unless prior permission has been obtained; nor should marketing communications without prior permission depict or refer to any person’s property in a way likely to convey the impression of a personal endorsement of the product or organisation involved.

ARTICLE 15—EXPLOITATION OF GOODWILL

Marketing communications should not make unjustifiable use of the name, initials, logo and/or trademarks of another firm, company or institution. Marketing communications should not in any way take undue advantage of another firm's, individual's or institution's goodwill in its name, brands or other intellectual property, or take advantage of the goodwill earned by other marketing campaigns without prior consent.

ARTICLE 16—IMITATION

Marketing communications should not imitate those of another marketer in any way likely to mislead or confuse the consumer, for example through the general layout, text, slogan, visual treatment, music or sound effects.

Where a marketer has established a distinctive marketing communications campaign in one or more countries, other marketers should not imitate that campaign in other countries where the marketer who originated the campaign may operate, thereby preventing the extension of the campaign to those countries within a reasonable period of time.

ARTICLE 17—SAFETY AND HEALTH

Marketing communications should not, without justification on educational or social grounds, contain any visual portrayal or any description of potentially dangerous practices, or situations which show a disregard for safety or health, as defined by local national standards. Instructions for use should include appropriate safety warnings and, where necessary, disclaimers. Children should be shown to be under adult supervision whenever a product or an activity involves a safety risk.

Information provided with the product should include proper directions for use and full instructions covering health and safety aspects whenever necessary. Such health and safety warnings should be made clear by the use of pictures, sound, text or a combination of these.

ARTICLE 18—CHILDREN AND TEENS

18.1 General Principles

Special care should be taken in marketing communications directed to or featuring children or teens.

- ▶ Such communications should not undermine positive social behaviour, lifestyles and attitudes.
- ▶ Products which are illegal for children or teens to purchase or are unsuitable for them should not be advertised in media targeted to them.
- ▶ Marketing communications directed to children or teens should not be inserted in media where the editorial matter is unsuitable for them.

For rules on data protection relating specifically to children's personal data see article 19.

For other specific rules on marketing communications with regard to children:

- ▶ with respect to direct marketing and digital marketing communications see chapter C, article C7
- ▶ within the context of food and non-alcoholic beverages see the ICC Framework for responsible food and beverage marketing communications

18.2 Inexperience and credulity of children

Marketing communications should not exploit inexperience or credulity of children, with particular regard to the following areas:

1. When demonstrating a product's performance and use, marketing communications should not
 - a. minimise the degree of skill or understate the age level generally required for a child to assemble or operate products
 - b. exaggerate the true size, value, nature, durability and performance of the product
 - c. fail to disclose data about the need for additional purchases, such as accessories, or individual items in a collection or series, required to produce the result shown or described
2. While the use of fantasy is appropriate for younger as well as older children, it should not make it difficult for them to distinguish between reality and fantasy.
3. Marketing communications directed to children should be clearly distinguishable to them as such.

18.3 Avoidance of harm

Marketing communications should not contain any statement or visual treatment that could have the effect of harming children or teens mentally, morally or physically. Children and teens should not be portrayed in unsafe situations or engaging in actions harmful to themselves or others, or be encouraged to engage in potentially hazardous activities or inappropriate behaviour in light of the expected physical and mental capabilities of the target demographic.

18.4 Social values

Marketing communications should not suggest that possession or use of the promoted product will give a child or teen physical, psychological or social advantages over other children or teens, or that not possessing the product will have the opposite effect.

Marketing communications should not undermine the authority, responsibility, judgment or tastes of parents, having regard to relevant social and cultural values.

Marketing communications should not include any direct appeal to children to persuade their parents or other adults to buy products for them.

Prices should not be presented in such a way as to lead children to an unrealistic perception of the cost or value of the product, for example by minimising them. Marketing communications should not imply that the product being promoted is immediately within the reach of every family budget.

Marketing communications which invite children and teens to contact the marketer should encourage them to obtain the permission of a parent or other appropriate adult if any cost, including that of a communication, is involved.

ARTICLE 19—DATA PROTECTION AND PRIVACY

When collecting personal data from individuals, care should be taken to respect and protect their privacy by complying with relevant rules and regulations.

19.1 Collection of data and notice

When personal data is collected from consumers, it is essential to ensure that the individuals concerned are aware of the purpose of the collection and of any intention to transfer the data to a third party for that third party's marketing purposes. Third parties do not include agents or others who provide technical

or operational support to the marketer and who do not use or disclose personal data for any other purpose. It is best to inform the individual at the time of collection; when it is not possible to do so this should be done as soon as possible thereafter.

19.2 Use of data

Personal data should be:

- ▶ collected for specified and legitimate purposes and used only for the purposes specified or other uses compatible with those purposes
- ▶ adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed
- ▶ accurate and kept up to date
- ▶ preserved for no longer than is required for the purpose for which the data were collected or further processed

19.3 Security of processing

Adequate security measures should be in place, having regard to the sensitivity of the data, in order to prevent unauthorised access to, or disclosure of, the personal data.

If the data is transferred to third parties, it should be established that they employ at least an equivalent level of security measures.

19.4 Children's personal data

- ▶ When personal data is collected from individuals known or reasonably believed to be children, guidance should be provided to parents or legal guardians about protecting children's privacy if feasible.
- ▶ Children should be encouraged to obtain a parent's or responsible adult's consent before providing personal data via digital interactive media, and reasonable steps should be taken to check that such permission has been given.
- ▶ Only as much personal data should be collected as is necessary to enable the child to engage in the featured activity. A parent or legal guardian should be notified and consent obtained where required.
- ▶ Personal data collected from children should not be used to address marketing communications to them, the children's parents or other family members without the consent of the parent.
- ▶ Personal data about individuals known or reasonably believed to be children should only be disclosed to third parties after obtaining consent from a parent or legal guardian or where disclosure is authorised by law. Third parties do not include agents or others who provide technical or operational support to the marketer and who do not use or disclose children's personal data for any other purpose.
- ▶ For additional rules specific to marketing communications to children using digital interactive media, see chapter C, article C7.

19.5 Privacy policy

Those who collect personal data in connection with marketing communication activities should have a privacy policy, the terms of which should be readily available to consumers, and should provide a clear statement of any collection or processing of data that is taking place, whether it is self-evident or not.

In jurisdictions where no privacy legislation currently exists, it is recommended that privacy principles such as those of the ICC Privacy Toolkit⁴ are adopted and implemented.

19.6 Rights of the consumer

Appropriate measures should be taken to ensure that consumers understand their rights to, e.g.:

- ▶ opt out of direct marketing lists
- ▶ opt out of interest-based advertising
- ▶ sign on to general direct preference services
- ▶ require that their personal data not be made available to third parties for their marketing purposes; and
- ▶ rectify incorrect personal data which are held about them

Where a consumer has clearly expressed a wish not to receive marketing communications using a specific medium, this wish should be respected. Appropriate measures should be put in place to help consumers understand that access to content may be made conditional on the use of data. For additional rules specific to the use of the digital interactive media and consumer rights, see chapter C, article C9.

19.7 Cross-border transactions

Particular care should be taken to maintain the data protection rights of the consumer when personal data are transferred from the country in which they are collected to another country.

When data processing is conducted in another country, reasonable steps should be taken to ensure that adequate security measures are in place and that the data protection principles set out in this code are respected. The use of the ICC model clauses covering agreements between the originator of the marketing list and the processor or user in another country is recommended.

ARTICLE 20—TRANSPARENCY ON COST OF COMMUNICATION

Where the cost to consumers of accessing a message or communicating with the marketer is higher than the standard cost of that mode of communications, e.g. “premium rate” for an online message, connection or telephone number, this cost should be made clear to consumers, expressed either as “cost per minute,” “cost per message,” “message or data rates may apply,” or other similar means likely to be understood by the consumer. When this information is provided on-line, consumers should be clearly informed of applicable charges at the time when they are about to access the message or online service, and be allowed a reasonable period of time to disconnect without incurring the charge.

Where a communication involves such a cost, the consumer should not be kept waiting for an unreasonably long time in order to achieve the purpose of the communication and calls should not be charged until the consumer can begin to fulfill that purpose.

ARTICLE 21—UNSOLICITED PRODUCTS AND UNDISCLOSED COSTS

Marketing communications associated with the practice of sending unsolicited products to consumers who are then asked for payment (inertia selling), including statements or suggestions that recipients are required to accept and pay for such products, should not be used.

Marketing communications which solicit a response constituting an order for which payment will be required (e.g. an entry in a publication) should make this unambiguously clear.

4 Available from www.iccwbo.org

Marketing communications soliciting orders should not be presented in a form which might be mistaken for an invoice, or otherwise falsely suggest that payment is due.

For specific rules on respecting consumers' wishes, see chapter C, article C8.

ARTICLE 22—ENVIRONMENTAL BEHAVIOUR

Marketing communications should not appear to condone or encourage actions which contravene the law, self-regulatory codes or generally accepted standards of environmentally responsible behaviour. They should respect the principles set out in chapter D, Environmental Claims in Marketing Communications.

ARTICLE 23—RESPONSIBILITY

These general rules on responsibility are technology neutral and apply to all forms of marketing communications. Rules on responsibility with special relevance to certain activities or media can be found in the chapters devoted to those activities and media.

Marketers have overall responsibility for the marketing communications of their products.

The responsibility to observe the Code also applies to other participants in the marketing eco-system, including market influencers, bloggers, vloggers, affiliate networks, data analytics and ad tech companies as well as those responsible for preparing algorithms and the use of artificial intelligence for marketing communications purposes.

Agencies or other practitioners should exercise due care and diligence in the preparation of marketing communications and should operate in such a way as to enable marketers to fulfill their responsibilities.

Publishers, media owners, contractors or other parties, who publish, transmit, deliver or distribute marketing communications, should exercise due care in the acceptance of them and their presentation to the public.

Individuals employed by any firm, company or institution falling into any of the above categories and who take part in the planning, creation, publication or transmission of a marketing communication are responsible, to an extent commensurate with their respective activities, for ensuring that the rules of the Code are observed and should act accordingly.

Whatever the nature of the activity, medium or technology, responsibility is shared by all parties concerned, commensurate with their respective role in the process and within the limits of their respective functions.

The Code applies to the marketing communication in its entire content and form, including testimonials and statements, and audio or visual material originating from other sources. The fact that the content or form of a marketing communication may originate wholly or in part from other sources does not justify non-observance of the Code rules.

ARTICLE 24—EFFECT OF SUBSEQUENT REDRESS FOR CONTRAVENTION

Subsequent correction and/or appropriate redress for a contravention of the Code, by the party responsible, is desirable but does not excuse the contravention.

ARTICLE 25—IMPLEMENTATION

The Code and the principles enshrined in it should be adopted and implemented, nationally and internationally, by the relevant local, national or regional self-regulatory bodies. The Code should also be applied, where appropriate, by all organisations, companies and individuals involved at all stages in the marketing communication process.

Communications practitioners or advertising agencies, publishers, media-owners, contractors and other participants in the marketing eco-system, such as market influencers, bloggers, vloggers, affiliate networks, data analytics and ad tech companies as well as those responsible for preparing algorithms for marketing communications should be familiar with the Code and with other relevant local self-regulatory guidelines on advertising and other marketing communications, and should familiarise themselves with decisions taken by the appropriate self-regulatory body. They should ensure an appropriate means exists for consumers to make a complaint and that consumers can readily be aware of it and use it easily.

Further details regarding implementation of the Code by companies and other bodies can be found in the Implementation Guide for the ICC Marketing Codes⁵.

The ICC Code and its principles are generally reflected in the advertising and marketing communications codes of self-regulatory organisations across the world. Complaints under these codes should be made to the relevant self-regulatory organisations.

The ICC regularly reviews the interpretation of the ICC Code and principles with regard to specific techniques, technologies or products and issues, where appropriate, interpretive statements, guidance or frameworks.

Requests for interpretation of the principles contained in this Code may be submitted under specific circumstances to the ICC Commission on Marketing and Advertising⁶.

ARTICLE 26—RESPECT FOR SELF-REGULATORY DECISIONS

No marketer, communications practitioner or advertising agency, publisher, media owner or contractor should be party to the publication or distribution of an advertisement or other marketing communication which has been found unacceptable by the relevant self-regulatory body.

All parties are encouraged to include in their contracts and other agreements pertaining to advertising and other marketing communication, a statement committing the signatories to adhere to the applicable self-regulatory rules and to respect decisions and rulings made by the appropriate self-regulatory body and support its operation.

Where no effective self-regulatory codes and arrangements are in place in a particular country, all parties are encouraged to include in their contracts and other agreements pertaining to advertising and marketing communication a statement committing the signatories to respect the current ICC Code.

5 Annex II: Implementation Guide for the ICC Marketing Codes

6 Annex I: Terms of Reference



II. DETAILED CHAPTERS



CHAPTER A: SALES PROMOTION

This chapter is to be read in conjunction with the General Provisions and Definitions on Advertising and Marketing Communications and the Introduction regarding interpretation, application, jurisdiction and relationship with the law.

Scope of chapter A

This chapter applies to marketing devices and techniques which are used to make products more attractive by providing some promotional item, whether in cash or in kind, or the expectation of such a benefit. The chapter applies irrespective of the form of distribution or of media, including digital (e.g. websites) and audiovisual media. It also applies to sales and trade incentive promotions, to editorial promotional offers and to those made by audiovisual media.

Promotions are usually temporary activities, but the chapter applies also to the long-term and permanent use of promotional techniques.

The chapter covers all forms of sales promotion, including:

- ▶ premium offers of all kinds
- ▶ reduced price and free offers
- ▶ the distribution of stamps, coupons, vouchers and samples
- ▶ charity-linked promotions
- ▶ prize promotions of all kinds, including incentive programmes
- ▶ promotional elements used in connection with other marketing communications, such as direct marketing or sponsorships

The chapter does not cover the routine distribution of product supplements or accessories of a non-promotional nature.

Terms specific to sales promotion

The following definitions relate specifically to this chapter and should be read in conjunction with the general definitions contained in the General Provisions:

- ▶ The term “**promotional item**” refers to any goods or services (or combination thereof) offered for a promotional purpose.
- ▶ The term “**consumer**” refers to any person, company or organisation to whom any sales promotion is directed or who receives a benefit from it, either financially or in kind.
- ▶ The term “**prize promotion**” refers to any skill contest or prize draw used in conjunction with a sales promotion activity.

- ▶ The term “**intermediary**” refers to any person, company or organisation, other than the promoter, engaged in the implementation of any form of sales promotion.
- ▶ The term “**main product**” refers to the goods or services (or combination thereof) being promoted.
- ▶ The term “**promoter**” refers to any person, company or organisation by whom or on whose behalf a promotion is initiated.

Depending on the circumstances, any producer, wholesaler, retailer or other person in the marketing process may be a promoter, intermediary and/or consumer for the purposes of a particular sales promotion.

ARTICLE A1—PRINCIPLES GOVERNING SALES PROMOTIONS

- ▶ All sales promotions should deal fairly and honourably with consumers.
- ▶ All sales promotions should be so designed and conducted as to meet reasonable consumer expectation associated with the advertising or promotion thereof.
- ▶ The administration of sales promotions and the fulfilment of any obligation arising from them should be prompt and efficient.
- ▶ The terms and conduct of all sales promotions should be transparent to all participants.
- ▶ All sales promotions should be framed in a way which is fair to competitors and other traders in the market.
- ▶ No promoters, intermediaries or others involved should do anything likely to bring sales promotions into disrepute.

ARTICLE A2—TERMS OF THE OFFER

Sales promotions should be so devised as to enable the consumer to identify the terms of the offer easily and clearly, including any limitations. Care should be taken not to exaggerate the value of the promotional item or to obscure or conceal the price of the main product.

ARTICLE A3—PRESENTATION

A sales promotion should not be presented in a way likely to mislead those to whom it is addressed about its value, nature or the means of participation. Any marketing communication regarding the sales promotion, including activities at the point of sale, should be in strict accordance with the General Provisions of the Code.

ARTICLE A4—ADMINISTRATION OF PROMOTIONS

Sales promotions should be administered with adequate resources and supervision, anticipated to be required, including appropriate precautions to ensure that the administration of the offer meets the consumers’ reasonable expectations.

In particular:

- ▶ The availability of promotional items should be sufficient to meet anticipated demand consistent with the express terms of the offer. If delay is unavoidable, consumers should be advised promptly and necessary steps taken to adjust the promotion of the offer. Promoters should be able to demonstrate that they have made, before the event, a reasonable estimate of the likely response. Where a purchase or a series of

purchases are a precondition for obtaining the promotional item, promoters should ensure promotional items are sufficiently available to match the number of purchases being made.

- ▶ Defective goods or inadequate services should be replaced, or appropriate financial compensation given. Any costs reasonably incurred by consumers as a direct result of any such shortcoming should be reimbursed immediately on request.
- ▶ Complaints should be efficiently and properly handled.

ARTICLE A5—SAFETY AND SUITABILITY

Care should be taken to ensure that promotional items, provided they are properly used, do not expose consumers, intermediaries, or any other persons or their property to any harm or danger.

Promoters should ensure that their promotional activities are consistent with the principles of social responsibilities contained in the General Provisions, and in particular take reasonable steps to prevent unsuitable or inappropriate materials from reaching children.

ARTICLE A6—PRESENTATION TO CONSUMERS

Complex rules should be avoided. Rules should be drawn up in language that consumers can easily understand. The chances of winning prizes should not be overstated.

Information requirements

Sales promotions should be presented in such a way as to ensure that consumers are made aware, before making a purchase, of conditions likely to affect their decision to purchase.

Information should include, where relevant:

- ▶ clear instructions on the method of obtaining or participating in the promotional offer, e.g. conditions for obtaining promotional items, including any liability for costs, or taking part in prize promotions
- ▶ main characteristics of the promotional items offered
- ▶ any time limit on taking advantage of the promotional offer
- ▶ any restrictions on participation (e.g. geographical or age-related), availability of promotional items, or any other limitations on stocks. In the case of limited availability, consumers should be properly informed of any arrangements for substituting alternative items or refunding money
- ▶ the value of any voucher or stamp offered where a monetary alternative is available
- ▶ any expenditure involved, including costs of shipping and handling and terms of payment
- ▶ the full name and address of the promoter and an address to which complaints can be directed (if different from the address of the promoter)

Promotions claiming to support a charitable cause should not exaggerate the contribution derived from the campaign; before purchasing the promoted product consumers should be informed of how much of the price will be set aside for the cause.

Information in prize promotions

Where a sales promotion includes a prize promotion, the following information should be given to consumers, or at least made available on request, prior to participation and not conditional on purchasing the main product:

- ▶ any rules governing eligibility to participate in the prize promotion
- ▶ any costs associated with participation, other than for communication at or below standard rate (mail, telephone and other devices)
- ▶ any restriction on the number of entries
- ▶ the number, value and nature of prizes to be awarded and whether a cash alternative may be substituted for a prize
- ▶ in the case of a skill contest, the nature of the contest and the criteria for judging the entries
- ▶ the selection procedure for the award of prizes
- ▶ the closing date of the competition
- ▶ when and how the results will be made available
- ▶ whether the consumer may be liable to pay tax as a result of winning a prize
- ▶ the time period during which prizes may be collected
- ▶ where a jury is involved, the composition of the jury
- ▶ any intention to use winners or winning contributions in post-event activities and the terms on which these contributions may be used

ARTICLE A7—PRESENTATION TO INTERMEDIARIES

Information for intermediaries

Sales promotions should be so presented to intermediaries that they are able to evaluate the services and commitments required of them. In particular, there should be adequate details as to:

- ▶ the organisation and scope of the promotion, including the timing and any time limit
- ▶ the ways in which the promotion will be presented to the trade and to the public
- ▶ the conditions for participation
- ▶ the financial implications for intermediaries
- ▶ any special administrative task required of intermediaries

Information on outer packing

Where appropriate, relevant information for intermediaries, such as any closing date or time-limit, should appear on the outer packing of products bearing promotional offers, so that the intermediary is able to carry out the necessary stock control.

ARTICLE A8—PARTICULAR OBLIGATIONS OF PROMOTERS

Interests of intermediaries

Sales promotions should be devised and administered with due regard to the legitimate interests of intermediaries and should respect their freedom of decision.

Interests of employees, employers and consumer relations

The terms of sales promotions should be so designed as to respect the bond of loyalty between employees and their employers.

Promotion and incentive schemes should be designed and implemented to take account of the interests of everyone involved and should not conflict with the duty of employees to their employer or their obligation to give honest advice to consumers.

Rights of intermediaries' employees

The prior agreement of the intermediary or his/her responsible manager should always be sought if the proposed promotion involves:

- ▶ inviting the employees of the intermediary to assist in any promotional activity
- ▶ offering any inducement or reward, financial or otherwise, to such employees for their assistance or for any sales achievements in connection with any sales promotion

In the case of an offer addressed openly through public media, for which such prior permission cannot be obtained, it should be made clear that employees must obtain their employer's permission before participating.

Timely delivery of goods and materials to intermediaries

All goods, including promotional items and other relevant material, should be delivered to the intermediary within a period which is reasonable in terms of any time limitation on the promotional offer.

Contractual relationships between intermediaries and consumers

Sales promotions involving active co-operation by the intermediary or his/her employees should be so devised as not to prejudice any contractual relationship which may exist between the intermediary and the consumers.

ARTICLE A9—PARTICULAR OBLIGATIONS OF INTERMEDIARIES

Honesty

Sales promotions which have been accepted by the intermediary should be fairly and honestly handled, and properly administered by him/her and his/her employees.

Misrepresentation

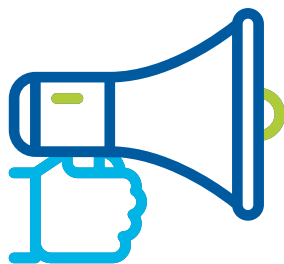
Sales promotions involving any specific responsibility on the part of the intermediary should be so handled by him/her that no misinterpretation is likely to arise as to the terms, value, limitations or availability of the offer.

In particular, the intermediary should adhere to the plan and conditions of the promotion as laid down by the promoter. No changes to the agreed arrangements, e.g. alteration of the time-limit, should be made by the intermediary without the prior agreement of the promoter.

ARTICLE A10—RESPONSIBILITY

The onus for observing the Code falls on the promoter, who has the ultimate responsibility for all aspects of sales promotions, whatever their kind or content.

Anyone taking part in the planning, creation or execution of any sales promotion has responsibility, as defined in article 23 of the General Provisions, for ensuring the observance of the Code towards intermediaries, consumers, and other parties affected or likely to be affected by the promotion.



CHAPTER B: SPONSORSHIP

This chapter is to be read in conjunction with the General Provisions and Definitions on Advertising and Marketing Communications and the Introduction regarding interpretation, application, jurisdiction and relationship with the law.

Scope of chapter B

This chapter applies to all forms of sponsorship relating to corporate image, brands, products, activities or events of any kind. It includes sponsorship by both commercial and non-commercial organisations, including sponsorship elements forming part of other marketing activities such as sales promotion or direct marketing. The rules also apply to any sponsorship element of corporate social responsibility programmes. Sponsor-owned activities should comply, to the extent applicable, with the principles of this chapter.

This chapter does not apply to product placement, or to funding which lacks a commercial or communication purpose, such as donations or patronage, except where there is a sponsorship element.

Terms specific to sponsorship

The following definitions relate specifically to this chapter and should be read in conjunction with the general definitions contained in the General Provisions:

- ▶ The term “**audience**” refers to the public, individuals or organisations to which a sponsorship property is directed.
- ▶ The term “**donations and patronage**” refers to forms of altruism where money or goods may be given, with only negligible or no benefits, recognition or commercial return.
- ▶ The term “**media sponsorship**” refers to sponsorship of a **media property** (e.g. television or radio broadcast, publication, cinema, internet, mobile or other telecommunication technology).
- ▶ The term “**product placement**” refers to the inclusion of a product or brand so that it is featured within the content of a programme, film or publication, including online material, normally in return for payment or other valuable consideration to the programme or film producer, publisher or licensee.
- ▶ The term “**sponsor**” refers to any corporation or other legal entity providing financial or other sponsorship support.
- ▶ The term “**sponsor-owned activity**” refers to a property which appears to be a sponsorship but where the sponsor and the sponsored party are the same entity; for instance an event created and owned by a company/organisation for which it also has the intention or effect of being perceived as the sponsor of the event.
- ▶ The term “**sponsorship**” refers to any commercial agreement by which a sponsor, for the mutual benefit of the sponsor and sponsored party, contractually provides financing or other support in order to establish an association between the sponsor’s image, brands or products and a sponsorship property, in return for rights to promote this association and/or for the granting of certain agreed direct or indirect benefits.

- ▶ The term “**sponsored party**” refers to any individual or other legal entity owning the relevant rights in the sponsorship property and receiving direct or indirect support from a sponsor in relation to the sponsorship property.
- ▶ The term “**sponsorship property**” refers to an event, activity, organisation, individual, media or location.

ARTICLE B1—PRINCIPLES GOVERNING SPONSORSHIP

All sponsorship should be based on contractual obligations between the sponsor and the sponsored party. Sponsors and sponsored parties should set out clear terms and conditions with all other partners involved, to define their expectations regarding all aspects of the sponsorship deal.

Sponsorship should be recognisable as such.

The terms and conduct of sponsorship should be based upon the principle of good faith between all parties to the sponsorship.

There should be clarity regarding the specific rights being sold and confirmation that these are available for sponsorship from the rights holder. Sponsored parties should have the absolute right to decide on the value of the sponsorship rights that they are offering and the appropriateness of the sponsor with whom they contract.

ARTICLE B2—AUTONOMY AND SELF-DETERMINATION

Sponsorship should respect the autonomy and self-determination of the sponsored party in the management of its own activities and properties, provided the sponsored party fulfils the obligations set out in the sponsorship agreement.

ARTICLE B3—IMITATION AND CONFUSION

Sponsors and sponsored parties, as well as other parties involved in a sponsorship, should avoid imitation of the representation of other sponsorships where such imitation might mislead or generate confusion, even if applied to non-competitive products, companies or events.

ARTICLE B4—“AMBUSHING” OF SPONSORED PROPERTIES

No party should seek to give the impression that it is a sponsor of any event or of media coverage of an event, whether sponsored or not, if it is not in fact an official sponsor of the property or of media coverage.

The sponsor and sponsored party should each take care to ensure that any actions taken by them to combat ‘ambush marketing’ are proportionate and that they do not damage the reputation of the sponsored property nor impact unduly on members of the general public.

ARTICLE B5—RESPECT FOR THE SPONSORSHIP PROPERTY AND THE SPONSOR

Sponsors should take particular care to safeguard the inherent artistic, cultural, sporting or other content of the sponsorship property and should avoid any abuse of their position which might damage the identity, dignity, or reputations of the sponsored party or the sponsorship property.

The sponsored party should not obscure, deform or bring into disrepute the image or trademarks of the sponsor, or jeopardise the goodwill or public esteem associated with them.

ARTICLE B6—THE SPONSORSHIP AUDIENCE

The audience should be clearly informed of the existence of a sponsorship with respect to a particular event, activity, programme or person and the sponsor's own message should not be likely to cause offence. Due note should be taken of existing professional ethics of the sponsored party.

This article is not, however, intended to discourage sponsorship of avant-garde or potentially controversial artistic/cultural activities, or to encourage sponsors to exercise censorship over a sponsored party's message.

ARTICLE B7—DATA CAPTURE/DATA SHARING

If personal data is used in connection with sponsorship, the provisions of article 19 are applicable.

ARTICLE B8—ARTISTIC AND HISTORICAL OBJECTS

Sponsorship should not be conducted in such a way as to endanger artistic or historical objects.

Sponsorship which aims to safeguard, restore, or maintain cultural, artistic or historical properties or their diffusion, should respect the public interest related to them.

ARTICLE B9—SOCIAL AND ENVIRONMENTAL SPONSORSHIP

Both sponsors and sponsored parties should take into consideration the potential social or environmental impact of the sponsorship when planning, organising and carrying out the sponsorship.

Any sponsorship message fully or partially based on a claim of positive (or reduced negative) social and/or environmental impact should be substantiated in terms of actual benefits to be obtained. Parties to the sponsorship should respect the principles set out in the ICC Business Charter for Sustainable Development⁷.

Any environmental claim made with respect to the sponsorship should conform to the principles set out in chapter D, Environmental Claims in Marketing Communications.

ARTICLE B10—CHARITIES AND HUMANITARIAN SPONSORSHIP

Sponsorship of charities and other humanitarian causes should be undertaken with sensitivity and care, to ensure that the work of the sponsored party is not adversely affected.

ARTICLE B11—MULTIPLE SPONSORSHIP

Where an activity or event requires or allows several sponsors, the individual contracts and agreements should clearly set out the respective rights, limits and obligations of each sponsor, including, but not limited to, details of any exclusivity.

7 Available from www.iccwbo.org

In particular, each member of a group of sponsors should respect the defined sponsorship fields and the allotted communication tasks, avoiding any interference that might unfairly alter the balance between the contributions of the various sponsors.

The sponsored party should inform any potential sponsor of all the sponsors already a party to the sponsorship. The sponsored party should not accept a new sponsor without first ensuring that it does not conflict with any rights of sponsors who are already contracted and, where appropriate, informing the existing sponsors.

ARTICLE B12—MEDIA SPONSORSHIP

The content and scheduling of sponsored media properties should not be unduly influenced by the sponsor so as to compromise the responsibility, autonomy or editorial independence of the broadcaster, programme producer or media owner, except to the extent that the sponsor is permitted by relevant legislation to be the programme producer or co-producer, media owner or financier.

Sponsored media properties should be identified as such by presentation of the sponsor's name and/or logo at the beginning, during and/or at the end of the programme or publication content. This also applies to online material.

Particular care should be taken to ensure that there is no confusion between sponsorship of an event or activity and the media sponsorship of that event, especially where different sponsors are involved.

ARTICLE B13—RESPONSIBILITY

As sponsorship is conceptually based on a contract of mutual benefit, the onus for observing the Code falls jointly on the sponsor and the sponsored party, who share the ultimate responsibility for all aspects of the sponsorship, whatever its kind or content. Anyone taking part in the planning, creation or execution of any sponsorship has a degree of responsibility, as defined in article 23 of the General Provisions, for ensuring the observance of the Code towards those affected, or likely to be affected, by the sponsorship.



CHAPTER C: DIRECT MARKETING AND DIGITAL MARKETING COMMUNICATIONS

This chapter is to be read in conjunction with the General Provisions and Definitions on Advertising and Marketing Communications and the Introduction regarding interpretation, application, jurisdiction and relationship with the law.

Scope of chapter C

Unless specifically indicated otherwise, this chapter applies to all participants in the direct marketing and digital marketing eco-system and their marketing communications activities, whether digital or non-digital, whatever their form, medium or content. It sets standards of ethical conduct to be followed by all parties.

It is designed to apply to multiple regions and be technology neutral. It should be applied to new technology when there are technologically reasonable means commercially available in the marketplace by which companies should comply.

Due to the rapidly changing and developing nature of digital interactive media, additional guidance regarding interpretation and application of these rules is made by the ICC where necessary. These can be found on the ICC Marketing Code webpage.

Recommendations on best practice for customer redress and dispute resolution in online business can be found in the ICC documents “Putting it right” and “Resolving disputes online”⁸.

Terms specific to direct marketing and digital marketing communications:

Further definitions are found in the specific sections on telemarketing and interest-based advertising (IBA) of this chapter; see Articles C21 for specific terms related to telemarketing and C22 for specific terms related to interest-based advertising.

- ▶ The term “**direct marketing**” is the communication, by whatever means, of advertising or marketing material carried out by a direct marketer itself or on its behalf, and which is directed to particular individuals using their personal contact information (including mailing address, telephone number, email address, mobile phone number, facsimile, personal social media account handle, and the like).
- ▶ The term “**digital marketing communications**” refers to marketing communications, using digital interactive media intended primarily to promote products or to influence consumer behaviour.
- ▶ The term “**operator**” refers to any person, firm or company, other than the marketer, that provides a direct marketing, or digital marketing communications service for or on behalf of the marketer.
- ▶ The term “**right of withdrawal**” refers to the consumer’s right to resend any goods to the seller, or to cancel the order for services, within a certain time limit and thus annul the sale.

8 Available from www.iccwbo.org

GENERAL PROVISIONS

ARTICLE C1—IDENTIFICATION AND TRANSPARENCY

Marketing communications should be properly identified as such in accordance with Article 7 of the General Provisions. Subject descriptors should be accurate and the commercial nature of the communication should be transparent to the consumer.

Where a marketer has created or offered consideration for a product endorsement or review, the commercial nature should be transparent. In such cases, the endorsement or review should not state or imply that it is from or conferred by an individual consumer or independent body.

Marketers should take appropriate steps to ensure that the commercial nature of the content of a social network site or profile under the control or influence of a marketer is clearly indicated and that the rules and standards of acceptable commercial behaviour in these networks are respected.

Any image, sound or text which, by its size, volume or any other visual characteristic, is likely to materially reduce or obscure the legibility and clarity of the offer should be avoided.

ARTICLE C2—IDENTITY OF THE MARKETER

The identity of the marketer and/or operator and details of where and how they may be contacted should be given in the offer, so as to enable the consumer to communicate directly and effectively with them. This information should be where technically feasible available in a way which the consumer could access and keep, i.e. via a separate document offline, an online or downloadable document, email or SMS or log-in account; it should not, for example, appear only on an order form which the consumer is required to return. At the time of delivery of the product, the marketer's full name, address, e-mail and phone number should be supplied to the consumer.

ARTICLE C3—THE OFFER

The terms and conditions of any offer made should be transparent to consumers and other participants. The fulfilment of any obligation arising from the offer should be prompt and efficient.

All offers involving promotional items should be framed in strict accordance with the rules of Chapter A: Sales Promotion.

ARTICLE C4—PRESENTATION

Wherever appropriate, the essential points of the offer should be simply and clearly summarised together in one place. Essential points of the offer may be clearly repeated, but should not be scattered throughout the promotional material.

When the presentation of an offer also features products not included in the offer, or where additional products need to be purchased to enable the consumer to use the product on offer, this should be made clear in the original offer.

Consumers should always be informed beforehand of the steps leading to the placing of an order, a purchase, the concluding of a contract or any other commitment. If consumers are required to provide data for this purpose, they should be given an adequate opportunity to check the accuracy of their input before making any commitment.

Where appropriate, the marketer should respond by accepting or rejecting the consumer's order.

Software or other technical devices should not be used to conceal or obscure any material factor, e.g. price and other sales conditions, likely to influence consumers' decisions. Before making any commitment the consumer should be able to easily access the information needed to understand the exact nature of the product, as well as the purchase price, shipping and other costs of purchase.

ARTICLE C5—HIGH PRESSURE TACTICS

High-pressure tactics which might be construed as harassment should not be used. Consumers should not be asked to sign up to an offer where there will be no means provided to confirm the terms and conditions.

ARTICLE C6—RESPECT FOR PUBLIC GROUPS AND REVIEW SITES

The terms and conditions of particular digital interactive media which may have rules and standards of acceptable commercial behaviour, e.g. news groups, forums, blogs, vlogs or bulletin boards and general server software for web page content editing (wiki sites), should be respected. Marketing communications posted to such public meeting places are appropriate only when the forum or site has implicitly or explicitly indicated its willingness to receive such communications.

ARTICLE C7—MARKETING COMMUNICATIONS AND CHILDREN

- ▶ Parents and/or guardians should be encouraged to participate in and/or supervise their children's interactive activities.
- ▶ Personal data about individuals known to be children should only be disclosed to third parties after obtaining consent from a parent or legal guardian or where disclosure is authorised by law. Third parties do not include agents or others who provide support for operational purposes of the website and who do not use or disclose a child's personal information for any other purpose.
- ▶ Websites devoted to products that are subject to age restrictions such as alcoholic beverages, gambling and tobacco products should undertake measures, such as age screens, to restrict access to such websites by minors⁹.
- ▶ Marketing communications directed at children in a particular age group should be appropriate and suitable for such children.

ARTICLE C8—RESPECTING CONSUMER WISHES

Marketers should respect a consumer's wish not to receive direct marketing communications by e.g. signing on to a preference system or utilizing another system, such as mailbox stickers. Marketers who are communicating with consumers internationally should, where possible avail themselves of the appropriate preference service in the markets to which they are addressing their communications and respect consumers' wishes not to receive such communications (see also General Provisions, article 19, data protection and privacy).

Direct marketing sent electronically should include a clear and transparent mechanism enabling the consumer to express the wish not to receive future solicitations.

⁹ The term 'minor' refers to those below the legal purchase age, i.e., the age at which national legislation permits the purchase or consumption of such restricted products. In countries where purchase age and consumption age are not the same, the higher age applies. For the purpose of this Article, in countries where there is no legal purchase or consumption age minors are defined as those below the age of 18. The meaning of this term has been derived from the definition provided in the ICC Framework for Responsible Marketing Communications of Alcohol.

ARTICLE C9—RESPECTING CONSUMER USE OF DIGITAL INTERACTIVE MEDIA

Due care should be taken to ensure that digital marketing communications and/or any application used to enable consumers to open other marketing or advertising messages, do not interfere with the consumer's normal usage or experience of digital interactive media

ARTICLE C10—RESPECT FOR THE POTENTIAL SENSITIVITIES OF A GLOBAL AUDIENCE

Marketers should strive to avoid causing offense by respecting social norms, local culture and tradition in markets where they are directing marketing communications. Given the global reach of electronic networks, and the variety and diversity of possible recipients, marketers should take steps to align their marketing communications with the principles of social responsibility contained in the General Provisions.

ARTICLE C11—SAFETY AND HEALTH

Marketers should ensure that the promotion or the use of marketing communications does not encourage or condone irresponsible practices that could endanger safety and health.

Products, including, where applicable, samples, should be suitably packaged for delivery to the customer—and for possible return—in compliance with the appropriate health and safety standards.

ARTICLE C12—RIGHT OF WITHDRAWAL

Where consumers have a right of withdrawal the marketer should inform them of the existence of this right, how to obtain further information about it, and how to exercise it. (See General Provisions for further provisions re free trials).

ARTICLE C13—AFTER-SALES SERVICE

When after-sales service is offered, details of the service should be included in the terms of any guarantee, or stated elsewhere in the offer. If the consumer accepts the offer, information should be supplied on how to activate the service and communicate with the service agent.

ARTICLE C14—PRICES AND CREDIT TERMS

Any information needed by the consumer to understand the cost, interest and terms of any other form of credit should be provided, either in the offer or when the credit is offered.

Whether payment for the offer is on an immediate sale or instalment basis, the price and terms of payment should be clearly stated in the offer, together with the nature of any additional charges (such as postage, handling, taxes, etc.) and, whenever possible, the amount of such charges.

In the case of sales by instalment, the credit terms, including the amount of any deposit or payment on account, the number, amount and periodicity of such instalments and the total price compared with the immediate selling price, if any, should be clearly shown in the offer.

Unless the duration of the offer and the price are clearly stated in the offer, prices should be maintained for a reasonable period of time.

ARTICLE C15—UNSOLICITED PRODUCTS

Products for which payment is expected should not be delivered without an order.

See also General Provisions, article 21—Unsolicited products and undisclosed costs.

ARTICLE C16—FULFILMENT OF ORDERS

Unless otherwise stipulated in the offer, orders should be fulfilled within 30 working days of receipt of the order from the consumer. The consumer should be informed of any undue delay as soon as it becomes apparent. In such cases, any request for cancellation of the order by the consumer should be granted, even when it is not possible to prevent delivery, and the deposit, if any, should be refunded immediately.

ARTICLE C17—SUBSTITUTION OF PRODUCTS

If a product becomes unavailable for reasons beyond the control of the marketer or operator, another product may not be supplied in its place unless the consumer is informed that it is a substitute and unless such replacement product has materially the same, or better, characteristics and qualities, and is supplied at the same or a lower price. In such a case, the substitution and the consumer's right to return the substitute product at the marketer's expense should be explained to the consumer.

ARTICLE C18—RETURN OF FAULTY OR DAMAGED PRODUCTS

The cost of return of products which are faulty, or damaged other than by the consumer, is the responsibility of the marketer, provided the consumer gives notice within a reasonable period of time.

ARTICLE C19—PAYMENT AND DEBT COLLECTION

The procedure for payment and debt collection should be such as to avoid undue inconvenience to the consumer, making due allowance for delays outside the consumer's control.

Debtors should not be approached in an unreasonable manner and debt collection documents which might be confused with official documents should not be used.

ARTICLE C20—RESPONSIBILITY

Overall responsibility for all aspects of direct marketing and digital marketing activities, whatever their kind or content, rests with the marketer. As defined in article 23 of the General Provisions, whatever the nature of the activity, medium or technology, responsibility is shared by all the parties concerned, commensurate with their respective role in the process and within the limits of their respective functions.

All parties concerned need to take into account that responsibility, also applies to other participants in the direct marketing and digital marketing eco-system including:

- ▶ operators, telemarketers or data controllers, or their digital ad agencies, other service providers and their subcontractors, who contribute to the activity or communication;
- ▶ interest-based advertising, data analytics and ad technology companies;
- ▶ publishers, platforms and channels, media-owners, affiliate networks or contractors who publish, transmit or distribute the offer or any other communication;

- ▶ market influencers, bloggers and vloggers;
- ▶ and those responsible for preparing algorithms for marketing communications.

SPECIAL PROVISIONS

ARTICLE C21—PROVISIONS FOR TELEMARKETING

Scope: The following provisions apply specifically to **direct marketing** via telemarketing.

Definition of terms specific to Telemarketing provisions:

- ▶ The term “**telemarketer**” refers to any person, firm or company that provides or performs a telemarketing service for or on behalf of the marketer.
- ▶ The term “**telemarketing**” includes all marketing communications performed/made by voice via a landline, mobile, voice over IP or any other device.
- ▶ The term “**automatic dialling-announcing device**” refers to any automatic equipment incorporating the capability of storing or producing telecommunications numbers used in conjunction with other equipment to convey a pre-recorded or synthesized voice message to a telecommunications number.
- ▶ The term “**predictive dialling device**” refers to “any software, system, or device that automatically initiates outgoing telecommunications from a pre-determined list of telecommunications numbers”.

C 21.1—Disclosures

Outbound calls

1. When calling a consumer, telemarketers should:
 - ▶ promptly state the name of the marketer they represent and their own name
 - ▶ unambiguously state in the beginning the purpose of the call
 - ▶ politely terminate the call when it becomes apparent that the recipient is not competent to complete the call, or does not wish to take the call, or is a child (unless the telemarketer receives permission from an appropriate adult to proceed with the call)
2. When a telemarketer calls a consumer who has a device with a number display facility, the consumer should be able to identify the number of the company that is calling.

All calls

3. Before closing the call, the telemarketer should ensure that the consumer is informed and aware of the nature of any agreement reached, and of any steps that will be taken following the call.

Where a sale agreement is claimed to have been concluded, the consumer should be fully aware of the essential points of the contract. These include, as a minimum:

- ▶ the main characteristics of the product
- ▶ where products are to be supplied permanently or for an on-going period, the minimum duration of the contract
- ▶ the price of the product, including any additional costs (e.g. delivery and/or handling charges and any tax which the consumer may have to pay)
- ▶ the arrangements for payment, delivery or performance

- ▶ any right of withdrawal to which the consumer is entitled

Where the call leads, not to a sale, but to further contact by a marketer, the telemarketer should inform the consumer that there will be a subsequent contact. If data supplied by the consumer are to be used for any non-obvious purpose, i.e. a purpose which has not already been disclosed, the telemarketer should explain this purpose to the consumer in accordance with the General Provisions on data protection (article 19).

C 21.2—Reasonable hours

Unless the recipient has expressly requested otherwise, outbound calls should be made only during hours which are generally regarded as reasonable for the recipient.

C 21.3—Right to written confirmation

Where a call results in an order, the consumer has the right to receive confirmation, in writing or other durable format, of the detailed terms of the contract, in due time and at the latest at the time of delivery of the goods or at the commencement of the delivery of the services. Confirmation should include all the information specified in article C12 (Right of withdrawal) and article C2 (Identity of the marketer) and, where appropriate, any other information specified in this chapter.

C 21.4—Monitoring of conversations

Monitoring, including recording, of conversations made for telemarketing purposes should be conducted only with appropriate safeguards, in order to verify the content of the call, to confirm a commercial transaction, for training purposes and for quality control. Telemarketers should be made aware when monitoring is taking place and consumers should be informed, as early in the call as is practicable, of the possibility of monitoring.

No recorded conversation should be presented to a public audience without the prior consent of both participants.

C 21.5—Unlisted numbers

Consumers with an unlisted number should not be contacted for any commercial purpose, unless the number was supplied by the consumer to the marketer or operator.

C 21.6—Use of predictive dialling services and automatic dialling announcing services

Where a predictive dialling device is used, if no telemarketer is immediately available to take the call generated by the dialler, the equipment should abandon the call and release the line in not more than one second.

Other automatic dialling-announcing devices may be used to contact a consumer only where the call is initially introduced by a telemarketer, or where the consumer has expressly agreed to receive such calls without telemarketer intervention.

Neither a predictive dialling device nor any other automatic dialling-announcing devices may be used unless the equipment immediately disconnects when the consumer hangs up. Dialling equipment should release each time before connecting to another number.

ARTICLE C22—PROVISIONS FOR INTEREST-BASED ADVERTISING (IBA)

Scope

The following applies to IBA focusing on web viewing behaviour over time and across multiple web domains or applications owned and operated by different unaffiliated entities in order to create interest segments (a collection of users that share one or more attributes based on prior and current online browsing activity) or to associate such viewing behaviour against interest segments for the purposes of delivering advertisements to and by that web user's interests and preferences.

These provisions apply to all individuals and entities engaged in such activities online.

Definition of terms specific to IBA provisions:

- ▶ The term “**interest-based advertising**” or “**IBA**”, and also referred to as “online behavioural advertising” or “**OBA**” refers to the practice of collecting information over time on users' online actions on a particular device across different unaffiliated websites or applications in order to create interest segments or to allocate such viewing behaviour against interest segments for the purposes of delivering advertisements to and by that web user's interests and preferences. It pertains to advertising operations on desktop, in mobile, video or TV, social, or IoT settings, and include tracking and targeting across devices. IBA does not include quantitative ad delivery or quantitative ad reporting, or contextual advertising (e.g. advertising based on the content of the web page being visited, a consumer's current visit to a web page, or a search query).
- ▶ In the context of IBA, the term “**third party**” refers to an entity that engages in IBA on a non-affiliated website, service, or app (including, but not limited to, advertisers, ad exchanges, ad networks, and technology service providers). This is in contrast to a “**website operator**” or “**first party**” which is the owner, controller or operator of the website, including affiliated sites, service, or applications with which the web user interacts.
- ▶ The term “**consent**” means an individual's freely given, specific and informed indication in response to a clear and conspicuous notice regarding the collection and use of data for online behavioural advertising purposes.

Application of notice and choice provisions

Any party participating in IBA should adhere to principles of notice and user control as set out below. Transparency of data collection and use, and the ability for users and consumers to choose whether to share their data for IBA purposes is vital. The following guidance provides further clarification for how these principles apply to IBA.

C22.1 Notice

Third parties and website operators should give clear and conspicuous notice on their websites describing their IBA data collection and use practices. Such notice should include clear descriptions of the type of data and purpose for which it is being collected and information on how consumers may exercise choice with regard to the collection and use of the data for IBA purposes.

Notice should be provided through deployment of one or multiple mechanisms for clearly disclosing and informing Internet users about data collection and use practices.¹⁰

¹⁰ Examples of how third parties, and where applicable website operators can provide notice of the collection of data for IBA purposes include mechanisms like an icon that links to a disclosure either in or around the advertisement delivered on the web page where data for IBA purposes is collected or somewhere else on the web page; or through a web link to an industry-developed website(s) where third parties are individually listed.

C22.2 User control

Third parties should make available a mechanism for web users to exercise their choice with respect to the collection and use of data for IBA. Such choice should be available via a link from the notice mechanisms described in footnote ⁹.

C22.3 Precise Location

Precise location data is data that describes the precise location of a device derived through any technology that is capable of determining with reasonable specificity the actual physical location of an individual or device, such as GPS-level latitude/longitude coordinates or location-based frequency signal triangulation. Precise location data does not include general location data, such as postal code, city or neighbourhood, whether that data is derived from an Internet Protocol (IP) address or other sources.

Privacy disclosures should make clear the ways in which sites, apps, and services (including, for example, Application Programming Interfaces (APIs) and Software Development Kits (SDKs) available for use by third parties) access, use, and share precise geolocation data. Companies should also disclose all mechanisms through which location information is collected (e.g., Wi-Fi, Basic Service Set Identifier (BSSID)) and ensure that consumer choice related to collection of location data is never circumvented (by collecting Wi-Fi state, for example, when other location services are turned off).

After serving and delivering an IBA ad based on precise location data in real time, such data should be retained only for the purposes and periods specified at the time of collection.

C22.4 Cross Device Tracking

Disclosures and choices offered to consumers and to the first-party companies on whose websites and apps cross-device tracking companies appear should address the many forms of tracking used, including any proprietary techniques that combine technologies (e.g., cookies, fingerprinting, cookie syncing). These disclosures should also disclose tracking across multiple devices.

Users should not be led to believe tracking is more limited than it is, or that they have blocked all tracking across all apps, browsers and user devices when that is not the case. Companies should ensure that a consumer's opt-out on one device to prevent that device from receiving interest based ads should also prevent data from that device from informing interest based ads on other devices linked through cross-device linking. If the choices offered do not cover all the ways companies track consumers, then this should be clearly and prominently indicated.

C22.5 Data security

Appropriate physical, electronic, and administrative safeguards to protect the data collected and used for IBA purposes should be maintained at all times.

Data that is collected and used for IBA should only be retained for as long as necessary for the business purpose stated in the consent.

C22.6 Children

Segments specifically designed to target children for IBA purposes should not be created without appropriate parental consent.

C22.7 Sensitive data segmentation

In general, companies should not create or use IBA segments based on sensitive data. Those seeking to create or use such IBA segments relying on the use of sensitive data as defined under applicable law should obtain a web user's—consent, prior to engaging in IBA using that information.



CHAPTER D: ENVIRONMENTAL CLAIMS IN MARKETING COMMUNICATIONS

This chapter is to be read in conjunction with the General Provisions and Definitions on Advertising and Marketing Communications and the Introduction regarding interpretation, application, jurisdiction and relationship with the law. Additional guidance for marketers interested in environmental claims is available in the ICC Framework for Responsible Environmental Marketing Communications.

Scope of chapter D

This chapter applies to all marketing communications containing environmental claims, i.e. any claim in which explicit or implicit reference is made to environmental or ecological aspects relating to the production, packaging, distribution, use/consumption or disposal of products. Environmental claims can be made in any medium, including labelling, package inserts, promotional and point-of-sales materials, product literature as well as digital interactive media¹¹. All are covered by this chapter.

The chapter draws from national and international guidance, including, but not limited to, certain provisions of the International Standard ISO 14021 on ‘Self-declared environmental claims,’ relevant to the marketing communication context, rather than technical prescriptions.

Terms specific to environmental claims

The following definitions relate specifically to this chapter and should be read in conjunction with the general definitions contained in the General Provisions:

- ▶ The term “**environmental aspect**” means an element of an organisation’s activities or products that can interact with the environment.
- ▶ The term “**environmental claim**” means any statement, symbol or graphic that indicates an environmental aspect of a product, a component or packaging.
- ▶ The term “**environmental impact**” means any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organisation’s activities or products.
- ▶ The term “**life cycle**” means consecutive and interlinked stages of a product system, from raw material acquisition or generation of natural resources to final disposal.
- ▶ The term “**product**” refers to any goods or services. “Product” normally includes the wrapping, container etc. in which the goods are delivered; however, in the environmental context it is often appropriate to refer separately to the packaging, which then means any material that is used to protect or contain a product during transportation, storage, marketing or use.
- ▶ The term “**qualification**” means an explanatory statement that accurately and truthfully describes the limits of the claim.

11 See definition for digital interactive media in the Introduction of the Code

- ▶ The term “**waste**” refers to anything for which the generator or holder has no further use and which is discarded or released into the environment.

There are many different specific environmental claims, and use and importance may vary. These general principles, however, apply to all environmental claims. Guidance on the use of selected environmental claims often appearing in marketing communication, is provided in the ICC Framework for Responsible Environmental Marketing Communications.

ARTICLE D1—HONEST AND TRUTHFUL PRESENTATION

Marketing communication should be so framed as not to abuse consumers’ concern for the environment, or exploit their possible lack of environmental knowledge.

Marketing communication should not contain any statement or visual treatment likely to mislead consumers in any way about the environmental aspects or advantages of products, or about actions being taken by the marketer in favour of the environment. Overstatement of environmental attributes, such as highlighting a marginal improvement as a major gain, or use of statistics in a misleading way (“we have doubled the recycled content of our product” when there was only a small percentage to begin with) are examples. Marketing communications that refer to specific products or activities should not imply, without appropriate substantiation, that they extend to the whole performance of a company, group or industry.

An environmental claim should be relevant to the particular product being promoted and relate only to aspects that already exist or are likely to be realised during the product’s life, including customary and usual disposal or reasonably foreseeable improper disposal. It should be clear to what the claim relates, e.g. the product, a specific ingredient of the product, or its packaging or a specific ingredient of the packaging. A pre-existing but previously undisclosed aspect should not be presented as new. Environmental claims should be up to date and should, where appropriate, be reassessed with regard to relevant developments.

Vague or non-specific claims of environmental benefit, which may convey a range of meanings to consumers, should be made only if they are valid, without qualification, in all reasonably foreseeable circumstances. If this is not the case, general environmental claims should either be qualified or avoided. In particular, claims such as “environmentally friendly,” “ecologically safe,” “green,” “sustainable,” “carbon friendly” or any other claim implying that a product or an activity has no impact—or only a positive impact—on the environment, should not be used without qualification unless a very high standard of proof is available. As long as there are no definitive, generally accepted methods for measuring sustainability or confirming its accomplishment, no claim to have achieved it should be made.

Qualifications should be clear, prominent and readily understandable; the qualification should appear in close proximity to the claim being qualified, to ensure that they are read together. There may be circumstances where it is appropriate to use a qualifier that refers a consumer to a website where accurate additional information may be obtained. This technique is particularly suitable for communicating about after-use disposal. For example, it is not possible to provide a complete list of areas where a product may be accepted for recycling on a product package. A claim such as “Recyclable in many communities, visit [URL] to check on facilities near you,” provides a means of advising consumers where to locate information on communities where a particular material or product is accepted for recycling.

ARTICLE D2—SCIENTIFIC RESEARCH

Marketing communications should use technical demonstrations or scientific findings about environmental impact only when they are backed by reliable scientific evidence.

Environmental jargon or scientific terminology is acceptable provided it is relevant and used in a way that can be readily understood by those to whom the message is directed. (See also article 9 of the Code—Use of technical/scientific data and terminology).

An environmental claim relating to health, safety or any other benefit should be made only where it is supported by reliable scientific evidence.

ARTICLE D3—SUPERIORITY AND COMPARATIVE CLAIMS

Any comparative claim should be specific and the basis for the comparison should be clear. Environmental superiority over competitors should be claimed only when a significant advantage can be demonstrated. Products being compared should meet the same needs and be intended for the same purpose.

Comparative claims, whether the comparison is with the marketer's own previous process or product or with those of a competitor, should be worded in such a way as to make it clear whether the advantage being claimed is absolute or relative.

Improvements related to a product and its packaging should be presented separately, and should not be combined, in keeping with the principle that claims should be specific and clearly relate to the product, an ingredient of the product, or the packaging or ingredient of the packaging.

ARTICLE D4—PRODUCT LIFE-CYCLE, COMPONENTS AND ELEMENTS

Environmental claims should not be presented in such a way as to imply that they relate to more stages of a product's life-cycle, or to more of its properties, than is justified by the evidence; it should always be clear to which stage or which property a claim refers. A life-cycle benefits claim should be substantiated by a life cycle analysis.

When a claim refers to the reduction of components or elements having an environmental impact, it should be clear what has been reduced. Such claims are justified only if they relate to alternative processes, components or elements which result in a significant environmental improvement.

Environmental claims should not be based on the absence of a component, ingredient, feature or impact that has never been associated with the product category concerned unless qualified to indicate that the product or category has never been associated with the particular component, ingredient, feature or impact. Conversely, generic features or ingredients, which are common to all or most products in the category concerned, should not be presented as if they were a unique or remarkable characteristic of the product being promoted.

Claims that a product does not contain a particular ingredient or component, e.g. that the product is "X-free", should be used only when the level of the specified substance does not exceed that of an acknowledged trace contaminant¹² or background level. Claims that a product, package or component is "free" of a chemical or substance often are intended as an express or implied health claim in addition to an environmental claim. The substantiation necessary to support an express or implied health or safety claim may be different from the substantiation required to support the environmental benefit claim. The advertiser should be sure to have reliable scientific evidence to support an express or implied health and safety claim in accordance with other relevant provisions of the Code.

12 "Trace contaminant" and "background level" are not precise terms. "Trace contaminant" implies primarily manufacturing impurity, whereas "background level" is typically used in the context of naturally occurring substances. Claims often need to be based on specific substance-by-substance assessment to demonstrate that the level is below that causing harm. Also, the exact definition of trace contaminants may depend on the product area concerned. If the substance is not added intentionally during processing, and manufacturing operations limit the potential for cross-contamination, a claim such as "no intentionally added xx" may be appropriate. However, if achieving the claimed reduction results in an increase in other harmful materials, the claim may be misleading.

ARTICLE D5—SIGNS AND SYMBOLS

Environmental signs or symbols should be used in marketing communication only when the source of those signs or symbols is clearly indicated and there is no likelihood of confusion over their meaning. Such signs and symbols should not be used in such a way as falsely to suggest official approval or third-party certification.

ARTICLE D6—WASTE HANDLING

Environmental claims referring to waste handling are acceptable provided that the recommended method of separation, collection, processing or disposal is generally accepted or conveniently available to a reasonable proportion of consumers in the area concerned (or such other standard as may be defined by applicable local law). If not, the extent of availability should be accurately described.

ARTICLE D7—RESPONSIBILITY

For this chapter, the rules on responsibility laid down in the General Provisions apply (see article 23).

ADDITIONAL GUIDANCE¹³

Terms important in communicating environmental attributes of products tend to change. The ICC Framework for Responsible Environmental Marketing Communications provides additional examples, definitions of common terms, and a checklist of factors that should be considered when developing marketing communications that include an environmental claim.

13 www.iccwbo.org/MarketingCode



ANNEX I

TERMS OF REFERENCE OF THE ICC CODE INTERPRETATION PANELS

ARTICLE 1—FUNCTION

The function of the ICC Code Interpretation Panels is to offer an opinion on the meaning of ICC Marketing Codes, related Frameworks and other instruments of guidance (collectively, “ICC Guidance”), such as:

- ▶ ICC Advertising and Marketing Communications Code
- ▶ ICC International Code of Direct Selling
- ▶ ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics
- ▶ ICC Principles on Responsible Deployment of Electronic Product Codes
- ▶ ICC Framework for Responsible Food and Beverage Communications
- ▶ ICC Framework for Responsible Environmental Marketing Communications
- ▶ ICC Framework for Responsible Marketing Communications of Alcohol

Setting up, composition and appointment

ARTICLE 2—SETTING-UP AND APPOINTMENT

The Chair of the ICC Marketing Commission may convene a panel on an ad hoc basis for the purpose of providing a reasoned opinion on one or more questions of interpretation of the ICC Guidance. The Commission Chair will consult the leadership of the commission about interpretation requests and, acting on their recommendation, inform the members of the commission accordingly. A panel may be set up on the Commission Chair’s own initiative or following a request for interpretation. In both cases the same procedure of decision applies. The panel members shall be appointed by the Commission Chair having regard to e.g. their nationality, expertise and availability.

ARTICLE 3—COMPOSITION

A panel shall consist of three to five members, one of whom shall be appointed Chair of the panel. The Chair should ensure that proceedings and decisions are made in an impartial way. Members shall have adequate knowledge of the relevant ICC Guidance. Panel members shall be so selected as to provide amongst themselves the expertise required for the question(s) at hand.

Members shall participate in their personal capacity, and not as representatives of a specific company, industry or other particular interest.

ARTICLE 4—QUORUM

A quorum shall consist of at least two members.

ARTICLE 5—SECRETARIAT

The policy manager of the ICC Marketing Commission shall be the secretary of any Interpretation Panel convened by the Chair. The policy manager shall ensure all materials relevant to the request are collected and distributed in a timely manner to panel members, take minutes, make a record of the panel decision, and transmit the decision to the Applicant as well as publish the decision on the ICC website.

Competence

ARTICLE 6

The primary objective of the panel is to produce high quality opinions. The panel shall examine the interpretation question(s) put before it. In response the panel shall issue a reasoned opinion, which shall relate to specific articles/rules of any ICC Guidance relevant to the request. An opinion may also refer to the general spirit of the Code(s) concerned.

ARTICLE 7

The panel shall provide interpretations in principle. It shall not act as an arbiter or take a position on individual cases. This does not preclude the panel being consulted for interpretation of Code provisions in connection with such a case.

Requests for interpretation

ARTICLE 8—FILING OF REQUEST

Any firm, company, business, association, marketing self-regulatory body, court of law or public authority, as well as ICC national committees, may act as an applicant and file a request for interpretation. Requests shall be addressed to ICC International Secretariat. However, a request shall be accepted only where it is demonstrated that clarification of the question(s) cannot be satisfactorily provided at local level of the market(s) concerned, and that this option has been effectively exhausted. A decision to set up a requested panel, or not, shall be taken by the Chair of the ICC Marketing Commission within 30 working days, and be communicated to the applicant without delay.

ARTICLE 9—FORMAT OF REQUEST

The request shall be made in writing or other durable format, and shall specify in what respect(s) clarification is sought. Also, it shall be supported by a statement outlining the background and reasons for the request. Where the request is connected with a specific case (see Article 7) a copy of the relevant marketing communication(s) shall be provided. Applicants may also submit any other information pertaining to the request.

ARTICLE 10

In the case of an own initiative, the Chair of the ICC Marketing Commission shall refer to the panel being set up the question(s) on which clarification is sought.

ARTICLE 11—DECISION TO CONVENE A PANEL

The decision whether or not to set up a panel and to entertain a request shall be based on an assessment of the importance of providing the clarification(s) in question, particularly with regard to international aspects and matters of principle involved.

Furthermore, it shall be taken into account whether or not it appears feasible to arrive at a sufficiently clear interpretation due to the nature of the question(s) raised in the request and on the basis of the submitted documentation and/or any complementary information that can be obtained with reasonable effort, time and cost.

Languages

ARTICLE 12

Requests for interpretation and important supporting documentation shall be presented in English.

Procedure

ARTICLE 13—TIMETABLE

The panel shall produce high quality opinions without undue delay. For each request the panel shall lay down a timetable and notify the applicant as to when the opinion can be expected. The timetable may be modified when there are valid reasons, such as need for more information.

ARTICLE 14—MEETING FORMAT

The panel may work by means of physical meetings, e-mails, telephone, web or video conferences or any other convenient method of communication, or a combination of such methods. The Chair shall, in consultation with the other members, decide the optimal methods to facilitate a response to the request. Members are obliged to respond to drafts and other working documents within the time limits set by the Chair.

ARTICLE 15—PANEL OPINION

The panel shall submit a draft opinion to the Chair of the ICC Marketing Commission for confirmation. Once confirmed, the opinion is final and without appeal. As the objective is to provide guidance on matters of principle, the opinion shall be published in full text, unless compelling reasons against publication have been presented.

If the draft opinion is not confirmed, the Commission Chair shall send it back to the panel for review, together with an explanatory statement. After that, the procedure described in paragraph 1 applies.

Before confirming the draft opinion, the Commission Chair may, if he/she considers it appropriate, seek the advice of the commission members with regard to the draft as a whole or particular issues pertaining to it.

When the final opinion has been delivered, the panel is disbanded. If it transpires an opinion cannot be presented within reasonable time, the Commission Chair may decide to interrupt proceedings and disband the panel.

Conflict of interest

ARTICLE 16

No member associated with the applicant, or having an interest in the request for interpretation likely to prevent him/her being perceived as independent, shall participate in the deliberations of the panel. Should the Chair of the ICC Marketing Commission have a conflict of interest with regard to an applicant, a request or an interpretation question raised, one of the Commission Vice-Chairs shall act in his/her place.

Decisions

ARTICLE 17

The panel shall work with a view to reaching consensus on the opinion. In the event of a split, the decision shall be taken by a majority vote, the Chair having the casting vote.

Expert advice and complementary information

ARTICLE 18

The panel is entitled to seek expert advice in any appropriate form which does not engage further costs of procedure unless these have been approved beforehand by ICC, see also Article 20. Furthermore, the panel may obtain and use any information needed for the proper carrying out of its task.

Confidentiality

ARTICLE 19

Panel deliberations shall be confidential. Only the panel members convened to address the specific request and the Secretary shall have access to the internal documents of such panel.

Fees and costs

ARTICLE 20

In principle, the services of an ICC Code Interpretation Panel are free of charge where, in the judgment of the Chair of such panel, the request is likely to be resolved expeditiously by panel members. Where a request is anticipated to incur extra costs, the Chair of the ICC Marketing Commission may decide on a fee to be paid, in advance, by the applicant. Should expert advice and/or complementary information in accordance with Article 18 be needed, the Panel Chair may decide that the applicant shall cover the costs thus incurred. If such fees are not paid, the request for interpretation shall be denied.



ANNEX II

IMPLEMENTATION GUIDE FOR THE ICC MARKETING CODES

Introduction

The International Chamber of Commerce has been a major rule-setter for international advertising since 1937, when the first ICC Code on Advertising Practice was issued. Since then, it has extended the ICC self-regulatory framework on many occasions to assist companies in marketing their products responsibly. Previously separate codes were revised and brought together in 2006 as the Consolidated ICC Code of Advertising and Marketing Communications Practice¹⁴ and most recently updated in the 2018 revision, following in the long-established tradition of promoting high ethical standards for advertisers, advertising agencies and the media around the world. The global codes are regularly reviewed and updated by the ICC Commission on Marketing and Advertising, which brings together some of the best marketing, self-regulatory and legal expertise available from the range of participants in the industry and from around the world.

The Code is a fundamental underpinning but the credibility of self-regulation depends on its implementation. For the individual company or any other organisation a commitment to a Code of Conduct will be of true benefit only when the principles and rules are made part of the governing policy and are actively applied and enforced.

This Guide has been drawn up with a view to facilitate the practical use of the ICC Marketing Codes specifically. However, it is based on general and sound principles of compliance, and may therefore prove helpful in relation to other sets of rules. In particular, it will easily apply to the implementation of national or sectorial codes in the field of marketing communications, which throughout the world are based on the ICC Codes.

Although the Guide gives advice on how to implement the Codes within an organisation, the need to support and combine efforts with any relevant self-regulatory bodies set up by the industry should be underscored. When established with the means to be effective, such schemes multiply the value of self-regulation. Consultation of self-regulatory decisions and copy advice facilities can also provide deeper understanding of interpretation matters.

Scope

This Guide provides principles and guidance for the implementation of the ICC Marketing Codes within an organisation (company, firm, undertaking or association), including measures for maintaining and improving compliance with them. Where appropriate the Guide can also be used in connection with other commitments of a self-regulatory nature.

Objective

The objective of this Guide is to facilitate effective implementation of the ICC Marketing Codes and similar self-regulatory frameworks. The Guide can be used as a stand-alone document, but should preferably be combined with other relevant instruments such as compliance or training programmes where they exist.

14 www.iccwbo.org/MarketingCode

Principles

1. Endorsement and commitment

- ▶ The board/top management should endorse the Code in question and make a firm commitment to effective compliance that i9s to permeate all relevant parts of the organisation, including branch offices and subsidiaries. This should be supported by action.

2. Policy integration

- ▶ The endorsed Code—and adherence to relevant industry rules based upon it—should be made an integral part of the organisation’s strategy and business objectives. This should be effectively communicated to the organisation. The implementation should be so framed as to take due account of relevant cultural and commercial conditions and applicable legal requirements. Any organisation specific rules or amendments must be compatible with the Code.

3. Obligations and responsibility

- ▶ Obligations under the Code should be clearly identified and responsibilities for compliance should be assigned.

4. Interpretation

- ▶ The Code should be interpreted in the spirit as well as to the letter. It should be made clear from the outset that circumvention of the rules will not be accepted.

5. Resources and support

- ▶ Adequate resources should be allocated to raise and maintain Code awareness in the organisation, and to allow for effective Code management. Support functions should be put in place, as needed.

6. Education and training

- ▶ Education should be provided for all concerned so as to ensure sufficient knowledge of the Code’s substantive rules and the ensuing obligations. Where appropriate, assessment training should be provided.

7. Monitoring and controls

- ▶ Adherence to the Code should be monitored systematically, and checks be put in place to manage the identified obligations. Monitoring should be followed by action for improvement.

8. Encouragement and sanctions

- ▶ Conduct that creates and promotes compliance with the Code should be encouraged and rewarded, whereas conduct that undermines the respect for the Code should not be tolerated.

9. Follow-up and improvement

- ▶ Implementation should be an ongoing process, not a one-time event. Feedback should be used to assess and improve performance.

Application

Endorsement and commitment

For the Code to take effect within the organisation it must be clearly and visibly endorsed by the Board/top management. Effective implementation requires an active commitment from the leadership to develop and maintain a programme for its operation and enforcement.

There should be an explicit message that observance of the Code is mandatory, and that lip-service does not meet the compliance requirement. Compliance should be the same as for any legal obligation. Also, it should be clear from the outset that accountability will be assigned to relevant management levels throughout the organisation.

The reasons why the Code is being implemented should be widely communicated to the organisation. This should always include the fundamental values of self-regulation, in particular its trust-building and brand enhancing features, but may also address specific situations and political issues, as appropriate.

The implementation programme should be drawn up and explained in a document that is readily available to all employees concerned, using plain language that all can understand. Where appropriate, it may include instructions for how specific local or regional circumstances or requirements can be accommodated when applying the Code. Obviously, how elaborate and detailed the programme needs to be depends on a number of factors, e.g. the diversity and size of the organisation. However, care should be taken not to make it more complex than necessary.

Policy integration

The Code should be presented as an instrument that will help the organisation to achieve its business objectives. It should therefore become an integral part of the organisation's business strategies, plans and operational policies.

It should be explained that the Code, in its field of application and together with other related documents, sets the ethical benchmark of the organisation, and how that relates to assets such as brand value. The way these ethical norms impact on the organisation's activities and communications should also be outlined. All of this should be done in a manner that takes account of the organisation's degree of complexity (size, structure etc) and fields of operation. Particular attention should be given to relevant, ethically sensitive areas (target groups, culture, type of products, communications, etc).

Observance of the Code should be required of external suppliers and made part of the contract.

Obligations and responsibility

Responsibilities for managing the Code should be clearly identified and assigned. This should include observance of the substantive rules as a matter of professional diligence, as well as compliance procedures at different levels and stages. Responsibilities should be matched by adequate powers of intervention. Likewise, accountability should come with responsibility, and be applied in practice.

Particular compliance risks should be identified and potential consequences of failures be analysed. If needed, responsibilities and powers should be specified and enhanced.

It should be clarified that certain "excuses" are not accepted. The fact that competitors allegedly are using unethical practices is not a valid reason for doing the same, nor do sluggish sales justify breaches of the Code.

Large organisations often have a dedicated compliance officer with operational responsibility for compliance. Smaller organisations may also have someone with such overall responsibility, although combined with other tasks. As the Code should be part of the organisation's total "normative package", it is likely to fit well into the responsibilities of that position. However, appointing a person or a group as generally responsible for code management does not relieve others of their assigned responsibilities. Successful implementation depends on cooperation, and managers should lead by example. A way of promoting compliance may be to have ethical conduct explicitly mentioned in position descriptions.

Interpretation

Adherence to the Code is not just a matter of mechanical application. The rules have to be understood against the background of the Code's basic principles and its purpose and objectives. A formalistic approach should not be adopted. This means, for example, that a practice which clearly runs against the ethical principles underpinning the Code should not be undertaken, even though it is not explicitly addressed by any specific article. Also, using a name or a denomination different from the Code's terminology for the purpose of circumvention, should not be permissible.

In most cases, the understanding of the Code should be unproblematic for a person with adequate training. However, borderline issues are likely to arise now and then. Those should be addressed with due care and insight, taking into consideration possible overall policy implications. Decisions should be recorded and kept easily available for employees concerned to ensure coherent and consistent application.

Resources and support

The introduction and maintenance of the Code as an instrument in the day-to-day operation of the organisation are bound to require some dedicated resources, depending on the kind of organisation. However, it is crucial that adequate resources are provided. Lack of resources tend to be taken as a sign of low priority, and undermines the respect for the Code and may put the credibility of the leadership's basic commitment in doubt.

Resources will be required for such activities as communications and education/training, and for setting up mechanisms for information sourcing, complaints handling, feedback analysis, referral of controversial issues, and enforcement etc. Also, there is likely to be a need for various tools, such as checklists or manuals, to facilitate the application of the Code.

It is essential that line managers and employees who are faced with obligations and responsibilities are given adequate support. In particular they should have easy access to advice, whether in-house or externally. Seeking advice is an important component of an overall compliance culture, and should be encouraged.

Education and training

When introducing the Code for the first time there is usually a need to raise both awareness and knowledge of its substance and function. This may require a fairly extensive education effort. This should be adapted to the specific features and operations of the organisation, so as to make the Code seem relevant from the start. Practical orientation with illustrative examples is usually better than just dry theory.

The purpose of the broad education should not be to turn everybody into code experts, but rather to convey basic knowledge and the ability to identify elements that might be problematic or controversial, and hence to seek advice/referral. Those having taken the course should be able to confirm they are familiar with the Code contents and understand its principles and the relevant ensuing obligations.

For those who have particular, identified responsibilities for the application of the Code, further in-depth training may be required. That is likely to focus on assessment capability, in terms of Code substance and in relation to organisational policies and objectives.

Education and training should include information about any existing self-regulatory body, set up by industry for the purpose of applying the Code in a given country. It should be made clear that decisions by such a body are to be followed. The organisation should make sure those concerned can easily stay informed of the relevant self-regulatory "case-law".

Perhaps the most difficult part here is to keep awareness and knowledge alive over time. Knowledge tends to fade, new persons come into the organisation, and positions change. Therefore, an education and training plan should be established so as to ensure knowledge maintenance and development are kept up.

Monitoring and controls

The effectiveness of the implementation programme should be regularly monitored to ensure the desired performance and behaviours are achieved. Even if monitoring is done by means of sample testing it should be based on a systematic approach. Monitoring should be geared towards identifying compliance problems and points where the system does not work satisfactorily, but also functions that meet requirements particularly well. Code monitoring can target specific areas or functions, and may be carried out as an integral part of the overall compliance monitoring.

Monitoring is not an end in itself. It is undertaken for a learning purpose so that problems can be remedied and performance improved. Depending on the complexity of the system, specific indicators may have to be developed.

Some controls and check-points are necessary to ensure that Code obligations are met and risks of compliance failure eliminated as far as possible. Preferably, these controls should be designed to fit into the normal decision making process, and not as a stand-alone procedure. However, it is essential that control requirements are clear and documented. For instance, points where approval is mandatory should not be perceived as optional.

Encouragement and sanctions

Code compliance is effectively promoted by the full understanding of its contribution to the achievement of the organisation's business objectives. However, code implementation also needs to involve encouragement as well as deterrence.

This means that compliant behaviour should be visibly rewarded, and sanctions applied in cases of intentional or negligent disregard of the Code or the procedures put in place.

Although a code of conduct is not a legal regulation, it should be made clear that once adopted by the organisation it is not a voluntary instrument, which is optional to follow. Top management should state that breaches will not be tolerated, and that action will follow if needed. The implications for staff could be generally set out in the conditions of employment.

Follow-up and improvement

Monitoring and other follow-up initiatives should be used as a basis for continual improvement of the Code implementation programme. This should include the review of the programme itself.

There are a number of information sources that can be used for this purpose. Apart from monitoring results and feedback from the organisation's own staff, complaints from customers and comments from suppliers and regulators can be analysed. Results may be used to set compliance benchmarks and/or performance targets.

Notes

THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the world's largest business organisation with a network of over 6 million members in more than 100 countries. We work to promote international trade, responsible business conduct and a global approach to regulation through a unique mix of advocacy and standard setting activities—together with market-leading dispute resolution services. Our members include many of the world's largest companies, SMEs, business associations and local chambers of commerce.

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