Advertising and Marketing Communication Practice

Consolidated ICC Code

International Chamber of Commerce
The world business organization

Preface

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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 foundation 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 and 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 minimize 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.

We believe this 2011 revision of the ICC Consolidated Code of Advertising and Marketing Communications Practice will continue to build trust with consumers and acceptance for the role of self-regulation around the world.

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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, 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. Self-regulatory codes continue to be developed and refined in response to societal, technological and economic changes.

Independent systems of self-regulation have been successfully applying the ICC Code for the past 70 years. The use of properly implemented advertising and marketing communications codes is acknowledged and accepted in all major markets[1] 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.

The Code

The first ICC advertising code was issued in 1937 to provide a globally acceptable framework for responsible creativity and communication. It has been regularly revised to keep apace with changes in practice thereby continuing to be the global reference point for responsible advertising and marketing communications. In 2006 many of the marketing codes were consolidated into one document, the Consolidated ICC Code of Advertising and Marketing Communication Practice (the Code). Further advice is provided by ICC guidelines and framework interpretations.[2]

This ninth revision of the Code (and first of this consolidated version) builds significantly on the policy decision in 2006 to ensure that in addition to traditional advertising all forms of marketing communications are covered. 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 does 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 commercial communication,

1. see for example: "1) the Case study report on Advertising of the Hague Institute for the Internationalisation of Law (HiiL) Project on Constitutional Foundations of Transnational Private Regulation Coordinated by Fabrizio Cafaggi European University Institute, Florence, Italy, University of Trento with Colin Scott, University College Dublin, Ireland & Linda Senden Tilburg University, The Netherlands" http://privateregulation.eu and 2) the EU Commission DGSanco report 2006, Self-Regulation in the EU Advertising Sector: http://ec.europa.eu/dgs/health_consumer/self_regulation/docs/report_advertising_en.pdf

2. See 'Structure of the Code'

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.

Significant changes

The new revision has dynamically integrated the applicability of rules on digital interactive marketing communications throughout the Code and in particular the rewriting of chapter D to ensure these cover all digital interactive media techniques, platforms or devices. For the first time the Code addresses responsibility with respect to the use of online behavioural targeting in the delivery of advertisements. The effect of both of these changes will be significant in terms of the remit and rules of regional and national code compliance schemes across the globe.

Other significant changes relate to the rules on environmental claims in chapter E. The chapter was adapted to address claims related to behaviour and lifestyle. It cross-references to the detailed framework guidance produced on the subject by ICC in January 2010.

Marketers should always ensure they have complied with local and sectoral codes as the principles in this code have been drafted deliberately to be broad and flexible.

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

It is particularly important this new edition of the Code, based on the best available expertise, becomes a daily reference source for everyone involved in the preparation, distribution and regulation of marketing communications. To aid in this, ICC has developed a Codes Centre website publishing this and other ICC marketing codes and framework guidance giving quick access to all relevant code provisions with regard to a specific subject or issue. The site can be found at www.codescentre.com and includes official locally translated versions of the Code and links to local self-regulatory sites where the codes are adapted and applied.

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.

Purpose of the Code

The Consolidated ICC Code is intended primarily as an instrument of self-regulation for commercial communications; however, its provisions may also be useful in regulating other, 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/young people;
- 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 minimise the need for detailed governmental and/or inter-governmental legislation or regulations.

Structure of the Code

The Consolidated ICC Code is constructed as an integrated system of ethical rules. Its General Provisions and Definitions apply without exception to all marketing communications; they 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;
- Chapter D – Advertising and Marketing Using Digital Interactive Media;
- Chapter E – Environmental Claims in Marketing Communications.

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

- ICC International Code of Direct Selling;
- ICC/ESOMAR International Code of Market and Social Research;
- ICC Principles on Responsible Deployment of Electronic Product Codes;
- ICC Framework for Responsible Food and Beverage Communications.
- ICC Framework for Responsible Environmental Marketing Communications

Scope of the Code and definitions

The Consolidated ICC Code applies to all advertising and other marketing communications for the promotion of any kind of goods and services, corporate and institutional promotion included. Its standards of ethical conduct should be observed by everyone concerned with marketing communications, whether as advertisers, marketers, advertising practitioners or agencies, in the media, or in related functions.

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.

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. Where legislation and regulation are not consistent across borders, the Code defers to local rules. For example, since the definition of the term "child" or "young person" varies widely, the provisions outlined in this code that apply to marketing communications addressed to children and young people recommend the use of local definitions. An exception is in the field of privacy where there is general consensus on the age at which rules relating to "children" apply. Hence, for the purpose of all privacy-related sections, including sections on online behavioural advertising, and in the absence of relevant local regulatory or self-regulatory definitions, the Consolidated ICC Code refers to "children" as 12 and under.

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;
- the term *"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;
- the term *"digital interactive media"* refers to any media platform, service or application providing electronic communications, using the Internet, online services, and/or electronic and communication networks, including mobile phone, personal digital assistant and interactive game consoles which allows the receiving party to interact with the platform, service or application;
- the term *"marketing communications"* includes advertising as well as other techniques, such as promotions, sponsorships and direct marketing, 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;
- the term *"market research"*, which includes social and opinion research, is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision-making. The identity of respondents will not be revealed to the user of the information without explicit consent and no sales approach will be made to them as a direct result of their having provided information;
- the term *"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;

- the term *"offer"* means any presentation or solicitation for the sale or purchase of products;
- the term *"personal data"* means any information relating to an identified or identifiable individual;
- the term *"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 marketing communications using a specific medium, against which marketing lists are matched;
- the term *"product"* refers to anything that constitutes the subject of an advertisement; this usually means goods or services, but is not restrictive: where appropriate the Code may be applied more widely, e.g. to concepts.

Interpretation

The Consolidated 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, direct mail, electronic messaging, fax, telephone, etc., communications which are acceptable for one medium may not necessarily be acceptable for another. Communications should therefore 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.

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. In the view of ICC, the rational and effective order would be for the principle of origin to take precedence, and ICC recommends it be implemented in the context of self-regulation. However, the question of legal jurisdiction, i.e. 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 with regard to where they target their marketing communications, and to familiarize themselves with the rules and regulations of the various relevant jurisdictions.

I. General provisions on advertising and marketing communication practice

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

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 3

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 4

Social responsibility

Marketing communications should respect human dignity and should not incite or condone any form of discrimination, including that based upon race, 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 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 delivery, 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

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 7

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 shipping and handling charges 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.

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 8

Substantiation

Descriptions, claims or illustrations relating to verifiable facts in marketing communications should be capable of substantiation. Such 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 9

Identification

Marketing communications should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement appears in a medium containing news or editorial matter, it should be so presented that it is readily recognisable as an advertisement and the identity of the advertiser should be apparent (see also article 10).

Marketing communications should 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 or independent reviews.

Article 10

Identity

The identity of the marketer should be apparent. 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 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.

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, text or a combination of both.

Article 18

Children and young people

Special care should be taken in marketing communications directed to or featuring children or young people. The following provisions apply to marketing communications addressed to children and young people as defined in national laws and regulations relevant to such communications.

- Such communications should not undermine positive social behaviour, lifestyles and attitudes;
- Products unsuitable for children or young people should not be advertised in media targeted to them, and advertisements directed to children or young people should not be inserted in media where the editorial matter is unsuitable for them.

Material unsuitable for children should be clearly identified as such.

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

Inexperience and credulity

Marketing communications should not exploit inexperience or credulity, 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 to assemble or operate products;
   b. exaggerate the true size, value, nature, durability and performance of the product;
   c. fail to disclose information 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.

Avoidance of harm

Marketing communications should not contain any statement or visual treatment that could have the effect of harming children or young people mentally, morally or physically. Children and young people 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 behaviour.

Social values

Marketing communications should not suggest that possession or use of the promoted product will give a child or young person physical, psychological or social advantages over other children or young people, 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 and young people 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 and young people 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 young people 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

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

- in the digital interactive media see chapter D, article D5;
- within the context of food and non-alcoholic beverages see the ICC Framework for responsible food and beverage marketing communication.

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.

Collection of data and notice

When personal information 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 information 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.

Use of data

Personal data collected in accordance with this code should be

- collected for specified and legitimate purposes and not used in any manner incompatible 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.

Security of processing

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

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

Children's personal information

When personal information is collected from individuals known or reasonably believed to be children 12 and younger, 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 other appropriate adult's permission before providing information via digital interactive media, and reasonable steps should be taken to check that such permission has been given.

Only as much personal information should be collected as is necessary to enable the child to engage in the featured activity.

Data collected from children should not be used to address marketing communications to the children's parents or other family members without the consent of the parent.

Identifiable personal information 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 technical or operational support to the marketer and who do not use or disclose children's personal information for any other purpose.)

Additional rules specific to marketing communications to children using digital interactive media can be found in chapter D, article D5.

Privacy policy

Those who collect 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 if any collection or processing of data 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 Toolkit[3] are adopted and implemented.

3. Available from www.iccwbo.org

Rights of the consumer

Appropriate measures should be taken to ensure that consumers understand and exercise their rights

- to opt out of marketing lists (including the right to sign on to general preference services);
- to require that their data are not made available to third parties for their marketing purposes; and
- to rectify incorrect data which are held about them.

Where a consumer has expressed a wish not to receive marketing communications using a specific medium, whether via a preference service or by other means, this wish should be respected. Additional rules specific to the use of the digital interactive media and consumer rights are to be found in chapter D.

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, all 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[4].

4. Available from www.iccwbo.org

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 postage or telecommunications, 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" or as "cost per message". When this information is provided on-line, consumers should be clearly informed 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 fulfil 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 be avoided.

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.

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 unsolicited individually addressed digital marketing communications, see chapter D, article D4.

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 E, Environmental Claims in Marketing Communications.

Article 23

Responsibility

These general rules on responsibility 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.

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.

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

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 fulfil their responsibilities.

Publishers, media owners or contractors, 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 a 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 positions, for ensuring that the rules of the Code are observed and should act accordingly.

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 and at all stages in the marketing communication process.

Marketers, communications practitioners or advertising agencies, publishers, media-owners and contractors 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 Codes[5].

5. See Annex II

Requests for interpretation of the principles contained in this code may be submitted to the ICC Code Interpretation Panel[6].

6. See Annex I

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.

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 Consolidated ICC Code.

II. Detailed chapters

Chapter A: Sales Promotion

This chapter is to be read in conjunction with the General Provisions on Advertising and Marketing Communication Practice.

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 etc.);
- 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 on Advertising and Marketing Communication Practice.

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 an individual's data are 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 Development[7].

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

7. Available from www.iccwbo.org

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.

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

This chapter is to be read in conjunction with the General Provisions on Advertising and Marketing Communication Practice, and with chapter D on Advertising and Marketing Communications Using Digital Interactive Media.

Scope of chapter C

This chapter applies to all direct marketing activities in their entirety, whatever their form, medium or content. It sets standards of ethical conduct to be followed by marketers, distributors, practitioners or other contractors providing services for direct marketing purposes, or in the media.

Terms specific to direct marketing

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 *"data controller"* means the person or body that controls the purpose and means of the processing of personal data and its protection and use;
- the term *"direct marketing"* comprises all communication activities with the intention of offering goods or services or transmitting commercial messages, presented in any medium and aimed at informing and soliciting a response from the addressee, as well as any service directly related thereto;
- the term *"electronic media"* refers to media services providing electronic communication such as electronic mail and Short Message Service (SMS);
- the term *"marketing list"* means a list of contacts within a data base created or used for direct marketing purposes;
- the term *"operator"* refers to any person, firm or company, other than the marketer, that provides a direct marketing service for or on behalf of the marketer;
- the term "processing" means any operation, or set of operations, performed upon personal data;
- the term *"predictive dialler"* means an automated dialler which will adjust the rate at which it dials and deliver answered telephone calls immediately to match operator availability;
- the term *"telemarketer"* refers to any person, firm or company, that performs a direct marketing service by telephone for or on behalf of the marketer;
- the term *"telemarketing"* includes all marketing done by voice via telephone, landline, mobile or other device.

Article C1

The offer

The fulfilment of any obligation arising from a direct marketing activity should be prompt and efficient.

Whenever an offer is made, all the commitments to be fulfilled by the marketer, the operator and the consumer should be made clear to consumers, either directly or by reference to sales conditions available to them at the time of the offer.

When presenting the offer, any font which, by its size or any other visual characteristic, is likely to materially reduce or obscure the legibility and clarity of the offer should be avoided.

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.

Article C2

Presentation

The terms of any offer should be clear, so that the consumer may know the exact nature of the product being offered.

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.

High-pressure tactics which might be construed as harassment should be avoided, and, marketers should ensure that they respect local culture and tradition to avoid offensive questions.

Article C3

Right of withdrawal

Where consumers have a right of withdrawal (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 annulling the sale), the marketer should inform them of the existence of this right, how to obtain further information about it, and how to exercise it.

Where there is an offer to supply products to the consumer on the basis of "free examination", "free trial", "free approval" and the like, it should be made clear in the offer who will bear the cost of returning products and the procedure for returning them should be as simple as possible. Any time limit for the return should be clearly disclosed.

Article C4

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 C5

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 available as a permanent reference which the consumer can keep, i.e. via a separate document offline, an online document, email or SMS; 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 and telephone number should be supplied to the consumer.

Article C6

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 C7

Promotional incentives

Direct marketing which makes use of promotional incentives should comply with the relevant provisions of chapter A, Sales Promotion.

Article C8

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 C9

Fulfilment of orders

Unless otherwise stipulated in the offer, orders should be fulfilled within 30 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 C10

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 C11

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 C12

Prices and credit terms

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.

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.

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 C13

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 C14

Respecting consumer wishes

Where consumers have indicated the wish not to receive direct marketing communications by signing on to a preference service, or in any other way, this should be respected. Marketers who are communicating with consumers internationally should, where possible ensure that they 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).

Where a system exists, enabling consumers to indicate a wish not to receive unaddressed mail (e.g. mailbox stickers), this should be respected.

Article C15

Use of electronic media

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

Unsolicited direct marketing communications sent via electronic media may be sent only where there are reasonable grounds to believe that the consumer who receives such communications will have an interest in the subject matter or offer.

Article C16

Use of telemarketing

C 16.1 – Disclosures

The following provisions apply specifically to telemarketing:

Outbound calls

1. When calling a consumer, telemarketers should:
   - promptly state the name of the marketer they represent;
   - 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 ongoing 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 16.2 – 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 16.3 – Right to written confirmation

Where a call results in an order, the consumer has the right to receive confirmation, in writing or 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 C3 (Right of withdrawal) and article C5 (Identity of the seller) and, where appropriate, any other information specified in this chapter.

C 16.4 – 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 16.5 – 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 16.6 – Use of automatic dialling equipment

Where a predictive dialler 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 equipment 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 dialler nor any other automatic dialling equipment 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 C16

Responsibility

Overall responsibility for all aspects of direct marketing activities, whatever their kind or content, rests with the marketer.

However, responsibility, as defined in article 23 of the General Provisions, also applies to other participants in direct marketing activities and that needs to be taken into account. As well as marketers, these may include:

- operators, telemarketers or data controllers, or their subcontractors, who contribute to the activity or communication;
- publishers, media-owners or contractors who publish, transmit or distribute the offer or any other communication.

Chapter D: Advertising and Marketing Communications Using Digital Interactive Media

This chapter is to be read in conjunction with the General Provisions on Advertising and Marketing Communication Practice and with chapter C on Direct Marketing.

Scope of chapter D

This chapter applies to advertising and marketing communications using digital interactive media for the promotion of any form of goods and services. It supplements the Code's General Provisions and chapter C on Direct Marketing with specific rules relevant to special issues presented by the nature of digital and interactive media, such as those on data collection.

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].

This chapter sets standards of ethical conduct to be followed by all parties (e.g. marketers, agencies or media) involved with advertising and marketing communications using digital interactive media.

8. Available from www.iccwbo.org

Terms specific to advertising and marketing communications using digital interactive media

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 *"digital marketing communications"* refers to marketing communications, using digital interactive media intended primarily to promote products or to influence consumer behaviour;
- the term *"individually addressed"* refers to communication that is sent to an e-mail address, mobile telephone number (e.g. SMS) or other similar account linked to an identifiable individual who can be directly contacted personally through such address.

Article D1

Identification

Where a digital marketing communication is individually addressed to a consumer, the subject descriptor and context should make this clear. Subject descriptors should not be misleading and the commercial nature of the communication should not be concealed.

The commercial nature of product endorsements or reviews created by marketers should be clearly indicated and not be listed as being from 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 under the control or influence of a marketer is clearly indicated and that the rules and standards of acceptable commercial behavior in these networks are respected.

Article D2

Clarity of the offer and conditions

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.

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.

Article D3

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 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 D4

Unsolicited individually addressed digital marketing communications

Individually addressed unsolicited marketing communication via digital interactive media should i) only be conducted where there are reasonable grounds to believe that the consumer who receives such communications has an interest in the subject matter or offer, and ii) include a clear and transparent mechanism enabling the consumer to express the wish not to receive future solicitations.

In addition to respecting the consumer's preferences, expressed either directly to the sender or through participation in a preference service programme, care should be taken to ensure that neither the digital marketing communication itself, nor any application used to enable consumers to open other marketing or advertising messages, interferes with the consumer's normal usage of digital interactive media.

Article D5

Digital marketing communications and children

- Parents and/or guardians should be encouraged to participate in and/or supervise their children's interactive activities;
- Identifiable personal information about individuals known to be children should only be disclosed to third parties after obtaining consent from a parent or legal guardian 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 or services that are subject to age restrictions such as alcoholic beverages, gambling and tobacco products should undertake measures to restrict access to such websites by minors;
- Digital marketing communications directed at children in a particular age group should be appropriate and suitable for such children.

Article D6

Respect for the potential sensitivities of a global audience

Given the global reach of electronic networks, and the variety and diversity of possible recipients, marketers should ensure that their digital marketing communications are consistent with the principles of social responsibility contained in the General Provisions.

Article D7

Provisions for online behavioural advertising (OBA)

Scope

The following applies to OBA focusing on web viewing behaviour over time and across multiple web domains as practiced by third parties 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 do not apply to advertising focused on web viewing behaviour for a particular website or affiliated websites as practiced by a website operator or first party (or those entities acting on behalf of a website operator or first party). For example, the provisions do not apply to the data collection and use practices for an online magazine or retail site when the data is solely for these sites' or their affiliates' own purposes.

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

Definition of terms specific to OBA provisions:

- the term *"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 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. OBA does not include the activities of website operators, 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 OBA, the term *"third party"* refers to an entity that engages in OBA on a non-affiliated website. This is in contrast to a *"website operator"* or *"first party"* which is the owner, controller or operator of the website, including affiliated sites, with which the web user interacts.
- the term *"explicit consent"* means an individual's freely given specific and informed explicit action 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 third party participating in OBA should adhere to principles of notice and user control as set out below. Transparency of data information collection and use, and the ability for users and consumers to choose whether to share their data for OBA purposes is vital. The following guidance provides further clarification for how these principles apply to OBA.

D7.1 Notice

Third parties and website operators should give clear and conspicuous notice on their websites describing their OBA 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 an easy to use mechanism for exercising choice with regard to the collection and use of the data for OBA 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.[9]

D7.2 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 OBA purposes and the transfer of such data to third parties for OBA. Such choice should be available via a link from the notice mechanisms described in footnote 9.

Those collecting and using data via specific technologies or practices that are intended to harvest data from all or substantially all websites traversed by a particular computer or device across multiple web domains, and use such data for OBA, should obtain a user's explicit consent. Web users should be provided with an easy to use mechanism for web users to withdraw their explicit consent to the collection and use of such data for OBA.

D7.3 Data security

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

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

D7.4 Children

Segments specifically designed to target children 12 and younger for OBA purposes should not be created.

D7.5 Sensitive data segmentation

Those seeking to create or use such OBA segments relying on use of sensitive data as defined under applicable law should obtain a web user's explicit consent, prior to engaging in OBA using that information.

Article D8

Responsibility

Anyone taking part in the planning, creation or execution of digital marketing communications including OBA, 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.

The rapidly changing and developing nature of digital interactive media makes more detailed guidance impracticable and inappropriate. However, whatever the nature of the activity, responsibility is shared by all the parties concerned, commensurate with their respective role in the process and within the limits of their respective functions.

9. Examples of how third parties, and where applicable website operators, can provide notice of the collection of data for OBA 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 OBA 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.

Chapter E: Environmental Claims in Marketing Communications

This chapter is to be read in conjunction with the General Provisions on Advertising and Marketing Communication Practice. Additional guidance for marketers interested in environmental claims is available in the ICC Framework for Responsible Environmental Marketing Communications.

Scope of chapter E

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 via telephone or digital or electronic media such as e-mail and the internet. 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;
- 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 E1

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 E2

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 6 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 E3

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 E4

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 contaminant[10] or background level.

10. "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.

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 must 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.

Article E5

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 E6

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 E7

Responsibility

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

Additional guidance

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.

Annex I

Terms of reference of the ICC Code Interpretation Panel

Article 1

The function of the ICC Code Interpretation Panel is to clarify the meaning of ICC Marketing Codes and Guidelines.

Composition and appointment

Article 2

The ICC Code Interpretation Panel may be called upon as and when the need arises. The decision rests with the Chair of the ICC Commission on Marketing and Advertising. The Panel may consider one or more interpretation questions at a time. The Panel shall be composed of Standing Members and, where appropriate, Specialist Members.

Article 3

As Standing Members, a group of three persons shall be appointed, one of them as the Panel Chair. They shall be selected so as to provide amongst them knowledge of the ICC Code system and expertise in self-regulation and marketing ethics in general. Standing Members shall be appointed for a maximum period of three years (renewable) by the ICC Secretary General, acting on the proposal of the ICC Commission on Marketing and Advertising. In appointing Standing Members, consideration will be given to their nationality, availability and ability to conduct the procedure in accordance with the Terms of Reference.

Article 4

Where specialist expertise is required, additional members may be seconded to the Panel. The Panel Chair may appoint up to three such Specialist Members on an *ad hoc* basis.

Article 5

A quorum shall consist of at least two Standing Members and, where applicable, one Specialist Member.

Article 6

The Secretary of the ICC Commission on Marketing and Advertising shall be the Secretary of the Panel.

Competence

Article 7

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 of the Codes, and/or the general spirit of the Code(s) concerned.

Article 8

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 in connection with such a case.

Requests for interpretation

Article 9

Any firm, company, business, association, court of law, public authority, self-regulatory body or private individual, 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.

Article 10

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. Applicants may also submit any other information relevant to the request.

Article 11

The Chair of the ICC Commission on Marketing and Advertising may, on his/her own initiative, refer questions to the ICC Code Interpretation Panel.

Article 12

The decision whether or not 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 on the basis of the request and the submitted documentation and/or any complementary information that can be obtained with reasonable effort and cost.

Languages

Article 13

Requests for interpretation shall be presented in English.

Procedure

Article 14

The primary objective of the Panel is to produce high quality Opinions. This shall be done 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 15

The Panel may work by means of physical meetings, e-mails, telephone conferences and the like, or a combination of these. The Chair shall, in consultation with the other Members, decide on how to proceed. Members are obliged to respond to drafts and other working documents within the time limits set by the Chair.

Article 16

The Panel shall submit a Draft Opinion to the Chair of the ICC Commission on Marketing and Advertising 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 Chair of the ICC Commission on Marketing and Advertising 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 Chair of the ICC Commission on Marketing and Advertising may, if he/she considers it appropriate, seek the advice of the ICC Commission with regard to the Draft as a whole or particular issues pertaining to it.

Conflict of interest

Article 17

No Member associated with the Applicant, or having an interest in the matter in hand likely to prevent him/her being perceived as independent, shall participate in the deliberations of the Panel.

Decisions

Article 18

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 19

The Panel is entitled to seek expert advice in any appropriate form. Furthermore, the Panel may obtain and use any information needed for the proper carrying out of its task.

Confidentiality

Article 20

Panel deliberations shall be confidential. Only the Members and the Secretary shall have access to the internal documents of the Panel. All are pledged to confidentiality.

Fees and costs

Article 21

In principle, the services of the ICC Code Interpretation Panel are free of charge. Where a request is anticipated to incur extra costs, the Chair of the ICC Commission on Marketing and Advertising may decide on a fee to be paid, in advance, by the Applicant. Should expert advice and/or complementary information in accordance with Article 19 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 not be entertained.

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 Practice[1] and most recently updated in the 2011 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.

1. http://www.codescentre.com

The Code is a fundamental underpinning but the credibility of self-regulation depends on its implementation. For the individual company or any other organization 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 sectoral 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 organization, 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 organization (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.

Principles

1. Endorsement and commitment

The board/top management should endorse the Code in question and make a firm commitment to effective compliance that is to permeate all relevant parts of the organization, 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 organization's strategy and business objectives. This should be effectively communicated to the organization. The implementation should be so framed as to take due account of relevant cultural and commercial conditions and applicable legal requirements. Any organization 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 organization, 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 organization 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 organization.

The reasons why the Code is being implemented should be widely communicated to the organization. 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 organization. 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 organization to achieve its business objectives. It should therefore become an integral part of the organization'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 organization, and how that relates to assets such as brand value. The way these ethical norms impact on the organization's activities and communications should also be outlined. All of this should be done in a manner that takes account of the organization'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 organizations often have a dedicated compliance officer with operational responsibility for compliance. Smaller organizations may also have someone with such overall responsibility, although combined with other tasks. As the Code should be part of the organization'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 organization are bound to require some dedicated resources, depending on the kind of organization. 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 organization, 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 organizational 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 organization 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 organization, 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 organization'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 organization 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 & 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 organization'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.

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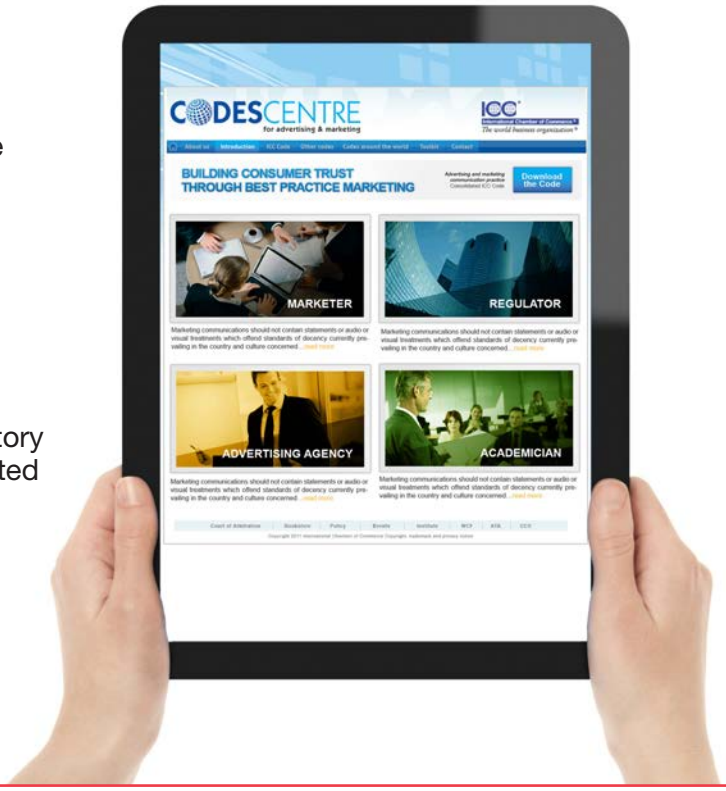

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