

THE ADVERTISING STANDARDS



BODY OF KENYA

# **Code of Advertising Practice and Direct Marketing**

**PART 1**

**ADVERTISING STANDARDS  
BODY  
OF  
KENYA**

Code Of Advertising Practice & Direct Marketing

*[Code of Advertising Practice  
And  
Direct Marketing]*

# Code Of Advertising Practice & Direct Marketing

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**ADVERTISING STANDARDS  
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KENYA**

*[The Code of Advertising Practice  
And  
Code Of Advertising Practice & Direct Marketing]*

April, 2003

Complied by:

NKIROTE K.MWORIA AND  
DOUGLAS J.MANGO

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## **A.CODE OF ADVERTISING PRACTICE**

### **I *Preface***

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1. Since the inception of the Marketing Society of Kenya, Advertising Code of Practice in 1992, there have been significant changes in the communications environment and increased competitiveness in the market which sometimes blurs the moral judgement, or otherwise of the industry players.
2. To the effect, the Advertising industry in Kenya, through the initiative of the Marketing Society of Kenya (MSK) and the Association of Practitioners in Advertising (APA) have initiated a review process that is intended to lead to an adoption of a comprehensive and up-to-date Advertising Code of Practice and Guiding Principles for the Kenyan Market and later for the entire East African Market.

Thus this Kenyan Code of Advertising Practice covers the following aspects of advertising:-

## **Code Of Advertising Practice & Direct Marketing**

- General rules in Advertising Practice that include moral issued amidst the three markets.
  - All media and communication channels.
  - Guiding principles and recommended complaints procedures.
3. In this regard, the code establishes an Advertising Standards Body for Kenya (ASBK) whose principal organ shall be the Advertising Standards Board (ASB).

4. This Body is an independent body set up by the marketing and advertising industry to ensure that its system of self-regulation works in an efficient and sufficient manner and that its principal activities do not work in any way whatsoever, against the public interest.
5. The management of the Body shall be vested in the ASB which shall be nominated by a joint sitting of the MSK and APA councils and shall comprise of:
  - a) Five members nominated as above by virtue of their knowledge and experience in matters relating to marketing, advertising, media and/or the wider communications industry.
  - b) Two members nominated by reason of their professional expertise in matters relating to administration, banking, law or accounting. Such professional shall be of no less than seven (7) years standing in their field of expertise.
  - c) The Board shall at its first elect a Chairman and appoint Secretary from amongst its members.

## Code Of Advertising Practice & Direct Marketing

6. The ASB shall have all powers necessary for the performances of its functions under this Code and shall serve for terms of one (1) year at a time. The members shall also meet from time to time as they deem necessary to carry out their functions and at the very least shall hold an annual general meeting for the purpose of dispensing with annual reporting and approval of finances.
7. The Code of Advertising Practice is the guiding document of the ASBK. The Code is based upon the International Code of Advertising Practice (ICAP), prepared by the International Chamber of Commerce.

The ICAP is internationally accepted as a basis for domestic systems of self-regulation. It forms the foundation of this Code in which the basic principles laid down in the ICAP are related to the particular circumstances of advertising in Kenya. The Code is drawn up and embraced by representatives of the marketing, communication and media industry, and is amended from time to time as provided by the code itself to meet the dynamic needs of the industry and our society.

8. The subscribers to this authority are required to adhere to this Code. The following individuals and organizations are members of the ASB:-

- Association of Practitioners in Advertising

- Marketing Society of Kenya

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- Any other individuals or organizations whose names appear at the subscribers books of registry at the secretariat

9. This Code is supplemented by individual codes which are determined by the various subscribers as provided for in this Code, so far as they do not contravene subscribers as provided for in this Code, so far as they do not contravene the key principles enacted by this Code and can therefore only differ in detail where individual needs are to be met. These individual codes are reflected in the appendices to the Code.

10. The Code binds the advertiser, the practitioner in advertising, the facilitator in the creation of advertisements and providence of data, statistics and information to be relied upon for the production of advertising and the medium involved in publication or broadcasting of the advertiser's message to the public.

11. As advertising is a service to the public, it should conform to the basic principles of advertising and its content should not violate any of our national laws.

12. Three reasons may be advanced for the need for regulatory code in addition to such legislation:

- a) First, legislative controls are not intended to distinguish between advertisements which live up to the best professional standards and those which do not. The finer detail and complexity is the concern of the advertising industry itself. To this end, the industry has voluntarily adopted this Code of Conduct to maintain the standards of dealing and honest trading in advertising that the consumer is entitled to expect. The industry believes that professional regulations, voluntarily applied, can ensure the elimination of deceptive or harmful practices more expediently and at less cost than legislative intervention, and that such regulation are also more easily adaptable to changing economic and social conditions.
- b) The second reason for a self-regulatory code is that those who are bound by it agree to observe it both in spirit and in the letter, and not to circumvent it by dubious ingenuity. Continued observance to the provisions of the Code does much to advance the standing of advertising as an essential element in the marketing of goods and services and thus promoting goodwill and understanding between advertisers and the consumers.

- c) Third, a code of practice can maintain standards in an area of communication which defies legal definition, that of good manners and taste. Advertisers are expected at all times to be scrupulous in their respect for individual privacy and personal susceptibilities.
- 13. ASB procedures are designed in such a way as to assist any person who wishes to complain about an advertisement (consumers, competitors, agencies, industry bodies and associations, etcetera). Adherence to these procedures will ensure effective and timely resolution of complaints. The procedures are designed to grant all concerned a fair and equal opportunity to be heard without fear or bias. The Procedural Guide to the Code forms an integral part of the Code.
- 14. This Code of Practice shall hereinafter be amended to suit the exigencies of the market and a comprehensive review shall be undertaken after every decade.

## Code Of Advertising Practice & Direct Marketing

**We the PRACTITIONERS OF ADVERTISING AND MARKETING in Kenya**  
RECOGNISE that advertising has become a pivotal component of product and service marketing in the global economy;

ACKNOWLEDGE that it is imperative that the Kenyan market has robust Code of Advertising Practice that governs and provides a tangible framework under which all professional parties in the marketing process forge a responsible attitude;

HONOUR those who have endured aches and pains to ensure a rudimentary framework of rules to govern the essentials of the process of selling by effect, and those who have facilitated constant review and update of these rules in the bid to ensure relevancy, sustenance and applicability without the possibility of rendering these rules outlived in usefulness and function;

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RESPECT those who have worked, tirelessly, to build and develop the economies of our countries up to the competitive and dynamic levels that we have reached today;

BELIEVE that a Kenyan Code of Advertising Practice belongs to all who live in Kenya, united by it in all our ethnic, cultural, religious and economic diversity, that the morality, principles and ethical beliefs behind this code are shared as one in this country;

REITERATE that the freedom to advertise is a fundamental right of speech and expression protected under the constitution of Kenya and as such the practice of advertising is a constitutional right is exercised within the ambit of the constitution bereft of intruding into the limitations expressed in the letter and the spirit of the constitution;

## Code Of Advertising Practice & Direct Marketing

EMPHASISE that this Code functions to play a fundamental part in ensuring a responsible attitude by all professional parties in the marketing process especially towards the protection of the often vulnerable consumer and the community at large as well as in combating unfair competition methods and in harmonizing and facilitating business practices;

ASSURE that this Code further constitutes a key element in the general philosophy of self regulation in an initiative by the marketers in preference to governmental measures whenever possible to ensure an internal mechanism of dispute resolution and self governance by the stakeholders themselves who are better placed to understand the disputes and intricacies within the industry;

ASSERT that the purpose of formulating this Code is to exchange and safeguard the freedom of choice for business between different marketing methods and

further encourage a free flow and trade of goods and services especially within the East Africa region and largely between other countries in the region and in the world;

ADMIT AND ACKNOWLEDGE that the Code serves three main purposes, namely, to protect the customer, to ensure professionalism among advertisers and to lay a foundation in the building of competitive regional advertising and marketing trends and values;

RECOGNISE that the Code is designed primarily as a self discipline measure amongst the marketing region, laying down criteria for professional conduct while at the same time bringing awareness to the public of the self-imposed limitations and restraints accepted by those using or working in advertising

## Code Of Advertising Practice & Direct Marketing

REASSURE that in the spirit of honesty and truthfulness, we do not seek to encourage soft and gutless advertising, and neither are we looking for mere entertainment; we still want advertising with selling teeth in it;

ACCEPT the jurisdiction of the Courts of Law in matters beyond the hierarchy of the mechanisms of ASBK and also above all are bound by this document and acknowledge the use of this document as a strong reference document by the municipal courts within the framework of the law in the event that the internal dispute resolution mechanisms and arbitration methods fail;

COMPLEMENT AND SUPPLEMENT rather than, replace or substitute, the legislations that exist to protect consumers from dishonest and fraudulent trading practices;

WE, the subscribers, therefore, adopt this Code of Practice as the supreme self-regulatory code for Kenya so as to:

IMPROVE upon the handling of unfairness and the impropriety of the past and establish regional advertising based on ethical practices, fair competition, representation of true facts, consumer sensitivity and protection of their interests and practical and straightforwardness in building of brands and strategic skills;

LAY the foundation for internal self-regulation of this significant free unnecessary and unwarranted governmental interference and intervention;

BUILD a united and effective Kenyan advertising industry governed and regulated by this one ultimate code, and in unison ensuring the adherence of the basic principles and fundamental rules enacted by this Code;

ENCOURAGE the sharing of benefits that accrue in the world of advertising amongst the subscribers to the Code and the building of modern advertising methods and concepts;

FACILITATE the cost-cutting and relationship-building culture of mediation, conciliation and arbitration as means of alternative as means of alternative dispute resolution rather than the avenue of Courts of Law, which cultivates acrimony, enmity and extravagant competition and discourages meaningful growth as well as the development of the advertising industry;

Advertising is here to stay and self-regulation is a manifest for its effective interplay.

*“It matters not how strait the gate, how charged with punishment the scroll. I am the master of my fate; I am the captain of my soul”*

**INVICTUS**

# Code Of Advertising Practice & Direct Marketing

THE ADVERTISING STANDARDS



BODY OF KENYA

# **Code of Advertising Practice and Direct Marketing**

**PART 2**

1. The scope of this Code shall include but not be limited to the following:

### **1.1 Commercial Advertising**

This Code shall primarily regulate commercial advertising. Its provisions shall be in respect of, expect as expressly provided for hereafter, advertisements for the supplies of goods or services or provision of facilities by way of trade, and also to advertisements other than those for specific products which are placed in the course of trade by or on behalf of any person or entity involved in commercial trading

### **1.2 Non-commercial Advertising**

The Code shall apply in as far as it is appropriate, to advertisements by government departments and agencies, statutory bodies, non-governmental and non-commercial organizations as well as individuals

### **1.3 Political Advertising**

The provisions of this clause shall not be interpreted as bringing political advertisements into the sphere of the ASBK functions **SAVE THAT** the advertising agency and individual medium carrying such advertisements shall be held responsible as to the appropriateness of any advertisement they accept and carry.

#### **1.4 Advocacy Advertising**

This Code shall also apply to any advertisement to the extent that it is controversial in that it expresses an opinion which is the subject of divided societal opinion or controversy, and that such divided opinion or controversy, and that such divided opinion or controversy involves issues within the areas of public policy and practice.

Such opinion shall then not be subject to the provisions of the Code relating to misleading claims except that the advertisement bearing such controversial opinions are:-

- Readily recognizable as advertisements;
- Cause no confusion as to the identity or status or policy affiliation of the advertiser;
- Whenever such information is not readily available state the advertiser's address and telephone number;

## ***IV Interpretation***

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2. This Code is to be applied in the spirit as well as to the letter.

2.1 Due to the various characteristics of different media and mode of communication, an advertisement which is accepted by one medium is not necessarily acceptable to another. The primary test to be applied in the assessment of advertisement conformity to the terms of this Code will be that of the probable consumer impact of the advertisement as a whole upon those who are likely to perceive it by manner of sight and sound.

2.2 Attention shall be paid to the entire content of the advertisement, visual and oral, all words and numbers, music jingles and sound effects and to nature, time and location of medium through which it is conveyed.

2.3 In assessing the impact of an advertisement, the ASB may take into consideration the following:

2.3.1 The surrounding circumstances;

2.3.2 That the language used in the advertisement as a whole may justify departure from the literal meaning thereof;

2.3.3 That the consumer is usually motivated by the brief impression of an advertisement;

2.4 When an advertisement promotes a matter of social concern rather than a commercial product or service, the ASBK will consider public sensitivities, social concerns, public opinion and general mood and perception in interpreting such an advertisement.

2.5 When an objection is raised in respect of an amended advertisement, which amendments resulted from an ASBK ruling, the original and the amended versions of the advertisement shall be taken into consideration.

2.6 Where the overall impression of the advertisement as a whole is in doubt or controversy, the ASBK may, at the concerned advertiser's cost or at its own cost to be reimbursed by the advertiser for the sake of expediency, call for a consumer reaction test by independent research, acceptable to the ASBK.

2.7 This Code binds advertisers, practitioners in advertising as defined in this Code and media owners, but the principal responsibility of observance of the terms of this Code lies fully upon the advertiser.

2.8 In this Code, headings embodied in the clauses are for convenience and shall not be used in its interpretation and unless the context clearly indicates a contrary intention:

- 2.8.1 the singular shall include the plural and vice versa;
- 2.8.2 a reference to any one gender shall be capable of being construed as a reference to any of the others;
- 2.8.3 a reference to a natural person shall be capable of being construed as a reference to partnerships and bodies corporate;

### **3. Applicability**

3.1 The Code shall be effective at the date it is launched and shall apply to:

- 3.1.1 Advertisements in television, radio, newspapers, magazines, brochures, leaflets, circulars, mailing, fax transmissions, catalogues, follow-up literature and other electronic or printed material;
- 3.1.2 Posters, billboards, outdoor and other promotional media in public places;
- 3.1.3 Cinema and video commercials;
- 3.1.4 Advertisements in non-broadcast electronic media;

- 3.1.5 View data services for instance relating to telephony advertising;
  - 3.1.6 Marketing databases containing consumers' personal information;
  - 3.1.7 Sales promotions;
  - 3.1.8 Advertisement promotions;
  - 3.1.9 Advertisements and promotions covered by the Cigarette Code(s)
- 3.2 The code shall not apply to:
- 3.2.1 The contents of premium rate telephone calls, SAVE AS the advertising for these services is covered by the Code;
  - 3.2.2 Advertising in foreign media;
  - 3.2.3 Health related claims in literature only addressed to the medical,dental,veterinary and allied professions;
  - 3.2.4 Classified private advertisements;
  - 3.2.5 Statutory notices and communication, public notices, police notices, Kenya Gazette notices and other official notices within this class;
  - 3.2.6 Works of art exhibited in public and private;
  - 3.2.7 Private correspondence;
  - 3.2.8 Oral communication including telephone calls;
  - 3.2.9 Press releases and other public relations material;
  - 3.2.10 The contents of books and other editorial communications;
  - 3.2.11 Regular competitions such as crosswords;

- 3.2.12 Packages,wrappers,labels,tickets and price lists unless they advertise another product, a sales promotion or are visible in an advertisement;
- 3.2.13 Political advertisements as defined and limited in the code;

#### **4. Amendment**

- 4.1 The provisions of this Code, where needs be, may be modified or amended by the ASB, and such amendment shall be communicated to all whom the Code applies.
- 4.2 There shall also be a total review of the Code from time to time, such reviews not being less than ten (10) years apart.
- 4.3 This review shall be conducted by an independent Task Force appointed by the ASB.

## ***V Definitions***

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5. In this Code, unless the context otherwise indicates, the following expressions shall have the following meanings:

5.1 **“Advertisement” means** any visual or oral communication, representation, reference or notification of any kind which:

5.1.1 is intended to promote or persuade the sale, leasing or use of any goods or services; or

5.1.2 appeals for, promotes or persuades the support of any cause.

5.2 The advertisement ought to be one that leaves the ultimate judgement, decision and discretion upon the consumer and should be free of any coercion, duress, intimidation or use of any force to accomplish the sale or loyalty.

5.3 Promotional content of display material, menus, labels and packaging also fall within the definition. Editorial material is not an advertisement unless it is an editorial for which consideration has been given or received.

5.4 The word “advertisement” applies to *published* advertising wherever it may appear. It does not apply to editorial or programming publicity.

5.5 **“Advertising Standards Body of Kenya” or “ASBK”** means an independent body set up by the marketing and advertising industry, charged with the responsibility of regulating the advertising industry in Kenya.

5.6 **“Advertiser”** means the entity, individual or corporate, commercial or otherwise, on whose instance the advertising appears.

5.7 **“Advertising Standards Committee” or “ASC”** means the judicial board or committee which adjudicates on consumer and competitor complaints.

- 5.8 “**Standards Appeal Council**” or “**SAC**” means the judicial board or committee which is appointed to adjudicate upon appeal against rulings from the Advertising Standards Board.
- 5.9 “**Broadcast medium**” means the holder of a broadcasting licence granted within the meaning of the Films and Stage Plays Act Chapter 222, Laws of Kenya or the Kenya Communications Act, 1997.
- 5.10 “**Print Medium**” means the holder of printing and publishing licence granted within the meaning of the Books and Newspapers Act, Chapter 111, Laws of Kenya.
- 5.11 “**Children**” shall bear the same meaning as given in the Children’s Act, Number 8 of 2001.of Laws of Kenya that is persons who are under the age of 18.For the purposes of this Code, children shall also mean persons who are portrayed as, or who appear to be under the age of 18.
- 5.12 “**Code**” means the Code of Advertising Practice of the ASBK, as amended by the ASBK from time to time, and includes all appendices to the Code and the Complaints Procedural guide.
- 5.13 “**Consumer**” refers to any person who is likely to be reached by or exposed to an advertisement whether he becomes the ultimate user or abstain from using the product or service. This includes an end consumer, user or trade customer or clientele.
- 5.14 “**Day**” means working days excluding Saturday, Sunday and gazette public holidays.

5.15 “**Directorate**” means the Executive Director and the executive staff of the ASA, acting either individually or collectively.

5.16 “Discrimination” means any prejudicial, bias or unfair acts or omissions, including policies, laws, rules, practices, conditions or situations which directly or indirectly:

5.16.1 imposes burdens, obligations or disadvantages upon; or

5.16.2 withholds benefit opportunities or advantages from

5.16.3 any person on one or more of the following grounds-

-race, gender, marital status, disability or pregnancy, ethnic or social origin, colour, sexual orientation, age, religion, conscience, belief culture,language,birth,political or economic affiliation;

-or any other analogous ground;

and “discriminate” and “discriminatory” shall have corresponding meanings.

5.17 “**Electronic media**” means advertising published by way of electronic means, and includes, inter alia, broadcast media and World Wide Web.

5.18 “**Manufacture**” means an entity concerned with the production of tangible consumer goods, whether fast moving package goods, durables, on-durables or industrial goods which are marketed to consumers.

5.19 “**Objectionable Copy**” means an advertisement, whether already published/broadcasted or not, that is before and subject to the ruling of either the ASC or SAC.

- 5.20   **“Offending Advertiser”** means any Advertiser against whom a complaint has been lodged with the ASC.
- 5.21   **“Product”** includes goods, services, activities and facilities.
- 5.22   **“Retailer”** means an entity carrying manufacturerers’goods and acts as an intermediary between the public/consumers and the manufacturers, and it includes the wholesaler, but not in so far as reference is made to ‘wholesale’ prices.
- 5.23   **“Secretariat”** means the administrative and registration officials and the locality of all the ASBK’S records.

## ***VI Advertising Principles: Basic Principles***

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**6** Advertisements should conform to the four basic principles that all advertisements be **legal, decent, honest and truthful.**

6.1 All advertisements should be prepared with a sense of responsibility and regard to the consumer, and general public.

6.2 All advertisements should respect and conform to the principles of fair competition in business.

6.3 An advertisement shall not bring the practice of advertising into dispute or ridicule or disdain, or reduce confidence in advertising as a service to industry and to the public at large.

6.4 All advertisements must conform to the substance of this Code.

6.5 The primary responsibility for observing this Code falls upon advertisers and by proxy those who are involved in preparing and publishing, advertisements on behalf of the advertiser, including but not limited to the following:

6.5.1 Advertising agencies.

6.5.2 Marketing research companies.

6.5.3 Print and broadcast media (including publishers).

6.5.4 Creative, design and other supplies companies.

6.5.5 Production houses.

6.5.6 Outdoor communication agencies.

6.5.7 Sales promotion.

6.5.8 Direct Marketing.

6.5.9 Internet advertising.

- 6.6 Any unreasonable and unwarranted delay in responding to enquiries by the ASBK beyond the stipulated duration may be considered a breach of the Code.
- 6.7 The ASBK will upon request treat in confidence any genuinely private or secret material supplied to it unless the Courts of Law or officials acting within their statutory power therein compels its disclosure.

## **7. Legality**

- 7.1 Advertisements shall not contain anything that is a breach of existing laws of Kenya or omit anything that the respective laws require.
- 7.2 Advertisements shall not contain anything which might lead or lend support to criminal or illegal activities, nor should they appear to encourage or condone such activities.
- 7.3 Advertisements shall not contain anything which is likely to bring the law into disrepute.

## **8. Decency**

- 8.1 An advertisement shall not contain statements or visual presentations which offend against prevailing standards of decency.
- 8.2 In particular, an advertisement shall not contain anything that is likely to lead to serious or widespread offence, indignation, umbrage or resentment on grounds of race, tribe, religion, sex, sexual orientation or disability.
- 8.3 Compliance with the provisions of this clause will be judged on the context, medium, medium timing, target audience, product and prevailing, standards of decency.
- 8.4 Advertisers are required to consider public sensitivities before using potentially offensive material as advertisements may be distasteful without necessarily conflicting with the provisions of this clause.

8.5 The fact that a particular product is offensive to a section of the consumer or the general public, or the fact that the product gives expression to attitudes or opinions about which society is divided, is not sufficient grounds for objecting to an advertisement for it.

## **9. Honesty**

9.1 An advertisement shall not be so framed as to abuse the trust of the consumer or exploit his/her lack of experience or knowledge or credulity.

9.2 Advertisements shall not contain anything which offends or takes advantage of the susceptibility or vulnerability of the consumers.

9.3 The presentation and design of an advertisement shall be such as to allow each part of the advertiser's message to be easily grasped and clearly understood.

9.4 This clause does not outlaw hard and impactful advertisements so long as they are honest.

9.5 No advertisement should so closely resemble any other, such that it misleads or causes confusion.

## **10. Truthfulness**

### **Substantiation**

10.1 An advertisement shall not mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise.

10.2 All advertisements should be readily backed with relevant documentation and evidence to establish and substantiate all descriptions, claims and comparisons which relate to matters of objectively ascertainable fact, prior to acceptance for publication or transmission.

- 10.2.1 This documentation and evidence of substantiation should be readily available without delay if requested by the ASC stipulated by the procedural guidelines.
- 10.2.2 The primary responsibility for substantiation lies with the advertiser and remains with him even when the handling of the advertising is delegated to an agent such as advertising agency
- 10.2.3 Subject to what is stated in below, advertisers will be required to provide substantiation which emanates from a credible independent research entity acceptable to the ASBK. In the event that substantiation is provided it will be necessary to satisfy to the ASC, unless the committee on its own volition accepts as credible, the credentials of the source.
- 10.2.4 Advertisers should ensure that in-house research or other documentation emanating from within the advertiser's company closely associated companies and submitted as substantiation is evaluated and confirmed by a credible independent research entity acceptable to ASBK.

### ***Claims***

#### ***10.3 Misleading Claims***

An advertisement shall not contain any statement or visual presentation which, directly or by implication, omission, ambiguity or exaggerated claim, is likely to mislead the consumers about the product being advertised, the advertiser or about any other product or advertiser, in particular with regard to:

- 10.3.1 Characteristics such as nature, composition, method and date of manufacture and expiry, fitness for purpose, range of use, quantity, commercial or geographic origin;
  - 10.3.2 Actual value or total price to be paid;
  - 10.3.3 Other terms of purchases such as hire purchase and credit sale;
  - 10.3.4 Conditions of delivery, exchange, return, repair and maintenance;
  - 10.3.5 Terms of any guarantee;
  - 10.3.6 Copyright and intellectual property rights, such as patents, trademarks, industrial designs and models, trade names, geographical indications, and plants breeders rights;
- 10.4 Official or other recognition or approval, awards or medals, prizes or diplomas whether in Kenya or in any other country or the East African region or in any other region.

#### 10.5 *Puffery*

No constraint upon free expression of opinion is placed by the Code's rule of truthful representation. Value judgements, matters of opinion or subjective assessments are permissible provided that:

- 10.5.1 It is clear what is being expressed is an opinion;
- 10.5.2 There is no likelihood of the opinion or the manner in which it is expressed, misleading consumers about any aspect of a product or service which is capable of being objectively assessed in the light of generally accepted standards.

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

10.7 *Hyperbole*

Advertisements which contain material of the kinds described below are not to be regarded, for that reason alone, as being in conflict with the Code's rule on truthful presentation:

10.7.1 Obvious untruths, harmless parody, caricature or mimicry, exaggerations and the like, the evident purpose of which is to attract attention or to cause amusement provided they are clearly to be seen as humorous or hyperbolic and are not likely to be understood as making literal claims for the advertised product;

10.7.2 Incidental minor inaccuracies, unorthodox spellings and the like which do not affect the accuracy or truthfulness of the advertisement in any material respect;

10.7.3 Accurate descriptions of the contents of books and other media of communication in circumstances in which some of the matter so described cannot itself be substantiated.

10.8 *Expert opinion*

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

#### *10.9 Statistics and scientific information*

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

#### *10.10 Headlines*

A headline to an advertisement should not mislead in any way and it should not be acceptable to contend that a misleading impression conveyed by a headline has been corrected in the body of the advertisement.

When a statement contained in a headline of printed advertising is asterisked to refer to an explanatory footnote, the type size used in the footnote should not be smaller than that used in the substantive copy of the advertisement.

#### *10.11 Political claims*

To the extent that any advertisements expresses an opinion in the matter which is the subject of political statements, public policy or practice, then neither that opinion nor any evidence which the advertisement may include in support or explanation of is subject to provision of this Code on truthful presentation.

Assertions of fact and expressions of opinion which are political' in the sense of the preceding subparagraph will be required to conform to the provisions of 10.1 and 10.2 above if they are made in the context

of appeal for funds or are directly linked to the offer of any product in return for payment.

All advertisements which contain 'political' claims should:

- a) Be readily recognizable as advertisements;
- b) Cause no confusion as to identity, status or political or ideological affiliation of any kind of advertiser; and
- c) Whenever such information is not otherwise accessible, state the advertiser's address or telephone number.

### **Value of goods**

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

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

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

10.12.3 There is no general requirement that the cost to the consumer of an advertised product should be stated in an advertisement.

10.12.4 However, when any indication of cost is given in an advertisement, regard should be paid to the following provisions of clarity and inclusiveness:

- If reference is made in an advertisement to more than one product, or more than one version of a single product, it should be clear to which product or version any quoted price relates.
- If a product is illustrated, and a price quoted in conjunction with the illustration, advertisers should ensure that what is illustrated can be purchased for the price shown.
- Except when those addressed by an advertiser are likely to be able to recover VAT, prices should normally be quoted inclusive of VAT. When prices are quoted exclusive of VAT, that fact should be stated with no less prominence than the prices themselves. The same principles apply in the case of other taxes and duties.
- When an advertised product cannot be purchased unless the consumer is willing to make associated purchases from the advertiser (e.g. where a case has to be purchased with a camera), the price of the advertised product

should normally be quoted on a basis which includes such unavoidable costs. Where it is impracticable to include such costs in the quoted price, for example, they are variable while the price of the advertised product is not, the consumer's liability to pay them should be stated with no less prominence than the price of the advertised product itself.

### **Use of 'free'**

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

10.14 When such incidental costs exceed those that would typically arise if a comparable product was bought from a comparable source, the product advertised should not be described as free.

10.15 Advertisers should not seek to recover the cost, in whole or in part, of the products which they describe as 'free':

- by imposing of packaging or handling, inflation of the true cost of delivery or impose any additional charges they would not normally make;
- by inflating any incidental expenses such as freight and postage which they may legitimately recover; or
- by altering the composition or quality, or by increasing the price of any other product which they require to be bought as a pre-condition of the consumer obtaining the 'free' product.

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

10.17 Advertisements offering 'free' goods shall indicate that such goods are only received subject to purchase

10.18 Except in the context of a free trial, the word 'free' should not be used if payment for an advertised product is only deferred

10.19 Any offer, which consists in the giving without cost of one product on condition that another is paid for, should normally be temporary, otherwise if such a combination offer is continuous, the use of the word 'free' may become misleading.

### **Use of 'to...' and from...' Claims**

10.20 Expressions such as 'up to x miles per gallon' and 'prices from as low as y' should not be used if, as a result, consumers may be misled about the extent to which the benefits claimed are in practice attainable by them or are available to them. Such claims should not be used:-

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

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

**Direct supply**

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

**Wholesale**

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

**Fresh**

10.23 The word 'fresh' must not be used in advertising in such a manner as to mislead or confuse the consumer.

## ***VII Advertising Principles: General***

### **11. DISPARAGEMENT OF ADVERTISERS**

11.1 Advertisements should not attack, discredit or disparage other products, services, advertisers or advertisements either directly or indirectly.

11.2 Comparisons highlighting a weakness in an industry or product will not necessarily be regarded as disparaging when the information is factual and in the public interest **PROVIDED THAT** the comparative advertising adheres to the provisions of this Code and remains as subtle and decent as possible.

### **12. COMPARATIVE ADVERTISING**

12.1 Advertisements in which factual comparisons are made between products and/or services are permitted provided that:

12.1.1 All legal requirements are adhered to-particular attention is drawn to the provisions of the Trade Marks Act, Chapter 506 the Laws of Kenya;

12.1.2 Only facts capable of substantiation are used as governed by this Code;

12.1.3 One or more material, relevant, objectively determinable and verifiable claims are made;

12.1.4 The claims are not misleading or confusing as governed by this Code;

12.1.5 No infringement of advertising goodwill takes place as governed by this Code;

12.16 No disparagement of advertisements takes place as governed by this Code;

12.17 The facts or criteria used are fairly chosen. In this assessment the following will, *inter alia*, be taken into account-

- The significance of the facts or criteria used;
- The relevance and representativeness of the facts or criteria used; and
- Whether the basis of the comparison is the same.

12.1.8 Products or services compared must have the same or similar characteristics

12.1.9 The contextual implication is strictly limited to the facts;

12.1.10 Where the claims are based on substantiated research, the express consent as to the accuracy and scope of such claims be obtained from the relevant research body;

12.1.11 The advertiser accepts responsibility for the accuracy of the research and claims;

12.2 References to the claims made above shall be deemed to include all visual and oral representations.

12.3 Group comparisons and comparisons which identify competitors by implication are acceptable subject to the criteria contained in this clause.

12.4 The guiding principle in all comparisons shall be that products and/or services should be promoted on their own merits and not on the demerits of competitive products.

12.5 In considering matters raised under this clause, cognizance will be taken to the intention of the advertiser

12.6 Advertisers are required to obtain advice regarding the conformity of advertising material with all the provisions of this clause, and in particular the Trade Marks Act, (Chapter 506 Laws of Kenya), before placing a comparative advertisement.

### **13. TESTIMONIALS**

13.1 Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience over a reasonable period of the person giving it and not on third party's opinion.

13.2 Testimonials or endorsements which are obsolete or otherwise no longer applicable (for example where there has been a significant in formulation of the product concerned) should not be used.

13.3 Testimonials should not contain any statement or implication contravening the provisions of this Code and should not be used in a manner likely to mislead.

13.4 Testimonials should not contain any claims to efficacy which cannot justifiably be attributed to the use of the product, and any specific or measurable results claimed should be fairly presented.

13.5 Where "before" and "after" claims are made, they should be capable of substantiation, expressed and illustrated in such a way as to permit a fair comparison to be made.

13.6 Where any testimonials contain an expression which conflicts with the Code, the advertiser may with the written approval of the person giving the testimonial, amend it so as to remove the source of conflict.

13.7 Testimonials from persons resident outside Kenya are not acceptable unless their addresses and/or country of residence are given to the ASBK or the medium involved which may decide whether such details must be used in the advertisement.

13.8 Advertisements based on fictitious characters should not be framed so as to give the impression that real people are involved; in particular they should contain “testimonials” or “endorsements” which may give such an impression.

13.9 Advertisers and their advertising agencies should have and be able to present for inspection by the ASBK on request, copies of any testimonials used in advertising. Such copies should be signed and dated by persons providing the testimonials and should confirm what is contained in any of the advertisements in question.

#### **14 USE OF THE WORD “NEW” IN AN ADVERTISEMENT**

1.1 The word “new” or words implying “new” may be used in all media, packaging, posters, billboards etcetera for an entirely new or novel product or latest version of a product or service marketed or sold during a given (6) months period.

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

1.3 The maximum usage of the word “new” or words implying “new” in the above prescribed context shall be confined to a six (6) month period calculated from the date proven usage in an advertisement. In exceptional circumstances the ASBK may agree to an extension of six (6) additional months if use.

1.4 After the expiry of the prescribed advertising campaign period using the word “new” or words implying “new”, the advertisement in question may not renew the use of the word “new” until the expiry of at least three (3) months in respect of the same product.

## 15. PRICES

### 15.1 Pricing Policy

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

15.1.1 Any stated price should be clear and advertisers should ensure that the prices match the product advertised.

#### 15.1.2 *Quotation*

Prices quoted shall be the selling price at which the goods will be sold to the purchaser against immediate payment for the same.

The price must be quoted in full.

#### 15.1.3 *Inclusiveness*

Prices must include all necessary or incidental costs without which the product cannot be purchased, for example, a deposit for a container.

Where impracticable to include such costs in the quoted price, the purchaser's liability to pay such costs must be stated prominently.

#### 15.1.4 *Taxes*

Prices quoted in advertisements addressed to the public should normally include VAT and other non-optional taxes and duties imposed on all purchasers.

#### 15.1.5 *Clarity*

If reference is made in advertisement to more than one version of a single product, it should be clear which version any quoted price relates

If the price of one product is dependant on the purchase of another, the extent of any commitment by purchasers should also be made clear.

Price claims such as “up to” and “from” should not exaggerate the availability of benefits likely to be obtained by purchasers.

## 15.2 **Price Comparisons**

### 15.2.1 ***By Manufacturers***

An advertiser may wish to claim that his prices are lower than those of his competitors- such claims shall be generally acceptable subject to specific provisions in this code on Comparative Advertising.

### 15.2.2 ***Co-operative Advertising***

Where a manufacturer inserts the name of a retailer the advertisement will be deemed to be a “retail” advertisement and not that of the manufacturer.

### 15.2.3 ***By Retailers***

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

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

15.2.3.2 A single price reduction or discount may be advertised for maximum period of three (3) months.

#### 15.2.4 *Sale Advertising*

Special sale prices may be advertised on the understanding that satisfactory documentary evidence of all the claimed price reductions is held available to be furnished on request.

#### 15.2.5 *Corporate Slogans*

These provisions shall not apply to corporate slogans, themes and/or statements relating to pricing.

### 16 GUARANTEES AND WARRANTIES

#### 16.1 *Definitions*

16.1.1 **“Guarantee”**- a formal written understanding to reimburse a purchaser for the cost of the product itself, or the cost of having it put right in the event of manufacturing or latent defects becoming apparent;

16.1.2 **“Warranty”**- used more generally, a promise, without any formal legal obligation being intended, that a product shall be of the quality and fit for the purpose for which it is intended.

#### *Provisions*

16.2 These words are often used by advertisers interchangeably, yet are meant in two distinct senses. With this regard since the possibilities of confusion are considerable, the advertiser must be as clear as possible to the sense in which he uses these words.

16.3 The words “guarantee” and “warranty” should not be used in a manner that would cause confusion about the consumer’s legal rights, or that diminishes rights which would otherwise be enjoyed by the consumer; purport to do so; or may be understood by the consumer as so doing.

- 16.4 In particular, substantial limitations should be set out clearly in the advertisement and before commitment a consumer should be able to obtain the full terms of the guarantee from advertisers.
- 16.5 There is no objection to the use of “guarantee” in a colloquial sense provide that there is no confusion as to the word expressing an intention to take on additional legal responsibility.

## **17 MONEY-BACK UNDERTAKINGS**

- 17.1 Where the phrase “money-back” is used, it will be assumed that a full refund of the purchase price of the product will be given to a dissatisfied consumer, either throughout the reasonably anticipated life of the product or for the period specifically in the advertisement.
- 17.2 The words “guarantee” and “warranty” shall not be used in describing or referring to an undertaking, the substance of which is merely to refund the price of a product within a brief trial period to a dissatisfied consumer.
- 17.3 However, where such undertakings are made the time within which claims must be made by consumers should be clearly stipulated.

## **VIII Advertising Principles: Legal**

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### **18 ADVERTISING GOODWILL**

- 18.1 Advertisers shall not make unfair use of the goodwill attached to the trade mark, name, and brand or advertising campaign of another without prior written permission.
- 18.2 Such permission shall not be construed as being a waiver of the provisions of this Code.
- 18.3 The use of parodies or imitations, the intention of which is primarily to amuse and are not likely to affect adversely the advertising goodwill of another to a material extent shall not fall within the provisions of this clause.

### **19. IMITATION**

- 19.1 Advertisers shall ensure that their advertisements do not so closely resemble any existing advertisement, local or international, that it misleads or causes confusion to the purchaser or consumer.
- 19.2 Particular care shall be taken in the packaging and labelling of goods to avoid causing confusion or deception with regard to competing products.
- 19.3 In considering disputes regarding imitations, the ASC shall pay particular attention with regard to undue imitation of international campaigns by local advertisers **PROVIDED THAT** the international advertiser is committed to start trading in the local market within a reasonable period of time.

## **20. PROTECTION OF PRIVACY AND EXPLOITATION OF THE INDIVIDUAL**

20.1 Advertisements should not, except in the circumstances noted below portray or refer to, by whatever means, any living persons, unless the express prior permission of that individual has been obtained. Advertisers should also take care not to offend the religious or other susceptibilities of those connected in any way with deceased persons depicted or referred to in any advertisement.

20.2 This provision does not apply:

- 20.2.1 To the use of crowd or background shots in which individuals are recognizable, PROVIDED THAT neither the portrayal, nor the context in which it appears is defamatory, offensive, derogatory or humiliating. However, an advertiser should withdraw any such advertisements if a reasonable objection is received from person depicted;
- 20.2.2 To advertisements for books, films, radio or television programmes, press features and like, in which there appears portrayals of, or references to, individuals who form part of their subject matter;
- 20.2.3 To police or other official notices such as notices termination of employment PROVIDED that any allegation contained in notices of termination of employment shall be readily substantiated especially if they impute upon a persons reputation;
- 20.2.4 To occasions when in the ASBK'S opinion the reference or portrayal in question is not inconsistent with the

subject's rights to a reasonable degree of privacy and does not constitute an unjustifiable commercial exploitation of the individual's fame or reputation.

20.2.5 Particular attention is drawn to the provisions of Defamation Act, Cap 36 of the Laws of Kenya.

## **21 ADVERTISEMENTS AIMED AT CHILDREN**

### **21.1 Definitions and Interpretation**

In advertising targeted at children, it should be realized that because of the credulity and lack of experience of a child, the interpretation of the Code as embodied in this Code will be interpreted much more narrowly, as children would be likely to attach or associate a more literal meaning to advertising.

In the interpretation of this clause the word "children" will also include "young people".

### **21.2 Children and Safety**

#### *General principles*

21.2.1 Advertisements addressed to or targeted towards children or that are likely to influence children should not contain any statements or visual presentations which might result in harming them mentally, morally, physically or emotionally.

21.2.2 The aim of the general principle is:

21.1.2.1 That children should not be brought up under the impression that it is acceptable and safe to be in certain surroundings; and

21.1.2.2 That the depiction of a particular activity or circumstances in such a way would not have the

likely effect that children would attempt to emulate it with the concomitant risk of physical, moral or mental harm or that the impression created is that it is acceptable to act in a certain manner.

21.2.3 Instances where the above principles may apply are as follow:

- 21.2.3.1 An advertisement which encourages children to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels or the like;
- 21.2.3.2 An advertisement where children appear to be unattended in street scenes unless they are obviously old enough to be responsible for their own safety, and where they are shown to be playing in the road or along the roadside unless it is clearly shown to be in a play area or other safe areas, in street traffic scene where they shown to disobey traffic rules;
- 21.2.3.3 An advertisement where children are shown or seen leaning dangerously out of windows or over bridges, or climbing dangerous cliffs;
- 21.1.3.4 An advertisement where small children are shown climbing up to take things above their head level or where medicines, disinfectants, antiseptics or caustic substances are shown within reach of children without close parental supervision or where unsupervised children as shown administering these products in any way;

21.2.3.5 An advertisement where children are shown matches or any inflammable substances such as gas, paraffin, petrol or petroleum products, mechanical or mains powered appliances in such a way which could lead to their sustaining injury.

### **21.3 Children's unwariness and lack of experience**

#### *General principles*

21.3.1 Advertisements should not exploit the natural credulity or gullibility of children or their lack of experience and should not strain their senses of loyalty.

21.3.2 Instances where the above conditions are applicable are as follows:

21.3.2.1 Where a commercial product or service, through an advertisement, suggests that unless children buy or encourage other people to buy the product or service, they will be failing in some duty or lacking in loyalty toward some person or organization is the one making the appeal or not;

21.3.2.2 Advertisements which lead children to believe that if they do not own the product advertised they will be inferior in some way to other children or that they will be held in contempt or ridicule for not owning it;

21.3.2.3 Dealing with the activities of a club where children meet is acceptable **PROVIDED THAT** there is a clear statement that the club is carefully supervised in the manner of the behaviour of the children and

the company they keep, and that there is no suggestion of the club being, a secret society;

21.3.2.4 Offering a free gift, where the gift is not “free” in a literal sense, that is where the gift is available but with a consideration on the side. If a condition applies that is “free with” this fact should be stated as well as any other conditions that will apply if the free gift is not deliverable immediately if the main conditions are met. The gift should be portrayed in such a manner that its size can be determined by showing it in relation to some common object.

21.3.3 Children should not be portrayed as being sexually appealing, or in a sexually provocative way or in any form of sexual innuendo or insinuation.

21.3.4 In using children in advertising attention is drawn to the provisions of the specific categories of advertising in this Code and more particularly to the Children's Act, No. 8 of 2001, Laws of Kenya and the Employment Act Chapter, 226, the laws of Kenya.

## **22. SAFETY**

22.1 Advertisements should not without reason, justifiable on educational or social grounds contain any visual presentation or any description of dangerous practices or of situations which show a disregard for safety,

22.2 Special care should be taken in advertisements directed towards or depicting or young people.

## **23. USE OF ANIMALS IN ADVERTISING**

23.1 Advertisers must satisfy the ASBK that no animal is caused pain or distress in the course of making an advertisement and no advertisement may contain anything that may reasonably be thought to encourage or condone cruelty or irresponsible behavior towards animals.

23.2 Advertisers **MUST** also adhere to the provisions of the Prevention of Cruelty to Animals Act, Chapter 360, the laws of Kenya.

23.3 The use of animals in circumstances other than “natural” is subject to independent supervision and/or approval by animal welfare organizations such as the council of the Kenya Society of Prevention of Cruelty to Animals (KSPCA).

## **24. RECOGNITION OF AN ADVERTISEMENT**

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

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

24.3 In the case of a single advertisement occupying a whole page or part of a page, the following guidelines must be considered:

24.3.1 The word **ADVERTISEMENT** should stand alone at the head of the advertisement in such size and weight of type as to be easily seen.

- 24.3.2 If the advertisement occupies less than half a page, it should be boxed in completely; or if half a page or more, separated from any adjacent matter by a distinct border.
- 24.3.3 Special care and attention should be taken wherever the size and style of type in the advertisement the same as, or closely resembles that of the editorial matter.
- 24.4 Where already paid up space or ‘paid-for space’ is in style of the editorial, whether paid for by the same or different advertisers, particular care is needed to ensure that no part can be mistaken for editorial matter.
- 24.5 As a general rule, where an advertisement or series of advertisements paid for by the same organization (s) under the same control extends over more than one page, the word **ADVERTISEMENT** should be printed at the head of each page in such a way that a reader cannot fail to see it.
- 24.6 Similarly, where supplements are paid for wholly by an advertiser or advertisers, it should normally be headed in bold letters with the words **ADVERTISING SUPPLEMENT**, and carry the word (s) **ADVERTISEMENT** or **ADVERTISING SUPPLEMENT** at the head of each page.
- 24.7 In Electronic media, special care should be taken to clearly distinguish between programme content and advertising. Where there is a possibility of confusion, advertising should be clearly identified in a manner acceptable to the ASBK.
- 24.8 In general and where these provisions do not provide specific guidelines, advertisements must be clearly distinguishable from the editorial content of the publication in which it appears or from the programmes content betwixt which it appears.

24.9 Features announcements or promotions that are disseminated in exchange for a payment or other reciprocal arrangement should comply with the Code if their content is controlled by the advertisers. They should also be clearly identified as such.

24.10 Distance selling advertisements with written response mechanisms (e.g. postal, fax or email) and advertisement for one day sales and the likes should contain the name and address of the advertisers. Distance selling advertisements with telephone response mechanisms and advertisements for business opportunities should contain the name and contact details of the advertisers. Unless required by law, other advertisers are not normally obliged to identify themselves.

## ***IX Specific Categories of Advertising***

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### **ADVOCACY ADVERTISING, ADVERTISING FOR CHARITABLE CAUSES AND POLITICAL ADVERTISING**

#### **1. Definitions and Interpretation**

- 1.1 **“Advocacy Advertising”** means advertising by non-governmental organizations towards humanitarian causes, charitable societies or causes and other forms of advertising whose basis are largely matters of individual or societal opinion and to various extents controversial.
- 1.2 **“Political Advertising”** means advertising of political parties, coalitions or associations of political parties and bureaus, political candidates and general campaign policies, manifestos and strategies of these political affiliations.
- 1.3 **“The Act”** referred to in this category is The National Flag, Emblems and Names Act, Chapter 99, the Laws of Kenya.

#### **2. Provisions**

- 2.1 Advertisements claiming that a purchase of a product will support some charitable or good cause are acceptable provided the following details are included in the advertisement:
  - 2.1.1 Amount of donation;
  - 2.1.2 Name of charity or cause;
  - 2.1.3 Physical address of the charity organization;
  - 2.1.4 Duration of the campaign.

- 2.2 Political advertisements or political advertising campaign by an advertising agency will not necessarily impute that the agency embraces the principles, beliefs and aspirations of the political bureau.
- 2.3 Advertisements under this category may include a statement disassociating the advertising agency from the beliefs of principles beliefs and aspirations of the political bureau.
- 2.4 An advertising media shall not reject a political advertisement merely on the grounds that the advertisement supports a certain political bureau or because the media has already or is in the process of advertising another opposing political party.
- 2.5 The rejection of any political advertisement by an advertising medium must be consistent with the spirit and letter of the Code.
- 2.6 Political advertising may make use of the National Anthem, national emblems and symbols as long as it does not disrespect in speech, manner or writing according to the provisions of the Act.
- 2.7 The use of national emblems and national symbols and specified names and likeness to the national symbols as stated by the Act, must be preceded with the written permission of the Minister of Justice and Constitutional affairs according to the provisions of the Act.
- 2.8 In the omission of the above mentioned office in the cabinet or in the absence of the minister or assistant minister in the above named office, the written permission of the Attorney-General or his deputy shall suffice. Failure to obtain such required permission is an offence under the Kenyan Law.
- 2.9 Advertising by advocacy or lobby groups claiming facts based on research should be ready to provide specific substantiation for their claim.
- 2.10 Advertising of the nature set out in this category seeking to collect donations for a charitable or humanitarian cause should be ready to

provide detailed information on deposit of the donation either through a bank account bearing the name of the advocacy organization or a reputable depository point bearing the name of a charitable or humanitarian cause.

## **ANTISEPTICS AND HOUSEHOLD CARE PRODUCTS**

These shall include but not be limited to the following:

- a) Antiseptics
- b) Germicides
- c) Disinfectants
- d) Detergents and Soaps

## **Antiseptics, Germicides and Disinfectants**

### **1. Definitions and Interpretation**

- 1.1 Advertising of “**Antiseptic soaps**” shall be guided by the antiseptic and disinfectant provisions of this Category
- 1.2 Any “Medicinal claims” or “health claims” contained in advertisements under this category shall be required to adhere to the “Advertising containing health claims” section at the Appendix to this Code.

### **2. Provisions**

- 2.1 No advertisement for any product in these categories should claim or imply:
  - 2.1.1 That it offers complete protection against diseases, or the danger of infection unless the claims or implications can be specifically substantiated;
  - 2.1.2 That it is a substitute for cleanliness.
- 2.2 Advertisements should not exaggerate the dangers of the presence of germs in the normal domestic situation.

## **DETERGENTS AND SOAPS**

### **1. General**

- 1.1 This category is supplementary to the general provisions of the Code. Special care must be taken by advertisers to ensure that the spirit as well as the letter of those provisions is scrupulously observed.
- 1.2 This category shall apply to all washing powders commonly referred to as detergents and all other kinds of washing soaps, whether in powder form or not and shall include bar soaps, laundry additives like softeners and perfuming solutions as well as washing powder used both hand wash and machine wash.

### **2. Definitions & Interpretation**

- 2.1 **“Stain”** means any mark or blotch or blot or splotch that has affixed to a garment whether temporary or semi-permanent, but does not include discolouration of a garment unless that discolouration is caused by another garment.
- 2.2 **“Stubborn stain”** refers to an ordinary stain according to the meaning above but of a more obstinate or difficult nature to remove.
- 2.3 **UNLESS** expressly stated, any reference to “detergents” shall also refer to bar soaps and cube soaps that are used to launder garments.

### **3. Provisions**

- 3.1 No advertisements for detergents shall either claim to inhibit the fading away/aging of garments or slow down/hold back the running down of garments.

- 3.2 No advertisement for detergent shall claim to prevent the shrinking of garments which are naturally susceptible if laundered inappropriately.
- 3.3 Advertisements for detergents shall not make any claims of softening and perfuming properties or any other properties that are beneficial to the garment unless such claims can be readily substantiated.
- 3.4 Advertisements for detergents MUST not depict machine wash detergents as substitutes to ordinary hand wash detergents unless proper substantiation available.
- 3.5 Comparative advertising of detergents shall only be acceptable to the extent provided for in the Comparative Advertising section of this Code.
- 3.6 The use of the word “new” or words implying “new” is as stipulated by the general principles of this Code.

## **BETTING TIPSTERS AND GAMING**

### **1. General**

- 1.1 This category is supplementary to the general provisions of the Code and special care should be taken to ensure that the spirit as well as the letter of the whole Code is scrupulously observed.
- 1.2 This Category shall also abide by the provisions of the Betting, Lotteries and Gaming Act (Chapter 131, laws of Kenya) and the Licensing Control Board as enacted in the aforementioned Act.

### **2. Definitions and Interpretation**

- 2.1 “**Gaming**” shall have synonymous meaning with “gambling”, “betting”, “laying a bet” and “having a bet”.
- 2.2 “**Casino**” means a licensed commercial enterprise whose key trade or business is gambling.

### **3. Provisions**

- 3.1 Advertisements for betting tipsters are acceptable under the following conditions:
  - 3.1.1 Betting tipsters advertisers will be required to disclose to publishers their real name and permanent address. Where the business is conducted in any other name, that name is also required to be disclosed.
  - 3.1.2 Betting tipsters may not advertise success stories or offer guarantees.
  - 3.1.3 No money may be requested in such advertising.

- 3.2 Advertisements for betting tipsters and gambling must not contain anything that is likely to lead people to adopt styles of gambling that are unwise.
- 3.3 Advertisements and promotions should be socially responsible and should not encourage excessive gambling.
- 3.4 Care should be taken not to exploit the young, immature or those who are mentally, economically or socially vulnerable.
- 3.5 Advertisements should not be directed at persons below eighteen (18) years of age through the selection of media, style of presentation, content or context in which they appear. No advertising medium should be used to advertise betting and gaming if more than 25% of its audience is below 18 years of age.
- 3.6 People shown gambling should not be, nor should they appear to be below twenty-five (25) years of age.
- 3.7 Licensed casinos can only use classified advertisements to advertise to the public, unless such advertisements are an inclusive feature in advertising an entire entertainment entity.
- 3.8 Such advertisements should be restricted to the name, logo, address, telephone and fax numbers of the premise, factual information about the ownership, the facilities provided, those who maybe admitted and how to apply for membership.
- 3.9 Advertising material other than classified may be sent only to the members of such casinos.

## **BEVERAGES**

These shall include but not limited to the following:

- Alcoholic Drinks
- Non-alcoholic Beverages

## **Alcoholic Drinks**

### **1. General**

- 1.1 Advertising of alcoholic drinks should be done in a responsible manner such that it does not feature or foster irresponsible drinking. This applies to the quantity of drink being consumed or shown in the advertisement.
- 1.2 The consumption of alcohol may be portrayed as sociable or thirst quenching but in a responsible manner
- 1.3 Advertisements may be humorous but must still conform to the spirit and letter of the Code.

### **2. Definitions and interpretation**

- 2.1 “Alcoholic drinks” means any licensed liquor packaged in a bottle, plastic or metal can or any other authorized form of packaging and contain alcohol amounting to an equivalent or excess of 1.2% alcohol by volume.
- 2.2 “Liquor advertising” shall be used interchangeably with the term “advertising of alcoholic drinks”
- 2.3 “Liquor” shall be used interchangeably with the term “alcoholic drinks”
- 2.4 “Low alcohol drinks” are those that contain between 0.5%-1.2% alcohol by volume.

### **3. Provisions**

- 3.1 All advertisements in this category should be socially responsible and should:
  - 3.1.1 Be directed towards brand selling to develop brand loyalty or to persuade people to change brands or types of alcoholic beverages.

3.1.2 Not set out to encourage increase in the consumption of alcohol or excessive drinking.

3.2 Advertisements should neither suggest that regular solitary drinking is advisable nor should they exploit the young immature or those who are mentally, economically or socially vulnerable.

3.3 Liquor advertising should pay regard to the target audience and general viewership in the following manner:

3.3.1 Liquor advertising should not be directed at persons below 18 years of age.

3.3.2 No one associated with the act of alcohol consumption in an advertisement shall be below twenty-five (25) years of age or appear to be below the aforementioned age.

3.3.3 No advertising medium should be used to advertise alcoholic drinks if more than 25% of age.

3.3.4 Persons under the age of 18 years shall not be depicted in liquor advertisements except where it would be usual for them to appear, for instance in background scenes or in family crowds. They will not be shown drinking alcoholic beverages, nor will it be implied that they are drinking such beverages.

3.4 Advertisements should not imply that alcoholic beverage consumption is essential to business and social success or acceptance or that refusal is a sign of weakness. Such advertisements should not be based on a dare or imply any failings in those who do not accept the challenge of a particular alcoholic beverage.

3.5 Advertisement of a brand preference may be promoted as attributed to drinker's good taste and discernment.

3.6 Liquor advertising should neither be suggestive of sexual indulgence nor permissiveness.

Such advertisements should not portray nudity or present an improper portrayal of near nudity or present any situation derogatory to the virtue of either sex or claim or suggest that alcoholic beverages can contribute directly to sexual prowess or seduction.

3.7 Liquor advertisements should not suggest that any alcoholic drink can enhance mental, physical or sexual capabilities, popularity, attractiveness, masculinity, femininity or sporting achievements,

3.8 Advertisements should not induce people in an improper manner to prefer a drink because of its higher alcoholic content or intoxicating effect. Advertisements may give factual information about the alcoholic strength of a drink or its relatively high alcoholic content but this should not be the dominant theme of the advertisement.

3.9 Liquor advertisements should not claim that alcohol has curative qualities or effect ,nor offer it expressly as a stimulant, sedative or tranquilizer. Advertisements may refer to the refreshing attributes of an alcoholic beverage, but should not imply that performance can be improved through the consumption of such a drink.

3.10 Advertisements should not suggest consumption of liquor is acceptable under circumstances which are generally regarded inadvisable, improper or illegal for instance proceeding or during any operation requiring sobriety, skill or precision. Examples of such operations are motor vehicle driving, aeronautics and other forms of transport, work or sport requiring immense physical effort.cc

3.11 When advertising low alcohol drinks, care should be taken that they are promoted in a way that does not encourage their inappropriate consumption and should not depict activities that require complete sobriety

3.12 Advertisements must not depict pregnant women.

3.13 Alcohol may not be advertised in context of aggressive or anti-social behaviour.

3.14 Advertisements should not contain expressions which tend to degrade liquor as a beverage

3.15 Advertisements should not suggest consumption of liquor by member of a class who are opposed to consumption of liquor for example teetotallers or, prohibitionists, or are generally regarded as immature or otherwise unfit for example destitute persons and criminals.

3.16 Advertisements may not suggest consumption of liquor for other than religious purposes, in proximity of churches, burial places and places held sacred, unless a beverage was first produced in such a location and the location is used only when depicting the actual history of the product.

3.17 Liquor advertisements should not depict consumption of alcohol in a squalid, sordid, filthy, poverty stricken or disgusting surroundings

3.18 Advertisements should not suggest or commend or make fun of over-indulgence of alcohol consumption or its after effects

3.19 Advertisements may not suggest that noticeable after effects of liquor abuse, such as flushed complexion, unsteady gait, slurred speech and bloodshot eyes are not present if a particular product is consumed; or can be simply cured, concealed or removed by remedial treatment after consumption.

## **Non-Alcoholic Beverages**

### **1. General.**

1.1 This category is supplementary to the general provisions of the Code and special care should be taken to ensure that the spirit as well as the letter of the whole Code is scrupulously observed.

### **2. Scope.**

2.1 This category shall apply to advertising publishing or broadcasted in the Republic of Kenya.

2.2 All advertising of non alcoholic beverages, irrespective of whether they are locally manufactured or imported, shall be guided by this category as well as the provision of this Code.

2.3 This category shall apply to advertisements in respect of the following:

2.3.1 Hot beverages such as tea, coffee, cocoa, and chocolate drinks.

2.3.2 Fizz drinks.

2.3.3 Sodas, soft drinks and pops (whether fizzy or not, bottled or canned);

2.3.4 Bottled and flavoured water (includes mineral and distilled water);

2.3.5 Fruit and bottled juices (sometimes known as squashes.)

2.3.6 Energy drinks.

### **3. Definitions and Interpretation.**

***In this category:***

3.1 “**Fizz drinks**” refers to soft drinks that emit sparkle or bubble or effervescence which is sometimes used as a preservative.

- 3.2 “**Mineral water**” shall refer to purified and distilled water collected either from a natural geological spring or geysers or purified, distilled then enriched with healthy mineral substances as found from the geological sources.
- 3.3 A “**non-alcoholic beverage**” shall mean any drink or substance that can be used to make a drink, not containing alcohol, packaged and offered for sale.
- 3.4 “**Tea**” shall be interpreted to include “**herbal**” or “**spiced**” tea.

#### **4. Provisions**

- 4.1 Fresh juices shall consists of natural juice of good quality and which:
  - 4.1.1 Contains no additives;
  - 4.1.2 Has not been subjected to any preserving process other than chilling;
  - 4.1.3 Is clean and free from foreign matter;
  - 4.1.4 Is intended to be sold for consumption within reasonable time as indicated on the bottle or packaging for sale.
  - 4.1.5 Unlike fruit juice below, shall not require diluting in order to bring out intended taste.

#### ***Fruit Juices and Fruit Drinks***

- 4.2 In case of blended fruit juices in a container, a depiction or pictorial representation of the fruit species imparting the predominant flavour and aroma to the blend shall not be regarded as constituting any misinterpretation despite the fact that the fruit species depicted does not occupy the highest position in the arrangement.
- 4.3 No trade mark or brand name which may possibly, directly or by implication, be misleading or create a false impression of the contents of the container containing the fruit shall appear on the container.

4.4 The words “pure”, “natural”, “fresh” or “real” or other words expressing a similar meaning, whether directly or by implication shall not;

4.4.1 Appear on a container other than in the class of fresh fruit juices; and

4.4.2 Must conform to the general provisions of this Code.

*Tea, Coffees and other Hot drink Mixtures.*

4.5 Advertisements for these products shall not make claims as to having ‘medicinal properties .and shall adhere to the principals set out in the “*General Health-Related Claims*” section of this code.

4.6 Additives or spices added to beverages in this category shall at all times conform to the “*Foodstuffs and Food Additives*” category of this code.

4.7 Any health; related claims in this category especially that of vitamins and minerals, **MUST** be in conformity with the Health-related claims Appendix of this Code.

4.8 **NO** advertisements for the consumption of products in this category of the Code, **SAVE AS** for “mineral water” shall be portrayed as a substitute for the consumption of ordinary water.

## **BREAST MILK SUBSTITUTES AND BABY TEATS.**

### **1 Product Information.**

- 1.1 Product information relating to breast milk substitutes **MUST** support sound infant feeding practice and must include clear information on all the following things:
  - 1.1.1 Breast milk and breast feeding are the best choice except in the exceptional circumstances;
  - 1.1.2 In accordance to the provisions of World Health Organizations, there shall be no advertisement of milk powder toward mothers for the consumption of babies under twelve month old;
  - 1.1.3 Where to seek professional advice when a supplement alternative at be required;
  - 1.1.4 The information be restricted to scientific and factual matters, and such information must not imply that bottle feeding is equivalent or superior to
  - 1.1.5 The information **MUST** emphasize the importance of and methods of obtaining safe clean water for the preparation of breast milk substitutes.

### **2 Baby Feeding Bottles and Teats.**

- 2.1 Product information for feeding bottles and teats should not be in contravention of the spirit of this provision of the Code.
- 2.2 Adequate information should be given on the cleaning, sterilizing and general care of the bottles and teats
- 2.3 Illustrations should be used whenever possible on packaging and instructional leaflets particularly with regard to cleansing and sterilizing procedures

### **3. Provisions**

3. 1 Advertisements promoting the use or benefit of breast milk substitutes will not be permitted.
- 3.2 The above does not preclude the advertising of the availability and price of such substitutes without any further sales or promotional wording.
- 3.3 Advertising of baby feeding bottles and teats must not be in a form which is prejudicial to breast feeding.

## **CIGARETTES, RELATED PRODUCTS AND SMOKING DETERANTS**

### **Cigarette and Related Products.**

#### **1 General**

- 1.1 The purpose of this category is the regulation of advertising and advertisements addressed to the public for various brands of cigarettes and other tobacco related products.
- 1.2 This category is supplementary to the general provisions of the Code and special care should be taken to ensure that the spirit as well as the letter of the letter of the whole Code is scrupulously observed.
- 1.3 All cigarettes manufactures, dealers and import agents are bound by the provisions of this Code.

#### **2 Definitions & Interpretation**

- 2.1 Subject to the rules in the General Provisions of the Code and this category, there is absolutely no intent to hamper, debilitate or frustrate fair competition or to handicap advertisers in attracting the attention of consumers. It remains legitimate and legal for advertisers to:
  - 2.1.1 Indicate that cigarettes are enjoyed by people of many different kinds;
  - 2.1.2 Seek to persuade existing smokers to change their brand or pursue loyalty of the existing smokers to their preferred brand; and
  - 2.1.3 In pursuit of these objectives, employ all kinds of techniques of artistic presentations as are normally used by advertisers of other types of products or services and are consistent with the spirit and the letter of this Category and the ASBK Code.

### **3 Scope**

- 3.1 This category shall apply to advertising published or broadcasted in the Republic of Kenya.
- 3.2 All advertising of cigarettes, irrespective of whether they are locally manufactured or imported, shall be guided by this category as well as the provisions of the Code.
- 3.3 This category shall apply to advertisements in respect of the following:
  - 3.3.1 Cigarettes and their components such as tobacco and tobacco substitutes
  - 3.3.2 Hand rolling tobacco.
  - 3.3.3 Cigars, cheroots, cigarillos, and pipe tobacco.
  - 3.3.4 Cigarette papers, filters and wrappings.
  - 3.3.5 Any product if advertisement concerned features a cigarette or pack design of a recognizable brand of cigarette product available in Kenya.
  - 3.3.6 Teasers for cigarettes or cigarette products.
  - 3.3.7 Advertisements on special offers, competitions and other sale promotions of cigarette products.
  - 3.3.8 Products displaying the colours, livery, insignia or name of a cigarette brand in a way that promotes branded cigarette products.
  - 3.3.9 Schemes, events or activities sponsored or supported financially by manufacturers of products listed above, even when such advertisements are for sports sponsorship and are required by the voluntary agreement on sports sponsorship to carry a health warning.

3.4 This category shall not apply to the following:

3.4.1 Herbal cigarettes and tobacco

3.4.2 Cigarette holders, matches, lighters and the like except when covered by the provisions above.

3.4.3 Advertisements and promotions addressed to the trade in the media and not targeted at the public though such kinds of internal promotions should avoid media whose viewership attracts publicity.

#### **4 Objectives of Cigarette Advertising**

4.1 Cigarette advertising must not be directed towards increasing the number of smokers or increasing the consumption rates of existing smokers. Advertising must be directed only towards existing smokers and be intended only to either effect a change of brand or to encourage brand loyalty.

4.2 To fortify the above provision all cigarettes advertising must, according to the requirements of the Ministry of Health, contain a warning to the effect that smoking is harmful to human health.

4.3 Cigarette advertising must be created or targeted for young people specifically those below eighteen (18) years of age. Advertisements should not exploit those who are especially vulnerable and those who suffer from any physical, or mental or social hardship.

4.4 To bolster the above provision, television cigarette advertisements must not be aired during hours that viewership is at the highest or most likely and should preferably be aired during adult programmes viewership.

4.5 Preferably television commercials in this category should be aired after 9:00pm

## **5 Provisions.**

- 5.1 No person who is below twenty-five (25) years of age shall be depicted in cigarette advertisements, except in a crowd or other scenes where the background is not under the control of the advertisers.
- 5.2 Advertisements must not depict family scenes of father and /or mother handling cigarettes in front of children.
- 5.3 No cigarette products may be advertised on posters, bulletin boards or billboards located in the immediate vicinity of primary or secondary schools.
- 5.4 Advertisements should not claim or imply that tobacco use is a prerequisite to the attainment of social, business, or sporting success or a glamorous lifestyle.
- 5.5 No advertising will depict or use as, endorsers, celebrities in the sporting or entertainment world nor any other person who shall particularly appeal to those below 18 years of age.
- 5.6 The content of cigarette advertising must as far as possible be directed at smokers, but must not imply that all persons in a particular situation are smokers. In practice, not more than all persons in a particular situation are smokers. In practice, not more than half of those shown in groups should be smoking and smoking should not be shown in public places where it is usually prohibited.
- 5.7 Cigarette advertisements must not convey exaggerated satisfaction from the act of smoking. Advertisements showing people smoking should not express unrealistic enjoyment of the cigarette, nor show people reaching with extravagant eagerness for a cigarette.
- 5.8 No advertisements may claim health properties or benefits for any cigarette. The smoking characteristics for the products ma be illustrated or described, provided no health claim is implied.

- 5.9 No advertisements must state or imply that smoking is safe, or promotes physical health or that smoking a particular brand is better for health or that smoking a particular brand is better for health than smoking any other brand of cigarette or is essential to romance, prominence, success or personal advancement or business success, relaxation and concentration.
- 5.10 Advertisement should not include illustrations or messages which are sexually titillating or which imply a link between the use of tobacco and sexual success. Advertisements should also not claim that it is daring or glamorous to smoke or that smoking enhances people's masculinity, femininity, appearance or independence.
- 5.11 Advertisements should not encourage smokers to buy or stock large quantities of cigarettes.
- 5.12 Cigarettes should not be shown in the mouth and advertisements should associate smoking with healthy eating or drinking.
- 5.13 People may be shown smoking while engaged in work or leisure activities provided that the advertisement does not illustrate inappropriate smoking situations.
- 5.14 In order to preserve culture and traditional norms and practices, characters and situations depicted should not be such that they directly or indirectly imply traditional values, aspir or historical aspirational associations or behavioural norms of the community to which the advertisements is aimed.

## **6 Television Advertisements for Events Sponsored by Tobacco Companies.**

- 6.1 Television advertisements and commercial billboards for events that tobacco companies are involved in by way of sponsorship or otherwise will be subject to the following conditions and may:

6.1.1 Mention or depict the brand name of the product when it forms part of the name of the event or sponsored team, service, activity etcetera.

6.1.2 Depict the brand logo as it appears on the product.

6.2 The advertisement may not:

6.2.1 Mention or depict the product itself or refer to product benefits or advantages or use slogans associated with the product;

6.2.2 Use jingles or music tracks associated with the brand, even though this have been re orchestrated or rearranged;

6.2.3 Give undue emphasizes to supplementary brand identification that is, posters or hoardings appearing in live footage use in advertisement.

6.3 Tobacco companies that provide sponsorship of events that involve majority participations by persons below 18 years of age shall be required to adhere to the following conditions:

6.3.1 Refrain from any kind of public display of their brand name, brand logo by way of posters, billboards, banners, flyers or any mode of outdoor advertising;

6.3.2 Refrain from advertising campaign of the event under the auspices of the companies name, slogan and brand logo;

6.3.3 The sponsor company may only assimilate, in the advertisement of the event, the colours that represent the sponsor company and may only mention the name of the event of the sponsor company;

6.3.4 The sponsor company shall include only the company name and may include the name of the event in any items issue as

gifts during the event and they shall refrain from using colours that represent the sponsor colours or any numbers, livery or insignia that may be associated with an advertising campaign of the company or any of its brands therein;

- 6.3.5 The sponsor company shall not conduct any promotional activities or sales of any tobacco products of the company at the venue of the event.

## **7 Smoking deterrents**

- 7.1 An advertisement for any smoking deterrent shall not be accepted **UNLESS** The advertiser makes clear that the product offers only assistance and not a cure, and that its success shall be dependant upon the willpower of the user.

## **COMPETITIONS ADVERTISING.**

### **1. General**

- 1.1 The ASBK may, in respect of any advertisement for a competition, require that substantiation, in the form of acceptable legal advice that the competition is legal, be furnished.
- 1.2 The value of prizes referred to in advertising must include Value Added Tax.

### **2. Fund raising competitions**

- 2.1 Advertising for competitions intended to collect contributions from the public or raise funds, or drawing attention to such competitions, shall only be published or broadcasted if :-
  - 2.1.1 The competition conforms to the relevant legislations;
  - 2.1.2 The prizes offered are already available or guaranteed;
  - 2.1.3 The prizes will be awarded irrespective of the number of entries received;
  - 2.1.4 That the competition will not be cancelled once the advertisement has been published or broadcasted;
  - 2.1.5 A closing date for entries is stipulated as well as a date by which the name of the prize winner (s) in at least one major regional publication or national publication with a circulation in Kenya.
- 2.2 Advertisements in this category **MUST** conform to the provisions of the Betting, Lotteries and Gaming Act, Chapter 131, the laws of Kenya

## **CONTRACEPTIVE ADVERTISING**

### **1. General**

1.1 This category is supplementary to the general provisions of the Code. Special care should be taken by advertisers to ensure that the spirit as well as the letter of the provisions of the whole Code is scrupulously observed.

### **2. Definitions and Interpretation**

2.1 “**Contraceptives**” means any clinically tested and approved substances or devices that is either swallowed or fitted onto the male or female genital organs, whether on the outside or inside during copulation (sexual intercourse), whose main purpose of these devices , is to prevent fertilization from taking place or to inhibit sexually transmitted diseases.

2.2 “**STD**” means Sexually Transmitted Diseases.

### **3. Scope**

3.1 These contraceptives include but are not limited to the following devices and substances:

3.1.1 Condoms

3.1.2 Intra Uterus Contraceptive Devices (IUD’s)

3.1.3 Birth control pills

### **4. Provisions**

4.1 There is no objection under the Code to the advertising of contraceptive methods, either in general or particular provided a reference is made in appropriate cases to the fact that certain methods are available only on prescription.

4.2 All advertisements must, as a way of precaution:

- 4.2.1 Contain a warning as to the dangers of promiscuous sexual activities
  - 4.2.2 Display a sense of social responsibility and regard and may not appear to promote promiscuity.
- 4.3 All advertisers should be ready to support with clinical proof claims of absolute safety and reliability of their products.
- 4.4 No advertisement should encourage the consumer to engage in sexual activities.
- 4.5 All advertisements should be restrained and in good taste.
- 4.6 Visual treatments of the advertisement must exercise decency and discretion whenever the product is featured unwrapped.
- 4.7 Any visual treatment of the packaging will be acceptable in electronic shots, provided the pack does not include anything which could cause offense.
- 4.8 No children or any person who appears to be below the age of eighteen(18) years should be used in any advertisement.
- 4.9 Classified electronic advertisements must take all above precaution and should not mislead by taking excuse in the limited airtime allocated.

## **COSMETICS**

1. This category shall include but not be limited to the following products:

- a) Anti-ageing (Anti-wrinkle products)
- b) Anti-perspirants and deodorants.
- c) Cosmetic cellulite products.
- d) Skin-lightener products.
- e) Hair and scalp products
- f) Toothpastes and related products.

2. **General**

2.1 This category is supplementary to the general provisions of the Code. Special care should be taken by advertisers to ensure that the spirit as well as the letter of these provisions is scrupulously observed.

2.2 For the purpose of this category of the Code advertising includes any form of product promotion.

2.3 The specific requirements of this category take precedence over the general requirement of the Code.

2.4 All advertisements for cosmetics shall conform to the provisions as accepted by The Standards Act, Cap 496, the Laws of Kenya, where applicable.

3. **Definitions and Interpretation**

3.1 “**Cosmetic Product**” shall mean any substance or preparation intended to be placed in contact with the various external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and mucous membranes of the oral cavity with the view exclusively or mainly of cleaning them, perfuming them changing their appearances and/or correcting body odours

and/ or protecting them or keeping them in good condition, **EXPECT** where such cleaning, perfuming, protecting, changing, keeping or correcting is wholly for the purpose of treating or preventing diseases.

3.2 This definition specifies six (6) functions pertaining to cosmetic products, namely:

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

3.3 If a product does not have at least one of these as its primary purpose, it is not a cosmetic.

3.4 It should be noted that the field of application of cosmetics remains as before:

- 3.4.1 the epidermis;
- 3.4.2 the hair system;
- 3.4.3 the nails;
- 3.4.4 the lips
- 3.4.5 the external genital organs;
- 3.4.6 the teeth;
- 3.4.7 the mucous membranes of the oral cavity.

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

### **3.6 The Use of Words in a Cosmetic context and in a Medicinal Context**

The use of words in a cosmetic context has the following typical characteristics:

- 3.6.1 Temporary action;
- 3.6.2 Improvement of the appearance of the skin;
- 3.6.3 To be used regally to maintain the effect;
- 3.6.4 The effect is aimed at grooming and enhancing the appearance of the skin texture.

3.7 The use of words in a medicinal context has the following typical characteristics:

- 3.7.1 Permanent or drastic effect after completion of a treatment;
- 3.7.2 Healing or curative aspects;
- 3.7.3 To be used restrictively because of the potency of the treatment;
- 3.7.4 The effect is used as treatment of or relieving a disease condition.

3.8 For Example:

**REVITALISE** in the cosmetic sense: "*The moisturizing and toning properties of this product will leave your skin feeling revitalized, refreshed and will look years younger.*"

**TREATMENT** in the cosmetic sense: "*This dry weather skin treatment pack provides you with all the products to nourish moisturize and tone your skin in hot and dry climate and will leave your skin looking at its best.*"

### **3.9 *Unacceptable claims***

- 3.9.1 Unacceptable claims are claims that are used and are not substantiated, or claim statements not worded in cosmetic sense.
- 3.9.2 In general, no cosmetic claims on products used on mucous membranes (except) the mouth will be allowed.
- 3.9.3 Claims suggesting permanent effects of cosmetics should not be used. For example, permanent improvement, reversal of deterioration effect amongst curative claims.
- 3.9.4 The term “cosmeceutical” is not permitted with reference to cosmetic products as it is misleading.

### **3.10 *Substantiation***

- 3.10.1 Claims relating to points of differences must have appropriate substantiation.
- 3.10.2 In general acceptable substantiation would be supplier information if a single active ingredient is used in the same concentration and formulation type as in the supplier tests. If this is not the case, a company would be required to carry out additional testing.
- 3.10.3 Claims that a product contains ingredients with special properties should be supported by acceptable scientific evidence that the ingredient is indeed beneficial for the purpose referred to.
- 3.10.4 It is a requirement of this Code that safety assessments be done on cosmetic products prior to marketing.
- 3.10.5 Substantiation will be judged according to international standards.

3.10.6 All substantiation shall conform to the provisions set out in the General Principles and Legality part of the Code.

3.11 *Claims implying health-related properties*

3.11.1 Any claim implying health-related properties must have appropriate substantiation, for example soaps, moisturizers and barrier creams.

3.11.2 Claims that a product contains ingredients with special properties should be supported by acceptable scientific evidence that the ingredient is indeed beneficial for the purpose referred to.

3.12 *Use of the word “Natural”*

3.12.1 The word “natural” shall not be used on the label of or with reference to a cosmetic:

3.12.1.1 As part of the name in relation to a processed or manufactured cosmetic and shall not be used to qualify the name or trade name thereof;

3.12.1.2 To describe the ingredients of mixed, compounded or blended cosmetic unless all the ingredients thereof occur in nature or have not been manufactured or processed. The inclusion of one or more ingredients derived from “natural sources” does not imply that the entire product is of natural origin.

3.13 *Use of the word “Pure”*

The use of the word “pure” requires substantiation and the ingredients referred to would have to be a cosmetic grade or higher.

3.14 *Claims of Recommendation by Medical Practitioners*

- 3.14.1 No person shall label a cosmetic with a label that contains the words “recommended by a doctor” or any other word or words or pictorial indication implying that medical practitioners recommend the use of such a cosmetic unless acceptable substantiation is provided.
- 3.14.2 Reference should be made to the “Medicinal and Health Claims” section of this Code.

3.15 *Non-content Claims*

Advertisements should not be based on claims that a product does not contain a given ingredient in common use in competitive products which may give the impression that the ingredient is generally unsafe or harmful.

3.16 *Claims made for ingredients*

Mention of ingredients may be made but if specific claims for such ingredients are made, substantiation must be provided to prove that the product itself has those properties.

#### 4. Anti ageing (Anti-wrinkle) Products

4.1 These products are topically applied for the prime purpose of keeping the skin in good condition. They affect the physiological function to a minor and superficial level and the condition which they prevent, that is premature skin wrinkling, is not a disease. These products are classified as cosmetics.

4.2 Advertising of these products may make the following claims:

- 4.2.1 Cover up (hide) age spots that is blemishes, dark pigmented areas)
- 4.2.2 Makes a person feel or look younger (youthful)
- 4.2.3 Helps to prevent or reduce or slow the signs or appearance of ageing (age lines, premature ageing)
- 4.2.4 Moisturizes ageing skin
- 4.2.5 Smoothes wrinkles.

## **5. Anti- perspirants and Deodorants**

### **General**

5.1 An antiperspirant is topically applied and modifies a physiological function in that it inhibits the production of perspiration. Its purpose is the prevention of body odour which will occur if perspiration is unchecked. Even though it acts by the modification of physiological function, this modification is minor and is at a superficial level .The product is classified as a cosmetic.

### **5.2 Definitions and Interpretation**

5.2.1 “**Anti-perspirants**” shall include all manufactured perspiration prevention solutions whether in liquid or semi-liquid form sometimes also referred to as “roll-ons”

5.2.2 “**Deodorants**” shall include but not itself to the following products that are referred in various terminologies:

5.2.2.1 Body mist

5.2.2.2 Body spray

5.2.2.3 Perfume

5.2.2.4 Cologne

5.2.2.5 Aftershave

5.2.2.6 Body Fragrance

### **Provisions**

5.3 Advertisements claiming body deodorant effects for products taken by the mouth shall not be accepted.

5.4 Advertisements for anti-perspirants should neither make exaggerated claims to keep skin dry either absolutely, or for a specific period, nor should they contain health claims or any medicinal benefit.

5.5 Advertising for anti-perspirants and deodorants may make environmental claims and may also display these claims on the product provided such claims can be specifically substantiated.

5.6 Any environmental claims in this category of advertising shall be required to adhere to the “Advertising Containing Environmental Claims” section at the Appendix to this Code.

## **6. Cosmetic Cellulite Products**

6.1 All claims shall comply with the substantiation clause in the General Principles and Legality section of this Code and in particular with regard to the following phrases:

6.1.1 Firms and tones the skin;

6.1.2 Helps to speed up metabolism of fat;

6.1.3 Helps the elimination of water and fats;

6.1.4 Improve micro-circulation;

6.1.5 Centimetre loss.

6.2 There must be a responsible approach to advertising.

6.3 A healthy lifestyle must be encouraged. It is not acceptable to advocate no dieting and no exercise.

6.4 Weight loss should not be claimed.

6.5 Permanent removal of cellulite must not be claimed.

## 7. Skin lightening products

- 7.1 Any term that directly or by implication claims to lighten or even the skin tone or similar claims would require acceptable scientific substantiation.
- 7.2 No advertisement/label for a cosmetic product may claim that it does not contain an ingredient which is not normally permitted in cosmetics, for example “hydroquinone-free” or “steroid-free”.
- 7.3 Products claiming skin-lightening that do not incorporate Ultra Violet Ray (UV) filters to meet the above requirement shall carry a warning “use with sunscreen”.
- 7.4 A product may not claim to lighten the skin to tones that are lighter than its natural skin tones unless acceptable and sufficient substantiation for safety and efficacy is available.

## **8. Hair and scalp products**

In claims relating to:

### *8.1 Baldness, hair loss, thinning hair and hair growth*

A product claiming to delay avoidable hair loss and not because of disease may fall under the definition of a cosmetic.

### *8.2 Hair and root nourishment*

Unless acceptable substantiation can be provided, no advertisement should contain any claim contain any claim or implication that:

- 8.2.1 the hair roots can be fed or nourished; and/or
- 8.2.2 the hair itself can be strengthened or its health, as distinct from its appearance, improved;
- 8.2.3 no advertisement for a product which is stated to contain any protein or vitamin should claim or suggest that the topical application of such substance have any effect on the health of the hair or scalp unless acceptable substantiation is provided.

### *8.3 Greasy/oily hair and scalp, dandruff and other hair or scalp conditions*

- 8.3.1 Advertisements for a product or treatment offered for the control of dandruff or greasy hair should not contain any claim or implication that either condition can be permanently prevented, and should plainly state that effective control is dependant on regular use. Such an advertisement shall also not contain any exaggerated claim or implication as to its effectiveness.
- 8.3.2 No advertisement should contain any offer of a product or treatment for any condition of the hair or scalp which may be a symptom of systemic disease or malfunction.

8.3.3 In consumer advertising, care should be taken not to use unfamiliar words for common conditions in manner that consumers may in some way be confused or worried. By way of example, seborrhoea, pityriasis and alopecia should not be used instead of excess grease, dandruff and baldness respectively.

#### *8.4 Wigs, hairpieces and hair extensions*

Advertisements for wigs, hairpieces, hair extensions and other ways of adding hair or hair like materials to the consumer's own should be so drafted as to make it quite clear the nature of the product or process being offered and in particular should avoid any copy or illustration that might suggest the re-growth or the arrest or retarding of the balding or thinning. Claims that such products and processes are undetectable, permanent or absolutely secure are unacceptable, unless such claims can be substantiated.

#### 8.5 Fine hair

Volumizing or thickening products for fine hair may be advertised PROVIDED THAT it is made abundantly clear that the volumizing or thickening which takes place is cosmetic and in no way conducive to any permanent improvement in the health or thickness of the hair or its rate of growth.

#### 8.6 Split ends

Products offered for the mending of split ends of hair should contain no claims which suggest that their action is other than purely mechanical. No permanent effect may be claimed.

#### 8.7 Colour preparations

Claims should be based on the average duration of colour:

- 8.7.1 Temporary colours last from the time of application until the next shampooing or wetting of the hair.
- 8.7.2 Semi-permanent colours last for a finite period. The colour result is not permanent. Any claim relating to the durability of the product requires acceptable substantiation.
- 8.7.3 A permanent hair colourant is classified as a colourant or product that permanently alters the natural pigment of the hair and will not affect the colour of any re-growth. Any claim would require substantiation.
- 8.7.4 Bleach is a lightening or decolourising oxidation substance
- 8.7.5 Colour enhancing or preserving products can only act on artificially coloured hair. Any claims require substantiation.
- 8.7.6 A colour remover is a product designed to remove or reduce previously applied colours from the hair without further altering the natural colour of the hair.

## 9. Toothpastes and Similar products

- 9.1 Advertisements for toothpastes and mouthwashes may make claims towards prevention of **teeth decay and hygiene**.
- 9.2 Claims may indicate that regular brushing with the toothpaste may help fight tooth decay
- 9.3 Certain toothpaste formulations containing fluoride (fluoride toothpaste) have been shown by independent medical research to reduce the incident of tooth decay, especially with children.
- 9.4 Claims made for fluoride toothpastes should also exaggerate the result or applicability of such research. Claims as to the effectiveness of such products should also be related to the need of brushing the teeth regularly.
- 9.5 It should not be claimed that toothpaste, mouthwash or other related products will completely destroy bacteria causing mouth odour (bad breath) or that it will provide long-lasting freedom from mouth odour unless such claims can be substantiated.
- 9.6 No advertisements for a toothpaste, chewing gum or tablets intended to clean the teeth should suggest that the product will remove all food particles from the teeth or gums.
- 9.7 It should not be claimed or even suggested that chewing gum or tablets or the use of mouthwashes or dental floss can take the place of brushing after meals or substitute the brushing function all together.
- 9.8 Advertisements for toothpaste must relate the functions of ordinary toothpaste to the advertised product. Advertising for toothpaste may not attempt to link the functions of a mouthwash product to that of ordinary toothpaste by using terms like “mouth paste”, “mouth cleaner” and “mouthwash”.

9.9 Advertisements of toothpaste and related products must not contain medicinal or curative claims otherwise they should be advertised as medicine whose administration is by way of brushing of the teeth.

## **EDUCATIONAL COURSES**

- 1.1 Advertisement for educational courses should not at any time mislead the consumer as to the status or extent of the nature and recognition of the qualification that can be obtained
- 1.2 Descriptions such as '**recognized**' , '**officially approved**' '**certified**' or words having or implying similar meaning shall not be used without qualification, accreditation or authorisation unless related to qualifications that are recognized by
  - 1.2.1 Bodies or instructions approved by the Government of Kenya as set out in the Education Act, Cap 211 of the Laws of Kenya.
  - 1.2.2 Universities and colleges set up under the Law of Kenya.
  - 1.2.3 Bodies or professional institutions that have the credentials to operate in Kenya and are representative of a particular field of endeavour.
- 1.3 Save for the categories set out above, in all other cases where the word '**recognized**' , '**officially approved**' , '**certified**' or other similar words which imply status or extent or recognition are used in an advertisement they shall be followed by an unambiguous description of the bodies that have granted such recognition
- 1.4 Where international recognition is claimed these provisions shall also apply and it will not be sufficient to claim that the course is also offered in other countries. It will be incumbent upon the advertisers to furnish the ASBK with acceptable evidence in support of these claims if required.
- 1.5 Unrecognized degree courses should not be advertised or offered nor should the value of recognized degrees be misrepresented.

## **FINANCIAL ADVERTISING**

### **1. Financial Advertising**

- 1.1 The rules that are set out here provide only general guidelines. Advertisers, agencies and the media must also note and comply with Laws of Kenya for the time being in force that governs financial services and products. In particular, note is taken of the Banking Act and the Capital Markets Authority Act, Chapters 488 and 485A, Laws of Kenya respectively.
- 1.2 Advertisements addressed to the general public for capital or financial services and product or financial information, should be set out in easily understood terms for the target audience.
- 1.3 The advertiser and/or agency shall ensure that the public are fully aware of the nature of the commitment into which they may enter as a result of responding to the advertisement. In particular any limitations, expenses, penalties and charges that are attached to the offer shall be set out in the advertisement or clearly spelt out as being as free and available for the consumer before any binding contract is entered into.
- 1.4 In this respect, the advertisers and agencies shall be aware that the complexities of finance may well be beyond the normal understanding of the target audience and have a special responsibility to ensure that they do not, take advantage of people's inexperience or gullibility.
- 1.5 Specifically, the basis used to calculate any rates of interest, forecasts or projections should be apparent immediately.
- 1.6 Advertisements shall also make clear that the value of investments is variable and, unless guaranteed, can go down as well as up, and that past performance or experience does not necessarily give guide for the future

1.7 Advertisements relating to this clause shall disclose the full physical address and contact details of the advertiser

## **2. Self-employment Opportunities**

2.1 Advertisements for self-employment opportunities may not be phrased in a manner likely to suggest that the opportunity being offered is one part time or normal employment.

2.2 These advertisements shall not require interested parties to send money for further details or prior to full information about schemes being supplied to the consumer.

## **3. Financial Assistance and Debt Consolidation**

3.1 Advertisements offering loans or to consolidate debts must state whether the advertiser is a moneylender or broker for a moneylender.

## **4. Franchise Schemes**

4.1 A franchise scheme means a scheme whereby a company, a firm or individual known as the ‘franchisee’ the right to sell specified products or services in return for an initial payment percentage of profits or any other consideration.

4.2 Advertisements by franchisors must provide all the information required by media in advance of publication.

4.3 Such advertisement should not mislead directly or by implication to the support available or the likely reward for the investment and work required.

## **5. Pseudo Cheques**

5.1 In the event that a pseudo cheque is used for promotional purposes such a cheque shall always be displayed as:

- 5.1.1 Having a warning notice printed on it in legible print, immediately above or below the amount panel, stating 'Not valid for Bank Transactions'.
- 5.1.2 Not having fictitious codes printed in the space normally reserved for any transaction coding. This provision does not preclude the printing of fictitious codes for provisional purposes in areas not reserved for the official encoding.

## **FOODSTUFF AND FOOD ADDITIVES**

### **1. General**

1.1 This category is supplementary to the general provisions of the Code and special care should be taken to ensure that the spirit as well as the letter of the whole Code is scrupulously observed

### **2. Definitions and Interpretation**

2.1 “**Cereals**” means breakfast sometimes known as cornflakes or muesli in all its ingredients and categories including puffed rice.

2.2 “**Marmalade**” means any fruits conserve, jelly or jam manufactured from fruit pulp and mostly spread on and/or eaten with confectionary products.

2.3 “**Margarine**” means any type of cooking oils or fat and shall include lard and butter that is used as a bread-sweetener or sweeteners or additive or flavour for confectionary products.

2.4 “**Sauces and spices**” means any food additives that serve to flavour, season, add colour or ensure a certain taste to the food, whether in powder form, paste, granules or any other form thereof other than its natural form. This definition shall include bottled spices whether uncooked or in a ‘ready to use’ state such as ketchup.

### **3. Provisions**

3.1 Any advertisement for margarine containing health claims in relation to fats, vitamins and minerals must be readily substantiated and must conform to the Advertisements containing Health-related Claims Appendix of this Code.

3.2 Any “**natural**” or “**fresh**” claims contained in advertisements for marmalades **MUST** conform to the General advertising principles of this Code.

3.3 Sauces and spices whose ingredients contain acidic substances or after effects or any other side-effects ought to be advertised with extra caution in the following considerations:

- 3.3.1 ingredients of the sauce or spice must be stated on the labelling of the product;
- 3.3.2 advertisement for the use of such products **MUST** be in a sparingly manner;
- 3.3.3 excessive usage of such additives **MUST** not be encouraged unless such additives have a beneficial value whose value should be readily substantiated.

3.4 Advertisement of margarines containing “low” or “no” cholesterol claims must be readily substantiated.

3.5 Sauces and spices that are otherwise eaten or consumed when cooked **MUST** not be portrayed to be eaten or consumed when in its raw form.

3.6 Advertisement of cereals containing health related claims in relation to either **“whole wheat”** or vitamins and minerals must be readily substantiated and must conform to the Advertisements containing Health-related Claims Appendix of this Code.

3.7 **NO** advertisement in this category of the Code, **SAVE AS** for “breakfast cereals” shall depict consumption of any food additives in this category as a substitute for real food.

## **IMPORTED PRODUCTS**

1.1 No advertisement shall give the impression that a product is imported when it is,in fact manufactured in the Republic of Kenya.

## **MAIL ORDER ADVERTISING**

### **1. General**

1.1 Mail order advertisement should conform to all applicable clauses of this Code and in particular to the provisions of this category.

### **2. Definitions & Interpretation**

2.1 **“Mail order advertising”** shall for the purpose of this code, except as expressly provided below, refer to circumstances where an offer is made, whether directly or by implication, to dispatch goods, or have them delivered to the consumer, upon receipt of an order, without the necessity for the consumer to visit any retail establishment or to examine the goods prior to purchase.

2.2 These rules shall include advertisements by any advertiser who also conducts a normal retail business.

### **3. Provisions**

#### **3.1 Obligation of Mail Order Advertisers**

##### *Advertisements*

3.1.1 Advertisements for goods offered by mail order requiring money to be sent in advance must include an offer by the advertiser to refund the purchase price if the purchaser is dissatisfied with the goods ordered.

3.1.2 The advertisement shall indicate the period within which the goods must be returned, which period must not be less than fourteen (14) days from the date of dispatch, unless the nature of the goods make an earlier return imperative.

3.1.3 The advertisement, instruction material ,catalogue and list of goods and/or services for sale shall also clearly state the full

company name and full street address at which the advertiser can be contacted in normal business hours.

*Premises*

- 3.1.4 The full name of the company must be prominently displayed at the premises identified in the advertisement, instruction material and/or catalogue.
- 3.1.5 A representative of the company shall be present at the premises identified above during normal business hours to deal with any enquiries, and shall be capable of dealing with such enquiries as may be posed.

*Invoices*

- 3.1.6 Advertisers shall not make deceptive use of proforma invoices.

**3.2 Supply of Goods**

- 3.2.1 All goods dispatched in response to orders received must conform to both the description given in the offer and to any sample which may have been supplied.
- 3.2.2 Substitutes may only be supplied with the express consent of the person who ordered the good for which they are replacements.
- 3.2.3 Nothing in an advertisement, catalogue, list or other promotional material diminishes a buyer's rights in law.
- 3.2.4 Samples of goods where money is required to be sent in advance should be available for public inspection at the premises referred to in this category during normal business hours.

- 3.2.5 All goods offered by small order methods shall aim to conform to relevant Kenyan standards relating to safety of consumer goods.
- 3.2.6 Any advertisement which claims that goods are of value by virtue of the amount of the precious metal they contain is required to give an indication of the weight and fitness of precious metal contained in the goods concerned.
- 3.2.7 When a physical characteristic may influence the decision as to whether to order a product or not (for example, size, weight or value in some cases) it shall be specifically indicated in the advertisement.

### **3.3 Supply of Services**

Offers of services by mail order shall include details of the nature, duration, extent, and cost of the service concerned.

### **3.3 Special Offers**

- 3.4.1 Offers which require a person to return a notice that s/he does not wish to receive further goods or services shall not be made except when the conditions are made clear in the initial offer which is accepted by the consumer by way of a confirmed order.
- 3.4.2 Goods and/or services shall not be dispatched or provided to a potential buyer unless an order has been received or the consignment is clearly shown to be “free” and the recipient expressly informed of his unqualified right to treat it as an unconditional gift.
- 3.4.3 The word “free” may also be used for conditional offers which require the recipient to buy other goods or services **PROVIDED**

**THAT** all terms and conditions of the offer are conspicuously stated in conjunction with the word “free” and provided that the price of the main goods is not inflated or their quality reduced to provide the cost of the free goods.

### **3.4 Fulfilments of Orders**

3.5.1 All mail order advertisements should prominently and clearly state the latest date on which the advertiser undertakes to dispatch the order, which period shall not exceed twenty-eight (28) days from the date of receipt of the order.

3.5.2 An advertisement, however, may clearly state that the latest date on which dispatch will be effected, may be extended beyond the twenty-eight (28) day period in the following circumstances:

3.5.2.1 Where a substantial sum of money is required in one advance payment and the advertiser is required to provide security for that part of the consumer's money which remains unsatisfied by the provision of goods.

3.5.2.2 Where made-to-measure goods and goods subject to special manufacture are concerned.

3.5.2.3 Where the advertisement makes it clear that a series of items is to be dispatched in sequence and states the intervals between consignments.

3.5.3 If it becomes clear that an order cannot be dispatched within the period stated in the advertisement, the advertiser should:

- 3.5.3.1 Immediately offer the consumer a refund. If the consumer elects to wait, s/he should either be given a firm date for dispatch or the progress of their order should be reported to them
- 3.5.3.2 Irrespective of the above, if the advertiser does not supply goods ordered on a cash-with-order basis within the stipulated period then the advertiser shall refund all payments in full within seven (7) days of the end of that period.

### **3.6 Refunds**

- 3.6.1 The advertiser shall refund all money paid for goods and their dispatch to the consumer immediately upon receipt of the goods being returned when a request is received for reimbursement in the following circumstances:
  - 3.6.1.1 Where goods are returned undamaged within fourteen (14) days of receipt, or within such longer period which may be specified in the advertisement.
  - 3.6.1.2 Where the consumer has expressed the wish to be reimbursed where goods are undeliverable within the date stipulated for dispatch
  - 3.6.1.3 Where the consumer has fulfilled the terms of a money-back guarantee and requests a refund in terms of the guarantee.
  - 3.6.1.4 Where, for whatever reason, the product received by the consumer does not conform to the description of it in advertisements, PROVIDED THAT the product is returned within fourteen (14) days.

3.6.1.5 Where the advertiser is in breach of his contractual obligations.

3.6.2 Credit notes or vouchers shall not be supplied in lieu of cash refunds unless particularly requested by the consumer

## **MEDICINAL AND HEALTH-RELATED PRODUCTS**

### **1. General**

- 1.1 This category is supplementary to the general provisions of the Code. Special care must be taken by the advertisers to ensure that the spirit as well as the letter of those provisions is scrupulously observed.
- 1.2 Advertisements shall not make claims concerning the safety of a product or exaggerated claims in regard to the speed with which a product relieves pain
- 1.3 No advertisement shall be so worded that, while in its literal meaning it may not contravene any of the provisions of this section of the Code, in the effect of its likely inference to the class of the people to whom it is addressed, it amounts to a contravention of the Code.
- 1.4 Labels of medicine for either self-medication **MUST** contain a warning that if the symptoms persists a doctor should be consulted.

### **2. Definitions and Interpretation**

- 2.1 **“Competition”** means any schemes in which persons are invited to compete for a prize or prizes;
- 2.2 **“Incentive scheme”** means any scheme whereby final sellers or persons employed by them receive financial or other incentives based upon sales of medicines;
- 2.3 **“Final seller”** means any medical practitioner, dentist, pharmacist, clinical officer or any other person who sells medicines directly to the consumer.
- 2.4 The word **“product”** is to be taken as refereeing also to treatments and courses of treatments and to appliances, except where the context does not permit, or as expressly provided otherwise.

### **3. Scope**

- 3.1 This category of the Code applies to the following classes of advertisement:
- 3.1.1 Those for medicines ,medicinal and surgical treatments and appliances;
  - 3.1.2 Those for toilet and other products which claim or imply therapeutic or salutary or prophylactic qualities; and
  - 3.1.3 Those for any product which is advertised, whether wholly or in part, upon the basis that it may improve, restore or maintain the user's health or his physical or mental condition.
- 3.2 Individual advertisements published by or under the authority of a Government department and advertisements addressed directly to registered medical or dental practitioners, pharmacists, registered medical auxiliaries or nurses, may at the discretion of the ASBK be excluded from the application of such of the restrictions within this Category of the Code as from time to time considered inappropriate, bearing in mind the source of the advertisement or the professional qualifications of those whom it is addressed.
- 3.3 **PROVIDED ALWAYS THAT** such advertisements conform in every respect to the General Principles and Legality section of this Code and in the later case are either sent directly or are published in their respective professional journals.

### **4. Conformity with legislation**

- 4.1 All advertisements for products must be subject to licensing and comply with requirements of the Foods, Drugs and Chemical Substances Act Chapter 254, Laws of Kenya, the Pharmacy and Poisons Act, Chapter 244, the Laws of Kenya, Dangerous Drugs Act,

Chapter 245, the Laws of Kenya and the regulations of the Ministry of Health, and any conditions contained in the product registration.

4.2 In appropriate cases the advertiser may be required to produce evidence of compliance with any evidence attached to the registration of the product in order to ascertain the safety, quality and efficacy of the product concerned.

## **5. Protection of Children and inexperienced persons**

5.1 Advertisements for products as defined in above should not encourage or likely to lead to unsafe practises by children or other inexperienced persons or to create perceptions that such practice are desirable.

5.2 Advertisements for medicines or products, the make up and /or packaging of which resemble medicines:

5.2.1 Should not be directed at children or be devised to appeal particularly to children;

5.2.2 Should not feature children taking such products unless administered by an adult; and

5.2.3 Should not be based on endorsements by or associated with exaggerated or superhuman characters.

## **6. Unacceptable Claims: General**

6.1 No advertisement should employ any words, phrases or illustration which claim or imply the cure of any ailment, illness or disease, as distinct from the relief of its symptoms.

6.2 No advertisement should contain any offer to diagnose, advice, prescribe, or treat by correspondence.

- 6.3 No advertisement should cause anxiety to those who see it unnecessary, lest they are suffering (or may, without responding to the advertiser's offer, suffer) from an disease or condition of ill health; or falsely suggested; or falsely suggest that any product is necessary for the maintenance of health or retention of physical or mental capacities, whether by people in general or particular groups.
- 6.4 No advertisement should offer any product for a condition which needs the attention of a registered medical or other qualified practitioner.
- 6.5 No advertisement should encourage, directly or indirectly, indiscriminate, unnecessary, excessive or prolonged use of products within the scope of this category of the Code.
- 6.6 No advertisements should make exaggerated claims in particular through the selection of testimonials or other evidence unrepresentative of a product's effectiveness, or by claiming that it possesses some special property or quality which is incapable of being established.
- 6.7 No advertisement should contain any offer to refund money to dissatisfied users of any product within the scope of this category other than appliances and therapeutic clothing.
- 6.8 No advertisement should contain any testimonial which conflicts with the provisions of Section Clause of the general provisions of the code. Testimonials given by doctors or other qualified practitioners who are not registered in Kenya are unacceptable unless the advertisement makes clear their place of registration.
- 6.9 No advertisement should be based on claims that a product does not contain a given ingredient which is in actual or implied common use in competitive products in any way which is disparaging or may give the impression that the ingredient is generally unsafe or harmful.

6. 10 No advertisement shall contain any reference which is calculated to lead the public to assume that the article, product, medicine or treatment advertised has some special properties or qualities which is in fact unknown to or unrecognized by practitioners in medicine, medical and dental associations and the Ministry of health.

7. **Unacceptable Claims Relating to Particular products, treatments, symptoms and conditions**

7.1 Reference to particular diseases and conditions may not be made, or such reference must be limited to the extent listed in ***Appendix B*** and the provisions contained therein.

7.2 Advertisements must not claim or imply that any product, medicine or treatment offered therein will include miscarriage

7.3 Advertisements by **acupuncturists or acupuncture** clinics are not acceptable.

7.4 Advertisements for analgesics may not claim to induce sleep or relieve tension or calm nerves unless such claims are associated with the relief of pain.

7.5 Advertisements for appliances or devices sold for self-treatment of an disease, disability or physical condition, should not make claims for effectiveness, safety, permanence of results or painless treatment unless such claims can be substantiated to the satisfaction of the ASBK.

7.6 Advertisements for preparations and devices purporting to promote enlargement of the breasts (**bust developers**) are not acceptable.

7.7 Exercises and courses, including exercises which may have an incidental effect on the bust line, may not be advertised in such a way as to place predominant on any effect of improving, increasing or enlarging the bust line.

- 7.8 There is no objection under the Code to the advertising of **contraceptives and birth control** methods, either in general or particular, provided a reference is made in appropriate cases to the fact that certain methods are available only on prescription.
- 7.9 The effectiveness and safety of particular methods should not be exaggerated.
- 7.10 Products for the removal of **corns** may be advertised subject to medicinal approval of the product for this purpose.
- 7.11 Advertisements for depilatories and similar products, offered for lay use, are unacceptable, as are claims for products the effectiveness of which is claimed to be based upon their “radioactive” properties.
- 7.12 Antiseptic **gargles** should not be presented as cough treatments.
- 7.13 Advertisements referring to hay **fever or other allergic conditions** causing coughs, sneezing, wheezing or catarrh may not suggest that the product will clear up the condition itself unless it contains appropriate antigens or be universally effective against the condition of allergy. Claims for products which do not contain antigens should be limited to the temporary relief of symptoms.
- 7.14 Advertisements should not claim or imply that the product advertised is suitable for the treatment of frequent or regular headache attacks. No product may be advertised as a cause of treatment, as distinct from relief for **headaches**.
- 7.15 Advertisements for deaf aids (**hearing aids**) shall only be accepted if they offer such appliances as aids to hearing and shall not be accepted if they offer them as a treatment for deafness.
- 7.16 Advertisements addressed to the general public should not contain any exaggerated claims to efficiency based merely upon the fact that a product included **hormones or animal extracts**.

- 7.17 Advertisements addressed to the general public should not contain any offers to diagnose or treat any defects, disability or condition of physical or mental ill-health by hypnosis, hypnotherapy, psychology, and psycho-analysis, psychiatry.
- 7.18 Reference to lack of appetite or aversion from food, which may well be symptoms of more serious conditions, are unacceptable in connection with claims for **indigestion remedies**.

#### 7.19 Advertising for **laxatives**

- 7.19.1 Should **NOT** depict habitual or indiscriminate use of these products especially for the relief of abdominal pains, excessive belching, after meal discomfort, headaches, backache, biliousness, for any benefit to complexion or appearance or for the relief of indigestion, except s permitted by a credible medical association or the Ministry of health.
- 7.19.2 Should **NOT** claim the use of the product can purify blood.
- 7.19.3 **MUST NOT** contain pictures, artwork and/or copy which could mislead by creating expectations of effect other than laxation for example better health, body building, improved vitality etcetera
- 7.19.4 **MUST NOT** state or imply that the product or ingredient offer a natural way to induce laxation unless this is indicated in the package insert.
- 7.19.5 Should **NOT** contain claims that any laxative has a particular advantage for individuals simply on the basis of sex, age or other demographic characteristics unless otherwise indicated in the package insert.

- 7.19.6 In reference to palatability should NOT be used to support claims of efficiency or to promote frequent or continued use and neither should such reference dominate the label.
- 7.19.7 Should make claims confined to constipation or infrequent, difficult or painful passage of stools, unless otherwise indicated in the package insert.
- 7.19.8 Should not encourage, directly or indirectly, the excessive use of laxatives.
- 7.20 Advertisements should not contain any offer of a product for the treatment of **haemorrhoids** unless the direction for the use of the container itself or its labels include advice to the effect that persons who suffer from haemorrhage should consult a doctor.
- 7.21 Advertisements addressed to the general public for food products (or food supplements) containing **polyunsaturated fats** or polyunsaturated fatty acids may claim that the inclusion of such fats in the diet in substitution for other fats of different chemical constitution may retard the generation of cholesterol and help to reduce the cholesterol level.
- 7.22 Hypercholesterolemia is only one of the number of risks factors in degenerative heart disease. Care should therefore be exercised that the impression is not given that by lowering cholesterol levels the risk of heart disease is eliminated.
- 7.23 Advertisements for **pregnancy test kits** for home use may be accepted **SUBJECTED** to their efficiency and the adequacy of the instructions supplied with them having been demonstrated to the satisfaction of a medical authority determined by the ASBK.
- 7.24 No advertisement should contain any claim for slowing down the process of **ageing** based upon product's content EXCEPT mere

cosmetics characteristics feature of ageing following the guidelines of the Cosmetic Category of the Code.

#### **7.25 Rheumatic and Allied Pains.**

- 7.25.1 Advertisements should not refer to any medicine, product, appliance or device in terms calculated to lead to its use for the treatment of any form of arthritis or chronic or persistent rheumatism.
  - 7.25.2 There is no generally accepted evidence that copper bangles (or other copper objects to be worn or carried) can alleviate rheumatic or muscular pains, and such claims for them are not acceptable.
  - 7.25.3 Bath additives may be offered to encourage the taking of hot baths for their soothing effect of muscular pain or stiffness, but no claims should be made, such as references to spa/hot tub water, which suggests that the additives themselves provide any medical benefit unless so registered under the regulations of the Foods, Drugs and Chemical Substances Act Chapter 254 of the Laws of Kenya and the Ministry of Health regulations.
- 7.26 No advertisement shall claim that the product, medicine or treatment advertised will promote sexual virility or be effective in treating sexual weakness, or habits associated with sexual excess or indulgence, or ailment, illness or disease associated with those habits.
- 7.27 No advertisements for a **product containing vitamins or minerals** should make any claim.

- 7.27.1 That there is evidence of general or widespread vitamin or mineral deficiency.
- 7.27.2 That a full, varied and properly prepared diet needs to be supplemented by vitamin or mineral products.
- 7.27.3 That good looks and good health are better maintained, or that irritability, “nerviness” and lack of energy, can be avoided merely through consumption of additional vitamins or minerals.
- 7.27.4 That the application of vitamins to the skin is in any way beneficial to a normal healthy skin unless substantiation can be provided; and
- 7.27.5 That the inclusion of vitamins in suntan lotions has any effect either in promoting suntan or preventing sunburn unless substantiation can be provided.

## **8. Sample Distribution.**

- 8.1 The distribution of samples of medicine directly to the public is prohibited, UNLESS such distribution is by qualified health professionals such as doctors, pharmacists, dentists, nurses and clinical officers.

## **9. Registration.**

- 9.1 In respect of products registered under the provisions of the Foods, Drugs and Chemical Substances Act( Chapter 254 the Laws of Kenya), the Pharmacy and Poisons Act (Chapter 244 the Laws of Kenya), Dangerous Drugs Act(Chapter 254 the Laws of Kenya) and the regulations of the Ministry of health, only those claims approved by the respective councils and Associations may be advertised.

9.2 In respect of medicines called up for registration but not yet registered, claims in advertisement shall be limited to those submitted to EITHER the **Pharmacy and Poisons Board** according to the provisions of the Pharmacy and Poisons Act (Chapter 244 the Laws of Kenya) or the Public Health (Standards Board) according to the provisions of the Foods, Drugs and Chemical Substances Act (Chapter 254 the Laws of Kenya) whichever is application for registration PROVIDED that such claims comply with the other provisions of the ASBK Code.

#### **10. Promotion of Medicine through Competitions.**

- 10.1 The provisions of this clause shall apply to advertising for all medicines as defined by the Foods, Drugs and Chemical Substances Act (Chapter 254 the Laws of Kenya) and the definitions at the beginning of this category shall apply.
- 10.2 **EXCEPT** as stipulated above no advertisement for any incentive scheme is permissible.
- 10.3 No advertisement for a competition shall require the purchase, usage, sale or prescription of any medicines.
- 10.4 No advertisement may offer medicine as a prize in a competition.
- 10.5 The provision of this clause shall not preclude lawful schemes whereby trade purchasers of more than a stipulated quantity of a medicine receive further quantities of that medicine without further charge or offers of discount to final sellers based on their purchase of medicine.

#### **11. Promotions of medicines with coupons**

- 11.1 No medicines shall be promoted to the lay public through the use of coupons in advertising if the use of such coupons-

- 11.1.1 Could lead to the misuse of the medicine; and /or
- 11.1.2 Would promote usage which would be detrimental to the health of the consumer.

## **MIRACLE HEALING**

- 1.1 No miracle healing claims or inferences of curative properties through claims of miracle healing may be in an advertisement.

## **MOTOR VEHICLE &AUTOMATION**

### **1. General.**

- 1.1 This category shall include the advertising of all motor vehicles and shall include advertising of power generators and electrical water pumping devices.
- 1.2 Advertisements offering motor vehicles on a purchase, lease or rental basis should include full details on the payments to be made.
- 1.3 The prices quoted should correspond with the motor vehicle illustrated.
- 1.4 The price stated shall also be a true reflection of the actual price to be paid by a lessee or hirer in the event of a lease or rental.
- 1.5 Safety claims as regards the motor vehicle should not exaggerate the benefit to consumers, and the advertiser shall not exaggerate the benefit to consumers, and the advertiser shall not make absolute claims about safety unless they hold evidence to support them.
- 1.6 Advertisements quoting fuel consumption figures shall clearly state where the test was conducted and the average speed of the vehicle during the test.
- 1.7 Without prejudice to the provisions of the category, advertisements in relation to motor vehicles shall at all times adhere to the provisions set out in the ***“Comparative Advertising”*** section of this Code.

### **2. Social Responsibility.**

- 2.1 As a general rule, advertisements for motor vehicles, fuel or accessories shall avoid portraying or referring to practices that encourage anti-social behaviour.
- 2.2 In particular, such advertisements portray absolute adherence to the regulations set out in the Traffic Act, Cap 403 of the Laws of Kenya, and shall in addition.

- 2.2.1 Not portray speed in a way that might encourage motorists to drive irresponsibility or break the law.
  - 2.2.2 Not portray bad driving or under age drivers
  - 2.2.3 Not portray persons behind the wheel who have been or are consuming alcoholic beverages or are under the influence of alcohol.
  - 2.2.4 Not portray persons in a motor vehicle who are not wearing a seat belt.
  - 2.2.5 Not portray children under the age of seven (7) years sitting in the front seat of the motor vehicle or in the backseat without a seat belt or in a car seat, as is appropriate to the circumstances.
- 2.3 When making environmental claims for products, advertisers should conform to the specific rules set out herein on environmental claims.

## **REAL ESTATE AND FURNITURE ADVERTISING**

### **1. General**

- 1.1 Advertisements for property, or real estate, either for rent or sale, which depicts areas or items additional to those that shall be offered in the price, shall clearly state that these items are excluded.
- 1.2 Similarly, advertisements for suites of furniture which depict items additional to those that shall be offered in the lease or sale and are not included in the price, shall clearly state that these items are excluded.

### **2. Provisions on Real Estate**

#### *Information Furnished.*

Advertisements in respect of fixed property (land), whether for sale or for rent, should not exaggerate on such matters as:-

- 2.1.1 the land itself and any building erected or to be erected on it;
- 2.1.2. the size of the land, availability of services, fixtures and amenities in the building or on land;
- 2.1.3 the legal title and formalities;
- 2.1.4 rights and servitudes of any kind;
- 2.1.5 any local authority and town planning requirements;
- 2.1.6 any taxes, rates and other duties outstanding or payable;
- 2.1.7 the price, terms of payments and loan facilities;
- 2.1.8 making reference to municipal valuation, building society valuation, cost price or replacement value;
- 2.1.9 mentioning the name of a specific architect, builder or designer;

- 2.1.10 whether the sale or rental transaction of the property is being conducted by the owner or by an agent or proxy of the owner.
- 2.2 When immediate transfer of the property into the name of the purchaser is not possible, or where there are restrictions on the transfer, this fact should be clearly mentioned in the advertisement in specific terms.
- 2.3 The advertiser shall at no time attempt to estimate the length of time required for such a transfer to become available.
- 2.4 No estate agent or a proxy to the owner shall, by means of an advertisement, canvass clients or offer property for sale or to let, **UNLESS** he, in that advertisement, publishes his name and the fact that he is an agent or acting as a proxy to the owner and if applicable, the name of his employer or the estate agent he represents.

## **SLIMMING**

### **1. General.**

- 1.1 This category of the Code seeks to dispel the confusion there often is about slimming products, about what the given products can do and whether these products work at all; and in particular about the claims which are made for those products that can be shown to work effectively.
- 1.2 All advertisers, agencies and media are reminded that advertisements must conform not only to this Category but also to the spirit and letter of all other relevant sections of the Code.
- 1.3 All advertisements offered for publication on either a mass loss or a figure control platform has to be checked by publishers with the appropriate media body before it can be accepted for publication. To facilitate this pre- publication checking, no new, “slimming” copy should be submitted unless at least (7) days are available for checking.
- 1.4 When a new formulation is introduced or when new claims are made for an existing product, the advertiser or the agency should submit full substantiation for all new claims at the same time as the copy or illustration for the proposed advertisement, otherwise delay may be expected. Independent testimony will be required from medical practitioners registered in Kenya as to any psychological effects claimed. Testimonials from the users of the product do not constitute substantiation.
- 1.5 Advertisements for any slimming regime nor establishment should neither be directed at, nor contain anything that will appeal particularly to people who are below eighteen (18) years of age.
- 1.6 Advertisements must not suggest that it is desirable to be underweight.

- 1.7 Advertisements must not contain general claims that precise amount of weight can be lost within a stated period or that weight can be lost from specific parts of the body.
- 1.8 Advertisements for intense exercise programmes should encourage users to check with a doctor before commencing.
- 1.9 Short-term loss of girth may be achieved by wearing a tight-fitting garment. This should not be portrayed as permanent nor should it be confused with weight loss.
- 1.10 Advertisements for slimming should state the methods or procedures used in the stead of mentioning what methods or procedures NOT used for instance, “No pills, No belts, No exercise, no diet, no cream...” in order to avoid misleading the consumers about other healthy practices they may opt to undertake.
- 1.11 Any claims of “no- side effect” **MUST** be readily substantiated

## **2. Definitions and Interpretation**

- 2.1 “**Slimming**” means the losing of mass and the controlling of the figure so far as the human form is concerned, so as to achieve the impression of slenderness or trimness or leanness or general appearance of smallness or willowy look.
- 2.2 “**Slimming methods**” means methods or modes of achieving the slimming effect and may include amongst others diet plans commonly known as ‘dieting’, low-calorie and low-fat consumption, use of appetite depressants, exercising and working out and general aerobics by means of body calisthenics.

### **3. Mass loss**

#### *3.1 General Principles.*

- 3.1.1 Mass limitation or control, by preventing the accumulation of excessive fat, are also common objectives. References to mass loss in subsequent sections are to be inclusive of mass limitation and control.
- 3.1.2 The only way for a person to loss mass, other than temporarily, is burning up the excess fat his body has stored. A diet is the only practical self-treatment for achieving a reduction in this excess fat.
- 3.1.3 Diet plans and aids to dieting of the kinds dealt with below are therefore the only products which may be offered in advertisements capable of effecting any loss of mass. Direct or indirect claims that mass loss can be achieved by any other means are not acceptable in advertisements addressed to the general public.
- 3.1.4 Temporary mass loss can be achieved by the expulsion of water from the body but this may not be represented in advertisements as a method of slimming.
- 3.1.5 Overweight or excessive mass in young people is sometimes associated with a defective action of the gland and it is, therefore, desirable that they should be advised to consult their doctors before embarking upon a slimming diet.
- 3.1.6 Obesity is a condition requiring medical attention and treatment. No claims referring to obesity are admissible in advertisements directly to the general public.

### *3.2 Diet Plans*

- 3.2.1 Evidence will be required from the advertiser to show that his suggested diet(s) will provide adequate amounts of proteins, vitamins and minerals, and that the diet is capable of achieving the results claimed for it, when followed by the kind of person for whom it is intended.
- 3.2.2 No direct or indirect claims should be made in any advertisements for a diet that it contains any ingredient which in itself has the property of hastening the process of mass loss.
- 3.2.3 All foods have some kilojoules count and in a balanced diet it will be necessary to have foods with higher and lower kilojoules levels. There are no grounds for supposing that specific foods have particular properties which speed up the metabolic process which causes excess fat to be “burnt up” and thus mass to be lost.
- 3.2.3 All foods have some kilojoules count and in a balanced diet. It will necessary to have foods with higher and lower kilojoules levels. There are no grounds for supposing that specific foods have particular properties which speed up the metabolic process which causes excess fat to be “burnt-up” and thus mass be lost.
- 3.2.4 Advertisements for “crash” dieting are unacceptable.

### *3.3 Aids to dieting: General Provisions*

- 3.3.1 Diet aids, such as foods, foods substitutes or appetite depressants, may not be advertised except in terms which make clear they can only be effective when taken in conjunction with or as part of a kilojoules-controlled diet. Due prominence should be given, therefore, in all advertisements to the part played by diet.
- 3.3.2 Any diets provided in conjunction with diet aids, whether on pack, in advertisements or otherwise, will be required to conform to the advice given above on diet plans, and details of the diets proposed should therefore be enclosed, with

appropriate substantiation, when clearance of advertising is being sought.

3.3.3 Advertisement for diet aids should also conform to the advice given above as to the non-acceptability of certain claims for the individual effectiveness of specific foods or other diet ingredients.

#### *3.4 Foods.*

3.4.1 Advertisements for foods offered as diet aids should make clear in what way they contribute to the diet for example whether the particular food is lower in kilojoules than its convectional equivalent on a mass for mass basis, or a slice for slice basis.

3.4.2 Particular care should be taken to ensure that advertisements for meal substitutes do not imply that these products are effective if eaten in addition to normal meals rather than instead of them.

#### *3.5 Appetite depressants*

3.5.1 Advertisements for appetite depressants should make clear how they work and will only be regarded as acceptable when adequate evidence has been provided by advertisers that the product is safe and effective at the level of consumption suggested.

3.5.2 Advertising claims for the effect of appetite depressants should not be expressed in terms of food equivalent for example equal to four eggs and a sausage.

## **TIMESHARING**

### **1. General**

1.1 This section of the Code is supplementary to the general provisions of the Code. The spirit as well as the letter of the provisions of the whole Code should be observed.

### **2. Definitions and Interpretation**

2.1 **“Timesharing” or “Timeshare”** shall mean the right to use and occupy one or more properties on a periodic basis according to an arrangement allocating similar rights of use amongst other users.

2.2 **“Promotional Activity”** shall mean direct person-person contact with a view to the sale of timesharing.

### **3. Provisions.**

3.1 Any advertisements relating to a timesharing interest shall contain:

3.1.1 The type of accumulation concerned such as self-contained apartments, hotel rooms e.t.c

3.1.2 Full particulars regarding the legal basis on which the timesharing interest in the scheme may be required.

3.1.3 The total number of calendar years during which a prospective purchaser of a timesharing interests shall have the right to exercise his/her rights thereof

3.1.4 The name and physical addresses of the timesharing a scheme.

3.2 Sales personnel involved in Promotional Activities should be aware of the provisions of the Code and must not make any statements or furnish undertakings or behave in any way contrary to its provisions.

3.3 In particular, all oral or printed statements in timeshare advertising and/or Promotional Activities, including sales presentations and

solicitations, shall not convey false or misleading information about the product.

## **TOURS AND TRAVEL, LEISURE AND ENTERTAINMENT, HOTELS AND RESTAURANTS, RESORTS AND CRUISES**

### **1. General**

1.1 This category is supplementary to the general provisions of the Code. Special care should be taken by advertisers to ensure that the spirit as well as the letter of the provisions of the whole Code is scrupulously observed.

### **2. Definitions and Interpretation.**

2.1 **“Inclusive tours”** means a tour defined below, which is inclusive of either one or more of the following venture activities.

2.2.1 Sightseeing.

2.1.2 Camping expeditions.

2.1.3 Game visits and other safaris.

2.1.4 Hiking.

2.1.5 Other entertainment activities.

2.2 A **“Tour”** means an organized travel and entertaining activity which may include other leisure or adventurous activities

2.3 **“Cruise”** means any journey in the nature of a trip, travel or a tour and may include sailing by ship or any water carrying vessel.

### **3. Inclusive Tours.**

3.1 Advertisements for inclusive tours should be so framed so as to avoid disappointment to the consumer. In the interest of such protection, the medium concerned may determine and require publication of information covering:

- 3.1.1 The firm, company or organization responsible for the tour. Where it is not possible to make available the name of the firm, company or organization, the physical and postal address of the firm, company or organization must be made available;
- 3.1.2 The means of transport, whether charter or scheduled (including whenever possible name of the carrier, type and class of aircraft, type and capacity of cruise vessel, or other means of transport);
- 3.1.3 Destination(s) and itinerary.
- 3.1.4 Exact destination of the tour and of the stay at each locality;
- 3.1.5 The type and standard of accommodation and meal facilities offered;
- 3.1.6 Any special arrangements offered (entertainment, sightseeing etcetera);
- 3.1.7 The total price of the tour as advertised (at least minimum an maximum prices) and those items which are included therein (airport taxes and other fiscal charges, incidental transportation, portage tips, down payments, etcetera) and those items not included that the consumer has to incur;
- 3.1.8 Cancellation conditions;
- 3.1.9 The number of days indicated in the travelling time include both date of departure and arrival

## **UNIT TRUSTS**

### **1. Definitions & Interpretations.**

1.1 “**Unit Trust**” shall mean units in a unit portfolio, managed by a management company or any other form of participation in a unit portfolio of a unit trust scheme or similar scheme.

1.2 A unit trust need not be listed on a recognized stock exchange.

### **2. Provisions**

2.1 The general principle is that no advertisement may be made in respect of a unit trust that is false, misleading or deceptive.

2.2 Advertising of unit trusts shall be in accordance with any Act of Parliament that may for the time being be in force regulating unit trusts.

**Advertisements Containing Environmental Claims.**

**1. General**

1.1 This Appendix is supplementary to the general provisions of the Code. Special care should be taken by advertisers to ensure that the spirit as well as the letter of the provisions of the whole Code is scrupulously observed.

**2. Definitions and Interpretation.**

2.1 “**Environmental claim**” means any direct or indirect representation, reference, indication, averment or statement in an advertisement relating to the immediate or future impact or influence on the environment of a product or its packaging or a service.

2.2 “**CFC**” is abbreviation for Chlorofluorocarbon a gas compound that damages the Ozone layer.

2.3 Unless the context otherwise requires, a reference to the product is deemed to include reference to any packaging in which the product or any of its components are or were at any time contained.

2.4 All environmental claims and statements made in advertising should provide accurate information, meaningful to the consumer and based on recognized scientific standards and principles.

2.5 Advertisements should not contain vague, incomplete or irrelevant statements about environmental matters, nor should it impair public

confidence in the efforts made by the business community to improve its ecological standards.

### **3 Absolute Claims and Statements**

- 3.1 Advertisements containing unqualified claims and statements about environmental matters will be interpreted as meaning “100%” and shall be subjected to substantiation.
- 3.2 The same principle will apply to descriptions such as “...free” or “contains no...” which will be assumed to claim total absence of the stated substance.
- 3.3 Corporate claims in advertising may refer to specific products or actions, but may not imply that they extend to the company’s performance functions as a whole, unless this can be substantiated.
- 3.4 Advertisements should clearly indicate whether the claims made relate to the products or packaging, and in the absence of such indication shall be considered to be referring to both.
- 3.5 Advertisements containing general statements such as “**environmentally friendly**” or “**ozone friendly**” or “**green or “ecologically aware”**” or “**wholly biodegradable**” or graphics or symbols designed to convey a similar environmental message, will not be permitted unless qualified by a description of the benefit conferred, for example “**ozone friendly**”- **free from CFC’s**”
- 3.6 Environmental signs or symbols used in advertising should clearly indicate their source and should not imply official approval.

### **4. Recyclable**

- 4.1 Advertisements may not by using the Mobius Loop symbol or in any other way claim that the product is recyclable, merely because it is

technically capable of being recycled, unless facilities which are reasonably accessible, exist for collection and recycling.

## **5. Degradable**

- 5.1 No advertisements any make claims for the degradability of the packaging material unless the claim can be substantiated.
- 5.2 Advertisements claims about the degradability of products disposed of through the sewage systems may only be made if the by-products of degradation and the product in question do not contain substances.

## **6. Ozone friendly**

- 6.1 No product or packaging may claim to be “ozone friendly” if at any point in its manufacture, packaging, use or degradation it uses or is likely to emit chlorofluorocarbons.
- 6.2 Advertisements which claim to indicate in any other way that a product does not contain any substance which will or may have adverse or detrimental affect on the ozonosphere (ozone layer) shall not be acceptable unless the ASBK is satisfied that the product falls within the class of product:
  - 6.2.1 In which chlorofluorocarbons (Freons) are or have in the past commonly been used as inert dispensing agents or as solvents or refrigerants; or
  - 6.2.2 That generally perceived by the consumer public as being a product which contains such substances.

### **Advertisements Containing Health-Related Claims**

#### **1. General**

1.1 This Appendix is supplementary to the general provisions of the Code.

Special care must be taken by advertisers to ensure that the spirit as well as the letter of those provisions is scrupulously observed.

1.2 This Appendix to the code serves the purpose of issuing guidelines to claims that are not directly of a medical nature but those that have implications upon health and medicinal related functions.

#### **2. Impression on Professional Advice or Support.**

2.1 Claims of medical or other professional support for a product whether in a copy or illustration, or otherwise, should be substantiated and the extent of such support not be exaggerated in any way.

2.2 **UNLESS** fully substantiated in terms set out above, statements giving the impression of professional support or recommendations by persons who appear in advertisements and who are presented, directly or by implication, as being qualified to give such evidence, are not permitted.

2.3 This clause is specifically intended to prohibit the portrayal of doctors, dentists, veterinary surgeons, pharmacists, paramedics, clinical officers, nurses, midwives etcetera in the circumstances stated. It is not intended to preclude the depictions of laboratory settings representative of factual tests.

2.4 When unqualified claims of support and /or recommendations are made, substantiation in the form of an acceptable survey showing that

the majority of persons in the profession concerned support and/or recommended the product and/or service in preference to competitors must be furnished.

- 2.5 Detailed evidence should be held ready for supply to the ASBK in support of any evidence to tests, whether carried out by the advertiser or otherwise.
- 2.6 References to tests, trials, research, doctors, preference or prescribing habits or the use of the product or treatment in hospitals, clinics and the likes may only be used if they are fully substantiated. References to tests or trials conducted in a named hospital or by a named professional or official organization are permissible only if authorized and approved by the medical committee or other equivalent authority of the hospital or other organization concerned.
- 2.7 Where reference is made in an advertisement to a test or other research which has been carried out other than by an independent organization or without independent medical supervision, this fact should be clearly indicated.
- 2.8 Professional journals should not be named or quoted without permission and references to such journals should not give any unjustified impression of professional support.
- 2.9 References to doctors, dentists, nurses and the likes contained in any advertisements should refer only to those registered in the country in which they practice.
- 2.10 Advertisements should not refer to any **“College” “Hospital” “Clinic”, “Institution”, “Laboratory”**, or similar establishments **UNLESS** there exists a bona fide establishment corresponding to the description used, which is under the regular and effective supervision of a regular medical practitioner or other person holding an appropriate recognized qualification.

- 2.11 No address, title or description which may imply that a product emanates from any hospital or official source, or is other than a proprietary product, is acceptable for advertising **UNLESS** substantiation is available from the advertiser.
- 2.12 Nothing herein contained shall prevent the continued use in an advertisement of the word “Doctor” or any abbreviation thereof, as part of the name of a branded product.
- 2.13 Where in any advertisement a reference to literature is required such literature shall also be subject to these rules.
- 2.14 No advertisements shall contain any statements which either expressly or by implication disparage either the medical profession or the value of professional medical attention and treatment.
- 2.15 No advertisements shall be accepted if the advertiser fails to disclose the name of the product or nature of the use or treatment advertised.

3. **Breast Milk Substitutes.**

- 3.1 Advertisements for breast milk substitutes must conform to the provisions set out in its respective Category of the Code.

## **Use of Standardization Marks and Market Research in Advertising.**

### **1. Definition & Interpretation**

- 1.1 For the purpose of this category the following phrases shall bear the meanings set out here-below:
- 1.2 “**Standardization Mark**” shall mean a mark purporting to give accreditation to a product or one showing a standard benchmark of quality.
- 1.3 “**Research Body**” shall mean an organization approved by the Marketing and Social Research Association of Kenya.

### **2. General Principles**

- 2.1 An advertisement referring to or bearing a Standardization Mark or a standard and/or Research Body, shall not be acceptable unless previously approved in writing by the body.
- 2.2 The advertiser shall bear the onus of submitting a copy of the approval on request and to satisfy the ASBK that the necessary approval has been obtained.

### **3. Market Research.**

- 3.1 The purpose of marketing or consumer research is the objective collection and analysis of willingly provided information on products and services. In particular, marketing research is the principal channel whereby suppliers are informed, of the habits, needs and views of the general public.

- 3.2 Market research should be conducted not only according to accepted principles of fair competition but also according to standards based on generally accepted scientific methods.
- 3.3 Market research is dependent upon public confidence that is honestly, objectively and fairly conducted.
- 3.4 This Code recommends that activities using market research or methods similar to market research should be conducted in accordance with the MRSA Code of Practice.

### **References to diseases in Advertising**

- 1.1 Advertisements should not make or offer products, treatments or advice for any of the following illness or conditions unless recommendations accord with a full product registration by the recognized registration authority.
- 1.2 In order to avoid missing out any ailments, diseases are listed more than once under different names.
- 1.3 The diseases to which no reference or only limited reference may be made are:
  - AIDS(Acquired Immune Deficiency Syndrome)
  - Alopecia (Baldness)
  - Amenorrhea
  - \*Anaemia, other than that caused by dietary deficiency.
  - Arterio-sclerosis
  - Artery troubles
  - Arthritis
  - \*Asthma, except for product advertised solely for the alleviation of an attack of asthma, and the advertisement should contain a recommendation that sufferers should seek medical advice.
  - Auditory systems, any structural or organic ailment
  - \*Backache (where the reference is to chronic or persistent backache)
  - Barbers rash (Sycosis)
  - Bleeding Disease

- Blood pressure
- Breast diseases or development of breast diseases
- Bright's disease
- Cancer
- Carbuncles
- Cardiac symptoms, heart troubles,
- Cataract
- \*Circulatory conditions, except minor conditions such as chilblains, restless legs etcetera
- Convulsion (paroxysm or fits)
- Dermatitis(See Skin Disease)
- Diabetes
- Diseases ankles
- Disseminated (or multiple) sclerosis
- Ears, any structural or organic defect of the auditory system)
- Enlarged glands
- Epilepsy
- Erysipelas
- Eyes, any structural or organic defect of the optical system
- Fits(Convulsions)
- Gallstones
- Gingivitis
- Glands, enlarged, or glandular conditions
- Glaucoma
- Goitre
- Hemorrhagic diseases
- Heart troubles, cardiac symptoms

- Hypertension or systems thereof
- Impetigo
- \*Indigestion, where the reference is to chronic or persistent
- \*Insomnia, where the reference is to chronic or persistent
- Itch, the (Scabies)
- Kidney, disorder or disease of the
- Lazy eye
- Leg trouble
- Locomotor Ataxia
- Lupus
- \*Menopausal ailments, except minor associated conditions
- Migraine
- Multiple(or disseminated) sclerosis
- Obesity or overmass(see advertising for slimming)
- Osteoarthritis
- Paralysis
- Pernicious anemia
- Phlebitis
- Prolapse
- \*Psoriasis, except for temporary relief
- Purpura
- Pyorrhoea
- \*Rheumatism (and backache) where the reference is too chronic or persistent
- Rheumatoid arthritis
- Ringworm

- Scabies(the Itch)
- Seborrhea, except for the relief of
- Sexual weakness and loss of libido
- \*Skin diseases, except those of minor nature, where the reference is to “all or most” or skin ailments in general
- \*Sleeplessness, where reference is to chronic or persistent
- Squint
- Sycosis(Barber’s rush)
- Thrombosis
- Tuberculosis
- Ulcers(All except mouth ulcers)
- Urinary infections
- \*Varicose veins(except where the reference is confined to relief by elastic stockings)
- Venereal diseases
- Verrucae of the feet
- \*Whooping cough, except for the alleviation of symptoms

**1.4** Advertisements should not make any recommendations or offer products, treatments, or advice for any of the following illnesses or conditions

**UNLESS-**

- 1.4.1 The recommendations are in accordance to full product registration by the appropriate medical registration authority;
- 1.4.2 Such advertisements is an educational or information campaign addressed to lay public by Government institutions or bodies recognized by Government institutions or bodies by the ASA to run campaigns, but which

advertisements **MUST** nonetheless adhere to the provisions of Advocacy advertising of the Code; or

- 1.4.3 the advertising is for products not registrable with any Medical authority in which case, the advertising is subject to the normal provisions of the Code.

### **Miscellaneous Provisions**

- 1.1 Advertisements for cellular phones, television sets, and other domestic appliances MUST comply with the general provisions of the Code.
- 1.2 Comparative advertising of an aggressive nature, what is commonly referred to as "**advertising warfare**" shall comply with the general provisions of this Code to the spirit and letter of enactment.
- 1.3 This Code recognizes the self-regulation within the petroleum and energy sector and the marketing research under the umbrella of Marketing and Social Research Association (MSRA) and shall adopt regulations as enacted or amended from time to time in this sector.
- 1.4 Any other industry or sector not directly mentioned in this Code but whose normal activities involve or incorporate advertising practice shall be strictly bound by the provisions of the Code.
- 1.5 The Code of Advertising Practice and Direct Marketing will function in liaison with other Codes enacted within the wider communications industry which are:
  - 1.5.1 The Marketing and Social Research Association Code of Practice
  - 1.5.2 The Public Relations Society of Kenya Code of Practice.

# **DIRECT MARKETING CODE**

## **1 Definition & Interpretation**

1.1 For the purpose of this category of the Code “direct marketing” shall refer to all advertisements, except as expressly provided, in which an offer is made, whether directly or by implication, to dispatch goods or have them delivered to the purchaser, upon receipt of an order, without the necessity for the consumer to visit any retail establishment or to examine the goods prior to purchase.

## **2. General Principles**

### *2.1 Marketing Claims*

2.1.1 A marketer shall not make misleading or deceptive claims about an offer delivered through direct marketing whether by words, omission, illustrations or any other means.

2.1.2 In particular, a marketer shall not represent that it is undertaking market research where the purpose for contacting is direct marketing.

### *2.2 Information at Time to Offer*

2.2.1 Consumers must be provided with all information reasonably necessary for them to make an informed purchase decision.

2.2.2 Such information shall include but not be limited to:

2.2.2.1 Name and full physical address of the marketer;

2.2.2.2 The total price of the goods or services including any delivery charges;

2.2.2.3 The delivery arrangements;

2.2.2.4 All material restrictions, limitations or conditions to purchase; and

2.2.2.5 The period, if any, for which the contract solicitation remains valid.

### *2.3 Unfair Conduct*

2.3.1 A marketer must not engage in conduct which is unfair or “unconscionable” in nature. For example a consumer’s obvious inability to understand the offer must not be exploited.

### 2.4 Incentives

2.4.1 The terms and conditions under which incentives, including prizes, gifts, or other rewards are offered must be clearly stated, including but not limited to:

2.4.1.1 The manner of drawing or awarding a gift, prize or reward;

2.4.1.2 Whether or not the provision of the gift, prize or reward is conditional on the consumer purchasing goods or services from the marketer

## *2.5 Availability of Goods and Services*

2.5.1 Unless the promotional material specifically warns of limited stocks, the marketer must not offer particular goods or services for sale until sufficient stock is available, or reasonably expected to be available, to meet the reasonably foreseeable demand.

## *2.6 Delivery*

2.6.1 If the marketer has not specified a period for delivery then the goods or services must be delivered in a reasonable time from receipt of an order, such reasonable period of time is not exceed thirty(30) days.

## *2.7 Payment*

2.7.1 A marketer shall not request or accept payment for goods or services if it:

2.7.1.1 Intends to supply goods or services materially different from the goods or services in respect of which payment is made; or

2.7.1.2 There are reasonable grounds, of which the marketer is aware or ought reasonably to be aware, for believing that it will not be able to supply the goods or services within the period specified by it or, if no period specified by it or, if no period has been specified, within a reasonable time not exceeding thirty(30) days.

## *2.8 Cancellation and Refunds*

2.8.1 Each contract a marketer makes with a consumer shall provide that the consumer has the right to cancel the contract:

2.8.1.1 Within a period of time is not less than seven(7) working days (this excludes weekends and gazetted public holidays); and

2.8.1.2 At any time before the goods or services are dispatched to the consumer.

2.8.2 Where a consumer is entitled to a refund, a marketer must refund moneys within seven (7) working days of the marketer receiving the returned goods or notice of the cancellation of the contract from the consumer.

## *2.9 Minors*

A marketer must have appropriate procedures in place to limit the sale of restricted goods or services to children.

## *2.10 Unordered Goods and Services*

2.10.1 Consumers who have been supplied unordered goods and services shall not have to pay for those goods and services.

2.10.2 The marketer may contact the consumer to make reasonable arrangements for taking possession of the unordered goods.

## 2.11 *Substituted Goods or Services*

A marketer that cannot supply exactly the same good or service as specified by a consumer may supply a substitute goods and services of a similar kind, quality and price with the express permission of the consumer.

## 2.12 *Complaints*

Marketers must have in place procedures for dealing with complaints from consumers.

### **3. Provision on Telemarketing**

#### *Information*

3.1 At the earliest possible opportunity in an outbound telemarketing call, a marketer must ensure that the following information is provided to the consumer and repeated if the consumer at any time requests it:

3.1.1 The name of the person making the call;

3.1.2 The name of the organization on whose behalf the call is being made; and

3.1.3 The purpose of the call.

3.2 The telemarketer must also be able to provide to a consumer who requests it, details of the source from which the telemarketer obtained the consumer's personal information.

3.3 A telemarketer who is not able to provide the above information at the time of the request will ensure that the consumer is provided with the information in a reasonable period after the request is made.

*Acceptable Calling Conduct*

- 3.4 A marketer shall ensure that all telephone calls to a consumer are made between the hours of 8.a.m and 9 p.m
- 3.5 If the consumer has previously agreed to receive a telemarketing call from the marketer outside these hours then the organization may make such a call to the consumer.
- 3.6 If it appears that a consumer has been interrupted at any inconvenient time by a telephone call, the telemarketer must promptly offer to call the consumer back and inquire as to when would be a more convenient time to do so.
- 3.7 A telemarketer must provide the consumer with a clear opportunity to accept or decline the marketer's offer.

*Calling Frequency*

- 3.8 A telemarketer must not contact a consumer more than once in a fortnight for the same or similar camping without that consumer's prior consent.

**4. Provision for Electronic Commerce.**

*Transparent and Effective Protection*

- 4.1 Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.

*Fair Business, Advertising and Marketing Practices.*

- 4.2 A marketer must not make any representation, or omission, or engage in any practice that is likely to be deceptive, misleading, fraudulent, or unfair.

- 4.3 A marketer selling, prompting or marketing goods or services to consumers should not engage in practices that are likely to cause unreasonable risk or harm to consumers using e-commerce.
- 4.4 A marketer must take into account the global nature of electronic commerce, and whenever possible, should consider the various regulatory characteristics of the markets they target.
- 4.5 A marketer should not exploit the special characteristics of e-commerce to hide their true identity or location, or to avoid compliance with consumer protection standards in force.
- 4.6 A marketer should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial e-mail messages.
- 4.7 Where consumers have indicated that they do not want to receive unsolicited commercial e-mail messages, such choice should be respected by the marketers.
- 4.8 The marketer should take special care in advertising or marketing that is targeted to children, the seriously ill, and others who may not have the capacity to fully understand the information with which they are presented.

#### *Online Disclosures*

- 4.9 A marketer engaged in e-commerce with consumers should provide accurate, clear and easily accessible information about themselves.
- 4.10 A marketer engaged in e-commerce with consumers must also provide accurate and easily accessible information describing the goods or services offered; sufficient to enable consumers to make an informed decision about whether to enter into the

transaction and in manner that makes it possible for consumers to maintain an adequate record of such information.

- 4.11 The marketer should also provide sufficient information about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction.
- 4.12 With this regard, where applicable and appropriate given the transaction, such information should include the following:
  - 4.12.1 An itemization of total costs collected and /or imposed by the business.
  - 4.12.2 Notice of the existence of routinely applicable costs to the consumer that are not collected and/or imposed by the business;
  - 4.12.3 Terms of delivery or performance.
  - 4.12.4 Terms, conditions and methods of payment
  - 4.12.5 Restrictions, limitations or conditions of purchase
  - 4.12.6 Instruction for proper use including safety and health care warnings;
  - 4.12.7 Information relating to available after-sales service;
  - 4.12.8 Details of conditions related to withdrawal, termination, return, exchange, cancellation and /or refund policy information; and
  - 4.12.9 Available warranties and guaranties.
- 4.13 All information that refers to cost should indicate the applicable currency, if not in Kenya Shillings.

*Confirmation Process.*

- 4.14 To avoid ambiguity as to the consumer's intention to make a purchase, there should be a mechanism by which the consumer can identify precisely the goods or services they wish to purchase before concluding the purchase.
- 4.15 Similarly, the consumer should be able to cancel the transaction before concluding the purchase.

*Payment*

- 4.16 Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.
- 4.17 Limitations of liability for unauthorized or fraudulent use of payment systems to enhance consumer confidence should be encouraged in the context of e-commerce.

**5 Fair Conduct Relevant to Data Protection.**

*Collection of Data*

- 5.1 A marketer must not collect personal information unless the information is necessary for one or more of its functions or activities.
- 5.2 The marketer must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.

*Use of Disclosure.*

- 5.3 A marketer must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless the individual has consented.

for the marketer to use or disclosure the information for the secondary purpose.

*Data Quality*

5.4 The marketer must take reasonable steps to make sure that the personal information it collects uses or discloses is accurate, complete and up-to-date.

*Data Security*

5.5 A marketer must take reasonable steps to protect personal information it holds from misuse, loss and from unauthorized access, modification or disclosure.

# **C. PROCEDURAL GUIDELINE**

## **(COMPLAINTS & DISPUTE RESOLUTION GUIDE)**

### **1. INTRODUCTION**

- 1.1 The purpose of these procedures is to ensure that the ASBK is seen by the Government and members of the public to be a self-regulator of the advertising industry with distinction. In particular, that Government or external interference in establishing and maintaining high advertising standards is found to be unnecessary.
- 1.2 It is also the purpose of these procedures to ensure that the Advertising Standards Committee, as is herein after defined, acts fairly in investigating and dealing with allegations of misconduct or unacceptable conduct within the industry.
- 1.3 Accordingly, the ASBK reserves the right to depart from the precise requirement of these procedures in as far as it is expedient to do so and where the resulting treatment of the parties is no led fair. The general guidelines and spirit of procedures shall be applied at all times.

### **2. ESTABLISHMENT OF THE ADVERTISING STANDARDS COMMITTEE.**

- 2.1 There is establishment a committee of first instance charged with the responsibility of receiving, considering and acting upon every complaint when at first lodged or brought to be known as the attention of the ASBK and it shall be known as the Advertising Standards Committee(ASC)
- 2.2 This committee shall consist of two (2) ex-officio members, three(3) nominated members and a legal secretary, and shall be appointed by the Advertising Standards Board(ASB)

- 2.3 The ex-officio members of the ASC shall be the Chairperson for the Chairperson for the time being of the Marketing Society of Kenya and the Chairperson of the Advertising Practitioners Association, respectively.
- 2.4 The Chairman of the Committee shall be as unanimously agreed upon by the committee members, and shall be a recognized or marketing practitioner of less than ten (10) years standing.
- 2.5 The secretary to the ASC must, as a minimum, be in possession of an LLB (Bachelors in Law) degree and must be vastly acquainted with legal issues in advertising. The Secretary shall have no vote in the decisions made by ASC.
- 2.6 All matters before the ASC shall, in the event of difference of opinion, be decided by the vote of the majority of the members thereof.
- 2.7 The ASC may choose to take expert opinions in any relevant field and to take into account the recommendation of such expert in the making of any decision pertaining to a matter before them.
- 2.8 The ASC shall regard to the rules of natural justice; that no one shall be a judge in his own cause and both parties shall be given an opportunity to be heard.
- 2.9 The ASC shall meet periodically (not being less than one every quarter) to review any matters arising ASC members shall serve for no more than three (3) consecutive one (1)year terms.

### **3. SOURCES OF COMPLAINTS**

Complaints regarding advertisements, their content and/or the advertisements industry in general may emanate from three (3) main sources:

- 3.1 Complaints from a competitor of the advertiser;

- 3.2 Complaints from a consumer or member of the public;
- 3.3 Criticism and dialogue in the press or media.

#### **4. BEFORE LODGING A FORMAL COMPLAINT**

- 4.1 It is recommended that all disputing parties make an attempt to resolve a matter prior to lodging a formal complaint with the ASC.
- 4.2 The following is recommended for preliminary dispute resolution:
  - 4.2.1 Correspondence exchanged should request a response by a specified date. A reasonable period as determined by the circumstances and agreed upon by the parties should be allowed.
  - 4.2.2 The complainant should convey their complaint to the other party in concise and polite terms, limiting content to factual allegations and opinions that are emotive derogatory or insulting in nature.
  - 4.2.3 Correspondence may be copied to the ASC BUT it is emphasized that at this stage it shall not take any action until a formal complaint is lodged in the manner or form, as may from time to time be determined by the ASC
  - 4.2.4 Should the matter be resolved between the disputing parties, the parties should, as a matter of courtesy, inform the ASC.

#### **5. SUB JUDICE**

- 5.1 The ASC will decline to consider and deal in a parallel process to determine or resolve a dispute between parties.
- 5.2 Where the complainant has lodged a complaint or dispute, or instituted any action with any other regulatory body or in a court of law, either within or outside the jurisdiction of the ASC and where the subject matter of the complainant is substantially the same, the ASC shall await conclusion or termination of this process.

## **6. LODGING OF COMPLAINTS.**

As a minimum all formal complaints lodged with the ASBK must meet the following criteria:

- 6.1 The complaint must be in writing
- 6.2 The identity of the complainant(s) must be disclosed
- 6.3 The complaint must be in respect of a particular advertisement and not about the advertiser in general.
- 6.4 The advertisement to which the complaint relates must be clearly identifiable. If the advertisement was in print media, a copy thereof should be attached, if in other forms of media details of time and date of transmission or location must be provided.
- 6.5 The grounds on which the complaint is based must be clearly stated and if possible the sections of this Code to which the complaint relates should be identified.
- 6.6 The address, contact number and name of contact person (if available) of the offending advertiser or agent acting on their behalf should be included
- 6.7 The complaint must be accompanied by the appropriate non- refundable administrative fee as specified in these provisions.
- 6.8 Any other strictly relevant documentation may be attached to the complaint for ease of reference.
- 6.9 Consumer or public complaints shall be dealt with at a nominal administrative fee of Kenya Shillings One Thousand only (Kshs.1,000.00) payable at the secretariat.

## **7. COMPLAINTS PROCEDURES**

7. 1 The specific time lines and notice periods for these procedures shall be as out from time to time by the ASC.

## **7.2 Complaints from a Competitor.**

- 7.2.1 The complaint shall be hand delivered, posted or sent from a secure and identifiable electronic mail, clearly addressed to the Secretariat of the ASBK accompanied by an administrative fee of Kshs. 30,000/= only or shall from time to time be specified by the ASC.
- 7.2.2 Upon receipt of such a complaint and the requisite fee, a duly authorized officer of the secretariat shall examine the complaint and may dispense with it at first instance. In the event that the officer is unable to dispense with the matter and /or the matter is found to have merit it shall be forwarded to the ASC.
- 7.2.3 Without prejudice to 7.2.2 above, immediately upon receipt of such a complaint , by the ASC a copy of the complaint shall be forwarded to the offending advertiser giving them an opportunity to file a formal response to the complaint.
- 7.2.4 On expiry of the period given and/or on the receipt of a formal response, the Chairman shall convene a special meeting of the Committee to consider the matter at hand. A properly constituted sitting of the ASC shall have no less than three (3) members sitting at any one time.
- 7.2.5 The committee shall then invite the parties to present their cases before it and where it deems necessary, discard the need of summoning the parties before it to give formal evidence.

7.2.6 After consideration of the complaint, the formal response, evidence adduced by the parties and any expert opinions requested shall make their judgment and issue a direction with this regard.

7.2.7 **PROVIDED ALWAYS** that a judgment is made and delivered within ninety (90) days of the receipt of the complaint at the secretariat and thirty (30) days of the conclusion of hearing.

### **7.3 Complaints from a Consumer or Member of the Public**

7.3.1 A consumer or member of the public who is aggrieved by an advertisement is at liberty to the lodge a complaint

7.3.2 The ASC shall adopt the same procedure as above save for the fact that the complainant need only pay the nominal administrative fee prescribed herein.

7.3.3 The ASC may also in this instance request for and receive views from competitors of the offending advertiser.

### **7.4 Complaints arising from Dialogue in the Press.**

7.4.1 The ASC Secretariat is charged with the duty of reporting complaints arising from the press to the Directorate of the ASBK.

7.4.2 If the complaint warrants attention or investigation, the Directorate is charged with the responsibility of framing a complaint and making a formal application to the ASC for consideration

7.4.3 These complaints shall be considered in the periodic meetings of the ASC or at a meeting specially convened by the Chairman. for the purpose of considering a particular complainant or issue.

7.4.4 The ASC shall then correspond formally with the Offending Advertiser requesting them to present their views within a specific time period.

7.4.5 On expiry of the period given and/or on the receipt of a formal response, the Chairman shall convene a special meeting of the ASC to consider the matter at hand and after consideration of the complaint, the formal response, evidence adduced by the Offending Advertiser and any expert opinions requested shall make their judgment and issue a direction with this regard.

7.5 Outside legal representation may be permitted, but should not be employed to delay in expedient dispensation of the matter.

7.6 In event that the ASC requires witnesses to appear before the Committee for any reason whatsoever, appearances shall be limited to a maximum of three persons per party. The names and designations of the persons should be submitted to the Secretariat no less than forty-eight (48) hours prior to the meeting of the ASC.

7.7 Rulings, decisions and/or directions of the ASC shall be conveyed to the parties concerned in writing as soon as reasonably possible after the meeting where such ruling, decision and/or direction were made. Written reasons for any ruling must be provided at the request of either of the parties.

7.8 The ASC may call an emergency sitting of its members within a thirty-six (36) hour period to determine a complaint that due to its

nature may occasion severe pecuniary injury or injury to reputation or any damage to any of the parties concerned. Such emergency sitting may issue out injunctive relief effective immediately pending issuance, at a subsequent date, of a reasoned out ruling or judgment

7.9 Such rulings shall be delivered in writing within twenty-one(21) days of the emergency sitting.

7.10 The directions issued shall be final and binding on the parties' subject only to an appeal to the Standards Appeal Council and subsequently to the High Court of Kenya on points of law.

7.11 Where such an appeal is lodged, the ruling, decision and/or direction of the ASC must be adhered to until reserved by the SAC or the relevant court of competent jurisdiction.

7.12 No party to the matter, **SAVE AS** by reason of its own default, be denied a chance to be heard or to respond to a complaint.

## **8 THE STANDARDS APPEAL COUNCIL**

8.1 There shall be a Standards Appeal Council convened from time to time to receive, consider and decide appeals by aggrieved parties to a decision of the ASC.

8.2 The SAC shall comprise of:

8.2.1 The advocate for the time being appointed as the lawyer representing the ASBK, who shall be an advocate of the High Court of Kenya of not less than ten (7) years standing- who shall sit in the position of Chairman of the SAC.

8.2.2 One (1) member appointed by virtue of having been a former chairperson of either the APA or MSK councils.

8.2.3 Three (3) other members of not less than ten (10) years standing in their individual fields of expertise.

8.3 The members of the SAC shall serve for three (3) years at a time.

## **9. APPEAL PROCEDURE**

9.1 Any person or party aggrieved by a decision of the ASC under the provisions of this Code may appeal to the SAC within thirty (30) days of the receipt of the ruling, decision and/or direction. The appeal shall be considered by the SAC.

9.2 Notice of appeal must be given in writing and communicated to the SAC and to the other parties in the dispute within the thirty (30) days.

9.3 The SAC is entitled to, on a first reading and due consideration of the appeal, reject the appeal on a unanimous decision that the appeal is either:

9.3.1 An unfounded appeal in the event of a clear and direct contravention of the Code; or

9.3.2 A malicious, vexatious, embarrassing or wilful appeal.

9.4 The appellant shall be required to serve upon the SAC within seven (7) days of the notice of appeal, eight (8) copies of all documentation, and shall be required to ensure that all documentation is paginated.

9.5 A copy of the appeal will be submitted to the respondents(s) within three (3) days of receipt by the SAC.

- 9.6 The appeals shall be accompanied by a non-refundable administrative fee of Kshs.100, 000/= or such amount as shall from time to time be communicated by the SAC
- 9.7 The SAC shall communicate to the parties in writing the date on which the appeal shall be considered. The SAC will, where possible, consider an appeal within twenty-eight (28) days of the date on which the appeal was lodged with them.
- 9.8 A copy of any reply submitted by the respondent should reach the SAC and the appellant at least three (3) clear days before the date the appeal is to be considered.
- 9.9 The parties and their representatives shall be entitled to appear before the SAC on the date on which the appeal is to be considered.
- 9.10 The SAC may, at its direction, invite up to three(3) experts to appear before the SAC on the date on which the appeal is to be considered and to give their opinion on the matter at hand.
- 9.11 The SAC will, where possible, deliver its ruling within fourteen (14) days of consideration of the appeal and shall provide on request by either party a written reason for its ruling.
- 9.12 The SAC shall be entitled to order one or more of the parties to pay the costs of the appeal.
- 9.13 The costs herein shall include but not be limited to costs of filing the complaint, lodging the appeal, costs of tendering witnesses and experts to adduce evidence in the matter and any other costs incidental thereto.

## **10. SANCTIONS**

The ASC and the SAC shall be entitled to impose the following sanctions on an offending advertiser or respondent in a complaint or dispute:

- 10.1 Order the withdrawal of the an advertisement in its current format;
- 10.2 Direct the advertiser to submit the proposed amendment to the Secretariat for the pre-publication advice;
- 10.3 Subject the advertiser to pre-publication advice in respect of future advertisements for a specified period;
- 10.4 Publish adverse publicity, including the publication of names of defaulters in the local media;
- 10.5 Require media members of the ASBK to withhold advertising space from the respondent;
- 10.6 Refer the advertiser to a disciplinary hearing with one of the umbrella associations.

## **11 ENFORCEMENT OF RULINGS**

11.1 The responsibility for adherence to a ruling, decision and/or direction by the ASC or SAC lies primarily with the person against whom such ruling has been made.

11.2 Once a ruling, decision and/or direction has been issued, it shall be the responsibility of the Secretariat to monitor whether or not the ruling is adhered to.

11.3 Where an advertisement is required to be withdrawn in terms of a ruling, decision or direction, the advertisement shall be withdrawn as soon as possible, but not later than as set out below:

11.3.1 Newspapers- immediately as deadlines permit

11.3.2 Radio – immediately as deadlines permit

11.3.3 Television - immediately as deadlines permit

11.3.4 Magazines - immediately as deadlines permit

11.3.5 Outdoor – two (2) weeks or as otherwise determined by the ASBK

11.3.6 Pamphlets and leaflets – as determined by the ASBK

11.3.7 Packaging – three (3) months or as otherwise determined by the ASBK

11.4 Should the respondent ignore a reasonable request for co-operation, the ASBK will issue an ad-alert to its media members.

## **12DISCLOSURE AND LIABILITIES**

12.1 If a member of any of the committees set out in these procedural guidelines shall either directly or indirectly be interested or have an interest in any matter before the committee for determination, he shall as soon as is practicably possible and in any event within seven (7) days of receipt of the documents in that matter disclose the fact to the members of the committee and shall not take part in the consideration, discussion in the matter.

12.2 No committee member shall bear any personal liability in respect of any decision made in a matter in which they have sat and/or deliberated upon.

## **13. CONFIDENTIALITY**

13.1 The ASBK will make available to any person requesting any records, documents and other information in its possession, **SUBJECT** to what is set out below:

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

13.1.1.1 trade secrets of a third party

13.1.1.2 financial, commercial, scientific or technical information other than trade secrets, of a third party, the disclosure which would be likely to cause harm to the commercial or financial interest of that third party; or

13.1.1.3 information supplied in confidence by a third party, the disclosure of which could reasonably be expected-

- a) to put that party at a disadvantage in contractual or other negotiations; or
- b) to prejudice that third party in commercial competition..

13.1.2 The ASBK will make disclosure of such records, documents or other information SUBJECT to the payment of the requisite administration fees as amended from time to time by the authority.

13.1.3 The ASBK will refuse a request for access to a record, document or other information if its disclosure would constitute an action for breach of duty of confidence owed to a third party in terms of an agreement.

- 13.2 Whilst a complaint is in the process, all parties must treat all letters and documents which are received in connection with it as confidential.
- 13.3 For the purposes of the determination of any dispute or the making of any decision, the Standards Committee or Standards Appeal Council may need to disclose information about any of the parties and details of the complaint or dispute to any person or body it is considered necessary to inform or consult in dealing with the case.
- 13.4 Once a decision is made, the direction itself is not confidential, and may be disclosed to others by the parties or by the Committee or Council.
- 13.5 The Committee or Council may publish the direction or a report of it.
- 13.6 The ASC or SAC may on providing a breach of confidentiality, be entitled to impose sanctions on the breaching party in the form of a fine not exceeding Kenya Shillings Twenty Thousand only (Ksh.20,000.00).
- 13.7 In the event that there is a continuing breach of confidentiality that further aggravates the *status quo* of the complaint, the ASC or SAC may rule as it deems fit to balance the scale of the wrong, injury or damage caused by the said breach of confidentiality.

## **14 OUR CHARTER**

- 14.1 Our role is to provide an impartial, efficient and effective method of resolving complaints and disputes concerning advertisements and the advertising industry in general.

14.2 Members of the ASBK and relevant media owners must be willing to uphold the decisions of the Standards Committee and the Standards Appeal Council to ensure the continuation of self-regulation of the advertising industry in Kenya.

#### **D. ASBK'S INTERCHANGE OF OPNION ON OBJECTIONABLE ADVERTISING**

- 1.1 The ASBK assumes a continuing responsibility for keeping watch on objectionable advertising.
- 1.2 The ASBK thus adopts a plan known as the *Interchange of opinion on Objectionable advertising* to enable advertising agencies to register their views with each other without identification.
- 1.3 Any advertising agency, member or non-member, at a requisite fee to be determined by the secretariat, may forward to the ASBK its criticism of any advertisement, which, in its opinion, is in any way objectionable.
- 1.4 The criticism is then reviewed by the ASC in a similar procedural manner to those of complaints from the press, but with an objective of improvement of advertisement contents
- 1.5 The result is then forwarded to the agency originating the advertisement, alongside with a report of the committee vote and remarks, if any.
- 1.6 The report, at an administrative fee, should be made available at the secretariat without disclosing the identity of the holder of the opinion.
- 1.7 The ASBK promotes this system, by periodically distributing brochures to remind all advertising agencies of their affirmative duties to the industry and the public.

### **List of Statutes other regulations affecting advertising**

This guideline is intended to alert advertisers to the existence of legislations and Rules affecting.

**The Acts of Parliament that may be read as supplementary to this Code include:**

1. Constitution of the Republic of Kenya
2. Revision of the Laws Act, Chapter 1, the Laws of Kenya
3. Interpretation and General provisions Act, Chapter 2, the Laws of Kenya
4. Law Reform Commission Act, Chapter 3, the Laws of Kenya
5. Children's Act, No. of 2001
6. Communicating Commission of Kenya Act, No of
7. Defamation Act, Chapter 36, the Laws of Kenya
8. The Intellectual Property Act, No. of 2001
9. Advocates Act, Chapter 16, the Laws of Kenya
10. Vexatious Proceedings Act, Chapter 41, the Laws of Kenya
11. Arbitration Act, Chapter 49, the laws of Kenya
12. College of Arms Act, Chapter 98, the laws of Kenya
13. National Flag, Emblems and Names Act, Chapter 99, the laws of Kenya
14. Public Holidays Act, Chapter 110, the laws of Kenya
15. Books and Newspapers Act, Chapter 111, the Laws of Kenya

16. Petroleum Act, Chapter 116, the laws of Kenya
17. Housing Act, Chapter 117, the laws of Kenya
18. Liquor Licensing Act, Chapter 121, the laws of Kenya
19. Traditional Liquor Act, Chapter 121, the laws of Kenya
20. Copyright Act, Chapter 130, the laws of Kenya
21. Betting, Lotteries and Gaming Act, Chapter 131, the laws of Kenya
22. Pensions Act, Chapter 189, the laws of Kenya
23. Provident Fund Act, Chapter 191, the laws of Kenya
24. University of Nairobi Act, Chapter 210, the laws of Kenya
25. Moi Universities Act, Chapter 210A, the laws of Kenya
26. Universities Act, Chapter 210B, the laws of Kenya
27. Kenyatta University Act, Chapter 210C, the laws of Kenya
28. Education Act, Chapter 211, the laws of Kenya
29. Egerton University Act, Chapter 214, the laws of Kenya
30. Antiquities and Monuments Act, Chapter 215, the laws of Kenya
31. Kenya Broadcasting Corporation Act, Chapter 221, the laws of Kenya
32. Films and Stage Plays Act, Chapter 222, the laws of Kenya
33. Employment Act, Chapter 226, the laws of Kenya
34. Trade Disputes Act, Chapter 234, the laws of Kenya
35. Local Government Act, Chapter 265, the laws of Kenya
36. Registration of Titles Act, Chapter 281, the laws of Kenya

37. Land Titles Act, Chapter 282, the laws of Kenya
38. Land Consolidation Act, Chapter 283, the laws of Kenya
39. Land Adjudication Act, Chapter 284, the laws of Kenya
40. Prevention of Cruelty to Animals Act, Chapter 360, the laws of Kenya
41. Wildlife (Conservation and Management) Act, Chapter 376, the laws of Kenya
42. Traffic Act, Chapter 403, the laws of Kenya
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46. Hotel Accommodation Tax Act, Chapter 478, the laws of Kenya
47. Insurance Act, Chapter 487, the laws of Kenya
48. Banking Act, Chapter 488, the laws of Kenya
49. Building Societies Act, Chapter 489, the laws of Kenya
50. Hotel and Restaurant Act, Chapter 494, the laws of Kenya
51. Standards Act, Chapter 496, the laws of Kenya
52. Registration of Business Names Act, Chapter 499, the laws of Kenya
53. Transfer of Business Act, Chapter 500, the laws of Kenya
54. Imports, Exports and Essential Supplies Act, Chapter 502, the laws of Kenya
55. Restricted trade practices Monopolies and Price Control Act, Chapter 504, the laws of Kenya
56. Trade Descriptions Act, Chapter 505, the laws of Kenya

57. Trade Marks Act, Chapter 506, the laws of Kenya
58. Hire Purchase Act, Chapter 507, the laws of Kenya
59. Weights and Measures Act, Chapter 513, the laws of Kenya
60. Motor Vehicle Components and Accessories Act, Chapter 520, the laws of Kenya
61. Unit Trusts Act, Chapter 521, the laws of Kenya
62. Architects and Quantity Surveyors Act, Chapter 525, the laws of Kenya

In advertisements for **health, medicinal and health-related products**, the following Acts may apply:

1. Public Health Act, Chapter 242, the laws of Kenya
2. Radiation Protection Act, Chapter 243, the laws of Kenya
3. Pharmacy and Poisons Act, Chapter 244, the laws of Kenya
4. Dangerous Drugs Act, Chapter 245, the laws of Kenya
5. Use of Poisonous Substances Act, Chapter 247, the laws of Kenya
6. Medical Practitioners and Dentists Act, Chapter 253, the laws of Kenya
7. Foods, drugs and Chemical Substances Act, Chapter 254, the laws of Kenya
8. Clinical Officers (Training, Registration and Licensing) Act, Chapter 260, the laws of Kenya

**Other regulations** affecting advertising include:

1. The market and Social RESEARCH Association Code of Practice(MSRA Code OF practice)
2. The public Relations Society of Kenya Code of Practice

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