

Advertising and Marketing Communication Practice

Consolidated ICC Code



International Chamber of Commerce

The world business organization

Preface



Guy Sebban
ICC
Secretary General

ICC – the world’s business organization, whose membership is composed of thousands of enterprises from all sectors in every part of the world – is uniquely positioned to provide balanced and insightful input to marketing and advertising developments in the world. ICC has been a major rule-setter in the field of international marketing and advertising since 1937 when the first ICC code on advertising practice was issued. To deal with new challenges and new technologies, ICC has revised and extended its range of self-regulatory instruments to assist companies in marketing their products responsibly.

This new ICC Code addresses the current need for a single “Consolidated ICC Code of Advertising and Marketing Communication Practice.” Through business self-regulation, the code promotes high standards of ethics in marketing. It also offers governments sound business principles to consider when elaborating initiatives that bear on marketing and consumer protection.

The consolidated ICC Code will provide practical guidance for companies all over the world and help to build consumer trust and confidence.

Foreword



John Manfredi

Chair of the Commission on Marketing and Advertising; Chairman, Manloy Associates; Former Senior Vice President, Corporate Affairs, The Gillette Company

The Consolidated ICC Code of Advertising and Marketing Communication Practice is a new set of precepts for the new age of communications. This eighth revision, referred to as the Code, covers a range of marketing practices from advertising on the Internet to the do's and don'ts of communicating with children.

As we worked on this new consolidated ICC Code, uppermost in our thinking was that consumers want to know the advertisements directed to them will not be deceptive or misleading – that they are honest and truthful. They also want to know the personal information they give companies will be properly protected. This Code provides that assurance for consumers from the hundreds of thousands of businesses around the world that abide by it.

It sets a high ethical hurdle that is well beyond legal requirements. For example, the Code specifies that any scientific claims in an advertisement have to be backed by sound scientific research and data that are on hand and available for review. Any marketers that gather personal information must safeguard it while it is held and only keep it a limited time before it is fully purged. Advertisements aimed at young people must never exploit their inexperience.



Anders Stenlund

Vice-chair of the Commission on Marketing and Advertising, Co-chair of the Task Force on Code Revision; Director, Confederation of Swedish Enterprise

The Code is one element of an extensive system of regulation that includes a global process of enforcement. Code enforcement agencies around the world review allegations of tens of thousands of code breaches annually. If found to be justified, they are corrected or the businesses are sanctioned. In many countries, the number of cases handled by the code enforcement agencies far exceeds those brought by government regulators.

We have drawn on the best marketing, self-regulatory and legal expertise available from around the world. In particular we want to thank the members of the ICC Task Force on Code Revision for their active participation, patience and creative contributions.

To fully understand the application of these rules to specific advertising needs, we encourage users of this consolidated ICC Code to read both the general provisions and the relevant chapters relating specifically to the advertisement and technique they are using.



Oliver Gray

Co-chair of the
Task Force on
Code Revision;
Director-General,
European
Advertising
Standards Alliance

Users of this Code should also check local codes, which while based on the globally accepted codes of the ICC, may go into greater detail on particular aspects to respond to local conditions. Guidance in this respect can be found via the ICC website (www.iccwbo.org), from the local ICC chapter, trade association or self-regulatory body (SRO), the latter which is mainly responsible for the application and interpretation of the codes. If you are in doubt, we recommend you make use of the confidential copy advice services that most SROs provide before you launch your advertisements.

We welcome any suggestions on improving the consolidated ICC Code. These should be addressed to the ICC secretariat.

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Introduction

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

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

The first ICC Code of Advertising Practice was published in 1937, to provide a globally accepted framework for responsible creativity and communication. This general Code has been regularly updated ever since and to it have been added separate codes on sales promotion, sponsorship, direct marketing, electronic media and environmental advertising, as well as on market research and direct selling. Further advice is provided by guidelines and framework interpretations.¹

In undertaking the eighth revision of its Code of Advertising Practice, ICC made two important policy decisions: first, it was decided to consolidate the major part of the existing ICC marketing and advertising codes into a single, easily accessible document; secondly, the scope of the Code's general provisions has been extended, to include other forms of marketing communication as well as advertising.² The new consolidated Code follows the established ICC tradition of promoting high ethical standards in marketing communication by means of relevant and well-implemented self-regulatory codes, designed to complement existing frameworks of national and international law. ICC expects business operators to respect and endorse the Code both in the spirit and to the letter.

Independent systems of self-regulation have been successfully applying the ICC Code for the past 70 years. The use of properly implemented advertising and marketing communication codes is acknowledged and accepted in all major markets³ as industry best practice and a recognized means of providing additional consumer protection. Self-regulation is a tried and tested system which has served responsible business well, for the benefit of consumers all over the world.

At the present time, rapid technological developments in the media – including television, interactive radio, the electronic media, video games and the telephone – as well as public concern about the protection of children and other potentially vulnerable groups, are focusing attention on future forms of regulation.

1. See 'Structure of the Code'

2. See 'Scope of the Code and definitions'

3. See, for example, "Information Report on the current state of co-regulation and self-regulation in the European single market" published by EcoSoc, February 2005 and EU studies "The study to identify best practice in the use of soft law and to analyze how this best practice can be made to work for consumers in the EU" (Lex Fori for the EU Commission DG Sanco, October 2002) and "The study on the impact of advertising and teleshopping on minors", (INRA/Bird & Bird, 2001).

In this environment it is particularly important that this new edition of the Code, based on the best available expertise, becomes a daily reference source for everyone involved in the preparation, distribution and regulation of marketing communication.

The consolidated ICC Code deals with marketing communication, which is to be taken in a broad sense (see definitions), but obviously does not extend indiscriminately to every type of corporate communication. For instance, the Code does not apply to corporate public affairs messages in press releases and other media statements, nor to information in annual reports and the like, or information required to be included on product labels. Likewise, statements on matters of public policy fall outside the scope of this Code. Finally, communications whose primary purpose is entertaining or educational and not commercial, like the content of television programmes, films, books magazines or videogames, are not intended to be covered by this Code.

The Code Revision Task Force of the ICC Commission of Marketing and Advertising will regularly review the Code's provisions, to ensure that they continue to reflect the latest developments in technology, marketing practice and society.

Purpose of the Code

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

The Code is intended to achieve the following objectives:

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

Structure of the Code

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

- Chapter A – Sales Promotion;
- Chapter B – Sponsorship;
- Chapter C – Direct Marketing;
- Chapter D – Advertising and Marketing using Electronic Media and the Telephone;
- Chapter E – Environmental Advertising and Marketing Communication.

The Code should also be read in conjunction with other ICC codes, principles and framework interpretations:

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

Scope of the Code and definitions

The consolidated ICC Code applies to all advertising and other marketing communication for the promotion of any kind of goods and services, corporate and institutional promotion included. Its standards of ethical conduct should be observed by everyone concerned with marketing communication, whether as advertisers, marketers, advertising practitioners or agencies, in the media, or in related functions. Implementation of the Code will vary depending on individual circumstances: it may be applied by self-regulatory organisations (SROs) set up for the purpose, as well as by individual companies, agencies, media, etc.

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

The following general definitions apply throughout the Code. Terminology relating to a specific chapter is defined in that chapter.

For the purposes of this Code:

- the term “*advertising*” or “*advertisement*” means any form of marketing communication carried by the media, usually in return for payment or other valuable consideration;
- the term “*consumer*” means any person who can reasonably be expected to be affected by a marketing communication, whether as an individual or as a trade customer or user;

- the term “*electronic media*” refers to any media providing electronic, interactive communications, such as the internet, online services and electronic and communication networks including the telephone;
- the term “*marketing communication*” includes advertising as well as other techniques, such as promotions, sponsorships, and direct marketing, and should be interpreted broadly to mean any form of communication produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour.
- the term “*market research*”, which includes social and opinion research, is the gathering and interpretation of information about individuals or organizations using statistical and analytical tools to gain insight or support decision making. It is implicit that the identity of the respondent will only be revealed to the user of the information for research purposes, and that no sales approach will be made to them as a direct result of their having provided information;⁴
- the term “*offer*” means any presentation or solicitation for the sale or purchase of products;
- the term “*personal data*” means any information relating to an identified or identifiable individual;
- the term “*preference service*” (“Robinson List”) means the administration and operation of a suppression file of consumers who have registered a wish not to receive unsolicited direct marketing communication using a specific medium, against which marketing lists are matched;
- the term “*product*” refers to anything that constitutes the subject of an advertisement; this usually means goods or services, but is not restrictive: where appropriate the Code may be applied more widely, e.g. to concepts.

Interpretation

The consolidated ICC Code is to be interpreted in the spirit as well as to the letter. It applies to the marketing communication in its entirety, including all words and numbers (spoken and written), visual treatments, music and sound effects, and material originating from other sources.

Because of the different characteristics of the various media, e.g. press, television, radio and other broadcast media, outdoor advertising, films, direct mail, fax, e-mail, electronic media, telephone, etc., a communication which is acceptable for one medium may not necessarily be acceptable for another. Communications should therefore be judged by their likely impact on the reasonable consumer, having regard to the characteristics of the targeted group and the medium used.

4. This suggested definition is a placeholder to be included in the definitions section of the General Provisions until a final version is approved by the Professional Standards Committee and the ESOMAR Council in April.

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

I. General Provisions on Advertising and Marketing Communication Practice

Article 1

Basic principles

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

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

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

Article 2

Decency

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

Article 3

Honesty

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

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

Article 4

Social responsibility

Marketing communication should respect human dignity and should not incite or condone any form of discrimination, including that based upon race, national origin, religion, gender, age, disability or sexual orientation.

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

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

Marketing communication should not play on superstition.

Article 5

Truthfulness

Marketing communication should be truthful and not misleading.

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

- characteristics of the product which are material, i.e. likely to influence the consumer's choice, such as: nature, composition, method and date of manufacture, range of use, efficiency and performance, quantity, commercial or geographical origin or environmental impact;
- the value of the product and the total price to be paid by the consumer;
- terms for delivery, exchange, return, repair and maintenance;
- terms of guarantee;
- copyright and industrial property rights such as patents, trade marks, designs and models and trade names;
- compliance with standards;
- official recognition or approval, awards such as medals, prizes and diplomas;
- the extent of benefits for charitable causes.

Article 6

Use of technical/scientific data and terminology

Marketing communication should not

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

Article 7

Use of “free” and “guarantee”

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

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

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

Article 8

Substantiation

Descriptions, claims or illustrations relating to verifiable facts in a marketing communication should be capable of substantiation. Such substantiation should be available so that evidence can be produced without delay and upon request to the self-regulatory organisations responsible for the implementation of the Code.

Article 9**Identification**

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

Marketing communication should not misrepresent their true purpose. They should not be presented as, for example, market research or consumer surveys if their purpose is commercial, i.e. the sale of a product.

Article 10**Identity**

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

Marketing communication should, where appropriate, include contact information to enable the consumer to get in touch with the marketer without difficulty.

Article 11**Comparisons**

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

Article 12**Denigration**

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

Article 13**Testimonials**

Marketing communication should not contain or refer to any testimonial, endorsement or supportive documentation unless it is genuine, verifiable and relevant. Testimonials or endorsements which have become obsolete or misleading through passage of time should not be used.

Article 14**Portrayal or imitation of persons and references to personal property**

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

Article 15**Exploitation of goodwill**

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

Article 16**Imitation**

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

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

Article 17**Safety and health**

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

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

Article 18**Children and young people**

The following provisions apply to marketing communication addressed to children and young people, as defined in national laws and regulations relevant to such communications.

Special care should be taken in marketing communication directed to or featuring children or young people. Such communications should not undermine positive social behaviour, lifestyles and attitudes.

Products unsuitable for children or young people should not be advertised in media targeted to them, and advertisements directed to children or young people should not be inserted in media where the editorial matter is unsuitable for them. Material unsuitable for children should be clearly identified as such.

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

Inexperience and credulity

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

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

Avoidance of harm

Marketing communication should not contain any statement or visual treatment that could have the effect of harming children or young people mentally, morally or physically. Children and young people should not be portrayed in unsafe situations or engaging in actions harmful to themselves or others, or be encouraged to engage in potentially hazardous activities or behaviour.

Social values

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

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

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

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

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

For specific rules on marketing communication to children in the electronic media see Chapter D, Article D7.

Data protection and privacy

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

Collection of data

When personal information is collected from consumers, it is essential to ensure that the individuals concerned are aware of the purpose of the collection and of any intention to transfer the data to a third party for that third party's marketing purposes. When it is not possible to inform the individual at the time of collection, this should be done as soon as possible thereafter.

Use of data

Personal data collected in accordance with this Code should be

- collected for specified and legitimate purposes and not used in any manner incompatible with those purposes;
- adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed;
- accurate and kept up to date;
- preserved for no longer than is required for the purpose for which the data were collected or further processed.

Security of processing

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

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

Children's personal information

When personal information is collected from children, guidance should be provided to parents about protecting children's privacy.

Children should be encouraged to obtain a parent's or other appropriate adult's permission before providing information via electronic media, and reasonable steps should be taken to check that such permission has been given.

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

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

Additional rules specific to marketing communication to children using the electronic media and the telephone can be found in Chapter D, Article D7.

Privacy policy

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

In jurisdictions where no privacy legislation currently exists, it is recommended that privacy principles such as those of the ICC Privacy Toolkit⁵ are adopted and implemented.

Rights of the consumer

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

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

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

Cross-border transactions

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

When data processing is conducted in another country, all reasonable steps should be taken to ensure that adequate security measures are in place and that the data protection principles set out in this Code are respected. The use of the ICC model clauses covering agreements between the originator of the marketing list and the processor or user in another country is recommended.⁶

5.
Available from
www.iccwbo.org

6.
Available from
www.iccwbo.org

Article 20

Transparency on cost of communication

Where the cost to consumers of accessing a message or communicating with the marketer is higher than the standard cost of postage or telecommunications, e.g. “premium rate” for an online message or telephone number, this cost should be made clear to consumers, expressed either as “cost per minute” or as “cost per message”. When this information is provided on-line, consumers should be clearly informed at the time when they are about to access the message or online service, and be allowed a reasonable period of time to disconnect without incurring the charge.

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

Article 21

Unsolicited products and undisclosed costs

Marketing communication associated with the practice of sending unsolicited products to consumers who are then asked for payment (inertia selling), including statements or suggestions that recipients are required to accept and pay for such products, should be avoided.

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

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

For specific rules on unsolicited commercial e-mails, see Chapter D, Article D5.

Article 22

Environmental behaviour

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

Article 23

Responsibility

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

Responsibility for the observance of the rules of conduct laid down in the Code rests with the marketer whose products are the subject of the marketing communication, with the communications practitioner or agency, and with the publisher, media owner or contractor.

Marketers have overall responsibility for the marketing communication for their products.

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

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

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

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

Article 24

Effect of subsequent redress for contravention

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

Article 25

Implementation

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

Marketers, communications practitioners or advertising agencies, publishers, media-owners and contractors should be familiar with the Code and with other relevant local self-regulatory guidelines on advertising and other marketing communication, and should familiarise themselves with decisions taken by the appropriate self-regulatory body.

7.
See annex

Requests for interpretation of the principles contained in this Code may be submitted to the ICC Code Interpretation Panel.⁷

Article 26

Respect for self-regulatory decisions

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

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

II. Detailed Chapters

Chapter A – Sales Promotion

This Chapter is to be read in conjunction with the General Provisions found in Part I.

Scope of Chapter A

This Chapter applies to marketing devices and techniques which are used to make products more attractive by providing some additional benefit, whether in cash or in kind, or the expectation of such a benefit. The Chapter applies irrespective of the form of distribution or of media, including electronic and audio-visual media. It also applies to sales and trade incentive promotions, to editorial promotional offers and to those made by audio-visual media.

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

The Chapter covers all forms of sales promotion, including:

- premium offers of all kinds;
- reduced price and free offers;
- the distribution of stamps, coupons, vouchers and samples;
- charity-linked promotions;
- prize promotions of all kinds, including incentive programmes.

Terms specific to Sales Promotion

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

- the term “*additional benefit*” refers to any goods or services (or combination thereof) offered for a promotional purpose;
- the term “*beneficiary*” refers to any person, company or organisation to whom any sales promotion is directed or who receives a benefit from it, either financially or in kind;
- the term “*prize promotion*” refers to any skill contest or prize draw used in conjunction with a sales promotion activity;
- the term “*intermediary*” refers to any person, company or organisation, other than the promoter, engaged in the implementation of any form of sales promotion;
- the term “*main product*” refers to the goods or services (or combination thereof) being promoted;
- the term “*promoter*” refers to any person, company or organisation by whom or on whose behalf a promotion is initiated.

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

Article A1

Principles governing sales promotions

- All sales promotions should deal fairly and honourably with consumers and other beneficiaries.
- All sales promotions should be so designed and conducted as to avoid causing justifiable disappointment or giving any other grounds for reasonable complaint.
- The administration of sales promotions and the fulfilment of any obligation arising from them should be prompt and efficient.
- The terms and conduct of all sales promotions should be equitable to all participants.
- All sales promotions should be framed in a way which is fair to competitors and other traders in the market.
- No promoters, intermediaries or others involved should do anything likely to bring sales promotions into disrepute.

Article A2

Terms of the offer

Sales promotions should be so devised as to enable the beneficiary to identify the terms of the offer easily and clearly. Care should be taken not to exaggerate the value of the additional benefit or to obscure or conceal the price of the main product.

Article A3

Presentation

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

Article A4

Administration of promotions

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

In particular:

- the availability of additional benefits should be sufficient to meet anticipated demand within a reasonable period of time. If delay is unavoidable, beneficiaries should be advised promptly and necessary steps taken to adjust the promotion of the offer;
- defective goods or inadequate services should be replaced, or appropriate financial compensation given. Any costs incurred by beneficiaries as a direct result of any such shortcoming should be reimbursed immediately on request;
- complaints should be efficiently and properly handled.

Article A5

Safety

Care should be taken to ensure that additional benefits, provided they are properly used, do not expose beneficiaries, intermediaries, or any other persons to any harm or danger.

Article A6

Presentation to beneficiaries

Information to participants

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

Information should include, where relevant:

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

Information in prize promotions

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

- any rules governing eligibility to participate in the prize promotion;
- any costs associated with participation, other than for communication at or below standard rate (mail, telephone etc.);
- the number, value and nature of prizes to be awarded and whether a cash alternative may be substituted for a prize;
- in the case of a skill contest, the nature of the contest and the criteria for judging the entries;
- the selection procedure for the award of prizes;
- the closing date of the competition;
- when and how the results will be made available;
- whether the beneficiary may be liable to pay tax as a result of winning a prize;

- the time period during which prizes may be collected;
- where a jury is involved, the composition of the jury;
- any intention to use winners or winning contributions in post-event activities.

Article A7

Presentation to intermediaries

Information for intermediaries

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

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

Information on outer packing

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

Article A8

Particular obligations of promoters

Interests of intermediaries

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

Interests of employees, employers and consumer relations

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

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

Rights of intermediaries' employees

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

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

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

Timely delivery of goods and materials to intermediaries

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

Contractual relationships between intermediaries and beneficiaries

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

Article A9

Particular obligations of intermediaries

Honesty

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

Misrepresentation

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

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

Article A10

Responsibility

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

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

Chapter B – Sponsorship

This Chapter is to be read in conjunction with the General Provisions found in Part I.

Scope of Chapter B

This Chapter applies to all forms of sponsorship relating to corporate image, brands, products, activities or events of any kind. It includes sponsorship by both commercial and non-commercial organisations. It does not apply to product placement, or to funding which lacks a commercial or communication purpose, such as donations or patronage, except where there is a sponsorship element.

Terms specific to sponsorship

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

- the term “*audience*” refers to the public, individuals, or organisations to which a sponsorship property is directed;
- the term “*donations and patronage*” refers to forms of altruism where money or goods may be given, with limited or no benefits, recognition or commercial return;
- the term “*media sponsorship*” refers to sponsorship of a media property (e.g. television or radio broadcast, publication, cinema, internet, mobile or other telecommunication technology);
- the term “*product placement*” refers to the inclusion of a product so that it is featured within a programme, normally in return for payment or other valuable consideration to the programme producer or licensee;
- the term “*sponsor*” refers to any corporation or legal person providing financial or other sponsorship support;
- the term “*sponsorship*” refers to any commercial agreement by which a sponsor, for the mutual benefit of the sponsor and sponsored party, contractually provides financing or other support in order to establish an association between the sponsor's image, brands or products and a sponsorship property, in return for rights to promote this association and/or for the granting of certain agreed direct or indirect benefits;
- the term “*sponsored party*” refers to any individual or legal person owning the relevant rights in the sponsorship property and receiving direct or indirect support from a sponsor in relation to the sponsorship property;
- the term “*sponsorship property*” refers to an event, activity, organisation, individual, media or location.

Article B1

Principles governing sponsorship

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

Sponsorship should be identified as such.

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

Article B2

Autonomy and self-determination

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

Article B3

Imitation and confusion

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

Article B4

“Ambushing” of sponsored properties

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

Article B5

Respect for the sponsorship property and the sponsor

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

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

Article B6

The sponsorship audience

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

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

Article B7**Data capture/data sharing**

If an individual's data are used in connection with sponsorship, the provisions of Article 19 are applicable.

Article B8**Artistic and historical objects**

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

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

Article B9**Social and environmental sponsorship**

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

Any sponsorship message fully or partially based on a claim of positive (or reduced negative) social and/or environmental impact should be substantiated in terms of actual benefits to be obtained. Parties to the sponsorship should respect the principles set out in the ICC Business Charter for Sustainable Development.⁸

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

8.
Available from
www.iccwbo.org

Article B10**Charities and humanitarian sponsorship**

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

Article B11**Multiple sponsorship**

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

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

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

Article B12

Media sponsorship

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

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

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

Article B13

Responsibility

As sponsorship is conceptually based on a contract of mutual benefit, the onus for observing the code falls jointly on the sponsor and the sponsored party, who share the ultimate responsibility for all aspects of the sponsorship, whatever its kind or content.

Anyone taking part in the planning, creation or execution of any sponsorship has a degree of responsibility, as defined in Article 23 of the General Provisions, for ensuring the observance of the Code towards those affected, or likely to be affected, by the sponsorship.

Chapter C – Direct Marketing

This Chapter is to be read in conjunction with the General Provisions found in Part I.

Scope of Chapter C

This Chapter applies to all direct marketing activities in their entirety, whatever their form, medium or content. It sets standards of ethical conduct to be followed by all involved with direct marketing, whether as marketers, distributors, practitioners or other contractors providing services for direct marketing purposes, or in the media, and is to be applied against the background of applicable law.

Provisions relating specifically to the use of the telephone are contained in Chapter D – Advertising and Marketing Communication using Electronic Media and the Telephone.

Terms specific to Direct Marketing

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

- the term “*data controller*” means the person or body responsible for the contents and/or use of the marketing file;
- the term “*direct marketing*” comprises all communication activities with the intention of offering goods or services or transmitting commercial messages, presented in any medium and aimed at informing and soliciting a response from the addressee, as well as any service directly related thereto;
- the term “*marketer*” refers to the person, firm or company who offers or provides products, directly or through an agent or intermediary;
- the term “*marketing list*” means a data base created or used for direct marketing purposes;
- the term “*operator*” refers to any person, firm or company, other than the marketer, that provides a direct marketing service for or on behalf of the marketer;
- the term “*processing*” means any operation, or set of operations, applied to personal data;

Article C1

The offer

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

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

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

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

Article C2

Presentation

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

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

High-pressure tactics which might be construed as harassment should be avoided.

Article C3

Right of withdrawal

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

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

Article C4

After-sales service

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

Article C5

Identity of the marketer

The identity of the marketer and/or operator and details of where and how they may be contacted should be given in the offer, so as to enable the consumer to communicate directly and effectively with them. This information should be available as a permanent reference which the consumer can keep; it should not, for example, appear only on an order form which the consumer is required to return. At the time of delivery of the product, the marketer's full name, address and telephone number should be supplied to the consumer.

Article C6

Unsolicited products

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

See also General Provisions, Article 21 – Unsolicited products and undisclosed costs.

Article C7**Promotional incentives**

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

Article C8**Safety and health**

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

Article C9**Fulfilment of orders**

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

Article C10**Substitution of products**

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

Article C11**Return of faulty or damaged products**

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

Article C12**Prices and credit terms**

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

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

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

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

Article C13

Payment and debt collection

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

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

Article C14

Respecting Consumer Wishes

Where consumers have indicated the wish not to receive a direct-marketing communication by signing on to a preference service, or in any other way, this should be respected. Marketers who are communicating with consumers internationally should, where possible ensure that they avail themselves of the appropriate preference service in the markets to which they are addressing their communications and respect consumers' wishes not to receive such communications (see also General Provisions, Article 19, Data Protection and Privacy).

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

Article C15

Responsibility

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

Responsibility, as defined in Article 23 of the General Provisions, also applies to other participants in direct marketing activities. As well as marketers, these may include

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

Chapter D – Advertising and Marketing communication using Electronic Media and the Telephone

This Chapter is to be read in conjunction with the General Provisions found in Part I.

Scope of Chapter D

This Chapter applies to all advertising and marketing communication using electronic media and the telephone for the promotion of any form of goods and services. It supplements the Code's General Provisions and Chapter C – Direct Marketing with specific rules relevant to special issues presented by the nature of the electronic media, such as those on data collection and use of the telephone.

Recommendations on best practice for customer redress and dispute resolution in online business can be found in the ICC documents “Putting it right” and “Resolving disputes online”.⁹

This Chapter sets standards of ethical conduct to be followed by all parties (e.g. marketers, agencies or media) involved with advertising and marketing communication using electronic media and the telephone.

Terms specific to advertising and marketing communication using electronic media and the telephone

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

- the term “*electronic media*” refers to any media providing electronic, interactive communications, such as the internet, online services, and/or electronic and communication networks, including the telephone;
- the term “*interactive service*” refers to any content or service sent out in a manner which allows the receiving party to reply, send back a message or engage in automated communications;
- the term “*predictive dialler*” means an automated dialler which will adjust the rate at which it dials and deliver answered telephone calls immediately to match operator availability;
- the term “*tele-operator*” means a seller or operator using the telephone for marketing communication purposes.

⁹.
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www.iccwbo.org

Article D1

Origin and jurisdiction

Advertising and other marketing communication using electronic media and the telephone should be subject to the rules and regulations in the country of origin or, where permissible, of the country stipulated by the marketers including tele-operators. Marketers and tele-operators are urged to familiarise themselves with the rules and regulations of the various jurisdictions where they target their marketing communication, as the applicable laws may differ.

Article D2**Identification**

Where an individually addressable electronic communication has a commercial purpose, the subject header and context should make this clear. Subject headers should not be misleading and the commercial nature of the communication should not be concealed.

Article D3**Clarity of the offer and conditions**

Where an electronic communication has a marketing purpose, software or other technical devices should not be used to conceal or obscure any material factor, e.g. price and other sales conditions, likely to influence consumers' decisions.

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

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

Article D4**Respect for public groups**

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

Article D5**Unsolicited messages**

Unsolicited marketing communication should be sent via electronic media only where there are reasonable grounds to believe that the consumers who receive such communications will have an interest in the subject matter or offer.

Article D6**Transparency and non-interference**

Marketing communication sent via electronic media should include a clear and transparent mechanism enabling the consumer to express the wish not to receive future solicitations. Such mechanisms should be used only for this purpose, and should be easy to find, easy to understand and easy to use.

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

Article D7

Advertising and marketing communication to children

The following requirements apply to all offers of products to children via electronic media:

- parents and/or guardians should be encouraged to participate in and/or supervise their children's interactive activities;
- identifiable personal information about children should be disclosed to third parties only after obtaining parental consent or where authorised by law. Third parties do not include agents or others who provide support for operational purposes of the website and who do not use or disclose a child's personal information for any other purpose.

Article D8

Respect for the potential sensitivities of a global audience

Given the global reach of electronic networks, and the variety and diversity of possible recipients,

- marketers should ensure that their marketing communication are consistent with the principles of social responsibility contained in the General Provisions and should take special care to ensure that they do not cause offence;
- marketing communication for products unsuitable for children should be clearly identified as such in the subject line of the message.

Article D9

Use of the telephone

D9.1 – Disclosures

The following provisions apply specifically to telephone marketing:

1. *Outbound calls* – when calling a consumer, tele-operators should:
 - promptly state the name of the marketer they represent;
 - unambiguously state the purpose of the call;
 - politely terminate the call when it becomes apparent that the recipient is not competent, or does not wish to take the call, or is a child (unless the tele-operator receives permission from an appropriate adult to proceed with the call).
2. When a tele-operator calls a consumer who has a telephone with a number display facility, the consumer should be able to identify the number of the company that is calling.
3. *All calls* – before closing the call, the tele-operator should ensure that the consumer is informed and aware of the nature of any agreement reached, and of any steps that will be taken following the call.

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

- the main characteristics of the product;
- where products are to be supplied permanently or for an ongoing period, the minimum duration of the contract;

- the price of the product, including any additional costs (e.g. delivery and/or handling charges and any tax which the consumer may have to pay);
- the arrangements for payment, delivery or performance;
- any right of withdrawal to which the consumer is entitled.

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

D9.2 – Reasonable hours

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

D9.3 – Right to written confirmation

Where a call results in an order, the consumer has the right to receive confirmation, in writing or durable format, of the detailed terms of the contract, in good time and at the latest at the time of delivery of the goods or at the commencement of the delivery of the services. Confirmation should include all the information specified in Chapter C, Article C3 (Right of withdrawal) and Article C5 (Identity of the seller) and, where appropriate, any other information specified in Chapter C.

D9.4 – Monitoring of conversations

Monitoring, including tape-recording, of telephone conversations made for telephone marketing purposes should be conducted only with appropriate safeguards, in order to verify the content of the call, to confirm a commercial transaction, for training purposes and for quality control. Tele-operators should be made aware when monitoring is taking place and consumers should be informed, as early in the call as is practicable, of the possibility of monitoring. No tape-recorded conversation should be played to a public audience without the prior consent of both participants.

D9.5 – Unlisted numbers

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

D9.6 – Use of automatic dialling equipment

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

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

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

Article D10

Responsibility

Anyone taking part in the planning, creation or execution of a marketing communication using electronic media and the telephone has a degree of responsibility, as defined in Article 23 of the General Provisions, for ensuring the observance of the Code towards those affected, or likely to be affected.

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

Chapter E – Environmental Claims in Marketing Communication

This Chapter is to be read in conjunction with the General Provisions found in Part I.

Scope of Chapter E

This Chapter applies to all marketing communication containing environmental claims, i.e. any claim in which explicit or implicit reference is made to environmental or ecological aspects relating to the production, packaging, distribution, use/ consumption or disposal of products. Environmental claims can be made in any medium, including labelling, package inserts, promotional and point-of-sales materials, product literature as well as via telephone or digital or electronic media such as e-mail and the internet. All are covered by this Chapter, which also contains advice on some widely-used claims.

The Chapter incorporates the International Standard ISO 14021 on ‘Self-declared environmental claims’, by transcribing and adapting selected parts of clear relevance in a marketing communication context, while leaving out various technical prescriptions.

Terms specific to environmental claims

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

- the term “*environmental aspect*” means an element of an organisation’s activities or products that can interact with the environment;
- the term “*environmental claim*” means any statement, symbol or graphic that indicates an environmental aspect of a product, a component or packaging;
- the term “*environmental impact*” means any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organisation’s activities or products;
- the term “*life cycle*” means consecutive and interlinked stages of a product system, from raw material acquisition or generation of natural resources to final disposal;
- the term “*product*” refers to any goods or services. “*Product*” normally includes the wrapping, container etc. in which the goods are delivered; however, in the environmental context it is often appropriate to refer separately to the packaging, which then means any material that is used to protect or contain a product during transportation, storage, marketing or use;
- the term “*qualification*” means an explanatory statement that accurately and truthfully describes the limits of the claim;
- the term “*waste*” refers to anything for which the generator or holder has no further use and which is discarded or released into the environment.

Guidance on the use of selected environmental claims, often appearing in marketing communication, is provided at the end of this Chapter.

Article E1

Honest and truthful presentation

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

Marketing communication should not contain any statement or visual treatment likely to mislead consumers in any way about the environmental aspects or advantages of products, or about actions being taken by the marketer in favour of the environment. Corporate communications may refer to specific products or activities, but should not imply without justification that they extend to the whole performance of a company, group or industry.

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

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

Qualifications should be clear, prominent and readily understandable; the qualification should appear in close proximity to the claim being qualified, to ensure that they are read together.

Article E2

Scientific research

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

Environmental jargon or scientific terminology is acceptable provided it is relevant and used in a way that can be readily understood by those to whom the message is directed. (See also Article 6 of the Code - Use of technical/scientific data and terminology).

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

Article E3

Superiority and comparative claims

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

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

Improvements related to a product and its packaging should be presented separately, and should not be combined.

Article E4

Product life-cycle, components and elements

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

When a claim refers to the reduction of components or elements having an environmental impact, it should be clear what has been reduced. Such claims are justified only if they relate to alternative processes, components or elements which result in a significant environmental improvement, taking all relevant aspects of the product's life cycle into account.

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

Claims that a product does not contain a particular ingredient or component, e.g. that the product is "X-free", should be used only when the level of the specified substance does not exceed that of an acknowledged trace contaminant¹⁰ or background level.

10.

"Trace contaminant" and "background level" are not precise terms. "Trace contaminant" implies primarily manufacturing impurity, whereas "background level" is typically used in the context of naturally occurring substances. Claims often need to be based on specific substance-by-substance assessment to demonstrate that the level is below that causing harm. Also, the exact definition of trace contaminants may depend on the product area concerned.

Article E5

Signs and symbols

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

Article E6**Waste handling**

Environmental claims referring to waste handling are acceptable provided that the recommended method of separation, collection, processing or disposal is generally accepted or conveniently available to a reasonable proportion of consumers in the area concerned. If not, the extent of availability should be accurately described.

Article E 7**Responsibility**

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

List of selected environmental claims

The following list contains some widely used claims. The intention is to define their normal meaning and to give guidance for their usage in marketing communication. The list is based on Clause 7 of the ISO 14021, which provides further details on qualifications and evaluation methodology.

1. Compostable

A characteristic of a product, packaging or associated component that allows it to biodegrade, generating a relatively homogeneous and stable humus-like substance. This claim should not be made if the compost, the composting system or the environment is negatively affected to an appreciable extent by the decomposing product, packaging or component.

Where appropriate, a compostability claim should be qualified with reference to, for example, the type of composting facility or process recommended, the compostable components, the necessary preparation, product modification or required materials, equipment, etc. and the availability of composting facilities (if the product is not suitable for home composting); see also Article E6.

2. Degradable

A characteristic of a product or packaging that, in specific conditions, allows it to break down to a specific extent within a given time. This claim should not be made for a product or packaging, or any component, which releases substances in concentrations harmful to the environment.

A degradability claim should relate to a specific test method which includes a maximum level of degradation and test duration, and should be relevant to the likely circumstances of disposal.

3. Designed for disassembly

A characteristic of a product's design enabling the product to be taken apart at the end of its useful life in a way that allows components and parts to be reused, recycled, recovered for energy or in some other way diverted from the waste stream.

Where appropriate, a claim of design for disassembly should be accompanied by a statement explaining to which components it applies and also specifying by whom disassembly is to be carried out (e.g. by the consumer or by a specialist). Such a claim may need to be qualified with regard to, for example, the availability of the process in question (see Article E6) and any tools or equipment required. Consumer information on the disassembly method, etc. should be provided where appropriate.

4. Extended life product

A product designed to provide prolonged use, based on either improved durability or the presence of a feature enabling it to be upgraded, and resulting in reduced

resource use or reduced waste. This claim is comparative by nature, and should fulfil the appropriate requirements (see Article E3).

A claim of extended life should be accompanied by an explanation of the need to upgrade or of improved durability, as the case may be.

5. Recovered energy

A characteristic of a product made using energy recovered from material, or energy which would otherwise have been disposed of as waste but has been collected through managed processes. In this context, the recovered energy may itself constitute the product.

Anyone proposing to make a claim of this kind should ensure that adverse effects on the environment resulting from the collection and conversion of waste into energy are managed and controlled. Where appropriate, a claim of recovered energy should be accompanied by details of the type and quantity of waste used for recovery.

6. Recyclable

A characteristic of a product, packaging or associated component enabling it to be diverted from the waste stream through available processes and programmes and to be collected, processed and returned to use in the form of raw materials or products.

Where appropriate, a claim of recyclability should be qualified having regard to the availability of collection facilities (see Article E6). If a symbol is used, it should be the Möbius Loop, which consists of three twisted chasing arrows forming a triangle (for graphical requirements, see ISO 7000, Symbol No. 1135). This symbol should be used only for claims of recyclability or recycled content (see 7 below.) The Möbius Loop without a percentage value is taken to be a claim of recyclability. If there is any likelihood of confusion, the precise meaning of the symbol should be clarified by an explanatory statement, e. g. the words “recyclable” or “x % recycled contents”. If there is any likelihood of confusion about whether the symbol relates to the product or the packaging, it should be accompanied by an explanatory statement.

7. a) Recycled content

Proportion, by mass, of recycled material present in a product or packaging. Only pre-consumer and post-consumer materials are considered as recycled content. Pre-consumer material means material diverted from the waste stream during a manufacturing process and not reclaimed as part of that same process. Post-consumer material means material generated by households or other end-users which can no longer be used for its original purpose.

b) Recycled material

Material that has been reprocessed from recovered (reclaimed) material by means of a manufacturing process and made into a final product or into a component for incorporation into a product.

c) Recovered (reclaimed) material

Material that would otherwise have been disposed of as waste or used for energy recovery, but has instead been collected and recovered (reclaimed) as material input, in lieu of new primary material, for a recycling or manufacturing process.

Where a claim under a) – c) is made, the percentage of recycled material should be stated. The percentages for product and packaging should be stated separately, and not combined. If a symbol is used, it should be the Möbius Loop with a percentage value and, where appropriate, an explanatory statement (see 6 above).

8. Reduced energy consumption (energy-efficient, energy-conserving, energy-saving)

Reduction in the amount of energy consumed by a product performing the function for which it was designed when compared with the energy used by other products performing the equivalent function. Claims in this category relate to energy reduction in the use of goods and delivery of services, but not in the manufacturing process of a product or its packaging. Such claims are comparative by nature and should fulfil the appropriate requirements (see Article E3).

9. Reduced resource use

A reduction in the amount of material, energy or water used to produce or distribute a product or its packaging or specified associated component. (N.B. claims relating to reduced energy or water consumption in use are dealt with under 8 and 10 respectively). This claim is comparative by nature and should fulfil the appropriate requirements (see Article E3).

A claim of reduced resource use should be expressed in terms of percentage reduction. The percentages for product and packaging should be stated separately and not combined.

When a claim of reduced resource use is made, the type of resource concerned should be stated, and the percentage reduction should be expressed separately for each resource. If the claimed reduction causes an increase in the consumption of another resource, the resource affected and the percentage increase should be stated.

10. Reduced water consumption (water-efficient, water-conserving, water-saving)

Reduction in the consumption of water associated with the use of a product performing the function for which it was designed when compared with the amount of water used by other products performing an equivalent function. Claims in this category relate to water reduction in the use of the product, but not in the manufacturing process of the product or its packaging. Such claims are comparative by nature, and should fulfil the appropriate requirements (see Article E3).

11. a) Reusable

A characteristic of a product or packaging conceived and designed to accomplish within its anticipated life cycle more than one application, rotation or use for the same purpose for which it was conceived.

b) Refillable

A characteristic of a product or packaging that can be filled with the same or a similar product more than once, in its original form and without additional processing except for specified requirements such as cleaning or washing.

No product or packaging should be described as reusable or refillable unless it can be reused or refilled for its original purpose. Such claims should be made only where programmes, facilities or products exist for the purpose. Where appropriate, a claim should be qualified with regard to the availability of programmes or facilities, or to any limit on the number of times the product can be reused or refilled (see Article E6).

12. Waste reduction

Reduction in the quantity (mass) of material entering the waste stream as a result of a change in a product, process or packaging, but excluding the in-process re-utilisation of materials. This claim is comparative by nature, and should fulfil the appropriate requirements (see Article E3).

Waste may include discharges to air and water as well as solid waste from processes, and waste reduction may occur at the production, distribution, use and disposal stages. Claims may be based not only on a reduction of water content of solid waste, but also on a reduction in mass through waste treatment processes. A reduction claim may also relate to the transfer of waste to other users who intend to utilise it for a constructive purpose.

Annex

Terms of Reference of the ICC Code Interpretation Panel

	Terms of Reference of the ICC Code Interpretation Panel
Article 1	<p>The function of the ICC Code Interpretation Panel is to clarify the meaning of ICC Marketing Codes and Guidelines.</p>
	Composition and appointment
Article 2	<p>The ICC Code Interpretation Panel may be called upon as and when the need arises. The decision rests with the Chair of the ICC Commission on Marketing and Advertising. The Panel may consider one or more interpretation questions at a time. The Panel shall be composed of Standing Members and, where appropriate, Specialist Members.</p>
Article 3	<p>As Standing Members, a group of three persons shall be appointed, one of them as the Panel Chair. They shall be selected so as to provide amongst them knowledge of the ICC Code system and expertise in self-regulation and marketing ethics in general. Standing Members shall be appointed for a maximum period of three years (renewable) by the ICC Secretary General, acting on the proposal of the ICC Commission on Marketing and Advertising. In appointing Standing Members, consideration will be given to their nationality, availability and ability to conduct the procedure in accordance with the Terms of Reference.</p>
Article 4	<p>Where specialist expertise is required, additional members may be seconded to the Panel. The Panel Chair may appoint up to three such Specialist Members on an ad hoc basis.</p>
Article 5	<p>A quorum shall consist of at least two Standing Members and, where applicable, one Specialist Member.</p>
Article 6	<p>The Secretary of the ICC Commission on Marketing and Advertising shall be the Secretary of the Panel.</p> <p>Competence</p>
Article 7	<p>The Panel shall examine the interpretation question(s) put before it. In response the Panel shall issue a reasoned Opinion, which shall relate to specific articles of the Codes, and/or the general spirit of the Code(s) concerned.</p>
Article 8	<p>The Panel shall provide interpretations in principle. It shall not act as an arbiter or take a position on individual cases. This does not preclude the Panel being consulted for interpretation in connection with such a case.</p>

Requests for interpretation

Article 9	Any firm, company, business, association, court of law, public authority, self-regulatory body or private individual, as well as ICC national committees, may act as an Applicant and file a request for interpretation. Requests shall be addressed to ICC International Secretariat.
Article 10	The request shall be made in writing or other durable format, and shall specify in what respect(s) clarification is sought. Also, it shall be supported by a statement outlining the background and reasons for the request. Applicants may also submit any other information relevant to the request.
Article 11	The Chair of the ICC Commission on Marketing and Advertising may, on his/her own initiative, refer questions to the ICC Code Interpretation Panel.
Article 12	<p>The decision whether or not to entertain a request shall be based on an assessment of the importance of providing the clarification(s) in question, particularly with regard to international aspects and matters of principle involved.</p> <p>Furthermore, it shall be taken into account whether or not it appears feasible to arrive at a sufficiently clear interpretation on the basis of the request and the submitted documentation and/or any complementary information that can be obtained with reasonable effort and cost.</p>
Article 13	<p>Languages</p> <p>Requests for interpretation shall be presented in English.</p>
Article 14	<p>Procedure</p> <p>The primary objective of the Panel is to produce high quality Opinions. This shall be done without undue delay. For each request the Panel shall lay down a timetable and notify the Applicant as to when the Opinion can be expected. The timetable may be modified when there are valid reasons, such as need for more information.</p>
Article 15	The Panel may work by means of physical meetings, e-mails, telephone conferences and the like, or a combination of these. The Chair shall, in consultation with the other Members, decide on how to proceed. Members are obliged to respond to drafts and other working documents within the time limits set by the Chair.
Article 16	<p>The Panel shall submit a Draft Opinion to the Chair of the ICC Commission on Marketing and Advertising for confirmation. Once confirmed, the Opinion is final and without appeal. As the objective is to provide guidance on matters of principle, the Opinion shall be published in full text, unless compelling reasons against publication have been presented.</p> <p>If the Draft Opinion is not confirmed, the Chair of the ICC Commission on Marketing and Advertising shall send it back to the Panel for review, together with an explanatory statement. After that, the procedure described in paragraph 1 applies.</p>

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

Conflict of Interest

Article 17

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

Decisions

Article 18

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

Expert advice and complementary information

Article 19

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

Confidentiality

Article 20

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

Fees and costs

Article 21

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

Published in August 2006 by

International Chamber of Commerce (ICC)

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Document No. 240-46/330

The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC was founded in 1919. Today it groups thousands of member companies and associations from over 130 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

Document 240-46/330



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