



[ Asociación para la Autorregulación de la Comunicación Comercial ]

## RULES OF THE JURY

These Rules of the Jury were approved by the Board of Directors of the Spanish Self-Regulatory Association for Commercial Communications (Autocontrol) on 23 April 1997. The latest amendments on it have been approved by the Board of Directors on 10 May 2006.

### TITLE I

#### COMPOSITION AND TASKS

##### ARTICLE 1.- NATURE AND INDEPENDENCE.

1.- The Jury is a specialised body in deontological-advertising matters. The Jury is composed of independent members, and it has specific attributions as indicated in these Rules. As a specialised body, this Jury will enjoy full and absolute independence in its functions.

2.- Members of the Jury should abstain in cases of conflict of interest.

##### ARTICLE 2.- LOCATION

The Jury is located in Madrid, at the headquarters of the Spanish Self-Regulatory Association for Commercial Communications (Autocontrol).

##### ARTICLE 3.- COMPOSITION.

1.- The Jury will be composed of one Chairman, six Vice-Chairmen and eighteen members, all of them of unquestionable impartiality. Each Vice-Chairman will act as Chairman of one Division of the Jury.

2. - At the time of their appointment and during their term of office, members of the Jury should not engage in any labour relation with any company in membership of Autocontrol.

3.- Autocontrol's Board of Directors, by a majority, will appoint and renew the Chairman, Vice- Chairmen and members of the Jury. They will be chosen amongst independent experts of unquestionable high personal and professional prestige.,

4.- Members of the Jury will be appointed for a renewable term of office of two years. Nevertheless, the composition of the Jury will be partially renewed each year.

5. - Autocontrol's Director General, or the staff member to whom he may delegate, will act as the Secretary of the Jury, with voice but no voting rights.

##### ARTICLE 4.- TASKS.

The Jury will have the following tasks:

- a) To draw up draft codes on advertising standards and other rules on commercial communication related matters, to be handed in to Autocontrol's Board of Directors for their definitive procedures and approval.
- b) To adjudicate, according to these Rules, on complaints alleging breaches of the codes or rules approved and/or applied by Autocontrol, which are submitted against commercial communications which have been



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published or broadcasted by Autocontrol's members or by non-members that expressly or tacitly accept the competence of the Jury.

**c)** When required by any person with legitimate interest, and in accordance with these Rules, to issue deontological non-binding advisory opinions about the correctness of commercial communications broadcasted or published by non-members who had rejected to participate in the procedure described in abovementioned paragraph b).

**d)** To adjudicate on requests for revision, submitted by advertisers according to these Rules, against copy advice reports issued by Autocontrol's Copy Advice Team.

**e)** To issue technical or deontological opinions concerning advertising issues as requested by the Association.

**f)** To act as arbitrator on advertising matters submitted to its adjudication.

**g)** Any other function connected with commercial communication matters which is specifically entrusted to it by the Board of Directors.

## TITLE II

### STRUCTURE AND COMPETENCES

#### ARTICLE 5.- STRUCTURE.

1.- The Jury may sit in Plenary Session or in Divisions.

2.- Except for what is indicated in article 21, the Plenary Session of the Jury will be validly constituted when at least half plus one of all its members are present, excluding, for the purposes of this calculation, the members who abstained from voting or those whose challenging or rejection has been accepted. The Plenary Session of the Jury shall be chaired by the Jury's Chairman; in his absence, by one of the six Vice-Chairmen present at the meeting, or failing this, by one of the Jury's members, elected by votation amongst them.

3.- The Divisions will be composed of four members each, one of them being one of the Vice-Chairmen of the Jury, who will chair the Division. Each Division will have at least three substitute members, appointed amongst the members of the remaining Divisions; they can be called by the Secretary of the Jury to cover any absences.

#### ARTICLE 6.- MEETINGS.

The Jury, working either in Plenary Session or in a Division, will meet as often as necessary.

Meetings will be called at least 48 hours beforehand by the Secretary, who will provide the Jury with the agenda. In cases of special urgency, the 48-hour deadline can be ignored, but it should be motivated.

#### ARTICLE 7.- THE CHAIRMAN OF THE PLENARY SESSION.

1.- The Jury's Chairman will chair the Plenary Session, being in charge of maintaining order and good governance. He will make the necessary decisions to ensure its correct operation, making sure that the members duly observe their obligations.

2.- In case of votes being tied and not being possible to reach a decision agreed by a majority, the Jury's Chairman will have the casting vote.

3.- The Jury's Chairman will decide upon the challenges submitted against Jury's members.

#### ARTICLE 8.- COMPETENCES OF THE PLENARY SESSION.

The Plenary Session will be competent to:



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- a) Approve the draft codes and rules of conduct on commercial communication matters prepared by the Divisions.
- b) Adjudicate on appeals filed against the decisions ruled by the Divisions.
- c) Review the non-binding advisory opinions on non-members' advertising issued by the Divisions according to article 11 of these Rules.

## ARTICLE 9.- DIVISIONS.

1.- The Jury has six Divisions, all of them with the same faculties and powers. They will be differentiated through their number: First Division, Second Division, Third Division, Fourth Division, Fifth Division and Sixth Division.

2.- To be validly constituted, the Divisions will require at least three members; one of them must be its Chairman, and will have the casting vote. Three substitutes (members from other Divisions) will be permanently assigned to each Division; they can be called by the Secretary whenever needed to reach the quorum to validly constitute the Division.

3.- If one Division cannot be formally constituted for reasons of participation, abstentions or accepted challenges, the Secretary will allocate the corresponding files to another Division.

4.- For those complaints that need to be adjudicated during the month of August, a special Division will be appointed, composed of members of any of the Jury's Divisions; one of its members must be the Chairman of the Jury or one of the Vice-Chairmen.

## ARTICLE 10.- DISTRIBUTION OF CASES.

1.- The cases will be distributed amongst the Divisions in chronological order. The Secretary of the Jury will allocate them and he might group several cases together to be studied and adjudicated by the same Division in one meeting.

2.- When considered appropriate or necessary, the Secretary of the Jury may provide the Jury not only with the file of the case but also with relevant legal information, case-law and/or deontological precedent related to each case.

## ARTICLE 11.- COMPETENCES OF THE DIVISIONS.

The Divisions are competent to:

- a) Issue reports as requested by the Association.
- b) Draw up draft codes and rules of conduct for the Association.
- c) Adjudicate on complaints alleging breaches of the codes or rules approved and/or applied by Autocontrol, submitted against commercial communications which have been published or broadcasted by Autocontrol's members or by non-members that expressly or tacitly accept the competence of the Jury.
- d) Issue, in accordance with these Rules, deontological non-binding advisory opinions about the correctness of commercial communications broadcasted or published by non-members who had rejected to participate in the procedure described in the previous paragraph.
- e) Adjudicate on requests for revision, submitted by advertisers according to these Rules, against copy advice reports issued by Autocontrol's Copy Advice Team.
- f) To act as arbitrator on advertising matters submitted to its adjudication.
- g) Deal with the explanatory requests established in article 27.

## TITLE III



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## OPERATING PROCEDURE OF THE JURY CHAPTER I

### BREACH OF CODES AND RULES OF CONDUCT

#### ARTICLE 12.- PROCEDURE.

1.- Any party having a legitimate interest can submit a complaint against a specific piece of commercial communication. The complaints procedure can also be started ex officio by Autocontrol's governing bodies whenever the circumstances require it.

2.- The Jury will also adjudicate on any cross-border complaint submitted under the cross-border procedures set by the European Advertising Standards Alliance.

3.- Moreover, the Jury will adjudicate on the complaints filed against advertisements already broadcasted or published in other countries which have been declared in breach of the applicable rules either by the competent advertising self-regulation body in membership of the European Advertising Standards Alliance, or by a judicial court or equivalent body, provided that there are enough evidence about its imminent broadcasting or publication in Spain. This will not apply where the advertiser expressly declares its intention not to release the complained advertisement in Spain.

#### ARTICLE 13.- COMPLAINTS.

1.- All complaints concerning the infringement of advertising ethical codes must be duly submitted in writing, where the complainant must include at least the following information:

- a) Complainant's name and surname or company name as well as address, and in case of representation the power of attorney proving such representation.
- b) The essential facts of the alleged breach and the complainant's plea.
- c) Documents and evidences supporting the facts.
- d) Where applicable, the request to challenge one or several members of the Jury.

2.- Complaints on advertisements which have not been broadcasted or published within the previous 12 months will not be accepted, unless in the cases indicated in article 12.3 of these Rules. The complaint will neither be handled if the complained company accepts the complaint and commits itself in writing not to broadcast or publish the complained commercial communication any more.

3.- Complaints on issues that have been adjudicated or are being ruled by a judicial court or an administrative procedure will not be accepted.

4.- If a complaint submitted in front of the Jury is also filed and admitted by a judicial court, the proceeding in front of the Jury will be immediately interrupted.

#### ARTICLE 14.- CHALLENGE AND ABSTENTION.

1.- Members of the Jury should abstain and can be challenged on the following grounds:

- a) Having a direct or indirect interest in the case submitted before the Jury.
- b) Having provided professional services to any of the complaining parties, within a period of less than one year.
- c) Having had a labour relationship with either of the parties.
- d) Having been accused of a criminal offence by either of the parties.
- e) Having complained against any of the parties.



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- f) Having had a conflict with any of the parties.
- g) Having a close friendship or conflictive relationship with any of the parties.

2.- The member of the Jury in any of the above circumstances should abstain from hearing the case without waiting to be challenged.

3.- The parties of the complaint and Autocontrol's governing bodies are entitled to challenge a member of the Jury.

4.- The complainant should include its challenge request in its letter of complaint. The complained company can request the challenge within 3 working days upon reception of the complaint. The Chairman of the Jury will analyse the motivated request for challenge and make a decision. The Secretary of the Jury will inform both the Chairman of the competent Division and the parties about the decision of the Jury's Chairman.

5.- The members of each Division will be informed in advance of the cases to be heard and adjudicated in each meeting, so that they can abstain, if necessary.

#### ARTICLE 15.- TIME-LIMITS .

For the purposes of calculating the time-limits indicated in this Chapter, Saturdays, Sundays, public holidays as well as December 24<sup>th</sup> and 31<sup>st</sup> will not be considered working days.

#### ARTICLE 16.- SUMMONS.

As soon as the Secretary of the Jury receives the complaint and verifies that it complies both with Autocontrol Statutes and these Rules, he will send a copy of the complaint and enclosed documentation to the complained party or parties, asking him/them to reply within the time-limit of five working days upon reception of those documents. The complained party or parties' reply and any evidences attached must be sent in writing to Autocontrol headquarters.

#### ARTICLE 17.- MEDIATION.

1.- If it is possible to reach an agreement between the parties, the complaint will be solved through Autocontrol's mediation, and it will then not be sent to the Jury.

2.- a) The Secretary of the Jury will try to mediate between the parties, if requested by the complained company.

b) The complaint will be shelved if the complainant refuses to try the mediation.

3. If the parties do not reach any agreement, the Jury will adjudicate on the complaint within the time limits established in this Chapter. In no circumstances the time-limit to reply the complaint will not be interrupted by the mediation attempt.

#### ARTICLE 18.- ADJUDICATION

1.- Once the reply of the complained party has been received (within the time-limit) or the time-limit indicated in article 16 has expired, the competent Division will study the complaint and the evidences submitted by the parties. After examining them, the Division will rule a decision.

The parties might present reliable market research surveys to the Jury to support their positions and argumentation. As long as they are validated by independent, reliable and specialised market research



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organisations recognised by Autocontrol, such market research surveys will be taken into consideration by the Jury together with the rest of elements and evidences included in the file of the case.

2.- If the complaint is submitted against a non-member's commercial communication and this replies by specifically rejecting to take part in the procedure before the Jury, the Division will not adjudicate on the complaint. Notwithstanding the former, upon the complainant's request the Division will issue its deontological non-binding advisory opinion about the correctness of the commercial communications broadcasted or published by the non-member.

## **ARTICLE 19.- APPEAL AND REVISION OF NON-BINDING ADVISORY OPINION**

1.- Adjudications issued by a Division can be appealed before the Plenary Session of the Jury within four working-days upon reception of the adjudication in writing.

2.- Similarly, the revision of a non-binding deontological advisory opinion issued by a Division can be requested before the Plenary Session of the Jury within four working-days upon reception of the opinion in writing.

## **ARTICLE 20.- APPEAL PROCEDURE**

1.- Appeal must be submitted in writing, and it must clearly indicate the reasons for appealing the Division's adjudication.

2.- Once the writing of appeal is received in Autocontrol, the Secretary of the Jury will immediately send it to the other party, so that it can reply within the time-limit of four working days upon reception.

3.- Once the reply has been received within the abovementioned time-limit or if that time-limit has expired, the Plenary Session of the Jury will meet and adjudicate on the appeal.

4.- Within the appeal procedure, the Plenary Session of the Jury will only accept those evidences which could not be submitted before the Division due to duly proved objective or temporal reasons,.

## **ARTICLE 21.- ADJUDICATION ON APPEALS AND REVISION OF NON-BINDING ADVISORY OPINION**

Within both the procedure of appeal and/or revision of non-binding advisory opinions, the Plenary Session of the Jury will be composed by the Chairman of the Jury and the Chairmen and members (regular or substitute members) from two Divisions different from the Division of the Jury which had adjudicated in first instance or had issued the challenged advisory opinion. Article 5.2 of these Rules will be applied for the purposes of quorum and substitution of the Chairman.

## **ARTICLE 22.- NEW EVIDENCES**

The Jury or its Chairman can order new evidences if it considers it necessary or appropriate to clarify facts. Among such new evidences and without prejudice of article 18, the Jury or its Chairman can commission reliable market research surveys, in agreement with the parties, who will pay its cost.

## **ARTICLE 23.- ORAL HEARING**

When considered necessary or appropriate for the best solution of the complaint, the Chairman of the Division or the Plenary Session can decide to hold an oral hearing with the parties before the Jury's deliberation and adjudication.

## **ARTICLE 24.- CONFIDENTIALITY**



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The parties shall commit not to disclose or advertise either the fact that a complaint has been submitted and is being handled or its adjudication until it has been released or published by Autocontrol.

## **ARTICLE 25.- DECISION.**

1.- The Jury's adjudications will be adopted by majority of its members. Dissenting members may formulate an individual opinion, which will be enclosed to the adjudication. In case of tie, the Chairman of the Jury (Division or Plenary Session) will have casting vote.

2.- The adjudication upholding the complaint –and therefore declaring the complained advertisement in breach of the Code– will include all or some of the following elements:

- a) Declare that the complained advertisement breaches the rules.
- b) Urge the advertiser to definitely withdraw or amend such advertisement in accordance with the content of the adjudication.
- c) A warning.
- d) In those cases considered particularly serious by the Jury, active publication of the adjudication in the way the Board of Directors consider more appropriate.

## **ARTICLE 26.- MOTIVATION.**

All the Jury's adjudications will be motivated. In their final part of conclusion or decision, adjudications will state on the existence or inexistence of the alleged breach and, where applicable, they will indicate the imposed sanctions.

## **ARTICLE 27.- REQUEST FOR CLARIFICATION**

1.- Any of the parties in the complaint can ask the Jury for a clarification of its adjudication within two-days time. Such request must be addressed to the Secretary of the Jury, who will immediately refer it to the Chairman of the Division that had adjudicated on the case or to the Chairman of the Plenary Session in case of appeal.

2.- The request for clarification will never interrupt the time-limit for appeal.

## **ARTICLE 28.- ENFORCEMENT**

1.- The adjudications issued by the Jury (Division or Plenary Session) will be immediately communicated to the parties and affected members for compliance.

2.- The Board of Directors will supervise and impose the enforcement of the Jury's final adjudications in an effective way.

## **ARTICLE 29.- PUBLICATION OF ADJUDICATIONS**

All Jury's adjudications will be published in Autocontrol's monthly newsletter, on its website, or through other Autocontrol's means.

## **ARTICLE 30.- EFFECTS OF THE JURY'S ADJUDICATIONS.**

Jury's adjudications will be binding for all Autocontrol members and for those non-members who expressly accept the competence of the Jury. It will be understood that there is express acceptance of the Jury's competence in those cases where a company or organisation not being member of Autocontrol submits a



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complaint before the Jury, as well as in those cases where a complaint is submitted against a non-member who files an appeal against the adjudication by a Division.

### **ARTICLE 31.- EFFECTS OF THE JURY'S NON-BINDING ADVISORY OPINIONS**

Non-binding advisory opinions issued by the Jury (Divisions or Plenary Session) in accordance with these Rules will be communicated to the complainant. They will also be communicated to the administrative and/or judicial authorities in those cases where the Jury or Autocontrol's Board of Directors may consider it advisable.

## **CHAPTER II**

### **COPY ADVICE AND ARBITRATION**

#### **ARTICLE 32.- COPY ADVICE REQUEST**

1.- Advertisers and/or their agencies can submit to copy advice their own advertising projects which are at production stage or in any phase before their publication or broadcast. Autocontrol's Copy Advice Team will provide with its advice concerning the legality or ethic correctness of the submitted piece of advertising, on a confidentiality basis.

2.- Media can also request for copy advice in relation with those advertisements they have received for publication or broadcast. In an urgent preliminary analysis, Autocontrol's Copy Advice Team will indicate whether there are significant reasons of a preventive nature advising not to broadcast or publish the ad, or not.

3.- Copy advice reports will be issued by Autocontrol's Copy Advice Team and will not be binding either for the requester or for the Jury.

4.- In case the requester were not satisfied with the copy advice report issued by Autocontrol's Copy Advice Team, it might ask the Jury (Division) for a revision, providing the Jury with any argument, document or evidence that it consider appropriate. Such Jury's revision decision will be binding for the requester.

5.- If a complaint is submitted against a commercial communication which had been previously submitted to copy advice, the complaint will be adjudicated by one of the Jury's Divisions. If such copy advice report had also been submitted to revision, the Division of the Jury that had revised it will abstain

#### **ARTICLE 33.- BAN OF ADVERTISING USE**

It is not allowed to mention in advertising either the conclusions of copy advice reports issued by Autocontrol's Copy Advice Team or even the mere fact of their having been requested or issued.

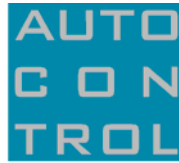
#### **ARTICLE 34.- ARBITRATION.**

1.- The Jury may act as an institutional arbitrator, if both parties in conflict agree.

2.- In that case, the parties will choose, amongst the members of the Jury, one, three or five arbitrators. If the parties do not agree about the appointment of the arbitrators and arbitration is in equity, this will be carried out by the corresponding Jury's Division in chronological order.

#### **ARTICLE 35.- ARBITRATION PROCEDURE.**

1.- Arbitration procedure will follow what is established in the Arbitration Law of 23 December 2003.



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2.- The arbitral decision cannot be appealed before the Plenary Session of the Jury under any circumstances.

### **ARTICLE 36.- COOPERATION WITH THE AUTHORITIES**

In the event that and administrative or judicial authority might ask Autocontrol for its opinion about a piece of commercial communication, Autocontrol will provide them with the Jury adjudication and/or the positive copy advice report received by that advertisement. If there is no adjudication or such copy advice report, as well as in those cases where the aforementioned authorities send a request for intervention to Autocontrol, the authorities' request will be referred to the Jury, and a complaints procedure (article 13) will be then initiated *ex officio* to obtain the Jury's adjudication or opinion, in accordance with these Rules.

### **FINAL PROVISION**

These Rules will be applicable from 15<sup>th</sup> June 2006, after their publication in Autocontrol's website and its monthly newsletter.