

SELF-REGULATION CODE ON COMMERCIAL COMMUNICATIONS INCLUDING ENVIRONMENTAL CLAIMS 2009*

*** This Code only applies to the signing industries: energy and automobile**

This Code is available in English and Spanish. The Spanish version is the only valid and official.

INTRODUCTION

There is a clear and generalized social concern currently existing over environmental or ecological issues, in particular those referring to global warming, biodiversity and sustainable development. This concern requires a coordinated answer and the implication of all the parties involved.

The Spanish companies and the advertising industry, aware of this matter, have undertaken to play a proactive and constructive role in this complicated and collective duty by establishing high levels of social responsibility in their advertising activities, especially those containing environmental claims.

Environmental claims and references allow the industry to inform about the environmental qualities of their products, and at the same time, provide consumers with the knowledge of the environmental impact caused by purchasing, using or disposing of the promoted product, which enables them to adopt more informed and responsible purchase decisions.

However, these claims need to be legal, truthful and responsible in order to effectively promote the purchase/hiring of products or services with a lower environmental impact without losing consumer trust in environmental claims, and avoiding unlawful practices between consumers.

In addition, it is important that commercial communications do not abuse of consumers' concern over the environment nor take advantage of their lack of knowledge on these matters.

The design of this Code has been promoted with the goal of establishing a set of rules that will guide the adhered companies in the development, execution and airing of their advertising messages including environmental claims and references.

SCOPE OF THE CODE

This Code shall be applied to commercial communications or any other type of advertising used in Spain for the promotion of any product (good or service). This also includes the use of environmental claims for corporate or brand promotion of an adhered company. Corporate trademarks, considered as

registered signs that form part of a company's identity in the market, are excluded.

Commercial communications are considered as any type of advertising aired through any media, usually with a payment, such as promotions, sponsorships and direct marketing techniques. They refer to any type of communication performed by companies with the goal of promoting products, services or influencing consumers' behaviour.

An environmental claim is considered as any implicit or explicit reference, made verbally, written or through images, which refers to the environmental aspects of a brand or product (good or service), of a component or packaging, or is relevant from an environmental point of view.

Autocontrol's Advertising Code of Conduct will apply in every matter not covered under this Code and, in default, the ICC Code of Advertising and Marketing Communication Practice shall be applicable in those cases which do not oppose the rules established under this Code.

ETHICAL RULES

I. - Legality Principle

1. – Commercial communications that contain environmental claims, must respect the current legislation regardless of its content, format (oral, written, graphic, visual, audiovisual) or media used.

II. - Loyalty Principle

2. – Commercial communications that contain environmental claims, will respect the requirements of good faith and good commercial uses, regardless of its content, format (oral, written, graphic, visual, audiovisual) or media used.

III. - Social Responsibility Principle

3. – Commercial communications that contain environmental claims, should be made with a sense of social responsibility under the terms in which this concept is explained in Article 4th of the ICC Code of Advertising and Marketing Communication.

4. – Commercial communications should not show any behaviour against the environment. The sole exception shall be when these types of images are shown with an educational or illustrative pro-environment cause, but should never lead consumers to imitate these behaviours.

IV. – Truthful Principle

5. Commercial communications should be truthful.

Thus, they should not be likely to mislead consumers, especially about environmental aspects or advantages of products, or about actions being taken by the marketer in favour of the environment.

Neither should they omit relevant facts or substantial information if this omission is likely to mislead the consumers.

6. – Environmental claims should be reassessed and updated as necessary to reflect changes in technology, competitive products or other circumstances that could alter the accuracy and update of the claim.

7. – Environmental claims should be based on allowed, objective, updated, sufficient and verifiable proof:

- (i) An environmental statement will be considered verifiable only in those cases in which the verification can be carried out without the need of accessing to any confidential information.
- (ii) The company shall be responsible of evaluating and facilitating all necessary information in order to verify the environmental allegations, if such are requested.

8. – Advertisements should not lead consumers to think that the use of environmental claims comprise a universal acceptance if a reasonable doubt or different scientific opinions exist on that matter.

V. – Objectivity Principle

9. - Environmental claims should be precise and contain simple language, avoiding ambiguity and exaggerations that may lead to incorrect interpretations.

10. Environmental claims that refer to products should be specific, relevant and objective. As a result of which:

- (i) They have to refer to the product, the range of products or technology in the promotion.
- (ii) They have to be suitable for each product and used in the appropriate context.
- (iii) They have to be appropriate in the area in which the corresponding environmental impact is made.
- (iv) They have to be specific in terms of their aim. As a result, it should be clearly stated if the claim refers to the complete product or refers only to a product component or its packaging.

- (v) They have to be specific in terms of the period or characteristics being referred to. As a result, they have to be made in such manner that they will not lead to the impression that they relate to more stages of a product's life-cycle, or to more of its properties, than is justified by the evidence.
- (vi) They have to be specific in terms of the environmental aspect or improvement stated in the assertion.
- (vii) They should not be restated using different terminology to imply multiple benefits for a single environmental change.

11. – Generic claims, or those not specific about environmental benefits, in particular claims such as “not harmful for the environment”, “green”, “eco”, “sustainable”, should be avoided or justified with specific observations. These observations need to be clear, evident, easily understandable, and should appear in close proximity to the claim being qualified, to ensure that they are read together.

12. – Any kind of additional or explanatory information related to environmental claims should be presented in such a way, that the convenience of reading it along with the environmental claim is clear, should be located near to it, and shall not contradict or essentially limit the main claim.

If this additional or explanatory information is offered through scroll, the size of the indications, the contrast on the background and its speed shall be taken into account.

It shall be assumed that the requirements of the previous paragraph are complied, if the criteria under the Appendix I are respected.

VI. – Superiority and Comparative Claims

13. – Comparative or superior (absolute or relative) environmental or improvement claims should be specific and the basis for the comparison should be clear. In particular, the environmental claim should indicate the lapse of time that has passed since the improvement.

14. – An environmental superiority can only be claimed when a significant advantage can be proved.

15. – Products being compared should meet the same needs and be intended for the same purpose.

16. – Comparisons should not lead to confusion among the companies, activities, products, names, brands or other distinctive signs of competitors.

17. – Comparative claims should be worded in such a way as to make it clear whether the advantage being claimed is absolute or relative, independent from the fact that it is referring to previous processes or products (of the company or to those of a competitor).

18. – Comparative claims can be based on:

- (i) Percentages, which need to be expressed as differences in an absolute value¹.
- (ii) Absolute values, which need to be expressed as relative improvements².

VII. – Special Rules

19. - When the environmental claim refers to a reduction of components or elements which have 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.

20. – Environmental claims that a product does not contain a specific ingredient or component (for example, this product is “x –free” or “without x”), should be used only when the amount of the substance being mentioned is not higher than its detection level.

21. – Environmental claims about waste materials are acceptable only when the recommended method for separating, collecting, or processing them is generally accepted and easily accessible for the majority of consumers in that specific area.

VIII. – Demonstrations and scientific testimonials

22. – Technical or scientific demonstrations about the environmental impact shall only be used when they are backed up by generally accepted scientific proofs.

23. – Commercial communications should not reproduce or make use of scientific or technical testimonials (or perceived that way), which are not real.

IX. – Signs and symbols

24. – Signs and symbols used in advertisements should not be likely to mislead about its source, meaning or the characteristics of the goods or services they accompany.

- (i) They should be easily distinguished from other signs and symbols, especially those related with different environmental characteristics.

¹ For a recycling change from 10% to 15%, the correct claim is the absolute difference, that is 5%. The assertion “plus 50%”, even if it is true, is likely to mislead about the scope of the improvement.

² For an improvement of the product life from 10 to 15 months, the relative difference shall be “plus 50% of life cycle”.

- (ii) They should not be used in such a way as falsely to suggest official approval or third-party certification.
- (iii) If a symbol is displayed in a product because the manufacturer is an economic sponsor of the organization whose symbol is being shown, this fact should be made clear
- (iv) In particular, it is important to avoid leading to the impression that the use of such symbol, is a guarantee from the entity being sponsored, its activities or products.
- (v) Registered signs, denominative or mixed, by which the qualities or properties of a brand, product or packaging related with environmental claims are transmitted to consumers, and which do not have an independent certificate from a third party, need to go along with an explanation when the sign on its own can lead to error or confusion. If there are limits due to the media therefore existing complications of including such information in the same advertisement, there may be a remission to another site which shall be free of charge in order to obtain such explanatory information, i.e. web site.

FREQUENTLY USED ENVIRONMENTAL CLAIMS

The definitions and guidelines for the use of the following environmental claims are hereinafter provided:

1. Compostable
2. Degradable
3. Recyclable
4. Recycled
5. Energy-reduced consumption
6. Water-reduced consumption
7. Reduced use of resources
8. Reusable
9. Waste reduction

1. Compostable

A characteristic of a product, packaging or component that allows biodegradation, generating a relatively homogeneous and stable humus-like substance. This claim should not be used if the compost, the composting system or the environment can be negatively affected by the product, packaging or component that decomposes.

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

2. Degradable

A characteristic of a product or packaging, which under certain conditions, decomposes in a certain measure and in a given period of time.

This claim should not be made for products, packaging or components which release substances that are harmful for the environment in its decomposing process.

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

3. Recyclable

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

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).

4. Recycled

a) Recycled content³

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 within that same process. It shall be excluded the re-use of remnants originated in a procedure which can be re-used for the same procedure which has generated it.

Post-consumer material means material generated by households, commercial stores or other end-users and which can no longer be used for its original purpose.

b) Recycled Material

³ The recycling does not include the energetic valuation.

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

c) Recovered 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.

5. Water-reduced consumption

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.

This claim should relate to the use of the product, and not include reduction of water in manufacturing or packaging processes.

Furthermore, this claim is comparative by nature, and should fulfill the requirements for such claims.

6. Energy-reduced consumption

Reduction in the amount of energy associated with the use of a product performing the function for which it was conceived when compared with the energy used by other products performing the equivalent function.

This claim should relate to the use of goods and delivery of services, and not include reduction of energy in manufacturing or packaging processes.

Furthermore, this is a comparative or a superiority claim by nature, and should fulfil the requirements for such claims.

7. Reduced use of resources

A reduction in the amount of material, energy or water used to produce or distribute a product or packaging or specified associated component.

This claim is a comparative or a superiority claim by nature, and should fulfil the requirements for such claims.

A claim of reduced resource use should be expressed in terms of reduction percentage. The reduction percentage for product and packaging should be separately stated, 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 other resources, the resource affected and the percentage increase should be stated.

8. Reusable

A characteristic of a product or packaging that has been conceived and designed to accomplish within its life cycle a certain number of trips, rotations or uses for the same purpose for which it was conceived.

a) Refillable

A characteristic of a product or packaging that can be filled with the same or 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 claimed to be reusable or refillable unless it can be reused or refilled for its original purpose.

Such claims should be made only where programs, facilities or products exist for the purpose. Where appropriate, the claim should be qualified with regard to the availability of programs or facilities or to any limit on the number of times the product can be reused or refilled.

9. Waste reduction

Reduction in the quantity (mass) of material entering the waste stream as a result of a change in the product, process or packaging, but excluding the in-process re-utilisation of materials.

This claim is comparative or superiority claim by nature, and should fulfil the requirements for such claims

I. Link to the Code

1. Companies that sign the “Self-regulation Code on commercial communications including environmental claims/arguments” and have expressly

manifested their membership to this Code, compromise to respect its rules in their environmental advertising.

2. Companies that sign the “Self-regulation Code on commercial communications including environmental claims/arguments” also undertake to respect the Code’s rules in their advertising activities as well as immediately obey the content of the decisions that Autocontrol’s Advertising Jury can rule in relation to this Code.

3. The list of companies that sign the “Self-regulation Code on commercial communications including environmental claims/arguments” will be made public.

4. Companies that sign the “Self-regulation Code on commercial communications including environmental claims/arguments” can communicate their adherence to the Code in their Web pages and Corporate Social Responsibility Reports. In addition, they shall be able to communicate through their advertisements of the adherence to the Code, in the manner determined by the Follow-up Commission.

II. Code compliance control

1. Code post-control compliance

1.1. The compliance control of the Code’s regulations corresponds to Autocontrol’s Advertising Jury, which shall be responsible for the settlement of advertising complaints submitted due to breach of the Code’s rules by companies which form part of the Code.

1.2. In this sense, companies adhered to the Code undertake to immediately obey and fulfil the decisions ruled by the Advertising Jury about complaints presented in relation to this Code, either by ceasing the advertising activity or performing the requested amendments.

2. Out of court settlements

2.1. Apart from the companies adhered to the Code, complaints due to breach of this Code’s rules can be submitted to the Advertising Jury by: non-profit associations, Autocontrol, Public Entities, the Environmental Council, any company or business association with a legitimate interest, the Follow-up Commission, consumers, or other people, entities or collective organizations not mentioned above.

2.2. For the effective application of this Code and the handling of complaints and decisions presented against the adhered companies due to breach, Autocontrol’s Advertising Jury will perform on the principles of independence, transparency, contradiction, effectiveness, legality, freedom of choice, and the consumer’s right of representation established in the European Commission’s 98/257/CE Recommendation, and will proceed according to its rules. The Jury will resolve the submitted complaints taking into account the ethic rules set forth

under this Code, deciding on a case by case basis, if a breach of rules has occurred and the level of seriousness.

2.3. In its rules, the Jury shall determine which party (or parties) will be responsible for the administrative economic expenses related to the complaint proceedings. It will also decide on the complaining party's requests, and eventually on the concurrence of circumstances such as recklessness or bad faith by either party.

Public Entities, the Environmental Council, non-profit associations, and this Code's Follow-up Commission will be exempted from the payment of these Administrative expenses, since the proceedings and resolutions of their complaints are free of charge. In such cases, the company under claim shall bear any economic expenses to Autocontrol.

2.4. Any decisions ruled by the Advertising Jury in the application of the present Code, will be immediately communicated to the involved parties for compliance. Afterwards, the decision shall be made public in Autocontrol's Web page or other means.

2.5. In cases where a breach is repeated or the company does not comply with the Jury's resolution, the Follow-up Commission reserves the right to decide whether the Company will be expelled from this Code. The Commission will make this expulsion and its reasons of public domain. If a company is expelled, its readmission as an adhered company shall not be reconsidered within a period less than a year. The readmission as an adhered company to the Code will only be given after the stated period of time has elapsed if it expressly accepts not to incur in practices which may be prohibited by the Code.

2.6. The Follow-up Commission also reserves the right to report the company committing the violation before the competent authorities or start legal actions in case any of the companies adhered to the Code do not comply with the contents of a decision given out by the Advertising Jury.

3. – Copy Advice

3.1. In order to ensure that their advertising follows this Code, the adhered companies can send their advertisements which shall contain environmental claims to Autocontrol's Copy Advice Team for a pre-launch test. A Copy Advice is voluntary, confidential and non-binding. The Copy Advice Team shall solve any queries within a period of 3 working days upon its request.

3.2. Companies requesting a Copy Advice will provide the Copy Advice Team with all the information required in order to carry out this evaluation.

3.3. In case of disagreement with the given Copy Advice, the company can voluntarily request a review by the Jury, which, following its regulations and taking into account the Copy Advice and the documentation provided by the company, will decide on the approval or disapproval of its content. The Jury's decision will always be binding. The Section of the Jury present in this revision

will not participate in the proceedings that would be followed in case a complaint is held against that specific advertisement.

3.4. Adhered companies will not use the content of the Copy Advice or the fact that they requested it for advertising purposes. However, they can appear before the Court, Governmental Authorities and the Advertising Jury in case of a dispute.

III. – Follow-up Commission

1. – A Follow-up Commission will be created for this Code with a mixed structure. It will be formed by the Secretary of State for Climate Change (which will lead the Commission's Presidency), two representatives from society (one chosen by the Consumer Council and the other by the Environmental Advisory Council), a Ministry of Industry, Tourism and Commerce representative, a Ministry of Health and Social Policy representative, an academic expert/scientist, two representatives from each of the sectors adhered to the Code, a representative from the "*Asociación Española de Anunciantes (AEA)*", and a representative from Autocontrol with no vote (only freedom of speech) and which shall exercise the functions of the Commission Secretary.

A substitute will be chosen for each member, in case they are unable to attend to the Commission's meetings.

The Commission can be extended, in a parity manner, in case companies from new business sectors become members of the Code. The Follow-up Commission may also create, if necessary, Working Groups.

2. – The follow-up Commission will have the following functions:

a) Periodically evaluate the Code's application in relation with the established objectives. With this aim, it will require periodic samplings of the advertising with environmental claims aired in Spain.

b) Propose the necessary improvements and Code revision proposals.

c) Request, after a six month period which the Code has come into effect, a sampling of advertisements with environmental claims to analyze its level of compliance. Upon the sampling results, the Commission shall decide the maintenance of the voluntary use of the Copy Advice set forth at Section 3 of the "Application Rules" or else shall agree on the establishment of a mandatory regime for one or several specific media.

d) Periodically go over the reports submitted by Autocontrol on the Code's compliance.

e) Decide on the entrance of certain companies, either in already participating sectors or new industrial ones. In the second case, the Commission will decide on extending its membership to include representatives of new sectors and, in this same number, include representatives from the Administration or society.

f) Decide on the submission of complaints before Autocontrol's Advertising Jury in those cases in which a breach of the Code's rules may have occurred.

g) Examine complaints submitted by individual consumers or any other person, entity or group not foreseen in previous section II.2.2, with the aim of deciding whether they contain any sign of infringement of the regulations in the Self-Regulation Code, and decide whether they should be sent to the Advertising Jury.

h) In cases in which the Commission decides that indications of infringements of the Code are not present, an answer will be sent to the complaining person/entity explaining the decision.

i) In cases in which an infringement of the Code is evident, the case will be transferred to the Advertising Jury for the complaint proceedings.

j) Manage to get information from Autocontrol on whether certain advertisements, publicly known for having started their broadcast, received a Copy Advice as well as its result.

3. The Follow-up Commission will meet with the frequency needed to achieve its functions successfully, through a notice by its President or a request from three or more of its members.

4. A member of the Follow-up Commission, whose company or direct competitors can be affected in a specific way on a ballot, will abstain from submitting its vote in the Commission.

IV. – Validity of the Code

The present Code will come into effect on September 1st, 2009. However, advertisements that have already been aired before this date can continue to be used until December 31st, 2009.

V. – Code Revision

1. The Code will be frequently reviewed, with the goal of adapting it and maintaining it up to date in order to incorporate any relevant changes in society and legislation.

2. When an amendment of the Code is necessary after this review, it shall be carried out with the necessary audiences and publicity.

3. The Code's amendment proposals shall be accepted with a majority vote in the Follow-up Commission, and the proposal will be communicated to all the companies adhered to the Code. If these companies have not formally notified the Commission of their rejection to the new proposal after two months, an assumption of acceptance shall be made. Having passed the two month period,

the proposed changes shall come into force for all those companies that on such date are still adhered to the Code.

4. After at least a year since the signature or the adherence to the Code, the companies may stop being part of the Code if they wish, by formally communicating it to the Follow-up Commission. This will be effective three months after the Commission receives the request, and will be made public the same way as an adherence to the Code would have been made public.

APPENDIX I SCROLL CRITERIA

The size of the text (using lower-case letters as a reference) is recommended to be a minimum of 14 pixels (measure of 720x576 over a screen), 26 points if the scroll is still, or 15 pixels / 28 points in case it is inserted as “scroll.”

The amount of time the message should take to go across the screen should be measured depending on the amount of words that the message contains. Guiding measures include: 12 words – 6 seconds, 20 words – 10 seconds, 30 words – 15 seconds, 40 words – 19 seconds, etc. This should all be done with a constant and predetermined speed.

ADDENDUM ON ENVIRONMENTALLY-RESPONSIBLE ADVERTISING OF VEHICLES

Once the Code of Conduct of the European Automobile Manufacturer’s Association (ACEA) on automobile advertising is approved, and prior conformity from the Follow-up Commission, the European Code will be added to the present Code as an appendix in all aspects not opposing the Code.