



# CODE OF ADVERTISING PRACTICE

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This Code of Advertising Conduct was approved at the Extraordinary General Assembly held on December 19, 1996, as established in the bylaws of the Association for the Self-regulation of Commercial Communication and after consultation with the AUTOCONTROL Jury and the Council of Consumers and Users. Latest version, including the amendments approved by the Ordinary General Assembly held on June 4, 2019.

This text is unofficial English translation of the official texts in Spanish.  
The Spanish's version will prevail in case of discrepancies.

# I. SCOPE OF APPLICATION AND GENERAL RULES

## 1. SCOPE OF APPLICATION

These ethical rules apply to all of advertising communication aimed at promoting, directly or indirectly and regardless of the means, format, or media used, the contracting of goods and services, or the enhancement of trademarks and trade names.

These ethical rules will also be applicable to any advertisements commercial communications released on behalf of private individuals or legal persons, in order to promote certain attitudes or behaviours.

These rules will not apply to political advertising.

## 2. PURPOSE AND AIMS OF THE ASSOCIATION FOR SELF-REGULATION OF COMMERCIAL COMMUNICATION

**2.1.** The purpose of the Association is to contribute to making advertising a particularly useful instrument in the economic process, ensuring respect for advertising ethics and the rights of the recipients of advertisements, excluding the defence of professional interests.

**2.2.** The following are considered to be the purposes of the Association, solely by way of illustration:

- a) The elaboration of codes of advertising ethics, both of a general nature and of a sectoral nature, which include the basic standards of conduct that must be respected in the advertising activity.
- b) To resolve disputes and conflicts submitted by its members or third parties, which may arise from carrying out a particular advertisement.
- c) To draw up opinions, reports, studies of any kind or nature on matters related to advertising, when requested, either by a member, by the Public Administrations, or by any third party.
- d) To be a procedural party to defend the objectives of the Association and the public interest in compliance with the advertising legislation in force in Spain.
- e) To actively collaborate with public officials, public bodies and international bodies to ensure that advertising is in accordance with the rules under which it is governed, as well as, in general, directing proceedings, formulating proposals, making suggestions or issuing reports for these agencies and authorities in matters that affect advertising.
- f) To contribute to the development and improvement of Spanish legislation on advertising.
- g) To participate in national or international associative organisations, which are of interest for the purposes of the Association.

- h) Any other activity, complementary or that may arise as a result of the purposes detailed in previous sections.

### 3. OBLIGATIONS OF MEMBERS

The members of the Association for Self-Regulation of Commercial Communication will be obliged to:

- a) Respect current legislation in their advertising activities and the Codes of Advertising Conduct that may be applied.
- b) Comply with the decisions adopted by the Jury.
- c) Providing reliable and responsible information on issues, which are not of a confidential nature or which are not likely to cause damage or involve serious risks, when such information is requested by the governing bodies of the Association or by the Jury.

### 4. THE JURY:

#### COMPOSITION, CONFLICT OF INTERESTS AND POWERS

**4.1.** The Jury is a body specialised in advertising deontological issues, composed of prestigious persons in the advertising and commercial communication areas, with the powers specified in the bylaws and in its Rules. The work of the Jury is ruled, amongst other criteria, by independence. As a specialised body, the Jury will enjoy full and absolute independence in its functions.

**4.2.** The Advertising Jury will consist of a President, several Vice-presidents and panel members, of indisputable impartiality, who had not maintained for the past three years or do not maintain during their mandate, any employment, commercial, organic or other kind of relationship, involving a stable partnership with members of the Association.

**4.3.** The members of the Jury shall abstain and might be challenged in case of conflict of interest, under the terms set by the Rules of the Jury.

**4.4.** The governing bodies of the Association will encourage appointments to the Jury brought forward by agencies that promote consumers and users concerns or that stand for social interests.

**4.5.** It will have the following attributions:

- a) To draft and elaborate the preliminary texts of advertising codes of ethics, which are passed on to the Association's Board of Directors for final processing.
- b) To handle claims submitted by members and non-members against specific advertisements which are claimed not to comply with the rules and codes of ethics approved by the AUTOCONTROL, in accordance with its own Rules.
- c) To deliver technical or deontological judgments on advertising issues when submitted by the Association.

- d) To act as a court of arbitration in advertising disputes which have been submitted to the Jury.
- e) Any other duties, regarding advertising issues, expressly referred to the Jury by the Board of Directors.

## 5. THE JURY:

### PLENARY SESSION OR DIVISIONS PROCEDURE. REMEDY OF APPEAL

The Jury may proceed as a Plenary Session or in Divisions.

The claims regarding the breach of the rules or codes of conduct enforced by the Jury will be settled by the Divisions.

The Plenary Session will be competent to decide remedies of appeal against the decisions of the Divisions.

## 6. PROCEDURE

The procedure will be brought “ex officio” or by any person with a legitimate interest to proceed against a certain advertisement, and will be processed in accordance with the Rules of the Jury.

## 7. ENFORCEABILITY OF THE DECISIONS

The Jury’s decisions are binding not only for the interested parties, but also for the rest of the members. It is the Association governing body obligation to ensure effective implementation of the Jurys resolution, as well as to enforce the disciplinary procedure provided by the bylaws in case of default and, if it deems appropriate, to inform the Authorities if any violations have been committed through advertising.

## 8. APPLICABLE STANDARDS

The Jury will resolve the claims by applying the current Code of Advertising Practice and, if applicable, the sectoral codes approved by the Association or whose application the Jury has been entrusted.

In the alternative, it will be applicable the ICC Advertising and Marketing Communications Code.

## II. RULES ON ETHICS

### A. BASIC PRINCIPLES

#### 1. THE VALUE OF ADVERTISING

No commercial communication may be made in such a way that it negatively affects the social perception of advertising, undermines consumer confidence or impairs its importance in ensuring the proper functioning of the market.

#### 2. RESPECT FOR LAW AND THE CONSTITUTION

Commercial Communications shall respect legislation in force, and in particular the values, rights and principles enshrined in the Spanish Constitution.

#### 3. INTERPRETATION OF ADVERTISING

**3.1.** Commercial Communications and advertising claims must be analysed as a whole, without breaking down their integral parts, and taking into account the overall impression generated in the mind of the consumer.

**3.2.** Notwithstanding the above, those parts of advertisements, which are particularly prominent and immediately capture consumers attention shall be subjected to specific analysis.

**3.3.** In any case, when a commercial communication contains a clearly highlighted message within the meaning of the previous point, the advertiser shall take all the measures necessary to ensure that the rest of the advertisement clearly comprehensible, and must not introduce qualifications and restrictions relevant the main message.

**3.4.** When analysing an advertisement, the Jury may take into account related or even external aspects, provided that such aspects could influence the interpretation of the message by consumers. In particular, the Jury may analyse the influence that the following factors may have on the interpretation of the message: the time when the message is broadcast; the media used; the channels and ways of marketing the product; or other previous or current advertising campaigns, in that or other media, related to the message analysed.

**3.5.** When analysing an advertisement, the Jury will take into account the perspective of an average consumer, who is reasonably well informed and reasonably observant and circumspect, within the group of recipients to whom the advertising is directed.

## 4. GOOD FAITH

Commercial Communications must never constitute a means to abuse the good faith of the consumer.

## 5. EXPLOITATION OF FEAR

Commercial communications must not, without justification, provide reasons for purchasing which take advantage of fear, apprehension, misfortune, suffering or superstitions of those to whom it is addressed. Among other examples, advertisers may make use of fear, as long as it is proportionate to risk or adversity, in order to encourage prudent behaviour or to discourage dangerous, imprudent or unlawful actions.

## 6. NON-INCITEMENT TO VIOLENCE

Commercial communications shall not incite or condone violence, nor will they suggest advantages in violent attitudes or practices.

## 7. NON-INCITEMENT TO UNLAWFUL BEHAVIOUR

Commercial communications must not incite antisocial or unlawful behaviour, nor will it be tolerant of those aspects, nor will they suggest that there are advantages in antisocial or unlawful attitudes or behaviours.

## 8. RESPECT GOOD TASTE

Commercial Communications must not include any content which runs contrary to the prevailing standards of good taste and social decency, as well as against good customs.

## 9. DANGEROUS PRACTICES AND SAFETY

Commercial communications must not encourage dangerous practices, except when made in a context in which it may be specifically deduced that it they promotes personal safety or that of others.

Advertising addressed to children should not contain any visual representation or description of potentially dangerous practices or situations that show a disregard for safety.

## 10. DISCRIMINATORY ADVERTISING

Commercial communications must avoid endorsing discrimination based on race, nationality, religion, disability, age, gender or sexual orientation, neither must they prejudice a person's dignity. In particular, advertising commercial communications that can be degrading or discriminatory towards women must be avoided, including those which use the woman's body, or parts thereof, as a mere object detached from the product or service that is intended to be promoted or associated with stereotypical behaviours that undermine equality between women and men.

## 11. RIGHT TO HONOUR

Advertising must necessarily respect the rights to honour, privacy and personal image.

## 12. RESPECT FOR THE ENVIRONMENT

Commercial communications shall not present behaviours generally considered harmful to the environment, unless their display has an educational or demonstrative motive in favour of the environment, nor shall they incite such behaviour.

## B. AUTHENTICITY

**13.** Commercial communications will be identifiable as such regardless of the means, format, or media used.

When a commercial communication, including so-called 'native advertising', appears in a medium that contains news or editorial content, it must be presented in a way that is easily recognisable as an advertisement and, when necessary, labelled as such.

That the real intent is advertising must be obvious. Therefore, a communication that promotes the sale of a good or the contracting of a service should not be passed off, for example, as market research, consumer survey, user-generated content, private blog, private publication on social networks or an independent analysis.

### 14. MISLEADING ADVERTISING

**14.1.** Commercial communications must not be misleading. Misleading advertising is understood as the one that in any way deceives or is likely to deceive its recipients, and is liable to alter their economic behaviour, provided that it has an impact on one of the following elements:

- a) The existence or nature of the good or service.
- b) The main characteristics of the good or service, such as its availability, benefits, risks, execution, composition, accessories, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product.
- c) After-sale customer assistance and complaint handling.
- d) The extent of the entrepreneur's or professional's commitments, the motives for the commercial practice and the nature of the commercial transaction or contract, as well as any statement or symbol in relation to direct or indirect sponsorship or approval of the entrepreneur or professional or the goods or services.
- e) The price or the manner in which the price is calculated, or the existence of a specific price advantage.
- f) The need for a service, part, replacement or repair, and the change of the initially advertised price, unless there is a subsequent agreement between the parties agreeing to such change.
- g) The nature, attributes and rights of the entrepreneur or professional or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions.
- h) The consumer's rights or the risks he may face.

**14.2.** Likewise, it will be regarded as misleading, the advertising which omits information necessary for the recipient to make or be able to make a prior informed decision on his economic behaviour, and for this reason can significantly distort their economic behaviour.

**14.3.** For the purpose of applying the previous paragraph, all the characteristics and circumstances of the advertisement, as well as the limitations of the medium of communication used, shall be taken into account. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the entrepreneur or professional to make the necessary information available to consumers by other means shall be taken into account, in deciding whether the information has been omitted.

## D. RULES ON CERTAIN ADVERTISING FORMS AND TECHNIQUES

### 15. GUARANTEES

Commercial communications must not contain any reference to a guarantee that does not improve the legal position of the purchaser. Advertising may contain the words “guarantee”, “guaranteed”, “certified” or words having the same meaning, provided that it does not deceive or is likely to mislead the consumer regarding the scope of the guarantee.

### 16. AVAILABILITY OF PRODUCTS

Goods or services that cannot be supplied or provided shall not be offered, unless the advertisement indicates the moment or time-scale for the delivery or service.

### 17. TECHNICAL DATA

Where technical, scientific or statistical data are disseminated in commercial communications, they must be relevant and verifiable; they shall not give rise to error on the natural or legal persons, their nature and other circumstances that support them.

### 18. COMPARATIVE TESTS

Publication of comparative tests on products or services must reveal the identity of the individuals and legal entities that have carried them out, as well as the date on which they were carried out. In the event of partial dissemination, this shall be done in an equitable manner.

### 19. TESTIMONIALS

When commercial communications includes recommendations and/or testimonials, that are assertions from parties not connected to the advertiser, and who are not acting as spokespersons for the advertiser, whether they are paid or not, they must be truthful, both with regard to the person providing the recommendation/testimonial, as well as to the content of the recommendation and/or testimonial. The advertiser must have written authorisation of the testimonial and it is his responsibility to prove the veracity of the advertisement. Such advertising may only be used as long as the above conditions remain valid.

The sponsored nature of a recommendation or testimony must be made clear by an appropriate warning in those cases in which the message, due to its formal characteristics or content, may mislead the user about the said nature.

## 20. EXPLOITATION OF THE REPUTATION OF OTHERS AND IMITATION

**20.1.** Commercial communications shall not contain either explicitly or implicitly, any reference to the distinctive signs of another advertiser, other than in legal or conventionally permitted cases or in the case of acceptable comparative advertising.

**20.2.** Commercial communications must not imitate the general layout, text, slogan/tagline, distinctive signs, visual presentation, music, or sound effects of other advertisements, whether national or foreign, even if the campaigns have come to an end, when any of these items are protected by industrial or intellectual property rights or the advertising leads to the likelihood of confusion in the minds of consumers, or entails taking unfair advantage of the effort or reputation of others.

## 21. DENIGRATION

Commercial communications must not discredit or denigrate, implicitly or explicitly, other companies, activities, products or services. Statements contained in the message that are accurate, truthful and relevant will not be considered as denigration. In particular, references to the personal circumstances of a businessman or his company will not be considered as “relevant”.

## 22. COMPARISONS

Comparative advertising, direct or indirect, must respect the requirements listed below:

- a) The goods or services compared must have the same purpose or meet the same needs.
- b) The comparison will be done objectively between one or more material, relevant, verifiable and representative features of those goods and services, which may include price.
- c) In the case of products covered by a designation of origin or geographical indication, specific name or guaranteed traditional specialty, the comparison may be only made with other products of the same designation.
- d) Goods or services shall not be presented as imitations or replicas of goods or services bearing a protected trade mark or trade name.
- e) The comparison must not contravene any rules established by Articles 14, 20 and 21 of the Code, related to acts of deception denigration and confusion and exploitation of another's reputation.

## 23. PROOF OF ADVERTISING CLAIMS

The burden of proof falls on the advertiser to prove the veracity of the assertions and claims made in the commercial communications.

Claims that state or imply the existence of a certain level of grounds must have, at least, the level of proof stated in the publicity. Proof must be available so that it can be provided as soon as the publicity is the subject of a complaint and within the deadlines provided for answering it.

## 24. AGGRESSIVE ADVERTISING

Commercial communications shall not be aggressive. Aggressive advertising is understood to be that which is likely to significantly impair or is likely to significantly impair, via harassment, coercion, including the use of force, or undue influence, the freedom of choice or conduct of the recipient (i.e. consumer), and thereby affects or may affect their economic behaviour.

## 25. PROMOTIONS

Promotional commercial communications, such as contests or similar activities must clearly indicate the essential conditions for participation and their duration. Under no circumstances must the pre-conditions for winning the prize, nor the costs associated with receiving it or taking part in the promotion be masked.

## 26. COMMON CHARACTERISTICS

No commercial communications can suggest that their products or services possess particular or unique characteristics when these are common among similar products and services.

## 27. CAMPAIGNS WITH A SOCIAL CAUSE

**27.1.** When commercial communications refer to the advertiser's participation in a charity act or campaign, advertising must scrupulously respect the principles of truthfulness and good faith.

**27.2.** In addition, the following rules must also be observed:

- a) The advertiser must disclose explicitly, unequivocally and without misleading the extent of its participation in the corresponding charity act or campaign.
- b) If the advertisement refers to a solidarity organisation, the advertiser shall have its consent and respect the instructions given or conditions under which the authorisation was granted.

## E. PROTECTION OF CHILDREN AND ADOLESCENTS

**28.** Commercial communications addressed to children must be extremely careful. They must not exploit the naivety, immaturity, inexperience or natural gullibility of children or adolescents.

Commercial communications aimed at children or adolescents, or which are likely to influence them, must not contain statements or visual presentations which may harm them mentally, morally or physically.

Products of illegal sale for children and/or adolescents or inappropriate or harmful to them should not be publicised in media directed to them.

Commercial communications aimed at children and/or adolescents should not be included in media where editorial content is not suitable for them.

Special care will be taken to ensure that commercial communications do not mislead or deceive children as to the actual size, value, nature, lifespan or performance of the advertised product. If extra items (e.g. batteries) are required to use the product or to produce the results described or shown (e.g. paint) they must be explicitly pointed out. Commercial communications must not overestimate the degree of skill or the age limit of the children in order to enjoy or use the products.

## F. HEALTH PROTECTION

**29.** Commercial communications must avoid encouraging its recipients, especially children and/or adolescents, into acquiring traits or behaviours that may be harmful to their health.

## G. ADVERTISING OF CREDIT INSTITUTIONS

**30.** Companies and entities adhered to AUTOCONTROL and under the scope of Order EHA/1718/2010 of 11 June, on the regulation and control of advertising of banking services and products or Order EHA/1717/2010 of 11 June, concerning the regulation and control of advertising of investment services and products, undertake to respect in their advertising the specific rules applicable to them. In particular and respectively: (i) the principles and criteria set out in the Annex to Circular 4/2020 of 26 June of the Bank of Spain, on advertising of banking products and services or those incorporating any rule that may replace it and (ii) the principles and criteria set out in any circular that may be published by the National Securities Market Commission developing Order EHA/1717/2010 of 11 June, on the regulation and control of advertising of investment services and products.

### 31. DATA PROTECTION

The processing of personal data for advertising purposes must respect the rights and principles of personal data protection established by the regulations. By way of example, and to the extent that it complies with current regulations, the following obligations must be met:

- a) At the time of data collection, it is essential that the person be aware of the purpose for which their data will be used, and if these are going to be shared with third parties so that they, in turn, use them for advertising purposes. If obtaining the data requires prior consent, this must be freely given, specific, informed, unambiguous and express.
- b) If the data is not obtained from the data subject, the information on the use of the data must be provided at the latest within one month of receiving it. However, in the same instance, if the data is used before to communicate with that person or is communicated to other recipients, the information must be provided at the latest at the time of such communications.
- c) The data must be adequate, relevant and limited to what is necessary for the intended advertising purpose, and all reasonable measures will be taken to suppress or rectify without delay any data that is inaccurate.
- d) The data will not be kept longer than necessary for the purposes for which they were collected and to meet, where appropriate, the possible responsibilities arising from their use.
- e) The data will be protected with technical and organizational security measures appropriate to the risk, to guarantee its confidentiality, availability and integrity.
- f) When collecting data from children, information on the use that will be given to their data should be provided in a language that is easy for them to understand. In the case of children under fourteen years of age, if the use of their data is based on their consent, the consent of their parents or guardians must also be obtained and reasonable efforts will be made to verify that this consent was so obtained.
- g) When the recipient of commercial communications has expressed his desire not to receive advertising or that his data is not shared with third parties for this purpose, his request must be met within a maximum period of one month from receipt. This period may be extended by another two months if necessary due to the complexity or number of applications received.
- h) If data is transferred to any third party established in a country that does not guarantee an adequate level of protection, the necessary precautions and measures will be taken to ensure that the level of data protection is not undermined.

## 32.

**32.1.** Compliance with this Code of Conduct or the other applicable sectoral codes may be checked by the means provided in the Rules of the Jury.

**32.2.** Likewise, the governing bodies of the Association are entitled to establish a yearly plan to check that advertisements comply with this code or, alternatively, with the specific sectoral codes that apply to groups or categories of advertisements that can be grouped according to specific and homogeneous criteria.



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