



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 573

Pretoria, 22 March
Maart 2013

No. 36253

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS · INHOUD*No.**Page
No. Gazette
 No.***GENERAL NOTICE****Trade and Industry, Department of***General Notice*

224	Consumer Protection Act (68/2008): National Consumer Commission.....	3	36253
-----	----------------------------------------------------------------------	---	-------

GENERAL NOTICE

NOTICE 224 OF 2013



NATIONAL CONSUMER COMMISSION

NATIONAL CONSUMER COMMISSION

I, Mr. Ebrahim Mohamed, Acting Commissioner of the National Consumer Commission, hereby publish a proposed industry code and ombudsman scheme for public comment in terms of section 82(3)(a) of the Consumer Protection Act 68 of 2008(Act No. 68 of 2008).

The proposed industry code was received from the Advertising Standards Authority of South Africa (ASA). This general notice refers to ASA codes and an ombud scheme for alternative dispute resolution of complaints. The ASA code is very large in size and it is not financially expedient to attach it with this notice for gazetting purpose. The code may be accessed by download from the ASA website www.asasa.org.za. A limited amount of hard copies may also be made available per request from the National Consumer Commission at the address provided hereunder.

In accordance with section 82(3)(a) and (b) of the Act, the National Consumer Commission is required to publish the proposed industry code for public comment and consider any submissions made during the public comment period.

The National Consumer Commission is also required to consult with the relevant industry and relevant accredited consumer protection groups. The

Commission is empowered to revise the proposed industry and then make recommendations to the Minister of Trade and Industry for accreditation of the industry codes and the ombudsman scheme.

The general public is accordingly invited to submit written comments, quoting the following reference number (**NCC/GN/0007**) to: The Acting National Commissioner, National Consumer Commission c/o Mr. Jeremiah Modiba, 8th Bauhinia Street, Building No. 12, Berkley Office Park, Techno Park Centurion 0157 or email: comment3@thencc.org.za. The comment period closes within 21 official days of publication of this notice in the Government Gazette.



Mr. E Mohamed

Acting Commissioner: National Consumer Commission



The Advertising Standards Authority of South Africa

(Association incorporated under Section 21)

Telephone 011 781 2006 Fax 011 781 1616 Email info@asasa.org.za Website www.asasa.org.za
 Wilowview Burnside Island Office Park (Entrance off Athole) 410 Jan Smuts Avenue Craighall Park PO Box 41555 Craighall 2024
 Company Registration Number 1995/000784/08 Non-profit Registration Number 043-694-NPO

**TO: NATIONAL CONSUMER COMMISSION
 ATTENTION: MR J MODIBA**

**FROM: Mr FRED MAKGATO
 HEAD: LEGAL AND REGULATORY AFFAIRS**

DATE: 12 DECEMBER 2012

RE: APPLICATION FOR ACCREDITATION FOR:

- 1. THE ADVERTISING STANDARDS AUTHORITY OF SOUTH AFRICA; AND**
- 2. THE CODE OF ADVERTISING PRACTICE AND SPONSORSHIP CODE**

1. **Introduction**

1.1 The Consumer Protection Act 68 of 2008 (the Act) was promulgated in 2010 and became effective on the 1 April 2011.

1.2 Section 82 of the Act provides that:

“82.1 In this section –

a) “industry Code” means a code –

i) regulating the interaction between or among persons conducting business within an industry, or

ii) regulating the interaction, or providing for alternative dispute resolution, between a person contemplated in subparagraph (i) and consumer; and

b) “proposal” or “proposed industry code” includes any existing scheme that has been voluntarily established within an industry to regulate the conduct of persons conducting business within that industry...

President Judge Kate O'Regan

Directors NV Nkomo (Chairperson) J Siney-Gould (Vice Chairperson) TN Msibi (CEO) DR Terblanche I Louw P Mollwa M Gendel

6. *If –*

- a) *a proposed industry code provides for a scheme of alternative dispute resolution; and*
- b) *the Commission considers that the scheme is adequately situated and equipped to provide alternative dispute resolution services comparable to those generally provided in terms of any public regulation, the Commission, when recommending that Code to the Minister, may also recommend that the scheme be accredited as an accredited industry ombud...”*

8. A supplier must not, in the ordinary course of business, contravene and applicable industry Code.”

1.3 In compliance with the above stated section, the National Consumer Commission issued a Directive/Notice on 13 November 2012 calling for applications for accreditation of industry Codes.

1.4 In response thereto, the Advertising Standards Authority of South Africa hereby submits its detailed application. The application will be in twofold:

- The Code to be accredited as an **industry Code** as per paragraph 1.2 above (Section 82(3)); and
- The ASA, as institution, to be accredited as **“an accredited industry ombud”** as per paragraph 1.2 (Section 82 (6)) above.

PART A

APPLICATION FOR ACCREDITATION OF THE ASA AS AN ACCREDITED INDUSTRY OMBUD

2. Background Information

2.1 The ASA was established in 1968 by the Marketers, Advertisers and Media Owners to be an independent body whose mandate is to:

2.1.1 adopt and enforce a Code of Advertising Practice and Sponsorship Code.

- 2.1.2 to investigate and adjudicate on advertising complaints viz consumer vs advertiser and competitor vs competitor.
- 2.2 The establishment was more on a gentlemen's agreement.
- 2.3. However, between 1969 and 1970 the constitution (incorporating the Code) was developed and finally adopted in 1971.
- 2.4. In 1982, the ASA became the member of the European Advertising Standards Alliance (EASA). EASA is an alliance of Self-Regulatory Organisations in advertising, marketing and sponsorship commercial communications. There is almost an SRO in most of European countries as Europe recognises the importance of Self-Regulatory system and appreciates the benefits of co-regulation (Self-Regulation co-existing with Statutory Regulation).
- 2.5. The ASA has aligned the provisions of its Code with those of the International Chamber of Commerce Code of Advertising Practice and EASA's principles as contained in the Blue Book. The Blue Book is a codification of EASA's principles of Best Practices in advertising, marketing and sponsorship communication industry. EASA endorses and supports this application. Kindly be referred to a letter from EASA marked "A1".
- 2.6. In 1995, the ASA was registered as a legal entity in terms of the then Companies Act as a Not-for-profit company. The Memorandum of Association and Articles of Association were lodged with the then CIPRO. A copy of the Articles is attached hereto marked "ASA1". In terms of Article 2 of the Articles of Association, the ASA must:
- 2.6.1 Adopt and enforce a Code of Advertising Practice;
- 2.6.2 Adopt a Code of Sponsorship;
- 2.6.3 Determine whether advertising and/or sponsorship contravenes or offend against standards;
- 2.6.4 Consult with and advise appropriate bodies, i.e. government, statutory etc;
- 2.6.5 Protect consumers and ensure professionalism among advertisers.

2.7. The Articles of Association provides for an efficient corporate governance structure as follows:

2.7.1 **The members and membership (Article 3)** and classes of membership (**Article 4**). The importance of these Articles will become relevant hereunder when dealing with Funding of the Company.

2.7.2 Currently, there are 5 **classes of membership** and those are :

7.2.1 Core members (founding members);

7.2.2 Media members (media members);

7.2.3 Industry members;

7.2.4 Associate members; and

7.2.5 Consultant members.

2.7.3 **Fees, Subscription and Finances** – funding of the company comes from the following sources (**Article 5**):

2.7.3.1 Annual subscriptions;

2.7.3.2 Subsidies or voluntary contributions by Members or third parties;

2.7.3.3 Income from any services that may be provided by the company;

2.7.3.4 Donor funding;

2.7.3.5 National and Local funding grants; and

2.7.3.6 International Aid.

This aspect of the Income will be expatiated hereunder on Funding.

2.7.4. **General Meetings of the ASA – Notice of meetings – Meetings and proceedings at Annual General Meetings (Articles 8, 9 and 10)**. The General Meeting, either annual or special general meeting, is the highest authority of the organisation. Major resolutions and/or amendments are effective once determined or ratified at the annual or the special general meeting. The logic for this structure is that the ASA is owned by the industry and not by shareholders or the Board.

2.8. Officers of the Company are:

2.8.1 **President** - The office of the President is honorary in nature as the person is independent and does not perform any administrative or oversight role. The President's function is primarily to preside at the Final Appeal Committee, Sponsorship Appeal Committee and provide guidance on certain legal issues. It is a requirement that the person must be a referred judge.

2.8.2 Chief Executive Officer;

2.8.3 Chairperson and/or Vice chairperson.

2.9. **The Board** - The provisions for the composition of the Board are contained in **Article 12**, Rotation of Directors (**Article 12**); Disqualification of Directors and Committee Members (**Article 14**); and the powers of the Board (**Article 15**).

2.9.1 Article 15.3 provides that:

“15.3 The Board shall, subject to any resolution of the Members in general meetings, be vested with the general management, control and direction of the business of the Company and shall, more specially, have the power to:

15.3.1 manage the business and administer the funds of the Company;

15.3.2 appoint or dismiss any salaried employees of the Company and determine their remuneration and terms of services;

15.3.3 terminate the membership of any Member subject to the provisions of these Articles;

15.3.4 co-opt representatives from Constituent Members to serve on the Board provided that no more than 2(two) co-opted Directors may at anytime serve on the Board;

15.3.5 regulate the form of procedure at meetings;

15.3.6 delegate any of their powers to anyone or more persons or committee constituted by them as they deem fit, subject to any limitation imposed by these Articles or the Act, provided that such management and control is not inconsistent with, and is in

compliance with, any resolution passed by a general meeting. The Directors may further from time to time revoke any such delegation;

15.3.7 enforce, as far as reasonably possible, the Codes;

15.3.8 amend the Codes, provided, however, that no amendments shall be effective unless at least 21 (twenty one) days notice of the proposed amendment has been given to all Members in general meeting; and

15.3.9 nominate 3 (three) independent parties to act as a disciplinary committee, as and when required.”

2.10. In line with the provisions of Articles 15.3.6 and 15.3.7, the Board established the following Committees to enforce, the Codes:

- 2.10.1 The Directorate (**Article 9**);
- 2.10.2 Advertising Standards Committee (ASC) (**Article 21**);
- 2.10.3 Advertising Industry Tribunal (AIT) (**Article 22**);
- 2.10.4 Final Appeal Committee (FAC) (**Article 23**);
- 2.10.5 Sponsorship Dispute Resolution Committee (SDRC) (**Article 24**);
- 2.10.6 Sponsorship Appeal Committee (SAC) (**Article 25**).

2.11. The above stated Committees are comprised as follows:

2.11.1 **The Directorate**

It is comprised by the Chief Executive Officer and executive staff acting individually or collectively. The function of the Directorate is to administer the Codes on a daily basis i.e. receive, assess, investigate and adjudicate on complaints.

2.11.2 **The ASC**

- 2.11.2.1 Core members may nominate 2 (two) representatives.

- 2.11.2.2 Public bodies serving public interest may nominate 8 (eight) representatives.
- 2.11.2.3 Media Members, Industry Members and Consultant Members, as alluded in paragraph 7.2 above, may nominate 1 (one) representative each.
- 2.11.2.4 The Chairperson and Vice-Chairperson are appointed by the Board. The Chairperson shall be independent and legally qualified or deemed by the Board to be legally competent.
- 2.11.2.5 The ASC has the power to co-opt any person where necessary.

At the ASC's meeting, voting shall be by a show of hands and matters shall be decided by a majority vote of the Committee members present. Where there is a tie, the Chairperson shall have a casting vote in addition to his/her deliberative vote.

2.11.3 **The AIT**

- 2.11.3.1 The Association for Communications and Advertising (ACA) – 5 (five) nominees.
- 2.11.3.2 Marketing Association of South Africa (MASA) – 5 (five) nominees.
- 2.11.3.3 Print Media SA and National Association of Broadcasters 1 (one) nominee each.
- 2.11.3.4 The ACA and MA(SA) may nominate 2 (two) additional members to act as alternatives.
- 2.11.3.5 Media Members, Industry Members and Consultant Members may nominate 1 (one) representative each.

The Chairperson and Vice-Chairperson are appointed by the Board. The Chairperson shall be independent and legally qualified or deemed by the Board to be legally competent.

At the AIT meeting, voting is by way a show of hands and matters shall be decided by a majority vote of the Committee members present. Where there is a tie, the Chairperson shall have a casting vote in addition to his/her deliberative vote.

2.11.4 **Final Appeal Committee (FAC)**

2.11.4.1 The Chairperson (who is the President of the company).

2.11.4.2 Core members are entitled to nominate 1 (one) representative each and Public bodies of note serving the public interest may nominate 2 (two) representatives.

2.11.5 **Sponsorship Dispute Resolution Committee (SDRC)**

2.11.5.1 Core members may nominate as follows:

- ACA 3
- MA(SA) 6
- PMSA 1
- NAB 1

2.11.5.2 The Chairperson of the SDRC may co-opt representatives from the following organisations as follows:

- Sports Marketing Consultants 3
- Business & Arts South Africa 1
- Public Relations Institute of SA 1

2.11.6 **Sponsorship Appeal Committee (SAC)**

2.11.6.1 Independent Chairperson

2.11.6.2 Core members are entitled to nominate as follows:

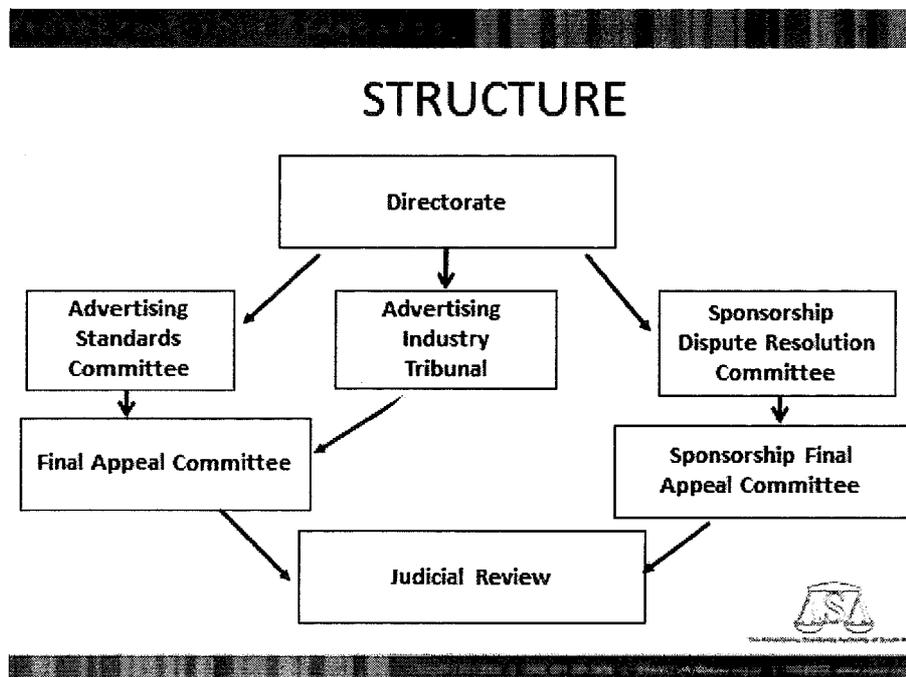
- ACA 1
- MA(SA) 2
- PMSA 1
- NAB 1

2.11.6.3 The Chairperson will co-opt representatives from the following organisations as follows:

- Sports Marketing Consultant 1
- Business & Arts South Africa 1
- Public Relations Institute of SA 1

2.11.7 The Articles of Association also deal with the winding-up of the Company (**Article 30**), Amendment to the Articles (**Article 33**) and Reserve (**Article 34**).

2.11.8 Herewith the structure of the Committees as alluded above:



3. INDEPENDENCE

3.1 The ASA is an independent self-regulatory body established and founded by the advertising and marketing industry, the purpose of which is to adjudicate on advertising complaints validly lodged either by consumer (s) against advertiser (s) or advertiser (s) against advertiser (s). In essence, the ASA is a referee on advertising complaints.

3.2 Despite the fact that the ASA is established and funded by the industry, it is independent from the industry, in that it does not rule or adjudicate in favour of industry members against consumers and non-members.

3.3 Secondly, the ASA is independent from government influence. The position clearly emphasises the importance of industry's effective self-regulatory mechanism. As such this independence makes it trustworthy and reputable.

4. **FUNDING**

4.1 It is stated in paragraph 7.3 above that the ASA is funded by the industry. The Articles of Association provides in **Article 5.4** that:

“The income of the company shall be derived from the following sources:

4.1.1 Annual subscription as set out in Articles 5.1;

4.1.2 Subscription or voluntary contributions by Members or third parties;

4.1.3 Income from any services that may be provided by the Company;

4.1.4 Donor funding

4.1.5 National and local government grants; and

4.1.6 International aid

The financial year of the company shall be a calendar year as defined in the Memorandum and all funds shall be managed in accordance with the rules adopted by the Members in general meeting.”

4.2 Practically, the income of the company comes from annual subscriptions which comprises 2% of the income; subsidies or voluntary contributions by Members which comprises 79% of the income; and from services provided by company in the form of training to entities and appeal fees paid by the competitors which comprises 17% of the income and 2% from interest earned. Kindly be referred to the budget and/or funding schedule attached hereto marked **“ASA2.”**

4.3 The ASA, being instructed by the Parliamentary Portfolio Committee in Communications to continue protecting consumer, approached the Department of Trade and Industry on several occasions for further funding and such attempts did not result in positive results from the Department.

- 4.4 Despite lack of funding from the government, the ASA continues to adjudicate on consumer complaints and same contribute ±94% of complaints received by the ASA annually. Kindly be referred to previous annual reports attached hereto marked “**ASA3.**”
- 4.5 Core members (NAB, MASA, PMSA and ACA) provides voluntary or subsidised funding, whereas other members provides annual subscriptions to ASA’s funding.
- 4.6 **Sustainability of Funding** - The advertising and marketing industry has a levy collection system to fund industry bodies viz the ASA and SAARF. Media houses charge and collect a levy on all advertising placed with them and same is paid over to an administrative entity (MAMCA) whose mandate is to collect the levy from the media house and pay it over to the ASA and SAARF on monthly basis.

Contribution to the ASA’s funding does not come from one member, and therefore even if one member resigns the ASA’s funding will not be affected.

5. **MEMBERSHIP**

- 5.1 We dealt with classes of membership in paragraph 2.7.2 above and we have indicated that the ASA was established in 1968 by the advertising and marketing industry comprised of marketers, agencies and media. These are the three pillars of the industry strength.
- 5.2 There are 4 (four) core members and those are:
- **Association for Communications and advertising (ACA)**. Attached herewith a list of their membership marked “**ASA4**”. The ACA represent the majority of advertising agencies, if not all.
 - **Marketing Association of South Africa (MA(SA))**. Attached hereto is a list of their membership marked “**ASA5**”. MA (SA) represent the majority of marketers in South Africa.
 - **Print Media of South Africa (PMSA)**. Print Media comprises of three associations, and those are:
 - ❖ Newspaper Association of South Africa (NASA);
 - ❖ Magazine Publishers Association (MPASA); and
 - ❖ Association of Independent Publishers (AIP).

NASA comprises of 269 members and those are: Urban Daily Newspaper, Urban Weekly Newspapers, Saturday and Sunday Editions, National Weekly Newspapers and Community Newspaper.

MPASA comprises of 461 members and **AIP** comprises of 230 regional newspapers.

The list of PMSA's membership is attached hereto marked "**ASA6**".

- **The National Association of Broadcasters (NAB)**. All commercial television houses and all major commercial radio stations are members. The membership includes an industry community television house and community radio stations, and also technical stations. A list of NAB's membership is attached hereto marked "**ASA7**". NAB also has an association member as per the attached list.

5.3 The ASA has 15 (Fifteen) Industry members who joined voluntarily and those are:

- Association for Savings & Investment SA (ASISA);
- Association of South African Travel Agents (ASATA);
- Cosmetic Toiletry & Fragrance Association (CTFA);
- Direct Marketing Association of South Africa (DMSA);
- Furniture Traders Association c/o Consumer Goods Council of South Africa (CGCSA);
- Health Products Association (HPA);
- Hospital Association (HASA);
- Industry Association for Responsible Alcohol Use (ARA);
- Pet Food Industry Association of Southern Africa;(PFI);
- SA Optometric Association of Southern Africa (SAOA);
- Vacation Ownership Association of Southern Africa (VOASA)
- Retail Motor Industry Organisation (RMI);
- Cinemark (Sterkinekor);
- Printing Industry Federation (PIF); and
- Out of Home Media (OHMSA) (its membership still to be decided on)

The list of some of their membership is attached hereto marked "**ASA8**".

5.4 However, the following members have not submitted their list in support of this application as they still have issues that they need to address:

- Health Products Association of SA (HPASA);
- Out of Home Media of SA (OHMSA);
- Furniture Traders Association c/o Consumer Goods Council of SA (CGCSA);
- Cosmetic Toiletry & Fragrance Association (CTFA) – provided the number of their membership and the percentage it represent in the industry;
- Sterkinekor;
- SA Optometric Association; and
- Pet Food Industry Association of Southern Africa.

5.5 Based on the above, we reserve our right to supplement this application by submitting lists or information of the members.

6. **SELF-REGULATION SYSTEM RECOGNITION**

- 6.1 Recognising the importance and contribution of the ASA, Parliamentary Portfolio Committee on Communications invited the ASA to Parliament in 2002 to account for its role in the society with regard to the protection of consumers. Kindly see invite from the portfolio Committee attached hereto marked "**PC1**".
- 6.2 The said Committee invited the ASA again in November 2011 and January 2012 respectively.
- 6.3 The ASA has been interacting with the Department of Trade and Industry on various issues and occasions. The Department even awarded the ASA with a certificate. A copy of the said Certificate is attached hereto marked "**ASA9**".
- 6.4 As indicated previously herein, the ASA won "Best Practice" awards in Europe. Copies of the said awards are attached hereto marked "**ASA10 and ASA11**".
- 6.5 The importance and the role of the ASA in protecting consumers is recognised in Section 51(1) of the Electronic Communications Act 36 of

2005 wherein it provides that: **“All Broadcasting Service Licensees must adhere to the Code of Advertising Practice (in this section referred to as the Code) as from time to time determined and administered by the Advertising Standards Authority of South Africa”**.

6.6. The role and jurisdiction of the ASA is also recognised in the High Court. Kindly be referred to two judgments attached hereto marked **“ASA12”**.

6.7 The President’s Council wrote to the ASA in November 1990 expressing appreciation for the work done by the ASA. A copy of the letter is attached hereto marked **“ASA13”**.

7. CONCLUSION

7.1 The ASA was established in 1968 to protect consumers and ensure professionalism among advertisers by enforcing the standards contained in the Code.

7.2 Articles of Association provides for establishment of various structures or committee for the ASA to fulfil its mandate.

7.3 The ASA’s funding, as provided from reliable sources, is sustainable.

7.4 The ASA’s membership covers a wide range of agencies, marketers and media and this makes implementation of the system effective.

7.5 The ASA is therefore the best institution to be accredited as an industry ombud in the advertising and marketing industry.

7.6 The ASA is a member of the European Advertising Standards Alliance.

PART B

APPLICATION FOR ACCREDITATION OF THE ASA’S CODE OF ADVERTISING PRACTICE AND SPONSORSHIP CODE

1. Establishment of the ASA, the Constitution and the Code

- 1.1 The ASA was established in 1968. The Minutes of the Sub-Committee recorded in its minutes regarding the meeting that was held on the 19 November 1968. At that time the reference used was “meeting of advertising interest.”
- 1.2 The 26 June 1969 a further meeting of advertising interest of which consideration was given to the establishment of an advertising Association in South Africa, was held. A copy of the minutes of the meeting is attached hereto marked “**ASA14**”.
- 1.3 A Constitution and the initial Code were enacted and adopted. The first executive committee (Currently named the Board of Directors) met and its minutes were signed up on 3 August 1970. A copy of the minutes is attached hereto marked “**ASA15**”.
- 1.4 It was agreed in the above stated meeting that the ASA must replace the adopted Code with that of the International Code of Advertising Practice of the International Chamber of Commerce.
- 1.5 It was noted in page 3 of the minutes dated 18 November 1971 that the ASA must embark on a publicity campaign.
- 1.6 In the Special Meeting of the Executive Committee held on 8 February 1971, it was resolved that the name of the organisation must change from “**Advertising Standards Association**” to “**Advertising Standards Authority**” and that there must be a comprehensive Code to be adopted and not that of the ICC or the British Code. **It was stressed in the meeting that a Code dealing with South African circumstances should be adopted.** A copy of pages 1-2 of the said minutes is attached hereto marked “**ASA16**”.
- 1.7 With regards to the amendments to the Code, it was decided that the ASA may at any time add to the sections or sub-sections of this Code and such additions shall become part of the Code immediately after notification to all members.
- 1.8 It was recorded in the initial draft of the Code that the purpose of the Code is to recognise that advertising is a service to the public and as such should be informative, factual, honest, decent and its content should not violate any of the laws of the Country.
- 1.9 It stated in the General Code of Standards that:

i) **“Acceptable and Unacceptable Advertising**

(a) All advertising should aim at informing the consumer and helping him to buy more intelligently on the merits of the product or service advertised.

(b) Tell the truth, avoid mis-statement of fact and avoid deception through implication or omission.”

1.10 A formal Code was adopted at the special annual general meeting in December 1971. A detailed copy of the Code is attached hereto marked “**ASA17.**”

2. **THE CURRENT CODE**

2.1 The Code, developed and adopted in 1971 based on “Best Practice” from different Codes, continued to evolve up to date. Kindly see the chairman’s report of 1997 attached hereto marked “**ASA18**”.

2.1.1 The principles adopted from the founding Code continued to exist up to date and those are:

2.1.2 The Board of Directors may **affect amendments to the Code** after the suggested **amendments** are **ratified at a general meeting**, either annual or special general meeting.

2.1.3 The **general members must approve** any suggested **amendments**.

2.1.4 **Code amendments are necessary** due to social or societal changes.

2.2 **Code Amendments or Review**

2.2.1 The Constitution and the Code formed basic documents during the formation of the ASA. However, the Constitution was replaced by the **Memorandum and Articles of Incorporation** as the ASA was registered as a Section 21 Company, (Non-profit Company) in terms of the Companies Act as amended from time to time.

2.2.2 Article 20 of the Articles of Associations provides that:

“20.1 The Board may create the Code of Advertising Practice and the Sponsorship Code of Practise, and amend it from time to time. Amendments become effective once approved by the Board.

20.2 The Board may delegate its power to amend the Code to the Code Review Committee. This Committee will be vested with powers to recommend code amendments to the Members in general meeting who will approve such changes.

20.3 Invitation for proposals to amend the Codes should not only be extended to Members, but to anyone likely to be affected. (our emphasis).

20.4 The Core Members may nominate 2 (two) representatives each to serve on the Code Review Committee, subject to ratification by the Board. Such nominations will take place at the Annual General Meeting. The Core members’ representation will run for 1 (one) year after the date of ratification by the Board, and not from the date of their initial information.

20.5 The Code Review Committee shall be entitled to co-opt any interest party.

20.6 The Chairperson and Vice-Chairperson of the Board are also members of this committee.

20.7 The Chairperson of the Board, and in his absence the Vice Chairperson, shall preside as the Chairperson of this Committee.

20.8 If both the Chairperson and the Vice are unavailable for a meeting of the Code Review Committee, the members of the Committee shall elect a member of the Committee as a Chairperson”.

2.2.3 In implementing the provision of Article 20, the ASA has a Code Review Committee and it is constituted accordingly.

- 2.2.3.1 The Code Review process is undertaken annually and at times depending on the need and urgency for the amendments.
- 2.2.3.2 The Committee normally issues a Public Notice and a Membership Notice inviting comments or suggestions or proposed amendments to be submitted to the ASA. The Notices are usually issued in the beginning of November each year and affords the public and members a period of 5 (five) months to forward their comments.
- 2.2.3.3 The suggested amendments will be evaluated to determine their necessity, validity, relevance and legality. Once the criteria is satisfied, a Code Review package is prepared and delivered to Committee Members in preparation for a meeting to be convened. Should the need arises, a proposer will be invited to appear before the committee to make oral representation and provide clarity on certain issues.
- 2.2.3.4 The Code Review Committee will compile a recommendation report for the annual general meeting. Once the AGM accepts the recommendations of the Code Review Committee, amendments will be effected in a printed format by the publishers.
- 2.2.3.5 The annual turn-around time in Code Amendments is a result of the nature of the Advertising and Marketing Industry in that it is very fast paced and therefore new situations must be dealt with swiftly in order to avoid any damage that might be caused and the amendments have to be approved at the general meeting. The Annual Code Review process is very effective and must therefore be preserved.
- 2.2.3.6 Being aware about the Mandatory Statutory Consultative Process to promulgate the Code in terms Section 82 of the CPA, and in light of the above outlaid Code Review Process and its dynamics, we hereby request that the ASA be exempted from undergoing the mandatory statutory consultation process in relation to future amendments of the

Code, as same has the potential of defeating the urgency of amending the Code. We therefore request that the *status quo* remains.

2.2.3.7 The **Preface** of the Code provides, as in the initial Code of 1971, in **Clause 11** that:

“Advertising is a service to the public and, as such, should be informative, factual, honest, decent and its content should not violate any of the laws of the country. All entities bound by the Code shall neither prepare nor accept any advertising which conflicts with the Code and shall withdraw any advertising which has subsequently been deemed to be unacceptable by the ASA Directorate, Advertising Standards Committee, Advertising Industry Tribunal or Appeal Committee.”

2.2.3.8 In its endeavour to protect consumers, it provided in **Clause 12** of the Preface that:

“The Code has two main purposes, namely to protect the consumer and to ensure professionalism among advertisers. The Code lays down criteria for professional conduct, while at the same time informing the public of the self-imposed limitations accepted by those using or working in advertising. The Code forms the basis for arbitration where there is a conflict within the industry, or between advertisers and the general public.”

Further in **Clause 14** of the said Preface, it is provided that:

“ASA Procedures are designed to assist any person who wishes to complain about an advertisement (advertisers, consumers, competitors, agencies, industry bodies etc.) Adherence to those procedures will ensure effective and timeous resolution of complaints. The procedures are designed to grant all concerned a fair and equal opportunity to be heard without fear of bias. The Procedural Guide to the Code forms an integral part of the Code.”

- 2.2.3.9 Consumers or public organisations representing consumer interest lodge their complaints for free. Even appeals to the Advertising Standards Committee and Advertising Industry Tribunal (which appeal cost approximately **R74000, 00**) are processed and adjudicated for free; whereas appeals to the Final Appeal Committee cost approximately **R84 000, 00**.
- 2.2.3.10 The procedure for consumers to complain is very easy and the requirements are simple. The complaints can be faxed, emailed or posted and the complainant must state his/her full names, ID number and the grounds of complaint.
- 2.2.3.11 Competitors pay a filing fee to lodge their complaints and appeals up to Final Appeal Committee.
- 2.2.3.12 The Sponsorship Code was introduced in 1999 and same has not been amended since as the principles of sponsorship remain the same. A copy is attached hereto marked "**ASA19**".
- 2.2.3.13 Both Codes are endorsed by ASA members as per paragraphs 2.7.2, 5.2 and 5.3 above, which indicates that the ASA Code is applicable to the entire advertising and marketing industry, with the exception of the Pharmaceutical Industry, which has its own Code and structure in terms of the Medicines Act and/or the Medicines and Related Substances Act.

3. **PUBLIC AWARENESS CAMPAIGNS**

The ASA has the following projects in place for public awareness purpose:

- 3.1 ASA's representatives conduct training programmes for public schools, colleges and universities around the country;
- 3.2 Publication of ASA's Rulings and the Code on the ASA's website;

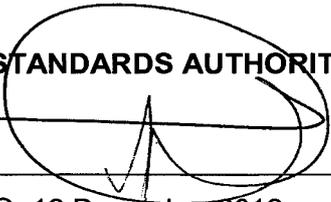
- 3.3 The ASA staff members host a radio programme, ASA Today, on Radio Today every Wednesday flighted at 18h30.
- 3.4 The ASA conduct training on the implantation of the Code to ASA's members as per request. An inviting member pays for this service.
- 3.5 The ASA publish and distribute annual reports, corporate brochures, corporate videos and pamphlets with illustrations. Kindly be referred to documents attached hereto marked "**ASA 20**"
- 3.6 There are also articles in the media about complaints and rulings of the ASA.

4. **CONCLUSION**

- 4.1 The Code is endorsed by the entire advertising and marketing industry;
- 4.2 The Code is amended annually in terms of the Articles 20 of the Articles of Association to meet changing societal demands;
- 4.3 Amendments to the Code are approved at the general meeting.
- 4.4 Consumers and public organisations representing consumer interest complain and appeal for free.
- 4.5 The self-regulatory system as implemented by the ASA through the Code is highly effective and therefore request that the Code be accredited as industry Code in the advertising and marketing industry.

KIND REGARDS,

ADVERTISING STANDARDS AUTHORITY OF SOUTH AFRICA


FRED MAKGATO: 12 December 2012

HEAD: LEGAL AND REGULAOTRY AFFAIRS

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531