

NOTES ON THE CODE OF ETHICS AND SELF-REGULATION IN ADVERTISING OF THE ADVERTISING SELF-
REGULATION COUNCIL (CONARP)

By Marcelo E. Gallo

Advertising Self-Regulation

The advertising self-regulation is a system adopted by the advertising industry with the purpose of preserving professional ethics and the practice of a responsible advertising, for the protection of freedom of trade and of the consumers' rights, that allows certain regulation of advertising without governmental intervention.

Aside from some disadvantages that may be mentioned, such as the lack of "absolute" authority of the ethics tribunals, in my opinion, the advertising self-regulation has several advantages. Among them, it encourages competition within an ethical framework, which tends to protect consumers and substantially reduces both, the legal costs associated to claims that may arise such as the terms for the resolution of disputes.

The benefits generated by self-regulation are, probably, those that have achieved its use in a large number of countries.

In Argentina, the Advertising Self-Regulation Council (CONARP), as reflected in its Website, is a non-for-profit organization that encourages the advertising self-regulation practice by advertisers, advertising and communication agencies, the media and other professionals of the industry, to encourage fair business practices and responsible advertising.

The entity was founded in November 2001, as per initiative of the then Argentine Association of Advertising Agencies (*Asociación Argentina de Agencias de Publicidad*) (at present the Argentine Association of Advertising) (*Asociación Argentina de Publicidad -AAP-*) and the Argentine Trade Association of Advertisers (*Cámara Argentina de Anunciantes -CAA-*).¹

The AAP and the CAA drafted the Code of Ethics and Self-Regulation in Advertising to specify the principles, values and ethical regulations of the profession, aside from the legal framework and organized the CONARP to seek its compliance.

The mission of the CONARP is to safeguard the self-regulation practice to defend ethics and the responsible exercise of freedom of trade favoring the responsible advertising as an integral practice that makes-up its social responsibility.²

¹ In Argentina, the direct predecessors of the CONARP are the Intercompany Commission of Advertising Self-Regulation (*Comisión Intersocietaria de Autorregulación Publicitaria (CIAP)*), organized by the same entities in 1976, which stopped acting in 1992, and was replaced by the respective Ethics Commissions of the AAP and of the CAA, up to the formation of the CONARP.

² As evidenced by the Preamble of the Code of Ethics and Advertising Self-Regulation, the purposes of the CONARP, are the following: "1. Contribute to better understand the duties of advertising in our lifestyle system, hence exercising social responsibility incumbent upon us as businessmen related to communication.

The Code of Ethics and Advertising Self-Regulation (the “Code”), specifies the principles, values and regulations that make-up the ethical framework of the profession, aside from the applicable legal framework and the CONARP seeks its compliance.

Code of Ethics and Advertising Self-Regulation

The Code, in the general and special provisions, forbids misleading, comparative, denigrating, abusive, subliminal, discriminatory and dangerous advertising, and safeguards the proper compliance with the duty of information and the suitable use of personal data.

Likewise, the ethical regulation sets forth some principles related to certain essential values of the company, with the defense of education and culture and with the quality of life and environment, which advocates that advertising must not incur in violations.

It is composed by a preamble and five sections, titled: I. STATEMENT OF PRINCIPLES, II. GENERAL PROVISIONS, III. SPECIAL PROVISIONS, IV. EXTENTS AND INTERPRETATION REGULATIONS and V. RULES OF PROCEDURE, which I will try to summarize in this work.

I. STATEMENT OF PRINCIPLES

In the STATEMENT OF PRINCIPLES, the Code states that **advertising must observe the principles of moral and good customs, as well as the legal regulations in force.**³

Consequently, advertising **must be honest, truthful and trustworthy** (Code, section 2nd).⁴

2. Tend towards conferring dignity on advertising as a professional activity as a positive and determining factor of the community development.

3. Contribute to good understanding and cooperation among advertisers, advertising and communication agencies and media.

4. Safeguard the proper abidance by the ethical regulations and the grounds of good service that advertising owes to consumer and the whole community.

5. Intervene in conflicts that may arise within the activity to act with equity for the defense of the principles supported herein.

6. Cooperate with the authorities in the legislation directly or indirectly related to advertising.

7. Contribute to the formation and professional upgrading of the activity through the associated entities and cooperating with schools and universities that teach this kind of studies.”

³ Especially and among others, the Consumer’s Defense Act, the Antitrust Act, the Fair Commercial Practices Act; the National Act to Prevent Alcoholism, the Trademarks Act, the Personal Data Protection Act, the Integral Protection of Women Act, the Audiovisual Communication Service Act and the Argentine Food Code (Code, section 1st).

⁴ Section 3rd of the Code – last section of part I. – sets forth that advertisers, advertising agencies, advertising professionals and the media officers must: Undertake the social responsibility that implies the broadcast of its messages. Be aware that the observance of ethical principles and abidance by the regulations that preserve them constitute the ground that advertising owes to the public, to themselves and to the community in general. Use their efforts to win the trust of society as regards the products and services that they advertise, in the advertisements and in the exercise of the advertising activity. To take a stand against unfair competition practices. Not to favor the spreading or continuity of every message that has been considered contrary to the letter and spirit of the Code.

II. GENERAL PROVISIONS

In the GENERAL PROVISIONS, the regulation of section 4th provides, **for the defense of the essential values of society**, that advertising must avoid all matters that damages the concepts and essential values of society.⁵

Consequently, the Code provides that advertising must not contain expressions or visual or auditory representations, or improper references that:

1. Offend moral or good customs prevailing in society in the communities that make it up.
2. Offend the homeland, nations, their symbols, national heroes and authorities.
3. Offend in any manner whatsoever institutions, whatever their gender or composition is.
4. Offend religious feelings.
5. Encourage illegal activities and disregard for the law and legally constituted authorities.
6. Encourage any kind of discrimination.

Section 6th provides that, in addition, advertising must avoid immoral⁶, gruesome⁷ and rude issues.⁸

For the defense of education and culture, section 7th sets forth that advertising must use language properly, with decorum and good taste.

Section 8th, **for the defense of intimacy and dignity of persons and family**, sets forth that advertising must avoid every expression, attitude or suggestion that harms the intimacy of persons or that may cause mortification to its family group.⁹

For the defense of loyalty, section 10th provides that advertising must avoid the unjustified or denigratory use of the name, institutional symbols or trademarks of products or services of third parties. Also, what implies discredit or disparagement to competition and what constitutes plagiarism or a copy or imitation of logotypes, isotypes, texts, illustrations, images or audios or a national or international reason created by another advertiser or by an agency, in whole or in some of its parts, or that may create confusion in the consumer's mind with competing trademarks or products.

For the defense of truthfulness, advertising must be truthful and avoid deceit or exaggeration that goes against the public's good faith, abuses the public's trust or exploits the lack of culture, knowledge or experience of addressees (Code, section 11th).¹⁰

⁵ For example, among others, according to the Code: a) persons, b) family, c) homeland, its symbols and national heroes, d) the legal regulations in force, e) authorities, f) institutions, g) religions, h) cultural heritage and traditions, and i) the work.

⁶ Everything containing indecent, obscene or thorny expressions, attitudes or suggestions.

⁷ Everything containing or causing expressions or attitudes of violence, cruelty, anxiety, fear, morbidity or superstition.

⁸ Everything meaning a bad taste statement, in any manner whatsoever, and every unpleasant situation, image or expression.

⁹ For the sake of it, it provides that messages involving real persons, either public or private, must obtain their previous consent and express authorization and that advertising must respect the memory of deceased persons (Code, section 9th).

¹⁰ No message may contain descriptions, images or texts that contribute to confuse the public or make it believe that the advertised product has an effect that is not within its possibilities, unless evident exaggerations are used to amuse or attract attention.

No message may suggest that its content is supported by the media that spreads it or that it is a part of its editorial material, and it should be clearly specified that it is an advertising space. The identity of advertiser must be evident.¹¹

For the defense of the quality of life and environment, advertising must be environmentally friendly.¹²

In advertising and other forms of business communication, like labels and containers of products, that bear **environmental statements** the current characteristics of the product should be mentioned as well as their impact on environment, duly verified through technical and scientific methods.¹³

III. SPECIAL PROVISIONS

No message may include techniques inducing its **subliminal** perception by the recipient when recipient cannot recognize that it is an ad (Section 15th).

The messages must not contain statements or presentations that directly or by implication, omission, ambiguity, minimization or exaggerations, may **mislead** the recipient (Section 16th).¹⁴

No message may present the product as **gratuitous** if it is not or contains prices indications that lead to wrong interpretations.¹⁵

Advertising of offers must unequivocally specify what must buyers do to obtain the acknowledgement of the promises made by salesmen.

The Code regulates **comparative advertising** in its sections 19th and 20th.

Accordingly, it sets forth that the messages containing comparison of prices or other characteristics must respect intellectual and industrial property rights, the purpose thereof must be to inform consumer on the verifiable advantages of the advertised product, refer to comparable products and quality, be precise and

¹¹ This does not apply to the communications under the modality of “teaser campaign”, which purpose is to attract attention on future pieces, provided that at the end of the campaign the name of advertiser is informed.

¹² It shall not generate or encourage: a) Material and visual pollution of environment. b) Alteration of the natural and urban landscapes. c) Obstruction of the sight of public places, tourist’s attractions and monuments. d) Excess of noise that threaten the persons’ health and welfare (Code, section 14th).

¹³ Ambiguity must be avoided, precisely explaining the real extents thereof. The statements must be clear and legible. The lifecycle of the mentioned product shall be clearly specified, with the relevant justification. The statements referred to the absence or decrease of a particular ingredient may be used only if the level of said substance does not exceed the acknowledged pollution limits.

¹⁴ The regulation of section 16th is specifically referred to error with respect to: 1. The characteristics of the mentioned product, as well as its nature, origin, manufacturing, composition, quantity, usefulness, qualities or properties, its value or usage. 2. Purchase or lease conditions, discounts, bonus discounts, facilities, quantity and number of installments and total prices that should be effectively paid. 3. Delivery, change, devolution, repair and maintenance. 4. Warranty conditions, manufacturer, distributor, copyright and industrial property rights, patents, registered trademarks, designs and models, trade names. 5. Official acknowledgements or approvals and distinctions such as prizes, medals and diplomas.

¹⁵ In cases involving payment of expenses for communications, freight or delivery, or taxes, said items must be clearly informed.

reflect the truth, under the same conditions and must be objectively presented so that comparison may be verifiable.¹⁶

In the case of **comparative promotions** (Section 30th) in which the benefits of the product or service are highlighted as regards another competitor, including those that intend to show performance advantages or distinctive functional benefits, the compliance with the applicable local and international regulations and/or the scientific-technical procedure that allow the verification of their authenticity and the statistical-scientific relevance of their conclusions shall be proved.¹⁷

As regards **testimonial advertising**, sections 22nd to 26th forbid incurring in false declarations.¹⁸

The use of **inquiries** in advertising appears in section 21st, that provides that when said inquiries are used, they must be made in a methodical, representative and verifiable manner, and the content of the message must be supported by said inquiries.

Advertising using **investigations** must be supported by identifiable, verifiable and available sources (Section 28th).

In cases where **scientific information**, is produced, the same must be clear and submitted in comprehensible terms to the recipient of the message (Section 29th).

When advertising is referred to **professional support, warranties and certifications** the messages must not indicate or suggest that the product is supported or recommended by professionals or institutions or public or private entities, without the relevant previous authorization (Section 27th).

The use of models, **uniforms or outfits** that are typical of a profession, trade or occupation, must not mislead the public and must be endorsed by a professional thereof, sticking to the ethical regulations of said activity.

¹⁶ And provides that comparative messages **must not**: 1. Create confusion with the comparison. 2. Ridicule or denigrate the other product. 3. Deform the image of other products. 4. Threaten the good name or prestige of third parties. 5. Intend to create rejection against the products of competitors or their users. 6. Use exaggerations or dramatizations that may confuse consumer on the specific result of comparative demonstration.

¹⁷ Likewise, the promotion mechanics shall guarantee that the demonstration may be reproduced in equal conditions and with the same elements and products used in each opportunity when the demonstration to the public is made. When to such end comparative demonstrations are carried out in points of sale or public places and the product of competition is used, the demonstration shall be made under such conditions to scientifically replicate the relevant laboratory tests, and they must be carried out by means of specialized technical staff and have a protocol to guarantee accuracy, capacity of being replicable and reliability of the demonstration and the relevant performance so as not to mislead or deceive the qualities or performance of one or the other product.

¹⁸ Messages may include only real testimonies or recommendations, related to the experiences of those who offer their testimonies or of those personified by the persons who offer the testimony, and all the cases must be duly verifiable.

The testimonies and opinions obtained from the consumers that appear in the message must be sincere and verifiable and must not confuse the recipients of the message. In such events, the message must not contain any reference at all to a person, trademark, firm or institution without the due consent thereof.

Personifications or dubbings must be expressly authorized by the persons who have been personified or their voices dubbed.

Advertising that **proves the practical use** of a product must do it with truthfulness and in a verifiable manner under equal conditions with those reflected in the message, refraining from showing qualities that the product does not have and avoiding the creation of expectations that it cannot satisfy.

Promotional offers, prizes and contests, must comply with the legal regulations in force.

Special categories

The Code, in its section 32nd, includes as Annexes the advertising self-regulation codes of the Argentine Trade Association of Over-the-Counter Medicines (*Cámara Argentina de Medicamentos de Venta Libre*), the Trade Association of Liquor Distillers (*Cámara de Destiladores Licoristas*), the Trade Association of the Tobacco Industry (*Cámara de la Industria del Tabaco*) and the Coordinator of the Food Industry (*COPAL*), granting to them the nature of supplemental regulations on the respective products.

Direct Marketing. The performance of any obligation generated by a direct marketing activity must be immediate and efficient. When an offer is made, the commitments undertaken by the responsible party, the intermediary and consumer must be clear for consumer, within the conditions specified at the time of the offer.¹⁹

Sponsorships. Sponsorships must be identified as such. Sponsors and sponsored parties, as well as each party involved, must avoid the imitation of reasons used by other sponsors that may generate confusion or deceit in the public, even in the case of trademarks, companies or events that are not competitors. **It must not look like it is the sponsor** of an activity or of its media coverage **if it is not the official sponsor.**²⁰

Advertising addressed to children and teenagers is considered by the Code in its sections 33rd to 38th.

Section 33rd provides, as a general principle, that said advertising must be especially careful with the children's credibility and the lack of experience of youngsters and forbids advertisings that show them in dangerous situations.²¹

¹⁹ In addition, the tactics of excessive pressure that may be interpreted as harassing should be avoided. As regards advertising or promotional materials delivered at home through the post or promoters or salesmen –including the informative material or sales aid or promotional material –, shall comply with the provisions of the Code, provided that it reaches promoters, salesmen, distributors and consumers. Advertisers that promote sales through these modalities must make available for the public samples of the advertised goods.

²⁰ In the event of programming content sponsoring, the sponsor's name and trademark shall be identified, and the necessary measures shall be taken to ensure that there is no confusion between the sponsorship of an activity and the sponsorship of its broadcasting, especially when different sponsors are involved.

²¹ And that, consequently, the following shall be made:

1. Safeguard the content of messages that are included in programs addressed, preceding or following them and those included in publications directed to the same.
2. Avoid the visual presentation of dangerous practices or situations, that may induce children and teenagers to emulate them risking their safety.
3. Avoid showing to children the extent and use of objects that per se are associated to dangers, such as weapons, sharp elements, medicines, toxic, caustic or flammable substances.
4. Avoid showing to small children the operation of electrical or gas devices or lighting a fire without the supervision of an adult.
5. Avoid showing children driving adults' vehicles or carrying out actions that imply the risk of dangers or violate safety rules.

Section 34th, emphasizes that advertising addressed to children or teenagers must avoid inducing them to carry out acts that are physically, mentally or morally damaging, it must neither take advantage of the natural credibility of children nor of the youngsters' inexperience, it must not distort their sense of loyalty, it must not show them in improper places or in risky or dangerous situations and must not contain declarations or visual presentations that may lead them to the same. No unsuitable products must be offered to them either.

No message of products for children or teenagers must: 1. Undermine their social values, by suggesting that their use or holding will provide them a physical, social or psychological advantage on other children or youngsters. 2. Undermine the authority, responsibility, judgment or criteria of parents and teachers.²² 3. Contain mandatory or compelling phrases that urge the children or youngsters to obtain the product by any means.

No message addressed to underage users must create anxiety or suggest that their parents or relatives fail to comply with their duties if they do not satisfy them and must not suggest that if a child does not buy the advertised product it means for him a minimization and will be considered with less respect or shall be subject to teasing or other mockery (Code, sections 35th and 36th).

Advertising of toys must comply with certain requirements to avoid the children's a disappointment.²³

Digital Means

Email, the Internet, cellular phones and other alternative means.

When the purpose of an email is advertising, the name of the matter and the context must be informed. The names of headings must not be misleading and the commercial nature of the communication must be explicit.

Consumers must be informed beforehand on the steps to be followed in a purchase. If personal data is requested to them, they must have the chance to review the accuracy of the data offered before completing the commercial action. When applicable, the person in charge of the commercial communication must answer by accepting or rejecting the purchase order.

Electronic messages with advertising purposes which have not been requested may be sent only when there is true evidence that the recipient of the communication may be interested in the offer. The communications

6. Avoid showing small children committing illegal acts or violating ordinances or regulations.

²² Commercial communication inviting minors to get in touch with the salesmen must warn that it is necessary to have the previous consent of their parents or responsible adult, and must inform on the cost of the communication, if applicable. Personal information on minors can be obtained only by third parties if the delivery of said information is previously authorized by his/her parents, in compliance with the privacy laws in force. On the other hand, the parents or legal guardians must participate and supervise the activities of minors, especially as regards interactive communications.

²³ a) If the price is specified what is offered in exchange must be informed. b) The size of the toy must be specified in a sufficiently illustrative manner. c) When a message shows the results that a child may obtain through his/her manual skills, it must be reasonably reachable for most of the children included in the relevant segment of age. Likewise, it shall offer all the information on possible additional purchases, like accessories or individual elements within a collection or series, necessary to obtain the final result shown or described.

sent through electronic means must include a simple and transparent mechanism allowing consumer to express his/her desire not to receive future communications.

Forums and social networks

Advertising communications in forums and social networks are appropriate only when their members have informed their previous agreement for the reception of messages of such characteristics.

Segmentation of audiences

Due to the global extent of networks and the variety and diversity of public, the parties responsible of the advertising communication must be consistent with the principles of social responsibility and must take the necessary care so as not to cause possible offenses.²⁴

Viral marketing

Advertising must avoid every unfair practice that attacks the good name and reputation of persons, entities or trademarks, urging public opinion, not to believe malicious versions hiding behind anonymity, or repeating said versions easing their spreading.

Media professionals must fit the contents of their messages within responsible marketing and advertising parameters, since the messages reach minors and persons that, as per their degree of maturity, education and cultural level, may lack the capacity of sufficient discernment for its proper interpretation.

IV. EXTENTS AND INTERPRETATION REGULATIONS

The principles and regulations of the Code **apply** to commercial messages, whatever the media used for its spreading is, either of products or services or institutional messages, produced in the country or abroad, issued as traditional or not traditional advertising (Section 40th).²⁵

The **responsibility** of their observance falls in: a) The advertiser and the advertising agency that have created and placed the message. b) The social communication media that spreads it. c) Any person that has taken part in the planning, creation or publication thereof.

The principles and regulations that compose the Code are not restrictive and the basic principles and their spirit shall be borne in mind.

The annexes to be included by the CONARP shall be subordinated to the principles and regulations of the Code and its spirit. In case of **conflict between the regulations of the Code and the annexes** the application

²⁴ Advertising communications of products that are inappropriate for minors must be clearly identified as such in the message matter.

²⁵ Due to the different characteristics of the different media, care must be taken that all the versions of an advertising message to be spread through different means fit into the regulatory framework contemplated in the Code.

of what the CONARP deems more adequate to safeguard advertising ethics and the responsible exercise of freedom of trade is exclusive of the CONARP.

V. RULES OF PROCEDURE

The intervention of the CONARP in a conflict implies the acknowledgement of its authority, the commitment to the principles of the Code and the acknowledgement of its regulations, as well as the commitment to comply with its resolutions and that **the election of the CONARP for the conflict resolution shall be previous to any other performance of state agencies.**

When there exists a previous remedy of the applicant requiring the intervention of state, administrative or judicial agencies, it shall be interpreted that the requiring party has preferred to choose said means and the CONARP **shall refrain from intervening.** Likewise, in case of an application filed in the first place before the CONARP if there is a previous remedy filed by the other party before said agencies, the CONARP shall refrain from intervening.

When there exists a request of intervention by the CONARP, **if the parties agree upon a solution of the case,** the CONARP may interrupt the treatment thereof, refraining from issuing the resolution, unless it deems it advisable so as not to leave a case unpunished which otherwise would have been observed, and may inform the parties its thought and recommendations to avoid the repetition thereof.

Likewise, **the CONARP may increase the charges** when from the analysis of a case there arise other violations to the Code aside from the one objected to by the requesting party.

The task of the CONARP will be limited to things related to the advertising content and its relation with the principles of the Code, without considering aspects not related to the commercial communication.

I will not analyze in detail the rules of procedure of the Code. But it is important to highlight that, **if the Council determines that the content of an advertising message contradicts the principles of the Code,** it requests to advertiser and the responsible agency the modification of the analyzed communication, its discontinuity or spreading after the hours suitable for all ages, as applicable, within forty-four (24) following working hours.²⁶

If the responsible parties do not obey the resolution in due time and proper manner it sends a warning, including a copy to the entities that are partners of the Council and to the party requesting the intervention. Likewise, it may: a) Inform the performance of the CONARP to the relevant official entities and related entities of the industry; b) Inform the decision on the questioned communication and the non-acceptance of the resolution by the advertiser or the agency through mass media.

The Council's resolution may be appealed before the Executive Committee, within five (5) working days as from the notice of said resolution. **In order to file the appeal, it is necessary to previously comply with the**

²⁶ If the spreading of the communication/mechanics under analysis would have ended, the Committee may issue a recommendation, favoring alternatives that conform to the regulations of the Code.

provisions of the resolution. The Executive Committee shall issue a decision within five (5) working days and shall immediately inform its decision, which is not open to appeal, through authentic means.

Conclusion

The substantive provisions contained in the Code seem proper to me for the achievement of the purposes for the preservation of professional ethics, freedom of speech and the protection of consumers' rights.

Its procedural provisions ensure an extremely fast proceeding of the issues that are submitted to the CONARP, protecting the right of self-defense.²⁷

The foregoing, joined to the legal costs saving and the reasonableness of the Council's decisions both, every time I have had to act – either in the defense of the reporting parties, or of the reported parties – or analyze, within the framework of consultations made by our Firm's clients, led me to write these lines; so that more colleagues may know this advertising self-regulation system and may think about the advantages that its use may bring to its clients – either domestic or foreign – .

²⁷ Usually – except in extremely complex cases – the conflicts are finally resolved, according to my experience, including the motion to reopen a case (based on evidence of the falseness of the facts upon which the prior decision was made), within twenty days. An unthinkable term in the courts of justice.