



# CODE OF ETHICS IN ADVERTISING

## 07 February 2023

### I. GENERAL PROVISIONS

#### Article 1

1. This Code of Ethics in Advertising, hereinafter referred to as “the Code”, constitutes a set of principles that should be obeyed by entrepreneurs, including especially advertisers and other legal and natural persons as well as organisational units without legal personality conducting advertising in the territory of the Republic of Poland.
2. The source of standards contained in the Code of Ethics in Advertising are generally accepted principles of ethics and good market practices, in particular standards of business ethics and ethical standards in marketing communications recommended by the European Advertising Standards Alliance (EASA).
3. The Code does not constitute a set of standards replacing the compulsory legal regulations but only contains a set of principles imposing on the entities governed by the Code additional limitations irrespective of the legal regulations in force.

#### Article 2

1. The activities to which the provisions of the Code apply must be performed with due diligence, in accordance with social conventions, with a due sense of social responsibility, and should conform to the principles of fair competition.
2. The parties to agreements related to advertising and, at the same time, signatories to this Code can maintain their mutual legal relations at their own discretion, provided that such relations are consistent with the Code.

### II. DEFINITIONS

#### Article 3

The terms used in the Code have the following meanings:

- a) advertisement – the message containing in particular information or a statement, especially paid or remunerated otherwise, accompanying an activity, which is intended to increase the sale of products, to be another form of using the products or to achieve another effect, desired by the advertiser, excluding public relations activities. Advertising also includes sales promotion, offers addressed to the recipients in the form of direct marketing or sponsorship, as well as elements of visual identification and the message referred to in the preceding sentence made available in the



Internet on a web server or in social media and other places intended to reach its recipients; in a situation where the recipient of the advertisement is a consumer, the evaluation of the advertisement is based on the model of the average consumer.

For the avoidance of doubt, advertising within the meaning of the Code does not comprise the following messages in accordance with the principles defined in Chapter III of the Code of Ethics in Advertising:

(1) a message aimed at the promotion of socially desirable behaviours if it is not connected at the same time with the promotion of the advertiser, the advertiser's business or product, or products at the advertiser's disposal;

(2) a message constituting an element of the electoral or referendum campaign, including the message with the content promoting specific behaviours of the recipients during the elections or the referendum;

(3) a message, also of public nature, originating from an entity (e.g. a company, a foundation), required by the legal regulations in force or addressed to such entity's authorities, shareholders or potential shareholders, in particular to the extent encompassing the factual, legal, and financial state, and also within the scope of information concerning shares and other securities, deposit certificates, instruments of entitlement or other investment units with respect to: (i) such an entity, (ii) entities directly or indirectly affiliated with such entity.

The above rules are used to interpret the provisions of the Code, including those which regulate the rules of sales promotion, direct marketing, sponsorship, and with respect to relations with the recipients and consumers;

- b) **comparative advertising or advertising of comparative nature** – an advertisement that makes it possible to identify, directly or indirectly, the competitor or competitor's products, or services offered by the competitor in order to promote a different entity or its products or products at such entity's disposal;
- c) **environmental advertising** – an advertisement that claims or suggests that a product or an advertiser:
  - a. has a positive impact on the natural environment,
  - b. has no impact on the natural environment,
  - c. is less harmful to the natural environment than, respectively, other products or advertisers,
  - d. has improved its impact on the natural environment over time;
- d) **sponsorship** – a form of advertising consisting in a material benefit provided by a specific entity (sponsor) to another entity (the sponsored party) for the purpose of indirect or direct promotion of its name (brand), company, reputation, business activity, event, goods or services, trademark or other individualising designation, or in the performance by it of other activities shown in the sponsorship agreement; within the meaning of the Code, media patronage is not sponsorship if it is limited exclusively to information about a particular event;
- e) **product** – goods or services subject to advertising, including, without limitation, the result of creative, manufacturing, commercial or service activities, and in the case of environmental advertising, also the brand of the advertiser;



- f) **recipient** – the party that can familiarize themselves with the advertisement;
- g) **consumer** – a natural person conducting a legal transaction that is not directly related to their economic or professional activity, with an entrepreneur
- h) **average consumer** – a consumer who is reasonably well informed, attentive and cautious; the assessment is made taking into account social, cultural, linguistic factors and the fact that the consumer in question belongs to a particular group of consumers, by which we mean a clearly identifiable group of consumers who are particularly susceptible to the impact of advertising or to the product to which the advertising relates due to special characteristics such as age, physical or mental disability.
- i) **advertiser** – the entity which – especially for a fee or for remuneration paid otherwise – commissioned to make an advertisement for distribution, and the advertising message concerns such entity or such entity’s business activity or product, or product at such entity’s disposal;
- j) **promoter** – the entity which in its own name or acting in the advertiser’s name organises the conduct of advertising, including, without limitation: the advertising campaign, sales promotion, sponsorship or campaign with the use of direct marketing. For the avoidance of doubt, if the promoter acts in its own name, it is at the same time the advertiser within the meaning of the Code;
- k) **operator** – the entity participating in the process of distribution or sale of products between the advertiser and the consumer;
- l) **media** – entities which provide – for a fee or free of charge – the advertising distribution service by any technology of distribution, in particular: publication, broadcasting using audio or video, exposure or using direct marketing methods;
- m) **special call** – telephone/fax call or sending a text/multimedia message the cost of which is different than arising from the normal telephone tariff in force for typical calls;
- n) **preference list** – the list of consumers who have opted out from unsolicited marketing messages (e.g. so-called “Robinson List”);
- o) **children** – persons who are less than 12 years old;
- p) **young people** – persons who are at least 12 years of age but not older than 18 years of age;
- q) **data** – results of studies, sales results, and all other statistical data used in the advertisement;
- r) **Union of Associations Advertising Council** – the union of associations within the meaning of Associations Act (Dz.U. (Polish Journal of Laws) 1989 No. 20, item 104, as amended) with its registered office in Warsaw.



### III. BASIC PRINCIPLES OF ADVERTISING

#### Article 4

Advertisements should not contain any form of discrimination, in particular that based upon race, religion, sex or national origin.

#### Article 5

Advertisements should not contain any elements encouraging acts of violence, including hate speech.

#### Article 6

Without justifiable reasons based, for example, on social grounds and prophylaxis (prevention), advertisements should not motivate consumers to purchase a product by taking advantage of fortuitous events or by causing anxiety or fear.

#### Article 7

Advertisements should not be operated in such a way as to endanger artistic or historical objects, whether tangible or intangible.

#### Article 8

Advertisements should not abuse the trust of the recipient or exploit the recipient's lack of experience or knowledge.

#### Article 9

Advertiser, promoter, operator and media, each of them only within the scope of its activities related to advertising, will obey the rule that every recipient of advertising made or distributed with its participation should be able to identify that a particular message is an advertisement.

#### Article 10

1. Advertisements should not mislead their recipients, in particular with regard to:
  - a) important characteristics such as properties, composition, method and date of manufacture, range of use, quantity, origin (also geographical) of the advertised item;
  - b) value of the product and the total price actually to be paid for the product as well as other payment conditions such as instalment sales, leasing, credit sales, bargain sales;
  - c) terms of delivery, replacement, return, repair and maintenance;
  - d) contractual non-compliance and warranty terms;
  - e) intellectual and industrial property rights, such as, in particular, patents, names, trademarks, and industrial designs and models;
  - f) official permits or quality certificates, awards, prizes, medals, and diplomas;
  - g) the extent of the entrepreneur's benefits for charitable causes;
  - h) specific advantages of the product if the advantage consists exclusively in the compliance with minimum legal requirements
2. Data as well as scientific terms, quotations from technical or scientific publications not considered



data within the meaning of the Code, used in advertisements, must indicate their source and cannot be used in a misleading manner. The data must be presented correctly from the methodological point of view. Presentation of statistical data must in particular take into account the rules of statistical inference, including the statistical error.

#### **Article 11**

1. Comparative advertising is not contrary to social conventions if it meets the following conditions altogether:
  - a) it is not a misleading advertisement
  - b) it compares goods or services meeting the same needs or intended for the same purpose in a fair and verifiable manner on the basis of objective criteria;
  - c) it objectively compares one or more relevant, characteristic, verifiable and typical features of these goods and services, which may include price;
  - d) it does not cause confusion in the market in terms of distinguishing between the advertiser and its competitor, or between their goods or services, trademarks, business designation or other distinctive marks;
  - e) it does not discredit the goods, services, activity, trademarks, business designation or other distinctive marks, as well as the circumstances of a competitor;
  - f) for goods with a protected geographical indication or protected designation of origin it always refers to goods with the same indication;
  - g) it does not unfairly exploit the reputation of a competitor's trademark, business designation or other distinctive mark, or a protected geographical indication or protected designation of origin of competing products;
  - h) it does not present the goods or services as an imitation or copy of goods or services bearing a protected trademark, protected geographical indication or protected designation of origin or other distinctive mark.

#### **Article 12**

1. Advertisements should not portray or refer to any natural person, including a well-known person, in connection, for example, with public functions performed by such person, without obtaining such person's prior consent, and should not describe or refer to a thing owned by a specific person without such person's consent, in a way likely to convey the impression of the personal endorsement by such person.
2. The provisions of paragraph 1 above apply, mutatis mutandis, analogy to entities other than natural persons.

#### **Article 13**

If an advertisement contains information on a guarantee to the extent and within the meaning contained in legally binding terms of sale, it must be available at a point of sale or enclosed with the product, and will then be transferred to the recipient.



#### **Article 14**

Presentation of terms of instalment sale, credit or other forms of consumer loans must be made in such a way so as not to raise doubts concerning the actual final price of the advertised item, including the amount of cash payment, the amount of advance payment, the interest rate, the credit instalment repayment dates, and other conditions related to that kind of sale.

#### **Article 15**

Advertisements informing about instalment sale offers, credit sales or other forms of consumer loans should not contain any statements likely to mislead the recipients, in particular as to their kind, indispensable security, repayment dates, actual interest costs, and any other possible fees.

#### **Article 16**

Advertisements referring to savings or investment methods may not contain any statements likely to mislead the recipients, in particular with respect to the estimated future income, factors affecting the amount of such income, and the possible tax benefits.

#### **Article 17**

Advertisements which may make the recipient believe that it is not necessary to pay for the product if such product is not actually available free of charge are not allowed.

#### **Article 18**

1. Advertisements for a franchise may not directly or indirectly be misleading, in particular as to the scope of the provided assistance, potential remuneration, labour input and the necessary funds. The franchiser's full name and permanent address should be stated.
2. The provisions of paragraph 1 are applicable to advertisements aimed at entering into legal or factual relations similar in effects to franchise.

#### **Article 19**

Advertisements of products which, used in a proper way, may cause real danger should clearly and in simple language point out the potential danger related to their use.

#### **Article 20**

The data, recommendations, commercial offers, information, or clarifications concerning the product used in an advertisement should be appropriately documented and verifiable. The documents within the scope not constituting trade secret pursuant to Article 11(2) of the Act of 16 April 1993 on combating unfair competition (Dz.U. 2022, item 123) should be made available upon a written request of the recipient.



#### **Article 21**

Advertisements should not promote attitudes that question the rights of animals. Advertisements containing the likeness of animals should be self-restrained so animals are not portrayed in a way that suggests non-humanitarian treatment of them.

### **IV. ADVERTISING AIMED AT CHILDREN AND YOUNG PEOPLE**

#### **Article 22**

The value of the products offered in advertisements addressed to children or young people cannot be indicated in the manner which will make children or young people incorrectly perceive their actual value, e.g. by using in an inappropriate context such expressions and words as “only”, “little”. The advertisements cannot suggest either that the product is affordable for any household budget.

#### **Article 23**

Advertising aimed at children or young people cannot contain any statements which may constitute a health or safety hazard.

#### **Article 24**

According to Article 8 and Article 10 advertising aimed at children or young people cannot exploit their natural credulity and lack of experience.

#### **Article 25**

**Advertising aimed at children or young people must take into account the degree of their development and cannot be a hazard to their physical and mental well-being or further moral development.**

#### **Article 26**

Advertising aimed at children or young people cannot suggest that the possession or use of the product will guarantee them social or psychological advantage over others and the failure to possess such product will have the opposite effect.

#### **Article 27**

Advertising aimed at children or young people cannot undermine the authority of parents or of other persons given custody, question their responsibility, opinion, tastes, or preferences. The above limitation is not applicable to the cases of counteracting social pathologies.

#### **Article 28**

1. In the case of advertising aimed at children special care should be taken to ensure that it is not misleading as to the true size, value, nature, durability, appearance, and technical potential of the advertised item, e.g.:
  - a) it should be made clear if accessories (e.g. batteries) are necessary for using the product or additional material (e.g. paint) is necessary for achieving the result shown or described.
  - b) if the advertisement is applicable to separately sold products, this should be unequivocally stated.



c) advertisements cannot diminish the physical skills required to use the product; where the results and the method of use of the advertised item are presented without any clear reservation, then the presented result should be achievable for an average child at the age range for which the product is intended.

**Article 29**

Advertisements cannot contain (i) orders to persuade adult persons to purchase the advertised items, or (ii) instructions of how to persuade adult persons to purchase the advertised items, where the orders and instructions are aimed at children or young people.

**Article 30**

If necessary due to security reasons, both advertisements as well as products aimed at children or young people must contain express information for which age group the product is intended.

**Article 31**

Articles 22–31 apply accordingly also to advertisements which are not directly aimed at children, but children are their recipients due to the form, place and method of presentation. This applies in particular to advertisements broadcast on television and on the Internet close to children's programming or messages, advertisements shown in cinemas before children's movies and to OOH advertising.

**Article 32**

Articles 22–31 apply accordingly also to advertisements which are not directly aimed at children, but children are their recipients due to the form, place and method of presentation. This applies in particular to advertisements broadcast close to children's programming, advertisements shown in cinemas before children's movies and to OOH advertising.





## V. ENVIRONMENTAL ADVERTISING

### Article 33

Environmental advertisements must not undermine public trust in appropriately performed activities undertaken within the framework of environmental care. The message of environmental advertisements must not be factually inaccurate, unmeasurable or unverifiable.

### Article 34

1. Environmental advertisements should be written in an explicit, simple and understandable language. Environmental or scientific terms may be used in an environmental advertisement provided that they are material to the overall message and understandable for the average recipient.
2. Environmental advertisements relating to the future environmental impact must be based on clear, objective goals, aspirations and commitments.

### Article 35

1. Environmental advertisements should not present the requirements imposed by law on all products in a given product category, or any features otherwise common to all products in the same category as distinguishing features unique for the advertiser's offer.
2. If the truthfulness of an environmental advertisement depends on the existence of certain conditions or reservations, these conditions or reservations should be indicated in the advertisement.

### Article 36

1. Environmental advertisements should refer to a specific product or activity of the advertiser, and in its message the environmental advertisement must not extend the advertising effect to the entire activity of the advertiser in an unfounded or unverifiable manner.
2. Environmental advertisements of a product should be different from environmental advertisements relating to the advertiser's operations, practices and sustainability policies.

### Article 37

Environmental advertisements should be evaluated on a case-by-case basis, from the perspective of the recipient and taking into account the social, cultural and linguistic factors of the market in which they will be broadcast.



#### **Article 38**

The environmental benefits of a given product indicated or depicted in an advertisement must be related to the product's characteristics. Where environmental benefits relate to characteristics that occur periodically at a particular stage or stages of a product's life cycle, the advertisement must inform the recipient thereof.

#### **Article 39**

The general presentation of the subject of an environmental advertisement, its individual elements and the information on its subject may not be misleading about the existence of environmental benefits concerning the subject.

#### **Article 40**

Environmental advertisements, including, without limitation, the wording used in them that refers to environmental impact, should be justified in a way that is understandable to the recipient. The justification should be based on verifiable evidence, taking into account the state of knowledge, including, without limitation, scientific or specialized knowledge, on the subject relevant to the advertisement on the date of its broadcast.

#### **Article 41**

Information referring to waste management may be included in an advertisement only if the recommended waste sorting, collecting, recycling or disposal method is understandable and easily accessible for the recipient. Otherwise, the advertisement must explicitly and in an understandable manner indicate the manner and scope of access to the indicated methods.

#### **Article 42**

If environmental advertisements contain comparisons, including general comparisons or comparisons to other products, then only products or services that perform the same function may be compared. Environmental advertisements may compare one or more material, relevant, verifiable and representative characteristics of these products. Environmental advertisements should indicate the comparison criteria that have been adopted. The same scientifically valid methods and criteria of comparison should be applied to assess all products being compared in a consistent manner.

### **VI. SPONSORSHIP**

#### **Article 43**

Sponsorship and related agreements must be carried out transparently and in a way that is easily understood by outsiders as to their nature. In particular, they must identify all stakeholders and the



commitments to the sponsor.

#### Article 44

Sponsorship information from the sponsor of an event or a sponsored event must be clearly worded and must not violate the social conventions.

#### Article 45

Sponsorship may not be performed in such a way as to endanger artistic or historical objects, whether tangible or intangible.

#### Article 46

Sponsorship activities may not be misleading as to the entity, brand, or other identification marks of the sponsored party, especially when the sponsored event is presented on radio or television.

#### Article 47

The sponsored party is obliged to take action aimed at minimising the environmental impact of the sponsored event as much as possible. Any message originating from the sponsored party or the sponsor regarding environmental care must be consistent with the facts and the provisions of Title V above.

### VII. DIRECT MARKETING

#### Article 48

1. Direct marketing activities, including the offers related to direct marketing, must be carried out so as to be understandable to the **recipient**. In particular, the **recipient** should always be able to identify the advertised product and the terms of the offer, including the price.
2. The **recipient** of an offer delivered within the framework of direct marketing should always be able to identify such offer as an advertisement. An offer which may easily be mistaken for a bill or an invoice may not be made.
3. An offer delivered within the framework of direct marketing must clearly indicate what liabilities will be imposed on the **recipient** upon the acceptance of the offer.
4. The information transferred within the framework of direct marketing, which has an effect on the **recipient's** decision (e.g. payment terms, returns, and waivers of the agreement), must be transferred in such a manner and within such time to make it possible for the **recipient** to take such information into account before accepting the offer.
5. No products for which a payment is requested can be delivered within the framework of direct marketing without prior ordering of such products by the **recipient**.

#### Article 49

1. An offer delivered within the framework of direct marketing must not be misleading, in particular as to the true size, value, nature, durability, appearance and technical capabilities of the advertised product, and if:



- a) additional accessories are necessary: (i) to use the product or (ii) to achieve the effect described or shown, this must be clearly stated;
  - b) the offer is for products sold separately, this fact must be clearly stated.
2. If the offer delivered within the framework of direct marketing includes an offer to, for example, "examine" or "try" a product for free, the offer must include the terms of such use, including, in particular, information on who bears the cost of returning the product, and time limitations on its use.
  3. An offer delivered within the framework of direct marketing must include information on where and how to contact the seller and the advertiser so that the **recipient** can contact them directly and effectively. At the time of delivery of the product the **recipient** must be informed of the full names, addresses, telephone numbers and e-mail addresses of the seller and the advertiser.

#### Article 50

1. Direct marketing offers must respect the privacy of the **recipient**.
2. If personal data of individuals are collected within the framework of direct marketing, the **recipient** must be clearly informed thereof, with the indication of the scope of processing of such data. The collection, storage and use of data must comply with **data protection regulations**.
3. For offers received within the framework of direct marketing, including, without limitation, offers received with the use of addressed mail, non-addressed prints, telephones, telephone text messages and multimedia messages (e.g. SMSs, MMSs, etc.), faxes, e-mail or other methods of addressed online communications the **recipient** must be able to verify the sender of such an offer, and where applicable also the source from which the **recipient's** data originate.
4. The promoter must comply with **recipients'** demands if they do not wish to receive offers delivered within the framework of direct marketing, including, without limitation, addressed mail, non-addressed prints, telephones, telephone text messages and multimedia messages (e.g. SMSs, MMSs, etc.), faxes, e-mail messages or other methods of addressed online communications, by ceasing to deliver such offers. The **recipient** may express their will not to receive the mail from the specific promoter by transferring to such promoter a respective request. The **recipient** may also express their will not to receive the messages of a specific type by opting out on the appropriate preference list or by displaying at the place of delivery of the messages the information about such request.

#### Article 51

1. Outgoing telemarketing conducted within the framework of direct marketing cannot be carried out between 9 p.m. and 8 a.m. and on statutory holidays, unless the **recipient** expressly wanted a call at that time.
2. When an offer is being made by telephone within the framework of direct marketing, the **recipient** must be told at the beginning of the call the name and surname of the caller as well as the name of the advertiser. On demand, the **recipient** must obtain information on the address and telephone number at which the caller and the advertiser may be contacted.
3. If special calls are used within the framework of direct marketing, the **recipient** must be previously informed on the rate applicable to such a call.



## VIII. SALES PROMOTION

### Article 52

1. Sales promotions cannot be developed or implemented so as to mislead the recipients.
2. The plan and implementation of a promotion cannot be such as to provoke or to appear to condone aggressive or unlawful behaviour, or cannot otherwise be inconsistent with the rules of social coexistence. Moreover, they cannot encourage practices contrary to the public interest.

### Article 53

Sales promotions must be designed in such a way as not to abuse the audience's trust or take advantage of their potential lack of knowledge or experience.

### Article 54

Sales promotions should be organized in such a way as to make it easy for the recipient to identify clearly the terms of the offer. Care should be taken not to exaggerate the value of the additional benefit, and the price of the main product should not be concealed by the promotional activity.

### Article 55

Sales promotions should be managed with adequate resources and supervision methods. In particular, the organizer of a sales promotion should make sure that the availability of the additional benefits is adequate enough to allow the demand to be satisfied within a reasonable time. If a delay is inevitable, the consumers should be notified, and, if necessary, action should be taken which will result in the adjustment of the advertising concerning the offer.

### Article 56

1. When organising sales promotions, the right of privacy of each entity should be respected. Additional liabilities not arising from the rules of the sales promotions rules cannot be imposed on such entities.
2. If, as a result of the organized sales promotion, personal data of natural persons are collected, then the recipient should be clearly informed thereof, with the indication of the scope of processing of such data. The collection, storage and use of data must comply with data protection regulations.

### Article 57

Sales promotions should be planned and implemented with proper regard to appropriate standards of safety to the extent necessary for the protection of the consumers participating in such promotions against health risks.

### Article 58

The presentation of sales promotions should enable the consumers, before making any required purchase, to receive information on the rules of such promotion if the information can affect their decision to purchase the relevant product. In particular, the presentation should include, where applicable:

- a) specific instructions on how to participate in the promotion or take advantage of the promotional offer, such as conditions for receiving free gifts or bonuses;



- b) the general characteristics of the additional benefits on offer;
- c) time limitations for taking advantage of the promotional offer;
- d) any limitation as to the geographical area, age of the promotion participants, quantity (number) of the promoted items or other additional available benefits, or any other limitations on quantity.
- e) the value of the vouchers or coupons on offer if it is possible to receive the cash equivalent;
- f) additional expenses, including shipping and handling charges, as well as payment terms;
- g) the full name of the promoter and an address to which complaints can be directed if different from the address of the promoter.

#### **Article 59**

1. If the sales promotion includes a competition, before participating in the competition and regardless of the purchase of the main product, the following information must be provided to the consumer in addition to the information indicated in Article 55, or made available to the consumer upon request:
  - a) the qualifications needed to participate in the competition;
  - b) all costs related to participation known to the promoter, and where applicable, information on the rates used (e.g. for special calls);
  - c) the number, value and type of prizes that can be won and whether it is possible to receive the cash equivalent;
  - d) in the case of a skills competition, the type of this competition and the criteria for evaluating the presented skills;
  - e) the method of determining the winners and selecting the prize;
  - f) the closing date of the competition;
  - g) when and how the results will be announced;
  - h) whether the consumer will be required to pay tax on the prize won;
  - i) the date on which prizes can be picked up;
  - j) how the jury is selected;
  - k) the composition of the jury at the latest when the results are announced;
  - l) the intention and rules for the use of winners or their presented skills in subsequent activities.
2. If the sales promotion includes a lottery, where applicable, the provisions of paragraph 1 apply to the lottery accordingly.

#### **Art.60**

Sales promotions, approved by the intermediary, should be fairly conducted and properly managed by them (their employees).

#### **Article 61**

1. Sales promotions that impose a special responsibility on the intermediary should be carried out by the intermediary in such a way that no doubts of interpretation arise, especially as to the terms, value, limitations or availability of the offer covered by the sales promotion.
2. In particular, the intermediary should act in accordance with the plan and terms of the promotion as provided by the promoter. Without the promoter's prior consent, the intermediary may not



make any changes to the arrangements made, such as changes in time limits.

**Article 62**

1. Sales promotions containing comparisons should be designed in such a way as to avoid the possibility of misrepresentation and violation of other principles of fair competition.
2. Comparative references should be based on verifiable facts and fairly chosen. Article 11. The Code is applicable accordingly.



## **IX. FINAL PROVISIONS**

### **Article 63**

The implementation, interpretation, supervision of compliance, adjudication of compliance and amendments to the Code are within the exclusive competence of the relevant bodies of the Union of Associations Advertising Council, in accordance with the content of its Articles of Association and applicable bylaws.

### **Article 64**

1. Every entity, with the exception of advertising recipients and consumers, should comply with the provisions of the Code insofar as they are addressed to them. The above obligation applies in particular to advertisers promoting persons acting on their behalf within the framework of the authorization to represent them or make decisions on their behalf, intermediaries and media, except for the responsibility referred to in paragraph 2.
2. The advertiser or promoter is ultimately responsible for all aspects of the advertisement, regardless of its type or content.
3. Verifiable evidence that is necessary to determine the compliance of an advertisement, as defined in Article 3(a), with the provisions of the Code will be available and presented at the request of the competent body of the Advertising Council.

### **Article 65**

The titles of the Code's chapters are for organisational and structural purposes only. In particular, they cannot provide a legal basis for interpreting specific provisions of the Code.

### **Article 66**

Additional advertising requirements are contained in industry codes in the form of appendices to the Code.

### **Article 67**

In matters not regulated by the Code, the generally valid provisions of law apply accordingly.





## Industry codes

### Appendix No. 1 Beer Advertising Standards

#### Scope of application

Change (deletion)

##### Article 1

1. The Appendix governs all marketing messages that are advertising related to beer and are distributed in the territory of the Republic of Poland or targeted at Polish beer consumers. The scope of the marketing message of the beer advertising is determined by the definitions of advertising, comparative advertising and sponsorship contained in Article 3(a) – (c) of the Code of Ethics in Advertising (further: “advertising” or “beer advertising”).

#### Requirements for the content and form of beer advertising

##### Article 2

1. All advertising must comply with the laws and regulations effective in the territory of the Republic of Poland.
2. Beer advertising should follow the rules contained in the Code of Ethics in Advertising and the provisions of this Appendix.
3. The provisions of chapter IV of the Code of Ethics in Advertising do not apply to beer advertising.

##### Article 3

1. Beer advertising may not use images, symbols, persons and topics which can be regarded as offensive, derogatory or humiliating.
2. Beer advertising may not cause religious offence.

##### Article 4

Beer advertising may not encourage aggressive or anti-social behaviour.

##### Article 5

Beer advertising must not use or promote sexual freedom, show sexual content or nudity, or suggest that beer consumption can positively influence sexual performance.

##### Article 6

Beer advertising may not create the image of beer as a means of overcoming life's problems.



#### **Article 7**

Beer advertising may not present beer consumption in circumstances which are commonly regarded as irresponsible, inappropriate or in breach of law, in particular before or during any course of action which requires sobriety.

#### **Article 8**

Beer advertising may not:

- 1) present or encourage irresponsible or excessive consumption of beer,
- 2) present intoxicated people or in any way suggest that a state of intoxication is a socially approved state,
- 3) encourage consumers to give preference to a given beverage due to its ability to cause intoxication,
- 4) suggest that consumption of beer with lower alcohol content does not lead to alcohol abuse,
- 5) present refusal to consume alcohol or consumption in moderate quantities in a negative light.

### **Protection of children and young people**

#### **Article 9**

Beer advertising may not be aimed at people under the age of 18, in any way whatsoever, be it through its contents or the method of publicizing. In this context, the content of Chapter IV "Advertising aimed at children and young people" does not apply to beer advertising.

#### **Article 10**

Neither beer producers, nor their representatives, nor their agencies may make any payments or provide any benefits whatsoever for advertising which is mainly aimed at persons under the age of 18 and is meant to be publicly distributed in the Republic of Poland. These limitations apply also to product placement.

#### **Article 11**

Beer advertising may not:

- 1) contain images of people who are less than 25 years old;
- 2) use images of people or personalities who influence minors in a special way;
- 3) suggest that beer is essential to become an adult or to achieve success at work or in any other area of social activity.

### **Protection of health**

#### **Article 12**

Beer advertising may not:

- 1) suggest that beer has healing properties or prevents illnesses;
- 2) suggest that beer has properties of a stimulating, anaesthetic or sedative drug;
- 3) present pregnant women or breastfeeding women.



## **Appendix No. 2 Standards for Food Advertising Aimed at Children**

### **Article 1**

Advertising of food products may not be aimed directly at children under the age of 12.

### **Article 2**

Restrictions on advertising of food products do not apply to products that meet specific nutritional criteria based on accepted scientific evidence and/or national and international nutritional recommendations contained, in particular, in Appendix 2a to the Code of Ethics in Advertising, "Nutritional Criteria for Self-Regulation of Food Advertising Aimed at Children under the Age of 12 in Poland".

### **Article 3**

Any type of advertising is considered to be aimed at children if, in the intended target group of the media used, children under the age of 12 account for a minimum of 35 percent.

### **Article 4**

Food products may not be advertised in any form on the premises of educational institutions where children stay.

### **Article 5**

No type of food product advertising aimed at children can:

- a) promote or portray unhealthy eating habits or unhealthy lifestyles in the form of eating and drinking immoderately, excessively or compulsively, and promote sedentary lifestyles,
- b) discredit the importance of healthy eating habits, a varied and balanced diet and physical activity,
- c) include a direct appeal to children to purchase the advertised products by using phrases like: "buy it now", "you must have it",
- d) appeal to the child to persuade their parents to buy the advertised product,
- e) mislead about the features of the promoted product and the benefits that may result from the use of the product,
- f) imply that a given product has any special nutritional characteristics if all similar products have similar characteristics,
- g) create fear by including descriptions of violence or exaggeratedly aggressive elements,
- h) encourage the use of a food product in an inappropriate or unsafe manner.

### **Article 6**

Using a company's name, logo or product in educational campaigns aimed at promoting healthy eating habits and physical activity among children and young people is not advertising, within the meaning of this Code. The content of such campaigns must be consistent with national and/or international recommendations on nutrition and physical activity. These types of campaigns can only be launched on school grounds with the approval of school authorities.



## Appendix No. 3 Charter for the Protection of Children in Advertising

### Chapter 1: Self-Regulation Goals

#### Article 1

The purpose of the Charter is to specify the terms that should be met in order to properly protect the interest of children in marketing communications. The terms are in line with the Broadcasting Act of 29 December 1992 (Dz.U. 1993 No. 7, item 34 as amended), hereinafter referred to as the Act, in particular with Article 18(1), (3) and (5) of the Act.

#### Article 2

The signatories of the Charter are aware of the fact that an advertising message may provide children with new knowledge and skills, positive values as well as convictions about the world and people, but it can also pose certain threats, all the more so as:

- using the Internet content and watching TV, including advertising messages, is one of the main activities performed by children in their free time,
- using an image of a child in order to enhance the effectiveness of an advertisement can increase the probability of exposing young advertising audience to risks associated with both messages aimed directly at them and commercials using child images, but aimed at adults,
- the use of child actors in commercials intensifies the impact of the commercials, especially on children.

#### Article 3

Signatories of the Charter will strive to protect children as addressees of advertising messages, as well as limit unnecessary exposure of child actors appearing in commercials **if the exposure is not related to the nature of the product or the concept of the advertising message.**

### Chapter 2: Advertising products and services where children may be indirect recipients

#### Article 4

The signatories of the Charter will do their best to ensure that advertising messages addressed to children and advertising messages that are not addressed directly to them, but, due to their form, place and manner of presentation, are watched by children, do not include contents that might have a negative impact on the children's development.

#### Article 5

Signatories of the Charter, acting in accordance with the provisions of Article 16b(2)-(5), which prohibit the broadcasting of commercial messages

- 1) that encourage children to exert pressure on parents or other persons in order to persuade them to purchase the advertised products or services;
- 2) that take advantage of children's confidence in parents, teachers and other people;
- 3) unreasonably showing children in dangerous situations;



- 4) having a hidden impact on the subconscious.

declare that commercials addressed to children due to their contents, form, communication channel and manner of presentation will not contain, in particular:

- 1) contents that may pose a threat to their health or safety,
- 2) scenes showing physical or mental abuse,
- 3) scenes showing family problems (e.g. neglecting a child, a child acting as an adult, a negative attitude of a child towards adults, including parents),
- 4) a message that directly or indirectly undermines the authority of parents and legal guardians as well as their effort put in exercising the parental responsibility or taking care of children, in particular one that depicts the exercise of this responsibility or custody as a negative phenomenon, contrary to the child's welfare,
- 5) scenes encouraging conflicts in any form (child – peers, child – parents and child – institutions),
- 6) scenes showing threat (e.g. dangerous games or accidents), **unless the purpose of the presentation is to promote the protective function of a product**,
- 7) a motif of **excessive** consumption and a consumerist lifestyle as a key value in life,
- 8) a message that suggests, directly or indirectly, that fun and entertainment do not involve any responsibility and limitations or preclude such responsibility or limitations,
- 9) discriminatory content, in particular due to race, sex, nationality, religious beliefs or disability,
- 10) a message that uses, directly or indirectly, sexual innuendoes, including the use of sexual jokes and a hidden sexual meaning of individual words, or presents a false picture of sex and a sexual relationship, exclusively as an element of fun and entertainment,
- 11) an image of a child **persistently** extorting shopping and other decisions on adults,
- 12) promotion of negative models of generally unacceptable behaviour,
- 13) promotion of products that do not meet the criteria of other self-regulations of broadcasters, in particular the “Agreement between TV broadcasters on the principles of distributing commercials and sponsor references concerning food products or drinks containing ingredients that are not recommended in excessive amounts in the daily diet”.

### Chapter 3: Child actors in commercials

#### Article 6

The signatories of the Code undertake to obey, at all stages of creating and distributing advertising messages, the following principles:

- 1) the use of a child image in commercials advertising products or services that are not associated with children's everyday life and activities should be limited by means of a thorough analysis of legitimacy
- 2) children appearing in a commercial should be presented in a friendly social environment, especially with the family and peers
- 3) a child image cannot be treated in a commercial like an object in order to tout products and suggest to other children or their parents that they should buy it.

#### Article 7



The signatories of the Charter will do their best to ensure that children do not appear in commercials in the following contexts:

- 1) acceptance of social stigmatization of a person and taunting as a model of socialization,
- 2) educationally dubious content (associations with alcohol consumption, references to sex life etc.),
- 3) extreme fetishization of a product as the only remedy for a child's problems and vital needs,
- 4) imitating adult behaviours that are not appropriate from the point of view of children's development needs.

#### **Article 8**

The following is to be avoided in the process of producing commercials with child actors:

- 1) any threats to their health or safety
- 2) their exposure to severe stress
- 3) using a model character in the narrative of a commercial that might ridicule a child actor
- 4) exposure to content that is inappropriate at a given development phase
- 5) situations leading to a distorted perception of the reality, e.g. if very young children appear in commercials with a fantasy plot to a large extent
- 6) situations causing fears, typical of social commercials warning against dangerous situations.



## Appendix 4 to the Code of Ethics in Advertising Technical document on cosmetic claims

Agreed by the Sub-Working Group on Claims (version of 3 July 2017)

The original version of this technical document can be accessed at the following link:  
<https://ec.europa.eu/docsroom/documents/24847>

The purpose of this document is to provide guidance for the application of Commission Regulation (EU) No 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products.

Based on Article 20 of Regulation (EC) No 1223/2009 on cosmetic products ('CPR'), Commission Regulation (EU) No 655/2013 established EU harmonised common criteria in order to assess whether or not the use of a claim is justified.

Article 20 of the CPR applies to products that fall within the definition of a cosmetic product under Article 2 of the CPR<sup>1</sup>. The common criteria only come into play when it has been assessed that the product in question is indeed a cosmetic product. It is for the national competent authorities and national courts to decide on a case-by-case basis which regulatory framework is applicable.

In order to ensure harmonisation across the single market as regards qualification of products, various guidance documents have been produced by the European Commission on the demarcation between cosmetic products and other product categories (e.g. between cosmetics and medicines<sup>2</sup>, between cosmetics and biocidal products<sup>3</sup>, and between cosmetics and other products<sup>4</sup>) in order to determine whether the product falls within the definition given in Article 2. In particular, the presentation of the product<sup>5</sup> (including all communication mediums) and the manufacturer's intended purpose should ensure that the cosmetic product falls within the definition laid down in Article 2 of the CPR.

The Commission adopted recommendations on the efficacy of sunscreen products and related claims<sup>6</sup> which were inspired by the same principles as those illustrated in Commission Regulation (EU) No 655/2013.

In accordance with Article 5 of the CPR, the responsible person should ensure compliance with Article 20 of the CPR and with the common criteria set out in Commission Regulation (EU) No 655/2013.

According to Article 6(1) of the CPR, distributors also have a duty to act with due care, in the context of their activities. Distributors should translate any claim provided by the responsible person in a way that keeps the essence of the claim, otherwise they become the responsible person under Article 4(6)

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<sup>1</sup> According to Article 2 of the CPR a cosmetic product is 'any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth or the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours'.

<sup>2</sup> Guidance document on the demarcation between the Cosmetic Products Directive 76/768/EEC and the Medicinal Products Directive 2001/83/EC as agreed between the Commission services and the competent authorities of the Member States.

<sup>3</sup> Guidance document of the Commission and the competent authorities of the Member States on the demarcation between Directive 98/8/EC concerning the placing on the market of biocidal products and Directive 76/768/EEC concerning cosmetic products, Version 2002/2003, revision 1 of 24 May 2004.

<sup>4</sup> Manual on the scope of application of the Cosmetic Products Directive 76/768/EEC (Article 1(1) of the Directive) Version 5.0, June 2009.

<sup>5</sup> See also Directive 87/357/EEC on products which, appearing to be other than they are, endanger the health or safety of consumers.

<sup>6</sup> Commission Recommendation 2006/647/EC of 22 September 2006.



of the CPR. For this purpose, close cooperation between the responsible person and distributor should be encouraged.

Whilst ensuring that the same principles are respected throughout the EU, the common criteria are not aimed at defining or specifying the wording that can be used for cosmetic product claims. Nevertheless, the responsible person has a duty to ensure that the wording of the message communicated is in compliance with the common criteria and is consistent with the documentation in this person's possession for supporting the claim. If a company adapts a claim to the extent that the primary function of the notified product<sup>7</sup> is changed, it should be considered a different product.

In accordance with Article 22 of the CPR, Member States' competent authorities should monitor compliance with Commission Regulation (EU) No 655/2013 via in-market controls of the cosmetic products made available on the market, including the appropriateness and relevance of the supporting evidence for justifying the use of claims. A common approach at Union level will facilitate administrative cooperation between the competent authorities of the Member States and prevent distortions in the internal market.

In specific cases, where the common criteria may fail to provide an adequate and sufficiently detailed framework for the protection of consumers and professionals from misleading claims, additional common criteria for specific types of claims should be elaborated.

Annex I to this document provides a detailed description of the common criteria established by Commission Regulation (EU) No 655/2013, including illustrative and non-exhaustive examples of claims.

Annex II to this document provides for best practices specifically related to the type of evidential support used for the justification of cosmetic claims.

Annex III to this document provides guidance for the application of the common criteria established by Commission Regulation (EU) No 655/2013 to "free from" claims, including illustrative and non-exhaustive examples of "free from" claims.

Annex IV to this document provides guidance for the application of the common criteria established by Commission Regulation (EU) No 655/2013 to the specific type of claim "hypoallergenic".

## **ANNEX I**

### **Common criteria for claims used in relation to cosmetic products**

According to Commission Regulation (EU) No 655/2013 claims on cosmetic products should conform to the following common criteria:

1. Legal compliance
2. Truthfulness
3. Evidential support
4. Honesty
5. Fairness
6. Informed decision-making

These common criteria are of equal relevance and are further elaborated below.

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<sup>7</sup> Notified according to Art. 13(1) of Regulation 1223/2009.





Criterion	Description	Examples of claims (only illustrative and not exhaustive) and remarks
Legal compliance	<p>Claims that indicate that the product has been authorised or approved by a competent authority within the Union should not be allowed since a cosmetic product is allowed on the Union market without any governmental approval. Equally, a CE-mark should not be applied on cosmetic products as this would make the consumer think that they are under a regulatory regime different from the Cosmetic Product Regulation, except for products which fall simultaneously under the cosmetics and the toys legislation.</p> <p>The acceptability of a claim should be based on the perception of the average end user of a cosmetic product, who is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors in the market in question.</p> <p>Claims which convey the idea that a product has a specific benefit when this benefit is mere compliance with minimum legal requirements should not be allowed.</p>	<p>The claim "<i>this product complies with provisions of the EU cosmetics legislation</i>" is not allowed since all products placed on the EU market must comply.</p> <p>The claim "<i>skin care product does not contain hydroquinone</i>" is not allowed, as hydroquinone is banned by EU cosmetics legislation.</p>
Truthfulness	<p>Neither the general presentation of the cosmetic product nor individual claims made for the product should be based on false or irrelevant information.</p> <p>If a product claims that it contains a specific ingredient, the ingredient should be deliberately present.</p> <p>Ingredient claims referring to the properties of a specific ingredient should not imply that the finished product has the same properties when it does not.</p>	<p>The claim "<i>silicone-free</i>" should not be made if the product contains silicone. The claim "<i>48-hour hydration</i>" is not allowed if the set of evidence only supports a shorter period of hydration.</p> <p>Products explicitly or implicitly claiming that they contain honey must actually contain honey, and not only honey flavour, in order to be truthful.</p> <p>The claim "<i>contains moisturising aloe vera</i>" or prominently picturing aloe vera should not be made if the product itself has no moisturising effect.</p>



	<p>Marketing communications should not imply that expressions of opinions are verified claims unless the opinion reflects verifiable evidence.</p>	
<p>Evidential support</p>	<p>Claims for cosmetic products, whether explicit or implicit, should be supported by adequate and verifiable evidence regardless of the types of evidential support used to substantiate them<sup>8</sup> including where appropriate expert assessments.</p> <p>The responsible person<sup>9</sup>:</p> <ul style="list-style-type: none"> <li>- Determines the appropriate and sufficient methodology to be used for claim substantiation. The appropriateness and relevance of the claims may be evaluated by the authorities as part of their market surveillance activities.</li> <li>- Determines the appropriate evidential support. Such evidence can be of different kinds and forms and should be justified where necessary in the product information file<sup>10</sup>.</li> <li>- Should hold appropriate and adequate scientific evidence to substantiate the claim made whether explicit or implied.</li> <li>- May consult an expert who will provide the appropriate evidential support.</li> <li>- Should ensure that the evidential support is still applicable when the formulation of the product changes.</li> </ul> <p>Evidence for claim substantiation should take into account state of the art practices (see Annex II on best practices).</p> <p>Where studies are used as evidence, they should be relevant to the product and to the benefits claimed, should follow well-designed, well-conducted methodologies (valid, reliable and reproducible) and should respect ethical considerations.</p> <p>The level of evidence or substantiation should be consistent with the type of claim being made, in particular for claims where lack of</p>	<p>Computers are now able to analyse and quantify skin coloration for even skin tone; this can also be done by trained observers using a grading scale.</p> <p>The presentation of results from <i>in vitro</i> or <i>in silico</i> studies should not suggest a result skin coloration.</p>

<sup>8</sup> See Annex II

<sup>9</sup> See Articles 4 and 5 of Regulation (EC) No 1223/2009.

<sup>10</sup> See Article 11(2) of Regulation (EC) No 1223/2009, listing the information to be included in the product information file (11(2)(d): ‘where justified by the nature or the effect of the cosmetic product, proof of the effect claimed for the cosmetic product’).



	<p>efficacy may cause a safety problem, e.g. sun protection claims<sup>11</sup>.</p> <p>Statements of clear exaggeration<sup>12</sup> which are not to be taken literally by the average end user (hyperboles) or statements of an abstract nature should not require substantiation.</p> <p>A claim extrapolating (explicitly or implicitly) ingredient properties to the finished product should be supported by adequate and verifiable evidence, such as by demonstrating the presence of the ingredient with an effective concentration.</p>	<p>A claim "this perfume gives you wings" is hyperbolic, as no one would take it literally and expect to grow wings.</p>
<p>Honesty</p>	<p>Presentations of a product's performance should not go beyond the available evidential support.</p> <p>Claims should not attribute to the product concerned specific (i.e. unique) characteristics if similar products possess the same characteristics.</p>	<p>The claim "<i>one million consumers prefer this product</i>" should not be allowed if based only on the sale figure of one million items.</p> <p>Claims about efficacy should not be based on electronically manipulated "before"/ "after" images if the display is misleading as to the performance of the product.</p> <p>Claims about improved properties of a new formulation should reflect the actual improvement and should not be overstated.</p> <p>Fine fragrances usually contain such a high amount of alcohol that the additional use of preservatives is not necessary. In this case, it would be dishonest to highlight in advertising the fact that a certain fine fragrance does not contain any preservatives.</p>

<sup>11</sup> See Recommendation 2006/647/EC of 22 September 2006 on the efficacy of sunscreen products and the claims made relating thereto, OJ L 265, 26.9.2006, p. 39.

<sup>12</sup> See Article 5 of Directive 2005/29/EC: the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally is not considered as an unfair practice.



	<p>If the performance of a product is linked to specific conditions such as use in association with other products, this should be clearly stated</p>	<p>If the claimed performance of a shampoo is based on the combined use of that shampoo with a hair conditioner, this should be specified.</p>
Fairness	<p>Claims for cosmetic products should be objective and should not denigrate the competitors, nor should they denigrate legally used ingredients.</p> <p>Claims for cosmetic products should not create confusion with the product of a competitor<sup>13</sup>.</p>	<p>A claim "<i>contrary to product X, this product does not contain ingredient Y which is known to be irritating</i>" should not be made.</p> <p><i>"Well tolerated as it does not contain mineral oils"</i> is an unfair statement towards other products which are equally well tolerated.</p> <p><i>"Low in allergens because without preservatives"</i> is unfair because it assumes that all preservatives are allergenic.</p> <p>Comparing the efficacy against severe sweating of an antiperspirant with the efficacy against severe sweating of a deodorant is not fair, as the two are different products with different functions.</p>
Informed decision-making	<p>Claims should be clear and understandable to the average end user.</p> <p>Claims are an integral part of products and should contain information allowing the average end user to make an informed choice.</p> <p>Marketing communications should take into account the capacity of the target audience (population of relevant Member States or segments of the population, e.g. end users of different age groups and gender) to comprehend the communication<sup>14</sup>. Marketing</p>	

<sup>13</sup> See Article 6 of Directive 2005/29/EC and Article 4 of Directive 2006/114/EC.

<sup>14</sup> See Article 5 of Directive 2005/29/EC: commercial practices which are likely to distort the behaviour of a clearly identifiable group of consumers in a way which a trader could reasonably be expected to foresee should be assessed from the perspective of the average member of that group.



	communications should be clear, precise, relevant and understandable by the target audience.	
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## **ANNEX II**

### **Best practice for claim substantiation evidence**

Different types of evidential support can be used to substantiate claims. It is usual to substantiate claims by using either experimental studies or consumer perception tests and/or published information or, indeed, a combination of these.

The aim of this annex is to define best practices specifically related to the type of support used.

#### **Best practices applying to experimental studies**

Experimental studies include (but are not limited to) studies *in silico*, *in vitro*, *ex-vivo*, with

instrumental or biochemical methods, studies conducted on volunteers, investigator

evaluations, sensory evaluations, etc. Different types of experimental studies can be used to

provide data on the performance of cosmetic products. It is useful to take into consideration existing relevant guidelines, e.g. guidelines relating to instrumental clinical techniques, other European or international guidelines or standards (e.g. CEN, ISO, etc.)

Such studies should comprise methods which are reliable and reproducible. The studies should follow a well-designed and scientifically valid methodology according to best practices. The criteria used for evaluation of product performance should be defined with accuracy and chosen in accordance with the aim of the test.

The experimental aspect of studies calls for reliance on knowledge and awareness of statistical principles in the design and analysis of the study, e.g. in terms of number of subjects, test samples, etc. This is necessary in order to ensure that the studies achieve scientifically and statistically valid conclusions.

A study protocol should be drawn up and validated in order to enable the study to be conducted and monitored appropriately, thereby ensuring its quality. Whatever the type of study, it is important that the person conducting the study:

- should have the appropriate qualifications;
- should have training and experience in the field of the proposed study;
- should have high ethical standards and professional integrity.

Test facilities should maintain a quality assurance system, including standardised operating procedures.

A monitoring system should be set up for each study in order to ensure that the protocol and the operating procedures are correctly followed.

Data processing and the interpretation of results should be fair and should not overstep the limits of the test's significance. Data recording, transformations and representation in tabular or graphical form should be transparent or clearly explained, if complex. The study should not be designed to overstate the measured effect(s). Appropriate statistical analysis of the data should be performed.

*Ex vivo/in vitro* tests should be conducted under standardised conditions and their protocols should refer to published and/or in-house validated methods. Clear descriptions of the methodology will be documented, as well as the statistical analysis of the data. These tests should be conducted in a controlled environment. To be used as evidence, such tests should be predictive of an action or



representative of an *in vivo* effect, but studies on humans should validate these predictive effects only if absolutely necessary.

Studies conducted on volunteers should follow ethical principles<sup>15</sup> and the tested products should be assessed in advance as safe. Studies on humans should be conducted on the target population where necessary, and be defined by strict inclusion/exclusion criteria.

Products may bear claims that relate to the nature of experimental studies. Consumer expectations regarding these claims may vary depending, in particular, upon the presentation of the claim and its specific context. However, under all circumstances, consumers will expect that such claims are made only when the effects tested are favourable.

The claim "tolerance tested" means that the product underwent tests under the supervision of a scientifically qualified professional, intended to study its tolerance by a target group and that the results of those tests show that the product was well tolerated by this group.

The claim "tested under medical supervision" indicates that the product underwent tests conducted under the supervision of a medically qualified professional, such as a medical doctor or a dentist. Depending on the presentation of the claim, it may, for example, refer to specific efficacy of the product or to skin tolerance.

The claim "dermatologically tested" implies that the product was tested on humans under the supervision of a dermatologist. Depending on the presentation of the claim, it may refer to specific efficacy or tolerance of the product. Consumer self-perception studies are not appropriate to support such claims.<sup>16</sup> The same logic applies also to claims referring to any other medical disciplines.

The claim "clinically tested" refers to expertise, process or conditions under which the tests were carried out. "Clinically tested" means that the product was tested on humans under the supervision of a medically qualified professional or another scientifically qualified professional according to a clinical protocol or in a clinical setting.

A report should be prepared which includes clear identification of the product, enabling the establishment of a link to the product available on the market. The report should also include the study's objective, test schedule and test protocol, presentation of results and their interpretation, statistics, and signature of the person in charge of the study.

### **Best practice applying to consumer perception tests**

Such tests evaluate consumers' perception of product efficacy and cosmetic properties based on parameters that they can observe or feel.

The experimental aspect of studies calls for reliance on knowledge and awareness of statistical principles in the design and analysis of the study, e.g. in terms of the number of subjects, test samples, etc. This is necessary in order to ensure that the studies achieve scientifically valid conclusions.

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<sup>15</sup> For instance, the principles as stated in the Declaration of Helsinki, adopted by the 18th WMA General Assembly, Helsinki, Finland, 1964, and its subsequent amendments, or national requirements.

<sup>16</sup> The use of the claim "dermatologically tested" for cosmetic products was assessed by the European Court of Justice in Case C-99/01. In its decision, the Court clarified that the average consumer's expectation of such a claim is that the product underwent tests intended to study its effects on the skin and that the results of those tests were positive and showed that the product was well tolerated.



A study protocol should be drawn up and validated in order to enable the study to be conducted and monitored appropriately, thereby ensuring its quality.

Studies conducted on consumers should follow ethical principles<sup>16</sup>, and the tested products should be assessed as safe in advance. Studies on humans should be conducted on a statistically representative sample of the target population, defined by strict inclusion/exclusion criteria including a clear definition of socio-demographic criteria.

A critical point for the validity of consumer tests is the wording of the questionnaire.

The questions and proposed answers should be clear enough to be unequivocally understood by participants. The answer scale should be well balanced (e.g. same number of positive and negative answers (a nominal, ordinal or visual analogical notation scale may be used)) and not capable of influencing the answer.

Special attention should be paid to the wording of questions for which responses will be used to substantiate the claim: the claim should be directly substantiated by the results related to the relevant question without any questionable interpretation.

Data processing and the interpretation of results should be fair and should not overstep the limits of the test's significance. Data recording, transformations and representation in tabular or graphical form should be transparent or clearly explained if complex. The results should not be designed to overstate the effect(s) measured. Appropriate statistical analysis of the data should be performed.

A report should be prepared which includes clear identification of the product, enabling the establishment of a link to the product available on the market. The report should also include the study's objective, test schedule and test protocol, presentation of results and their interpretation, statistics, and signature of the person in charge of the study.





### **Best practice applying to the use of published information**

Published information may include scientific publications, scientific state-of-the-art and market data.

Reference to scientific publications on ingredients or combinations of ingredients to substantiate a claim is acceptable provided that they are relevant to the cosmetic product and the claim made. Particular weight can be attached to articles that have been peer-reviewed before being published in the scientific literature where they are open to scrutiny by the scientific community at large.

Market data (e.g. a company's market share within a specific product category in a specific country) may be a legitimate source of information to substantiate claims. Such data should be relevant to the claim made and representative of the market in question.

For example, the claim to be the best-selling toothpaste in Europe may be supported by sales data from a reputable source such as a third party market research company.

**ANNEX III****"Free from" claims**

In the case of "free from" claims, more guidance is needed for the application of the common criteria to provide an adequate and sufficient protection of consumers and professionals from misleading claims.

Criterion	Description	Examples of claims (only illustrative and not exhaustive) and remarks
Legal compliance	"Free from" claims or claims with similar meaning should not be made concerning an ingredient / ingredients which is / are prohibited for use in cosmetics by Regulation (EC) No 1223/2009.	The claim " <i>free from corticosteroids</i> " is not allowed, as corticosteroids are banned by EU cosmetics legislation.
Truthfulness	<p>In case claims in relation to the absence of ingredients are made with reference to functional groups of ingredients that are defined in Regulation (EC) No 1223/2009, such as preservatives and colorants, the product should not contain any ingredient that belongs to the group as defined in this Regulation.</p> <p>If it is claimed on the product that it does not contain a specific ingredient / specific ingredients, the ingredient / ingredients should not be present or released.</p>	<p>The claim "free from formaldehyde" is not allowed if the product contains a formaldehyde releasing ingredient (e.g. diazolidinyl urea).</p>
Evidential support	The absence of a specific ingredient / specific ingredients should be demonstrated by adequate and verifiable evidence.	See Annex II on "Best practices applying to experimental studies".
Honesty	"Free from" claims or claims with similar meaning should not be allowed when they refer to an ingredient which is typically not used in the particular type of cosmetic product.	Fine fragrances usually contain such a high amount of alcohol that the additional use of preservatives is not necessary. In this case, it would be dishonest to highlight in advertising the fact that a certain fine fragrance does not contain any preservative.



	<p>"Free from" claims or claims with similar meaning should not be allowed when they imply guaranteed properties of the product, based on the absence of an ingredient / ingredients, and the guarantee cannot be given.</p> <p>"Free from" claims or claims with similar meaning addressing functional groups of ingredients should not be allowed if the product contains ingredients with multiple functions and among these is the function that the product is claimed to be free from. Exceptions might be possible (e.g. based on challenge test results of the formula without the particular ingredient(s)).</p>	<p>The claim "<i>free from allergenic/sensitizing substances</i>" is not allowed. A complete absence of the risk of an allergic reaction cannot be guaranteed and the product should not give the impression that it can.</p> <p>The claim "<i>free from preservatives</i>" should not be used when a product contains an ingredient / ingredients showing a protective effect against microorganisms, which are not included in Annex V of Regulation 1223/2009, e.g. alcohol. If the responsible person has evidence that the particular ingredient or the combination of such ingredients does not enhance the protective properties of the product, it might be appropriate to use the claim (e.g. challenge test results of the formula without the particular ingredient).</p> <p>The claim "free from perfume" should not be used when a product contains an ingredient which has a perfuming function in the product, regardless of its other possible functions in the product.</p>
Fairness	<p>"Free from" claims or claims with similar meaning should not be allowed when they imply a denigrating message, notably when they are mainly based on a presumed negative perception of the safety of the ingredient (or a group of ingredients).</p>	<p>Certain parabens are safe when used in accordance with Regulation (EC) No 1223/2009. Considering the fact that all cosmetic products must be safe, the claim "free from parabens" should not be accepted, because it denigrates the entire group of parabens.</p> <p>Phenoxyethanol and triclosan are safe when used according with the Cosmetics Regulation.</p>



		Hence, the claim "free from these substances" should not be accepted because it denigrates authorised substances.
Informed decision-making	"Free from" claims or claims with similar meaning should be permitted when they allow an informed choice to a specific target group or groups of end users.	The following claims should be permitted if they also comply with the other common criteria: "free from alcohol", e.g. in a mouthwash intended as a family product;  "free from animal-derived ingredients", e.g. in products intended for vegans;  "free from acetone", e.g. in nail polish, for users wishing to avoid its particular smell.



#### **ANNEX IV**

##### **Hypoallergenic claim**

The claim "hypoallergenic" can only be used in cases where the cosmetic product has been designed to minimize its allergenic potential. The responsible person should have evidence to support the claim by verifying and confirming a very low allergenic potential of the product through scientifically robust and statistically reliable data (for example reviewing post-marketing surveillance data, etc.). This assessment should be constantly updated in light of new data.

If a cosmetic product claims to be hypoallergenic, the presence of known allergens or allergen precursors should be completely avoided, in particular the presence of substances or mixtures:

- o identified as sensitizers by the SCCS or former committees assessing the safety of cosmetic ingredients;
- o identified as skin sensitizers by other official risk assessment committees;
- o falling under the classification of skin sensitizers of category 1, sub-category 1A or sub-category 1B, on the basis of new criteria set by the CLP Regulation<sup>17</sup>;
- o identified by the company on the basis of the assessment of consumer complaints;
- o generally recognized as sensitizers in scientific literature;
- o for which relevant data on their sensitizing potential are missing.

The use of the claim "hypoallergenic" does not guarantee a complete absence of risk of an allergic reaction, and the product should not give the impression that it does.

Regarding the use of data from studies on humans in the risk assessment of skin sensitisation, including ethical aspects, reference should be made to the SCCS "Memorandum on use of Human Data in risk assessment of skin sensitisation", SCCS/1567/15, 15 December 2015.

The companies should consider whether consumers in the respective country understand the claim "hypoallergenic".

If necessary, further information or clarification regarding its meaning should be made available.

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<sup>17</sup> Section 3.4.2.2. (Skin sensitisers) of Commission Regulation (EU) No 286/2011 of 10 March 2011 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:083:0001:0053:EN:PDF>