

CODE OF PRACTICES

香港廣告商會

THE ASSOCIATION OF ACCREDITED
ADVERTISING AGENCIES OF HONG KONG



THE PURPOSE OF THESE STANDARDS:

The Code of Practice of The Association of Accredited Advertising Agencies of Hong Kong exists for three reasons:

- (i) to reassure advertisers who employ members of the Association that they are dealing with companies and individuals who subscribe to Code of Practice and ethical conduct in line with their own business ethics and attitudes;
- (ii) to ensure the continuation of the advertising agency business in Hong Kong as a professional and profitable enterprise. By safeguarding a minimum scale of remuneration, the industry is ensuring that a sufficient number of advertising agencies, offering a full range of services, is available to meet the requirements of Hong Kong Industry and Commerce;
- (ii) to provide a basis for standards and business practices such as remuneration, import duties, statutory charges and taxation that is common to both Hong Kong and the People's Republic of China. Providing this basis is both appropriate and timely, as clients of The Association of Accredited Advertising Agencies of Hong Kong increasingly require similar standards of professionalism and remuneration in both markets.

The purpose of strengthening, clarification and uplifting of standards is :

- (i) to ensure that each member will carry on his profession and business in such a manner as to protect the public interest and uphold the dignity and interests of the profession, the Association and its members generally, and
- (ii) to force competition between advertising agencies into the area of upgrading the quality and extending the scope of their various services, rather than restricting such activities to meet a financial need.

Membership of The Association of Accredited Advertising Agencies of Hong Kong requires that a member company, individual or a partnership shall acknowledge acceptance of the Code of Practice either under Company Seal or personal signature.

THE CODE OF PRACTICE OF THE ASSOCIATION OF ACCREDITED ADVERTISING AGENCIES OF HONG KONG ARE AS FOLLOWS:

FEES, DUTIES AND TAXES

1. Prior to undertaking any work, Members are required to have a clear understanding with advertisers about the service fees and government duties and taxes to be charged.

All accounts rendered shall set out clearly and specifically the amount and nature of the service fee charged and any government duties, levies and taxes levied.

MINIMUM SCALES OF REMUNERATION

2. The following is the minimum scale of charges to be observed by members

(A) Commission-earning business

- (i) **Creative advertising which is to be disseminated or circulated within Hong Kong and the People's Republic of China.**

Commission at the standard rate payable by the advertising media owners or operators or trade suppliers, calculated on such gross expenditure or outlay in respect of such advertising, and in addition thereto a service charge to be paid by the advertiser, bringing the total agency remuneration to not less than fifteen percent on such gross outlay or expenditure.

- (ii) Creative advertising to be disseminated or circulated within Hong Kong and the People's Republic of China, where media buying is carried out by other than a Member of the Association. In all other respects, i.e. account service, creative and media planning, the Member is operating as a full service agency and as such requires appropriate compensation.

Commission at the standard rate payable by the advertising media owners or operators or trade suppliers, calculated on gross outlay or expenditure in respect of such advertising, discounted by two and one half percent. The main agency therefore receives a minimum commission of twelve and one half percent on the gross outlay or expenditure, in respect of such advertising.

- (iii) If, in respect of any advertising of any kind mentioned in the foregoing

paragraphs (i) or (ii), commissions or charges shall be calculated on an expenditure or outlay less than the gross expenditure or outlay, members shall make additional charges to advertisers so that their total remuneration for such advertising shall be not less than that to which they would have been entitled had such commission or charges been calculated on such gross expenditure or outlay.

- (iv) All studio artwork hours are to be charged at the minimum rate set by The Association of Accredited Advertising Agencies of Hong Kong, which shall be revised from time to time. Other creative charges and fees are to be based on the experience and skill of the individuals involved.
- (B) Where no commissions are payable by the media owners or operators or trade suppliers the following minimum charges shall be made to advertisers.
- (i) Creative advertising to be disseminated or circulated within Hong Kong or the People's Republic of China. A charge of not less than fifteen percent of the gross expenditure or outlay in respect of such advertising.
 - (ii) Creative advertising to be disseminated or circulated within Hong Kong or the People's Republic of China where media buying is carried out by other than a Member of the Association. In all other respects, i.e. account service, creative and media planning, the Member is operating as a full service agency, and as such requires appropriate compensation. A charge of not less than twelve and one half percent of the gross expenditure or outlay in respect of such advertising.
- (C) The foregoing scale of remuneration is calculated before the levying of any government or other taxes on advertising, or import or other duties on advertising materials. Members shall invoice their clients for those clients' proportion of all taxes and statutory levies that are turnover-based or billings-based, and not of a profit-based / income tax nature, imposed by the relevant authorities in Hong Kong and/or the People's Republic of China. These charges will be in excess of any commissions or service fees received by the agency and will be calculated on the clients' gross expenditure or outlay on advertising.
- Similarly, Members shall invoice a client at cost for any duties, taxes or statutory levies incurred on advertising materials imported for use in Hong Kong or the People's Republic of China, either from outside those two markets, or in the movement of materials between the two markets.

(D) **The foregoing scale of remuneration should be regarded as the minimum allowable** scale below which no Member of the Association is permitted to operate, in either Hong Kong or the People's Republic of China. It should be emphasised that the servicing requirements of some advertising accounts necessitate a higher scale to ensure that the servicing of the account remains at a professional level and that the account returns a reasonable level of profit to the agency. In these cases members are empowered to negotiate additional remuneration on a client by client basis, which may take the form of additional service fees, hourly charges for specific services, etc.

REBATES, DISCLOSURES, COMMISSION SHARING

3. (A) No member shall allow or offer any direct or indirect rebate to an advertiser. Without affecting the generality of the foregoing, for the purpose of this provision a rebate shall be deemed to have been allowed or offered if a member with a view to or with the hope or expectation of obtaining an account or any advertising work shall do or offer to do any of the following things, namely :-
- (i) place any person in the service of an advertiser at the expense or partly at the expense of the member; or
 - (ii) pay or make any allowance, reward, fee or remuneration or grant any benefit or consideration to any person connected directly or indirectly with an advertiser; or
 - (iii) charge for work or materials supplied at less than the amount required by clause 4 of these Code of Practice.
- (B) No member shall accept from any third party any commission or remuneration at a higher rate than that regularly allowed by media owners or operators or trade suppliers as defined by clause 2 of these Code of Practice unless he shall have first made full disclosure to the clients concerned. It is recommended that clients be made aware of the rates of commission allowed to accredited advertising agents by media and suppliers. A list of such commissions is supplied as an appendix to the Code of Practice, and will be updated as appropriate and necessary.
- (C) Nothing in these Code of Practice shall prohibit a member sharing any part of his remuneration (commission, discounts and/or service fees) with any other member of The Association of Accredited Advertising Agencies of Hong Kong. Because the Association is set up in order to improve standards in the advertising industry, remuneration sharing with non-Association members is not in accordance with the Association's Code of Practice.

PURCHASES

4. Members shall charge for advertising materials and trade work procured by them from third parties in respect of any advertising at not less than [the gross cost thereof to them. However, attention is drawn to Section 3(B) specifically prohibiting the acceptance of any discount or commission greater than the regular commission, without first making full disclosure to the client concerned.

PROFESSIONAL PRACTICE

5. The Hong Kong Code of Advertising Standards as subscribed to by The Association of Accredited Advertising Agencies of Hong Kong is binding on all its members, and is set out on the back page of this document.
6. Each member shall carry on his profession and business in such a manner as to protect the public interest and uphold the dignity and interests of the profession, the Association and its members generally.
7. Members shall not continue to press a claim for business after being told by an advertiser that the advertiser already employs an agency with which he is satisfied.
8. Members shall not attempt to hold or obtain business by offering an extension of credit as an inducement.
9. Members shall not include their own names or their initials or symbols or in the case of joint members the name or the initials of the firm or any of its members or symbols in advertising prepared or handled for advertisers, but such advertising shall be wholly devoted to the service of the advertiser.

DIRECT MAIL/DIRECT MARKETING

10. The Association subscribes to the rules and Codes of Practice of the Director Mail and Marketing Association of Hong Kong. All members involved in Direct Mail and Direct Marketing should be familiar with the provision of those rules and abide by them. A copy of DMMA Code of Ethic can be obtained from the 4As Secretariat.

NEW BUSINESS PRESENTATIONS

11. Members shall be governed by the following standard of professional practice in relation to new business presentations:-
 - (A) Where an advertiser requests a written document derived solely from sources within an agency, explaining the agency and @s personnel, samples of work, asking for evidence of understanding of the advertiser's marketing situation, leading to a positioning statement, and devoid of the purchase of any paid out side advice or services, this document shall generally be submitted 10 the advertiser free of charge.
 - (B) Where a member agency provides creative ideas in any form to a prospective diem, whether for a fee or free of charge, the agency should make it clear that the advertiser is not entitled to use any part of the creative work so submitted (Other than by agreement between the parties) and copyright in respect of such creative work remains in the agency.

A suggested form of wording for inclusion in such materials is as follows .-

"The copyright for all purposes, in all materials in the following document remains the property of (The Advertising Agency) unless specific written contractual arrangements are made to the contrary."

CODE OF ADVERTISING STANDARDS

The Association endorses and supports in spirit as well as the letter, such codes of advertising standards as are laid down by the laws Hong Kong. The Association is also a self disciplining body. Any member found guilty of a contravention or non-compliance with the provisions of this Code will be penalised in accordance with Rules 9, 10, 11, 12 and 58 of the Rules of the Association. The Code below represents, briefly, the minimum standards to which the Association subscribes, and these are to be read in conjunction with prevailing Ordinances on the subject of advertising. The word "Advertisement" shall be construed throughout this Code in its broadest sense to embrace any form of advertising.

The general principle which will govern all advertising is that advertising shall be legal, decent, honest and truthful.

(A) PRESENTATION

- (i) An Advertisement shall always be truthful about what is offered and shall not be liable to mis-interpretation by implication or because of omissions.
- (ii) No advertisement shall contain statements or visual presentations offensive to accepted standards of public decency and good taste.
- (iii) Advertisements must comply with the laws of Hong Kong.
- (iv) Advertisements shall be clearly distinguishable as such to avoid confusion with editorial matter.
- (v) Special production techniques or substitute materials used in advertisements to depict the advertised product shall not be used unless the resultant picture presents a fair and reasonable impression of the product and its effects.

(B) DESCRIPTIONS AND CLAIMS

- (i) No advertisement shall contain any descriptions, claims, or illustrations which directly or by implication mislead about the product or service advertised and in particular regarding the following matters :-
 - a) quantity (which includes length, width, height, area, volume, capacity, weight and number), size or gauge;
 - b) method of manufacture, production, processing or re-conditioning;
 - c) composition;
 - d) fitness for purpose, strength, performance, behaviour or accuracy;
 - e) any physical characteristics not included in the preceding paragraphs;
 - f) testing by any person and results thereof;
 - g) approval by any person or conformity with a type approved by any person;
 - h) place or date of manufacture, production, processing or re-conditioning;
 - i) person by whom manufactured, produced, processed, or re-conditioned;
 - j) other history, including previous ownership or use.

- (ii) Special attention should be paid to the advertising of food and drugs, precious and semi-precious metals, medical products where specific requirements are set down by the law.

(C) SUBSTANTIATION

- (i) All descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation.
- (ii) No advertisement claim expressly stated to be based on, or supported by, independent research or assessment should be made, unless the member is in possession of evidence of such independent research or assessment.

(D) TESTIMONIALS

- (i) Testimonials used in advertisement shall be the testimony of competent, impartial persons containing no misstatement of facts or misleading implications and should reflect the current opinion of the authors. An advertiser shall not use fictitious testimonials, or testimonials originally given for products other than that currently offered by the advertiser. This will include testimonials making statements or claims which the advertiser knows to be incorrect. Members should ask the advertiser to supply a copy of the supporting evidence for any testimonial claim.

- (ii) Where an identifiable picture of a person is used in conjunction with a quotation commending an advertised product, the person shown should be the person whose words are quoted.

(E) IMITATION

Devices or methods of advertising likely to create confusion in the minds of people as between products or services shall not be used. This relates to imitation of a competitor as to trade marks, packaging design, labelling of products, copy, layout, illustrations, advertising slogans, visual presentation, music or sound effects as to be likely to mislead or confuse.

(F) COMPARATIVE ADVERTISING

Substantiated competitive claims inviting comparison with a group of products or other products in the same field are permissible under certain circumstances, provided that:-

- (i) It should be made clear with what the comparison is being made and that the differences being compared are true and can be proven.
- (ii) The subject matter of the comparison should not be presented to suggest a better bargain is being offered than is truly the case. Different weights, sizes, units of measurements, qualities and prices prevailing at different times, natural vs substitute products should be taken into account and comparisons made on an equivalent basis.
- (iii) Comparisons in all cases should be substantiated and supportable by research and/or other statistical evidence.
- (iv) Members should be aware of the legal implications of making comparisons between branded goods and named services rather than generic product groups or services.
- (v) Members should abide by principle that the comparison being made is fair and reasonable and that presentations in words and images do not disparage competitors.

(G) DISPARAGING ADVERTISING

Whilst advertising which compares one product to a group of products is allowable in certain circumstances (see above) the Association does not permit its members to indulge in disparaging advertising. Disparaging advertising can be defined as advertising which seeks to compare a product or service to similar or other products or services in a way which is misleading, derogatory, false in implication or in fact. Advertising which implies that a competitive product is not fit for purpose is not allowable.

Care should be taken when creating comparative advertising that facts are manifestly true and that proof is available of the comparative differences. When considering whether advertising is disparaging, the net effect of the total communication will be taken into account.

(H) SCIENTIFIC AND MEDICAL TERMS

- (i) All quotations from laboratory data statistics and containing scientific terms shall be taken from competent sources. Excerpts of data which distort or fail to disclose the true test results shall not be used in support of claims. Pseudo-scientific terms shall not be used in advertisements to make claims appear to have a scientific basis they do not possess.
- (ii) Testimonials by medical doctors, dentists, paramedical personnel including nurses, pharmacologists, physiotherapists, radiographers, and medical and dental technologists should not be used. Nor should any suggestion be made that a product or method of treatment is recommended generally by doctors, or approved by a particular hospital, unless the advertisement is intended only for publication in a bona fide medical journal.
- (iii) Special care should be taken where medical preparations, alleged cures and treatments are involved. Members are recommended to read the following for further clarification :-

Pharmacy and Poisons Ordinance (Cap. 138)

Undesirable Medical Advertisement Ordinance (Cap. 231)

Medical Registration Ordinance (Cap. 161)

Antibiotics Ordinance (Cap. 137)

Dangerous Drugs Ordinance (Cap. 134)

(I) TOBACCO ADVERTISING

- (i) All cigarette advertisement shall bear the appropriate health warning and tar designation of the cigarette being advertised.
- (ii) No children or juvenile shall participate in presentation of advertisements relating to tobacco and in particular, parents featured as smoking in the presence of children.
- (iii) Members are cautioned to comply with the requirements under the Smoking (Public Health) Ordinance (Cap. 371) and the Television Advertising Standards

(J) ALCOHOL ADVERTISING

- (i) Advertisements of alcoholic drinks shall not associate drink with driving or dangerous machinery; specific warnings however may be used in these circumstances.
- (ii) Advertisements should not suggest that drinking has therapeutic benefits or convey the message that drinking is a prerequisite to relaxation.
- (iii) Advertisement themes to induce purchasing of certain brands because they have a higher alcoholic content shall not be used.
- (iv) Advertisement of alcoholic drinks shall be directed only to adult audience.
- (v) No children or juvenile shall participate in presentation of advertisements relating to alcohol, unless they form part of the natural background.

(K) ADVERTISEMENTS TO CHILDREN

- (i) Advertisements directed to the primary attention of children shall contain nothing, in illustration or otherwise, which might result in harm, physically, mentally or morally, or which exploits their natural credulity. In particular, such advertisement shall avoid the portrayal of any of the following :-
 - a) the commission of any crime, acts of violence or cruelty or sexual acts;
 - b) circumstances of agony or anguish;
 - c) children acting dangerously or showing a disregard for safety
e.g. playing on the road, leaning out or climbing heights unattended, lighting fires or explosives, dealing with power supplies or complicated machinery, or handling unsafe material and chemicals.

- (ii) Advertisements should not encourage children to make themselves a nuisance in order to persuade others to buy the advertised products; nor should it suggest to children that if they did not buy the advertised product, or encourage others to do so, they will be failing in their duty, or lacking in their loyalty or liable to be held in contempt.
- (iii) Approximate prices of the goods portrayed in advertisements directed to children should be indicated.
- (iv) The sizes of the goods intended for children should be realistically portrayed in the advertisement.
- (v) Members shall comply with the comprehensive Television Advertising Standards on advertising to children for advertising in all media.

(L) PRICE CLAIMS

Advertisements shall not contain exaggerated, fictitious price comparisons, non-existent discounts or savings, or employ list prices known to be false or not current. All prices quoted shall be accurate and incapable of misleading by distortion or undue emphasis.

(M) FREE GIFTS

Except where the law prohibits use of the word "free" in advertising, goods or services offered without cost or obligation to the recipient may be unqualifiedly described as "FREE". The term "FREE" can also be used conditionally where the offer requires the recipient to purchase some other item - provided all terms and conditions are accurately and conspicuously disclosed in immediate conjunction with the use of term "FREE" and further provided that the article or service required to be purchased is not increased in price or decreased in quality or quantity. However, if the so-called free item is not an accessory, extra or duplicate but an essential component part of an article normally sold as a complete unit, then the term shall not be described as free in the advertisement.

(N) GUARANTEES

The word "Guarantee" is to be used according to its legal meaning. Wherever used, the terms of the guarantee are to be clearly stated - or information given as to where the full terms can be obtained.

(O) SPECIAL CLAIMS

An advertisement shall not contain any reference calculated to lead the public to assume that the product advertised has some special ingredient unless the qualities and properties of this ingredient can be scientifically established. The use of hyperbole or frank exaggeration primarily intended to amuse or direct attention is permissible provided they are clearly to be seen as humorous or hyperbolic and are not likely to be understood as making literal claims for the advertised product.

(P) MAIL ORDER ADVERTISING

(i) Advertisers shall be prepared to meet any reasonable demand created by their advertising and shall readily refund in full money to buyers who can show reasonable cause for dissatisfaction with their purchase or delay in delivery.

Samples of goods advertised shall be available at the advertiser's place of business for public inspection during normal business hours.

(ii) All mail order advertisements shall contain the following information :-

- a) the name and address of the advertiser;
- b) whether the advertiser will accept a return of the goods, and conditions of refund;
- c) the period within which the advertiser undertakes to fulfil orders.

(iii) Advertisements for articles made of precious metals shall state the amount and fineness of the metal involved in the pieces on offer.

(Q) SWITCH SELLING (BAIT ADVERTISING)

Advertisers shall ensure that merchandise of the quality or specification advertised is available prior to the advertising of such merchandise and that an adequate quantity or number of such goods shall be available to meet reasonable public demand having regard to the nature of the merchandise. Where it becomes clear that the advertised product is no longer available, immediate action should be taken to ensure that any further advertisements for the products are promptly amended or withdrawn.

(R) INSTRUCTIONAL COURSES

Advertising offering courses of instruction in trades or subjects leading up to professional or technical examinations shall not imply the promise of employment, or exaggerate the opportunities of employment or remuneration alleged to be open to those taking such courses; neither shall it offer unrecognised "degrees" or qualifications.

(S) SUPERSTITION AND FEAR

Advertisements shall not be framed in a manner as to exploit the superstitious or unduly play on fear to induce people to purchase goods or services.

(T) SOCIAL RESPONSIBILITY

Advertising as far as possible should show social responsibility, and in particular :-

- (i) Advertisements should not disparage sectors of the society, whether by sex, race or creed.
- (ii) Advertisements should neither encourage nor condone violent or anti-social behaviour.
- (iii) Where the context admits, advertisements should seek to encourage civic duties and consideration for the public, e.g. throwing an emptied can or cigarette butt into a bin.