

Health product advertising and the Marketing Code

Advertisements for health products must not fall foul of the Code of Practice for the marketing of health products or the Code of Advertising Practice, says Delene Bertasso, senior associate at law firm Adams & Adams.



The new South African Code for the Marketing of Health Products and the Code of Advertising Practice provide guidelines concerning the nature of the advertising content in healthcare advertisements.

"The Marketing Code was issued in terms of the Medicines and Related Substances Act. Its aim is to ensure that the marketing of health products to both healthcare professionals and consumers is carried out in accordance with the ethical and professional parameters of the Marketing Code," says Bertasso.

According to Bertasso, companies in the Healthcare Industry have agreed to subscribe to the Marketing Code. "The Marketing Code Authority ("MCA") has been entrusted with enforcing the Marketing Code and is in the process of appointing various panels to handle complaints. The MCA has not yet dealt with any complaints, but Adams & Adams will carefully be monitoring this space and reporting any interesting developments."

Filing complaints

An entity believing that certain marketing material contravenes the provisions of the Marketing Code may file a complaint with the Executive Officer of the MCA. The Marketing Code makes it incumbent upon the parties to a complaint to embark upon genuine attempts to resolve the matter before filing a complaint. While the Advertising Code also requires the parties to attempt a settlement before filing a complaint, the Marketing Code's requirements in this regard are stricter.

The Marketing Code is in essence a duplication of Appendix "A" to the Advertising Code- which dealt with healthcare advertising, and which is enforced by the Advertising Standards Authority of South Africa ("ASA").

"In September 2012 the ASA passed a resolution removing Appendix "A" from the Advertising Code," comments Bertasso.

It is therefore no longer possible to file complaints at the ASA against advertisements promoting health products based on a contravention of the provisions of Appendix "A". For example, in terms of Appendix "A" it was possible to object to advertisements that included recommendations by a person, who because of their celebrity status, may encourage consumers to use a particular health product. As this provision does, however, appear in the Marketing Code a complaint can now be lodged at the MCA based on a contravention of this provision.

Double-check that marketing material

Despite the removal of Appendix "A", it is still possible to file complaints against advertisements promoting health products at the ASA based on a contravention of the other sections of the Advertising Code, such as misleading claims and/ or the exploitation of the complainant's advertising goodwill.

"Members of the healthcare industry who do not want to find themselves at the receiving end of a complaint, are well advised to ensure that their marketing material does not fall foul of both the new Marketing and the ASA's Advertising Codes," concludes Bertasso.

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