

Legal Extranet



South Africa

General Legal Overview

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General Legal
Overview: Legislation Article

Subject:

Free gifts or premiums

Country:

South Africa

General legal framework:

National Gambling Act 33 of 1996

Lotteries Act 57 of 1996

Tobacco Products Control Act 83 of 1993

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

The ASA Code requires, in terms of the general principles, that products should not be described as "free" where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, a clear statement that this is the case should be made in the advertisement.

Where a claim is made that, if one product is purchased, other products will be provided "free", the advertiser should be able to show that he will not be able immediately and directly to recover the cost of supplying the "free" product whether in whole or in part.

A trial may be described as "free" although the consumer is expected to pay the cost of returning the goods, provided that the advertiser has made clear his obligation to do so.

Advertisements offering "free" goods shall indicate that such goods are only received subject to purchase.

Consumers shall not be led to overestimate the value of goods whether by exaggeration or through unrealistic comparisons with other goods or services.

The advertiser should be ready to substantiate any claim he makes as to the value in cash terms of goods offered by him at a lower price or free; and any saving to the consumer claimed to result from the offer of goods at a lower price than their actual value.

For more information in this regard, please see the ASA website.

Weblink: <http://www.asasa.org.za>

Specific restrictions:

Tobacco:

Section 3 Of the Tobacco Products Control Act 83 of 1993 prohibits the free distribution of tobacco products as well as the receipt of tobacco products as gifts or prizes in contests or games.

Subject:

Gaming and Betting

Country:

South Africa

General legal framework:

National Gambling Act 7 of 2004
Lotteries Act 57 of 1996
Broadcasting Act 153 of 1993

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

Section III of the ASA Code states that advertisements for betting tipsters will be accepted insofar as those advertisements do not offer guarantees or advertise success stories. Betting tipsters will be required to disclose to publishers their real names and permanent addresses.

see www.asasa.gov.za)

Section 15 of the National Gambling Act 7 of 2004 provides that the advertising of gambling activities to attract minors, other than amusement games, is prohibited, and all advertisements have to include a statement in the prescribed format warning of addictive and compulsive gambling.

The National Gambling Act further provides that if the Minister is satisfied that a specific form of advertising is not targeted at the general public, then that advertisement will be exempt from being publicised.

According to the Regulations under the Lotteries Act, a lottery incidental to entertainment that is exempt in terms of this Act may be advertised through postal services, newspapers, distribution of pamphlets, and radio stations but not broadcasting nationally.

Such an advertisement shall state:

1. the purpose of the lottery concerned;
2. the beneficiary of the lottery;
3. the price of the tickets;
4. where the tickets will be sold;
5. the closing date for participation in the lottery;
6. when the draw will take place;
7. the manner in which the winner or winners of the lottery shall be determined;
8. the prizes to be won;
9. the fact that the determination of the winner or winners shall be final and no correspondence in that regard may be entered into;
11. prizes may not be exchanged for cash amounts;
12. all prizes shall be allocated; and
13. how the winner or winners shall be notified.

Specific restrictions:

The Broadcasting Act requires that all entities registered as licensees have to comply with the ASA Code. A specific form of advertising may be exempt if the authorities are satisfied that the advertisement does not target the general public.

Subject:

Prize Promotions

Country:

South Africa

General legal framework:

National Gambling Act 7 of 2004
Lotteries Act 57 of 1996

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

Lotteries are games, schemes or promotional competitions where the prizes are distributed by lot or chance. Where skill is the determining factor in determining the prize, this will fall within the definition of gambling and will be governed by the National Gambling Act 33 of 1996.

In South Africa, it is not possible to eliminate the element of chance by merely asking questions which that are so easy that they do not in any way influence the outcome. There must be 'real skill' involved in determining the winner of a prize.

Regulations under the Lotteries Act provide that a promoter may not offer or award to a person under a particular age, a prize or benefit comprising or consisting of or involving goods or services which in terms of a law, code of conduct or ethics, agreement or rule, may not be sold or supplied to, used by, or in any other way benefit a person under that age.

Furthermore, advertising material in respect of a promotional competition or which offers or awards goods or services must not be directed at underage persons. The rules of promotional competitions relating to the manner and date of announcing the winners of the competition must be published in advertising material promoting that competition.

Subject:

Alcohol

Country:

South Africa

General legal framework:

Liquor Act 59 of 2003
Liquor Products Act 60 of 1989

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")
Industry Association for Responsible Alcohol Use

General restrictions:

Liquor advertising must comply with the provisions of Appendix B of the ASA Code, which states that liquor advertisements may not:

1. feature irresponsible drinking or encourage a general increase in the consumption of alcohol;
2. be directed at persons under the age of 18, 3. associate a person younger than 25;

3. imply that alcoholic-beverage consumption is essential to business or social success or acceptance;
4. be suggestive of sexual indulgence or permissiveness;
5. suggest the consumption of liquor under inadvisable circumstances;
6. depict pregnant women;
7. feature aggressive or anti-social behaviour;
8. offend cultural , gender and religious sensitivities;
9. suggest consumption of liquor at any place specifically prohibited by the Liquor Act; and
10. suggest or commend over-indulgence and suggest the noticeable after-effects of liquor abuse.

All advertisements in print, television, and cinema media must portray the message “Not for sale to persons under the age of 18”. Further specifications for such advertisements are set out in Appendix B. (see the ASA website at www.asasa.org.za).

The Liquor Act provides in terms of Section 9, that a person must not advertise any liquor or methylated spirits in a false or misleading manner; in a manner intended to target or attract minors; or any substance that is prohibited in terms of this Act. Furthermore, a person must not advertise any substance as liquor or methylated spirits if that substance is not liquor or methylated spirits, respectively, as defined in the Act.

Subject:

Tobacco

Country:

South Africa

General legal framework:

Tobacco Products Control Act 83 of 1993

General self-regulatory framework:

The Advertising Standards Association of South Africa’s Code of Advertising Practice (“the ASA Code”)

General restrictions:

Advertising restrictions relating to tobacco are regulated in terms of legislation and is also governed by the ASA Code.

The Tobacco Products Control Act provides that no person shall:

1. advertise including the use of tobacco trade marks, logos, brand names or company names used on tobacco products; or
2. use tobacco trade marks, logos, brand names or company names for the purposes of advertising any organisation, service activity or event;

No manufacturer, importer, distributor or retailer of tobacco products shall:

1. organise or promote any organised activity that is to take place in whole or in part in the Republic;
2. make any financial contribution to any organised activity that is to take place, or is taking place, or has taken place in whole or in part in the Republic;
3. make any financial contribution to any person in respect of the organisation or promotion of any organised activity in the Republic by that person; the participation, by that person, in any organised activity that is to take place, or is taking place in whole or in part, in the Republic;

4. sell or import for subsequent sale any prescribed tobacco product, unless product is in a package;
5. the package in which the tobacco product is sold bears the prescribed warning concerning the health hazards incidental to the smoking of tobacco products;
6. the quantities of the constituents present in the tobacco product concerned are stated on the package.

Warnings and content information must appear on the packaging in the manner or be of the duration as described in the Tobacco Products Control Act.

Permitted advertising:

In terms of the Tobacco Products Control Act, a retailer of tobacco products may post (in accordance with the regulations passed in relation to the Tobacco Products Control Act), signs at the point of sale that indicate the availability of tobacco products and their price.

Subject:

Motor vehicle advertising

Country:

South Africa

General legal framework:

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

Motor vehicle advertising is covered by the ASA Code, and provides that:

1. all advertisements quoting fuel consumption figures shall clearly state where the test was conducted and the average speed of the vehicle during the test;
2. advertisements making claims of successes in motor sport have to be approved by AA Motorsport, an independent body, set up to ensure that motor vehicle standards are maintained according to certain criteria, prior to publication; and
3. any advertisements offering motor vehicles on a lease or rental basis need to include details on payments to be made and the basis on which the residual value will be determined if ownership of the vehicle is obtained at the end of the agreement, and the price stated in such advertising must reflect the actual price to be paid by the lessee or hirer.

Subject:

Health & Beauty

Country:

South Africa

General legal framework:

Health Act 63 of 1977
Medicines and Related Substances Control Act 101 of 1965
Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

Medicines Control Council (MCC)

South African Bureau of Standards (SABS) and Department of Trade & Industry (DTI) in co-Operation with the Cosmetic, Toiletry and Fragrance Association (CTFA) of South Africa

General restrictions:

All advertisements for products subject to licensing under the Medicines and Related Substances Act must comply with the requirements of the Act and conditions contained in relation to product registration, as well as the standards and regulations as set out by the MCC governing the advertising of health and beauty products, including cosmetics.

The standards set out in general provisions of the ASA Code as well as Appendices A and C of the ASA Code are supplementary to these regulations.

Appendix A of the ASA Code relates to medicinal and related products and advertisements containing health claims and provides that:

1. claims of medical or other professional support for a product should be substantiated and the extent of the support should not be exaggerated in any way;
2. advertisements for products should not encourage, or be likely to lead to, unsafe practices by children, or other inexperienced children, or create perceptions that such practices are desirable;
3. no advertisement should employ words, phrases or illustrations which claim or imply the cure of any illness unless registered by the MCC;
4. no advert should contain any offer to diagnose or treat via correspondence;
5. no advert should cause unwarranted fear;
6. no advert should encourage excessive or prolonged use of products;
7. no advert should make exaggerated claims;
8. no refund of money may be offered to dissatisfied users.

Further unacceptable claims relating to particular products, treatments, symptoms and conditions are listed in this appendix. Only products registered with the MCC with claims approved by the council may be advertised. The promotion of medicines through competitions and coupons is regulated by the ASA Code.

Appendix C of the ASA Code regulates the advertising of cosmetics and is supplementary to the general provisions of the ASA Code. Any claim implying health-related properties must have appropriate scientific substantiation. This appendix of the ASA Code covers the following topics: use of the word "natural"; use of the word "pure"; claims by medical practitioners; claims for ingredients; anti-ageing products; anti-perspirant products; alpha hydroxy acids; cosmetic cellulite products; skin lightener products, hair and scalp products and preparations containing sunscreens.

For further information please see www.asasa.org.za.

Subject:

Comparative Advertising

Country:

South Africa

General legal framework:

Consumer Affairs (Unfair Business Practices) Act 71 of 1988.

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

Section II of the ASA Code regulates comparative advertising and provides that advertisements whereby factual comparisons are made between products or services are allowed, provided that:

1. all legal requirements are adhered to, and in this regard, the Trade Marks Act 194 of 1993 is taken into consideration;
2. only facts capable of substantiation are used; objectively determinable and verifiable claims are made;
3. claims are not misleading or confusing;
4. no infringement of advertising goodwill takes place;
5. there is no disparagement;
6. the facts or criteria used are chosen fairly;
7. the products or services compared must have the same or similar characteristics and must be intended for the same or similar purpose;
8. the contextual implication must be strictly limited to the facts;
9. where claims are based on research, the consent as to the accuracy and scope of such claims must be obtained from the relevant research body, and the advertiser accepts responsibility from the accuracy of the research and claims.

The guiding principle in all comparisons shall be that products or services shall be promoted on their own merits and not on the demerits of competitive products.

The intention of the advertiser is important in determining whether an advertisement complies with the requirements of the ASA Code.

For further information in this regard, please see www.asasa.org.za.

Subject:

Financial Products and Services

Country:

South Africa

General legal
framework:

Financial Markets Control act 55 of 1989
Financial Advisory & Intermediary Services Act 37 of 2002

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

Section III of the ASA Code regulates Financial advertising and provides requirements for the following categories: business opportunities; self-employment opportunities; financial assistance and debt consolidation; brokerage of installment take-overs, and employment training and courses of instruction.

Generally the ASA Code provides that advertisements addressed to the general public for financial products or services or financial information should ensure that the public are fully aware of the nature of any commitment into which they may enter as a result of responding to the advertisement.

Due to the complex nature of finance, advertisers have a responsibility to ensure that advertisements do not take advantage of the public who may lack knowledge and experience in this field.

The Financial Markets Control Act 55 of 1989 prohibits the canvassing of advertising by any person who is not an

authorized financial services provider.

Subject:

Pharmaceuticals

Country:

South Africa

General legal framework:

The Medicines and Related Substances Control Act 101 of 1965 contains regulatory provisions relating to labeling and advertising of pharmaceuticals. The Medicines Control Council (MCC) as governed by the Department of Health may require evidence of compliance with conditions set out in the above Act.

General self-regulatory framework:

Appendix A of the Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

Advertisements must comply with Appendix A of the ASA Code, and the marketing requirements as set out in the Medicines and Related Substances Control Act, as well as any conditions contained in the product registration (as provided by the MCC).

It may be required that the advertiser has to produce evidence of compliance with any condition attached to the registration, to the MCC, and only those products registered with the MCC, with claims that have been proven by the Council, may be advertised.

No advertisement should make exaggerated claims, or cause false anxiety or employ words or phrases which claim to cure an ailment unless permitted by and registered with the MCC.

Labels of medicines for self-medication should contain a warning that if symptoms persist a doctor should be consulted.

Additional restrictions:

All advertisements must give the necessary information for correct use of the product, which includes the proprietary name of the medicine as well as names and quantities of ingredients

Claims of medical or professional support for a product should be substantiated and not exaggerated in any way.

The promotion of medicines through competitions and through the use of coupons is strictly prohibited.

Subject:

Direct Marketing

Country:

South Africa

General legal framework:

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")
The Direct Marketing Association of South Africa.

General restrictions:

Appendix D of the ASA Code governs mail order advertising. The direct marketing rules must be read in conjunction with the general rules as set out in the ASA Code. The purpose of this appendix is to lay down criteria for professional

conduct, as well as to provide the public with an indication of the self-imposed limitations accepted by those using or working in direct marketing.

These rules form the basis for arbitration where there is a conflict in interest within the business, or between companies and the general public.

The ASA Code governs: 1. the obligations of mail order advertisers, 2. the supply of goods, 3. supply of services, 4. advertising collectibles and limited editions, 5. special offers, 6. competitions, 7. fulfillment of orders, 8. return of goods and refunds, 9. mailing lists, 10. time periods applicable, as well as lists and data. Generally the advertisement must be honest and not ambiguous, so as to avoid misleading advertising.

Specific restrictions:

Television:

Television advertising must clearly state at the time, the price given and any additional costs to be paid, as well as the proper name of the seller, with addresses, in clearly visible letter sizes.

Legislation Article

Subject:

E-mail

Country:

South Africa

General legal framework:

Electronic Communications and Transactions Act 25 of 2002

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

E-mail and other forms of electronic media are required to comply with the general provisions of the ASA Code, as well as the relevant provisions of the Electronic Communications and Transactions Act. Neither the ASA Code or the Act deal specifically with e-mail advertising.

Legislation Article

Subject:

Sponsorship

Country:

South Africa

General legal framework:

Broadcasting Act 4 of 1999

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

All forms of sponsorship advertising are required to comply with the general provisions of the ASA Code.

Additional restrictions:

Tobacco:

No person is able to organize, promote, make financial contributions or sponsor an event within the Republic, if the advertisement is related to tobacco products.

Legislation Article

Subject:

Data Protection

Country:

South Africa

General legal framework:

Copyright Act 98 of 1978

Electronic Communications and Transactions Act 25 of 2002

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

General restrictions:

The general rules relating to advertisements are applicable, as well as Annexure D of the ASA Code, whereby it states that advertisers collecting personal information from individuals must inform them at that time who is collecting the information and why, as well as advising whether the information will be disclosed to others.

The Electronic Communications and Transactions act 25 of 2002 contains a voluntary section on protecting personal information collected by electronic means. Chapter 8 of the ECT Act contains universally accepted data protection principles setting out how personal information, as defined in the ECT Act may be collected and used. Subscription to these principles is voluntary, and this chapter of the ECT Act only applies to information that has been obtained through electronic transactions.

If an organization decides to subscribe to the principles provided in the ECT Act, it will have to subscribe to all of the principles, as selective subscription is not permissible. Section 51 of the ECT Act sets out the principles for collecting, using and disclosing personal information.

Subject:

Coupons

Country:

South Africa

General legal framework:

General self-regulatory framework:

The Advertising Standards Association of South Africa's Code of Advertising Practice ("the ASA Code")

Medicines Control Council

General restrictions:

All the general provisions of the ASA Code must be complied with when making use of coupons in advertisements.

Specific restrictions:

Medicines:

No medicines shall be promoted to the public through the use of coupons in advertising if the use of the coupons could lead to the misuse of the medicine or promote unhealthy usage, which would be detrimental to the consumer.

Information
supplied by:

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Disclaimer

The information set out above is only intended to provide a general overview of the subject matter covered. It is not a substitute for legal advice, which should be obtained for each individual situation, from a suitably qualified and experienced local lawyer.

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