

G-Regs™

Netherlands – Section A – Dutch Advertising Code



Full title: The Dutch Advertising Code (*Nederlandse Reclame Code* – NRC)

Title of relevant section: Section A – General
Articles 1-19, Annex 1 & 2

Article 1

Advertising is defined as: any form of public and/or systematic direct or indirect promotion of goods, services and/or ideas by an advertiser or, either wholly or partly, on behalf of him, with or without the help of a third party. The solicitation of services is also defined as advertising.

The advertiser is an organization or a person, not a consumer.

Explanation of Article 1

The different forms of advertising include (amongst others): teleshopping, telemarketing, sponsorship, product placement, packaging, labelling, direct marketing and buzz marketing.

It is important that a (organised/ structured) mechanism can be described/ outlined, whereby the direct or indirect promotion of goods, services and/or ideas takes place or has taken place.

The requirement of systematic promotion is needed in order to prevent all so-called one-to-one communications, such as for example, one-on-one sales talks, from being regarded as 'advertising'. A one-to-one communication may be regarded as advertising if it has been established that it was a standard/ generic communication and not specifically aimed at the individual recipient.

Communications which do not contain any promotional element are not regarded as advertising within the meaning of this article. These might include purely factual statements, such as opening times and purely factual information about the policy (or changes in policy) of public authorities or private sector companies.

Also, communications about goods, services and/or ideas, in which there is no inducement/ incitement or influence exerted by the advertiser, are not advertisements within the meaning of this article. If it is a question of a communication stimulated¹ by the advertiser, it may therefore constitute advertising *

* The Advertising Code Authority and /or the Board of Appeal shall determine whether such communications can be attributed to the advertiser. This may be the subject of a special advertising code and will depend, inter alia, on whether the advertiser can actually exert influence on the announcement(s) and if not, whether the advertiser has made or makes sufficient effort beforehand to ensure that the announcement will meet the requirements of the Dutch Advertising Code.

¹ "Stimulating communications" can mean promoted (paid for) communications

URL of source: Dutch: <https://www.reclamecode.nl/nrc/pagina.asp?paginaID=262%20&deel=2>

The overall message plays a role in assessing the promotional element. Not only is it about the text, but also the size, lay-out, use of colour and so forth. The mere stating of the advertiser's name may in itself constitute advertising (e.g. sponsor boards).

The definition does not stipulate that the promotion is a paid advertisement. Usually this will be the case, but from the point of view of the public it makes no difference whether an advertisement is placed free of charge or in return for payment.

Article 2

Advertising must be in accordance with the law, the truth, good taste and decency

Explanation of article 2

This article includes, among other things, the provisions of the AVMS Directive² which provide that advertising must not offend human dignity and that advertising may not contain or promote any type of discrimination based on gender/ sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation (see Art. 9(1c)(i&ii) AVMSD)

The criteria of "good taste and decency" should be assessed according to current social views as to whether the communication exceeds permissible limits, also taking into account the manner in which it has been published and the effect that it has on the public as a result. A communication published in such a way that the public cannot avoid being confronted with it will be deemed to exceed permissible limits earlier than communications published in other ways. In this respect, the frequency with which the communication is seen and the situation of the communication must also be considered

Article 3

Advertising must not contravene the public interest, public order or good morals.

Article 4

Advertising must not be gratuitously offensive or constitute a threat to mental and/or physical public health.

Article 5

The form and content of advertising must not undermine confidence in advertising.

Article 6

Without justifiable cause, an advertisement shall not arouse feelings of fear or superstition.

Article 7

Advertising must not be unfair. Advertising is considered to be unfair if it contravenes the requirements of professional diligence, and if it materially distorts or is likely to materially distort the economic behaviour of the average consumer reached, or targeted, as regards the product. Misleading and/or aggressive advertising is considered to be unfair in all cases.

Explanation of Article 7

If an advertisement is targeted at a specific group of consumers, it shall only be considered unfair if the advertisement distorts the economic behaviour of the average member of this group. Advertisements which the advertiser/ trader could reasonably be expected to foresee as materially distorting or likely to materially distort the economic behaviour of a specific, clearly recognizable group of consumers, i.e. consumers who are particularly vulnerable to that type of advertising or to the corresponding products due to their mental or physical disability/ infirmity, age or credulity, must be assessed from the perspective of the average member of that group. This does not affect the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.

² Audiovisual Media Services Directive 2010/13/EU <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:en:PDF>

URL of source: Dutch: <https://www.reclamecode.nl/nrc/pagina.asp?paginaID=262%20&deel=2>

“materially distorting the economic behaviour of consumers” means using advertising to appreciably impair the consumer’s ability to make a well-informed decision which causes the consumer to make a transactional decision which he otherwise would not have made.

“Professional diligence” is defined as the normal level of skill and care that may be reasonably expected from a trader towards the consumer, in accordance with honest market practice and/or the standard of good faith within the trader’s market sector.

“Transactional decision” means a decision made by a consumer as to whether, and if so how and on what terms he purchases a product, makes a payment in whole or in part (i.e. in instalments), retains or disposes of a product, or exercises a contractual right in relation to the product, irrespective of whether or not the consumer decides to act or refrain from acting (i.e. decides to conclude a transaction)

Article 8

Misleading advertising

8.1: When assessing whether or not an advertisement is misleading, account must be taken of all its characteristics and circumstances, the factual context, the limitations of the communication medium, and the public to which it is addressed (intended audience)

8.2: Any advertising which contains incorrect/ false information, or information that is unclear or ambiguous for the average consumer in respect of one or more of the elements as listed in points a - g hereunder, and causes or is likely to cause the average consumer to take a transactional decision that he would not have otherwise taken, is considered to be misleading:

- a. The existence or nature of the product
- b. The main features of the product, such as availability, benefits, risks, execution, composition, accessories, customer service and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose (suitability for use), usage, quantity, specification, geographical or commercial origin, expected results, or the results and essential characteristics of tests and controls performed on the product.
- c. The extent of the obligations of the advertiser, the motives for advertising and the nature of the sales process, any statement or symbol related to direct or indirect sponsorship, or recognition/ approval of the advertiser or the product;
- d. The price or the way in which the price is calculated, or the existence of a specific price advantage;
- e. The need for a service, spare part (component), replacement or repair;
- f. The nature, characteristics and rights of the advertiser or his agent, like for example his identity, his assets, qualifications, status, approval, affiliation, connections; ownership of industrial, commercial or intellectual property rights, or his prizes, awards and distinctions;
- g. The legal rights of the consumer, including the right of replacement or refund, or the risks he might run/ face.

8.3: Advertising is also regarded as misleading if it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves the following:

- a. Marketing of a product in a way that could lead to confusion with a competitor’s products, trademarks, trade names and other distinguishing marks;
 - b. Non-compliance by the advertiser with a code of conduct by which he has undertaken to be bound, insofar as the commitment/ obligation is capable of being verified and the advertiser indicates (in advertising) that he is bound by the code of conduct.
 - c. Omitting, keeping hidden, or providing in an unclear, unintelligible, ambiguous or untimely manner – essential information which the average consumer needs - in order to make an informed transactional decision
-

Explanation of article 8.3

Where the medium used for advertising involves limitations of space or time, these limitations as well as measures taken by the advertiser to make the information available to consumers by other means, shall be taken into account when deciding whether information has been omitted. Essential (i.e. material) information includes, among other things, all information the advertiser has to provide pursuant to the law on advertising.

8.4 Invitation to purchase

In the case of an invitation to purchase in advertising, which does not relate to a distance contract or off-premises contract, the following essential (i.e. material) information must be provided:

- a. the main characteristics of the product, to an extent appropriate to the medium and the product;
- b. the geographical address and the identity of the advertiser, in particular, his trading/business name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
- c. the price including taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges/costs cannot reasonably be calculated in advance, the fact that such additional charges/costs may be payable;
- d. the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
- e. for products and transactions involving a right of withdrawal/ revocation or cancellation, the existence of such a right

Invitation to purchase in connection with a distance or off-premises contract

If the invitation to purchase in advertising relates to a distance contract or off premises contract, instead of the abovementioned information, the following essential information must be provided in a clear and comprehensible manner:

- f. the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
 - g. the identity of the advertiser, such as his trading name;
 - h. the geographical address at which the advertiser is established and the advertiser's telephone number, fax number and e-mail address, where available, and, where applicable, the geographical address and identity of the advertiser on whose behalf he is acting;
 - i. the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
 - j. the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
 - k. the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;
-

-
- l. where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with the law, as well as the model withdrawal form set out in Annex I(B) of Directive 2011/83/EU;
 - m. the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
 - n. where applicable, the minimum duration of the consumer's obligations under the contract;

Additional requirements for the invitation to purchase in connection with a distance contract

If the invitation to purchase in advertising relates to a distance contract, in addition to the obligations in points f – n, the following obligations:

- o. the information provided for under f. - n. shall be made available to the consumer in a way appropriate to the means of distance communication used. In so far as that information is provided on a durable medium³, it shall be legible
- p. the consumer shall be made aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for under f., i., m. and n.
- q. the electronic ordering process shall be arranged in such a way that the consumer can only accept an offer after it has been made absolutely clear that the order implies an obligation to pay.

If the acceptance is done by activating a button or a similar function, there is compliance with the previous sentence if when placing the order it is made clear in words that cannot be misunderstood and in an easily legible manner that the acceptance implies an obligation to pay towards the advertiser.

A button or similar function shall therefore be labelled in an easily legible manner with an unambiguous formulation from which it is made clear that placing the order entails an obligation to pay the advertiser. This can be done by the phrase "order with obligation to pay" - *bestelling met betalingsverplichting*

- r. In case of a means of distance communication which allows limited space or time to display the information, the advertiser shall provide, on that particular means, prior to the conclusion of such a contract, at least the information regarding the main characteristics of the goods or services, the identity of the advertiser, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to under f., g., i., l. and m. The other information referred to under h., j., k. and n. shall be provided by the advertiser to the consumer in an appropriate way in accordance with what is stated above under o.
- s. When using the phone with a view to concluding a distance contract with a consumer, the advertiser shall, at the beginning of the conversation, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, and the commercial purpose of the call.

Explanation of article 8.4

An "invitation to purchase"⁴ is defined as a commercial message stating the characteristics and the price of the product in a way appropriate to the medium used, and thus enabling the consumer to make a purchase. If the advertisement contains an answering or ordering

³ Art. 2(10) of the Consumer Rights Directive 2011/83/EU – 'durable medium' means any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored

⁴ UCPD Directive – Art 2(i) 'invitation to purchase' means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;

URL of source: Dutch: <https://www.reclamecode.nl/nrc/pagina.asp?paginaID=262%20&deel=2>

mechanism, it is always considered to be an invitation to purchase. In case such a mechanism is missing, it depends on the circumstances whether there is a matter of an invitation to purchase. A key factor is whether the consumer can base a decision about the transaction on the information in the advertisement. If the advertisement states a (starting from) price, the consumer usually has sufficient information to decide to make a transaction.

8.5: The methods of advertising (or advertising practices) which are considered misleading under all circumstances are set out in Annex 1 of the Dutch Advertising Code.

Explanation of article 8.5

The methods of advertising as referred to in Annex 1 of the Dutch Advertising Code are misleading under all circumstances. Therefore, it is not necessary to consider whether they are misleading for the average consumer, or if the economic behaviour of the average consumer is materially distorted or is likely to be materially distorted.

Article 9

Testimonials, commendations (attestations) or expert statements that are used in advertising must be based on the truth and must be in line with the latest accepted scientific views.

Article 10

In advertising intended for the general public, scientific terms, statistical data and quotations shall be used with the utmost care in order to prevent/ avoid confusion of ideas. If use is made of statistics which are valid only within certain limits, such limits shall be stated clearly. No technical terms, descriptions, illustrations or pictures that are manifestly intended to suggest in a quasi-scientific or misleading manner the presence of non-existent properties of goods or services, shall be used

Article 11

Recognisable/ Identifiable Advertising

11.1: Advertising must be identifiable as such by virtue of its lay-out, presentation, content or otherwise, taking into account the public for which it is intended

11.2: Advertising in audio-visual media must be clearly distinct from the rest of the programming by optical and/or acoustic means. The use of subliminal techniques is prohibited. The use of elements from a broadcast programme in advertising is also prohibited in the event it can be reasonably assumed that the viewers or listeners would be misled or confused by it. The appearance in advertising of people who may be deemed, by virtue of their participation in broadcast programmes, to have influence or instil confidence in certain sections of the public is prohibited.

Explanation of article 11

The term audio-visual media particularly refers to programmes broadcast on radio and TV. Subliminal techniques refer to techniques which employ inserted images and/or sounds of very brief duration in an attempt to influence viewers or listeners, possibly without their knowledge or ability to perceive them.

Article 12

If the term 'guarantee/ warranty' (*garantie*) is mentioned in an advertisement, the scope, content and duration of the guarantee/ warranty must be clear, taking into account the relevant medium⁵.

Article 13

Comparative advertising is defined as any form of advertising in which a competitor, or goods or services provided by a competitor, are mentioned explicitly or implicitly. Comparative advertising is permitted - as far as the comparison is concerned- provided it:

⁵ Explanation Note: General Recommendation – Section C of Dutch Advertising Code; f. Guarantees - [here](#)

URL of source: Dutch: <https://www.reclamecode.nl/nrc/pagina.asp?paginaID=262%20&deel=2>

-
- a. is not misleading according to the spirit of the Dutch Advertising Code.
 - b. compares products or services that meet the same demands or are intended for the same purpose;
 - c. compares objectively one or more essential, relevant, checkable (verifiable) and representative characteristics of these goods or services, such as price;
 - d. does not lead to the advertiser being confused with a competitor, or the brands, trademarks, other distinguishing characteristics, goods or services of the advertiser being confused with those of a competitor;
 - e. does not harm the good name or make disparaging remarks about the brands, trademarks, other distinguishing characteristics, goods or services, activities or circumstances of a competitor;
 - f. concerns in the case of products with a designation of origin, products with the same designation;
 - g. leads to no unfair advantage resulting from the familiarity of a brand, trade name or other distinguishing characteristics of a competitor or the origin designation of competitive products; and
 - h. does not present goods or services as an imitation or copy of goods or services with a protected trademark or protected trade name.

Any comparison that refers to a special offer shall indicate clearly and unambiguously the end (i.e. the date on which the offer ends) and, should the special offer not yet apply, the beginning of the period during which the special price or other specific conditions apply, or state that the special offer continues as long as stocks last or services can be provided.

Article 14

14.1: Aggressive advertising is prohibited. An advertisement is considered to be aggressive in the event that, taking into account all its features and circumstances, the factual context, the limitations of the communication medium and the intended audience, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product, by means of intimidation / harassment, coercion, including the use of physical violence, or undue influence, which thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

14.2: The methods of advertising which are considered aggressive under all circumstances are listed in Annex 2 of the Dutch Advertising Code.

Explanation of article 14

"Undue Influence" is defined as taking advantage of a dominant position in order to apply pressure on the consumer even without the use of violence or threat of violence, in such a way that the consumer's ability to make a well-informed decision is considerably reduced. The methods of advertising as referred to in Annex 2 of the Dutch Advertising Code are considered aggressive under all circumstances. Therefore, it is not necessary to consider whether they are aggressive in respect of the average consumer, or if the economic behaviour of the average consumer is materially distorted or is likely to be materially distorted.

Article 15

At the request of the Advertising Code Committee or the Board of Appeal the advertiser must demonstrate the accuracy or fairness of the advertisement, should this be disputed for good reasons.

Article 16

The Dutch Advertising Code must not only be applied according to the letter of its provisions but according to its spirit as well.

Article 17

In the case of Special Advertising Codes, the General Section of the Dutch Advertising Code shall remain fully in force.

Article 18

Companies as well as consumers have the right to submit a complaint about violations of the Dutch Advertising Code with the Advertising Code Authority (SRC). This means that where in this part of the General Code reference is made to consumers, corporate bodies are also covered. Neither consumers nor companies may submit a complaint about article 19 DAC.

Article 19

At the request of the President of the Advertising Code Committee, organizations and institutions which publish advertisements are bound to submit a valid proof of payment of the financial contribution, yearly stipulated by the Advertising Code Authority.

Explanation of article 19

The financial contribution is based upon a percentage of the advertiser's gross media expenses. The Board of the Advertising Code Authority decides each year the percentage that applies. In addition, the yearly contribution per concern is capped at € 30,000. Furthermore, an advertiser, who does not belong to a concern and whose gross media-expenses in a year are less than €1m, is not bound to pay a contribution for the year concerned. This article came into effect on 15 January 2010 and applies to contribution requests made after this date.

Since the year 2010 a 0.025 percentage has been determined (= € 250 per € 1 million media expenses) and the contribution is based upon the gross media expenses in the year passed, as produced by Nielsen. The Advertising Code Authority itself upholds the obligation to pay. See www.reclamecode.nl for further information.

Annex 1

Advertising is considered misleading under all circumstances in the event of:

1. Claiming to have signed (be a signatory to) a code of conduct, when this is not the case.
2. Attaching a confidence/ trust mark, a quality mark or similar label without having obtained the required permission.

Explanation of 1 and 2:

This means, for example, that an advertiser may only use the logo of a business organisation if he is entitled to do so, and, that an advertisement may not suggest that the advertiser is a member of a business organisation or associated with an arbitration board if this is not the case.

3. Claiming that a Code of Conduct is recognized (i.e. endorsed) by a public body or other authority, when this is not the case.
4. Claiming that an advertiser (including his advertisement) or a product has been approved, endorsed or authorised by a public or private organization, when this is not the case; or claim such a thing when the terms of the approval, endorsement or authorisation have not been met.
5. Offering products for a specified price without disclosing the existence of any reasonable grounds the advertiser may have for suspecting that he might not be able to supply, nor have another advertiser (i.e. trader) supply, these products or similar products at that price, for a period that is, and in quantities that are, reasonable, taking into account the product itself, the range/ scale of the advertising campaign for this product and the price offered (bait advertising).
6. Offering a product for a specified price and subsequently:
 - a. Refusing to show the consumer the offered product; or
 - b. Refusing to accept an order or refusing to deliver the product within a reasonable term; or
 - c. Showing a defective example of the product with the intention to promote another product ('bait and switch').

-
7. Deceptively/ Falsely claiming that the product will be available for a limited period of time or only under special conditions for a limited period of time, to urge the consumer to make an immediate decision and not give him insufficient opportunity or time to make an informed decision.
 8. Claiming or otherwise suggesting that a product may be sold legally, when this is not the case.
 9. Presenting rights given to consumers in law as a distinctive feature of the advertiser's offer.
 10. Using editorial content in the media to promote a product, where the advertiser has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).
 11. Making a materially inaccurate statement/ claim with regard to the nature and extent of the risk to the personal security of the consumer or his family, in the event that the consumer does not purchase the product.
 12. Promoting a product that resembles a product produced by a certain manufacturer in such a way as to purposely give the impression that the product has indeed been fabricated by this manufacturer, when this is not the case.
 13. Establishing, managing or promoting a pyramid promotional scheme whereby a consumer's ability to realize compensation after his initial payment results exclusively from his introduction of new consumers into the scheme, rather than from the sale or use of products.
 14. Claiming that the advertiser is about to stop his business (cease trading) or move premises, when this is not the case.
 15. Claiming that certain products may facilitate the winning of games of chance.
 16. Falsely claiming that a product may cure illnesses, ailments or malformations.
 17. Supplying materially inaccurate information about market conditions or on the possibility of finding the product with the intention of making the consumer buy the product on terms less favourable than the normal market conditions.
 18. Claiming within the context of an advertisement that a contest is being organised or prizes offered, without actually awarding the prizes described (advertised) or a reasonable alternative.
 19. Describing a product as "gratis" (*gratis*); "free" (*voor niets*); "without charge/ complimentary" (*kosteloos*) or similar if the consumer has to pay anything other than the inevitable cost of responding to the offer and collecting or paying for delivery of the product.
 20. Including an invoice or similar document seeking payment in advertising material which gives the consumer the impression that he has already ordered the marketed product, when this is not the case.
 21. Falsely claiming or creating the impression that the advertiser is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.
 22. Creating the false impression that after-sales service for a certain product is available in another member state other than the one in which the product is sold.
-

Annex 2

Under all circumstances aggressive advertising is defined as:

1. Making persistent and unwanted solicitations by telephone, fax, e-mail or other means of distance communication (remote media).
 2. Creating the false impression that the consumer has already won a prize, will definitely win a prize or, upon performing a certain action, will win a prize or other equivalent benefit, while in fact:
 - there is no prize or other equivalent benefit, or
 - taking steps to be eligible for the prize or other equivalent benefit is subject to the consumer paying a certain amount of money or incurring a cost.
-

Acting contrary to Art. 2(1)(a & b)⁶ of the Code for Advertising Directed at Children and Young People (as included in the Dutch Advertising Code).

⁶ Article 2 (Para. 1)

Advertising directed at children may not cause any moral or physical damage and should therefore comply with the following criteria for the benefit of their protection:

- a. it shall not encourage them to buy a certain product by exploiting their lack of knowledge or their credulity;
- b. it shall not directly incite/ encourage their parents or others to buy the products advertised.

URL of source: Dutch: <https://www.reclamecode.nl/nrc/pagina.asp?paginaID=262%20&deel=2>