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| Full title of law or regulation | This guidance is extracted from www.checksrc.nl and http://www.checkdereclamecode.nl/ ; set out below is the Unfair advertising/ Always Unfair/ Blacklist section |
| Title of relevant section | Always Unfair (Blacklist). In the blacklist of Appendix 1 of the DAC/ NRC there are a number of specific advertising practices that are always considered misleading. Below is an overview of those practices for which the RCC receives the most number of complaints. |
| Free | <p>Number 19 of Annex I DAC/NRC: Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the product)</p> <p>Products advertised as "free" or using similar wording – should really be free. This means that the consumer should not be faced with any payment obligation if he wishes to receive the free item (file 2013 00249). However, it is allowed to include the offer of a free item as a condition of a purchase of another product. In that case, you will receive the item free of charge when purchasing another product (see combined offer information)</p> <p>Unavoidable costs to enter into the offer (such as telephone or postage) as well as pick-up, collection, and delivery costs may be charged without compromising the free character of the offer. Please make clear in the advertisement that these costs will be charged and at what amount. Note: it is not permitted to:</p> <ul style="list-style-type: none"> • Charge packaging costs, settlement costs and administration fees • Use a paid phone number where consumers have to order the free product. <p>It is only permitted to call a product 'free' if you do not have to pay anything other than the actual costs of shipping or collection. This means that an offer can only be described as 'free' if the consumer does not pay more than a) the minimum unavoidable costs of responding to the offer, b) the actual transport or shipping costs and c) the (incidental) travel costs to collect the product. Passing on (i.e. charging) more than the actual costs implies that the consumer indirectly still owes a certain amount for the product, meaning there is no longer a 'free' product (see file 2017/00286)</p> <p>See the following information where a free item is part of a:</p> <ul style="list-style-type: none"> • Combined offer: A combined offer is allowed provided the cost of the free product is not recouped by reducing the quality of the product that has to be paid for or by increasing the price of that product. • Package offer: A package offer is permitted provided that the consumer pays the same price in the case where the free item is not included in the package. For elements that cannot be separated from each other without compromising the entire package, it is not allowed to offer a particular item as free (for example, free wheels when buying a car unless it is an additional set). If the consumer is obliged to purchase a whole package, the individual components may not be offered for free (for example, an all-in-one package). New elements that are not yet part of a standard package may be called "free" for a reasonable period (in principle 6 months) if they do not have to be paid for. • Necessary side-purchase in order to take advantage of the free item. The consumer needs to be informed of the need to have or purchase additional equipment in order to make use of the free offer (i.e. a receiver to view free satellite TV channels) |
| Limited Supply Offer (Bait) | <p>Number 5 of Annex 1 DAC/ NRC: Offering products for a certain price without mentioning that there are good reasons to suspect that the advertiser might not be able to deliver these products or similar products for the mentioned price, nor have another advertiser deliver them, during a certain period and in quantities, which are reasonable, taking into account the product itself, the range of the advertising campaign for this product and the price offered (bait))</p> <p>If advertising is created for a product where the advertiser knows there is a lot of interest but only a small amount of stock available, the consumer must be clearly warned of the limited stock in the advertising. This can be done, for example, with a message such as: "Attention!! Please Note! Only very limited stock" (<i>Let op! Slechts zeer beperkt voorradig</i>). The</p> |

absence of such a communication makes the advertisement misleading under all circumstances. In addition, article 8.2.b also states that accurate information about availability should be provided.

Make sure that all branches/ stores have some stock at their disposal. If there is no qualification in the advert, then the advertising will be deemed as applying to all stores/ branches. This follows on from General Recommendation h (Section C (h) DAC/ NRC).

Advertising for branches: the Advertising Code Committee recommends that companies and organizations that make use of several outlets for offering their products or services, take such measures that in the event advertisements are placed which refer to all outlets, the products or services in question are made fully available or deliverable at all these outlets, subject to specific and cited exceptions. (Section C (h) Dutch Advertising Code)

If there is doubt as to whether there is sufficient stock, then the advertisement must state: "Subject to availability/ until stocks run out" – (*Zolang de voorraad strekt*) or "Once it's gone, it's gone" (*Op=Op*) or similar. If this notice is missing, the consumer will trust that he can make use of the offer throughout the entire term. If the consumer is properly informed about the availability and the advertiser has also acted properly, the complaint will in principle be rejected. Example here:

<https://www.reclamecode.nl/webuitspraak.asp?ID=53235&acCode>

Advertising in editorial articles (Native)

An advertorial should also be easily recognisable as advertising. If advertising is paid for and not recognizable as advertising, that is by definition a violation of number 10 of the blacklist of Appendix 1 of the NRC.

If the word 'advertorial' (*advertorial*) or 'advertisement' (*advertentie*) is sufficiently clear with the piece, or the consumer is otherwise sufficiently clearly informed that the piece contains advertising, then it is permitted.

Claims with healing properties

Number 16 Annex 1 Black List DAC/ NRC: Falsely claiming that a product may cure illnesses, ailments or malformations.

Be very careful with statements about healing properties of a product. If these claims are unfounded, the Advertising Code Commission may judge that advertising is misleading under all circumstances.

In addition, this kind of advertising will also often be in violation of the law, including the Medicines Act (*Geneesmiddelenwet*) and the Commodities Act (*Warenwet*). Consult the KOAG / KAG: Stichting Aanprijzing Gezondheidsproducten (Council for the Monitoring of Health Product Advertising) Inspection Board. For more information about this subject:

<https://www.koagkag.nl/Home>

Creating the false impression that the consumer has won a prize

Number 2; Annex 2 Black List. 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, when 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 – is considered to be aggressive advertising in all circumstances.

Be careful about raising expectations about winning a prize. Notices that a consumer has won a prize if there is in fact no prize or the consumer has to pay any amount to be eligible for a prize are classified as aggressive advertising in the Dutch Advertising Code.

Also consult the Code of Conduct for Promotional Games of Chance (see Section K – Sales Promotions).

Example case: Not an SRO adjudication:

A mail order company sent promotional advertising by post stating that the consumer "is guaranteed 100% that he/she is one of the selected people to receive an electronic product. This product is free of charge!" In fact, consumers had to respond within two days and pay

€19.99 to cover 'administration and transport costs'. The Netherlands Authority for Consumers and Markets (ACM) found that giving consumers the false impression that they have already won a prize while requiring them to pay a fee within two days of receiving notice of the promotional action fell under point No. 31 of Annex I UCPD (equivalent Number 2, Annex 2 of DAC/ NRC or Art. 193i (h) Book 6 Civil Code); and also other blacklisted actions such as No 20 Annex I UCPD owing to the use of the word 'free'. Equivalent: Number 19, Annex 1 DAC/ NRC or Art. 193g (t) Book 6 Civil Code)

CA/NB/544/10, Consumentenautoriteit, 21 September 2010, Garant-o-Matic B.V see. P.26 here of ACM review 2010:

https://www.acm.nl/sites/default/files/old_publication/publicaties/15031_dutch-consumer-authority-annual-report-2010.pdf

Invoice advertising

Number 20, Annex 1 Black List: 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.

This category is generally considered as acquisition fraud. Consult the National Advisory Centre for Acquisition Fraud (*Steunpunt Acquisitiefraude* – SAF) for more information on this subject:

<https://www.fraudhelpdesk.org/>
