

## **NEW VERSION**

# **CODE OF ETHICS OF THE ADVERTISING INDUSTRY**

According to KOG as amended on 12.1.2021

In Austria - as in almost all European countries - there is a dual system for the restriction of advertising, consisting on the one hand of legal regulations and on the other hand of self-restriction guidelines. The code of ethics of the advertising industry represents a core part of the Austrian system for the protection of consumers against the misuse of advertising. Self-disciplinary mechanisms of the advertising industry serve to monitor and correct aberrations and undesirable developments in advance of and at the margins of the legal provisions.

The self-restriction guidelines of the advertising industry of a country must be related to the extent of legal advertising regulation. The more advanced the legal regulation system concerning advertising and consumer protection is in a country - in Austria it is already very extensive - the more the task of advertising self-restraint shifts to those areas of ethics and morals that are subject to a social development process (with ever more rapid change). Since these cannot be regulated by law because they are constantly changing and evolving and represent a culturally difficult phenomenon to grasp, advertising self-restraint with a sense of proportion is necessary. The Code of Ethics of the Advertising Industry - i.e. the entirety of the self-restraint guidelines that the Austrian advertising industry has voluntarily imposed on itself - is divided into two parts. The first part, "Basic Rules of Conduct", primarily comprises guidelines concerning the sensitive areas mentioned above and represents the "core" of the Code of Ethics of the Advertising Industry. The second part, "Special Rules of Conduct", regulates areas that have become particularly topical over the course of time, either nationally or internationally - we are on our way to a borderless communication society - and therefore require special regulations.

### **1. Basic Rules of Conduct**

- 1.1. General advertising principles
- 1.2. Ethics and morals
- 1.3. Violence
- 1.4. Health
- 1.5. Safety
- 1.6. Environment
- 1.7. Illegal Advertising Environment
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- 2.2. Children and Youth
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## **1. BASIC RULES OF CONDUCT**

### **1.1. GENERAL ADVERTISING PRINCIPLES**

#### ***Preamble***

Advertising cannot and must not move in a vacuum apart from national and international legal frameworks, ethical and moral values and the demands of society derived from them. The advertising industry's commitment to the market economy, to competition and to the freedom of expression is embedded in the legal and ethical foundations on which state and society are based with their community-promoting norms and goals and in the realisation that advertising has an impact on society as a whole through its mass effect. In the course of socialisation, the messages conveyed by advertising influence both consciously and unconsciously the perception and formation of identity, especially in children.

Advertising thus bears social responsibility and must take into account the rights, interests and feelings of individuals and groups of people.

- 1.1.1 Advertising should be characterised by the principle of social responsibility, especially towards children and young people before the age of 18.
- 1.1.2 Advertising must be legally permissible and strictly observe the legal standards.
- 1.1.3 Advertising must comply with the principles of fairness as generally recognised in business life.
- 1.1.4. Advertising must not be contrary to generally accepted morality.
- 1.1.5. Advertising must not violate human dignity, in particular through degrading or discriminatory portrayals.
- 1.1.6. Advertising must not violate the principle of honesty and truthfulness.
- 1.1.7. Advertising shall not mislead by suggestive and imitative representations.
- 1.1.8 Advertising shall not violate the right to privacy.
- 1.1.9 Advertising shall be clearly recognisable as such.
- 1.1.10. Advertising should not directly or indirectly coerce consumers to buy.
- 1.1.11. Advertising should not be placed on advertising media that obviously contradict Austrian legal provisions.

## 1.1. ETHICS AND MORALS

### *Preamble*

Advertising is in the public eye and thus bears social responsibility. Notwithstanding the fundamental right to express an opinion - and given its legal limits - account must be taken of the fact that advertising has an impact on society.

When designing advertising, responsible consideration must be given to whether a subject is compatible with the legal norms and the ethical-moral values of society or not.

The frame of reference to be applied for this purpose is, among others, the general human rights.

1.1.1 Advertising has social responsibility

1.1.2 Advertising must respect the human dignity and integrity of the person and must not violate it.

1.1.3 Advertising shall not directly or indirectly discriminate against or promote discrimination against any person. The core diversity dimensions require special protection against discrimination.

a) **Age:** Advertising must not discriminate (directly or indirectly) against anyone on the grounds of age or generation. In the case of older people, care must always be taken to present them in a dignified manner.

b) **Gender:** Advertising must not discriminate (directly or indirectly) against anyone on the basis of gender. Men and women shall always be considered and treated as fully equal.

c) **Sexual orientation:** Advertising shall not discriminate (directly or indirectly) against any person on the grounds of sexual orientation.

d) **Disability, impairment:** Advertising must not discriminate (directly or indirectly) against disabled or impaired people. Respectful treatment must be maintained at all times.

e) **Religion:** Advertising shall not discriminate (directly or indirectly) against any person on the grounds of religion or belief.

f) **Ethnicity/nationality:** Advertising must not discriminate against anyone on the basis of their nationality or origin. People with a migration background must always be treated as equals and must not be devalued.

1.1.4 Suffering, misfortune or death may not be misused for advertising purposes; rather, such depictions are only permissible if they have the aim of counteracting suffering, preventing misfortune or accidents, drawing the public's attention to a social problem, a grievance, or if a directly related product is being advertised (e.g. gravestones etc).

## 1.3. VIOLENCE

### *Preamble*

#### **Definition of violence**

*(according to the World Report on Violence and Health - definition by the World Health Organization).*

Violence in this context is understood as the intentional and actual use or threat of physical coercion or physical power against one's own or another person, or against a group/community, which either concretely or with a high probability leads to death, injury, psychological damage, maldevelopment or deprivation.

In our society, there is a clear trend towards a willingness to use violence and to engage in violent activities. This development, which has a multitude of roots, is not to be approved of, neither for ethical-moral nor for economic reasons. Any means that helps to stop or mitigate this trend is welcomed. Due to its social responsibility, advertising is called upon to avoid statements and content that depict or promote violence.

Violence as understood by the Austrian Advertising Council includes physical, psychological and sexualised violence.

#### 1.3.1 Advertising must not contain any violent depictions.

- a) Advertising must not use content that is violent, trivialises violence, aestheticises violence or glorifies violence.
- b) There shall be no depictions or statements that depict brutal, aggressive, anti-social or violent behaviour or encourage, promote or condone such behaviour, regardless of implementation (e.g. in the form of animation, comics, emojis and GIF's etc.).
- c) In addition to physical violence, advertising must not include depictions of psychological and sexual violence (e.g. bullying, stalking). Violent, aggressive abuse is also inadmissible.
- d) Furthermore, depictions that include sexualised violence are to be rejected.
- e) The depiction of violence, including against animals, as well as vandalism as a content-related or stylistic component of advertising messages shall be prohibited.
- f) Advertising must not cause fear or anxiety. Fear-inducing depictions and statements may only be made if they encourage prudent, sensible, legally compliant and safe behaviour. However, it should be noted that fearful and frightening representations must be in proportion to the respective real danger.
- g) Advertising must not convey content which, although superficially non-violent, is to be judged as violent in the overall context. Violent, aggressive insults are also inadmissible.
- h) Massive violence may not be depicted in a humorous way.

### **1.3.2. Weapons Advertising**

#### **Preamble**

The advertising of weapons must take into account the particular dangers that arise from and are associated with their improper handling.

The Austrian Weapons Act (1996) forms the basis for the definition of weapons. Weapons are defined in §1 of the Weapons Act as objects which, by their nature, are intended to eliminate or reduce the ability of people to attack or defend themselves through direct action or to be used for firing shots in hunting or shooting sports.

- a) When advertising weapons, care must be taken to ensure that the particular danger posed by their improper use is taken into account. For this reason, weapons must always be labelled with the warning "Weapons endanger health and life if used improperly" when they are advertised.
- b) Weapons may not be depicted in actual use, directed against living beings.
- c) When advertising weapons, any particularly trivialising or glorifying depiction should be avoided.
- d) The humorous portrayal of weapons is also to be rejected.
- e) Weapons may not be depicted without a direct connection to the product being advertised.

## 1.4. HEALTH

### *Preamble*

Health is a very comprehensive term. Health is not only to be seen individually, as a degree of physical, mental and social well-being, but also in the context of society as a whole with the corresponding economic effects. The state of health, which has a great influence on the individual quality of life as well as on social prosperity, is subject to constant fluctuations and is assessed very differently from person to person. Health-related statements therefore require the highest sense of responsibility.

Health advertising is also comprehensively regulated by law and is subject to strict specifications. For medicinal products, the Medicinal Products Act must be observed.<sup>1</sup> The labelling and presentation of food and beverages, food supplements, commodities as well as cosmetic products are regulated in food law.<sup>2</sup> In addition:

- 1.4.1. Health advertising must not discriminate.
- 1.4.2. No representations or statements may be made that degrade or demean persons on the basis of their physical or mental weaknesses or illnesses. The same applies to the physical appearance of persons.
- 1.4.3. No depictions or statements may be made that propagate behaviour or body shapes that are harmful to health - especially with regard to body weight (e.g. bulimia, anorexia, obesity, etc.).
- 1.4.4. Advertising should not trivialise the consumption of medicines or encourage excessive consumption of medicines or food supplements.
- 1.4.5. Advertising for medicinal products and food supplements must not be directed at the target group of children.
- 1.4.6. Advertising for medicinal products, food supplements, especially weight loss products, and cosmetics should not directly or indirectly coerce consumers into buying them.
- 1.4.7. There shall be no representations and statements that are likely to exploit the hopes of people who are suffering.
- 1.4.8. No depictions or statements may be made that degrade or demean persons because of their physical or mental weaknesses or illnesses. The same applies to the physical appearance of persons.

<sup>1</sup> Federal law on the manufacture and placing on the market of medicinal products ([AMG](#)).

<sup>2</sup> ([LMSVG](#)), EU Regulation on the general principles of food law ([EG-BasisVO No. 178/2002](#)), EU Food Information Regulation ([EU-InformationsVO No. 1169/2011](#)), EU Regulation on the use of nutrition and health claims made on foods ([EG- e.g. Food Safety and Consumer Protection Act ClaimsVO No. 1924/2006](#)), Food supplement regulation ([NEMV](#)) EU Directive on the approximation of laws on food supplements [No. 2002/46/EG](#), EU Regulation on Cosmetic Products [No. 1223/2009](#), EU Regulation concerning advertising claims in relation to cosmetic products [No. 655/2013](#).

- 1.4.9. No depictions or statements may be made that propagate behaviour or body shapes that are detrimental to health - especially with regard to body weight (e.g. bulimia, anorexia, obesity, etc.).
- 1.4.10. Advertising should not trivialise the consumption of medicines or encourage excessive consumption of medicines or food supplements.
- 1.4.11. Advertising for medicinal products and food supplements must not be directed at the target group of children.
- 1.4.12. Advertising for medicinal products, food supplements, in particular weight loss products, and cosmetics, should not directly or indirectly coerce consumers to buy them.
- 1.4.13. There shall be no representations and statements that are likely to exploit the hopes of people who are suffering.
- 1.4.14. Health advertising must not mislead.
- a)** Claims that refer to physiological or pharmacological effects and give the impression to consumers that the advertised product maintains "health", stops or reverses the ageing process, reduces body weight if the lifestyle is maintained, simulates a dietary effect or similar shall be prohibited.
- b)** Advertising shall not use medical or scientific terminology that may mislead the average consumer.
- c)** No representations and statements shall be made which give the impression that alternative remedies, in particular homeopathic products, are generally more effective or safer than others.
- d)** No representations and statements shall be made which give the impression that an advertised product can be effective in connection with the treatment of addiction-like dependencies or the breaking of bad habits without special demands on the willpower of the consumer.
- e)** In connection with vitamin, mineral or other preparations or food supplements, no representations and statements shall be made which give the impression that such products are a substitute for a balanced and healthy diet or could offer effective protection against diseases. Disease-related claims are reserved exclusively for medicinal products.

## **1.5. SAFETY**

### ***Preamble***

Security is one of the basic needs of every human being. Maintaining or increasing general security is not only the task of the state, but also of every individual. The state is mandated by the population to maintain the trust of the individual(s) in society by enacting appropriate rules and norms, so that chaotic conditions characterised by insecurity are avoided. In addition to this state function, however, each individual member of society is also jointly responsible for maintaining security in a country. Responsible advertising is therefore also called upon not to endanger general security through appropriate representations and statements.

- 1.5.1. Advertising should not endanger general security.
- 1.5.2. There should be no portrayals or statements that depict behaviour or situations that could endanger security or encourage such behaviour. In particular, depictions of war, violence or anti-social behaviour shall be avoided.
- 1.5.3. Advertising shall not make use of images that pose a risk of accidents. In particular, the depiction of incorrect or reckless operation of machinery, motor vehicles or other products shall be avoided.

## 1.6. ENVIRONMENT

### *Preamble*

With increasing pollution and exploitation of resources, environmental protection has become an important, indeed in some cases vital, concern of our society. Environmental protection goes beyond the basic obligation of respect for people, animals and the environment and includes the sustainable improvement and preservation of the quality of the environment so that future generations will also find an environment worth living in. The responsibility of our generation therefore extends not only to the preservation of the quality of life of our own generation, but also to that of future generations.

Many consumers and companies have understood the signs of the times and are acting in an environmentally conscious manner. Consumers are increasingly asking for environmentally friendly products and the economy is reacting to this by offering appropriate products and services. Active environmental management is no longer a foreign word in the economy. Nevertheless, problems arise due to the scientific-technical complexity of environmental issues as well as due to the increasing emotionalisation in this area, which are especially the responsibility of the advertising industry. The self-restrictive measures of advertising are intended to prevent "black sheep" from being able to give themselves an unjustified "green" image and mislead consumers.

- 1.6.1. Advertising relating to the environment needs to be handled with particular sensitivity so as not to give rise to misconceptions.
- 1.6.2. There should be no representations and statements that cannot be substantiated by facts.
- 1.6.3. If it has been proven that products have not had any adverse effects on the environment, there should be no advertising and statements that could give the impression that the product has been made environmentally compatible through special technical production measures.
- 1.6.4. There shall be no presentations and statements that compare different product groups or different materials with regard to their environmental impact (e.g. plastic versus paper). In particular, such comparisons should not be made if the complexity of the situation or the rapid scientific and technical development in a field could mislead consumers.
- 1.6.5. Scientific terms should not be used unless absolutely necessary or their use should not mislead.
- 1.6.6. The use of eco-labels should be avoided if these labels are not generally recognised - or if they can be used to mislead.

## 1.7. UNLAWFUL ADVERTISING ENVIRONMENT

### *Preamble*

With the increasing importance of advertising in online media (banner advertising, internet spots etc.), the question of the ethical evaluation of the advertising environment used arises more and more frequently.

Advertising on web media whose main purpose and effect obviously contradict the relevant laws applicable in the territory of the Federal Republic of Austria (cf. exemplary list in the following paragraph) contradicts the general principles of advertising. It must be the concern of a responsible advertising industry not to place its advertising measures in such an advertising environment. This is especially true in the online sector.

Advertising media whose main purpose and mode of action obviously contradict the relevant laws in force on the territory of the Federal Republic of Austria are in particular advertising media with the following obvious main purpose and/or the following obvious main mode of action:

- Violation of the Data Protection Act;
- Violation of rights under the Copyright Act;
- Violation of the (Nazi) Prohibition Act 1947;
- Violation of the Pornography Act and/or of the provisions of the Criminal Code on offences against sexual integrity and self-determination;
- Violation of the provisions of the Criminal Code on punishable acts against public peace (in particular dissemination of terrorist and/or inciting content);
- Violation of the War Materials Act and/or the Weapons Act;
- Violation of the Narcotic Substances Act.

## 1.8 INFLUENCER MARKETING

### *Preamble*

The Austrian Advertising Council recognises developments and trends and has therefore focused on ethical and moral rules in the field of "**Influencer Marketing (Advertising)**" in order to advocate serious advertising with clients (brands), bloggers and consumers. The general advertising guidelines of the advertising industry and the code of ethics of the advertising industry are to be applied.

Influencers in particular have a responsibility and role model effect, especially towards the mostly young consumers up to the age of 18. Special rules of conduct have been created to take this into account. In advertising with children and adolescents and advertising that directly addresses children and adolescents, special attention is thus paid to the maturity and life experience of children and adolescents. The way in which children and adolescents perceive and react to advertising must be taken into account in all advertising measures, especially in view of the fact that children also learn through imitation (see "2.2 Children and Young People").

In addition to influencers, advertising companies as clients also have a responsibility towards consumers, as they have a direct influence on the communication on social media channels in the case of commissioned or paid advertising.

It must be the concern of a responsible advertising industry to implement advertising measures in compliance with the relevant legal provisions (including the Telecommunications Act, Media Act, e-Commerce Act, ORF Act, Audiovisual Media Services Act, Private Radio Act, Copyright Act, Unfair Competition Act).

This applies in particular to "influencer marketing" in the online sector. In the case of advertising representations and statements that violate the above-mentioned legal provisions, the Austrian Advertising Council sees itself as a contact, but is not authorised to take action. The Austrian Advertising Council reserves the right to forward complaints of this kind to the competent bodies.

### **Definition of "Influencer Marketing"**

Influencers are persons who influence the behaviour of consumers by reporting on blogs, posts, tweets, videos and other social media measures for brands, services or products or by carrying out other marketing and promotional activities. Influencers communicate via various channels, but are primarily active in social networks. Influencer marketing takes place in the interest of a third party, in most cases an advertising company.

Influencer marketing is a form of online marketing in which clients (usually advertising companies) book paid advertising on the channels (such as social media/website/blog/video or similar) of opinion leaders. The media presence, awareness and reputation of influencers support companies in making brands known, improving images of a brand or stimulating the sale of products or services. Influencers make a brand the topic of conversation and recommend it via blogs, in forums and social media as well as offline at events and in private surroundings. For the influencer, product samples, financial compensation or other benefits represent entrepreneurial or private values that are to be regarded as income.

Essentially, two conditions characterise influencer activities as marketing communication: compensation and content control.

Content control is when the advertising company makes specifications or suggestions regarding texts, structure or the design of a post, such as requesting a positive rating, a certain number of posts or suggesting the use for specific social media channels. Content control becomes more clearly visible when scripts or texts are given by the advertiser and validated by the influencer before publication.

In addition to any financial payment, compensation also means remuneration through commission-free services and products that represent an incentive for the influencer. This also includes free product samples of low value.

Labelling: Influencer marketing communication, like all advertising communication, should be implemented and labelled in such a way that the consumer immediately recognises it as advertising. Influencer advertising must be clearly recognisable to third parties and labelled as advertising, e.g. with the designation #Advertising (at the beginning of the post on social media channels and their platforms such as website/blogs or channel adequately as a header in the caption). Product placements and minor contributions in kind (e.g. samplings) must also be labelled with #Advertising to protect consumers.

In the case of violations of the labelling obligation, the Austrian Advertising Council sees itself as a contact, but is not authorised to take action. The Austrian Advertising Council reserves the right to forward complaints of this kind to the competent authorities.

**In terms of ethical and moral guidelines for influencer marketing**, the Code of Ethics of the Austrian Advertising Industry is applied. Particular attention is paid to the following points of the code:

- 1.8.1 Particularly in the case of advertising aimed directly at children and young people (2.2.), there must be no obvious or hidden encouragement to buy the advertised product.
- 1.8.2 Healthy body shapes: Care must be taken in the advertising measure not to use images (selfies, pictures, etc.) of influencers who propagate behaviour or body shapes that are harmful to health (e.g. bulimia, anorexia, obesity, etc.), especially in relation to body weight - see specifically "1.4 Health (1.4.3.)".
- 1.8.3 Discrimination and exclusion in relation to psychological and social violence (see "1.3 Violence (1.3.1. b)"). Care should be taken to ensure that influencers also do not use psychological and verbal violence. This includes in particular the belittling of individuals or groups, insults and threats as well as the creation of fear, for example in the form of practices such as "pranking".

## 2. SPECIAL RULES OF CONDUCT

2.1. Gender discriminatory advertising (sexist advertising)

2.2. Children and Youth

2.3. Older people

2.4. Alcohol

2.5. Tobacco

2.6. Motor vehicles

## 2. SPECIAL RULES OF CONDUCT

### 2.1. SEXIST DISCRIMINATORY ADVERTISING (sexist advertising):

#### *Preamble*

In the past, knowledge about gender relations as well as people's self-concept and self-image has changed considerably. This change has also had a corresponding impact on images of people and gender in society. Since advertising is not only a reflection of social attitudes, but also has an impact on society, especially on which images and ideas of adults, children acquire in the course of socialisation, advertising that violates the dignity of human beings must be refrained from as discrimination. The frame of reference to be used for assessment is human rights; in the case of discrimination against women, the human rights of women.

2.1.1. Advertising must not discriminate on the basis of gender. It is essential to consider the advertising measure in its overall context. In particular, the picture-text language used, the way of presentation (aesthetics, artistic design elements), the target group orientation and, consequently, the environment in which the advertising measure is placed must be taken into account.

Gender-discriminatory advertising (sexist advertising) exists in particular if

2.1.2. persons are portrayed in a derogatory, contemptuous or mocking manner;

2.1.3 the equality of the sexes is called into question;

2.1.4. subjugation or exploitation is portrayed or it is suggested that violence or dominance is tolerable;

2.1.5. the person is reduced to his or her sexual characteristics and this is made the focus of the advertising design.

2.1.6. sexualised depictions are used without a direct connection to the content of the advertised product. It is important to consider this in the overall context.

2.1.7. the dignity of human beings in the area of sexuality is violated.

2.1.8. persons are devalued who do not correspond to the prevailing ideas about belonging to one gender (e.g. intersex, transgender people).

2.1.9. Advertising for sexual services, insofar as it is legally permissible, must not violate the dignity of people, especially sex service providers, consumers or passers-by. Bodies and especially sexuality may not be inappropriately portrayed in the picture-text language. Special attention must be paid to the placement, timing and environment of the advertising subject.

2.1.10. Advertising must not contain, condone, promote or glorify incitement to hatred, in particular in the categories listed under "1.2 Ethics and morality". In particular, advertising must not contain material which, when judged in the relevant context, condones, promotes or glorifies violence against persons or portrays children and young people in a sexualised manner.

## **2.2. CHILDREN AND YOUTH**

### ***Preamble***

Children and adolescents are particularly at risk of abuse due to their low maturity and lack of life experience. The Austrian legal system therefore places children and adolescents under special protection, both within the framework of national and supranational legislation and through international conventions such as the UN Convention on the Rights of the Child.

The Austrian Advertising Council takes this into account and has created special rules of conduct. Advertising with children and adolescents and advertising that directly addresses children and adolescents should pay special attention to the maturity and life experience of children and adolescents. The way in which children and adolescents perceive and react to advertising must be taken into account in all advertising measures, especially in view of the fact that children also learn by imitation.

Therefore, the Austrian Advertising Council appeals to all advertisers to be aware of their pedagogical responsibility towards children and adolescents.

### **2.2.1. CHILDREN**

**(this includes persons before the age of 12)**

#### **2.2.1.1. Advertising in general:**

- a) Advertising shall not portray or make it appear that violent, aggressive or anti-social behaviour is worthy of imitation or approval.
- b) Advertising must not communicate content to children or use images that may cause physical, psychological or moral harm to children.
- c) Advertising must not endanger the psychological well-being of children, in particular by depictions that cause fear or fright.
- d) Advertising shall not portray dangerous, unhealthy or reckless acts or encourage children to engage in such behaviour.
- e) Advertising shall not suggest or depict educational measures which are likely to impair or violate the physical or psychological well-being and dignity of the child. This applies in particular when these measures are portrayed by persons impersonating parents or other guardians or educators.
- f) Advertising must not portray children in a discriminatory manner if they do not buy or own the advertised product. In particular, portrayals and statements that exclude such children, for example by making them appear unpopular, socially inferior or disobedient, must be refrained from.
- g) Product-related information regarding the protection of minors and other warnings must also be clearly recognisable on advertising measures.
- h) Advertising must not show children in dangerous situations without a justified reason.

#### **2.2.1.2. Advertising aimed directly at children:**

- a) Advertisements or promotions must take into account children's lack of maturity and experience. Depictions and statements must be appropriate to the age of the target group and must not overtax or abuse the child's imagination.
- b) Advertising to children must not be gender discriminatory.
- c) Advertising for products that are not suitable for children, such as alcohol, tobacco, medicines, weapons, food supplements and slimming products or certain services (such as gambling, betting) must not be directed at the target group of children.
- d) Children have limited knowledge, less experience and a smaller vocabulary than adults. Advertising shall take this into account by providing simple, clear and complete information and shall not mislead children.
- e) Advertising shall not use representations in which children directly ask/persuade their parents or third parties to buy a particular product.
- f) Advertising directed at children must be specially marked so that any confusion with a part of the programme or an editorial contribution is excluded.

#### **2.2.1.3. Advertising with children as actors:**

- a) Advertising featuring children must not be gender discriminatory.
- b) Children must not be portrayed in an eroticising or sexualised manner or the portrayal of children must not be aimed at arousing sexual desire.
- c) Children must never be portrayed in a degrading or ridiculing manner.
- d) Children shall not be portrayed as victims of violence of any kind, nor shall they be portrayed as perpetrators of violence.
- e) Children shall not be used as actors or actresses in advertisements for products or services which are not suitable for children and which are likely to harm or endanger the well-being or health of children; in particular, this includes advertisements for weapons, cosmetic surgery, gambling, betting, tobacco, alcohol and video games with content which is not suitable for children and/or which glorify violence.
- f) Advertising shall not contain statements or recommendations by children about particular advantages and characteristics of the product which do not correspond to the natural expressions of a child's life.

#### **2.2.1.4. Inappropriate audiovisual commercial communications around children's programmes:**

The guidelines below apply to audiovisual media service providers whose offer includes children's programmes. They aim to effectively reduce the impact on children of audiovisual communications for the foods and beverages described in more detail below (see "General Principles" and "Specific Conditions" below). Includes inappropriate audiovisual commercial communication accompanying or included in children's programmes.

Audiovisual commercial communication means images (with or without sound) intended to promote, directly or indirectly, the sale of food which are included in or accompany a programme or user-generated video in return for payment, for similar consideration or as self-promotion.<sup>3</sup>

This includes, but is not limited to, television advertising and advertising as part of an on-demand audiovisual media service<sup>4</sup>, sponsorship, teleshopping and product placement<sup>5</sup>.

The guidelines below cover inappropriate audiovisual commercial communications for foods and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans-fatty acids, salt/sodium and sugars, excessive intake of which in the overall diet is not recommended.<sup>6</sup> The Advertising Council decides on the basis of the **Code of Ethics** of the Advertising Industry. In the sense of a decision-making aid for the Advertising Council, an expert opinion is prepared by a specially established food advisory board, which is based on recognised nutritional guidelines.

Inappropriate is the form or content of audiovisual commercial communication for the aforementioned foods which is broadcast immediately before, after or during (commercial breaks) programmes which are exclusively or predominantly aimed at children (persons under 12 years of age) if they contradict the following criteria:

#### 2.2.1.4.1. General principles

- a) Audiovisual commercial communications for these foods shall be designed in such a way as not to abuse children's confidence in the quality of the products being advertised.
- b) Audiovisual commercial communications for these foods shall not discourage a healthy, active lifestyle. In particular, it shall not suggest that an inactive lifestyle is preferable to physical activity.
- c) Audiovisual commercial communications for those foods shall not discourage or disparage a balanced and healthy diet. In particular, it shall not devalue or discourage the consumption of fresh fruit or vegetables.
- d) Audiovisual commercial communications for these foods shall not encourage excessive or one-sided consumption of the products advertised. The positive portrayal of compulsive or pathological eating habits is not permitted.
- e) Audiovisual commercial communications for those foods shall not portray in a derogatory way the abstention from the consumption of the advertised products.
- f) Positive characteristics of the advertised foods and beverages whose excessive intake in the overall diet is not recommended shall not be emphasised.

<sup>3</sup> Cf. Audiovisual Media Services Act ([AMD-G](#)) § 2 Z 2.

<sup>4</sup> Cf. [AMD-G](#) § 2 Z 40.

<sup>5</sup> Product placement is not permitted in children's programmes, cf. § 38 Abs 1 [AMD-G](#).

<sup>6</sup> Cf. [AMD-G](#) § 36 Abs 3, [KommAustria-Gesetz](#) § 33 Abs 3a Z 2, [ORF-Gesetz](#) § 13 Abs 8a.

#### 2.2.1.4.2. Special Provisions

- a) Audiovisual commercial communications for these foods shall not establish any link between improved academic performance and the consumption of these foods.
- b) Audiovisual commercial communications of these foods shall not create the impression that the possession or consumption of these foods promotes social success or ensures higher status and popularity in the children's age group.
- c) Audiovisual commercial communications for those foods shall not suggest that those foods have therapeutic, curative or disease-preventive effects.
- d) Audiovisual commercial communications for these foods shall not promote intemperance in the consumption of these foods or portray moderation or abstinence in a negative light.
- e) Audiovisual commercial communications for these foods shall not contain negative statements about persons who, for whatever reason, wish to reduce their consumption of these foods.
- f) Audiovisual commercial communications for these foods shall not suggest that these foods can replace a meal. In particular, it shall not suggest that these foods can be a complete substitute for vegetables and/or fruit.
- g) Audiovisual commercial communications for reduced-calorie versions of these foods ("light versions") shall not encourage excessive consumption of the reduced-calorie food.
- h) Audiovisual commercial communications for these foods and the information they provide on taste, portion size and the potential contribution of these foods to a balanced diet shall be truthful, complete and comprehensible.
- i) Audiovisual commercial communications for those foods and the information they contain about the amount of carbohydrate, fat or protein present in those foods shall not misleadingly suggest positive effects for an overall balanced diet (e.g. high carbohydrate foods shall not be promoted by referring to their low or no fat content and vice versa).
- j) Where such foods are directly associated with children's programmes (e.g. licensed products), audiovisual commercial communications for them shall not be broadcast immediately before, during or after such programmes.
- k) Audiovisual commercial communications for these foods shall not cause physical or psychological harm to children.
- l) Audiovisual commercial communications for those foods shall not directly appeal to children to buy those foods by exploiting their inexperience and credulity.
- m) Audiovisual commercial communications for those foods shall not directly encourage children to persuade their parents or others to purchase those foods.
- n) Audiovisual commercial communications for these foods shall not inappropriately exploit, through explicit invitations to purchase, the special trust that children have in parents, teachers and other natural confidants (including "child idols ") and thereby discourage the learning of a balanced diet and healthy lifestyle. It must further not suggest that the consumption of these foods directly enables children to gain the popularity or social status of these persons.

### **Further explanation:**

The EU Audiovisual Media Services Directive <sup>7</sup> sets requirements for audiovisual commercial communications for certain foods and beverages that accompany or are included in children's programmes. Since 2010, there has been a corresponding voluntary commitment by Austrian broadcasters with the involvement of the advertising and food industries. In the implementation of an amendment<sup>8</sup>, this voluntary commitment will be extended to providers of video-on-demand services and video-sharing platforms and extended to other audiovisual channels, such as video clips and user-generated content. Also included are social networks that provide broadcasts and user-generated videos.

Independent of this advertising self-restraint around children's programmes, food businesses are not only responsible for the safety and quality of their products, but also for ensuring that the information provided about food is free from deception. For entrepreneurs who place food on the market, the following applies: Misleading and deceiving consumers through labelling, presentation and advertising are prohibited by law in Austria and the EU. <sup>9</sup>

This protection includes the (targeted) consumers, i.e. adults and children/adolescents. Compliance with the regulations is checked by the official food control and infringements are sanctioned.

Beyond these legal requirements, the food industry, together with the advertising and audiovisual media industries, is committed to effectively reducing the impact of audiovisual commercial communication for certain foods and nutrients on children. In addition, the food industry has been active for many years in gradually reducing nutrients whose excessive intake is not recommended in the overall diet (including fat, trans fatty acids<sup>10</sup>, salt/sodium, sugar) by reformulating recipes and providing comprehensive information on the nutritional properties of foods. A wide range of safe and quality foods, comprehensive product information and better nutrition education can help consumers make the ideal purchase decision for their individual nutritional needs and eat a balanced diet.

Food advertising plays a subordinate role especially with regard to the multi-causal problem of overweight in society. Rather, obesity has complex causes: in addition to an unbalanced dietary behaviour, lack of exercise, stress, lack of sleep, socio-economic factors, genetic predisposition and psychosocial aspects are decisive. A balanced diet and an active lifestyle can contribute to a healthy life.

<sup>7</sup> [Directive No. 2010/13/EU](#).

<sup>8</sup> [Directive \(EU\) 2018/1808](#) amending Directive 2010/13/EU

<sup>9</sup> e.g. in the Food Safety and Consumer Protection Act ([LMSVG](#)), the Federal Act against Unfair Competition ([UWG](#)), the EU Regulation on the General Principles of Food Law ([EC-Basic Regulation No. 178/2002](#)), the EU Food Information Regulation ([EU-Information Regulation No. 1169/2011](#)) or the Regulation on the Use of Nutrition and Health Claims made on Foods (EC Claims Regulation No. 1924/2006). ([EC-Claims Regulation No.1924/2006](#)).

<sup>10</sup> The trans fatty acid content in food is already bindingly regulated by the Ordinance of the Federal Minister of Health on the Content of Trans Fatty Acids in Food ([Trans-Fatty Acids Ordinance](#)).

## **2.2.2. YOUTH**

**(this includes people between the age of 12 and before the age of 18)**

### **2.2.2.1. Advertising in general:**

In principle, the points listed under 2.2.1 also apply to young people, albeit in an age-appropriate form.

However, the following points must be given special consideration in connection with young people:

- a) Advertising must not depict reckless and/or dangerous actions that encourage young people to imitate them.
- b) Advertising with young people as actors or advertising directed at young people may only contain depictions or statements relevant to criminal law if these are to be understood as a message and an invitation to behave in a legally compliant manner.
- c) Advertising for products such as tobacco, alcohol, medicines, weapons, food supplements and slimming products may not be directed at the target group of young people.
- d) There shall be no advertising of cosmetic surgery to under 18 year olds.
- e) In order to protect young people, no representations or statements may be made that could promote behaviour that is harmful to health. Particularly with regard to bulimia, anorexia, obesity, etc., care must be taken not to portray body shapes that are harmful to health, especially with regard to body weight, but also not to ridicule them.
- f) Furthermore, no depictions and statements may be made which could promote an over-idealised overall appearance (e.g.: facial corrections, breast enlargements, over-trained) as a (beauty) ideal to strive for.

### **2.2.2.2. Inappropriate audiovisual commercial communications for alcoholic beverages in the youth environment**

The following guidelines apply to audiovisual media service providers. They aim to effectively reduce the exposure of young people (persons under 18 years of age) to audiovisual communications for alcoholic beverages.

Based on the EU Audiovisual Media Services Directive <sup>11</sup> specific requirements are set for inappropriate audiovisual commercial communications related to alcoholic beverages (cf. the more detailed explanations on chapter 2.2.1.4.) which are shown in the environment of young people.

<sup>11</sup> [Directive No. 2010/13/EU](#).as ammended

The form or content of audiovisual commercial communication for alcoholic beverages is considered inappropriate if it contradicts the criteria for beer and spirits set out below and in the two annexes to the Code of Ethics <sup>12</sup>.

Audiovisual Commercial Communication for alcoholic beverages is inappropriate if it contradicts the following criteria:

- a) Audiovisual commercial communications for alcoholic beverages must not encourage children and adolescents under the age of 18 to drink alcoholic beverages, nor show adolescents drinking or encouraging drinking.
- b) Audiovisual commercial communications for alcoholic beverages shall not be made in media the majority of the editorial content of which is aimed at young people.
- c) Audiovisual commercial communications for alcoholic beverages shall not contain statements in which young people are addressed as not yet old enough to consume alcoholic beverages and are thereby provoked to drink.
- d) Audiovisual commercial communications for alcoholic beverages shall not depict persons stating that they have already consumed alcoholic beverages as a young person(s).
- e) If persons are shown in audiovisual commercial communications for alcoholic beverages, they must at least be young adults, also from the visual impression.

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<sup>12</sup> Communication Code of the Austrian Brewing Industry and Communication Code of the Austrian Spirits Industry.

## 2.3. OLDER PEOPLE

### *Preamble*

The significance and perception of the real image of old age will be of existential importance for our social future. The way in which advertising portrays the image of old age will provide information on how society will deal with old age in the future. The future of our society should be based on new, positive and intergenerational images of old age.

- 2.3.1. Any discriminatory portrayal and verbal expression about older persons, especially in combination with gender discrimination, must be avoided. In particular, older persons must not be portrayed in a superficially naïve, incompetent or ridiculous manner.
- 2.3.2. Older people are not to be reduced to their deficits in the portrayal. Particularly in a comparative comparison with other generations, a sensitive approach should be taken.
- 2.3.3. When portraying older people in advertising, care must always be taken to treat them with dignity.

## 2.4. ALCOHOL

### *Preamble*

Notwithstanding the legitimate commitment of the advertising industry to free, healthy and fair competition, and notwithstanding the fact that moderate consumption of alcoholic beverages is accepted in our society, advertising in relation to alcohol must be aware of its responsibility towards society. Advertising should not use subjects that are likely to be misunderstood as an invitation to abuse alcohol or as an incentive to consume alcoholic beverages in excess.

- 2.4.1. Advertising should not encourage excessive or abusive alcohol consumption.
- 2.4.2. Alcohol advertising should not be targeted at children.
- 2.4.3. Alcohol advertising in the context of persons under 18 years of age shall be subject to the requirements of Chapter 2.2.2.2.
- 2.4.4. Advertising should not use trivialising images. Depictions such as driving vehicles or operating machinery in the context of alcohol consumption shall be avoided.
- 2.4.5. Advertising should not give the impression that alcohol consumption has therapeutic effects and can help to solve private and social problems.
- 2.4.6. For beer and spirits, the specific criteria in the two annexes to the Code of Ethics<sup>13</sup> shall be taken into account.

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<sup>13</sup> Communication Code of the Austrian Brewing Industry and Communication Code of the Austrian Spirits Industry

## **2.5. TABACCO**

### ***Preamble***

Freedom of advertising is a fundamental democratic right. It is considered a prerequisite for our functioning market economy oriented towards free competition. Notwithstanding this fundamental right to freedom of expression, the Austrian advertising industry is aware of its ethical and moral responsibility towards society and has imposed voluntary advertising restrictions on tobacco products within the framework of the self-restriction system, which has proven itself over many years both nationally and internationally. Advertising should not use subjects that aim at a general increase in the consumption of tobacco products or encourage excessive tobacco consumption.

- 2.5.1. Tobacco advertising must strictly adhere to the agreed self-restraint guidelines.
- 2.5.2. Advertising should neither trivialise tobacco consumption nor encourage excessive consumption through depictions or statements.
- 2.5.3. Tobacco advertising should not be aimed at children.
- 2.5.4. Advertising should not give the impression that tobacco consumption increases social acceptance.
- 2.5.5. Tobacco advertising should not discriminate against non-smokers.

## 2.6. MOTOR VEHICLES

### *Preamble*

Motor vehicles have made an indispensable contribution to the mobility of our society. Nevertheless, increasing motorisation entails risks that can endanger the lives and health of road users both directly in road traffic and indirectly through environmental destruction and exploitation. Advertising for motor vehicles, accessories and fuel must therefore face up to this responsibility and avoid anything that encourages risky, antisocial or environmentally hazardous driving.

- 2.6.1. Advertising should not depict driving scenes that are not in compliance with the law or that may encourage risky, aggressive or reckless driving..
- 2.6.2. Speed, high acceleration or engine power should not be the dominant messages in advertising.
- 2.6.3. Emphasising special technical features of the vehicle or accessories (especially safety technology) should not lead to the assumption that they can master any dangerous situation in road traffic and thus encourage risky driving.
- 2.6.4. Advertising should not promote driving behaviour that is wasteful of energy or harmful to the environment.