

SPORTS AND BEYOND:

IP and Competition in the Sport Industry

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9th



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LESI • YMC
LICENSING EXECUTIVES SOCIETY INTERNATIONAL
YOUNG MEMBERS CONGRESS

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Advertising regulation

EU legislation



State legislation



Self-regulation



Directive
2018/1808/UE
- Audiovisual media
services -

Recital 13)

Experience has shown that both self- and co-regulatory instruments, implemented in accordance with the different legal traditions of the Member States, can play an **important role in delivering a high level of consumer protection.**

Recital 14)

Member States should, in accordance with their different legal traditions, **recognize the role which effective self-regulation can play as a complement** to the legislative, judicial and administrative mechanisms in place and its useful contribution to the achievement of the objectives of Directive 2010/13/EU.

EASA – European Advertising Standards Alliance



ICAS – International Council for Ad Self-Regulation



-  Self-Regulatory Organizations (SROs)
-  SRO Associations and International Industry Associations

COMPANIES



AGENCIES



PRESS



SALES HOUSES



SECTOR COMPANIES



INSTITUTIONS



RADIO AND TV



OUTDOOR



WEB



Code

IAP Istituto dell'Autodisciplina Pubblicitaria

Code of Marketing Communication Self-Regulation Italy

68th edition effective February 9th, 2021

First edition dated May 12th, 1966

Preliminary and General Rules

a) Purpose of the Code

The Code of Self-Regulation aims to ensure that marketing communication, while performing an extremely useful role in the economy, is carried out as a service to the public, with special consideration given to its influence on consumers. The Code defines activities that, while legal, are in contrast with the aforesaid; the rules reflect the behaviour that communication must conform to, and constitute the legal basis for marketing communication self-regulation.

b) Complying Parties

The Code of Marketing Communication is binding for advertisers, agencies, advertising and marketing consultants, media of any kind, and for anyone who has accepted the Code directly or by membership of an association, or through an agreement to execute marketing communication as described under para. d).

c) Obligations of signatories

Signatories undertake to observe the Code and its Regulations and to ensure compliance by their members, to efficiently disseminate the rulings of the Jury and to adopt appropriate measures towards members who fail to comply with or repeatedly disregard the Jury's decisions.

d) Acceptance clause

To more effectively ensure compliance with the decisions of the Jury, signatories undertake to ensure that their members and associates shall include a special clause in their contracts specifying acceptance of the provisions of the Code, its Regulations and the rulings of the Jury including publication of the latter, as well as acceptance of final desist orders issued by the Review Board.

e) Definitions

For the purposes of the Code, the term "marketing communication" shall refer to advertising and all other forms of communication including corporate and institutional messages whose aim is to promote the sale of goods or services regardless of the modalities used, as well as forms of communication regulated by Title VI. The

term does not refer to sales policies or marketing techniques as such.

The term "product" refers to the object of marketing communication and therefore also includes services, methods, treatments, rights, obligations and the like. The self-regulatory code does not refer to the nature of the product or service being offered.

The term "message" refers to any form of public presentation of the product and therefore includes the outer packaging, wrapping, labelling etc.

The term "consumer" refers to any individual, legal person or any group of individuals to whom the marketing communication is addressed or is liable to receive it.

For the purposes of the Self-Regulatory Code, the distribution of promotional material for educational aims, as requested by public or private schools and supervised by teaching staff, does not constitute marketing communication.

Title I

Rules of behaviour

Art. 1 – Fairness in marketing communication

Marketing communication must be honest, truthful and correct. It must avoid anything likely to discredit it.

Art. 2 – Misleading marketing communication

Marketing communication must avoid statements or representations that could mislead consumers, including omissions, ambiguity or exaggeration that are not obviously hyperbolic, particularly regarding the characteristics and effects of the product, prices, free offers, conditions of sale, distribution, the identity of persons depicted, prizes or awards.

In assessing whether or not a marketing communication is misleading, the benchmark is the reasonable consumer belonging to the relevant target group.

Art. 3 – Terminology, quotations, technical and scientific tests, statistical data

Terms, quotations and references to scientific and technical tests must be used appropriately. Technical and scientific tests and statistical data with limited validity must not be presented in such a way as to make them appear generally valid.

Regulations

Regulation guaranteeing the impartiality of self-regulatory judgements

Regulations concerning marketing communication relating to food supplements for weight loss or weight control and other types of supplements

Regulations concerning the copy advice of the review board

Regulations for safeguarding future marketing and advertising campaigns (see Art. 44 of the Self-Regulatory Code)

Regulations on the time requirements for the enforcement of self-regulation decisions

Digital Chart Regulations on the Recognizability of Marketing Communication Distributed over the Internet

Regulation governing marketing communication for food products and beverages to protect children and ensure healthy eating

Advertising self-regulation strengths



- ✓ **Independence** of the bodies
- ✓ **Speed** of intervention (adjudications from 8 to 12 clear working days)
- ✓ Effectiveness of the **sanction** (withdrawal of the ad and name and shame)
- ✓ Protection of **consumers** (cases: 92% protection of consumers - 8% competitors)
- ✓ **Free and easy access** to consumers
- ✓ **Flexibility** (rules are constantly updated, 68 editions of the Code)
- ✓ **Transparency** of decisions (published on the IAP website)
- ✓ **Prevention** as the first objective (copy advice and protection of advertising creativity)

Ambush marketing

We will not use the
Olympic rings to
illustrate this story

ICC - Advertising
and Marketing
Communications
Code

Article B4 - «“Ambushing” of sponsored properties»

No party should seek to give the impression that it is a sponsor of any event or of media coverage of an event, whether sponsored or not, if it is not in fact an official sponsor of the property or of media coverage.

The sponsor and sponsored party should each take care to ensure that any actions taken by them to combat “ambush marketing” are proportionate and that they do not damage the reputation of the sponsored property nor impact unduly on members of the general public.

Code of Marketing Communication Self-regulation

Preliminary and General Rules

e) Definitions

For the purposes of the Code, the term “**marketing communication**” shall refer to **advertising and all other forms of communication** including corporate and institutional messages whose aim is to **promote the sale of goods or services irregardless of the modalities used**, as well as forms of communication regulated by Title VI. The term does not refer to sales policies or marketing techniques as such.

Code of Marketing Communication Self-regulation

Art. 2 - Misleading marketing communication

Marketing communication must avoid statements or representations that could mislead consumers, including **omissions, ambiguity or exaggeration** that are not obviously hyperbolic, particularly regarding the characteristics and effects of the product, prices, free offers, conditions of sale, distribution, the identity of persons depicted, prizes or **awards**. (...)

Art. 13 - Imitation, Confusion and Exploitation

Marketing communication should not copy or slavishly imitate that of others even if it concerns non-competitive products, especially if there is the risk of generating confusion with the marketing communication of others.

Moreover, any **exploitation of the name, trademark, notoriety and corporate image** of other marketers **should be avoided**, if it is intended to generate an **undue advantage**.

Unichips Italia s.p.a. vs PepsiCo Food A.I.E.

TV COMMERCIAL

PRODUCT DISPLAYS



Featuring Fabio Cannavaro, Lionel Messi

Plaintiff: official sponsor of the National Football team.

Complaint: the hype of a competitor who, during the World Cup in Brazil, aired, amongst other initiatives, a TV commercial in a Brazilian setting with Fabio Cannavaro, former captain of the National team, as protagonist. He wore a blue shirt, recalling the one of the National team.

The Jury, while recognizing the possible relevance of ambush marketing in terms both of art. 2 and that of art. 13, paragraph 2, of the Code, **excluded the existence of an offence in this case.**

The Jury's decision

- ✓ The Jury did not consider the case to be ambush marketing, on the assumption that it was **not likely to determine an erroneous belief in the public** regarding the existence of a relationship of sponsorship (no unequivocal references to the National team, either).
- ✓ The mere connection of Cannavaro's image to that of the National team did not constitute violation of the Code, and this also took into consideration the **player's interest in exploiting his image** (consisting of his past and participation in events that have made him famous), provided there is no confusion with regard to other sponsorship and no illegal connection to the notoriety of third parties.

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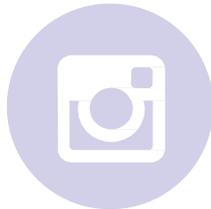
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