

[EXCERPTS: Cape Verde – Decree-Law No. 46-2007; Advertising Code, Articles 1-5, 8-11, 20-22, 36, 40 and 65].

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ANNEX

**ADVERTISING CODE**

CHAPTER I

**General Provisions**

Article 1

**Scope of law**

1. The present Law applies to any kind of advertising, regardless of the medium used for its dissemination.
2. This Law also applies to any advertising agents and any public or private institutions, whether national or foreign, engaging in advertising activities in the national territory, even if the broadcasting body is located in a foreign country.

Article 2

**Applicable law**

Advertising is governed by what is set forth in the present Law and other legislation applicable to this sector.

Article 3

**The concept of advertising**

1. For the purposes of this Law, advertising is considered to be any kind of communication carried out by entities of a public or private character, in the context of commercial, industrial, artisanal or liberal activities, for the direct or indirect purpose of:
  - a) Promoting any goods or services with a view to their commercialization or exchange;
  - b) Promoting ideas, principles, initiatives or institutions.
2. Advertising is also considered to be any kind of communication by Government not covered in the foregoing paragraph, having the purpose of promoting, directly or indirectly, the provision of goods or services.
3. For the purposes of this Law, political propaganda, journalistic information, programs of entertainment, the act of releasing literary or artistic works protected pursuant to the terms of the Copyright Code, media access for the purposes of electoral campaigns, referenda and political communications, are not considered to be advertising, when they use legally assigned broadcast intervals.

Article 4  
**The concept of advertising activities**

1. Advertising activities are considered to be the combination of operations relating to the conveying of an advertising message to its recipients, as well as the legal and technical relationships arising therefrom between advertisers, professionals, advertising agencies and institutions that make use of advertising media or execute the aforesaid operations.
2. Included among the aforesaid operations in the foregoing paragraph are, in particular, those of advertising conception, creation, production, planning and distribution.

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Article 5

**Advertisers, professionals, advertising agencies, advertising media and recipients**

1. For the purposes of what is set forth in this Law, the following shall apply:

*a)* The Advertiser is considered to be the individual or group of persons on whose behalf the advertising is carried out;

*b)* The Professional is considered to be the individual who conducts the advertising activity;

*c)* The Advertising Agency is considered to be the juridical person specializing in the methods, art and techniques of advertising, which, through the professionals in its service, studies, designs, executes and distributes advertising through the media of dissemination, for and on behalf of the client advertisers, for the purpose of promoting the sale of merchandise, products or services, disseminating ideas or informing the public regarding the organizations or institutions that it serves;

*d)* An advertising medium is considered to be the vehicle used for the transmission of the advertising message;

*e)* The recipient is considered to be the individuals or groups of persons to whom the advertising message is addressed, or who, through it, is in any way reached.

2. Informational periodical publications published by the bodies of local authorities are not to be construed as advertising media unless the advertiser is a municipal enterprise exclusively or mostly funded by public resources.

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Article 8

**The principle of identifiability**

1. Advertising must be unequivocally identified as such, whatever the medium used for its dissemination.

2. Advertising that is broadcast over radio and television must be clearly separated from the rest of the programming, through the insertion of a separator at the beginning and the end of the advertising space.

3. The separator referred to in the foregoing paragraph on the radio is made up of acoustical signals, and on television, by optical or acoustical signals, and must, in the case of television, contain, in a matter that can be perceived by recipients, the word “advertising” in the separator that precedes the advertising space.

Article 9

**Hidden or disguised advertising**

1. It is prohibited to use subliminal images or images that are in other ways disguised that exploit the possibility of transmitting advertising without the recipients perceiving the advertising character of the message.
2. In television or photographic transmission of any events or situations, whether real or simulated, direct and exclusive focusing on existing advertising is prohibited.
3. For the purposes of this Law, subliminal advertising is considered to be advertising that, by recourse to any technique, can cause in the recipient sensory perceptions of which he does not become aware.

Article 10

**The principle of truthfulness**

1. Advertising must respect the truth, and not distort facts.
2. Assertions concerning the origin, nature, composition, properties and conditions for the purchase of goods or services advertised must be accurate and susceptible to proof at any time before the competent authorities.

Article 11

**Deceptive advertising**

1. Any advertising that in any way, including through its presentation, misleads or is likely to mislead its recipients is prohibited, regardless of whether it causes them any economic harm or is damaging to a competitor.
2. To determine whether a message is deceptive, it is necessary to take into account all of its elements, and particularly any indications having to do with:
  - a) The characteristics of goods or services, such as their availability, nature, execution, composition, manner and date of manufacture or prescription, their adjustment, use, quantity, specifications, geographical or commercial origin, results that could be expected from their use, or else essential results and characteristics of tests or controls carried out on the goods or services;
  - b) The price and the way it is set or paid, as well as the conditions for the delivery of the goods or the provision of the services;
  - c) The nature, characteristics and rights of the advertiser, such as its identity, its qualifications and its commercial or intellectual property rights, or awards or distinctions that it has received;
  - d) The rights and duties of the recipient, as well as the terms for the provision of guarantees.
3. For the purposes of what is set forth in paragraph 1, messages that in any way, including through their presentation, mislead or are likely to mislead their recipient into favoring the idea that a particular prize, offer or promotion has been granted to him, independent of any economic counterpart, lottery or need to engage in any ordering process, is also considered deceptive advertising.
4. In the cases indicated in the foregoing paragraphs, the venue competent for the conduct of the respective enforcement proceedings can require the advertiser to submit proof of the material accuracy of the factual data contained in the advertisement.
5. The data referred to in the foregoing paragraphs are to be presumed inaccurate if the proof required is not submitted, or is insufficient.

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Article 20

**Tobacco**

1. Any kind of advertising, promotion or sponsorship of tobacco is prohibited.
2. For the purposes of this Code, a tobacco product is understood to be any product intended to be smoked, inhaled, sucked or chewed, as long as it composed, even if only partially, of tobacco.

Article 21

**Treatments and medications**

1. Any kind of advertising for medical treatments and medications is prohibited, with the exception of advertising included in prospectuses or technical publications intended for doctors and other health care professionals.
2. The exception to what is stated in the foregoing paragraph is subject to legislation enforced by the Ministry of Health.

Article 22

**Advertising at educational institutions or establishments for minors**

Advertising for alcoholic beverages, tobacco or for any kind of pornographic material in educational institutions and their surrounding area, is prohibited, as are any publications, programs or activities specially intended for minors.

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Article 36  
**Sponsorship**

1. For the purposes of this Law, sponsorship is understood to refer to participation by natural or juridical persons who are not engaged in the activity of televising or producing audiovisual works, in the financing of any audiovisual works, programs, reporting, publications, categories or sections, hereinafter designated in abbreviated form as programs, regardless of the medium used for their dissemination, with a view to the promotion of their name, brand or image, as well as their activities, goods or services.
2. Television programs cannot be sponsored by natural or juridical persons whose primary activity is the manufacture or sale of cigarettes or other products derived from tobacco.
3. Television programs to provide political information cannot be sponsored.
4. Sponsored programs must be clearly identified as such by indication of the name or logo of the sponsor at the beginning and/or at the end of the program, without prohibiting such indication being made cumulatively at other moments, pursuant to the regime set forth in Article 46 for the insertion of advertising on television.
5. The content and scheduling of a sponsored broadcast may not under any circumstances be influenced by the sponsor in such a way as to affect the editorial responsibility and independence of the broadcaster.
6. Sponsored programs may not incite the purchase or leasing of goods or services of the sponsor or of third parties, particularly through specific promotional references to such goods or services.

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Article 40

**Protection of children and adolescents**

1. A promoter that conducts a sales promotion cannot collect personal data of a child without the verifiable consent of the legal representative of such child, except in cases where it may be necessary to ask a child for the contact information of its legal representative in order to be able to request the consent of the latter.
2. Pursuant to the legislation regarding general product safety, promoters may not directly provide a child with a free offer, a complimentary item or service, if by doing so it might in any way harm the child's health.
3. Promoters may not provide to individuals under the age of 18 products free of charge whose sale is prohibited to minors, particularly alcoholic beverages, tobacco, toxic or inflammable products.

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Article 65

**Application of sanctions**

1. The application of the fines set forth in this Law fall within the competence of the regulatory body for the sector.
  
2. Whenever the regulatory body for the sector may deem that together with the fine it should also apply some of the accessory sanctions set forth in this Law, it shall forward the respective proceeding, with a duly founded proposal, to a member of the Government in charge of Social Communication Social, who shall be responsible for deciding on the accessory sanctions proposed.
  
3. Without impairment to what is set forth in the following paragraph, proceeds of finds are to be distributed as follows:
  - a) 20% for the authority imposing the penalty;
  - b) 20% for consumer protection associations;
  - c) 60% for the State.
  
4. Proceeds from finds imposed for infractions to what is set forth in Articles 19 and 20 are to be distributed as follows:
  - a) 20% for the authority imposing the penalty;
  - b) 20% for the State;
  - c) 60% for a fund intended to finance campaigns for promotion and education on health and the development of measures for research, prevention, treatment and rehabilitation for problems related to alcohol and tobacco.

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