

ICC POLICY STATEMENT ON FREEDOM OF COMMERCIAL COMMUNICATION

POLICY STATEMENT

Prepared by the ICC Commission on Marketing and Advertising

Freedom of commercial communication

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Introduction

The purpose of this policy statement is to present the position of world business on the issue of the freedom of commercial communication. It outlines ICC principles related to this freedom, to self-regulation and to business recognition of its responsibility to consumers in providing legal, decent, honest and truthful commercial communications. Freedom of commercial communications finds its origins in the right to freedom of expression, which is subject to constitutional or legal protection in many jurisdictions and recognized internationally. Freedom of advertising and commercial speech, underpinned by effective self-regulation, are thus cornerstones of the market economy.

- The freedom of commercial communications should be vigorously protected and promoted by ICC, as well as by governments and business associations alike.

Commercial communications

Definition

The term “commercial communications” refers to any publicity activity intended as part of a marketing process for goods or services.

The main activities associated with commercial communications are advertising, public relations, sales promotion, direct and relationship marketing, events marketing and commercial sponsorship.

Broadly defined, “advertising” can be understood to be commercial messages carried by television, press, telephone, direct mail, internet and digital media (including mobile, social and other interactive or electronic media), cinema, radio, outdoor (posters, sports stadia, buses, taxis, trains, commercial vehicles) and other “ambient media”, covering anything from backs of bus tickets to skywriting.

The mere appearance of a brand or product, however, does not necessarily constitute a marketing communication.

Statement of principles

Freedom of commercial speech

Freedom of commercial speech is a fundamental principle of free markets and should be applied to the marketing of all legal products.

Responsibility

An essential requirement of freedom of commercial speech is responsibility. All commercial communications must be carried out in accordance with the globally- accepted rules of self-regulation set out by ICC and applicable local and industry advertising self-regulatory standards.

Self-regulation

Commercial communications are best governed by effective self-regulation within a legal framework that 1) protects consumers throughout all platforms and technologies used by companies for

commercial communications purposes, and 2) promotes fair competition.

Freedom of choice

Legal constraints on commercial communications beyond the basic framework necessary to provide for consumer protection and fair competition often reduce competitiveness, constitute barriers to trade and inhibit consumers' freedom of choice. While freedom of marketing communications may be limited in the interests of the public and the common good, such constraints must conform to applicable legal and constitutional requirements, and should never impose any form of restriction on truthful information about the existence and availability of goods and services that are lawfully traded.

The marketing process

Commercial communications are inseparable from other elements of the production and sale of goods and services. All elements of the marketing process are interdependent.

Explanation of principles

Freedom of commercial speech

Freedom of commercial speech is the foundation of a society. Freedom of commercial speech contributes to economic advancement, and is essential for free markets, fair competition, media and trade. New ideas and information can spread rapidly through commercial speech to all parts of society. Responsible advertising also advances responsible economic activity, which benefits societies.

Freedom of commercial speech ensures the freedom of expression through funding independent media, such as newspapers, magazines, cable, satellite, broadcast services and internet, which are all supported by advertising. Media advertising revenues also make a significant financial contribution to educational programming and entertainment, such as sporting and cultural events.

Advertising and sponsorship helps provide quality information and entertainment for consumers and enhances participation and attendance at events.

Public interest advertising campaigns bring important social and safety issues to the attention of consumers.

In short, advertising funds the media, promotes entertainment and sports, builds awareness of social issues, and thus advances consumer choice and fosters economic development.

Responsibility

In accepting the freedom of commercial communication, marketers agree to behave in a responsible way. ICC codes¹, as the embodiment of this responsibility, are reviewed and updated regularly to reflect changing practices, perceptions and technological developments.

Responsible marketing communications maintain consumers' trust and confidence in advertising. A prime responsibility of self-regulation is to ensure that there is an awareness of the system, that standards are met and that complaints are handled effectively. In addition, marketers are assured protection for their own businesses through these codes, since they help to ensure fair competition at the same time as they protect consumers.

ICC notes that all advertising should be prepared with a due sense of social responsibility and conform to the principles of fair competition through truthful presentation, fair comparisons and

avoidance of denigration, misleading information and the exploitation of goodwill.

Special care should be taken in marketing communications directed to children.¹

Self-regulation

Self-regulation is a system by which the advertising industry actively polices itself. The three parts of the industry - the advertisers who order the advertising and are responsible for it, the agencies (advertising, creative and media buying) who create its form and content, and the various forms of offline and online media that carry it - work together to codify advertising standards and to set up locally appropriate systems to ensure that advertisements that fail to meet those standards are quickly amended or withdrawn.

Experience has shown that self-regulation is more effective than legislation in regulating the detail of commercial communications. Self-regulation governs in spirit as well as the letter and may encompass a more comprehensive range of options on possibly controversial issues of taste and interpretation.

Self-regulation is easily updated and can be adapted and enforced far more quickly than by recourse to legal decisions. It gives access to redress which is free of charge for the consumer.

ICC and local and sectoral codes establish that communications should not offend standards of decency, abuse the trust of consumers, or exploit their lack of experience or knowledge. They prevent any form of discrimination, incitement to violence or appeals to unjustifiable fear.

They give special protection to vulnerable groups such as children and can address complex issues like social and environmental aspects of sustainable development by highlighting important principles that govern all advertising.

ICC recognizes that, for self-regulation to be effective, consumers and marketers must be aware of it and there must be adequate enforcement mechanisms and sanctions such as those operated by self-regulatory bodies.

Freedom of choice

The freedom of choice inherent in competitive market situations has worked to the advantage of consumers.

A natural result of competition is increased commercial communications, which ensure that consumers have the information they need to make freedom of choice a reality. Any action that restricts commercial communication therefore reduces choice and by definition restricts trade and ultimately may increase prices. It can also dis-incentivise innovation.

ICC has long maintained that products that can be legally manufactured and marketed should be legal to advertise in line with free market media and communication laws, and taking into account the interests of the public and the common good. Restrictions on the freedom to advertise legitimate products may have the effect of protecting domestic markets from external competitors: often the only way for a foreign competitor to enter a new market is through an advertising campaign. If such campaigns are banned or heavily restricted, it may become virtually impossible for new entrants to penetrate the market.

¹ Article 18 of the Consolidated ICC Code of Advertising and Marketing Communications Practice and ICC Framework for Responsible Food and Beverage Marketing Communication

ICC believes that, as an overall objective of the General Agreement on Trade in Services (GATS) and other ongoing trade negotiations including the Trade in Services Agreement (TiSA), more commitments from all countries to liberalize cross-border trade in advertising and related services are needed in order to increase market access as well as the adoption of least trade restrictive measures.²

The marketing process

The process of bringing goods and services to market consists of various inter-related elements:

- product formulation, design, packaging and branding;
- distribution and availability of the product;
- cost and value for money proposition; and
- commercial communications.

The interdependence of these elements means that barriers to one can put pressure on others, resulting in higher prices, reduced availability, reduced quality, or other factors not in the consumers' interest.

Commercial communications should not therefore be regarded as something that can be legislated in isolation from the other marketing elements or from wider economic and social effects. All of these elements are the essential catalysts for any market-oriented economy and fundamental to the efficiency of commercial activities.

As the principal means of establishing and increasing market share, commercial communications are essential to the existence and development of a strong private business sector, both domestically and internationally.

Conclusion

Excessive regulation in the field of advertising and commercial communications will hinder trade and hampers economic growth and development.

ICC urges all governments to reject general advertising bans and overly prescriptive restrictions on truthful commercial communications, which distort trade and inhibit market growth, in favour of the self-regulatory regime described above. Governments should allow legitimate goods and services to be responsibly advertised in accordance with accepted self-regulatory codes of business practice that are effectively enforced.

The International Chamber of Commerce (ICC)

ICC is the world business organization, whose mission is to promote open trade and investment and help business meet the challenges and opportunities of an increasingly integrated world economy.

With interests spanning every sector of private enterprise, ICC's global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries. ICC members work through national committees in their countries to address business concerns and convey ICC views to their respective governments.

ICC conveys international business views and priorities through active engagement with the United Nations, the World Trade Organization, the G20 and other intergovernmental forums.

Since 1935, ICC has been instrumental in promoting high standards of marketing ethics notably by encouraging responsible conduct of business through self-regulation.

Close to 3,000 experts drawn from ICC member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

www.iccwbo.org

Notes:

¹ For a complete list and content of ICC codes on marketing and advertising, including the ICC International Code of Advertising Practice, please see www.iccwbo.org.

² For further information and the full policy statement (document number 240/453rev – The Liberalization of Advertising Services) please see www.iccwbo.org.

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