



Policy Statement

Freedom of Commercial Communication

Prepared by the Commission on Marketing and Advertising

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 advertising and commercial speech, underpinned by effective self-regulation, are cornerstones of the market economy, and should be vigorously protected and promoted by ICC, as well as governments and business associations alike.

Commercial communications

Definition

The term “commercial communications” refers to any publicity activities 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.

Within the broad term, “advertising” can be understood to be commercial messages carried by television, press, telephone and telefax, direct mail, internet and interactive media, cinema, radio, outdoor (posters, sports stadia, buses, taxis, trains, truck sides) and other “ambient media”, covering anything from backs of bus tickets to skywriting.

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 developed into local and sectoral codes of practice.

Self-regulation

Commercial communications are best regulated by effective self-regulation within a legal framework that protects consumers.

Freedom of choice

Legal constraints on commercial communications beyond the basic framework necessary to guarantee consumer protection often constitute barriers to free trade and inhibit consumers' freedom of choice.

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 speech is fundamental in a democratic society. The significance of freedom of commercial speech is however not always understood and in many cases not expressly protected in a country's constitution. The information content in commercial speech can contribute to the advancement of any society. New ideas and information can be spread rapidly by commercial speech to all parts of society.

Freedom of commercial speech also helps to ensure freedom of expression through funding independent media. Newspapers, magazines, cable, satellite, broadcast services and internet are all supported by advertising. Media advertising revenues also significantly finance 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.

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 tastes and technological developments.

A prime responsibility of self regulation is to maintain consumers' confidence in advertising, ensuring standards are met and complaints are handled effectively. In addition, marketers are assured protection for their own businesses through these codes that help to ensure fair competition at the same time that 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.

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 advertising agencies who create its form and content, and the media that carry it - work together to codify advertising standards and to set up a system 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 it therefore encompasses 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 detailed issues like social and environmental aspects of sustainable development.

ICC members recognize 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 always 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 free trade and ultimately increases selling prices.

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. 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.

ICC believes that, as an overall objective of the General Agreement on Trade in Services (GATS), 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 inter-dependence of these elements means that barriers to one can put pressure on others, resulting for instance 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 free trade and affect economic growth and development.

ICC urges all governments to reject the use of advertising bans and other detailed restrictions on commercial communications which act to distort free trade, in favour of the self-regulatory regime described above. Governments should allow legitimate goods and services to be responsibly advertised in accordance with accepted codes of business practice.



About ICC

ICC is the world business organization, the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy. ICC was founded in 1919 and today it groups thousands of member companies and associations from over 130 countries. Since 1935, ICC has been instrumental in promoting high standards of marketing ethics notably by encouraging responsible conduct of business through self-regulation.

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Notes:

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.

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