



CODE OF PRACTICE FOR DIRECT MARKETING IN NEW ZEALAND

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Code of Practice for Direct Marketing in New Zealand

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This Code has been developed by the Marketing Association (formerly the New Zealand Direct Marketing Association), the Advertising Standards Authority (ASA), and the eMarketing Standards Authority (eMSA), and is supported by the Ministry of Consumer Affairs and Consumers' Institute.

All marketers are expected to comply with the principles set out in the Code. The compliance guide sets out actions which can help achieve compliance with the principles. Where the compliance guide is silent on a particular issue, marketers are expected to act in accordance with the spirit and intention of the Code, which is to ensure that consumers' interests are properly protected. Although this code is written for marketers, by reading it, consumers can gain an understanding of the standards expected to be met by marketers.

This code replaces the existing Marketing Association Code of Ethics and Standards of Practice for Trader Members and the Telemarketing Code of Ethics.

DEFINITIONS

- (a) "Consumers" are customers or potential customers, whether they are members of the public, organisations or businesses.
- (b) "Direct Marketing" is the process by which consumers are offered the opportunity to obtain or purchase goods or services or make charitable donations direct by mail, newspaper or magazine, radio, television, telephone, facsimile, email, Internet or any similar means of communication.
- (c) "Appropriate industry Codes of Practice" include the Advertising Codes of Practice of the Advertising Standards Authority and all other industry codes endorsed by the Marketing Association.
- (d) Where the word "advertisement" is used in the Code, it covers any and all forms of advertising.

This code is based on five basic principles:

PRINCIPLE 1:

Marketers will comply with the laws of New Zealand and all appropriate industry Codes of Practice

PRINCIPLE 2:

Offers will be clear and truthful and not present a product, service, or offer in a way that could mislead the consumer.

PRINCIPLE 3:

Orders for products or services will be handled in a responsible and prompt manner.

PRINCIPLE 4:

Marketers will carry out their business in a way that is socially responsible.

PRINCIPLE 5:

Marketers will uphold high standards of business practice to bring about the trust of consumers.

PRINCIPLE 1:

Marketers will comply with the laws of New Zealand and all appropriate industry Codes of Practice.

This Code assumes that organisations already comply with all New Zealand Law, and is written to establish standards of customer service over and above the customer's legal rights.

COMPLIANCE GUIDE

1(a) **Consumer Laws:** Organisations involved in direct marketing must pay particular attention to the Consumer Guarantees Act 1993, Fair Trading Act 1986, Door to Door Sales Act 1967, the Telecommunications Act 1987, the Gambling Act 2004 and any amendments to these Acts, which all include consumer rights provisions.

1(b) **Individual Privacy:** It is important that direct marketers are familiar with The Privacy Act 1993 and the 12 Privacy Principles included in it. Their marketing activities must comply with these principles. Refer to www.marketing.org.nz or email marketing@marketing.org.nz for an easy reference guide to implementing the 12 Privacy Principles.

1(c) **Advertising to Children:** Marketers must also be aware of and abide by the ASA's Code of Practice for Advertising to Children. The term "children" means all those under the age of 14 years.

1(d) **Liquor and Pharmaceuticals:** Attention is also drawn to the Advertising Codes of Practice for Liquor and Pharmaceuticals. Liquor advertisements require a LAPS (Liquor Advertising Pre-Vetting Service) code number, and any product making a therapeutic claim requires a TAPS (Therapeutic Advertising Pre-Vetting Service) code number.

PRINCIPLE 2:

Offers will be clear and truthful and not present a product, service, or offer in a way that could mislead the consumer.

COMPLIANCE GUIDE

2(a) **Testimonials:** Testimonials used in any form of advertising must be current, typical and genuine and any claims made must be able to be verified.

2(b) **Disguise:** Marketers must not claim to be carrying out a survey or research when their real purpose is to sell a product or service, or to raise funds.

2(c) **Timeliness:** Descriptions and promises must reflect actual conditions, situations and circumstances existing, to the best of the seller's knowledge, at the time of the promotion.

2(d) **Evidence:** Test or survey data used in any communication must be reliable, accurate and current and must support the specific claim being made. Marketers must be able to verify the basis for any claim or comparison and must not imply a scientific, factual or statistical basis where none exists.

2(e) **Identity:** Every offer, communication and shipment of goods must identify the marketer and provide the consumer with sufficient information to be able to contact them.

2(f) **Disparagement:** Inaccurate information must not be used to attack or damage the reputation of competitors' products, services, advertisements or companies.

2(g) **Representation:** Products or services offered must be accurately and fairly illustrated.

2(h) **Currency:** Prices quoted in advertisements in New Zealand must be in New Zealand dollars and include GST, unless otherwise clearly stated.

2(j) **Contests:** When contests or prizes are used to promote the sale of goods, the rules of the contest must be clearly stated, and must conform with The Gambling Act 2004. Particular attention must also be paid to Principle 3 of The Privacy Act 1993 with regard to the collection and storage of personal data.

2(j) **Refusal of Offer:** A telephone marketer must provide the consumer with a clear opportunity to refuse any appointment or offer. A definite refusal must be accepted right away, and the call ended. People must not be harassed.

2(k) **Cost and Charges:** When finalising any agreement, the marketer must clearly state the total cost, all relevant terms, conditions and payment plans, plus any extra charges such as delivery or handling costs, including any costs incurred in returning goods. These terms must be confirmed in writing if requested.

2(l) **Misrepresentation:** Consumers must not be misled into believing that a marketing communication is news, information, public service or entertainment programming when its purpose is to sell goods or services or to seek donations to causes or charities.

2(m) **Description:** Products or services offered in all media must be accurately and fairly described. The terms and conditions of the offer must not be made less clear or unreadable by the use of type size, colour, contrast, style, placement or any other treatment.

2(n) **Advertorial/Infomercial:** Advertorials/Infomercials must be clearly identified as such.

PRINCIPLE 3:

Orders for products or services will be handled in a responsible and prompt manner.

COMPLIANCE GUIDE

3(a) **Identity:** Advertisements which invite a reply to a Post Office box, email, website, or telephone number must clearly identify the organisation and must also provide a physical address. In the case of an Internet banner advertisement, this information must be easily found on the website page linked to that banner advertisement.

3(b) **Appointments:** In the case of an appointment to meet, contact details and a person's name must be given so that the appointment can be altered or cancelled.

3(c) **Inertia selling/negative option:** Consumers are not responsible to pay for unordered goods or services, or for their return to the marketer. Goods or services must not be sent or charged for unless a confirmed order has been received from the consumer. If a consumer will be required to return a notice advising that he or she does not wish to receive any further goods or services, that fact must be made clear in the first offer. (Under contract law, the silence of a consumer is not enough to indicate they have accepted the goods or services. Buyers must actually state they want to buy.)

3(d) **Payment options:** Consumers must be advised in clear and simple language of the available methods of making payments, the security of those payment methods, and how to use those methods.

3(e) **Processing of payments:** Marketers must maintain efficient and complete records of orders and money received so that they can quickly and properly answer customers' questions about their orders.

3(f) **Payment security:** Organisations must set up systems to ensure any payment information (e.g. credit card details) is collected and held securely. The information collected must be accurate, up-to-date and kept only as long as needed for the purposes for which it was collected.

3(g) **Shipment:** All orders must be shipped within the time stated in the advertisement. If no time is stated, they must be shipped within 30 days of the order being received.

3(h) **Shipment delay:** If the order, or any part of it, cannot be supplied within the required time, the customer must be notified promptly and given a reasonable idea of the expected delay. At the same time, they must also be given an opportunity to cancel the order and receive a refund.

3(i) **Returned goods:** Marketers must accept delivery of items returned in good condition within the time specified in their Terms and Conditions.

3(j) **Refunds:** Marketers must maintain efficient and complete records of goods returned by customers. Refunds and exchanges must be sent within 30 days from the time the returned goods are received by the trader.

3(k) **Substitution:** If it is necessary to substitute one product for another, customers must first give their approval, unless the advertisement clearly states that a substitution might need to be made.

3(l) **Terms and conditions:** The consumer must be informed of all the terms and conditions before a contract is confirmed.

3(m) **Agreements and contracts:** Copies of all relevant documents, agreements, contracts and/or advice of legal rights must be sent to customers within five (5) working days, commencing from the date of the transaction. Documents confirming an order must provide full contact details of the organisation, including a physical address.

PRINCIPLE 4:

Marketers will carry out their business in a way that is socially responsible.

COMPLIANCE GUIDE

4(a) **Children:** A marketer must not knowingly take orders from children under the age of 14 without adult approval.

4(b).1 **Name Removal Register:** The Marketing Association will maintain a Name Removal Register containing details of consumers who have requested no unasked for mail, telephone calls, facsimiles.

Marketers must check the list of people they plan to communicate with against the Marketing Association's Name Removal Register and remove from that list any names that appear on the Register. [This does not apply when an organisation communicates with existing members or customers.]

4(b).2 **Opting out:** In addition to the requirements of the 12 principles of the Privacy Act, consumers must be given the opportunity to 'opt out' of receiving marketing information which they have not requested. Marketers must have a system in place that enables them to honour such requests.

4(b).3 **Internet and email opt-out:** Consumers must be given the opportunity in every location, site or page from which data that identifies them is being collected to choose not to have such information made available to others for marketing purposes.

4(b).4 **Marketing list referrals:** Marketers must not allow individuals to sign others up without their permission to receive marketing offers.

4(b).5 **Third party lists:** Marketers using third party lists must ensure the list complies with the requirements of the Privacy Act 1993.

4(c).1 **Calling hours:** Telephone calls to private homes should only be made between 8.00 am and 8.30 pm, unless the caller is advised that another time would be more convenient and acceptable.

4(c).2 **Calling days:** Telephone marketing calls should be avoided on public holidays, unless the caller has a reason to believe that the calls will be readily acceptable.

4(d) **Confirmation of credit card details:** If, in the course of placing an order via telephone, a consumer authorises the charge for goods or services to be made on a credit card, the telemarketer must read back all relevant details of the credit card. They must also be sure that the customer understands that the cost of the goods or services will be charged to the credit card.

4(e) **Verification of Internet orders:** When purchasing over the Internet, consumers must be given an opportunity to check that the details of their orders are correct and be given the right to accept or reject the terms and conditions of the contract.

4(f) **Confirmation of contract/offer:** The receipt of confirmed contracts/offers placed via the Internet or in response to an emailed offer must be promptly acknowledged in order to reassure the consumer that their order has reached its destination.

4(g) **Safety and health warnings:** Where applicable and appropriate when purchasing over the Internet or in response to an emailed offer, consumers must be given any mandatory safety and health care warnings which they would be given at any other point of sale.

PRINCIPLE 5:

Marketers will uphold high standards of business practice to bring about the trust of consumers.

COMPLIANCE GUIDE

5(a) Internal Complaint Handling

5(a).1 **Procedures:** Organisations must have fair and effective procedures in place to handle consumer complaints and difficulties within a reasonable time and in a way that results in both the consumer and the organisation being satisfied. These procedures will be free of charge to the consumer and will not affect his or her right to seek legal redress.

5(a) 2. **Consumer information:** If asked to do so, organisations must give consumers clear and easy-to-obtain information about complaints handling procedures.

5(a).3 **Dispute resolution:** If a consumer is not satisfied with the way an organisation has handled their complaint, they must be told how to contact the Marketing Association and/or the Electronic Marketing Standards Authority.

5(b) Marketing By Telephone

5(b).1 **Identity and purpose:** At the beginning of a call, telemarketers must clearly state their name, the organisation they represent and the general reason for their call. If the consumer expresses a wish to end the conversation, then the caller must end the call as soon as possible.

5(b).2 **Identification:** The name and address of the organisation on whose behalf calls are made must be listed in the telephone directory. In the case of a new number, it must be available to consumers through a recognised Directory Service.

5(b).3 **Ex-directory numbers:** Calls must not be made to unlisted or unpublished numbers, unless the consumer has given the calling organisation permission to call them.

5(b).4 **Workplace Permission:** Where a consumer has had no previous contact with an organisation, they must not be contacted by telephone on private business at their place of work without permission.

5(b).5 **Duration:** If a call is expected to take more than three (3) minutes, telemarketers must state honestly how long the call is likely to take. The consumer must be given the opportunity at this time to end the call.

5(b).6 Cooling-off period: After a consumer has received any new contract, they must be given a seven (7) day "cooling off" period. During this time the consumer may cancel the agreement without being penalised, and any payment or deposit they have made must be promptly and fully refunded. The consumer is to be told of this "cooling off" period, both at the time the offer is made and in the written contract.

5(b).7 Recording calls: Calls should only be recorded for the purpose of verifying details, and the consumer advised that this is being done, e.g. at the time a sale is being confirmed. Such tapes must not be played without the agreement of both the consumer and the caller, except for the purpose stated. Calls randomly recorded for the purpose of staff training or quality control should only be played for the stated purposes.

5(b).8 Automatic Dialling Systems: If an automatic dialling system with a recorded message is used, the consumer must be advised of this at the beginning of the call, allowing them to end the call immediately if they wish to do so.

5(c) Internet And Other Electronic Media

5(c).1 Application: All forms of electronic media, including (but not limited to) the Internet, electronic mail, TXT, WAP, interactive kiosks, databases and computer-based information services, are covered by these guidelines.

5(c).2 Spamming: As a general rule, email 'spamming' (the process of unasked for mass marketing by email or TXT messaging) is regarded as a poor business practice. Unrequested marketing communications must not be sent by email or TXT unless they are relevant to the existing relationship between an organisation and its customer.

5(c).3 Reply: Every email offer must clearly identify the marketer and provide the person receiving it with a simple and easy-to-use method of replying and opting out.

5(c).4 Disclosure: When information is being gathered from individual consumers that could identify them, and which will be linked with clickstream data (such as that obtained from their behaviour, pathway, or choices expressed when visiting a website), they must be advised what information is being collected and how it will be used. This advice must be given before the consumer sends data that could identify them.

5(c).5 Website security:

(i) Consumers' personal and payment information must be protected by sound security systems;

(ii) Consumers must be able to access information about the security systems the organisation uses in clear, simple language so they can judge the level of risk in relying on those systems;

(iii) Marketers and consumers need to have confidence that they are dealing with a bona fide person or business and that the transaction is also bona fide. Authentication systems, such as digital certificates, should be used to verify the contents of transactions and the identity of the parties where that is necessary and appropriate.

(iv) Consumers must not be encouraged to provide confidential information in a manner that is considered insecure;

(v) All security and authentication processes must be reviewed and updated as necessary to ensure appropriate security levels are consistently maintained.

REVIEW:

This Code will be formally reviewed after one year of operation and then every three years after that time. In addition, the Code may be amended between reviews if necessary. Reviews will be carried out by the Marketing Association Code Review Board, in consultation with the Advertising Standards Authority, the eMarketing Standards Authority, the Ministry of Consumer Affairs and consumer organisations.

For Further Information Contact:

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ASA CODES:

The Codes are developed by the ASA to cover the entire range of advertising activity, and amended whenever there is an issue that requires review or updating. Where appropriate, mainstream consumer groups, government departments, government agencies, industry and other interested parties are also involved in the process.

The Codes include a Code of Ethics, which is the overall philosophy covering fairness, respect for people, and honest practice, plus a number of Codes covering either particular issues (eg. Advertising to Children) or product areas (eg. Financial Services).

A full list of ASA codes are available for download at www.asa.co.nz/codes/codes.htm.

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