

Preamble

Whereas:

1. advertising of dietary supplements should comply with good mores, i.e. with moral and social standards applicable to business activity and this Code aims to facilitate formulation of these standards based on the assumption that the notion of good mores is dynamic and adjusts to their evolving social perception, and that unequivocal interpretation of the notion of 'good mores' is not possible and always calls for analysis and reference to the specific facts of the case;
2. this Code embraces and adopts the existing regulatory framework, including the area of combating unfair competition and counteracting unfair market practices;
3. advertising of dietary supplements should enhance the level of protection of consumers' health and interests by providing consumers with the basis for making informed choices and for safe use of dietary supplements, with special focus on health, economic, environmental, social and ethical aspects;
4. issues related to advertising of dietary supplements are regulated in numerous legal acts, both at the EU and national level; however, nothing prevents the industry from rendering the applicable standards more detailed or establishing standards that go beyond the requirements imposed by law;
5. consumer choices may be based on the information contained in advertisements/commercials; therefore, in order to protect the addressees of advertising messages from unfair practices, legal regulations set acceptability limits and establish rules for formulating such messages;
6. in order to establish a high level of consumer protection and guarantee that consumers have the right to adequate information, it is necessary to provide them with appropriate information on dietary supplements they consume;
7. assuring a high level of consumer protection is one of key priorities of the economy;
8. providing consumers with a basis for making informed and unbiased choices concerning dietary supplements they consume should be adopted as a general rule;
9. legal regulations provide for a ban on use of any information misleading consumers, in particular as to the characteristics, effect or properties of dietary supplements, or attributing therapeutic properties to certain dietary supplements. To be effective, these bans should be applied especially to advertising of dietary supplements;
10. it is the entrepreneur's duty to provide consumers with full and reliable information about the offered goods;
11. it is assumed that consumers follow their common sense in each case and view advertising messages with caution;
12. the notion of 'good mores' relies on broadly understood respect for other people which, when dealing with consumers, should take, inter alia, the form of providing relevant information about the advertised dietary supplements.

DEFINITIONS

CHILD - shall mean any person who has not turned 15 yet.

INITIATORS - shall mean four organisations grouping the entities operating in the dietary supplements market that were the first to sign the Code, namely the Polish Council for Supplements and Nutritional Foods (KRSiO), the Polish Chamber of Pharmaceutical & Medical Device Industry (POLFARMED), the Polish Association of Self Medication Industry (PASMI) and the Union of Producers and Distributors of Dietary Supplements (Suplementy Polska).

ORGANISATION - shall mean any organisation grouping the entities operating in the dietary supplements market.

CONSUMER - shall mean any person who is sufficiently well informed, attentive and careful; the evaluation is made by considering the social, cultural and linguistic factors and the consumer's membership of any specific consumer group understood as an unequivocally identifiable group of consumers that is especially susceptible to be influenced by advertising or the product being advertised because of its specific characteristics such as age or physical or mental disability.

ENTITY OPERATING IN DIETARY SUPPLEMENTS MARKET - shall mean any entrepreneur responsible for fulfilling the requirements of foodstuffs laws applicable to advertising at an enterprise engaged in the business activity associated with any stage of production, processing or distribution of a dietary supplement it controls.

ADVERTISING OF DIETARY SUPPLEMENTS - shall mean any act involving a specific dietary supplement that is addressed to consumers, within the framework of pursued business activity, designed to increase, indirectly or directly, sales of dietary supplements.

REGULATION (EC) NO 1924/2006 - shall mean Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods.

DIETARY SUPPLEMENT - shall mean any foodstuffs the purpose of which is to supplement the normal diet and which are concentrated sources of vitamins or mineral components or other substances with a nutritional or other physiological effect, alone or in combination, marketed in dose form, namely forms such as capsules, pastilles, tablets, pills and other similar forms of liquids and powders designed to be taken in measured small unit quantities.

SIGNATORY OF THE CODE - shall mean any initiator or entity operating in the dietary supplements market that has accepted and signed the Code and undertaken to comply with its provisions.

Article 1

1. This Code sets forth the rules for advertising of dietary supplements by the entities operating in the dietary supplements market.
2. The purpose of the Code is to establish a mechanism of voluntary self-regulation in the area of advertising of dietary supplements.

Article 2

1. The provisions of the Code apply exclusively to dietary supplements advertisements and/or commercials addressed to consumers, regardless of their form, in particular to the advertising activities undertaken with the intermediation of television, radio, press, the Internet and outdoor advertising.
2. The provisions of this Code do not apply to:
 - a. packaging and labelling of dietary supplements;
 - b. information about the Signatory of the Code not constituting advertising, in particular information addressed to investors and employees of the Code's Signatory; and
 - c. correspondence other than advertising intended to answer the inquiries filed by consumers with the entity operating in the dietary supplements market and pertaining to a specific dietary supplement.

Article 3

1. The provisions of the Code are binding on the Signatories of the Code and on the entities that have expressed their wish to apply the provisions of the Code and signed the statement of compliance with the provisions of the Code referred to in Article 15(2) and (3).
2. The entities other than the Signatories of the Code may apply the provisions of the Code on a voluntary basis.

Article 4

Advertisements and/or commercials of dietary supplements should comprise, as a minimum, the definition of a 'dietary supplement' and the name of the entity operating in the dietary supplements market displayed on the label of the dietary supplement being advertised.

Article 5

1. In the case of visual and audiovisual advertising, the 'dietary supplement' expression should be displayed in the right-hand bottom corner of the advertising space within a distinguishable rectangular field (hereinafter: the 'rectangle'). The text should be visible, legible, displayed horizontally in a single line, with the distance between the letters and the bottom and top edge of the rectangle not greater than:
 - a. the height of the text's letters in the case of the top and bottom edge of the rectangle; and
 - b. the width of the letters in the case of side edges of the rectangle.
2. In the case of a visual advertisement, the height of the rectangle should amount to 5% of the advertisement's height and in the case of an audiovisual advertisement, the height of the rectangle should amount to 10% of the advertisement's height.
3. In the case of an audiovisual advertisement, the 'dietary supplement' expression should be visible on the screen over a minimum uninterrupted period of 8 seconds, and the 'dietary supplement' expression must be broadcast, over a minimum period of 2 seconds, concurrently with the presentation of the name or label of the advertised dietary supplement. The rules referred to in this clause apply also to visual advertising in the form of a film (motion picture) with no soundtrack.
4. In the case of an audio advertisement, the 'dietary supplement' text should be read out, as a minimum, once during the broadcast of the advertisement in the case of an advertisement lasting up to 30 seconds and, as a minimum, twice during the broadcast of the advertisement in the case of an advertisement lasting more than 30 seconds prior to or after the mention of the name of the advertised product.
5. In the case of online advertising, the rules applicable to a given type of advertisement: visual, audiovisual or audio, as specified in Clauses 1 to 4, apply.

Article 6

1. Advertisement of a dietary supplement cannot make use of images or recommendations of an actual or fictitious physician, pharmacist, nurse, midwife or any actual or fictitious person with medical, pharmaceutical, nursing or midwifery educational background.

Article 7

1. Save when the possibility to invoke the name of illness stems directly from legal regulations, in particular from the formulas found in the list of health claims made on foods referred to in Commission Regulation (EU) No 432/2012, the use of the following in advertising of dietary supplements is not permitted:
 - a. names of illnesses if this would result in the advertised dietary supplements being attributed the properties of preventing or treating illnesses, or suggest possession of such properties by them; or
 - b. names of illness that, in fact, do not exist.

Article 8

1. When an advertisement invokes any research or tests (e.g. scientific research attesting to the product's effectiveness, consumer tests confirming consumer satisfaction levels or market research concerning sales levels), the entity operating in the dietary supplements market should provide consumers with a possibility to become acquainted with the findings of such research or tests within the scope of the claims made on the terms and conditions referred to in Clauses 2 to 5.
2. The possibility for consumers to become acquainted with the findings of any published research or tests within the scope of the claims made consists in, as a minimum, making available to consumers the source of the research or tests presented in compliance with the generally applicable citing rules, i.e. with designation, as a minimum, of one author or authors of the publication, abbreviated name of the periodical, issue number and year of publication, as well as page numbers.
3. The possibility for consumers to become acquainted with the findings of any unpublished research or tests within the scope of the claims made consists in, as a minimum, making available to consumers the data from the research or tests prepared in such manner as to enable consumers to verify the claim made in the advertisement.
4. The advertisement should feature, as a minimum, the details, respectively, of the source of research or tests presented consistently with Clause 2 or the data from the research or tests or of the website where consumers will be able to become acquainted with the information referred to in Clauses 2 or 3.
5. The entities operating in the dietary supplements market are responsible for indicating the actual sources of research or test data.

Article 9

1. Subject to Article 6 and without prejudice to the provisions governing the declarations invoking the recommendations of individual physicians or healthcare professionals and other associations not listed in Article 11 of Regulation No 1924/2006, it is acceptable to invoke in an advertisement the recommendations issued by the entities that have been entered in the National Court Register (KRS) or another public register.
2. When invoking the recommendations referred to in Clause 1, provision in an advertisement of a dietary supplement of the full or abridged name of the entity recommending the dietary supplement and the details of the website where consumers can become acquainted with the full text of the recommendation is obligatory.
3. For the purposes of this regulation, a recommendation means a positive opinion on the dietary supplement. Article 10

Article 10

1. Addressing dietary supplements advertisements/commercials to children is prohibited.
2. An advertisement addressing children is an advertisement incorporating direct calls on children to (i) purchase the advertised dietary supplements or (ii) encourage their parents or other adults to purchase the advertised dietary supplements for them.
3. It is prohibited to advertise dietary supplements intended for children using the characters:
 - a. present in mass culture, with the reservation that use of cartoon characters associated with a given product other than the characters present in mass culture is permitted;
 - b. constituting a reflection of the persons referred to in Article 6;
 - c. shown in hazardous situations; and
 - d. carrying fictional weapons or other dangerous items that look realistic.
4. The provisions of Clause 3a do not apply to the packaging and labelling used in an advertisement of a dietary supplement.

Article 11

1. Cases involving breaches of the provisions of this Code are considered by the Disciplinary Court, hereinafter the 'Court'.
2. The ultimate purpose of the Court is not to rule on guilt but to rule on liability and to make decisions on advertisements' compliance with the Code with a view to guaranteeing high ethical standards of advertising of dietary supplements.
3. Each of the Signatories of the Code has the exclusive powers to refer a case to the Court for consideration. Consideration of cases relating to the breach of the provisions of the Code notified by consumers will be performed according to the procedure agreed upon by the Initiators with consumer organizations. The Court is bound by the scope of any complaint.
4. The Court hears cases exclusively with regard to potential breaches of the Code. The Court guarantees that its rulings are not contrary to the commonly applicable law.

Article 12

The Terms and Conditions constituting Appendix No. 1 to the Code define organisation and functioning of the Court and the method of publication of the Court's rulings.

Article 13

1. Upon stating a breach of the rules contained in the Code, the Court, while observing the principle of presumption of innocence and having considered severity of the breach for consumers, degree of the entity's fault, scope of the breach, business history of the entity responsible for the breach (e.g. number of breaches of the Code stated by the Court or compliance with the sanctions imposed by the Court), may apply the following sanctions:
 - a. admonition with recommendation to alter or remove the advertisement; or
 - b. communication of the ruling to the other Signatories of the Code along with the details of the entity in breach of the Code.
2. If the Court finds that the same provision of the Code has been breached for the third time by the same Signatory, the Court, taking into account the level of harm of that breach to a consumer and scope of the breach, may apply an additional sanction being publication of the judgment with justification on the Court's website.
3. Sanctions may be combined.

Article 14

1. Each of the Signatories of the Code is obliged to comply with all regulations contained in the Code.
2. Each of the Signatories of the Code is to designate the qualified personnel in charge of analysis and approval of all materials of advertising nature that involve dietary supplements for their compliance with the regulations of the Code, ahead of their distribution or broadcasting.
3. Each of the Signatories of the Code shall have the right to invoke its status of a Signatory of the Code and, in particular, publicise the information about its compliance with the provisions of the Code as long as this is true.

Article 15

1. Every entity fulfilling the criteria of a Signatory of the Code may become a Signatory of the Code.
2. Accession to the Code requires the signing of the declaration in the wording consistent with Appendix No. 2 to the Code.
3. The accession declaration is filed with an organisation being a Signatory of the Code to which a given entity operating in the dietary supplements market belongs. When the entity operating in the dietary supplements market does not belong to any organisation being a Signatory of the Code or such entity is an organisation grouping the entities operating in the dietary supplements market that is not a Signatory of the Code, the entity operating in the dietary supplements market or organisation grouping the entities operating in the dietary supplements market is to file the declaration with an organisation of its choice that is a Signatory of the Code.
4. The organisation that is a Signatory of the Code is to inform the remaining organisations being Signatories of the Code of the filed declaration and of the date of its filing and update the list of all entities being the Signatories of the Code.

Article 16

1. Amendments to the Code must be approved by all Initiators of the Code.
2. Each of the Signatories of the Code has the right to propose amendments to the Code. The proposes amendments along with their justification are to be filed with the organisation being a Signatory of the Code (the 'Organisation Processing Amendments'). The Organisation Processing Amendments transmits the proposed amendments along with their justification to all remaining Signatories of the Code without delay. Each of the Signatories of the Code may, within 30 days of their receipt, give the Organisation Processing Amendments notice of their non-acceptance or acceptance of the proposed amendments, with each proposed amendment voted separately. Such notice may be accompanied by an opinion of the Signatory of the Code on the proposed amendments. Failure to give notice within 30 days is deemed to constitute approval of the proposed amendments without reservations.
3. The Organisation Processing Amendments notifies all Signatories of the Code of the received opinion and of approval or rejection of the proposed amendments within 30 days of the lapse of the time limit referred to in Clause 2. In the case of approval of at least one amendment, the Organisation Processing Amendments distributes the consolidated text of the Code incorporating the approved amendment to all Signatories of the Code.
4. Amendments to the Code take effect within the time limit set in the notice referred to in Clause 3 which cannot be shorter than 14 days and longer than 30 days from the lapse of the time limit referred to in Clause 3.

Article 17

1. Each of the Signatories of the Code has the right to terminate the Code at any time in writing. Such termination takes effect as of the day of its service. The termination does not affect the course of the proceedings pending before the Court and relating to the Signatory in question.
2. When the Code is terminated by a Signatory of the Code being an entity operating in the dietary supplements market or any other entity not being an organisation that is a Signatory of the Code, the notice of termination is served with the organisation with which that entity filed its declaration of accession.
3. When the Code is terminated by a Signatory of the Code being an organisation, the notice of termination is served with a selected organisation that promptly informs thereof the remaining organisations being the Signatories of the Code.

Article 18

1. The Code takes effect on the day of its signing by the Initiators of the Code.
2. A Signatory is to assure compliance of all its advertisements/commercials involving dietary supplements with the provisions of the Code within 6 months of the date of the signing of the Code by the Signatory.

ATTACHMENTS

1. Rules and Regulations of the Disciplinary Court
2. Declaration of Accession to Code of Good Practices for Advertising of Dietary Supplements