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INDEPENDENT BROADCASTING AUTHORITY

REGULATIONS RELATING TO THE DEFINITION OF ADVERTISING AND THE REGULATION OF INFOMERCIALS AND PROGRAMME SPONSORSHIP IN RESPECT OF BROADCASTING ACTIVITIES

The Independent Broadcasting Authority, has under section 78(1) of the Independent Broadcasting Authority Act No. 153 of 1993, as amended, made the regulations in the Schedule.

SCHEDULE

1. Definitions

In these regulations, any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context indicates otherwise:

- 1.1 "Act" means the Independent Broadcasting Authority Act, No. 153 of 1993;
- 1.2 "advertisement" means any material broadcast, in visual and/or audio form, for which the broadcaster receives a consideration, in cash or otherwise, and which promotes the interests of any person, product or service, provided that:
 - 1.2.1 spot commercials, public service announcements for which the broadcaster receives a consideration, any material that would constitute an infomercial but for the fact that it is of two minutes' duration or less, that part of sponsorship packages which is constituted by spot commercials, and commercial features shall be regarded as being advertisements; but
 - 1.2.2 public service announcements in respect of which the broadcaster does not receive any consideration, supply agreements, infomercials exceeding two minutes in duration, branded filler material which is of a public service nature, sponsorship elements which form part of in-programme material, presenters' credits and (in relation to competitions and self-promotions) programme competitions, branded promotional spots and self-promotion promos shall not be regarded as being advertisements;
- 1.3 "ASA" means the Advertising Standards Authority of South Africa;

- 1.4 "Authority" means the Independent Broadcasting Authority established by Section 3 of the Act;
- 1.5 "BMCC" means the Broadcasting Monitoring & Complaints Committee referred to in Section 21(1)(b) of the Act;
- 1.6 "branded filler material which is of a public service nature" means a visual and/or audio announcement transmitted by a broadcaster and aimed at imparting knowledge the dissemination of which is in the public interest, regardless of whether such announcement has the effect of promoting the interests of a commercial entity;
- 1.7 "branded promotional spot" means a promotional announcement transmitted by a broadcaster regarding a forthcoming programme or regarding a channel or station and which mentions or refers to an advertiser or a commercial entity;
- 1.8 "broadcaster" means a person who provides a broadcasting service under and in accordance with a broadcasting licence issued to it by the Authority under Chapter VI of the Act;
- 1.9 "commercial feature" means a stand-alone feature, unrelated to a programme, and which may take the form of (but is not limited to) a commercial competition, advertising feature or advertising programme which is primarily intended to promote the interests of one or more person, product, service or sponsor, regardless of duration, and excludes any programme competition;
- 1.10 "infomercial" means material of more than two minutes' duration, broadcast in visual and/or audio form, for which the broadcaster receives a consideration, in cash or otherwise, which is usually (but not necessarily) presented in a programme format, which promotes the interests of any person, product or service, which entails a direct offer of a product or service to a member or members of the public in return for payment, and which usually (but not necessarily) contains a

demonstration of the use of the product or service concerned, and includes material known as tele-shopping, home shopping, direct marketing and direct sales;

- 1.11 "news or current affairs programme" means a programme transmitted by a broadcaster in which it reports on news events or which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance;
- 1.12 "performance period" means the period between 05h00 and 23h00 every day;
- 1.13 "presenters' credits" means any acknowledgement of the provision of hair products, clothing, accessories, make-up or other goods or services to a production company or broadcaster by a third party;
- 1.14 "prime time", in relation to a person who provides a television broadcasting service, means the period between 18h00 and 22h00 every day;
- 1.15 "product placement" means the depiction of, or a reference to, a product or service in material (other than an advertisement) broadcast, in visual and/or audio form, in respect of which the broadcaster and/or the producer of the material concerned receives payment or other valuable consideration, and which promotes the interests of any person, product or service;
- 1.16 "programme competition" means a competition that forms part of, or is linked to, a programme by way of a competition window, insert or slot, and which does not have the promotion of the commercial interests of a person, product or service as its primary purpose;
- 1.17 "programme sponsorship" means the direct or indirect financing, whether partial or total, of the production or transmission of broadcast

programme material by an advertiser or person with a view to promoting its own or another person's name, trade mark, image, activities or product;

- 1.18 "public service announcement" means a visual and/or audio announcement transmitted by a broadcaster and aimed at imparting knowledge or information the dissemination of which is in the public interest and/or which attempts to solicit support for, or create awareness of, any non-profit organisation or any other organisation which conducts activities in the public interest;
- 1.19 "self-promotion promo" means a promotional announcement transmitted by a broadcaster and which focuses on a forthcoming programme to be transmitted by that broadcaster, or on the broadcaster itself or one of its channels;
- 1.20 "sponsorship element" means marketing material which forms part of, or is superimposed on, broadcast programme material and includes (but is not necessarily limited to) on-screen corner logos, opening and closing billboards, stings, squeezebacks, the on-air depiction of, or referral to, any brand, product or name, ribbons and crawls, naming rights, and product placements;
- 1.21 "supply agreement" means any agreement that forms part of a programme purchasing contract concluded between a broadcaster and a programme provider and which usually, but not necessarily, specifies the amount and frequency of promotional material which the broadcaster is obliged to transmit before, during or after the transmission of the purchased programme material.

2. Application

- 2.1 These regulations are binding on every broadcaster who provides a television broadcasting service and, to the extent that they are applicable, taking into account the nature of a sound broadcasting

service and the nature of the obligations imposed by these regulations, on every broadcaster who provides a sound broadcasting service.

2.2 Every broadcaster shall, in addition to complying with these regulations, comply with the Code of Advertising Practice of the ASA, as required by Section 57(1) of the Act.

2.3 To the extent that there may be any inconsistency between these regulations and the Code of Advertising Practice of the ASA in respect of any matter which falls within the jurisdiction of the Authority, these regulations shall prevail.

3. Advertising

3.1 The definition of "advertisement" set out in regulation shall be applicable to all broadcasters.

3.2 The definition of "advertisement" set out in regulation 1 shall be used by the Authority to distinguish between programme material, advertisements, infomercials and programme sponsorships transmitted by broadcasters, for the purposes of:

3.2.1 ensuring compliance by broadcasters with these regulations;

3.2.2 determining whether jurisdiction in respect of complaints concerning material transmitted by broadcasters vests in the BMCC or the ASA;

3.2.3 in the case of broadcasters who provide a television broadcasting service, regulating the amount of advertising that may be transmitted.

3.3 Any broadcaster who transmits a programme competition, a branded promotional spot, branded filler material, a self-promotion promo or a

sponsorship element in the form of the on-air depiction of, or referral to, any brand, product or name, shall ensure that the primary purpose of the broadcast of such material is to promote the broadcaster or the programme concerned, rather than the commercial interests of the person, product or service referred to in the course of such transmission.

- 3.4 Transmission elements such as continuity announcements and station identification, in the form of on-screen logos, signature tunes and the like, do not constitute advertisements.

4. Infomercials

- 4.1 No broadcaster may transmit any infomercials during prime time or during the transmission of, or in breaks during the transmission of, any children's programme.
- 4.2 Every broadcaster shall ensure that all infomercials transmitted by it are presented and labelled in such a manner that it will be clear to the audience that such infomercials do not constitute programme material.
- 4.3 No channel may transmit infomercials for more than two hours during the performance period in any one day.
- 4.4 The provisions of this regulation 4 shall not apply to any dedicated infomercial channel which may obtain a broadcasting licence from the Authority in accordance with the applicable provisions of the Act.

5. Programme Sponsorship

- 5.1 Every broadcaster who derives benefit from a programme sponsorship shall ensure that, in relation to the relevant sponsored programme, editorial control remains with that broadcaster.

- 5.2.1 in respect of every programme sponsorship obtained or accepted by it, enter into a written sponsorship contract with the sponsor which shall provide that the sponsor shall not be entitled in any way to influence the content or scheduling of the sponsored programme;
- 5.2.2 on the Authority's request furnish the Authority with copies of sponsorship contracts concluded by that broadcaster.
- 5.3 A broadcaster who provides a television broadcasting service shall not obtain or accept any programme sponsorship from any person in respect of any news or current affairs programme.
- 5.4 Notwithstanding regulation 5.3, a broadcaster who provides a television broadcasting service shall be entitled to obtain or accept a programme sponsorship in respect of a weather forecast or sports results bulletin which constitutes part of a news programme broadcast by that broadcaster.
- 5.5 Any depiction of, or referral to, the name, logo, product or service of a person who provides a programme sponsorship to a broadcaster, whether before, during or after the broadcast of the relevant programme, shall be subordinate to the content of the programme material to ensure that undue prominence is not given to that name, logo, product or service.
- 5.6 No broadcaster shall permit any product placement in any news or current affairs programme transmitted by it.
- 5.7 Product placement in programming other than news and current affairs shall be subordinate to the content of the programme material.
- 5.8 No broadcaster shall accept any programme sponsorship from any person who is prohibited by any legislation from procuring the

transmission by a broadcaster of any advertisement, infomercial or other marketing material.

- 5.9 In all cases of programme sponsorship, the broadcaster shall, before and after the transmission of the sponsored programme, state clearly the nature of the sponsor's association with the relevant sponsored programme. Preference should be given to descriptions such as "sponsored by" or "in association with" as opposed to descriptions such as "brought to you by" or "with compliments of".

6. Effective date

- 6.1 These regulations, insofar as they relate to advertisements, shall take effect on 1 April 1999 provided that, until 1 October 1999, commercial features shall be deemed not to constitute advertisements.
- 6.2 These regulations, insofar as they relate to infomercials and programme sponsorship, shall take effect on 1 April 2000.

7. Short title

These regulations may be cited as the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999.