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November 2024

CONAR PUBLISHES NEW EDITION OF THE CHILEAN CODE OF ADVERTISING ETHICS

On November 26th, 2024, the National Council of Self-Regulation and Advertising Ethics ("CONAR") published the seventh edition of the Chilean Code of Advertising Ethics ("CChEP") to include the latest amendments of the Code of the International Chamber of Commerce ("ICC"), the case law and the doctrinal pronouncements of CONAR, and the recent self-regulatory standards contained in various local and international codes.

This new edition of the CChEP revises, updates and arranges the articles of the previous edition, and adds or deepens on topics that were not considered or were only mentioned in a general way.

The main modifications introduced by the new edition of the CChEP are related to the use of artificial intelligence; the role of influencers; protection of personal data; children and adolescents as targets and participants in advertising; representation of the elderly; environmental advertising; and, casino, gaming and gambling advertising.

The following is a summary of the main amendments:

Artificial Intelligence

The new edition incorporates Article 34° to regulate the use of Artificial Intelligence ("AI"), specifically generative AI, in the creation and development of advertising and marketing communications and activities, whether in the generation of content, the management and use of personal data or any other activity aimed at consumers.

The CChEP provides that the use of AI, in particular generative AI, in the development of advertising and marketing activities should always be transparent, safe and subject to human control, having to observe in particular:

• **Transparency** : AI-generated communication that may mislead the public regarding reality in cases such as impersonation or other

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deceptive practices, should explicitly state its virtual origin.

The use of AI for advertising purposes to generate or modify images, audios or videos that at first glance appear to be real content, must avoid any possibility of deception or error by clearly warning that such content is virtual and has been generated by automated means.

• **Data Protection:** Advertisers must comply with all applicable data protection laws and regulations when using AI in advertising.
• **Manipulation:** AI must not be used to generate false messages attributed to real people by impersonating or imitating their image, voice or any other form of representation that is fictitious and not true, except with the consent of such persons.

Nor should it be used to virtually represent natural or legal persons or impersonate the identity of individuals, brands, companies or institutions without due authorization.

• **Copyright and Intellectual Property Rights:** Advertising generated through the use of the IA must not violate copyright and intellectual property rights, which prevent copying, impersonation or unauthorized use of protected third-party content.
• **Bias and Discrimination** : Messages generated by AI must prevent any type of bias or arbitrary discrimination, both in their content and in the segmentation of audiences, taking care not to unfairly exclude certain groups or promote negative stereotypes
• **Human oversight** : The possible effects of AI communications should be foreseen and monitored.
• **Responsibility and Accountability:** Advertisers and other participants in advertising communications must take responsibility for the use of AI and any negative consequences resulting from it and must address and rectify any problems.

Influencers

Article 36° regulates the role of influencers, deepening the regulation contained in the previous edition. In particular, the new edition specifies that:

An influencer shall be understood as any individual, whether a celebrity or well-known character or not, including representations created or controlled by technological means (avatar), who in a personal capacity makes a communication of a commercial nature through social networks, interactive electronic platforms or similar

media, in exchange for consideration from a third party that controls or editorially instructs such communication.

• Content issued by influencers will be considered as a marketing communication if the influencer has received some kind of consideration from the brand, whether financial or through other agreements, regardless of whether these considerations derive from a formal contract or otherwise.
• The level of control of the content by the advertiser is usually indicative of whether there is a clear commercial purpose, and therefore a marketing communication, or not.
• The advertising content generated by an influencer will be the responsibility of the advertiser when the latter has requested the creation and/or dissemination of such content; or when the advertiser has decided to use or sponsor within its own advertising communication the content of a third party originally unsolicited.
• All advertising content from influencers must be clearly marked leaving no doubt that it is advertising content, paid, sponsored or in collaboration with a specific brand or company.
• The content that influencers create for themselves, their own brands, products or services, as well as the use of affiliate links in their content, constitute a marketing communication subject to the rules of the CChEP and its commercial nature must be evident.

Likewise, Article 36° specifies that the participation of minors as influencers, must attend to the following principles:

• **Parental/Guardian Consent and Involvement:** All marketing communications featuring minors as influencers must have the explicit consent of the minor and his or her parent or guardian for the minor's participation.
• **Protection of Privacy:** Advertisers should take appropriate precautions to ensure that the privacy of minors as influencers is protected, as well as the capture and use of personal data of other minors.
• **Age Appropriateness of Content** : Marketing communications featuring minors as influencers should be age-appropriate and free of inappropriate products, services, language, themes or behavior.

Respect and Privacy, Use of Personal Data

The seventh edition of the CChEP contemplates in its Chapter VII the

“respect and privacy, use of personal data”, highlighting the importance of respecting consumer privacy in the digital advertising environment both in the handling of data on digital platforms and marketplaces, establishing ethical standards in the collection and use of data. In particular:

• Article 20° on “respect and privacy” specifies that, in the case of references or representations of known characters, their names or elements that are associated with their identity, copyright, trademark rights and the safeguarding of personal identity must be taken into account.
• A new article 20 bis is incorporated, referring to the “use of personal data”, in which it is specified that the principle of legality (the basis for the exercise of free commercial expression) also applies to the processing of personal data for advertising purposes or in connection with marketing communications, which may refer, among others, to:

• Sending commercial communications of any kind and through all types of media.
• Promotions and contests carried out with the purpose of collecting personal data for advertising purposes.
• Use of technologies that collect data from the recipients of the commercial communication.

• The new article 20 bis of the CChEP stipulates that the processing of personal data must comply with the following ethical principles:

• The collection and processing of more data than necessary for the delivery of the commercial communications must be avoided.
• Any processing of personal data must be based on some of the sources of lawfulness recognized by the legislation in force.
• All data processing must respect the principles of purpose, time limitation, proportionality, quality, responsibility, security, transparency and confidentiality contained in the legal regulations in force.
• The interested parties must always be informed of the processing of their personal data and its purpose.
• The interested parties must be informed of their rights with respect to their personal data (access, rectification, cancellation or suppression, opposition, portability and blocking).

Protection of minors

The seventh edition incorporates a specific chapter on the protection of minors (Chapter VIII), noting that minors are a group whose immaturity, credibility, ease of persuasion and suggestion make them especially vulnerable. For this reason, advertising aimed at minors is subject to more stringent requirements than advertising aimed at a more experienced adult audience.

It is established that advertising aimed at minors must meet strict standards due to their vulnerability, considering their immaturity and credulity. It is essential that it be clearly identifiable as advertising and separated from non-advertising content. In this regard, the following key points are addressed:

Avoid exploitation: It is forbidden to take advantage of the inexperience of minors, present products with false promises or foster feelings of inferiority for not purchasing them.

• **Social values:** Advertising must respect parental authority and promote positive values such as respect and generosity, avoiding negative stereotypes, violence or unhealthy lifestyles.
• **Commercial pressures:** Minors should not be incited to buy directly or pressured to influence others to purchase products. Information on prices and conditions must be clear and understandable.
• **Promotions and digital commerce** : Promotions should be responsible and not encourage compulsive purchases. In the digital realm, parental consent is required to interact or make purchases. Also, directing minors to inappropriate sites or encouraging them to communicate with strangers is prohibited.
• **Use of minors in advertising** : Minors must not be shown in dangerous or sexualized situations or in contexts that affect their dignity. Nor should they be used to promote products aimed at adults.

Additionally, the chapter on “Games, bets and contests” regulates the advertising of games and bets with special emphasis on the protection of minors, establishing the following prohibitions:

• **Exploiting vulnerabilities:** It is prohibited to exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of minors or vulnerable persons.
• **Youth appeal:** Shapes, images, language, music or other resources especially appealing to children or young people, particularly those

reflecting youth culture, must not be used.
• **Role models:** It is prohibited to include persons or characters whose example could be followed by or have a strong appeal to minors under 18 years of age.
• **Representation of minors:** Persons under 18 years of age or who appear to be under 18 years of age must not be shown playing or performing significant roles in advertising.
• **Maturity and gambling:** The act of gambling should not be presented as an indicator of maturity or as a step towards adulthood.

This regulatory framework seeks to ensure the protection of minors in all advertising areas, especially in the digital environment and in sensitive sectors such as gaming and gambling.

Entry into force

This seventh edition of the CChEP replaces the previous version and will enter into force on **January 1, 2025** .

The full text of the new edition of the CChEP can be consulted at the following link .

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