

ENFORCEMENT

A. INTERNATIONAL AND REGIONAL LEGISLATION

A1. International treaties

Below, I set out the relevant provisions of the main international treaties that make provision for non-discrimination on the basis of, amongst other things, gender or sex.

1. **International Convention on the Elimination of all forms of Discrimination against Women (1979)**

- Definition of "discrimination against women"

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Article 1)

- Effects of discrimination against women:

"discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and

makes more difficult the full development of the potentialities of women in the service of their countries and of humanity” (Preamble)

- The obligation placed on Member States:

“to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (Article 5(a))

- Signatories: 99

- Parties: 187

2. Charter of the United Nations (1945)

- *“We the Peoples of the United Nations Determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small” (Preamble)*

- The purpose of the UN is:

“to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 1(3))

- Member States: 193

3. Universal Declaration of Human Rights (1948)

- *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”* (Article 2)

4. International Covenant on Civil and Political Rights (1966)

- *“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”* (Article 2);
- *“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”* (Article 3); and
- *“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”* (Article 26)
- Signatories: 74
- Parties: 167

5. International Covenant on Economic, Social and Cultural Rights (1966)

- *“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political*

or other opinion, national or social origin, property, birth or other status.”
(Article 2(2))

- *“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”* (Article 3)
- Signatories: 70
- Parties: 160

A2. Regional legislation

There are various regional instruments that also make provision for non-discrimination, for example:

- Article 14 of the **European Convention on the Protection of Human Rights and Fundamental Freedoms (1950)**:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”; and

- Article 2 of the **African Charter on Human and Peoples’ Rights (1981)**:

“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”

A3. Why do these multinational instruments not contain more specific provisions regarding the portrayal of women?

- global cultural diversity in relation to race, age, social and economic background, tradition, religion;
- the concept of morality and decency (which is a subjective concept) is nearly impossible to define objectively in legislation. Therefore, what qualifies as “acceptable or decent advertising” will differ from country to country and will also differ amongst cultural groups in one country; and
- the right to freedom of expression is also a fundamental human right. Therefore, in the context of this issue, there will always be a conflict between the advertiser’s right to freedom of expression and women’s right to dignity and non-discrimination.

B NATIONAL LEGISLATION

B1. Introduction

Most countries have legislation prohibiting acts which offend against human dignity and discriminate on the basis of, amongst others, gender or sex (in line with their obligations set out in the multinational and regional instruments above). However, most countries do not have legislation dealing specifically with the concept of the portrayal of women in advertising.

Below, I briefly discuss a few countries that do, however, have legislation dealing specifically with the concept of the portrayal of women in advertising.

B2. Some countries where the portrayal of women in advertising is regulated by legislation

We divided the world into 4 “regions”. I discuss each region below.

1. North

1.1 Norway

Section 2 of the **Marketing Control Act of 2009** provides:

“The marketer and the designer of the marketing shall ensure that the marketing does not conflict with the equality of the sexes and that it does not exploit the body of one of the sexes or convey an offensive or derogatory appraisal of women or men.”

1.2 Spain

The most relevant provisions of the **Organic Act 1/2004 on Integrated Protection Measures against Gender Violence** are:

- *“In advertising, all materials must respect the dignity of women and their right to an image that is neither stereotyped nor discriminatory, whether such materials are on display in private or public communication media. The rules governing legal actions for the withdrawal or rectification of advertisements are modified, whereby such actions may now be initiated by institutions and associations working for equality between men and women.”* (Preamble);
- *“advertising material that uses the image of women in a degrading or discriminatory manner shall be deemed to be illegal.”* (Article 10); and
- *“The communications media shall work for the protection and safeguarding of sexual equality, avoiding any discrimination between men and women.”* (Article 14).

2. East

2.1 China

The **Advertisement Law of the Peoples Republic of China (1994)** provides:

- *“The contents of an advertisement shall be conducive to the physical and mental health of the people, shall promote the quality of commodities and services, protect the legitimate interest of consumers, be in compliance with social morality and professional ethics, and safeguard the dignity of the State.”* (Article 7(1))

- An advertisement shall not involve any of the following circumstances:
 - violating the sound social morals;
 - having information suggesting pornography; and
 - carrying information of sexual discrimination. (Article 7(2))

- Where an advertisement is published in violation of Article 7(2), the organ in charge of advertising supervision and control shall:
 - order the advertiser to stop publishing the advertisement and to make corrections in public;
 - confiscate their advertising charges; and
 - impose a fine thereon. (Article 39)

3. **West**

3.1 **Costa Rica**

The **Law Regulating Advertising that Uses the Image of Women, Act No.5811** prohibits:

- the use of an image of women, to promote sales, in any demeaning form; and
- exploiting women's sexuality.

Furthermore, the Act provides that any advertising that offends the dignity of the family, uses the image of women to promote sales or promotes sexist patterns in the community may be banned by the National Direction on Advertisement Control.

3.2 Nicaragua

The **General Law on Media and Social Communication, Act No. 57** provides that the media has an obligation to emphasize women's participation and action, to respect their dignity, and to not use them as commercial or sexual objects.

3.3 Panama

Law 4 of 1999 Establishing Equal Opportunities for Women provides that the State must promote a dignified image of women in the communication media and must avoid programs, writings, advertising images and stereotyped models implying superiority or inferiority of men or women.

4. South

My research covered the legislative provisions in South Africa, Australia and New Zealand. It appears that none of those countries have legislation specifically dealing with the portrayal of women in advertising. As with most countries, this issue is dealt with under the self-regulatory institutions of those countries. Below, I give a brief overview of the relevant provisions contained in the Codes of the self-regulatory organisations (SROs) in those countries.

4.1 South Africa

The **Code of Advertising Practice of the Advertising Standard Authority of South Africa (ASA Code)** provides that:

- “*gender stereotyping or negative gender portrayal is not permitted in advertising, unless in the opinion of the ASA, such stereotyping or portrayal is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.*” (Clause 3.5 of Section II); and
- “*no advertisements may contain content of any description that is discriminatory, unless, in the opinion of the ASA, such discrimination is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.*” (Clause 3.4 of Section II).

4.2 Australia

Section 2 of the **Australian Association of National Advertisers’ Code of Ethics (AANA Code of Ethics)** provides that advertising or marketing communications must:

- not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief;
- not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people; and
- treat sex, sexuality and nudity with sensitivity to the relevant audience.

4.3 New Zealand

The **Advertising Standards Authority Code for People in Advertising** provides that advertisements should not:

- use stereotypes in the portrayal of the role, character and behaviour of groups of people in society which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule. (Clause 4); or
- employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. In particular people should not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product. (Clause 5)

C. SELF REGULATION: INTERNATIONAL CHAMBER OF COMMERCE CODE OF ADVERTISING AND MARKETING COMMUNICATION PRACTICE (1937)

The self-regulation of advertising and marketing refers to a system where the advertising, marketing and media industries in respective countries set up voluntary rules and standards aimed at marketing and advertising practices in those countries and enforce the industry's commitment to those rules and standards.

The **ICC Code** serves as the basis of the self-regulatory advertising codes around the world. SROs in each country that adopt the **ICC Code** as basis, takes the prevailing culture of the specific country and communities in those countries concerned into consideration.

The **ICC Code** provides that marketing communications should:

- not contain statements or audio or visual treatments which offend standards of decency currently prevailing in the country and culture concerned (Article 2);
- respect human dignity and should not incite or condone any form of discrimination, including that based upon race, national origin, religion, gender, age, disability or sexual orientation (Article 4); and

- not contain any statement or visual treatment that could have the effect of harming children or young people mentally, morally or physically. (Article 18).

Why self- regulation?

The advantages of self-regulation include:

- the codes of the SROs take the decency, morals and culture of the relevant society into consideration;
- the SROs can monitor changing community values and can amend the self-regulatory codes to reflect those values. In this regards, the self-regulatory codes may not “slack” behind changing community standards;
- the self-regulatory codes are implemented and enforced by the advertising, marketing and media industries that are responsible for the conduct of their own members;
- the complaints procedure is accessible and efficient; and
- the complaints procedure is time and cost effective compared to court action.