

Do non-members of the Advertising Regulatory Board have to comply with its code?

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The short answer is "no...and yes". Here's the long answer...



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The [Advertising Regulatory Board](#) (ARB) is an independent entity established and funded by the marketing communication industry, to regulate advertising in South Africa. The ARB's [Code of Advertising Practice](#) sets out the basic principles of what is or isn't regarded as acceptable advertising. Since the ARB is a membership-based entity, only members of the ARB are required to adhere to the ARB. Based on this alone, it sounds like the answer to the above question is simply "No. *Because you are not a member of the ARB, you don't need to listen to the ARB.*"

However, any consumer or competitor can lodge a complaint with the ARB against the advertising of any trader which it feels may be in conflict with the ARB's Code. Although the ARB does not have jurisdiction over a person or trader who is not a member, the ARB will still consider and decide on complaints lodged before it, regardless of who the advertiser is.

It does so for the guidance of its members. Decisions issued by the ARB will be binding on its members, which means that if the ARB determines that an advertisement against which a complaint has been lodged is not in line with its Code, they will effectively determine whether its members should accept or withdraw that advertisement from a particular medium.

Here's a practical example:

Trader A (who is not a member of the ARB) advertises its product on television and makes certain claims about its product which are not in accordance with the Code. Trader B lodges a competitor complaint against Trader A on the basis that the television advertisement is misleading.

The ARB considers the complaint (and any defence which Trader A may or may not proffer) and ultimately finds that Trader A's advertisement is unacceptable and must be withdrawn.

Trader A might shrug its shoulders – *“Who cares, I’m not a member of the ARB. They can’t tell me what to do.”* But since all South African television broadcasters are members of the National Association of Broadcasters (NAB), and the NAB is a member of the ARB, the ARB’s decision against Trader A’s advertising will result in the NAB refusing to accept (and flight) the advertisement.

In other words, even though Trader A itself is not bound by the decision of the ARB, it is still affected by the ARB’s decision because its advertising is no longer being accepted by the ARB’s members.

Importantly, the decisions of the ARB also give guidance to all of its members on what may be considered as unacceptable content.

If you want to avoid potentially being affected by a decision of the ARB (whether directly or indirectly), it’s as simple as making sure that your advertising (defined as any visual or aural communication which is intended to promote the sale or use of any goods or services) is compliant with the ARB’s Code.

Apart from avoiding the obvious risk of being affected by a possible adverse decision against your advertising, ensuring your advertising is “Code-compliant” means fulfilling your duty to the general public to ensure that your advertising is factual and honest, and that it doesn’t violate any of the laws of South Africa.

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