



Electronic Retailing Association Europe ASBL

ERA EUROPE SELF REGULATION CHARTER

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INTRODUCTION

The Electronic Retailing Association of Europe (“ERA Europe”) believes that consumer confidence is the key to the continued growth and success of the electronic retailing industry.

“Electronic Retailing” is defined as any form of marketing or selling products or services directly to the consumer through electronic media such as television, internet, mobile, radio, and all other electronic communication devices, as well as associated non-electronic communication media.

In order to encourage fair, ethical, and responsible business practices that promote consumer confidence in electronic retailing, ERA Europe has adopted the following “Self Regulation Charter for Electronic Retailers,” which applies to all its members’ activities.

In accordance with the ERA Europe bylaws, as an ERA Europe member you agree to accept the guidelines and principles laid out in this Charter.

ERA Europe members are obligated to adhere to this Self Regulation Charter, as well as to their relevant member state or European regulations upon which this Charter is based.

The ERA Europe Self Regulation Charter addresses all aspects of the commercial relations with consumers and confirms your commitment that your company is in agreement with, and agrees to abide by, the applicable provisions of the Charter.

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A. GENERAL PRINCIPLES

Electronic Retailers must comply with all applicable European and national laws and regulations that govern their business. This includes but is not limited to, regulations governing television, internet and radio advertising, distance selling and consumer and data protection. In case of conflict between this set Charter and any national or European regulations, the latter shall prevail.

Electronic Retailers should not engage in dishonest or unethical business practices. Electronic Retailers should encourage the companies or individuals with whom they do business to follow the principles set forth in this Charter, and should not do business with companies that engage in dishonest or unethical business practices.

B. GENERAL GUIDELINES FOR ADVERTISING

1. Electronic Retailing activities must be legal, decent, honest and truthful.
2. Electronic Retailing activities must deal fairly and equitably with the consumer. Electronic Retailers must operate responsibly towards viewers, customers and consumers in general.
3. Electronic Retailers must not mislead viewers or misrepresent products or services in any way.
4. Electronic Retailers should not produce or disseminate any advertisement that has a deceptive format (i.e. that appears to be a bona fide information or entertainment programme created by a disinterested party solely for the purpose of providing information or entertainment) or that otherwise purports to be something other than an advertisement.
5. Electronic Retailers should follow the European and National rules governing the separation between Editorial Content and Advertising as defined by the Television Without Frontiers Directive.
6. No Television Shopping programme should disparage any person or group on the grounds of race, religion, national origin, gender, age, or sexual orientation, or include indecent or offensive content.
7. Particular care shall be taken in advertisements for products designed for use by children. All such advertising should comply with the European Directives and other Regulations, relating to advertising to children.
8. Advertisements must also comply with European Directives and regulations relating to consumer-sensitive products, including but not limited to, tobacco products, alcoholic beverages, pharmaceutical products, and auctions.

C. CLAIMS SUBSTANTIATION

Electronic Retailers must have a reasonable basis, for all direct or implied objective claims made for a product or service. Such evidence must consist of competent and reliable evidence and must correspond to the exact product or service presented to the consumer.

1. Electronic Retailing content must not contain deceptive implied claims, nor omit material information, the disclosure of which is necessary to prevent the program from being deceptive. Any necessary qualifying disclosures should be legible (or audible) and understandable.
2. When Electronic Retailing content expresses or implies that a claim has been scientifically established or proven, the Electronic Retailer must possess the scientific proof of this claim.
3. Any references to tests, trials, or research undertaken in relation to products should only be used with the permission of those persons who undertook the test, trial or research.
4. Particular care should be taken to substantiate health or safety claims for products such as dietary supplements, drugs, diet and exercise products, and medical devices. All representations regarding the safety or efficacy of such products or services must be substantiated by competent and independent scientific evidence.

D. DEMONSTRATIONS, TESTIMONIALS AND ENDORSEMENTS

1. All testimonials or endorsements used by Electronic retailers must be a true representation of the product capability and be supported by the relevant, signed documentation ie testimonial release forms. In the case of live TV shopping, the Electronic Retailer must make all reasonable efforts to ensure that live testimonials and endorsements are true, genuine and not misleading. If a claim is made which does not meet this, it needs to be immediately disclaimed as such. Testimonials should relate only to the specific product being featured.
2. Demonstrations of the product being marketed or of a competing product must not misrepresent any material feature of that product or the product's actual performance in real-life conditions. All demonstrations must either be represented as they actually take place, or be conveyed disclosing the details of the real-life conditions (such as the actual elapsed time).
3. Comparative tests and demonstrations of competing products must take into account the purpose for which the products are intended, the manner in which they are normally used by the consumer, and the instructions for use that accompany the products.
4. All testimonials from consumers must reflect the honest opinions, findings, beliefs or experiences of the consumer and be representative of the results to be expected by the average consumer. If not, the Electronic Retailer must clearly and prominently disclaim that the experiences of the consumer offering the testimonial are not representative of the results to be expected by the average consumer, or disclose what results the average consumer can expect.
5. If Electronic Retailing content claims that an endorser uses the offered product or service, the endorser must have been a bona fide user of the product or service at the time the endorsement was made. The Electronic Retailer should not continue to use an endorsement without reason to believe that the endorser remains a bona fide user of the product.
6. Any Electronic Retailing content, featuring an endorsement from a professional or an expert should be supported by the relevant documentation, ie qualifications or proof of profession. An expert's endorsement must be supported by an actual evaluation, examination or testing of the product or service he or she is endorsing that is at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the endorsement.

7. Testimonials should not be the only evidence to substantiate claims and any claim expressed must be supported by documentary evidence. Any claims made in such testimonials must conform with the other provisions of these guidelines.
8. Electronic Retailers should ensure that they have signed and dated proof for any testimonials they use in Electronic Retailing activities, with the exception of live testimonials.
9. People should not be shown in any Electronic Retailing content without their explicit legal consent.

E. COMPARATIVE ADVERTISING

1. Comparative advertising should only be used when deemed legal and authorized in the market where it will be used.
2. Comparative advertising should inform buyers of the benefits of the product, and not disparage a competitor's product. Comparisons should be presented fairly and accurately, rather than in a manner intended to degrade the competitive product. Comparisons must be substantiated and Electronic Retailers must hold documentary evidence to prove all claims.

F. PRICES, COSTS, PROMOTIONS

1. All statements regarding prices and costs must be truthful and substantiated.
2. When Electronic Retailing content claims that the current price for an advertised product is less than a former price, the former price must be a bona fide price at which the product was actually offered for sale.
3. Comparative price advertising should compare only actual prices for comparable products and must not be otherwise misleading.
4. When "free" or similar representations are made, any conditions or obligations upon which receipt of the "free" item are contingent should be disclosed, and the cost of the "free" merchandise should not be recovered by marking up the regular price of the product that must be purchased in order to receive the "free" product, or by lowering the quality or quantity of the product that must be purchased.
5. Prices of the offered products or services should be clearly stated in the Electronic Retailing content and should relate only to the featured product or services.
6. It should be clear from the Electronic Retailing content whether or not VAT or other taxes are included in the price. Other costs additional to the price, such as delivery or packing, must be clearly legible and visible to the consumer.
7. Where the price is payable in instalments, the total price to be paid by the customer must be clear in the Electronic Retailing content, as well as the amount of each instalment and the frequency with which those instalments are to be paid.
8. Where Electronic Retailers provide a consumer credit to their customers the provisions of the European Directive on consumer credit as well as the applicable national laws on consumer credit have to be complied with.
9. Electronic Retailers should ensure that the use of promotions, free gifts, premiums, and other promotional devices comply with the regulations and laws applicable to the countries where the transaction between the consumer and the Electronic Retailer will take place.

10. The terms of an advertised offer should be sufficiently clear and complete so that the consumer will understand what is being offered, what it costs, and what his or her ongoing commitments or obligations are, if any, prior to the purchase of the advertised product or service.
11. An Electronic Retailer should make clear if accessories or other items depicted or mentioned in Electronic Retailing content are optional and not included in the advertised price.
12. In the case of a continuity program, the consumer must be made aware of the material terms and conditions of the program.
13. The real costs of calling must be made clear to the customer. Callers to a pay-per-call service should hear an introductory disclosure message, or "preamble," at the beginning of their calls that discloses the cost of the call and contains the other Disclosures prescribed by law, and should be given the opportunity to terminate the call during the preamble without incurring any charge.
14. Electronic Retailers should not place any charges on telephone or internet bills when they know or should have known that the charge was not authorized by the consumer responsible for paying the telephone or internet bill.
15. Where lead-generation is allowed, Electronic Retailing content must clearly indicate that all pricing conditions will be disclosed when the consumer makes the first contact.

G. CONSUMER PROTECTION – INFORMATION DUTIES

1. The Electronic Retailer shall provide the consumer with the following information in a clear and comprehensive manner
 - a. The main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
 - b. The identity of the Electronic Retailer, such as his trading name;
 - c. The geographical address at which the Electronic Retailer is established, the Electronic Retailer's telephone number, fax number, and e-mail address where available, to enable the Consumer to contact the Electronic Retailer quickly and efficiently;
 - d. The total price inclusive of taxes, or where the nature of the goods or services means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total cost per billing period;
 - e. The cost of using the means of distant communication for the conclusion of the contract, where that cost is calculated other than the basic rate;
 - f. The arrangements for payment, delivery, performance, the time by which the Electronic Retailer undertakes to deliver the goods or to perform the service, and the Electronic Retailer's complaint handling policy;
 - g. In addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;

- e. In the case of contracts for regular delivery of goods during defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good.
3. If the Electronic Retailer has not provided the consumer with the information on the right of withdrawal, the withdrawal period shall expire 12 months from the end of the initial withdrawal period. If the Electronic Retailer has provided the consumer with the information provided for in Section G. paragraph 2 above within 12 months of the beginning of the initial withdrawal period as defined in paragraph 2 above, the withdrawal period shall expire 14 days after the day the consumer receives this information.
4. Obligations of the Electronic Retailer in case of withdrawal
 - a. The Electronic Retailer shall reimburse all payments received from the consumer including if applicable the cost of delivery, without undue delay and not later than 14 days from the day on which he is informed of the decision of the consumer to withdraw.
 - b. The Electronic Retailer shall carry out the reimbursement referred to in subparagraph a) using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise, and provided the consumer does not incur any fee as a result of such reimbursement.
 - c. The Electronic Retailer shall not be required to reimburse the supplementary costs, if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the Electronic Retailer.
 - d. Unless the Electronic Retailer has offered to collect the goods himself, for sales contracts, the Electronic Retailer may withhold the reimbursement until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods, which- ever is the earliest.
5. Rights and Obligations of the consumer in case of withdrawal
 - a. For Electronic Retailing contracts, the consumer shall send back the goods or hand them over to the Electronic Retailer or to a person authorised by the Electronic Retailer to receive them, without undue delay and in any event not later than 14 days from the day on which he communicates his decision to withdraw to the Electronic Retailer, unless the Electronic Retailer has offered to collect the goods himself. The deadline is met if the goods are sent back by the consumer before the period of 14 days has expired.
 - b. The consumer shall only bear the direct cost of returning the goods unless the Electronic Retailer has agreed to bear them or the Electronic Retailer failed to inform the consumer that the consumer has to bear them.
 - c. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods. The consumer shall in any event not be liable for diminished value of the goods where the Electronic Retailer has failed to provide notice of the right of withdrawal in accordance with paragraph 3.
 - d. Passing of risk: For Electronic Retailing contracts, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods.

6. Exceptions from the right of withdrawal:
 - a. The supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the Electronic Retailer and which may occur within the withdrawal period.
 - b. The supply of goods made to the consumer's specifications or clearly personalized.
 - c. The supply of goods which are liable to deteriorate or expire rapidly;
 - d. The supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery.
 - e. The supply of goods which are, after delivery, according to their nature, inseparably mixed with other items; the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery.
 - f. The supply of digital content which is not supplied on a tangible medium, if the performance has begun with the consumer's prior consent and his acknowledgement that he hereby loses his right of withdrawal.

I. PRODUCT DESCRIPTIONS, PROCESSING OF CUSTOMER ORDERS & CUSTOMER DATA HANDLING

1. Unless the parties have agreed otherwise on the time of delivery, the Electronic Retailer shall deliver the goods by transferring the physical possession or control of the goods to the customer without undue delay and no later than 30 days from the conclusion of the Electronic Retailing contract.
2. Electronic Retailers should not charge a customer's credit card account, unless it has shipped or otherwise provided the goods or services ordered. If, after receiving an order, an Electronic Retailer learns that the product cannot be shipped within 30 days, it should notify its customers of that fact, allow them to cancel their orders if they wish, and make any necessary refunds promptly.
3. An Electronic Retailer should not substitute merchandise that materially differs from that ordered by a customer unless the customer agrees to the substitution.
4. An Electronic Retailer should not offer merchandise for sale unless it has a reasonable basis to believe that it will be able to ship that merchandise within the time specified in the offer (or, if no time is specified in the offer, within 30 days after receipt of an order).
5. Electronic Retailers should ship to customers the products in the exact quantities that have been ordered.
6. Electronic Retailers must deal promptly with any returned products or requests for replacements.
7. In the event that a customer asserts that any products ordered are not delivered, the Electronic Retailer must prove receipt by the customer. If the Electronic Retailer cannot prove delivery, then it will be responsible for providing a replacement product as soon as possible at no cost to the customer.
8. An Electronic Retailer who offers consumers a "free trial" of an advertised product should not charge the customer's credit card, debit his or her checking account, or cash his or her check or money order until the free trial period has expired.

9. Electronic Retailers must ensure that they comply with all relevant laws in respect of the sale of goods. In particular, products sold must be fit for the purpose for which they are intended to be used and/or for which the customer might reasonably expect them to be used.
10. Electronic Retailers who collect personal information from customers should not misrepresent the purposes to which that information may be provided. If a customer does not give or withdraws his or her consent that his or her personal information is rented, sold, transferred or exchanged, the Electronic Retailer refrains from using the data in the aforementioned way.
11. Electronic Retailers must take all necessary organisational and technical measures to protect customers' private information, including credit or debit card details.
12. Electronic Retailers must ensure that they comply with all relevant national, European and international laws, regulations and conventions, with respect to consumer rights and data protection in general as well as transfer, processing and use of customer's personal data in detail.

J. WARRANTIES

Advertising claims relating to a product warranty must be truthful and consistent with the terms of that warranty. Electronic Retailer should disclose any material conditions, limitations, or charges relating to the warranty. Any warranty offered with a consumer product should be properly designated as "full" or "limited," and should contain the basic information required by law in the countries where warranty apply (e.g., what the warranty covers and does not cover, what the period of coverage is, what the warrantor will do to correct problems, how the customer can obtain warranty service, and how national law affects the customer's rights under the warranty). Any requests for repairs, replacement products, or refunds under the terms of a warranty should be honoured promptly.

K. YOUR MEMBERSHIP IN ERA EUROPE

By signing the ERA Europe membership application form, you agree to adhere to the guidelines and principles laid out in this Charter.

National Business Standards & Codes of Conduct

As an Electronic Retailer, you should follow the Advertising, Direct Marketing, Distance Selling, and Data Protection Codes of Conduct promoted by your relevant national associations. You should elect to apply the national codes of conduct and the ERA Europe Self Regulation Charter in the manner most favourable to your Consumer.