

Non-maleficence as an ethical guideline to design

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Abstract

South Africa finds itself in the difficult position of not having a truly representative voice for design practice. Furthermore, we find ourselves without an advertising regulator with legislative support or legal force with a view on ensuring ethical and non-harmful design practice. The closest we come to such a body, is our advertising self-regulator, namely the Advertising Standards Authority of South Africa (ASASA). The ASASA requires that advertising messages be legal, honest, decent, and truthful and further advocates that advertisers must respect consumers, must conform to fair competition, and must not bring the trade into disrepute nor diminish the public's confidence in advertising. These principles are likewise entrenched in advertising self-regulatory codes in most developed and in some developing countries. Despite appropriate codes, some design practitioners still thwart the principles of honesty and truthfulness through misleading advertising practices. An analysis of ad alerts issued and breach allegations lodged with the ASASA indicates that some advertisers, despite receiving adverse rulings, continue to violate the ASASA's code. Graphic designers knowingly or unknowingly participate in misleading practices by aestheticising harmful products through design. Whether a designer knowingly participates in promoting harmful products shifts the issue from the ethical to the moral, due to the maleficence of some of these products. A critical review of codes of conduct developed by national as well as international design organisations indicates that not all provide moral guidelines when practitioners encounter design tasks which may potentially cause harm. There is no code of conduct for graphic designers in South Africa and no legislation to enforce honesty, decency, and truthfulness. It is for these reasons that this paper advocates for a South African ethical code of conduct based on the principle of non-maleficence in opposition to utilitarianism. Such a code must harmonise with internationally accepted design codes, self-regulatory codes as well as legislation in order to provide guidance when designers are confronted with apparent or potentially injurious assignments.

Keywords: Ethics; advertising self-regulation; non-maleficence; code of conduct; misleading advertising

Introduction

The proliferation of design examples that promote harmful products or services, the limitation of advertising self-regulation in South Africa, and the absence of an ethical code that could guide designers when faced with an apparent or potentially injurious assignment, motivated this paper. Harmful products, in the context of this paper, refers to untested and inert products such as herbal and health supplements and traditional elixirs that are available from self-styled healers, retailers and pharmacies. An example of such a harmful product is Miracle Mineral Supplement (MMS), an industrial chemical marketed as a cure for a diverse number of diseases such as AIDS, malaria and the common cold (USA 2015). This product was sold in South Africa by a company that markets its products as a “wonderful natural health products” that is available in pharmacies and retailers (Biosil 2015). The active ingredient, sodium chloride, is used in pesticides and hydraulic fracturing (or “fracking”). Although ASASA (2012) instructed the South African company to withdraw the advertisement in 2012, they continued to promote the product until 2014.

There is no South African code of conduct that can guide graphic designers when faced with an injurious assignment such as designing marketing material for harmful products such as MMS. Marketers of these products act solely from a profit-driven perspective and use the services of designers to gentrify their products, and do not adequately or fully consider the health and well-being of the end-user. Designers thus become abettors in an exploitative and misleading process that entices unsuspecting consumers to purchase and consume inert, and sometimes dangerous, substances. Whether a designer should knowingly participate in such misleading practices shifts the issue from an ethical to a moral choice.

The aim of this paper is to argue why we should adopt an ethical code for designers, and why such a code should include non-maleficence as a guiding tenet.

This paper further borrows from the concept of non-maleficence as well as Kantian ethics, and argues how these may provide the basis for an ethical code for South African designers. A reflection on advertising self-regulation in South Africa, and a review of codes of practice for designers in other parts of the world, demonstrate the need for such a code. The paper concludes by calling for a morally based code of conduct for designers, and demonstrates this in the form of an anti-manifesto.

Ethical principles

The practice of misleading consumers is a calculated and deceitful process. A marketer does not necessarily have to lie to a consumer, but can, through the use of carefully constructed text and imagery, cause a consumer to draw inferences that may culminate in perceiving a dishonest message as truthful and honest. A message may therefore be truthful and misleading at the same time. A typology of truthful but nonetheless misleading messages by Hastak and Mazis (2011) provides an insight into how marketers deceive consumers. Two of the five messages identified in their typology are particularly applicable to this paper. The first is a *source-based misleadingness* claim. This is typically found where a medical practitioner endorses a product or where a consumer's testimonial supports a product's efficacy claim such as commonly encountered with regards to numerous weight loss advertisements. The second is *interattribute misleadingness* where claims in an advertisement will cause a misleading inference about the product itself. One example is the use of green leaves and images of nature on product packaging to imply the naturalness of the product, hoping that the consumer will infer that the product is natural and therefore safe. This is an approach that is contrary to the principle of non-maleficence.

The concept of non-maleficence is best understood when viewed from evidence-based medical practice where it is a guiding tenet for ethical conduct (Morrison 2010). The term is based on the Latin maxim *primum non nocere* ("first, do no harm"), and dictates that, as a first step, medical practitioners should, above all, do no harm when treating patients. A medical practitioner, when confronted with a patient, must make a decision whether the benefits of a prescribed treatment will outweigh the possible negative side effects of that particular treatment. Modern evidence-based medical practice in turn is influenced by Emmanuel Kant's moral philosophy. Kantian ethics is a secular deontological¹ moral philosophy whereby a person is duty-bound to act in a manner that adds value to the recipient of the action (Daniel 2015). Kant's set of rules, or what he terms as "maxims", is categorical in nature and makes us duty-bound to act in response. Kant referred to the ultimate principle of morality as the *Categorical Imperative* and declared that this determines our moral duty (CSUS 2015). Kant's third formulation of his *Categorical Imperative* (one that is applicable to this paper), states that "[t]herefore, every rational being must so act as if he were through his maxim always a legislating member in the universal kingdom of ends" (Kant & Ellington 1993, p. 43). This categorical imperative is based on the premise that a person is autonomous and that his or her decisions are not subject to personal interests. People become bound to their own rules (*maxims*),

¹ Deontological is an approach to ethics that judges the morality of a decision based on the adherence to predetermined rules. It is an obligatory rule based approach to ethics.

but these rules are only valid if they are binding to others and become universalisable. Kantian ethics requires us not to act by *maxims* that create “incoherent or impossible states of natural affairs” (Shakil 2013). We can reformulate this as a question. If we create or allow a certain action (the maxim), is such an action morally permissible? Will others accept such a rule (i.e. condone the action) or will such a rule lead to an impossible state of affairs? The answer is simple if we apply this reasoning to medical practice. Making it morally permissible for a medical practitioner to prescribe inert medication will produce an “impossible state of affairs”. We are therefore duty-bound to reject the practice of prescribing inert medicine (Kant’s *Categorical Imperative*). Making such a rule universal would mean that doctors will be known for prescribing inert medication, leading to patients losing faith in the medical profession, resulting in the subsequent demise of the practice of medicine (and thus leading to an impossible state of affairs).

We can apply the same reasoning to graphic design practice. Let us, for example, state that it is acceptable to assist through design, a company to market inert medication aimed at AIDS sufferers. Universalising this rule and making it applicable to others (and ourselves), would imply that we will willingly and knowingly accept and administer such inert medication to AIDS patients. This, of course, is irrational. We cannot accept such a process as it will create an impossible state of affairs. We are therefore duty-bound to reject the notion of marketing inert medication, and as designers, the process of designing marketing material for such products. The principle of non-maleficence and Kantian ethics require a person to first avoid causing harm and as such he or she is duty-bound to reject those processes that cause harm.

Given the position of non-maleficence and Kantian ethics, one inevitably questions whether one should hold graphic design practice to the same ethical standard as with evidence-based medical practice. We can argue that both provide benefit to the end-user; the one provides health, whilst the other provides (gentrified) information for decision-making. Both practices have the potential to cause harm, to do good, and are in a position to avoid doing harm. It is for these reasons that we argue that one should hold design practice to a high ethical standard. One can nonetheless also argue that it is not possible to hold design practice to a high ethical standard, due to what some describe as the prettification and puffery nature of design. This is exactly what design should not be, especially human-centred or anthropocentric design. Acosta and Romeva (2010, p. 34) provide a fresh perspective critical of an anthropocentric approach and argue that it is “... necessary to accept the opposite to Darwinism of evolution by competition: co-creation and cooperation between the planetarium species for coexistence. A more creative, harmonic and conscious of ecosphere human intelligence has to appear, and this intelligence has to be organize in equity with the capacities, actions and vital rights of the rest of planetarium species”

If patients are protected from harmful medical practices by a code of ethics, should consumers not likewise be protected from harmful design practices by a code of ethics? If there is a need for an ethical code for designers, should such a code provide protection to the end-user? If we accordingly endorse the ethical principle of causing no harm to others through design, then the question is the prominence of non-maleficence in a code of conduct for designers.

Non-maleficence, as a central tenet, also resonates with some universally accepted secular codes of conduct. Although one’s ethical position is influenced by one’s culture and background, some universal principles still apply. In this regard Kinnier, Kernes and Dautheribes (2000) developed a short list of universal moral values. Their list is based on the frequency of these values in previously published lists by researchers, the major world religions, secular organisations and the work of philosophers and scholars who published in this field. They do caution that no individual or group is qualified to legislate what is right or wrong for others, but at the same time that there may be or exist a limited set of moral values that most people will accept as a matter of course. Their shortlist consists of four values: (1) commitment to something greater than oneself (seeking justice and truth), (2) self-respect and responsibility, (3) respect for others (the Golden Rule) and (4) caring for other living beings and the environment.

Advertising self-regulation in South Africa

The Advertising Standards Authority of South Africa (ASASA) is South Africa's only advertising self-regulatory body and one of the few functioning regulators in Africa. It is an independent body, reliant on funding by marketing and communication industry stakeholders. It aims to keep advertising legal, honest, truthful, and fair. Advertisers must respect consumers, must conform to fair competition, not bring the trade into disrepute nor diminish the public's confidence in advertising (ASASA 2015a). These universal principles are entrenched in advertising self-regulators' codes in Australasia, North America, Hong Kong, Singapore, India, Western Europe and South Africa to name but a few.

The ASASA is a reactive organisation and only responds to consumer and industry complaints as far as advertising is concerned. Consumers can lay complaints at no cost, whilst a business is required to pay a fee to have its complaint investigated. The ASASA, after receiving a complaint, provides a ruling, and base their decision on their advertising codes. An advertiser is required to withdraw or amend any objectionable advertisement, labelling and associated infringing marketing material when the ASASA rules in favour of a complainant. The Consumer Protection Act, No. 68 of 2008 (South Africa 2009), likewise aims to protect the consumer from misleading marketing practices, such as "exaggeration, innuendo or ambiguity as to a material fact" (Ibid: 86, Section 41(1b)). Despite a functioning regulator and appropriate legislation, some practitioners still thwart the principles of honesty and truthfulness when they receive an adverse ruling from the ASASA. A review of *ad alerts*, available on ASASA's database from 2011 to 2015 (ASASA 2015b), revealed that 10 of the 18 available *ad alerts* are for slimming and pseudo-medical products. One of the advertisers concerned, for example, claims that their product is proven to be an effective treatment for HIV/AIDS (ASASA 2013). An *ad alert* is a strong form of sanction and is issued when ASASA sends out a notification to their members not to accept any advertisements from a particular advertiser. In addition, we analysed *breach allegations* lodged with the ASASA by consumers and competitors. Thirty-seven breach allegations (from April 2009 to May 2015) are available via ASASA's subscription database. Eleven of these 37 *breach allegations* centre around medical and weight loss products. The ASASA upheld nine of these 11 complaints. A *breach allegation* comes about where a consumer or competitor complains that a respondent did not comply with an adverse ASASA ruling. Only four consumers are involved in these 11 complaints, of which one person, Dr Harris Steinman, is the complainant in no less than eight of these cases. Steinman has also lodged the most complaints with the ASASA regarding misleading complementary and alternative medical products. An extensive synthesis of these complaints and the ASASA rulings are available on CAMcheck (2015).

Whilst international and large national companies seem to comply with ASASA rulings (see the rulings by ASASA on their website), there are copious examples where some companies do not comply with ASASA rulings, and are unresponsive to sanctions imposed by the ASASA (see the examples on Steinman's CAMcheck). The principles of advertising self-regulation should work in an ordered and compliant society, but this does not necessarily take place in South Africa, which in turn brings into question whether self-regulation is an effective measure in enforcing non-maleficent behaviour.

International codes of design practice

A number of design and related disciplines have established codes of conduct for their members. Architects, for example, must register with a professional body, must comply with their codes, and are subject to disciplinary action and sanctioning by their respective bodies. The situation is somewhat different from other design disciplines such as visual communication design, interior design, and industrial design. In general, practitioners from these areas do not have to belong to a professional body and do not have to subscribe to a code of conduct. There are, however, a number of design organisations that have established voluntary codes of conduct. The section that follows provides a brief reflection on aspects of codes that are applicable to this paper. It is by no means a

comprehensive sample, but provides a good indication of international trends. The table at the end of this section provides a summary.

The International Council of Societies of Industrial Design (icsid) has a *Code of Professional Ethics* and whose aim it is to advance the industrial design profession. The code (icsid 2014) consists of five articles that cover the client, the user, the world's eco system, one about enriching cultural diversity and one about benefits to the profession. Their article concerning the user requires designers to consider the well-being of society, and, in particular, their health and safety. The article further requires designers not to act in a harmful manner, nor to act in a manner that is contradictory to the well-being of the user.

The International Council of Design (ico-D [formerly ICOGRADA]) represents more than 140 organisations in 67 countries. They published a short code of professional conduct for designers that cover the community, the client and other designers. The (only) ethical consideration is that a designer should "act in the best interest of the ecology and of the natural environment" (ico-D 2011, p. 4).

The South African Institute of Architects (SAIA) has a *National Code of Conduct* (SAIA 2010) with five principles to regulate the conduct of their members. These principles cover professional conduct in public; the treatment of employees and clients; responsibility towards other members, the Institute and the profession; and a responsibility towards third parties affected by their work. Similar to the icsid Code, members must act with integrity towards third parties and must not misrepresent facts nor provide misleading information to members of the public that may be affected by their work. SAIA is the only organisation in this sample where members are required to belong to a professional body, where a code is enforceable and where members are subject to sanctions.

The Society of Graphic Designers of Canada's (GDC) (GDC 2012) *Code of Ethics and Professional Conduct* consists of 48 individual codes. Similar to SAIA's code, it covers the environment, other members, clients, employees, the organisation, and the profession. Two unique codes (Codes 4 and 5) stipulate that a member may not agree to assist, permit, or contravene any federal, provincial or municipal law, regulation or by-law relating to the practice of graphic design. Akin to the icsid Code, members are not permitted to participate in design activities that could be seen as a deliberate or reckless disregard of the safety and health of their communities. In addition they must take a responsible role when portraying people, the consumption of natural resources, the environment, and animals. They may also not accept assignments that violate human and property rights (Codes 31 and 32).

Although strictly speaking the theatre industry is not a design profession, their proximity to the arts and theatre design warrants a brief review. The South African theatre industry's code for the South African theatre (AFAI 2014) is a working document. The preamble to the code states that it is not binding upon its members and that it is "not cast in stone". The primary aim of their code is to ensure a positive working environment for all involved in the theatre industry. Members must treat each other and the public with respect, must act with honesty and integrity and must conduct themselves in a professional manner. This is then the only code that emphasises issues such as sexual harassment, sexual favouritism, violence, theft, corruption, fraud and alcohol and drug abuse.

The Australian Graphic Design Association's (AGDA) *Code of Ethics* covers eight sections and deals with members' professional business conduct. It has a utilitarian ethos where the designer is required to "always act in the best interests of the client". One clause, however, requires members to work in such a manner so that their actions cause no or as little harm as possible to the environment. They are also required not to use "false, misleading or deceptive statements in advertising or publicity material", but this only applies to their own promotional and publicity activities (AGDA 1996).

The American Institute of Graphic Arts' (AIGA) *Standards of Professional Practice* covers seven sections. Although it is similar to the AGDA's utilitarian focus, it promotes a number of ethical

principles. Designers must act in the best interests of their clients and self-promotional activities must not contain “deliberate misstatements of competence, experience or professional capabilities”. Their code thus requires a designer to act in a responsible manner and avoid projects that could harm the public. They are further required to be truthful and should not participate in false, misleading and deceptive design or do anything to harm the health and safety of others. Designers should furthermore consider the environmental, social, and cultural implications of their work and must minimise any adverse impact their work may hold. Members are also required to act in a responsible manner when portraying people, resources, animals and the environment. Interestingly, they are also encouraged to participate freely in projects that would benefit society (AIGA 2010).

Malaysia’s *Code of Professional Conduct* covers five areas. One of these addresses a designer’s responsibility to the public and another the designer’s responsibility towards the environment and society. Similar to the American code, designers are required to be truthful, and may not deceive nor mislead with design nor misrepresent their own competence. They must respect their audience, avoid stereotyping, and be sensitive towards others. Members must regard the health and safety of society, and must portray people, natural resources, animals and the environment in a responsible manner. They may not participate in discriminatory practices, must consider the impact of their work, and minimise such impact on the environment and society. They are, as with AIGA members, also encouraged to undertake charitable work for the benefit of society (wREGA 2013). This particular code has a strong ethical orientation.

Table 1 below (see next page) provides a summary of the various codes’ position in terms of a number of ethical principles. The decision whether the organisation’s codes merely support an ethical principle – leaving the decision to a member – or whether their members are compelled to comply, is based on the word-strength of the codes. An “s” in the table signifies a suggestion and could allow a member a choice whereas a “c” signifies that members are compelled to take the indicated route. Even though the judgement whether to classify an organisation’s position as suggested or compulsory is to some extent difficult to validate, it does, however, indicate the general position of these organisations and their codes. The last row indicates whether the particular organisation has a non-maleficence charter embedded in its code.

The SAIA, icsid as well as the Canadian and Malaysian bodies are four organisations that stand out in terms of binding their members to appropriate ethical conduct. The SAIA, however, is the only professional body and their code is consequently the only code whose guidelines are binding upon its members. The reason is obvious, as architects devise products that have the potential to cause physical harm if there is a design fault. It is also for this reason that SAIA is able to discipline its members and that registered architects are generally held in higher esteem than those who are not registered as professional architects with the Council. The Malaysian Code of Professional Conduct stands out in terms of compulsory codes. There could be several reasons for this. Pertubuhan Wakaf Reka Grafik Malaysia (wREGA), the Graphic Design Association of Malaysia, published their code in 2013 and most probably incorporated key ethical trends and requirements from existing design and related organisations into their code. wREGA operates in a Muslim cultural environment and cannot ignore (stricter) Islamic requirements for ethical business practices. A recent paper (Rahman et al., 2014) reflects on the (unethical) marketing practices in Malaysia and questioned the ethics of exaggerating product benefits, false information regarding products, and the use of women in advertising.

	International Council of Societies of Industrial Design	International Council of Design	Society of Graphic Designers of Canada	South African Institute of Architects	South African Theatre Industry	Australian Graphic Design Association	American Institute of Graphic Arts	Malaysia's COPC
Kinnier et al.'s (2000) values								
Justice and truth								
Self-respect and responsibility								
Respect for others					s			
Caring for living beings and the environment	s	s	s	c		s	s	s
Advertising Standards Authority of South Africa's principles								
Honesty				c	s			c
Truthfulness				c				c
Decency								
Legal			c	c	s			
Society, end-user and the environment								
Safety and health	s		c	c			c	c
Consider the end-user	s			c				c
Consider society	s		c	c	s			c
Responsible portrayal of people, resources, animals, ecology	s	s	s	c		s	s	s
Human rights, discrimination			c		s		c	c
Avoid stereotyping, dehumanising, culturally sensitive	s			c	s			c
Personal conduct								
Personal promotional must be truthful		c	c	c		c	c	c
Charitable work, philanthropic ethos							s	s
Conduct, discrimination, sexual conduct					s			
Support the principle of non-maleficence	Yes	No	Unsure	Yes	No	No	Yes	Yes

Table 1: The position of organisations and their codes in terms of a number of ethical principles

Recommendations and conclusion

The idea of questioning one's ethical conduct as a designer is not a new concept. Ken Garland published the *First Things First* manifesto in 1963 (Garland 1964). This manifesto questions the triviality of advertising items such as slimming diets and cigarettes, and states that other items are more worthy of designers' skills such as education and scientific publications. Similarly, Milton Glaser, whilst illustrating *Dante's Purgatory* for an Italian publisher, developed a series of moral questions that he named *The Road to Hell* and in which he questions the design profession's practice

of misrepresenting the truth. The eleven steps to a design hell range from a design assignment such as making a pack appear bigger on a shelf, to designing an advertisement for a product that could cause the death of the user (Glaser 2005). A noteworthy publication is a book titled *Do good design: How designers can change the world* by Canadian designer David Berman (2009). He touches upon a designer's social responsibility and provides a chronological and detailed account on the development of ethical codes for a number of organisations.

Even though a number of codes attempt to address misleading design practices by requiring their members to be honest, their parent organisation does not always have the statutory power to enforce their codes, and society does not have recourse against a designer that participates in injurious practices. The question that invariably comes to the fore is whether developing a code of conduct for South African designers is meaningful or not. One can argue that the Consumer Protection Act of 2008 is an adequate vehicle through which consumers can seek protection. The reality is that, despite legislation and an established advertising self-regulator, consumers are still largely unprotected against untested and unproven products and services. Given the trend that designers in many countries have developed their own codes of conduct, one can argue that it is inconceivable for South African designers not to follow suit and develop their own code of conduct. The question regarding the position and prominence of non-maleficence in such a code nonetheless remains, and whether such a notion should be categorical, likewise, remains an important question. A code of conduct for designers must support and augment legislation and self-regulatory activities. Such a position is only possible if a code of conduct positions the concept of not doing harm before utilitarian product or service claims. The position of utilitarianism as a moral philosophy – where an action that produces the best results and the most satisfaction (e.g. for the marketer) is seen as the correct action – is detrimental to society. It is at odds with the principle of doing no harm because it does not question the efficacy nor the harmfulness of the advertised product, and ignores the potential disadvantage to the end-user.

Positioning non-maleficence as a categorical variable in a code of conduct for designers will bolster the discipline's standing in terms of honesty, truthfulness, decency and legitimacy. Such a code will assist a designer to question or reject an injurious assignment. Non-maleficence as a central tenet also resonates with universally accepted codes of what is wrong or right.

We have argued why we should adopt a South African ethical code for designers, and why such a code should include non-maleficence, in opposition to utilitarianism, as a core principle. The peril of ignoring non-maleficence and ethical principles, such as those proposed by Garland, Glaser as well as Kinnier et al., becomes apparent when one translates an ethical code into an anti-ethical manifesto. Allow us to present such an anti-manifesto (after Kinnier et al. 2001) to demonstrate the need for an ethical code.

- 1) A designer should always, and at all times, place the interest of the client above, and to the disadvantage of the end-user, and society.
- 2) A designer is ultimately responsible to complete a design assignment and should not allow his or her self-respect and respect for others to sway his or her unethical design decisions.
- 3) A designer must deem the environment and other living beings as cheap and exploitable resources that he or she must use to maximise design effectiveness and profit.
- 4) A designer should not allow ethical considerations to affect his or her design decisions. Ethics interferes with utilitarian design, the maximising of profit and the successful exploitation of consumers.

A fifth anti-manifesto code, specifically applicable to South Africa, could read as follows:

- 5) A designer must acknowledge the criminal endeavours of those public officials who selfishly, unfairly, illegally and for personal gain, award contracts and approve tenders. Designers should factor in a recompense system as a reward for these officials for receiving and securing future contracts.

This paper advocates an ethical code of conduct for South African designers. Such a code of conduct should harmonise with advertising self-regulation and legislation to provide guidance when confronted with injurious assignments. The code should include non-maleficence, in opposition to utilitarianism, as a guiding tenet. South Africa's past, the levels of inequality, and opportunities for marketers to exploit consumers coupled with the difficulty to enforce self-regulation, make it judicious to develop a categorical code of conduct.

South Africa cannot avoid, nor should it defer, the development of a code of conduct for designers. What we do not know, and what requires further research, is what content would be acceptable to the design industry and to what extent we will be able to enforce such a code. We also do not know how design educators will respond to a call for the inclusion of ethics in their design curricula. Ethics and design in education will set the trend of ethics and design conduct in South Africa for future design practitioners. DEFSa, in partnership with representative professional bodies, is the credible vehicle to initiate such a process.

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