

Society of Health and Physical Educators (SHAPE America)

Advertising Policy

(9/7/05)

1. SHAPE America reserves the right to revise the rates set forth herein at any time.
2. Payment for advertising shall be made in accordance with the credit terms granted Advertiser as shown on invoice. Publisher may at its option require cash with order or change the payment terms. If payment is made by an Agency, allowable commissions may be deducted. If any bill is not paid by its due date, commissions shall be deemed not earned and the gross amount of the bill shall be paid in full.
3. Advertiser and Agency shall be jointly and severally liable for the payment of all bills and charges made. Advertiser authorizes Publisher, at its election, to tender any bill to Agency, and such tender shall constitute due notice to Advertiser of the bill and such manner of billing shall in no way impair or limit the joint and several liability of Advertiser and Agency. Payment by Advertiser to Agency shall not discharge Advertiser's liability to Publisher. The rights of Publisher shall in no way be affected by any dispute or claims as between Advertiser and Agency.
4. Advertiser and Agency represent and warrant that they are authorized to publish the entire contents and subject matter of the advertisements and that publication by Publisher will not violate the personal or proprietary rights of any third party or any law or regulation. Advertiser and Agency will indemnify and hold Publisher harmless from and against any loss, expense, or liability (including attorney's fees) resulting from claims or suits based upon such advertising, without limitation.
5. Subject to terms hereof, Advertiser confirms that it has appointed Agency to be its authorized representative with the understanding that, in accordance with trade usage, agency may be paid a commission. Advertiser shall have the right to revoke its agent at any time effective upon receipt by Publisher of notice in writing.
6. As a not-for-profit, tax-exempt organization that publishes various publications, some of which contain advertising, SHAPE America does not verify or substantiate the claims of Advertisers. As a matter of law, it is the responsibility of an Advertiser and/or Agency, not the publisher, to substantiate its claims. Advertisers agree to indemnify and defend the publisher from any and all liability for all advertising content.
7. Publisher must approve all Advertising copy submitted for all SHAPE America publications. SHAPE America reserves the right, at its absolute discretion and at any time before publication, to reject any advertising copy, whether or not the same has already been acknowledged and/or previously published. The rejection of copy by the Publisher, for any reason whatsoever, shall not be considered a breach of contract, but shall require Advertiser and/or Agency to supply new copy acceptable to the Publisher. Advertisements that simulate editorial content must be clearly labeled "ADVERTISEMENT" and Publisher may, in its sole discretion, so label such copy. Such advertisements must appear in a different typeface than that used for Publisher's editorial material.
8. SHAPE America strictly prohibits false, deceptive, misleading and unfair methods of competitive advertising. Any advertising that casts a negative light on its competitors is not acceptable; therefore SHAPE America has the right to reject any advertising copy that does so.
9. In the event that the Advertiser and/or Agency pull an ad after the space reservation deadline, therefore breaching the Advertising Contract, SHAPE America will not refund monies to the Advertiser or Agency. Also, Advertiser and/or Agency agree that all material necessary for the placement must arrive at SHAPE America no later than the published closing dates. Advertiser and/or Agency agrees that in the event that such materials are not sent in time, that SHAPE America will not have any responsibility to Advertiser and/or Agency for failure to publish the proposed ad and hereby agrees that SHAPE America is authorized to publish the last prepared ad of Advertiser, if any, and that Advertiser will pay said amount for the ad.
10. In the event a volume of advertising less than that agreed is used and paid for or the Advertiser or Agency otherwise breaches the terms of this rate card, or if at any time Publisher in its reasonable judgment determines that Advertiser is not likely to have published the total amount of advertising agreed to during the term of the agreement to advertise, any rate discount will be nullified and Advertiser and Agency will be charged the difference between the rates charged and the rates applicable for the volume of space actually used, in accordance with the applicable rate schedules ("short-rate"). In such event, Advertiser and Agency must reimburse Publisher for the short-rate within ten days of Publisher's invoice therefor and Advertiser will thereafter pay for advertising at the open rate or at the newly-determined rate(s) (as applicable).

11. SHAPE America, at its option, may terminate its relationship with Advertiser and/or Agency for the breach of any of the terms hereof, it being specifically understood without limitation that failure on the part of either Advertiser or Agency to pay each bill on or before its due date shall constitute a breach. Should Publisher terminate its relationship with Advertiser and/or Agency, all charges incurred together with short-rate charges shall be immediately due and payable. Furthermore, in the event Advertiser or Agency breaches, Publisher may decide to exercise its right to (a) cancel its recognition of Agency, thereby causing agency to lose claim to commission for any future advertising placed with Publisher on behalf of Advertiser or any other client and/or (b) refuse to publish any or all of Advertiser's advertising.
12. Any bill tendered by SHAPE America shall be conclusive as to the correctness of the item or items therein set forth and shall constitute an account stated unless written objection is made thereto within ten days from the rendering thereof.
13. The Advertiser or Agency may not use any space for the advertisement either directly or indirectly of any business organization, enterprise, product, or service other than that for which the advertising space is provided by the Publisher, nor may Advertiser or Agency authorize any others to use any advertising space.
14. Orders containing restrictions, or specifying position, facing, editorial adjacency, or other requirements may be accepted and inserted but such restrictions or specifications are at Publisher's sole discretion.
15. If it becomes necessary to place with an attorney for collection any claim for funds due under the terms of this agreement, then Advertiser and Agency agree to pay to Publisher a reasonable attorney's fee of twenty-five (25) percent of the balance then unpaid.
16. Typographical errors by Publisher in published advertisements shall not constitute a breach of contract, but shall, if brought to the Publisher's attention no later than 5 working days after the advertisement appears, entitle Advertiser to credit for actual space of error on the first insertion only, unless a proof of the advertisement was furnished to or by the Publisher, in which event Advertiser and/or Agency shall accept full responsibility.
17. Publisher's liability for failure to publish an advertisement shall not exceed a refund of or credit for Publisher's charge for such advertisement.
18. Advertiser and Agency recognize that the copyright in any advertisements created by publisher is owned by publisher. As to all other advertisements, Advertiser and Agency agree that Publisher has the non-exclusive right, for the full term of copyright by itself or through third parties, to republish and reuse any advertisements submitted hereunder in any form in which the advertisements may be published or used (in any media now in existence or hereafter developed) in whole or in part, whether or not combined with material of others. The advertiser/agency acknowledges and agrees that any material submitted may be included in an electronic database of published pages from the publication and are acceptable as proof of publication for the purpose of payment of invoices.
19. All property rights, including any copyright interest in any advertisements produced for Advertiser or Agency by SHAPE America, using artwork and/or typography furnished or arranged for by SHAPE America, shall be the property of SHAPE America. No such advertisements or part thereof may be reproduced without the prior written consent of the Publisher.
20. The foregoing terms shall govern the relationship between Publisher and Advertiser and Agency. SHAPE America has not made any representations to Advertiser or Agency that are not contained herein. Unless expressly agreed to in writing signed by Publisher, no other terms and conditions in insertion orders, copy instruction, letters, or otherwise will be binding on Publisher.
21. SHAPE America prohibits discrimination on the basis of race, religion, creed, sex, age, marital status, sexual orientation, national origin, disability, or veteran status in the treatment of participants in, access to, or content of its programs and activities.