

# *The Canadian Code of Advertising Standards*

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Ad Standards™

# Contents

## Self-regulation of Advertising in Canada 1

Overview

Definitions

Application

Exclusions

Political and Election Advertising

Excluded from Definition of “Advertising”  
and “Advertisement(s)”

Excluded Media

Scope of the *Code*

## Code Provisions 3

1. Accuracy and Clarity
2. Disguised Advertising Techniques
3. Price Claims
4. Bait and Switch
5. Guarantees
6. Comparative Advertising
7. Testimonials
8. Professional or Scientific Claims
9. Imitation
10. Safety
11. Superstition and Fears
12. Advertising to Children
13. Advertising to Minors
14. Unacceptable Depictions and Portrayals

## The Preclearance and Regulatory Mosaic 5

## The Consumer Complaint Procedure 5

How to Submit Consumer Complaints to ASC

How Consumer Complaints are Received and  
Handled by ASC and Council

Non-Reviewable Complaints

Complaint Review Process

Complaints Involving Clauses 10 or 14

Complaints Involving All Other *Code* clauses

Administratively Resolved Complaints Involving  
Clauses 1 and 3

Council Hearing and Decision

Appealing a Council Decision

Ad Complaints Reports

Identifying the Advertiser and its Advertising

Re-Opening a Case

Advertiser’s Failure to Respond or Participate

Failure to Follow Procedure or Comply  
with Decision

## Canadian Code Of Advertising Standards Interpretation Guidelines 10

*Interpretation Guideline #1* – Alleged Infractions  
of Clauses 10 or 14: Elements of Humour  
and Fantasy

*Interpretation Guideline #2* – Advertising to Children

*Interpretation Guideline #3* – Environmental Claims

*Interpretation Guideline #4* – Alleged Infractions  
of Clauses 10 or 14: Motor Vehicle Advertising

*Interpretation Guideline #5* – Testimonials,  
Endorsements, Reviews

# Self-regulation of Advertising in Canada

## Overview

The *Canadian Code of Advertising Standards (Code)*, which has been developed to promote the professional practice of advertising, was first published in 1963. Since that time it has been reviewed and revised periodically to keep it contemporary. The *Code* is administered by Advertising Standards Canada (ASC). ASC is the industry body committed to creating and maintaining community confidence in advertising.

The *Code* sets the criteria for acceptable advertising and forms the basis upon which advertising is evaluated in response to consumer, trade, or special interest group complaints. It is widely endorsed by advertisers, advertising agencies, media that exhibit advertising, and suppliers to the advertising process.

Consumer complaints to ASC about advertising that allegedly does not comply with the *Code* are reviewed and adjudicated by one of two Councils: the Standards Council, which includes representatives from Western Canada, Central Canada, and Atlantic Canada, or, in Quebec, by le Conseil des normes. Councils are independent bodies of senior industry and public representatives that are supported and coordinated by, but altogether independent from, ASC.

Advertising complaints between advertisers, based on the *Code*, are administered under ASC's *Advertising Dispute Procedure* (formerly called the Trade Dispute Procedure). Complaints about advertising from special interest groups are separately administered under ASC's *Special Interest Group Complaint Procedure*.

## Definitions

For the purposes of the *Code* and this document:

**“Advertiser”** is defined as an “entity” that has, or shares with one or more other entities, the final authority over the content of an advertisement.

**“Advertising”** and **“advertisement(s)”** are defined as any message (other than those excluded from the application of this *Code*), the content of which message

is controlled directly or indirectly by the advertiser expressed in any language and communicated in any medium (except those listed under Exclusions) to Canadians with the intent to influence their choice, opinion or behaviour.

**“Advertising”** also includes “advocacy advertising”, “government advertising”, “political advertising”, and “election advertising”, as defined below.

**“Advocacy advertising”** is defined as “advertising” which presents information or a point-of-view bearing on a publicly recognized controversial issue.

**“Entity”** is a term that includes, but is not limited to, one or more brands, persons, companies, and organizations.

**“Government advertising”** is defined as “advertising” by any part of local, provincial or federal governments, or concerning policies, practices or programs of such governments, as distinct from “political advertising” and “election advertising”.

**“Political advertising”** is defined as “advertising” appearing at any time regarding a political figure, a political party, a government or political policy or issue publicly recognized to exist in Canada or elsewhere, or an electoral candidate.

**“Election advertising”** includes “advertising” about any matter before the electorate for a referendum, “government advertising” and “political advertising”, any of which advertising is communicated to the public

within a time-frame that starts the day after a vote is called and ends the day after the vote is held. In this definition, a “vote” is deemed to have been called when the applicable writ is issued.

**“Material connection”** is defined as any connection between an entity providing a product or service and an endorser, reviewer, influencer or person making a representation that may affect the weight or credibility of the representation, and includes: benefits and incentives, such as monetary or other compensation, free products with or without any conditions attached, discounts, gifts, contest and sweepstakes entries, and any employment relationship, but excludes nominal consideration for the legal right to identify publicly the person making the representation.

**“Special Interest Group”** is defined as an identifiable group, representing more than one individual and/or organization, expressing a unified viewpoint that is critical of the content of an advertisement, and/or the production method or technique, and/or the medium, used to carry the advertisement and convey its perceived message.

**“Teaser Advertisement”** is defined as an advertisement that generally reveals little about the product(s), service(s), event(s) or advertiser hinted at in the advertisement, the objective of which is to stimulate curiosity about and interest in the advertiser, product(s), service(s) or event(s).

## Application

The *Code* applies to “advertising” by (or for):

- advertisers promoting the use of goods and services;
- corporations, organizations or institutions seeking to improve their public image or advance a point of view; and
- governments, government departments and crown corporations.

## Exclusions

### Political and Election Advertising

Canadians are entitled to expect that “political advertising” and “election advertising” will respect the standards articulated in the *Code*. However, it is not intended that the *Code* govern or restrict the free expression of public opinion or ideas through “political advertising” or “election advertising”, which are excluded from the application of this *Code*.

### Excluded from Definition of “Advertising” and “Advertisement(s)”

Excluded from the terms “advertising” and “advertisement(s)” (as defined in this *Code*) are messages from an “entity” that/who has no “material connection” with the entity that makes, distributes, markets or advertises the product or service featured in the advertising or advertisement(s).

### Excluded Media

The following are excluded from the definition of “medium” and the application of the *Code*:

- i. foreign media (namely media that originate outside Canada and contain the advertising in question) unless the advertiser is a Canadian person or entity; and
- ii. packaging, wrappers and labels.

## Scope of the Code

The authority of the *Code* applies only to the content of advertisements and does not prohibit the promotion of legal products or services or their portrayal in circumstances of normal use. The context and content of the advertisement and the audience actually, or likely to be, or intended to be, reached by the advertisement, and the medium/media used to deliver the advertisement, are relevant factors in assessing its conformity with the *Code*. In the matter of consumer complaints, Council will be encouraged to refer, when in its judgment it would be helpful and appropriate to do so, to the principles expressed in the *Gender Portrayal Guidelines* respecting the representations of women and men in advertisements.

# Code Provisions

The *Code* is broadly supported by industry and is designed to help set and maintain standards of honesty, truth, accuracy, fairness and propriety in advertising. The provisions of the *Code* should be adhered to both in letter and in spirit.

## 1. Accuracy and Clarity

In assessing the truthfulness and accuracy of a message, advertising claim or representation under Clause 1 of the *Code* the concern is not with the intent of the sender or precise legality of the presentation. Rather the focus is on the message, claim or representation as received or perceived, i.e. the general impression conveyed by the advertisement.

- (a) Advertisements must not contain, or directly or by implication make, inaccurate, deceptive or otherwise misleading claims, statements, illustrations or representations.
- (b) Advertisements must not omit relevant information if the omission results in an advertisement that is deceptive or misleading.
- (c) All pertinent details of an advertisement must be clearly and understandably stated.
- (d) Disclaimers and asterisked or footnoted information must not contradict more prominent aspects of the message and should be located and presented in such a manner as to be clearly legible and/or audible.
- (e) All advertising claims and representations must be supported by competent and reliable evidence, which the advertiser will disclose to ASC upon its request. If the support on which an advertised claim or representation depends is test or survey data, such data must be reasonably competent and reliable, reflecting accepted principles of research design and execution that characterize the current state of the art. At the same time, however, such research should be economically and technically feasible, with regard to the various costs of doing business.
- (f) The advertiser must be clearly identified in the advertisement, excepting the advertiser of a “teaser advertisement” as that term is defined in the *Code*.

## 2. Disguised Advertising Techniques

No advertisement shall be presented in a format or style that conceals the fact that it is an advertisement.

## 3. Price Claims

- (a) No advertisement shall include deceptive price claims or discounts, unrealistic price comparisons or exaggerated claims as to worth or value. “Regular Price”, “Suggested Retail Price”, “Manufacturer’s List Price” and “Fair Market Value” are deceptive terms when used by an advertiser to indicate a savings, unless they represent prices at which, in the market place where the advertisement appears, the advertiser actually sold a substantial volume of the advertised product or service within a reasonable period of time (such as six months) immediately before or after making the representation in the advertisement; or offered the product or service for sale in good faith for a substantial period of time (such as six months) immediately before or after making the representation in the advertisement.
- (b) Where price discounts are offered, qualifying statements such as “up to”, “XX off”, etc., must be in easily readable type, in close proximity to the prices quoted and, where practical, legitimate regular prices must be included.
- (c) Prices quoted in advertisements in Canadian media, other than in Canadian funds, must be so identified.

## 4. Bait and Switch

Advertisements must not misrepresent the consumer’s opportunity to purchase the goods and services at the terms presented. If supply of the sale item is limited, or the seller can fulfill only limited demand, this must be clearly stated in the advertisement.

## 5. Guarantees

No advertisement shall offer a guarantee or warranty, unless the guarantee or warranty is fully explained as to conditions and limits and the name of the guarantor or warrantor is provided, or it is indicated where such information may be obtained.

## 6. Comparative Advertising

Advertisements must not unfairly discredit, disparage or attack one or more products, services, advertisements, companies or entities, or exaggerate the nature or importance of competitive differences.

## 7. Testimonials

Testimonials, endorsements or other representations of opinion or preference must reflect the genuine, reasonably current opinion of the individual(s), group or organization making such representations, must be based upon adequate information about or experience with the identified product or service and must not otherwise be deceptive.

## 8. Professional or Scientific Claims

Advertisements must not distort the true meaning of statements made by professionals or scientific authorities. Advertising claims must not imply that they have a scientific basis that they do not truly possess. Any scientific, professional or other authoritative claims or statements must be applicable to the Canadian context, unless otherwise clearly stated.

## 9. Imitation

No advertiser shall imitate the copy, slogans or illustrations of another advertiser in such a manner as to mislead the consumer.

## 10. Safety

Advertisements must not, without reason justifiable on educational or social grounds, display a disregard for safety by depicting situations that might reasonably be interpreted as encouraging unsafe or dangerous practices or acts.

## 11. Superstitions and Fears

Advertisements must not exploit superstitions or play upon fears to mislead the consumer.

## 12. Advertising to Children

Advertising that is directed to children must not exploit their credulity, lack of experience or their sense of loyalty, and must not present information or illustrations that might result in their physical, emotional or moral harm.

Child-directed advertising in the broadcast media is separately regulated by *The Broadcast Code for Advertising to Children*, also administered by ASC. Advertising to children in Quebec is prohibited by the *Quebec Consumer Protection Act*.

## 13. Advertising to Minors

Products prohibited from sale to minors must not be advertised in such a way as to appeal particularly to persons under legal age, and people featured in advertisements for such products must be, and clearly seen to be, adults under the law.

## 14. Unacceptable Depictions and Portrayals

It is recognized that advertisements may be distasteful without necessarily conflicting with the provisions of this Clause 14; and the fact that a particular product or service may be offensive to some people is not sufficient grounds for objecting to an advertisement for that product or service.

Advertisements shall not:

- (a) condone any form of personal discrimination, including discrimination based upon race, national or ethnic origin, religion, gender identity, sex or sexual orientation, age or disability;
- (b) appear in a realistic manner to exploit, condone or incite violence; nor appear to condone, or directly encourage, bullying; nor directly encourage, or exhibit obvious indifference to, unlawful behaviour;
- (c) demean, denigrate or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule;
- (d) undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.

# The Preclearance and Regulatory Mosaic

The *Code* is not intended to replace the many laws and guidelines designed to regulate advertising in Canada. Nor are the *Code*'s provisions intended to be senior to any other aspect of Canada's preclearance and regulatory apparatus – to which some require mandatory compliance; others voluntary.

As its name implies, the *Code* has as its primary purpose the expression of Canadian standards in advertising that, when followed, should result in responsible yet effective advertising without unreasonably blunting the underlying fundamental right to advertise lawfully-sold products and services in a fair but competitive manner.

ASC also provides copy clearance services, upon request, to various groups within the advertising and marketing industry through ASC Clearance Services. Every approved copy submission includes a written inscription, prominently displayed, advising the

advertiser that the copy was approved only within the context of (and for as long as the copy complies with) the provisions of the applicable (named) Act, Regulations and Guidelines (if any).

The inscription may also note that an advertisement produced from the approved submission could provoke a consumer complaint under the *Code*, and that if such complaint is upheld by Council, the advertiser will be requested by ASC to withdraw the commercial or amend it to comply with the *Code*.

## The Consumer Complaint Procedure

### How to Submit Consumer Complaints to ASC

The procedure for consumers wishing to complain to ASC that an “advertisement” (as defined in the *Code*) contravenes the *Code* is as follows:

ASC accepts complaints submitted by email, mail, or fax.

#### To submit a complaint by e-mail:

- Complete the [Online Complaint Submission Form](#) available on ASC's website.

#### To submit a complaint by letter or fax:

- Include your full name, telephone number, complete mailing address and (if available) fax number and email address.

- Identify the product or service being advertised, and the medium in which the advertisement appears:
  - For **Print Advertisements**: identify the name and date of the publication(s) in which you saw the advertisement(s) and include a copy of the advertisement(s).
  - For **Out-of-home Advertisements**, such as outdoor, transit or similar advertisements: identify the date on and exact location at which you saw the advertisement.

- For **Broadcast Advertisements**: identify the station, time and date on/at which you saw/heard the commercial and provide a brief description of the commercial.
- For **Cinema Advertisements**: identify the title of the movie, the date of viewing, and the name and location of the movie theatre at which you saw the advertisement and provide a brief description of the advertisement.
- For **Internet Advertisements**: identify the date of viewing, website, and include a print-out of the advertisement and other applicable web pages (if any).
- Explain the reason or basis for the complaint and, if known, the provision(s) of the *Code* that may apply.
- Submit the complaint to ASC at the address, or fax number listed at the bottom of this page.

### How Consumer Complaints are Received and Handled by ASC and Council

In keeping with their mandate within today's self-regulatory environment, ASC and Council carefully consider and respond to all written consumer complaints received by them about advertising that allegedly does not comply with the *Code*.

The critical factor in determining whether an advertisement should be reviewed by Council is not the number of complaints received. The fundamental issue is only whether an advertisement, if the subject of any number of complaints, appears to contravene the *Code*. Ultimately, that question can only be answered by Council in response to one or more bona fide complaints that originate from the public.

### Non-Reviewable Complaints

If, upon review, it appears to ASC or Council that a complaint is not a disguised trade complaint or special interest group complaint, and that based on the provisions of the *Code* reasonable grounds for the complaint appear to exist, then the consumer complaint will be accepted for processing. If at any time thereafter during the complaint review process, but prior to the release of Council's decision on the complaint, either ASC or Council concludes that, in reality, the complaint is a trade complaint or a special interest group complaint, but not a consumer complaint, the process will be discontinued and the complainant notified accordingly. In these cases, the complainant will be reminded that alternative

approaches should be considered by the complainant for registering an advertising-related complaint, such as under ASC's *Advertising Dispute Procedure* or *Special Interest Group Complaint Procedure*.

ASC or Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that:

- a. the specific advertisement(s) about which the complainant alleges a *Code* violation has/have not been identified;
- b. based on the provisions of the *Code*, reasonable grounds for the complaint do not appear to exist;
- c. the advertising, or such part of the advertising to which the complaint refers:
  - i. is, substantially, also the subject of litigation or other legal action then actively undertaken and pursued in Canada; or
  - ii. is under review, or subject to an order, by a Canadian court, or an agent or agency (or some other comparable entity) of the Canadian Government; or
  - iii. generally meets, or exceeds, or is not inconsistent with, advertising standards articulated in regulations, guidelines, or otherwise by an agency (or some other comparable entity) of the Canadian government or a provincial government with respect to products or services that are fundamentally comparable to the products or services advertised in the advertising to which the complaint refers; or
  - iv. has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government; or that
- d. such advertising is not within the purview of the *Code* or, if in ASC's opinion, the complaint is beyond the resources or ability of ASC to resolve effectively, reasonably or conclusively under this *Procedure*; or if the matter to which such advertising refers has been identified by a competent authority such as an agency (or some other comparable entity) of the Canadian government or a provincial government as being outside the purview of ASC; or
- e. the complainant is abusing this *Consumer Complaint Procedure*.

### Complaint Review Process

All complaints directed to ASC will be initially evaluated by ASC staff. If, in its evaluation, ASC makes

a preliminary determination that there may be a *Code* infraction by the advertisement (i.e. an accepted complaint), the advertiser will be notified in writing of the nature of the complaint and, if informed consent is freely granted by the complainant to ASC, the identity of the complainant.

### Complaints Involving Clauses 10 or 14

When an accepted complaint relates to the provisions of Clause 10 (Safety) or Clause 14 (Unacceptable Depictions and Portrayals), the advertiser will be asked to promptly respond (copying ASC), within a stated timeframe, directly to the complainant if the complainant has agreed to be identified. If the complainant does not wish to be identified, the advertiser will respond directly to ASC, who will redirect the response to the complainant. Complaints about alleged offences under Clauses 10 or 14 that are handled in this way will go forward for Council deliberation if the complainant notifies ASC that the complainant remains dissatisfied after receiving the advertiser's response, and if, after reviewing the advertiser's response, ASC believes the advertising still raises an issue under the *Code*. Otherwise, the matter will not be forwarded to Council and will not proceed further.

### Complaints Involving All Other *Code* clauses

Where a preliminary determination has been made that there may be an infraction of one or more of the other clauses of the *Code* (i.e. other than Clauses 10 or 14), the advertiser will be asked to respond directly to ASC by providing, in writing and without unreasonable delay, information requested by Council in order that Council may deliberate and reach a fully-informed decision about whether the *Code* has, in fact, been violated.

### Administratively Resolved Complaints Involving Clauses 1 and 3

ASC has the administrative discretion to resolve cases that involve an apparent contravention of either or both Clauses 1 and 3 without requiring formal adjudication by Council if the advertiser has remedied the contravention by permanently withdrawing or "appropriately amending the advertisement" in question before or immediately upon being advised of the complaint by ASC.

In all Clause 1 and/or 3 cases involving acknowledged or adjudicated *Code* infractions in retail advertising,

the advertiser must, in addition to withdrawing or "appropriately amending the advertisement", undertake appropriate corrective action by providing a "correction advertisement" or a "correction notice" that (i) appears in consumer-oriented media addressed to the same consumers to whom the original advertisement was directed; or that (ii) is prominently exhibited at the advertiser's retail outlets at which the advertised product or service that was incorrectly advertised is available for purchase or acquisition.

A "correction advertisement" means a new advertisement in which the advertiser corrects the error(s) in the original retail advertising. A "correction notice" means a notice that identifies the advertiser and acknowledges and corrects the error(s) in the original retail advertising.

Complaints resolved in this manner will be publicly reported by ASC only as statistics without identifying the advertiser or the advertising.

### Council Hearing and Decision

All complaints directed to ASC will be initially evaluated by ASC staff. If a complaint raises a potential *Code* issue and concerns an English-language advertisement, other than one that appears only in Quebec, it will be directed to the Standards Council. If a complaint raises a potential *Code* issue and concerns advertising in the French-language, or advertising that appears only in Quebec, the complaint will be evaluated and decided by le Conseil des normes.

At the initial Council deliberation, the materials available for Council's review include, at a minimum, the complaint letter, the advertiser's written response, if any, and a copy of the advertising in question.

Council's decisions are by majority vote. Any member of Council may abstain from voting on any matter.

If Council concludes an advertisement violates the *Code*, the advertiser, with a copy to the complainant, will be notified of the decision in writing and requested to appropriately amend the advertising in question or withdraw it, in either case without unreasonable delay.

If, at the initial deliberation by Council, the complaint is not upheld, both the complainant and the advertiser will be notified in writing with an explanation for Council's decision.

### Appealing a Council Decision

Both the complainant and the advertiser are entitled to request an appeal from a decision of Council by filing

a Request for Appeal addressed to ASC. The Request for Appeal must be in writing and received at ASC within seven working days after the decision is sent to the parties. It must provide the appellant's reasons for believing the decision was in error. A request by an advertiser for an appeal will be considered if that advertiser undertakes in writing to withdraw the advertising in question within 11 working days after the Request for Appeal is received at ASC. The withdrawn advertising may be reinstated, however, if at the appeal hearing the Appeal Panel decides not to uphold the complaint. Advertisers will be granted a reasonable extension of time in which to withdraw the advertising if Council is satisfied that the advertising medium used to convey the advertising is unable to facilitate the withdrawal in the designated time.

A five-person Appeal Panel will be selected from among a roster of persons who did not serve at the original Council deliberation. The Appeal Panel will comprise two public representatives with the balance coming from the advertising industry sector. Both the advertiser and the complainant will be requested to make only written submissions to the Appeal Panel. The submissions must be brief, confined strictly to the matters under appeal and received by ASC within the requested timeframe. At the appeal hearing, the complaint will be treated as a new complaint and the matter reconsidered in its entirety.

Decisions of Appeal Panels will be by majority vote and will be sent to both parties following the appeal hearing. Decisions by Appeal Panels will be binding and final.

## Ad Complaints Reports

Each year, ASC will publish one or more reports on consumers' complaints to ASC about advertising. The principal purpose of these reports is to serve, for the benefit of the advertising industry and the interested public, as a guide to the interpretation of the *Code* as applied to advertising issues that concerned the public.

The Ad Complaints Reports will be divided into three sections: "Identified Cases", "Non-identified Cases", and "Administratively Resolved Cases."

In the "Identified Cases" section, details will be provided of those consumer complaints that were adjudicated and upheld by Council under the *Code*. This section will include identification of the advertiser and advertising. In this section, advertisers will be entitled to state their position on their advertisements

about which Council has upheld one or more complaints.

In the "Non-identified Cases" section, consumer complaints adjudicated and upheld by Council about advertisements "appropriately dealt with" by the advertiser will be summarized, without identifying the advertiser or the advertisement.

"Appropriately dealt with" by the advertiser, or "appropriately amending the advertisement", means action voluntarily undertaken by the advertiser, without delay, to amend the advertisement to correct the alleged infraction, after being advised by ASC that a complaint had been received and before the matter was brought forward to Council for review and decision. Alternatively, the advertiser, without delay, may withdraw the advertisement from any further exposure, distribution or circulation. In the case of retail advertising, the advertiser must also provide, without delay, a "correction advertisement" or a "correction notice" that (i) appears in consumer-oriented media addressed to the same consumers to whom the misleading or offending advertising was originally directed; or that (ii) is prominently exhibited at the advertiser's retail outlets at which the advertised product or service that was incorrectly advertised is available for purchase or acquisition.

A "correction advertisement" means a new advertisement in which the advertiser corrects the error(s) in the original retail advertising. A "correction notice" means a notice that identifies the advertiser and acknowledges and corrects the error(s) in the original retail advertising.

In the "Administratively Resolved Cases" section, only statistical information will be provided about complaints administratively resolved by ASC about advertisements that involve apparent infractions of Clauses 1 and 3. Neither the advertiser nor the advertisement will be identified.

## Identifying the Advertiser and its Advertising

Notwithstanding any contrary provision stated elsewhere in the *Code*, ASC will have the discretionary right, but not the obligation, in "Non-identified Cases" or in "Administratively Resolved Cases", to identify and comment on an advertiser, its advertising and the outcome of a complaint about the advertising as adjudicated by ASC, Council and/or an Appeal Panel.

This discretionary right of ASC arises when an advertiser in a "Non-identified Case" or in an "Administratively Resolved Case":

- a. has, in ASC's opinion, permitted or participated in the disclosure publicly of the identity of the advertiser and the advertising in question, and/or the outcome of one or more complaints about the advertising as adjudicated by ASC, Council or an Appeal Panel; or
- b. when the advertiser specifically asks ASC to comment publicly, as ASC sees fit, on the advertiser's advertising in question and/or the outcome of one or more complaints about the advertising as adjudicated by ASC, Council or an Appeal Panel.

### Re-Opening a Case

ASC will have the discretionary right to reactivate the *Consumer Complaint Procedure*, in whole or part, including the imposition of sanctions provided in the *Code*, if an advertiser fails to fulfill its undertaking to withdraw or amend an advertisement; or if the matter underlying the complaint is of a continuing or repetitive nature, suggesting an avoidance of the provision(s) of the *Code*.

### Advertiser's Failure to Respond or Participate

If an advertiser fails to respond in a timely manner to ASC's request for a copy of the advertisement that is the subject of a consumer complaint, ASC may ask the carrying media to assist ASC by providing it with a copy of the advertisement in question. If an advertiser fails to respond to a complaint or participate in the *Consumer Complaint Procedure* the complaint may be decided in the advertiser's absence based on the information already in the possession of Council and on any further pertinent information submitted by the complainant for Council's review.

### Failure to Follow Procedure or Comply with Decision

The *Code* is a reflection of standards by which industry wishes to be held accountable for its advertising and representations to the public. Because self-regulation is more than self-restraint on the part of individual companies or entities, the *Code* would be incomplete without effective sanctions to enforce compliance.

If an advertiser fails to participate in or comply with the provisions of the *Consumer Complaint Procedure* or to voluntarily comply with a decision of Council, ASC:

- will advise exhibiting media of the advertiser's failure to co-operate and comply, and request media's support in no longer exhibiting the advertising or representation(s) in question; and
- may publicly declare, in such manner as Council deems appropriate, that the advertising or representation(s) in question have been found to contravene the *Code*, and publicly identify the advertiser of such advertising or entity making such representation(s); and
- may notify the Competition Bureau and/or other regulatory authorities of the fact that the advertiser of such advertising or entity making such representation(s) has not participated in or with the *Consumer Complaint Procedure*, and/or that the advertising or representation(s) in question has/have been found to contravene the *Code*, and that the advertiser or entity making the representation(s) has not complied with a decision of Council.

# Canadian Code Of Advertising Standards Interpretation Guidelines

ASC develops *Interpretation Guidelines* to enhance industry and public understanding of the interpretation and application of the clauses of the *Canadian Code of Advertising Standards (Code)*. *Guidelines* are developed and updated on an as-needed basis.

## **Interpretation Guideline #1 – Alleged Infractions of Clauses 10 or 14: Elements of Humour and Fantasy<sup>1</sup>**

In assessing impression(s) likely to be conveyed by an advertisement, Council shall take into consideration the use and application in the advertisement(s) of such elements as humour and fantasy.

## **Interpretation Guideline #2 – Advertising to Children<sup>4</sup>**

2.1 As used in Clause 12 of the *Code*, the phrase “advertising that is directed to children”, (advertising to children), includes a commercial message on behalf of a product or service for which children are the only users or form a substantial part of the market as users, and the message (i.e. language, selling points, visuals) is presented in a manner that is directed primarily to children under the age of 12.

2.2 Advertising to children that appears in any medium (other than the media specifically excluded under the *Code* from the definition “medium” and from the application of the *Code*) shall be deemed to violate Clause 12 of the *Code* if the advertising does not comply with any of the following principles or practices:

### **a. Food Product Advertising to Children<sup>2</sup>**

- i. Food product advertising addressed to children must not be inconsistent with the pertinent provisions of the *Food and Drugs Act* and *Regulations* and the Canadian Food Inspection

Agency’s *Food Labelling for Industry (CFIA Industry Labelling Tool)*. This *Code Interpretation Guideline* is intended, among other purposes, to ensure that advertisements representing mealtime clearly and adequately depict the role of the advertised product within the framework of a balanced diet, and that snack foods are clearly presented as such, not as substitutes for meals.

### **b. Healthy, Active Living<sup>4</sup>**

- i. Advertising to children for a product or service should encourage responsible use of the advertised product or service with a view toward the healthy development of the child.
- ii. Advertising of food products should not discourage or disparage healthy lifestyle choices or the consumption of fruits or vegetables, or other foods recommended for increased consumption in *Canada’s Food Guide to Healthy Eating*, and in Health Canada’s nutrition policies and recommendations applicable to children under 12.

### **c. Excessive Consumption<sup>4</sup>**

- i. The amount of product featured in food advertising to children should not be excessive or more than would be reasonable to acquire, use or, where applicable, consume, by a person in the situation depicted.
- ii. If an advertisement depicts food being consumed by a person in the advertisement, or suggests that the food will be consumed,

<sup>1</sup> May 2003

<sup>2</sup> April 2004

<sup>4</sup> September 2007

the quantity of food shown should not exceed the labelled serving size on the Nutrition Facts Panel (where no such serving size is applicable, the quantity of food shown should not exceed a single serving size that would be appropriate for consumption by a person of the age depicted).

**d. Factual Presentation<sup>4</sup>**

- i. Audio or visual presentations must not exaggerate service, product or premium characteristics, such as performance, speed, size, colour, durability, etc.
- ii. Advertising to children must not misrepresent the size of the product.
- iii. When showing results from a drawing, construction, craft or modelling toy or kit, the results should be reasonably attainable by an average child.
- iv. The words “new”, “introducing” and “introduces” or similar words may be used in the same context in any children’s advertising for a period of up to one year only.

**e. Product Prohibitions<sup>4</sup>**

- i. Products not intended for use by children may not be advertised either directly or through promotions that are primarily child-oriented.
- ii. Drug products, including vitamins, may not be advertised to children, with the exception of children’s fluoride toothpastes.

**f. Avoiding Undue Pressure<sup>4</sup>**

- i. Children must not be directly urged to purchase or to ask their parents to make inquiries or purchases.

**g. Price and Purchase Terms<sup>4</sup>**

- i. Price and purchase terms, when used in advertising directed to children, must be clear and complete. When parts or accessories that a child might reasonably suppose to be part of the normal purchase are available only at extra cost, this must be clearly communicated.
- ii. The costs of goods, articles or services in advertising directed to children must not be

minimised, as by the use of “only”, “just”, “bargain price”, “lowest price(s)”, etc.

- iii. The statement “it has to be put together” or a similar phrase in language easily understood by children must be included when it might normally be assumed that an article featured in advertising directed to children would be delivered assembled.
- iv. When more than one product is featured in advertising directed to children, it must be made clear in the advertising which of the products are sold separately (this includes accessories).

**h. Comparison Claims<sup>4</sup>**

- i. In advertising to children, no comparison may be made with a competitor’s product or service when the effect is to diminish the value of other products or services.

**i. Safety<sup>4</sup>**

- i. Adults or children must not be portrayed in clearly unsafe acts or situations except where the message primarily and obviously promotes safety.
- ii. Products must not be shown being used in an unsafe or dangerous manner (e.g. tossing a food item into the air and attempting to catch it in the mouth).

**j. Social Values<sup>4</sup>**

- i. A range of values that are inconsistent with the moral, ethical or legal standards of contemporary Canadian society must not be encouraged or portrayed.
- ii. Advertising to children must not imply that, without the advertised product, a child will be open to ridicule or contempt; or that possession or use of a product makes the owner superior (this latter prohibition does not apply to true statements regarding educational or health benefits).

**k. General<sup>3</sup>**

- i. Advertising to children must:
  - use age-appropriate language that is easily

<sup>3</sup> April 2006

<sup>4</sup> September 2007

understandable by children of the age to whom the advertisement is directed;

- refrain from using content that might result in harm to children;
- collect only the information reasonably required to allow children to engage in the activity, e.g. collect only the minimal amount of personal information sufficient to determine the winner(s) in contests, games or sweepstakes-type of advertising to children;
- limit the advertiser's right to deal with anyone other than the parents or guardians of children who win a contest, game or sweepstakes promotion;
- require children to obtain their parent's and/or guardian's permission before they provide any information; and make reasonable efforts to ensure that parental consent is given;
- refrain from using the data collected from children to advertise and promote products or services other than those designed for/appropriate for children;
- not attempt to collect from children data related to the financial situation or the privacy of any member of the family. Furthermore, advertisers must not, and must not ask for permission to, disclose personal information that may identify children to third parties without obtaining prior consent from parents, unless authorized by law. For this purpose, third parties do not include agents or others who provide support for operational purposes of a website and who do not use or disclose a child's personal information for any other purpose.

#### **I. Assessment<sup>4</sup>**

- i. Each advertisement shall be judged on its individual merit.

### **Interpretation Guideline #3 – Environmental Claims<sup>5</sup>**

When evaluating complaints involving environmental claims that allegedly are misleading or deceptive, Council may, in exercising its judgment, take into

account the standards proposed by the Competition Bureau and the Canadian Standards Association in the Special Publication PLUS 14021, *Environmental claims: A guide for industry and advertisers*.

### **Interpretation Guideline #4 – Alleged Infractions of Clauses 10 or 14: Motor Vehicle Advertising<sup>6</sup>**

- 4.1 When evaluating complaints about advertising involving depictions of motorized vehicles that allegedly contravenes Clause 10 (Safety), Council will take into account the following questions:
  - a. Does the depiction of the performance, power or acceleration of the vehicle convey the impression that it is acceptable to exceed speed limits?
  - b. Does the depiction of a vehicle's handling ability involve potentially unsafe actions such as cutting in and out of traffic, excessively aggressive driving, or car chases in a residential setting?
  - c. Does the depiction appear realistic or does it appear to be unreal, as in a fantasy-like scenario that is unlikely to be copied or emulated in real life?
  - d. Would it be reasonable to interpret the depicted situation as condoning or encouraging unsafe driving practices?
- 4.2 When evaluating complaints involving depictions in automobile advertising that allegedly contravene Clause 10 (Safety) or Clause 14 (Unacceptable Depictions and Portrayals), Council also will take into account the following questions developed and endorsed by the Association of International Automobile Manufacturers of Canada and the Canadian Vehicle Manufacturers Association:
  - a. Is the vehicle operated in violation of applicable laws or beyond reasonable speed under the circumstances taking into account the portrayed road, weather, traffic and surrounding conditions (e.g. children in the area,) or over usual speed limits in Canada?

<sup>4</sup> September 2007

<sup>5</sup> November 2008

<sup>6</sup> September 2009

- b. Does the depiction of the performance, power or acceleration and braking of the vehicle, taking into consideration the advertisement as a whole including visual (both images and text) and audio messages convey the impression that it is acceptable to exceed speed limits or to otherwise operate a vehicle unsafely or illegally?
- c. Does the depiction of racing and rallies, and of other competition environments, taking into consideration the advertisement as a whole including visual (both images and text) and audio messages, convey the impression that production vehicles could be driven like racing or competition vehicles on a public roadway?
- d. Is the advertisement encouraging or endorsing vehicle use that is aggressive, violent or injurious toward other road users, or that denigrates or disparages cautious behaviour when using a vehicle?

### **Interpretation Guideline #5 – Testimonials, Endorsements, Reviews<sup>7</sup>**

The following provides guidance on disclosure that is required in order for a testimonial, endorsement, review or other representation (in any medium) to comply with Clause 7 of the *Code*.

1. A testimonial, endorsement, review or other representation must disclose any “material connection” between the endorser, reviewer, influencer or person making the representation and the “entity” (as defined in the *Code*) that makes the product or service available to the endorser, reviewer, influencer or person making the representation, except when that material connection is one that consumers would reasonably expect to exist, such as when a celebrity publicly endorses a product or service.
2. If such a material connection exists, that fact and the nature of the material connection must be clearly and prominently disclosed in close proximity to the representation about the product or service.

Examples of how to disclose material connections can be found in the *FTC’s Guide to Testimonials & endorsements*, available at [ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking](http://ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking), and the Word of Mouth Marketing Association’s White Paper – *Ethical Word of Mouth Marketing Disclosure Best Practices in Today’s Regulatory Environment*, available at [womma.org/free-womm-resources](http://womma.org/free-womm-resources).

<sup>7</sup> October 2016

## For More Information

Questions regarding the interpretation and application of the *Code* should be addressed to ASC:

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