

# 2012

## AD COMPLAINTS REPORT YEAR IN REVIEW

The 2012 Complaints Report contains statistical information about complaints submitted to ASC in 2012 for review under the *Canadian Code of Advertising Standards (Code)*. Case summaries about complaints upheld by the Councils from January 1, 2012 to December 31, 2012, are available on our web site at: [adstandards.com](http://adstandards.com)

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# INTRODUCTION

At Advertising Standards Canada (ASC) we recognize that an effective consumer response mechanism is essential to maintaining public confidence in advertising. Through ASC's *Consumer Complaint Procedure*, we accept and respond to consumers' complaints about advertising appearing in the Canadian media.

Reporting on complaints upheld by ASC's independent Standards Councils (Councils) is an important part of the process. The online case summaries provide invaluable learning for both the advertising industry and the public regarding how Councils interpret and apply the *Canadian Code of Advertising Standards (Code)*.

This 2012 Ad Complaints Report provides an account of the number of consumer complaints received and investigated over the past year, information about the types of complaints upheld, and insights regarding consumer concerns in 2012.

## HIGHLIGHTS

- ASC received a total of 1,310 consumer complaints regarding 1,057 advertisements.
- Councils reviewed 141 complaints that raised issues under the *Canadian Code of Advertising Standards*.
- A total of 116 complaints about 87 advertisements were upheld by Councils.
- Consumers' complaints alleging inaccurate or misleading advertising represented 40% per cent of all complaints.
- Retail advertising garnered the highest number of complaints – 247.

## CODE DEFINITION OF ADVERTISING

"Advertising" is defined as any message (the content of which 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.

## 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*.

**Media:** The following are excluded from the definition of "medium" and the application of the *Code*:

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

# YEAR IN REVIEW

## OVERVIEW

In 2012, consumers submitted 1,310 complaints to ASC – a 28% decrease from 2011, but consistent with traditional complaint volumes. Of the total complaints received, 854 met the criteria for acceptance under the *Canadian Code of Advertising Standards (Code)*. The balance of 456 complaints could not be pursued because they did not fall within the *Code* acceptance criteria. These included: complaints in which no specific advertisement was identified; complaints about advertisements that were no longer current; complaints about political or election advertising; and complaints about advertisements that did not meet the *Code* definition of advertising.

## TWO-YEAR COMPLAINTS SUMMARY

	2012	2011
Received by ASC	1,310 (1,057 ads)	1,809 (1,153 ads)
	↓	↓
Met <i>Code</i> acceptance criteria	854 (688 ads)	1,210 (1,129 ads)
	↓	↓
Raised potential <i>Code</i> issues and forwarded to Councils	141 (112 ads)	177 (109 ads)
	↓	↓
Complaints upheld by Councils	116 (87 ads)	146 (83 ads)

## COMPLAINTS BY CODE CLAUSE

The *Code* sets the standards for acceptable advertising and provides the basis for the review and adjudication of consumer complaints about advertising. Of the 854 complaints that met the *Code* acceptance criteria, almost all involved concerns relating to the following *Code* clauses:

- Clause 1 (Accuracy and Clarity) and Clause 3 (Price Claims)
- Clause 2 (Disguised Advertising Techniques)
- Clause 10 (Safety)
- Clause 14 (Unacceptable Depictions and Portrayals)

Complaints that raised issues under one or more *Code* clauses were forwarded to ASC's independent, volunteer Standards Councils (Councils) for adjudication. Throughout 2012, Councils reviewed 141 complaints and upheld 116 complaints about 87 advertisements.

### Clause 1 (Accuracy and Clarity) and Clause 3 (Price Claims)

In 2012, ASC reviewed 526 complaints alleging misleading or inaccurate advertising (Clauses 1 and 3). Following review, Councils upheld 95 complaints about 79 advertisements. These involved advertisements: for products that were unavailable during a promotional period; that omitted relevant information; that did not clearly state all pertinent details of an offer; or that contained unsubstantiated claims.

For the second year in a row more complaints were pursued under Clauses 1 and 3 (526) than under Clause 14 (297).

### Clause 14 (Unacceptable Depictions and Portrayals)

In 2012, 297 of the pursued complaints related to Clause 14,

and Councils upheld 16 of these about five advertisements. The balance of the complaints reviewed under Clause 14 involved matters of personal taste or preference and did not raise issues under any provisions of this clause.

**Clause 10 (Safety)**

A total of 18 complaints were pursued under Clause 10, and four were upheld about two advertisements.

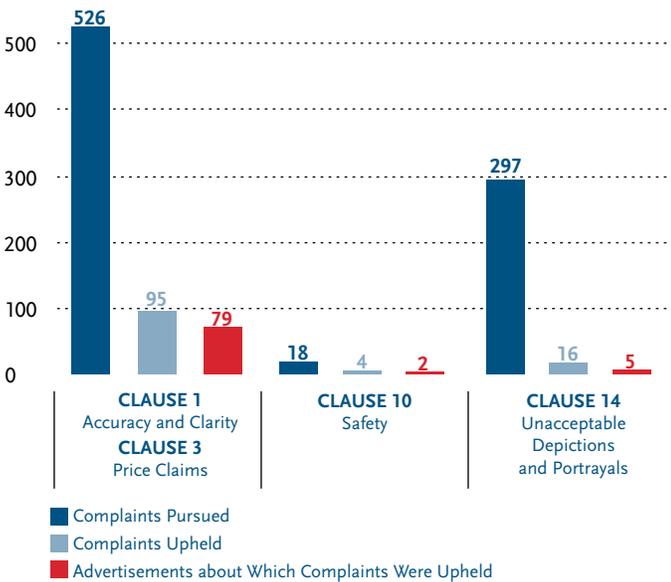
**Clause 2 (Disguised Advertising Techniques)**

In 2012, four complaints were pursued under this clause, and one was upheld about one advertisement.

**Other Clauses**

**Clause 12 (Advertising to Children) and Clause 13 (Advertising to Minors)**

Two complaints were pursued under each of these clauses, and none were upheld.



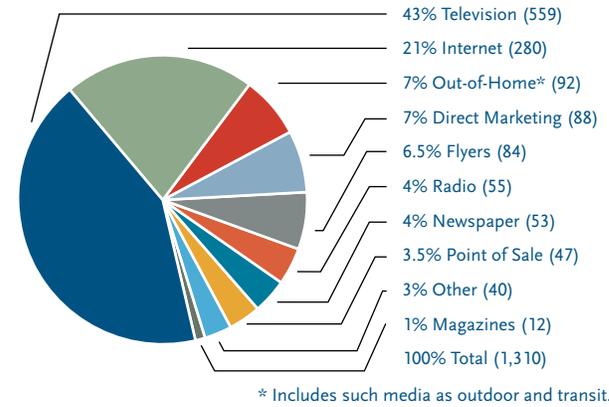
**COMPLAINTS BY CATEGORY OF ADVERTISING\***

Consistent with previous years, retail advertising generated more complaints than any other category of advertising (247). The second highest number of complaints by category related to advertising in the Service category, which attracted 157 complaints. Third, with 126 complaints, was advertising in the Food category, which includes manufacturers, retailers and restaurants.



**COMPLAINTS BY MEDIA**

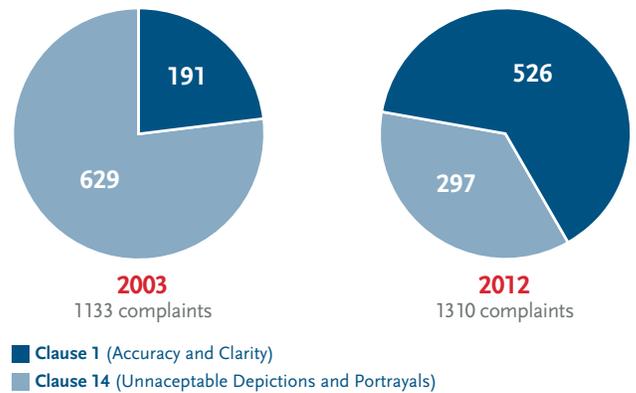
Due to its broad reach, advertising on television, with 559 complaints, garnered the highest number of complaints of any medium. Advertising on the Internet generated the second highest number of complaints (280). Advertising displayed in the out-of-home media, including transit and billboard advertising, followed with 92 complaints.



**CONSUMER CONCERNS AND COMPLAINT TRENDS**

The nature of consumers' concerns has changed considerably over the past decade. With the economic downturn and uncertainty about finances and employment, consumers have become more value conscious and scrutinize advertising with a more critical eye. As a result, we have seen a real uptick in complaints about advertisements consumers believe are inaccurate or misleading. There has been a corresponding decrease in complaints about advertisements consumers find offensive or in poor taste. Some of the factors that might explain this include: evolving societal norms, changing demographics, increasing exposure to international creative and greater media choices.

This shift is illustrated in the following charts.



**UNDERSTANDING AD COMPLAINTS: A GUIDE TO ASC'S RESOURCES ONLINE**

To read and learn about the *Canadian Code of Advertising Standards*, *Interpretation Guidelines* and the Consumer Complaints Process, visit: [adstandards.com](http://adstandards.com). Resources include:

- [Canadian Code of Advertising Standards](#)
- [Interpretation Guidelines](#)
- [ASC Advisories](#)
- [Ad Complaints Reports](#)
- [Consumer Complaints Online Submission Form](#)

In 2003, complaints alleging inaccurate or misleading advertising under Clause 1 represented 17% of the total number of complaints submitted to ASC. Nine years later, in 2012, Clause 1 complaints represented 40% of the complaint total. By contrast, Clause 14 complaints represented 56% of total complaints in 2003 and only 23% in 2012.

Canadian consumers care about getting value for their money, good deals and low prices. This came through loud and clear in the complaints they submitted to ASC in 2012, particularly about retail advertising. In today's highly competitive retail environment, many retailers advertised price match guarantees, offering to match or beat their competitors' prices on the same or similar products. Savvy consumers paid attention, and when a retailer did not honour its advertised promise, ASC heard about it. In fact, Councils upheld six complaints about four different advertisements.

Another popular price promotional technique is the *daily deal* advertisement. In 2012, as in the previous year, ASC heard from consumers who challenged the accuracy of savings and other claims contained in several daily deal advertisements. Councils upheld three complaints about three such advertisements.

## ASC GUIDANCE FOR ONLINE RETAIL ADVERTISERS

### A. Retailers or Affiliate Marketers: Who is Responsible For Advertising Errors?

### B. Who is Responsible When Offers in National Retail Advertising are not Honoured by the Advertiser's Local Stores?

### C. Correcting Errors in Retail Advertising

From the complaints submitted to ASC in the past several years, it's clear that consumers are looking for discounts, deals and low prices, and they expect advertisers to be accountable for errors and mistakes in their advertising.

Several recent Standards Council (Council) decisions, examined below, provide useful guidance to retail advertisers on how to avoid contravening the *Canadian Code of Advertising Standards (Code)*.

### A. RETAILERS OR AFFILIATE MARKETERS: WHO IS RESPONSIBLE FOR ADVERTISING ERRORS?

*Affiliate Marketing Programs* are increasingly used to drive online retail sales. This typically involves an online retailer entering into agreements with third party "affiliate marketers" to post the retailer's promotional offers on the affiliates' websites. The affiliate receives a commission for every resulting sale.

In most cases this arrangement works to the benefit of all parties – the consumer, the retailer and the affiliate. But who is accountable when there are errors or mistakes in an offer published on the affiliate's website?

In 2012, Council adjudicated just such a case, which provides important insights for advertisers.

**Clause 1:** Accuracy & Clarity  
**Advertiser:** Retail & Service Provider  
**Industry:** Retail  
**Media:** Internet  
**Complaint:** 1

**Description:** A coupon for 50% off the prices of a retailer's merchandise was posted online by an affiliate marketer.

**Complaint:** The complainant alleged the advertisement was misleading because the retailer would not honour the offer at one of its outlet stores.

**Decision:** While the retailer had informed the affiliate marketer that its outlet stores were excluded from the offer, it did not monitor the affiliate marketer's website to ensure the offer was correctly stated. In fact, the exclusion was not mentioned in the offer posted on the affiliate marketer's website.

Council found that both the retailer and the third-party affiliate marketer qualified in this case as 'advertiser' and both were accountable under the *Code* for the retailer's advertising as it appeared on the third-party marketer's website. Based on the acknowledged facts, Council concluded that the advertisement was misleading and omitted relevant information.

**Infraction:** Clauses 1(a) and (b).

### GUIDANCE FOR RETAILERS AND AFFILIATE MARKETERS

In cases such as this, it is essential that affiliate marketers be fully advised of and correctly follow the retailer's instructions, and that they post the promotional offer as detailed by the retailer. It is also incumbent on the retailer to ensure that the affiliate marketer does not deviate from the retailer's instructions.

### BEST PRACTICE

Retailers should make it clear in their contractual agreements with affiliate marketers that:

- an affiliate may not change or modify the content of an offer without the retailer's permission;
- if the affiliate does modify the offer without the retailer's permission, the affiliate marketer must take the appropriate corrective action required under the *Code*; and that
- failure to adhere to the terms will result in termination of the affiliate marketer's participation in the retailer's program.

It could happen that an affiliate, following the advertiser's instructions, posts on the affiliate's own website an advertisement exactly as provided by the retailer, but the advertisement is later found by Council to be inaccurate or misleading under the *Code*. Who, then, is responsible for taking the corrective action required under the *Code*? In such a case, ASC would regard the retailer as being responsible for the misrepresentation and for taking the appropriate action to correct the advertisement.

## B. WHO IS RESPONSIBLE WHEN OFFERS IN NATIONAL RETAIL ADVERTISING ARE NOT HONoured BY THE ADVERTISER'S LOCAL STORES?

In 2012, Council adjudicated a number of complaints from consumers alleging that certain retail outlets would not honour the terms of offers and promotions, such as price match guarantees, advertised nationally by a corporate entity that bore the same trading name as the retail outlet. In none of these cases did the advertisements put limitations or qualifications on the advertised offer such as: “available only at participating stores.”

**Clause 1:** Accuracy & Clarity

**Advertiser:** Canadian Tire Corporation, Limited

**Industry:** Retail

**Region:** Manitoba

**Media:** Flyer

**Complaints:** 2

**Description:** Various products were advertised in a Canadian Tire flyer that included the advertiser's Price Match Guarantee. It read: “We'll not only match any competitor's price, we'll beat it...on an identical item.”

**Complaint:** The complainants alleged that even though they provided proof that a competitor offered two of the advertised products at lower prices, staff at a Canadian Tire retail store in Winnipeg would not honour the advertiser's Price Match Guarantee.

**Decision:** Council found no language in the advertisement that excluded any Canadian Tire store from participating in the Price Match Guarantee program. Council concluded, therefore, that because the Price Match Guarantee was not honoured, the advertisement contained a misleading claim, did not state all pertinent details of an offer, and omitted relevant information.

**Infraction:** Clauses 1(a), (b) and (c).

**Appeal:** On an appeal by the advertiser, an Appeal Panel of Council confirmed Council's original decision.

## GUIDANCE FOR RETAIL ADVERTISERS

It was reasonable for the complainants in this case to assume that the advertiser was the named corporate entity and that all retail stores that traded under the same name as the advertiser participated in the Price Match Guarantee promotion. The case underscores the fact that when an important element in the advertising is not honoured by what appears to be the advertiser's retail outlet, the responsibility and accountability under the *Code* for the advertising rests with the national advertiser, unless otherwise clearly communicated by the advertisement.

## C. CORRECTING ERRORS IN RETAIL ADVERTISING

The incidence of complaints to ASC about uncorrected inaccuracies and errors in retail advertising is on the rise. ASC's 2005 *Advisory on Correcting Mistakes in Retail Advertising* is reprinted here to clarify how retail advertising errors should be corrected under the *Code*.

# ADVISORY ON HOW TO CORRECT MISTAKES AND INACCURACIES IN RETAIL ADVERTISING

When Council, upon adjudicating a consumer complaint, finds that a retail advertisement contains an erroneous or misleading claim, the *Code* requires the retail advertiser to “provide a correction advertisement that appears in consumer-oriented media addressed to the same consumers to whom the misleading advertisement was originally directed.” The following guidelines will help retail advertisers understand what constitutes appropriate corrective advertising under the *Code*.

## WHAT IS RETAIL ADVERTISING?

For the purposes of the *Code*, “retail advertising” includes advertising by an entity that advertises to the public, and from whom the public may directly purchase the advertised products or services, either through a conventional retail outlet or online through the advertiser's website.

Some advertisers may not consider themselves as conventional retail advertisers. However, under the above definition, retail advertising would include advertising by telecommunications companies, airlines, travel companies, automobile dealers, daily deal advertisers, spas/salons, and other service providers.

## CORRECTING MISTAKES IN RETAIL PRINT ADVERTISING

Upon learning of a mistake in their advertising, retail advertisers should:

- immediately withdraw the advertisement containing the error from further publication or exposure, and
- correct the error and, without delay, publish a correction advertisement in the same medium as the original advertisement (i.e., flyer, newspaper, etc.). The correction advertisement must draw the mistake to attention of consumers.

Council also recommends that a similar kind of correction notice, with similar content, be prominently posted at retail outlets.

## CORRECTING MISTAKES IN RETAIL WEBSITE ADVERTISING

The same principles apply to errors in advertising on retailers' own websites. The only difference is that the advertisement to correct the erroneous website advertising should be posted in close proximity to where the original website advertisement appeared. The correction advertisement on the website should say that the original information was wrong, how it was wrong, and that the error has subsequently been corrected.

An in-store corrective advertisement should also be prominently displayed to bring the error and its correction to the attention of in-store customers.

Council has repeatedly said that when retail advertising on the web or other medium violates the *Code*, in addition to correcting the mistake on their websites, retail advertisers should both inform the public that an error occurred and explain what the error was.

For retail advertisers to limit their corrective action to fixing an advertising error but not informing the public that an error occurred would be to presume that no member of the public saw and was affected by the misrepresentation in the first place. But based on Council's considerable experience in handling such complaints, this is not a correct assumption.

The only certain way to avoid the negative effects on the public caused by an advertising error is to correct the error before the advertising is released to public. Otherwise the above-described procedure should be honoured. If followed, these guidelines should help to minimize the possibility of consumer dissatisfaction and complaints to ASC about misleading retail advertising, wherever it appears.

Advertisers that comply with the requirement under the *Code* to run corrective advertisements in a timely fashion to correct misinformation and misimpressions conveyed in the retailer's earlier advertisements will not be identified by name in the summaries of upheld complaints published in ASC's *Ad Complaints Reports*.

## KEEPING THE *CODE* CURRENT

The *Canadian Code of Advertising Standards (Code)* is the principal instrument of advertising self-regulation. It sets the standards for advertising that is truthful, fair and accurate. First published in 1963, the *Code* was developed as a collaborative effort among major advertisers and the media that together recognized the power of advertising to influence consumer choice. To harness the influential force of advertising in an ethical and responsible manner, the *Code* was created by the industry to set the standards for acceptable advertising in Canada.

Following its introduction, the *Code* has been regularly updated to ensure it remains relevant and current. In 2000, *Interpretation Guidelines* were introduced to facilitate industry and public understanding of the interpretation and application of clauses of the *Code* as new consumer issues arise and societal expectations change. There are currently four *Interpretation Guidelines*.

Guideline #1	Alleged Infractions of Clauses 10 or 14: Elements of Humour and Fantasy (2003)
Guideline #2	Advertising to Children (2004, 2006, 2007)
Guideline #3	Environmental Claims (2008)
Guideline #4	Alleged Infractions of clauses 10 or 14: Motor Vehicle Advertising (2009)

## THE CONSUMER COMPLAINT PROCEDURE

Established by the Canadian advertising industry over 40 years ago, the *Consumer Complaint Procedure* provides Canadian consumers with a mechanism to submit written complaints

about advertising currently running in Canadian media.

The *Consumer Complaint Procedure* includes the following steps.

### 1. COMPLAINT RECEIPT

Each written consumer complaint is reviewed by ASC against the *Canadian Code of Advertising Standards (Code)*.

### 2. PRELIMINARY REVIEW

ASC conducts a preliminary evaluation of the complaint.

If the complaint does not raise an issue under the *Code*, or if ASC cannot accept the complaint, ASC sends a letter of explanation. Details can be found in the Exclusions and Non-reviewable Complaints sections of the *Code*.

### 3. HOW COMPLAINTS ARE HANDLED

Complaints that raise *Code* issues are handled in different ways depending upon the nature of the complaint.

#### Complaints About Safety Issues (Clause 10) or Unacceptable Depictions and Portrayals (Clause 14)

The complaint is forwarded to the advertiser who is asked to respond directly to the consumer about the complaint. If, after receiving the advertiser's response, the consumer is not satisfied, the consumer can request a review by the Standards Council. Council is made up of senior representatives from the advertising industry and the public, who volunteer their time to support the consumer complaints process.

#### Complaints Under All Other *Code* Clauses

The advertiser is asked to comment, in writing to ASC, on the consumer's concerns. If there remains a concern under the *Code*, the matter will be forwarded to Council for a decision.

### 4. COUNCIL REVIEW AND DECISION

Complaints forwarded to Council are carefully reviewed under the *Code*. If Council determines that the advertisement contravenes one or more clauses of the *Code*, Council will uphold the complaint. The advertiser is asked to amend or withdraw the advertisement.

Whether or not the complaint is upheld, ASC will inform the consumer and the advertiser, in writing, of Council's decision.

### 5. APPEALING A COUNCIL DECISION

If the consumer or advertiser disagrees with Council's decision, the consumer or advertiser can request an appeal within seven days of receiving the decision.

## THE STANDARDS COUNCILS

ASC's independent, volunteer Standards Councils (Councils) play a vital role in ensuring objective and fair complaint adjudication. While ASC administers the process by which consumers submit their written complaints about advertisements, those complaints that raise potential issues under the *Code* are reviewed and adjudicated by Councils. The Councils include senior industry and public representatives from across Canada, who are committed to help ensure that Canadian advertising is truthful, fair and accurate.

Rafe Engle (Chair), R.S. Engle Professional Corporation  
Roberta Albert\*  
John Azevedo, Nintendo of Canada Ltd.  
Peggy Barnwell\*  
Denise Barrett\*  
Tim Bowen, TMTC Consulting  
Renee Bozowsky\*  
Alexis Cameron, *The Vancouver Sun/The Province*  
Suzanne Carpenter, Corus Radio Toronto  
Joan Cohen\*  
Megan Coles\*  
Theresa Courneyea  
Mike Darley, Canadian Broadcasting Corporation  
Chris Dodge\*  
Rick Emberley, MarketQuest-Omnifacts  
Michele Erskine, CBS Outdoor  
Jan Evanski, Corus Radio Vancouver  
Eleanor Friedland\*  
Lorraine Hughes\*  
Marilyn King, Pattison Outdoor Advertising  
Norm Kirk\*  
Stephen Lawson, Hudson's Bay Company  
Larry LaPorta, Beiersdorf Canada Inc.  
Helena Lazar, Publicis  
John Leckie, Gowling Lafleur Henderson LLP  
Louise Lusic\*  
Yvonne Martin-Newcombe\*  
Margo Northcote, creative consultant  
Sheryl O'Toole, Peoples Drug Mart  
Andeen Pitt, Wasserman & Partners Advertising  
Suzanne Raitt, Newspapers Canada  
Kate Reynolds-Braun, *The Globe and Mail*  
Nancy G. Rubin, Stewart McKelvey  
Adam Seely, Pattison Outdoor Advertising  
Helen Smallcombe\*  
Pat Sullivan\*  
Michelle St-Jacques, Unilever Canada Inc.  
Teresa Tsuji, Rogers Healthcare Group  
Robert Wyckham\*  
Ted Ykema, Pfizer Canada Inc.

### LE CONSEIL DES NORMES

Raymonde Lavoie, (présidente), DesArts Communication  
Ronald Béliard\*  
Elena Chow\*  
Philippe Comeau, LG2  
Luc-André Cormier, V Interactions Inc.  
Sylvain Desrochers\*  
Denis Dompierre\*  
Christiane Dubé, La Presse  
Paul Hétu†, Association canadienne des annonceurs Inc.  
Diane Lapointe, Gaz Métro  
Brigitte Lefebvre\*  
Lucienne Lemire\*  
Alykhanhthi Lynhiavu\*  
Nadia Martel, Bombardier Produits Récréatifs Inc.  
Marie-Luce Ouellet, AAPQ  
Gilber Paquette, Hebdo Québec  
Diane Patenaude†, V Interactions Inc.

Lise Plante, Conseil québécois du commerce de détail  
Manon Richer, Pfizer Canada Inc.  
Carole Thibault, Danone Inc.  
Joëlle Turgeon, Société Radio-Canada  
Dominique Villeneuve†, AAPQ

†Alternate

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## HOW TO SUBMIT A CONSUMER COMPLAINT

If you have a concern about an ad you see or hear currently running in Canadian media, you can submit a complaint to ASC using the [Online Complaint Submission Form](#).

Note re Confidentiality: Your complaint and all correspondence between you and ASC about the complaint is confidential and may not be made public. ASC cannot accept or proceed with a complaint if confidentiality is not maintained by a complainant.

Be sure to provide the following information in your submission:

- Your name, complete mailing address and phone number.
- Explain the reason or basis for the complaint and, if known, the provision(s) of the *Code* that may apply.
- Identify the product or service being advertised.
- Identify the medium in which the advertisement appears (e.g. television, radio, online).
- 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 **Online Advertisements**: identify the date of viewing, website, and include a print-out of the advertisement and other applicable web pages (if any).
- 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. (Include a photograph if you can.)
- 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 **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.

To submit your complaint, complete the [Online Complaint Submission Form](#), or send your written complaint by fax to (416) 961-7904, or by mail to:

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