

Advertising Standards Canada

CANADIAN CODE OF ADVERTISING STANDARDS

The Canadian Code of Advertising Standards, 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 is the industry body committed to creating and maintaining community confidence in advertising.



Advertising Standards Canada
Les normes canadiennes de la publicité

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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 co-ordinated by, but altogether independent from, ASC.

Trade complaints about advertising, based on the *Code*, are administered under ASC's *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:

- **“Advertising”** and **“advertisement(s)”** are 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 on page 2) 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.
- **“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 political or government policy or issue, 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.
- **“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.

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 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.

INTERPRETATION GUIDELINES

The *Code* may be supplemented from time to time by *Interpretation Guidelines* that enhance industry and public understanding of the interpretation and application of the *Code*'s 14 clauses. The *Interpretation Guidelines* can be found on ASC's website (www.adstandards.com).

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. Advertisers and their representatives must substantiate their advertised claims promptly when requested to do so by Council.

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 inaccurate, deceptive or otherwise misleading claims, statements, illustrations or representations, either direct or implied, with regard to any identified or identifiable product(s) or service(s).

(b) Advertisements must not omit relevant information in a manner that, in the result, is deceptive.

(c) All pertinent details of an advertised offer 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 visible and/or audible.

(e) Both in principle and practice, all advertising claims and representations must be supportable. 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 due recognition of the various costs of doing business.

(f) The advertiser must be clearly identified in an advocacy advertisement.

2. DISGUISED ADVERTISING TECHNIQUES

No advertisement shall be presented in a format or style that conceals its commercial intent.

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 fulfil 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 representations of opinion or preference, must reflect the genuine, reasonably current opinion of the individual(s), group or organization making such representations, and must be based upon adequate information about or experience with the product or service being advertised, 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 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. SUPERSTITION 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 that based upon race, national origin, religion, sex or age;
- (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 e-mail, mail, or fax.

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

- Complete the Online Complaint Submission Form available on ASC’s website (www.adstandards.com).

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

- Include your full name, telephone number, complete mailing address and (if available) fax number and e-mail 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 on page 8.

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 *Trade Dispute Procedure* or *Special Interest Group Complaint Procedure*.

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 is, substantially, also the subject of litigation or other legal action then actively undertaken and pursued in Canada; or 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 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 the complaint is beyond the resources of ASC to resolve under this *Procedure*; or that

e) the complainant is abusing this *Consumer Complaint Procedure* by having as one of the complainant's primary intentions to generate publicity for a cause or issue.

COMPLAINT REVIEW PROCESS

If, after a complaint is received, there is 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.

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 advertiser, advertising agency and media sectors. Each party will be given at least five working days advance written notice of the date of the appeal hearing.

Both the advertiser and the complainant will be requested to make their submissions in writing to the Appeal Panel. The submissions must be brief, confined strictly to the matters under appeal and received by ASC at least two full working days in advance of the appeal hearing.

Decisions of Appeal Panels will be by majority vote and will be sent to both parties within five working days of the appeal hearing. At the appeal hearing, the complaint will be treated as a new complaint and the matter reconsidered in its entirety.

Decisions by Appeal Panels will be binding and final.

ADVERTISING 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 advertising complaints reports will be divided into two sections. One section will provide details, including advertiser and advertisement identification, of those consumer complaints upheld under the *Code*. In this section, advertisers will be entitled to state their position on their advertisements about which Council has upheld one or more complaints. The other section will summarize, without naming the advertiser, consumer complaints upheld by Council about advertisements dealt with appropriately by the advertiser. Appropriate action by the advertiser 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 and, in the case of retail advertising, provide a correction advertisement that appears in consumer-oriented media addressed to the same consumers to whom the misleading or offending advertising was originally directed.

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 fulfil 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 advertising standards by which industry wishes to be held accountable. 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 voluntarily comply with the decision of Council, ASC:

- will advise exhibiting media of the advertiser's failure to co-operate and request media's support in no longer exhibiting the advertising in question; and
- may publicly declare, in such manner as Council deems appropriate, that the advertising in question, and the advertiser who will be identified, have been found to violate the *Code*.

FOR MORE INFORMATION

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

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