



STAFF REPORT ACTION REQUIRED

TTC Corporate Policy Review: Advertising on TTC Property

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| Date: | June 15, 2017 |
| To: | TTC Board |
| From: | Chief Executive Officer |

Summary

At its meeting of December 20, 2016 the Board approved a motion by Chair Josh Colle requesting that TTC staff undertake a review the TTC's Advertising on TTC Property policy and report back to the Board.

TTC staff in Customer Communications and Legal departments worked together to review Canadian legislation, best practices in other Canadian transit agencies, and have revised and updated the policy to reflect current realities in advertising on transit and develop a review process to may better respond to complaints.

The purpose of this report is to update the policy with the proposed revisions.

Recommendations

It is recommended that the Board:

1. Approve the following TTC Corporate Policy, as amended, which is attached as Appendix A: Advertising on TTC Property.

Financial Summary

This report has no financial impact.

Accessibility/Equity Matters

There are no accessibility or equity impacts associated with this report.

Issue Background

The TTC has a contract with Pattison Outdoor, which is the third party responsible for selling advertisements and the initial review of any advertising content. At Pattison's request, TTC staff in the Customer Communications department conduct a review of many proposed advertisements to determine if they meet the criteria in the TTC's advertising policy, and applicable advertising guidelines (including the Canadian Code of Advertising Standards), Canadian legislation and Canadian court judgments.

The Canadian Charter of Rights and Freedoms guarantees everyone the rights and freedoms set out in it, including the freedom of expression. In a 2009 court decision, the Supreme Court of Canada ruled that a public transit agency is subject to the Charter in its role as the host of advertising. If the TTC chooses to accept advertising on TTC property, it must not limit the expression of freedom of an advertiser by refusing an advertisement except as permitted under Section 1 and/or 2(b) of the Charter. Section 1 of the Charter provides that Charter rights are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Decision History

At its meeting on December 20, 2016 Chair Colle moved a motion to have staff undertake a review of the TTC Advertising Policy. This report and the revised policy are a result of that review.

[Link to Decision History - Item #23 Board Meeting 2005 - December 20, 2016](#)

https://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/December_20/Reports/23_Correspondence_Request_to_TTC_for_Removal_of_Advertising_on_TTC_Property.pdf

Comments

Staff reviewed the existing Advertising on TTC Property policy and identified areas where the policy and process could be clarified and strengthened.

The policy sets out the decision making process and responsibility with respect to the acceptability and removal of advertisements on TTC property. The TTC Board reserves the right to review any advertisement to determine whether it complies with the requirements as set out in the policy.

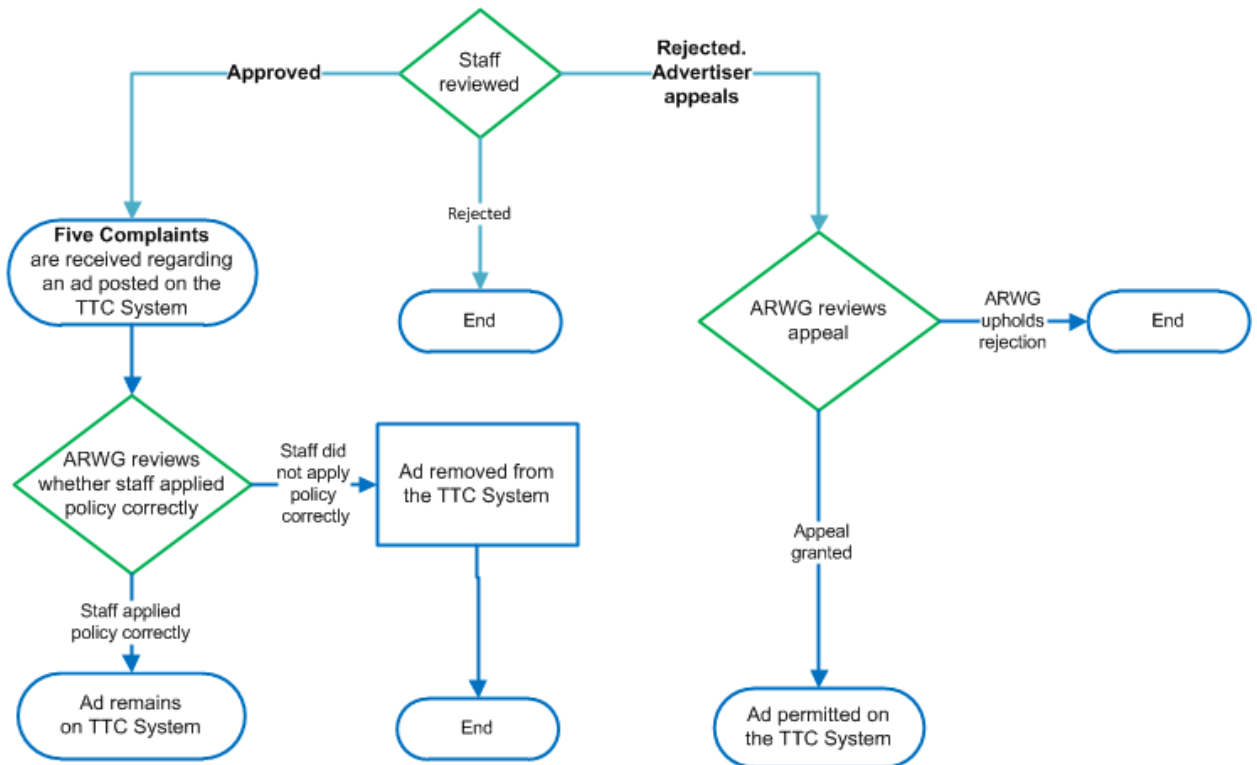
The revised policy is attached as Appendix A. The details of recommended changes include:

- Updating the policy to include reference to the 2009 Supreme Court of Canada decision that held that a public transit agency is subject to the Charter in its role as the host of advertising. If the TTC chooses to accept advertising on TTC property, it must not limit

the expression of freedom of an advertiser by refusing an advertisement except as permitted under Section 1 and/or 2(b) of the Charter. This provides critical context to TTC staff’s review of advertisements and the limitations the Supreme Court of Canada placed on public transit agencies to deny an advertisement.

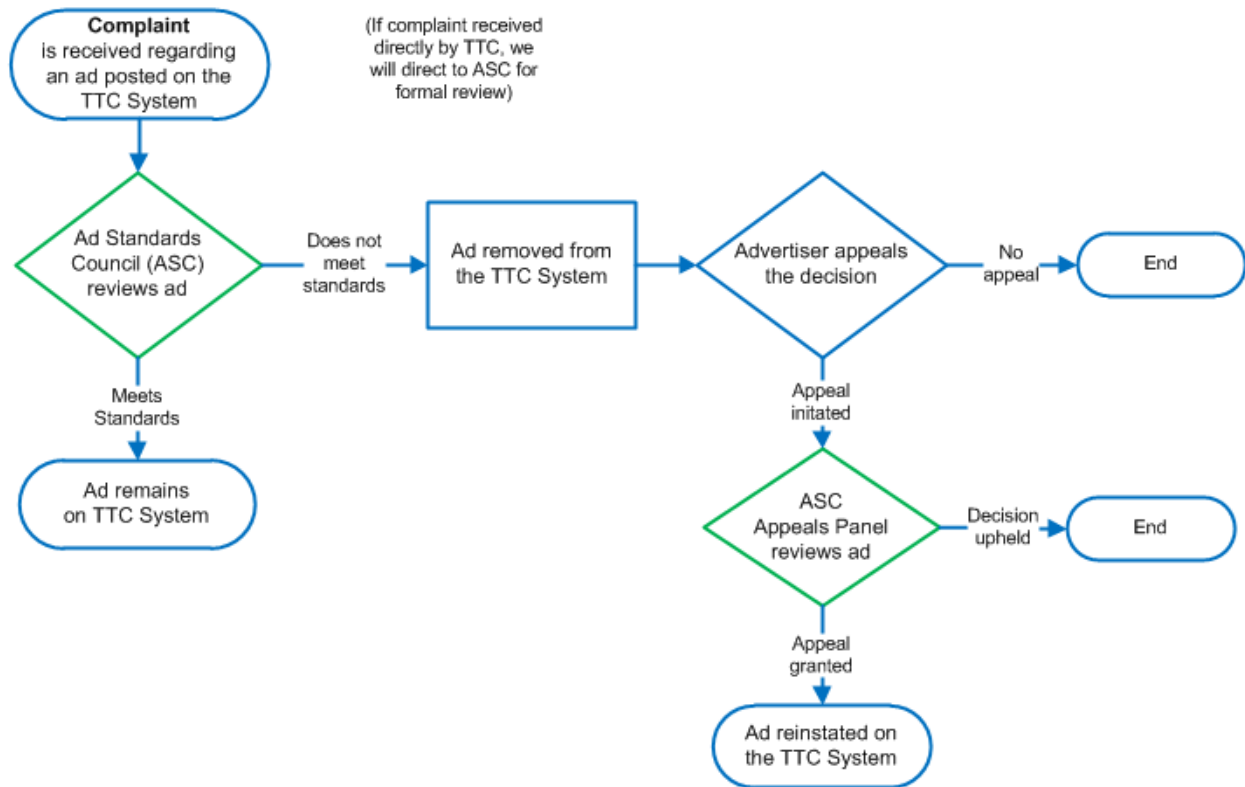
- For advertisements posted on TTC property, the revised policy provides a clear complaint process through an independent third party entity. All complaints of advertisements will be directed to Advertising Standards Canada (ASC) for a review to determine compliance with ASC accepted advertising requirements. ASC has developed The Canadian Code of Advertising Standards (advertising code) that establishes the requirements for acceptable advertising in Canada. The advertising code is attached as Appendix B.
- ASC is the national not-for-profit advertising self-regulatory body. ASC has been successfully fulfilling this role as an adjudicating and regulatory body since 1957 and the TTC is a member in good standing and would abide by any ASC decision or recommendation.

Current and Proposed Process



ARWG- Advertising Review Working Group

Proposed ASC Review Process



ASC Complaint/Review Process:

Consumer complaints can be made to ASC by the following methods:

- Online at www.adstandards.com
- By fax to 416-961-7904
- By mail to: Advertising Standards Canada
175 Bloor Street East
South Tower, Suite 1801
Toronto, ON M4W 3R8

Additional information of the ASC consumer complaints process can be found at <http://www.adstandards.com/en/ConsumerComplaints/theConsumerComplaintsProcess.aspx>

Once received, ASC reviews the consumer complaint in accordance with the provisions of advertising code. Complaints that raise potential issues under the advertising code are evaluated by independent, volunteer bodies known as the Standards Councils. The Standards Councils, made up of industry experts and public representatives, including those from the legal community, play a critical role in ensuring the objective, balanced and fair adjudication process.

ASC Complaints Snapshot 2016:

- 1,639 complaints submitted relating to 1,237 advertisements
- 59% of pursued complaints alleged inaccurate or misleading advertising
- 225 complaints received about retail advertising – the highest by sector
- 264 complaints about 222 advertisements warranted investigation; of those:
 - 178 complaints about 171 advertisements were administratively resolved by ASC
 - 44 complaints about 30 advertisements were upheld by Standards Councils (contravened the Advertising Code)
 - The remaining 42 complaints about 21 advertisements were not upheld by Standards Councils (did not contravene the Advertising Code)

An Advertising Review Panel (ARP) will be created in place of the current Advertising Review Working Group. ARP will be made up of TTC senior staff and the main role of ARP will be to conduct a review of appeals from advertisers when the TTC declines their advertisement prior to being posted on TTC property.

When TTC staff determine that an advertisement does not meet the TTC advertising policy and rejects an advertisement, the advertiser may revise and resubmit the advertisement to TTC staff for secondary review, or the advertiser may ask for an appeal of staff's decision by ARP.

Contacts

- Cheryn Thoun – Head of Customer Communications, 416-393-3800
- Brian Leck – Head of Legal and General Counsel, 416-393-3860

Attachments

- Appendix A – Advertising on TTC Property Policy – Revised Version
- Appendix B – The Canadian Code of Advertising Standards

Appendix A. – Advertising on TTC Property Policy

1.0 RESPONSIBILITY

Head - Customer Communications

2.0 PURPOSE

2.1 To establish the criteria for the acceptability of Advertisements for posting on TTC Property and the process by which Advertisements will be reviewed and accepted.

3.0 OBJECTIVE

3.1 The Canadian Charter of Rights and Freedoms (the “Charter”) guarantees everyone the rights and freedoms set out therein, including the right to freedom of expression. In a 2009 court decision, the Supreme Court of Canada ruled that a public transit agency (like the TTC) is subject to the Charter in its role as the host of advertising. If the TTC chooses to accept advertising on TTC Property, it must not limit the expression of an Advertiser by refusing an Advertisement except as permitted under Section 1 and/or 2(b) of the Charter, as applicable.

3.2 The limitations on the content of an Advertisement set out in this policy must be viewed in the context of the TTC’s limited legal ability to deny an Advertisement under the Charter, as provided by clause 3.1, while also ensuring that it continues to provide a safe and welcoming public transit system.

3.3 This policy sets out the decision making process and responsibility with respect to the acceptability and removal of Advertisements on TTC property. The TTC Board reserves the right to review any Advertisement to determine whether it complies with the requirements as set out in this policy.

4.0 DEFINITIONS

The following definitions apply within the context of advertising on TTC Property.

4.1 Advertiser

The entity requesting from the Company to post Advertisement(s) on TTC Property.

4.2 Advertisement

Any message (the content of which is controlled by the Advertiser), or proposed message, with the intent to influence TTC riders’ choice, opinion or behaviour, which message is posted (or is to be posted), and includes Advocacy Advertisements and Election Signs.

4.3 Advocacy Advertisement

An Advertisement which presents information or a point-of-view that attempts to influence public opinion on specific political, economic or social issues.

4.4 Applicable Laws

Any federal, provincial or municipal law, rule, statute, regulation, by-law (including City of Toronto by-laws), order, ordinance, protocol, policy, notice, direction, judgment or other requirement issued by any government, board, commission or tribunal, or any court or regulation-making entity, or regulatory authority having jurisdiction over advertising. Applicable laws shall include TTC policies. For greater clarity, Applicable laws includes the Ontario Human Rights Code.

4.5 ARP

Refers to the TTC Advertising Review Panel. The ARP is made up of TTC staff whose role it is to review Advertisements in accordance with Sections 6 and 7 of this policy.

4.6 ASC

Refers to Advertising Standards Canada. ASC is the not-for-profit Canadian advertising industry body committed to creating and maintaining community confidence in advertising and to ensuring the integrity and viability of advertising through industry self-regulation.

4.7 ASC Code

Refers to the Canadian Code of Advertising Standards. The ASC Code is the advertising industry's principal instrument of advertising self-regulation in Canada administered by ASC. The ASC 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.

4.8 Company

The entity which has contracted with the TTC for the right to sell advertising space on TTC Property for the purpose of posting Advertisements.

4.9 Election Signs

As defined in Chapter 693 of the City of Toronto Municipal Code.

4.10 TTC Property

All lands, facilities, structures, stations and vehicles owned, leased, occupied or maintained by the TTC, including platform video screens.

5.0 PROCESS FOR ADVERTISEMENT POSTING ON TTC PROPERTY

- 5.1 The Advertiser is to deal directly with the Company.
- 5.2 The Company is responsible for interpreting and implementing this policy. The Company shall accept and post any Advertisement that meets the guidelines for acceptance in accordance with this policy.
- 5.3 Any Advertisement with reference to public transit and/or the TTC must be presented by the Advertiser to the Company for review and acceptance prior to the production of the Advertisement. The Company shall forward the Advertisement to TTC staff for further review and acceptance.

6.0 REVIEW

- 6.1 If, in the opinion of the Company, an Advertisement does not comply with the guidelines for acceptance under this policy, the Company shall forward the Advertisement to TTC staff. TTC staff shall review the Advertisement and determine whether the Advertisement complies with the guidelines for acceptance under this policy. If TTC staff determines that the Advertisement does not comply with the guidelines for acceptance under this policy, the Advertisement shall not be permitted to be posted on TTC Property and the Company will be so advised. The Company shall advise the Advertiser accordingly.
- 6.2 In the event TTC staff determines that an Advertisement does not comply with the Guidelines for Acceptance as set out in Section 8 of this policy, the Advertiser may request, through the Company, a review by ARP of the TTC staff decision. ARP shall review the decision of TTC staff for determination as to whether TTC staff properly applied this policy.
- 6.3 A review by TTC staff and ARP under this policy shall be in accordance with the prevailing advertising review process and in the context of the objective of providing a safe and welcoming public transit system.

7.0 COMPLAINTS

- 7.1 A person wishing to make a complaint about an Advertisement posted on TTC Property may file the complaint with ASC at www.adstandards.com. Should the TTC receive a complaint of an Advertisement posted on TTC Property, the TTC shall direct the complainant to file the complaint with ASC at www.adstandards.com.
- 7.2 In the event that ASC determines that a complaint is not within its mandate to investigate, the complaint shall be referred to ARP for review to determine whether the Advertisement at issue complies with the Guidelines for Acceptance as set out in Section 8 of this policy.

7.3 The TTC shall have the right to reject, remove, or to have the Company remove, any Advertisement from TTC Property at no cost to the TTC.

8.0 GUIDELINES FOR ACCEPTANCE

8.1 Any Advertisement must meet all of the following:

8.1.1 Comply with Applicable Laws.

8.1.2 Comply with the ASC Code.

8.1.3 Comply with any rule, procedure, by-law or code of any professional regulatory body.

8.1.4 Comply with the Objective as set out in Section 3 of this policy.

8.1.4 Not discredit the business or service of public transit, the TTC or its employees, nor have an adverse effect on the image of the TTC, or public transit, as a safe and reliable form of transportation.

8.2 The Advertiser is responsible to satisfy itself that the Advertisement complies with Applicable Laws.

8.3 As part of any review or complaint, the TTC, ARP or ASC, as applicable, may consider information contained in the Advertisement including logos, website addresses and referenced websites, the content of the website addresses and the referenced websites, and the background and history of the Advertiser and any other entity referenced in the Advertisement.

9.0 REFERENCE SOURCES

- The Canadian Code of Advertising Standards
- City of Toronto Municipal Code and By-laws
- Ontario Human Rights Code

The Canadian Code of Advertising Standards

REVISED OCTOBER 2016



Advertising Standards Canada
Les normes canadiennes de la publicité

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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 Fantasy¹

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 Children⁴

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 Children²

- 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 Living⁴

- 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 Consumption⁴

- 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,

¹ May 2003

² April 2004

⁴ 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 Presentation⁴

- 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 Prohibitions⁴

- 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 Pressure⁴

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

g. Price and Purchase Terms⁴

- 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 Claims⁴

- 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. Safety⁴

- 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 Values⁴

- 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. General³

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

³ April 2006

⁴ 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. Assessment⁴

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

Interpretation Guideline #3 – Environmental Claims⁵

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 Advertising⁶

- 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?

⁴ September 2007

⁵ November 2008

⁶ 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, Reviews⁷

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/system/files/documents/plain-language/pdf-0205-endorsement-guides-faqs_0.pdf, 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.

⁷ October 2016

For More Information

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

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