



STAFF REPORT ACTION REQUIRED

Date Due Slip Advertising – Customer Complaint

ate:	June 13, 2013
To:	Advertising Review Working Group
From:	Director, Communications, Programming and Customer Engagement

SUMMARY

The purpose of this report is to provide details of a complaint submitted by a customer about specific advertisements on the back of the Library's date-due-slips.

RECOMMENDATIONS

The Director, Communications, Programming and Customer Engagement recommends that the Toronto Public Library Board:

1. considers the customer complaint about advertising on the back of the Toronto Public Library's date-due-slips

FINANCIAL IMPACT

The Library's advertising policy states that "The Library, at its sole discretion, may remove advertising that contravenes this policy from its property, at no cost to the Library". Therefore, the Library would not incur any direct costs from removing the advertising from the date-due-slips should the Board deem them to be in contravention of the policy.

However, in order to remove the specific advertisements, all receipt rolls would need to be removed from all branches and recycled, and new rolls would need to be printed and redistributed to the branches. This would mean that the vendor would be operating the campaign at a significant loss and may put the viability of the pilot and future campaigns at risk. If the summer campaign cannot be rerun, the Library could forgo cost savings in receipt paper purchases of up to \$10,000 for the three remaining months of the campaign.

The Director, Finance & Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its February 27, 2012 meeting, the Library Board approved an advertising policy and the implementation of advertising on the reverse side of Library date-due-slips.

In September 2012, the Library contracted the services of Receipt Media to implement the Library's advertising program.

In April 2013, the Library began a six-month pilot of an advertising program on the back of its date-due-slips with eight advertisers advertising in the spring campaign (two months), and six advertisers advertising in the summer campaign (four months).

On May 17, 2013 the Library received a complaint from a customer about specific advertisements on the back of the Library's date-due-slips.

ISSUE BACKGROUND

The customer expressed concerns about the following advertisements, provided the following reasons for those concerns, and requested that the Advertising Review Working Group (ARWG) take the following actions. (The full text of the customer complaint can be found in Attachment 1 of this report.)

Advertisement	Concern	Action
Diamond & Diamond Lawyers	“have no conceivable relationship with library usage”	Remove from date-due-slips
Pizza Pizza and Pizza Nova	“Fast food has no nexus or purpose with the operation of the public library”	Remove from date-due-slips
MADD (Mothers Against Drunk Driving)	Isn’t a paid advertisement. It’s a free placement of a PSA.	Label future free PSAs as such.
Receipt Media	The vendor who is selling the advertising space is getting free advertising space to advertise its company	Remove from date-due-slips

The customer also asked for acknowledgment from the ARWG that all current advertising insertions were reviewed and approved in advance, with full knowledge that MADD's insertion was a free PSA and that Receipt Media was advertising itself.

Note that the Library's summer date-due-slip advertising campaign currently running from June to September 2013 does not include advertisements from Pizza Pizza, Pizza Nova, or Diamond and Diamond Lawyers. It does include advertisements from MADD and Receipt Media. Copies of the specific advertisements can be found in Attachment 2.

COMMENTS

Advertisements that have nothing to do with the business or operation of the Library (Diamond & Diamond Personal Injury Lawyers, Pizza Pizza, Pizza Nova)

The Library's advertising policy (See Attachment 3) does not state that advertisements must be related to the business or services of the Library. The underlying principles of the Library's policy balance "... support[ing] and facilitat[ing] the development of mutually beneficial advertising relationships between the Library, the business community and other organizations" with "... adversely affect[ing] public confidence in the Library or the value of the Library brand."

The policy also explicitly states that "The acceptance of advertising by the Library is not an endorsement of a product or service" and that "advertising on Library property does not provide, nor imply, Library endorsement of advertisers, their messaging or their points of view."

When reviewing the proposed advertisers and the creative content of the proposed ads, Library staff took into consideration the policy directives which state that "the Library will not accept ... advertising that detracts from the Library's public image" or that "is considered of questionable taste, or which in the Library's discretion is considered irritating in its style, content, or method of presentation." In the opinion of staff, the ads in question did not meet this criteria because the creative content and its placement within the Library environment is unobtrusive and simple in its presentation, and the advertising organizations and/or their products and services are not disreputable or inappropriate.

Advertisements that are unpaid (MADD, Receipt Media)

The Library's advertising policy states that:

"Library staff is authorized to establish or negotiate and charge fees for advertising or contract a third party company to do so.

"Third party companies may be contracted through the Library's procurement policy and procedures to implement some, or all, of the Library's advertising program components."

The contract with the vendor for the pilot implementation of the Library's date-due-slip advertising requires that the vendor take on all costs and responsibilities associated with the sales, printing, distribution and management of the advertising program, which includes the negotiation of pricing of the advertisements with the advertisers. In return, the Library receives the receipt paper free of charge. It is the prerogative of the vendor to discount or give away advertising space to incent advertisers and/or to fill unpaid spaces. Receipt Media also provided free advertising space to the Toronto Public Library Foundation for the spring and summer campaigns.

Receipt Media advertising its own business

It is common practice for advertising vendors to promote the benefits of their advertising channels using those advertising channels. For example, park bench advertisements often advertise their available spaces with promotional messages such as “See? You just proved bench advertising works”, or available billboard spaces advertise “This space for rent” or “Advertise here”. The promotion of Receipt Media on the back of the Library’s date-due-slips benefits the Library because it encourages would-be advertisers to contact the vendor to advertise on the Library’s channel.

CONTACT

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SIGNATURE

Linda Hazzan
Director, Communications, Programming and Customer Engagement

ATTACHMENTS

Attachment 1: Full text of complaint from customer

Attachment 2: Samples of the advertisements identified in the customer’s complaint

Attachment 3: Toronto Public Library Advertising Policy

Attachment 1: Customer Complaint

Complaint regarding violations of TPL advertising policy

This complaint concerns alleged violations of Toronto Public Library's advertising policy as it relates to ads on the obverse of date-due slips (and also hold slips, a use the Library never told the public about).

Policy claims

Throughout the development of this unnecessary, unremunerative, unwanted, ethically offensive advertising program, the Library swore up and down that advertising would be consistent with the Library's mission and would be in good taste.

1. Board Chair Paul Ainslie: "The policy would follow the Canadian Code of Advertisement Standards. We also have our advertisement policies and procedures in place. So it would be done in a tasteful manner, and I have a great amount of faith in our team" ("[Funding gap has library mulling more ads](#)," *National Post*, 2012.02.29).
2. In an interview on *Metro Morning*, CBC Radio One, on 2013.03.11, City Librarian Jane Pyper said: "The kinds of place that are expressing interest are other cultural organizations, some business that are involved in learning, some other nonprofits that are also in the learning business. So ones where they think that they might find a sympathetic audience." (She meant the advertisers would find a sympathetic audience among library users.)

But what kinds of ads would the Library reject? "I think anything that might undermine that message – a very clear, *clear* neutrality around information and exchange of ideas. "

3. The original request for proposals (TPL 018/2012) stated:

The Library reserves the right to reject advertising that, in the Library's sole opinion, may adversely affect public confidence in the Library or the value of the Library brand. [...]

The Library will *not* accept... advertising that detracts from the Library's public image or could place the Library at the centre of a controversy or sensitive issue[.]

Violations

The following advertisements on TPL slips violate the policy and stated objectives, I claim.

Diamond & Diamond Lawyers

These personal-injury lawyers are, to put it bluntly, ambulance-chasers and have no conceivable relationship with library usage. ("Pile of books graze your toe at the Reference Library? Call 1-800-567-HURT!" the ads insinuate.) Diamond & Diamond refused to explain to me how its advertising was remotely appropriate for a library setting.

MADD

The advertisement for Mothers Against Drunk Driving isn't actually an advertisement. It's a free placement as a public-service announcement, Deb Kelly of MADD told me via E-mail:

The message you've contacted us about is one of our public service announcements (PSA). We have some of these available for newspapers, magazines, and, in this case, the company which does those receipts. They generally promote one of our programs or a general sober-driving message. When the venues/companies have space available in their publications, on their receipts, etc., they donate it to us free of charge to help us share our message with their various audiences. In this instance, the company which does the receipts had some space available to donate and we graciously accepted it.

This particular PSA promotes our Campaign 911 public-awareness program, which lets people know they can call 911 if they see a driver they suspect is impaired. It is an important way in which the public can help police take impaired drivers off the roads. Given that impaired driving continues to kill more than 1,000 people each year and injures close to 64,000 others, this is a public-safety message which we want to reach as many people with as possible and one we believe is compatible with most audiences.

While MADD could be described as one of those “other nonprofits” Pyper mentioned, the fact remains that drunk driving has nothing to do with a public library. I can live with its advertisements. What I object to is the way this public-service announcement is misrepresented as a paid advertisement and not as the freebie it is.

Pizza Pizza and Pizza Nova

Fast food has no nexus with the purpose and operation of a public library. While not as offensive as, say, advertisements for condoms or tampons, the fact remains that neither Pizza Pizza nor Pizza Nova has anything to do with the Library.

As evidence of the alleged inability of the monopoly ad-sales vendor, Receipt Media, to actually sell ads, these pizza joints should have been given category exclusivity. That would mean library patrons would be subjected to ads from one and only one pizza outlet. There shouldn't be any such advertisements at all, but the fact there are two such ad campaigns, from chain-store competitors, adds insult to injury.

Pizza Pizza and Pizza Nova refused to explain to me how their advertising was appropriate for a library setting.

Receipt Media

Receipt Media, the monopoly ad-sales vendor for this misadventure, has its own advertisement on the back of Library slips. According to its [rate card](#), such advertisements are worth \$8,000 for a six-month insertion. (Or, as I would put it, the low, low price of \$15,000 per year – \$1,000 off!)

At no time did the Library inform the public that a paid vendor for the advertising program would also be able, in effect, to write cheques to itself in the equivalent of \$15,000 a year by running advertisements for itself. I doubt actual money changed hands; we are talking about nominal value.

The advertisements are unrelated to the Library and its purpose because they read, in their entirety: “Get your business noticed with Receipt Media. 416.646.2281” (plus an internal code number). They are straight-up ads for an ad agency.

If Receipt Media were actually informing would-be advertisers that its company is the vendor of record for the project, at first blush that might seem to be a reasonable usage. But even that would be inconsistent with the Library’s purpose and stated guidelines. Take the example of print magazines. Even when a third-party agency handles ad sales, where an advertiser looks for that information is *in the magazine* on its masthead, not in an advertisement in the magazine. Where an advertiser should go in order to inquire about advertising is the Toronto Public Library in first instance; staff could then refer the inquiry to the contracted agent. (Any really canny advertiser would just Google it. I am saying the correct protocol is to contact the Library first, not a third-party vendor.)

Here, Receipt Media double-dips: It gets a vig on all or part of advertising sales for the library and also runs ads for itself, presumably for free.

Receipt Media refused to answer questions about any of the foregoing insertions or its own.

Other facts

The following statements are not complaints but amount to information I am passing on to the Working Group.

- The advertiser billed as `Learn4Life.CA` is really the Toronto District School Board. Its representatives were initially surprised to learn that TDSB was advertising at all. Eventually I was told that its continuing-education division placed the advertisements. But one side of the operation did not know what another side was doing. (I expect this will come as a surprise to the Working Group.)
- H&R Property Management Ltd. is a marginal advertiser. You could really stretch it and claim that library users sometimes need to look for an apartment. I believe H&R is not eligible to advertise based on the Library’s stated policies, but I am willing to give them a bare pass.

Remedy requested

1. The Library’s original RFP for date-due advertising stated that it “reserves the right to remove any advertising, at no cost to the Library, even if it has been previously reviewed and approved.”

1. I need a statement from the Working Group that all current advertising insertions were reviewed and approved in advance, with full knowledge that MADD's insertion was a free PSA and that Receipt Media was advertising itself.
2. Consistent with policy, I request the immediate removal of the advertisements for Diamond & Diamond and both pizza chains and the removal of advertising for Receipt Media.
2. In all future printings (not all future campaigns – starting with the next production run of paper stock), labelling of free public-service announcements as such.

Next step

The Working Group is on notice that the next step is an organized public boycott of present and future Library advertisers.

Submitted by Joe Clark
May 17, 2013

POLICY: **ADVERTISING POLICY**

SECTION: **Section II – General Policies – Miscellaneous**

MOTION#/DATE: **12 - 034 – February 27, 2012**

REVISED: **12 - 217 – December 17, 2012**

Effective Date

February 28, 2012

Policy Objective

The objective of this policy is to provide a framework and guidelines regarding advertising on Toronto Public Library (the “Library”) property (e.g. publications, websites, video screens, trucks and other spaces identified by the Library), and the processes by which advertising is managed, approved and/or appealed.

Underlying Principles

1. The Library’s advertising program supports and facilitates the development of mutually beneficial advertising relationships between the Library, the business community and other organizations.
2. Financial benefits that are generated by the advertising program are to assist in the delivery of library service to the public.
3. The Library’s advertising policy will:
 - a. comply with the mandate, mission and values of the Library;
 - b. protect the Library’s principles of intellectual freedom` and equity of access to information, programs, services and collections;
 - c. protect the confidentiality of customer records as governed by the Municipal Freedom of Information and Protection of Privacy Act and the Library’s Access to Information and Protection of Privacy Policy;



- d. be consistent with, and complementary to, other related Library policies and programs (e.g. Sponsorship, Naming, Displaying and Distributing for Public Information, Room Bookings, Procurement Processes); and
- 4. Library services are highly valued and used by residents of Toronto. The Library has a national and international reputation for excellence in service delivery and has a leadership role in the library community. The Library reserves the right to reject advertising that, in the Library's sole opinion, may adversely affect public confidence in the Library or the value of the Library brand. This includes advertising that could be construed as being targeted to children by its manner, the space that it occupies, and the intent of the advertised product or service.

Policy Statement

The Library recognizes that the sale of commercial advertising is a source of revenue for the Library. However, the Library's primary mission is to provide high quality library service to Toronto's diverse residents in a welcoming and supportive environment. The Library provides neutral public spaces and universal access to information, knowledge, resources, collections, services and programs that help to enrich lives, facilitate social engagement, and enhance opportunities for success for Toronto's diverse population.

The Library will accept paid advertising that meets the policy, principles and specific directives outlined in the Policy and that fulfills the Library's revenue objectives. The Library will not accept advertising that is contrary to its service role or that the Library, in its sole discretion, determines is not in the best interests of the Library. The sale of advertising by the Library will not influence the acquisition of Library collections or Library services.

All commercial messages carried by the Library must be approved by Library staff prior to placement in or on Library advertising vehicles.

The Library reserves the right to accept or refuse any commercial message, to limit the period for which a commercial message is approved and to withdraw approval.

The acceptance of advertising by the Library is not an endorsement of a product or service.

It is the responsibility of advertisers to ensure that proposed advertising does not contravene any applicable legislation prior to submission to the Library for consideration. The Library assumes no liability for advertisements that contravene legislation and all advertisers will be required to indemnify the Library for any costs or



damages the Library may incur as a result of their advertising.

This policy also includes directives to ensure that advertising does not negatively affect other sources of sponsorship and fundraising revenue secured by the Library or the Toronto Public Library Foundation (the “Foundation”).

Scope

The following policy applies to all arrangements whereby persons other than the Library or the Foundation or a person approved under another Library policy pays for advertising on approved Library advertising property including, but not limited to, publications, websites, video screens, trucks and other spaces identified by the Library.

This policy does not apply to:

- Sponsorship (see Sponsorship Policy);
- Naming (see Naming Policy);
- In-branch distribution of non-commercial materials (see Displaying and Distributing Information for the Public Policy);
- Affiliate programs;
- Philanthropic gifts, donations or grants;
- Government grants or funds;
- External program or project partnerships, where the Library sponsors, partners with, or contributes to programs or projects of other organizations;
- Advertising targeted to children in the following categories: books or other material in the Library’s collections, government advertisements, and public service announcements.

Specific Directives

The Library considers advertising proposals from persons other than the Library or the Foundation or a person approved under another Library policy based on the guidelines contained in this policy. The Library does not have an obligation to accept any advertising proposal. The Library, at its sole discretion, may remove advertising that contravenes this policy from its property, at no cost to the Library and all advertisers will be required to indemnify the Library for any costs or damages the Library may incur as a result of their advertising.

The Library will consider advertisements based on the following guidelines:



1. The Library will implement the Advertising Program in a transparent and accountable manner in compliance with the Library's policies and procedures.
2. Advertisements must be in compliance with City of Toronto by-laws; applicable provincial and federal laws and regulations, including the Ontario Human Rights Code; and the *Canadian Code of Advertising Standards* (see Appendix 1).
3. The Library does not accept advertising material promoting discrimination, stereotypes, socially unacceptable behavior, gratuitous violence, obscene or profane language or unfair representation. Without limiting the generality of the foregoing points, advertisements shall not:
 - a. condone any form of personal discrimination, including that based upon race, national origin, ethnic origin, religion, age, ancestry, colour, citizenship, creed (religion), sex, sexual orientation, gender identity, record of offence, marital/family status, same sex partnership status, or disability;
 - b. appear to exploit, condone, or incite violence; or directly encourage or exhibit obvious indifference to, unlawful or reprehensive behavior;
 - c. demean, denigrate, or disparage any identifiable person, group of persons, firm, organization, industrial or commercial activity, profession, product or service, 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;
 - e. promote views and ideas that are likely to promote discrimination and hatred;
 - f. cause or invite hostility or division between people of different racial or national groups, or might reasonably give rise to hostility or division.
4. Advertising must be appropriate for all ages, in keeping with the Library's goal of creating a welcoming and supportive environment for everyone.
5. Library audiences must know on whose behalf an advertising message is being presented by use of a brand name, logo, or other forms of identification.



6. Advertising on Library properties does not provide, nor imply, Library endorsement of advertisers, their messaging or their points of view. The Library reserves the right to explicitly disclaim endorsement of advertisers or advertising in any ad space.
7. Advertisers and advertising will not influence the selection and provision of library materials, programs, services or content. It must always be clear to audiences when external products, services or points of view are being advertised.
8. Delivery of Library branding, content, communications, services, programs or collections, as well as the Foundation's branding and communications, must not be impeded by the location, prominence, or messaging of paid advertising or advertisers.
9. Advertising promoting contests and lotteries must comply with the applicable provisions of the *Criminal Code*, the *Competition Act*, and any other applicable legislation.
10. The Library will NOT accept the following types of advertising content:
 - a. advertising that detracts from the Library's public image or could place the Library at the centre of a controversy or sensitive issue;
 - b. advertising that is considered of questionable taste, or which in the Library's discretion is considered irritating in its style, content, or method of presentation.
 - c. advertising that is partisan or political in nature;
 - d. the promotion of religious beliefs or convictions;
 - e. personal ads and notices, and notices of items for sale or rent;
 - f. the promotion of tobacco and alcohol companies and products.
 - g. the promotion of surveys, pledges, forms or petitions;
 - h. fundraising, unless otherwise agreed upon through mutual consultation between the Library and the Foundation;

- i. Commercial advertising primarily targeted to children, including but not limited to the commercial advertising of food and beverages directed to children.
- 11. Consistent with the Municipal Freedom of Information and Protection of Privacy Act and the Library's Access to Information and Protection of Privacy Policy, advertisers will not be given access to individual customer records and data. However, aggregated customer demographic information that is publicly reported by the Library may be used for advertising sales purposes.
- 12. Specifications and guidelines for advertising locations, sizes, formats and rates are established and managed by the Library and must be adhered to by the advertiser.
- 13. Should organizations with sponsorship, naming, affiliate program, donor, display and distribution agreements, or partnership agreements with the Library wish to advertise as part of the Library's advertising program, a separate advertising contract complying with this policy will be required.

Process for Advertising with the Library

- 1. The Advertising Policy, as approved by the Board, governs all advertising opportunities on Library property. The policy and advertising program are managed by the Library.
- 2. Library staff is authorized to establish or negotiate and charge fees for advertising or contract a third party company to do so.

Third party companies may be contracted through the Library's procurement policy and procedures to implement some, or all, of the Library's advertising program components, and

it is the responsibility of the company contracted to deliver the sale, posting and implementation of advertising within the agreed upon Library vehicle(s) in compliance with all terms and conditions of the advertising policy.

- 3. The Library will establish an Advertising Review Working Group (ARWG) comprised of Library Board members to make determinations on whether advertising is consistent with this policy in the event that a) an advertiser disagrees with the decision of a third party company or Library staff on whether advertising is inconsistent with this policy, or b) if a member of the public files a complaint claiming that advertising accepted by the Library is not consistent with



this policy. The ARWG will review advertising materials for acceptability, and will make recommendations to the Library Board, as required. The Library reserves the right to remove any advertising, at no cost to the Library, even if it has been previously reviewed and approved.

4. Any advertisement with reference to public libraries and/or the Library must be presented by the advertiser to the company and/or the Library for approval prior to the advertisement being produced. Library staff will review and provide approval to post.
5. In considering the approval and placement of commercial advertising, the Library will limit children's exposure to advertising by considering:
 - the manner in which the advertisement or promotion is presented, not accepting commercial advertising which uses animation, cartoons, puppets and persons that are well known to children;
 - the time and place that the advertising is presented, such as in areas of libraries and the website primarily designated for children;
 - the nature and intended purpose of the product or service that is advertised, such as products and services where the primary users are children (e.g. sugary cereals).
6. All advertisers should satisfy themselves that their proposed advertising does not contravene any applicable laws.
7. In instances where members of the public wish to file complaints or inquiries about advertising displayed on Library property, they may use existing Library feedback procedures.

Definitions

Advertising is a business arrangement where an external organization purchases or leases space, or time, on any form of Library property for the purpose of communicating with the public with the intent to influence their choice, opinion or behavior. Unlike 'sponsorship' it involves the use of contracted public advertising in set locations, for a set period of time. Advertising does not imply any reciprocal partnership arrangement since the advertiser is not entitled to any additional benefits beyond access to the space or time.

Advertising Review Working Group (ARWG) is a working group of the Board whose role is to review advertising materials on an as required basis and make recommendations to the Board on whether advertising is consistent with this policy in the event that there are disputes.

Advertising Standards Canada (ASC). The independent regulatory body of the Canadian Advertising Industry committed to creating and maintaining community confidence in advertising. Its mission is to ensure the integrity and viability of advertising through industry self-regulation.

Affiliate Program refers to a negotiated, mutually beneficial business arrangement between the Library and an external organization whereby the Library receives a referral fee or commission from sales when a customer clicks an affiliate link to get to the organization's website. A policy or agreement outside of the advertising policy is required.

Canadian Code of Advertising Standards. The advertising industry's principal instrument of advertising self-regulation and is administered by ASC. 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.

Children's Advertising. Promotional messages that specifically target young people by being broadcast, shown or displayed to an audience that is primarily children. For the purpose of this policy, a child is anyone 12 years old or younger.

Advertising to children is determined by taking into consideration its context, including:

- a) the manner in which the advertising or promotion is presented, such as the use of animation, cartoons, puppets and persons that are well known to children;
- b) the time and place that it is presented, such as in the children's areas of the library, where children's programming takes place, or on the children's website; and
- c) the nature and intended purposes of the product or service that is advertised, such as products and services where the primary users are children, e.g. sugary cereals.

A philanthropic gift or donation is an arrangement where a donor contributes cash and/or in-kind goods or services to the Library, or the Foundation, without expectation or requirement of a reciprocal benefit. While most donors expect some form of recognition as a result of their gift, the recognition is marginal in value relative to the value of the gift as defined by the Canada Customs and Revenue Agency.

A **sponsorship** is a mutually beneficial business exchange between the Library and an external organization whereby the sponsor contributes funds, products or in-kind services to the Library, and/or to the Foundation, in return for recognition, acknowledgement or other promotional considerations. Sponsorships involve an association between the sponsor and the Library and/or the specific program, event, service or activity being sponsored.

Toronto Public Library Foundation is an independent corporation with the mission to provide essential resources for the enhancement of Toronto Public Library and to allocate funds to priority needs not supported by municipal funding.

Accountability

The Director of Communications, Programming and Customer Engagement is responsible for the implementation of this policy.

The Advertising Review Working Group (ARWG) is responsible for reviewing advertising materials on an as required basis and for dispute resolution.

Related policies

- Displaying and Distributing Information for the Public
- Sponsorship
- Naming
- Access to Information and Protection of Privacy
- Procurement Processes

Appendices

Canadian Code of Advertising Standards



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

ADVERTISING STANDARDS CANADA

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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 the national and regional Consumer Response Councils (collectively referred to as Councils and individually as a Council). These autonomous bodies of senior industry and public representatives are supported and co-ordinated by, but altogether independent from, ASC.

Trade complaints about advertising, based on the *Code*, are separately 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”** 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 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, Councils will be encouraged to refer, when in their 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 a Council.

1. ACCURACY AND CLARITY

- (a) Advertisements must not contain inaccurate or deceptive claims, statements, illustrations or representations, either direct or implied, with regard to a product or service. In assessing the truthfulness and accuracy of a message, the concern is not with the intent of the sender or precise legality of the presentation. Rather, the focus is on the message as received or perceived, i.e. the general impression conveyed by the advertisement.
- (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 entity that is the advertiser in an advocacy advertisement must be clearly identified as the advertiser in either or both the audio or video portion of the advocacy advertisement.

2. DISCUISED 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 marketplace 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 other products, services, advertisements or companies, 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 any identifiable person, group of persons, firm, organization, industrial or commercial activity, profession, product or service 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 a 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 mail, e-mail, or fax. Telephoned complaints cannot be accepted.

To submit a complaint by e-mail:

- Complete the e-mail complaint form and follow the instructions provided on ASC's website (www.adstandards.com).

To submit a complaint by letter:

- 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 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 9.

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 deliberation by a Council 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 a 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

Complaints directed to ASC will be initially evaluated by ASC staff. If a complaint raises a potential *Code* issue and it concerns national advertising in the French-language, or advertising that appears only in Quebec, the complaint will be evaluated and decided by le Conseil des normes in Montreal. Complaints about an advertisement will be directed to one of the regional Councils identified in Appendix A to the *Code* if the advertisement relates to local or regional advertising in the vicinity of that Council. Complaints from outside Ontario about national English-language advertising will be evaluated and decided by Council members who have national experience and exposure at a Council Hearing that includes English-language representation from the Council in the region where the complaint(s) originated. Otherwise, complaints about national English-language advertisements will be directed to the national Council in Toronto.

At the initial deliberation by a Council, 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 a 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 a Council, the complaint is not upheld by Council, 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 deliberation by a Council. 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 the Standards Division 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 a Council has upheld one or more complaints. The other section will summarize, without naming the advertiser, consumer complaints upheld by Councils 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 the applicable 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 a 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*.

**APPENDIX: REGIONAL CONSUMER
RESPONSE COUNCILS**

Alberta Consumer Response Council

albertacouncil@adstandards.com

British Columbia Consumer Response Council

bccouncil@adstandards.com

Atlantic Consumer Response Council

atlanticcouncil@adstandards.com

FOR MORE INFORMATION

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

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Toronto, ON M4W 3R8

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