



CANADA
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Country Report

CANADA

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1. Legislation - Federal	
Topic:	New Criminal Offence for Deceptive Direct Mail Contests
Who:	The Competition Bureau, an agency of Industry Canada, (Cdn. Federal Government)
When:	February 2002
Where:	Ottawa, Canada
What happened:	<p>Deceptive direct mail contests are one of the focal points of a set of new amendments proposed for the federal <i>Competition Act</i>.</p> <p>The amendments aren't anywhere near as detailed as the new direct mail sweepstakes laws that have come into effect in the United States. The Competition Bureau, however, is now going forward with a new criminal offence aimed primarily, the Bureau says, at scratch and win direct mail sweepstakes that give the impression that a prize has been won, but require the recipient to incur additional costs which exceed the value of the prize itself.</p> <p>The trumpeted Bill C-23, as passed by the House of Commons in mid-December, 2001, received Second Reading before the Senate on February 5, 2002. Barring any changes that might be requested by the Senate Committee, it is expected to be in effect a bit later this year. Generally, the Bill provides for the following range of changes to the <i>Competition Act</i>.</p> <ul style="list-style-type: none">▪ creates a new offence: “deceptive prize notices”▪ provides a limited right of private access to the Competition Tribunal▪ enhances co-operation with foreign competition authorities for the

enforcement of civil competition and fair trade practice laws

- provides new judicial powers to the Competition Tribunal
- improves the Tribunal process and powers
- sets out additional measures to protect competition in the Canadian airline industry

Following is a summary of the first three of these changes.

Deceptive Prize Notices

The New Offence

The proposed new provision (to be added as Section 53) prohibits one from, among other things, sending *“by electronic or regular mail or by any other means a document or notice in any form, if the document or notice gives the general impression that the recipient has won, will win, or will on doing a particular act win, a prize or other benefit and if the recipient is asked or given the option to pay money, incur a cost or do anything that will incur a cost.”* (emphasis added)

The above would not apply *“if the recipient actually wins the prize or other benefit”* and if three additional conditions are met (which are essentially the requirements for any contest). These are that:

- 1) adequate and fair disclosure must be made of: (a) the number and approximate value of the prizes or benefits; (b) the area or areas to which they have been allocated; and (c) any fact within the person’s knowledge that materially affects the chances of winning;
- 2) the prizes/benefits must be distributed without unreasonable delay; and
- 3) participants must be selected or prizes/benefits distributed randomly, or on the basis of the participants’ skill.

The wording of the proposed offence sounds pretty broad to us but the Government emphasizes strongly that it is not intended to catch typical, legitimate sweepstakes. It will issue guidelines to provide some further comfort on that count.

What Will The Penalty Be?

It will depend. The offence may be prosecuted either by way of summary conviction or indictment. The penalty on summary conviction will be a fine of up to \$200,000 and/or up to one year in prison. Conviction on indictment – a fine “in the discretion of the court” and/or up to five years in prison.

Companies and/or their officers or directors will be subject to prosecution and conviction, though a due diligence defence will be permitted under certain circumstances.

The following are factors that a court will be required [under Section 53(7)] to consider as aggravating:

	<ul style="list-style-type: none"> • the use of a list of persons previously deceived in a deceptive prize notice or telemarketing offence • the particular vulnerability of the recipients to abusive tactics (e.g. the elderly) • the amount of proceeds realized • previous convictions in a deceptive prize notice or telemarketing offence; and • the manner in which information is conveyed, including the use of abusive tactics <p>Private Access To The Competition Tribunal</p> <p>Canadian companies will be permitted, with leave of the Competition Tribunal, to have access to the Tribunal if they have a complaint about a competitor under the provisions of Sections 75 or 77 of the Act (exclusive dealing, tied selling, market restriction and refusal to deal). Cases must proceed within 1 year following cessation of the conduct in question.</p> <p>Applicants will have to show that their business is “directly and substantially affected” by the relevant anti-competitive practice; and the Tribunal will not grant leave if the Commissioner of Competition has either started an inquiry or settled the matter.</p> <p>The Bureau believes that this right of access will complement the enforcement activities of the Bureau, allowing it to focus on cases that raise public concern. It will also demonstrate that private enforcement can, in some cases, be more suitable for businesses than public enforcement.</p> <p>International Co-ordination</p> <p>New provisions will allow the gathering of evidence for and from foreign jurisdictions with respect to <u>civil</u> competition matters, in the same manner as currently exists for criminal matters. Information provided voluntarily to our Competition Bureau will remain confidential, unless permission is first obtained.</p> <p>Our Competition Bureau already works with a variety of legal authorities in the USA, Australia and other countries to enforce global consumer protection in competitive matters, including deceptive marketing practices.</p>
<p>Why this matters:</p>	<p>The fact that the deceptive direct mail contest offence closely tracks the provisions of the deceptive telemarketing offence and similarly constitutes a criminal offence with no recourse to the less serious civil treatment as a “reviewable matter” reflects the seriousness of this activity in the government’s view. Only time will tell if the private access to the Competition Bureau proves to meet the Bureau’s expectations, but it presents another option for the aggrieved competitor. The international co-ordination on civil competition matters reflects the Bureau’s increased activity in the global arena.</p>

2. Legislation - Provincial	
Topic:	Direct Sellers
Who:	Provincial Regulators of Direct Sellers
When:	2001 and Ongoing
Where:	Manitoba and Nova Scotia
What happened:	<p>In Manitoba:</p> <p>Work continues on the issue of exempting call centres from licensing as direct sellers. A final draft of a “Code of Ethics” will be presented by the Manitoba Customer Contact Association later this year.</p> <p>If the proposal is approved, call centres in this Province will be exempted from having to be licensed as direct sellers if they are a member of the Manitoba Customer Contact Association, or develop and have approved a similar Code of Ethics.</p> <p>The City of Winnipeg has started to enforce a 30 year-old by-law requiring the payment of a \$135 “business licence” in lieu of business tax on all direct selling independent contractors along with a one-time Home Occupation Permit (\$111.87) the annual Canvasser’s Licence (\$65/yr). Concerned that these costs are prohibitive and will chill or eliminate direct selling in Winnipeg, direct sellers are presenting a submission through their industry association to the City of Winnipeg calling for appropriate modifications to preserve direct selling in this city.</p> <p>While in Nova Scotia:</p> <p>Nova Scotia’s requirement that direct sellers maintain a permanent place of business in Nova Scotia rather than using a law firm for this purpose (beyond the first 6 months of a direct seller’s operation in this Province) continues to concern direct sellers trying to operate in Nova Scotia. A direct seller can use the permanent address of one of its sales persons or distributors located in the Province as the permanent place of business – however, this is not acceptable to many direct sellers. Nova Scotia differs significantly from other provinces which do allow a law firm to be used for this purpose. Direct sellers will continue their efforts, through their industry association, to encourage the Province to develop a more accommodating policy that will be consistent with requirements in other provinces.</p>
Why this matters:	While there are some core areas in which direct selling is regulated in the same manner (e.g.: providing statement of cancellation rights to buyers), these issues reflect the diverse trends in the regulation of direct selling in Canada.

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3. Legislation - Provincial	
Topic:	Privacy
Who:	Ontario Government
When:	2002
Where:	Toronto, Ontario, Canada
What happened:	<p>The Ontario Government has just released proposed privacy legislation that has the Canadian Marketing Association (“CMA”) in an uproar, and the Association for the Advancement of Relationship Marketing (“AARM”) concerned as well.</p> <p>The draft legislation goes much further than existing federal legislation, and will – if passed in the current format – effectively prevent the use of general consumer information for marketing purposes unless customers provide express, positive consent. In other words, companies will be unable to:</p> <ul style="list-style-type: none"> ▪ use existing customer information for future contact ▪ share customer information with any agency or contracted help ▪ transfer customer information outside Ontario’s borders unless the other jurisdictions (including provinces, states, countries) have existing “adequate” privacy protection in place. <p>All not-for-profit fund-raising activities are encompassed in the proposals.</p> <p>CMA believes that this is a very serious legislative threat to the retail industry in Ontario. AARM believes that the proposal is “draconian” and will require re-writing.</p> <p>Comments and submissions are requested by March 31, 2002 (extended from the original due date of March 8th).</p>
Why this matters:	Many Canadians (and others dealing with Canada) are still becoming accustomed to the federal privacy legislation, implemented in Jan. 2001, which for the most part, appears to be palatable, but the draft Ontario legislation

	appears to threaten the equilibrium that has been achieved and may well undergo further change if the government listens to the critics.
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4. Self Regulatory Case Report	
Topic:	Use of Sex in Advertising
Who:	A beer company
When:	2002
Where:	Advertising Standards Canada (“ASC”)
What happened:	<p>Ads to promote beer showed women in sexually provocative clothing and poses, including breasts partially covered by red bows and a very low-cut gown.</p> <p>There were complaints that the ads exploited sexuality to sell a product; and ads used sexuality and partial nudity to advertise an unrelated product. The Council upheld the complaints. The ads focused on women’s sexuality to sell a product unrelated to sexuality.</p>
Why this matters:	Another example that the supporters of the adage, “Sex Sells” still have not found a way to convey their message without running afoul of ASC.

5. Self Regulatory Case Report	
Topic:	Disregard for Safety
Who:	A detergent manufacturer
When:	2000
Where:	Advertising Standards Canada
What happened:	In a commercial for a laundry detergent, targeted to adults and which advertiser believed was intentionally exaggerated, a teen was shown directing a dump truck to cover him with a load of dirt. The boy was buried, then emerged from the dirt pile covered in dirt but unharmed.

	<p>Complainants were concerned that the activity shown was potentially dangerous, especially if seen by children.</p> <p>Council upheld the complaint though advertiser stated that children were not the target audience and that the activity was purposefully exaggerated. Because impressionable children enjoy playing in dirt and getting dirty, Council believed they could be led to believing that the portrayed situation was not potentially harmful.</p>
Why this matters:	<p>While safety concerns are often a key consideration in ads directed to children, it may be easier to overlook the safety angle in ads where children are not the target market and the situation depicted seems quite improbable or humorous. Nevertheless this decision highlights the fact that the safety provisions of ASC Code will be upheld with respect to all ads.</p>

6. Self Regulatory Case Report	
Topic:	Lack of Clarity and Accuracy & Inadequate Stock
Who:	Computer advertiser
When:	2000
Where:	Advertising Standards of Canada
What happened:	<p>A notebook computer was offered for sale via a national newspaper ad, with the computer being available on-line.</p> <p>Advertised product was unavailable when complainant visited the website. [Advertiser claimed to have had sufficient inventory until the day the advertisement appeared]</p> <p>Although advertiser ran a correction notice, Council found it was significantly delayed. Complaint was upheld because ad contained inaccurate information <u>and</u> failed to include a relevant fact (that the quantity of computers was limited).</p>
Why this matters:	<p>This case illustrates that the same, basic advertising rules continue to be applied regardless of the media used---traditional newspapers or the Internet. Also when advertising appears in several media, it's crucial to ensure all ads are aligned</p>

7. Case Reports - Federal Issues	
Topic:	Deceptive Telemarketing
Who:	Telemarketers promising “valuable rewards”
When:	2000
Where:	Canada
What happened:	<p>Case 1: Consumers were promised valuable awards if they bought products which were later found to be at inflated prices. Director of the company pleaded guilty to 3 criminal charges and was sentenced to pay \$300,000 (the highest amount against 1 individual).</p> <p>Case 2: Consumers were promised valuable awards if they bought products which were later found to be at inflated prices. Company was fined \$700,000; and its Senior manager was sentenced to a 6-month conditional jail term.</p>
Why this matters:	These two telemarketing cases illustrate the severe penalties courts are prepared to hand out once deceptive telemarketers are found and prosecuted. This offence remains a high enforcement priority of the Competition Bureau.

8. Case Reports - Federal Issues	
Topic:	Federal tobacco law in court (again)
Who:	JTI-Macdonald Corp., Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc
When:	January, 2002
Where:	Quebec Superior Court
What happened:	<p>The battle continues between the federal government and Big Tobacco in Canada.</p> <p>In January, 2002, hearings began before the Quebec Superior Court on the constitutional validity of the 1997 <i>Tobacco Act</i> and two subsequent regulations. The latter case was launched by JTI-Macdonald Corp., Imperial Tobacco Canada Ltd., and Rothmans, Benson & Hedges Inc. The legislation now under attack represents the government’s second go-round. It was passed following the 1997 Supreme Court of Canada decision that the advertising and</p>

	<p>labelling provisions of the previous law were unconstitutional.</p> <p>The tobacco companies argue that the current restrictions on advertising and the mandatory graphic warnings on cigarette packages are not a reasonable limit on free expression. The government has submitted that tobacco is “... a drug which just like cocaine and heroin creates a strong addiction and which will kill one out of every 2 smokers” [as reported by the National Post on January 15, 2002].</p> <p>Canada’s labelling regulations, requiring extremely graphic pictures on the pack, illustrating blackened lungs, diseased gums and various other effects of smoking, are inspiring similar regulations in other countries.</p> <p>“Light” and “Mild” Under Attack</p> <p>Meanwhile, over the last several months, Health Canada’s Tobacco Control Program has run a pointed ad campaign challenging, among other things, the use of terms such as “light” and “mild” in connection with cigarettes. Its concern is that these cigarettes are in reality of no less of a health danger than regular cigarettes. On December 1, 2001, the Government published a Notice of Intent in Canada Gazette, Part I, indicating that it is considering regulations to prohibit manufacturers and importers from selling a tobacco product in a package displaying the terms "light" and "mild". The Government was soliciting comments on the development of these proposed regulations.</p>
Why this matters:	<p>Not only will this case determine the ability of the Canadian government to enforce one of the world’s strictest laws concerning tobacco labelling but likely it will influence the decision of other like-minded countries which have expressed interest in following Canada’s tough approach.</p>

9. Legislation - Provincial	
Topic:	Direct Sellers
Who:	Provincial Regulators of Direct Sellers
When:	2001 and Ongoing
Where:	Manitoba and Nova Scotia
What happened:	<p>In Manitoba:</p> <p>Work continues on the issue of exempting call centres from licensing as direct sellers. A final draft of a “Code of Ethics” will be presented by the Manitoba Customer Contact Association later this year.</p> <p>If the proposal is approved, call centres in this Province will be exempted</p>

	<p>from having to be licensed as direct sellers if they are a member of the Manitoba Customer Contact Association, or develop and have approved a similar Code of Ethics.</p> <p>The City of Winnipeg has started to enforce a 30 year-old by-law requiring the payment of a \$135 “business licence” in lieu of business tax on all direct selling independent contractors along with a one-time Home Occupation Permit (\$111.87) the annual Canvasser’s Licence (\$65/yr). Concerned that these costs are prohibitive and will chill or eliminate direct selling in Winnipeg, direct sellers are presenting a submission through their industry association to the City of Winnipeg calling for appropriate modifications to preserve direct selling in this city.</p> <p>While in Nova Scotia:</p> <p>Nova Scotia’s requirement that direct sellers maintain a permanent place of business in Nova Scotia rather than using a law firm for this purpose (beyond the first 6 months of a direct seller’s operation in this Province) continues to concern direct sellers trying to operate in Nova Scotia. A direct seller can use the permanent address of one of its sales persons or distributors located in the Province as the permanent place of business – however, this is not acceptable to many direct sellers. Nova Scotia differs significantly from other provinces which do allow a law firm to be used for this purpose. Direct sellers will continue their efforts, through their industry association, to encourage the Province to develop a more accommodating policy that will be consistent with requirements in other provinces.</p>
<p>Why this matters:</p>	<p>While there are some core areas in which direct selling is regulated in the same manner (e.g.: providing statement of cancellation rights to buyers), these issues reflect the diverse trends in the regulation of direct selling in Canada and even within a province: Manitoba is easing requirements for direct selling via call centres while at the same time enforcing old by-laws that may threaten the direct selling industry in Winnipeg; Nova Scotia currently remains entrenched in its position as the lone province that requires direct sellers to have a place of business in the province.</p>

<p>10. Legislation - Provincial</p>	
<p>Topic:</p>	<p>Privacy</p>
<p>Who:</p>	<p>Ontario Government</p>
<p>When:</p>	<p>2002</p>
<p>Where:</p>	<p>Toronto, Ontario, Canada</p>

<p>What happened:</p>	<p>The Ontario Government has just released proposed privacy legislation that has the Canadian Marketing Association (“CMA”) in an uproar, and the Association for the Advancement of Relationship Marketing (“AARM”) concerned as well.</p> <p>The draft legislation goes much further than existing federal legislation, and will – if passed in the current format – effectively prevent the use of general consumer information for marketing purposes unless customers provide express, positive consent. In other words, companies will be unable to:</p> <ul style="list-style-type: none"> ▪ use existing customer information for future contact ▪ share customer information with any agency or contracted help ▪ transfer customer information outside Ontario’s borders unless the other jurisdictions (including provinces, states, countries) have existing “adequate” privacy protection in place. <p>All not-for-profit fund-raising activities are encompassed in the proposals.</p> <p>CMA believes that this is a very serious legislative threat to the retail industry in Ontario. AARM believes that the proposal is “draconian” and will require re-writing.</p> <p>Comments and submissions are requested by March 31, 2002 (extended from the original due date of March 8th).</p>
<p>Why this matters:</p>	<p>Many Canadians (and others dealing with Canada) are still becoming accustomed to the federal privacy legislation, implemented in Jan. 2001, which for the most part, appears to be palatable, but the draft Ontario legislation appears to threaten the equilibrium that has been achieved and may well undergo further change if the government listens to the critics.</p>

<p>11. Case Report-Provincial Issues</p>	
<p>Topic:</p>	<p>French Language Advertising in Quebec</p>
<p>Who:</p>	<p>Quebec Court of Appeal</p>
<p>When:</p>	<p>October, 2001</p>
<p>Where:</p>	<p>Quebec, Canada</p>
<p>What happened:</p>	<p>“Markedly Predominant” Standard is Constitutional, Quebec CA Says:</p> <p>On October 24, 2001, the Quebec Court of Appeal in <i>Les Entreprises W.F.H. Ltd. vs. Le Procureur général du Québec</i>, confirmed the constitutionality of section</p>

	<p>58 of the Charter of the French Language (the «Charter»).</p> <p>Les Entreprises W.F.H. Ltd. was found guilty of contravening section 58, which provides that commercial advertising may be both in French and in another language provided that French is <u>markedly predominant</u>, by advertising its antique shop by way of a two-sided sign, one side in English, the other in French, in the same proportions and character sizes.</p> <p>The Quebec Court of Appeal found that section 58 entirely respects the Supreme Court ruling in the <i>Ford</i> and <i>Devine</i> judgments and that the situation of the French language in Quebec has not substantially evolved to render this ruling inapplicable in 2001. In addition, the Court decided that section 58 does not constitute discrimination under section 15 of the <i>Canadian Charter of Rights and Freedoms</i>, since a difference of treatment does not necessarily constitute prohibited discrimination.</p>
Why this matters:	It is always interesting to see what happens when someone pushes the envelope. The result here is certainty---the Charter of the French Language in Quebec is very much alive and well and will be vigorously enforced.

12. Labeling / Advertising Guidelines	
Topic:	“Made In Canada” Claims
When:	2001
Where:	Competition Bureau, Industry Canada, (Cdn. Federal Government)
What happened:	<p>The <u>Guide to “Made in Canada” Claims</u> (adopted in the 1980’s) has recently been updated. “Made in Canada” claims can be made either expressly (in words), or by implication (for instance, by using a symbol such as the maple leaf, subject to other applicable legislation).</p> <p>Although each scenario will continue to be assessed by the Competition Bureau on a case-by-case basis, following are the general principles for “Made in Canada” claims:</p> <ul style="list-style-type: none"> ▪ Goods must be wholly obtained, produced, mined or harvested in Canada, and ▪ The last substantial transformation of the goods must occur in Canada, and ▪ At least 51% of the “total direct costs” must be Canadian. <p>(Be sure to check with legal counsel as to which costs can actually be included</p>

	<p>in the calculation for “total direct costs.”)</p> <p>If your product does not qualify for use of the statement, “Made in Canada”, consider whether you can use qualified claims – e.g. “designed” or “assembled” in Canada.</p> <p>The Competition Bureau also released, in November 2001, its Enforcement Policy on the Marketing of Canadian Diamonds which discusses when “Made in Canada” claims may be made.</p> <p>Under the Enforcement Policy, a “Canadian” claim will be allowed if the diamond originates in a Canadian mine. The same principle is applicable to other gemstones, such as British Columbia jade. Where a diamond is mined outside Canada, the fact that it was cut/polished in Canada would not normally found a “Made in Canada” claim as: a) these processes don’t result in a fundamentally different product; and b) cutting and polishing costs would only represent a small percentage of total production costs.</p>
Why this matters:	<p>“Made in Canada” claims/designs are popular with marketers but can be quite complex. Not only do they involve compliance with applicable Customs legislation but as we see here, must comply with the misleading advertising provisions of the Competition Act and related guidelines issued by the Bureau.</p>

13. Labeling / Advertising Guidelines	
Topic:	Cosmetic claims
Who:	Health Canada (Cdn. Federal Government)
When:	2001
Where:	Ottawa, Canada
What happened:	<p>The “anti-aging” claim debate with the Government has prematurely aged cosmetic marketers for years in Canada. On October 31, 2001, grey hairs were popping out all over when Health Canada said it disapproved of the term for cosmetics under any circumstances, period, and that the term would have to be removed from all labelling and advertising by the end of February, 2001 (later extended to June, 2001) unless the product were registered as a drug. The Government’s position, of course, was that, literally, “anti-aging” represents a fiddling with physiology - i.e., that the product may delay, correct, modify or stop the aging process itself – i.e. a drug claim.</p> <p>A further position has now been disseminated, however. In a letter to the</p>

	Canadian Cosmetics, Toiletries and Fragrances Association (“CCTFA”) dated June 20, 2001, Health Canada indicated that it had reconsidered the issue in light of a “net impression” concept and was now willing to accept “anti-aging” as long as it was “ <u>clearly qualified in a cosmetic sense</u> ”. Health Canada’s position has yet to be updated on its website.
Why this matters:	With the aging baby boomer population on the hunt for the fountain of youth, this prohibition amounted to a potential loss of a significant market. The new requirement to use the claim in context seems like a sensible compromise.

14. Labeling / Advertising Guidelines	
Topic:	Comparative Ad Guidelines for Therapeutic Claims
Who:	Therapeutic Products Directorate, (“TPD”), Health Canada (Cdn. Federal Government)
When:	2001
Where:	Ottawa, Canada
What happened:	<p>The Therapeutic Products Directorate (“TPD”) finalized the update to its <i>Guidelines and Principles for Comparative Claims related to Therapeutic Drugs</i> in 2001. Once implemented (which is anticipated to happen in mid-2002), Advertising Standards Canada (“ASC”) will use these Guidelines for pre-clearing proposed therapeutic drug advertising.</p> <p>What don’t the Guidelines apply to? To comparisons of non-therapeutic aspects of drugs, to non-drug therapies, or to claims of cost-effectiveness or quality of life.</p> <p>Part I – “the Directive” - comprises the original principles issued in 1997, which were incorporated into PAAB’s Code of Advertising Acceptance, Sections 5 and 11, as of January 1, 1999. These, then, should present no major issue for drug advertisers.</p> <p>Part II – “Guidance” – outlines the standards now adopted by the TPD. It provides data requirements for comparative therapeutic claims for use in: (a) all consumer-directed advertising; and (b) labelling of non-prescription drugs. Evidence in support of comparative therapeutic claims must be: conclusive, definite, and validated.</p> <p>TPD will retain the ultimate responsibility for decisions regarding product safety and for evaluation of comparative therapeutic claims that fall outside</p>

	the scope of ASC. TPD will also review and approve all comparative therapeutic claims included in drug labelling (as opposed to advertising).
Why this matters:	When this guideline is finalized, this will be the first time that advertisers in Canada will be able to make comparative claims about the therapeutic aspects of non-prescription drugs. (To date, comparative claims for such products have been limited to non-therapeutic aspects). How much comparative advertising of therapeutic benefits this change will generate will depend on advertisers' ability to meet the testing requirements for such claims.

15. Reorganization of Federal Drug Authorities	
Topic:	Drug Ads
Who:	Therapeutic Products Directorate (“TPD”); Marketed Health Products Directorate (Health Canada) and Pharmaceutical Advertising Advisory Board (“PAAB”)
When:	2001
Where:	Canada
What happened:	<p>TPD will act as the regulatory authority for drug advertisements. It may intervene when an ad poses a significant safety concern, when an unauthorized drug product is promoted, or if resolution of another issue is not achieved through the independent agencies' complaints mechanism.</p> <p><u>Drug Ad Pre-clearance</u> should still be obtained from:</p> <ul style="list-style-type: none"> - Advertising Standards Canada (ASC), for consumer drug advertising - the Pharmaceutical Advertising Advisory Board (PAAB) for ads directed to professionals to ensure compliance with the various regulatory provisions and codes of advertising respecting drugs. <p>As of April 1, 2002 – another change has been made the Health Products and Food Branch (Health Canada,) has created the “Marketed Health Products Directorate” responsible primarily for post-market surveillance and assessment of drugs. This new branch will also collect adverse reaction and medication incident data, and be responsible for communicating product related risks to both health care professionals and the public.</p> <p><i>Speaking of PAAB Pre-clearance Reviews.....</i></p> <p>If your message about pharmaceutical products is directed to health</p>

	<p>professionals, is about your company’s products <u>and</u> is paid for by the manufacturer or distributor of the product, then it is considered to be advertising. As such, it is subject to PAAB review. This holds true for advertising in any media, including the Internet.</p> <p>Note that if you choose to use the Internet to advertise to health professionals, make your choice of audience obvious by:</p> <ul style="list-style-type: none"> 4 not promoting the site to the general public 4 not providing key words for search engines that appear to attract the general public 4 making the content of the site (i.e.: terminology) obviously directed to health professionals, and 4 using passwords to protect at least a portion of the site from the general public. <p>Otherwise, you could end up in hot water under the prescription drug advertising constraints in the <i>Food and Drug Regulations</i>.</p> <p>PAAB Has Been Busy ...</p> <p>As reported in the January issue of PAAB <i>UpDate</i>, PAAB has updated its <i>Code of Advertising Acceptance</i>. Among the changes, which took effect on April 1, 2002, it clarified that the Internet will be treated as a <u>patient</u> information vehicle – making the above information even more relevant if you wish to use the Internet to advertise to health professionals.</p> <p>PAAB also reports that Health Canada has determined that using small type and footnotes to include required indication and safety information is considered to be misleading and therefore in violation of the <i>Food and Drugs Act</i>.</p> <p>A reminder is also issued to advertisers that “faxed advertising communications to health professionals are not exempt from the PAAB Code of Advertising Acceptance, though commercial messages are exempt from PAAB review.</p>
<p>Why this matters:</p>	<p>Keeping straight who does what in the ever-changing drug regulatory environment remains a constant challenge as Health Canada feverishly spins off new directorates/bodies. This is today’s snapshot of the newest cast of characters to make their debut but no doubt we will have more to report soon.</p>