

## CANADA



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<b>1. Self Regulation</b>	
<b>Topic:</b>	New Canadian Code of Advertising Standards
<b>Who:</b>	Advertising Standards Canada
<b>When:</b>	May 2003
<b>Where:</b>	Canada
<b>What happened:</b>	<p>In May, Advertising Standards Canada ("ASC") released a revised Canadian Code of Advertising Standards ("Code"). The Code applies to all forms of media including broadcast, out-of-home, print and Internet. It does not apply to product packaging and labeling, or to media originating from outside Canada unless the advertiser is a Canadian entity.</p> <p>The revised Code is effective as of September 1, 2003. Key amendments to the Code include the following:</p> <ul style="list-style-type: none"><li>• The requirement that ads not discredit, disparage or attack competitors is now qualified by the word "unfairly" (Clause 6)</li><li>• While the prior Code prohibited advertisements that showed a disregard for safety or depict situations that might encourage unsafe or dangerous practices, the new Code prohibits only situations that "might <i>reasonably</i> be interpreted" encouraging such acts. (Clause 10)</li><li>• Scenes that exploit, condone or incite violence, or that exhibit indifference to unlawful or reprehensible behaviour, are now prohibited when the depiction of violence is "realistic", or the indifference towards the behaviour is "obvious" (Clause 14(b))</li><li>• The new Code qualifies that the ad must show "obvious" indifference to, or encourage "gratuitously and without merit" conduct or attitudes that offend standards of public decency to be a violation (Clause 14(d))</li></ul> <p>In addition to these changes, the ASC has announced that Interpretation Guidelines will be developed on an as-needed basis to promote consistency and reasonableness in interpreting the Code. The first Guideline released states: "In assessing impression(s) likely to be conveyed by an advertisement, Council shall take into consideration the use and application in the advertisement(s) of such elements as humour and fantasy."</p> <p>Finally, procedural changes mean that if a complaint is received concerning an issue of Safety (Clause 10) or Unacceptable Depictions and Portrayals (Clause 14), the advertiser will now be asked to respond to the complainant, either directly or through the ASC. If the complainant is</p>

	not satisfied with the advertiser's response, then the matter will continue through the traditional ASC complaint process. If the complainant is satisfied, the matter will not proceed further.
<b>Comment:</b>	The revisions to the Code, as well as the development of Interpretation Guidelines, are important in allowing advertisers both more flexibility and greater certainty with respect to how the ASC will apply the Code. The new procedure for complaints about Safety and Unacceptable Depictions and Portrayals has the potential to lead consumers to a better understanding of the advertiser's position, and may encourage advertisers to be more directly accountable to consumers.

<b>2. Industry Guidelines</b>	
<b>Topic:</b>	Canadian Guidelines With Respect to the Sale and Marketing of Diamonds, Colour Gemstones and Pearls
<b>Who:</b>	Jewellers Vigilance Canada Inc.
<b>When:</b>	August 2003
<b>Where:</b>	Canada
<b>What happened:</b>	<p>The Canadian Guidelines With to the Sales and Marketing of Diamonds, Coloured Gemstones and Pearls have been revised. These Guidelines, endorsed by the Competition Bureau, address definitions and terminology for use in advertising and sale of diamonds, coloured gemstones and pearls. These Guidelines are to be followed with respect to any representation, in any media, regarding these items.</p> <p>It is contrary to the purposes of the Guideline: (a) to make a representation that does not conform in all respects to these Guidelines in the selling, advertising, or distribution of any substance defined in these Guidelines; or (b) to make any misleading or deceptive statement, representation or illustration relating to origin, formation, production, condition or quality of any substance defined in these Guidelines. Some examples of the guidance provided by this document are as follows:</p> <ul style="list-style-type: none"> <li>• It is contrary to the purpose of the Guidelines to refer to any diamond or coloured gemstone to identify any substance that has been partly or wholly created through human intervention. Such items must be identified as synthetic, composite, assembled, artificial, imitation, or simulated, as appropriate. This qualification must immediately precede the word diamond or coloured gemstone. Neither phrase may be given greater prominence or emphasis, or may be separated from each other.</li> <li>• The term "carat", in reference to diamonds, may not be used where it could be presumed to refer either to karat weight or precious metal quantity.</li> <li>• It is unacceptable to use the word "perfect" to refer to any attribute of a pearl, cultured pearl, coloured gemstone or diamond.</li> <li>• With respect to coloured gemstones, the term semi-precious should not be used in any context.</li> </ul>
<b>Comment:</b>	These Guidelines complement those established in the Canadian

	Diamond Code of Conduct, as well as other general restrictions respecting advertising, sales and warranties under the Competition Act. They are applicable to all those engaged in the sale and advertising of coloured gemstones, diamonds and pearls in Canada.
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<b>3. Industry Regulation</b>	
<b>Topic:</b>	Internet Advertising Guidelines
<b>Who:</b>	Competition Bureau
<b>When:</b>	February 2003
<b>Where:</b>	Canada
<b>What happened:</b>	<p>The Canadian Competition Bureau has released guidelines concerning the application of the <i>Competition Act</i> to advertising on the Internet (the "Guidelines"). The Guidelines provide some practical insights on the Bureau's approach to misleading representations and deceptive marketing practices on the Internet. Under the Guidelines, the Internet is treated no differently than any other media with respect to the application of the <i>Competition Act</i>. Therefore, the same prohibitions against false or misleading advertising will apply. The Guidelines, however, provide further details with respect to how the Act will be applied to this medium. For example:</p> <ul style="list-style-type: none"> <li>• Disclaimers and text hyperlinks leading to information relevant to an offer or claim should be very explicit, and accessible to all users, regardless of the software or hardware used to access the webpage;</li> <li>• Attention-grabbing tools, such as flashing text, cannot be used to draw the consumer's attention away from a disclaimer;</li> <li>• Illustrations, photography, and/or artwork should fairly and accurately illustrate the product or service being offered;</li> <li>• Websites should not create a false or misleading impression as to the company's location, identify or affiliation.</li> </ul> <p>The application of the Guidelines will be based on the test of general impression, and will be interpreted on a case by case basis.</p> <p>The Competition Bureau also states that it will: "Assert Canadian jurisdiction over foreign entities to the fullest extent authorized by law whenever necessary to protect the Canadian market from misleading representations and deceptive marketing practices".</p>
<b>Comment:</b>	The Guidelines go into great detail with respect to examples of permitted and restricted practices. With respect to international compliance, no doubt the Competition Bureau will be reliant upon cross border co-operation in order to enforce its Guidelines on extra-territorial advertisers.

<b>4. Regulations:</b>	Natural Health Products Regulations, Food and Drugs Act ("FDA")
<b>Topic:</b>	New regulation of natural health products (includes "dietary supplements")
<b>Where:</b>	The Canadian Federal Government (Natural Health Products Directorate)

<b>When:</b>	June 18, 2003
<b>What happened:</b>	<p>The final <i>Natural Health Product Regulations</i> ("NHPR") of FDA were published on June 18, 2003 but will not come into force until January 1, 2004 (except for the 60 day monograph approval process which starts July 1, 2004). The NHP Directorate ("NHPD") is developing key information for NHPR compliance but little information is currently available. Other FDA regulations are the food, drugs, cosmetics and medical devices regulations.</p> <p>The NHPR will apply to NHPs as of 01/01/04, <i>except</i> where specific transitional periods for compliance apply with respect to product licensing, site licensing, good manufacturing practices ("GMPs") and labeling requirements of NHPs, notably:</p> <ul style="list-style-type: none"> <li>• A product that has a drug identification number issued under the FDA drug regulations <i>and</i> falls within the NHP definition, has 6 years to comply with the NHPR (ending December 31/09);</li> <li>• Those who manufactured, packaged, labeled, imported NHPs before 01/01/04, have 2 years ending December 31, 2005 to meet the NHP site license/GMP requirements.</li> </ul> <p>During the transition periods, the FDA drug regulations apply.</p> <p>NHPs will be regulated as a subset of drugs and must be pre-cleared, either by the 60 day monograph approval process or by providing other evidence to support the claim.</p> <p>Foreign and domestic site license applicants may submit a GMP compliance report from their own qualified Quality Assurance ("QA") person in place of government inspectors. The NHPD will develop agreements with foreign regulators to establish GMP equivalence between countries.</p> <p>NHPs <i>must</i> make permitted health claims: structure-function claims risk-reduction claims or therapeutic claims (cure/treatment of a disease). (<i>Notably, US dietary supplements must not make treatment claims which may pose a challenge for North American packaging as the NHPR will permit treatment claims</i>). Currently there are no proposed NHP advertising guidelines.</p>
<b>Comment:</b>	The NHPR will have a significant impact on the NHP industry in Canada with some smaller entities struggling to comply, while larger, international entities focus on meeting the challenge of integrating the NHPR into their NHP international labeling and marketing plans.

<b>5. Discussion Paper:</b>	Options for Amending the Competition Act
<b>Topic:</b>	Strengthening the Civil Provisions of the Competition Act for Misleading Advertising
<b>Where:</b>	The Canadian Government---Competition Bureau
<b>When:</b>	June, 2003

<b>What happened:</b>	<p>The Competition Bureau issued a Discussion Paper for comment---Options for Amending the Competition Act. Key proposals in the advertising area include:</p> <ul style="list-style-type: none"> <li>• Increasing the current “administrative penalties” for misleading advertising/deceptive marketing practices from a limit of \$100, 000 for a corporation and \$50, 000 for an individual (or twice these amounts for subsequent violations) to an amount in the discretion of the Competition Tribunal based on the facts of each case.</li> <li>• Restitution: The courts would be empowered to order business and individuals who violate the misleading advertising provisions of the Competition Act and cause consumers loss, to provide restitution to consumers either by providing restitution directly to consumers from a restitution fund or by appointing a fund administrator to do so. The courts would have discretion in determining how any balance in the fund could be distributed including for example, giving it to non profit organizations that work to benefit consumers rather than returning it to the violator.</li> <li>• Civil Cause of Action: Those who suffer loss by misleading advertising/deceptive marketing practices would be entitled to seek damages in civil court. The Competition Act provisions currently limited to civil actions for criminal conduct (such as conspiracy/pyramid schemes) or breaches of Competition Bureau orders would be amended to facilitate such civil actions.</li> </ul>
<b>Comment:</b>	<p>The above represents a number of sweeping proposals that the Bureau had not previously signaled were coming. If these proposals are enacted, they will surely “up the ante” for misleading advertising in Canada.</p>

<b>6. For Review and Comment</b>	Proposed Competition Act Guidelines:
<b>Topic:</b>	Guidelines on the Deceptive Notice of Winning a Prize Provisions, Competition Act
<b>Where:</b>	The Canadian Federal Government ---Competition Bureau
<b>When:</b>	August 26, 2003.
<b>What happened:</b>	<p>The proposed guidelines to the Deceptive Notice of Winning a Prize provisions (“Prize Provisions”) of the Competition Act provide the following clarifications to key wording in the Prize Provisions:</p> <ul style="list-style-type: none"> <li>• Sending prize notifications by “electronic or regular mail or by any other means” includes mail, electronic mail, fax and door to door communications;</li> <li>• The reference to the recipient “doing a particular act” (to win a prize/benefit) refers to doing something positive rather than something passive (such as meeting residency/age requirements to enter a contest);</li> <li>• The reference to the recipient having to “incur a cost” to win a prize does not refer to an initial, incidental cost such as a stamp or to an amount that is nominal compared to the prize (i.e. the cost of getting</li> </ul>

	car insurance for a car prize). It would apply to having to call a 900# and incur costs to win a prize.
<b>Comment:</b>	The Guidelines to the Competition Act provisions on Deceptive Notice of Winning a Prize ("Prize Provisions") clarify certain points in the provisions and generally track the Competition Act requirements for required disclosures in promotional contests and overall should be helpful.