

Clause 8 in Report No. 9 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on May 21, 2015.

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York Region Transit (YRT/Viva) Advertising Policy

Committee of the Whole recommends adoption of the following recommendation contained in the report dated April 23, 2015 from the Commissioner of Transportation Services:

1. Recommendation

It is recommended that:

1. The draft York Region Transit Advertising Policy be approved.

2. Purpose

This report seeks Council approval of an advertising policy for York Region Transit (YRT/Viva) property.

The policy will ensure that all advertising on YRT/Viva vehicles and property is consistent with the Canadian Code of Advertising Standards. In addition, the purpose of this policy is to ensure that third party advertising on Regional property is consistent with the Region's corporate values, image and strategic goals.

York Region Transit (YRT/Viva) Advertising Policy

3. Background

YRT/Viva does not have an advertising policy

Over the last two years, advertisements have been approved to appear on transit systems across Canada and the United States where the content was thought to be inappropriate by interested parties. The advertisements were deemed acceptable by the transit agencies, and allowed to appear on the systems, based on the rules and regulations outlined in their advertising policies.

Concerned that requests for these types of advertisements would come to York Region, YRT/Viva staff consulted with the Region's Legal Department. It was recommended that a clear, objective policy be adopted to mitigate risk in the event a possible challenge under the freedom of expression provisions of the *Canadian Charter of Rights and Freedoms*. The current YRT/Viva guidelines leave the decision as to whether advertising should be removed from the system up to the discretion of the General Manager, Transit.

Third party bus and shelter contractors sell and maintain all advertising for York Region

YRT/Viva has three advertising contracts in place for the sale and maintenance of advertising on the conventional fleet (expires September 2015), in transit shelters (expires 2029) and on waste/recycling receptacles (expires 2028).

Currently, if an advertising contractor receives a complaint or public feedback about an advertisement appearing on the system, they will deal directly with the concern. However, if required by the contractor, the General Manager and Marketing and Communications Manager evaluate the feedback and determine if the advertisement is to be removed.

YRT/Viva receives minimal complaints annually on advertising appearing on the system.

4. Analysis and Options

York Region Legal staff recommended that an advertising policy be adopted that is consistent with the freedom of expression provisions in the *Canadian Charter of Rights and Freedoms*

An Advertising Policy will allow YRT/Viva to consistently manage advertising content to avoid potential perceptions of subjectivity, bias and inconsistency when determining who may advertise on YRT/Viva property. The provisions of the Advertising Policy should recognize that freedom of expression, through advertising, is a constitutionally protected right and that any limitations on that right must be minimal and in accordance with the limited exceptions allowed. Such exceptions include the promotion of hatred, violence or degrading messages.

Staff conducted a best practice study of other Canadian transit systems and municipal policies while researching options for a YRT/Viva Advertising Policy

Six Canadian transit and municipal advertising policies, guidelines and procedures were reviewed to assist in determining options for YRT/Viva.

Common themes identified included following the Advertising Standards Canada and Canadian Code of Advertising Standards, and adherence to the Ontario Human Rights Code, Canadian Charter of Rights and Freedom and the Criminal Code of Canada.

Of the policies reviewed, each had set criteria for the advertising approval process, protecting the interest of public transit and the transit authority, and giving the transit agency sole discretion on what is permitted on their transit systems.

Differences in the policies reviewed were also evaluated

Each transit system and/or municipality had a unique process for managing and evaluating advertisement suitability, the appeal process and policy interpretation.

York Region Transit (YRT/Viva) Advertising Policy

A YRT/Viva Advertising Policy has been drafted

Once implemented, the proposed YRT/Viva Advertising Policy (Attachment 1) will allow York Region to consistently manage advertising content on its transit property. The policy could easily be adapted for all Regional property where advertising is possible, and outlines:

- Applicable Laws followed by York Region
- Criteria for Acceptance of Advertisements
- Responsibilities
- Non-compliance
- Objections by Members of the Public

As an appendix, the Policy outlines the process for approval of an advertisement, gives the advertising contractor the authority to interpret and implement the policy, and the process to be taken if an advertisement contravenes.

The proposed YRT/Viva Advertising Policy follows Advertising Standards Canada and the Canadian Code of Advertising Standards

YRT/Viva is a member of Advertising Standards Canada and will ensure advertising that appears on the system adheres to the Canadian Code of Advertising Standards (Attachment 2).

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.

Link to key Council-approved plans

The YRT/Viva Advertising Policy links to the 2015-2019 Strategic Plan under Good Government by ensuring YRT/Viva is focused on being open, transparent, accountable and reliable on the programs and services offered; and Vision 2051, by having an opening and responsive government structure in place.

5. Financial Implications

There are no financial implications associated with the implementation of a YRT/Viva Advertising Policy.

York Region Transit (YRT/Viva) Advertising Policy

6. Local Municipal Impact

The YRT/Viva Advertising Policy will provide York Region residents with a formal process to address their comments regarding advertising on YRT/Viva property.

7. Conclusion

The proposed YRT/Viva Advertising Policy was developed by conducting a best practice study and reviewing the learnings from other Canadian transit systems and municipalities. The Policy highlights the Code overseen by Advertising Standards Canada and clearly outlines which advertising is acceptable on the YRT/Viva system.

Implementing an YRT/Viva Advertising Policy will allow staff and their advertising contractors to consistently and transparently manage advertising that appears throughout the YRT/Viva system.

For more information on this report, please contact Ann-Marie Carroll, General Manager, Transit at ext. 75677 or Christine Terin, Manager, Marketing and Communications, Transit at ext. 75835.

The Senior Management Group has reviewed this report.

April 23, 2015

Attachments (2)

6082071

Accessible formats or communication supports are available upon request



STATUS: Draft
Council Approved:
CAO Approved:

TITLE: Advertising on YRT/Viva Vehicles and Property	Edocs No.: 5633975 Original Approval Date: N/A Policy Last Updated: December 8, 2014 Posted on Intranet:
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POLICY STATEMENT:

The Region acknowledges that commercial advertising provides a financial benefit through the opportunity to offset the cost of Regional programs and services. The objective of this policy is to ensure that advertising complies with all applicable laws and Regional policies and does not adversely affect public safety or the Region’s corporate values.

APPLICATION:

This policy applies to all advertisements on YRT/Viva vehicles and property.

PURPOSE:

To ensure that all advertising on YRT/Viva vehicles and property is consistent with the Canadian Code of Advertising Standards. In addition, the purpose of this policy is to ensure that third party advertising on Regional property is consistent with the Region’s corporate values, image and strategic goals.

DEFINITIONS:

Advertiser: The entity or person wishing to purchase advertising space on YRT/Viva vehicles or property.

Advertisement(s): Any paid or in-kind communications that are designed to influence, educate or inform the public.

Advertising Space: The area on any vehicle or property where advertising may be displayed as set out in the contract between the Contractor and the Region.

Advertising Standards Canada (“ASC”): The not-for-profit Canadian advertising industry body established to create and maintain community confidence in advertising and to ensure the integrity and viability of advertising through industry self-regulation.

Canadian Code of Advertising Standards (the “Code”): The advertising industry’s principal instrument of advertising self-regulation, administered by Advertising Standards Canada, which sets the criteria for acceptable advertisements and forms the basis upon which advertisements are evaluated in response to consumer, trade, or special interest group complaints.

Certified (English) Translation: A certified translation consists of three parts, the source-language (original) text, the target-language (translated) text and a statement signed by the translator or translation company representative, with his or her signature notarized by a Notary Public, attesting that the translator or translation company representative believes the target-language text to be an accurate and complete translation of the source-language text.

Contractor: The entity which has contracted with the Region for the right to sell and display advertisements on Region vehicles and property.

Region: The Regional Municipality of York as represented by York Region Transit (YRT/Viva).

Regional Property (“YRT/Viva Property”): For the purpose of this policy, Regional property includes YRT/Viva vehicles, shelters, stations and other assets with advertising space as determined by the General Manager of YRT/Viva

DESCRIPTION:

1.0 Applicable Law

1.1 Advertisements must, as determined by the Region in its sole discretion, comply with all applicable legislation, regulations and bylaws in force in the Province of Ontario, including, but not limited to:

- Ontario Human Rights Code
- Canadian Charter of Rights and Freedoms
- Criminal Code of Canada
- Constitution of Canada

2.0 Criteria for Acceptance of Advertisements

2.1 Advertisements will be permitted on Regional property provided:

- (i) the Advertisement complies with the criteria set out in the Canadian Code of Advertising Standards, as amended.

- (ii) the Advertisement does not, as determined by the Region in its sole discretion, demean, denigrate, exploit 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.
 - (iii) there are no adverse effects on public safety associated with display of the Advertisement.
 - (iv) the Advertisement does not incite violence or hatred.
 - (v) no Advertisement will be accepted which the Region, determines in its sole discretion, is of questionable taste or in any way offensive in the style, content or method of presentation.
 - (vi) all Advertisements shall be reflective of a moral and reputable character.
- 2.2 Advertisements, which convey information about a meeting, gathering or event, must contain the name of the sponsoring group, and the location, date and time of the event.
- 2.3 Advertisements, which (a) promote or oppose a specific theology or religious ethnic, point of view, policy or action; or (b) advocate or oppose any ideology or political philosophy, point of view, policy or action; or (c) convey information about a political party or the candidacy of any person for a political position or public office, must visibly display the name of the sponsoring group.
- 2.4 No Advertisements will be accepted which promote any tobacco company, tobacco product or tobacco brand promotions, including sponsorship or promotion of cultural or sporting events.
- 2.5 In order for the Region to ensure that all Advertisements comply with this policy, requests for placement of non-English language Advertisements must be accompanied by a Certified Translation (English) of the Advertisement content.
- 2.6 Advertisements that denigrate public transit as a safe and reliable form of transportation are prohibited.
- 2.7 The Region's acceptance of an Advertisement does not constitute express or implied endorsement of the content or message of the advertisement, including any person, organization, products, services, information or viewpoints it may contain, or of the advertisement sponsor itself.
- 2.8 When required by the General Manager, the Advertisement must display the following disclaimer: *"The opinions expressed in this advertisement or by the sponsor of this*

advertisement, do not in any way represent the opinions of, and are not endorsed by, the Region.”

3.0 Objections by Members of the Public

- 3.1 Any person who objects to any Advertisement governed by this policy may file a complaint with Advertising Standards Canada, following its prescribed process.
- 3.2 Any individual or advertiser who wishes to appeal a decision of the Region regarding the application of the Canadian Code of Advertising Standards on Advertisements on YRT/Viva vehicles and transit property, may file a complaint with Advertising Standards Canada at www.adstandards.com

RESPONSIBILITIES:

General Manager, Transit – YRT/Viva

- Has sole discretion if an Advertisement may or may not appear on the system.

Manager, Marketing and Communications, Transit – YRT/Viva

- Is responsible for working with the Contractor to arrange for the display of Advertisements on Regional property

Manager, Capital Assets, Transit – YRT/Viva

- Is responsible for coordinating transit vehicles to ensure the timely installation of Advertisements

NON-COMPLIANCE WITH POLICY:

In the event it is determined that a posted Advertisement does not comply with this policy, the Region shall reserve the right to remove, or to have the Contractor remove, the Advertisement at no cost to the Region.

REFERENCE:

CONTACT:

Manager, Marketing and Communications, Transit - YRT/Viva

APPROVAL INFORMATION

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Advertising Standards Canada

CANADIAN CODE OF ADVERTISING STANDARDS

The Canadian Code of Advertising Standards, which has been developed to promote the professional practice of advertising, was first published in 1963. Since that time it has been reviewed and revised periodically to keep it contemporary. The Code is administered by Advertising Standards Canada. ASC is the industry body committed to creating and maintaining community confidence in advertising.



Advertising Standards Canada
Les normes canadiennes de la publicité

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OVERVIEW

The Canadian Code of Advertising Standards (Code), which has been developed to promote the professional practice of advertising, was first published in 1963. Since that time it has been reviewed and revised periodically to keep it contemporary. The Code is administered by Advertising Standards Canada (ASC). ASC is the industry body committed to creating and maintaining community confidence in advertising.

The Code sets the criteria for acceptable advertising and forms the basis upon which advertising is evaluated in response to consumer, advertiser, or special interest group complaints. It is widely endorsed by advertisers, advertising agencies, media that exhibit advertising, and suppliers to the advertising process.

Consumer complaints to ASC about advertising that allegedly does not comply with the Code are reviewed and adjudicated by one of two Councils: the Standards Council, which includes representatives from Western Canada, Central Canada, and Atlantic Canada, or, in Quebec, by le Conseil des normes. Councils are independent bodies of senior industry and public representatives that are supported and co-ordinated by, but altogether independent from, ASC.

Advertising complaints between advertisers, based on the Code, are administered under ASC's Advertising Dispute Procedure (formerly called the Trade Dispute Procedure.). Complaints about advertising from special interest groups are separately administered under ASC's Special Interest Group Complaint Procedure.

DEFINITIONS

For the purposes of the Code and this document:

- “Advertising” and “advertisement(s)” are defined as any message (the content of which is controlled directly or indirectly by the advertiser) expressed in any language and communicated in any medium (except those listed under Exclusions on page 2) to Canadians with the intent to influence their choice, opinion or behaviour.
- “Advertising” also includes “advocacy advertising”, “government advertising”, “political advertising”, and “election advertising”, as defined below.

- “Advocacy advertising” is defined as “advertising” which presents information or a point-of-view bearing on a publicly recognized controversial issue.
- “Government advertising” is defined as “advertising” by any part of local, provincial or federal governments, or concerning policies, practices or programs of such governments, as distinct from “political advertising” and “election advertising”.
- “Political advertising” is defined as “advertising” appearing at any time regarding a political figure, a political party, a government or political policy or issue publicly recognized to exist in Canada or elsewhere, or an electoral candidate.
- “Election advertising” includes “advertising” about any matter before the electorate for a referendum, “government advertising” and “political advertising”, any of which advertising is communicated to the public within a time-frame that starts the day after a vote is called and ends the day after the vote is held. In this definition, a “vote” is deemed to have been called when the applicable writ is issued.
- “Special Interest Group” is defined as an identifiable group, representing more than one individual and/or organization, expressing a unified viewpoint that is critical of the content of an advertisement, and/or the production method or technique, and/or the medium, used to carry the advertisement and convey its perceived message.

APPLICATION

The Code applies to “advertising” by (or for):

- advertisers promoting the use of goods and services;
- corporations, organizations or institutions seeking to improve their public image or advance a point of view; and
- governments, government departments and crown corporations.

EXCLUSIONS

Political and Election Advertising

Canadians are entitled to expect that “political advertising” and “election advertising” will respect the standards articulated in the Code. However, it is not intended that the Code govern or restrict the free expression of public opinion or ideas through “political advertising” or “election advertising”, which are excluded from the application of this Code.

Excluded Media

The following are excluded from the definition of “medium” and the application of the Code:

- i) foreign media (namely media that originate outside Canada and contain the advertising in question) unless the advertiser is a Canadian person or entity; and
- ii) packaging, wrappers and labels.

SCOPE OF THE CODE

The authority of the Code applies only to the content of advertisements and does not prohibit the promotion of legal products or services or their portrayal in circumstances of normal use. The context and content of the advertisement and the audience actually, or likely to be, or intended to be, reached by the advertisement, and the medium/media used to deliver the advertisement, are relevant factors in assessing its conformity with the Code. In the matter of consumer complaints, Council will be encouraged to refer, when in its judgment it would be helpful and appropriate to do so, to the principles expressed in the Gender Portrayal Guidelines respecting the representations of women and men in advertisements.

INTERPRETATION GUIDELINES

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

The Code is broadly supported by industry and is designed to help set and maintain standards of honesty, truth, accuracy, fairness and propriety in advertising.

The provisions of the Code should be adhered to both in letter and in spirit. Advertisers and their representatives must substantiate their advertised claims promptly when requested to do so by Council.

1. ACCURACY AND CLARITY

In assessing the truthfulness and accuracy of a message, advertising claim or representation under Clause 1 of the Code the concern is not with the intent of the sender or precise legality of the presentation. Rather the focus is on the message, claim or representation as received or perceived, i.e. the general impression conveyed by the advertisement.

(a) Advertisements must not contain inaccurate, deceptive or otherwise misleading claims, statements, illustrations or representations, either direct or implied, with regard to any identified or identifiable product(s) or service(s).

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

(c) All pertinent details of an advertised offer must be clearly and understandably stated.

(d) Disclaimers and asterisked or footnoted information must not contradict more prominent aspects of the message and should be located and presented in such a manner as to be clearly legible and/or audible.

(e) Both in principle and practice, all advertising claims and representations must be supportable. If the support on which an advertised claim or representation depends is test or survey data, such data must be reasonably competent and reliable, reflecting accepted principles of research design and execution that characterize the current state of the art. At the same time, however, such research should be economically and technically feasible, with due recognition of the various costs of doing business.

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

2. DISGUISED ADVERTISING TECHNIQUES

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

3. PRICE CLAIMS

(a) No advertisement shall include deceptive price claims or discounts, unrealistic price comparisons or exaggerated claims as to worth or value. “Regular Price”, “Suggested Retail Price”, “Manufacturer’s List Price” and “Fair Market Value” are deceptive terms when used by an advertiser to indicate a savings, unless they represent prices at which, in the market place where the advertisement appears, the advertiser actually sold a substantial volume of the advertised product or service within a reasonable period of time (such as six months) immediately before or after making the representation in the advertisement; or offered the product or service for sale in good faith for a substantial period of time (such as six months) immediately before or after making the representation in the advertisement.

(b) Where price discounts are offered, qualifying statements such as “up to”, “XX off”, etc., must be in easily readable type, in close proximity to the prices quoted and, where practical, legitimate regular prices must be included.

(c) Prices quoted in advertisements in Canadian media, other than in Canadian funds, must be so identified.

4. BAIT AND SWITCH

Advertisements must not misrepresent the consumer’s opportunity to purchase the goods and services at the terms presented. If supply of the sale item is limited, or the seller can fulfil only limited demand, this must be clearly stated in the advertisement.

5. GUARANTEES

No advertisement shall offer a guarantee or warranty, unless the guarantee or warranty is fully explained as to conditions and limits and the name of the guarantor or warrantor is provided, or it is indicated where such information may be obtained.

6. COMPARATIVE ADVERTISING Advertisements must not, unfairly, discredit, disparage or attack one or more products, services, advertisements, companies or entities, or exaggerate the nature or importance of competitive differences.

7. TESTIMONIALS

Testimonials, endorsements or representations of opinion or preference, must reflect the genuine, reasonably current opinion of the individual(s), group or organization making such representations, and must be based upon adequate information about or experience with the product or service being advertised, and must not otherwise be deceptive.

8. PROFESSIONAL OR SCIENTIFIC CLAIMS

Advertisements must not distort the true meaning of statements made by professionals or scientific authorities. Advertising claims must not imply that they have a scientific basis that they do not truly possess. Any scientific, professional or authoritative claims or statements must be applicable to the Canadian context, unless otherwise clearly stated.

9. IMITATION

No advertiser shall imitate the copy, slogans or illustrations of another advertiser in such a manner as to mislead the consumer.

10. SAFETY

Advertisements must not without reason, justifiable on educational or social grounds, display a disregard for safety by depicting situations that might reasonably be interpreted as encouraging unsafe or dangerous practices, or acts.

11. SUPERSTITION AND FEARS

Advertisements must not exploit superstitions or play upon fears to mislead the consumer.

12. ADVERTISING TO CHILDREN

Advertising that is directed to children must not exploit their credulity, lack of experience or their sense of loyalty, and must not present information or illustrations that might result in their physical, emotional or moral harm.

Child-directed advertising in the broadcast media is separately regulated by the Broadcast Code for Advertising to Children, also administered by ASC. Advertising to children in Quebec is prohibited by the Quebec Consumer Protection Act.

13. ADVERTISING TO MINORS

Products prohibited from sale to minors must not be advertised in such a way as to appeal particularly to persons under legal age, and people featured in advertisements for such products must be, and clearly seen to be, adults under the law.

14. UNACCEPTABLE DEPICTIONS AND PORTRAYALS

It is recognized that advertisements may be distasteful without necessarily conflicting with the provisions of this Clause 14; and the fact that a particular product or service may be offensive to some people is not sufficient grounds for objecting to an advertisement for that product or service.

Advertisements shall not:

- (a) condone any form of personal discrimination, including that based upon race, national origin, religion, sex or age;
- (b) appear in a realistic manner to exploit, condone or incite violence; nor appear to condone, or directly encourage, bullying; nor directly encourage, or exhibit obvious indifference to, unlawful behaviour;
- (c) demean, denigrate or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule;
- (d) undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.

THE PRECLEARANCE AND REGULATORY MOSAIC

The Code is not intended to replace the many laws and guidelines designed to regulate advertising in Canada. Nor are the Code's provisions intended to be senior to any other aspect of Canada's preclearance and regulatory apparatus – to which some require mandatory compliance; others voluntary. As its name implies, the Code has as its primary purpose the expression of Canadian standards in advertising that, when followed, should result in responsible yet effective advertising without unreasonably blunting the underlying fundamental right to advertise lawfully-sold products and services in a fair but competitive manner.

ASC also provides copy clearance services, upon request, to various groups within the advertising and

marketing industry through ASC Clearance Services. Every approved copy submission includes a written inscription, prominently displayed, advising the advertiser that the copy was approved only within the context of (and for as long as the copy complies with) the provisions of the applicable (named) Act, Regulations and Guidelines (if any).

The inscription may also note that an advertisement produced from the approved submission could provoke a consumer complaint under the Code, and that if such complaint is upheld by Council, the advertiser will be requested by ASC to withdraw the commercial or amend it to comply with the Code.

THE CONSUMER COMPLAINT PROCEDURE

HOW TO SUBMIT CONSUMER COMPLAINTS TO ASC

The procedure for consumers wishing to complain to ASC that an “advertisement” (as defined in the Code) contravenes the Code is as follows:

ASC accepts complaints submitted by e-mail, mail, or fax.

To submit a complaint by e-mail:

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

To submit a complaint by letter or fax:

- Include your full name, telephone number, complete mailing address and (if available) fax number and e-mail address.
- Identify the product or service being advertised, and the medium in which the advertisement appears:
 - For Print Advertisements: identify the name and date of the publication(s) in which you saw the advertisement(s) and include a copy of the advertisement(s).
 - For Out-of-home Advertisements, such as outdoor, transit or similar advertisements: identify the date on and exact location at which you saw the advertisement.
 - For Broadcast Advertisements: identify the station, time and date on/at which you saw/heard the commercial and provide a brief description of the commercial.

- For Cinema Advertisements: identify the title of the movie, the date of viewing, and the name and location of the movie theatre at which you saw the advertisement and provide a brief description of the advertisement.
- For Internet Advertisements: identify the date of viewing, website, and include a print-out of the advertisement and other applicable web pages (if any).
- Explain the reason or basis for the complaint and, if known, the provision(s) of the Code that may apply.
- Submit the complaint to ASC at the address, or fax number listed on page 8.

HOW CONSUMER COMPLAINTS ARE RECEIVED AND HANDLED BY ASC AND COUNCIL

In keeping with their mandate within today's self-regulatory environment, ASC and Council carefully consider and respond to all written consumer complaints received by them about advertising that allegedly does not comply with the Code.

The critical factor in determining whether an advertisement should be reviewed by Council is not the number of complaints received. The fundamental issue is only whether an advertisement, if the subject of any number of complaints, appears to contravene the Code. Ultimately, that question can only be answered by Council in response to one or more bona fide complaints that originate from the public.

NON-REVIEWABLE COMPLAINTS

If, upon review, it appears to ASC or Council that a complaint is not a disguised complaint between advertisers 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 complaint between advertisers or a special interest group complaint, but not a consumer complaint, the process will be discontinued and the complainant notified accordingly. In these cases, the complainant will be reminded that alternative approaches should be considered by the complainant for registering an advertising-related complaint, such as under ASC's Advertising Dispute Procedure or Special Interest Group Complaint Procedure.

ASC or Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that:

- a) the specific advertisement(s) about which the complainant alleges a Code violation has/have not been identified;
- b) based on the provisions of the Code, reasonable grounds for the complaint do not appear to exist;
- c) the advertising, or such part of the advertising to which the complaint refers 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 that generally meets, or exceeds, or is not inconsistent with, advertising standards articulated in regulations, guidelines, or otherwise by an agency (or some other comparable entity) of the Canadian government or a provincial government with respect to products or services that are fundamentally comparable to the products or services advertised in the advertising to which the complaint refers; or has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government; or that
- d) such advertising is not within the purview of the Code or, if in ASC's opinion, the complaint is beyond the resources or ability of ASC to resolve effectively, reasonably or conclusively under this Procedure; or if the matter to which such advertising refers has been identified by a competent authority such as an agency (or some other comparable entity) of the Canadian government or a provincial government as being outside the purview of ASC; or
- e) the complainant is abusing this Consumer Complaint Procedure because, in ASC's evaluation, one of the complainant's primary intentions is to generate publicity for a cause or issue.

COMPLAINT REVIEW PROCESS

All complaints directed to ASC will be initially evaluated by ASC staff. If, in its evaluation, ASC makes a preliminary determination that there may be a Code infraction by the advertisement (i.e. an accepted complaint), the complaint will be forwarded, verbatim, to the advertiser. If informed consent is freely granted by the complainant to ASC, the identity of the complainant will also be shared with the advertiser.

COMPLAINTS INVOLVING CLAUSES 10 OR 14

When an accepted complaint relates to the provisions of Clause 10 (Safety) or Clause 14 (Unacceptable Depictions and Portrayals), the advertiser will be asked to promptly respond (copying ASC), within a stated timeframe, directly to the complainant if the complainant has agreed to be identified. If the complainant does not wish to be identified, the advertiser will respond directly to ASC, who will redirect the response to the complainant. Complaints about alleged offences under Clauses 10 or 14 that are handled in this way will go forward for Council deliberation if the complainant notifies ASC that the complainant remains dissatisfied after receiving the advertiser's response, and if, after reviewing the advertiser's response, ASC believes the advertising still raises an issue under the Code. Otherwise, the matter will not be forwarded to Council and will not proceed further.

COMPLAINTS INVOLVING ALL OTHER CODE CLAUSES

Where a preliminary determination has been made that there may be an infraction of one or more of the other clauses of the Code (i.e. other than Clauses 10 or 14), the advertiser will be asked to respond directly to ASC by providing, in writing and without unreasonable delay, information requested by Council in order that Council may deliberate and reach a fully-informed decision about whether the Code has, in fact, been violated.

ADMINISTRATIVELY RESOLVED COMPLAINTS INVOLVING CLAUSES 1 AND 3

ASC has the administrative discretion to resolve cases that involve an apparent contravention of either or both Clauses 1 and 3 without requiring formal adjudication by Council if the advertiser:

- has remedied the contravention by permanently

withdrawing or “appropriately amending the advertisement” in question before or immediately upon being advised of the complaint by ASC.

In all Clause 1 and/or 3 cases involving acknowledged or adjudicated Code infractions in retail advertising, the advertiser must, in addition to withdrawing or “appropriately amending the advertisement”, undertake appropriate corrective action by providing a “correction advertisement” or a “correction notice” that (i) appears in consumer-oriented media addressed to the same consumers to whom the original advertisement was directed; or that (ii) is prominently exhibited at the advertiser’s retail outlets at which the advertised product or service that was incorrectly advertised is available for purchase or acquisition.

A “correction advertisement” means a new advertisement in which the advertiser corrects the error(s) in the original retail advertising. A “correction notice” means a notice that identifies the advertiser and acknowledges and corrects the error(s) in the original retail advertising.

Complaints resolved in this manner will be publicly reported by ASC only as statistics without identifying the advertiser or the advertising.

COUNCIL HEARING AND DECISION

All complaints directed to ASC will be initially evaluated by ASC staff. If a complaint raises a potential Code issue and concerns an English-language advertisement, other than one that appears only in Quebec, it will be directed to the Standards Council. If a complaint raises a potential Code issue and concerns advertising in the French-language, or advertising that appears only in Quebec, the complaint will be evaluated and decided by le Conseil des normes.

At the initial Council deliberation, the materials available for Council’s review include, at a minimum, the complaint letter, the advertiser’s written response, if any, and a copy of the advertising in question.

Council’s decisions are by majority vote. Any member of Council may abstain from voting on any matter.

If Council concludes an advertisement violates the Code, the advertiser, with a copy to the complainant, will be notified of the decision in writing and requested to appropriately amend the advertising in question or withdraw it, in either case without unreasonable delay.

If, at the initial deliberation by Council, the complaint is not upheld, both the complainant and the advertiser will be notified in writing with an explanation for Council’s decision.

APPEALING A COUNCIL DECISION

Both the complainant and the advertiser are entitled to request an appeal from a decision of Council by filing a Request for Appeal addressed to ASC. The

Request for Appeal must be in writing and received at ASC within seven working days after the decision is sent to the parties. It must provide the appellant’s reasons for believing the decision was in error. A request by an advertiser for an appeal will be considered if that advertiser undertakes in writing to withdraw the advertising in question within 11 working days after the Request for Appeal is received at ASC. The withdrawn advertising may be reinstated, however, if at the appeal hearing the Appeal Panel decides not to uphold the complaint. Advertisers will be granted a reasonable extension of time in which to withdraw the advertising if Council is satisfied that the advertising medium used to convey the advertising is unable to facilitate the withdrawal in the designated time.

A five-person Appeal Panel will be selected from among a roster of persons who did not serve at the original Council deliberation. The Appeal Panel will comprise two public representatives with the balance coming from the advertising industry sector

Both the advertiser and the complainant will be requested to make only written submissions to the Appeal Panel. The submissions must be brief, confined strictly to the matters under appeal and received by ASC within the requested timeframe. At the appeal hearing, the complaint will be treated as a new complaint and the matter reconsidered in its entirety.

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

Decisions of Appeal Panels will be by majority vote and will be sent to both parties following the appeal hearing. Decisions by Appeal Panels will be binding and final.

AD COMPLAINTS REPORTS

Each year, ASC will publish one or more reports on consumers’ complaints to ASC about advertising. The principal purpose of these reports is to serve, for the benefit of the advertising industry and the interested public, as a guide to the interpretation of the Code as applied to advertising issues that concerned the public.

The Ad Complaints Reports will be divided into three sections: “Identified Cases”, “Non-identified Cases”, and “Administratively Resolved Cases.”

In the “Identified Cases” section, details will be provided of those consumer complaints that were adjudicated and upheld by Council under the Code. This section will include identification of the advertiser and advertising. In this section, advertisers will be entitled to state their position on their advertisements about which Council has upheld one or more complaints.

In the “Non-identified Cases” section, consumer complaints adjudicated and upheld by Council about advertisements dealt with appropriately by the advertiser

will be summarized, without identifying the advertiser or the advertisement.

“Appropriately dealt with” by the advertiser, or “appropriately amending the advertisement”, means action voluntarily undertaken by the advertiser, without delay, to amend the advertisement to correct the alleged infraction, after being advised by ASC that a complaint had been received and before the matter was brought forward to Council for review and decision. Alternatively, the advertiser, without delay, may withdraw the advertisement from any further exposure, distribution or circulation. In the case of retail advertising, the advertiser must also provide, without delay, a “correction advertisement” or a “correction notice” that (i) appears in consumer-oriented media addressed to the same consumers to whom the original advertisement was originally directed; or that (ii) is prominently exhibited at the advertiser’s retail outlets at which the advertised product or service that was incorrectly advertised is available for purchase or acquisition.

A “correction advertisement” means a new advertisement in which the advertiser corrects the error(s) in the original retail advertising. A “correction notice” means a notice that identifies the advertiser and acknowledges and corrects the error(s) in the original retail advertising.

In the “Administratively Resolved Cases” section, only statistical information will be provided about complaints administratively resolved by ASC about advertisements that involve apparent infractions of Clauses 1 and 3. Neither the advertiser nor the advertisement will be identified.

IDENTIFYING THE ADVERTISER AND ITS ADVERTISING

Notwithstanding any contrary provision stated elsewhere in the Code, ASC will have the discretionary right, but not the obligation, in “Non-identified Cases” or in “Administratively Resolved Cases”, to identify and comment on an advertiser, its advertising and the outcome of a complaint about the advertising as adjudicated by ASC, Council and/or an Appeal Panel.

This discretionary right of ASC arises when an advertiser in a “Non-identified Case” or in an “Administratively Resolved Case”:

- a) has, in ASC’s opinion, permitted or participated in the disclosure publicly of the identity of the advertiser and the advertising in question, and/or the outcome of one or more complaints about the advertising as adjudicated by ASC, Council or an Appeal Panel; or
- b) when the advertiser specifically asks ASC to comment publicly, as ASC sees fit, on the advertiser’s advertising in question and/or the outcome of one or more complaints about the advertising as adjudicated by ASC, Council or an Appeal Panel.

RE-OPENING A CASE

ASC will have the discretionary right to reactivate the Consumer Complaint Procedure, in whole or part, including the imposition of sanctions provided in the Code, if an advertiser fails to fulfil its undertaking to withdraw or amend an advertisement; or if the matter underlying the complaint is of a continuing or repetitive nature, suggesting an avoidance of the provision(s) of the Code.

ADVERTISER’S FAILURE TO RESPOND OR PARTICIPATE

If an advertiser fails to respond in a timely manner to ASC’s request for a copy of the advertisement that is the subject of a consumer complaint, ASC may ask the carrying media to assist ASC by providing it with a copy of the advertisement in question. If an advertiser fails to respond to a complaint or participate in the Consumer Complaint Procedure the complaint may be decided in the advertiser’s absence based on the information already in the possession of Council and on any further pertinent information submitted by the complainant for Council’s review.

FAILURE TO FOLLOW PROCEDURE OR COMPLY WITH DECISION

The Code is a reflection of advertising standards by which industry wishes to be held accountable. Because self-regulation is more than self-restraint on the part of individual companies or entities, the Code would be incomplete without effective sanctions to enforce compliance.

If an advertiser fails to voluntarily comply with the decision of Council, ASC:

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

FOR MORE INFORMATION

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

Advertising Standards Canada
175 Bloor Street East
South Tower, Suite 1801
Toronto, ON M4W 3R8
Telephone: 416 961-6311
Fax: 416 961-7904

Advertising Standards Canada
2015 Peel Street, Suite 915
Montreal, Quebec H3A 1T8
Telephone: 514 931-8060
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Advertising Standards Canada
les normes canadiennes de la publicité