

Ad Complaints Report

2010

YEAR IN REVIEW

WHAT'S IN THIS REPORT

Introduction.....	2
2010/2011 Public Awareness Campaign.....	2
2010 Year in Review.....	3
The <i>Code</i> in a Digital World.....	5
Keeping the <i>Code</i> Current.....	6
The Consumer Complaint Procedure.....	6
ASC Advisory on the Meaning of the Phrase “No Contracts” in Advertising...	7
National and Regional Consumer Response Councils.....	8
How to Submit a Consumer Complaint.....	9

This 2010 Complaints Report contains statistical information about complaints submitted to ASC in 2010 for review under the *Canadian Code of Advertising Standards (Code)*. Case summaries about complaints upheld by the Councils from January 1, 2010 to December 31, 2010, are available on our web site at www.adstandards.com.



Advertising Standards Canada
Les normes canadiennes de la publicité

2010/2011 PUBLIC AWARENESS CAMPAIGN

In December 2010, ASC launched its latest Public Awareness Campaign – “Truth in Advertising Matters.” This national multi-media campaign was developed to build awareness of ASC and the industry’s commitment to advertising that is truthful, fair and accurate. Among the campaign components is a new microsite – adstandards.ca. Using simple language and dynamic graphics, the site provides background on advertising, ASC, and the *Canadian Code of Advertising Standards*.



At Advertising Standards Canada (ASC) we recognize that an effective consumer response mechanism is essential to building public confidence in advertising. In keeping with our mandate and, as part of our commitment to transparency, we accept and respond to consumers’ complaints about advertising appearing in the Canadian media.

Reporting on complaints upheld by ASC’s independent national and regional Consumer Response Councils (Councils) is an important part of the consumer complaint process. The published case summaries provide invaluable learning for both the advertising industry and the public regarding how the Councils interpret and apply the *Canadian Code of Advertising Standards (Code)*.

Published for both consumers and the advertising industry, this 2010 Ad Complaints Report provides an account of the number of consumer complaints received and investigated over the past year, information about the types of complaints upheld, as well as insight into hot button consumer issues in 2010.

2010 HIGHLIGHTS

- ASC received a total of 1,200 consumer complaints regarding 743 advertisements.
- Councils reviewed 180 complaints that raised issues under the *Code*.
- A total of 84 complaints about 58 advertisements were upheld by Councils.
- Consumers’ complaints alleging inaccurate/misleading advertising represented 35 per cent of pursued complaints.
- Retail advertising garnered the highest number of complaints – a 27 per cent increase over 2009.

UNDERSTANDING AD COMPLAINTS: A GUIDE TO ASC’S RESOURCES ONLINE

To read and learn about the *Canadian Code of Advertising Standards*, Interpretation Guidelines and the Consumer Complaint Procedure, visit Advertising Standards Canada’s web site at www.adstandards.com.

Online resources include:

- *Canadian Code of Advertising Standards*
- Interpretation Guidelines
- ASC Advisories
- Ad Complaints Reports
- Consumer Complaints Online Submission Form

OVERVIEW

In 2010, consumers submitted 1,200 complaints to ASC – relatively consistent with the number submitted in 2009. Of the total complaints received, 1,059 complaints met the criteria for acceptance under the *Canadian Code of Advertising Standards (Code)*. The balance of 141 complaints could not be pursued because they did not fall within the *Code* acceptance criteria. These included complaints in which no specific advertisement was identified, and complaints about advertisements that were no longer current, or did not otherwise meet the *Code* definition of advertising.

TWO-YEAR COMPLAINTS SUMMARY

	2010	2009
Received by ASC	1,200 (743 ads)	1,228 (760 ads)
	↓	↓
Met <i>Code</i> acceptance criteria	1,059 (642 ads)	1,034 (624 ads)
	↓	↓
Raised potential <i>Code</i> issues and went to Council review	180 (122 ads)	133 (89 ads)
	↓	↓
Complaints upheld by Councils	84 (58 ads)	80 (56 ads)

COMPLAINTS BY CODE CLAUSE

The *Code* sets the standards for acceptable advertising and provides the basis for the review and adjudication of consumer complaints about advertising. Of the 1,059 complaints pursued by ASC, almost all involved concerns relating to the following *Code* clauses:

- Clause 1 (Accuracy and Clarity), Clause 3 (Price Claims)

- Clause 10 (Safety)
- Clause 12 (Advertising to Children)
- Clause 14 (Unacceptable Depictions and Portrayals)

Complaints that raised issues under one or more *Code* clauses were forwarded to ASC's independent, volunteer national and regional Consumer Response Councils (Councils) for adjudication. Throughout 2010, Councils reviewed 180 complaints, and upheld 84 complaints about 58 advertisements.

Clause 14 (Unacceptable Depictions and Portrayals)

In keeping with historical patterns, just over 50 per cent (540) of the pursued complaints related to Clause 14. However, the majority of these complaints involved matters of personal taste or preference and did not raise issues under any provisions of this clause.

Under Clause 14, Councils upheld 33 complaints about 11 advertisements. Among these were 22 complaints about three advertisements that were found to offend general standards of public decency.

Clause 1 (Accuracy and Clarity) and Clause 3 (Price Claims)

In 2010, ASC reviewed 436 complaints alleging misleading or inaccurate advertising under Clause 1 and Clause 3. Following review, Councils upheld 46 complaints about 44 advertisements. These involved advertisements for products that were either unavailable during the promotional period; advertisements that omitted relevant information or did not clearly state all pertinent details of an offer; or contained unsubstantiated claims.

Clause 10 (Safety)

A total of 40 complaints were pursued under Clause 10. Two of these complaints were upheld about two advertisements.

CODE DEFINITION OF ADVERTISING

"Advertising" is defined as any message (the content of which is controlled directly or indirectly by the advertiser) expressed in any language and communicated in any medium (except those listed under Exclusions) to Canadians with the intent to influence their choice, opinion or behaviour.

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*.

Media

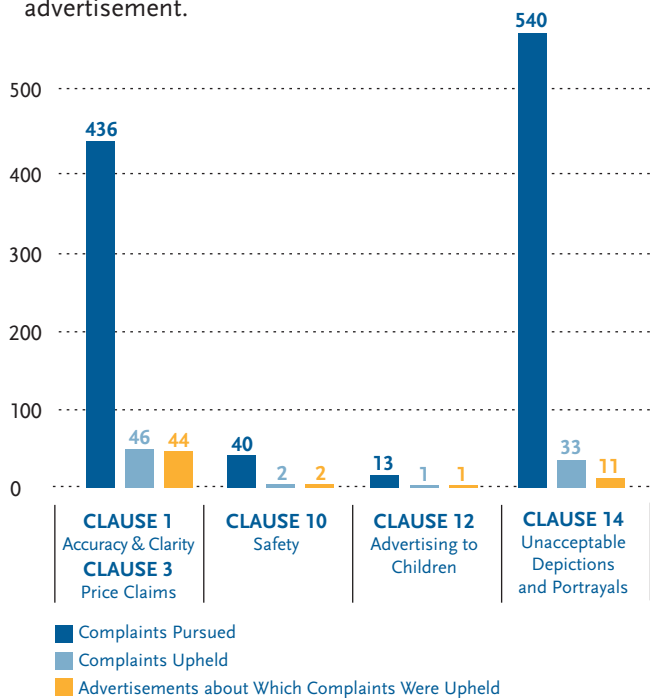
The following are excluded from the definition of "medium" and the application of the *Code*:

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

Advertising Standards Canada 2010 YEAR IN REVIEW

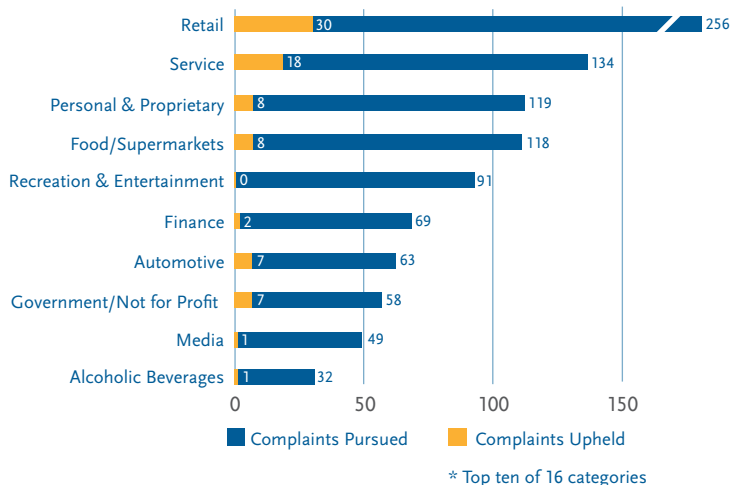
Clause 12 (Advertising to Children)

A total of 13 complaints were pursued under this clause. One of the complaints was upheld about one advertisement.



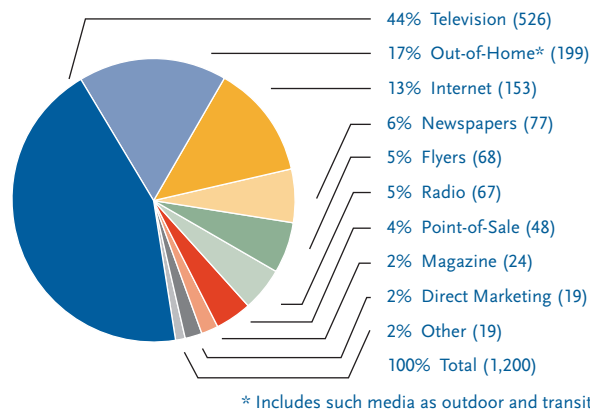
COMPLAINTS BY CATEGORY OF ADVERTISING*

Retail advertising generated 256 consumer complaints in 2010, more than any other category of advertising and significantly higher than the 156 complaints generated in 2009. The second highest number of complaints by category related to advertising in the Service category, which attracted 134 complaints – an increase over 93 complaints received in 2009. In third place was advertising of Personal and Proprietary products with 119 complaints.



COMPLAINTS BY MEDIA

Consistent with previous years, advertising on television continued to generate the highest number of complaints at 526. Advertising displayed in the out-of-home media, including transit and billboard advertising, garnered the second highest number of complaints at 199. Internet advertising followed with 153 complaints.



UNDERSTANDING CONSUMER 'HOT BUTTONS'

Throughout 2010, and in keeping with 2009, consumers continued to be focused on value, scrutinizing advertising – especially retail advertising – with a critical eye. In 2010, consumer concerns regarding inaccurate and misleading advertising represented approximately 35 per cent of all pursued complaints compared to 17 per cent between 2000 and 2005. Consumers' complaints alleging misleading advertising included concerns about:

- broad, unqualified claims;
- claims that certain physical conditions and illnesses could be alleviated through the use of unapproved treatments, products or services; and
- unsubstantiated environmental claims.

Examples of advertising claims found by Councils to be misleading and/or unsubstantiated included the following: “emission-free,” “better for the environment” and “no contracts.”

In 2010, consumers continued to raise concerns about content that their children were exposed to in advertising. For example, ASC received over 100 complaints about two provocative out-of-home campaigns that used sexual images. ASC also heard from consumers who did not believe it was appropriate for advertisers to feature children in commercials for some products and services, and that certain types of products and services should not be advertised to children.

Canadians love the Internet. In 2009, 80 per cent of Canadians aged 16 and older used the Internet for personal reasons – up from 73 per cent in 2007¹. This usage included ordering goods and services online, searching for health and medical information, as well as downloading or watching television and movies online. Canadians are also heavy users of social media. It is estimated that almost 50 per cent of Canadians are on Facebook alone. With this rise in Internet use among a broad consumer audience, advertisers are making increasing use of new online platforms to reach Canadian consumers.

When the *Code* was first introduced in 1963, it applied only to advertising carried in traditional paid media such as television, radio, print and out-of-home. In the new ever-changing digital age, ASC is frequently asked about the application of the *Code* and whether the “rules” apply to digital media, including social media. The answer is yes, provided that the advertising in question meets the definition of “advertising” in the *Code*².

DETERMINING WHAT IS ADVERTISING

To evaluate whether or not a message in online, electronic or social media would be considered to be “advertising” for the purpose of the *Code*, the following question must be asked:

- Is the message controlled directly or indirectly by the advertiser?
- Is the message communicated to Canadians?
- Is the message intended to influence choice, opinion or behaviour?

If the answer to all three questions is yes, then the message qualifies as advertising and is governed by all of the *Code*'s provisions.

Consider the example of an advertiser that wishes to promote an online contest via various social media sites to Canadians. The contest invites consumers to submit advertisements that they create using the advertiser's product in new and unusual ways. The advertisement ultimately judged the most creative will be posted on the advertiser's website. While the winning advertisement will be created by a consumer, not the advertiser, its use and placement will be controlled solely by the advertiser. Although the advertisement was created by the consumer, it would qualify as “advertising” under the *Code*.

DIGITAL ADVERTISING TO CHILDREN

Advertisers are also using digital media to reach children and recognize that special care must be exercised when communicating to the child audience. Under Clause 12 (Advertising to Children) of the *Code* 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.” More specific guidance regarding how this clause may apply can be found in the *Code*'s Interpretation Guideline #2 – Advertising to Children, available at www.adstandards.com

¹ Statistics Canada, 2009 Canadian Internet Usage Survey

² “Advertising” is defined as “any message (the content of which is controlled directly or indirectly by the advertiser) expressed in any language and communicated in any medium (except those listed under Exclusions) to Canadians with the intent to influence their choice, opinion or behaviour.”

KEEPING THE CODE CURRENT

The *Canadian Code of Advertising Standards (Code)* is the principal instrument of advertising self-regulation. It sets the standards for advertising that is truthful, fair and accurate. First published in 1963, the *Code* was developed as a collaborative effort among major advertisers and the media that together recognized the power of advertising to influence consumer choice. To harness the influential force of advertising in an ethical and responsible manner, the *Code* was created by the industry to set the standards for acceptable advertising in Canada.

Following its introduction, the *Code* has been regularly updated to ensure it remains relevant and current. For example, in 2000, Interpretation Guidelines were introduced to facilitate industry and public understanding of the interpretation and application of clauses of the *Code* as new consumer issues arise and

societal expectations change. There are currently four Interpretation Guidelines.

Guideline #1	Alleged Infractions of Clauses 10 or 14: Elements of Humour and Fantasy (2003)
Guideline #2	Advertising to Children (2004, 2006, 2007)
Guideline #3	Environmental Claims (2008)
Guideline #4	Alleged Infractions of Clauses 10 or 14: Motor Vehicle Advertising (2009)

As consumer behaviour and societal expectations evolve, and advertisers and media offer new ways to reach consumers, ASC is focused on ensuring that the *Code* remains robust, contemporary and responsive to changes in the advertising and media environments.

THE CONSUMER COMPLAINT PROCEDURE

Established by the Canadian advertising industry over 40 years ago, the Consumer Complaint Procedure provides Canadian consumers with a mechanism to submit written complaints about advertising currently running in the Canadian media. ASC accepts and responds to all written complaints it receives via online submission, by letter, or fax.

Complaints received are evaluated under the provisions of the *Code*. Complaints that raise a potential issue under the *Code* are reviewed and evaluated by independent, volunteer bodies – the national and regional Consumer Response Councils. There are six key steps in the complaints review process following receipt of the written complaint by ASC.

1. ASC reviews the advertisement against the clauses of the *Code*.
2. If a potential issue is identified under a clause of the *Code* (other than Clause 10 or 14) the advertiser is asked to respond to ASC regarding the merits of the complaint.
3. ASC reviews the advertisers' response. If a *Code* issue remains, the complaint is forwarded to one of the independent Consumer Response Councils for adjudication.
4. If a Council determines that an advertisement violates a *Code* clause, the advertiser is asked to amend or withdraw the advertisement.
5. An appeal process is provided in the *Code* for advertisers or consumers who wish to appeal a Council decision.
6. Upheld complaints are publicly reported regularly in ASC's online Ad Complaints Reports.

ASC ADVISORY OF THE MEANING OF THE PHRASE “NO CONTRACTS” IN ADVERTISING

This ASC Advisory was published in 2010 to provide guidance to the advertising industry to help ensure that advertising for products or services on a “No Contract” basis complies with the provisions of the *Canadian Code of Advertising Standards (Code)*.

WHAT IS THE CONCERN?

ASC hears from consumers who question when advertisers apply significant terms and conditions to the purchase of services or products they advertise as being available on a “No Contract” basis.

Consumers tell ASC they believe they have been misled by advertising that appears to indicate that “no conditions” apply to purchase or service offers, when this is clearly not the case.

WHAT DOES THE TERM “NO CONTRACT” MEAN IN ADVERTISING?

A case adjudicated by the Consumer Response Council (Council) in 2010 highlights this issue. (The Council is the independent body composed of senior industry and public representatives that adjudicates consumers’ complaints to ASC about advertising.)

In this instance, the advertiser claimed there were “No Contracts” attached to its service when, in fact, the service was subject to a fairly detailed and comprehensive compendium called “Terms of Service”.

The advertiser defended its advertising on the grounds that its “No Contracts” claim was only intended to refer to a subscriber’s right to cancel the advertiser’s service without penalty on 30 days’ notice. The advertiser also submitted to ASC that its competitors, as well as other advertisers in unrelated industries, engage in the same practice.

Council and a subsequent Appeal Panel ultimately decided that the “No Contracts” claim was misleading in this context – i.e. Council evaluated that the provisions governing cancellation as outlined in the “Terms of Service” constituted a contractual obligation, as did the overall “Terms of Service” which were binding on both the advertiser and its customers.

However, Council determined that the claim would be acceptable under the *Code* if the advertising clearly explained what was meant by the term “No Contracts.” The advertising had to make clear that “No Contracts” meant only that there were no cancellation charges – not that there weren’t any conditions governing the provision of the advertised service.

Council also noted that if ASC received complaints from consumers that similar “No Contracts” types of claims are misleading under the *Code*, advertisers should anticipate a similar outcome.

WHAT PRINCIPLE CAN BE DERIVED FROM THIS CASE?

To ensure that advertising messages are not misleading, don’t promise more than will be delivered. If, as in this case, the major benefit you want to communicate is that there are “no cancellation charges,” why not say so? And if you attach terms and conditions to the purchase of or subscription to your goods or service, it is risky to advertise that there is “No Contract.”

Other ASC Advisories are available at:
www.adstandards.com/en/Standards/ASCAdvisories.aspx

ASC's independent volunteer Consumer Response Councils (Councils) play a vital role in ensuring objective and fair complaint adjudication. While ASC administers the process by which consumers submit their written complaints about advertisements, those complaints that raise potential issues under the *Code* are reviewed and adjudicated by the Councils. The Councils are comprised of senior industry and public representatives who are committed to help ensure that Canadian advertising is truthful, fair and accurate.

There are five Councils across Canada in British Columbia, Alberta, Quebec, Ontario, and Atlantic Canada.

NATIONAL CONSUMER RESPONSE COUNCIL

Roberta Albert*
 Peggy Barnwell*
 Tim Bowen, Cossette Inc.
 Renee Bozowsky*
 Joan Cohen*
 Theresa Courneyea*
 Rafe Engle (Chair), R.S. Engle Professional Corporation
 Michele Erskine, CBS Outdoor
 Eleanor Friedland*
 Lorraine Hughes, OMD Canada
 Marilyn King, Pattison Outdoor Advertising
 Norm Kirk*
 Stephen Lawson, Hudson's Bay Company
 Helena Lazar, Publicis
 Sharon MacLeod, Unilever Canada
 Heather Nobes, Visa Canada
 Margo Northcote, creative consultant
 Jayne Payette, Nestlé Canada Inc.
 Suzanne Raitt, Newspapers Canada
 Teresa Tsuji, Rogers Healthcare Group
 Sandra Wheaton, Canadian Broadcasting Corporation
 Dr. Gerry Wright, Johnson & Johnson Inc.

FRENCH CANADA CONSUMER RESPONSE COUNCIL

Ronald Béliard*
 Philippe Comeau, LG2
 Luc-André Cormier, V Interactions Inc.
 Yanik Deschênes, AAPQ
 Jocelyn Desjardins, Conseil québécois du commerce du détail
 Sylvain Desrochers*
 Denis Dompierre*
 Christiane Dubé, *La Presse*
 Sylvie Gaudreau†, V Interactions Inc.
 Paul Hétu†, Association canadienne des annonceurs Inc.
 Diane Lapointe, Gaz Métro
 Raymonde Lavoie, (présidente), DesArts Communication
 Brigitte Lefebvre*
 Lucienne Lemire*
 Alykhanhthi Lynhiavu*
 Marie-Luce Ouellet†, AAPQ

Nadia Martel, Bombardier Produits Récréatifs Inc.
 Gilber Paquette, Hebdos Québec
 Annie Péloquin, *Sélection du Reader's Digest (Canada) Ltée*
 Veronica Piacek, Pfizer Canada Inc.
 Roselyne René de Cotret†, Société Radio-Canada
 Joëlle Turgeon†, Société Radio-Canada
 Sandra Wheaton, Société Radio-Canada

ALBERTA CONSUMER RESPONSE COUNCIL

Gary Cobb, *The Calgary Herald*
 Sandra Jonsson, CTV Calgary
 Louise Lutic*
 Paige O'Neill, Chinook Centre
 Kate Reynolds-Braun, *The Globe and Mail*
 Adam Seely, Pattison Outdoor Advertising
 Pat Sullivan (Chair)*

ATLANTIC CANADA CONSUMER RESPONSE COUNCIL

Michel Bertin, Radio-Canada
 Jay Calnan, Newcap Radio – CFRQ, CFDR, CKUL
 Heather Crees, McCain Foods (Canada)
 Rick Emberley, MarketQuest Research Group Inc.
 Kelly Greenwood*
 Nancy G. Rubin*

BC CONSUMER RESPONSE COUNCIL

John Azevedo, Nintendo of Canada Ltd.
 Alexis Cameron (Chair), *The Vancouver Sun/The Province*
 Pat Conway, Pattison Outdoor Advertising
 Jan Evanski, Corus Radio Vancouver
 John Leckie, Gowling Lafleur Henderson LLP
 Simone Lis*
 Dr. Yvonne Martin-Newcombe*
 Sheryl O'Toole, Peoples Drug Mart
 Andeen Pitt, Wasserman & Partners Advertising
 Anne Steele*
 Robert Wyckham*

†Alternate

*Public Representative

HOW TO SUBMIT A CONSUMER COMPLAINT

ASC accepts consumer complaints about advertising through our website, email, mail or fax.

If you have a concern about an ad you see or hear currently running in Canadian media, you can submit a complaint to ASC. To allow ASC to communicate your precise concern to the involved advertiser, complaints must be received in writing. We encourage you to submit complaints through our online complaint submission form, available at www.adstandards.com, or you can mail or fax them to ASC.

Be sure to provide the following information in your submission:

Your name, complete mailing address and phone number.

Explain the reason or basis for the complaint and, if known, the provision(s) of the *Code* that may apply. Identify the product or service being advertised. Identify the medium in which the advertisement appears.

To submit your complaint, fill out the online form at www.adstandards.com, or send your written complaint by fax to (416) 961-7904 or by mail to:

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