

## **Coronavirus disease 2019 (COVID-19) Claims and a Reminder About Substantiating Advertising Claims**

With rising concerns about the global spread of this novel Coronavirus disease, some companies are advertising products promising to help prevent the virus from spreading or offer a cure to those infected. Even claims about products that are not traditionally thought of as a treatment or prevention of an illness may be seen to imply a benefit to consumers looking for solutions at this difficult time. Ad Standards is releasing this bulletin to remind advertisers about their obligations in connection with substantiating claims, both in the context of health protection, and scientific claims more broadly.

### **Health Products**

According to Health Canada, “[a]t this time, there is no vaccine for COVID-19 or any natural health products that are authorized to treat or protect against COVID-19.” For more information, see: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/symptoms.html>. As a reminder, claims about certain regulated products such as natural health products and non-prescription drugs are only permissible if authorized by Health Canada. These product categories include hard-surface disinfectants, antiseptic skin cleansers (e.g. hand sanitizer, disinfectant soaps), homeopathic remedies (including nosode products), and other similar products advertised for the prevention, mitigation or treatment of a disease such as COVID-19. Ad Standards preclears advertising in these categories against applicable Terms of Market Authorization, and will only approve claims that have been authorized by Health Canada. To the extent that not all advertising is submitted for preclearance, we remind consumers to be vigilant.

### **Consumer Products**

In other consumer product categories, the onus is on the advertiser to have competent and reliable evidence to substantiate its claims. This evidence must be on file with the advertiser before the claim is made. Under Clause 1 (Accuracy and Clarity) of the *Canadian Code of Advertising Standards (Code)*, the general impression conveyed by the advertisement, and not just its literal meaning, must be considered. Paragraph (e) of Clause 1 states that all advertisements must be supported by competent and reliable evidence. Further, where testing is involved, then the tests and data must be reasonably competent and reliable, “reflecting accepted principles of research design and execution that characterize the current state of the art.” When assessing an advertisement against this clause, Standards Councils and Ad Dispute Panels take a comprehensive look at the type of testing performed and whether that test directly supports the claim made, to determine whether the evidence is indeed “competent and reliable”. Anecdotal evidence, survey data from a foreign jurisdiction, or testing that did not reflect real-life experience with the product are all examples of inadequate substantiation that Standards Councils and Ad Dispute Panels have rejected in the past.

This standard echoes the requirements of law and, specifically, the *Competition Act* (section 74.01(1)(b)) which requires that any representation about performance, efficacy, or length of life of a product must be based on “adequate and proper” testing. To determine what adequate and proper tests would be, the Competition Bureau will look at the context of the advertising and to several defined criteria, such as whether the test simulates the real world conditions in which the product will be used, and whether the test has been repeated and yielded the same results.

# Ad Standards

Not only should claims be proven, but they cannot be distorted, too broad, or over-stated. The scope of the claim should reflect the testing that was done so that the testing directly and unequivocally supports the claim. In the *Code*, Clause 8 (Professional or Scientific Claims) addresses this issue as follows:

“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.”

It is not enough for an advertiser to have a test loosely tied to its claims about its product, or to rely on a poorly-designed test as substantiation. Rather, whatever claim is made needs to have a direct link to prior testing that sufficiently supports the entirety of the claim. Similarly, Canadian advertisers should also keep in mind the importance of context when importing data from another jurisdiction. Survey data should be based in Canada, since Canadian perceptions will differ from those of consumers in other jurisdictions and contexts.

## Conclusion

Advertising is defined broadly under the *Code*, and applicable legislation under the jurisdiction of Health Canada. This means that these requirements apply to advertising in all media, including in-store claims, broadcast, print, websites, twitter accounts, and social media webpages and apps. Regardless of the media, the same standards and expectations apply. If scientific support or proper evidence is lacking, or if the claims have not been authorized (where so required), the claim cannot be made on these channels.

For information about how to submit a complaint about an ad to Ad Standards, please see: <https://adstandards.ca/complaints/>