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Advertising Dispute Procedure Case Summaries

The following are summaries of cases decided under the Advertising Dispute Procedure (the "Procedure"). The Procedure is applicable when one Advertiser (as defined in the *Canadian Code of Advertising Standards* ["*Code*"]) challenges advertising by another Advertiser under the *Code*. According the Procedure, the summaries do not disclose the identity of the Advertisers unless an advertisement is found to be in violation of the *Code*, and the Advertiser does not voluntarily amend or withdraw the advertisement in accordance with the decision of the Adverting Dispute Panel.

2020 Advertising Dispute Procedure Case Summaries

Case #1 - 2020

Advertiser Category:	Consumer Product Manufacturer
Region:	National
Media:	Digital, Out-of-home
Clause(s) Under Consideration:	Clauses 1(a) and (e), Clause 6
Description:	Advertising claimed that a consumer product/service was (i) Canadian; (ii) superior in relation to its competitors, and (iii) received perfect star ratings from consumers.
Complaint:	The complainant alleged that claims could not be substantiated and were misleading.
Defendant's Position:	The defendant advertiser submitted that the claims in question were either sufficiently substantiated, or constituted mere puffery.
Ad Dispute Panel Decision:	The Panel did not find the support submitted by the defendant advertiser about the product being "Canadian" to be persuasive. In the Panel's view, the correct framework in which to assess the claim about the product being Canadian was the Competition Bureau's guidance on "Made in Canada" and "Product of Canada" claims. The defendant advertiser did not provide evidence to satisfy these criteria. In assessing certain of the defendant advertiser's performance superiority claims, third party websites were referenced as substantiation. Those websites were found by the Panel to be legitimate and based on objective criteria. The Panel considered Ad Standards' *Guidelines for the Use of Research and Survey Data to Support Comparative Advertising Claims*, which states, "Research to support a specific comparative claim against another product or service should follow published standards of the market research industry, or generally accepted industry practices." The complainant advertiser in this case did not demonstrate that the defendant advertiser's rating methodology was misleading. The Panel found that where disclaimers containing information about the assessment criteria are displayed in a reasonably prominent and easy-to-understand manner, the advertising complies with the *Code.* The Panel found that claims of being the "favourite" were not supported by competent and reliable evidence showing the product/service to be the most popular or best-selling. As a result, the Panel found that these claims were not adequately substantiated.

	Concerning yet other superiority claims, the defendant advertiser asserted that the claims were mere puffery. The Panel noted that scope of puffery is limited in Canada, and that claims relating to "best" and "most affordable" required substantiation which was not provided in this case. In considering the five-star rating claims, the majority of the Panel echoed the 2019 Advertising Dispute Case Summery #2 which states in relevant part: > The perfect star rating used in the advertising reflected the "rounding up" practices of the advertiser's website service provider, and was repeated in advertising across various media. The Panel found that this resulted in misleading visual representations, and that the advertiser has the responsibility to ensure that all of its claims are accurate and not misleading, regardless of the practices of its providers. According to the Panel, an advertiser cannot visually depict an unqualified perfect star rating if not all ratings are perfect. This was distinguished by the Panel from stating the number of five-star ratings received, which may be acceptable under the *Code*, if true. For the reasons above, the Panel found that elements of the advertising contravened both Clause 1 (a) and (e) of the *Code*. In addition, the Panel found that making superiority claims without sufficient support unfairly discredited the complainant advertiser and resulted in the exaggeration of competitive differences between the two brands, contrary to Clause 6 of the *Code*.

2019 Advertising Dispute Procedure Case Summaries

Case #1 - 2019

Advertiser Category:	Consumer Product Manufacturer
Region:	National
Media:	Television, In-store, Digital
Clause(s) Under Consideration	Clauses 1 and 6.
Description:	A multi-media advertising campaign invited consumers to switch to a higher quality product.
Complaint:	A competitor, who was the market leader in the product category, alleged that the variations on the claims in the campaign were each a comparison to its product and, by implication, suggested that its product was of a lower quality than that of the defendant. The complainant believed the advertising was misleading, as well as being an unfair comparison.

Defendant's Position:	The defendant submitted that the claims were not comparative. Rather, the claims were self-referential. In the alternative, if there was comparison at all, the comparison was to the defendant's other products in the category and not to the complainant's product.
Ad Dispute Panel Decision:	The Panel was not provided with any evidence, by either party, of how consumers interpreted the advertising claims. Clause 1 of the *Code* requires the Panel to assess the meaning of the advertising with a focus "on, the message, claim or representation as received or perceived"; that is, the "general impression". With this as its guide, the Panel concluded that the claims did imply some form of superiority and that the comparison would be considered by consumers to be against the market leader, not against the defendant's other products. Given that there was no evidence before the Panel to substantiate the implication that the defendant's product was superior to that of the complainant (or, for that matter, of others in the market), the Panel found that the claim contravened Clause 1(a) of the *Code,* which prohibits direct or implied "inaccurate, deceptive or otherwise misleading claims, statements, illustrations or representations." The unsubstantiated comparison was also found by the Panel to violate Clause 6 of the *Code,* which prohibits unfair comparative claims. One variation of the claim, which did not invite the consumer to switch, but only identified the brand of product, was found not to violate the *Code.*

Case #2 - 2019

Advertiser Category:	Consumer Product Manufacturer
Region:	National
Media:	Digital, Out-of-home, Print
Clause(s) Under Consideration	Clauses 1(a) and (e), Clause 6
Description:	Advertising claimed that a consumer product/service: (i) was the highest rated of its class; (ii) received perfect star ratings from consumers; and (iii) was the best selling in the category.
Complaint:	The complainant alleged that claims could not be substantiated and were misleading, as well as unfairly disparaging.
Defendant's Position:	The defendant advertiser submitted that the "highest rated" claim and the perfect star rating were accurate and that all necessary information regarding its consumer ratings were easily accessible on its website. The defendant advertiser also stated that it had evidence to substantiate the "best selling" claim.
Ad Dispute Panel Decision:	The Panel found that the overall impression created by an unqualified claim of 'highest rated' is that the product/service is superior to all others in the category. Such an unqualified superiority claim would, in the Panel's view, require robust, reliable, well designed, head-to-head testing versus other products/ service offerings in the category. Such support was not provided. Even on a narrower reading of the claim, the advertiser

	did not provide adequate substantiation to the Panel that its product/service had higher consumer ratings on its website than those of its competitors. The perfect star rating used in the advertising reflected the "rounding up" practices of the advertiser's website service provider, and was repeated in advertising across various media. The Panel found that this resulted in misleading visual representations, and that the advertiser has the responsibility to ensure that all of its claims are accurate and not misleading, regardless of the practices of its providers. According to the Panel, an advertiser cannot visually depict an unqualified perfect star rating if not all ratings are perfect. The Panel further disagreed with the advertiser's position that, in an online selling environment, the rating could be sufficiently qualified or explained by further information available on the retail website. The advertiser submitted that the "best selling" claim was not currently being used in advertising, but did not undertake to permanently discontinue its use, and so the Panel adjudicated the claim. Although the advertiser indicated that it had sales data to support the claim, no substantiation was provided. According to the Panel, the onus is on the advertiser to provide all of the evidence and data on which its is relying to support the claim. The Panel notes that this is an unqualified comparative sales claim which would require current sales data for all products in the category sold at retail and online. The absence of reliable third party data capturing sales of this category does not provide a licence to make such a claim versus its competitor. For the reasons above, the Panel found that the advertising contravened both Clause 1 (a) and (e) of the *Code*. In addition, the Panel found that making superiority claims without sufficient support unfairly discredited the complainant advertiser and resulted in the exaggeration of competitive differences between the two brands, contrary to Clause 6 of the *Code.*