

Advertising Dispute Procedure 2019

Background

The need for a Canadian procedure designed to resolve advertising disputes between competitors was first formally addressed by Ad Standards in 1976 when its predecessor organizations launched what, after several name changes, is now known as the Advertising Dispute Procedure.

Over the past year, Ad Standards consulted with members and considered global self-regulatory advertising dispute procedures with a view to updating and, where possible, improving its advertiser complaints process and procedure.

The objective continues to be a relatively quick, uncomplicated, practical, informal and cost-effective method of resolving advertising disputes between advertising competitors in Canada without them having to resort to legal action. It is intended to facilitate the resolution of such disputes and the expeditious removal or amendment of advertising that contravenes the *Canadian Code of Advertising Standards* (“Code”). It is not designed to punish advertisers.

The feedback to Ad Standards in the course of these consultations was that industry strongly supported the need for Ad Standards to continue offering an Advertising Dispute Procedure; and that alleged breaches of the *Code* should continue to be the basis on which advertiser-initiated complaints are grounded.

Highlights of New Advertising Dispute Procedure

There are three pre-conditions for Ad Standards being able to accept a complaint (“Complaint”) from an advertiser. First is that Ad Standards must be satisfied by the complainant advertiser that it has not succeeded in its good faith attempt to resolve the disputed issues directly with the defendant advertiser. Second is that Ad Standards must be of the opinion there are reasonable grounds to proceed with the Complaint that alleges one or more breaches of the *Code*; and that the advertising in question has not been excluded under the provisions of the *Code* or the Procedure from adjudication by an Ad Dispute Panel (see Exclusions). Third, the Complaint must be accompanied by the applicable fee (see **Fee Schedule**).

Either party may ask Ad Standards, if it accepts the Complaint, to convene a voluntary, not mandatory, resolution meeting (“Resolution Meeting”) between the complainant advertiser and the defendant advertiser. This meeting would be moderated by Ad Standards. It would not be held unless both advertisers agree to it. Failure to agree to a Resolution Meeting will not be a factor in the Ad Dispute Panel’s assessment as to whether the advertising contravened the *Code*.

If a Complaint is accepted by Ad Standards but no Resolution Meeting is requested or held; or if a Resolution Meeting is held but does not result in a resolution, the defendant advertiser will have a time-limited opportunity to respond in writing to the Complaint.

The defendant advertiser’s response to the Complaint will be sent to Ad Standards and to the complainant advertiser who, in turn, will have a time-limited opportunity to reply to whatever was submitted by the defendant advertiser.

The defendant advertiser may file its reply to or comment on the complainant advertiser’s last submission.

The Complaint together with the formal written submissions made by the two advertisers will, collectively, form the file on which basis a three-person panel will adjudicate the dispute (the “Ad Dispute Panel”).

Unlike Ad Standards’ previous Advertising Dispute Procedure, there will be no live Hearings by the Ad Dispute Panel with the two advertisers in attendance and presenting their arguments in-person. The only materials the Ad Dispute Panel may consider in their deliberation are the written submissions from the complainant advertiser and the defendant advertiser, as described above.

The Ad Dispute Panel will be chaired by a lawyer (who Ad Standards is satisfied has no conflict with the advertisers or issues under review), experienced in advertising and marketing law. The other two members of the Ad Dispute Panel will be drawn from a roster of people from the advertiser, communication/advertising agency, media and industry sectors.

The Ad Dispute Panel’s decision is final and non-appealable.

Neither the complainant advertiser nor the defendant advertiser may disclose or discuss publicly the Ad Dispute Panel’s decision, except by the advertisers themselves within their respective organizations.

The identity of the advertisers involved in a dispute, and the identity of the members of the Ad Dispute Panel, will not be disclosed by Ad Standards in its case summaries and may not be disclosed or implied by the advertisers themselves.

The purpose of these case summaries by Ad Standards is to inform the advertising community and the public of the outcome of complaints about advertising that allegedly contravenes the *Code*; and thereby provide clarity about the kinds of advertising activity that have been found to conflict with the *Code* in some respect or other.

If the Ad Dispute Panel sustains a Complaint, the defendant advertiser will be required to withdraw the advertising in question or amend the advertising in such a manner as to comply with the Ad Dispute Panel’s decision and not contravene the provisions of the *Code*.

If the defendant advertiser declines to participate in the Procedure and Ad Standards’ new complaint process, the Ad Dispute Panel will still proceed with its adjudication and the Complaint will be decided by the Ad Dispute Panel on the basis of the submissions made in the Complaint to Ad Standards by the complainant advertiser.

Failure by the defendant advertiser to fully comply with the Ad Dispute Panel’s decision, whether or not the advertiser chooses to participate in the Procedure (i) will result in Ad Standards advising the exhibiting media of this fact and, similarly, notifying the Competition Bureau; and (ii) may result in Ad Standards publishing its summary of the Ad Dispute Panel’s decision of the case including a summary of the facts and issues in dispute, an identification of both parties to the dispute; and a description of the advertising in question.

Questions regarding the interpretation and application of the Procedure may be directed to Ad Standards for a without-charge consultation (see [Section 8](#) of the Procedure for details).

Definitions

“Ad Dispute Panel” means a multi-person panel of persons who, having declared themselves to have no conflict with the advertisers named in the Complaint or the issues in dispute, adjudicate a dispute and Complaint brought under Ad Standards’ Advertising Dispute Procedure.

“Ad Dispute Panellist” means and refers to all persons who participate as a member of an Ad Dispute Panel.

“Advertiser” means a legal entity (including, without limitation, a trade association and a **“Special Interest Group”**, but specifically excluding its Advertising/Communication Agency or Agencies acting in that capacity) that is/are engaged in the use of Advertising; OR whose product(s) and/or service(s) is/are the subject of, or prominently featured in, the complained-of Advertising or a portion thereof, whether or not that Advertising was prepared or placed by the Advertiser, directly or indirectly, in any medium for communication to Canadians; OR that, in the opinion of Ad Standards, may be adversely affected by Advertising about which a Complaint has been lodged.

“Advertising” or **“advertising”** means "Advertising" as defined in the *Code*.

“Advertising/Communication Agency” means any organization engaged in the creation and/or placement of Advertising.

“Affiliate” means a parent, subsidiary or sister company.

“Ad Standards” means Advertising Standards Canada.

“Code” means the *Canadian Code of Advertising Standards*, administered by Ad Standards.

“Complainant” means and refers to an advertiser who by written complaint received by Ad Standards alleges that another advertiser’s advertising does not conform to the *Code*.

“Complaint” means the written complaint from a Complainant.

“Fee” means the applicable fee payable under this Advertising Dispute Procedure.

“Member” means an entity that is a member-supporter of Ad Standards, in good standing at the time of the Complaint.

“Non-Member” means an entity that is not a Member.

“Procedure” means this Advertising Dispute Procedure.

“Resolution Meeting” means and refers to one or more meetings convened by Ad Standards and voluntarily attended by one or more representatives of the defendant advertiser and the complainant advertiser for the purpose of reaching a voluntary resolution of the Complaint that is mutually acceptable to the defendant advertiser and the complainant advertiser without requiring the involvement by an Ad Dispute Panel in the adjudication of the Complaint and dispute between these advertisers.

“Special Interest Group” means 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.

“Working Day” means a week day that is not Saturday, Sunday or a public or statutory holiday.

“Working Days” means more than one Working Day.

Advertising Dispute Procedure (Procedure)

1. Filing a Complaint

- 1.1. Complainant advertiser files with Ad Standards a written Complaint complete with all the evidence and, where applicable, technical/and or consumer test results and methodologies on which the complainant advertiser is relying. The Complaint must detail the basis of the Complaint and specify the provisions of the *Canadian Code of Advertising Standards* (“Code”), which, allegedly, are contravened by the defendant advertiser’s advertising. All information submitted in a Complaint will be shared with the defendant advertiser.
- 1.2. Complaint must be in writing, signed, or authorized in writing, by a senior executive officer in Canada (or an authorized legal representative) of the complainant Advertiser, addressed to and received by the Chief Legal & Policy Officer at Ad Standards, or by such other person appointed for this purpose by Ad Standards.
- 1.3. Accompanying the Complaint must be:
 - Written confirmation which, in form and content, satisfies Ad Standards that the complainant advertiser has made a good faith attempt to resolve the disputed issues with the defendant advertiser, but without success;
 - The applicable fee or fees (see **Fee Schedule**).
- 1.4. Ad Standards’ fee for conducting one or more Resolution Meetings relating to the same Complaint is found in the Fee Schedule. The Resolution Meeting fee is shared equally by the complainant advertiser and the defendant advertiser.
- 1.5. See **Timelines** – a chart illustrating the estimated ‘start-to-finish’ timelines under the Procedure, recognizing the timelines may be adjusted at the sole discretion of Ad Standards.
- 1.6. Either party may ask Ad Standards to convene an in-person Resolution Meeting between the two advertisers, moderated by Ad Standards. Participation in such Resolution Meetings is strictly voluntary by the advertisers affected and may not be convened under the Procedure without both advertisers’ approval and assent.
- 1.7. The final conditions precedent to Ad Standards accepting a Complaint are that (a) Ad Standards finds in the as-filed Complaint what, in the opinion of Ad Standards, are prima facie reasonable grounds under the provisions of the Advertising Dispute Procedure for proceeding with the Complaint in which one or more breaches of the *Code* are alleged; and (b) the advertising in question is not excluded from adjudication by an Ad Dispute Panel under the exclusions provisions of the *Code* or the Procedure (see **Exclusions**).
- 1.8. The complainant advertiser will be notified by Ad Standards within three (3) working days of receiving the Complaint, advising whether the Complaint has been accepted, or declined. In the

latter case, Ad Standards will explain to the complainant advertiser why the Complaint was not accepted.

- 1.9. When a Complaint is accepted by Ad Standards it will be forwarded as received by Ad Standards to the defendant advertiser for its information.
- 1.10. If (a) no Resolution Meeting is requested by either advertiser; or if (b) the defendant advertiser or complainant advertiser does not agree to participate in a Resolution Meeting when offered that option by Ad Standards; or if (c) the Resolution Meeting is held but does not result in a resolution of the Complaint acceptable to both advertisers, then upon written notice to that effect from Ad Standards to the defendant advertiser, copying the complainant advertiser, the defendant advertiser will be given ten (10) working days within which to submit its written response to the Complaint.
- 1.11. The ten (10) working days begins on the working day following the day the defendant advertiser receives Ad Standards' notification (in paragraph 1.10 above).
- 1.12. The facilitator acting for Ad Standards on a Resolution Meeting, if one is convened, will be a different facilitator than the one acting if the Complaint is not resolved at the outcome of a Resolution Meeting. Nothing in the nature of information or data disclosed at a Resolution Meeting may be disclosed to the Ad Dispute Panel without the consent of the advertiser making the disclosure at the Resolution Meeting.
- 1.13. The defendant advertiser's response will be addressed jointly to Ad Standards and the complainant advertiser and must be received by them within ten (10) working days following the day the defendant advertiser receives Ad Standards' request for the defendant advertiser's response. The defendant advertiser's response must include all the evidence and, where applicable, technical/and or consumer test results and methodologies on which the defendant advertiser is relying.
- 1.14. The complainant advertiser will have the opportunity to reply to the defendant advertiser's response within five (5) working days following the day the complainant advertiser received the defendant advertiser's response.
- 1.15. Within five (5) working days following the day of its receipt of the complainant advertiser's reply, the defendant advertiser will be entitled to file with Ad Standards, copying the complainant advertiser, the defendant advertiser's reply to or comment on the complainant advertiser's last submission (see 1.14 above).
- 1.16. No further submissions by either advertiser will be accepted unless Ad Standards, on behalf of the Ad Dispute Panel, specifically requests further explanatory data from either or both advertisers.

- 1.17. The Complaint, together with the requested and received submissions from the two advertisers, will constitute the complete file and on that basis the dispute between the two advertisers will be adjudicated by an Ad Dispute Panel.
- 1.18. Even if the defendant advertiser fails to submit one or more of the requested replies or responses, the Ad Dispute Panel will nonetheless proceed with its adjudication and the Complaint will be decided by the Ad Dispute Panel after considering only the complainant advertiser's and defendant advertiser's submissions received by the Ad Dispute Panel within the prescribed time limits or in response to a specific request by the Ad Dispute Panel or Ad Standards on the Ad Dispute Panel's behalf.

2. The Ad Dispute Panel

- 2.1. Ad Dispute Panels are comprised of three (3) persons, chaired by a lawyer who is experienced in advertising and marketing law applicable to Canada; and who, to Ad Standards' satisfaction, appears to have no conflict with either of the two advertisers or the issues in dispute to which the Complaint refers.
- 2.2. The two (2) other members of an Ad Dispute Panel will be drawn from a roster of similarly non-conflicted people within the advertiser, communication/advertising agency, media and industry sectors, including in-house lawyers employed in these sectors.
- 2.3. Each party to the dispute will be notified of the identity of the Panellists and may object to the inclusion of a Panellist. If the objecting party expresses what, in Ad Standard's opinion, is a reasonable apprehension of bias on the part of a Panellist, Ad Standards will select a substitute Panellist. The same procedure will be followed until Ad Standards is satisfied that all the Panellists are qualified and unbiased.
- 2.4. Each member of the Ad Dispute Panel will be required to sign a Confidentiality and Non-Disclosure Agreement (see **Confidentiality and Non-Disclosure Agreement**).
- 2.5. The adjudication of Complaints will be conducted by Ad Dispute Panels in the absence of the complainant advertiser and the defendant advertiser.
- 2.6. There will be no formal in-person Hearing as such, attended by one or both advertisers.
- 2.7. Ad Dispute Panels will set their own procedure for their adjudication process that may, at the option of the Ad Dispute Panel, include, without limitation, in-person meetings, telephone conferences, written exchanges, Skype and/or video conferencing among the Ad Dispute Panellists, or other methods of communication and deliberation acceptable to the Ad Dispute Panel. Ad Dispute Panel decisions will be by majority vote.
- 2.8. The basis for an Ad Dispute Panel's decision will be the Complaint and the parties' submissions which are required or permitted under this Procedure for receipt within a timeframe prescribed in this Procedure.

- 2.9. No other submissions from the advertisers will be accepted or considered by the Ad Dispute Panel unless they have been specifically and formally requested as points of clarification by the Ad Dispute Panel or by Ad Standards acting at the request of the Ad Dispute Panel. Each party will be copied on any answers provided by the other party in response to the Ad Dispute Panel's request for clarification.
- 2.10. The Ad Dispute Panel's decision ("Decision") will be in writing sent to the two advertisers within ten (10) working days after the Ad Dispute Panel receives the completed adjudication file from Ad Standards. This timeframe may be extended, in exceptional circumstances, if the Ad Dispute Panel deems it necessary.
- 2.11. All Decisions are final and non-appealable. This includes decisions by Ad Standards whether or not it will accept a Complaint.
- 2.12. Neither of the two advertisers and none of the Ad Dispute Panellists may disclose or discuss publicly the Ad Dispute Panel's Decision or acknowledge that a dispute between the two advertisers was the subject of a Complaint under the Procedure, or the identity of the Ad Dispute Panellists.
- 2.13. One exception is that the two advertisers may, within their respective organizations, freely discuss the Complaint and its outcome, provided that all authorized recipients of such information agree to be bound by the limitation on disclosure imposed in this Procedure.
- 2.14. The limitation on disclosure will be lifted after Ad Standards publishes a summary of the case in question on its website to the extent that neither advertiser nor any of the Ad Dispute Panellists may engage in any publicity or comment about the dispute and its outcome, including, without limitation, the Ad Dispute Panel's Decision, other than as reported by Ad Standards in its case summary of the Ad Dispute Panel's Decision.
- 2.15. The limitation on disclosure applies to all Complaints adjudicated under the Procedure whether or not the Complaint is upheld.
- 2.16. The identity of the advertisers and the identity of the members of the Ad Dispute Panel will not be disclosed in the case summaries and may not be implied or disclosed, directly or indirectly, by the Ad Dispute Panellists or by the advertisers themselves.

3. Retaining Independent Experts

- 3.1. Submissions made by one or both advertisers in connection with a Complaint may include technical data or relate to surveys, tests, studies and/or other such research information.
- 3.2. Since the research methodology and/or design used to obtain the data may require validation, in exceptional circumstances, Ad Standards or the Ad Dispute Panel may require an assessment of such data from independent experts having no conflict of interest in the Complaint.

- 3.3. Ad Standards will, without delay, notify both the complainant advertiser and defendant advertiser that Ad Standards intends to call upon the services of one or more independent experts and identify the expert(s) selected.
- 3.4. Both advertisers are entitled to object to the independent expert(s) and request the replacement of one or both such experts by notifying Ad Standards within two (2) working days or receiving notification of the identity of the expert(s).
- 3.5. If, in the view of Ad Standards, the objection is reasonable, Ad Standards will select one or more alternate experts and notify both advertisers of the alternate expert's identity.
- 3.6. All costs and expenses incurred by Ad Standards for the independent expert's (or experts') participation in the Procedure and all costs attributable to the assessment of the data in question, will be recovered by Ad Standards from, and will be payable by one or both of, the advertisers involved in the Complaint, apportioned as Ad Standards deems appropriate.
- 3.7. If the adjudication by the Ad Dispute Panel proceeds in the absence of the defendant advertiser, Ad Standards may also obtain one or more independent experts at the sole expense of the complainant advertiser.

4. Case Summaries

- 4.1. The purpose of Ad Standards' case summaries ("Case Summaries") is to provide a summary of the Decision including the facts and issues in dispute between the two unnamed and unidentified advertisers. In this way, the advertising community and the public in Canada will be informed of the outcome of complaints about advertising that allegedly contravenes the *Code*; and thereby provide clarity about the kinds of advertising activity that have been found by an Ad Dispute Panel to contravene the *Code* in some respect or other.
- 4.2. An additional benefit of publishing these Case Summaries is to provide an enduring body of precedents from which advertisers may better inform themselves about practices and advertising examples that a qualified Ad Dispute Panel concluded were in contravention of the *Code*.
- 4.3. Neither the identity of the advertisers nor members of the Ad Dispute Panel who participated in the Adjudication will be recorded in Ad Standards' Case Summaries and may not be disclosed or implied by the complainant advertiser or defendant advertiser in any publicity, including public commentary, related to the Complaint, that is made or given by either advertiser. All such publicity or commentary must be limited to the matters as reported by Ad Standards in its case summaries.

5. Consequences of Decisions by the Ad Dispute Panel

- 5.1. When an Ad Dispute Panel sustains a Complaint, the defendant advertiser will be required under the Procedure to appropriately amend or, alternatively, withdraw the advertising in question so that it complies with the Ad Dispute Panel's Decision and does not contravene the *Code*.
- 5.2. The time within which to appropriately amend or withdraw the advertising at issue will be expressed either within the Decision or, at the discretion of the Ad Dispute Panel, referred to Ad Standards to impose, acting not unreasonably.
- 5.3. Bearing on how much time will be permitted for such corrective action will be considerations of the media within which the advertising under adjudication appears, and the ease or difficulty (as determined by the Ad Dispute Panel or Ad Standards) with which the requisite amendment or withdrawal can be accomplished.

6. Non-Participating, Non-Complying Advertisers

- 6.1. The Ad Dispute Panel may proceed with an adjudication even when an advertiser declines to actively participate in the process.
- 6.2. In such cases, the Complaint will be adjudicated by the Ad Dispute Panel on the basis of the submissions made by the complainant advertiser, and any admissible submissions received by Ad Standards from the defendant advertiser before the dispute file was referred to the Ad Dispute Panel for deliberation and adjudication.
- 6.3. Failure by the defendant advertiser to fully comply with the Ad Dispute Panel's Decision will result in Ad Standards communicating this fact to the exhibiting media and to the Competition Bureau, supplementing this notification with as much additional detail as Ad Standards deems appropriate and necessary. In cases involving a defendant advertiser who fails to fully comply with the Ad Dispute Panel's Decision, Ad Standards may publish a summary of the Decision, which will include the facts and issues in dispute, an identification of the parties in the Dispute and a description of the advertising in question.

7. Voluntary Withdrawal or Amendment

- 7.1. A defendant advertiser, upon being notified by Ad Standards of its receipt of a Complaint, or at any other point in the Procedure, may voluntarily undertake by written notice to Ad Standards to withdraw or amend the advertising at issue to the satisfaction of Ad Standards.
- 7.2. Provided that (i) the withdrawal or amendment, as undertaken by the defendant advertiser, occurs within a timeframe expressed by the defendant advertiser in its undertaking voluntarily given prior to a Decision being issued by the Ad Dispute Panel; or (ii) the withdrawal or amendment occurs within a timeframe expressed in the Decision or, at the request of the Ad

Dispute Panel, subsequently expressed by Ad Standards, then (iii) the Procedure will be suspended and the Complaint file closed.

7.3. Ad Standards will have the right to reactivate the Procedure:

- if the defendant advertiser's undertaking is not fulfilled; or
- if, acting on the written request of the complainant advertiser received by Ad Standards within twelve (12) months of the date inscribed on the original Complaint, Ad Standards alone concludes that the subject of the Complaint is of a continuing or repetitive nature, which fact suggests to Ad Standards there is an avoidance of, or a predisposition to the avoidance of, one or more of the provision(s) of the *Code*; or
- in cases where the identical advertisement(s) to which the Complaint refers is/are repeated; or
- when one or more of the critical elements of the advertising in question which were found by the Ad Dispute Panel to be in contravention of the *Code* have been replicated in other advertising for or by the defendant advertiser.

8. Understanding and Interpreting the Procedure

8.1. Any questions regarding interpreting and the application of the Procedure should be directed to:

Ad Standards
33 Bloor Street East, Suite 303
Toronto, ON
M4W 3H1
Attention: Chief Legal & Policy Officer

Exclusions

Ad Standards will not accept or proceed with (i) a Complaint, or (ii) that part of a Complaint, or (iii) the part of the advertising to which the Complaint refers if, in Ad Standards' opinion, either the Complaint or a part thereof:

(a) substantially, at any time before the Ad Dispute Panel actually considers the Complaint, also:

- I. is the subject of litigation in which the defendant advertiser identified in the Complaint is also named and identified as a party defendant in the litigation, that was, or is then, actively undertaken and pursued by the complainant advertiser in Canada; or is
- II. the subject of a complaint formally submitted by the complainant advertiser to another competent Canadian authority or tribunal such as the Competition Bureau or Health Canada; or
- III. Advertising (or other advertising that is substantially similar to the advertising), which was in the past or concurrently is the subject of a review or proceeding by a Canadian court or Canadian authority or tribunal; or
- IV. has been, specifically, approved by an agency (or some other comparable entity) of the Canadian government or a provincial government; or
- V. generally meets, or exceeds, or is not inconsistent with applicable advertising standards articulated in regulations, guidelines, or otherwise by an agency (or some comparable entity) of the Canadian government or a provincial government; or
- VI. has been otherwise submitted as a complaint by the complainant advertiser to Ad Standards under another process administered by Ad Standards such as the Consumer Drug Complaint Procedure.

Ad Standards will also decline to accept or proceed further with a Complaint, or any part thereof:

(b) where the Complaint relates to one or more advertisements (for food, drug, natural health products, cosmetic, alcoholic beverage or children's products or services) that were reviewed and approved by Ad Standards Clearance Services, except to the extent the Complaint relates to alleged offences under the *Code*; or

(c) where the Complaint includes as a material element of the Complaint any matter which, in Ad Standards' opinion, Ad Standards is unable to resolve effectively or reasonably under this Procedure because the Complaint, in whole or part, in the opinion of Ad Standards:

- I. is outside the purview or intended scope of the *Code*; or
- II. may result in the improper application of the *Code* or Procedure; or
- III. requires an assessment, evaluation and comprehension by Ad Standards and an Ad Dispute Panel of issues, or data associated with the issues, that, in Ad Standards' sole opinion, are technical or otherwise complicated and beyond Ad Standards' resources or the Ad Dispute Panel's ability to resolve effectively or reasonably; or
- IV. has been identified by a competent authority, such as an agency (or some other comparable entity) of the Canadian government or a provincial government or territory of Canada as being outside the purview of Ad Standards.

Ad Standards, at its sole discretion, may also decline to accept or proceed further with a Complaint, or any part thereof:

Ad Standards

- I. where the defendant advertiser or complainant advertiser identified as such in the Complaint failed or declined to participate in a previous Advertising Dispute case or did not fully comply with the decision of an Ad Dispute Panel in a previous Advertising Dispute case in respect of which such advertiser was identified as being one of the parties in such previous Advertising Dispute case.