

Bloggers, Spokespersons and Influencers, beware: the Canadian Code of Advertising Standards Has Been Updated!

Following a public consultation, Advertising Standards Canada (ASC) updated its [Canadian Code of Advertising Standards](#) (the Code), a new version of which came into force on October 3rd, 2016. These changes include new definitions as well as the [Interpretation Guideline #5 – Testimonials, Endorsements, Reviews](#), which requires for all influencers to disclose any paid sponsorship.

A Brief Review

The Code is the main self-regulatory tool for the Canadian advertising industry. In general, it applies to any advertisement appearing in all genres of Canadian media (radio, Internet, print, television, etc.), except for packaging, packaging material and labels. Moreover, the Code does not apply to foreign media, unless the advertiser is a Canadian legal entity or body.

The Code comprises fourteen (14) articles that establish the criteria used to determine the acceptability of an advertisement in case of complaints from consumers, advertisers or special interest groups. The ASC's Standards Council reviews the complaints and can require that the advertiser withdraw or modify an advertisement if it is deemed to contravene the Code. The [Interpretation Guidelines](#) complete and now form an integral part of the Code by providing additional details concerning the interpretation and the application of its articles.

What Has Changed

Firstly, Article 7 of the Code provides that testimonials, endorsements or other representations of opinion or preference must not be deceptive. Thus, the new Interpretation Guideline #5 complements this article in stating that testimony, support, criticism or any other representation must disclose any "material connection" between the influencer and the entity advertising its product or service, though an exception is made when consumers may reasonably infer this material connection from the context. Otherwise, the material connection must be clearly revealed in a visible and prominent manner, near the representation of the advertised product or service.

Furthermore, definitions of the words "Advertiser", "Entity", "Material Connection" and "Teaser Advertisement" have been added to frame the new disclosure requirements imposed on influencers.

Finally, although ASC is a self-regulating body which does not have the power to impose fines on wrongdoers, the Code now provides that ASC may inform the Competition Bureau, or any other regulatory body, when an advertiser does not comply with the Advertising Dispute Procedure (the Procedure) or the Standards Council.

Conclusion

Henceforth, any sponsorship of a product, service or trademark in exchange for payment must be clearly discernable. It is worth noting that the U.S. Federal Trade Commission (FTC) adopted similar guidelines in 2009, in its [Guide to Testimonials & Endorsements](#), and has already imposed a [fine of US\\$250,000](#) on an offender for failing to disclose his relationship with the people expressing their interest in the product. The FTC's comprehensive guide, a link to which can be found on ASC's website, provides examples of the ways in which material connections may be divulged. As such, it can be a very useful tool to American and Canadian influencers alike.

In Canada, the consequences of non-compliance with the Procedure or with a decision of the Standards Council remain to be seen. Nevertheless, such a breach could now trigger an investigation by the Competition Bureau, who could impose fines of up to CAD\$200,000¹ on culprits in cases of false or deceptive representations to consumers...

¹ Article 52(5) of the *Competition Act*, R.S.C. 1985, c. C-34 states that, in an indictment, the court may choose the penalty it deems appropriate and that, in summary proceedings, the maximum fine is set at \$200,000.