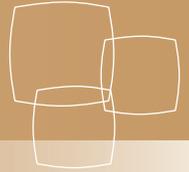




Bureau de la concurrence  
Canada

Competition Bureau  
Canada

Bulletin



# The Deceptive Marketing Practices Digest

Volume I



Canada

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## (Re) Introduction

For many years, the Competition Bureau published the *Misleading Advertising Bulletin*, where advertisers, their counsel and the Canadian public could go for articles, features and opinions that offered advice and presented the Bureau's perspective on matters of ongoing interest in advertising and marketing. In light of the Bureau's commitment to enhancing communication and transparency, we have decided to re-introduce this popular publication on a pilot basis under the title *Deceptive Marketing Practices Digest*. I hope that it fills a niche by periodically offering timely articles of interest.

Everyone can agree about the benefits of truthful advertising: according to a recent survey,<sup>1</sup> truth and accuracy are paramount to consumers in all advertising media. Almost all Canadians say they are likely to stop purchasing a product advertised in a way that they feel is not truthful or accurate. Significantly, a majority of Canadians believe that advertising has a positive effect on the Canadian economy.

We at the Bureau couldn't agree more: recognition of the benefit of truthful advertising is a fundamental principle that underlies all of the acts that we administer, including the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*. Of course, most businesses also agree, and take their shared responsibility for compliance with the deceptive marketing practices provisions of the *Competition Act* very seriously.

In this first issue, we take a look at some topical issues in advertising and in the digital economy in particular. We address online advertising in Canada, the use of disclaimers, and the growing problem of online advertisements designed to look like independent reviews, a practice often referred to as "astroturfing". I hope that these articles are helpful and informative, particularly for advertisers who are committed to shared compliance, and who want to ensure that their innovative online campaigns are fully meeting consumers' and the Bureau's expectations for representations that are free of deception.

**John Pecman**

Commissioner of Competition

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<sup>1</sup> "2014 Consumer Perspectives on Advertising", Advertising Standards Canada, [www.adstandards.com/en/ASCLibrary/2014ASCCConsumerResearch.pdf](http://www.adstandards.com/en/ASCLibrary/2014ASCCConsumerResearch.pdf).

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## Online Advertising in Canada

### Introduction

Canadians have embraced the online world and are integrating it into their daily lives in ever-expanding ways. An increasing majority of Canadians go online, increasingly on mobile devices, to communicate, schedule and inform themselves, relying on trusted social media, retailer, and special interest or curated news sites for entertaining or educational information. Commerce in particular has found its place online as consumer trust in the medium grows.

While most entertainment and information available online is seemingly provided free of charge, it is in fact fueled in large measure by advertising.<sup>2</sup> However, unlike the advertising that funds our television programs, online ads talk back to advertisers, allowing them to collect enormous volumes of information about our online behaviour which they can then use to target their advertising in ever more refined ways.

<sup>2</sup> The term “advertising” in this article refers to any representation made to the public, by any means whatever, for the purpose promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.

### The Growth of Online Advertising in Canada

Advertising on the internet occupies an increasingly significant percentage of Canadian advertising, and revenues have been growing at double digit rates every year for the past decade.<sup>3</sup>

So what is fuelling the rapid growth of online marketing? In large measure, it is a function of Canadians’ enthusiastic adoption of digital technology and, in particular, mobile devices such as smartphones and tablets. This has changed not only how we connect, but also how and where we encounter advertising and shop. Consumers use mobile devices to gather product information, including information related to price, word-of-mouth and peer reviews and competitive offerings; to obtain discounts and rewards; to initiate and complete transactions for products; to download digital content or track packages to the front door; and to share their shopping and product experiences with other consumers.

As the real and virtual worlds converge, online advertising is ever more prevalent and sophisticated. The tools available for advertisers to track consumer behaviour are expanding, allowing them to collect, utilize and share vast amounts of increasingly detailed data almost 24/7.

It is important, from the Bureau’s perspective, that innovation in this area respects the right of consumers not to be misled by advertisers. This perspective is shared by the Bureau’s international regulatory partners, including the Australian Competition and Consumer Commission, the

<sup>3</sup> “2013 Actual + 2014 Estimated Canadian Internet Advertising Revenue Survey”, Ernst & Young/ Interactive Advertising Bureau of Canada, September 17, 2014, [iabcanada.com/files/Canadian-Internet-AdRev-Survey\\_2013-14.pdf](http://iabcanada.com/files/Canadian-Internet-AdRev-Survey_2013-14.pdf).

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United Kingdom's Competition and Markets Authority, and the Federal Trade Commission in the United States.

### Online Marketing Trends

Online trends appear and mature quickly and often disappear just as fast. The Bureau strives to monitor these advances and keep informed in particular about developments that could impact the quality of consumer information.

One important trend for example, referred to as "behavioural advertising", is the use of online behaviour data to target advertising to individual consumers. Advertisers use information collected about consumers' online behaviour, such as browsing histories, to gauge their interests and deliver relevant advertisements. For example, the advertisements that appear to one consumer on a travel website might be targeted at that particular consumer, while other consumers visiting the same website at the same time may encounter different advertisements appropriate to their interests.

For advertisers, behavioural advertising can offer increased profitability, as advertising dollars are better spent delivering advertisements to potential customers most likely to be interested in them. For consumers, many appreciate tailored advertisements, including targeted discounts, product offers, and coupons.

Another developing trend is in the area of "geolocation". Everyone has heard the old real estate adage "location, location, location". In the online world, it is consumers' "geolocation, geolocation, geolocation" that matters most as they move through their day. This data is often referred to as geolocation information.

Most smartphones now incorporate technology capable of tracking and storing the devices' changing geolocation with great precision. Increasingly, software applications are sharing this real-time data about consumers' daily activities with advertisers who can then combine this data with what they know about the interests of individual consumers, adding yet another dimension to their ability to target their promotional efforts.

Retailers are using this technology in many innovative ways. For example, they are creating geofences, essentially virtual zones within shopping malls and other real world spaces, where they can detect when consumers enter, and deliver targeted promotional material directly to their mobile devices. In the case of gaming, geolocation data allows advertisers to invite consumers to go to a specific retailer, in the mall for example, that may offer exclusive Wi-Fi access to a certain game or will unlock new levels of the game.

In short, the ability to collect and combine location information with other information about consumers' preferences provides advertisers with unprecedented marketing opportunities.

While marketing trends tend to come and go, advertisers want to know if there are common problems that are of particular interest to the Bureau when it comes to online marketing and the potential for consumer deception. The short answer is yes, there are common problems that we see in the digital sphere. These problems, some of which we address below, are by no means unique to online marketing, but they do require extra care given the complexities of the medium and its role in the digital economy.

## Disclosure Issues in the Digital Economy

Many of the kinds of representations that mislead consumers online create a false or misleading general impression because the advertiser has not adequately disclosed information necessary for consumers to make informed choices. The true state of affairs, if revealed at all, is often buried in fine print disclaimers or is obscured because of its formatting or placement in the context of the overall advertisement. The following outlines some of the more common examples.

### When information is actually advertising

One of the most powerful ways for consumers to protect themselves when shopping is to become informed. The online world has opened infinite gateways into new sources of information where consumers can educate themselves about products and services by referring to studies, articles and expert reviews, and also by tapping into the experiences of fellow consumers. This is an intensely pro-consumer development.

However, in many instances this can be completely undermined by advertisers who design online advertisements for a product or service to look like something other than promotional material. Some are made to look like unbiased news articles or headlines, others like independent sources of information such as expert reviews or blogs, while still other commercial representations masquerade as consumer reviews and testimonials.

As consumers seek out and rely on information found online in order to help them make choices in the marketplace, advertisements that falsely pose as arms-length information can be seriously

misleading, and erode confidence in the digital economy.

### Hiding the true cost of a product or service

Another growing problem in the digital economy is the tendency of some advertisers to trumpet a very appealing price for a product, while concealing the true total cost. In one common technique, referred to as “drip-pricing”, advertisers offer an attractive price for a good or service, but consumers who respond to the representation discover that unexpected additional costs are added to the prominently advertised price. The true total cost may only be revealed after the consumer has initially responded to the advertisement.

Sometimes, additional costs are disclosed somewhere in fine print, often accessible only if consumers decide to scroll through many pages on the relatively small screen of their mobile devices. These disclosures are usually wholly inadequate to prevent the claims made about the advertised price from being misleading.

There is a significant body of research that shows that hiding or obscuring costs significantly affects consumers’ ability to make well informed decisions, and has a negative impact on the proper functioning of the marketplace.<sup>4</sup> The international consumer protection community, through the Committee on Consumer Policy of the Organization for Economic Cooperation and Development (OECD), has identified similar concerns.<sup>5</sup>

<sup>4</sup>“Advertising of Prices”, Office of Fair Trading, December 2010, OFT1291, [webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared\\_of/market-studies/AoP/OFT1291.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_of/market-studies/AoP/OFT1291.pdf).

<sup>5</sup> OECD (2014), “Consumer Policy Guidance on Mobile and Online Payments”, OECD Digital Economy Papers, No. 236, OECD Publishing <http://dx.doi.org/10.1787/5jz432c1ns7-en>.

### Inadequately disclosed terms and conditions

A third problem arises when advertisers include obligations in fine print that go well beyond what consumers expect or understand. For example, consumers responding to an advertisement for the purchase of a product may not realize that they have agreed to an ongoing subscription to continue to receive similar products in the future. In other cases, terms and conditions may impose obligations on consumers, such as surrendering significant control over personal information, that have nothing to do with the transaction at hand.

Again, these onerous terms are often buried in fine print or use opaque language, requiring consumers to ferret out the true nature of what appears to be a routine transaction on its face. The fact that most consumers now view these advertisements on the go, and on mobile devices, significantly amplifies the problem and the likelihood of consumer deception.

Inadequate disclosure by advertisers of information that is materially important to consumers is a significant competitive concern.

### **Shared Values**

The digital economy is truly global, and we believe it is important to keep an eye on the practices and procedures of our international partners in law enforcement in this area. The advertising practices discussed above are universal and the experiences of these agencies help to inform both our understanding of the complex issues surrounding advertising in the digital realm and our own enforcement efforts in this sphere. Furthermore, the Bureau is involved in international fora, such as the OECD and the

International Consumer Protection and Enforcement Network. Both of these organizations are actively involved in either monitoring enforcement developments or updating guidance in relation to the online marketplace.

### **Conclusion**

The way that commerce is conducted in the Canadian marketplace has changed significantly, and advertising is evolving just as quickly. We have covered just a few of the emerging issues.

The Competition Bureau recognizes the competitive importance of online commerce to the Canadian economy. This world, by definition, is driven entirely by information and it is crucial that the integrity of this information be safeguarded so that Canadian consumers and businesses can continue to fully benefit from all of the advantages that the online marketplace offers.

#### **Further Reading**

Workshop on e-Commerce and Online Advertising, October 1, 2013  
*The Bureau co-hosted a one-day workshop exploring e-commerce and online advertising.*  
[www.onlineadvertisingworkshop.ca/2013](http://www.onlineadvertisingworkshop.ca/2013)

Remarks by Matthew Boswell, Senior Deputy Commissioner of Competition to the Public Interest Advocacy Centre, November 28, 2014.  
[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03856.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03856.html)

## Disclaimers Demystified

### Introduction

*The more informative your advertising, the more persuasive it will be.*

David Ogilvy, 1963<sup>6</sup>

Disclaimers, the less conspicuous, fine print elements of advertisements,<sup>7</sup> are often used to add information or clarifications that are not integrated into the design of the main body. Sometimes these disclaimers add details or expand on what is being offered. At other times, when the main message is designed in such a way that it could mislead consumers, advertisers might try to rely on fine print disclaimers to restrict or even contradict the more prominent message. It is this last type of usage that often gets advertisers into trouble.

Two of the most popular features published in the *Misleading Advertising Bulletin* looked at the challenges of relying on disclaimers to avoid offending the misleading advertising provisions of the *Competition Act* (the Act).<sup>8</sup> While the old Bulletin is now out of print, we know that copies are still referenced by advertisers and their counsel, suggesting that their message has enduring value.

Despite significant amendments, the misleading advertising and deceptive marketing practices

provisions of the Act have not changed much in substance, but there have been a lot of changes to how advertisers reach consumers, particularly in the digital realm. Once limited by the constraints of traditional media, advertisers are now faced with new, complex and interconnecting formats that present both possibilities and challenges. We believe it is time to revisit the fundamental basics that informed our advice in 1990 and see how they have stood the test of time.

### The Act and General Impression

The Act contains criminal and civil prohibitions<sup>9</sup> against promoting a product<sup>10</sup> or business interest by making a representation to the public that is false or misleading in a material respect. Provisions in both the criminal and civil sections<sup>11</sup> require that the general impression conveyed by a representation as well as its literal meaning be taken into account when determining whether or not a representation is materially false or misleading.

The general impression test effectively recognizes the power of the “sum of the parts” in advertising, and ensures that the courts consider the overall impression that an advertisement as a whole makes on consumers.

Any discussion about disclaimers in advertising is, therefore, essentially a discussion about the general impression that a representation creates, and not just a discussion of the literal meaning of the words.

<sup>6</sup> Confession of an Advertising Man, David Ogilvy, First Published 1963, Holiday House, ISBN 0689102151.

<sup>7</sup> The term “advertising” in this article refers to any representation made to the public, by any means whatever, for the purpose promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.

<sup>8</sup> *Competition Act* (R.S.C., 1985, c. C-34).

<sup>9</sup> *Ibid.* (Sections 52 and 74.01).

<sup>10</sup> *Ibid.* Section 2(1) of the Act defines “product” to include an article and a service.

<sup>11</sup> *Ibid.* (Sections 52(4) and 74.03(5)).

## Disclaimer Basics

In a nutshell, advertisers are responsible for ensuring that any representation they make to promote a product or business interest does not create a materially false or misleading general impression for consumers. What are the implications of this obligation when it comes to disclaimers?

While our earlier publications briefly touched on some basic format-specific issues, their real value was in the way they expressed, from a few different angles, the fundamental principles underlying how disclaimers are likely to factor into a general impression test and why they are often inadequate in this respect.

The principles are actually rather straightforward:

### First Fundamental Principle

Fine print that expands on, or clarifies possible ambiguities in, the main body of an advertisement is unlikely to mislead consumers, assuming that the general impression of the advertisement is not otherwise misleading.

For instance, advertisers may be constrained by space or other format considerations when trying to design effective advertisements. Oftentimes, in order to avoid aesthetic clutter in the main body, they use disclaimers to further expand on the main message or add other useful information less obtrusively.

Using fine print can be perfectly legitimate if it adds useful information to a truthful and accurate representation.

### Second Fundamental Principle

The potential to mislead consumers increases significantly when a disclaimer is used to restrict, contradict or somehow negate the message to which it relates. If the main body of the advertisement creates a materially false or misleading general impression in itself, before any reference is made to a disclaimer, then fine print may not do much to alter the general impression in a way that ensures that consumers will not be misled.

*An easy guide is to examine the disclaimed text alone. What is the plain meaning readers would ascribe to it? Is the fine print being used to protect the advertiser from the consequences of that meaning? If yes, then the fine print is being used to limit or contradict the general impression conveyed by the disclaimed text.*

1990 Misleading Advertising Bulletin<sup>12</sup>

Advertisers employ the unique characteristics and constraints of a medium to full advantage when designing advertisements to grab attention and succinctly deliver a compelling message.

Disclaimers, however, are not usually composed or positioned with the same intent. Even when simply worded, they may not be an effective means of altering the strongly persuasive and attention-grabbing elements of the representation.

To illustrate this principle, the author of our 1990 feature challenged readers to recall if they noticed any footnotes in the article, whether they bothered to read them, and if so, whether they remembered

<sup>12</sup> "Asterisks, Disclaimers and Other Fine Print", Misleading Advertising Bulletin 4/1990, Competition Bureau (then known as the Bureau of Competition Policy).

what the footnotes said.

*The likelihood that disclaimer statements will have a significant effect on the general impression conveyed to an average purchaser by a false or misleading advertisement is small. Indeed, it is arguable that the manner of presentation of disclaimers usually ensures the very opposite result.*

1990 Misleading Advertising Bulletin<sup>13</sup>

The likely impact of disclaimers is further compromised when they are worded in a way that is confusing or difficult to understand, are buried in lines of dense fine print or are otherwise presented in a way that effectively obscures their true meaning.

Finally, advertisements are not contracts, and disclosing the truth in fine print may not immunize advertisers from the consequences of making materially false or misleading representations.

*“The courts must not approach a written advertisement as if it were a commercial contract by reading it several times, going over every detail to make sure they understand all its subtleties. Reading over the entire text once should be sufficient to assess the general impression conveyed by a written advertisement.”*

Supreme Court of Canada in a case involving the interpretation of advertising under the *Quebec Consumer Protection Act*<sup>14</sup>

<sup>13</sup> *Ibid.*

<sup>14</sup> *Richard v. Time Inc.*, 2012 SCC 8, [2012] 1 S.C.R. 265, [2012 SCC 8 \(CanLII\)](#), at para 56.

### Example from the Files

Consider the recent case of the *Commissioner of Competition v. Yellow Page Marketing B.V.*<sup>15</sup> In that case, the advertiser faxed forms to businesses which gave the general impression that they had been sent by the recipients’ usual yellow pages supplier who required the businesses to update their listing information by faxing the forms back. However, the faxes contained fine print indicating that any business that returned the fax was obligated to a two-year contract with the sender, at a cost of \$1,428 each year.

In that case, the evidence indicated that the vast majority of complainants who received the fax did not read, notice or understand the fine print. The court concluded that the representations in the faxes were materially false or misleading, and that the fine print did not reduce its false or misleading nature.

This case offers a concrete example of how a fine print disclaimer failed to cure an otherwise materially false or misleading representation.

### Digital Dilemma

Online advertising appears in many digital formats, including banners, text-based hyperlinks, interesting or entertaining content, email or text messages, short video or audio clips, and items shared on social media feeds, to name just a few.

Furthermore, advertisements created in any one of these formats can appear across interconnected platforms, including social media sites, review

<sup>15</sup> *Commissioner of Competition v. Yellow Page Marketing*, [2012 ONSC 927 \(CanLII\)](#).

platforms, news sites or aggregators, and retailer or company websites.

Consumers, often on the go, now encounter online advertising throughout the course of a typical day, and they are assessing this information on mobile devices and making decisions more quickly than ever before.

If the chosen format allows advertising to unfold through a series of steps or pages, consumers may be misled if important information is relegated to a disclaimer that is not apparent or appears at a stage after the consumer has somehow committed or delved deeper into the advertisement. Or the same advertisement, viewed on a certain platform or on a mobile device, may present the important elements in a way that is not obviously accessible.

To complicate things further, online advertising is often intentionally designed to be shared online. Created in one format and loaded onto a specific platform, advertising will then travel across platforms and be viewed on many different browsing devices.

An advertisement created, even carefully, in one format and distributed through one platform, may be altered when it is shared among users and appears on different platforms. The risk is that any fine print disclaimers get lost or left behind depending on the formatting or technical constraints of the secondary platforms or devices.

It is clear that the challenges associated with digital formats significantly limit the likelihood that disclaimers, as a general proposition, will be seen and understood in a way that is likely to alter the general impression of an online advertisement.

## Conclusion

Digital media has changed the way that commercial representations are designed, distributed and consumed. These changes do little to increase the likelihood that disclaimers will be read and understood in such a way that they will likely alter the general impression of an otherwise materially false or misleading representation. If anything, it is easy to imagine the exponential increase in risk associated with a reliance on disclaimers to cure materially false or misleading representations.

As such, it appears that the guidance offered by the Bureau many years ago remains just as relevant today. By keeping the two fundamental principles relating to disclaimers front-and-centre throughout the design process, advertisers will be able to properly gauge advertising messages when navigating the complexities of any format, and thereby avoid the pitfalls associated with a misplaced reliance on disclaimers.

### Further Reading

Competition Bureau Reaches Agreement with Bell Canada Requiring Bell to Pay \$10 Million for Misleading Advertising, June 28, 2011.

*Advertised prices were not in fact available, as additional mandatory fees were hidden from consumers in fine-print disclaimers.*

[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03388.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03388.html)

## Online Reviews

### Introduction

Genuine product reviews, written by consumers who have had authentic user experiences, have become a crucial source of unbiased product information for consumers.<sup>16</sup> Social media sites, for example, are often where consumers begin researching a new product or service. Who can you depend on if not the opinion of a friend or like-minded person?

Authentic consumer reviews on digital platforms benefit both consumers and business, providing a wealth of unbiased product information to help consumers make informed decisions, and rewarding businesses that provide a superior product or service.

### Astroturfing

The term “astroturfing”, when used in an advertising context, refers to the practice of creating commercial representations that masquerade as the authentic experiences and opinions of impartial consumers, such as fake consumer reviews and testimonials.

We have noticed an increase in this practice that is often part of organized efforts by companies to boost their own ratings or lower the ratings of their competitors. For example, companies have been

known to encourage their employees to post positive reviews on websites and review platforms, or to provide their customers with incentives to leave positive reviews. Companies may also hire “reputation enhancement” firms or “search engine optimization” (SEO) firms who pay third parties to post fake online reviews.

While these schemes are sometimes intended to promote a specific product or service, they are often part of efforts by companies to promote their business interests more generally. For example, they may hope to build or protect brand loyalty or increase demand. If this practice continues unchecked, it will seriously erode consumer confidence in the authenticity of online reviews, at a cost to both customers and business.

*Social media is a major source of information for consumers seeking advice to guide their purchasing decisions, and a prime platform for fake online reviews.*

John Pecman, Commissioner of Competition<sup>17</sup>

### The Competition Act

The misleading advertising provisions of the *Competition Act* (the Act)<sup>18</sup> prohibit advertisers from making a representation, by any means whatever, that is false or misleading in a material respect,<sup>19</sup> and further provide that the general impression conveyed by the representation be

<sup>16</sup> “Customer Service and Business Results: A Survey of Customer Service from Mid-Size Companies”, Dimensional Research, April 2013. “The vast majority of participants who have seen reviews claimed that that information did impact their buying decisions. This was true of positive reviews (90%) and negative reviews (86%).” [d16cvnquv7pr.cloudfront.net/resources/whitepapers/Zendesk\\_WP\\_Customer\\_Service\\_and\\_Business\\_Results.pdf](https://d16cvnquv7pr.cloudfront.net/resources/whitepapers/Zendesk_WP_Customer_Service_and_Business_Results.pdf).

<sup>17</sup> “Too good to be true: Don’t buy into fake online reviews”, Bureau Press Release, March 10, 2015, [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03882.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03882.html).

<sup>18</sup> *Competition Act* (R.S.C., 1985, c. C-34).

<sup>19</sup> Pursuant to subsections 52.01(1) and 74.011(1), there is no requirement that false or misleading representations be material when made in the sender or subject matter information of an electronic message, as defined by the Act.

taken into account.

### The Problem with Astroturfing

Consumers read online reviews to research the pros and cons of a product, and they highly value the genuine experiences of other shoppers. Insofar as the general impression is concerned, there can be little doubt that consumer reviews are seen to reflect the authentic experiences of impartial consumers.

This makes perfect sense. Canadians expect consumer reviews to be just that: reviews expressing the real experiences of genuine customers.

What would consumers make of glowing user reviews if they were revealed to have been written by people who had never used the product and, furthermore, may have been paid to write the reviews? Clearly consumers would dismiss such opinions outright as false and deceptive.

What if those same positive comments had been composed by employees of the company? Companies and their employees clearly have a vested interest in positive consumer reviews of their product, and are likely to be perceived as biased and lacking adequate impartiality, and therefore less likely to provide a balanced review. As such, consumers may attach less weight to the reviews when they know that they lack independence.

When it comes to the materiality of consumer user reviews, there is no shortage of evidence indicating that user reviews are an important resource for consumers looking to make informed choices, and

that businesses are increasingly concerned about their online word-of-mouth reputations.

Surveys have shown, for instance, that a majority of consumers find online sources trustworthy for product reviews and have changed their minds about purchases based on online information or have had their decision to purchase confirmed by a favourable review.<sup>20</sup>

On the business side, research shows that an increase in review scores may allow businesses to raise prices and still maintain market share, and that an increase in online reputation can lead to an increase in customers.<sup>21</sup>

In terms of the authenticity of testimonials, Bureau guidance on the subject explains that consumers will assume that a consumer offering a testimonial had actually used the product before commenting on it, and indicates that “...consumers are more likely to accept representations about products made by other consumers when apparently based on practical use and conveyed with a candor that

<sup>20</sup> “Game Changer: Cone Survey Finds 4-out-of-5 Consumers Reverse Purchase Decisions Based on Negative Online Reviews”, 2011 Cone Online Influence Trend Tracker. 89% of consumers find online sources trustworthy for reviews; 4-out-of-5 consumers have changed their minds based solely on negative online information. [www.conecomm.com/stuff/contentmgr/files/0/286c351989671ae74994fec139863bb2/files/2011\\_cone\\_online\\_influence\\_trend\\_tracker\\_release\\_and\\_fact\\_sheet.pdf](http://www.conecomm.com/stuff/contentmgr/files/0/286c351989671ae74994fec139863bb2/files/2011_cone_online_influence_trend_tracker_release_and_fact_sheet.pdf).

<sup>21</sup> “The Impact of Social Media on Lodging Performance”, 2012, C. Anderson, Cornell University. Hotels that increase review scores by one point on a five point scale can increase prices by more than ten percent and still maintain the same occupancy or market share. A one-percent increase in reputation can lead to an occupancy increase of more than half a percent. [scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1004&context=chrrpubs](http://scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1004&context=chrrpubs).

may itself vouch for the reliability of the representations".<sup>22</sup>

In addition to the need for the review to be authentic, the guidance also underlines the importance of impartiality, indicating that problems arise with what appear to be third-party testimonials when there is an undisclosed material connection, financial or otherwise, between the third-party and the advertiser, such as an employee. These material connections are relevant, even if the person provides an honest and unbiased review, because consumers highly value the independence of third-party opinions.

Advertisers, or those with whom they have a material connection, who are considering posting consumer reviews about their own products or those of a competitor may wish to ask themselves whether the reviews create the general impression that they represent the authentic experiences and opinions of impartial consumers. In thinking about the impression created, advertisers are encouraged to consider the context within which the review is likely to be displayed. Part of the consideration of the context would include whether it allows the review to be separated from any disclosure of a material connection.

*Among the many and varied channels through which a person may receive information, it is hard to imagine any that carry the credibility and, thus, the importance of interpersonal communication, or word of mouth. There is good reason to believe that it has more potential impact than any other communication channel.*<sup>23</sup>

<sup>22</sup> "Ensuring Truth in Advertising", Bureau Online Resource, [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/00513.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/00513.html).

## International Spotlight

Astroturfing is a problem that crosses borders and threatens the integrity of online commerce globally. It occupies an increasingly central spot on the radar of most major law enforcement agencies and international organizations tasked with addressing issues associated with deceptive and misleading marketing practices.

The Bureau has excellent working relationships with its international partners and strives to keep informed of their experiences in this area, as well as participating in various international fora where the subject is addressed and discussed.

In terms of the activities of individual agencies, in October 2009, the U.S. Federal Trade Commission (FTC) revised its guides relating to the use of endorsements and testimonials<sup>24</sup> to include examples of endorsements conveyed by bloggers or other "word-of-mouth" marketers that would constitute "material connections" between advertisers and endorsers that must be disclosed. The accompanying guidelines explain that a connection between the endorser and the marketer of the product, that would affect how people evaluate the endorsement, should be disclosed.<sup>25</sup> Significant enforcement activities have continued since the revision of the Guides.

<sup>23</sup> "Using Online Conversations to Study Word-of-Mouth Communication", David Godes and Dina Mayzlin, Marketing Science, Vol. 23, No. 4, Fall 2004, ISSN 0732-2399.

<sup>24</sup> "FTC Publishes Final Guides Governing Endorsements, Testimonials", News Release, Oct 5, 2009, [www.ftc.gov/news-events/press-releases/2009/10/ftc-publishes-final-guides-governing-endorsements-testimonials](http://www.ftc.gov/news-events/press-releases/2009/10/ftc-publishes-final-guides-governing-endorsements-testimonials).

<sup>25</sup> "The FTC's Revised Endorsement Guides: What People are Asking", FTC, [www.ftc.gov/tips-advice/business-center/guidance/ftcs-revised-endorsement-guides-what-people-are-asking](http://www.ftc.gov/tips-advice/business-center/guidance/ftcs-revised-endorsement-guides-what-people-are-asking).

In September 2013, the New York State Attorney General completed an undercover investigation into the “reputation management industry” and the practice of astroturfing. The investigation found that some reputation management companies and SEO companies, responding to businesses increasingly concerned with online reputation, were using advanced techniques to hide identities and set up bogus online profiles in order to flood review platforms with fake customer reviews. Nineteen companies agreed to pay more than \$350,000 in penalties following the investigation.<sup>26</sup>

Transparency and impartiality are central notions in the Australian Competition and Consumer Commission’s guidance relating to online reviews. Businesses are required to be open and transparent about commercial relationships that could impact reviews, and reviews could mislead consumers if presented as impartial when in fact they are written by the company or third parties who have received some form of compensation.<sup>27,28</sup>

In February 2015, the United Kingdom’s Competition and Markets Authority (CMA) requested public comment regarding online reviews and endorsements.<sup>29</sup> In the request, the

CMA stated that reviews are “*playing a growing role in helping consumers to make shopping decisions, including finding hotels, selecting tradespeople and choosing cosmetics*”. Moreover, they are concerned about the “*trustworthiness or impartiality of information in some reviews and endorsements*” and are also looking into “*the role of media companies, online reputation managers and search engine optimisers*”. According to a 2014 survey referenced by the CMA, an estimated 81% of UK consumers read customer reviews and 47% read blogs.<sup>30</sup>

*Consumer reviews are now a part of everyday decision-making. Yet, the credibility of reviews is fundamentally undermined when business-owners commit review fraud, either by leaving positive reviews for themselves or negative reviews for their competitors.*<sup>31</sup>

## Conclusion

Virtual word-of-mouth sites, including company and retailer websites, social media sites and review platforms, together form an invaluable well of rich information that is now clearly the starting point for consumer research. The practice of astroturfing threatens to ‘pollute the well’ and thereby compromise this important source of consumer information.

<sup>26</sup> “A.G. Schneiderman Announces Agreement With 19 Companies To Stop Writing Fake Online Reviews And Pay More Than \$350,000 In Fines”, September 23, 2013, [www.ag.ny.gov/press-release/ag-schneiderman-announces-agreement-19-companies-stop-writing-fake-online-reviews-and](http://www.ag.ny.gov/press-release/ag-schneiderman-announces-agreement-19-companies-stop-writing-fake-online-reviews-and).

<sup>27</sup> “What You Need to Know About: Online reviews - a guide for business & review platforms”, ACCC, December 2013, [www.accc.gov.au/publications/online-reviews-a-guide-for-business-review-platforms](http://www.accc.gov.au/publications/online-reviews-a-guide-for-business-review-platforms)

<sup>28</sup> “Advertising & promoting your business - Managing online reviews”, ACCC, Online Resource, [www.accc.gov.au/business/advertising-promoting-your-business/managing-online-reviews](http://www.accc.gov.au/business/advertising-promoting-your-business/managing-online-reviews).

<sup>29</sup> “CMA seeks information on online reviews and endorsements”, Competition and Markets Authority, February

2015. [www.gov.uk/government/news/cma-seeks-information-on-online-reviews-and-endorsements](http://www.gov.uk/government/news/cma-seeks-information-on-online-reviews-and-endorsements).

<sup>30</sup> “The growing power of consumers”, The Deloitte Consumer Review, July 2014. [www2.deloitte.com/uk/en/pages/consumer-business/articles/the-growing-power-of-consumers.html](http://www2.deloitte.com/uk/en/pages/consumer-business/articles/the-growing-power-of-consumers.html).

<sup>31</sup> “Fake It Till You Make It: Reputation, Competition, and Yelp Review Fraud”, Michael Luca and Georgios Zervas, May 2015, [people.hbs.edu/mluca/fakeitillyoumakeit.pdf](http://people.hbs.edu/mluca/fakeitillyoumakeit.pdf).

Negative or positive reviews directly affect consumer decision-making and, furthermore, can be of significant concern to business. Canadians need to know that they can rely on consumer user reviews, and businesses must be permitted to benefit from the legitimate views of their customers without contending with competitors who stack the deck.

### Further Reading

Don't buy into fake online endorsements - Not all reviews are from legitimate consumers  
Press Release, July 28, 2014.

*The Bureau warned consumers about endorsements that give the impression that they have been made by ordinary consumers, when in fact they have been made by or on behalf of a business.*

[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03782.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03782.html)

Too good to be true: Don't buy into fake online reviews, Press Release, March 10, 2015.  
Competition Bureau focuses on fake online reviews during the third annual "2 Good 2 B True Day"

*The Bureau again warned consumers about overly positive or negative reviews. "If it sounds too good to be true, then it probably is."*

[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03882.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03882.html)

## How to Contact the Competition Bureau

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act*, the *Precious Metals Marking Act*, or the program of written opinions, or to file a complaint under any of these acts should contact the Competition Bureau's Information Centre.

### Website

[www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca)

### Address

Information Centre  
Competition Bureau  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

### Telephone

Toll-free: 1-800-348-5358  
National Capital Region: 819-997-4282  
TTY (for hearing impaired) 1-866-694-8389

### Facsimile

819-997-0324