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Bulletin

The Deceptive Marketing Practices Digest Volume 2

Canada

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Introduction

The *Competition Act's* prohibitions against misleading advertising and deceptive marketing practices are a key component in the Competition Bureau's mandate to safeguard and promote a healthy, competitive marketplace. There can be no mistake that the prohibitions against deceptive practices in the Act were put there deliberately and for good reason. The historical record shows that for over a century, Parliament and the courts have understood the destructive effect that deceptive marketing practices have in the market, reducing the quality of information, hindering innovation and increasing prices for poorer quality goods.

In this second volume of the Deceptive Marketing Practices Digest we touch on this history in our look at the provision requiring that advertised performance claims be supported by adequate and proper testing. First drafted by Parliament over 75 years ago, the language of the section and the validity of its objective were put under the microscope recently when courts, on two separate occasions, upheld the constitutionality of the section after it was challenged under the *Canadian Charter of Rights and Freedoms*. These two cases were a decisive affirmation of the Bureau's position that protecting the credibility of performance claim advertising has an important competitive objective that benefits both businesses and consumers alike.

This volume also looks at the benefits of consent agreements. Introduced in 1999, consent agreements formalize what we used to call undertakings by making them enforceable by the courts. These agreements are now one of our most effective enforcement tools for resolving misleading advertising matters, allowing creative and effective compliance outcomes that avoid the costs and delays of litigation.

We look at on-site inspections under the *Precious Metals Marking Act,* and how we stay current when it comes to giving inspectors the tools to work effectively, and finally we provide a brief glimpse of the Bureau's partnership with other law enforcement agencies in the Canadian Anti-Fraud Centre.

I was pleased with the positive feedback that followed the publication last year of the first volume of the Deceptive Marketing Practices Digest and I trust you will find this second volume equally informative.

John Pecman
Commissioner of Competition

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Substantiating Performance Claims - Standing the Test of Time for over 75 Years

Introduction

In the late 19th and early 20th centuries, advertising was taking up ever more space in Canadian newspaper columns, offering consumers everything from miracle treatments and restoratives that promised to cure virtually any ailment to household products with extraordinary purity, durability or cleaning power. Although the advertising of miraculous curatives or incomparable performance seemed to occupy more page space, it was by no means a new practice.

Advertising has been with us as long as merchants have peddled their wares, and making claims that a product will perform in some way has always been a preferred marketing technique. Consumers find a "performance claim" very persuasive, which is why, of course, the practice has endured for so long.

Performance claims are a good thing, because they can provide consumers with important information about products and allow them to make better-informed choices when shopping. This makes the market work in a way that benefits all Canadians: businesses will create better products if they can edge out the competition by promoting improved or superior performance qualities; retailers will stock a better selection of products if they are in demand, and consumers will reward them both with their purchases.

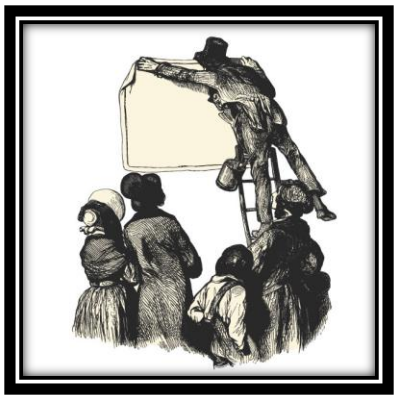
This kind of ad may seem familiar from banner ads on the internet. Remarkably, this is an ad found in a Canadian newspaper nearly a century ago.

The risk is that performance claims typically must be accepted on trust, since consumers have no way to assess whether a claim has a sound basis. Advertisers, on the other hand, do usually have this ability, and they have access to the necessary supporting information. This knowledge gap between consumers and advertisers (an example of what economists call "asymmetry of information") causes problems when advertisers make unsubstantiated performance claims.
Put another way, consumers expect that advertisers know more about their own products, and they trust that performance claims are supported by a solid foundation of testing based on this specialized knowledge.

Advertisers who exploit the information gap by making unsubstantiated claims are betraying this trust. Consumers are led to believe that products have been tested and will perform exactly as claimed, and competitors offering superior products that perform as promised will lose sales.

This practice can undermine a properly functioning marketplace, which harms all Canadians. This also explains why the requirement to properly substantiate performance claims has been the law in Canada for nearly as long as there have been laws concerning misleading and deceptive advertising.

The Legislation



Over 75 years ago, in the midst of the Great Depression, a Royal Commission[1] was tasked with enquiring into how certain business practices might be affecting the Canadian economy. The Commission's final report, among its key findings, targeted marketing practices that harmed both consumers and honest merchants by destroying consumer confidence in the validity of all advertising. Looking at quality issues in particular, the Commission was concerned about the economic harm that resulted when advertised claims about performance were made with uncertain knowledge and were not based on comparative testing. Interestingly, it was the business sector that pressed the issue, arguing that misleading and deceptive claims about quality and performance destroyed competition, affecting both consumers and honest businesses, by either driving competitors from the market or forcing them to compete in a similarly dishonest way.

> ***"Misleading advertising by one merchant works damage to the trade of all and provokes further falsification and misstatement."***
>
> Report of the Royal Commission on Price Spreads 1935

To remedy this problem, the Commission proposed a requirement that claims be based on testing, which they said would not only protect consumers against unsubstantiated performance claims, but would also promote the interests of honest competitors. Furthermore, observing that it is the business of manufacturers and sellers to know the product they make or handle, the Commission put the onus of proof squarely on the advertiser. Accordingly, a testing requirement was introduced in 1935 as part of amendments to the *Criminal Code*.[2]

The provision was transferred to the *Combines Investigation Act* in 1969[3] (repealed in 1986 and replaced by the *Competition Act*[4]) and remained a criminal provision in Canada's competition law for

[1] Canada, Royal Commission on Price Spreads, *Report of the Royal Commission on Price Spreads* (Ottawa: King's Printer, 1935)

[2] *An Act to Amend the Criminal Code*, S.C. 1935, c.56, s.6, added section 406(3)(a)

[3] Bill C-150, *The Criminal Law Amendment Act* 1968-69 1st Sess., 28th Parl., 1968-69

[4] *An Act to establish the Competition Tribunal and to amend the Combines Investigation Act and the Bank Act and other Acts in consequence thereof,* 1st Sess., 33rd Parl., 1985

the next 30 years until the *Competition Act* (the "Act") was amended in 1999.[5] As part of this latter amendment, the criminal prohibition against unsubstantiated performance claims was converted into "reviewable conduct" under the civil deceptive marketing provisions of the Act. Throughout all of these years and many legislative amendments, the provision relating to advertised performance claims has stood the test of time, one proof of which is the simple fact that the specific wording of the requirement has remained essentially unchanged since 1935.

The specific provision can be found in section 74.01 of the Act, and reads:

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,
[…]
(b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation. [6]

Put simply, this provision requires that advertisers base their claims about the performance, efficacy or length of life of a product on adequate and proper testing. In this regard, it is the advertiser who has the responsibility for establishing that he or she has met the requirement.

Upholding the Constitutionality of the Testing Requirement

There have been a number of cases over the years where the courts have considered advertising of all kinds of different performance claims and whether, under the Act, the claims could be said to be based on 'adequate and proper' testing. The decisions in these cases have brought a great deal of clarity to the section and have significantly enhanced the general understanding of its meaning.

In two of the more recent cases, advertisers have unsuccessfully challenged the constitutionality of the testing requirement based on freedom of expression under the *Canadian Charter of Rights and Freedoms*. Interestingly, it is in the courts' rejection of these challenges and in its upholding of the section that we can find both a confirmation of its historical rationale and some further insights into why the testing requirement is such an important element of the overall objective to protect the quality of marketplace information.

In the first case, *Imperial Brush*, an advertiser of manufactured stove and fireplace maintenance products made claims that the products helped reduce the quantity of harmful creosote deposits in fireplaces and wood stoves and helped prevent chimney fires. [7] In the second case, *Chatr Wireless*, the company claimed that its Chatr service, a mobile phone brand, had fewer dropped calls than new wireless entrants.[8]

[5] Bill C-20, *An Act to amend the Competition Act and to make consequential and related amendments to other acts*, 1st Sess. 36th Parl.,1999
[6] *Competition Act*, R.S.C. 1985, c. C-34, paragraph 74.01(1)(b)
[7] *The Commissioner of Competition v. Imperial Brush Co. Ltd. and Kel Kem Ltd. (c.o.b. as Imperial Manufacturing Group)*, 2008 CACT 2
[8] *Canada (Competition Bureau) v. Chatr Wireless Inc.*, 2013 ONSC 5315

The Commissioner of Competition filed applications against the companies in each of these cases, alleging that the representations at issue were performance claims that were not based on adequate and proper testing. In both instances, the advertisers challenged the constitutionality of the testing requirement, arguing that it infringed their right to freedom of expression guaranteed under paragraph 2(b) of the *Charter*.

Conceding that the provision limits an advertiser's freedom of expression, the Commissioner argued in both cases that the requirement that performance claims be based on adequate and proper testing was justified.[9] Considering arguments and expert evidence from each side, both courts conducted a thorough constitutional analysis of the testing requirement.

In *Imperial Brush,* the Competition Tribunal[10] found that the rationale for the provision is to decrease deceptive advertising, stating that:

"The objective is to prevent certain unsubstantiated representations. The deception being addressed is that these representations are grounded in some objective testing. A representation that a product will perform in a specific way is designed to convince the purchaser that there is some objective basis upon which the purchaser can rely."[11]

In exploring this issue, the Tribunal recognized that asymmetries of information in this particular type of advertising created the potential for harm, concluding that the provision:

"…seeks to address the imbalance of knowledge between the consumer and the seller. It protects the consumer by ensuring that she can rely on statements regarding the performance, efficacy or length of life of a product, since those statements are to be based on proper and adequate tests."[12]

The Tribunal in *Imperial Brush* as well as the Ontario Superior Court of Justice in *Chatr Wireless* agreed with the Commissioner's position that when consumers base their decisions to purchase a product on unsupported performance claims, there is an increased potential for the misallocation of resources. In other words, consumers will be more likely to purchase the product, buy too much of it, or pay too much for it. This diverts their purchasing dollars away from other offerings that may be better, more innovative or that present a better overall value.

Furthermore, as a result of improper claims, consumers lose confidence in advertising claims in general, which in turn makes it difficult for honest firms to convey the superior quality and performance attributes of their products to increasingly skeptical consumers. These innovative companies find it harder to survive, which has a destructive effect on the marketplace and leads to higher prices and the loss of high quality products and firms.[13]

[9] Section 1 of *The Canadian Charter of Rights and Freedoms* (Part 1 of The *Constitution Act, 1982)* provides an exception for laws that limit *Charter* rights where it "*can be demonstrably justified in a free and democratic society*."

[10] The Competition Tribunal, an adjudicative body with specialized expertise, operates independently of any government department. The Tribunal hears cases related to mergers, misleading advertising and restrictive trade practices.

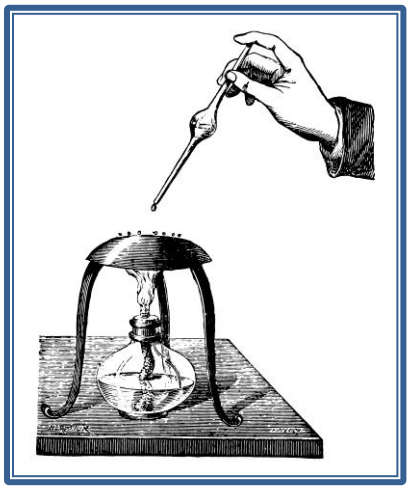
[11] *Imperial Brush* (para 76)

[12] Ibid. (para 77)

[13] The decisions in both *Chatr Wireless* (para. 483-86) and *Imperial Brush* (para. 76-90) acknowledge how misleading advertising practices of this nature make consumers skeptical about all advertised claims which then has a cascading, destructive effect in the market.

Happily for consumers and honest competitors, both courts concluded that the testing requirement is indeed a justifiable limit on the advertiser's freedom of expression. Both decisions underscore and reaffirm what legislators knew over 75 years ago: Consumers need to be able to believe that performance claims are based on proper and adequate testing if the marketplace is to function efficiently for the benefit of all Canadians. This is a validation of the work done by Parliament to protect consumers and honest competitors all those years ago.

A Flexible Standard for Modern Times – Insights from the Cases



It is clear that Parliament understood the importance of flexibility in terms of what constitutes an adequate and proper test, in contrast, for example, to many strict industrial standards. It purposely drafted the requirement with the objective that testing be determined according to the context of the advertisement. This leaves advertisers with creative freedom and avoids putting too many limits on the kinds of claims that can be made, provided the advertiser can back these claims with testing. The courts, in addition to acknowledging the flexibility objective, have also helped by providing insight into what constitutes adequate and proper testing.

First, when deciding what can be considered 'proper', the courts have generally interpreted this to mean that testing is "*fit, apt, suitable or as required by the circumstances*"[14], stressing the importance of considering the entire context.

The courts have also made it clear that whether testing is sufficient will depend on the nature of the claim and the meaning or general impression it conveys. This means that an important first step is to consider all of the facts and have a good understanding of what consumers will believe they are being promised. The nature and significance of this promise, as it is understood by the consumer, forms the basis for determining the methodology of the testing.

One way to approach this flexibility is to imagine a spectrum, where the required degree of rigour depends on the unique facts of the case. Here too, the courts have provided guidance.

At the lowest end of the spectrum it is clear that there must be a test, which the courts, referring to the dictionary definition, have defined as *"…a procedure intended to establish the quality, performance or reliability of something."*[15] They have rejected evidence that has been presented as an alternative to testing, including evidence of consumer use over a long period of time, technical books, bulletins and manuals, anecdotal stories and studies or sales of similar products. The courts have also rejected the argument that a company's belief in the superiority of its product or service, and the belief that this superiority supports the advertised performance claim, satisfies the testing requirement. In *Chatr Wireless* for example, the company argued that its

[14] *Imperial Brush* (Para. 122)
[15] Ibid. (para. 152)

greater density of cellular towers, and better quality of indoor and underground reception, was the basis for its belief that it could offer fewer dropped calls. However, the court concluded that the advertiser must nevertheless conduct testing to support the specific performance claim.

At the other end of the spectrum, the courts have made it clear that testing does not require absolute certainty. Even perfectly designed and executed tests can produce erroneous results from time to time. In addition, tests do not necessarily need to meet the standard typically required for studies published in peer-reviewed scholarly journals.

A proposed advertisement needs to be carefully considered in its entire context before a decision can be made about where the level of testing needs to fall on the spectrum, if it is to be considered adequate and proper. To give an example, the court in *Imperial Brush* decided that the standard in that case had to be higher because the representations were made in the context of consumer safety, specifically by claiming to address the risk of dangerous chimney fires. It is important to remember that the onus is on the advertiser to prove that the test meets the requirements.

Notes on 'Adequate and Proper'

In addition to what has been discussed so far, the case law related to performance claim advertising has provided a number of principles that are the hallmarks of an adequate and proper test:

- It depends on the general impression that the advertisement makes on consumers;
- It is conducted before the claim is made;
- It is done under controlled circumstances, controlling for external variables;
- Subjectivity is eliminated as much as possible;
- It is not necessarily measured against a test of certainty, but it should establish that the results are not mere chance or a one-time effect, by establishing that the product causes the desired effect in a material manner; and
- The results of the testing support the claim made.

Conclusion

While advertising formats and media continually evolve, the fundamentals never change: advertisers need to differentiate themselves, and they know their product best and what does (or doesn't) set it apart. Like today, marketing methods were evolving aggressively in the early 20th century. Parliament recognized the power of advertised performance claims and the potential for competitive harm and came up with a solution that has withstood the test of time. They built in enough flexibility to allow advertisers to design their own performance claims as long as they could prove them.

The case law to date, including the courts' recent endorsements of the constitutionality and economic importance of the provision, is an important reminder to advertisers that with this flexibility, there comes a significant degree of responsibility.

Further Reading

Performance Representations Not Based on Adequate and Proper Tests
http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/00520.html

The Commissioner of Competition v. Imperial Brush Co. Ltd. and Kel Kem Ltd. 2008 CACT 2
www.canlii.org/en/ca/cact/doc/2008/2008cact2/2008cact2.html

Canada (Competition Bureau) v. Chatr Wireless Inc., 2013 ONSC 5315
www.canlii.org/en/on/onsc/doc/2013/2013onsc5315/2013onsc5315.html

Consent Agreements: A Primer

Introduction

The Competition Bureau seeks to protect the marketplace from the effects of deceptive marketing practices. One of the Bureau's most effective enforcement tools to accomplish this is the consent agreement.

What is a Consent Agreement?

Where the Bureau concludes that someone has contravened the civil deceptive marketing provisions of the *Competition Act*, it can file an application with the courts. The courts in turn have the jurisdiction to decide the outcome of deceptive marketing practices cases, and impose significant remedies for people found to have contravened its provisions.

However, the Act also provides other mechanisms which allow the Commissioner to fulfill the Bureau's mandate in a more efficient and flexible manner. One particularly useful tool, designed to protect the marketplace and consumers from the ill effects of deceptive marketing practices, is the consent agreement.

When amending the Act in 1999, Parliament decided that, in the modern advertising age, the harm to competition by deceptive marketing practices could in most cases be more efficiently addressed under a civil regime rather than through criminal prohibitions.[16] This belief was the basis for the creation of a new section that allowed the Commissioner of Competition to resolve concerns through consent agreements.

Under section 74.12 of the Act, if the Commissioner and the advertiser against whom an order is sought can reach an agreement, whether or not the terms of the agreement are provided for in the Act, they can register the agreement with the court. This gives the consent agreement the same force and effect of an order made by the court. In effect, this formalized the way the Bureau already pursued alternative dispute resolution. The already-existing process of negotiating "agreed undertakings" was made enforceable by the courts.

What Does a Consent Agreement Contain?

[16] *Report of the Consultative Panel on Amendments to the Competition Act,* March 6, 1996.

Consent agreements are intended to protect consumers and the proper functioning of the marketplace. For that reason, the typical agreement contains a number of terms intended to prohibit the repetition of the conduct, and also promote conduct by the advertiser that does not mislead or deceive consumers.

The terms of consent agreements vary depending on the specific circumstances. Generally speaking, the terms often include:

- a prohibition against the conduct that was the subject of the investigation or any substantially similar conduct;
- a commitment to comply with the deceptive marketing provisions of the Act;
- the payment of a monetary penalty;
- restitution to consumers of the advertised product;[17]
- the publication of a notice informing consumers of the Commissioner's conclusions;
- the appointment of an independent monitor;
- ongoing reporting requirements about whether the agreement is being upheld; and
- a requirement to implement a corporate compliance program to prevent problems from arising again.

A Successful Compliance Tool

Since the consent agreement process was added to deceptive marketing practices provisions of the Act, agreements have been used by the Bureau to resolve many issues in the marketplace. These include cases involving all manner of representations, ranging from unsubstantiated performance claims to misleading savings claims.

These agreements have resulted in commitments from businesses to ensure truthful advertising going forward. They have also resulted in millions of dollars in restitution for consumers and administrative monetary penalties to ensure that businesses understand the importance of conducting their marketing in a manner consistent with the deceptive marketing provisions of the Act.

Breaching a Consent Agreement

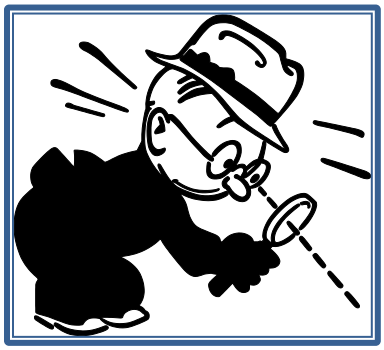
For consent agreements to remain an effective way to resolve issues and avoid lengthy, costly court proceedings, advertisers need to be kept accountable. While most businesses welcome the opportunity to resolve matters in this way and move forward, the Bureau remains vigilant to ensure they comply with consent agreements.

Once a consent agreement is registered with the court, it has the same force and effect as if it were an order of the court. This means that the penalties for contravening an order, found in section 66 of the Act, apply to contraventions of registered consent agreements. Penalties can include a fine in the discretion of the court or imprisonment for a term not exceeding five years, or both.[18]

[17] For conduct arising pursuant to section 74.01(1)(a) of the Act.

[18] Pursuant to section 66 of the Act, every person who contravenes a registered consent agreement made under Part VII.1, except paragraphs 74.1(1)(c) and (d) is guilty of an offence.

In 2014, the Bureau obtained its first conviction for the contravention of a registered consent agreement: Matthew Hovila was convicted of breaching a 10-year consent agreement that he signed with the Bureau in 2006.



In 2006, Mr. Hovila admitted that he had made false or misleading representations in relation to a job opportunities website that he operated. At that time, he signed a consent agreement, agreed to cease the conduct, notify the public, and pay a $100,000 administrative monetary penalty.

Through its monitoring program, the Bureau became aware that Mr. Hovila had begun making the representations again on the same website. He was arrested in 2011 and charged with contravening a registered consent agreement, as well as making false or misleading representations, possessing property obtained by crime, and laundering the proceeds of crime.

In 2013, Mr. Hovila was convicted and was sentenced to 15 months in jail for breaching the terms of his registered consent agreement.[19] In discussing the sentence generally, the Court highlighted the seriousness of contravening a consent agreement. It stressed more than once that the fact Mr. Hovila resumed the advertising only months after signing a consent agreement was a factor in determining an appropriate penalty overall (including the appropriateness of jail time), since the consent agreement was very beneficial and was freely entered into by Mr. Hovila.[20] This also served to devalue the otherwise mitigating factor that Mr. Hovila did not have a criminal record.

The Court said that a breach of a registered consent agreement, and any other court order for that matter, is extremely serious. Regardless of how an order comes into existence, it is a sacrosanct mechanism in a country governed by the rule of law. The Court found that a period of incarceration is the only answer for a breach of this sort.

> ***"Willful disobedience of a court order should always attract a significant penalty because it is necessary to impose that type of penalty in order to maintain the public confidence in judicial oversight of the administration of justice."***
>
> Her Majesty the Queen V. Matthew S. Hovila (February 6, 2014), (ABQB) [Unreported]

Conclusion

Consent agreements are often a very effective way for the Bureau to quickly and efficiently address the competitive harms that can result from deceptive marketing practices. These agreements have an immediate and positive impact on the quality of product information available, promoting the

[19] Mr. Hovila also received a 15-month jail sentence for making false or misleading representations, was ordered to pay restitution of $185,000 and a fine of $164,000. He also pled guilty to being in possession of proceeds of crime under the *Criminal Code* and was sentenced to one year in jail, to be served concurrently.

[20] This was in the context of a discussion about the "degree of wrongdoing" when considering an appropriate sentence. In the course of this discussion the Court confirmed that section 66 of the Act is a strict-liability offence even though the mental element of intention, or *mens rea,* had been proven in relation to the degree of wrongdoing in this case.

proper functioning of the marketplace for consumers and businesses alike.

Further Reading

Consent Agreements
Registered Consent Agreements in the above-mentioned cases can be found on the Competition Tribunal website
https://decisions.ct-tc.gc.ca/ct-tc/cd/en/item/462600/index.do?q=CT-2006-010

Breaching Consent
Alberta Man Sentenced to Jail in Online Job Opportunities Scam
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03660.html

Precious Metals Marking Inspections: The New Gold Standard in Equipment

Introduction

The Commissioner of Competition, in addition to having responsibilities for the *Competition Act*, is also responsible for administering three labelling statutes.[21] These statutes set standards for labelling prepackaged consumer products, precious metals articles and consumer textile articles. On-site inspections are an important tool that the Bureau uses to monitor and enforce compliance with these statutes.

Quality Marks on Precious Metals Articles

Jewellery, watches, cutlery and other items made from precious metals hold an appeal – for their beauty, and for the rarity and intrinsic properties of the metals. Besides their lustre and malleability, precious metals generally can be combined with other metals into alloys that can enhance desirable characteristics, such as durability or affordability.

Articles made of precious metals or their alloys are often described, and to a large extent valued, according to the quality and characteristics of the precious metal, such as its fineness, weight or thickness. Fineness, for instance, is essentially a measure of purity, and is represented as the ratio of the base precious metal to any added metals. For gold, this ratio is expressed in karats, whereas for the other precious metals, fineness is expressed as a minimum percentage or as parts per thousand. When this type of information is marked on the article, or is communicated to consumers in some other manner, it is referred to as a 'quality mark' for the purposes of the *Precious Metals Marking Act* (PMMA) and its Regulations.

It is virtually impossible for consumers to assess the accuracy of quality claims on articles of precious metal, especially when the claims relate to the quality of the metal content. For example, is the wedding ring they want to buy really 18K gold (75% pure gold), or is a watch case or necklace really sterling silver (925/1000 or .925)? The risk of harm to both consumers and legitimate businesses increases when consumers cannot verify quality claims and are misled into paying "high-quality" prices for lower quality items. Consumer confidence in the validity of quality markings must

[21] These are the *Consumer Packaging and Labelling Act* (non-food products), the *Textile Labelling Act* and the *Precious Metals Marking Act*.

be preserved if the market for precious metals articles is to remain healthy and competitive. The PMMA promotes accurate and truthful information by setting uniform standards for marking precious metals articles that are made (in whole or in part) of gold, silver, platinum and palladium. It prohibits markings that do not correctly indicate the quality of the precious metal content. There is no requirement that precious metals articles have quality markings, but if a quality mark is applied, it must be one that is prescribed by the PMMA Regulations, and that correctly indicates the quality. The marked article must also bear a registered trade-mark, also in a manner prescribed by the PMMA Regulations.[22]

Inspections

The PMMA provides Bureau inspectors with powers that allow them to monitor conformity with the safeguards set out in the PMMA and its Regulations.

Inspectors are authorized to enter the premises of anyone dealing in precious metals articles, at any reasonable time, and require that any precious metal article on those premises be made available for inspection. If the inspectors have reasonable grounds to believe that any items are improperly marked, corrective measures can be taken.

So how does the Bureau overcome the same problems encountered by consumers when it comes to assessing the quality of precious metals?

In the past, the Bureau relied on portable electronic gold testers to determine the accuracy of quality markings during on-site inspections. However, these devices were only capable of testing the karat value of gold, and could not be used to test other precious metals. Furthermore, the electric testers required a number of preparatory steps for each individual test, making the device less-than-ideal for quickly conducting numerous tests throughout a course of inspections.

The X-Ray Fluorescent Analyser

In a step designed to give inspectors the equipment they need to be more effective, the Bureau has recently replaced the electronic gold testers with the latest technology: X-Ray Fluorescent Analysers (XRF Analysers).

XRF Analysers are portable, non-destructive devices that analyse materials at the elemental level. Every individual element emits a unique fluorescent x-ray fingerprint. The XRF Analyser fires a burst of x-rays at a sample, and identifies the component elements by analysing the fluorescent fingerprint. These portable devices can, in a matter of seconds, provide a highly accurate analysis of the precious metal content of articles without any additional cost or damage to the article.

The XRF Analyser fires a burst of x-rays at a sample and identifies the component precious metals by analysing the "fluorescent fingerprint".

Bureau inspectors are now using the XRF Analysers when they conduct on-site inspections of anyone who deals in articles regulated by the PMMA. The portable devices greatly enhance the inspectors' ability to quickly examine numerous articles in the

[22] However, the trade-mark is not required if the article has been quality marked in a foreign country and bears a government assay mark which is recognized by the Bureau.

course of a single visit, and identify whether specific items raise concerns.

Conclusion

The Bureau strives to act quickly and effectively to ensure that consumers have accurate information when making purchasing decisions about precious metals articles, and keeping tools up-to-date helps in this endeavour. Use of the portable XRF Analyzer shows how having the right equipment and resources ensures timely and efficient compliance outcomes that are good for Canadian businesses and consumers.

Further Reading

Competition Bureau inspects quality marking requirements for gold jewellery
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03972.html

Guide to the Precious Metals Marking Act and Regulations - Enforcement Guidelines
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01234.html

Get to Know: The Canadian Anti-Fraud Centre

Introduction

The Competition Bureau is responsible for addressing deceptive marketing practices. However, it also has responsibility for addressing different kinds of criminal misleading advertising that are similar to fraud. These kinds of mass marketing frauds pose their own unique challenges when it comes to detecting them, investigating them and protecting consumers and the marketplace from their harmful effects.

The Bureau

Internally, the Bureau uses several methods to detect and keep the public informed about ongoing marketplace issues and trends in misleading advertising and deceptive marketing practices. Its dedicated, in-house Information Centre is the primary point of contact for complaints and information requests from both consumers and businesses, and many of the Bureau's investigations are the result of the information collected there.

Additionally, in the course of investigations or as members of teams that focus on new areas of concern, experienced officers keep informed about trends in marketing practices that have the potential to raise issues under the *Competition Act* (the "Act").

Finally, presentations on the deceptive marketing provisions of the Act to both advertisers and vulnerable consumer groups, together with online news publications, pamphlets and other multi-media materials, improves public awareness of the Bureau's enforcement activities and increases the likelihood that consumers and businesses will be able to avoid, or detect and report misleading and deceptive practices.

Partnerships

While the Bureau relies on its own internal methods to target non-compliance and educate consumers and businesses about the perils of deceptive marketing practices, it is not limited to its in-house expertise.

A broad range of information-gathering tools are available through partnerships with other government departments and law enforcement agencies, both federal and provincial, as well as internationally. The Bureau is not the only Canadian law enforcement agency whose mandate is concerned with mass marketing fraud. As a result, the subjects of investigations by the Bureau and other agencies often intersect, creating an opportunity for cooperation and support.

These cooperative arrangements improve the scope and effectiveness of the Bureau's efforts. They facilitate coordination and sharing of expertise, and provide opportunities to more effectively allocate resources.

The Canadian Anti-Fraud Centre

The Canadian Anti-Fraud Centre (CAFC) is an example of a productive agreement between agencies. As Canada's national fraud data repository, the CAFC is a partnership between the Bureau, the Royal Canadian Mounted Police (RCMP) and the Ontario Provincial Police (OPP). The Centre grew out of a 1993 initiative by the OPP to create a database of victims of telemarketing scams to be used as evidence in prosecutions.

Over time, the CAFC became the centralized repository for collecting and consolidating information from across the country about marketing scams and related deceptive activities across Canada and other jurisdictions. The CAFC began to use this information and expertise to provide other services, such as assistance to vulnerable groups, and an analytical unit that produces strategic intelligence about trends in the marketplace and detailed information about specific marketing activities.

Today, the CAFC annually fields more than 150,000 calls from around the world, and receives approximately 1,200 e-mails every day about suspected fraud. Additionally, consumers who suspect they have been targeted or victimized by fraudsters can now submit a report through the Centre's on-line Fraud Reporting System.

The Bureau has been involved in, and has benefited from, the activities of this unit from the beginning. It became a formal partner with the OPP and the RCMP in 2006 and jointly funds and manages the Centre. Today, the Bureau coordinates with its partners, and with the other agencies associated with the CAFC, to help identify and stop marketing scams across Canada and around the world.

The Bureau is able to further its own enforcement activities by drawing on the expertise and resources of the CAFC and its web of associated agencies to identify and prevent mass marketing fraud. Data collected and analysed by the CAFC can be used by the Bureau to identify trends and set priorities, while more targeted intelligence reports can be used to further investigations into specific cases.

But the CAFC does not just help the Bureau and its partners identify trends and target fraudulent or deceptive practices; it provides valuable

educational information to the public. On its website, the CAFC publishes excellent overviews of active scams, informing consumers about how to identify them and to avoid being victimized.

The CAFC is also very active in Fraud Prevention Month, an annual education and fraud awareness campaign. During the month of March, the Bureau and its partners in fraud prevention carry out numerous activities to inform Canadians about the impact of fraud and how to protect themselves.

Finally, on the public education and support front, the CAFC's Senior Support initiative is a one-of-a-kind volunteer program in Canada. Senior volunteers counsel senior victims of mass marketing fraud on how they can protect themselves from further victimization, and they also provide moral and peer support.

Conclusion

In a world where technological advances in fraud seem to daily present new challenges for law enforcement, the Bureau values its cooperative relationships with other government and law enforcement partners and the substantial benefits that come from pooling resources and expertise. Each agency brings its own wealth of experience to the table, creating better opportunities to target efforts. The Bureau will continue to foster these productive relationships and work together to help protect Canadian consumers and the economy from the damaging effects of misleading and deceptive practices in all forms.

Further Reading

Canadian Anti-Fraud Centre Website
www.antifraudcentre-centreantifraude.ca

John Pecman, International Enforcement Meeting
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03957.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

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