



Competition Bureau
Canada

Bureau de la concurrence
Canada



THE DECEPTIVE MARKETING PRACTICES DIGEST

Volume 3

This publication is not a legal document. It is intended to provide general information and is provided for convenience. To learn more, please refer to the full text of the Acts or contact the Competition Bureau.

For information on the Competition Bureau's activities, please contact:

Information Centre
Competition Bureau
50 Victoria Street
Gatineau QC K1A 0C9

Tel.: 819-997-4282

Toll free: 1-800-348-5358

TTY (for hearing impaired): 1-866-694-8389

Fax: 819-997-0324

Website: www.competitionbureau.gc.ca

This publication can be made available in alternative formats upon request. Contact the Competition Bureau's Information Centre at the numbers listed above.

This publication is also available online in HTML at:

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04205.html>

Permission to reproduce

Except as otherwise specifically noted, the information in this publication may be reproduced, in part or in whole and by any means, without charge or further permission from the Competition Bureau provided due diligence is exercised in ensuring the accuracy of the information reproduced; that the Competition Bureau is identified as the source institution; and that the reproduction is not represented as an official version of the information reproduced, nor as having been made in affiliation with, or with the endorsement of the Competition Bureau. For permission to reproduce the information in this publication for commercial redistribution, please [Apply for Crown Copyright Clearance](#) or write to:

Communications and Marketing Branch
Innovation, Science and Economic Development Canada
C.D. Howe Building
235 Queen Street
Ottawa, ON K1A 0H5
Email: ISED@canada.ca

Cat. No. Iu50-7E-PDF
ISSN 2369-9957

2017-05-02

Aussi offert en français sous le titre *Recueil des pratiques commerciales trompeuses (Volume 3)*.



Introduction

Borderless problems demand borderless solutions

If this issue of the Deceptive Marketing Practices Digest has a theme, it is how our recent activities illustrate two key components of my vision for making the Competition Bureau work for the benefit of all Canadians. The first is that international collaboration enhances our enforcement efforts and promotes global policy convergence. The second is that compliance improves when businesses have access to clear guidance reinforced through education and outreach.

In many of my presentations to business and consumer groups, I speak about the benefits of global and increasingly digital markets and about how we are continually exploring new ways to foster consumer confidence in these markets in a borderless world. The benefits are clear. Consumers have unprecedented choice in the digital economy, travelling international markets without leaving home. Businesses offer innovative products and services, and vigorously compete for customers on a global scale.

There has however, been a corresponding increase in the complexity and reach of deceptive marketing practices that challenge our traditional compliance and enforcement techniques. In this environment, it makes no sense for competition and consumer protection agencies to combat these deceptive practices in isolation, when we all face many of the same problems. We accomplish more, in my view, by working together.

The Bureau benefits from the experience and expertise of its international partners, and we work jointly on cross-border enforcement and on consumer standards that promote best practices worldwide. Furthermore, whenever it is appropriate, we coordinate and share intelligence, resources and expertise to help enforce one another's laws.

In this issue of the Digest, we look at two international fora that play pivotal roles in the global effort to be 'better together': the OECD Committee on Consumer Policy, and the International Consumer Protection and Enforcement Network. Also in this Volume, we examine some recent enforcement work related to the digital economy, specifically certain marketing practices that often result in 'bill shock' for consumers of telecommunication services.

Working cooperatively improves our ability to enforce our misleading advertising and deceptive marketing practices laws and promote the benefits of fair competition here at home. We are better together. Nowhere is this more evident than in the digital economy context.

John Pecman
Commissioner of Competition

Table of Contents

Better Together: Best Practices in Consumer Protection.....2 Organization for Economic Co-operation and Development Committee on Consumer Policy	So You Bought a Ringtone? Unexpected Third Party Charges on Your Wireless Account12
Better Together: Cross-Border Enforcement ...8 The International Consumer Protection and Enforcement Network	Unlimited' Claims Marketing 'All-You-Can-Eat' Telecom Services15
	How to Contact the Competition Bureau18

Better Together: Best Practices in Consumer Protection

Organization for Economic Co-operation and Development Committee on Consumer Policy

What do consumers and businesses worry about most in our fast-paced, increasingly borderless economy? What changes would have the greatest impact on our ability to enjoy the benefits of an international market? These questions occupy competition and consumer agencies around the world as we focus our efforts and resources on activities most likely to improve consumer confidence in the global marketplace.

This is a particular challenge in the digital economy. The Competition Bureau works hard to promote fair competition and protect Canadians from harmful marketing practices, but new concerns arise quickly, particularly online. In order to keep ahead of current issues, we need to access the best available intelligence, learn from the enforcement experience of others, both domestic and international, and promote global standards of consumer protection and fair competition. To be effective, we need to be borderless.



We do this by cooperating. More than ever, enforcement agencies around the world tackle these challenges together, sharing experiences and developing policy responses. One excellent example is the Bureau's active participation in the Organization for Economic Co-operation and Development (OECD) Committee on Consumer Policy.

The OECD is an international forum where member governments explore and promote solutions to common problems. It operates through specialized committees that conduct research and develop expertise in a given area. Once a committee identifies an issue, it can then articulate policy solutions and best practices. One of these is the Committee on Consumer Policy (CCP or 'Committee'). The Office of Consumer Affairs spearheads the Canadian Government's involvement in the CCP, and the Competition Bureau is an active and enthusiastic participant in the Committee's work.

To be effective, we need to be borderless

Members of the CCP work to keep ahead of emerging issues that affect consumers. Working with consumer groups, law enforcement, the

business community and experts in specific fields, the Committee conducts ongoing research and discussions to identify priorities, and to develop shared measures to promote consumer wellbeing. The digital economy is a long-standing strategic priority for the Committee, going back over 20 years.

The CCP is an excellent example of the strength in numbers. Despite different mandates and legal frameworks, agencies from around the world contribute a wealth of relevant experiences and expertise that significantly improve the ability of the Committee to identify and study key consumer challenges in the digital economy, and to develop appropriate and effective guidance to overcome these problems.

Through its ongoing work, the Committee identifies key principles and then articulates these in a way that members can embrace at home. Companies conducting business across borders will find it easier to comply with principles that converge across jurisdictions. Consumers will feel more confident entering into online transactions when they know that businesses are adhering to familiar and consistently high global standards. This serves to promote and maintain the integrity of online commerce.

Guidelines for Consumer Protection in the Context of Electronic Commerce

The CCP initiated its first rigorous study of consumer issues related to electronic commerce in 1998, in the early days of the digital economy, after members raised concerns that differing regulatory regimes might hinder growth in the emerging electronic marketplace. The result was the creation of the 1999 OECD [Guidelines for Consumer Protection in the Context of Electronic Commerce](#).

These were general principles intended to address common concerns among member agencies and promote a framework of predictable standards for all e-market participants. The issues addressed included fair advertising practices, accurate disclosures and improved consumer education.

Since then, the CCP has continued to follow trends in e-commerce and gauge the effectiveness of that original guidance, tracking changing realities and emerging issues before they matured.



Early on, the CCP anticipated the potential issues associated with the rapid growth in the use of mobile devices, and the impact these might have on consumer confidence in mobile commerce.

There were concerns, for example, about how the limitations of mobile media, such as small screens and multiple web pages, might impact marketing messages, affecting the quantity and/or quality of the information that consumers need in order to make informed decisions, including the terms of sale, the total cost and any other important terms and conditions.

Another issue identified for action was the use of text-based services for targeting and pushing advertising and digital content to mobile phones. The Committee anticipated how this emerging practice could lead to unauthorized charges on wireless bills, where consumers were not aware of costs or other terms and conditions, or where they were not aware that they were purchasing content or services.

The use of text-based services to target and push advertising and content to mobile phones could lead to unauthorized charges on wireless bills

Consumer Policy Guidance on Mobile and Online Payments

The issues identified through this ongoing review process often led to more focussed examinations and reporting on specific issues.

After identifying concerns in the area of mobile and online payments, the CCP conducted consultations and, in 2012, published a [Report on Consumer Protection in Online and Mobile Payments](#) outlining its findings and concerns in this important area of e-commerce.

The CCP then set to work crafting solutions in the form of policy guidance intended to address the concerns identified in the report.

Published in 2014, the [Consumer Policy Guidance on Mobile and Online Payments](#) (the 'Payments Guidelines') builds on the principles of the original e-commerce guidelines, aiming to improve industry practices related to mobile and online payments by promoting transparent and accessible information disclosure.

For example, terms and conditions relating to costs, obligations and payment requirements are not always easy for consumers to access and read in a mobile context. Key information in small print or scrolling text, for instance, can be hard to read and easily overlooked, or if placed on subsequent screens, consumers may miss the information or not read it at a sufficiently early stage in the transaction.

Present key information early, and in an easily readable and accessible manner

In this regard, the Payments Guidelines stress that key information should be presented early, and in an easily readable and accessible manner, and that consideration should be given to the small screens and the "on the go" context of the various mobile devices often used in e-commerce.

The Payments Guidelines also advise that businesses should not give consumers misleading or deceptive price or payment information and then provide the correct information further into the transaction.

The Committee was concerned about the practice of charging for automatic repeat purchases or subscription renewals without

clearly informing consumers. These consumers find themselves charged for products or services they may not have wanted. The Payments Guidelines remind businesses of the need to give consumers clear information about automatic repeat purchases or subscription renewals.

Similarly, the Committee was concerned about the practice of charging a customer's wireless account for third party content or services that the customer did not authorise or did not knowingly purchase, a practice sometimes referred to as 'cramming'.



Consumer Policy Guidance on Intangible Digital Content Products

Another e-commerce area into which the Committee conducted an in-depth review was consumer protection in the acquisition and use of digital content.

The Committee's 2013 comprehensive report on [Protecting and Empowering Consumers in the Purchase of Digital Content Products](#) looked at issues associated with the rapid expansion in the market for digital content and identified challenges faced by consumers who use this content, including inadequate information disclosure, and misleading marketing practices.

The report was the foundation for the development and publication, in 2014, of specific guidance related to the marketing and the selling of digital content.

Do not charge consumers for digital content without authorization or for products they thought were free or did not knowingly purchase

The [Consumer Policy Guidance on Intangible Digital Content Products](#), published in 2014, among other things, sets out policy principles to address inadequate information disclosure and unauthorized charges associated with apps and online games.

While the Digital Content Guidelines apply to e-commerce in general, the advice again focusses on the increasing use of mobile devices to access and use digital content.

Consumers downloading 'free' mobile apps, for example, should know that charges apply if they use certain premium features. Businesses should provide consumers with clear, conspicuous and unavoidable information on all of the potential costs of using digital content.

Furthermore, the Digital Content Guidelines encourage businesses to provide consumers with clear information about important terms and conditions, such as provisions for automatic repeat purchases or automatic subscription renewals. Consumers who, for instance, purchase ringtones through their

mobile phones should know if they have also subscribed to an ongoing service.



Recommendation of the Council on Consumer Protection in E-commerce

Published in anticipation of the June 2016 OECD Ministerial Meeting on the Digital Economy held in Cancun, Mexico, the OECD [Recommendation of the Council on Consumer Protection in E-commerce](#) is the most recent product of the Committee's continuing work in the digital economy. Updating the 1999 OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce*, the 2016 Recommendation builds on the same core principles of transparent and effective consumer protection in electronic commerce found in the original Guidelines.

The Committee adjusted the focus to reflect the evolution in online practices and behavior, recognizing that e-commerce had evolved to include businesses facilitating customer-to-customer transactions, and non-monetary commercial transactions where for example consumers get something for 'free' in exchange for their personal data. Among other things, this expanded focus encompassed issues related to the increase in digital content and payments, consumer reliance on online

comparison and reviews, and inadequate information disclosure.

The revised Recommendation, setting out general principles for businesses, is in many ways a synthesis of all the Committee's research and guidance relating to the digital economy to date.

Several principles relate to advertising and marketing practices and fall squarely in the Bureau's mandate, including that a business should:

- not misrepresent or hide terms and conditions likely to affect a consumer's decision
- not misrepresent or hide the total cost of a good or a service
- ensure that advertising is clearly identifiable as such
- ensure that endorsements are truthful, substantiated and reflect actual experience, and clearly and conspicuously disclose any material connection between businesses and online endorsers which might affect the weight or credibility that consumers give to an endorsement

The Bureau endorses these principles and promotes them at home whenever possible, as we have in the first two volumes of the Digest.

Conclusion

The extensive, ongoing work of the Committee on Consumer Policy, and initiatives like the 2016 *Recommendation on Consumer Protection in E-commerce*, are important examples of effective, global collaboration. This supports our own work at home by informing our enforcement efforts and helping in the promotion of best practices.

In short, the collaborative process and rich resource of opinion and research that participation at the OECD provides, gives us the confidence we need to set well-informed priorities and make the most effective use of our resources.

We need to cooperate if we are to keep ahead of the challenges that consumers and businesses face in the digital economy. We are better together.

Further Reading

[OECD Committee on Consumer Policy](#)

[Better Together – Remarks by John Pecman, Commissioner of Competition](#)

Better Together: Cross-Border Enforcement

The International Consumer Protection and Enforcement Network

Our international partnerships are an important component of our efforts to address emerging problems in a rapidly changing, increasingly digital economy.

When borders disappear, enforcement challenges increase. It makes little sense to work alone when a problem, stamped out in one region, pops up in another the next day. Borderless problems demand borderless solutions.



As outlined in the preceding article, the OECD Committee on Consumer Policy is an international forum for governments to meet and share information about emerging consumer protection issues.

The International Consumer Protection and Enforcement Network (ICPEN) is also a global network of law enforcement and consumer

protection agencies from over 60 countries, with the shared aim of protecting the economic interests of consumers around the world.

While the OECD Committee on Consumer Policy is a forum for identifying and researching emerging trends and then developing shared best practices and policy responses, ICPEN focuses primarily on cross-border enforcement, facilitating and encouraging global cooperation among enforcement agencies engaged in consumer protection.

How does this work? Members with diverse expertise and experience share and discuss real-time intelligence in order to identify emerging issues that affect consumer well-being. They develop appropriate enforcement responses, cooperating and pooling resources where appropriate, to target vital consumer issues.

Internet Sweeps

One very good example of a cooperative enforcement project is the annual ICPEN Internet Sweep, when Network members and their partners around the world conduct intensive, coordinated searches of the internet and other forms of electronic communication

to uncover potentially misleading or deceptive online conduct.

Each year, ICPEN chooses a theme for the sweep, usually linked to a specific sector or online practice. With this theme in mind, enforcement officers flag sites for possible enforcement action at home or, when appropriate, to share with another relevant ICPEN member. The objective of the annual sweep is to improve consumer confidence in e-commerce by demonstrating an online, global law enforcement presence.

The most recent sweep, conducted in September 2016, aimed to identify websites that use online reviews or endorsements as part of their business model. The Bureau has written about this practice in the first issue of the [Deceptive Marketing Practices Digest](#). (See sidebar)

Online Reviews and Endorsements – The ICPEN Guidelines

While ICPEN activities are usually enforcement related, new trends or concerns sometimes indicate a lack of clarity for businesses in relation to an emerging practice. In this instance, ICPEN might work together to identify and articulate shared best practices which the membership can then use to promote compliance and enhance enforcement efforts at home. This is what ICPEN did in relation to online reviews and endorsements.

Trust is important in the digital economy. Consumers trust that reviews are by authentic users and rely on them to make decisions.

The Problem of Astroturfing in DMP Digest Volume One

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.

Genuine product reviews, written by consumers who have had authentic user experiences, have become a crucial source of unbiased product information for consumers.

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

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 impression that they represent the authentic experiences and opinions of impartial consumers.

They reward businesses that provide superior products or services. Consumers and competitors will only experience the benefits of a competitive, digital marketplace when they know that they can rely on the quality and truthfulness of this important information.

Responding to issues in this area, ICPEN published the [Online Reviews and Endorsement Guidelines](#) (the 'Guidelines') to help businesses worldwide avoid deceiving consumers when using reviews as a marketing tool.



Developed by an ICPEN working group, of which the Bureau is a member, and anchored in basic truth-in-advertising principles, the Guidelines provide guidance for online marketers and influencers, including bloggers and review sites.

They provide tailored advice for three of the main participants in the 'functional chain' related to creation and distribution of online reviews and endorsements:

- [Traders and marketers](#) (those promoting their own or their clients' goods or services)
- [Digital influencers](#) (e.g. bloggers, tweeters and online publications)
- [Review administrators](#) (those who process online reviews)

The principles expressed in the Guidelines reflect the same fundamentals that inform the Bureau's advice on this subject. The Bureau views them as an integrated element in its own program of guidance for Canadian businesses.

By subsequently identifying online reviews and endorsements as the theme for last year's

internet sweep, ICPEN aimed to enhance the global reach and acceptance of the new Guidelines.

Conclusion

The online marketplace, borderless and constantly evolving, tends to defy many traditional enforcement methods. However, when it comes to combatting deceptive online marketing practices, there is strength in numbers.

The annual ICPEN Internet Sweep and the *Guidelines for Reviews and Endorsements* are just two examples of effective international cooperation.

The result-driven ICPEN model is a perfect fit for law enforcement agencies facing the modern challenges of online deception. The work of the Network demonstrates how we achieve lasting solutions when we cooperate to confront emerging issues. We work better when we work together to fight online deception.

Further Reading

[ICPEN International Internet Sweeps](#)

Annual Internet Sweep focusses on online reviews and endorsements (CB in Brief - October 2016)

Key Principles from the ICPEN Online Reviews and Endorsement Guidelines

For Traders and Marketing Professionals

- do not prevent consumers from seeing the whole picture of genuine, relevant and lawful reviews
- do not write, commission or publish fake reviews

In relation to blog posts, video blogs, tweets or online publications:

- where content is paid for, ensure that this fact is disclosed clearly and prominently
- where other commercial relationships may be relevant to the content, ensure that this fact is disclosed

For Digital Influencers

- disclose, clearly and prominently, whether content has been paid for
- be open about other commercial relationships that might be relevant to the content
- give genuine views on markets, businesses, goods or services

For Review Administrators

- be equal and fair in the collection of reviews
- be alert and proactive in the moderation of reviews
- be transparent in the publication of reviews



www.econsumer.gov

'Consumers who believe they have been a victim of deceptive practices on the Internet can register their complaint at www.econsumer.gov, the ICPEN's global online complaint mechanism which is available in seven languages. Various ICPEN consumer protection agencies have access to this mechanism for the purpose of monitoring online conduct and taking enforcement actions where possible.

So You Bought a Ringtone?

Unexpected Third Party Charges on Your Wireless Account

Consumer protection groups and government agencies like the Competition Bureau have worked hard over the years to remind Canadians that they should take care when sharing personal financial information online.

Consumers have learned over time to be more cautious about sharing important numbers online, such as their bank account and credit card numbers. However, many Canadians were unaware of the risks associated with sharing a different number: their mobile phone number.

Consumers often did not realize that their mobile phone number is also their mobile account number. They were unaware that under certain circumstances, some third-party businesses could have charges for digital content or services placed directly on a consumer's mobile account bill, to be collected by the consumer's wireless provider.

Referred to sometimes as 'direct carrier billing', 'billing- on-behalf-of' or simply 'BOBO', this practice is not a problem in and of itself. Consumers are welcome to elect to pay for digital content that they want to purchase from third parties by using their mobile account if their wireless carrier permits these transactions.

However, issues arose when some Canadian consumers complained that they had not authorized certain third party charges that

appeared on their wireless accounts for services they did not intend to purchase or for which they did not agree to pay. In fact, many consumers only learned that it was possible for their wireless phone number to be used for billing-on-behalf-of a third party when the charges appeared on their wireless accounts.



A Global Concern

The Bureau was not alone in its concerns regarding certain billing-on-behalf-of practices in the mobile space. For a number of years now, as discussed elsewhere in this Volume, the Bureau and its international partners on the OECD Committee on Consumer Policy examined the issues affecting the digital economy in general and mobile commerce more specifically.

This ongoing work resulted in the publication of detailed issue-specific reports and policy guidance. Two important areas that the Committee thoroughly addressed are:

- a) [digital content products](#) and
- b) [mobile and online payments](#).

Among other things, but of particular relevance here, the OECD published guidance that aims to ensure that:

- Businesses do not charge consumers for digital content without authorization or for products they thought were free or did not knowingly purchase;
- Businesses provide consumers with clear information about important terms and conditions, such as provisions for automatic repeat purchases or automatic subscription renewals. Consumers who, for instance, purchase ringtones through their mobile phones should know if they have also subscribed to an ongoing service; and
- Consumers should not be subject to 'cramming', which is the practice of charging wireless bills for third party content or services that the customer did not authorise or knowingly purchase.

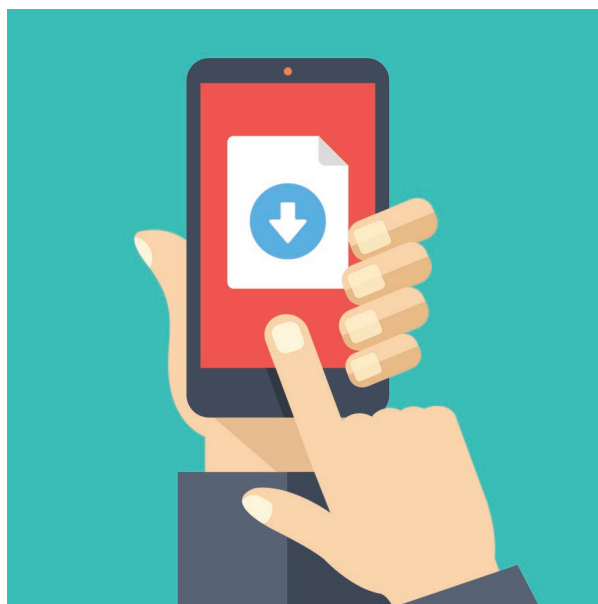
A Bureau Case Example

In 2012, the Bureau started an inquiry into the marketing activities of three Canadian wireless service providers – Bell Mobility Inc. (Bell), Rogers Communications Inc. (Rogers), Telus Communications Company (TELUS) - and the Canadian Wireless Telecommunications Association (CWTA). The aim of the inquiry was to determine whether the parties made, or permitted to be made, false or misleading representations promoting billing-on-behalf-of done by way of 'premium text messaging'.

The inquiry involved situations where certain third parties offered premium text messaging services to consumers, such as texts providing news, horoscopes, advice, alerts, ringtones and trivia. These premium text services, marketed via representations in pop-up advertisements, apps and social media, resulted in charges to consumers at rates in addition to standard text messaging rates. Bell, Rogers and TELUS permitted certain third parties to bill these services directly to the wireless accounts of the service provider's customers.

How did this work? The 4- to 6-digit text numbers used for interactive voting during reality TV shows were also the digital tool used for these premium text-messaging services. Known in industry parlance as 'short codes', these digital mechanisms were the key to this form of BOBO marketing.

The CWTA, on behalf of the wireless industry, established and managed the process and procedures by which short codes were made available to third parties, including parties wanting short codes for premium text messaging purposes.



Canadian consumers complained that unauthorized third party charges appeared on their wireless accounts for some 'premium' digital content that they did not intend to purchase or for which they had not agreed to pay.

The Bureau's inquiry culminated in legal proceedings against Canada's three largest wireless companies - Bell Canada, Rogers Communications and TELUS Corporation - and the CWTA.

Between March 2015 and May 2016, settlements were reached between the Commissioner of Competition and [Rogers](#), [TELUS](#), [Bell](#) and the [CTWA](#), ending the legal proceedings. The three wireless operators agreed to pay refunds and rebates to affected Canadian consumers totalling up to \$24.5 million. The agreements also resulted in commitments to channel over \$1 million in donations to leading consumer advocacy and research groups dedicated to supporting public interest in the digital economy.

The wireless operators and the CWTA also agreed to undertake consumer awareness campaigns to educate consumers about how charges on wireless devices are incurred and what steps consumers can take to avoid unwanted charges, including safety tips for consumers purchasing online.

Each of the companies also agreed to enhance and maintain their respective corporate compliance programs, with a specific focus on billing-on-behalf-of practices, as well as on the *Competition Act* more generally. Furthermore, each of the three wireless operators involved agreed that they would not charge a customer's wireless

account for 'premium' text messaging services unless the customer approves the charges through an affirmative act or statement made *directly* to their wireless service provider.

Finally, the settlements also recognized various steps that the wireless companies undertook on their own to improve their marketing practices in this area, eventually deciding to cease involvement in most premium text messaging services. The CWTA subsequently informed the Bureau that it had seen a virtual elimination of complaints relating to premium text messaging services.

Conclusion

The digital economy, in all of its facets, is a priority for the Bureau. Regardless of the electronic device or technology used for marketing products or services, the goal is the same: to ensure that marketing representations made to consumers are accurate and do not mislead, and that the manner and design of their presentation does not, as a result of the medium or context, lead to consumer deception.

Further Reading

[Record refunds for wireless consumers \(Rogers\)](#)

[Customers to receive \\$7.34 million in rebates \(Telus\)](#)

[Customers to receive rebates totaling up to \\$11.82 million \(Bell\)](#)

‘Unlimited’ Claims

Marketing ‘All-You-Can-Eat’ Telecom Services

**“Without limits or bounds; not restricted, limited, or qualified”
– Collins Dictionary**

Sometimes, consumers who enter into transactions or complete purchases for ‘unlimited’ telecommunication services are disappointed later to discover that the service is in fact ‘restricted, limited or qualified’ in some way.

Some words have meanings that are about as plain as can be. Most people would agree that the definition of ‘unlimited’ for instance leaves almost no room for ambiguity. The Competition Bureau, for one, believes that ‘unlimited’ means just what the dictionary tells us. Nevertheless, words that seem unambiguous are frequently at the centre of many misleading advertising inquiries.

This happens because advertisers will use a word that seems clear, but then try to alter or limit its plain meaning by adding qualifying language or other details. Usually they do this by using that old fallback: the disclaimer.

The Competition Bureau regularly reminds businesses to assess advertising from the consumer point-of-view to understand the general impression it is likely to produce. Moreover, we repeatedly illustrate how the unique characteristics of digital platforms and

devices can further diminish the effectiveness of disclaimers or fine print, especially when used to modify bold, seemingly unequivocal statements. In short, disclaimers are often ineffective, especially when used in a digital medium, to alter the general impression created by a representation.

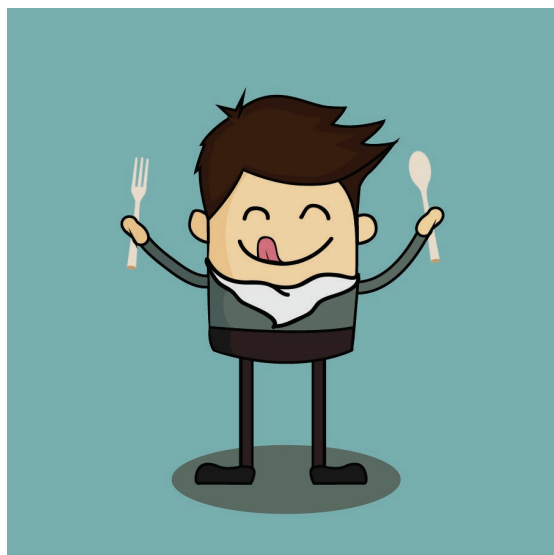
Unlimited Claims in Telecommunications Advertising

The technology used to communicate and consume information is evolving rapidly, changing how consumers use their televisions, computers and mobile devices. This means that consumers’ behaviour and their expectations relating to telecommunication products and services are changing.



Whether streaming videos, online gaming, monitoring or controlling their home, shopping or communicating with friends and family, people rely on digital technology more than ever before. The corresponding increase in the volume of data and minutes that consumers use each month has increased the demand for digital offerings that provide the best value when it comes to monthly usage costs.

Hoping to avoid monthly 'bill shock', many consumers want the peace of mind that comes with flat rate, 'unlimited' usage, sometimes referred to in the industry as an 'all-you-can-eat' plan.



The term 'unlimited' in an advertisement for telecommunication services has a meaning that consumers understand, just like the phrase 'all-you-can-eat' in a restaurant advertisement. It can have an important competitive impact on a consumer's decision-making process.

Marketing a telecommunication service as 'unlimited' may raise concerns under the misleading advertising prohibitions in the *Competition Act* if, in fact, the service is materially limited in a manner that is

inconsistent with the general impression. Our colleagues south of the border at the [Federal Trade Commission](#) have taken a similar position.

A Bureau Case Example

The Bureau recently took enforcement action against [Comwave Networks Inc.](#) after an investigation concluded that the company had made false or misleading representations in marketing for internet and home phone services. The Company entered into a consent agreement and paid a \$300,000 penalty.

In addition to concluding that Comwave misrepresented the charges for services and advertised prices that were not actually available, the Competition Bureau inquiry found that internet and home phone services advertised as 'unlimited' were actually subject to monthly caps on usage.

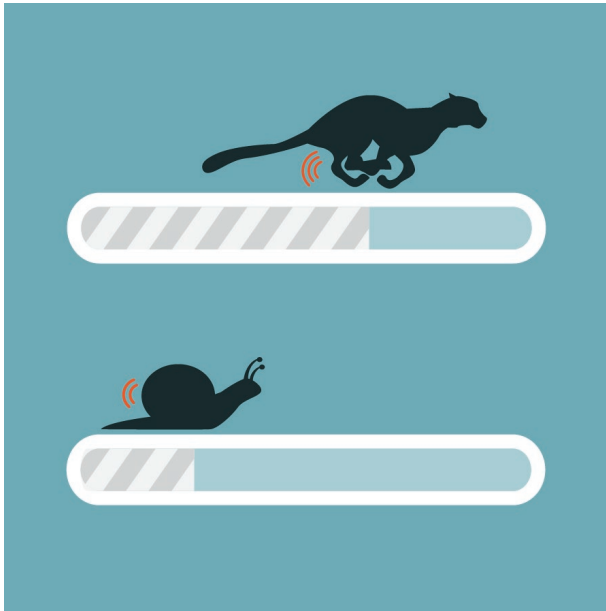
Comwave, for example, made representations such as:

The lowest priced Home Phone line with unlimited local calling

The Bureau concluded that disclaimers contained terms and conditions that limited residential phone service to 3000 minutes per month, and that these disclaimers were insufficient to alter the general impression created by the representations.

The company also advertised internet services, making representations such as:

Unlimited No Caps on Downloads Limit free Watch all the movies you want



The Bureau concluded that the representations created the general impression that there were no caps on downloads, when in fact the terms and conditions contained in disclaimers effectively limited internet usage by significantly slowing download speeds when consumers reached a certain amount of data per month. However, these disclaimers, and the subsequent sales process conducted by telephone, were insufficient to alter the general impression.

It is important to note that, while qualifying information was included in fine print disclaimers, and employees had instructions to provide some of the information when customers called, the Competition Bureau concluded that these were insufficient to alter the general impression created by the compelling, central statements that the services were 'unlimited'.

Conclusion

Given how important consumer access to telecommunications services is to the growth of the digital economy, it is essential that consumers get exactly what service providers represented in their advertisements. The Bureau encourages advertisers to ensure that consumers are not enticed with claims that promise unlimited services, only to be disappointed by additional mandatory fees or caps.

The Competition Bureau will continue to monitor and take action to correct misleading advertising practices of this kind, with an aim to ensure that consumers have truthful and accurate information, and that businesses can compete on a level playing field.

Further Reading

[Comwave to pay over \\$300,000 to settle telecom services advertising case](#)

[Deceptive Marketing Practices Digest - Volume 1 - Disclaimers Demystified](#)

[TracFone's limits on "unlimited" data lead to \\$40 million in consumer refunds](#)

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