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ADVERTISING PRE-CLEARANCE

Foreign Comparisons



Consommation  
et Corporations  
Canada

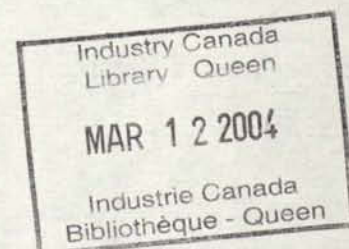
Consumer and  
Corporate Affairs  
Canada

ADVERTISING PRE-CLEARANCE

Foreign Comparisons

by

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Prepared for

Program Evaluation Division  
Bureau of Policy Coordination  
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This report is one of several prepared by independent consultants as input for the evaluation of the Advertising Pre-Clearance Program. All evidence, advice and recommendations represent the independent views of the consultant rather than the views of the Government of Canada or any of its departments or agencies.

## TABLE OF CONTENTS

	<u>Page</u>
Executive Summary .....	1
1.0 Introduction .....	1
2.0 Literature Review .....	3
2.1 Alternative Remedies .....	3
2.1.1 Government Pre-Clearance .....	3
2.1.2 Remedial Activities .....	5
2.1.3 No Government Interference .....	7
2.2 Benefits and Costs of Information Remedies .....	8
2.2.1 Consumer Benefits .....	10
2.2.2 Costs of Information Remedies .....	11
3.0 The Process of Advertising Regulation in Canada .....	12
3.1 Consumer and Corporate Affairs Canada .....	12
3.2 Advertising Standards Council .....	15
3.3 Broadcasters .....	16
3.3.1 Canadian Broadcasting Corporation .....	16
3.3.2 Telecaster Committee of Canada .....	17
4.0 The Canadian Pre-Clearance Process as Viewed by Selected Participants .....	20
4.1 Advertising Agencies .....	20
4.2 Product Manufacturers .....	22
5.0 Advertising Regulation in Other Countries .....	23
5.1 United States .....	23
5.1.1 Federal Trade Commission .....	23
5.1.2 Networks .....	28
5.2 Great Britain .....	30
5.2.1 Independent Broadcast Authority .....	30
5.2.2 Independent Television Companies Association .....	33
5.2.3 Fair Trading Act .....	34

	<u>Page</u>
6.0 Summary and Conclusions .....	35
APPENDIX A Associations and Persons Interviewed .....	39
B Food Advertisement Pre-Clearance Process .....	41
C American Broadcasting Co. Pre-Clearance Procedures .....	44
D Advertising Agency Interviews .....	46
E Comments and Reply on draft report .....	48
FOOTNOTES .....	53
REFERENCES .....	55

Executive Summary

While many remedies exist to overcome the informational market failure that often accompanies an asymmetry of information between buyers and sellers of goods, the optimal remedy is the one leading to the greatest social welfare. The first step in the process of choosing the optimal remedy is a thorough understanding of the remedy currently being used. This involves an understanding of both the mechanics of the present process as well as the effects it has had on each of the participants operating within the system. We have attempted in this study to analyze the current radio and television food advertisement pre-clearance process with specific attention directed towards the role of each actor - government, advertising agencies, television networks, and product manufacturers.

The Canadian food advertisement pre-clearance process is a multi-layered procedure beginning with Consumer and Corporate Affairs Canada. CCAC examines each commercial in relation to the false, misleading or deceptive provisions of the Food and Drug Act as well as the Consumer Packaging and Labelling Act. At present, it appears that there are questions about the effectiveness of the appeal procedure in the event of a disagreement between the reviewer and firm proposing the advertisement. Moreover, based upon the reported workloads of reviewers within similar processes, there is some evidence to suggest that CCAC reviewers seem to have greater workloads. This

may not allow the interaction and timely feedback desired by firms and may contribute to the high degree of frustration with the present system felt by some advertising firms.

Once the commercial receives CCAC approval, it must then receive the approval of the Advertising Standards Council if it is in a socially-sensitive area, e.g. child-directed and feminine hygiene ads. The ASC will also arbitrate complaints of one advertiser against another.

The commercial must then receive approval of the broadcasting company. The Canadian Broadcasting Corporation ensures that the commercial messages are presented with integrity and good taste, and are not controversial, misleading, or unfair in their competitive claims or exploitative of children. The Telecaster Committee of Canada, moreover, is a self-regulatory body of independent broadcasters that also reviews a commercial prior to its broadcast on any of a number of independent stations. Its criteria include fairness, honesty, and objectivity of tests, among others.

The U.S. system for the regulation of advertisements was found not to include government pre-clearance since that would constitute a prior restraint of speech in violation of the First Amendment to the U.S. Constitution. Pre-clearance is, however, practiced by each major network. The networks, moreover, use objective, comprehensive pre-clearance procedures since as a highly competitive industry, this approach is economically most

attractive. Once advertisements are broadcast, the Federal Trade Commission monitors the ads and issues a formal complaint when an ad is viewed as false or misleading. There is then a three-tiered mechanism for resolving such disputes.

In Great Britain, on the other hand, the Independent Broadcast Authority is entrusted by the government to oversee the industry's pre-clearance process. Although the Authority has the final word in the event of an appeal, the Independent Television Companies Association, an independent industry body, has the primary responsibility for reviewing ads as well as product labelling. Due to the absence of government involvement in the pre-clearance process, the British Government does monitor advertisements ex post much the same way as does the F.T.C. in the U.S.

Though it was beyond the scope of the present study to identify all feasible alternatives to the current system for regulating advertisements in Canada, the choice of the optimal remedy to overcome the informational problems inherent in the marketplace involves an examination of the costs and benefits associated with each alternative. Hence, as the final task of this study, we presented the general methodology for the cost-benefit analysis to be used in choosing the optimal remedy.



## 1.0 Introduction

Traditional economic theory posits that both buyers and sellers of goods are endowed with perfect information - the buyer to discriminate perfectly between all offerings and the seller to judge perfectly the needs of consumers. Since the marketplace economy is based on the accurate transmission of signals between buyers and sellers, government intervention may be appropriate when there exists an informational market failure, i.e. when consumer decisions are based on false or limited information. This intervention can involve any one of a number of remedies aimed at curing the market failure, e.g. government or industry pre-clearance of advertisements, government monitoring in association with remedial action ex post, etc. While the implications of each remedy may differ, the objective of each remedy is the same - to overcome the informational asymmetry in the marketplace.

The purpose of this study is to identify the alternative remedies used in the U.S. and Great Britain. This, however, is only part of the overall multi-stage process necessary for choosing the optimal remedy. The first step is a thorough understanding of the alternative currently being used. This involves an understanding of not only the mechanics of the present process, but also the effects it has had on each of the actors operating within the system. We have attempted in this study to describe the current regulatory process with some attention directed to the role of each actor - government, advertising agencies, television networks, and product manufacturers.

The second step in selecting the optimal remedy is to identify all the feasible solutions. Since other countries have adopted different approaches to solving the problem of asymmetric information between buyers and sellers of goods, it is most reasonable to begin the process of identifying alternatives by examining the approaches to this problem used outside of Canada. This task represents the primary objective of this study. In doing so, our efforts have been focussed on the process of advertising regulation in the U.S. and Great Britain.

Finally, once all feasible alternatives have been identified, it is necessary to determine the increase in consumer welfare associated with each remedy. This involves identification and quantification of the benefits and costs of each of the alternatives. The general methodology for the cost-benefit analysis is also described in this study.

The approach taken to achieve the outlined objectives of this study was:

- (a) to undertake a careful review of the economics, marketing and legal literatures with an emphasis on the effects of advertising on specific reference groups as well as the effectiveness of alternative mechanisms used to regulate advertising behaviour, (b) reviews of systems in U.S. and Great Britain through reviews of the literature, telephone interviews, etc. and (c) to conduct personal interviews (five with advertising firms and two with product manufacturers) designed to elicit the attitudes of the participants about the pre-clearance process and why these attitudes exist. Included in Appendix A is a list of individuals interviewed along with their affiliations.

## 2.0 Literature Review

### 2.1 Alternative Remedies

A review of the literature identified a number of studies attempting to analyze three alternative remedies to overcome the problem of asymmetric information in the marketplace; government pre-clearance, remedial government activities and no government intervention.

#### 2.1.1 Government Pre-Clearance

In Canada, extensive pre-clearance procedures<sup>1</sup> have been implemented by the Canadian Radio-Television Commission under the Broadcasting Act, with a view to screening advertisements prior to publication in order to ensure their conformity with certain standards.<sup>2</sup> According to Trebilcock, et al. (1976), the pre-clearance guidelines used by the Commission border on censoring. Unless the criteria for censorship reflects prevailing community attitudes, the whole process is subject to severe ridicule. The authors further argue that since pre-clearance is preventive rather than remedial, it is a superficially attractive measure for the control of advertising abuses. However, the scope for its implication in the prevention of misleading and unfair advertising in general can only be a limited one. The pre-clearance process may be seen as a cumbersome device for, unlike usual remedial measures, it does not lend itself to selectivity. Instead, all advertising claims must be scrutinized, not simply those which are immediately suspect. While monitoring of this kind may be appropriate for particular types of

advertising, either because of the product promoted or audience to which they are directed, the authors argue that a comprehensive pre-clearance program is not appropriate.

According to Trebilcock, et al., advertisements directed at children are a specific area where the pre-clearance procedure is suitable for the regulation of advertising. The effect of television commercials on children has been a topic receiving a great deal of attention in the academic literature and tends to support the conclusions of the authors. For example, Gorn and Goldberg (1977) examined the effect of television advertising on low income children and concluded that even one exposure to a commercial produces favourable attitudes toward the advertised product. Gorn and Goldberg (1978) also studied the effect of TV advertising directed at preschool children. They concluded that such advertisements may: (i) lead the child to select material objects over more socially-oriented alternatives; (ii) potentially increase parent-child conflict; (iii) lead to a more disappointed, unhappier child. Finally, in a more recent study, Gorn and Florsheim (1985) conclude that even if children are not presently consumers of a product class, exposure to television advertising for these products may influence the perspective that children have of the adult world. The effect is even stronger for product commercials in which the children see themselves as using when they are older. These results argue not only for pre-clearance of television advertisements directed at children, but strong parental guidance as well since adult commercials also have a strong influence on children.

### 2.1.2 Remedial Activities

In the U.S., industry and media bodies pre-clear broadcasted advertisements with the intent of reducing the likelihood of official remedial intervention by the Federal Trade Commission. Since its creation in 1914, the FTC has brought numerous cases against firms alleging false and deceptive advertising. Generally, according to Higgins and McChesney (1984), there have been two initial elements in deception cases: interpretation of the actual claim or claims made in advertisements, and determination of the truth or falsity of claims as interpreted by the Commission.

More recently, in holding that factual advertising claims must be supported by prior substantiation,<sup>3</sup> the Commission relied on an economic model of the market for information and an assessment of its efficiency:

"Generally, the individual consumer is at a distinct disadvantage compared to the producer or distributor of goods in reaching conclusions concerning the reliability of product claims...In other cases, the complexity of a consumer product, and accordingly the large amount of detailed product information necessary to make an informed decision, makes the costs of obtaining product information prohibitive. This problem is further magnified by the large number of competing products on the market....

The manufacturer has the ability, the know-how, the equipment, the time and the resources to undertake such information by testing or otherwise -- the consumer usually does not...

The consumer is entitled, on a matter of marketplace fairness, to rely upon the manufacturer to have a "reasonable basis" for making performance claims. A consumer should not be compelled to enter into an enormous gamble to determine whether a product will or will not perform as represented. The economic gamble revolved in a consumer's reliance upon affirmative product claims is created by the vendors' activities, and cannot be easily avoided by consumers."<sup>4</sup>

The advertising substantiation program has had a clear impact on many manufacturers' advertising decisions. Moreover, the responsibility for substantiation of the claim has been expanded beyond the producer of the advertised product. In addition to the manufacturer, the advertising agency who prepares the ads, the retailer who disseminates the ads, and even the celebrity who endorses the ads may be responsible for the claim of the ads having a reasonable basis.<sup>5</sup>

Skepticism about the effectiveness of the remedial activities engaged in by the FTC has been widespread. For example, a Congressional committee has described FTC regulation as "imperfect".<sup>6</sup> A team of lawyers working under the aegis of Ralph Nader echoed that sentiment<sup>7</sup> while the best thing an American Bar Association panel could say was that occasional success could not outweigh the recurrent flaws of FTC enforcement.<sup>8</sup> It was not until the work by Peltzman (1981), however, that a rigorous empirical analysis of the effects of FTC advertising regulation was first accomplished. The strongest evidence that FTC regulation has some nontrivial effects on the regulated firms was provided by the stock market. Peltzman found that FTC complaints had significant (negative) effects on the stock prices of the complainant firms. For the typical product involved in these cases, where total advertising is in the order of 1 percent of company sales, the story told by the stock market appears to be that the brand's advertising capital is essentially wiped out by an FTC complaint.

In yet another study of the impact of FTC regulation, Shimp (1979) concluded that as a result of the FTC's aggressive approach to regulating

advertisements, there has been a noticeable reduction in the amount of blatant lies in advertisements. Hence, there appears to be growing support for the efficacy of the remedial activities undertaken by FTC. Though a final conclusion must await further analysis, the empirical methodology employed by Peltzman, in particular, shows great promise for evaluating the effects of regulation in the information market.

### 2.1.3 No Government Interference

Those arguing in favor of no government interference even in situations where there exists a failure of information markets base their beliefs on the self-correcting activities of competitive markets. That is, for search goods, i.e. goods for which the expenses associated with search are less than the prospective benefits of searching,<sup>9</sup> the incentives for false advertising are likely to be small, because search-good buyers will be able to detect the exaggeration prior to purchase. At the same time, it has been argued that the gains from false advertisements of experience goods (i.e. goods for which it is not economically efficient to search) are likely to be only temporary, because the experience of new buyers ultimately reveals any exaggeration. For the strategy to work, enough first-time buyers have to be persuaded to try the product long enough to make up for the loss of repeat business as these buyers' experiences accumulate. While undoubtedly, the market does not self-correct sufficiently to encourage truthful advertising all the time, the question is whether the net benefits of government intervention outweigh the net benefits associated with unregulated information markets.

## 2.2 Benefits and Costs of Information Remedies

To choose between alternatives, it is necessary to determine the increase in consumer welfare associated with each remedy. This involves identification and quantification of the benefits and costs to consumers from each of the alternatives. Since quantification of the benefits and costs is a highly complex exercise beyond the scope of the present study, one must maintain the correct perspective by recognizing the ability of consumers to avoid commercials. According to Brendon (1985), new ways to avoid television commercials abound. By switching channels immediately when a commercial break occurs, a viewer can avoid commercials with a television remote control device or cable converter box. This practice is referred to as "zapping". Furthermore, viewer elimination of commercials via the fast-forward function of a VCR ("zipping") is also becoming an increasing threat to advertisers as the number of VCR's continue to saturate the Canadian market.<sup>10</sup> Finally, the introduction of cable and satellite dishes has brought many more stations into the home, many of which are commercial-free, resulting in greater fragmentation of viewing. Hence, the ability to avoid commercials is a reality of the 1980's, painfully apparent to advertisers, and a necessary consideration in the evaluation of present government regulation of advertisements.

One should not overlook as well, when considering the costs of misleading advertising, that a great deal of the advertising message is, whether truthful or deceptive, miscomprehended. In a recent study, Jacoby and Hoyer



(1982) found that the average amount of miscomprehension associated with any given communication was an unexpectedly high 30 percent. These results were quite robust, moreover, holding for respondents of different ages, income, education levels, sexes, and marital status. In yet another study, Jacoby, Nelson and Hoyer (1982) concluded that even remedial messages, using supposedly plain English, developed and proposed by the FTC, may be widely misunderstood by large segments of the population.

Hence, the ability of viewers to avoid television commercials, complemented by the audiences' high degree of misunderstanding of commercials they choose to watch, are important factors which must be considered carefully when evaluating the overall costs associated with alternative advertising regulation schemes.

Before discussing the methodology used to evaluate consumer information regulation, another important consideration must be noted. In contrast to the above arguments for the elimination of regulation, it may be argued as well that increased regulation is in consumers' interests. That is, as advertising regulation becomes increasingly more comprehensive, it may very well be that advertisements become more informative. Evidence of this phenomenon has been provided by Dowling (1980) in his comparison of the information content between U.S. and Australian television advertising. In contrast to the U.S., Australian advertising has a long history of both government and self-regulation. At the last count, according to Dowling, nine Federal government and 39 state government acts directly relate to

advertising. Also, for more than 40 years, the Australian advertising industry has adopted various behaviour codes for the advertising of selected products. In his study, Dowling found a substantial difference in the overall level of advertising informativeness<sup>11</sup> - 74% in Australia versus 49% in U.S. - and contributed this difference to the different regulatory environments in which firms operate in the two countries.

#### 2.2.1 Consumer Benefits

According to Mazis et al. (1981), to determine the benefits of any remedy designed to increase consumer welfare associated with curing an information market failure, three broad benefit categories should be considered: improved decision making, enhanced product quality, and reduced prices.

The first benefit, better consumer choice, is almost self-evident since consumers armed with more complete information should be able to make better decisions than when choice is based on limited knowledge about product attributes. The determination of the value of more complete information, however, is a controversial issue. Jacoby, Speller, and Kohn (1974) and Bettman (1975) have, for example, questioned whether more information will actually lead to better decisions.

The second benefit, improved product quality, occurs whenever new information allows some consumers to alter their choices, thus providing a signal to sellers to change their products. Often the result of increased informa-

tion is an increased selection of products (e.g., cigarette labelling regulations) which benefits all consumers, even those who didn't use the original information.

The third benefit, reduced prices, frequently occurs whenever new information is provided. That is, the new information may encourage competition and ultimately lead to reduced product prices in response to the greater competition.

#### 2.2.2 Costs of Information Remedies

There are three categories of costs which should be assessed when evaluating information remedies according to Mazis et al.: the affected firms' costs of compliance with the remedy; the government's costs of enforcement; and the costs to buyers and sellers of any unintended side effects.

The compliance costs associated with the advertising pre-clearance procedure includes the administrative costs of adhering to the regulation, the costs of delaying an advertising campaign due to the time involved in the approval process, the non-quantifiable costs associated with a government action that borders on censoring, etc.

Enforcement costs must also be considered in remedy evaluation. As previously stated, for example, the argument can be made that the non-selectivity of the screening process in any preventive remedy such as adver-

tising pre-clearance uses excessive resources that might otherwise be saved when a remedial action is undertaken instead.

The last category of costs, unintended side effects, is normally the most difficult one to identify and quantify. However, careful analysis of buyer and seller reactions to the various information remedies often permits a fairly accurate prediction of these costs. It is for this purpose that we have interviewed various members of the government, advertising agencies and product manufacturers so as to achieve initial view of the effects of alternative informational remedies.

### 3.0 The Process of Advertising Regulation in Canada

The process by which advertisements are cleared in Canada prior to their broadcast is a multi-layered mix of government and industry approvals.

#### 3.1 Consumer and Corporate Affairs Canada

The requirement for Consumer and Corporate Affairs Canada to approve food commercials prior to their broadcast is established in Sections 11, 13 and 19 of the three Broadcasting Regulations (AM and FM Radio and Television).<sup>12</sup> In carrying out this responsibility, advertisements are examined in relation to the false, misleading or deceptive provisions as found in Section 5 of the Food and Drug Act. The Consumer Packaging and Labelling Act is also taken into consideration in the approval process to ensure that the labels on the products are in compliance with the requirements of the Act.

While comparative advertising is not prohibited by legislation, special attention is directed in the review process towards those commercials where competing products are identified. In such advertisements, the focus of attention is generally given to comparable claims which are prone to elements of unfair disparagement. Consumer and Corporate Affairs does not directly concern itself with these elements of disparagement unless the message is false, misleading or deceptive. Advertisers have been given guidelines by the Advertising Standards Council regarding elements of disparagement. These guidelines have been issued for the use of both industry and government.

The step-by-step mechanics of the pre-clearance process for the approval of food advertisements is provided in Appendix B.<sup>13</sup> According to our discussions with program officials at CCAC, the review process typically takes 24-48 hours. This compares favourably with the results provided in a file review conducted by Consumer and Corporate Affairs where, in a sample of 196 commercials examined, 54 percent were processed within one week (majority of these in 1-2 days), 22 percent between one and two weeks, and 24 percent in more than two weeks. As well, our discussion with the above CCAC officials was consistent with the file review's report of approximately 14,000 commercials examined each year. According to the file review, annual examination and processing costs are approximately 2.6 person-years. These figures are somewhat below those obtained through our interview -- two full-time and three part-time reviewers. Using these latter figures, and assuming each part-time reviewer works half-time, each reviewer examines approximately 4000 commercials per year, or 16 per day (assuming 250 working days per year).

One must assume, however, that these are not spread out equally over the year, but instead are quite seasonal - suggesting a rather extreme work load at certain periods throughout the year for these individuals.

At present, the only recourse in the review process, in the event of a disagreement between the reviewer and firm proposing the advertisement is an appeal to the reviewer's supervisor. An alternative appeals process which would allow the Advertising Standards Council to adjudicate disagreements with final resolutions left to the Deputy Minister of CCAC has been recently proposed, according to Mr. Ralph McKay (Director of Consumer Products Branch, CCAC) and is currently being studied.

Once a commercial receives CCAC approval, as well as industry (Tele-caster Committee/CBC) approval, it is allowed to be broadcast for a period of one year, subject to another review for extending the broadcast period an additional year. If new information becomes available while the commercial is being broadcasted, CCAC may withdraw approval of the advertisement and, hence, force the network to stop running it.

As we shall see in the discussion that follows, it might appear that the guidelines used by CCAC to review a commercial overlap those used by the independent broadcasters, particularly in the area of comparative advertising. This is not true, however, since CCAC is only concerned with enforcement of the Food and Drug Act and Consumer Packaging and Labelling Act. That is, the mandate of CCAC in this area is to ensure that comparative

claims are not false, misleading or deceptive as outlined in the above Acts. If comparative ads do not contravene the Acts, but do appear to go beyond reasonable limits of discretion, they are referred to the Advertising Standards Council.

### 3.2 Advertising Standards Council

The Advertising Standards Council is an independent industry body administered by the Canadian Advertising Foundation. Current activities of the Council include:

- (a) Resolution of consumer complaints about advertising and advertising practices.
- (b) Provision of a forum wherein advertisers can settle disputes.
- (c) Promotion and administration of guidelines for the creation of food commercials, used by agencies, advertisers, and government review bodies. This project was undertaken at the request of Consumer and Corporate Affairs Canada and deals primarily with the areas of comparative advertising and the use of opinion survey data.
- (d) Provision of a pre-clearance procedure for commercials in socially-sensitive areas, e.g., child-directed and feminine hygiene advertisements.

### 3.3 Broadcasters

Once an advertisement has been cleared by CCAC, approval must then be attained from the broadcasting company before the commercial is run.

#### 3.3.1 Canadian Broadcasting Corporation

According to the Canadian Broadcasting Corporation's Advertising Standards, the objectives of the standards used by the CBC are to ensure that advertising messages are presented with integrity and good taste, and are not controversial, misleading, unfair in their competitive claims or exploitation of children. The messages broadcast over the CBC must also be in accordance with the broadcasting regulations of the Canadian Radio-Television and Telecommunications Commission and other applicable legal requirements. All advertising considered by the CBC to be deceptive or misleading is unacceptable whether it is caused by the omission of relevant information or by the arrangement of accurate information in such a way as to lead to a wrong conclusion. False or misleading advertising is prohibited under the Combines Investigation Act.

As well, we shall see from our interviews with advertising agencies, the general impression among these firms is that the standards applied by the CBC are stricter than those used by CCAC.



### 3.3.2 Telecaster Committee of Canada

The Telecaster Committee was formed by private broadcasters in 1972 as a voluntary self-regulatory body. The primary function of the Telecaster Committee Coordinator is to check each commercial to make certain that it complies with the Committee's guidelines and to assist advertisers in the general interpretation of these guidelines prior to production or telecast. The Telecaster Committee is a non-profit organization funded by the following member stations and networks:

CFCF - TV, Montreal	CKSH - TV, Sherbrooke
CFCM - TV, Quebec City	CKTM - TV, Trois-Rivières
CFCN - TV, Calgary	CKVR - TV, Barrie
CFPL - TV, London	CKY - TV, Winnipeg
CFTM - TV, Montreal	Atlantic Television System
CITV - TV, Edmonton	British Columbia Television
CITY - TV, Toronto	CTV Television Network
CJOH - TV, Kitchener	Global Television Network
CKMI - TV, Quebec City	

In contrast to CCAC's primary concern that a comparative advertisement not be false or misleading, the Telecaster Committee believes that comparative advertisements should comply with the following guidelines:

- (1) The intent and connotation of the ad should be to inform and never to discredit or unfairly attack competitors, competing products, or services.
- (2) When a competitive product is named, it should be one that exists in the marketplace as significant competition.
- (3) The competition should be fairly and properly identified but never in a manner or tone of voice that degrades the competitor product or service.
- (4) The advertisement should compare related or similar properties or ingredients of the product, dimension to dimension, feature to feature.
- (5) The identification should be for honest comparison purposes and not simply to upgrade by association.
- (6) If a competitive test is conducted, it should be done by an objective testing source, preferably an independent one, so that there will be no doubt as to the veracity of the test.
- (7) In all cases the test should be supportive of all claims made in the advertising that are based on the test.

- (8) The advertising should never use partial results or stress insignificant differences to cause the consumer to draw an improper conclusion.
- (9) The property being compared should be measurable and significant in terms of value or usefulness of the product to the consumer.
- (10) Comparatives delivered through the use of testimonials should not imply that the testimonial is more than one individual's thought unless that individual represents a sample of the majority viewpoint.

According to Ms. Pat Beatty, Coordinator, the Telecaster Committee reviews approximately 7,000 commercials per year and requires revisions to about 10 percent of the submissions. Ms. Beatty reported while being interviewed that she was not pleased with the present CCAC review process. In her opinion, it takes too long (in many cases 10 days - 2 weeks) to receive clearance. Also, she argued that it is totally unreasonable for CCAC to require a revision on a previously accepted part of a commercial that is being resubmitted only because revision has been required on another part of the same commercial. This procedure appears to her to be very subjective and arbitrary. Finally, Ms. Beatty strongly supports a streamlining of the current CCAC pre-clearance process.

#### 4.0 The Canadian Pre-Clearance Process as Viewed by Selected Participants

To understand the Canadian pre-clearance processes, one must be aware of the views of all participants in the process - government officials, advertising firms and product manufacturers. In this section, we shall focus on the latter two groups. The objective of the questions posed to a small sample of advertising agencies and food manufacturers was to give an initial insight into the following: (i) problems associated with the present process of advertising pre-clearance, and (ii) advantages and disadvantages of the pre-clearance process as perceived by those who are most affected.

##### 4.1 Advertising Agencies

Six individuals from five advertising agencies were interviewed with the questions presented to each of them provided in Appendix D. The names, affiliations and positions of each person interviewed are listed in Appendix A. A summary of their responses follows.

Five of the six individuals interviewed thought there were problems with either the system or the guidelines used by reviewers at the various stages of the process. The most frequently mentioned problem was that the decisions made by reviewers at CCAC appear subjective, arbitrary and inconsistent. This is attributed to: (a) excessive workloads of the reviewers, (b) a perceived lack of understanding of communications by reviewers and (c) the failure of reviewers to appreciate the economic hardship associated with their "minor" changes.

Also mentioned by two individuals as a particularly bothersome feature of the present system was the lack of an effective appeals process in the event of a disagreement with a CCAC reviewer.

Three of those interviewed, moreover, suggested establishing a Toronto office as a means of significantly reducing the costs they incur with the present system.

The belief was widely held, as well, that the U.S. system of industry self-regulation, with government monitoring ex post, was superior to the present Canadian system of government pre-clearance. The reasons given for this belief were quite varied: "industry knows itself better", "onus would be on the marketplace", and "Advertising Standards Council would be more efficient based upon their performance with approving child-directed and feminine hygiene ads".

It was, however, astutely pointed out by one individual that the U.S. system would not work in Canada since the broadcast market is much less competitive in Canada. According to this individual, the CBC is not only non-profit, but it doesn't seriously even solicit commercials. Therefore, there is no real competition to CTV like there is between the large private networks for the U.S. advertising dollar.

Finally, it was generally agreed upon by those individuals interviewed that the CBC was stricter and more cumbersome than CCAC in obtaining approval of an advertisement.

#### 4.2 Product Manufacturers

Within the Grocery Products Manufacturers of Canada's 1985 submission to the Ministerial Task Force on Program Reviews, two firms suggested that the Canadian pre-clearance process be abandoned in favour of a system used in another country - U.S. or Great Britain. We interviewed representatives from both of these firms so as to determine the reasons for their choice of an alternative scheme.

While both agreed that a change to industry self-regulation as in the U.S. and Great Britain would be an improvement over the present system of government pre-clearance, the reasons given for this belief were quite different. One interviewer argued that it is not so much that there are problems with the present system as that this is an opportunity for industry self-regulation that would reduce government's involvement in business and, hence, reduce the costs of government. The self-regulation process works with respect to child-directed advertisements and there is no reason why this system could not be extended to include all advertisements.

The other individual interviewed was much more adamant about the problems with the current CCAC pre-clearance process. According to this individual, CCAC officials are trying to protect their own jobs instead of being interested in getting the best commercials on TV. A much more sensible and understanding avenue would be one in which ads were cleared by the industry. He went on to conclude that the present system is in need of a

reorganization and urged an office be established in Toronto in order to speed up the process and reduce costs to the firms.

## 5.0 Advertising Regulation in Other Countries

### 5.1 United States

In the United States, advertising pre-clearance is a job undertaken by the networks. According to Ms. Tony Guarino of the Federal Trade Commission, a government pre-clearance process in the U.S. is in violation of the First Amendment to the U.S. Constitution in that it constitutes a prior restraint of speech. Hence, the U.S. system is composed of industry (network) pre-clearance complemented by government (Federal Trade Commission) monitoring of broadcasted commercials.

#### 5.1.1 Federal Trade Commission

The statutory basis of the FTC's current regulation of advertising is a series of 1938 amendments to the 1914 FTC Act. These amendments empower the FTC to prevent deceptive acts or practices in the sale of goods in general and add some stronger strictures against false advertising of foods, drugs, and cosmetics in particular. The strictures on "deceptive" ads was added to one on "unfair methods of competition" in the 1914 Act. The courts had interpreted "unfair" to mean methods which injured competitors rather than consumers, and the 1938 wording was designed to overcome this limitation.

Beyond this statement of Congressional intent, little exists in the law to guide or limit explicitly the mechanics of enforcement.<sup>14</sup>

An important feature of the enforcement mechanism is that each instance of false advertising is treated as a unique case. In principle, the FTC could regulate across a whole industry or type of ad. In practice, however, it has rarely tried to do so, though it has moved further in this direction after passage of the 1975 Magnuson-Moss Act. Instead, it will issue a complaint against Company X's particular ad. If it successfully prosecutes the complaint, and Company X then produces a substantially similar ad, that would entail a separate complaint, during whose prosecution the ad could continue to run.

The formal complaint procedure is supposed to involve a hearing before an FTC administrative law judge, who recommends either that the complaint be dismissed or that the advertiser be ordered to cease and desist. The Commission then reviews the recommendation and issues its decision.

While this is the basis of the formal procedure open to the Commission, the vast majority of the complaints which it issues are informally resolved. There is a three-tiered mechanism for the resolution of disputes. First, when a Commission investigation has revealed a probable violation of the statute, the advertiser concerned may be contacted with a view to securing, either by oral promise or written assurance, his voluntary compliance with the legislation as interpreted by the Commission.<sup>15</sup>



Secondly, the Commission may, as an alternative to, or in the event of failure of, the voluntary compliance procedure, issue notice of a proposed complaint against the ad and the order to be sought. The advertiser is, at this stage, given a period of 10 days during which he may elect to consent to the proposed. In the event of his choosing to do so, he is required to enter into an agreement with the Commission whose provisions include the terms of the order, an admission of jurisdictional facts, a waiver of further proceedings by the Commission and a waiver by the respondent of rights of review. After the terms of the agreement have been finally settled between the parties, it is placed on the public record for a period of 30 days as a provisionally accepted order. The Commission reserves the right to reconsider at the end of that period. The consent order procedure is regarded by the Commission as a privilege accorded to respondents, not as a right.

Finally, should the respondent refuse to consent to the proposed order, the matter is set down for hearing before an administrative law judge (a Commission staff member). If, after the hearing, the complaint is found to have been sustained, the administrative law judge files with the Commission and serves on the respondent an initial order to cease and desist (the order these days may also include one of the innovative remedies recently evolved by the Commission). The initial decision becomes the decision of the Commission 30 days after service. Within 10 days after service, the respondent may appeal the decision to the full Commission. In reviewing initial decisions, the full Commission fills the role of an appellate court.

The Act provides for a right of appeal from a decision of the Commission to a federal Court of Appeals.

As a final procedural point, in the event of a consent on an adjudicated order being breached the Commission is empowered to commence a civil action, in court, for the recovery of a monetary penalty of up to \$10,000 for each day during which the violation has continued. It is important to note that the Commission itself does not have the power to levy or impose monetary penalties. This function remains solely the responsibility of the courts.

There are a number of remedies available to the FTC. The first is affirmative disclosure, a variation of the cease and desist order. Affirmative disclosure was designed specifically to deal with a particular type of deception - misrepresentation by silence. To this end, the typical affirmative disclosure order prohibits the respondent from making certain claims unless he discloses facts, previously omitted, which are considered necessary to negate the misleading inferences to which express claims have given rise.

The second remedy available to the FTC is corrective advertising. The typical format in which corrective advertising is imposed consists of two separate orders. The first is a cease and desist order prohibiting the respondent from making claims which have been found to be deceptive or unfair. The second is an order requiring the respondent to cease and desist from advertising the product in respect of which the claims were made unless

a stipulated proportion of that advertising contains, for a stipulated period, a disclosure of certain facts aimed at correcting the misimpression generated by the earlier claims.

A third remedy available to the FTC is to require that advertisers submit texts, studies, or other data that purport to substantiate advertising claims regarding a product's safety, performance, efficacy, quality, or comparative price. This program places an affirmative responsibility on advertisers who are now required to have documentation indicating that they have a "reasonable basis" for making a claim prior to the dissemination of the ad. The responsibility for substantiation of the claim has been expanded beyond the producer of the advertised product to the advertising agency preparing the ads, the retailer who disseminates the ads, and even the celebrity who endorses the ads. It is noteworthy that according to Ms. Guarino of the FTC, the networks broadcasting the ad are not responsible for substantiation of claims.

Finally, though somewhat out of place in a discussion of FTC remedies, the Commission also practices interpretative rule-making. The first, and more informal, of these procedures is the advisory opinion. Section 1.1 of the General Procedures provides that any person may request advice from the Commission with respect to a course of action which he proposes to pursue.<sup>16</sup> Such requests will be met except where the course of action is already being followed by the requesting party, where the same or similar course of action is under investigation or has been the subject of a Commission proceeding, or

where the Commission does not consider itself competent, in view of the technical nature of the request, to make an informal decision.

The second type of interpretative rule issued by the FTC is the industry guide. Section 1.5 of the General Procedures provides that:

"Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry."<sup>17</sup>

Industry guides do not have the force of law, although Section 1.5 does go on to provide that violation may result in corrective action by the commission under applicable statutory provision.

#### 5.1.2 Networks

While the Federal Trade Commission's enforcement activities do not include the pre-clearance of commercial messages prior to their broadcast, such a function is performed by the independent broadcast networks. Each of the three major networks (NBC, CBS, and ABC) use similar procedures. The advertising agency submits the storyboard to a specialized editor who reviews the commercial. The specialized editors are typically attorneys, pharmacists, experts in child-directed ads, etc. They endeavour to ensure the truthfulness and good taste of ads and in doing so require substantiation of claims made within the ads. Any tests referred to in commercials, for

example, must be objective and independent. Statements made, moreover, must be consistent with the results of the tests.

According to ABC's Advertising Standards Guidelines, which are representative of each of the other networks' guidelines, all material broadcast over the American Broadcasting Company's facilities must conform to governmental laws and regulations and to the standards and policies of ABC. The Broadcasting Standards and Practices Department is responsible for reviewing all commercial material on ABC's Networks and Owned stations. The Department is an independent group within ABC. It reports directly to corporate management and operates objectively, free of any allegiance to a sales or programming department. As a result, there is a system of checks and balances in determining the acceptability of program and advertising material.

The Guidelines also state that ABC reserves the right at any time to revoke its approval of and to require the elimination or revision of any program material or advertising announcement which is inconsistent with ABC's standards and policies.

It is quite interesting that while interviewing officials from each network, each said that approximately 50,000 commercials were submitted for review yearly. Of these, 20-30 percent are food commercials according to Ms. Joan Spierman of ABC. It was quite unanimous among those interviewed that changes of one sort or another are required in the majority of submissions.

When asked why the networks pre-clear advertisements, the general consensus was a voluntary public service motivation, though Mr. Gitter of NBC did note that each network is federally licensed and as part of their mandate they must operate in the public interest. Mr. Mathew Margo of CBS also mentioned that the network must be fair to all advertisers if a claim is made that effects other advertisers. If one analyzes this statement, we find that this is a very strong argument for objective network pre-clearance of advertisements. It is in the interests of the networks collectively to act objectively and, hence, not alienate a present client or prospective client as a result of a subjective display of favoritism toward any one client. It would never pay for less than mutual objectivity since a dis-heartened advertiser could always get the advertisement broadcast on the non-objective network, resulting in greater profit accruing to that network. This would in turn signal the other networks to act in a similar way until any advertiser could get virtually anything broadcast, in which case it would no longer pay for any firm to spend funds on advertisements. Hence, the only stable and profitable situation is for all networks to act in an objective manner, given they are profit-oriented.

## 5.2 Great Britain

### 5.2.1 Independent Broadcast Authority

The Independent Broadcast Authority is a public body authorized by the British Parliament to organize and supervise the Independent Broadcast system

in Great Britain. It selects and appoints the program companies, supervises the programming, controls the amount and content of the advertising, and transmits all the services.

The IBA's Chairman, Deputy Chairman and ten members are appointed by the Home Secretary. The IBA has a staff of about 1500 at its London and Worchester headquarters, transmitter and engineering bases, and regional offices.

The IBA has extensive and comprehensive control over television and radio advertising throughout Great Britain. The frequency, amount and nature of advertisements must be in accordance with the Broadcasting Act and the rules and principles laid down by the IBA. The Authority's basic principles of broadcast advertising are set out in the IBA Code of Advertising Standards and Practice, drawn up in consultation with its Advertising Advisory Committee on which consumer, individual, and advertising interests are represented.

The Broadcasting Act of 1981 is concerned directly with prevention and not with prosecution after the event. It gives the IBA the duty and the power to exclude any advertisements that could reasonably be said to be misleading, and to decide as to the classes and descriptions of advertisements and methods of advertising that should be excluded from television and radio.

For television advertisements, the process begins with advertisers or their agencies forwarding scripts of proposed advertisements for clearance in advance of filming. The IBA's Advertising Control Division and a specialist advertising copy clearance group set up by the program companies under the aegis of the Independent Television Companies Association work in close cooperation on the examination of a total of well over 10,000 television advertisement scripts a year.

The television scripts are considered in relation to the Code, with the help of independent consultants in special fields; and discussion of any seemingly doubtful points with the advertising agencies ensures that the television advertisements in their final form are likely to comply with the Code. These inquiries involve the questioning of words and phrases to be used in advertisements; the substantiation of claims and the submission of the advertisements to the appropriate independent consultant or consultants for advice; checking the validity of testimonials and the identity of persons to be introduced by name; discussion of the total impression that might be given by an advertisement, whatever its line-by-line purpose may appear to be; discussion of the general effects to be given in vision and sound; and many other points arising from the far reaching provisions of the Code of Advertising Standards and Practice.

At the end of these discussions and investigations, over eight out of ten television advertisements scripts are found to meet the requirements of the Code as originally submitted. Eighteen per cent are returned for



amendment by the advertisers to bring them into line with the accepted interpretation of the Code. In due course the specialist staff of the Authority and the program companies join in a daily closed circuit viewing of finished films before the advertisements are accepted for broadcasting, to ensure that they conform with the agreed script and that there is nothing unacceptable about the tone and style of presentation or other aspects of the film treatment of the subject. Between 2-3% of the finished films need revision before final acceptance.

For the over 800 radio ads, the ethical standards demanded by the Authority are no less than those required for television, and all advertisements for Independent Local Radio must also comply with the IBA Code of Advertising Standards and Practices.

#### 5.2.2 Independent Television Companies Association

The Independent Television Companies Association is an industry body established by statutory control of the Authority. The guidelines for reviewing ads, as well as product labelling, are dictated by the Food Labelling Regulations Act (1984). If the Association is not able to make a judgment due to lack of knowledge about an area, they typically retain an expert consultant.

While as noted earlier, a negative decision by the Association can be appealed to the Authority, it was pointed out by Mr. Stewart Rutledge of the

Association that normally the Authority agrees with the Association regarding the unacceptability of an advertisement.

Mr. Ruttledge explained that the Association plays a positive role in trying to find a way an advertisement can be changed so as to be consistent with the Act. On the other hand, the authority has no positive role; it simply accepts or rejects the commercial.

Mr. Ruttledge further stated during the interview that the 15 reviewers employed by the Association review approximately 25,000 commercials per year. This translates, assuming 250 working days per year, into less than 7 ads per day reviewed which is less than half the workload of reviewers at CCAC. According to Mr. Ruttledge, moreover, the normal review process takes about 3 days.

In the event that new information becomes available to the Association once an advertisement is being broadcast, the Association would investigate the complaint and could take the ad off the air by withdrawing its approval.

#### 5.2.3 Fair Trading Act

Because of the lack of government involvement in the pre-clearance process in Great Britain, one would expect to find, as in the U.S., government monitoring of advertisements similar to the role of the FTC. This is exactly the situation where the Fair Trading Act (1972) provides for a

similar three-tiered administrative approach (refer to discussion of FTC) to the resolution of advertising complaints.

#### 6.0 Summary and Conclusions

While many remedies exist to overcome the informational market failure that often accompanies an asymmetry of information between buyers and sellers of goods, the optimal remedy is the one leading to the greatest social welfare. The first step in the process of choosing the optimal remedy is a thorough understanding of the remedy currently being used. This involves an understanding of both the mechanics of the present process as well as the effects it has had on each of the participants operating within the system. We have attempted in this study to analyze the current radio and television food advertisement pre-clearance process with specific attention directed towards the roles of each actor - government, advertising agencies, television networks, and product manufacturers.

The Canadian food advertisement pre-clearance process is a multi-layered procedure beginning with Consumer and Corporate Affairs Canada. CCAC examines each commercial in relation to the false, misleading or deceptive provisions of the Food and Drug Act as well as the Consumer Packaging and Labelling Act. At present, it is perceived that there is no effective appeal procedure in the event of a disagreement between the reviewer and firm proposing the advertisement. Moreover, based upon the reported workload of reviewers within similar processes, there is some evidence to suggest that CCAC reviewers seem to have greater workloads. This may not allow the inter-

action and timely feedback desired by firms and may contribute to the high degree of frustration with the present system felt by some advertising firms.

Once the commercial receives CCAC approval, it must then receive the approval of the Advertising Standards Council if it is in a socially-sensitive area, e.g. child-directed and feminine hygiene ads. The ASC will also arbitrate complaints of one advertiser against another.

The commercial must then receive approval of the broadcasting company. The Canadian Broadcasting Corporation ensures that the commercial messages are presented with integrity and good taste, and are not controversial, misleading, or unfair in their competitive claims or exploitative of children. The Telecaster Committee of Canada, moreover, is a self-regulatory body of independent broadcasters that also reviews a commercial prior to its broadcast on any of a number of independent stations. Its criteria include fairness, honesty, and objectivity of tests, among others.

The general conclusions derived from interviewing representatives of five advertising firms and two product manufacturers directly involved in the radio and television food advertising pre-clearance process are:

- (i) While there are perceived problems with the present advertising pre-clearance process in Canada, the major one is that the decisions made by reviewers at CCAC appear subjective, arbitrary and inconsistent. This is attributed to: [a] excessive workloads of the reviewers, [b] perceived lack of understanding of

communications by reviewers and [c] failure of reviewers to appreciate the economic hardship associated with their "minor" changes.

- (ii) The participants do not envision any appeal process within the present system.
- (iii) Establishment of a Toronto office was mentioned by 3 of the 5 interviewed as a change that could significantly reduce their costs.
- (iv) Industry self-regulation, as in the U.S., with government monitoring ex post was favoured over the present process.
- (v) The CBC was generally believed to be stricter and more cumbersome than CCAC in obtaining approval of an advertisement.

The U.S. system for the regulation of advertisement was found not to include government pre-clearance since that would constitute a prior restraint of speech in violation of the First Amendment to the U.S. Constitution. Pre-clearance is, however, practiced by each major network. The networks, moreover, appear to use objective, comprehensive pre-clearance procedures since as a highly competitive industry, this approach is economically most attractive. Once advertisements are broadcast, the Federal Trade Commission monitors the ads and issues a formal complaint when an ad is

viewed as false or misleading. There is then a three-tiered mechanism for resolving such disputes.

In Great Britain, on the other hand, the Independent Broadcast Authority is entrusted by the government to oversee the industry's pre-clearance process. Although the Authority has the final word in the event of an appeal, the Independent Television Companies Association, an independent industry body, has the primary responsibility for reviewing ads as well as product labelling. Due to the absence of government involvement in the pre-clearance process, the British Government does monitor advertisements ex post much the same way as does the F.T.C. in the U.S.

Though it was beyond the scope of the present study, to identify all feasible alternatives to the current system for regulating advertisements in Canada, the choice of the optimal remedy to overcome the informational problems inherent in the marketplace involves an examination of the costs and benefits associated with each alternative.

APPENDIX A

Associations and Persons Interviewed

<u>Association</u>	<u>Interviewee</u>	<u>City</u>	<u>Telephone No.</u>
Grant Tandy Ltd.	Mr. Bob Hellwig Exec. V.P.-Director of Client Services	Toronto, Ont.	(416) 968-0201
Foster Advertising Ltd.	Mr. Andy Sileika V.P. of Client Services	Toronto, Ont.	(416) 928-8000
McKim Advertising Ltd.	Mr. Jim Anderson President	Toronto, Ont.	(416) 863-5300
Ronalds-Reynolds' & Company, Ltd.	Ms. Rose-Marie Green Director of Marketing Services	Toronto, Ont.	(416) 593-5622
	Mr. Barry Milavsky Group Director	Toronto, Ont.	(416) 593-5622
R.T. Kelley Inc.	Mr. Bruce Chadwick President	Hamilton, Ont.	(416) 525-3610

Industry Trade Associations

Grocery Products Manufacturers of Canada	Ms. Marilyn Knox V.P. Technology	Toronto, Ont.	(416) 429-4444
Institute of Canadian Advertisers	Mr. Keith McKerracher Director	Toronto, Ont.	(416) 482-1396
Independent Television Companies Assoc.	Mr. Stewart Ruttledge Deputy Head of Copy Clearance Dept.	London, England	1-636-6866

Television Networks

National Broadcasting Co.	Mr. Richard Gitter V.P. of Broadcast Standards - East Coast	New York, N.Y.	(212) 664-4444
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American Broadcasting Co.	Ms. Joan Spierman Supervisor of Commercial Clearance	New York, N.Y.	(212) 887-7653
Columbia Broadcasting System	Mr. Mathew Margo Director of Commercial Clearance	New York, N.Y.	(212) 975-3319
Canadian Broadcasting Corp.	Ms. Maria Collins Asst. Manager of Advert. Stds. - English Network	Toronto, Ont.	(416) 925-3311

Government

Federal Trade Commission	Ms. Toni Guarino Program Advisor for Food and Drug Advertising	Washington, D.C.	(202) 376-8617
Consumer and Corporate Affairs Canada	Ms. Louisa Crapigna Reviewing Officer	Ottawa, Ont.	(819) 997-1591
	Mr. Ross Dunn Food Specialist	Ottawa, Ont.	(819) 997-1591
	Mr. Ralph McKay Director of Consumer Products Branch	Ottawa, Ont.	(819) 997-1591
Independent Broadcaster Authority	Mr. Nicholas Vaudrey Information Office Employee	London, England	1-584-7011

Grocery Products Manufacturers

Warner-Lambert Canada Inc.	Mr. Ralph S. Davis Director of Public Affairs	Toronto, Ont.	(416) 288-2114
General Mills Canada Inc.	Mr. Rob Hawthorn Senior V.P. - Marketing	Toronto, Ont.	(416) 743-8110

Peripheral Organizations

Advertising Standards Council	Mr. Bob Oliver President	Toronto, Ont.	(416) 961-6311
Telecaster Committee of Canada	Ms. Pat Beatty Coordinator	Toronto, Ont.	(416) 928-6045



APPENDIX B

FOOD ADVERTISEMENT PRE-CLEARANCE PROCESS

The following is a step-by-step outline of the clearance procedure for the preapproval of food advertisements.

There are two routes an advertiser or an agency can opt for in submitting food advertisements for preapproval, namely through:

- a) the CRTC, or
- b) the private agency.

A) CRTC route for all but wine, beer and cider advertisements

1. The advertiser or agency sends 3 copies of the proposed commercial by mail to the CRTC not less than two weeks in advance of the intended use;
2. The CRTC assigns a continuity number to the commercial and has it delivered by their messenger (daily) to CCAC. The messenger also picks up the previous day's advertisements and returns them to the CRTC;
3. CCAC reviewers proceed to examine the advertisement to ascertain that it is not false, misleading or deceptive, thus conforming with the provisions of the Food and Drugs Act (5), of the Consumer Packaging and Labelling Act (7) as well as those of other legislation. The commercial is subsequently
  - i) approved,
  - ii) edited, or
  - iii) rejected (further information may be requested to support a claim made, rewording may be required, or the storyboard may be changed).
4. Whether approval is granted or not, the script is returned to the CRTC.
5. At the CRTC,
  - i) if no changes are required, a dated stamp indicating "APPROVED" is placed on the commercial,
  - ii) if any changes are required, the "APPROVED" stamp is still applied but the suffix "C", indicating conditional wording, is placed beside the CRTC continuity number,

- iii) if the commercial is rejected, the CRTC continuity number then is suffixed by "R", for refused, and a dated stamp indicating "NOT APPROVED" is applied.
- 6. The CRTC returns the original copy of the commercial to the advertiser by surface mail, retains one copy for its files and forwards the other to CCAC.
- 7. Upon receipt of the commercial, the advertiser agrees with the corrections made, if any, or contacts the reviewer by phone to present his arguments and/or explore possible means of overcoming the problem. Advertisers often request personal interviews in order to guarantee a speedy resolution of differences and processing of the revised script.
- 8. Once agreement has been reached, the commercial is corrected and approval is granted, as per above.

For wine, beer and cider advertisements

- 9. The advertiser submits 6 copies of the advertisement by mail to the CRTC.
- 10. Same as steps A (2, 3 and 4) above.
- 11. At the CRTC,
  - i) if the commercial has been rejected by CCAC, it is returned to the advertiser immediately.

However,

- ii) if no changes are required, or if conditional wording has been proposed by CCAC, the advertisement is presented at the Beer, Wine and Cider Committee.

This Committee, whose membership consists of CRTC officials and representatives of the provincial liquor control boards (usually Ontario/Quebec) with CCAC representation upon invitation only (very seldom), reviews the advertisements taking into consideration the CRTC and provincial policy requirements.

NOTE: In the past, the CRTC administered a "good taste" provision, but now this requirement is left to the discretion of individual broadcasters such that the CRTC activity, in this area, has become a clerical operation.

- 12. Once the Committee has completed its work, it may, in certain special circumstances, send the commercial back to CCAC via the regular route. However, since the Committee's rules are more restrictive, no further changes are usually made by CCAC.

13. The CRTC returns the script to the advertiser with the appropriate annotations (see A (5)(i), (ii), (iii) above).

B. Private agency route

The actual clearance process is the same as in A above. However, the private agency, which assigns a fee for its services, acts as go-between and courier by bringing the commercial to the various government departments involved in the preapproval system and by relaying the information (CRTC continuity number, approval, corrections or rejection) by telephone to the advertiser - usually the same day.

The agency staff, in communicating with the advertiser, may also assist in clarifying problem areas, thus expediting the clearance process for their client.

Enclosure: Circular letter No. 176 is presently being revised by the CRTC for clarification purposes.

APPENDIX C

American Broadcasting Company Pre-Clearance Procedures

PROCEDURES

1. Clearance

- A. Advertising agencies should submit storyboards or scripts in duplicate for each commercial sufficiently in advance of production to permit careful review by the Broadcast Standards and Practices Department. Adequate substantiation must be submitted for all claims. Agencies should endeavor to submit adequate substantiation with the initial submission of a proposed commercial.
- B. Each commercial is reviewed by a Broadcast Standards editor. After reviewing a proposed commercial, an editor may:
  - 1) accept the commercial, or
  - 2) reject the commercial, or
  - 3) request revisions, and/or request additional substantiation for claims.
- C. After the storyboard or script of a commercial has been approved, final approval is subject to a review of the finished film or tape version and to the time and placement of the commercial as scheduled.
- D. An agency may appeal an adverse decision to the Director and/or Vice President of the Department.

2. Challenge

- A. Any commercial aired on ABC may be challenged. A challenge must be made in writing in a form which permits it, along with any supporting data, to be transmitted to the challenged advertiser for a response. In the event certain material is reasonably considered to be confidential, specific designation must be made.
- B. All challenges received by ABC will be reviewed by the Broadcast Standards and Practices Department. If, in the opinion of the Department, the challenge appears to have merit, it will be transmitted to the challenged advertiser for a response. The response will normally be due within 14 days. A different deadline may be established, depending upon the circumstances.
- C. ABC will maintain the confidentiality of the substantiation originally submitted by the challenged advertiser in support of the claims made in the advertising. However, the advertiser should endeavor to submit a response, with supporting data, in a form which is suitable for transmittal to the challenger.

- D. In order to resolve the issues raised by a challenge, it may be necessary to require the challenger and/or the advertiser to respond in writing to the arguments and data presented. If ABC personnel do not have the technical expertise necessary to make a judgment, the advertiser and the challenger may be encouraged to obtain a resolution from an acceptable third party. ABC reserves the right to utilize outside consultants.
- E. ABC will normally permit a challenged commercial to continue to run unless: 1) it is voluntarily withdrawn by the challenged advertiser; 2) the challenged advertiser refuses to cooperate with the challenge procedures described above; 3) a determination is rendered against the challenged advertiser by ABC or by a third party to whom the challenge has been referred for resolution; or 4) the issues raised by a challenge are resolved, with finality, against the advertiser by a government agency or an appropriate court.

Source: ABC Advertising Standards & Guidelines

Date: \_\_\_\_\_

Name of Organization: \_\_\_\_\_

Name of Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ Tel. No.: \_\_\_\_\_

Position of Contact Person: \_\_\_\_\_

Interviewer: \_\_\_\_\_

1. As an advertiser, do you see any problems associated with the present process of government pre-clearance of food advertisements prior to broadcast?
2. From your point of view, is there a major, overriding, problem with the current process of pre-clearance?

3. Are there any advantages to you, as an advertising firm, of the current pre-clearance process?

4. Which approach to pre-clearance of advertisements (government or self-regulation) do you prefer and why?

Government of Canada  
Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO  
A

M. F. D'Auray-Boult  
Program Evaluation Branch

FROM  
DE

Chief  
Program Co-ordination Division  
Consumer Products Branch

SUBJECT  
OBJET

PRE-CLEARANCE ADVERTISING EVALUATION  
FOREIGN COMPARISONS (FINAL REPORT)

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/NOTRE RÉFÉRENCE G594-1
YOUR FILE/VOTRE RÉFÉRENCE
DATE November 27, 1985

This is in response to your memorandum of November 04, 1985 with attached copy of the above-referenced report. I note that this study has been distributed as a final report but I trust this will not preclude the following concerns and observations from being given due consideration.

1. It appears that the intent of this study was to provide detailed information respecting the procedural systems in place in foreign countries (U.S. and Great Britain) to regulate advertising behaviour, specifically those processes related to television and radio advertising. In addition, a small sampling of participants involved in the Canadian pre-clearance process were to be surveyed to determine their attitudes and why these attitudes exist.

As a general observation, I am left with the impression that the information presented is incomplete. Foreign procedures are generally described, however, unlike the Canadian experience, we are not provided with user perceptions in the U.S. or Great Britain. In my view, this results in an unbalanced presentation, leaving the reader with many questions as to the overall efficiency and effectiveness of foreign procedures.

2. Executive Summary There are five conclusions presented in the Executive Summary which are derived from interviewing a small sampling (7) of advertising firms and product manufacturers involved in the pre-clearance process. I would question how conclusions could be drawn from such a small survey, particularly when, to the best of our knowledge, two of the five agencies are infrequent users of the system who have had minimal or no involvement with the pre-clearance process.

Allegations that decisions by reviewers are subjective, arbitrary and inconsistent are not supported in the text by examples.

The conclusion that the establishment of a Toronto Office could significantly reduce costs is understandable given that six of the seven interviewees are located in Toronto.



In addition, the Executive Summary, in describing procedures in Great Britain, states "Due to the absence of government involvement....". Upon reading the detailed description on pages 28-31, I am left with the impression that there is significant government involvement on the part of the IBA. Additional clarification is required on this point. The function of the Independent Television Companies Association in Great Britain (pg.31) is also unclear - do we assume that an industry body administers the government's Food Labelling Regulations Act?

The pre-clearance procedures employed by networks in the U.S. are described as being objective and comprehensive. It would be useful to have some explanation, or substantiation, of how this purported objectivity is achieved. One may question why there are numerous appeals and reportedly millions of dollars expended in the resolution of litigation cases if the screening process is as "objective and comprehensive" as stated.

3. Page 13 The paragraph describing the turn-around time for ads reviewed at CCAC and the volume of work and associated resources requires clarification or amendment. The data referenced by the author are not current. They were derived from a 1983 analysis conducted internally by the Branch during a period of staff shortages and backlogs. Further, they contradict the stated "typical" turn-around time of 24-48 hours. It appears that calculations used by the author to determine workload are based on person-years and not available net time devoted to advertising reviews. In addition, the assumption is made that part-time reviewers devote 50% of their time to advertising pre-clearance, which is not the case.
4. Page 25 There appears to be a contradiction where it is reported that, according to the FTC, the networks are not responsible for substantiation of claims yet page 26 indicates that they are.

I would be pleased to review the report with you in more detail at your convenience.

  
Carol LaBelle

cc: R.H. McKay  
C. Sheppard.

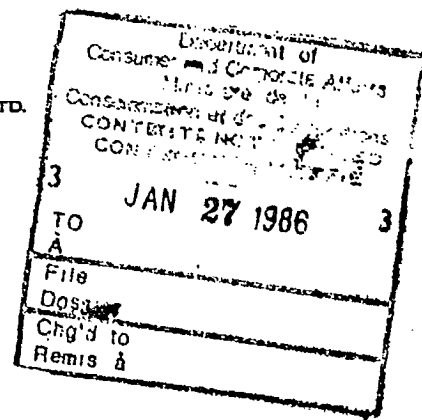
M. K. BERKOWITZ & ASSOCIATES LTD.

11 EVERGREEN CRESCENT

THORNHILL, ONT.

L3T 5V8

881-5304



January 22, 1986

C. LaBelle  
Chief, Program Co-ordination Division  
Consumer Products Branch  
16th Floor  
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Dear Ms. LaBelle:

I have received your comments from M.F. D'Auray-Boult on "Advertising Pre-clearance: Foreign Comparisons" and would like to take this opportunity to reply. A number of changes which address many of your concerns have been incorporated into the final report and I am sure that Marie France will be sending you a copy of the revised report. Before I address the concerns outlined in your memorandum dated November 27, 1985, I should like to thank you for the effort extended in preparing these thorough and thoughtful comments which I am sure have resulted in a better product on our part.

First, I appreciate your concerns that the presentation is unbalanced - only user perceptions of the Canadian system are provided in the study. The scope of the study was, however, only to describe the foreign procedures, not to examine their efficiency, effectiveness, or user perceptions. We are presently analyzing these questions in another study. As for presenting the user perceptions of the Canadian model in the Foreign Comparisons study, though it was not part of the terms of reference of the project, we believe that knowing these perceptions allows a better understanding of the present system and any comparisons are, therefore, more meaningful.

The Independent Broadcast Authority, moreover, is a public body, appointed by government, but directed to act independently without government intervention. According to Mr Vaudrey, an employee of the IBA's Information Office, the government has not been directly involved since the Authority was established by the Television Act, 1955.

The following quote is taken from "Independent Broadcasting in 1985", Independent Broadcasting Authority:

"All advertisements are checked against The IBA Code of Advertising Standards and Practice, which is drawn up

in consultation with the IBA's Advertising Committee. Specialist staff at the IBA and the Independent Television Companies Association have to satisfy themselves that new advertisements meet all the provisions contained in the Code and that advertisers' claims have been substantiated."

Hence, it appears that the staffs of both the IBA and Independent Television Association screen advertisements with respect to the Code, not the government's Food Labelling Regulation Act.

As for your comment about the U.S. networks, with three major networks competing for advertising dollars, it would never pay for less than mutual objectivity as explained on page 30 of the study. The guidelines used, however, are not necessarily the same as those which the government uses when examining advertisements for potentially false and misleading statements. Even in Canada, there is a distinct difference in the criteria used by CCAC and those used by the Telecaster Committee of Canada and the CBC when reviewing the same advertisements.

Regarding the turn-around time for ads reviewed by CCAC, the volume of work and associated resources, the primary information used in the report was the file review. No mention was made in this review that 1983 was not a typical year. Moreover, the "typical" turn-around time given to me during conversation with program officials at CCAC of 24-48 hours appears quite consistent with the file review in which it was stated that 54% of the ads were processed in one week with the majority of those in 1-2 days.

Furthermore, calculations are typically based upon person-years and we chose to follow that convention. The figures presented then represent the average load of a reviewer over the year. As for the assumption that part-time reviewers devote 50% of their time to advertising pre-clearance, this figure was first obtained in telephone conversation with Ms. Crapigna and Mr. Dunn on October 2, 1985, and confirmed with Mr. McKay on October 7, 1985. In the study we are now preparing, we shall be contacting you to help us in obtaining the current costs of running the pre-clearance program at CCAC.

Finally, while the U.S. networks are not legally responsible themselves for substantiation of claims made in broadcasted advertisements, they do require that advertisers substantiate their claims. As I reread pages 25-26, I do not see any contradiction. If you still see a problem, please let me know.

Again, thank you for your comments and I would be happy to discuss my reply in more detail at your convenience. During the next week or so, I shall, as mentioned, be contacting you for your help in obtaining information for our present study.

At the beginning of February, I shall be in Ottawa to talk to individuals directly involved in the Program. I look forward to meeting with you then.

Very truly yours,

*M.K. Berkowitz*

M.K. Berkowitz

President

M.K. Berkowitz & Assoc. Ltd.

cc. M.F. D'Auray-Boult

FOOTNOTES

1. According to Boddewyn (1982), pre-clearance is currently required for commercials in 20 countries: in 11 of them, that is by government regulation; while in 5 countries industry, and in 16 countries media, impose such a requirement through guidelines and codes.
2. Refer to Consumer and Corporate Affairs Canada (1984) for advertising guidelines.
3. In 1971, the FTC adopted a resolution designed to assist consumers to make rational choices. The new procedure outlined in the resolution required that advertisers submit on FTC demand tests, studies or other data that purport to substantiate claims regarding a product's safety, performance, efficiency, quality, or comparative price. See Trade Regulation Reporter 1971.
4. 81 FTC at 61-62.
5. See Cohen (1980) for an in-depth discussion of the FTC's advertising substantiation program.
6. False and Misleading Advertising: Hearings before the House Committee on Government Operations, 85 Congress, 2d Session 2668, 1958.
7. Cox, Fellmeth and Schultz (1969).
8. American Bar Association (1969).
9. See Nelson (1974).
10. According to Brendon, at present 21 percent of the households in Canada own a VCR.
11. Measures of the informativeness of commercial messages have been widely studied in the marketing literature. One approach which appears to have a great deal of promise is to establish the characteristics of advertisements associated with an informative advertisement. Aaker and Norris (1982) used this methodology to examine 524 commercials.

12. The following discussion of the authority for CCAC to approve commercials can be found in Nordicity Group (1985).
13. Reprinted from Consumer and Corporate Affairs (1985).
14. See Peltzman (1981).
15. See Trebilcock, et al. (1976).
16. 16 C.F.R. S.1.1. (1974).
17. 16 C.F.R. S.1.5. (1974).

References

- Aaker, D.A. and Norris, D. (1982), "Characteristics of TV Commercials Perceived as Informative", Journal of Advertising Research, Vol. 22, No. 2, pp. 61-70.
- American Bar Association (1969), Commission to Study the Federal Trade Commission, Report 41.
- Bettman, J. (1975), "Issues in Designing Consumer Information Environments", Journal of Consumer Research, Vol. 2, pp. 169-177.
- Boddewyn, J.J. (1982), Food Advertising Regulation and Self-Regulation: An International Survey, International Advertising Association.
- Brendon, R. (1985), "Can British Advertising Work Here?", Marketing, April 29, pp. 14-16.
- Cohen, D. (1980), "The FTC's Advertising Substantiation Program", Journal of Marketing, Vol. 44, pp. 26-35.
- Consumer and Corporate Affairs Canada (1984), Guide for Food Manufacturers and Advertisers, Consumer Products Branch, Bureau of Consumer Affairs, Hull, Quebec.
- Consumer and Corporate Affairs Canada (1985), "Results of File Search on Pre-Clearance Advertising for Radio and Television Advertisements", Program Evaluation Division, Hull, Quebec.
- Cox, E., Fellmeth, R., and Schulz, J. (1969), The Consumer and the Federal Trade Commission.
- Dowling, G. (1980), "Information Content in U.S. and Australian Television Advertising", Journal of Marketing, Vol. 44, pp. 34-37.
- Goldberg, M.E. and Gorn, G.J. (1984), "Some Unintended Consequences of TV Advertising on Children", Journal of Consumer Research, Vol. 5, No. 1, pp. 22-29.
- Gorn, G.J. and Florsheim, R. (1985), "The Effects of Commercials for Adult Products on Children", Journal of Consumer Research, Vol. 11, No. 4, pp. 962-967.
- Gorn, G.J. and Goldberg, M.E. (1977), "The Impact of Television Advertising on Children from Low Income Families", Journal of Consumer Research, Vol. 4, No. 2, pp. 86-88.
- Higgins, R.S. and McChesney, F.S. (1984), "An Economic Analysis of the FTC's AD Substantiation Program", unpublished paper presented at FTC conference.

- Jacoby, J. and Hoyer, W.D., (1982), "Viewer Miscomprehension of Televised Communication: Selected Findings", Journal of Marketing, Vol. 46, pp. 12-26.
- Jacoby, J., Nelson, M.C. and Hoyer, W.D. (1982), "Corrective Advertising and Affirmative Disclosure Statements: Their Potential for Confusing and Misleading the Consumer", Journal of Marketing, Vol. 46, pp. 61-72.
- Jacoby, J., Speller, D. E., and Kohn, C.A. (1974), "Brand Choice Behavior as a Function of Information Load", Journal of Marketing Research, Vol. 11, pp. 63-67.
- Mazis, M.A., Staelin, R., Beales, H. and Salop, S. (1981), "A Framework for Evaluating Information Regulation", Journal of Marketing, Vol. 45, pp. 11-21.
- Nelson, P. (1974), "Information and Consumer Behavior", Journal of Political Economy, Vol. 82, pp. 311-329.
- Nordicity Group (1985), Food Sector Evaluation Study, Part I, report prepared for Consumer and Corporate Affairs Canada.
- Peltzman, S. (1981), "The Effects of FTC Advertising Regulation", Journal of Law and Economics, Vol. 24, pp. 403-459.
- Shimp, T. (1979), "Social Psychological (Mis)Representations in Television Advertising", The Journal of Consumer Affairs, Vol. 13, No. 1, pp. 28-39.
- Trebilcock, M.J., Duggan, A., Robinson, L., Wilton-Siegel, H., and Masse, C. (1976), "A Study on Consumer Misleading and Unfair Trade Practices", Vol. 1, Consumer and Corporate Affairs Canada, Ottawa.



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M. K. Berkowitz & Associates  
Advertising pre-clearance :

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