



Government  
of Canada

Gouvernement  
du Canada

**MISLEADING  
ADVERTISING  
AND**  
*Deceptive  
Marketing  
Practices*

<http://competition.ic.gc.ca>

Canada



COMPETITION  
BUREAU

## ***What Is the Competition Act?***

The *Competition Act* (the Act) is a federal law governing business conduct in Canada and is enforced by the Competition Bureau (the Bureau). It aims to promote competition in the marketplace by stopping anti-competitive practices. Most businesses in Canada, both small and large, are governed by this Act.

The Commissioner of Competition (the Commissioner) is head of the Bureau, which is part of Industry Canada. The Commissioner is responsible for the administration and enforcement of the *Competition Act*, as well as three statutes concerning the accuracy and adequacy of information provided to consumers:

- the *Consumer Packaging and Labelling Act*
- the *Textile Labelling Act*
- the *Precious Metals Marking Act*.

## ***What Is Misleading Advertising?***

Misleading advertising occurs when, in the promotion of a product or any business interest, a representation is made to the public that is false or *materially* misleading. If a representation could influence a consumer to buy the product or service advertised, it is material. To determine whether an advertisement is misleading, the courts consider the “general impression” it conveys, as well as its literal meaning.

Misleading advertising can have serious economic consequences, especially when directed toward large audiences or when it takes place over a long period of time. It can affect both business competitors who are engaging in honest promotional efforts, and consumers.

## ***What Are the Possible Penalties?***

The *Competition Act* applies to all representations, regardless of form, that are made to the public to promote products or business interests. In cases where a person knowingly or recklessly makes a representation to the public that is materially misleading, the matter may be dealt with as a criminal offence. On summary conviction, the person is liable to a fine of up to \$200 000 and/or imprisonment for up to one year. If convicted on indictment, the person is liable to a fine at the discretion of the court and/or imprisonment for up to five years.

In cases where there is no compelling evidence that a misleading representation was made knowingly or recklessly, the Bureau may apply to the Competition Tribunal or other court for an order requiring the person to cease the activity, publish a corrective notice and/or pay a monetary penalty. On first occurrence, individuals are liable to penalties of up to \$50 000 and corporations are liable to penalties of up to \$100 000. These amounts may double for second and subsequent occurrences.

The Bureau conducts its investigations in private and keeps confidential the identity of the source and the information provided. However, if someone has important evidence about an offence under the Act, that person may be asked to testify in court.

The following "Dos and Don'ts" will help businesses comply with the Act.

### ***Advertising Dos and Don'ts***

- Do avoid fine print disclaimers. They often fail to change the general impression conveyed by an advertisement. If you do use them, make sure the overall impression created by the ad and the disclaimer is not misleading.
- Do fully and clearly disclose all material information in the advertisement.

- Do avoid using terms or phrases in an advertisement that are not meaningful and clear to the ordinary person.
- Do charge the lowest of two or more prices appearing on a product.
- Do ensure that you have reasonable quantities of a product advertised at a bargain price.
- Do, when conducting a contest, disclose all material details required by the Act before potential participants are committed to it.
- Do ensure that your sales force is familiar with these "Dos and Don'ts." Advertisers may be held responsible for representations made by employees.
- Do use the Commissioner's Program of Advisory Opinions. Contact the Information Centre for details.
- Don't confuse "regular price" with "manufacturer's suggested list price" or a like term. They are often *not* the same.
- Don't use "regular price" in an advertisement unless the product has been, or will be, offered for sale at that price for a substantial period of time, or a substantial volume of the product has been sold at that price.
- Don't use the words "sale" or "special" in relation to the price of a product unless a significant price reduction has occurred.
- Don't run a "sale" for a long period or repeat it every week.
- Don't increase the price of a product or service to cover the cost of a free product or service.
- Don't use illustrations that are different from the product being sold.

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- Don't make a performance claim before you can prove it, even if you think it is accurate. Testimonials usually *do not* amount to adequate proof.
- Don't sell a product above your advertised price.
- Don't unduly delay the distribution of prizes when conducting a contest.
- Don't forget that no one actually needs to be misled for a court to find that an advertisement is misleading.

*The Bureau produces videos and publications on various aspects of the Competition Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act and the Precious Metals Marking Act. To find out more about our videos and publications, contact the Information Centre at:*

Information Centre  
Competition Bureau  
Industry Canada  
50 Victoria Street  
Hull QC K1A 0C9

*Toll free:* 1-800-348-5358

*National Capital Region:* (819) 997-4282

*TDD (for hearing impaired):* 1-800-642-3844

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*E-mail:* [compbureau@ic.gc.ca](mailto:compbureau@ic.gc.ca)

*Web site:* <http://competition.ic.gc.ca>

*This publication is only a guide. It provides basic information about the Competition Bureau and the Competition Act. For further information, you should refer to the full text of the Competition Act or contact the Competition Bureau at one of the numbers listed above.*