CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Transit Division

Report to: Chair and Members
Public Works Committee

Submitted by: Scott Stewart, C.E.T.
General Manager
Public Works Department

Date: May 23, 2008

Prepared by: Andy McLaughlin
Extension 1809

SUBJECT: Commercial Advertising and Sponsorship Policy
(PW08060) - (City Wide)

RECOMMENDATION:
(a) That the revised City of Hamilton Commercial Advertising and Sponsorship Policy, attached as Appendix “A” to Report PW08060, be approved;

(b) That City staff be authorized to seek amendments to the City’s current advertising and sponsorship contracts to make the contracts consistent with the City’s amended Commercial Advertising and Sponsorship Policy;

(c) That the General Manager of the applicable City department or municipal services corporation be authorized to execute all necessary agreements and documents, satisfactory in form to the City Solicitor, to implement the recommendation in paragraph (b).

Scott Stewart, C.E.T.
General Manager
Public Works

EXECUTIVE SUMMARY:
Two complaints have been lodged objecting to the City's restrictions on advertising content on City-owned property, specifically religious and advocacy advertising. These restrictions are embedded in various existing advertising and sponsorship contracts and they are reflected within the present Council-approved policy (2001) on Commercial advertising and sponsorships.
SUBJECT: Commercial Advertising and Sponsorship Policy
(PW08060) - (City Wide) - Page 2 of 7

Corporate Commercial advertising contracts currently generate in the order of $900,000 in annual revenues to offset program expenditures through the sale of advertising space on City-owned property or through sponsorships of City programs and events by private entities.

The complaints have prompted a staff review of the existing policy and the preparation of a revised policy, contained in Appendix "A", that responds positively to changes in legislation, legal precedence and industry standards.

The revised policy defers to the Canadian Code of Advertising Standards. This long-standing document, attached as Appendix "B" provides a self-regulatory and compliance mechanism that defines criteria for acceptable advertising. The revised City policy continues to place specific restrictions on advertising content and messages that promote tobacco products and alcohol. It also prohibits the promotion of pornography. The substantive changes are that it allows for religious and advocacy advertising and clarifies the scope of political advertising. All advertising and sponsorships must not demean, denigrate or disparage any person or group of persons or offend the standards of public decency prevailing among a significant segment of the population.

In certain instances, the policy provides for an advance review, by Senior Management Team, of potentially controversial advertising or sponsorships. Public complaints arising from ad placements can be lodged with Ad Standards Canada through their established complaints process. If desired, individual members of the public can also request to appear as a delegation before the Audit and Administration Committee to provide evidence, should they believe that a violation of policy has occurred.

The revised Council-approved policy should be incorporated into advertising and sponsorship contracts going forward, ensuring that the City’s reputation and public image are protected. For existing advertising and sponsorship contracts, staff will seek amendments by mutual agreement with the various parties to ensure that their business practices respecting advertising and sponsorships on City-owned property abide by the revised City policy.

BACKGROUND:

The information/recommendations contained within this report have City wide implications.

On October 19, 2007, the Mayor’s Office received correspondence from Mr. David Harrison, President, Bus Stop Bible Studies (BSBS), requesting that City Council review an earlier staff decision to decline a request to place advertisements on HSR buses. BSBS also requested that the City modify its commercial advertising and sponsorship policy. The request was referred to staff for investigation and will be presented at a future meeting subsequent to Council’s direction on the recommended Advertising Policy attached as Appendix "A" to this report. More recently, in February 2008, staff responded to complaints about a pro-life advertising campaign on a City transit shelter at McMaster University. Upon investigating, staff found that the shelter had also been vandalized with graffiti. Based on the complaints and the belief that the shelter would be subject to repeated vandalism and ongoing complaints, staff directed that the ads be removed from this and four other sites within the City.
This action resulted in complaints from the community on both sides of the pro-life/pro-choice issue.

The City has various advertising and sponsorship contracts, some of which designate a contractor to manage advertising and/or sponsorship on City assets and property. In general, the contracts contain a variety of clauses respecting acceptable advertising content on City property. In addition to the various contracts, in 2001 Committee of the Whole approved a Commercial Advertising and Sponsorship Policy for City property, at City events and in City publications.

In many cases, the City’s standards are more restrictive than those deemed acceptable when referencing the Canadian Code of Advertising Standards, a code of conduct administered by Ad Standards Canada. In the case of the Transit Division, there are separate contracts for advertising in transit shelters and for advertising on HSR buses. Both contracts contain a provision for the removal of objectionable advertising at the sole discretion of the City.

Harmonization of the contractual language regulating the placement and/or removal of advertisements in the various contracts must be pursued in order to avoid future recurrences of community controversy over advertising regulation on City property.

In this regard, Senior Management Team directed staff to assemble a working group from a cross section of programs that have commercial advertising and sponsorship contracts and/or would be affected by commercial advertising to prepare for Council’s consideration a revised Commercial Advertising and Sponsorship Policy. The revised policy will provide consistency respecting advertising content and specific direction as to how to proceed if a public complaint is received. The recommended policy addresses advertising & sponsorship on all city-owned assets and on public property including all buses, bus shelters, bus benches, billboards, road rights-of-way, parklands and arenas.

**ANALYSIS/RATIONALE:**

After reviewing the existing City contracts, policies from other municipalities and consulting with relevant staff, the working group formulated a revised policy, attached as Appendix “A”. The review of advertising policies of other municipalities generally found the policies to be similar in context and appeared to be reflective of consultation between the municipalities in the course of drafting the policies. Arising from the same issue being faced by Hamilton, a challenge to permit religious and advocacy advertising, most municipalities surveyed have either amended or are in the process of reviewing their advertising policies to permit religious and advocacy advertising.

A core issue facing the City is the increased frequency of “Advocacy Advertising” defined as advertising presenting information or a point-of-view bearing on a publicly recognized controversial issue. The examples currently in question involve religious advertising. The issue is further complicated, for example, in that Transit has separate contracts for bus advertising and shelter advertising. The older of the two contracts (shelter advertising), contains subjective language for the placement and removal of ads, while the newer contract (bus advertising) specifically prohibits religious advertising.

The City’s revised Commercial Advertising and Sponsorship Policy follows the policy
direction of most municipalities in being more inclusive rather than exclusionary. As a result, there are more inclusions to the new policy than were permitted in the previous policy. For example, political, religious and advocacy advertising is permitted, subject to conditions. This is aligned to current federal and provincial laws.

In addition to following federal and provincial laws, the City is using the same self-regulating standard as private advertising companies - the Canadian Code of Advertising Standards, a code of conduct administered by Ad Standards Canada (Appendix B). The code contains fourteen provisions, ranging from unacceptable depictions/portrayals to advertising to minors.

The revised policy includes a definition statement for commercial advertising and for sponsorships. The policy aims to be more inclusive, as opposed to exclusive. It references the Canadian Code of Advertising Standards and all applicable laws. It continues to restrict the advertising of tobacco products and other activities hazardous to human health. Advertising related to pornography is not permitted. Political, religious and advocacy advertising is permitted, subject to conditions. In all cases, advertising must be free of content that may violate the prevailing standards of public decency prevailing among a significant segment of the population. A process for public complaints is included. In addition, Senior Management Team has the discretion to pre-screen ads that may be considered by the proponents as having the potential to generate controversy.

**ALTERNATIVES FOR CONSIDERATION:**

Council may, at its discretion, amend the list of restrictions on Commercial advertising listed in the policy that is contained in Appendix “A” of this report.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial

Corporate Commercial advertising contracts currently generate in the order of $900,000 in annual revenues to offset program expenditures through the sale of advertising space on City-owned property or through sponsorships of City programs and events by private entities.

Staffing

The revised policy recommends that the Office of the City Clerk receive and forward to Audit and Administration Committee requests for reconsideration from individuals or groups who believe that the policy has been violated.

Legal

The proposed Commercial Advertising and Sponsorship Policy will apply to commercial advertising and sponsorships on City-owned or City-controlled assets and public property, at City events and in City publications. It will also apply to City-owned property which the City licenses to outside parties for the purpose of advertising (e.g. licence agreement for billboard advertising). The list of restrictions on advertising and sponsorship in the proposed Commercial Advertising and Sponsorship Policy is supportable by law. Amendments to the City’s current advertising and sponsorship
contracts cannot be undertaken unilaterally but rather must receive the consent of all contracting parties. All future advertising and sponsorship contracts which the City enters into should incorporate the Commercial Advertising and Sponsorship Policy by reference.

POLICIES AFFECTING PROPOSAL:

A revised City of Hamilton Commercial Advertising and Sponsorship Policy is attached as Appendix “A” to this report.

RELEVANT CONSULTATION:

At the direction of Senior Management Team, a working group was assembled with representation from the Public Works Department, Transit and Operations & Maintenance; Corporate Services, Legal Services; Planning & Economic Development, Tourism Hamilton; Community Services; Access & Equity, Information Technology; and Public Health Services.

The Access and Equity Coordinator consulted the Gay Lesbian Bi-sexual Transgender Advisory Committee. Their input and recommendations were considered when drafting the revised Commercial Advertising and Sponsorship Policy.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☒ Yes ☐ No
Community messaging that is honest, truthful, accurate and fairly portrayed helps to keep the community informed.

Environmental Well-Being is enhanced. ☐ Yes ☒ No

Economic Well-Being is enhanced. ☒ Yes ☐ No
Revenue generated through the sale of advertising on City owned property helps to offset program costs.

Does the option you are recommending create value across all three bottom lines?
☒ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☐ Yes ☒ No
POLICY

The City of Hamilton permits commercial advertising and sponsorships on City-owned or City-controlled assets and public property, at City events and in City publications, subject to conditions outlined in this policy. This policy applies to all paid advertising and sponsorship recognition of individuals or corporations on City-owned or City-controlled assets and public property, at City events and in City publications. The advertisement of a product or service does not necessarily act as the City’s endorsement of any product or service. This policy replaces the Council-approved Commercial Advertising and Sponsorship Policy (2001).

PURPOSE

The City of Hamilton acknowledges that commercial advertising and sponsorships provide a community benefit through the opportunity to offset the cost of municipal programs and through the recognition of partnerships that provide valued support for City programs and events. The objective of this policy is to ensure that advertising and sponsorship abides by all applicable laws and City policies and does not adversely affect public safety or the City’s image or interests.

DEFINITIONS

“commercial advertising” means the sale to external businesses and organizations of advertising space on City property and publications or in conjunction with City events or programs.

“sponsorship” means the contribution of funds, goods or services-in-kind by an external business or organization to a City program, event or activity in return for acknowledgement, recognition or other promotional consideration related to the City program, event or activity.

REQUIREMENTS AND CONDITIONS

1. All advertising and sponsorships must comply with the Canadian Code of Advertising Standards, as amended from time-to-time.
2. All advertising and sponsorships must comply with all applicable federal, provincial and municipal laws and by-laws.
3. All advertising and sponsorships shall not, either directly or indirectly:
   (a) violate any City policy;
   (b) advertise tobacco products or promote tobacco use;
   (c) advertise the purchase of alcoholic beverages or promote the use of alcohol by those younger than the legal drinking age;
   (d) advertise or promote the use of illegal substances, weapons or other life-threatening products;
   (e) advertise the sale and distribution, or promote the possession, of pornographic materials.
4. The City will not accept advertising when in its sole discretion, it determines same not to be in the City’s best interests.
5. The City reserves the absolute right to accept advertising that does not violate this policy.
6. Notwithstanding any prior approval, the City reserves the absolute right to order the immediate removal or, if necessary, remove any advertising on its property at any time.
SUBJECT: Commercial Advertising and Sponsorship Policy
(PW08060) - (City Wide) - Page 7 of 7

PRE-SCREENING OF ADVERTISING AND SPONSORSHIP REQUESTS

From time to time, City advertising and sponsorship contractors may request advice from the City regarding questionable advertising content or sponsorship. The City's Senior Management Team (SMT) – composed of the City Manager and the General Manager from each department - will conduct the review. SMT may elect, at their discretion, to accept or deny the request for a review. Acceptance of a request by SMT may result in a decision to withhold approval of the advertisement or sponsorship.

RECONSIDERATION

Individuals or groups objecting to a particular advertisement or sponsorship governed by this policy may file a complaint with Advertising Standards Canada (ASC), following their prescribed process. Individuals or groups may also request, through the City Clerk, to appear as a delegation before the City's Audit and Administration Committee to state the nature of their request for reconsideration.

ADMINISTRATION

The General Manager of the department, or his or her designate, maintaining a particular advertising or sponsorship contract or otherwise designated with responsibility for commercial advertising and sponsorships on particular City-owned or City-controlled assets or public property, particular City events or particular City publications, will administer this policy.
CANADIAN CODE
OF ADVERTISING STANDARDS
TABLE OF CONTENTS

SELF-REGULATION OF ADVERTISING IN CANADA... 1
   Overview... 1
   Interpretation Guidelines... 1
   Definitions... 1
   Application... 2
   Exclusions... 2
   Political and Election Advertising... 2
   Excluded Media... 2
   Scope of the Code... 2

CODE PROVISIONS... 3
   1. Accuracy and Clarity... 3
   2. Disguised Advertising Techniques... 3
   3. Price Claims... 3
   4. Bait and Switch... 4
   5. Guarantees... 4
   6. Comparative Advertising... 4
   7. Testimonials... 4
   8. Professional or Scientific Claims... 4
   9. Imitation... 4
   10. Safety... 4
   11. Superstition and Fears... 4
   12. Advertising to Children... 4
   13. Advertising to Minors... 4
   14. Unacceptable Depictions and Portrayals... 4

THE PRECLEARANCE AND REGULATORY MOSAIC... 5

THE CONSUMER COMPLAINT PROCEDURE... 6
   How to Submit Consumer Complaints to ASC... 6
   How Consumer Complaints are Received and Handled by
   ASC and Council... 6
   Non-Reviewable Complaints... 6
   Complaint Review Process... 7
   Complaints Involving Clauses 10 or 14... 7
   Complaints Involving All Other Code clauses... 7
   Council Hearing and Decision... 7
   Appealing a Council Decision... 8
   Advertising Complaints Reports... 8
   Re-Opening a Case... 9
   Advertiser's Failure to Respond or Participate... 9
   Failure to Follow Procedure or Comply with Decision... 9

FOR MORE INFORMATION... 9

APPENDIX A: REGIONAL CONSUMER RESPONSE COUNCILS... 9
OVERVIEW
The Canadian Code of Advertising Standards (Code), which has been developed to promote the professional practice of advertising, was first published in 1963. Since that time it has been reviewed and revised periodically to keep it contemporary. The Code is administered by Advertising Standards Canada (ASC). ASC is the industry body committed to creating and maintaining community confidence in advertising.

DEFINITIONS
For the purposes of the Code and this document:

• “Advertising” is defined as any message (the content of which is controlled directly or indirectly by the advertiser) expressed in any language and communicated in any medium (except those listed under Exclusions on page 2) to Canadians with the intent to influence their choice, opinion or behaviour.

• “Advertising” also includes “advocacy advertising,” “government advertising,” “political advertising” and “election advertising” as defined below.

• “Advocacy advertising” is defined as “advertising” which presents information or a point-of-view bearing on a publicly recognized controversial issue.

• “Government advertising” is defined as “advertising” by any part of local, provincial or federal governments, or concerning policies, practices or programs of such governments, as distinct from “political advertising” and “election advertising.”
- "Political advertising" is defined as "advertising" appearing at any time regarding a political figure, a political party, a political or government policy or issue, or an electoral candidate.

- "Election advertising" includes "advertising" about any matter before the electorate for a referendum, "government advertising" and "political advertising," any of which advertising is communicated to the public within a time-frame that starts the day after a vote is called and ends the day after the vote is held. In this definition, a "vote" is deemed to have been called when the applicable writ is issued.

- "Special Interest Group" is defined as an identifiable group, representing more than one individual and/or organization, expressing a unified viewpoint that is critical of the content of an advertisement, and/or the production method or technique, and/or the medium, used to carry the advertisement and convey its perceived message.

APPLICATION
The Code applies to "advertising" by (or for):
- advertisers promoting the use of goods and services;
- corporations, organizations or institutions seeking to improve their public image or advance a point of view; and
- governments, government departments and crown corporations.

EXCLUSIONS
Political and Election Advertising
Canadians are entitled to expect that "political advertising" and "election advertising" will respect the standards articulated in the Code. However, it is not intended that the Code govern or restrict the free expression of public opinion or ideas through "political advertising" or "election advertising," which are excluded from the application of this Code.

Excluded Media
The following are excluded from the definition of "medium" and the application of the Code:
- foreign media (namely media that originate outside Canada and contain the advertising in question) unless the advertiser is a Canadian person or entity; and
- packaging, wrappers and labels.

SCOPE OF THE CODE
The authority of the Code applies only to the content of advertisements and does not prohibit the promotion of legal products or services or their portrayal in circumstances of normal use. The context and content of the advertisement and the audience actually, or likely to be, or intended to be, reached by the advertisement, and the medium/media used to deliver the advertisement, are relevant factors in assessing its conformity with the Code. In the matter of consumer complaints, Councils will be encouraged to refer, when in their judgment it would be helpful and appropriate to do so, to the principles expressed in the Gender Portrayal Guidelines respecting the representations of women and men in advertisements.
The Code is broadly supported by industry and is designed to help set and maintain standards of honesty, truth, accuracy, fairness and propriety in advertising. The provisions of the Code should be adhered to both in letter and in spirit. Advertisers and their representatives must substantiate their advertised claims promptly when requested to do so by a Council.

1. ACCURACY AND CLARITY
(a) Advertisements must not contain inaccurate or deceptive claims, statements, illustrations or representations, either direct or implied, with regard to a product or service. In assessing the truthfulness and accuracy of a message, the concern is not with the intent of the sender or precise legality of the presentation. Rather, the focus is on the message as received or perceived, i.e. the general impression conveyed by the advertisement.
(b) Advertisements must not omit relevant information in a manner that, in the result, is deceptive.
(c) All pertinent details of an advertised offer must be clearly and understandably stated.
(d) Disclaimers and asterisked or footnoted information must not contradict more prominent aspects of the message and should be located and presented in such a manner as to be clearly visible and/or audible.
(e) Both in principle and practice, all advertising claims and representations must be supportable. If the support on which an advertised claim or representation depends is test or survey data, such data must be reasonably competent and reliable, reflecting accepted principles of research design and execution that characterize the current state of the art. At the same time, however, such research should be economically and technically feasible, with due recognition of the various costs of doing business.
(f) The entity that is the advertiser in an advocacy advertisement must be clearly identified as the advertiser in either or both the audio or video portion of the advocacy advertisement.

2. DISGUISED ADVERTISING TECHNIQUES
No advertisement shall be presented in a format or style that conceals its commercial intent.

3. PRICE CLAIMS
(a) No advertisement shall include deceptive price claims or discounts, unrealistic price comparisons or exaggerated claims as to worth or value. "Regular Price," "Suggested Retail Price," "Manufacturer's List Price" and "Fair Market Value" are deceptive terms when used by an advertiser to indicate a savings, unless they represent prices at which, in the marketplace where the advertisement appears, the advertiser actually sold a substantial volume of the advertised product or service within a reasonable period of time (such as six months) immediately before or after making the representation in the advertisement; or offered the product or service for sale in good faith for a substantial period of time (such as six months) immediately before or after making the representation in the advertisement.
(b) Where price discounts are offered, qualifying statements such as "up to," "XX off," etc., must be in easily readable type, in close proximity to the prices quoted and, where practical, legitimate regular prices must be included.
(c) Prices quoted in advertisements in Canadian media, other than in Canadian funds, must be so identified.
4. BAIT AND SWITCH
Advertisements must not misrepresent the consumer's opportunity to purchase the goods and services at the terms presented. If supply of the sale item is limited, or the seller can fulfill only limited demand, this must be clearly stated in the advertisement.

5. GUARANTEES
No advertisement shall offer a guarantee or warranty, unless the guarantee or warranty is fully explained as to conditions and limits and the name of the guarantor or warrantor is provided, or it is indicated where such information may be obtained.

6. COMPARATIVE ADVERTISING
Advertisements must not, unfairly, discredit, disparage or attack other products, services, advertisements or companies, or exaggerate the nature or importance of competitive differences.

7. TESTIMONIALS
Testimonials, endorsements or representations of opinion or preference, must reflect the genuine, reasonably current opinion of the individual(s), group or organization making such representations, and must be based upon adequate information about or experience with the product or service being advertised, and must not otherwise be deceptive.

8. PROFESSIONAL OR SCIENTIFIC CLAIMS
Advertisements must not distort the true meaning of statements made by professionals or scientific authorities. Advertising claims must not imply that they have a scientific basis that they do not truly possess. Any scientific, professional or authoritative claims or statements must be applicable to the Canadian context, unless otherwise clearly stated.

9. IMITATION
No advertiser shall imitate the copy, slogans or illustrations of another advertiser in such a manner as to mislead the consumer.

10. SAFETY
Advertisements must not without reason, justifiable on educational or social grounds, display a disregard for safety by depicting situations that might reasonably be interpreted as encouraging unsafe or dangerous practices, or acts.

11. SUPERSTITION AND FEARS
Advertisements must not exploit superstitions or play upon fears to mislead the consumer.

12. ADVERTISING TO CHILDREN
Advertising that is directed to children must not exploit their credulity, lack of experience or their sense of loyalty, and must not present information or illustrations that might result in their physical, emotional or moral harm.

Child-directed advertising in the broadcast media is separately regulated by the Broadcast Code for Advertising to Children, also administered by ASC. Advertising to children in Quebec is prohibited by the Quebec Consumer Protection Act.

13. ADVERTISING TO MINORS
Products prohibited from sale to minors must not be advertised in such a way as to appeal particularly to persons under legal age, and people featured in advertisements for such products must be, and clearly seen to be, adults under the law.

14. UNACCEPTABLE DEPICTIONS AND PORTRAYALS
It is recognized that advertisements may be distasteful without necessarily conflicting with the provisions of this Clause 14; and the fact that a particular product or service may be offensive to some people is not sufficient grounds for objecting to an advertisement for that product or service.

Advertisements shall not:
(a) condone any form of personal discrimination, including that based upon race, national origin, religion, sex or age;
(b) appear in a realistic manner to exploit, condone or incite violence; nor appear to condone, or directly encourage, bullying; nor directly encourage, or exhibit obvious indifference to, unlawful behaviour;
(c) demean, denigrate or disparage any identifiable person, group of persons, firm, organization, industrial or commercial activity, profession, product or service or attempt to bring it or them into public contempt or ridicule;
(d) undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.
The Code is not intended to replace the many laws and guidelines designed to regulate advertising in Canada. Nor are the Code's provisions intended to be senior to any other aspect of Canada’s preclearance and regulatory apparatus — to which some require mandatory compliance; others voluntary. As its name implies, the Code has as its primary purpose the expression of Canadian standards in advertising that, when followed, should result in responsible yet effective advertising without unreasonably blunting the underlying fundamental right to advertise lawfully-sold products and services in a fair but competitive manner.

ASC also provides copy clearance services, upon request, to various groups within the advertising and marketing industry through ASC Clearance Services. Every approved copy submission includes a written inscription, prominently displayed, advising the advertiser that the copy was approved only within the context of (and for as long as the copy complies with) the provisions of the applicable (named) Act, Regulations and Guidelines (if any).

The inscription may also note that an advertisement produced from the approved submission could provoke a consumer complaint under the Code, and that if such complaint is upheld by a Council, the advertiser will be requested by ASC to withdraw the commercial or amend it to comply with the Code.
Advertising Standards Canada

THE CONSUMER COMPLAINT PROCEDURE

HOW TO SUBMIT CONSUMER COMPLAINTS TO ASC
The procedure for consumers wishing to complain to ASC that an "advertisement" (as defined in the Code) contravenes the Code, is as follows:

ASC accepts complaints submitted by mail, e-mail, or fax. Telephoned complaints cannot be accepted.

To submit a complaint by e-mail:
• Complete the e-mail complaint form and follow the instructions provided on ASC's website (www.adstandards.com).

To submit a complaint by letter:
• Include your full name, telephone number, complete mailing address and (if available) fax number and e-mail address.
• Identify the product or service being advertised and the medium in which the advertisement appears:
  • For Print Advertisements: identify the name and date of the publication(s) in which you saw the advertisement(s) and include a copy of the advertisement(s).
  • For Out-of-home Advertisements, such as outdoor, transit or similar advertisements: identify the date on and exact location at which you saw the advertisement.
  • For Broadcast Advertisements: identify the station, time and date on/at which you saw/heard the commercial and provide a brief description of the commercial.
  • For Cinema Advertisements: identify the date of viewing and the name and location of the movie theatre at which you saw the advertisement and provide a brief description of the advertisement.
  • For Internet Advertisements: identify the date of viewing, website, and include a print-out of the advertisement and other applicable web pages (if any).
• Explain the reason or basis for the complaint and, if known, the provision(s) of the Code that may apply.
• Submit the complaint to ASC at the address, or fax number listed on page 9.

HOW CONSUMER COMPLAINTS ARE RECEIVED AND HANDLED BY ASC AND COUNCIL
In keeping with their mandate within today's self-regulatory environment, ASC and Council carefully consider and respond to all written consumer complaints received by them about advertising that allegedly does not comply with the Code.

The critical factor in determining whether an advertisement should be reviewed by Council is not the number of complaints received. The fundamental issue is only whether an advertisement, if the subject of any number of complaints, appears to contravene the Code. Ultimately, that question can only be answered by Council in response to one or more bona fide complaints that originate from the public.

NON-REVIEWABLE COMPLAINTS
If, upon review, it appears to ASC or Council that a complaint is not a disguised trade complaint or special interest group complaint, and that based on the provisions of the Code reasonable grounds for the complaint appear to exist, then the consumer complaint will be accepted for processing. If at any time thereafter during the complaint review process, but prior to the release of Council's decision on the complaint, either ASC or Council concludes that, in reality, the complaint is a trade complaint or a special interest group complaint, but not a consumer complaint, the process will be discontinued and the complainant notified accordingly. In these cases, the complainant will be reminded that alternative approaches should be considered by the complainant for registering an advertising-related complaint, such as under ASC's Trade Dispute Procedure or Special Interest Group Complaint Procedure.
Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that:

a) the specific advertisement(s) about which the complainant alleges a Code violation has/have not been identified;

b) based on the provisions of the Code, reasonable grounds for the complaint do not appear to exist;

c) the advertising, or such part of the advertising to which the complaint refers is, substantially, also the subject of litigation or other legal action then actively undertaken and pursued in Canada; or is under review, or subject to an order, by a Canadian court, or an agent or agency (or some other comparable entity) of the Canadian Government; or has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government; or that

d) such advertising is not within the purview of the Code or the complaint is beyond the resources of ASC to resolve under this Procedure; or that

e) the complainant is abusing this Consumer Complaint Procedure by having as one of the complainant’s primary intentions to generate publicity for a cause or issue.

COMPLAINT REVIEW PROCESS

If, after a complaint is received, there is a preliminary determination that there may be a Code infraction by the advertisement (i.e. an accepted complaint), the advertiser will be notified in writing of the nature of the complaint and, if informed consent is freely granted by the complainant to ASC, the identity of the complainant.

COMPLAINTS INVOLVING CLAUSES 10 OR 14

When an accepted complaint relates to the provisions of Clause 10 (Safety) or Clause 14 (Unacceptable Depictions and Portrayals), the advertiser will be asked to promptly respond (copying ASC), within a stated timeframe, directly to the complainant if the complainant has agreed to be identified. If the complainant does not wish to be identified, the advertiser will respond directly to ASC, who will redirect the response to the complainant. Complaints about alleged offences under Clauses 10 or 14 that are handled in this way will go forward for deliberation by a Council if the complainant notifies ASC that the complainant remains dissatisfied after receiving the advertiser’s response, and if, after reviewing the advertiser’s response, ASC believes the advertising still raises an issue under the Code. Otherwise, the matter will not be forwarded to a Council and will not proceed further.

COMPLAINTS INVOLVING ALL OTHER CODE CLAUSES

Where a preliminary determination has been made that there may be an infraction of one or more of the other clauses of the Code (i.e. other than Clauses 10 or 14), the advertiser will be asked to respond directly to ASC by providing, in writing and without unreasonable delay, information requested by Council in order that Council may deliberate and reach a fully-informed decision about whether the Code has, in fact, been violated.

COUNCIL HEARING AND DECISION

Complaints directed to ASC will be initially evaluated by ASC staff. If a complaint raises a potential Code issue and it concerns national advertising in the French-language, or advertising that appears only in Quebec, the complaint will be evaluated and decided by le Conseil des normes in Montreal. Complaints about an advertisement will be directed to one of the regional Councils identified in Appendix A to the Code if the advertisement relates to local or regional advertising in the vicinity of that Council. Complaints from outside Ontario about national English-language advertising will be evaluated and decided by Council members who have national experience and exposure at a Council Hearing that includes English-language representation from the Council in the region where the complaint(s) originated. Otherwise, complaints about national English-language advertisements will be directed to the national Council in Toronto.

At the initial deliberation by a Council, the materials available for Council’s review include, at a minimum, the complaint letter, the advertiser’s written response, if any, and a copy of the advertising in question.
Council’s decisions are by majority vote. Any member of Council may abstain from voting on any matter.

If a Council concludes an advertisement violates the Code, the advertiser, with a copy to the complainant, will be notified of the decision in writing and requested to appropriately amend the advertising in question or withdraw it, in either case without unreasonable delay.

If, at the initial deliberation by a Council, the complaint is not upheld by Council, both the complainant and the advertiser will be notified in writing with an explanation for Council’s decision.

APPEALING A COUNCIL DECISION
Both the complainant and the advertiser are entitled to request an appeal from a decision of Council by filing a Request for Appeal addressed to ASC. The Request for Appeal must be in writing and received at ASC within seven working days after the decision is sent to the parties. It must provide the appellant’s reasons for believing the decision was in error.

A request by an advertiser for an appeal will be considered if that advertiser undertakes in writing to withdraw the advertising in question within 11 working days after the Request for Appeal is received at ASC. The withdrawn advertising may be reinstated, however, if at the appeal hearing the Appeal Panel decides not to uphold the complaint. Advertisers will be granted a reasonable extension of time in which to withdraw the advertising if Council is satisfied that the advertising medium used to convey the advertising is unable to facilitate the withdrawal in the designated time.

A five-person Appeal Panel will be selected from among a roster of persons who did not serve at the original deliberation by a Council. The Appeal Panel will comprise two public representatives with the balance coming from the advertiser, advertising agency and media sectors. Each party will be given at least five working days advance written notice of the date of the appeal hearing.

Both the advertiser and the complainant will be requested to make their submissions in writing to the Appeal Panel. The submissions must be brief, confined strictly to the matters under appeal and received by the Standards Division at least two full working days in advance of the appeal hearing.

Decisions of Appeal Panels will be by majority vote and will be sent to both parties within five working days of the appeal hearing. At the appeal hearing, the complaint will be treated as a new complaint and the matter reconsidered in its entirety.

Decisions by Appeal Panels will be binding and final.

ADVERTISING COMPLAINTS REPORTS
Each year, ASC will publish one or more reports on consumers’ complaints to ASC about advertising. The principal purpose of these reports is to serve, for the benefit of the advertising industry and the interested public, as a guide to the interpretation of the Code as applied to advertising issues that concerned the public.

The advertising complaints reports will be divided into two sections. One section will provide details, including advertiser and advertisement identification, of those consumer complaints upheld under the Code. In this section, advertisers will be entitled to state their position on their advertisements about which a Council has upheld one or more complaints. The other section will summarize, without naming the advertiser, consumer complaints upheld by Councils about advertisements dealt with appropriately by the advertiser. Appropriate action by the advertiser means action voluntarily undertaken by the advertiser, without delay, to amend the advertisement to correct the alleged infraction, after being advised by ASC that a complaint had been received and before the matter was brought forward to Council for review and decision. Alternatively, the advertiser, without delay, may withdraw the advertisement from any further exposure, distribution or circulation and, in the case of retail advertising, provide a correction advertisement that appears in consumer-oriented media addressed to the same consumers to whom the misleading or offending advertising was originally directed.
RE-OPENING A CASE
ASC will have the discretionary right to reactivate the Consumer Complaint Procedure, in whole or part, including the imposition of sanctions provided in the Code, if an advertiser fails to fulfil its undertaking to withdraw or amend an advertisement; or if the matter underlying the complaint is of a continuing or repetitive nature, suggesting an avoidance of the provision(s) of the Code.

ADVERTISER’S FAILURE TO RESPOND OR PARTICIPATE
If an advertiser fails to respond in a timely manner to ASC’s request for a copy of the advertisement that is the subject of a consumer complaint, ASC may ask the carrying media to assist ASC by providing it with a copy of the advertisement in question. If an advertiser fails to respond to a complaint or participate in the Consumer Complaint Procedure the complaint may be decided in the advertiser’s absence based on the information already in the possession of the applicable Council and on any further pertinent information submitted by the complainant for Council’s review.

FAILURE TO FOLLOW PROCEDURE OR COMPLY WITH DECISION
The Code is a reflection of advertising standards by which industry wishes to be held accountable. Because self-regulation is more than self-restraint on the part of individual companies or entities, the Code would be incomplete without effective sanctions to enforce compliance.

If an advertiser fails to voluntarily comply with the decision of a Council, ASC:
• will advise exhibiting media of the advertiser’s failure to co-operate and request media’s support in no longer exhibiting the advertising in question; and
• may publicly declare, in such manner as Council deems appropriate, that the advertising in question, and the advertiser who will be identified, have been found to violate the Code.

FOR MORE INFORMATION
Questions regarding the interpretation and application of the Code should be addressed to ASC:

Advertising Standards Canada
175 Bloor Street East
South Tower, Suite 1801
Toronto, ON M4W 3R8
Telephone: 416 961-6311
Fax: 416 961-7904

Les normes canadiennes de la publicité
2015 Peel Street
Suite 915
Montreal, Quebec H3A 1T8
Telephone: 514 931-8060
Fax: 514 931-2797

E-mail: info@adstandards.com
Website: www.adstandards.com

APPENDIX A: REGIONAL CONSUMER RESPONSE COUNCILS
Alberta Consumer Response Council
albertacouncil@adstandards.com

British Columbia Consumer Response Council
bccouncil@adstandards.com

Atlantic Consumer Response Council
atlanticcouncil@adstandards.com