

# AD COMPLAINTS AND DISPUTES REPORT

2019 YEAR IN REVIEW

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## Ad Standards™

Ad Standards is the self-regulatory body for Canada’s advertising industry. Through member support and cooperative industry initiatives, we build public confidence in advertising by helping ensure ads, in all media, are truthful, fair and accurate. We administer the *Canadian Code of Advertising Standards*, which sets criteria for acceptable advertising, and provide a mechanism for adjudicating and resolving consumer complaints and competitive disputes. We also review advertising creative and offer consultative services to help ensure compliance with relevant laws and regulatory guidelines. Our collaborative relationships with Canadian regulators and global self-regulatory organizations provide a diversity of valuable insights, which inform our initiatives and goals.

# In Support of Advertising that is Truthful, Fair & Accurate

Advertising Standards Canada (Ad Standards) is the national, independent, self-regulatory body for the advertising industry in Canada. The organization was created by the Canadian advertising industry to support both advertisers and the public. Through responsible industry self-regulation, achieved principally by the administration and enforcement of the *Canadian Code of Advertising Standards*, we strive to support and encourage confidence in Canadian advertising.

We recognize that an effective response mechanism is essential to maintaining public confidence in advertising. Through our *Consumer Complaint Procedure*, we accept and respond to complaints from the public about advertising appearing in Canadian media. Reporting on complaints upheld by Standards Councils is an important part of this process, providing insights to industry as to what is, or is not, found to be acceptable under the *Code*.

Since 1976, Ad Standards (and its predecessor organizations) has also administered a mechanism through which competitor advertisers can hold each other accountable. In 2019, Ad Standards introduced an updated *Advertising Dispute Procedure*. This new, streamlined process is intended to allow for more efficient and cost-effective means by which advertisers may challenge the claims of a competitor, without sacrificing the fairness or expertise brought to bear in case resolutions.

This 2019 Ad Complaints and Disputes Report provides an account of the consumer complaints received and investigated in 2019. We also report on the two cases resolved under the new *Advertising Dispute Procedure*, along with updates about a new interpretation guideline, and updates to the Standards Council implemented in the past year.

We encourage readers of this report to review the individual [Recent Complaint Case Summaries](#), and [Advertiser Dispute Procedure Case Summaries](#), posted on our website. These summaries provide insights about how Council and Ad Dispute Panels interpret and apply the *Canadian Code of Advertising Standards*.

If you have questions about this report, or how we at Ad Standards serve the advertising industry and the Canadian public, please do not hesitate to reach out.



**Catherine Bate**  
Chief Legal and Policy Officer

## Consumer Complaints (Just the Numbers)

### BY COMPLAINT

1,858



complaints received and reviewed by staff

949



complaints accepted by staff for consideration under the *Code*

351



complaints raised one or more potential issues under the *Code*

### BY AD

1,142

ads generated one or more consumer complaints

700

ads considered by staff under the *Code*

267

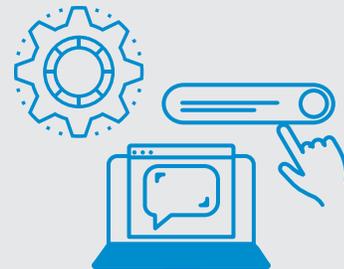
ads raised one or more potential issues under the *Code*

217

ads resolved without adjudication by Council

50

ads referred to Council



### STANDARDS COUNCIL ADJUDICATIONS

50



ads referred to Council

37



ads were found by Council to contravene the *Code*

## Consumer Complaints

### Overview

In 2019, Ad Standards received 1,858 complaints from the public. This was a slight drop from the number received in 2018 (when we tracked 2,005 complaints), due largely to a new practice limiting the number of complaints to ten per advertisement that will be reviewed by staff. Effective October 2018, when the same ad is complained about, alleging the same violation of the *Code*, only the first ten such complaints received are processed by Ad Standards' staff.

Of the total complaints received, 949 complaints about 700 ads were accepted by staff for consideration under the *Canadian Code of Advertising Standards (Code)*.

The remaining complaints were not accepted because they were either exempted from the application of the *Code* (e.g. airing on U.S. television stations, meeting the definition of a political or election ad which are excluded media, etc.), or the subject matter of the complaint was outside of Ad Standards' jurisdiction (e.g. complaints related to the advertising of unauthorized natural health products, which were duly reported to Health Canada by Ad Standards' Clearance Services).

Of the complaints accepted and reviewed, 351 complaints about 267 ads raised one or more potential issues under the *Code*.

COMPLAINTS	COMPLAINTS	ADS
Received and reviewed by staff	1,858	1,142
Accepted for consideration under the <i>Code</i>	949	700
Raised potential <i>Code</i> issue(s)	351	267

### Did you know that...

It only takes one complaint for Ad Standards to open a file about an ad. Ad Standards staff will address up to ten complaints per advertisement. Not all complaints raise issues under the *Code*. Of the 949 complaints accepted, the majority did not raise issues under the *Code* and were not further adjudicated after the initial review. Nevertheless, Ad Standards' staff responds to each complainant explaining why no issue was found.

## Administratively Resolved Cases

Ad Standards uses a streamlined procedure to handle simple, non-complicated cases that involve an apparent contravention of either or both Clauses 1 (Accuracy and Clarity) and 3 (Price Claims), without forwarding the case to Council. From time to time, Ad Standards may also rely on this simplified procedure where it is appropriate to resolve the matter expediently in the best interests of both the advertiser and consumer. This mechanism is available when the advertiser has permanently withdrawn (or appropriately amended) the advertisement before, or immediately upon being advised of, the complaint by Ad Standards. For retail advertising, the advertiser must also take corrective action in consumer-facing media, or at retail locations, to identify and correct the original error. Complaints handled in this manner are not forwarded to a Standards Council for adjudication.

Of the complaints administratively resolved in 2019, the main concerns arising under Clause 1 related to:

- Promotional offers by retailers that omitted a restriction/condition required in order to qualify for the offer;
- Promotional membership offers that did not include additional applicable fees, such as “annual fees”, “processing fees”, or requirement from consumers to buy their own device for telecommunications offers;
- Advertisements that omitted relevant information, in particular related to rebate offers, additional components sold separately and at additional cost, and reward program offers that omitted terms needed to qualify;
- Terms of an ad that were not applicable to consumers in all provinces where the ad appeared; and
- Ads using unqualified claims, such as “unlimited”, “only” or “without risk” when, in fact, such offers or claims required qualification.

Under Clause 3, the main concerns from complainants related to:

- Non-disclosure of US currency in advertisements targeted or available to Canadian consumers;
- Deceptive price claims or discounts, inflated regular prices and non-disclosure of regular prices.

### ***Influencer Marketing and Testimonials (Clause 7)***

In 2019, Ad Standards continued to allow influencers, and/or the advertiser of the goods or services being promoted, to administratively resolve cases by amending the post where the only shortcoming was the failure to make adequate disclosure of the material connection between the influencer and the advertiser (e.g. the omission of #ad).

Ad Standards received 6 complaints under Clause 7 in 2019, in line with 2018 when we received 8 complaints. These 6 complaints were administratively resolved:

- 5 related to non or unclear disclosure by influencers and were appropriately amended by the influencers upon receipt of the complaints;
- 1 related to a testimonial that the complainant alleged was not current and therefore not genuine. The publisher took appropriate steps to include the up-to-date testimonial in its magazine.

As the industry has now had a time to adjust and adopt to guidance published by Ad Standards (including the [Ad Standards Influencer Marketing Steering Committee’s Disclosure Guidelines](#)) and the Competition Bureau, future such complaints will follow the regular procedure and will be reported in Ad Standards’ Complaint Case Summaries.

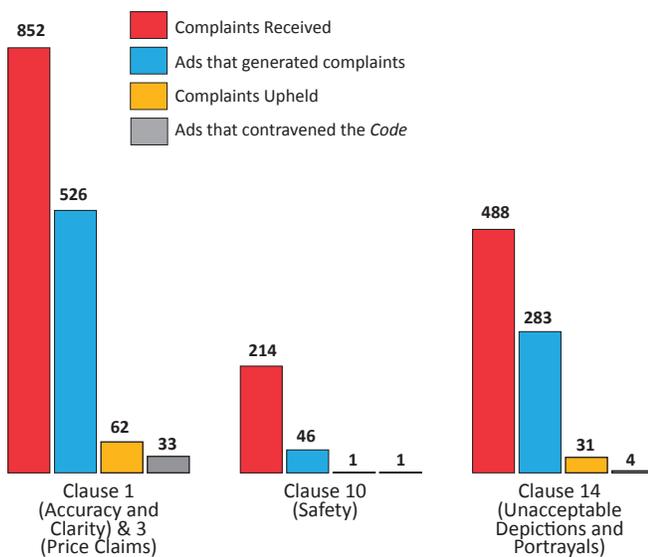
## Standards Council Adjudications

A total of 50 ads were forwarded to Standards Council for adjudication. Of these, 37 were found to contravene one or more clauses of the *Code*. Case Summaries of these upheld complaints can be found under [Archived Case Summaries](#).

## Complaints and Adjudications by *Code* Clause

The *Code* sets out the standards for acceptable advertising and provides the basis for the review and adjudication of consumer complaints about advertising. Consistent with previous years, the majority of consumer complaints received in 2019 related to Clauses 1 & 3 (Accuracy & Clarity / Price Claims), Clause 14 (Unacceptable Depictions and Portrayals), and Clause 10 (Safety).

### 2019 Ad Complaints Report: Most Common clauses



\*One case was found to contravene both Clause 1 and Clause 14, which explains why the “Ads that contravened the *Code*” category totals 38 across the three charts, rather than the 37 noted above.

## Clauses 1 & 3 (Accuracy & Clarity / Price Claims)

In 2019, Ad Standards received 852 complaints concerning 526 advertisements alleging misleading or inaccurate advertising (Clauses 1 and/or 3). Ultimately, Councils upheld 62 complaints about 33 advertisements. These involved advertisements that omitted relevant information, did not clearly state all pertinent details of an offer, contained unsubstantiated claims, or contained misleading price claims.

## Clause 10 (Safety)

A total of 214 complaints about 46 advertisements involved safety concerns, and 1 complaint was upheld by Councils about 1 advertisement.

## Clause 14 (Unacceptable Depictions and Portrayals)

Most complaints evaluated under Clause 14 involve subjective matters of personal taste or preference and do not ultimately raise issues under the *Code*. 488 complaints about 283 advertisements were reviewed under Clause 14. Of these, Councils adjudicated and upheld 31 complaints about 4 advertisements. The balance did not meet the threshold to raise issues under this clause.

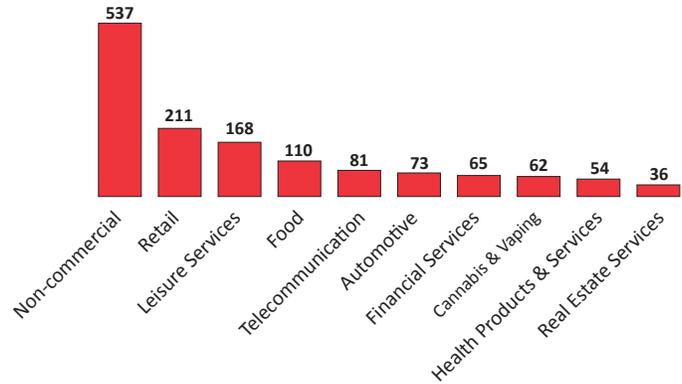
## Complaints By Category of Advertising

2019 was the third year in a row in which Ad Standards received the highest number of complaints about advertising by non-commercial entities with 537 complaints. Of these, 356 complaints were submitted about advocacy advertising. The most common complaints in this category related to Clause 1 (Accuracy and Clarity) and Clause 14 (Unacceptable Depictions and Portrayals). 136 complaints related to political/ election advertising, which is outside of the scope of application of the *Code* (See Page 7 of this report for further information about this exclusion).

The commercial advertising category that traditionally generated the highest number of complaints, retail advertising, followed with 211 complaints. Third, with 168 complaints, was advertising in the leisure services category (including bars and restaurants, hotels/ accommodation, and entertainment).

## Complaints by Category

Top ten categories

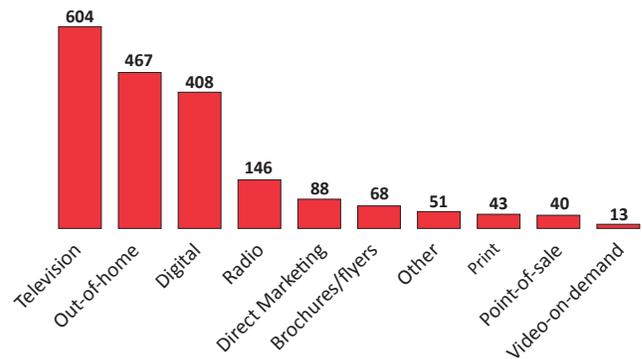


## Complaints by Media

Television advertising again garnered the highest number of complaints (604) of any medium. Advertising on billboards, in transit, and other out-of-home media generated the second highest number of complaints (467). Digital advertising, including advertising on advertiser-owned websites, display advertisements and email advertising messages, accounted for 408 complaints, of which 135 complaints related to ads on social media platforms.

## Complaints by Media Type

Top ten media types



## What's New in 2019

### ***Interpretation Guideline #6: Scope of “government advertising”, “political advertising” and “election advertising”***

The *Code* states that “political advertising” and “election advertising” are both excluded from its application. Although these are defined terms in the *Code*, questions emerged from both Standards Council and advertisers about the distinction between “political advertising”, “election advertising” and “government advertising”. Ad Standards therefore convened a task force to review the definitions in the context of modern political and government advertising, resulting in the issuance of *Interpretation Guideline #6*. This document goes into further detail about the scope and application of these definitions, with examples, in an effort to bring greater clarity and consistency as to when the *Code* applies and when certain advertising is excluded. The full Interpretation Guideline is available here: <https://adstandards.ca/interpretation-guidelines/>

In conjunction with the Interpretation Guideline #6, Ad Standards issued an advisory reminding advertisers engaged in political and election advertising about the principles of truthful, fair and accurate advertising under the *Code*. Although political and election advertising is excluded from the application of the *Code*, and Ad Standards therefore does not accept complaints about such ads for adjudication, the *Code* provides that: “Canadians are entitled to expect that the standards in the *Code* will be respected in advertising by and for Canada’s political parties and governments”. As stated in the advisory, “Ad Standards believes that both the public and the advertising industry benefit from furthering the same high level of public confidence in political and election advertising, as in advertising in Canada more generally.” The full text of the advisory is available here: <https://adstandards.ca/wp-content/uploads/2019/07/Advisory-July-2019.pdf>

### **Did you know that...**

Government advertising is subject to the application of the *Code* and Ad Standards accepts complaints about government advertising at all levels under the Consumer Complaints Procedure. Furthermore, since 2016 Ad Standards has been engaged to conduct proactive independent reviews of government advertising by the Government of Canada against criteria established for “non-partisan communications”. In 2019, Ad Standards was engaged to conduct similar non-partisan advertising reviews for the Government of British Columbia.

### ***Revised Advertising Dispute Procedure***

In 1976, Ad Standards first formally introduced a mechanism through which competitors could resolve advertising disputes. Ad Standards undertook a review of the procedure in 2018 and, following consultation with members and reviews of other self-regulatory advertising dispute procedures in place around the world, introduced the new *Advertising Dispute Procedure* in 2019.

The objective continues to be a relatively quick, uncomplicated, practical, informal and cost-effective method of resolving advertising disputes between advertising competitors in Canada, without them having to resort to legal action. It is intended to facilitate the resolution of such disputes and the expeditious removal or amendment of advertising that contravenes the *Code*.

Some of the changes in the new *Advertising Dispute Procedure* (the Procedure) compared to its immediate predecessor include:

- Ad Standards must be satisfied by the complainant advertiser that it has not succeeded in its good faith attempt to resolve the disputed issues directly with the defendant advertiser. Unless the parties have attempted but failed to come to a resolution first, Ad Standards will not accept the case for adjudication.
- Resolution Meetings between the parties are now optional. The Procedure allows for the parties to meet to discuss claims or issues in contention before the matter is set down for deliberations by a Dispute Panel. To date, however, the parties have preferred to proceed directly to adjudication without a Resolution Meeting.
- The Dispute Panel considers written submissions only. There are no live hearings or oral arguments made by either party. Instead, the Ad Dispute Panel (chaired by a lawyer with expertise in advertising law) reviews the complaint, the advertiser's response, and written replies from each party. The Ad Dispute Panel's decision is final and non-appealable.

Failure by the defendant advertiser to comply fully with the Ad Dispute Panel's decision, whether or not the advertiser chooses to participate in the Procedure:

(i) will result in Ad Standards advising the exhibiting media of this fact and, similarly, notifying the Competition Bureau; and

(ii) may result in Ad Standards publishing its summary of the Ad Dispute Panel's decision of the case, including a summary of the facts and issues in dispute, an identification of both parties to the dispute, and a description of the advertising in question.

The Advertising Disputes otherwise remain confidential. Neither the complainant advertiser nor the defendant advertiser may disclose or publicly discuss the Ad Dispute Panel's decision, except by the advertisers themselves within their respective organizations. Case summaries published by Ad Standards do not identify the parties or the advertising, provided that the defendant advertiser fully complies with the decision. They are published to inform the advertising community and the public of the outcome of complaints about advertising that allegedly contravenes the *Code*, and thereby provide clarity about the kinds of advertising activity that have been found to conflict with the *Code* in some respect.

The full Procedure and case summaries are available here: <https://adstandards.ca/complaints/advertiser-disputes/>

## Case Summaries: Advertiser Disputes

In 2019, two cases were adjudicated by Ad Dispute Panels under the Advertising Dispute Procedure. The summaries of the cases (also available at the link above) are as follows:

### Case #1 - 2019

ADVERTISER CATEGORY:	CONSUMER PRODUCT MANUFACTURER
<b>Region:</b>	National
<b>Media:</b>	Television, In-store, Digital
<b>Clause(s) Under Consideration</b>	Clauses 1 and 6.
<b>Description:</b>	A multi-media advertising campaign invited consumers to switch to a higher quality product.
<b>Complaint:</b>	A competitor, who was the market leader in the product category, alleged that the variations on the claims in the campaign were each a comparison to its product and, by implication, suggested that its product was of a lower quality than that of the defendant. The complainant believed the advertising was misleading, as well as being an unfair comparison.
<b>Defendant's Position:</b>	The defendant submitted that the claims were not comparative. Rather, the claims were self-referential. In the alternative, if there was comparison at all, the comparison was to the defendant's other products in the category and not to the complainant's product.
<b>Ad Dispute Panel Decision:</b>	The Panel was not provided with any evidence, by either party, of how consumers interpreted the advertising claims. Clause 1 of the <i>Code</i> requires the Panel to assess the meaning of the advertising with a focus "on, the message, claim or representation as received or perceived"; that is, the "general impression". With this as its guide, the Panel concluded that the claims did imply some form of superiority and that the comparison would be considered by consumers to be against the market leader, not against the defendant's other products. Given that there was no evidence before the Panel to substantiate the implication that the defendant's product was superior to that of the complainant (or, for that matter, of others in the market), the Panel found that the claim contravened Clause 1(a) of the <i>Code</i> , which prohibits direct or implied "inaccurate, deceptive or otherwise misleading claims, statements, illustrations or representations." The unsubstantiated comparison was also found by the Panel to violate Clause 6 of the <i>Code</i> , which prohibits unfair comparative claims. One variation of the claim, which did not invite the consumer to switch, but only identified the brand of product, was found not to violate the <i>Code</i> .

## Case #2 - 2019

ADVERTISER CATEGORY:	CONSUMER PRODUCT MANUFACTURER
<b>Region:</b>	National
<b>Media:</b>	Digital, Out-of-home, Print
<b>Clause(s) Under Consideration</b>	Clauses 1(a) and (e), Clause 6
<b>Description:</b>	Advertising claimed that a consumer product/service: (i) was the highest rated of its class; (ii) received perfect star ratings from consumers; and (iii) was the best selling in the category.
<b>Complaint:</b>	The complainant alleged that claims could not be substantiated and were misleading, as well as unfairly disparaging.
<b>Defendant's Position:</b>	The defendant advertiser submitted that the "highest rated" claim and the perfect star rating were accurate and that all necessary information regarding its consumer ratings were easily accessible on its website. The defendant advertiser also stated that it had evidence to substantiate the "best selling" claim.
<b>Ad Dispute Panel Decision:</b>	<p>The Panel found that the overall impression created by an unqualified claim of 'highest rated' is that the product/service is superior to all others in the category. Such an unqualified superiority claim would, in the Panel's view, require robust, reliable, well designed, head-to-head testing versus other products/service offerings in the category. Such support was not provided. Even on a narrower reading of the claim, the advertiser did not provide adequate substantiation to the Panel that its product/service had higher consumer ratings on its website than those of its competitors.</p> <p>The perfect star rating used in the advertising reflected the "rounding up" practices of the advertiser's website service provider, and was repeated in advertising across various media. The Panel found that this resulted in misleading visual representations, and that the advertiser has the responsibility to ensure that all of its claims are accurate and not misleading, regardless of the practices of its providers. According to the Panel, an advertiser cannot visually depict an unqualified perfect star rating if not all ratings are perfect. The Panel further disagreed with the advertiser's position that, in an online selling environment, the rating could be sufficiently qualified or explained by further information available on the retail website.</p> <p>The advertiser submitted that the "best selling" claim was not currently being used in advertising, but did not undertake to permanently discontinue its use, and so the Panel adjudicated the claim. Although the advertiser indicated that it had sales data to support the claim, no substantiation was provided. According to the Panel, the onus is on the advertiser to provide all of the evidence and data on which it is relying to support the claim. The Panel notes that this is an unqualified comparative sales claim which would require current sales data for all products in the category sold at retail and online. The absence of reliable third party data capturing sales of this category does not provide a licence to make such a claim versus its competitor.</p> <p>For the reasons above, the Panel found that the advertising contravened both Clause 1 (a) and (e) of the Code. In addition, the Panel found that making superiority claims without sufficient support unfairly discredited the complainant advertiser and resulted in the exaggeration of competitive differences between the two brands, contrary to Clause 6 of the Code.</p>

## Standards Council and Ad Dispute Panels

The Standards Council (Council) plays a vital role in ensuring objective and fair complaint adjudication. While Ad Standards' staff administer the process by which consumers submit their written complaints about advertisements, those complaints that raise potential issues under the *Code* are reviewed and adjudicated by Council. Each Council includes senior industry and public representatives from across Canada. The current members of the Council are posted on Ad Standards' website.

Under the revised Advertising Dispute Procedure, a three-member Ad Dispute Panel (Panel) is convened to consider each case brought between advertisers. A lawyer experienced in advertising and marketing law chairs each Panel. The other two members of the Panel are drawn from a roster of people from the advertiser, communication/advertising agency, media and industry sectors.

We are indebted to the members of the Council and Panels who adjudicate the cases brought before them. They give so freely of their time, energy and passion to the careful and considered application of the *Code* to help ensure that Canadian advertising is truthful, fair and accurate.

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