

ADVISORY ON THE MEANING OF THE PHRASE “NO CONTRACTS” IN ADVERTISING

This Advisory was developed to provide guidance to the advertising industry to help ensure that advertising for products or services on a “No Contract” basis complies with the provisions of the Canadian Code of Advertising Standards.

What is the concern?

Advertising Standards Canada (ASC) hears from consumers who question when advertisers apply significant terms and conditions to the purchase of services or products they advertise as being available on a “No Contract” basis.

Consumers tell ASC they believe they have been misled by advertising that appears to indicate that “no conditions” apply to purchase or service offers, when this is clearly not the case.

What does the term “No Contract” mean in advertising?

A case was recently adjudicated by the National Consumer Response Council that highlights this issue. (The Consumer Response Council is the independent body composed of senior industry and public representatives that adjudicates consumers’ complaints to ASC about advertising.)

In this instance, the advertiser claimed there were “No Contracts” attached to its service when, in fact, the service was subject to a fairly detailed and comprehensive compendium called “Terms of Service”.

The advertiser defended its advertising on the grounds that its “No Contracts” claim was only intended to refer to a subscriber’s right to cancel the advertiser’s service without penalty on 30 days’ notice. The advertiser also submitted to ASC that its competitors, as well as other advertisers in unrelated industries, engage in the same practice.

Council and a subsequent Appeal Panel ultimately decided that the “No Contracts” claim was misleading in this context – i.e. Council evaluated that the provisions governing cancellation as outlined in the “Terms of Service” constituted a contractual obligation, as did the overall “Terms of Service” which were binding on both the advertiser and its customers.

However, Council determined that the claim would be acceptable under the *Code* if the advertising clearly explained what was meant by the term “No Contracts”. The advertising had to make clear that “No Contracts” meant only that there were no cancellation charges – not that there weren’t any conditions governing the provision of the advertised service.

Council also noted that that if ASC received complaints from consumers that similar “No Contracts” types of claims are misleading under the *Code*, advertisers, should anticipate a similar outcome.

What principle can be derived from this case?

To ensure that advertising messages are not misleading, don’t promise more than will be delivered. If, as in this case, the major benefit you want to communicate is that there are “no cancellation charges”, why not say so? And if you attach terms and conditions to the purchase of or subscription to your goods or service, it is risky to advertise that there is “No Contract”.

Case summaries of complaints upheld by Council can be found on ASC’s website at:
<http://adstandards.com/en/Standards/report.asp>

For more information, please contact ASC at (416) 961-6311 or by email to info@adstandards.com