

## **Ad Complaints During the COVID-19 Pandemic: An August Update**

This advisory provides some insights about the types of complaints we are receiving at Ad Standards about advertising related to the COVID-19 pandemic, how we handle them, and some practical tips for the advertising industry to comply with the *Canadian Code of Advertising Standards (Code)*. At the end of this advisory, we provide a by-the-numbers overview of complaints received during the first four months of the pandemic.

Ad Standards administers the *Code*, which forms the basis for reviewing consumer complaints about advertising content in Canada. Our process is complaint-driven, meaning that Ad Standards reviews and adjudicates an advertisement only if we receive a valid complaint about it.

### **Q1: What types of complaints have you received related to the COVID-19 pandemic?**

A: We are receiving complaints from the public about a range of different issues. Things that are currently triggering complaints include:

- Depictions of crowds/group gatherings, where physical distancing or other public health recommendations seem not to be respected.
  - Scenes in which individuals are not wearing face coverings, or seem to be wearing or handling them improperly.
  - Ads that consumers see as playing upon people's fears, whether they be fears about finances, health, food security, the environment, or other issues.
  - Ads for products that claim to (or imply that they) treat, cure, or prevent COVID-19.
  - Frequency of advertising, in particular advertising about COVID-19 or advertisers' responses to it.
- The *Code* is limited to the content of advertising and does not apply to these complaints.

### **Q2: How does the *Code* apply to advertising in Canada?**

There are four clauses of the *Code* that most commonly form the basis of COVID-19 related complaints. We summarize the requirements and how they apply, but for more information please see the [full text of the Code](#).

#### ***Clause 1: Accuracy and Clarity***

This clause may apply where an ad that states or implies that a product will protect the public from COVID-19. It requires that all advertising be truthful, and that it must be supported by "competent and reliable evidence". Ads that are inaccurate or create a misleading general impression violate this provision. When we receive a complaint about an ad, Ad Standards may request substantiation from the advertiser for the Standards Council to consider whether there is adequate support for the claim.

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## ***Clause 11: Superstitions and Fears***

Under this clause, ads “must not exploit superstitions or play upon fears to mislead the consumer”. Ads that speak to issues that the public are particularly sensitive to – including health, environment, finances, product availability – may be considered under this clause. In reviewing the ad, Standards Council will consider whether the ad is factual or exaggerating the issue being advertised, and will look at both the language and images used to convey the advertiser’s message.

## ***Clause 10: Safety***

This clause prohibits scenes that show a disregard for safety, or that encourage unsafe or dangerous practices, or acts. To avoid complaints about under this clause, Ad Standards recommends showing behaviour that follows the regulations and public health advice related to COVID-19 in the jurisdiction where the creative will be viewed. This includes being mindful of issues like physical distancing and wearing masks.

Keep in mind that context is key when considering an ad under Clause 10. Public health recommendations, and the public’s perception of their own safety, may change over time. But, to trigger the *Code*, the ad must be seen to show a “disregard” for safety or “encourage” unsafe acts. And, the advertiser’s first response to a complaint goes directly to the person(s) who submitted the complaint as we discuss in our answer to [Q3](#) below. For more about what that means for depictions of physical distancing and masks, see [Q7](#) below.

## ***Clause 14: Unacceptable Depictions and Portrayals***

This clause can come into play in the context of COVID-19 where an ad appears to “directly encourage, or exhibit obvious indifference to, unlawful behaviour”. So, for example, if a provincial or local law requires that masks be worn in public, Standards Council will consider whether an ad showing people without masks encourages or is indifferent to this law. Like complaints received under Clause 10 (Safety), the advertiser’s first response goes to the person(s) who raised the complaint, and we discuss masks more in [Q7](#) below.

## **Q3: What happens when Ad Standards receives a complaint?**

A: Just because we receive a complaint doesn’t mean that there is a problem with the ad. But, it only takes one complaint to trigger our review process.

The first step in our Procedure is to see if the complaint raises any issues under the *Code*. If not, we respond to the complainant and the complaint is not further adjudicated. Complaints about allegedly unauthorized health products or claims are forwarded to Health Canada (see [Q5](#) below). Where Ad Standards staff identifies a potential *Code* issue, we reach out to the advertiser for its response.

If the complaint raises issues under Clause 10 (Safety) or Clause 14 (Unacceptable Depictions and Portrayals) the advertiser’s response is shared with the complainant. In many cases, that response is sufficient to satisfy the individual, and the case is closed. If a matter proceeds to Standards Council, and

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is found to violate the *Code*, the advertiser will be asked to amend or withdraw the advertising. If Standards Council finds no violation, then no further action is required.

During the pandemic, we are prioritizing complaints related to COVID-19 issues, so that they may be addressed in the timeliest manner possible to assist both the public and industry.

### **Q4: How many ads has Standards Council determined violated the *Code* because of COVID-19 complaints so far?**

As of August 4, 2020, out of more than forty complaints, only three (3) ads have been found to violate the *Code* by Standards Council. Two of these ads are under appeal by the advertisers in accordance with our procedure, and were found by Standards Council prior to appeal to be playing upon superstitions and fears in order to mislead (Clause 11). The third case raised issues under Clause 1 related to performance of a product.

In accordance with our procedure, where an ad is found to violate the *Code*, the advertiser is requested to voluntarily withdraw or appropriately amend it. In the very rare instances where the advertiser does not comply voluntarily, Ad Standards will request the support of host media to withdraw the ad in question, and may refer misleading advertising to the Competition Bureau.

### **Q5: Can advertisers claim that products treat, cure, or protect against COVID-19?**

At this time, generally, no. The science is still developing, and in most cases there is not competent and reliable evidence available to support such claims under the *Code*. Of course, each ad and claim will be reviewed on a case-by-case basis.

Claims about certain regulated health products are only permissible if authorized by Health Canada. These product categories include hard-surface disinfectants, antiseptic skin cleansers (e.g. hand sanitizer, disinfectant soaps), homeopathic remedies (including nosode products), and other similar products advertised for the prevention, mitigation or treatment of a disease such as COVID-19. Ad Standards preclears for non-prescription drugs, natural health products and medical devices against applicable Terms of Market Authorization, and will only approve claims that have been authorized by Health Canada.

When we receive complaints about health products claiming to defend against COVID-19, Ad Standards may forward these complaints to Health Canada for investigation.

### **Q6: I submitted an ad for preclearance and got a warning about the *Code*. What does that mean?**

A: If you receive a consumer warning on a script submitted for preclearance, it is intended as a ‘heads up’ that it includes something about which we expect to receive a complaint based on the nature of other complaints we see. The *Code* warning is the way we have to let advertisers know that there may be a negative consumer reaction to it. The warning does not affect our review of the ad under applicable laws or hold up our preclearance in any way. It is not relevant to Standards Council in its determination of a case.

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## Q7: So, bottom line, does advertising have to show people wearing masks and physical distancing?

As a practical matter, ads that shows people not wearing masks and/or not physical distancing is likely to trigger complaints. This does not mean that the activity violates the *Code*, but it does mean that Ad Standards will be reaching out to request a response. Assuming that the complaint is about safety or legal compliance, the advertiser's response will go to the consumer. From there, it will be considered by Standards Council only if the consumer is still not satisfied by the advertiser's response. So far, Standards Council has not been asked to adjudicate a case to determine what depictions go so far as to violate the *Code*.

## Q8: What if I have questions about a specific creative?

Ad Standards is here to help! Reach out to Yamina Bennacer, our Senior Manager, Standards ([yamina.bennacer@adstandards.ca](mailto:yamina.bennacer@adstandards.ca)), for more information about how Ad Standards can provide you with input about a script or concept, and its compliance with the *Code*.

### Tips for advertisers to keep in mind:

- Many people are anxious right now. Be mindful of their sensitivities, particularly around health, finances and product availability.
- Ensure that you can substantiate any claims, and avoid implying something more than you are able to prove about your product's performance.
- Ads that include people who are not wearing masks or not social distancing are likely to trigger complaints. Just because a complaint is filed with Ad Standards does not mean that the ad violates the *Code*. But, if the ad seems to encourage unsafe or unlawful behaviour, this could result in a finding that the ad violates the *Code*.
- Keep in mind the applicable laws and recommendations of public health authorities that apply to the consumers who will see the ad. Try to respect them, and at the very least not seem to flout them. And remember that they could change over time.
- If in doubt, reach out. Ad Standards is here to help and happy to take your questions about the *Code* and our procedure.
- Our goal is not to prescribe creative solutions to advertisers, but consider where different options might fall on the spectrum:
  - Depictions of family units or small groups, where face coverings and/or social distancing are not required by law or public health recommendations, are likely to be found acceptable under the *Code*.
  - Depictions of a small number of people interacting in private spaces, such as in their homes, cars, or porches, where face coverings and/or social distancing are not required by law or public health recommendations, are likely to be found acceptable under the *Code*.
  - Depictions of a people shopping in a grocery store or other public indoor spaces, without face coverings and engaging with people outside of their family units or 'bubbles', are more likely to be found to violate the *Code*.
  - Consider the role of fantasy, dreamscapes, and memories, where the ad may be more may be less likely to encourage unsafe or unlawful behaviour, and more likely to comply with the *Code*.

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- If using older footage, consider a disclaimer to call this out and to remind the viewer to respect public health recommendations. Depending on the creative, this may reduce the practical risk of complaint and provides a basis upon which a Standards Council may find that there is no violation of the *Code*.
- Ads that show or imply people are removing face coverings or meeting up and intentionally disobeying the laws and/or public health recommendations are more likely to be found to violate the *Code*.

Note that these are directional suggestions only, and each ad will be adjudicated by Standards Council on a case-by-case basis.

### COVID-19 Complaints – By the numbers

(Last updated: August 4, 2020)

During the first four months of the pandemic in Canada (mid-March to mid-July) Ad Standards received a total of **40 complaints** from consumers relating to claims made in the context of COVID-19. Out of the 40 complaints received, Ad Standards accepted **31 complaints** for review against the *Code*. These 31 complaints were handled as follow:

- **3 complaints** objected to the **depictions of social or event gatherings during social distancing**. Upon careful evaluation of the commercials, Ad Standards did not identify an issue under Clauses 10 (Safety) and 14 (Unacceptable Depictions or Portrayals) of the *Code*. The challenged advertisements did not display a disregard for safety by depicting situations that might reasonably be interpreted as encouraging unsafe or dangerous practices, nor did it exhibit obvious indifference to, unlawful behaviour.
- **1 complaint** alleged that an advertisement exhibited obvious indifference to unlawful behaviour by encouraging consumers to disregard the **physical distancing measures put in place by provincial and federal governments**. Ad Standards identified a potential issue under Clause 14 (b). In accordance with the Consumer Complaint Procedure involving Clause 14, the advertiser was required to respond directly to the consumer. In this case, the complainant did not wish to pursue this matter further after receiving the advertiser's response.
- **8 complaints** objected to advertisements that allegedly **played upon fears to mislead consumers**. These complaints related to advertisements by financial institutions, retailers and/or advocacy groups. 1 complaint did not raise an issue under the *Code*. Ad Standards identified a potential issue under Clause 11 (Superstitions and Fears) with the remaining 7 complaints. 4 complaints were adjudicated by Standards Council and an Appeal Panel ultimately did not identify a *Code* infraction.
- **5 complaints** alleged that an ad for an **anti-bacterial product** implied that it works against COVID-19. Upon investigation, Ad Standards did not find that the ad included inaccurate or conveyed a misleading impression. In our assessment, the ad did not state or imply that the product worked against COVID-19.
- **1 complaint** related to a **DIY hand sanitizer**. The complainant questioned the effectiveness of this do-it-yourself hand sanitizer recipe being advertised and felt this advertisement was potentially misleading. The complaint was adjudicated by Council and found to contravene the *Code*.
- **5 complaints** related to advertisements that promoted products and services that are not made available to Canadians during the COVID-19 pandemic. Ad Standards did not identify an issue under the *Code*. The ads for products were appropriately amended, prior to notification from Ad

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Standards, to reflect the fact that they were out of stock. The complained-of services, such as travel services, are still available to consumers if they wish to travel at a later date.

- **1 complaint** related to an advertisement that promoted unsafe behaviour such as **coughing or sneezing in hands**. Ad Standards identified a potential issue under Clause 10 (Safety). In this case, the complainant did not wish to pursue this matter further after receiving the advertiser's response.
- **1 complaint** related to an absolute claim that allegedly could not be substantiated by competent and reliable evidence. Ad Standards contacted the advertiser under Clause 1 (e), which provides that "All advertising claims and representations must be supported by competent and reliable evidence, which the advertiser will disclose to Ad Standards upon its request".
- **1 complaint** alleged that an ad that depicted highly indulgent people was insensitive given that many Canadians are in financial crisis due to Covid19. Ad Standards reviewed the ad against Clause 14 (Unacceptable Depictions and Portrayals) and was unable to identify an issue under the *Code*. Preamble of Clause 14 provides that "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."
- **2 complaints** related to editorial content and business practices, and **1 complaint** related to the frequency of advertising related to Covid-19, which do not fall within the application of the *Code*. Ad Standards' mandate is limited to the review of advertising content.
- **2 complaints** related to an ad that depicted individuals not wearing, or improperly handling, protective face coverings. Ad Standards' procedure is ongoing concerning these complaints.

Another **9 other complaints** were forwarded to Health Canada.

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