

LEGAL TIPS for Advertising and Running Contests

10 Tips for Advertising

1 General Impression

Whether a representation is false or misleading depends on the general impression conveyed and not just the literal meaning. Even if the statements or illustrations are literally true, they may create an impression that is false or misleading.

2 Disclaimers and Contradictory Messages

Disclaimers should be used to clarify, and not contradict, the advertisement's main message. Disclaimers that contradict the main message can make an advertisement false or misleading. Disclaimers should be legible, unhidden and clearly linked to the advertisement's main message.

3 Performance Claims

When making claims regarding performance or efficacy, you must have sufficient evidence to substantiate the claims. The reliability of any source you use must be considered. It should be clear to you that the claim is based on adequate and proper testing.

4 Savings and Price Claims

Price comparisons or savings claims can trigger the ordinary selling price provisions of the *Competition Act*. Such claims should meet the time or volume test specified in the *Competition Act* and should not otherwise be false or misleading. In particular, you should be able to substantiate the ordinary price you are claiming. The MSRP is usually not an appropriate ordinary price. Also, "Sales" and "Special Offers" must actually be sales and special offers.

5 Special Regulations (Pre-clearance)

Certain types of advertisements are governed by special legislation, for example, applicable provincial legislation will govern credit disclosure, including mathematical calculations for financial matters, such as leases. Certain advertisements need pre-clearance. For example, certain broadcast advertisements must be cleared through the Advertising Standards Council.

6 Safety, Violence, Gender Portrayal and Denigration

Ensure the advertisement complies with the Canadian Code of Advertising Standards, which includes provisions regarding safety, violence, gender portrayal, bullying, denigration, and comparative advertising.

7 Third Party Rights & Privacy

If an advertisement uses trade-marks, logos, images, photographs, quotes, voices, tag-lines, or names of third parties, it is important to make sure that the advertisement does not infringe the intellectual property, privacy or personality rights of those third parties. Also, if an advertisement campaign contemplates the collection, use or disclosure of personal information, you should obtain adequate consent from the individuals to whom the personal information pertains. Make sure the appropriate privacy statement is used.

8 Children

Advertising to children requires special care. Advertisements should not take advantage of the less developed judgement and greater impressionability of children. All guidelines of relevant broadcast, marketing and sales authorities should be taken into account. Broadcast advertising directed at children is not permitted in Quebec.

9 Environmental Claims

The Competition Bureau has issued guidelines containing 18 specific requirements for environmental claims in advertising. Such claims may not be vague or non-specific. The use of phrases such as "green" or "environmentally friendly", and claims of sustainability are discouraged. All claims must, among other things, be reliable, supported by accurate and available data, and be accompanied by a detailed explanation of the environmental benefit in close proximity to the claim itself. A product cannot claim to be free of something that was never part of the product before and all claims must take into consideration the life cycle of the product and not be solely based on the final product.

10 Contest Advertisements

If a contest is advertised, the advertisement should include the following information: (a) how to enter; (b) the number, type and value of prizes; (c) any regional allocation of prizes; (d) any skill-testing question requirement; (e) the contest closing date; (f) the odds of winning, and other facts that materially affect the chances of winning; (g) the fact that no purchase is necessary; (h) how to obtain full contest rules; and (i) any material qualifications regarding prizes, eligibility or manner of playing.

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1 No Purchase Necessary

Generally, a no-purchase method of entry is required. Check to make sure that your contest includes an acceptable no-purchase method of entry.

2 Element of Skill

The contest should incorporate an element of skill, such as a mathematical skill-testing question.

3 Chances of Winning

Disclose the odds of winning (e.g., "1 in 100 chances to win.") or that the odds of winning are not determinable (e.g., "Chances of winning depend on the number of entries received.").

4 Describing the Prize

Any material prize details and qualifications must be disclosed, including any regional allocation of prizes.

5 Dates, Times and Numbers

Check to make sure that all dates, times and numbers in the contest rules are correct.

6 Distribution of Prizes

Prizes must be distributed to winning entrants without undue delay.

7 Termination/Amendment

The rules should provide the contest sponsor a right to terminate or amend the contest.

8 Privacy Issues

Consider carefully how an entrant's personal information will be collected, used and/or disclosed. You must obtain the consent of the entrants to the collection, use and disclosure of their personal information. The consent you obtain must be sufficiently broad to cover everything you plan to do with the information. Systems should be in place to ensure that the personal information of entrants is only collected, used and disclosed for the purposes for which consent has been obtained.

9 Children

Where contests are open to children, special care must be taken to ensure adequate disclosure, especially in any advertisements. Entry should be conditional on consent from a parent/guardian and a publicity liability waiver executed by parent/guardian.

10 Quebec

If the contest is open to residents of Quebec, specific Quebec legal requirements for contests must be met.

ABOUT STIKEMAN ELLIOTT

Stikeman Elliott's Marketing, Advertising and Compliance Group proactively respond to client needs and ensure they receive legal counsel unique to their objectives in a timely and cost-effective manner, regardless of the complexity.

The Group provides marketing and advertising compliance (including *Competition Act* and provincial consumer protection legislation) advice to leading Canadian and international businesses across a wide range of industries, including food and consumer goods, automotive, pharmaceutical and healthcare, financial services, insurance and retail. Our lawyers routinely review, comment and provide risk assessments and risk mitigation advice, and service clients across Canada and have specific expertise in the highly-regulated Quebec market.

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