

Advertising Standards Canada

TRADE DISPUTE PROCEDURE

Advertising Standards Canada offers a Trade Dispute Procedure designed to resolve disputes between advertisers. Created at the request of industry over thirty years ago, the Trade Dispute Procedure was founded on the belief that self-regulation benefits the advertising industry at large. The Trade Dispute Procedure provides industry with a responsive and effective mechanism by which competitive disputes about advertising can be handled in a confidential forum outside of the judicial system. Based on the provisions of the Canadian Code of Advertising Standards and offered on a fee-basis, the Trade Dispute Procedure is kept current to ensure fairness in an increasingly competitive advertising environment.



Advertising Standards Canada
Les normes canadiennes de la publicité

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This revised Trade Dispute Procedure came into effect on January 4, 2010.
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Since 1976, **Advertising Standards Canada** has been involved, at the request of the industry, in a procedure designed to resolve disputes between Advertisers. This work continues in the belief that self-regulation is preferable to government intervention, and has generally proved to be swifter, less costly, and attracts less attendant public notoriety than settlements of trade disputes within the judicial system.

Disputes between Advertisers are matters of serious concern to the parties involved. To the extent that such disputes may represent violations of existing self-regulatory provisions, they are also of serious concern to professional advertising practitioners. Advertising Standards Canada maintains and administers the *Canadian Code of Advertising Standards*, upon which this **Trade Dispute Procedure** is founded.

The Procedure has undergone periodic review and revision to ensure the fairness and effectiveness of its application in an increasingly more competitive marketing environment. The Procedure deals with voluntary standards and guidelines, not issues of law.

It is based on the principle that self-regulation is both possible and desirable as a mature and responsible alternative to legislation imposed by governments.

Self-regulation is only effective when the parties in the advertising process exhibit spirited co-operation and compliance with the provisions in place, designed for the good of the industry at large. The **Trade Dispute Procedure** must therefore be equitable to the parties involved. It must be seen to be, and to be, in fact, an appropriate application of an effective self-regulatory procedure for the advertising process which is subject to strict rules, consistently and uniformly applied.

SUMMARY OF THE PROCEDURE

Complaints against an Advertiser's Advertising must be based on the provisions of the *Code*; submitted in writing to the Vice President, Standards, ASC; and signed, or authorized in writing, by a senior executive officer in Canada (or an authorized legal representative) of the Advertiser lodging the Complaint. Initially, the onus or burden will be on the complainant to convince ASC there are reasonable grounds to proceed with a Complaint alleging a breach of the *Code*.

A copy of the Complaint will be provided to the Advertiser against whom the Complaint has been lodged, if ASC, having assessed the Complaint, has verified and agreed that a violation of the *Code* may have occurred. ASC alone will determine whether a Complaint will be considered and accepted either as multiple Complaints or as a single Complaint about the same message appearing in more than one commercial or advertisement.

ASC, will convene and participate in one or more mandatory resolution meetings between the parties at which ASC will actively assist the parties in their attempt to reach a mutually acceptable resolution of the Complaint. If resolution cannot be achieved, a five-member Trade Dispute Panel will then be drawn from a special resource group of advertisers, agencies, media, legal professionals and public representatives, and a date for a hearing will be set.

Both parties will attend the hearing at the same time. Each will be able to question and challenge the other party's position after an uninterrupted presentation. In order for a complainant Advertiser to receive a judgment in its favour from the **Trade Dispute Panel**, it is incumbent upon the complainant to convince a majority of the **Trade Dispute Panel** that one or more of the material aspects of the complainant's case have been proven on the balance of probability. It is insufficient under the Procedure for the complainant to merely make unsubstantiated allegations of *Code* offences. The defendant Advertiser's burden, on the other hand, is to submit credible and reliable evidence that casts reasonable doubt, in the judgment of the **Trade Dispute Panel**, on the critical merits of the complainant Advertiser's case.

When the **Trade Dispute Panel** is satisfied that it has sufficient information from the submissions, both parties will be asked to retire and the Panel will reach its decision in private. Following notice of the **Trade Dispute Panel's** decision, either party may request a review of the decision if that party can demonstrate a misinterpretation

of evidence and/or a misapplication of a provision of the *Code* has occurred.

If a decision is so challenged, ASC will call upon three members of the **Trade Dispute Resource Group** to form a **Review Panel** and assess the merits of the challenge. If, in the Review Panel's opinion, there is cause for appeal, an **Appeal Panel** of five persons not previously involved and having no conflict in the matter will be selected and a date set to hear the appeal. The conduct of the appeal will be similar in all respects to the first hearing. The decision of the Appeal Panel, however, will be final and binding.

At any point in the Procedure, the defendant Advertiser has the option to voluntarily withdraw the Advertising in question (from broadcast, publication, circulation or exhibition, as the case may be) or appropriately amend it. Upon receipt of written confirmation of intention to withdraw and/or appropriately amend, and providing such action occurs within ten working days of the commitment, the Procedure will be suspended and the case file closed unless within one year of filing the original Complaint the Advertising in question is reinstated, in which case, acting upon the written request of the Advertiser filing the original Complaint, ASC will revive the original Complaint.

It should be noted that the Procedure will not be suspended, delayed or ended for the reason that a defendant Advertiser declines to attend and participate fully at any one or more stages in the Procedure. A decision on the Complaint may be made by a **Trade Dispute Panel** even in the absence of the defendant Advertiser based on the information already in the possession of the **Panel** and on any further pertinent information submitted by the complainant for the **Panel's** consideration.

If the Complaint is decided at a hearing by a Trade Dispute Panel with the defendant Advertiser declining to attend and/or participate, and/or if ASC has reasonable cause to believe that the defendant Advertiser will not comply with a Trade Dispute Panel's decision that is unfavourable to the defendant, then ASC will publish a summary of the outcome of the initial hearing and any appeal hearings. This will include the facts and issues in dispute, an identification of both parties and a description of the advertising in question.

ASC will also refer publically to the defendant Advertiser's unwillingness to participate/ comply and advise both the exhibiting media and the Competition Bureau of the facts and outcome of the hearing.

THE TRADE DISPUTE PROCEDURE

1. DEFINITIONS

For the purposes of the *Trade Dispute Procedure*, the following definitions will apply:

“Advertiser” means a legal entity (including, without limitation, a trade association, but specifically excluding its Advertising Agency or Agencies acting in that capacity) that is engaged in the use of Advertising; OR whose product(s) and/or service(s) is/are the subject of, or prominently featured in, the complained-of Advertising or a portion thereof, whether or not that Advertising was prepared or placed by the Advertiser, directly or indirectly, in any medium for communication to Canadians; OR that, in the opinion of ASC, may be adversely affected by Advertising about which a Complaint has been lodged.

“Advertising” means “Advertising” as defined in the *Code*.

“Advertising Agency” means any organization engaged in the creation and/or placement of Advertising.

“Affiliate” means a parent, subsidiary or sister company.

“ASC” means Advertising Standards Canada.

“Code” means the *Canadian Code of Advertising Standards*, administered by ASC.

“Complaint” means a written complaint received by ASC from an Advertiser alleging that another Advertiser’s Advertising does not conform to the *Code*.

“Fee” means the applicable fee payable under this Procedure pursuant to Paragraph 6.13 below.

“Member” means an entity that is a member-supporter of ASC, in good standing at the time of the Complaint.

“Non-Member” means an entity that is not a Member.

“Panel/Panels” see under **“Trade Dispute Resource Group”** below.

“Panellist” see under **“Trade Dispute Resource Group”** below.

“Procedure” means this *Trade Dispute Procedure*.

“Trade Dispute Resource Group” means the group of individuals appointed by ASC pursuant to Paragraph 4 below. From this group, the members of the Trade Dispute Panels, Review Panels and Appeal Panels (collectively sometimes referred to as “Panels” and individually as a “Panel”) will be drawn. Each person on a “Panel” will be known as a “Panellist”.

2. APPLICATION

This Procedure only applies to a Complaint received in writing by ASC from an Advertiser alleging that another Advertiser’s Advertising violates one or more provisions of the *Code*. There is no authority at this time for applying the Procedure to alleged violations of

(a) any other code (such as the *CRTC Code for Broadcast Advertising of Alcoholic Beverages*); or

(b) statutes, regulations, guidelines or policies (such as those that govern food and drug advertising in Canada).

3. EXCLUSIONS

ASC shall decline to accept, or to proceed further with, a Complaint, or any part thereof, where ASC is of the opinion that the Complaint, or such part of the Advertising to which the Complaint refers:

(a) is, substantially, at any time before the Trade Dispute Panel (or Review Panel or Appeal Panel) as the case may be, actually considers the Complaint, also:

- (i) the subject of litigation in which the defendant Advertiser in the Trade Dispute is named and identified as a party defendant in the litigation, that was, or is then, actively undertaken and pursued by the complainant Advertiser in Canada; or
- (ii) the subject of a complaint formally submitted by the complainant Advertiser to another competent Canadian authority or tribunal such as, but without limitation, the Competition Bureau; or
- (iii) Advertising (or other Advertising that is substantially similar to the Advertising) that was in the past or concurrently is the subject of a review or proceeding by a Canadian court or Canadian authority or tribunal;
- (iv) has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government; or
- (v) has been otherwise submitted as a complaint by the complainant Advertiser to ASC under another process administered by ASC such as the *Consumer Drug Complaint Procedure*.

ASC shall also decline to accept, or to proceed further with, a Complaint, or any part thereof, where the Complaint:

(b) relates to one or more advertisements (for food, drug, natural health products, cosmetic, alcoholic beverage or children’s products or services) that were reviewed and approved by ASC Clearance Services

except to the extent the Complaint relates to alleged offences under the *Code*; or where the Complaint (c) includes as a material aspect of the Complaint any matter which, in ASC's opinion, ASC is unable to resolve effectively or reasonably because such matter is outside the purview or intended scope of the *Code*, or may result in the improper application of the *Code* or Procedure.

4. TRADE DISPUTE RESOURCE GROUP

4.1 Members of the Trade Dispute Resource Group

ASC will appoint representatives of the following sectors to serve as members of the Trade Dispute Resource Group: Advertiser, Advertising Agency, media, and legal professionals experienced in Advertising (collectively called the "Industry Sector"); and the Public (the "Public Sector"). The number of members appointed shall be sufficient to provide for members or alternates to serve as follows: Trade Dispute Panels – five (5) representatives; Review Panels – three (3) representatives; and Appeal Panels – five (5) representatives. ASC may replace members of the Trade Dispute Resource Group, as and when ASC deems appropriate.

4.2 Compensation for Members of the Trade Dispute Resource Group

Industry Sector representatives shall serve without compensation as volunteers for the Trade Dispute Resource Group. Public representatives shall serve and be compensated in accordance with the prevailing practice of ASC.

5. THE PROCEDURE

5.1 Lodging a Complaint

All Complaints must be submitted to the Vice President, Standards, ASC in written form, signed, or authorized in writing, by a senior executive officer in Canada (or an authorized legal representative) of the complainant Advertiser. The Complaint must detail the basis of the allegation and specify the provision(s) of the *Code* which the Advertising allegedly violates; and must be accompanied by the applicable Fee.

5.2 Initial Assessment by ASC of Complaint

Within five (5) working days of receiving the complaint, ASC will notify the complainant Advertiser whether or not ASC agrees an infraction of the *Code* may have occurred. If it appears to ASC that an infraction of the *Code* may have occurred, and that the Complaint is not excluded from this Procedure under Paragraph 3

above, ASC will, without delay, send written notice of the Complaint to the defendant Advertiser. ASC will include a true copy of the Complaint in its notice to the defendant Advertiser. ASC may require receipt, within the same five (5) working days, of additional information from either or both parties to the trade dispute in order to complete the assessment to ASC's satisfaction.

5.3 First Stage Resolution

Having made a preliminary determination that an infraction of the *Code* may have occurred, ASC will, in writing, notify each of the involved parties of its preliminary determination and convene (and may adjourn and reconvene) one or more meetings among representatives of ASC, the defendant Advertiser and the complainant for the purpose of reaching a resolution of the Complaint that is mutually acceptable to the defendant Advertiser and the complainant.

In its notification to the involved parties, ASC will state that if for any reason, including without limitation the failure of the defendant Advertiser to attend at or participate in the mandatory resolution meeting, a resolution of the Complaint has not been reached within five working days of ASC's request that the parties meet in an attempt to reach a resolution of the Complaint, a hearing before a Trade Dispute Panel will take place subject to the availability of the Trade Dispute Panellists and ASC.

Acting upon the complainant Advertiser's consent or request, the five working days may be extended one or more times by some other number of days acceptable to the complainant Advertiser.

5.4 Notice of Hearing; Delays and Adjournments

Each party to a trade dispute will be given at least fifteen (15) working days' notice in writing of a scheduled Trade Dispute Panel hearing. Acceding to requests by either party for a delay or adjournment of such hearing will be at the sole discretion of ASC prior to the appointment of the Chairperson of the Trade Dispute Panel, and, thereafter, at the Chairperson's discretion. No such request for delay by a defendant Advertiser may be accepted unless the defendant Advertiser undertakes and agrees to withdraw the Advertising at issue until the Trade Dispute Panel and, if applicable, the Appeal Panel, has rendered its decision.

5.5 Composition of Panels

In the event of the unavailability of candidate Panellists, ASC shall be entitled to make substitutions, subject to the

provisions of Paragraph 6.1 below respecting each party's right to object based on a reasonable apprehension of bias on the part of the proposed Panellist.

5.6 The Conduct of the Trade Dispute Panel Hearing

Each party to the trade dispute will be present at the same time during the hearing. The complainant Advertiser will make the first uninterrupted submission, not to exceed 45 minutes, followed by the enquiries of the Trade Dispute Panel members and those of the defendant Advertiser. The defendant Advertiser will make the second equally time-limited, uninterrupted submission, followed by the enquiries of the Trade Dispute Panel and those of the complainant Advertiser. Each party, in the same order of appearance, will then be entitled to make a brief, closing, summary statement. Both parties to the trade dispute will be asked to retire from the proceedings when the Trade Dispute Panel is satisfied that it has sufficient information to conclude its deliberations. Notwithstanding the foregoing, the Trade Dispute Panel may recall any one or more of the participants in the proceedings (including, without limitation, their advisers and any independent experts) and request clarification of or elaboration on matters raised during the proceedings.

The Proceedings and the outcome of a Trade Dispute Hearing will not be invalidated because ASC, on its own initiative, has modified the Procedure, governing the conduct of that Hearing for reasons of efficiency and practicality after becoming satisfied that such modification is not inimical to the rights of the parties under the Procedure.

Decisions of Trade Dispute Panels will be by majority vote.

5.7 Notice of Trade Dispute Panel Decision

Written notice of a Trade Dispute Panel's decision and the reasons for the decision will be simultaneously sent to both parties to the trade dispute within five working days of the conclusion of the hearing.

5.8 Enforcement of Trade Dispute Panel Decision

In sustaining a Complaint, the Trade Dispute Panel may require the defendant Advertiser to withdraw the Advertising in question or amend the Advertising in such manner as to not offend against the provisions of the *Code*. The defendant Advertiser will be requested to confirm in writing receipt of the Trade Dispute Panel's decision (or, where applicable, the decision of the Appeal Panel), and required to declare in writing to ASC within four (4) working days of receiving such decision that the defendant Advertiser will:

- (a) comply with the decision either by withdrawing the advertising in question or amending it as proposed in the decision; or
- (b) appeal the decision, in the case of a Trade Dispute Panel decision.

5.9 Requesting Leave to Appeal a Trade Dispute Panel Decision

Either party to a trade dispute may request leave to appeal a Trade Dispute Panel's decision on the basis that the Trade Dispute Panel erred in its interpretation of evidence submitted or of the provisions of the *Code*.

A request for an appeal by either party must be received in writing by the Vice President, Standards, ASC within four (4) working days of the party's receipt of the Trade Dispute Panel decision; and must be accompanied by the applicable Request for Appeal Fee.

A defendant Advertiser may request an appeal only if that Advertiser has undertaken in writing to withdraw the Advertising in question, in accordance with the provisions set forth in Paragraph 6.9 below.

5.10 Review of Appeal

Upon receipt of a request for leave to appeal, ASC will draw a panel of three persons to consider the request, other than persons who served on the Trade Dispute Panel. The three-member Review Panel will be composed of two representatives from the Industry Sector and one Public representative, who have no conflict of interest in the Complaint.

The Review Panel will consider whether or not there appears to have been an error in the interpretation of evidence or the provisions of the *Code*. For this purpose, a representative of ASC will be made available to the Review Panel as a non-voting resource person. If no such apparent error is found, the Review Panel will affirm the Trade Dispute Panel's decision. If the Review Panel determines that an error may have occurred, the Review Panel will recommend that the appeal be heard by an Appeal Panel. The Review Panel will have seven (7) working days from the date ASC receives the request for leave to appeal in which to meet and reach a decision and send its decision in writing to the parties.

Decisions of Review Panels will be by majority vote.

5.11 Appeal of Trade Dispute Panel Decision

Upon recommendation of the Review Panel, and after receiving the applicable Appeal Hearing Fee, ASC will draw a five-member Appeal Panel from among those in the Trade Dispute Resource Group who did not serve on the Trade Dispute Panel or the Review Panel. The Appeal Panel will include four representatives from the Industry

Sector and one Public representative, noted in Paragraph 4.1 above, provided that none of such representatives has a conflict of interest in the Complaint.

Each party to the trade dispute will be given at least seven (7) working days written notice of the date of the Appeal Panel hearing. Requests made by either party for a delay or adjournment of the proceedings will be dealt with at the discretion of the designated chairperson of the Appeal Panel. The conduct of, and procedure to be followed at, an Appeal Panel hearing will be patterned after the conduct of the Trade Dispute Panel hearing described in Paragraph 5.6 above.

Decisions of Appeal Panels will be by majority vote.

5.12 Consequences of Appeal

The Appeal Panel, having re-heard the Complaint, may uphold the decision, in whole or in part, of the Trade Dispute Panel. Alternatively, if the Appeal Panel determines that an error in the interpretation of evidence or the *Code* has occurred, it will set aside the decision of the Trade Dispute Panel and in its place substitute the decision of the Appeal Panel.

The written decision of the Appeal Panel will be sent to both parties within five working days of the appeal hearing.

Decision by Appeal Panels will be binding and final.

5.13 Closing a Complaint File

ASC will close an individual Complaint file when, in its opinion, the Procedure has been completed, subject, however, to the provisions of Paragraph 6.9 below.

6. GENERAL

6.1 Objection to Panel Members

Each party to a trade dispute will be given written advance notice in a timely manner of the identity of the Panellists on the Trade Dispute Panel and, where applicable, the Review Panel and Appeal Panel, who will be considering the Complaint.

Either party may object to the inclusion of an individual Panellist if the objecting party has, what in ASC's opinion is, a reasonable apprehension of bias on the part of such Panellist. Such objection must be given in writing to, and received by, ASC within two working days of notice of the Panellists' identities having been given to the objecting party.

6.2 Bias

(a) ASC may disqualify any person from hearing a Complaint at any level or stage of this Procedure if, in its opinion, either party to a Trade Dispute pursuant

to Paragraph 6.1 above has expressed a reasonable apprehension of bias on the part of such person. Grounds upon which a reasonable apprehension of bias exists would include, but not be limited to the following:

- (i) Advertiser representative – if the employing company, or an affiliate of the employing company, of an Advertiser member of the applicable panel, is a party to the trade dispute or directly competes in Canada with a party to the trade dispute;
- (ii) Advertising Agency representative – if the Advertising Agency, or an affiliate of the Advertising Agency, which employs the Advertising Agency member, represents, in Canada, one of the parties to the trade dispute or a client which directly competes with a party to the trade dispute;
- (iii) Media representative – if a media representative may be unable to arrive at an unbiased decision due to a past or present employment or affiliation;
- (iv) Legal professional representative – if the professional member, or the law firm of the legal professional member, represents, in Canada, one of the parties to the trade dispute or a client that directly competes with a party to the trade dispute;
- (v) Public representative – if a Public representative may be unable to arrive at an unbiased decision due to a current or previous employment or affiliation.

(b) Each person drawn for service as a Panellist on a Trade Dispute Panel, a Review Panel or an Appeal Panel will be requested to attest that he or she has no conflict of interest in hearing the Complaint.

6.3 Access to Information Pertinent to a Complaint

Subject to Paragraph 6.6 below, any and all evidence submitted to ASC, either in support of or in defence against a Complaint, will, at the time of the Trade Dispute hearing, be shared with the other party to the trade dispute.

6.4 Provision of Supplementary Materials

ASC may, at any time or times during the Procedure, require one or both parties to a trade dispute to provide such supplementary materials that ASC believes are necessary to enable a Trade Dispute Panel to appropriately assess the merits of the Complaint or its defence and make an informed decision as required by the Procedure. Each providing party will, at its expense, prepare and provide such supplementary materials to ASC for redistribution to the Trade Dispute Panel and to the other party in the Trade Dispute pursuant to the provisions of Paragraph 6.3 above and 6.6 below.

6.5 Retaining Independent Experts

As evidence submitted in connection with a trade dispute may be technical in nature or relate to surveys, tests, studies, polls or other such research information, and since the research methodology and/or design used to obtain the evidence may require validation, ASC may, at any point during the Procedure, seek an assessment of such evidence from one or more independent experts having no conflict of interest in the Complaint.

ASC will, without delay, provide notice to both parties to the trade dispute that it intends to call one or more independent experts and will identify the expert(s) selected. Both parties to the trade dispute will be entitled to object to the independent expert(s) and request replacement of same by notifying ASC within two working days of such party's receipt of the notice identifying the expert(s). Such notice shall explain the reasons for the party's objection. If in the view of ASC the objection is reasonable, it will select one or more alternate experts and notify the parties of his, her or their identity. The parties will have the same opportunity to object to the alternate expert(s) as was provided in relation to the original expert(s) selected.

All costs and expenses incurred by ASC for the independent expert's (or experts') participation in the Trade Dispute Procedure and assessment of evidence will be recovered by ASC from, and payable by, one or both parties to the Complaint, apportioned as ASC deems appropriate.

ASC may also retain one or more independent experts at the sole expense of the complainant Advertiser if the Trade Dispute Hearing, or Appeal Hearing proceeds in the absence of the defendant Advertiser.

6.6 Deadline for Filing Evidence; Distribution of Filed Materials

Without exception, eight complete duplicate sets of all pertinent evidence to be relied on by each party to a Complaint must be in the possession of ASC at least five (5) full working days prior to the appointed date and time of the Trade Dispute Panel hearing. No evidence will be accepted from either party to a trade dispute after that deadline unless it is subsequently required by the Trade Dispute Panel.

The evidence shall not be deemed to be complete unless it also includes a summary statement of the evidence as filed giving as much detail as may be necessary in the opinion of ASC to outline to the other party to the dispute the case which the submitting party intends to present to the Trade Dispute Panel in order that the other party is reasonably well informed of the evidence

to which it may be required to respond and/or refute.

ASC will, without delay, deliver:

- (a) to each Panellist on the Trade Dispute Panel a copy of:
 - (i) the Complaint;
 - (ii) the detailed evidence; and
 - (iii) each party's summary statement of evidence; and

- (b) to each party to the dispute, a complete copy of the other party's detailed evidence provided, however, that no evidence provided by the complainant Advertiser will be shared with a defendant Advertiser that does not appear at and/or fully participate in the Trade Dispute Hearing, or Appeal Hearing, as the case may be.

Subject to the foregoing Paragraph 6.6 (b), no other or new evidence (other than corrections of typographical or clerical errors) will be considered by the Trade Dispute Panel or the Appeal Panel unless such evidence has been reasonably disclosed to the other party to the dispute in a summary statement, if not in detail. For the purpose of this Paragraph 6.6, whether or not any part of the evidence constitutes "other or new evidence", is a matter that is in the sole discretion of ASC to determine.

6.7 Audio-Visual/Telecommunications Equipment

If either party wishes to use audio-visual, telecommunications or other equipment for a Trade Dispute Panel hearing or an Appeal hearing, it must discuss its requirements with ASC at least forty-eight hours prior to the hearing. ASC will use its best efforts to accommodate the request at the expense of the requesting party.

6.8 Confidentiality of the Complaint and the Process

Subject to Paragraph 6.11 below, each party to a trade dispute, ASC and all Panellists shall, in writing, agree in advance that they will maintain confidentiality of the Complaint, the information that becomes available throughout the Procedure and the result or disposition of the Complaint.

6.9 Voluntary Withdrawal or Amendment

If a defendant Advertiser, upon being notified of the receipt of a Complaint or at any other point in the Procedure, voluntarily undertakes in a written notice to ASC to withdraw or amend the Advertising at issue to the satisfaction of ASC, and providing the withdrawal or amendment, as undertaken, will occur within not more than ten working days subsequent to the date of such notice from the defendant Advertiser, then the Procedure will be suspended and the Complaint file closed. ASC, however, will have the right to reactivate the Procedure:

- (a) if the undertaking is not fulfilled; or

(b) if, acting on the written request of the Advertiser who filed the original Complaint, received by ASC within twelve months of the date of the original Complaint, ASC alone concludes that the subject of the Complaint is of a continuing or repetitive nature, which fact suggests to ASC there is an avoidance of, or a predisposition to the avoidance of, the provision(s) of the *Code*.

ASC will be entitled to exercise the right, stated in subparagraph 6.9(b) above, to reactivate the Procedure in cases where the identical Advertisement(s) to which the Complaint refers is/are repeated. The right may also be exercised by ASC in cases where, in its opinion, one or more of the critical elements of the offensive principal claim(s) or tag line(s) of the original Advertisement, have been replicated in other advertising for the defendant Advertiser.

6.10 Failure to Appear at a Hearing

If either party to a trade dispute fails to attend and participate in a Trade Dispute Panel hearing or an Appeal Panel hearing, the Complaint will be decided in the party's absence based on the information already in the possession of the applicable Panel and any further information submitted at that hearing by the party in attendance.

6.11 Publicizing Case; Identifying Parties to the Complaint

(a) If the parties fail to reach a resolution of the Complaint pursuant to Paragraph 5.3 above, ASC will confirm in writing to each party when and where a Trade Dispute hearing will take place.

(b) If the parties reach a resolution of the Complaint as the Procedure provides, or failing a resolution, attend and/or participate at a hearing by a Trade Dispute Panel and/or Appeal Panel and comply with the applicable Panel's decision, then the identity of the parties, the Complaint and resolution will remain confidential.

(c) If the Complaint is decided at a hearing by a Trade Dispute Panel with the defendant Advertiser declining to attend and/or participate; and/or

(d) If ASC has reasonable cause to believe that the defendant Advertiser, after a final decision in the Complaint has been rendered by the applicable Panel, is not complying with the decision that was unfavourable to the defendant Advertiser, or will not comply with such decision, then ASC will, publish in such manner as ASC deems appropriate, a summary of the outcome of the initial hearing and any appeal hearings. This will include the facts and issues in dispute, an identification of the parties and a description of the advertising in question.

(e) In addition to taking the steps described in Paragraph 6.11(d) above, ASC, in such manner and at such time or times as ASC deems appropriate, will:

- (i) first require from the complainant Advertiser its agreement to provide appropriate and adequate evidence at complainant's expense to support its claim if, as a consequence of a Panel's decision, litigation ensues against ASC;
- (ii) refer publically to the defendant Advertiser's unwillingness to participate and/or comply;
- (iii) advise the exhibiting media of the fact recited in Paragraph 6.11(e)(ii) above;
- (iv) notify the Competition Bureau or its [successor(s)] of the fact recited in Paragraph 6.11(e)(ii) above and the other matters recited under Paragraph 6(d) above.

(f) A defendant Advertiser that has declined to attend at or participate in a hearing by a Trade Dispute Panel may, nonetheless, appeal a decision by the Trade Dispute Panel by:

- (i) following the provisions of the Procedure that relate to appealing a Trade Dispute Panel's decision; and by
- (ii) agreeing, in such form as ASC may request, to submit, without reservation, to the provisions of the Procedure in the instant case and any other cases brought in the future against the advertiser under the Procedure or under the Consumer Complaint Procedure; and, in either or both cases;
- (iii) also agreeing to comply with future decisions of a Panel or Council that may be unfavourable to the defendant Advertiser.

6.12 Uniformity of Procedure

Members of Trade Dispute Panels, Review Panels and Appeal Panels will use their reasonable best efforts to maintain uniformity in procedure and in reaching decisions.

6.13 Trade Dispute Fees

These are set out in the Fee Schedule found on ASC's website (www.adstandards.com). The Fees are based on conducting the proceedings in English at ASC's Toronto office. The cost of holding meetings or hearings in venues outside ASC's Toronto office, or providing special equipment or services such as, but not limited to, providing translation services or teleconferencing and/or audio visual equipment not currently owned by ASC, will be charged to the requesting party at its sole expense.

ADVERTISING STANDARDS CANADA

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