



# Truth in Advertising

Genome Canada  
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# Agenda

- **Part I: Who We Are**
- **Part II: Truth in Advertising and the Law**
- **Part III: Staying Out of Trouble**





# **Part I**

## **Who We Are**





## Competition Bureau

- Independent law enforcement agency
- *Competition Act, Consumer Packaging and Labelling Act, Textile Labelling Act, and Precious Metals Marking Act*





# Fair Business Practices Branch (FBP)



*Truth in advertising promotes a highly efficient, functioning economy by:*

- discouraging deceptive business practices;
- encouraging the provision of accurate and truthful information;
- enhancing competition by ensuring a level playing field; and
- enabling informed consumer choice.





# **Part II**

# **Truth in Advertising**

# **&**

# **The Law**





## General Civil Provision, s. 74.01(1) *Competition Act*

- Prohibition against making a representation to the public that is **false or misleading** in a material respect when promoting a product or business interest.

### Highlights:

- **General impression** - must consider the general impression conveyed to consumers by the representation, as well as the literal meaning.
- “**material respect**” – a representation that could affect the decision to purchase.





## General Criminal Provision, s. 52(1) *Competition Act*

- Same as general civil provision, s.74.01(1), except with *mens rea* requirement:
  - No person shall knowingly or recklessly make a representation that is false or misleading in a material respect.





## Performance Claims, s. 74.01(1)(b) *Competition Act*

- Prohibition on making a representation to the public in the form of a **statement, warranty or guarantee of the performance, efficacy or length of life** of a product or service that is not based on an adequate and proper test.
- **Onus is on advertisers** to substantiate.
- Timing: test to be concluded **before** the representation is made to consumers.



**50% energy savings!**





## Marketing on the Internet

- Problem: Consumers cannot physically inspect products for sale online.
- Your Obligation: Online representations (text, pictures, illustrations, audio, video) must not mislead consumers about any aspect of the product or service.
- Project False Hope - targeted cancer-related health fraud online:
  - action taken against approximately 100 Canadian-operated sites;
  - high compliance rate: > 92% complied with requests to modify or remove questionable claims.

**WWW**





### Sauna Belt (Northern Response)

- Claims: melt away fat and cellulite, resulting in significant and effortless weight loss.
- Competition Bureau conclusion: the claims were not based on adequate and proper testing, as required.
- Result and remedies: \$400,000 in penalties and costs, full refund to consumers, required to publish a corrective notice.





## Marketing on the Internet



Link: <http://wemarket4u.net/fatfoe/>





# **Part III**

## **Staying Out of Trouble**





## Staying Onside With the Law



- Review Bureau's guidelines and bulletins, particularly:
  - "Application of the *Competition Act* to Representations on the Internet";
  - "Performance Representations not Based on Adequate and Proper Tests"; and
  - [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).
- Consult your business compliance officer or lawyer.
- Ask the Bureau for an opinion (fee).





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