

CANADIAN MARKETING & ADVERTISING LAW CHECKLIST

Does your campaign raise any red flags?

Here are some critical issues to consider:

1. General Impression

- What is the overall impression?
- Are claims literally true but misleading?
- Have you considered the copy in the context of illustrations and other creative context?

2. Price/Savings Claims

- Are you making market price comparisons?
- Are you “drip” pricing?
- Do your pricing claims pass the ordinary selling price legal tests (time or volume)?
- Are you making an “up to” savings claim?

3. Disclaimers

- Are disclaimers used to clarify, rather than contradict, the main message?
- Are they legible, easily found and clearly linked to the main message?
- Have you considered what the ad will look like in the final size and format?

4. Anti-Spam

- Do you have express or implied consent to send the message (e.g. email or text/SMS)?
- Does an exception apply?
- Does your consent language and message include the prescribed disclosure requirements and a valid unsubscribe?

5. Regulated Products/Services

- Is the product or service subject to category-specific advertising requirements or prohibitions?
- Does it need pre-clearance? For example, cannabis, personal care products, cosmetics, food, alcohol, financial services, children’s advertising, electronics, etc.

6. Influencers and Testimonials

- Do you need to disclose a material connection?
- Does the representation reflect the true, honest and current belief of the reviewer, based on actual use?
- Are there any product regulatory considerations?

7. Intellectual Property and Clearances

- Should you take steps to protect the work?
- Have you confirmed that images, photographs, voices, trade-marks, logos, tag-lines, names and other aspects of the ad will not infringe on other parties’ intellectual property, personality or privacy rights?

8. Privacy

- What personal information is being collected and used? Is anything being transferred or disclosed, for example to your advertising agency or promotional partner?
- Do you have adequate consent? Does your Privacy Policy disclose this?

9. Substantiating Claims

- Do you have sufficient evidence to substantiate any claims?
- Do you have adequate and proper testing that matches claims about market position, performance, efficacy or length of life of a product?

10. Contests

- Is it open in Quebec?
- Are you including contest mini rules in all advertising?
- Have you drafted long rules? Do you want to require winners to sign a release (e.g. type of prize, publicity, etc.)?
- Are you complying with social media platform requirements?

KEY CONTACT



Kelly Harris

416.595.8593

kharris@millerthomson.com

MILLERTHOMSON.COM



MILLER THOMSON
AVOCATS | LAWYERS