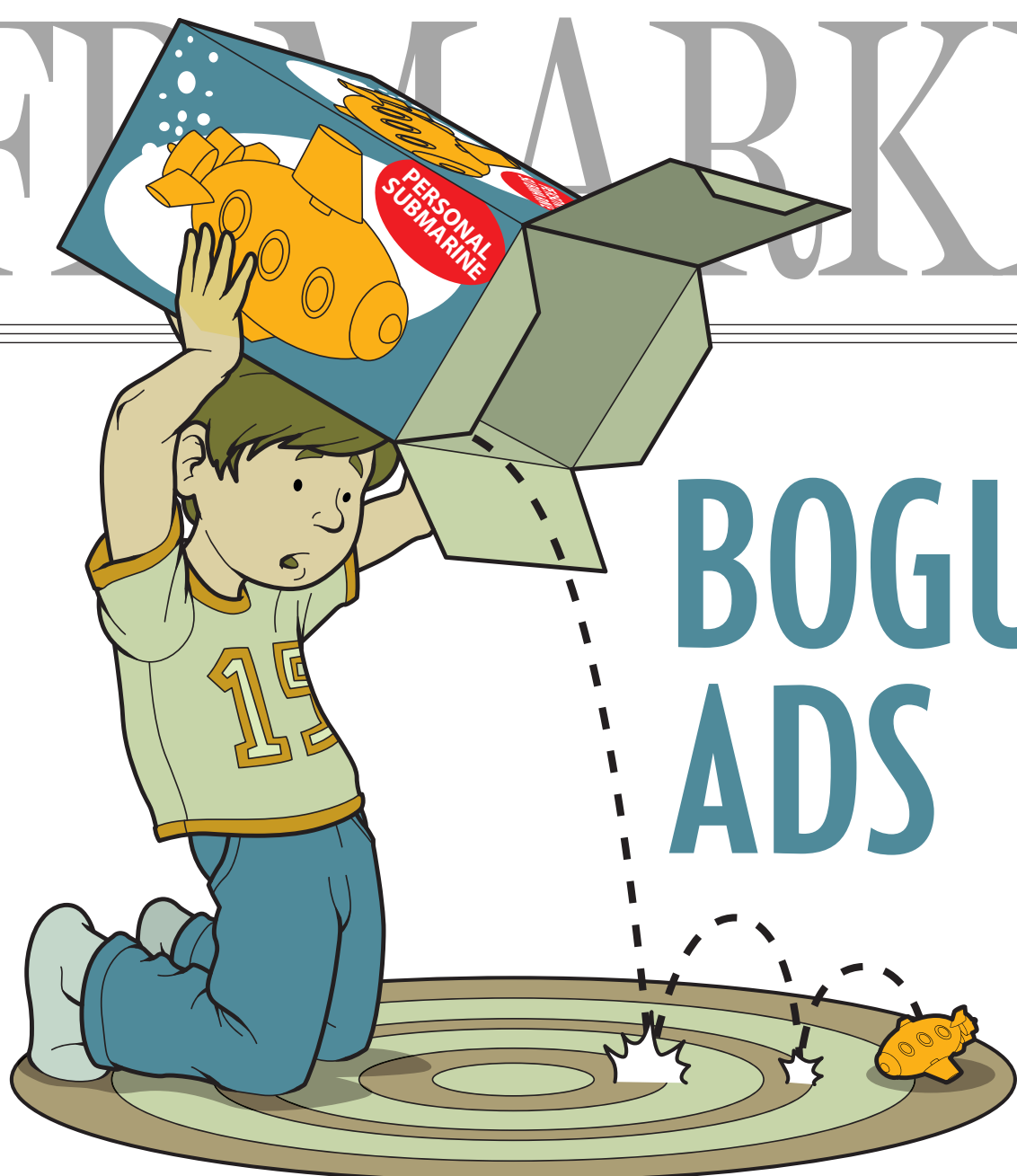


FINANCIAL MARKETING



BOGUS ADS

If you mislead the consumer, be ready to suffer the financial fallout

By Hollie Shaw

Advertisers are wary these days with even the not-so-fine print, given the Competition Act's new, dramatically heightened penalties for misleading marketing practices.

Given their severity, says John Gustavson, head of the Canadian Marketing Association (CMA), the fines might

not be constitutional,

Civil penalties for corporations have soared to \$10-million from \$100,000 for a first offence and to \$15-million from \$200,000 for repeat offenders, the most significant overhaul of the Act in two decades.

"The penalties might be unconstitutional as an administrative penalty and might be more of a criminal penalty," says Mr. Gustavson of the

changes that he believes could make marketers to settle cases more readily.

For individuals, penalties are up to \$750,000 from \$50,000 for a first offence and to \$1-million from \$100,000 for repeaters. The amendments also include prison sentencing for criminal convictions to a maximum of 14 years from five.

"On the one hand, the penalties before could have been

considered a slap on the wrist," Mr. Gustavson says of the new regulations passed in March along with the federal budget.

"This sort of thing is extremely serious, but some of the rules are not crystal clear," he says. "If you are going to give such huge penalties for an individual on a first offence and for a corporation — it is just an amazing increase for something that is not a criminal offence. A \$10-million penalty on a first offence could put somebody out of business.

Industry watchers believe there were clear signs the Bureau was clamping down on advertisers earlier this year when two prominent retail chains were cautioned, but not penalized, for misleading advertising.

In March, Moore's the Suit People Inc., which operates Moore's Clothing for Men, changed its advertising related to a national two-for-one suit sale after the Bureau noted Moore's advertised a "buy one, get one free" sale on designer suits without disclosing that the sale applied to select designer suits only.

At the time, Andrea Rosen, the Bureau's deputy commissioner, said, "It is important for advertisers to remember to clearly and conspicuously disclose any limitations or exclusions in their advertisements to ensure that consumers can make informed purchasing decisions.

Later that month, Brick Warehouse LP scrapped all advertising associated with a national mail-in \$80 rebate on art products without clearly disclosing that the "rebate" was in fact a gift certificate to be used toward a future purchase at The Brick.

When contacted by the Bureau, Brick sent consumers who had made rebate-related purchases an \$80 cheque rather than a gift certificate, and, in stores and on its Web site, told customers the offer was cancelled.

James Musgrove, a lawyer who practices marketing and competition law at Lang Michener in Toronto, says the question of constitutionality arises among those who would argue that the penalties are simply too severe for a civil action.

"If you have what are, in effect, criminal penalties, whether you call it a fine or not, you need the protection of criminal law for the accused."

And there are the murkier aspects of the new law: The misleading representations need not be made in a place to which the public has access.

"I'm damned if I know what that means," Mr. Musgrove says, speculating that it could apply in such cases as people "lying face to face" at the office. "It really broadens the scope in a small but potentially significant change," he says.

Mr. Musgrove believes the law will be challenged. Given the high penalties, "sooner or later somebody will fight it."

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ILLUSTRATION BY MIKE FAILLE



AD MISSIONS

It's nothing much to scream about

This week, a new Ad Missions panel crunches on a consumer-created viral video for Frito Lay Canada. A team from Montreal created the spot for the chip maker in a recent contest that asked consumers to name a new flavour of chip and produce a 30-second online commercial to promote it. 'Scream Cheese,' now airing as a national television spot, was the winner.

Andris Pone is brand strategist for Akendi Informed Design.

If you keep changing your message, people won't know what to think of you. That's why consistency is the No. 1 rule of branding. On this all-important basis, this ad succeeds very nicely. When I think Doritos, I think of a cheeky kind of humour, along with strong and vibrant flavours and a helluva crunch. I draw these associations because the brand, to its great credit, has been pounding away on these attributes forever. "Scream Cheese 2" doesn't speak to crunch, but as a very funny video, it delivers on cheeky humour in spades — the inappropriate screaming suggesting that intense cheese flavour awaits. The question asked at the end of the ad, "What are you SCREAMING about?" is a smart attempt to entice copycat videos that will virally perpetuate Doritos's key brand attributes. MasterCard's 12-year-old "Priceless" campaign has inspired thousands of spoofs on YouTube, ascending the credit-card brand to cultural icon status.

Andrew Potter is a Maclean's columnist, an editor at The Ottawa Citizen and co-author of The Rebel Sell: Why the Culture Can't be Jammed.

During my brief and unimpressive career as a counselor at a day camp for pre-teens, I discovered two things about kids. They love to scream, and they love goofy puns. That is what explains the success of spooooky cereals like Count Chocula and Frankenberry, the popular line of Sloche drinks from Couche-Tard, not to mention the perennial schoolyard chant: I scream, you scream, we all scream for ice cream. You'd think that a brand of chips called "Scream Cheese" would fit into this category — spooky/gross junk

food aimed at adolescents. Except this ad is pitched at casually hip twenty-somethings, the sort of crowd that is more into post-ironic nostalgia-mongering than preadolescent wordplay. It doesn't help that no one in the spot is actually screaming; instead, they're mostly yelling or just speaking loudly, and as the spot played out I found myself trying to guess what they were selling. Military recruiting? A PSA for headphones and hearing loss? A skit about anger management? Oh, corn chips. This is seriously confusing brand messaging. Crowd-sourced ad campaigns are all the rage right now. It's enough to make a real brand manager want to scream.

Scott Reid is a partner and creative director at Philter Communications Inc.

The opportunity to be more engaging and to give the appearance of a democratic brand is obviously compelling to marketers. This Doritos spot is humorous at points, and is clearly sophisticated as far as viewer-generated ads go (the other submissions I viewed were unwatchable). While there are some embarrassing performances and it's easy to find faults with the production, these criticisms are probably moot to the teens that are most likely the target. What I find important here, however, is that the idea behind the spot has no real connection with the product whatsoever. The conceit of screaming in unlikely situations is nice, but we never learn why this new flavour is called Scream Cheese. What is it about this flavour of chip that warrants the shouting? The contest idea is a great way to have a dialogue with customers, but as far as the quality of the advertising it generates, it's open for debate.

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MARKETING REPORT

U.K. COURT CHIPS IN ON PRINGLES

Pringles are potato chips, a London court ruled this week in a dispute over the salty Procter & Gamble Co. snack packaged in a tube. A three-judge panel at the Court of Appeal in London threw out a lower court's ruling that for tax purposes the snack isn't a potato chip, stick or puff. The earlier ruling allowed Pringles to be sold without a sales tax. While most food is exempt from Brit-

ain's 15% sales tax, products made from potatoes, potato flour, or potato starch are not. P&G's lawyers argued Pringles do not look, feel nor taste like a chip. They also claimed the snack isn't made like a chip since it's cooked from baked dough rather than potato slices. The court's decision could cost

Cincinnati-based P&G as much as \$US31-million a year. Bloomberg News



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