



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

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SENT VIA EMAIL

Ms. Diane Rhéaume
Secretary-General
Canadian Radio-television and
Telecommunications Commissions
1, Promenade du Portage
Gatineau, Québec
K1A 0N2

Dear Ms Rhéaume :

Re: Guidelines for Advertising, Promotion and Commercial Messages

This letter is sent in reply to a letter sent to Susan Wheeler, Senior Director, Policy and Regulatory Affairs of the CAB, dated January 3, 2006, from Doug Wilson, Director – Industry Analysis and Program Monitoring. Mr. Wilson's letter requested comments on proposed guidelines for advertising, promotion and commercial messages.

This process is the result of a process that formally started with consultations among the CAB, a number of its specialty and television members and Commission staff in March and April of 2004. This was followed by a letter to the Executive Director of Broadcasting, dated September 20, 2004. The CAB expressed its concerns about the interpretation by Commission staff of two elements of Circular 350, dated 8 August 1988 – the definition of an infomercial and what constitutes advertising within a program. The Association expressed its concern that some elements of Circular 350 and some interpretations of the circular by Commission staff did not accord with the evolving reality of television production and broadcasting in this country.

In a letter of reply dated May 11, 2005, Commission staff agreed that it was appropriate to “modify certain of the criteria used to determine the commercial content of a television program in light of the changes that have taken place in the industry” and that “some flexibility in interpretation is possible and appropriate”. The letter went on to make some general points with regard to product placement within a program and its impact on whether the program

would qualify as Canadian content, whether product placement would constitute advertising as well as on the definition of an infomercial. Finally, the letter indicated that the CRTC would develop guidelines to assist program producers and broadcasters by setting out specific examples of acceptable and unacceptable commercial content.

The broadcasting industry was pleased with the general approach shown in the May 11, 2005 letter which showed an understanding of the environment in which producers make programs and broadcasters license them. Based upon the approach many broadcasters have made commitments to producers for new programming and the producers have proceeded with production. We understand that a number of programs have not been assigned Canadian Recognition numbers pending the issuance of the guidelines.

The CAB was quite surprised by the CRTC's proposed guidelines as they do not appear to reflect the approach originally outlined in the May letter. While some elements serve to clarify the Commission's approach, we find that there are many examples and illustrations that contradict the flexibility demonstrated in the May letter. For example, specific references within the proposed guidelines to the use of company logos within a program directly contradict the statement in the letter that "product placements, company logos, addresses and websites, where there is no explicit intention to sell or promote, will not be considered advertising material". Moreover, the proposed guidelines also seem to contradict the statements in the CTV and Canwest Global licence renewals (Decisions CRTC 2001-457 and 2001-458) that "the Commission will monitor the development of all non-traditional forms of advertising, and continue to assess its impact on the public and the industry as a whole. If required, further discussion of non-traditional advertising could take place as part of a broader review of advertising policy at some future date."

Further we would note that some of the examples used in the proposed guidelines contradict the Commission's approach to infomercials, particularly with reference to PN 1995-93 which defines an ordering opportunity in the following manner:

An ordering opportunity is a direct solicitation, made by an on-screen host or through a voice-over, that provides information on how to purchase the product or service being advertised. The display of either a 1-800 phone number or a company name or address **by itself** does not constitute an ordering opportunity. (emphasis in the original).

We are concerned that in an attempt to be exhaustive, the proposed guidelines not only contradict the May approach but also lead to confusion.

Attached to this letter, you will find our proposed amended guidelines for advertising, promotion and commercial messages. Rather than trying to be as exhaustive as the document originally provided by the CRTC, our revised proposed guidelines set out the four elements that must be taken into consideration in differentiating between incidental placement of a product or service in a program and a commercial message.

Finally, the CAB believes the Commission should assign Canadian content certification numbers before the program is aired based on the storyboard or copy of the program provided by the independent producer.

We appreciate that the Commission staff has taken the time to consult the CAB on this important matter and would be pleased to discuss the CAB's proposed changes to the guidelines document with the hope of resolving this issue in a timely manner.

Yours truly,

A handwritten signature in black ink that reads "Wayne Charman". The signature is written in a cursive, flowing style.

Wayne Charman
Vice-President,
Television and Specialty & Pay Services

c.c. Doug Wilson, Director – Industry Analysis and Program Monitoring, CRTC

Encl.

ADVERTISING, PROMOTION & COMMERCIAL MESSAGES

Advertising material and commercial messages are defined in section 2 of both the *Television Broadcasting Regulations, 1987* and the *Specialty Services Regulations, 1990* (the Regulations) as follows:

- “**advertising material**” is defined as any commercial message and programming that promotes a station, network or program, but does not include:
 - a) a station or network identification;
 - b) the announcement of an upcoming program that is voiced over credits;
 - c) a program that consists exclusively of classified announcements, if the program is broadcast not more than once during a broadcast day and has a duration of not more than one hour (this provision is in the Television Regulations only); or
 - d) a promotion for a Canadian program or a Canadian feature film, notwithstanding that a sponsor is identified in the title of the program or the film, where the identification is limited to the name of the sponsor only and does not include a description, representation or attribute of the sponsor’s products or services.
- “**commercial message**” is defined as any advertisement intended to sell or promote goods, services, natural resources or activities and includes an advertisement that mentions or displays in a list of prizes the name of the person selling or promoting these goods services, natural resources or activities

As these definitions are set by regulation, the establishment of guidelines to determine what constitutes commercial content (advertising material) within a television program must be consistent with them. In addition, guidelines must take into account CRTC policies regarding the broadcast of commercial messages. These policies include Circular No. 350, of August 1988, Public Notice CRTC 1994-139, regarding the broadcast of infomercials and Public Notice CRTC 1995-93, which defines an ordering opportunity.

As set out in the definition in the Regulations and the current Commission policy set out in CRTC Circular No. 350, an “intention to sell or promote” is an integral part of a “commercial message”. In particular, Circular 350 identifies two aspects:

1. **An intention to sell or promote:** in programming where there is an explicit advertising message, for example, an image of a product or service promoted explicitly for sale, this intention is self-evident.
2. **The mix of functions:** the mix among the information, entertainment, and sales or promotion elements of programming can be a factor in deciding whether, in whole or in part, that programming should be considered a commercial message. If the mix of functions is heavily weighted towards information and entertainment, with very incidental sales or promotion, the programming would not be considered a commercial message.

Therefore, the Commission examines the mix among the information, entertainment, sales or promotion elements in which the placement, mention, logo, etc. is presented to determine if it constitutes an intention to sell or promote.

For purposes of these guidelines there are four elements that must be taken into consideration in differentiating between incidental placement of a product or service in a program and a commercial message.

1. Call to Action

Where there is a specific call to the viewer during the course of a television program to call or visit a commercial entity for the purpose of purchasing any product or service, this solicitation or call-to-action will be considered to be advertising. Where there is no such solicitation, the segment will not be considered to constitute commercial activity.

Websites

The mention or display of a website address during a television program would not be considered advertising material where the mention or display is solely to provide the viewer with information that is consistent with the orientation of the program and there is clearly no promotion of an establishment or service, its attributes, facilities, features, etc. For example, closing credits that contain the following: *“For more information on anything you’ve seen in this program, please visit our website at [www.....](#)”*. An examination of the contents of the website for commercial content is unnecessary as this is not part of the television program.

However, where the purpose of the mention or display portrayed in the television program can be considered as a call-to-action directing the viewer to purchase a product or service, the orientation of the program will be considered to have changed from information programming to advertising and promotion. In such cases, the website mention or display and any segment of the program featuring the products contained on the website may be considered advertising material.

Example:

A solicitation to “visit our website where you can purchase the deluxe hamburger grill” would be considered advertising.

2. Incidental to the primary orientation

Product/Service References

The placement or reference of a commercial product within a program will not be considered advertising material where the manner in which the product is placed or referenced is clearly incidental to the primary orientation of the segment in which it appears. In other words, where product references are made in such a way that they break the flow of the program, they will be considered to be commercial activity. Where they do not, they will not be considered to be commercial activity.

Examples:

During a travel program if the trip is made in a vehicle and the host refers to the trip being made in a particular vehicle, this would not be considered to be commercial activity. On the other hand if the host focuses on the vehicle and extols its virtues, this would be considered to be advertising material

A home construction show dealing with mistakes that a contractor has made, the use of a particular brand of drill as part of the flow of the program would not be considered to be advertising material. Where the attention of the viewer is drawn to the virtues of the particular drill make and/or model, the segment could be considered to be advertising material.

An expert guest on a program is identified as offering a relevant service as a means of establishing his or her credentials to provide advice or information; this would not be considered to be advertising. Where the guest outlines the costs of services provided, the business location and other information salient to the selling of a product, this could be considered commercial activity.

Slogans and Logos

The on-screen display of a product logo will not be considered advertising material where the display of the logo fits with the overall flow of the program and is clearly incidental to the primary orientation of the program.

Where however the product logo becomes the focal point of what the viewer sees on the screen such that it is no longer incidental to the primary orientation of the program, it may be considered advertising material. This might be a full frame, sustained shot of only the product or logo, or, where the product or logo appears so frequently on the screen that it no longer fits naturally within the overall flow of the program.

Examples:

The inclusion of a sponsorship notice that refers to the sponsor by name and logo, which may include its short standard marketing slogan, such as “brought to you by Ford where quality is job one”, would not be considered advertising material. Similarly, where the identification of the sponsorship also includes its website address, this would not be considered advertising.

However, a sponsorship such as “brought to you by John Doe Honda, which this week is offering 0% financing” would be considered advertising material.

3. Other contextual information

If the clear intent of the program or segment is weighted towards the provision of information and there are mentions of products with a view to enabling viewers to make an informed choice, they would not be considered to be advertising material.

Example:

If a program outlines how a new restaurant is built and put on the market and it includes reviews by patrons of the menu, service and ambience of the restaurant, this would not be considered to be advertising material. Conversely where a program or program segment provides what is essentially a promotion for a commercial premises or activity, it would be considered to be commercial activity.

4. Products advertised for sale in the commercial breaks

Any advertising that appears in a commercial break must be clearly distinguishable from the program content, such that specific products or services featured in a program are not advertised for sale in the distinct commercial break.

Examples:

If during a handyman or renovation show, a carpenter is shown using a Mastercraft tool, an advertisement for Canadian Tire (the major provider of such tools) or for Mastercraft tools in general would be considered to be clearly distinguishable.

During a travel program about a Caribbean island that describes a particular resort on the island, an advertisement for the resort is carried during a commercial break. This would not be considered to be distinguishable and could lead Commission staff to conclude that the portions of the program reviewing the resort are commercial content.

In reviewing individual programs and program segments to determine whether they constitute infomercial programs or whether given segments are considered to be commercial activity, all four of these criteria will be reviewed.