

# Kluwer Competition Law Blog

## Competition Bureau Tackles Astroturfing in Canada: Reaches Resolution with Bell Canada on Online Employee Reviews

Mark Katz (Davies Ward Phillips & Vineberg LLP, Canada) · Friday, October 16th, 2015

**By Anita Banicevic and Mark Katz**

On October 14, 2015, the Canadian Competition Bureau announced that it had reached a Consent Agreement with Bell Canada to resolve the Bureau's concerns regarding reviews posted by Bell employees for two Bell applications (apps) that were available from the iTunes App Store and the Google Play Store. The investigation and its resolution underscore the Bureau's interest in pursuing enforcement related to online representations and the importance of having an appropriate social media policy for employees.

### *The Bell Investigation*

On November 14, 2014, Bell Canada released new versions of the two apps via the iTunes App Store and the Google Play Store: the MyBell Mobile app and the Virgin Mobile My Account app. The apps at issue are free and allow existing customers to access, review and manage their wireless accounts from a wireless mobile device (e.g., check outstanding balances, make payments). Later in November, a Canadian marketing blogger reported in his online blog that certain of the online reviews for Bell Canada's MyBell Mobile application on the iTunes App Store appeared to have been written by Bell Canada employees. Canadian media outlets picked up on the blog posting on November 26, and these reports appear to have caught the attention of the Competition Bureau. The Commissioner of Competition subsequently initiated an inquiry on December 18, 2014.

As a result of his inquiry, the Commissioner concluded the following:

- Bell had encouraged certain Bell employees, including those involved in the development of the two apps at issue, to download and use them and, if they liked them, to give them 5-star ratings on the iTunes App Store and the Google Play Store.
- The online reviews for the two apps gave the impression that they were posted by independent and impartial consumers and did not reveal that they were made by Bell employees.
- The "ratings provided by Bell employees temporarily affected the overall star rating for the apps in the iTunes App Store and the Google play store until they were removed".
- Bell had engaged in conduct that met the elements of the general prohibition against misleading advertising (found in section 74.01(1) of the Competition Act) but that no restitution was warranted in the circumstances.

The Commissioner also noted, however, that "as soon as senior management at Bell Canada

became aware” of the media reports, the reviews in question were removed. The timing reported in the Consent Agreement and in the original blog suggests that the reviews at issue were likely posted for less than two weeks before they were removed.

### ***The Consent Agreement***

As part of its resolution with the Bureau, Bell Canada agreed

- to pay \$1.25 million in administrative monetary penalties (AMPs);
- not to “direct, encourage or incentivize any Bell Employees or contracted individuals to rate, rank or review an App in an App Store” for a term of three years;
- to enhance its Compliance Program within 60 days, and thereafter maintain it, with a specific focus on not encouraging reviews by Bell employees; and
- that Bell Canada’s “Senior Management shall fully support and enforce the Compliance Program and shall take an active and visible role in its establishment and maintenance”.

In addition, in connection with the settlement, Bell Canada advised the Commissioner that (i) within a year of registration of the Consent Agreement, it will sponsor and host a workshop on online advertising that will include content relating to the integrity of online reviews; and (ii) it had taken steps to notify all staff that it had amended its Social Media Guidelines (as of January 9, 2015) to include a policy prohibiting the public postings of ratings, rankings or reviews of Bell’s products by Bell employees and a warning to employees that non-compliance could result in disciplinary action, including termination.

Although it is not referenced in this Consent Agreement, Bell Canada had resolved a prior misleading advertising investigation in 2011 regarding its pricing representations. In that instance, the Commissioner alleged that Bell Canada had failed to adequately disclose all of the applicable charges for its services. As part of its resolution with the Bureau, Bell Canada agreed not to “publish, disseminate or communicate any representation with respect to the price of its services that is false or misleading in a material respect” for a 10-year term. While the 2011 resolution involved a different issue, it may have influenced the Bureau’s decision to pursue its investigation of Bell Canada’s online review practices so aggressively and to obtain Bell Canada’s agreement to pay a significant AMP.

### ***Implications***

Considering the relatively short length of time that the reviews were posted and the fact that the apps at issue were free and used by existing customers only to access and manage their Bell Canada wireless accounts, the AMP of \$1.25 million is significant. The amount of the penalty underscores the seriousness with which the Bureau approaches advertising and disclosure issues in the digital arena. The Bureau has repeatedly communicated its intention to focus on issues affecting the digital economy, and in particular online reviews. The Bell investigation indicates that this focus is likely to continue.

As a result, in addition to generally being vigilant about their advertising practices, companies should review and, if necessary, update their company online social media policies, particularly with respect to employee blogging and postings. If companies do not have social media policies yet, they would be well advised to adopt them. Finally, as Bell Canada did in this instance, companies should be proactive in addressing any issues if and when they arise.

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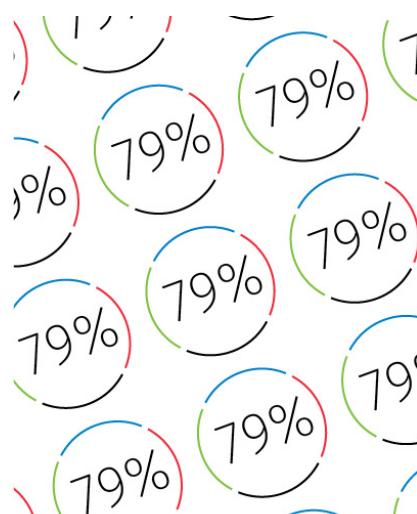
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Source: OECD "Consumer welfare"

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