

False and misleading advertising and retouching images



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Introduction:

The usage of Adobe Photoshop has come a really long way in the past few years, due to the advancement in technology. The software is used by majority of the beauty advertisement companies (Skincare, cosmetics) to make their models look more appealing, they adjust the lightings and retouch the image with the help of such software and get the attention of the audience. The advertisers make the retouched image far more better and appealing than the original image which when seen by the consumers, makes them want to buy their products. The issue here is that the faces of the models on advertisements that are being retouched do not come with a disclaimer that it is being retouched because of which these unrealistic images has implications on the consumer's physiological health such as combat eating disorder, anorexia, depression etc. To overcome the issue the retouching of the images should either be banned or the advertisers need to provide all the information about the ad, which in other words means they need to state a disclaimer that the image has been retouched. Canada has not really enacted any laws about retouching of the images but other countries like United Kingdom and France have. The British Regulatory actions against Olay criticized their advertisement because the company excessively used Photoshop to mislead the consumers. The ASA stated, " It is considered that post-production retouching... misleading impression of the effect the product could achieve"[1]. While on the other hand, France has enacted a new consumer protection law that asks the advertisement companies to show disclaimer about the photo that is being retouched. Canada does have a law against misleading advertising under the

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Competition Act, but no actions have been brought on this issue about retouching of the images, to match the efforts by UK and France.

Competition Act and General Impression Test:

The Competition Act under the Canadian legislation is there to maintain competition amongst Canadian businesses in the market by eliminating any conspiracy or anti competitive agreements. Under the Competition act there is a section about “ *deceptive marketing practice* ”, which in a way supports the law enacted by the European countries for misleading advertisement.

Section 74. 01 (1) states that, “ A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, ... any business interest, by any means whatever, (a) makes a representation to the public... (b) makes a representation to the public in the form of statement... the proof of which lies on the person making the representation,...”[2]. This illustrates that a “ retouched image” using Adobe Photoshop for an advertisement could be labelled as deceptive marketing practice based upon the fact that if it misleads the consumers according to the general impression portrayed by the context of the ad. On the other hand the Quebec Consumer Protection Act explains the general impression with similar interpretation of section 74. 03(5) of the Competition Act. The section states that, “ in proceedings under sections 74. 01 and 74. 02, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct”[3]. In order to verify this statement of the section we look at the Richard v. Time Inc.[4] case where the general impression test is implemented. In this case the Court stated that the <https://assignbuster.com/false-and-misleading-advertising-retouching-images/>

general impression should be tested based on “Credulous and inexperienced consumers” instead of the “average consumer”, in the case you can also see that how the court did not raise the bar that high for misleading advertising. This sort of issue regarding the general impression test could be found in the Quebec Consumer Protection Act, however it does not really change the way “misleading advertising” of digitally retouched images are taken into consideration according to the Competition Act. Retouched images using Photoshop on advertisements can be connected with sections 74.01(b) and 74.03(5) of the Competition Act. The three factors that can be taken into consideration on how the general impression of the retouched advertisement could be misleading are; whether the general impression is created through lack of proper and adequate testing, where or not the advertisement has a disclaimer about the picture being retouched and lastly if the efficacy of the product under the general impression of the advertisement is misleading or not.

General Impression and lack of proper and adequate testing:

The general impression portrayed by a retouched advertisement could be misleading when there is a lack of proper and adequate testing. As seen in parts of section 74.01(1)(b) it is stated that if the advertisers cannot make false claims about their product until or unless the claim is based up “adequate and proper test”. We look at Canada (Commissioner of Competition) v. Rogers and Chatr Wireless Inc.[5] to elaborate more about this statement. Chatr is a subsidiary company launched by Rogers, the reason why they launched Chatr is because they wanted more control over the telecommunication market to compete with its competitors like Bell, <https://assignbuster.com/false-and-misleading-advertising-retouching-images/>

Wind. When Rogers and Chatr were creating advertisements for the launch of this subsidiary company, they made various claims on how their dropped calls are way less compared to their competitors on their websites and press releases. When these claims were examined, it was discovered that the subsidiary company had more dropped calls than its competitors. In conclusion, the Court declared that Rogers and Chatr had failed to support their claim about lower dropped calls compared to their competitors, because they lacked proper and adequate testing in all Canadian telecommunication market about their claim. As a result, it was proven that the company had violated s. 74. 01(1)(b) of the Competition Act. This case showed that Chatr made a misleading claim about their dropped calls compared to other network carriers, to make them look more reliable than its competitors to the public. However their claims turned out to be false when investigated. Even though this case is related to the telecommunication market, it is still relevant to the skincare and cosmetics advertising market. Now let's look at a cosmetics company for better relevancy, one of the famous cosmetics brand; L'Oréal launched an advertisement for their anti-aging cream where they claimed that their product was "clinically proven to boost genes and stimulate the production of youth proteins in just seven days"[6]. To support this statement the company showed various graphs and data on their advertisement but the American Federal Trade Commission (FTC) found that all these graphs and data were false and not reliable. They also stated that the retouched images of the model through airbrushing were misleading. If companies use unproven data, retouched images and graphs just to prove that their claim is true it is not good enough because under Section 74. 01 (1)(b) of the Competition act all these actions are not

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comprised to be stated as exceptions. Which is why when Companies come up such advertisements where they use unreliable data and graphs just to support their retouched images of the models they can be held liable for violating s. 74. 01 (1)(b).

General Impression and Disclaimers:

The companies, who use retouched images in their advertisements to promote their product, try to add disclaimers to the ad about the retouched image to let the audience know about it and to avoid any issues that may relate to causing misleading advertising. But using disclaimers does not really assure that it may be able to avoid the general impression or the misleading part of the advertisement. For example, in many ads such disclaimers are written in very small fonts or are placed in such corners of the ads that it is hard for the viewers to read it, which tells how adding disclaimers can't really change the general impression of the ad context. As mentioned before, general impression is the impression that the viewer makes after viewing the main advertisement; one could say a normal consumer would not really take the time to read small or uninteresting disclaimers on the ad which in contrast supports the point that disclaimers cannot always avoid the general impression the consumer makes of the main advertisement. Lets look at another case to support this statement, Commissioner of Competition v. Yellow Page Marketing. As stated in the case, the respondents, " caused thousands of Canadian businesses, individuals, and organizations, including charities and non-profit organizations...The Commissioner submits that the victims were induced to pay more than \$2, 000...when the fine print revealed that they were actually <https://assignbuster.com/false-and-misleading-advertising-retouching-images/>

signing a new two-year contract with the respondents”[7]. The Court connected this case with section 74. 01 of the Competition Act, they concluded that the disclaimer wasn’t efficient enough to avoid the misleading interpretation of the invoices that were faxed by the respondents to all the businesses, because it did not state clearly in terms of general impression that these invoices were not related to Yellow Page’s records. This demonstrated that Canadian legal system does takes disclaimer cases for misleading advertisements quite seriously and sets the bar high for it. On the other hand, for Richard v. Time Inc. case when the prize winner got the letter stating that he had won the main cash prize, the letters on the document were written in really big font which gained all the attention of the viewer according to general impression. When looked upon closely the document contained another text that was way too small compared to the winning text, which said that Richard was only eligible to win the cash prize if only he could answer the skills question correctly. When at first glance Richard looked at the document where is stated that he had won the cash prize it gave him the general impression of it because of the way the text was sized and placed, however the disclaimer was good enough to avoid the general impression of wining the cash prize. This is why the case led to misleading representation under Section 70. 03(5) of the competition act. This proves the point that disclaimers cannot take away the main focus of the ad all the time, the main content of the ad will still carry the same general impression with or without the disclaimer. At the end of the day a normal viewer of an ad will not read all the contexts of the from the beginning till the end which is why disclaimers cannot be effective enough to avoid the misleading nature of the advertisement.

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General Impression and Efficacy:

Lastly, let's look at how general impression displayed by an advertisement about the efficacy of the product could be misleading. As we have learned from the previous illustration of the definition of what general impression mean through the "Times" case, it can be said that a normal person only looks at the main message conveyed by the advertisement. Hence, it can be stated that in order to prove of the advertisement is misleading or not it has to be examined in depth. Meaning the general impression is determined based on how the advertisement is being represented in terms of its context and if disclaimers have been placed in an effective way for the retouched images of the models. When it comes to skincare and cosmetic companies and their advertisements they have to be very careful with their ads, because their ads are inspected in depth to make sure that the claims about the efficacy they are making for their products are true based on the representation of the results by the model. As discussed earlier, the Olay Advertisement is a great example for this. In their ad, they were promoting their anti-aging eye cream by using a famous female matured celebrity. In the ad, they retouched the images of the eyes of the celebrity to make them look wrinkle free and completely different than her actual picture. They made it look so appealing that the British Regulatory system was able to point out that it seemed too appealing since it was overdone. The ad also had a statement that said, "because younger eyes never go out of fashion" to support the image. All these factors of the ad gave a misleading interpretation of the actual efficacy of the product itself. When the advertisement is seen under the general impression point of view of a

consumer, it demonstrated that if they use their eye cream they would totally get rid of the wrinkles under their eye. The over usage of the airbrush to retouch the eyes of the celebrity just made the statement of the advertisement look misleading. Even though in today's era of modern technology all the companies use such tools to retouch their images for the advertisement and people know about it, the court does not take their general impression they rather take a general impression of someone who is not as informed about such technologies because majority of the population is still living in a rural areas or are from older generations who are not quite aware about such technologies still. Which is why if the retouching of the image using such software give a general impression of the efficacy of the product it could violate section 74. 03(5) of the competition act.

Conclusion:

In conclusion it can be said that we live in a technological era where usage of such editing software like Adobe Photoshop is quite common amongst advertising companies, mostly amongst cosmetics and skincare products where they use a model to display the results of their products. They make their models look more appealing, they adjust the lightings and retouch the image with the help of such software and get the attention of the audience. The advertisers make the retouched image far more better and appealing than the original image which when seen by the consumers, makes them want to buy their products. This practice can sometimes backfire because it may end up making the advertisement look misleading under the general impression. European Countries like UK and France have already taken steps to prevent the consumers from getting misled from such advertisement by <https://assignbuster.com/false-and-misleading-advertising-retouching-images/>

initiating various laws and taking strict actions against them. However, Canada has not really taken any severe steps to protect their consumer from being misled from skincare and cosmetics advertisements where the images are retouched even though Canada does have a law against misleading advertising under the *Competition Act*. This can be changed if Canada decides to link these advertisements where Photoshop is used to retouch the images of the model with Sections 74. 01(1)(b) and 74. 03(5) of the *Competition Act*, because these ads could cause a misleading effect on the consumers even if they have disclaimers about the image being retouched because under the general impression the viewer does not really reads/views the entire context of the ad. The general impression could also be misled when retouched advertisement lacks proper and adequate testing and lastly, the general impression could also be misled when all the contents of the advertisement could be misleading about the efficacy of the product. By looking at the all the factors above Canada should really take into consideration of taking actions under the *Competition Act* against advertisement where images are retouched using Photoshop. They will make Canada join the European Countries in preventing their consumers from being misled by these retouched advertisements.

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