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## Marketing, Advertising & Regulatory Alert

### BELL CONSENTS TO PAY A \$10 MILLION ADMINISTRATIVE MONETARY PENALTY FOR ALLEGED MISLEADING ADVERTISING.

A consent agreement was filed with the Competition Tribunal on June 28, 2011 whereby Bell Canada, Bell Mobility and Bell ExpressVu (collectively, “Bell”) must pay an administrative monetary penalty (“AMP”) of \$10 MILLION DOLLARS, modify all non-compliant advertisements within 60 days and pay the \$100,000 dollars in costs and disbursements incurred by the Competition Bureau (the “Bureau”) during the course of its investigation.

**At issue?** Bell’s advertising, going as far back as December 2007 until at least June 2011, promoting prices for services to the public that the Bureau concluded were false or misleading in a material respect, contrary to the civil provisions (Section 74.01(1)(a)) of the *Competition Act* (the “Act”).

**This consent agreement is notable because it is the first time we’ve seen an AMP of \$10M imposed for misleading advertising.** Back in 2009, a new maximum AMP was set (upped from \$100,000 to \$10M) for a first order under the civil misleading advertising provisions of the Act. While consent agreements have previously imposed AMPs above the statutory maximum (particularly, in ‘ordinary selling price’ cases), here we see the first time this new \$10M threshold has been reached in this context.

Here, the Bureau contends that Bell advertised many of its services as though the consumer only had to pay monthly advertised prices (plus taxes and government fees), but in fact additional fees were applicable. By way of example, the Bureau notes in its press release that Bell was advertising a starting price of \$69.90 per month for a home phone, internet and television services bundle package, but the actual price being charged to its customers, including the additional fees, was

\$80.27...15% more than the advertised price. Those fees, according to the consent agreement, had to be sought out by consumers on Bell’s website and other locations. **So, it was not possible for consumers to obtain the services at the advertised prices; and, according to the Bureau, the disclaimers related to those additional fees were insufficient to change the general impression created by the price representations.**

This matter has been resolved by way of a consent agreement and so, while Bell does not contest the conclusions, Bell is not taken to have admitted to, or accepted, any of the facts or any violation of law.

Some of our readers may be waiting for news about the order being sought by the Bureau against Rogers Communications and its discount wireless service, *Chatr*, which we reported about last December. In the Bureau’s application to the Ontario Superior Court of Justice, the same misleading advertising provisions are at issue over *Chatr* ads claiming fewer dropped calls than some other wireless carriers. In addition to the maximum \$10M administrative monetary penalty, the Bureau is also seeking restitution and corrective notices, which were not part of the Bell consent agreement. The Rogers case is still making its way through the court process, and we’ll report as new developments arise.

The Heenan Blaikie LLP Marketing, Advertising & Regulatory Group provides experienced and practical services to manufacturers, retailers, marketers, advertisers and agencies on a full range of marketing, advertising, promotional, packaging and regulatory issues. For more information about this, and other recent developments, please contact:

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