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Challenge to Amusement Park Price Promotions Adds to Roller Coaster of Canadian Drip Pricing Enforcement

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Traduction en cours.

Just months after obtaining a record C\$38.9-million penalty in the first fully contested drip pricing case in Canada, the Competition Bureau has initiated a new drip pricing case against Canada's Wonderland Company, the operator of Canada's largest amusement park. The Bureau alleges that Wonderland is misleading consumers in promotional emails, social media and its mobile app by advertising prices that are not attainable due to additional mandatory fixed processing fees that are not sufficiently disclosed in the initial price representation. The Bureau's latest legal challenge builds on the Competition Tribunal's recent decision in the *Cineplex* case. As discussed in a prior [Davies bulletin](#), that case (which is under appeal) was the first to interpret the drip pricing provisions added to the *Competition Act* in June 2022 and also involved a type of processing (or "booking") fee alleged to be inadequately disclosed in online price representations to consumers.

Key Questions Raised by Bureau Challenge

If it proceeds, the Bureau's challenge to Wonderland's price representations may, among other things, require the Tribunal to engage more closely than it did in the *Cineplex* case with how far the Act's new drip pricing provisions require strict "all-inclusive" pricing, or whether these provisions leave scope for marketers to present prices and fees in a disaggregated manner without being deceptive.

Unlike in *Cineplex*, which involved an online purchase environment that included "floating ribbons", "urgency cues" and required that users scroll to the bottom of the screen to see the booking fee in question, many examples referred to in the Bureau's recent application against Wonderland involve more conventional static online price representations that disclose additional fees in relatively close proximity to the stated price, or display the additional fee immediately upon the user clicking a link to which the user was specifically directed.

Accordingly, the allegations against Wonderland may test the outer boundaries of where a "price representation" may be deemed to be false or misleading under the Act's drip pricing provisions, including, for example, whether and in what circumstances disclaimers or qualifiers may be taken into account when deciding whether an initial price is not attainable as well as whether isolated representations are, in fact, material to the purchasing decision of consumers when additional fees are prominently disclosed prior to purchase.

The Bureau's claim against Wonderland also raises questions about whether the drip pricing provisions apply to fees where (as may be the case with Wonderland's fees) the final quantum may depend on the number and/or mix of products ultimately selected by the consumer in the purchasing process. The drip pricing provisions apply only to a represented price that is not attainable due to "fixed" obligatory fees. In its application against Wonderland, the Bureau suggests that Wonderland's fees are *fixed* because they are "pre-determined and pre-set" based on "a defined and predictable set of rules", even if the ultimate quantum of the fees may depend on a consumer's product selections. This interpretation similarly pushes the boundaries of the application of the drip pricing provisions. Indeed, the Bureau's enforcement guidance to date provides that disclosure with respect to *variable* fees (where the amount "varies depending on certain factors") are not addressed by the drip pricing provisions. Rather, the Bureau states that such fees are to be assessed under the Act's general prohibition against misleading representations, which requires a more wide-ranging and contextual assessment of the general impression conveyed by the representation. In addition to testing the limits of what constitutes a fixed fee that attracts the application of the drip pricing provisions, the Bureau's position in its application against Wonderland may also create practical issues for advertisers seeking to alert consumers upfront to the existence of applicable fees while ensuring a smooth purchasing process.

The Competition Bureau is seeking a variety of remedies in its application against Wonderland, including administrative monetary penalties and an order that Wonderland pay to affected consumers an amount “not exceeding the amounts paid to Wonderland for the products in respect of which the reviewable conduct was engaged in.” In the *Cineplex* case, the Bureau sought – and the Tribunal imposed -- a monetary penalty representing the total amount of the booking fee in question. It remains to be seen whether the Bureau may take a different approach in future cases, including with respect to Wonderland.

What Else You Need to Know

- **Recent Amendments Raise the Stakes for Marketers.** As a result of recent legislative amendments to the Act:
 - The representation of a price that is not attainable due to fixed obligatory charges or fees may be considered to be false or misleading representation unless the fixed charge or fee is imposed under federal or provincial law (e.g., sales taxes).
 - The maximum monetary penalty available under the Act’s civil misleading advertising provisions has recently been increased to the greater of C\$10 million and three times the value of the benefit derived from the conduct (or, if that benefit cannot reasonably be determined, then 3% of the respondent’s annual worldwide gross revenues).
 - Starting in late June 2025, private parties may seek leave from the Tribunal to initiate claims in respect of conduct alleged to contravene the Act’s civil misleading advertising provisions if it is in the public interest to do so. In such cases, the Tribunal may order a respondent to pay a form of restitution to purchasers of the product affected by the deceptive conduct. Private parties may already sue for damages in respect of conduct that breaches the Act’s criminal misleading advertising provisions.
- **Drip Pricing Remains a Key Bureau Enforcement Priority.** The Bureau’s legal challenge to Wonderland’s price representations continues a long-standing emphasis on drip pricing enforcement, which has led to a number of negotiated consent agreements in addition to the landmark *Cineplex* decision. In the [Bureau’s press release](#) announcing the Wonderland litigation, the Commissioner stated, “For years, we have urged businesses to display the full price of their products upfront. I remind all businesses to review their pricing claims to make sure they do not mislead consumers.” It is notable that the Bureau asserts in its application that Wonderland’s continued marketing practices in the face of the Bureau’s publicly stated position and enforcement record on drip pricing is an “aggravating factor” for the purposes of assessing an appropriate level of monetary penalty.
- **Steps to Consider to Mitigate Risk**
 - Carefully evaluate online representations and purchasing flow for disclosure of mandatory fees. Properly itemize and disclose any mandatory fees clearly and conspicuously (upfront) to consumers. Although it remains to be seen if the Tribunal will agree, the Bureau’s position is that later (non-concurrent) disclosure will not necessarily cure an initial pricing representation that is considered deceptive in isolation.
 - Consider representations in the form and format viewed by consumers. Advertisers should review their website design to ensure that consumers are encouraged or required to review any information that is relevant to their understanding. Furthermore, consider the use and potential impact on consumers of design features like “countdown timers” and other urgency cues.
 - Remember that compliance programs are important. Having a robust and effective compliance program regarding advertising could assist in spotting potential issues and make a due diligence defence available, which may take on particular importance in light of the significant monetary penalties and reputational risks associated with a contravention.

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Les renseignements et commentaires fournis aux présentes sont de nature générale et ne se veulent pas des conseils ou des opinions applicables à des cas particuliers. Nous invitons le lecteur qui souhaite obtenir des précisions sur l'application de la loi à des situations particulières à s'adresser à un conseiller professionnel.