

December 10, 2020

Competition Bureau of Canada
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50 Victoria Street, Room C-114
Gatineau QC K1A 0C9

Canadian Food Inspection Agency
National Headquarters
1400 Merivale Road
Ottawa ON K1A 0Y9

Via Email and Online Form

To Whom It May Concern:

**Re: McDonald's False, Deceptive and Misleading Billboard and Transit
Advertisements Contrary to the *Food and Drugs Act*, and the *Competition Act***

I write to you on behalf of Animal Justice, a national animal law advocacy organization focussed on enhancing legal protections for animals.

This complaint outlines false, deceptive, and misleading advertising on the part of McDonald's Restaurants of Canada Limited ("**McDonald's**"). The advertisements at issue appear to violate:

- the *Food and Drugs Act*,¹ administered by the Canadian Food Inspection Agency (the "CFIA"); and
- the *Competition Act*,² administered by the Competition Bureau of Canada.

Animal Justice requests that the CFIA and Competition Bureau take action to enforce these laws and ensure the operation of a fair and efficient marketplace, protecting consumers against the false, misleading and deceptive claims made by McDonald's.

1. The Advertisement

A photo of the advertisement at issue (the "**McDonald's Ad**") is available below, seen at the intersection of Woodfield Road and Queen Street East in Toronto, Ontario on November 17, 2020. Other versions of the advertisement (containing the same text) were seen at the Yorkdale subway station in Toronto, Ontario on November 18, 2020. The McDonald's Ad also appears on billboards in other Canadian cities, including in Winnipeg, Manitoba on Pembina Highway near Taylor Avenue.

¹ R.S.C., 1985, c. F-27

² R.S.C., 1985, c. C-34



As shown in the above photo, the McDonald's Ad reads as follows in large, prominent text:

The Quarter Pounder. Canadian beef. Now sustainably sourced.

In the McDonald's Ad there is an asterisk immediately following the claim that the Quarter Pounder is "[n]ow sustainably sourced." Given that the advertisement is on a billboard, it is difficult for pedestrians and motorists to see the asterisk or the fine print text that follows. In small font at the bottom of the billboard, the McDonald's Ad goes on to state as follows:

* At least 30% of our Quarter Pounder beef is from certified sustainable sources that meet CRSB standards. crsb.ca

A high-resolution version of this ad is also included below:



The McDonald's Ad is evidently aimed at presenting the "Quarter Pounder" burger as an environmentally-friendly and sustainable meal option. This is problematic for two main reasons. First, the science is clear that beef is not a sustainable food product. Claiming that the meat in the Quarter Pounder is "sustainably sourced" is false and misleading. Second, even if it were true that beef can be "sustainably sourced", the Ad is misleading by virtue of the statistics it relies on in making its sustainability claim. A reasonable person reading this sign would assume that most or all of the meat in the product is "sustainably sourced" when, in fact, the fine print on the billboard is clear that the claim is only applicable to a minimum of 30% of the beef used in the Quarter Pounder burger. As explained in greater detail below, representing that this hamburger is "sustainably sourced" on account of this statistic is highly misleading.

2. Misleading Information

(a) Beef is not an environmentally sustainable product

The first major deceptive and misleading claim underlying the McDonald's Ad is that a beef hamburger can be "sustainably sourced" to begin with. Scientific evidence clearly demonstrates the enormous negative impact that the beef industry has on the environment. As the Intergovernmental Panel on Climate Change has noted, meat and dairy production are the biggest sources of greenhouse gas ("GHG") emissions from the agricultural sector,³ with cows being the biggest agricultural source of GHG emissions by far.⁴

Wayne Roberts, a Canadian food policy analyst and former manager of the Toronto Food Policy Council, succinctly notes:

Although scientific studies vary considerably in their estimates, cows and steers are said to account for two-thirds of greenhouse gas emissions coming from livestock. Raising animals for meat is said to be responsible for some 14.5 percent of all human-caused global warming emissions, similar to the share of emissions that come from cars.⁵

Even in light of some mitigation efforts being undertaken by some in the industry, the carbon footprint of beef farming – in Canada and globally – remains substantial. Indeed, by some measures, beef "requires 28 times more land to produce than pork or chicken, 11 times more water and results in five times more climate-warming emissions". When compared to other essential foods like "potatoes, wheat, and rice, the impact of beef per calorie is even more extreme, requiring 160 times more land and producing 11 times

³ Intergovernmental Panel on Climate Change "IPCC Special Report on Climate Change and Land" *IPCC* (Rev. 2020) online: < <https://www.ipcc.ch/srccl/>>

⁴ Eshel et al., "Environmentally Optimal, Nutritionally Aware Beef Replacement Plant-Based Diets" online (2016) *Environmental Science & Technology*, 50, 15, pp. 8164-8168 <<https://pubs.acs.org/doi/abs/10.1021/acs.est.6b01006>>

⁵ Wayne Roberts, "Is 'sustainable beef' a load of bull?" *Corporate Knights* (December, 2019) online: <<https://www.corporateknights.com/channels/food-beverage/is-sustainable-beef-a-load-of-bull-15752754>>

more greenhouse gases”.⁶ Alternatives like grass-fed cattle farms (which are often considered to be more sustainable) also have significant issues. As journalist Jessica Scott-Reid notes, “grass-fed beef actually produces higher emissions than conventional beef production” largely stemming from the land required to raise grass-fed cattle.⁷

Using terms like “sustainable” in advertisements gives rise to certain consumer perceptions of a product. As noted by psychologists Daniel Hanss and Gisela Bohm, academics from the University of Bergen (Norway), consumers relate the concept of sustainability primarily to environmental and social progress. In recent years, environmental protection and climate change have become particularly salient dimensions of the concept of sustainability amongst consumers.⁸ Sustainable products, in the eyes of the average consumer, should thus aid in the preservation of natural resources and/or combat climate change. In reality, the McDonald’s Quarter Pounder does neither of these things, despite being advertised as “sustainably sourced”.

Although McDonald’s may be taking steps to ensure that 30% of the beef in a specific burger meets Canadian Roundtable for Sustainable Beef (“**CRSB**”) standards, it remains misleading to market a beef burger as being “sustainably sourced” when, by its very nature, this product would be considered unsustainable by the average consumer.

(b) A small percentage of the product is “sustainably sourced”

Even if the premise that beef can be sustainably farmed is accepted, referring to the Quarter Pounder as “sustainably sourced” is still misleading based on the statistic that McDonald’s relies on in making this statement. As is provided in the fine print of the advertisement itself, Quarter Pounders, on an individual basis, may only be comprised of 30% so-called “sustainable beef” in any given circumstance. This would mean that 70% of the beef in certain burgers would not be verified as sustainably sourced by the CRSB. Broadly stating that the Quarter Pounder is sustainably sourced, despite the real prospect of these burgers being composed of 70% “unsustainable” beef, is blatantly misleading to consumers and runs afoul of advertisement content guidance in Canada. As per section 5.11 of the Competition Bureau and Canadian Standards Association’s “Environmental claims: A guide for industry and advertisers” (the “**Guide**”):

[T]he size of an environmental improvement to any one product, measured in terms of its impact, must be considered when making claims in order to avoid exaggeration.⁹

⁶ Damian Carrington, “Giving up beef will reduce carbon footprint more than cars, says expert” *The Guardian* (July 2014) online : <<https://www.theguardian.com/environment/2014/jul/21/giving-up-beef-reduce-carbon-footprint-more-than-cars>>

⁷ Jessica Scott-Reid, “How Grass-Fed Beef Is Duping Consumers, Again” (October 27, 2020) *Sentient Media* online: <<https://sentientmedia.org/how-grass-fed-beef-is-duping-consumers-again/>>

⁸ Daniel Hanss and Gisela Bohm, “Sustainability seen from the perspective of consumers” online (2011) *International Journal of Consumer Studies*, vol. 36, 6 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1470-6431.2011.01045.x>>

⁹ Competition Bureau & Canadian Standards Association, “Environmental claims: A guide for industry and advertisers”, Online (2008), Competition Bureau: < <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/guide-for-industry-and-advertisers-en.pdf>>.

The McDonald's Ad blatantly ignores the relatively small size of environmental improvement made in relation to the Quarter Pounder and exaggerates the extent to which its product is "sustainably sourced", considering that only a fraction of a given Quarter Pounder may be composed of so-called "sustainable" beef.

The validity of the CRSB metric used to verify so-called "sustainable beef" has also been criticized. As Wayne Roberts notes, "the CRSB's basic requirements, as well as optional ratings for "excellence" ...often appear vague" and contain various "loopholes".¹⁰ On extremely important matters "such as air quality and greenhouse gases, for example, the only requirement is that operators should be "aware of management practices that support carbon sequestration and minimize emissions"". The same loose wording goes for impacts on soil health, which need only be "monitored and managed". As Roberts further notes, "on animal welfare, there are no requirements to minimize animal suffering beyond meeting Canada's voluntary national farm animal code of practice". Labelling beef that meets these relaxed and overly broad "standards" as sustainable is irresponsible and misleading. These "weak performance measures set a low bar, open the doors to greenwashing... and undercut efforts to recognize and reward credibly more sustainable producers and brands".¹¹ Once again, by representing that the Quarter Pounder is sustainable based on this flawed metric, the McDonald's Ad is misleading consumers.

3. Legal Position

Section 5 of the *Food and Drugs Act* prohibits advertising food in a manner that is "false, misleading or deceptive or is likely to create an erroneous impression regarding its character..." This is a strict liability offence, meaning the offence is established if the prohibited act was performed regardless of the offender's due diligence.¹²

McDonald's uses false, misleading and deceptive language when referencing the "sustainably sourced" beef in the Quarter Pounder. As discussed in greater detail above, the advertisement in question employs misleading claims to leave viewers with the impression that the Quarter Pounder is a sustainable meal option despite the fact that it cannot be reasonably deemed as such for a number of reasons. This is dishonest.

Once again, referring to the Quarter Pounder as "sustainably sourced" despite the fact that this product is objectively not "sustainable" according to a general consumer's understanding of this concept is deceptive.

Section 52 of the *Competition Act* states that no person shall "knowingly or recklessly make a representation to the public that is false or misleading in a material respect" in the course of promoting, directly or indirectly, a product.¹³ Section 74 of the *Competition*

¹⁰ Wayne Roberts, "Is 'sustainable beef' a load of bull?" *Corporate Knights* (December, 2019) online: <<https://www.corporateknights.com/channels/food-beverage/is-sustainable-beef-a-load-of-bull-15752754>>

¹¹ Ibid

¹² R.S.C., 1985, c. F-27, s.31.1. See also: *R v. Rube*, 1991 CANLII 517 (BCCA)

¹³ R.S.C., 1985, c. C-34, s.52

Act further deems representations made to the public that are “false or misleading in a material respect” to be reviewable conduct. It is not necessary to prove that any person has, in fact, been deceived or misled for either offence to be made out.¹⁴

In determining whether a representation is materially false or misleading, the general impression, as well as the literal meaning of the representation, must be considered.¹⁵ A representation is material if it could affect the decision to purchase,¹⁶ or else conveys a false or misleading impression to an average consumer who would “likely be influenced by that impression in deciding whether or not [they] would purchase the product being offered.”¹⁷

Based on these statutory provisions, it is clear McDonald’s has made false, misleading and deceptive representations which are material in nature and justify further in-depth investigation. McDonald’s marketing language is evidently aimed at promoting the Quarter Pounder as an environmentally friendly and sustainable meal option. In reality, the Quarter Pounder meal is neither of these things.

As discussed briefly above, the Competition Bureau and Canadian Standards Association’s Guide is also instructive in this matter.¹⁸ The Guide is designed to provide assistance to industry and advertisers in complying with federal consumer protection laws when making environmental claims, so as not to mislead the public. It notes that “the concepts involved in sustainability are highly complex and still under study” and recommends “at this time... no claim of achieving sustainability shall be made”. The Guide provides that, if a sustainability claim is made by an advertiser, said advertiser must not claim that an entire product is sustainable as a result of some achievement, as this could be misleading. The McDonald’s Ad makes just such a claim that the Guide advises against.

The Guide further provides that “the size of an environmental improvement to any one product, measured in terms of its impact, must be considered when making claims in order to avoid exaggeration”. The McDonald’s Ad exaggerates the “sustainability” of the Quarter Pounder by relying on a misleading statistic, once again contravening the Guide.

4. Environmental Consumerism, the Impact of Greenwashed Advertisements, and the Need for Regulatory Action

Public concern for environmental protection and global sustainability has “increased tremendously in recent years as multiple research studies consistently reveal the public’s

¹⁴ R.S.C., 1985, c. C-34, ss.52(1) and 74.03(4)(a)

¹⁵ R.S.C., 1985, c. C-34, ss.52(4) and 74.03(5)

¹⁶ *R. v. Stucky*, 2006 CANLII 41523

¹⁷ See e.g. *R. v. Kenitex Canada Ltd.* (1980), 51 C.P.R. (2d) 103 at 107 (Ont. Co. Ct.) rev’d in part on other grounds, sub nom *R. v. Fell* (1981) Can LII 1949 (ON CA), 34 O.R. (2d) 665 (C.A.); see also *Bell Mobility Inc. v. Telus Communications Company*, 2006 BCCA 578

¹⁸ Competition Bureau & Canadian Standards Association, “Environmental claims: A guide for industry and advertisers”, Online (2008), Competition Bureau: < <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/guide-for-industry-and-advertisers-en.pdf>>.

desire to protect the environment”¹⁹. Consumers increasingly possess a sincere desire to purchase products that are less harmful to the environment,²⁰ and are more willing to make green purchases when companies/brands express that they are committed to environmental stewardship.²¹ This has given rise to a trend in the market referred to as “environmental consumerism”. Environmental consumerism is best explained as an orientation in which consumers’ purchases, product usage and disposal decisions are driven by a desire to preserve nature’s ecological balance.²²

Although “consumers may vary in their personal levels of environmental involvement, experimental research shows all consumers respond similarly to green products, suggesting universal appeal of green messages among consumers”.²³ Put another way, consumers universally care about the origins of the products they use and consume, and respond favorably to messaging concerning the positive impact of these products. In Canada specifically, recent reports indicate that an increasing number of Canadian consumers are seeking out environmentally friendly and sustainable products and are more “willing to stomach a higher price tag if food items are more sustainable”.²⁴

Disturbingly, through their use of false and misleading representations, McDonald’s is capitalizing on the rise of ethically conscious consumers and gaining sales while engaged in practices that are inherently harmful to the environment. McDonald’s greenwashed advertisements are especially harmful because, as research has shown, most consumers cannot perceive differences in greenwashed advertisements and true green advertisements.²⁵ Deceitful and “misleading product claims are extremely problematic for consumers who wish to purchase ethically produced products”.²⁶

McDonald’s should be held accountable for its deceptive marketing practices, so as to deter other companies from these behaviours, uphold consumer confidence in the food system, and promote a competitive marketplace. Allowing greenwashed advertisements to continue to be circulated in Canada has dangerous potential to mislead consumers to

¹⁹ Staci Ann Stokes, “Deception in Environmental Advertising: Consumers’ Reaction to Greenwashing” online (2009) *Kansas State University, US, Electronic Theses, Dissertations, and Reports*: < <https://core.ac.uk/download/pdf/5165468.pdf>>

²⁰ C.H. Schwepker & T.B. Cornwall “An examination of ecologically concerned consumers and their intention to purchase ecologically packaged products” online (1991), *Journal of Public Policy and Marketing* 10 (Fall) < <https://www.researchgate.net/publication/235356553> >

²¹ Lindsay Richards “Examining Green Advertising and Its Impact on Consumer Skepticism and Purchasing Patterns” online (2013), *The Elon Journal of Undergraduate Research in Communications* 10 (2) < <http://www.elon.edu/docs/e-web/academics/communications/research/vol4no2/07LindsayRichardsEJFall13.pdf>>

²² Staci Ann Stokes, “Deception in Environmental Advertising: Consumers’ Reaction to Greenwashing” online (2009) *Kansas State University, US, Electronic Theses, Dissertations, and Reports*: < <https://core.ac.uk/download/pdf/5165468.pdf>>

²³ Ibid

²⁴ PricewaterhouseCoopers “2019 Canadian Consumer Insights Survey” online (2019) *PwC* < <https://www.pwc.com/ca/en/retail-consumer/publications/pwc-canada-2019-canadian-consumer-insights-p567530.pdf>>

²⁵ Staci Ann Stokes, “Deception in Environmental Advertising: Consumers’ Reaction to Greenwashing” online (2009) *Kansas State University, US, Electronic Theses, Dissertations, and Reports*: < <https://core.ac.uk/download/pdf/5165468.pdf>>

²⁶ Camille Labchuk, “What does false advertising have to do with animal protection?” in Peter Sankoff, Vaughan Black and Katie Sykes eds, *Canadian Perspectives on Animals and the Law* (Toronto, Irwin Law, 2015) 277 at p. 283

make uninformed purchases, and cause serious, possibly irreparable, damage to the credibility of the advertising industry.

5. Conclusion

Enclosed, please find solemn declarations signed by six persons who are resident in Canada who request that the Commissioner of Competition inquire into the deceptive advertising practices engaged in by McDonald's, as set out in this complaint.

Thank you for your attention to this important matter. Our office is available to assist with your investigation efforts in any way.

Sincerely,

Scott Tinney



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*Encl.