

## The Competition Bureau Continues to Focus on the Online Marketplace

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**April 20, 2023**

On April 17, 2023, the Competition Bureau (Bureau) released Volume 6 of the Deceptive Marketing Practices Digest. For many years, the publication of the Digest was put on hiatus, but the return is welcome for advertisers as it gives insight into issues of concern for the Bureau.

Volume 6 focuses on two substantive issues in the online economy: fake scarcity cues and drip pricing.

Scarcity cues are online claims that a product has limited availability, such as “only 3 left,” and include “social proof” tactics to alert consumers that others are interested in the same product: “3 people have this item in their cart.” Although such psychological strategies to encourage consumption are not new, the Digest notes that in the online economy, such strategies are pervasive, and available in many different and novel automated forms, including inventory counters that may not even be linked to real inventory levels.

When true, the Bureau considers scarcity cues to be helpful by providing useful information to consumers. However, the Bureau warns that when these scarcity cues are false or misleading it may take action since these cues can lead consumers to make impulsive purchasing decisions they may not have otherwise made. The Bureau states that the general impression of any scarcity cue must be scrutinized to ensure that no aspect is misleading. The example given in the Digest is an online travel accommodation platform that warns “10 people are interested in the same room” when in fact those 10 people are looking at different travel days.

Drip pricing is the practice of advertising a price, which is not actually attainable because of the addition of mandatory fees. These additional fees are “dripped” onto the advertised price throughout the online purchase process. This practice has been an enforcement priority of the Bureau for years, with many high-profile cases and settlements. In June 2022, The *Competition Act* was amended by adding a new criminal s.52(1.3) and civil s.74.01(1.1) provision that specifically addresses the practice of drip pricing. These provisions enable the Bureau to pursue the practice without having to prove that the associated representations are false or misleading.

In Volume 6, the Bureau also reflected on its one-year term as President of the International Consumer Protection and Enforcement Network (ICEPEN). Environmental claims were a key focus of ICPEN under the Bureau’s leadership. During the year, ICPEN members conducted a coordinated examination of over 500 websites to uncover potentially misleading or deceptive conduct relating to the environmental impact of

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products or services, launched a campaign to educate consumers and raise awareness about misleading environmental claims, and coordinated Best Practices Workshops for investigators focusing on misleading environmental investigations among other topics.

For guidance relating to digital marketing and environmental marketing, please contact Jennifer McKenzie, Eric Buist, or any member of our Competition & Foreign Investment Group.

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