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Competition Bureau Files Application Against Rogers Alleging Misleading Advertising

CHITTER CHATR LET'S GET AT'ER!

Subscribing to Rogers Communications' *Chatr* discount wireless service will mean "fewer dropped calls than new wireless carriers" and will allow you to have "no worries about dropped calls." At least, that's what Rogers Communications claimed in recent nation-wide advertising in Canada.

This led to a lot of chatter—well actually, allegations—of misleading advertising from other new wireless service providers like Mobilicity, Wind Mobile and Public Mobile, eventually getting the ear of the Competition Bureau (the "Bureau"). So much so, that the Bureau has filed an application against Rogers, alleging misleading advertising under the civil misleading advertising provisions of the *Competition Act* (the "Act") and seeking – among other remedies – **an administrative monetary penalty in the amount of \$10 Million.**

In 2008, Ottawa opened up the domestic cell phone market making additional frequencies available to new wireless service providers, such as Wind Mobile, Mobilicity and Public Mobile. In September 2010, Mobilicity formally filed a complaint with the Bureau against Rogers over what it alleged to be "anti-competitive" behaviour in direct violation of Section 78 of the Act for its creation of a discount cell phone brand, Chatr Wireless Inc. And, also in September of this year, Wind Mobile filed a complaint with the Bureau over Rogers ads claiming its Chatr cell phone and text service has "fewer dropped calls" than the new market competitors. This latest complaint is what has everyone talking.

After an extensive two-month investigation, the Bureau concluded that Rogers' advertising campaign for the Chatr service is misleading as there is no discernable difference in dropped call rates between Chatr and new entrants. The Bureau has accordingly brought an application in the Ontario Superior Court of Justice under the civil misleading advertising provisions of the Act.

This may seem like just another battle in the telecom wars that started back in July of 2009. As detailed in the October 2010 *Canadian Marketing and Advertising Law Update*, we have seen rounds of injunction actions between Rogers, Bell and TELUS over the past year or so over claims about their respective advertising. But, this time, the Bureau has stepped in and significant penalties are at stake here. In fact, this is the first

time we've seen the Bureau look to impose the maximum \$10 million in administrative monetary penalties since this hundred-fold increase from the previous \$100,000 limit came into being in March 2009.

In addition to the administrative monetary penalty, the court is being asked by the Bureau to order Rogers to do the following:

- Immediately stop the advertising campaign and refrain from engaging in similar campaigns;
- Pay restitution to affected customers in the amount of \$20 to each Chatr customer for each month or part of a month that the customer was a Chatr customer while the representation was being made; and
- Issue a corrective notice to inform the general public about the nature and provisions of the order issued against them.

Rogers has said it will "vigorously" defend itself against the Bureau's action adding that it has conducted extensive testing to validate the claims. So stay tuned - the 'Chatr' about this is far from over.

The Heenan Blaikie LLP Marketing, Advertising & Regulatory Group provides experienced and practical service to manufacturers, retailers, marketers and agencies on a full range of marketing, advertising, promotion, packaging and regulatory issues. For more information about this, and other recent developments, please contact Catherine Bate [416 643.6875, cbate@heenan.ca] or Sara Perry [416 643.6975, sperry@heenan.ca].

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