



CASSELS BROCK
LAWYERS



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Fashion Industry Packaging & Labelling

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Introduction



Best Practices and Current Issues in Fashion Industry Packaging and Labelling in Canada

1. *Textile Labelling Act and Consumer Packaging and Labelling Act*
2. *Competition Act*
3. Product claim issues

Textile Labelling Act



Objectives:

- To protect consumers against misrepresentation in the labelling and advertising of textile fibre products
- To enable consumers to choose textiles on the basis of fibre content

Textile Labelling Act



- Requires that certain consumer textile articles be labelled with fibre content and dealer identification
- Prohibits false or misleading representations relating to fibre content

Textile Labelling Act



“Dealer” means the manufacturer, processor, finisher or retailer of a textile fibre product, or a person who is engaged in the business of importing or selling any textile fibre product

Textile Labelling Act



“Consumer textile article” means:

- Any textile fibre, yarn or fabric; or
- Any product made in whole or in part from a textile fibre, yarn or fabric that is in the form in which it is to be sold to any person for consumption or use, not textile fibre products used in the manufacturing, processing or finishing of any product for sale

Textile Labelling Act



“Label” means any label, mark, sign, device, imprint, stamp, brand or ticket.

- Representation labels (fibre content)
- Disclosure labels (dealer identity)

75% Rayon/Rayonne
21% Polyester
4% Other fibre/Autre fibre

CA00549

New Enterprise Inc.
22 Anywhere Street
Ottawa, Ontario K1A 0C9

75% Polyester
25% Cotton/Coton

Textile Labelling Act



Required information:

1. The generic name (in both English and French, except in areas where only one official language is used in consumer transactions) of any fibre that comprises five percent or more of the total fibre mass; and

Textile Labelling Act



2. The percentage by mass of each fibre contained in the textile article; and

Textile Labelling Act



3. The identity of the person who made the consumer textile fabric or the identity of the dealer for whom the article was made. This is usually done by printing the “CA Number” of the dealer obtained from Industry Canada on the label.

Textile Labelling Act



Optional Label Information

1. Trade-Marks and Descriptive Terms

- Canadian registered trade-marks for fibres can be included on labels immediately preceding or following the generic fibre name provided larger font size not used

Textile Labelling Act



Optional Label Information

2. Sizing

- If a size dimension is identified, it must be accurate

3. Care information

- If care information is provided, it must not be false or misleading and must be accurate

Consumer Packaging and Labelling Act



Labelling Requirements for Pre-Packaged Products

- The common or generic name of a product
- Declaration of net quantity
- Dealer identification

Competition Act



1. Misleading advertising
2. Substantiating product claims

Misleading Advertising



The *Competition Act* prohibits making a materially false or misleading representation for the purpose of promoting a product or business interest

Substantiating Product Claims



The *Competition Act* prohibits the making of a representation to the public about the performance, efficacy, or length of life of a product that is not based on an adequate and proper test

Substantiating Product Claims



In order to avoid making inappropriate claims:

- Ensure that your test is relevant to the entire claim
- Ensure that your test results are meaningful
- Use consumer panel testing only in appropriate situations

Substantiating Product Claims



Test Methodology

- In order to ensure that you are using sound methodology:
 - Ensure that the result claimed is not a mere chance or one-time effect. To do so, repeat the test
 - Ensure that if user-tests are conducted, you take adequate precautions such as using control groups and representative samples
 - Save all evidence of your testing so that if necessary, you can provide it to the Competition Bureau

Substantiating Product Claims



- **Lululemon VitaSea Clothing**
 - Unsubstantiated therapeutic and performance claims related to seaweed content in fabric

Environmental Claims



“Environmental Claims: A Guide for Industry and Advertisers” – June 2009

Environmental Claims



The Standards

- The value of environmental claims rests on the assurance that the information provided is credible, objective, and easily understood by consumers. The International Organization for Standardization's (the "**ISO**") 14020 Series of Standards on environmental labels and declarations has been developed to help in this regard.

Environmental Claims



The Standards

- The series is comprised of:
 1. Type 1 eco-logo labels (CAN/CSA-ISO 14024): At the request of the manufacturer of a product, these claims are independently verified by a third party through a standardized testing process. They give consumers an indication of the environmental ranking of a product within a category based on product life cycle considerations.

Environmental Claims



2. Type 2 self-declared environmental claims (CAN/SCA-ISO 14021): These claims are made by manufacturers, importers, distributors, or any person who promotes a product. They are usually based on a single attribute without taking into account the environmental impact of a product's entire life cycle, and without independent verification by a third party.

Environmental Claims



3. Type 3 environmental profile declarations (CAN/CSA-ISO 14025): These are comprehensive data lists that profile environmental information on a product throughout its life cycle. As these claims require disclosure of comprehensive data relating to environmental performance, the consumer might not always have the ability to assess them in terms of identifying and weighing the environmental risks relating to a product.

Environmental Claims

The Environmental Guide focuses on the Type 2 self-declared environmental claims and is designed to provide a system that when followed, will guarantee that these claims are “verifiable, accurate, meaningful and reliable.” It does this by setting out eighteen requirements for self-declared environmental claims. Some of the most important considerations to keep in mind when it comes to textiles are:

Environmental Claims



- Claims must be accurate, substantiated, and verified and the data used to do so must be available and accurate
- Claims should not be based on the absence of ingredients that were never present, nor may a claim imply that a product is safe by indicating that it is “free” of a substance if other harmful chemicals are used

Environmental Claims

- Claims must be specific about the environmental aspect or improvement which is claimed. It is not sufficient to make vague claims such as “green” or “environmentally friendly.” A claim must detail the environmental benefit in such a way that can be verified

Environmental Claims



- Claims must be presented in a manner that clearly indicates whether the claim applies to the complete product, or only to a component of it, such as the packaging

Environmental Claims



- The onus of proving a claim is on the party who makes it

“Made in Canada” Claims



Enforcement Guidelines relating to “Product of Canada” and “Made in Canada” Claims were released in draft form by the Competition Bureau in July 2009



“Made in Canada”/ “Product of Canada” Claims

“Made in Canada”

- Last substantiated transformation of the product must have occurred in Canada
- At least 51% of total direct costs of producing the product must have been incurred in Canada
- Quality statement such as “Made in Canada” with “60% Canadian content and 40% imported content”



“Made in Canada”/ “Product of Canada” Claims

“Product of Canada”

- Last substantiated transformation of the product must have occurred in Canada
- At least 98% of total direct costs of producing the product must have been incurred in Canada



The Bamboo Issue



Turning Plants into Pants

- The problem with bamboo stems from the fact that the chemical manufacturing processes used by clothing manufacturers use heavy, toxic chemicals that strip away all of the resource's eco-friendly lustre. While the “bamboo” textile articles may be derived from bamboo pulp, they are, in fact, rayon fibres made through a chemical process



The Bamboo Issue



The Competition Bureau's Response

- Competition Bureau's concern about misleading labelling and advertising led to clarification of its position: whenever an article is made of man-made rayon fibres derived from bamboo, the generic name on the label must first make reference to "rayon" or the corresponding chemical process and may then contain the words "from bamboo"

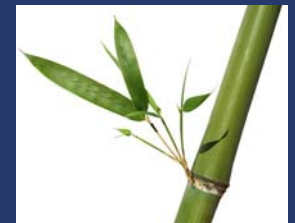


The Bamboo Issue



The Competition Bureau's Response

- The proper generic name will vary depending on which particular cellulose process was used to make the fabric. Examples of acceptable generic names include “rayon,” “viscose,” “rayon from bamboo,” and “viscose from bamboo”. “Bamboo” is no longer an acceptable generic name for a textile fibre unless the bamboo fibre has been mechanically processed from natural bamboo fibre



The Bamboo Issue



The Competition Bureau's Response

- All labels in the Canadian marketplace after August 2009 must conform with these requirements. In order to ensure compliance, the Bureau has contacted a variety of retailers, importers, manufacturers, sellers, processors, and finishers and has conducted on-site inspections and independent testing



The Bamboo Issue



The Competition Bureau's Response

- On January 27, 2010, the Bureau announced that more than 450,000 textile articles have been re-labelled and over 250 internet pages corrected as a result of its efforts. It will continue to monitor the marketplace and act on complaints involving false or misleading labelling and advertising related to textile fibre products



The Bamboo Issue



Bamboo Across the Border

- In late January 2010, 78 companies across the United States received letters from the FTC warning them that they may be breaking the law by selling clothing and other textile products that are labelled as “bamboo” but actually made of manufactured rayon fibre. The companies were told that they should remove or correct any misleading bamboo references and were given time to take corrective steps to avoid further legal action



The Bamboo Issue



Other Bamboozling Issues

1. Performance claims
2. Environmental claims



Conclusion



Next seminar:
Protecting Your Intellectual Property,
Presented by Len Glickman

March 31, 2010

Catherine M. Dennis

Catherine is a partner in the Information, Communications & Entertainment Law Group and practises in the area of intellectual property law. She provides advice on intellectual property matters, particularly trade-marks, marketing and advertising law, copyright law, and confidential information. She has appeared before various courts and tribunals.

Catherine assists clients in managing their domestic and international trade-mark portfolios through clearance and prosecution, licensing, opposition and cancellation proceedings and enforcement. She also has considerable experience in transactional work involving intellectual property and commercialization of intellectual property through licensing and distribution agreements.

She also advises major marketers of a wide variety of goods and services with regard to their advertising, promotions, contests, packaging and labelling.

Catherine is an active member of numerous professional organizations relating to intellectual property law, as well as marketing and advertising law. She is a member of the Trade-Mark Legislation, International Trade-Marks and Trade-Mark Licensing Committees of the Intellectual Property Institute of Canada, the Online Resources Committee of the International Trademark Association, the Intellectual Property Committee of the Canadian Chamber of Commerce, and the Marketing Practices Committee of the Canadian Bar Association (Competition Law Section).

Catherine is a graduate of the University of Toronto Law School, and was a Law Clerk to the Chief Justice of the Ontario Court (General Division) from 1992 to 1994.





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