

Legal 500

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Canada

Advertising & Marketing

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This country-specific Q&A provides an overview of advertising & marketing laws and regulations applicable in Canada.

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Canada: Advertising & Marketing

1. Please provide a brief overview of the legal and regulatory framework governing advertising and marketing in your market. In particular, please explain if there is a self-regulatory system, a statutory system and/or ability for competitors or consumers to bring claims against advertisers.

Advertising in Canada is regulated at the federal and provincial/territorial levels, as well as through self-regulatory bodies.

Federal Laws:

The Competition Act regulates false or misleading advertising and outlines prohibitions for various types of representations, such as price claims, unsubstantiated performance claims, testimonials, greenwashing, drip pricing, misleading warranties, bait-and-switch tactics, and promotional contests.

Additionally, the Criminal Code prohibits illegal lotteries, which impacts the manner in which promotional contests and sweepstakes are conducted. Intellectual property laws, including copyright and trademark regulations, are also relevant when advertising and marketing. There are also specific laws governing advertising for certain sectors and products, including alcohol, cannabis, tobacco, food, prescription and over the counter drugs, natural health products, cosmetics, and advertising aimed at children.

Federal laws further impose packaging and labeling requirements for consumer products, including certain bilingual provisions.

Provincial Laws:

Each province and territory also has its own consumer protection legislation which govern consumer advertising, protection and transactions. It prohibits certain deceptive and false marketing practices and establishes a framework for credit disclosure, direct sales and internet contracts, unsolicited goods, referral selling, and implied warranties. While many of the rules are similar across the provinces, there are some variations, particularly in Quebec.

Quebec consumer protection legislation is the most comprehensive and strict consumer protection law in

Canada. It prohibits misleading, false, or incomplete advertising, particularly regarding product claims, warranties, disclosures, and pricing. It also covers extended warranties, drip pricing, promotional contests, and regulates advertising for credit, alcoholic beverages, and travel services. The Quebec legislation includes specific restrictions on advertising to children under 13 years of age and mandates the use of French in all advertising and marketing.

Self-Regulation:

In Canada, there are also industry self-regulation systems, overseen by self-regulatory organizations such as Ad Standards Canada ("Ad Standards").

2. Please comment on how active the regulators are in your market, in practice, when it comes to regulating advertising and marketing.

Enforcement of advertising laws and regulations in Canada is largely complaint driven, but each of the regulators sets enforcement priorities based on current market practices and concerns relating to consumer protection.

Competition Bureau

The Competition Bureau (the "**Bureau**") is the independent law enforcement agency that enforces the false and misleading advertising provisions of the Competition Act. False or misleading advertising can be a criminal or civil offence under the Competition Act.

The Bureau has broad investigative powers. Investigations are conducted privately, keeping the identity of any sources and information confidential. It has statutory mechanisms to gather evidence, compel testimony and execute search and seizure actions.

The Competition Act penalty for criminal violations may involve a prison term of up to 14 years and/or an unlimited fine for indictable offences or a prison term of up to one year and/or a fine of up to CAD200,000 for summary conviction offences.

Civil penalties can include orders not to engage in conduct, to publish corrective notices, to pay administrative monetary penalties (AMP) and/or

restitution to consumers. AMPs can be up to the greater of CAD10 million (for first-time corporate offenders), CAD15 million (for repeat corporate offenders) and three times the value of the benefit from the deceptive conduct or, if that cannot be reasonably determined, up to 3% of the company's annual worldwide revenues with no cap.

Provincial and Territorial Ministries

The administration and enforcement of provincial/territorial consumer protection laws is the responsibility of the applicable provincial/territorial ministry, which will generally seek to enforce consumer protection laws through orders, fines and undertakings.

Industry-Specific Regulators

Certain products and services are regulated by industry-specific legislation which imposes restrictions and penalties. These include alcohol, cannabis, tobacco, food, drugs, natural health products, cosmetics, drugs, leasing services, transportation, and financial services. The regulatory bodies responsible for enforcement of these regulations include Health Canada, the Canadian Food Inspection Agency (CFIA), the Financial Consumer Agency of Canada and the Canadian Transportation Agency.

There are significant industry self-regulation requirements as well, administered by industry self-regulatory bodies such as Ad Standards.

Quebec

In Quebec, the *Office de la protection du consommateur* is in charge of the consumer protection legislation, the *Régie des alcools, des courses et des jeux* regulates alcoholic beverages advertising, the *Office québécois de la langue française* has governance over French language requirements, and the *Commission d'accès à l'information* is in charge of privacy issues. Remedies may include correcting orders, fines and administrative monetary penalties, depending on the legislation.

Regulators in Quebec typically enforce the applicable legislation based on complaints and will often send requests asking for corrective measures before taking further action. The *Office québécois de la langue française* has been pretty active in recent years. The *Commission d'accès à l'information* currently focuses on education and awareness. It is worthwhile mentioning that new administrative monetary penalties and higher fines for non-compliance with consumer protection legislation will be in effect on January 5, 2025.

3. Do different rules apply to different media (e.g. television broadcast, streaming, online, cinema, print, out-of-home, email marketing, etc)?

In Canada, marketing and advertising regulations tend to vary by media type in addition to the general advertising and marketing rules otherwise discussed in this Guide. Some variances include the following:

- **Television broadcasting, Radio and Streaming** are generally regulated by the Canadian Radio-television and Telecommunications Commission (CRTC), who regulate and supervise broadcasting and telecommunication in the public interest. The CRTC regulates the content on television as well as the limits on the amount of advertising per hour, with special rules for alcohol, children's and political advertising.
- **Out-of-home advertising**, such as billboards and transit ads, are regulated by local municipalities with content restrictions and location-specific rules.
- **Online marketing** could also be impacted by Canadian rules such as the Personal Information Protection and Electronic Documents Act (PIPEDA) (e.g. in the context of behavioural or targeted advertising), which governs how businesses handle personal information requiring that personal information can only be used for the purposes for which it was collected, unless consent is provided. There are also provincial privacy laws that might either complement or replace federal law.
- **Email marketing, texts/SMS and other forms of instant messaging** are governed by Canada's Anti-Spam Legislation (CASL), requiring express consent from the recipients as well as clear unsubscribe mechanisms. Sending unsolicited or misleading commercial electronic messages is illegal.

4. Is it necessary to have advertisements pre-cleared/pre-approved in your market by a relevant authority, regulator or other body before they are published/broadcast, either generally or in relation to particular media, sectors, products, individuals/businesses, etc? If so, please provide a high-level overview.

The Bureau has the discretion to provide a binding written opinion on how the Competition Act would apply to a

proposed practice. This service is provided upon request and payment of a fee.

Canadian government regulators have largely delegated pre-approval to industry self-regulatory agencies. Advertising appearing in provincial liquor retailers is often subject to approval procedures and timelines imposed by the provincial retailer.

Ad Standards offers a fee-based advertising copy review and advisory service. Pre-clearance services are available for:

- alcoholic beverages;
- children's advertising;
- cosmetics;
- food and non-alcoholic beverages;
- responsible advertising of food to children; and
- health products.

Canadian broadcasters typically require pre-clearance from an authorized pre-clearance service provider before accepting broadcast advertisements.

Additionally, the Pharmaceutical Advertising Advisory Board pre-clears advertising directed to healthcare professionals for prescription, non-prescription, biological and natural health products regulated by Health Canada.

Quebec

In Quebec, any advertising about alcoholic beverages must be pre-approved by the *Régie des alcools, des courses et des jeux*, for which requests must be made at least five days before the advertising is to be released.

5. Focusing on misleading claims/marketing, please explain how these are regulated in your market.

False or misleading advertising is prohibited by the Competition Act. In order for an advertising claim to be considered false or misleading, it must be made to the public and be false or misleading in a "material" respect. A representation is "material" if it would likely influence a person to purchase the good or service to which it relates. The courts will consider whether a claim is misleading by looking at the advertisement as a whole (i.e., text, images, symbols, and other content) and considering both its literal meaning and its general impression. When determining the "general impression" of a claim, courts consider a credulous and inexperienced consumer's understanding of the claim.

The Competition Act deals with false and misleading advertising under two regimes: a criminal track and a civil track. The provisions under the two regimes are very similar, but the criminal track only applies to claims that are made knowingly or recklessly. Similar standards regarding misleading advertising apply under provincial and territorial consumer protection legislation and the Canadian Code of Advertising Standards.

Quebec

Additionally, in Quebec, it is forbidden to make false or misleading representations to a consumer, whether or not a product or service has been in fact sold. A representation includes an affirmation, a behaviour or an omission.

Similar to the federal requirements, to determine whether or not a representation is false or misleading, one must consider the general impression it gives, and, as the case may be, the literal meaning of the terms used. The general impression test must be applied from the perspective of the average consumer, who is credulous and inexperienced and takes no more than ordinary care to observe upon first entering into contact with an entire advertisement. Not only the text, but also to the entire context, including the way the text is displayed to the consumer, must be considered.

It is prohibited to omit an important fact in any representation made to a consumer. Among other prohibited practices, it is worthwhile mentioning distorting the meaning of information, relying upon data or analyses falsely presented as scientific, and showing an illustration that is not representative of the good or service for which the price is advertised.

In another respect, it is necessary to present the information in any advertisement in a clear, legible and understandable manner.

6. How is advertising that is (or may be) harmful or offensive managed in your market?

See question 15 for a discussion of comparative advertising, including situations where they contain disparaging claims.

The Trademarks Act prohibits the registration of trademarks which are or are likely to be mistaken for any "scandalous, obscene or immoral word or device". According to the Trademarks Examination Manual, scandalous trademarks are trademarks that "cause general outrage or indignation", offensive trademarks are

marks that are "offensive or disgusting by accepted standards of morality or decency" and immoral trademarks are marks that conflict with accepted standards of morality. To be considered unregistrable pursuant to this prohibition, a trademark must offend a "not insignificant" segment of the public.

7. Are there special rules, or is there special guidance, relating to price claims in your market, such as discounts, sales, limited offers? If so, please provide a high-level overview.

The Competition Act prohibits false or misleading advertising, including price-related claims. Advertisers must ensure that discounts, sales, and other price offers reflect actual savings and are not deceptive. Some specific rules relating to price claims include the following:

- a price reduction must reflect the true regular price of the product;
- when advertising an "ordinary" or "regular" price, retailers must have sold a substantial volume of the product at that price (50% of the time), over a reasonable period (typically six months) before advertising a lower sale price;
- misleading claims about the availability or duration of a sale can be seen as deceptive advertising, "limited-time offer" or "while supplies last" claims should not be used to create a sense of urgency or scarcity;
- it is prohibited to advertise goods or services of which there is an insufficient quantity to meet public demand unless specifically mentioned in the advertisement (bait-and-switch advertising);
- it is prohibited to give consumers the impression that they can avoid paying taxes by using phrases such as "no taxes" (however, it is possible to use expressions such as "we offer a discount equivalent to the taxes");
- phrases such as "cost price" should be avoided as they are highly regulated and may only be used in limited circumstances; and
- it is prohibited to put a greater emphasis on a premium (including a rebate) than on the goods or services offered.

Quebec

In Quebec, consumer protection legislation about **price claims** is very stringent. A very important rule is that it is specifically forbidden to charge, for goods or services, a higher price than that advertised, which means that the

advertised price must be "all-inclusive" of the total amount the consumer must pay for the goods or services, with the exception of taxes (for example, an administrative fee should be included in the price if one pays with a credit card).

8. How are misleading environmental claims regulated in your market? Are there special rules or is there special guidance relating to environmental claims in your market? If so, please provide a high-level overview.

The Competition Act's general prohibition against false and misleading representations apply to environmental claims. In June 2024, the Competition Act was amended to expressly address greenwashing. The amendments require that: (a) claims about a product's environmental benefits be supported by adequate and proper testing and (b) claims about the environmental benefits of a business or its activities be substantiated by adequate and proper testing using an international recognized methodology. The Bureau has indicated that it will be developing guidance regarding what would be considered an "internationally recognized methodology" for testing.

In July 2024, the Bureau released Volume 7 of its Deceptive Marketing Practices Digest, which outlines the Bureau's interpretation of these greenwashing provisions and other issues related to environmental claims. The Bureau defines "environmental claim" as "any representation related to the environment that has been made for the purposes of promoting a product or business interest" and "greenwashing" as "as a short form for environmental claims that are deceptive because they are false, misleading or not adequately and properly tested or substantiated."

In general, the Bureau advises advertisers to ensure that environmental claims are substantiated and verifiable, do not exaggerate the environmental benefits of a product, and are truthful, specific and precise about environmental benefits. The Bureau also recommends ensuring that forward-looking claims (i.e. "our business will be carbon neutral within 3 years") are factual and backed by concrete, verifiable plans rather than be aspirational and non-specific.

The Bureau is in the process of updating its guidelines and has released a proposed regulatory framework regarding recycled content requirements for products and labelling rules for recyclability and composability. The Bureau's Environmental Claims Guide previously provided some interpretive guidance on environmental claims but

in November 2021, the Bureau archived this guidance and indicated that it does not reflect its current views. However, in the absence of other comprehensive guidance, these guidelines are still helpful in providing a general impression of how the Bureau may handle these claims.

9. What are the main sectors or product types where advertisements are either prohibited or tightly restricted (e.g. alcohol, tobacco/smoking, gambling, crypto, unhealthy food and drink). Please provide a high-level overview.

In Canada, there are specific rules that apply to advertising of regulated products such as crypto, alcohol, smoking/tobacco products, and gambling among others. Regarding unhealthy food and drink, please see Question 11.

Alcohol

Alcohol advertising is regulated at both the federal and provincial levels. In general, all radio and television advertisements must adhere to the CRTC's **"Code for Broadcast Advertising of Alcoholic Beverages"**. These advertisements must promote responsible consumption and cannot encourage a specific lifestyle, appeal to minors, associate drinking with driving, or imply any illegal activity. Advertisements typically must also comply with Ad Standards' **"Alcoholic Beverage Advertising Code"**, and if they involve spirits, follow **Spirits Canada's "Code of Responsible Advertising and Marketing"**. Provincial regulations often mirror the CRTC Code and extend to restrictions on digital advertising as well.

Tobacco and Vaping

Tobacco and vape advertising in Canada are regulated by both federal and provincial laws. Federal legislation prohibits nearly all forms of tobacco advertising, including digital ads, with the exception of direct mail to adults, which is limited to brand preference and informational content. Digital advertising for vapes is allowed but subject to various restrictions. Provincial laws generally regulate advertising of these products in or near retail locations and in public spaces.

Federal regulations specifically ban vape ads that target young people, include lifestyle imagery, use testimonials or endorsements, or promote sponsorships. They also prohibit claims about health benefits or comparisons with tobacco products, advertising certain vape flavors, unauthorized therapeutic claims, misleading information, and sales promotions. Vapes intended for use with

cannabis fall under the restrictions of the Cannabis Act.

In Quebec, any promotion or advertising of tobacco, including electronic cigarettes and any similar devices (even if they do not contain nicotine), tobacco accessories as well as of any related brand is highly regulated and prohibited in most situations. The rules are similar regarding promotion or advertising of cannabis, cannabis accessories as well as of any related brand.

Cannabis

Cannabis advertising, including cannabidiol (CBD), is strictly regulated under the Cannabis Act. Advertisements cannot be published in a way that makes them accessible to individuals below the legal age of majority. Cannabis advertisements must not:

- Depict a person, character, or animal;
- Associate cannabis with specific lifestyles (i.e., glamour or recreation);
- Include testimonials or endorsements;
- Communicate price or distribution details;
- Reference sponsorships;
- Appeal to young people;
- Make health or therapeutic claims;
- Associate cannabis with alcohol, tobacco, or vaping products; or
- Offer inducements or create a misleading impression about the product.

Crypto

If a cryptocurrency, non-fungible token (NFT) or other crypto-asset is not considered a security under applicable provincial laws, no additional advertising regulations apply, but their distributors will still be required to comply with the misleading advertising and deceptive marketing provisions in the Competition Act.

To the extent that a crypto-asset fits within the definition of a "security" under applicable provincial law, its distributors will be required to comply with securities legislation, including disclosure obligations for advertising. Securities are regulated on a provincial basis; however, the Canadian Securities Administrators (CSA) is an umbrella organization comprised of all 13 provincial/territorial regulators. The CSA, along with the Investment Industry Regulatory Organization of Canada (IIROC) has published guidance on advertising compliance called "Staff Notice 21-330 Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use" (the "Notice"). The Notice helps crypto trading platforms comply with securities laws and IIROC rules for

advertising, marketing and social media use in relation to crypto-assets that are securities.

The Notice also provides guidance regarding statements that could be considered false or misleading, compliance when promoting crypto trading platforms, and concerns regarding the use of gambling-style contests that may promote excessive trading on platforms.

Additionally, the CSA may review marketing and advertising as part of the registration process and compliance reviews for registered securities dealers. As a result, issues with misleading advertising may affect a platform's registered status under securities laws.

Gambling

Gambling advertisements in Canada are regulated at a provincial/territorial level. Each province has taken different approaches to regulating the content and placement of gambling advertising. Most gambling, including sports betting, is prohibited unless it is organized by or conducted under the permission of government-controlled corporations.

10. Are there special protections for children? If so, please provide a high-level overview.

The CRTC Broadcast Code for Advertising to Children sets out general restrictions on advertising directed at children, including avoiding excessive repetition, urging a child to make a purchase, and including characters that would be appealing to young persons. Similarly, Ad Standards' Children's Code applies to broadcast advertising and aims to guide advertisers to ensure that they are aware of the special characteristics of the children's audience.

Certain federal statutes, such as the Cannabis Act and the Tobacco and Vaping Products Act, prohibit advertising to children under the age of majority in their province of residence, and ads must not be appealing to young persons or depict certain lifestyles.

Many provinces have included restrictions in their alcohol-related legislation that prohibit advertising alcohol products to children under the age of majority or the use of ads that would be appealing to young persons, along with other restrictions. In many cases, these prohibitions are aligned with the CRTC Code for Broadcast Advertising of Alcoholic Beverages.

In 2023, Ad Standards began administering and enforcing its Code for the Responsible Advertising of Food and Beverage Products to Children, which sets out a general

prohibition on advertising (subject to certain exceptions) any food or beverage product in a manner that is primarily directed at persons under the age of 13, unless the product meets certain nutritional criteria.

Bill C-252 was introduced in the House of Commons in February 2022 and is proceeding through Parliament. This bill proposes to amend the Food and Drugs Act to prohibit the advertising of foods and beverages that contribute to excess sodium, sugars and/or saturated fat in children's diets in a manner that is primarily directed at persons who are under 13 years of age.

Canadian private sector privacy legislation does not differentiate between the collection, use and disclosure of personal information of adults versus children. However, the Office of the Privacy Commissioner of Canada (OPC) has published guidance related to the collection of personal information from youth (defined as those aged 18 and below, including children) and children (defined as those under 13 years of age). The OPC views the collection of such information as being of particular sensitivity especially if the child is younger. The key issue when dealing with youth and children is whether the organization would have valid consent, as it raises the question of whether the child or youth would understand the nature, purpose and consequences of the collection, use or disclosure of the information for which they are providing consent. The OPC has published a list of best practices when collecting personal information of youth/children.

Quebec

In Quebec, it is forbidden to direct any commercial advertising at children under 13 years of age. To determine whether an advertisement is directed at children under 13 years of age, the context of its presentation, notably the nature and intended purpose of the goods or services advertised, the manner of presenting such advertisement and the time and place it is shown, must be considered. There are very limited exceptions to this prohibition.

In addition, personal information concerning children under 14 years of age may only be collected with the consent of the person having parental authority or the guardian, unless collecting the information is clearly for the children's benefit. The consent of a minor 14 years of age or over may be obtained from the minor, the person having parental authority or the guardian. The consent is not effective if this rule is not complied with.

11. Are there particular rules or restrictions relating to unhealthy food and drink, such as 'junk food'? If so, please provide a high-level overview.

Canada has recognized the importance of ensuring that nutritional information about foods is readily available to consumers to assist them with making informed purchasing choices. The *Food and Drugs Regulations* were amended to introduce a mandatory front-of-package nutrition symbol on all pre-packaged foods high in sodium, sugars or saturated fat, subject to certain exceptions.

Additionally, as discussed above, Bill C-252 was introduced in the House of Commons in February 2022 and is currently proceeding through Parliament. This bill proposes to amend the *Food and Drugs Act* to prohibit the advertising of foods and beverages that contribute to excess sodium, sugars and/or saturated fat in children's diets in a manner that is primarily directed at persons who are under thirteen years of age.

Quebec

Quebec has stricter rules under their consumer protection legislation, where it is illegal to advertise any products, including food, to children under 13.

12. Are there particular rules or restrictions relating to influencer marketing? If so, please provide a high-level overview.

The deceptive marketing practices provisions of the Competition Act apply to anyone who is promoting a product, service, or any business interest, including influencers.

It is considered misleading advertising if an influencer does not disclose all material connections with the business, product or service they are promoting. A connection may be "material" if it has the potential to affect how consumers evaluate the independence of an influencer from a brand. Examples of material connection include when an influencer has a personal relationship with an advertiser or receives payment, free products, discounts, or trips.

Ad Standards has published guidelines to help ensure that influencer content is not deceptive. The guidelines require that disclosure of material connections be clear, prominent, and in close proximity to the representation being made. For example, Ad Standards and the Bureau guidance indicate that disclosures of material

connections by influencers can be made using hashtags, as long as they are clear (i.e. #ad or #sponsored – unclear disclosures include: #partner, #ambassador, #spon, and "promo"). This assists with meeting space constraints and character limits on social media posts.

The guidelines also include information on how to change disclosures for different formats (i.e. video posts) and across social media platforms, including TikTok, YouTube, Instagram, and SnapChat. They indicate that disclosures should be inseparable from advertisement content so that it stays with the content when shared by social media users. While some platforms include features that permit disclosure of advertising relationships, these features may not always be sufficient to meet legal disclosure requirements. They should be reviewed carefully and, in some cases, used in combination with additional disclosures.

Generally, advertisers should ensure that their influencers:

- clearly disclose any material connections with the advertiser in each post they make;
- do not make representations that are false or misleading; and
- only make performance claims on behalf of the advertiser if they are based on adequate and proper testing.

13. Do influencers require a licence, permit or other official permission before they can operate in your market as advertisers/marketers/brand ambassadors or similar?

Influencers do not require a licence, permit or other official permission to operate in Canada. However, they must comply with the same obligations as all other advertisers.

14. What are the main or most common IP considerations advertisers should keep in mind in your market?

Using a third-party trademark in advertising may constitute trademark infringement under the Trademarks Act.

The Trademarks Act also prohibits misrepresenting one's goods and/or services or those of a competitor, to the public. More specifically, section 7 generally prohibits:

- false and misleading statements tending to

discredit the business, wares or services of a competitor;

- directing public attention to wares/services/businesses in a manner that is likely to confuse the public;
- passing off of wares/services for those ordered or requested; and
- materially misrepresenting the public as it relates to the character, origin, mode of manufacture, or similar compositional qualitative description of the wares/services.

Section 22 of the Trademarks Act prohibits use of a trademark registered by another person in a manner that is likely to have the effect of depreciating the value of the goodwill attached to it.

Furthermore, the cause of action of trade libel supplements the Trademark Act in respect of the use of a trademark in association with misrepresentation of a good, service, or a business.

The Canadian Code of Advertising Standards requires that advertisements must not unfairly discredit, disparage or attack one or more products, services, advertisements, companies or entities, or exaggerate the nature or importance of competitive differences.

There are no specific rules at law requiring preclearance of materials to be used in advertising, except for the general application of intellectual property laws. To use materials owned by a third party, one must secure the necessary rights. In some instances, owners of buildings or other landmarks may claim rights in and to the images of the buildings and require permission for commercial use of any photograph or other image. Depicting a competitor's packaging, logo, or mascot in advertising may constitute copyright infringement and, in the case of the use of a competitor's trademark, trademark infringement or passing off.

Quebec

Quebec language laws generally require the use of the French language in advertising, subject to limited exceptions, and provide prominence requirements for French when it appears with other languages.

Both registered trademarks and unregistered trademarks in Canada (i.e., common law trademarks) can benefit from an exemption that allows them to be displayed exclusively in a language other than French: (1) on a product, its packaging and related documents; (2) in public signage; and (3) in commercial advertising.

However, regarding inscriptions on products, if a

trademark contains a generic term or a description of the product in a language other than French, that generic term or description must also appear in French on the product, except if it is the name of the product or the name of the business.

In addition, French needs to be "markedly predominant" (i.e. at least twice as large) whenever a trademark is displayed in a language other than French on public signage "visible from outside premises". French content may include: (1) a generic term of the relevant goods or services, (2) a description of the relevant goods or services, or (3) a slogan.

15. Is comparative advertising permitted in your market? If so, please provide a high-level overview.

Comparative advertising is generally permitted, so long as it is not false or misleading, does not infringe on third party intellectual property rights and does not unfairly disparage the competitor or its products/services. As indicated above, using a third-party trademark in advertising may constitute trademark infringement under the Trademarks Act.

Certain industries have specific restrictions on comparative advertising, for example comparative advertising of pharmacists is prohibited. In drug advertising, comparative claims must be backed by direct head-to-head human clinical studies. Additionally, there are specific requirements for making comparisons in food advertising.

Quebec

In Quebec, no one may falsely discredit the goods or services of third parties, by any means whatsoever.

16. Are there particular rules relating to 'image rights' in your market that advertisers should be aware of?

There are both common law and statutory rights to image rights or personality rights in Canada. The common law tort of appropriation of personality prohibits the use of an individual's personality—including name, picture, likeness, voice and identity—without permission, although it is relatively nascent in development.

In addition, some provinces have enacted specific legislation providing a cause of action for appropriation of personality. The following elements make up the

statutory cause of action across all jurisdictions:

- (a) only certain traits can be appropriated (voice, name, and likeness);
- (b) the defendant must be identifiable;
- (c) appropriation must be intentional;
- (d) the defendant must gain from the appropriation; and
- (e) the plaintiff must show that damages were suffered as a result of the appropriation.

Where the individual consented to the use of personality, it will constitute a defense in all jurisdictions where there is a statutory cause of action for appropriation of personality.

Most provincial legislation requires that the individual be identifiable. Some provinces extinguish personality rights on the death of the individual. In all jurisdictions, there is a defense to the appropriation (or it is not an appropriation) where it was in the public interest, or where the appropriation was fair comment on a matter of public interest. It is unlikely, however, that commercial advertising would be considered a matter of public interest.

Concurrently, there are also statutory and developing common law rights to privacy, including the following developing torts:

- Intrusion upon seclusion,
- Public disclosure of private facts, and
- Publicity that places a person in a false light in the public eye.

These torts are typically only actionable if the intrusion was intentional/reckless, amounted to an unlawful invasion of the plaintiff's private affairs, and/or would be viewed as highly offensive to the reasonable person.

Quebec

Quebec civil law sets out that every person has a right to the respect of their reputation and privacy (and anonymity), which includes the use of their image, likeness or voice. This right has been interpreted liberally by courts. Any such use requires an express consent from the person concerned for specific purposes only and often for a limited period of time.

17. Are there rules relating to perpetuating

potentially harmful stereotypes, such as gender stereotypes, racial stereotypes, religious stereotypes, and so on in your market? If so, please provide a high-level overview.

While there are no specific laws in Canada that explicitly address stereotyping or equity, diversity, and inclusion in advertising, the Criminal Code includes provisions regarding unacceptable depictions and portrayals. Section 14 prohibits advertisements that:

- Condone any form of discrimination, including on the basis of race, national or ethnic origin, religion, gender identity, sex, sexual orientation, age, or disability;
- Condone or encourage violence or bullying;
- Demean, denigrate, or disparage identifiable individuals, groups, or products;
- Undermine human dignity.

Additionally, the Online Streaming Act (Canada), which came into effect in April 2023, amends the Broadcasting Act to regulate internet audio and video services. Online platforms are now required to invest in Canadian content, with policy goals that support the creation, production, and distribution of Canadian and Indigenous content. These objectives also aim to ensure that the broadcasting system meets the needs of racialized communities and Canadians from diverse ethno-cultural backgrounds, socio-economic statuses, abilities, sexual orientations, gender identities, and age groups.

18. What has been the main impact AI has had on the advertising and marketing content and regulation in your market so far, and what impact is it likely to have in the coming year or two?

As AI has become more commonplace in everyday discussions, claims regarding the use of AI, such as claims that a product is developed through the use of AI, is powered by AI or has AI-related capabilities are becoming more common. There are no special regulations related to making claims about AI. However, advertisers must always comply with the misleading advertising and deceptive marketing provisions in the Competition Act, such that all claims regarding AI must not be false or misleading, and must be supported by adequate and proper testing.

At this time, Canada has not passed any laws that govern the use of artificial Intelligence (AI). The Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems

provides some guidelines for parties developing or managing generative AI systems, but is not the law. Updates are expected via the proposed Artificial Intelligence Data Act, which is currently under committee consideration in the House of Commons. It aims to regulate the development and use of "high-impact" artificial intelligence systems by businesses in Canada.

The proposed legislation does not include provisions related to copyright in content developed by generative AI and at this time Canadian law is not entirely clear with regards to who owns the copyright in materials, including advertising content, produced by generative AI. There is some support for the conclusion that content must be created by a human being in order for it to be protected by copyright, but we expect this issue to become more settled in the next few years. Until the law is more settled, advertisers relying on materials created by generative AI should consider that they may not have copyright protection over those materials.

Advertisers should also be alive to the algorithms behind generative AI products used to create advertising content, as early uses by some advertisers have revealed instances of AI promoting human biases in advertising campaigns.

19. Are regulators in your market currently utilising AI or new technologies in their regulatory activities in your market?

In 2022, the Canadian Intellectual Property Office (CIPO) began using AI technology to attempt to reduce the backlog of pending trademark applications in their system. Their first project involved using AI to review the goods and services statements in trademark applications and generate letters notifying applicants of potential issues with the descriptions that could lead to objections once examination occurs. More recently, in 2023, the process was updated so that the letters identified the specific description of goods or services at issue.

Earlier this year, CIPO also began issuing "pre-assessment" letters for trademark registrations that have approximately one year until their renewal date, do not have their goods and services classified under the Nice Classification system, and can be classified easily. The initial analysis is completed using AI and then reviewed by a Trademark Examiner for accuracy before the letter is issued. In the future, CIPO hopes to be able to issue these letters for all trademark registrations that are not yet classified, regardless of the difficulty of classification.

20. What are the main hot topics, challenges and opportunities facing advertisers in your market (now or in the near future) from a legal/regulatory point of view? Also, there any significant updates or changes to the law, rules, sanctions, regulators or anything else due in your market in the near future that readers should keep in mind?

Environmental, social and corporate governance advertising claims continue to be a key risk for regulatory enforcement as do drip pricing and other 'dark pattern' advertising tactics. Below is an overview of some of the legal trends and changes that we have seen in Canada.

Product Labelling

Front-of-pack nutrition labelling for food products

Canada has recognized the importance of ensuring that nutritional information about foods is readily available to consumers to assist them with making informed purchasing choices. In that regard, the Food and Drugs Regulations were amended to introduce a mandatory front-of-pack nutrition symbol on all pre-packaged foods high in sodium, sugars or saturated fat, subject to certain exceptions.

Changes to natural health products labelling

Canada also introduced amendments to labelling requirements for natural health products (NHPs) regarding the content and format of labels. Of note, new content requirements include the labelling of allergens, gluten, added sulphites and aspartame. Among the many new formatting requirements, a standardised "product facts table" format was introduced, where key product information must be disclosed (not unlike a nutrition facts table in the food context).

Proposed changes to cosmetics labels

In 2023, Health Canada announced proposed changes to the Cosmetic Regulations. These regulations already require the disclosure of all ingredients on cosmetic labels but currently allow the use of the term "parfum" to indicate the presence of fragrance ingredients to avoid needing to disclose what could otherwise be a lengthy list of a mixture of fragrance ingredients. The proposed changes would require "contact" fragrance allergens to be disclosed within the list of ingredients on product labels.

Activities by the Competition Bureau

Changes to the Competition Act

Amendments were introduced to Canada's Competition Act to create new prohibitions against drip pricing (ie. the practice of offering a product or service at a price that is unattainable due to fixed charges or fees that were not properly disclosed). While this practice was always prohibited under the general false and misleading advertising prohibition provision under this Act, it was not dealt with under its own specific section. The Act was also amended to increase the penalties that may be ordered for contravening the civil deceptive marketing practices provisions.

In May 2023, the Bureau commenced a proceeding against Cineplex Inc. ("Cineplex") before the Competition Tribunal for allegedly engaging in misleading advertising in the form of drip pricing. In particular, the Bureau alleges that Cineplex advertised a lower ticket price than the amount customers were required to pay. This is the first contested matter relating to drip pricing since the 2022 amendments to the Competition Act which added specific drip pricing provisions and suggests that the Bureau will continue its vigilance with respect to this type of deceptive advertising.

Focus on environmental and sustainability claims

The Bureau continues to view environmental marketing claims as an area of interest. While the Bureau archived its Environmental Claims guide for advertisers and the industry, it published a condensed list of key considerations when making such claims, including that they should be precise and substantiated. Then in 2024, as discussed above, the Competition Act was amended to specifically prohibit false and misleading environmental claims.

In November 2022, the Bureau confirmed that it had commenced an inquiry regarding alleged deceptive marketing practices relating to environmental claims in response to an application supported by the Canadian Association of Physicians for the Environment. The claims in issue relate to claims made in advertising of the Canadian Gas Association with respect to the environmental impact of natural gas and claims that it is "clean" and "affordable".

Health claims

Both Health Canada and the Bureau are likely to continue to closely monitor claims relating to health in product advertising. "Healthwashing", or the attempt by advertisers to promote products as "healthy" because one aspect of the product is beneficial even though the product as a whole cannot reasonably be considered to be healthy, is likely to receive the same level of vigilance as "greenwashing".

Digital services tax

Canada introduced a digital services tax (DST) in June 2024, which applies retroactively to taxable Canadian digital services revenue earned since January 1, 2022. It requires foreign and domestic large business to pay tax on certain revenue that such business earned in connection with online user engagement, such as digital services that rely on engagement, data, content and contributions from Canadian users, as well as sales and licensing of Canadian user data, all under certain circumstances. Impacted businesses are required to register by January 31, 2025 and file a return by June 30, 2025.

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