

ADVERTISING & MARKETING BULLETIN

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HEMP OR HYPE – THE RULES ON TEXTILE LABELLING IN CANADA

In the world of marketing, companies are constantly trying to improve their products to differentiate them from the competition. One popular development is to emphasize a product's environmental attributes, organic qualities or health effects. For instance, clothing is often touted as being made with hemp, bamboo or organic cotton. With these improved products come the marketing claims extolling their virtues. However companies have to be cautious in how far they go with these claims.

A very well-known company, Lululemon Athletica Inc., has recently been the subject of a media frenzy¹ and swift intervention by the Competition Bureau concerning the claims it has made regarding the seaweed content in, and health benefits of, its line of *VitaSea* clothing. A third party questioned the validity of these claims following an independent study and the New York Times commissioned its own study which seemed to support the third party's findings. Lululemon's stock soured, at least initially, despite the fact that Lululemon denied the alleged findings. Within 48 hours, however, the Competition Bureau announced that Lululemon had agreed to remove, effective November 16th, all unsubstantiated claims alleging therapeutic and/or performance benefits from its *VitaSea* line of clothing products. The Competition Bureau is now examining the entire industry of eco-friendly material and how they are touted in advertising.

There are laws regarding the claims one may make about clothing and other textiles and these are contained in the *Competition Act* under the misleading advertising sections, as well as the *Textile Labelling Act*. This bulletin focuses on the *Textile Labelling Act* (the "Act") and the regulations under the *Act* (the "Regulations"). The *Act* is a quasi-criminal statute that is in place to guard against misrepresentation in the labelling and advertising of textile fibre products. The *Act* seeks to promote greater transparency which enables customers to make educated choices based on fibre content when purchasing textiles.

MAIN FEATURES OF THE ACT

The main features of the *Act* include prohibitions, labelling requirements and punishment for contravention of the *Act*.

The *Act* prohibits a dealer from selling, importing into Canada or advertising listed consumer textile articles, unless they are labelled with fibre content and dealer identification in accordance with the *Act* and Regulations. It also prohibits the dealer from making misleading representations relating to textile fibre products, by means of a label, advertisement or otherwise and stipulates that any representations made in advertisements must be in accordance with the Regulations.

The labelling requirements of the *Act* dictate that any label containing a representation of the fibre content must show:

1. the generic name of any fibre that comprises five percent or more of the total fibre mass;
2. the percentage by mass of each fibre named pursuant to (1); and
3. the identity of the person who made the consumer textile fabric or the identity of the dealer for whom the article was made.

Maximum penalties for contravention of the *Act* vary depending on the provision in question, but can include a fine of up to ten thousand dollars or imprisonment for up to one year.

¹ This frenzy started with "Seaweed" Clothing Has None, Tests Show New York Times, Nov. 14 2007 by Louise Story. See also *Doubts about fabric squeeze Lululemon* The Globe and Mail Nov. 15, 2007 and *Lululemon supplier navigates rocky shoals* The Globe and Mail Nov. 16, 2007, both by Marina Straus and Paul Waldie.

THE REGULATIONS

The Regulations identify the specific requirements for labelling consumer textile products. Core to the Regulations is the list of articles that are required be labelled in accordance with the *Act* and the list of articles that are excluded from the provisions of the *Act*.

ARTICLES TO BE LABELLED – SCHEDULE I OF THE REGULATIONS

Schedule I of the Regulations identifies which articles are to be labelled in accordance with the *Act* and Regulations. The list of articles includes consumer textile articles worn by or carried on a person, floor coverings, outer coverings of upholstered furniture, draperies, carpets, table cloths, towels, all consumer textile articles that are for use on beds, umbrellas and tents to name a few.

REQUIRED INFORMATION

The Regulations identify mandatory disclosure requirements for these articles that fall within the spectrum of the *Act*. Three fundamental requirements covered in the Regulations include the disclosure of fabric content information, bilingual writing and the identity of the dealer.

- Fibre Content – Labels on these articles must state the fibre content expressed in percentages by mass. Anything more than 5% of the mass must be identified by common name.
- Bilingual Requirements – Required fabric content information and any information relating to the fibre content must be bilingual except in areas where only one official language is used in consumer transactions.
- Dealer Identity – Dealer identity can be disclosed by printing the name and postal address that the dealer normally uses to carry on business or by printing the “CA number” for the dealer, as given by the Competition Bureau, on the label.

It is further required under the Regulations that the disclosure label must be legible and accessible to the consumer at the time of purchase. Some textiles will require permanent labels where as others can use non-permanent labels such as wrappers or stickers.

VARIATIONS IN THE REQUIREMENTS

Not all the requirements found in the *Act* apply to all listed articles in Schedule I of the Regulations. There are certain items for which the Regulations are varied to accommodate their nature. Those items include second hand articles and prepackaged consumer textile articles.

With respect to second hand articles, those that are clearly identified as such do not require labelling. However when there is a label on the article it must be labelled in accordance with the *Act* and Regulations.

Labelling of prepackaged consumer textile articles is somewhat different from the labelling of traditional consumer textile goods. If the disclosure label is clearly visible to the prospective purchaser, no further labelling is required. However, if the label is not visible then the information must be repeated on the packaging. There are some product specific labelling restrictions within the *Act*.

CONCLUSION

While compliance with these Regulations may seem daunting, the alternative of suffering the penalties associated with their breach, including the potential negative publicity is much more onerous. There is no place for artistic license in labelling.

Written by Sharon Groom with research by Sofi Khwaja

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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The landscape of laws, regulations and codes governing advertising and marketing is complex and multi-jurisdictional. Our Advertising and Marketing Group has the knowledge and experience to help businesses comply with these legal requirements, without weakening the marketing effectiveness and creative brilliance of our clients' ideas. Our advertising and marketing clients operate in a wide range of business sectors, including automotive, food and beverages, consumer credit and other financial services, cosmetics, consumer goods, drugs, education, gaming, media and entertainment, electronics, publishing, medical devices, retail, textiles and telecommunications.

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For further information please contact your McMillan Binch Mendelsohn LLP lawyer or one of the Practice Leaders of our Advertising & Marketing Group listed below:

PRACTICE LEADERS

Sharon Groom	416.865.7152	sharon.groom@mcmbm.com
Bill Hearn	416.865.7240	bill.hearn@mcmbm.com

MCMILLAN BINCH MENDELSON

TORONTO | TEL: 416.865.7000 | FAX: 416.865.7048

MONTRÉAL | TEL: 514.987.5000 | FAX: 514.987.1213

www.mcmbm.com