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North of Legal or South of Safe? Key Legal and Regulatory Considerations to Substantiate “Made in Canada” Claims

On the heels of Canada Day and with Canadian patriotism on the rise, many companies doing business in Canada are eager to promote their products as “Canadian”. Before wrapping a product in the Canadian flag, and to avoid common pitfalls, the legal and regulatory requirements for “Made in Canada” and “Canadian” claims should be considered.

Key aspects of applicable Canadian federal laws and regulatory guidance are highlighted below.

What’s a Passing Grade North of 49? 51% and 98%!

Canada’s Competition Bureau takes the lead in enforcing the requirements of the *Competition Act*, *Consumer Product Safety Act*, and the *Textile Labelling Act* (for non-food products). These Acts prohibit false or misleading representation made in any medium, whether express or implied. In assessing a claim, the Competition Bureau considers not only its literal meaning but also the general impression conveyed by words, visual elements, illustrations, and the overall layout. False or misleading claims may lead to civil penalties or criminal sanctions.

“Made in Canada” and “Product of Canada” claims are not mandatory under the above-noted Acts, but if made, they must satisfy three conditions:

1. A “Made in Canada” claim requires that at least 51% of the total direct costs of producing or manufacturing the product have been incurred in Canada. For a “Product of Canada” claim, the threshold is at least 98% of the total direct costs.
2. For either type of claim, the last substantial transformation of the product must have occurred in Canada.
3. “Made in Canada” claims must be accompanied by an appropriate qualifying statement (e.g., “Made in Canada with imported parts”).

Are Those Maple-Leaf Cookies “Canadian”? The (Regulatory) Recipe for Success

For food and alcohol products, the use of a “Product of Canada” or “Made in Canada” claim is similarly voluntary. However, if one of these claims is used, whether at the wholesale or retail level, in advertising, by restaurants, or in respect of ingredients, it must not be false, deceptive, or misleading, or likely to create an erroneous impression. Enforcement is carried out by the Canadian Food Inspection Agency in accordance with the *Food and Drugs Act* and the *Safe Food for Canadians Act*. Applicable standards relate to the food or alcohol itself; packaging materials, among other things, are excluded from the assessment.

“Product of Canada” / “Canadian”

A food or alcohol product is a “Product of Canada” (or “Canadian”, which is considered equivalent) if “all or virtually all” significant ingredients, processing, and labour used to make it are Canadian in origin. Non-Canadian material, if present, must be negligible (less than a total of 2% of the product) and not generally produced in Canada (e.g., vanilla).

Claiming that a product is “100% Canadian” raises the threshold, meaning *all* ingredients, processing, and labour must be Canadian, rather than “all or virtually all”.

“Made in Canada”

A food or alcohol product can be labelled “Made in Canada” if the last substantial transformation of the product occurred in Canada (e.g., the processing in Canada of butter, sugar, and flour to produce cookies) even if some ingredients are from other countries.

A qualifying statement must be used to indicate that the product is made in Canada from imported, or a combination of domestic and imported, ingredients. The qualifying statement must be clear: made in Canada “from domestic **and/or** imported ingredients” is not permitted.

For products that cannot satisfy the conditions for a “Product of Canada” or “Made in Canada” claim, a process-related claim (e.g., “Brewed in Canada” or “Prepared in Canada”) may be used, if accurate and not misleading.

Pulp Fiction? Not When It Comes to Record-Keeping for Your “Made in Canada” Claims

Be ready to substantiate your “Made in Canada” and “Product of Canada” claims. Keep detailed records of material sources, manufacturing, and costs as evidence that your product meets the criteria.

Red, White & Legal: Intellectual Property Considerations

Don’t assume that using symbols of Canada as part of your product’s branding is fair game. To avoid infringing on someone else’s intellectual property, and the risk of potential lawsuits, make sure that any Canadiana you use (e.g., logos, symbols, slogans, advertising) is original or properly licensed. As one example, the national flag of Canada is a “prohibited mark” under the *Trademarks Act* and protected from unauthorized use for commercial purposes. The use of any mark consisting of, or so similar as to be likely to be mistaken for, Canada’s flag is prohibited without the consent of the Government of Canada.

Even if original or properly licensed Canadian symbols are used, caution is still advised: such symbols could suggest that the product is a “Product of Canada”, which may lead to regulatory noncompliance if the conditions for that claim cannot be met.

Key Takeaways

Promoting products as “Canadian” can be a powerful marketing tool, especially during times of heightened national pride. However, businesses should tread carefully to ensure compliance with Canada’s complex legal and regulatory requirements. Be sure to celebrate Canadian pride while staying firmly on the right side of the law.