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**Introducing Products to the Canadian Market:**  
**Overview of Packaging and Labelling Considerations**

When a non-Canadian manufacturer or distributor introduces new products into the Canadian market, it must consider a number of legal issues. One that can lead to delay if not addressed soon enough is to ensure that product packaging and labels comply with Canadian law. The purpose of this article is to provide an overview of the various pieces of federal legislation, and areas within provincial jurisdiction, that may need to be considered when introducing new products. We also identify other issues that should be considered when planning new marketing initiatives for Canada.

**Federal Statutes: Packaging and Labelling**

The federal statutes that most often need to be considered when reviewing product packaging and labels are as follows:

- o The *Consumer Packaging and Labelling Act* (“CPLA”) and the *Consumer Packaging and Labelling Regulations*<sup>1</sup> set out obligations for consumer product labelling generally and, in particular, specify the mandatory information that must be provided on the “principal display panel” on product packaging for all “pre-packaged products” sold in Canada. The mandatory information that must be provided in both English and French (Canada’s official languages) are (a) the identity of the product or its generic name; and (b) the net quantity or numeric count of the products. In addition, the CPLA requires that (c) the manufacturer or Canadian dealer name and place of business be included, but this may be located anywhere on the package except the bottom, and need not be in both official languages.

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<sup>1</sup> The Competition Bureau has prepared a Guide to the *Consumer Packaging and Labelling Act* and Regulations: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01248.html>

- The CPLA and its regulations contain detailed requirements that apply in specific situations. For example, there are minimum height and/or font size requirements that apply to the mandatory information on product labels.
- Both the CPLA and the *Weights and Measures Act* mandate the general use of metric measurement on product labels, although Imperial measurements may also be used in some circumstances.
- Country of origin markings are addressed in the *Marking of Imported Goods Regulations* and there are supplemental regulations that pertain to the identification of products from NAFTA (North American Free Trade Agreement) and non-NAFTA countries.
- The *Hazardous Product Act* and its regulations apply in certain circumstances, such as to specify the markings and symbols that are necessary for flammable or other hazardous products.
- The *Canada Consumer Product Safety Act* (“CCPSA”) applies to “consumer products” which include products that may be reasonably expected to be obtained by an individual to be used for non-commercial purposes. The focus of the CCPSA is to prohibit the manufacture, importation or advertisement of consumer products that pose a danger to human health or safety. The CCPSA also includes general record-keeping requirements, requirements for product recalls, and for government reports with respect to recalls and other incidents.
- Among other things, the *Competition Act* deals with “deceptive marketing practices” and includes criminal and civil provisions to address misleading representations and performance claims. Pricing can be affected under this legislation; it contains rules for meeting either a “time test” or a “volume of sales test” before advertising a sale price as compared to an ordinary price.
- For promotional contests, both the *Competition Act* (e.g. for disclosure requirements) and the *Criminal Code* (which gives rise to the “no purchase required” and “skill testing question” provisions that are generally used in contest rules) must be considered. There are additional Quebec-specific rules for promotional contests offered in that province.
- Product-specific federal legislation, that may also need to be considered include:

- The *Food & Drugs Act*. In addition to food and drugs, this legislation and its regulations govern the marketing and sale of cosmetics, medical devices and natural health products;
- The *Pest Control Products Act*; and
- The *Textile Labelling Act*.

### **Other Federal Regimes: Trade-Marks, Telemarketing and E-Mail Marketing**

The use or registration of trade-marks in the United States or elsewhere does not automatically confer equivalent rights in Canada on their owners. Appropriate searches should be conducted and applications filed to ensure that proposed trade-marks will not infringe the prior rights of third parties in Canada and to protect the manufacturer's rights here. "Common law" trade-marks should be identified with the <sup>TM</sup> symbol and registered marks with the ® symbol.<sup>2</sup>

If products are being marketed directly to consumers in Canada via telemarketing or e-mail, both the "National Do Not Call List" and other telemarketing requirements under the *Telecommunications Act* and the pending federal "anti-spam" legislation<sup>3</sup> should be considered.

### **Quebec's Charter of the French Language**

For U.S.-based manufacturers and distributors, the issue of French-language packaging and labelling can be a major concern. The Quebec provincial law, *The Charter of the French Language* requires that, generally, all product labels and advertising for products sold in that province be provided in the French language. English-language labels and advertising are permitted, but the French-language versions must always be "no less predominant" than a version in another language. All of the text must appear in French and the French version overall must comprise the same proportion of the product package or label as the English version. In contrast to the minimal bilingual labelling

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<sup>2</sup> The equivalent markings in French are <sup>MC</sup> (marque de commerce - unregistered) and <sup>MD</sup> (marque deposer - registered). The Canadian Intellectual Property Office provides an introduction to trade-marks at: [http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h\\_wr00002.html](http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00002.html).

<sup>3</sup> For guidance on the pending federal anti-spam legislation see my web site: <http://www.caobrienlaw.com/resources>.

requirements under the CPLA, this requirement cannot be complied with by merely “sticker-over” U.S.-produced English language labels. Instead, “mirror-image” labels are required, where, for example, one half of the container contains the French-language version and the other half contains the English-language version.

### **Consumer Protection and Privacy**

Most provinces have consumer protection legislation that can affect the sales and marketing activities of non-Canadian manufacturers or distributors. For example, the Ontario *Consumer Protection Act* and its regulations provide for certain consumer rights and warranties, prohibit certain unfair practices and mandate minimum rights and obligations under specific kinds of consumer contracts, such as future performance agreements (which include gift card agreements), Internet and remote agreements.

Where companies collect, use or disclose consumer personal information, privacy legislation will apply. The federal *Personal Information Protection and Electronic Documents Act* applies to personal information that is collected, used or disclosed in connection with commercial activity across Canada, where equivalent provincial privacy legislation has not been enacted. Equivalent legislation has been enacted in Quebec, Alberta and British Columbia, and a number of provinces have also enacted legislation that applies specifically to personal health information.

### **Self-Regulatory Bodies and Regimes**

Finally, certain self-regulatory regimes may need to be addressed. These could include whether there are any mandatory or industry-standard product standards, such as those developed or adopted by the Standards Council of Canada. Similarly, a company’s marketing and advertising campaigns may require reference to the *Canadian Code of Advertising Standards*, administered by Advertising Standards Canada.

Please address any questions about packaging and labelling or any related matters to Carol Anne O’Brien at [caob@caobrienlaw.com](mailto:caob@caobrienlaw.com), or (416) 640-7270.

Carol Anne O’Brien’s law practice is focused on regulatory matters including communications law (broadcasting and telecommunications), competition law, advertising and marketing, Internet domain names and privacy.
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