

**Resolution 13-20**  
**CANADIAN PRODUCT AND CANADIAN MADE**

- WHEREAS:** The guidelines for "Product of Canada" and "Made in Canada" claims promote compliance with subsection 5(1) of the Food and Drugs Act and subsection 6(1) of the Safe Food for Canadians Act, which prohibit false and misleading claims;
- WHEREAS:** A food product may use the claim "Product of Canada" when all or virtually all major ingredients, processing, and labour used to make the food product are Canadian;
- WHEREAS:** A "Made in Canada" claim with a qualifying statement can be used on a food product when the last substantial transformation of the product occurred in Canada, even if some ingredients are from other countries;
- WHEREAS:** Products will qualify for a "Made in Canada" when at least 51% of the total direct cost of producing or manufacturing the good must have occurred in Canada;
- WHEREAS:** Some of our "Made in Canada" raw products such as honey could be mixed with up to 30% of imported honey which is misleading to the Canadian consumers;

**THEREFORE BE IT RESOLVED**

**THAT ALBERTA'S AGRICULTURAL SERVICE BOARDS REQUEST**

That Canadian Food Inspection Agency amend the Guidelines for "Product of Canada" and "Made in Canada" claims to not include pure products such as honey.

<b>SPONSORED BY:</b>	<u>Northern Sunrise County</u>
<b>MOVED BY:</b>	<u>Peter Gunning, Northern Sunrise County</u>
<b>SECONDED BY:</b>	<u>Terry Ungarian, County of Northern Lights</u>
<b>CARRIED:</b>	<u>89%</u>
<b>DEFEATED:</b>	<u></u>
<b>STATUS:</b>	<u>Provincial</u>
	<u>Alberta Agriculture and Forestry</u>
<b>DEPARTMENT:</b>	<u>Canadian Food Inspection Agency</u>

## BACKGROUND

May 2013

Competition Bulletin

[James B. Musgrove](#)

The Competition Bureau's Enforcement Guidelines as to "Product of Canada" and "Made in Canada" Claims (the "Guidelines") came into effect as of July 1, 2010. The Guidelines apply to all goods sold in Canada, including those that are imported. The Guidelines, like their predecessors, are designed to assist in evaluating compliance with misleading advertising prohibitions as applied to the identification of Canadian content requirements in the *Competition Act*, the *Consumer Packaging and Labelling Act*, and the *Textile Labelling Act*.

In the predecessor version to the Guidelines, The Bureau expressed the view that "Made in Canada" claims could be made as long as the product met a 51% threshold of Canadian content and had its last substantial transformation in Canada.

Despite no changes in legislation or jurisprudence the current Guidelines set higher thresholds and draw a distinction between "Made in Canada" and "Product of Canada" claims. For a good to qualify as a "Product of Canada", the Guidelines take the position that the last substantial transformation must have occurred in Canada and at least 98% of the total direct costs of producing or manufacturing the good must have incurred in Canada.

For a good to qualify as being "Made in Canada", the Guidelines provide that the last substantial transformation must have occurred in Canada, and at least 51% of the total direct costs of producing or manufacturing the good must have been incurred in Canada. In addition, the representation must be accompanied by an appropriate qualifying statement such as "Made in Canada with imported parts" or "Made in Canada with domestic and imported parts". This could also include more specific information such as "Made in Canada with 60% Canadian content and 40% imported content". The Guidelines go on to advise that use of specific terms that reflect the limited production, manufacturing, or other activity that took place in Canada would be most appropriate (for example, "Assembled in Canada with foreign parts" or "Designed in Canada").

Terms such as "produced in Canada" or "manufactured in Canada" are likely to be considered synonymous with "Made in Canada" and should also, according to the Guidelines, comply with the above "Made in Canada" requirements. Sellers must also be cautious of implicit declarations (such as logos, pictures or symbols) that could be considered to give the same general impression to the public that a product is "Made in Canada" as an explicit declaration.

By contrast with the approach in the Guidelines, under the United States' "Made in USA" rules, total domestic versus foreign costs are analyzed on a case-by-case basis, according to the Federal Trade Commission's guide *Complying with the Made in USA Standard*, which expressly states that there is not a fixed point for all products at which they become "all or virtually all" made in the United States; the nature of the product, consumer expectations, how far removed

the finished product is from the foreign content and the proportion of domestic costs are all taken into account.

The hard and fast quantitative thresholds contained in the new Guidelines are not prescribed by legislation or regulation. They are not the result of court decisions. They simply represent the Bureau's view of the issue. Furthermore, some aspects are impractical. For instance, having to state in advertising materials such things as "Made in Canada with domestic and imported parts" may be problematic for many companies. It is simply too long a claim to be concisely articulated.

Additionally, it would appear that the transition from 51% to 98% was without significant public support. The House of Commons Standing Committee on Agriculture and Agri-Food, after receiving extensive representations, recommended only an increase to an 85% threshold, in their June 2008 report on "Product of Canada", in order to achieve the appropriate level of transparency and accuracy in these claims for food products.

There are obviously peculiarities inherent in rigid "Made in Canada" rules. Consider the case of jam, sausages and pickles. The fruit, pork and cucumbers, the essential ingredients, can all be locally grown in Canada. But the requirement for sugar, salt and spices, in transforming the essential ingredients into their finished product may require qualifying statements such as "made with imported sugar". It would be difficult to argue that consumers, who take pride in Canada made or produced goods, would think that the incidental addition of such ingredients not available in Canada would rob the finished product of its "Canadian-ness". Such producers and manufacturers, who cannot take advantage of the beneficial "Product of Canada"/"Made in Canada" claims, are negatively affected. Consumers are affected, because they are deprived of knowing that certain goods are essentially made in Canada, yet do not qualify for technical reasons.

The Guidelines take a very narrow, and mathematical, view of what is Product of Canada/Made in Canada. Much more so than the U.S. equivalent. They do so without the legislative, regulatory, jurisprudential or stakeholder support. They suggest clarifications which are impractical. The difficulty, however, is that if advertisers do not accede to the Bureau's view, they run a serious risk of prosecution or civil challenge – with fines up to \$10 million. With such serious consequences, it is submitted that the Bureau's Guidelines should reflect a more flexible approach – consistent with the legislation and jurisprudence.

by C.J. Michael Flavell and James Musgrove

a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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