

COVID-19: ADVERTISING & REGULATORY ISSUES

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Our panel of leading authorities will discuss Health Canada's guidance on ad claims about consumer products such as antiseptic cleansers, hard surface disinfectants, soaps and masks. Further, the panelists will summarize expedited approval pathways and exemptions that may facilitate the supply of these products. The speakers will also explore the pitfalls that arise in ads related to pandemic concerns around safety, scientific claims and misleading representation.

Transcript



Rene: Hi everyone. Thank you very much for joining us today. Just wanted to thank you all

for being here. I know that many important demands and obligations tying us in all directions these days so we really do appreciate your time coming in. On that point, in preparation for today's webinar, I even tried to give myself a haircut. Here we have Exhibit "A" why salons and hairdressers should be essential services for all Canadians. I just wanted to again welcome you on behalf of my fellow speakers. We are very, very excited about today to welcome Catherine Bate that will be talking with us today and Catherine Bate is the Chief Legal and Policy Officer for Ad Standards Canada. I'm also joined with my partner, Lewis Retik, who is a key member of our advertising and product regulatory group. I am Rene Bissonnette, also a partner in the advertising and product regulatory group. Today we'll be going over some of the important and hot topic advertising and regulatory issues that have come up in response to COVID-19. Next slide, please.

Just to give you an overview of certain of the topics that we'll be discussing today. You can see here we're talking about a variety of products, how they're regulated and some of the advertising issues that have arisen in response to COVID-19. Then we will hand it over to Catherine to discuss the type of issues that Ad Standards is seeing in response to COVID-19. Importantly, some of the consumer complaints they're receiving that are specifically in reference to COVID-19 advertising. Next slide, please.

To give you a sense of the current environment, there has been an unprecedented demand and urgent need for certain categories and products. Most importantly, we have hand sanitizers, hard surface disinfectants and certain medical devices. To give you an idea of that unprecedented demand, Statistics Canada reported that the demand for hand sanitizers has increased by 735% for the period ending March 14th, 2020, versus that same period last year. We see that same trend for all the product categories that I just referenced. So we really do see, and not in fact surprised to see, this unprecedented and urgent need for these products. So in response the government and its agencies have started to implement emergency measures to help stabilize that supply and increase that supply just to ensure that those many needs are met in order to respond to this incredible health risk that we're all facing. Now, the types of risks that the businesses that want to take advantage of that demand have to consider are the regulatory advertising and product liability risks. On the regulatory side these are heavily regulated products and there are a variety of different prescribed requirements that must be made to import manufacturers who sell these products and also their advertising is strictly regulated so that's to say the types of claims that can be made about them and the benefits they provide. Finally, we see a product liability issue emerging. Increasingly often now, as the businesses enter into this space and get exemptions from certain of the legislative requirements, we still have to consider the common law product liability issue within risks

that arise. So notwithstanding that you may have approval from the regulatory authorities to sell that product and be exempt from certain requirements, for example safety labelling, you still need to consider whether or not that exemption will help mitigate some of the product liability risk, that someone is in fact introducing a product and issues a claim against you on the basis of the common law product liability. These are important risks and considerations that any business needs to consider and address before entering into this space.

To give you a sense of, next slide please, how these risks are materializing, when we first saw COVID-19 come out and the influx of products entered the market it was a bit of wild West. We saw all these different businesses starting to take advantage of this incredible demand for these products and we see now the regulatory agencies starting to crack down on illegal or non-compliant activities. On this point, on May 6th the Competition Bureau issued a press release, which in they're cracking down on deceptive marketing claims about COVID-19 prevention or treatment. So they're actively monitoring the market place now and telling businesses that this a time to comply otherwise we're going to start issuing some very serious financial penalties, maybe potentially jail time. We have seen an uptick in recent regulatory and enforcement actions. So we're coordinating with Health Canada and it's important to note that Health Canada indicated in its press release had not yet approved any product, event, treat or cure COVID-19. That's a very important point to make and to consider. So these direct claims are really not ones that we should be making about these types of products. Next slide, please.

To give you a sense of the regulatory landscape that we're dealing with I'm going to hand things over to Lewis.

Lewis: I'm going to speak a bit about the regulatory aspect of some of these products that are becoming important in response to COVID-19. As many of our clients and companies in Canada are trying to introduce these products into Canada. The first part I'm going to speak to with respect to the regulatory aspect is hand sanitizers. As you can imagine hand sanitizers is a key tool in the fight against COVID. Many of our clients are looking to contribute and get involved with respect to the introduction of hand sanitizers into the Canadian marketplace. Now, as these are unprecedented times Health Canada is taking unprecedented measures to help companies achieve those goals. So with respect to an actual health product, let me start off by saying most hand sanitizers are in the natural health product category. There are some that are also in the non-prescription drug category. For both they both need market authorization, normally, to get into Canada to be sold legally in Canada. For an actual health product that would be an NPN and for an over the counter drug that would be a DIN number. In the current environment, Health

Canada's taking alternative approaches to allowing some of these products to get into the market, including some form of recognition of foreign approvals. For example, a lot of our clients are now bringing products approved for sale in the United States by the FDA, into Canada, not necessarily with an NPN. However, Health Canada's relaxed approach, or more relaxed approach to the introduction of these products into Canada isn't a free for all and it doesn't mean that companies could do just whatever they want. The importation of these products still require a licence. For a natural health product that would be a site licence and for an OTC that would be a drug establishment licence. The good news is, is that Health Canada's been very creative in it's approach to the import licences. For example, if we need an import licence to bring a product in we've gotten some in as little as 24 hours. Sometimes the import licence will be qualified specific to a time period dealing with COVID or specific to that product. Other times, and it's very circumstantial in terms of the facts at hand, they're broader. But at the end of the day we're seeing Health Canada take days to approve the importation of these products when for a natural health product, typically, it's been 60 to 90 days, and while we see far less on the non-prescription drug side taking advantage of these programs, getting a drug establishment licence could take upwards of a year. We're definitely seeing a much more aggressive approach to helping companies participate in getting hand sanitizers to market. Next slide.

I kind of spoke about this already. I apologize. One thing I do want to add to what I've already mentioned, or two things, one is it's important that when we're looking at foreign approvals, Health Canada has not been specific in which foreign countries it would recognize. It uses language that references similar foreign jurisdictions, but of course, what does that mean? In our experience we're seeing the vast majority of the products, to be honest with you, coming from the United States. So if it has the FDA registration number that's really been what's been very helpful in getting these products to market quickly. Another thing that's very important to note is that when Health Canada initiated this leniency for hand sanitizers it was pretty relaxed with respect to labelling. They've dialed that back a bit. So with respect to labelling, for example, where initially they were alluding to the idea that you could have a US labeled product, now they're indicating that those official languages need to be available to the customer. Now it doesn't necessarily need to be on the label itself but there needs to be a clear indication of a website where a consumer could go to, to see the other language. Obviously if it's a US label it's going to be in English only and online you would see the French version of the label. But the wording of the policy really speaks to the official languages. Next slide.

There is also an accelerated program to get product licences. So you don't simply need to rely on foreign companies getting the product to market vis a vis the US approval. There's

a fast track to get an actual natural product number, a natural health product licence from Health Canada. Again, we've seen licences issued in as few as a couple of days and we've had clients introduce product to market fully set up within a week. Now, I would say Health Canada's not quite as fast today as they were at the beginning of the process but they're still quite efficient at addressing these concerns. Unfortunately at the expense of the regular day to day business product launches. Next slide.

So now Rene's going to speak to us about claims with respect to hand sanitizers.

Rene: Yeah, absolutely. Thank you, Lewis. For those products that have obtained the market authorization by complying with the monographs, let's say antiseptic cleanses monograph, you see here the types of claims that are permitted to be made about those products. Again, you will note that they are generally claims about antibacterial antiseptic effect. They don't speak exactly to treating or preventing COVID-19 and so it's important to consider that when you are preparing your advertising materials about these types of products. You see here that it just speaks to broad antibacterial action or the way that the products kill harmful bacteria and germs. So, if you are looking to obtain a different type of claim, then you have to go to Health Canada and obtain their approval for that specific claim, and you have to submit evidence to them of advocacy of the product and support that your product does in fact provide that benefit. You are really limited here in the type of claims that you can make to help sell that hand sanitizer. Next slide, please.

So I'm now going to hand it back over to Lewis to discuss a different category of products, hard surface disinfectants.

Lewis: Okay, so, with respect to hard surface disinfectants, again, Health Canada is prioritizing everything related to COVID. So there is an opportunity to get, again, for a hard surface disinfectant on an expedited basis. I think one of the benefits with hard disinfectants, unlike other drug products, is you actually don't need a drug establishment licence to import it. So the importation barrier is eliminated. Therefore there are opportunities for companies to get hard surface disinfectants into the Canadian market at a much quicker pace in the current environment. Next slide.

So like the hand sanitizers there are recognizing approvals from foreign jurisdictions to help meet the need of the Canadian demand as well, though, there is an expectation for bilingual labelling to be available to the consumer in very much the same manner as what is expected for hand sanitizers. Next slide.

So Rene's going to speak to us about some of the claims associated with hard surface disinfectants.

Rene: Absolutely. Just before I do that, at the beginning of the presentation I neglected to mention that if you have any questions please feel free to submit them through the Q&A functionality. At the end of the presentation we'll take some time to answer questions. Please feel free to submit them. As Lewis said, we here have some of the efficacy claims that can be made with respect to hard surface disinfectants and importantly here, it's important to note that Health Canada has permitted indirect testing efficacy claims for certain categories of hard surface disinfectants. If you meet one of the three conditions noted there, labelled on a broad spectrum virucide, carries specific claims against prescribed non-enveloped viruses or carry specific claims against a prescribed Corona virus, you can make an indirect efficacy claim. An example of that is that, that's why it's in quotes, This product, noted product, is a broad-spectrum virucide hard surface disinfectant, and is expected to inactivate SARS-COVID-2, the virus that causes COVID-19. So you see there it's the indirect aspect of that claim. It's expected to inactivate. So there it's not directly stating that it will. This is really as close as we can get at this time to those types of claims that want to make about the efficacy of a product in terms of treating or preventing COVID-19 and that is important to note these claims are permitted in respect of those classes of hard disinfectants. I'm just going to hand things over to Lewis to discuss on the list that Health Canada maintains about these types of products.

Lewis: Health Canada, very interestingly, is maintaining a list of disinfectants with evidence for use against COVID-19, when the product meets the criteria that was just explained by Rene. So it's very interesting because on one side Health Canada says for these products you cannot make any direct COVID-19 claims, only indirect COVID-19 claims, and then with the other hand they're maintaining a list of products that are recommended for use against COVID-19. Setting that aside, one of the things about this list is that it's not automated. So even though Health Canada has their DIN approvals for hard surface disinfectants, intuitively should know which products meet the requirements to be on this list, and for lack of a better word, automate the population of this list from it's own database. It's actually not doing that. It's relying on companies with those approvals to reach back to Health Canada and say, "Hey, Health Canada. We have a product that is already approved by you for these claims. Can we please have that product added to the list?" The email address for this is on the slide deck, should you be one of those companies who have such a product and not realize that you actually have to ask to be on this list. But it's definitely a request based list. Next slide.

So now I'm going to talk a bit about cosmetics as the last kind of product category we're talking about with respect to COVID-19. So from a Canadian perspective cosmetics must be notified to Health Canada in advance of importation into Canada. In short, must be

compliant. Right? Must have a Canadian label, for example. Once again, Health Canada is very concerned that there's going to be a shortage of products used by Canadians to cleanse themselves, which would be helpful in mitigating the risks of the spread associated with COVID-19. Health Canada is again being lenient for these very specific types of cosmetics, cleansing cosmetics, in allowing the importation and sale of US labelled, or one language labelled cosmetics. In doing so, again, we go back to the issues we raised with the hand sanitizer and the hard surface disinfectant which is that it still needs to be made clear to the consumer, in some form of mechanism, where they could find the other official language, the French version online. Again, this illustrates, frankly in my entire career I've never seen anything like this, where Health Canada is allowing through policy a fundamental deviation of the law in order to achieve some greater good for the health and safety of Canadians. Even to the point of allowing non-compliant cosmetics. Next slide, sorry.

Now I'm going to pass it off to Rene who's going to talk to about us about the claims associated with cosmetics.

Rene: Absolutely. So cosmetics are only allowed to make certain non-therapeutic claims. So you really can't talk about any type of disease prevention or treatment effect. That is a source of frustration in these times. So many businesses, where we have many public health authorities indicating the incredible importance of washing your hands with soap, or washes, to help prevent the spread of COVID-19. It's a message that is repeated to us often and by health officials at every level of government. So we have this sort of strange situation, wherein we want to advance our products as being suitable candidates for those practices, but we really can't talk about any type of disease prevention effect. So you see that kills germs and any other type of anti-bacterial claims are prohibited. Where can we sort of explore the space, and try to take advantage of the opportunities available to us, is we can talk about cleansing and the effect the product has in cleaning hands but we really need to be careful to stay clear of any type of disease prevention. On that point, we see a lot of advertising wanting to echo the 20 second rule and the importance of washing hands to help prevent spread of COVID-19, and we really can't do that directly. So we can speak about the importance of washing our hands, and we can also speak of some of the other cosmetic benefits that are associated with that so, moisturization, softening skin, things like that but really looking at the overall general impression of the ad to determine are we staying on the safe side, that's to say about cleansing, or are we really conveying the message here that the use of the product to prevent the spread of COVID-19? There is some gray area between those two extremes and you have to be very careful in navigating those waters. That is the current environment we're dealing with. Some of the

limitations when trying to advertise soaps and washes in these times. Next slide please.

Now I'm going to hand things back over to Lewis to discuss medical devices.

Lewis: I believe when I spoke about cosmetics I mentioned it was the last category I was going to speak about and then I completely forgot that I am also speaking about medical devices. So this the last category I'm going to speak about. Medical devices, Health Canada is taking a similar approach but it's a little bit different. In the medical device world Health Canada issued an interim order respecting the importation and sale of medical devices for use in relation to COVID-19. Effectively, medical devices normally require medical device licences. So if it's a Class 2, 3 or 4 medical device, I think that's an important aspect, because most medical devices we're used to hearing about with respect to COVID, albeit they're not the only medical devices being used with respect to COVID, are personal protection products such as masks and gowns. Those are Class 1 medical devices. So as a product those don't typically need a medical device. But there are others we're certainly working, on as we speak, that would normally need a medical device. The other aspect of importing and selling medical devices is the requirement for medical device establishment licence. A medical device establishment licence has exemptions in terms of certain importers don't normally require an MDEL, but the product there's no exemption. So whether it's a Class 1, 2, 3 or 4 medical device, it would normally require an MDEL. Health Canada has provided this alternative approval route, that's supposed to be faster and more focused, to allow importers and sellers to import and sell COVID related medical devices that don't necessarily have a necessary medical device licence or medical device establishment licence to do so. This is supposed to be faster and when I say about supposed to be faster, it's very, very new, so we don't actually have the practice to know how fast it's going to be on a regular basis. It can start as early as, let's say, the hand sanitizers which was out much earlier. It's a little bit of a wait and see how this is going to work out but I expect that it's actually going to be very positive to allow companies to get their products to market very, very quickly. I should also point out that a number of current importers don't need either the interim order or a medical device establishment licence. For example, a retailer or a health care facility importing something like a mask. Well the mask doesn't need a medical device licence, and a retailer or health care facility doesn't need an MDEL, so there are situations where this isn't even necessary, albeit the products still need to be compliant. Next slide.

With respect to claims associated with medical devices, it's a little bit different than the way we think about claims for drugs or natural health products or even cosmetics. Well may be a little closer to cosmetics. So in the medical device world the formal position of Health Canada is that they're not really approving an indication for use. They're approving

a functional purpose but not a recommended use. Their position would be that a claim doesn't necessarily need to be, and I say this in quotes, "approved". That being said, like with all products, all claims must be true and not misleading. I would be very cautious about making direct COVID-19 claims in the same way as we discussed with respect to hand sanitizers. Not hand sanitizers, sorry. Hard surface disinfectants because frankly it's just a high risk claim. You're going to make a claim you need very, very strong evidence to support it. It would be a very difficult claim to support. Next slide.

Rene: Okay. Great. Now as you just saw we've gone over some of the various measures that have been implemented to try and expedite and facilitate the supply of these products to help meet the demand that is extraordinary and really once in a lifetime. We gave a broad overview of those different pathways and they are quite technical. We have provided a list of reference materials here, and after the presentation is done we're happy to share the slide deck with you, so you have those reference materials there for your use. You'll see that it's a long list so there's a lot of measures that have been taken to try and address the COVID-19 crisis. We just wanted to have those for you so you can take the time and really have a look at them in your own time. If you have any questions please feel free to reach out to us. I am now going to pass things over to Catherine to go over some of the various ways that the COVID-19 crisis has affected the services provided by Ad Standards and the types of complaints they're receiving from consumers.

Catherine: Thank you so much, Rene, and thank you to Gowlings for inviting me today. Just want to take a moment to talk a little bit about Ad Standards to kind of level set for anyone who's not familiar with who we are and what we do. Ad Standards is Canada's national independent self-regulatory body for the advertising industry. What that means is that we are an organization originally created by industry to assist both consumers and industry in setting the bar for advertising in Canada. We do this through a number of different ways. As the bubbles appears, you'll see the first one is clearance. I'm going to talk a little bit about pre-clearance and what we do to assist industry with respect to particularly the products that you've just heard about. Secondly, the Canadian Code of Advertising Standards. This is where the bulk of my conversation will happen today. Through the code we administer consumer complaints as well as disputes between advertisers, and a few of the other things that we're involved with including oversight and compliance check for ... Adchoices programs, industry initiatives such as children's advertising, spirits code, automotive advertising, specific to COVID, well not specific to COVID, but keeping us very busy these days. We're very proud to work with the Federal government and with the government of British Columbia to support their mandates of non-partisan advertising. So we review advertising that comes through those two jurisdictions

to help to ensure that the advertising is non-partisan so we're very busy, as one can imagine, with the government advertising going on related to COVID, in both those jurisdictions right now. As well as education and outreach. So again, thanks to Gowlings for having me today. To the next slide, please.

As I mentioned, Ad Standards offer a pre-clearance function and, again, for anyone who might wonder what that it is, advertising pre-clearance, generally, is not necessarily required by law. But we do offer advertising copy review and advisory services in five regulated categories. For the purposes of today, most importantly, in cosmetics, natural health products and health products generally. DIN's, over the counter, we look at things for hard surface disinfectants, right through to soap DIN's. So you name it we can be of assistance. We, as a practical matter, advertising going onto broadcast typically requires pre-clearance. The broadcasters will look for Ad Standards pre-clearance number and many other media, for other sectors it may be optional, in terms of whether or not you seek Ad Standards pre-clearance but we can help negotiate some of those gray areas that you've heard about so far. We'll go onto the next slide. What we're there for is to help uphold existing laws, regulations and Health Canada guidelines. Of course, we're looking first and foremost in these categories, generally with respect to the Food and Drugs Act, as well as Health Canada's associated guidelines. This is before the advertising comes out phase of Ad Standards. We're here to provide that resource and to review the creative, to help ensure compliance before things go out. This of course helps to weed out, if you will, that advertising that may be not permissible. So ads for non-authorized products or off-label or unauthorized claims that aren't included in product licences or ... So that's probably not most of this audience. Most of this audience is probably looking just to navigate those gray areas and that's where we can be of help to identify where there could be bleed. What we understand of Health Canada's interpretation. Much of what you've heard, is the ad talking about cleansing germs or killing germs? Is the ad talking about disinfecting? Is it a bacteria claim? Is it a virus claim? Is it creating halo that is implying a claim about COVID-19 or stating a claim about COVID-19 that isn't yet authorized or otherwise allowed by Health Canada? So that's our pre-clearance function. But with the next slide let me move on to talk about the Canadian Code of Advertising Standards.

Here we have the clauses of the Code. So again, for anyone not familiar this is a self-regulatory code administered by Ad Standards. The 14 clauses here are intended to set the ground work for self-regulation in the advertising industry in Canada. The ones highlighted in blue are those about which we receive the most complaints, typically. These are the areas that are most of concern to consumers. We move to the next slide you'll see

a slightly different highlighted list. This is where we're seeing the complaints related specifically to COVID-19. So again, this can be a whole range of issues and I'll divide it kind of into two parts when we look at this list. I'm going to dive into it a little further in just a moment. But we have the accuracy and clarity and is a claim truthful, not misleading in general impression and is it substantiated and that ties in as well professional or scientific claims. Is this represented as being a scientific claim? An official performance claim. Or is it implying that it has that scientific rigour when in fact it does not. The other clauses highlighted here, 10, 11 and 14, those are more sometimes subjective. It's how does the commercial appear? What is implied or intended? We'll go through some examples in just a moment. Actually, let's go to the next slide to talk through some of these specifics.

In general, let me level set with some numbers. So far since the middle of March up until last week, we received a total of 30 complaints about advertising, specifically in some way calling out concerns about COVID-19. 21 of those complaints were reviewed by Ad Standard staff. I'm not going to be able to talk about the specifics today. Some of them have been heard by our Standards council. I'll talk about the process in just a minute. Some have been through and are subject to appeal. Others are pending and in process. So I'm not going to talk about the exact commercials today but I will give some themes that we're seeing emerge. As I mentioned there's 21 ads that have been reviewed by staff. These range from misleading or unsubstantiated claims about the products, again, helping to prevent the spread of virus, offering cures for those infected by COVID-19. Those kind of clause 1. Is it truthful, accurate, substantiated, both in literal meaning as well as general impression. Then we have the category ads that are more looking at the clause 10 and 14. So I should say of the 21 complaints reviewed 11 did not raise issues under the Code. We had 2 that are specific to 10 and 14 and these were concerns related to, again, depictions of activities. Here we have unsafe hygiene or etiquette when coughing or sneezing. Again, what might have seemed very banal, not paid a lot of attention to if it was shot say 6 months ago, suddenly now has new imported importance, in terms of those sorts of depictions. The same with ads that seem to promote social gatherings or events. Questions as to whether or not those reflect past time, a future aspiration or seen to be crossing the line to encourage unsafe, dangerous or even illegal behaviour in these days of COVID. So whether or not, as I say, these cases are still up for adjudication. Whether or not they fall into an actual Code violation I think it's important for advertisers to be aware that even if they don't cross a line consumers are very sensitive to these issues right now. These are likely to be moving targets as consumer sensitivity, as well as out and out public health orders, vary over time and by jurisdiction as we go. We have also received complaints concerning scarcity of advertised products particularly for personal protective equipment and that's large. That can be anything from

masks, gloves to even disinfectant products. We also receive complaints about price gouging. Now we don't address price gouging, per se. Our Code does address misleading price claims so those familiar with the Competition Act, this is like the ordinary selling price types of claims, so a savings is implied but it's not actually substantiated savings. But the advertisement of a price, if it's accurate. So what the advertiser chooses to set as their selling price, that's not something that we regulate. However, there are several Provinces, Ontario included, that have price gouging legislation and so complaints in that are we coordinate to send this to over the applicable Provincial consumer protection authority. Certain other complaints we will send to Health Canada. We've had 9 of our complaints that we sent to Health Canada and that's in accordance with our role and partnership with Health Canada to report unauthorized health claims. So those we don't look at strictly under the Code. Again, when it's dealing with those health claim issues we will forward those to Health Canada for their enforcement. Moving on to the next slide.

Early during the outbreak and pandemic of COVID-19, Ad Standards released to the advisory, and I'll draw that to your attention. Again, you'll get the slide deck later so you can follow the link to read the full text of advisory. This was particularly focused on looking at claims substantiation obligations, both with respect to health products and scientific claims more broadly. We'll go to the next slide just to break that down a little bit.

So again, the advisory deals with both the clearance and the obligation for products, generally, to be authorized by Health Canada and the claims related to them to be authorized in this kind of changing landscape that we see, that Lewis and Rene have spoken about in terms of product approvals right now, and then also with respect to standards. So a few tips to keep in mind. Again, with respect to claims, to be very careful what we're seeing with complaints and also when things come in for pre-clearance, but claims not being overbroad to ensure that they aren't distorted or overstated. Even advertisers with the best of intentions and very sold claims might be implying more. I've heard the Competition Bureau recently speak on issues related to COVID-19, and we would echo concerns raised by the Bureau, that when you look at advertising through the lens of the consumer and what that consumer sees, there's always special attention given by regulators and by Ad Standards as well to the more vulnerable consumer. Right now, in some ways, we are all vulnerable consumers. Meaning that we are looking for the ray of light. We are looking for that glimmer of hope and afraid, concerned. So being in that more sensitive environment, want to be very careful to absolutely claim what you're entitled to claim but be careful not to cross a bar. This applies for submissions to Health Canada, applies for any ad that would be adjudicated by Ad Standards. The onus will always be on the advertiser to have competent reliable evidence to substantiate its claims.

So if we receive a consumer complaint we may ask for that substantiation for the claim and that evidence needs to be available on file with the advertiser before the claim is made.

I want to pause the slides here for just a moment to talk a little bit about our process, as I've mentioned a couple of times, when we review and how we review. We have the pre-clearance regime which you can submit for pre-clearance. Complaints under the Code are entirely complaints driven. Enforcement of the Code is complaints driven. Which means that we receive a consumer complaint and we review it at the staff level. So that's when we're assessing, in the case of these 30 complaints we took the 21 complaints and looked and said, "Okay. Do these raise an issue under the clauses of the Canadian Code of Advertising Standards?" In the case of 11 complaints that we received, about 9 different ads, we assessed that there was no issue under the Code as it's currently implied and interpreted. The other complaints, where we see that there is a potential issue raised under the Code, we first reach out to the advertiser and the advertiser has a chance to respond. If it's a complaint about clause 1, then we move forward from there. If it's a complaint under clause 10 or 14, that's the safety and acceptable depictions and portrayals, the advertiser's response goes back to the consumer to determine whether or not they're satisfied with the complaint. So those are the various stages where complaints related to COVID-19 are right now. When a matter goes forward for determination, it's determined by a council which is a 7 person panel independent from Ad Standards staff, made up of members of the industry as well as the general public, with a view to assessing the ads under the Code to determine whether or not the complaint is upheld or whether the advertising complies. So when we talk about the complaints moving through that process, and their ultimate adjudication, that's where things net out. So moving onto the next slide.

I wanted to take a few minutes just to bring a global perspective and kind of put Canada in the broader framework of where we stand. As I mentioned we received 30 consumer complaints that are COVID-19 up to date. Ad Standards is a member of a larger organization of other similar advertising self-regulatory bodies around the world. We're not the only ones. We, as well as many others as well as ICAS, which is this body of self-regulators, have put out advisories and notices related to COVID-19. We'll go onto the next slide and talk a little bit about the numbers, specific, that we've seen. These relate to ICAS's, some of the other organizations in this international group, and what they've seen so far. Which largely mirrors what we are seeing. Now these stats are a little old and don't include the European market. So this is the US, Canada, Brazil, Colombia, India, Australia, New Zealand, the UEA and South Africa. When you add in the European

nations, globally, self-regulatory organizations or SRO's, have dealt with more than 1,600 COVID related advertising complaints thus far. There have also been independent investigations, 403 independent organizations as of a week or so ago, related to COVID-19. So obviously global pandemic, global concerns and the questions that are coming up for advertising in Canada are reflected more broadly. Not surprisingly we're seeing many of the same complaints coming up in these other jurisdictions as well. Misleading health claims leading the way in terms of concerns. What's listed here as offensive advertising and fear mongering. Promotion of unsafe behaviour. So those align with our clauses related to acceptable depictions and portrayals which could be encouraging of unsafe or dangerous behaviour, fear mongering, superstitions and playing upon fears in our Code as well, and promotion of unsafe behaviour. So is it actually promoting something illegal or is it promoting something unsafe. Again, a cross range of different organizations about which complaints have been received. Health and cleaning products. Not surprisingly, the OTC's, supplements, interestingly alcohol. We would think of that as alcoholic beverages. In other jurisdictions that is perhaps relating to the disinfecting claims. But we're also seeing food and beverages and financial services. So anyone advertising anything could get caught up in this broader COVID concerns, whether it's related specifically to health products as one might think, but also in terms of general depictions and portrayals, how individuals in the ads are being shown and what sensitivities is that triggering for the consumers who are engaging with the advertising content. Many SRO's, self-regulatory organizations, have a fast track procedure for COVID-19 complaints and we also prioritize the COVID-19 complaints when they come in. So we're checking daily, and to triage and pull COVID related complaints, so they can be sent either immediately to Health Canada or put immediately into our queue for review and response. So with that I know there are a lot of questions coming in. So why don't we move on forward to address the questions.

Rene: Sounds great and thank you Catherine. Moving right into the Q&A right now. Just seeing the first question here from Sherry. Are there any legal supers that need to be added with regard to approval by Health Canada? So in respect of advertising claims, and talking now about those regulated products so, hand sanitizers and hard surface disinfectants and medical devices, you're not allowed to say that it's even approved or indicate in anyway that this might be endorsed by Health Canada. The closest that you can really get is a claim that the product has been authorized for sale by Health Canada and that refers to advertising. Now in respect of labelling there are some very prescriptive labelling disclosures that need to be included and most importantly for hand sanitizers and hard surface disinfectants. You have to include the natural health product number or the drug identification number. Alluding back to what we discussed earlier in terms of the uptick and enforcement listing, Health Canada has asked members of the public to report

any product that they see for sale that do not include those licencing numbers because they really are now trying to crackdown on some of those non-compliant products that have made their way into the market.

Moving down into the list. Okay. Are there are any other country that might be favoured for the importation of hand sanitizers? Are they in the US? I'll ask Lewis if he has a point of view on that.

Lewis: Yeah. So, first of all let me just mention that there are way more questions asked that we could possibly answer within this timeframe so you're always free to reach out to us following the webinar. But one of the questions are there any other countries that might be favoured for the importation of hand sanitizers? Are they in the US? I just want to be clear that Health Canada is not overtly saying that they're somehow favouring the US over other countries. They're using kind of a similar country concept to their approach. I would suggest that other countries that might be favoured would be the European Union or, sorry let me rephrase, countries within the European Union as well as the UK and Australia, as well as a number of other countries. But to say that there's any specific country that's not favoured, we haven't really gotten that far with Health Canada. They look at each notification or submission as on a case by case basis. It's only through application that we're really going to learn that and in our experience, frankly, the vast majority products that have worked through the system have been from the United States, because they're our closest neighbour so it's just natural that it would be from the United States.

The next question I see is if you apply for an NPN number through the expedited approach do you still have to send a specification for your product? So if you're applying for an NPN under the expedited approach, typically this would be what we call a compendial application, which is a Class 1 natural health product application as there's a monograph for hand sanitizers. The reality is you actually wouldn't submit a specification sheet for any Class 1 application so it would not form part of the application process.

Here's one for you, Rene. Does a hand sanitizer advertiser have to say, either in a video or audio, the percentage of alcohol contained in their product? Or Catherine.

Rene: I'll jump in and, no, they don't in the advertising and again that would come down to labelling issue. Really, in terms of advertising, it's really limited to the approved uses and indications for the product but not required to specifically call out that percentage of alcohol. I'm just going to hand it over to Catherine now to answer two questions that fall within her purview.

Catherine: Sure. I'll say the question that was just asked and answered, there's no legal

requirement if they're doing a pre-approval for the percentage of alcohol. But of course if there is a hand sanitizer that's implying that it effectively kill COVID-19, or kill viruses, and had a low percentage of alcohol, that may be something that while not technically required perhaps but could be disclosed. Just because depending on the general impression created by the ad. I could see consumers being upset ... sanitizer that may not have the percentage ... environment that we're in right now.

A couple of questions have come up. Both about monitoring of advertising as well as what happens when someone does not comply within order of Ad Standards. So I thought it helpful to kind of deal with both the pre and post-complaint areas. So there are bodies that are looking out for deceptive advertising. At Ad Standards we're not staffed and go out and search for cases. We rely on the complaints from consumers coming in and then we address and carry those forward. But the Competition Bureau, Health Canada and as well as certain Provincial consumer protection offices, have declared mandates to go out and look for potentially misleading advertising as well as triaging complaints themselves. While we're complaints driven there are other bodies that are looking proactively and certainly if you're aware, as a consumer, of a an issue that's something that can be brought to our attention. If you're aware as a competitor we also have an advertiser dispute process that allows for disputes between advertisers. So a couple of different avenues that we offer.

What happens if we come up, we at Ad Standards and our Standards council, arrives at a decision that an ad is non-compliant and the advertiser does not comply with that decision? First I'll say we're very grateful that we have supported the industry so I would say 98, may be 99% of the time the advertiser wants to do the right thing, so they receive a decision that the ad is found to be misleading by the Standards council with a chance for appeal, then the ad will be amended or withdrawn. In the rare instance where it's not we first reach out to media and we have great support, whether it be from the broadcasters, from print ... media, various media providers, in terms of assisting and enforcement when that arises. If it is something like the advertiser's own website where there isn't further recourse we have the ability to forward those cases to the Competition Bureau. So in those very rare instances where an advertiser does not wish to comply with the decision of the Standards council, or dispute panel in the case of ... , those matters are referred to the Competition Bureau who has the greater enforcement teeth in terms of injunctions, in terms of monetary penalties and what not.

Lewis: Thank you, Catherine. I'm going to answer the next question. The question is do you have a sense of the size of the non-COVID regulatory backlog and how we can help Health Canada address it? So this is actually a phenomenally good question and it's a

struggle we're dealing with on a day to day basis. It's a very timely question. Health Canada, on the oncoming of COVID-19 has basically said, "We're going to help you, industry, with all these urgent products and we're going to turn over backwards to get things done in a day." But they've effectively turned their back on everything else. The problem is it's becoming increasingly difficult for our clients, and members of the industry, to stay in business, in their day to day business, and challenge with economic situation. This is a really important issue. Some examples would be Health Canada takes the position that because of COVID-19 it's so important to focus on things like hand sanitizers, which it is, when a company goes in and says, "I have three products that I want to launch." and normally it would take 60 or 90 days to get them approved it's now sometimes its, "Well, we're just not looking at it." Or, "We're going to look at it when we get to it." For all we know this could take a year now to catch up on backlog. So companies are being hindered from doing their day to day business and this could effectively compound the economic impact of the overall situation. We're actually dealing with an issue right now where we have a client who applied for a licence, Health Canada made an error on its issuance of a licence, and they're just not dealing with the correction of the error. So, effectively our client has an inapplicable licence and who knows when it's going to be corrected. So these are some very, very challenging times on non-COVID related side of the business. It's too early to tell where it's going to go. Health Canada has not proposed a plan and, frankly, Health Canada hasn't even acknowledged the issue as of yet. I think they will but they're not there yet. Their head's still on COVID and their head isn't really in the other parts of the day to day business that companies need to address to be in business.

Rene: Okay. Thank you very much, Lewis and just looking at the time. It looks like we've reached the end of the webinar and wanted again to thank everyone for joining us today and, as I noted earlier, I know there's a lot of great questions there so if you want to reach out to us and ask those to us, please, please do. A big thank you again to Catherine and Ad Standards for co-hosting this with us. It was a pleasure and to everyone for joining, thank you. Be safe out there and we're all in this together so happy to share the time with you.

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