

January 18–19, 2022 (EST) | Virtual Conference



# 28<sup>th</sup> Annual ADVERTISING & MARKETING LAW

*Your Guide to the Latest Legal and Regulatory  
Developments Impacting the Canadian  
Advertising and Marketing Landscape*

## Cross Border Perspectives

**CATHERINE  
BATE**



Chief Legal and Policy Officer  
Ad Standards

**LAURA  
BRETT**



Vice President  
BBB National Programs,  
National Advertising Division

**SONIA  
CARRENO**



President  
Interactive Advertising Bureau of Canada

## Distinguished Co-Chairs:



**Marisa Muchnik**  
General Counsel  
Ferrero Canada Ltd



**Austin Wong**  
Director, Legal Counsel,  
Law Department, Content  
Corus Entertainment

## PLUS! In-House Insights from:



**Elizabeth Manley**  
Director, Trademarks &  
Marketing Law, Trademark Agent  
Cineplex Entertainment LP



**Paula Fernandez Pfizenmaier**  
Head of IP  
MercadoLibre Inc.



**Pinar Ozyetis**  
General Counsel,  
AIRMILES Reward Program  
Loyalty One



**Marina Seidl**  
Senior Counsel, RBC Law Group  
Royal Bank of Canada

## In-Depth Pre-Conference Workshops

**WORKSHOP A: Advertising Claims  
Substantiation 101** – Your Guide to  
the Essentials of Advertising Claims  
Substantiation in Canada

**WORKSHOP B: What Advertisers and  
Their Counsel Need to Know About  
Privacy Laws:** Understanding How  
New Privacy Legislation in the EU, USA  
and Canada are Impacting Canadian  
Advertising

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**A**ttend Canadian Institute's **28<sup>th</sup> Annual Conference on Advertising & Marketing Law** to delve into critical legal and regulatory developments affecting your company's ability to attract and bolster a dynamic customer base. This is the 'go-to' legal and regulatory event for advertising and marketing professionals.

Join us and understand how the digital age continues to rapidly shift the advertising and marketing law landscape. From evolving privacy and consumer protection concerns to new challenges in advertising and marketing practices, this year's program will equip you with the tool kit you need to handle Canada's evolving mix of rules and regulations.

**Join your colleagues this January and engage in thought provoking discussions which will help you:**

- ▶ **MANAGE** successful and compliant social media campaigns
- ▶ **UNDERSTAND** the essentials of advertising claims substantiation in Canada
- ▶ **EVALUATE** structure function and health claims in the age of COVID-19
- ▶ **ASSESS** new considerations in compliantly executing promotional contests and sweepstakes under the Competition Act

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## Legal Accreditation



### EARN CPD CREDITS

This conference program can be applied towards 8 of the 9 substantive hours of annual

Continuing Professional Development (CPD) as required by the **Law Society of Ontario**. Members will also receive an additional 3 substantive hours for workshop A and 3 professionalism hours for workshop B

The same number of hours may be applied to your continuing legal educational requirements in **British Columbia**.

The **Barreau du Québec** recognizes this training activity, the latter having been accredited by another Law Society subject to the MCLE.


For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the **Law Society of Alberta**.

The **Law Society of Saskatchewan** recognizes another province's CPD credits so long as the hours are submitted to the Director of Admissions & Education for approval.


























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## CO-CHAIRS:

-  **Marisa Muchnik**  
General Counsel  
**Ferrero Canada Ltd** (Toronto, ON)
-  **Austin Wong**  
Director, Legal Counsel, Law  
Department, Content  
**Corus Entertainment**  
(Toronto, ON)

## SPEAKERS:

-  **Bill Abbott**  
Director, Data Policy and Research  
**TELUS**
-  **Catherine Bate**  
Chief Legal and Policy Officer  
**Ad Standards** (Toronto, ON)
-  **Yamina Bennacer**  
Director, Standards (National)  
**Ad Standards**
-  **Laura Brett**  
Vice President  
**BBB National Advertising  
Division** (New York, NY)
-  **Evie Bouras**  
Counsel  
**McCarthy Tetrault LLP**  
(Toronto, ON)
-  **Sonia Carreno**  
President  
**Interactive Advertising Bureau  
of Canada** (Toronto, ON)
-  **Chantelle Cseh**  
Partner  
**Davies Ward Phillips &  
Vineberg LLP** (Toronto, ON)
-  **Daniel G. Edmondstone**  
Partner, Marketing & Advertising  
**McMillian LLP** (Toronto, ON)
-  **Chrissy Fratschko**  
Privacy Manager  
**Holt Renfrew** (Toronto, ON)
-  **Monique Gagné**  
Senior Law Clerk  
**Ad Standards**
-  **Daniel Goldberg**  
Partner  
**Frankfurt Kurnit Klein & Selz PC**  
(Los Angeles, CA)
-  **Jason W. Gordon**  
Partner  
**Reed Smith LLP** (Chicago, IL)
-  **Kelly Harris**  
Partner  
**Miller Thompson** (Toronto, ON)
-  **Chris Hersh**  
Partner  
**Norton Rose Fulbright Canada  
LLP** (Toronto, ON)
-  **Glenford Jameson**  
Principal  
**G. S. Jameson & Company**  
(Toronto, ON)
-  **Pei Li**  
Partner  
**Blake, Cassels & Graydon LLP**  
(Toronto, ON)
-  **Jennifer McKenzie**  
Partner  
**Cassels Brock & Blackwell LLP**
-  **Elizabeth Manley**  
Director,  
Trademarks & Marketing Law  
Trademark Agent  
**Cineplex Entertainment LP**
-  **Pinar Ozyetis**  
General Counsel, AIRMILES  
Reward Program  
**Loyalty One** (Toronto, ON)

-  **Paula Fernandez Pfizenmaier**  
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**MercadoLibre Inc.**  
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-  **Marina Seidl**  
Senior Counsel, RBC Law Group  
**Royal Bank of Canada**  
(Toronto, ON)
-  **Joanna Vince**  
Partner  
**Willms & Shier Environmental  
Lawyers LLP** (Toronto, ON)
-  **David Young**  
Principal  
**David Young Law** (Toronto, ON)

## WHO YOU WILL MEET

- In-House Counsel from all industries and Law firm Attorneys with practices in:
  - » Marketing & Advertising
  - » Privacy
  - » Competition
- Law Clerks & Paralegals servicing advertising and marketing practices
- Government and commission lawyers
- Privacy Officers, CASL Compliance Officers
- Directors, CEOs, VPs, and Managers of:
  - » Compliance
  - » Advertising
  - » Marketing
  - » Promotions
  - » Public or Consumer Relations
  - » Online/Social Media

# Pre-Conference Workshops

## January 17, 2022 (EST)

Workshop

A

9:00 am–12:30 pm (Break 10:30–11:00 am) S

### Advertising Claims Substantiation 101 – Your Guide to the Essentials of Advertising Claims Substantiation in Canada

 **Chris Hersh**, *Partner*, **Norton Rose Fulbright Canada LLP** (Toronto, ON)

**Jennifer Mckenzie**, *Partner*, **Cassels Brock & Blackwell LLP**

This interactive workshop will take you through the building blocks of a successfully substantiated advertising campaign in Canada. Our speakers will provide a comprehensive overview of both the content and terminology used to support claim substantiation for product and service advertisements, as well as the higher standards applied to comparative claims.

Points of discussion will include:

- Understanding claim substantiation requirements
- Defining key advertising terms relative to claims substantiation
  - » Reasonable basis
  - » Competent and Reliable
  - » Highest possible standard
- Differentiating between different types of claims: express vs. implied
- Identifying which evidence is necessary to substantiate a claim
- Exploring the role of statistics and scientific evidence in the claim substantiation process
- Understanding how to appropriately use qualifications or disclosures in advertising
- Exploring ways in which a substantiated claim may be utilized
- Understanding the interplay between marketing and legal departments when making a claim on a product or service
- Examining the steps in the creation of an advertising campaign relative to claims substantiation

12:00–12:30 pm

### Break

Workshop

B

12:30–4:00 pm (Break 2:00–2:30 pm) P

### What Advertisers and Their Counsel Need to Know About Privacy Laws: Understanding How New Privacy Legislation in the EU, USA and Canada are Impacting Canadian Advertising

 **Bill Abbott**, *Director, Data Policy and Research*, **TELUS**

**Sonia Carreno**, *President*, **Interactive Advertising Bureau of Canada** (Toronto, ON)

**Daniel Goldberg**, *Partner*, **Frankfurt Kurnit Klein & Selz PC** (Los Angeles, CA)

**Chrissy Fratschko**, *Privacy Manager*, **Holt Renfrew** (Toronto, ON)

A lot has changed in the way of privacy in the last year, including Quebec's Bill 64, which has made it harder for companies to gain consent to collect personal information from customers. In this workshop our speakers will cover all major changes in privacy law and explain how this impacts advertising and marketing practices.

- Understanding how changes in privacy laws have a direct impact on advertising and marketing practices
  - » How to ensure that your customer data collection policies are fully compliant
- Implementing Quebec's Bill 64 into your organization's customer data collection policies
- Identifying the gaps between current privacy legislation and Bill 64 relative to customer data protection
- Understanding whether the election results impact federal privacy legislation and how this will impact advertising and marketing
- Calculating fines and penalties for customer data breaches
- Delving into new standards for gaining customer consent
- Defining clear, free, and informed consent to collect, use, and communicate with customer data
- Defining "sensitive information" and a "reasonable expectation of privacy"
- Implementing processor agreements for third-party usage of customer data

# Main Conference Day One

## January 18, 2022 (EST)

8:45

### Co-Chair Opening Remarks

 **Marisa Muchnik**, *General Counsel*, **Ferrero Canada Ltd** (Toronto, ON)

**Austin Wong**, *Director, Legal Counsel, Law Department, Content*, **Corus Entertainment** (Toronto, ON)

9:00

### Evaluating Structure Function vs. Health Claims in the Age of COVID-19

 **Glenford Jameson**, *Principal*, **G. S. Jameson & Company** (Toronto, ON)

**Pei Li**, *Partner*, **Blake, Cassels & Graydon LLP** (Toronto, ON)

- Examining evolving standards for structure function and health claims in light of the pandemic
  - » Evaluating the fine line between the two and how the line has become even finer during the pandemic
- Understanding the impact of a pandemic on claims for disease prevention
- Avoiding misleading and scientifically unsupported claims about a product's ability to treat or prevent coronavirus in response to consumer fears
- Substantiating claims under the gun: maximizing opportunities in a time of need while ensuring proper safeguards to avoid exploiting a crisis
- Assessing recent guidance issues by Health Canada guidance and regulations for products such as masks and hand sanitizers

10:00

### Case Study on Advertising in Highly Regulated Markets: Marketing Cannabis in Canada

 **Chantelle Cseh**, *Partner*, **Davies Ward Phillips & Vineberg LLP** (Toronto, ON)

**Kelly Harris**, *Partner*, **Miller Thompson** (Toronto, ON)

Advertising and marketing in highly regulated spaces is challenging. This is especially true of the still relatively new cannabis industry which continues to grow on daily basis. In this case study, our speakers will explain the rules, regulations, and the foundation for effectively and compliantly advertising and marketing cannabis in Canada.

10:45 **Morning Break**

11:15

### What It Means to be 'Green' – Applying Truth-In Advertising Principles to Environmental Claims: An International Perspective

 **Laura Brett**, *Vice President*, **BBB National Advertising Division** (New York, NY)

**Laura Vince**, *Partner*, **Willms & Shier Environmental Lawyers LLP** (Toronto, ON)

- Meeting the requirements for substantiating green and environmental claims per BBB National Programs guidelines
  - » Identifying the guardrails of what an advertiser can and cannot say
  - » Ensuring the accuracy of environmental claims in the marketplace to prevent misleading claims
  - » Determining what types of testing are needed for claims around biodegradable, recyclable, etc.
  - » Understanding whether the claim be based on the ingredients alone
- Understanding how BBB's green guidelines in the U.S. compare with those in Canada
- Examining what regulators and self-regulators are looking for in terms of claims substitution for green claims
- Understanding the role of self-certification, trust marks, and seals, in substantiating environmental claim
- Promoting environmental claims without pushing "greenwashing"



12:15

### 1:1 Virtual Networking Break

12:30 **Lunch**



1:15

### Ad Standards and the Complaint Process

 **Yamina Bennacer**, *Director, Standards (National)*, **Ad Standards**

**Monique Gagné**, *Senior Law Clerk*, **Ad Standards**

As Canada's national advertising self-regulatory organization, Ad Standards has administered the Canadian Code of Advertising Standards (the 'Code') for almost 60 years. In this session, you will learn how the Code applies to your advertising initiatives, how it supports requirements imposed by third-party regulators, and how the self-regulatory process benefits both consumers and advertisers. In this practical session, we will illustrate:

- What is advertising self-regulation?
- What are the benefits of a self-regulatory system?
- What are the criteria set out in the Code for acceptable advertising?
- What happens when Ad Standards receives a complaint?
  - » From the Public
  - » From an Advertiser/Competitor
- What are some of the best practices when responding to a complaint?
  - » From the Public
  - » From an Advertiser/Competitor

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1:45

## A Bite of Food Advertising

 **Catherine Bate**, *Chief Legal and Policy Officer*, **Ad Standards** (Toronto, ON)

**Evie Bouras**, *Counsel*, **McCarthy Tetrault LLP** (Toronto, ON)

**Pierre Savoie**, *Partner*, **LJT Avocat**

Learn about the latest trends in advertising claims, class actions, and developments in the laws, regulations, and policies governing advertising of food and beverage products in Canada including:

- Trending food advertising claims
- “Pure”/ “Natural”/ “Local”/ “Fresh”, etc.
- Health claims (express or implied)
- Low carb /Meal replacement and weight loss claims
- Highlighted ingredients: a practical approach
- The consequences advertisers could face for violations
- Class actions, CFIA or Ad Standards
- Preclearance: what is it, and how does it help in compliance?
- An introduction to the Code for Responsible Advertising of Food and Beverage Products
- Other food law updates:
  - » Fortified foods, energy drinks, simulated meat and poultry, and other regulatory developments

2:30 Afternoon Break

3:00

## Avoiding Unqualified Country of Origin Claims

 **Daniel G. Edmondstone**, *Partner, Marketing & Advertising*, **McMillian LLP** (Toronto, ON)

**Jason W. Gordon**, *Partner*, **Reed Smith LLP** (Chicago, IL)

Over the last several years, there has been an uptick in “Made in Canada” claims. Our speakers will explain how to substantiate these claims as Canadian consumers continue to support local manufacturers.

- Assessing how consumers interpret country of origin claims
- Identifying what the current standards are and anticipating changes to the requirements
- Understanding if you can make a “Made in Canada” claim without including a qualifying statement
- Determining the impact of political influence on enforcement priorities
- Understanding manufacturer-retailer liability with materials coming from different countries and the impact of COVID-19

4:00

## Co-Chair Closing Remarks Conference Adjourns to Day Two

S

# Main Conference Day Two January 19, 2022 (EST)

9:00

## Co-Chair Opening Remarks

 **Marisa Muchnik**, *General Counsel*, **Ferrero Canada Ltd** (Toronto, ON)

**Austin Wong**, *Director, Legal Counsel, Law Department, Content*, **Corus Entertainment** (Toronto, ON)

## Understanding How the Evolving Role of Social Media Continues to Change the Marketing and Advertising Playing Field in Canada

9:15

### PART ONE: Influencer Marketing in Canada

S

 **Marina Seidl**, *Senior Counsel, RBC Law Group*, **Royal Bank of Canada** (Toronto, ON)

- Assessing the impact of increased influencer activity during the COVID-19 pandemic
  - » How consumers are using social media, who they’re following and why
  - » Impact of brands and influencers on consumers’ purchase habits
- Determining best practices for dealing with influencer contracts
  - » Considerations when engaging an influencer
  - » Key elements of an agreement

9:45 Morning Break



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10:15

S

## PART TWO: Being Politically Correct: Avoiding Political Polarization in Social Media Advertising

 John Salloum, *Partner*, **Osler, Hoskin & Harcourt LLP** (Toronto, ON)

David Young, *Principal*, **David Young Law** (Toronto, ON)

Through a series of examples, our speakers will analyze recent situations in which a brand's influencer become politically controversial. Our panelists will discuss the impact of these controversies on advertising, marketing, reputation, and offer solutions to avoid political landmines.


Points of discussion will include:

- The Ben and Jerry controversy
- Subway and Megan Rapinoe
- Souris River and Vaccinations

11:15

S

## Promoting Diversity and Inclusion in Ad Campaigns: An Insider's View

 Elizabeth Manley, *Director, Trademarks & Marketing Law, Trademark Agent*, **Cineplex Entertainment LP**

Paula Fernández Pfizenmaier, *Head of IP*, **MercadoLibre Inc.** (Buenos Aires, Argentina)

During this highly anticipated session, in-house counsel will share insights into tackling diversity and inclusion in the Canadian advertising landscape, all while meeting the Canadian Marketing Code of Ethics and Standards.

12:00 Afternoon Break

12:30

S

## New Considerations in Compliantly Executing Promotional Contests and Sweepstakes Under the Competition Act

 Shelley Samel, *Lawyer*, **Shelley Samel Law** (Toronto, ON)

Pinar Ozyetis, *General Counsel, AIRMILES Reward Program*, **Loyalty One** (Toronto, ON)

- Examining how the Competition Act applies to sweepstakes and promotional contests
- Understanding the continuing impact COVID-19 on sweepstakes and contests and how the Competition Act comes into play with the pandemic
- Assessing the contractual obligations of advertising contests and applying force majeure in the case of unprecedented circumstances
- Calculating what constitutes an "undue delay" when awarding prizes
- Ensuring adequate and fair disclosure including monetary value, regional allocations, and odds of winning
- Determining how to register your sweepstakes and whether it varies across the world
- Developing strategies when you have to conduct a contest or sweepstakes that covers many jurisdictions

1:30

## Co-Chair Closing Remarks End of Conference

## Upcoming Events

ACI's 5<sup>th</sup> Annual  
LEGAL, REGULATORY AND COMPLIANCE FORUM ON  
**ADVERTISING CLAIMS  
SUBSTANTIATION**

February 2–3, 2022  
Virtual Conference

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& Personal Care Products

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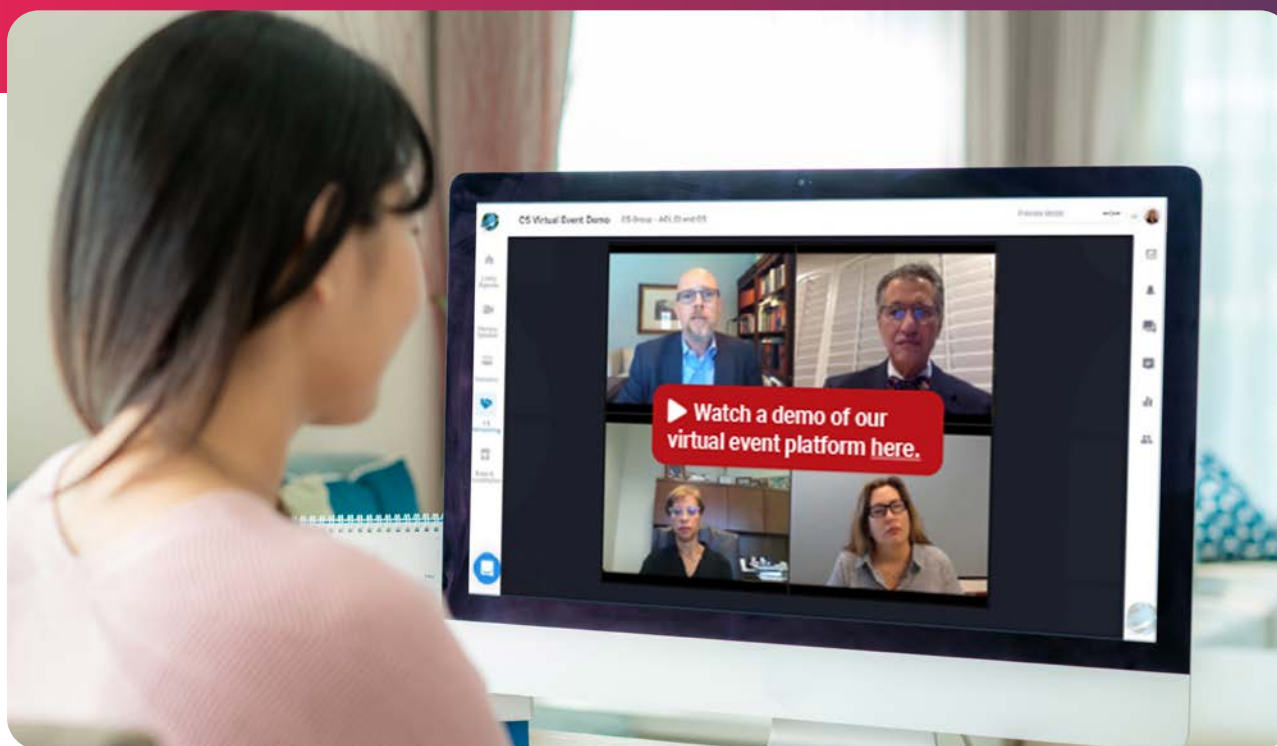
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Our new virtual events continue to be guided by our unifying philosophy: we believe that growth and success occurs when the power of people and the power of information come together. We may not be able to gather in person, but nothing stops connection and innovation.



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Virtual Conference	\$1,495	\$1,595	\$1,695
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<b>A   Advertising Claims Substantiation 101</b> – Your Guide to the Essentials of Advertising Claims Substantiation in Canada		\$295	
<b>B   What Advertisers and Their Counsel Need to Know about Privacy Laws:</b> Understanding How New Privacy Legislation in the EU, USA And Canada Are Impacting Canadian Advertising		\$295	

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