

The Dentons logo, consisting of the word "DENTONS" in white, uppercase, sans-serif font, enclosed within a white arrow-shaped graphic pointing to the right.

DENTONS

WEBINAR SERIES
KEEPING UP WITH
CROSS-BORDER CLASS ACTIONS

Part 3: **ESG and greenwashing**

November 21, 2024

Grow | Protect | Operate | Finance

Moderator:



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ESG and greenwashing class action risk in Canada

Kelly Osaka

Competition Bureau greenwashing investigations

Competition Act

- **Previously:** Section 52(1) – General prohibition against false or misleading representations.
- **Now:** Bill C59 – Section 74.01 expands deceptive marketing provisions to address greenwashing:
 - Businesses must now have testing or substantiation to support claims regarding the environmental benefits of a product or service.

Greenwashing investigations

- **Keurig** – investigation into claims related to the recyclability of coffee pods.
- **Energy industry association** – investigation into reduced emissions claims related to natural gas.
- **Bank** – investigation into continued financing of certain energy projects and climate related claims in advertisements.

Mandatory climate disclosure

Proposed amendments to CBCA:

- To require climate-related financial disclosure for large, federally incorporated private companies.
- To provide sustainable investment guidelines (“taxonomy”).

Proposed securities disclosure:

- 2023 ISSB released sustainability disclosure standards IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures.
- 2024 CSSB issued for consultation proposed climate-related disclosure and sustainability-related disclosure standards.

Municipalities taking action

BC “Sue Big Oil” campaign

- 2022 campaign to urge BC municipalities to support a class action against energy companies.
- Seeks \$1 per resident to be paid towards the proposed lawsuit.
- Several BC municipalities have joined the campaign including:
 - Burnaby, Port Moody, Gibsons and Squamish.



US class action claims and developments

Michael Duvall

Over- and under-stated environmental impacts

**Sustainable
aviation fuel**

*Zajac v. United
Airlines (D. Md.)*

**“Carbon Neutral
by 2030”; “Clean,
Safe, and Good”**

*Ortiz v. Eversource
Energy (Mass.)*

**“Be Planet”
campaign**

*Gyani v. Lululemon
(S.D. Fla.)*

“Carbon Neutral”

*Dorris v. Danone
Waters of
America (SDNY)*

Sustainability claims

**“Sustainability Collection”
containing recycled and organic
materials**

Ellis v. Nike (E.D. Mo.)

“Sustainably Sourced” seafood
Sanchez v. Walmart Inc. (N.D. Ill.)



Recyclability claims

In-House Counsel CLE Webinar Series presents, "Recycling Claims in the US – Watch Out for the Speed Traps"

Date and time:
Start: October 30, 2024, 1:00 PM
End: October 30, 2024, 2:00 PM

As companies and consumers increasingly focus on product lifecycle issues, recycling claims are drawing heightened attention from lawmakers, regulators, NGOs as well as public and private plaintiffs. Dentons partners, **Gary Roberts** and **Sarah Carlson**, will offer insights into the current US landscape and discuss new, stricter California standards for recycling claims. They will also explore key litigation trends in this area and what these developments mean for consumer goods companies and manufacturers.



The video thumbnail features the Dentons logo and the text "2024 IN-HOUSE COUNSEL CLE SERIES". The main title is "In-House Counsel CLE Webinar Series" with a red play button icon. Below the title is the date "October 30, 2024". At the bottom, it says "Watch on YouTube" with the YouTube logo. The background of the thumbnail shows a blurred image of people in a meeting.

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Supply chain concerns

“Responsibly sourced” &
“sustainably sourced” cocoa

Marie Falcone v. Nestle USA Inc.
(S.D. Cal.)



Trace chemicals & PFAS

“Clean” beauty products

Boyd v. Target Corp. (D. Minn.)



Compare: D.C. Superior Court DCCPPA Public Injunctive Cases



**Environmentally friendly,
sustainable image**

Earth Island Inst. v. BlueTriton Brands
(D.C. Super Ct.)

ERISA/Pension plan litigation

Investment in ESG Funds

Spence v. American Airlines (N.D. Tex.)

DOL “Tiebreaker” Rule



ERISA/Pension plan litigation



“Aspirational” statements not materially misleading

Fagen v. Enviva Inc. (D. Md.)



Alleged misrepresentations about climate change commitment

Lyall v. RELX PLC (D. Mass)



SEC climate disclosure rule

Thank you



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