SENSATIONAL ADVERTISING STANDARDS :

A CANADIAN'S WORLD VIEW

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WHY ARE YOU HERE?

- I'm interested in sensational advertising
- I'm interested in sensational standards
- I thought this was a session about measuring sensation and perception for competitive claims

Advertising is open to different interpretations – fact-based truth is not always enough



or even…



AGENDA

1. Essential adversarial perspective on claims testing
2. Canadian and international experience re ASTM Guidelines
3. Using E1958 during renovations
4. Frontier for leadership

1. ESSENTIAL ADVERSARIAL PERSPECTIVE

a. Anticipate adversarial scrutiny

b. Choose defensible authority

c. Social science criteria- the ultimate common denominator worldwide

ANTICIPATE ADVERSARIAL SCRUTINY

"Each year courtrooms are littered with the smouldering wreckage of consumer surveys that appeared rigorous and valid when launched, but were shot down at trial."

(Bruce Keller in a journal of the American Bar Association, 1992)



More recently, ironically, heated controversies among experts have reduced courts' patience for social science evidence *(Masterpiece Inc. v. Alavida Lifestyles Inc., 2011 SCC 27)* -- a frontier opportunity for research standards organizations

ASTM: *"THE CRITERIA USED FOR EACH FORUM ARE NOT IDENTICAL AND CONSTANTLY EVOLVING"*

- **Tension between methods of science and forum precedents. What to do? Option 1:**



- **Option 2: Be alert to tradeoffs, and be explicit in written report about reasons for one choice over another. (ASTM's proposes "reasonableness" criterion)**
- **ASTM a credible authority in adversarial setting**
- **Canadian industry experts planning outreach to educate triers of fact.**

CANADA'S SUPREME COURT ECHOES SOCIAL SCIENCE CRITERIA

- Validity, reliability, relevance





- Consistent with social science, universal
- Useful menu for defense and critiques, checklist for project planning
- Recommendation: use to organize your application of ASTM

2. ASTM GUIDELINES – OTHER COUNTRIES, OTHER VIEWS

1. Claim classifications less intricate
2. Claims without comparative words scrutinized nonetheless
3. Pertinent population is make-or-break
4. Random sampling elusive – alternatives need authoritative support

WHAT'S THE NAME OF THE CLAIM? ASTM'S CLAIM CLASSIFICATION

- Claim wording determines validity of the test
- Number one claims, superlative claims, superiority claims, parity claims, preference claims and technical claims. ASTM has comparable classification—check which are material to scientific testing criteria (Reference article available)







ASTM: SOME ATTRIBUTE TESTS CAN BE TREATED AS NON-COMPARATIVE RATHER THAN COMPARATIVE (?)

In general, assume a competitor will be affronted. Implied comparisons are actionable.



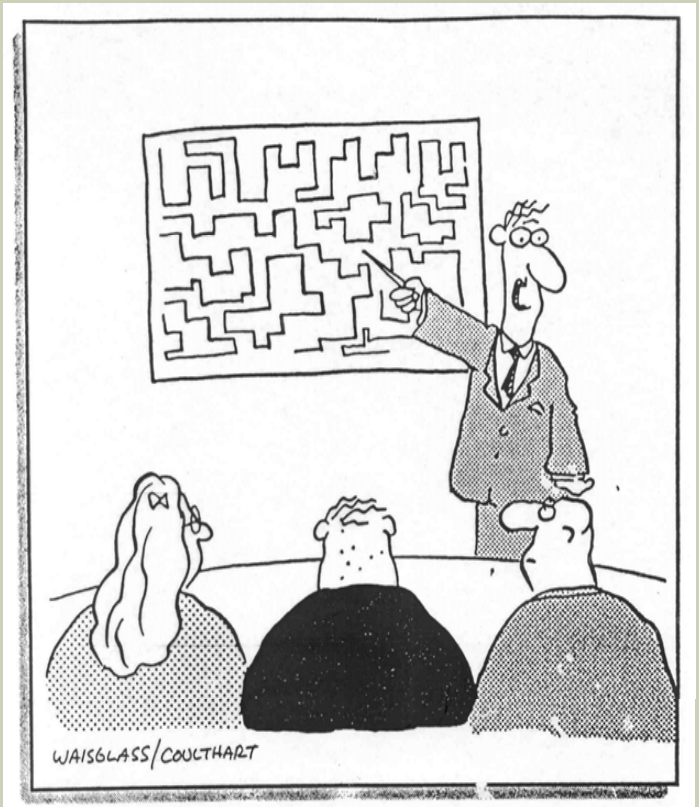




Sifto produces "the purest possible baking soda ... 100% effective...100% natural"

"Lactantia PurFiltre milk is the biggest breakthrough since Louis Pasteur developed pasteurization…utilizing micro-filtration technology that removes 99+% of total bacteria prior to…pasteurization. "

ASTM: DETERMINE AND TEST THE PERTINENT POPULATION



"This office floor plan was favored by 96% of the laboratory rats tested."

- Purchaser, user or influencer? This decision has been make-or-break.
- Are ASTM product use/purchase screening criteria too specific?

ASTM: RANDOM SAMPLING

- ASTM promotes thorough criteria for representativeness: 4/5 regions, two markets per region, equal probability sampling, cross-section of market share balance, urban versus rural
- Very high cost, large sample sizes; shortfall from perfection likely; some criterion for "sufficiency" desirable, to deflect hostile criticism
- Section 5 disclaimer re: random sampling imperfectly reconciled
- What about sample size? Doc available for what different user forums have accepted
- Canada wrestling with margin of error language, defensibility of non-randomness, return to experimental model—ASTM faces similar issues



3. USING E1958-12 DURING RENOVATION PERIOD

(Fine print: inputs drawn from Standards Committee for Canada, Litigation Resource Committee, Canadian Federal Court bench-book chapter on social science evidence, reference text "Survey Evidence and the Law Worldwide", project to update ASC standards, NAD testimony experience, and collaboration with ESOMAR)

Practical experience-based recommend-ations

WORKING WITH E1958-12 ESSENTIALS

1. **Priority on essential professional standards of ethics, privacy, disclosure, respect for limitations of participants**

2. **Next essential layer: international scientific criteria of reliability, validity, relevance. These are exhaustive—you can't go wrong.**

3. **Form and communicate a view on enforcement policy – standards without enforcement do us all a disservice**

WORKING WITH E1958-12 ESSENTIALS

4. **Compile authorities for footnoting trade-off decisions. List may include like-minded organizations e.g. ESOMAR, MRIA, NAD, ASC, ASA and documented requirements of various stakeholder organizations. (Available to send).**

5. **Exploit Internet resources, inc. interactive statistical tests**

6. **Issues of law when a dispute arises? Universal principle: social science expert not to wade into debates of law; expert opinion ultimately for a court and not for a paying legal client. Published cases will allow you to track courts' priorities when reconciling opposing evidence.**

4. HOT-TUBBING: THE NEXT FRONTIER

Picture deliberately avoided

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