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Keeping your AI disclosure clean: "AI washing" in the United States and lessons for Canadian issuers

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In the first half of 2026, there have been more AI-related securities class action filings in the United States than in all of 2025, representing the highest number of such claims in the last five years[1]. Many of these class actions involve allegations of "AI washing"—a term used to describe issuers alleged to have exaggerated or misrepresented the role, capabilities, or impact of AI in their business. While Canada has not yet seen a similar spike, the growing trend south of the border may be a preview of what is to come. To mitigate this risk, Canadian issuers should ensure that their disclosures accurately reflect their use of AI and avoid exaggerated, imprecise, or unsupported claims.

What you need to know

- **Disclosure versus reality**. "AI washing" claims typically allege that an issuer has overstated its AI capabilities, products, or competitive advantages to capitalize on investor enthusiasm for AI. While many issuers want to promote their AI capabilities—and in some cases are legally required to make such disclosure—issuers must ensure that all disclosures are accurate and reflect the issuer's actual AI reality.
- **Lessons from the United States**. The recent wave of AI washing litigation in the United States serves as a reminder that the review and assessment of an issuer's AI-related disclosure require the same rigour as other disclosures. Recent US cases have involved allegations that an issuer has falsely claimed to be developing AI technology, has exaggerated its AI capabilities, or has misrepresented the impact of its AI strategy on key business metrics. Canadian issuers should therefore ensure that their AI-related disclosures are accurate and balanced—avoiding vague buzzwords and unsupported claims about the sophistication, performance, or revenue impact of their AI technology.
- **Regulatory enforcement**. In the United States, the SEC has settled charges against investment advisers and issuers for making false and misleading statements about their use of AI[2]. While Canadian regulators have not yet taken similar regulatory action related to AI washing, this could change as AI-related disclosure becomes more prevalent. Issuers should be proactive in monitoring regulatory guidance and legislative developments, particularly since AI washing allegations may also arise in other regulatory contexts, including competition and consumer protection[3].

What is "AI washing"?

The term "AI washing" comes from "greenwashing", which describes the practice of overstating or misrepresenting an issuer's environmental initiatives or the environmental benefits of its products and services. Like greenwashing, AI washing occurs when companies misrepresent or exaggerate the role, capabilities, or impact of AI in their business.

AI washing allegations can take various forms. The classic case involves allegations that an issuer has falsely claimed to be deploying or developing AI technology, or has exaggerated its AI capabilities. Other cases involve allegations that an issuer has misrepresented the impact of its AI strategy on key business metrics, including financial performance.

A recent spike in AI washing litigation

There has been a recent spike in AI washing securities class actions in the United States. The following are examples of allegations from recent claims:

- **Using vague AI buzzwords to create a perception of sophistication.** A claim was brought alleging that a company relied on imprecise, vague "AI buzzwords" with little concrete meaning—such as "AI powered" and "machine learning-driven"—to describe products that were less sophisticated than the terminology suggested. The complaint alleges the company sought to capitalize on the "hype surrounding AI" and "the public's limited understanding of the true capabilities of AI"[4]. Similar allegations were made in another class action against a data management company, which allegedly used "promotional buzzwords" in its press releases that did not reflect its actual business operations[5].

- **Overstating AI performance capabilities.** Claims have been brought against companies alleged to have overstated what their AI technology could do. For example, a recent class action alleges that a cloud-based AI lending platform falsely represented that its "proprietary AI models" more accurately assessed loan risk, leading to increased loan approvals and revenue. The claim also alleges that there were undisclosed calibration issues affecting the AI's predictive accuracy, which had a "significant negative impact" on revenue[6].

- **Overstating the financial benefit of AI.** Companies also face exposure if they overstate the competitive advantage or financial value of their AI products. Another recent class action alleges that a web development platform falsely represented that its "leadership in AI-powered web development" differentiated it from competitors, when in fact the company was struggling to compete because competitors' AI technologies were surpassing its own. The claim also alleges the company understated the costs and commercial risks associated with developing its AI products[7].

- **Claiming to be an "AI company" without meaningful AI investment.** A plaintiff commenced a class action against a data engineering company alleging that it rebranded itself as an AI company without meaningfully investing in AI technology. The complaint alleges that tasks the company claimed were performed by AI were actually performed by low-cost remote workers[8].

AI washing in Canada: regulatory guidance and early litigation

Canada has not yet seen the same spike in AI washing class actions, though the US experience may be a preview of what is to come. In one recent Canadian case, a plaintiff commenced a proposed class action involving AI-related disclosure. The allegations include that the company failed to disclose material facts relevant to its AI products and services, and thereby negligently reported its financial performance[9]. The claim has not been certified.

Further, in December 2024, the Canadian Securities Administrators issued guidance cautioning issuers that AI washing "may be misleading to the public or constitute a misrepresentation, as defined by securities legislation", and warned against "vague and unsubstantiated statements" about AI[10].

As with greenwashing claims, a key issue in AI washing cases may be whether the alleged misrepresentation is sufficiently material to investors. While AI has become a significant market theme, it remains to be seen how Canadian courts will assess whether statements about an issuer's AI capabilities or competitive advantages would reasonably be expected to have a significant effect on the market price or value of the issuer's securities.

The rapidly evolving nature of AI may also complicate courts' assessments of alleged misrepresentations. Given the uncertainty surrounding AI capabilities and the value that AI may ultimately generate, courts and regulators may face challenges in distinguishing between statements that were misleading when made, and forward-looking statements or expectations that simply failed to materialize. More broadly, AI washing claims may also raise novel questions about how continuous disclosure obligations intersect with a rapidly evolving technological landscape.

Key takeaways

The recent wave of AI washing litigation in the United States serves as a reminder that AI-related disclosure requires the same rigour as any other public-facing disclosure. As AI becomes increasingly prevalent in business operations, scrutiny of AI-related statements will intensify. Canadian issuers should ensure their AI-related communications are accurate and balanced, avoiding vague buzzwords and unsupported claims about the sophistication, performance, or revenue impact of their AI technology.

FOOTNOTES

1. Ivelina Velikova and Svetlana Starykh, *Recent trends in Securities Class Action Litigation: H1 2026 Update* (National Economic Research Associates, Inc., July 21, 2026).
2. For example, see the following Securities and Exchange Commission press releases: *SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence,* March 18, 2024, and *SEC Charges Restaurant-Technology Company Presto Automation for Misleading Statements About AI Product*, January 14, 2025.
3. For example, the federal government made amendments to Canada's *Competition Act* to address greenwashing concerns and give the Competition Bureau enhanced powers to reprimand companies engaging in greenwashing. Our colleagues discussed the anti-greenwashing amendments to the *Competition Act* here.
4. *D'Agostino v Innodata Inc. et al*, Second Amended Class Action Complaint for Violation of the Federal Securities Laws, United States District Court for the District of New Jersey, filed April 10, 2025 ("Complaint against Innodata Inc. et al"), at paras 32–35.
5. *Aramouni v. Datavault AI Inc. et* al, Class Action Complaint filed in the United States District Court for the Eastern District of Pennsylvania on August 5, 2026, at paras 1–8.
6. *Dunn v. Upstart Holdings Inc. et al*, Complaint for Violations of the Federal Securities Laws, filed in the United States District Court for the Northern District of California on April 7, 2026, at paras 3–5.
7. *Yappi v. Wix.com Ltd. et* al, Class Action Complaint, filed in the United States District Court for the Northern District of Illinois on July 24, 2026, at paras 1–5.
8. *D'Agostino v Innodata Inc. et* al, Second Amended Class Action Complaint for Violation of the Federal Securities Laws, United States District Court for the District of New Jersey, filed April 10, 2025 ("Complaint against Innodata Inc. et al"), at paras 9–11.
9. *Yee v. Telus International (Cda) Inc*., 2026 ONSC 3165, at paras 2–3.
10. CSA Staff Notice and Consultation 11-348 - Applicability of Canadian Securities Laws and the use of Artificial Intelligence Systems in Capital Markets, December 5, 2024.

To discuss these issues, please contact the author(s).