

Greenwashing remains a focus of regulators in Australia in 2023, as consumers continue to support businesses and products that are environmentally conscious.

On 14 July 2023, the Australian Competition & Consumer Commission (ACCC) released their draft guidance for business on environmental and sustainability claims, after having completed an internet sweep of 247 businesses with 57% identified as having made concerning claims about environmental credentials. Further, competitors are increasingly challenging “green” claims of their rivals. For example, in March this year the Federal Court granted an urgent interlocutory injunction to prevent the sale of a product where the green credentials were challenged. It will remain a space to watch closely, including with international developments such as the EU’s proposed Green Claims Directive, which includes mandatory requirements before labels can be used and provisions to reduce the proliferation of new labels.

This article provides an overview of the position in Australia when making environmental claims for consumer products, including in product labelling.

When looking at environmental claims for products and their labels, the primary question is whether the information displayed amounts to a false or misleading representation about the goods or otherwise creates a real or not remote chance of consumers being misled or deceived. The test asks what is conveyed to an ordinary reasonable consumer of that product about the product’s attributes, looking at the words or images in the claim and taking into account how and where they were displayed. Different products may result in different assessments based on the complexity of the consumer decision-making process. While relevant, the use of disclaimers, qualifiers or exclusion does not guarantee protection.

To minimise risks, any environmental claims should:

- Be specific and clearly and accurately explained.
- Be honest and truthful.
- Detail the specific part of the product or process it is referring to.
- Use language that the average member of the public can understand.
- Explain the significance of the benefit to the environment.
- Not leave out or hide important information or exaggerate an environmental impact or initiative.
- Be able to be substantiated with robust evidence.
- Take care with visual elements (see below).



In advertising, visual elements have a significant impact. While pictures and imagery are commonly used on packaging, it is advisable to note that environmental images can convey a certain claim about the product or packaging. Particular care should be used for nature-based imagery or symbols used in a way that suggests third-party certification or endorsement, such as enclosing an image in a circle.

Overall, businesses are more likely to face issues with:

- Vague or unclear environmental claims such as “green”, “kind to the planet”, “eco-friendly”, “responsible” or “sustainable”. These claims are said to have little value for consumers as they can have a variety of different meanings and rarely provide enough information to allow consumers to make an informed purchasing decision.
- General claims that do not adequately refer to a specific part of a product, its packing or its production process, such as extraction, transportation, manufacture, use or disposal, when making a claim.
- Unqualified claims, such as that a product or its packaging is biodegradable, compostable, or recyclable, without detailing how to properly dispose of a product or packaging so that it can achieve that outcome.
- The use of absolute claims such as 100% plastic free, zero emissions, 100% recyclable, which may be easy targets to dispute given that even a small deviation can pollute the claim, with such claims needing to be very clear and backed by robust evidence.
- Comparisons with a competitor’s products or existing products in a business’ lineup that do not specifically explain how the comparison has been made and the factors that have been taken into account.
- Claims that are not meaningful in connection with the product and/or in comparison to its alternatives, for example where the feature is common to all similar products.
- Aspirational claims about a future position.

Businesses considering using environmental claims will need to be able to back up these claims through reliable scientific reports, transparent supply chain information, reputable third-party certification or other forms of evidence. Essentially, they ought to be prepared to defend the claim if asked to do so.

The ACCC is empowered to obtain information and documents, and its practice is to issue substantiation notices requiring a person or business to give information and/or produce documents to support a claim or representation. It has additional compulsory information gathering powers, such as requiring attendance at interviews and production of documents. If a business is found to be in contravention of the duty not to make false or misleading representations, the business could be liable to:

- Very significant pecuniary penalties.
- An injunction to prevent making the representation.
- Adverse publicity orders requiring it to publish information about the contravention
- Paying damages to any person who has suffered loss or damage due to the contravention.
- Other compensation or redress orders.

Assessment of environmental claims for consumer products and whether product labels and information are misleading is very fact-specific. Our team has experience both in Australia and overseas in assisting business wishing to make environmental claims, and in assessing the adequacy of proposed product labelling and advertising. With a global footprint, we are able to watch developments across different jurisdictions to assist clients with multijurisdictional compliance, and anticipate potential developments based on learnings from other countries.

For more information on Greenwashing in Australia, see [*What Is All This Fuss About "Greenwashing"?, ASIC's First Action for "Greenwashing": Key Takeaways, ASIC's Fourth Infringement Action for Alleged "Greenwashing"*](#) and [*ASIC Launches First Court Proceedings Alleging Greenwashing.*](#)

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