



To the Editor:

This is an article from a series of monthly columns by Environmental Law Specialist Dianne Saxe and Jackie Campbell. Dr. Saxe is one of the top 25 environmental lawyers in the world, and these articles are available for publishing at no charge, provided Dr. Saxe and Ms. Campbell are cited as the authors. Dr. Saxe can be contacted at (416) 962 5882 or admin@envirolaw.com. For more information, visit <http://envirolaw.com>.

What does “Green” mean?

When a product claims to be “green” is it?

We now have a guideline that supposed to help us tell. In June 2008, the federal and Competition Bureau and the Canadian Standards Association published an updated guide on *Environmental claims: A Guide for Industry and Advertisers* (the “Guide”).¹ This Guide should help industry and advertisers comply with Canada’s “truth in advertising” laws, such as the *Competition Act*, the *Consumer Packaging and Labelling Act* and the *Textile Labelling Act*. Truth in advertising should also help consumers to put our money where our values are.

Self-declared environmental claims

Some green claims are based on third-party testing, such as the [Energy Star](#) or [Ecologo](#) labels. Most, however, are *self-declared environmental claims*,². These are claims made by manufacturers, importers, etc. likely to benefit from a product’s environmental claims. The Guide is supposed to help ensure that these claims are “verifiable, accurate, meaningful and reliable”.

How is the Guide used?

Self-declared claims must always be treated with caution. They are usually based on one characteristic (e.g., that a product is biodegradable), which is not independently certified or verified, and the product’s environmental life cycle is usually not considered. The Guide has 18 requirements to help ensure that self-declared environmental claims are true. For example, the claims must:

- be accurate and not misleading
- be substantiated and verified. While self-declared claims do not require third-party testing or verification, “the data must be available and accurate”.³

¹ Competition Bureau Canada and Canadian Standards Association: *Environmental claims: A guide for industry and advertisers* (PLUS 14021) June 2008: 1-64. (Link at <http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02701e.html>)

² The others are eco-logo labels or environmental profile declarations, which are briefly discussed below).

³ Guide at p.6

- clearly indicate whether the claim applies to the entire product or service, or only to a component or packaging
- be specific to the environmental improvement claimed
- take all relevant aspects of the product’s life cycle into consideration (although life cycle assessment/analysis is not required)

Environmental claims must not be **vague or non-specific** (e.g., “non-polluting” and “safe for the environment” are too vague). Claims like “environmentally friendly”, “eco” and “green” are also vague terms that should only be used for products or services whose life cycles have been assessed and verified. Vague claims that are used as slogans and that are not based on demonstrated environmental benefit could be considered false or misleading. Claims that relate to environmental performance of a product must be based on proper testing.

A claim that a product is “**free**” of some substance must only be made where the concentration of the substance is no higher than the concentration at which it would be considered a “trace contaminant” or present at “background level” (although these latter terms are not defined). Such a claim cannot be made based on the absence of ingredients that were never present (e.g., pesticide-free for a product category that never used pesticides); nor can a claim imply that it is safe by indicating that it is “free” of a substance (e.g., a product labeled “hydrochlorofluorocarbon-free” could be interpreted by consumers as being safe for the atmosphere; however, this would be deceptive if the product contained volatile organic compounds and this were not disclosed).

Sustainability claims are complex. As there are no clear methods for measuring or confirming sustainability in products, no product should claim to be “sustainable”. However, claims that refer to registered management systems may be acceptable, if they are verifiable (e.g., “this wood comes from a forest certified to a sustainable forest management standard”).

Explanatory statements must accompany claims if the claim alone would likely result in misunderstanding. Most self-declared claims will require such statements.

Comparative claims, which are most likely to mislead consumers, require the most rigorous evaluation and must always be accompanied by an explanatory statement to clearly identify the benchmark against which products have been compared (e.g., an earlier process or product, or another organization’s process or product).

The Guide also reviews 12 of the most commonly used claims in exhaustive detail, including: “compostable”, “degradable”, “extended life product”, “recyclable”, “reusable” and “refillable”. The International Organization for Standardization is just starting work on a even more detailed standard for quantifying the carbon footprint of products.

Enforcement

While the Guide is not a formal part of the law, the Competition Bureau uses it as a benchmark when evaluating environmental claims (advertising or labels). Breaches of the Guide may be evidence of misleading and illegal advertising, and should make it easier to enforce false advertising laws. For example, the *Competition Act* prohibits knowingly or recklessly making false or misleading representations to the public to promote a product or business interest.⁴ Offenders may be fined up to \$200,000 and/or face up to one year in prison.⁵ The Bureau is allowing a 1-year transition phase to permit businesses to reassess their advertising and labelling claims in response to the Guide - however, this does not apply for “egregious cases”, which the Bureau “will not hesitate to pursue”.⁶

No [penalties](#) have yet been imposed for environmental claims. However, the Competition Bureau can accomplish a lot simply by threatening to act. Last year, for example, Lululemon Athletica Inc. very publicly abandoned all claims alleging therapeutic benefits from its VitaSea line of clothing products, which had been marketed throughout its national network.

The Bureau “is watchful of increasing trends in the marketplace making claims about the use of sustainable fibres (e.g. bamboo, soybeans) and any related environmental, health, and therapeutic claims about their benefits and reminds industry participants that they must ensure that proper fibre content is being disclosed. Scientific testing of the fibres or fabrics is necessary to substantiate the claims.”

Anyone who thinks an environmental claim or label is misleading should complain to the Competition Bureau, at 50 Victoria Street, Gatineau, Quebec, K1A 0C9

Email: compbureau@cb-bc.gc.ca Telephone: 819-997-4282. Truth in environmental advertising is all of our business.

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⁴ At s. 52(1)

⁵ s. 52(5)

⁶ News Release June 25, 2008 – What does green really mean?

<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02700e.html>