

Green claims: Companies must not mislead



AS ENVIRONMENTAL concerns grow, consumers are increasingly considering environmental benefits as a factor in their purchasing decisions.

This, in turn, has seen businesses seeking to promote their 'green' credentials to differentiate themselves and their products from the competition.

Where businesses are taking genuine steps to reduce their impact on the environment, they deserve to be able to promote these to their customers. In doing so, however, they should ensure their claims are accurate, scientifically sound and appropriately substantiated. This is more than just good business practice—it is required by law.

The Australian Competition and Consumer Commission enforces the *Trade Practices Act 1974*, which states that businesses must not mislead or deceive consumers in any way. This can include misleading them through silence, if in all the circumstances there is an obligation to reveal a particular fact or issue, or through the making of predictions where there is no reasonable basis for doing so.

It is also important to remember that an intention to mislead is not necessary. Businesses with the best of intentions have potentially misled their customers—and so breached the Act—by not adequately considering the ways their branding or product could be perceived.

The Act also prohibits a variety of false or misleading representations about specific aspects of goods and services.

Those most relevant to environmental claims include that a business must not falsely represent goods as being of a particular standard, composition or model or as

having a particular history or previous use. Businesses must also not represent that goods have sponsorship, approval, uses or benefits that they do not have.

Using endorsements or logos can be misleading or simply confusing if they are not well known or recognisable. Any claims of compliance with a certification must be verifiable.

Some of the greatest concerns in the green marketing sphere are about ambiguous naming of products and about relatively meaningless claims. Very few consumers are atmospheric scientists, and they cannot be expected to know when environmental claims are likely to be untrue. This is why the ACCC is particularly concerned about such claims.

In April 2008, the ACCC accepted court enforceable undertakings from De Longhi Australia that it would refrain from making misleading claims for its portable airconditioning products that use harmful greenhouse gases and an 'ECO' model cooler that uses a low-impact global warming gas.

The ACCC was concerned that the company's environmental claims were misleading and gave the impression that the coolers and their component gases were 'environmentally friendly' when they were not. De Longhi agreed to refrain from using unqualified claims that its products are 'environmentally friendly', amended its advertising and published corrective notices.

More recently, in January 2010, the ACCC obtained court enforceable undertakings against Global Green Plan, a former GreenPower retailer, which said it would purchase more than 4000 renewable energy certificates it had failed to buy on behalf of customers in 2007 and 2008

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IN SUMMARY, when making green or any other claims, businesses should remember that:

- › claims must be accurate
- › claims should be able to be substantiated
- › claims should be specific, not unqualified and/or general statements
- › claims should be in plain language
- › claims should only be made for a real benefit
- › claims must not overstate a benefit
- › claims should make it clear whether benefits refer to packaging or content
- › claims should consider the whole product life cycle.

under the government's national GreenPower accreditation program.

While operating GreenSwitch, Global Green Plan accepted payments from customers on the proviso that the money would be used to purchase certificates. However, not all of the money customers provided to Global Green Plan was used to purchase the certificates as promised.

The ACCC also recently instituted proceedings against Prime Carbon Pty Ltd, alleging that the company made false or misleading representations about the National Environment Registry

(NER) and the National Stock Exchange of Australia Ltd (NSX).

In addition to taking enforcement action, the ACCC provides businesses with guidance on ways to ensure their advertising and marketing materials do not fall foul of the Act.

Other examples of enforcement action taken against companies for misleading or deceptive green claims include:

- › In December 2008, the Federal Court declared that biodegradability claims made by **SeNevens International Ltd** in relation to a disposable nappy product were false and misleading because the product contained plastic components that were not capable of being broken down by the biological activity of living organisms. The court ordered corrective advertising and imposed injunctions against the company engaging in similar conduct in the future.
- › **SAAB/General Motors**—GM Holden as an agent for SAAB was found to have misled the public in a 2007 advertising campaign over the effect of planting of native trees to offset carbon dioxide emissions for the life of SAAB cars. GM Holden has advised that it is planting an extra 2500 trees to offset emissions for the life of all SAAB cars sold during the *Grrrrreen!* campaign.

The ACCC has produced a guide to help businesses understand their obligations under the Trade Practices Act when making green claims. It is available from the ACCC website: www.accc.gov.au/content/index.phtml?itemId=815763