



GREEN claims

Businesses are making an ever-increasing range of claims about the environmental aspects of products and services. On the positive side, this indicates the growing interest by businesses in this area. However, it can create fertile ground for consumer confusion and, in the worst cases, involve misleading and deceptive conduct in breach of the law.

Environmental claims such as 'biodegradable', 'compostable', or 'recyclable' are powerful selling tools. Images such as the earth or a forest may also be considered a sweeping claim that a product has environmental benefits.

With many consumers keen to make choices that reduce impact on the environment, it's important they get accurate information about these so-called 'green' products and feel confident in the purchasing decisions they make. Businesses that make environmental claims about their products must ensure those representations are accurate, scientifically sound and can be substantiated. Not only is this good business practice, it's the law.

Manufacturers and retailers that make false or misleading representations in their advertising or on their packaging may find themselves in breach of the Competition and Consumer Act (the new name for the Trade Practices Act since 1 January this year).

The ACCC has long had a responsibility under the Act. Now, under a new part of the legislation

called the Australian Consumer Law, the ACCC scrutinises claims to ensure they are genuine to prevent consumers being misled by false or misleading representations.

Under the Australian Consumer Law (ACL) amendments the ACCC can seek in civil proceedings penalties of up to \$1.1 million against corporations and \$220 000 against individuals for a contravention of various consumer protection provisions of the *Competition and Consumer Act 2010*.

Other remedies available include:

- › injunctions
 - › damages and compensation
 - › corrective advertising orders
 - › disqualification orders for company officers
 - › payment of the ACCC's legal costs.
- › be honest and truthful
 - › Detail the specific part of a product or process to which they refer
 - › use language that the average member of the public can understand;
 - › explain the significance of the benefit, and
 - › be able to be substantiated.

Under the ACL, the ACCC also now has the power to issue a substantiation notice requiring a person to give information and/or produce documents that could be capable of substantiating or supporting a claim.

To help businesses fully understand their green-marketing obligations, the ACCC has a number of guidance publications online at www.accc.gov.au.

In summary, environmental claims made should:

ACCC action in recent times has included:

Goody Environment

The Federal Court declared by consent that Goody Environment Pty Ltd engaged in misleading and deceptive conduct and made false representations about 'Goody' branded plastic bags. Goody claimed the bags were biodegradable and compostable in accordance with Australian Standard AS4736-2006 and could be supplied legally in South Australia under the state's Waste Avoidance Act. However, it was found that the bags did not meet the standard.

LG Electronics Australia

The ACCC conducted an investigation as to whether LG Electronics Australia Pty Ltd misrepresented the 'Comparative Energy Consumption' of various refrigerator models. To address the ACCC's concerns, LG gave the ACCC an undertaking that it would upgrade its compliance program and conduct more tests on a selection of its products. LG also said that it would offer all consumers who bought one of the refrigerator models compensation.