

CONSUMERS

Informed choice

PAULA BARON discusses a new government program which aims to help alleviate consumer confusion as to environmental claims made for products.

As consumer consciousness of environmental impact has increased, the consumer has been bombarded by advertising and marketing making environmental claims for products, particularly cleaning products. These claims seek to take advantage of the consumer's desire to minimise his or her environmental impact. Many of these claims are, at best, meaningless and, at worst, misleading. As a response to the growing concern of consumer groups and confusion on the part of the individual consumer, Environmental Choice Australia (ECA) was developed¹ by ANZECC (the Australian and New Zealand Environment Conservation Council) and was launched on 29 October 1991. ECA is administered through the federal Department of the Arts, Sport, the Environment and Territories and each government in Australia is responsible for implementing some of the program within its jurisdiction. Although ECA has been welcomed as a means of verifying claims and educating the public, it has been criticised as not going far enough. Indeed, it can be argued that its program of verification may increase consumer confusion, not alleviate it.

The ECA education and information strategy

This aspect of the program is fairly uncontroversial. The aims of the educative aspect of the program are to disseminate information so as to:

- provide consumers with the necessary information to make informed choices based on environmental impacts; and
- encourage the providers of products and services to reduce environmental impacts by changing processes.

The ECA verification and endorsement program

This aspect of the program is more controversial. Its four component parts are discussed below.

Code of ethics

Manufacturers participating in the program 'do so voluntarily and agree to abide by a Code of Ethics governing the environmental claims permissible on product labels or packaging'.²

There is also a Code of Conduct for the Environmental Marketing of Consumer Products independent of the ECA program put out by the Grocery Manufacturers of Australia Ltd. The principles for the latter Code are drawn from the Trade Practices Commission's (TPC) guidelines on the use of environmental claims in marketing. These include a checklist of recommendations for manufacturers to guard against misleading claims. The Code provides complaint handling procedures and is administered by a management committee. If a company contravenes the Code it may be required to give a written undertaking to discontinue, within a certain time, the offending practice or be required to issue corrective statements as appropriate. Refusal to undertake such actions could result in the matter being referred to the TPC or state regulatory body and continued refusal could result in the suspension or expulsion of a member from the Grocery Manufacturers Association (GMA). The Code provides for a right of appeal if a member is dissatisfied with the decision of the management committee. The matter is then referred to arbitration.

Scientific committee

The scientific committee established under the program, in relation to the verification of claims, provides advice on:

- the testing process used by industry to validate claims;
- definitions for terms such as 'biodegradable' or 'recyclable';
- new technologies to improve the environmental standard of products and services;
- new environmental industry [sic] to facilitate the achievement of ecologically sustainable development; and
- complaints in regard to breaches of the Code of Ethics.³

In addition, the committee will randomly test products for which some form of environmental claim has been made, regardless of whether the manufacturer has agreed to become part of the verification program.

Regulation under the Trade Practices Act and fair trading legislation

After surveying environmental claims made on products, claims were divided into four groups: claims able to be quantified; claims dependent on common understanding of terms used; meaningless claims; and misplaced or misleading claims. Claims can only be approved if they can be checked by testing or if they depend on a common understanding of the words used. Claims that are misleading or meaningless are not allowed.

While the *Trade Practices Act 1974* (Cth) (*TPA*) and the fair trading legislation have no specific provisions in regard to environmental claims, such claims are prohibited by the provisions relating to unfair practices. For instance, s.52 of the *TPA*, and the equivalent sections in the fair trading legislation,⁴ prohibit conduct which is misleading or deceptive or likely to mislead or deceive. Further, other sections provide that it is an offence to falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or previous use.⁵ It is also an offence to claim that goods or services have approval or sponsorship that they do not have.⁶ Substantial fines may be incurred for contravention of these provisions.

Endorsement

Upon verification of the manufacturer's claims by the scientific committee, the company is allowed to use an 'agreed form of words' on the labels of the product so that consumers can be assured that the claims have been shown to be true. Accreditation is effective for two years, after which a fresh application must be made for each product to be re-accredited. If any changes are made during this time, either to the claims or product formulation, the product will require re-assessment by the committee. A fee is payable for ECA endorsement of claims and an application processing fee is charged for each product.

Criticisms of the program

The very nature of the ECA as a government scheme encourages the view that only manufacturers who have passed the standards test have received endorsement, but the scheme is voluntary and only tests those claims made by the producer.

Voluntary nature of the program

The Australian Federation of Consumer Organisations (AFCO) maintains that, while the guidelines are good, the Trade Practices Commission cannot possibly take legal action on all dubious claims. The program of claim verification will, due to its voluntary nature, lead to many products evading scrutiny; and further, such initiatives as the GMA scheme, being a voluntary code within a voluntary association, with a dispute mechanism clearly biased in favour of industry, will do little to promote consumer confidence.⁷

Lack of 'cradle to grave' assessment

It is argued that ECA will have a piecemeal approach, examining only those claims that a company chooses to make about its product:

For example, a company which markets a product which depletes natural resources in its use of raw materials, is energy intensive in its manufacture and is non-recyclable could still make claims about being 'packaged in recycled paper'. If those claims were found to be true, the product could potentially receive the 'endorsement' of Environmental Choice Australia for that claim.⁸

The problem which AFCO sees arising from this is that consumers will be faced with products which use the Environmental Choice logo for different environmental claims. These consumers will then have to read packaging closely to find the details of such claims, then decide which product to buy, choosing, for instance, between a product which is recyclable or one which uses little energy in its manufacture.⁹ This requires, however, considerable analytical ability on the part of the consumer.

An alternative scheme of assessment is illustrated by the proposed European 'Ecolabel' which attempts to provide a life-cycle analysis of products. Researchers use data from manufacturers and an indicative assessment matrix, which establishes the types of environmental impact that a product is likely to have during its production, operation and disposal, such as energy consumption, air and water pollution, production of solid wastes, use of raw materials and water consumption.

There are, of course, difficulties with this scheme. It is often problematic to obtain the necessary information because of the complexity of manufacturing processes and the secrecy surrounding them.¹⁰ A further problem is posed by comparing different types of pollution:

For example, is one kilogram of waste water discharged to a river more environmentally damaging than a kilogram of sulphur dioxide gas released up a chimney?¹¹

To overcome this problem, researchers based in Cambridge, England, are using a method called the 'critical volume approach' whereby it is assumed that the discharge limits for pollutants set down in regulations are equivalent in terms of their environmental impact. Thus,

... if the 'safe' limit for a known water pollutant is 1000 parts per million and the limit for an air pollutant is 500 ppm, these amounts are considered to be equal in impact.¹²

The major limitation on this method is that it depends on regula-

tions ordinarily based on the toxicity of pollutants to humans, rather than approaches which embrace the wider environment.¹³ It does, however, attempt to provide a more comprehensive assessment than the Australian scheme.

Conclusion

The aim of the ECA program was to alleviate consumer confusion and concern, but does it do so? The operation of the scheme would appear to contribute to consumer confusion, rather than alleviate it. Can consumers possibly be expected to discriminate between different environmental claims? Can consumers be expected to understand the ramifications of the voluntary nature of the scheme? It seems that ECA expects a great deal of the consumer.

Paula Baron teaches law at the University of Tasmania.

The assistance of Catherine Prideaux, law student at the University of Tasmania, is appreciated.

References

1. 'Make Your Environmental Choice', pamphlet distributed by the Commonwealth Government.
2. Environmental Choice Information Bulletin, April 1992.
3. Environmental Choice Australia Publicity Kit, 'Environmental Choice Australia', p.5.
4. *Fair Trading Act 1985* (Vic.) ss.11, 12; 1987 (NSW) s.42; 1987 (SA) s.56; 1987 (WA) s.10; 1989 (Qld) s.38; 1990 (Tas.) s.14; *Consumer Affairs and Fair Trading Act 1990* (NT) s.42.
5. *TPA* s.53(a); *Fair Trading Act 1985* (Vic.) s.12(a); 1987 (NSW) s.44(a); 1987 (SA) s.58(a); 1987 (WA) s.12 (1)(a); 1989 (Qld) s.40(a); 1990 (Tas.) s.16(a); *Consumer Affairs and Fair Trading Act 1990* (NT) s.44(a).
6. *TPA* s. 53(c); *Fair Trading Act 1985* (Vic.) s.12(d); 1987 (NSW) s.44(e); 1987 (SA) s.58(e); 1987 (WA) s.12 (1)(e); 1989 (Qld) s.40(e); 1990 (Tas.) s.16(e); *Consumer Affairs and Fair Trading Act 1990* (NT) s.44(e).
7. AFCO media release, 18 February 1992.
8. AFCO media release, 29 October 1991.
9. AFCO media release, 29 October 1991.
10. Haddon, Matt, 'Making Green Labels Stick', (1992) *New Scientist*, 20 June, p.24.
11. Haddon, above.
12. Haddon, above.
13. Haddon, above.