

Competition Bureau Launches Public Consultation And Publishes Digest On Greenwashing Provisions



On June 20, 2024, the Government of Canada passed Bill C-59, amending certain provisions of the Competition Act (the “**Act**”). New provisions were added to target greenwashing in an effort to protect consumers from misleading advertisements related to a product’s or business’ environmental benefits. We recently posted an article in our [series on amendments to the Act](#), titled: [Amendments to the Competition Act – Bill C-59 and its impact on “Greenwashing”](#).

On July 22, 2024, the Competition Bureau (the “**Bureau**”) released a public consultation regarding the Act’s new Greenwashing provisions. The Bureau also published Volume 7 of its Deceptive Marketing Practices Digest (the “**Digest**”), which outlines its interpretation of certain greenwashing provisions. The stated goal of the public consultation is to provide enforcement guidance in consultation with Canadians to ensure transparency and predictability. The Bureau is seeking a wide range of perspectives and will carefully consider the feedback to provide better guidance to businesses and Canadians. Interested parties are invited to submit comments by **September 27, 2024**.

DIGEST AND GUIDELINES:

A. ENVIRONMENTAL CLAIMS DEFINED

Within the Digest, the Bureau defines an environmental claim as “any representation related to the environment that has been made for the purposes of promoting a product or business interest.” These claims may include promoting a positive environmental quality or attribute of a product, service, or business, or downplaying a negative one. They can encompass various aspects of a product’s environmental impact, such as the sourcing of its materials, production, packaging, and distribution. These claims also extend to services, processes, and business practices.

B. TYPES OF CLAIMS RECEIVED BY THE BUREAU

The Bureau receives a wide array of claims relating to greenwashing, which are summarized below:

I. COMPOSITION CLAIMS:

These involve claims made to the public regarding the composition of products or their packaging. For example, a business claiming that its packaging is made from 100% recycled paper or recycled bottles must be able to substantiate those claims.

II. PRODUCTION PROCESS OF PRODUCTS:

These involve claims made regarding the steps involved in producing a product, including claims about the resources, energy, or materials used in the process. Examples include claims that a product was made with renewable energy or is carbon neutral.

III. DISPOSAL OF PRODUCTS AFTER USE:

These claims relate to the green disposal of products, such as claims that a product is fully compostable or recyclable.

IV. COMPARISON CLAIMS:

These claims relate to comparative environmental claims. For example, comparing a product or service to its previous version or to those of a competitor.

V. VAGUE CLAIMS:

Vague claims are often made by businesses and can be misleading to consumers. These claims do not explicitly set out the environmental benefits of a product or service but instead allude to them. Common examples include claims that a product is eco-friendly without specifying its actual environmental benefits.

VI. CLAIMS ABOUT THE FUTURE:

Among the more common complaints received by the Bureau are claims related to the environmental improvements that a business will accomplish in the future, such as achieving carbon neutrality by a specific date.

C. ASSESSING A CLAIM

When assessing a claim, the Bureau must consider both the “general impression” conveyed by the claim and its literal meaning. The general impression is determined by considering the entire advertisement, including the words, graphic elements, and overall layout of the representations.¹

Provisions Seeking Feedback

With regards to section 74.01(1)(b.1) of the Act, which enforces claims about a product’s environmental benefits, the Bureau is particularly interested in hearing about:

1. What kinds of claims about environmental benefits are commonly made about products or services in the marketplace? Why are these claims more common than others?

2. Are there certain types of claims about environmental benefits of products or services that are less likely to be based on adequate and proper testing? Is there something about those types of claims that makes them harder to test?
3. What should the Bureau consider when it evaluates whether testing to support claims about the environmental benefits of products or services is “adequate and proper?”
4. What challenges may businesses and advertisers face when complying with this provision?
5. What other information should the Bureau be aware of when thinking about how and when to enforce this provision?

With regards to section 74.01(1)(b.2) of the Act, which enforces claims about a business or a business’ practices related to environmental benefits, the Bureau is particularly interested in hearing about:

1. What kinds of claims about environmental benefits are commonly made in the marketplace about businesses or business activities? Why are these claims more common than others?
2. Are there certain types of claims about the environmental benefits of businesses or business activities that are less likely to be based on “adequate and proper substantiation in accordance with internationally recognized methodology?” Is there something about those types of claims that makes them harder to substantiate?
3. What internationally recognized methodologies should the Bureau consider when evaluating whether claims about the environmental benefits of the business or business activities have been “adequately and properly substantiated?” Are there limitations to these methodologies that the Bureau should be aware of?

4. What other factors should the Bureau take into consideration when it evaluates whether claims about the environmental benefits of businesses or business activities are based on “adequate and proper substantiation in accordance with internationally recognized methodology?”
5. What challenges may businesses and advertisers face when complying with this new provision of the law?
6. What other information should the Bureau be aware of when thinking about how and when to enforce this new provision of the law?²

Tips for Businesses When Making Environmental Claims

The Digest also explains that the Bureau encourages environmental claims that provide truthful and accurate representations to consumers, as they enable consumers to make informed decisions. To better protect both businesses and consumers, the Bureau has provided the following tips for businesses to consider when making environmental claims:

1. BE TRUTHFUL, AND NOT FALSE OR MISLEADING:

Environmental claims must be true, both in their literal meaning and in the general impression they convey. The general impression is determined by examining the entirety of the representation, including the words or phrases being used, the manner in which the text is displayed, and any visual elements and their context. A claim can be literally true, but still create a false or misleading general impression about an environmental benefit.

2. ENSURE CLAIMS ARE PROPERLY AND ADEQUATELY TESTED:

Many environmental claims are performance claims regarding the efficacy, performance, or length of life of a product. For performance claims to be in compliance with the Act, the

business must be able to demonstrate that the claim is **based on adequate and proper testing**. The testing required will depend on the claim and must be completed prior to the claim being public. The Bureau will provide further guidance regarding the new provision.

3. BE SPECIFIC ABOUT WHAT IS BEING COMPARED:

Many environmental claims state or imply some comparison. When a comparison is made, businesses should be specific about what is being compared and the extent of the difference between the comparisons. Otherwise, claims can become vague, exaggerated, or misleading.

4. AVOID EXAGGERATION:

Businesses should look at all claims very carefully, as it is common for environmental claims to exaggerate an environmental benefit.

5. AVOID VAGUE ENVIRONMENTAL CLAIMS IN FAVOUR OF CLEAR AND SPECIFIC ONES:

The more that an environmental claim is vague, the more likely it is that it will convey a general impression that the environmental benefit is broad. Claims about environmental benefits should be supported by adequate and proper testing, and representations about these benefits should hold true for a product throughout its entire life cycle. More broadly, if the environmental claim pertains to the business as a whole, the environmental impact of all business activities must be taken into consideration when making the claim. Be clear about whether the benefit applies to part of or the entire product, service, or business.

6. AVOID ASPIRATIONAL CLAIMS ABOUT THE FUTURE:

Businesses should be careful about forward-looking claims, goals, or aspirations to ensure they are factual rather than

merely aspirational. Before making these claims, businesses should:

1. have a clear understanding of what needs to be done to achieve what is being claimed;
2. have a concrete, realistic, and verifiable plan to accomplish the objective with interim targets; and
3. ensure that meaningful steps are underway to accomplish the plan.

The Bureau highlights that even if a business has a clear plan to accomplish its environmental benefits, care must be taken to ensure that the claim is not misleading.³

Key Takeaways

Environmental claims by businesses regarding their products, service, or practices can run the risk of being considered greenwashing. To avoid such risks, businesses should always be clear, specific, and truthful in their environmental claims and assess them both in their literal meaning and general impression.

Businesses seeking clarification on the amendments to the Act related to greenwashing are encouraged to submit their questions and feedback to the Government of Canada.

Footnotes

1. Competition Bureau. "The Deceptive Marketing Practices Digest – Volume 7." Government of Canada, 22 July, 2024, <https://competition-bureau.canada.ca/how-we-foster-competition/education-and-outreach/deceptive-marketing-practices-digest-volume-7>.

2. Competition Bureau. "Public Consultation on Competition Act's New Greenwashing Provisions." Government of Canada, 22 July, 2024, <https://competition-bureau.canada.ca/how-we-foster-competition/education-and-outreach/public-consultation-competition-acts-new-greenwashing-provisions>.

3. *Supra* note 1.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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