

# Competition Bureau Releases Proposed Greenwashing Guidelines And Opens Consultation With Stakeholders



On December 23, 2024, the Competition Bureau released a draft version of its [proposed guidelines concerning environmental claims](#) to assist the industry in interpreting the June 2024 amendments to the [Competition Act](#), R.S.C., 1985, c. C-34 (the “Act”), which explicitly target greenwashing, as referenced in our [previous article](#).

Amendments to the *Act* targeting greenwashing claims impact a broad array of businesses, including those in the energy, mining, oil and gas, consumer products, health, food and beverage, financial services and construction sectors. Businesses should take proactive steps now to monitor their claims, ensure any claims made are substantiated and implement an effective compliance program.

Key Takeaways:

- **The Bureau’s enforcement focus is on marketing and promotional representations made to the public**, rather than on representations made exclusively for other purposes (i.e., to investors and shareholders in the context of securities filings). However, private

litigants are not precluded from attempting to pursue claims against businesses in connection with their non-promotional representations, even if such claims are ultimately unsuccessful.

- **The Bureau has emphasized the significance of the new requirement that claims be substantiated before they are made.** The amendments require businesses to ensure they possess substantiation prior to making certain environmental claims.
  - **Performance claims generally, as well as claims about the environmental benefits of a product, must be substantiated by an “adequate and proper test.”** The Bureau assumes the same interpretation of the terms “adequate and proper” and “test” will apply to environmental performance claims as has been applied to performance claims generally. Courts have interpreted an adequate and proper test to mean fit, apt, suitable or required by the circumstances, based on the general impression conveyed. Evidence such as long-term consumer use, technical books, bulletins and manuals or sales of similar products are not considered a “test.” Testing is required regardless of the size of a business.
  - **Claims regarding the environmental benefits of a business or business activity must be supported by “adequate and proper substantiation in accordance with internationally recognized methodology.”** The Bureau recommends that businesses choose substantiation that is suitable, appropriate, relevant and sufficiently rigorous to establish the claim in question. This may require scientific evidence. The Bureau will likely consider a methodology to be internationally recognized if it is recognized in two or more countries.
- **The Bureau will not seek to hold businesses liable for breaches of the new provisions of the Act before they**

**came into force on June 20, 2024.** However, businesses can be liable for environmental claims that were made before the new provisions became law if the claim was materially false or misleading or if a performance claim was not based on adequate and proper testing pursuant to pre-existing provisions of the *Act*. Businesses should exercise caution with respect to historic materials containing environmental representations that are publicly accessible.

- **The Bureau confirmed that businesses can continue to rely on a due diligence defence in response to environmental claims.** If a business establishes that it exercised due diligence to prevent a misleading representation from being made, any remedies ordered will be limited to a prohibition order, rather than administrative penalties, etc. Businesses should take proactive steps now to ensure they are following an effective compliance program and taking measures to verify the veracity of their claims to ensure this defence is available to them.
- **Private litigants and the Competition Tribunal are not bound by the Bureau's Guidelines.** If the Competition Tribunal grants leave to a private litigant to file an application, the Bureau has the right to intervene and will consider its Guidelines when doing so. The Bureau expects to publish updated guidance with respect to private access to the Competition Tribunal. The extent to which the Tribunal will grant leave for private litigants, such as environmental activist groups, to pursue enforcement action—including potentially for representations not intended for promotional purposes—remains to be seen.

The draft guidelines set out six “principles for compliance” to assist businesses in assessing whether their claims meet the requirements of the *Act*:

**Principle 1: Environmental claims should be truthful, and not false or misleading.** *Claims must be true, both in their literal meaning and in the general impression they convey, which is established by examining the entirety of the representation (words, phrases, display of text, visual representations, etc.).*

**Principle 2: Environmental benefit of a product and performance claims should be adequately and properly tested.** *Performance claims and claims about the environmental benefit of a product must be based upon adequate and proper testing conducted before making the claim.*

**Principle 3: Comparative environmental claims should be specific about what is being compared.** *Specificity should be made when making these types of claims (whether to a similar product, business or different time period).*

**Principle 4: Environmental claims should avoid exaggeration.** *Businesses should keep in mind the general impression created by a claim and ensure that claims are not made that are not substantiated.*

**Principle 5: Environmental claims should be clear and specific – not vague.** *The life cycle of a product and any substantiation requirements should be considered.*

**Principle 6: Environmental claims about the future should be supported by substantiation and a clear plan.** *Businesses should ensure that future-oriented claims (e.g., net-zero by 2030) are substantiated with a concrete, realistic and verifiable plan in place to accomplish the objective, with meaningful steps underway.*

*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.*

Author: [Kate Findlay](#)

Aird & Berlis LLP