

How False “Green” Marketing Claims Can Lead to Liability for Officers & Directors



A company claimed in ads that a device called the “Platinum Vapor Injector” (PVI), which it sold in Canada, would increase a vehicle’s fuel efficiency by 22% or more, reduce emissions and increase the octane level of regular gasoline. The ads also suggested that the US government had approved the PVI and confirmed its environmental claims. The federal Competition Bureau charged the company and its two officers (and sole shareholders) with misrepresenting a product’s performance without adequate and proper tests. The Competition Tribunal found that the company’s representations about the PVI were false or misleading in a material respect. It fined the company \$75,000 and the officers \$25,000 each. The Tribunal’s findings and sentence were upheld on appeal [*Commissioner of Competition v. P.V.I. International Inc.*].

[one_half][quote] Under the labelling laws, the government may seize products labelled with false environmental claims. In addition, individuals and companies could also face fines of up to \$10,000 and jail sentences of up to one year. [/quote][/one_half]

THE PROBLEM

Being environmentally responsible can give a company an edge over its competitors. According to a survey by Environics

Research Group, two-thirds of Canadian consumers would switch their spending to companies that have demonstrated a commitment to "green" policies. The preference for green goods and services is most pronounced in BC and AB, where 83% of consumers said they'd buy green even if it meant paying a higher price. So many companies have naturally started to highlight the green aspects of their products or services in their ads. But a company's environmental claims had better be accurate. The *P.V.I.* case should be a wake-up call that false environmental claims can lead to liability not just for a company but also for its officers and directors.

THE EXPLANATION

As consumers have become more environmentally aware and more interested in purchasing green products and services, environmental claims about products and services have also increased. But evidence suggests that many of these claims are false or misleading. For example, in 2007, TerraChoice Environmental Marketing Inc. surveyed six big box stores and identified 1,018 products bearing 1,753 environmental claims. Of those products, all but *one* made claims that were demonstrably false or risked misleading consumers. Making false environmental claims has become so common that there's even a term for it: "greenwashing", which TerraChoice defines as the act of misleading consumers regarding the environmental practices of a company or the environmental benefits of a product or service.

Greenwashing raises not only ethical and moral issues but also liability concerns. Environmental claims, like all other advertising and labelling claims are subject to consumer protection laws, including the *Competitions Act*, the *Consumer Packaging and Labelling Act* and the *Textile Labelling Act*. Under these laws, all environmental claims must be verified and substantiated with supporting data that's accurate and readily available to law enforcement agencies, such as the Competition Bureau. If the Bureau concludes that a company's

environmental claims are false or misleading, it can take legal action. The penalties under the *Competitions Act*:

- **Criminal:** There's no maximum fine for an individual or company and individuals could face up to five years in jail;
- **Civil:** The maximum penalty is a fine of up to \$50,000 for an individual and up to \$100,000 for a company.

Under the labelling laws, the government may seize products labelled with false environmental claims. In addition, individuals and companies could also face fines of up to \$10,000 and jail sentences of up to one year.

Given the increase in greenwashing, companies, officers and directors can expect increased enforcement of the consumer protection laws. Officers and directors are expected to ensure that the company doesn't misrepresent its products and services. In fact, the Tribunal in the *P.V.I.* case noted that there was no evidence that anyone in the company had exercised due diligence to prevent the false environmental claims from being made.

THE LESSON

It may be tempting to slap a "green" label on a product and market it as environmentally friendly. But if that claim is false, the company and you and your fellow officers and directors run the risk of fines and even jail. How can you minimize these risks? Require the marketing department to follow the advice in the Competition Bureau's guidance document, [*Environmental Claims: A Guide for Industry and Advertisers*](#), when marketing the company's products in Canada. This guide:

- Gives the users of ISO 14021, *Environmental labels and declarations Self-declared environmental claims (Type II environmental labelling)*, a best practice guide to the application of the standard and some practical examples

of how it could be applied to environmental claims in the Canadian marketplace; and

- Helps industry and advertisers comply with certain provisions of the *Competition Act*, the *Consumer Packaging and Labelling Act* and the *Textile Labelling Act*.

SHOW YOUR LAWYER

[*Commissioner of Competition v. P.V.I. International Inc.*](#),
[2002] CACT 24 (CanLII), May 30, 2002