Under The Green Lens: New Greenwashing Provisions Under The Competition Act

Amendments to the Competition Act, which took effect on June 20, 2024, introduce more stringent protections against “greenwashing,” a term commonly used to describe deceptive claims regarding the environmental attributes of a product, service or business activity. These amendments follow a period of focused enforcement activity in respect of potentially deceptive environmental claims on matters such as a product’s carbon neutrality, recyclability of packaging, or a company’s climate change or sustainability targets.

Armed with a codified statute that prescribes specific infringements for greenwashing, and reverses the onus on defendants to substantiate their claims, we can expect these developments to drive the Competition Bureau (the “Bureau”) towards further enforcement in 2025. The groundswell of accompanying media and political attention is also likely to fuel more complaints from consumers and public interest groups as public awareness of sustainability issues continues to rise. While the underlying analytical frameworks used to assess conduct under the amended regime may not change significantly, companies should prepare for stricter scrutiny of their environmental marketing claims. Companies should also revisit their compliance policies to avoid potential penalties and litigation.

Prior to the 2024 amendments, there already existed a civil prohibition against “representations to the public that are false or misleading in a material respect,” which captured environmental claims and was the basis for the Bureau’s historic enforcement activity. However, the Competition Act now explicitly prohibits deceptive environmental claims, imposing a duty on businesses to substantiate environmental claims about a business or product in accordance with “internationally recognized methodologies.” This term has not yet been defined, creating significant uncertainty for the business community, as well as a heightened risk of complaints and associated reputational consequences. As well, companies facing Bureau enforcement action can face monetary penalties of up to 3% of worldwide revenues.

Recognizing the need for clarity on the scope of the new greenwashing provisions, the Bureau conducted an expedited consultation process in 2024, and released draft guidance on the subject – itself subject to consultation – in late December 2024. These guidelines will replace the Bureau’s summary guidance on environmental claims and greenwashing published in 2021, and are hoped to provide advertisers with a more detailed toolkit to self-assess their environmental claims in light of the expanded regime and heightened enforcement climate. Once published, we anticipate that the Bureau will dedicate significant resources to greenwashing investigations, a number of which are already ongoing, to leverage on these new tools.

To add further fuel to fire, the *Competition Act* has also been amended to permit private parties – not just the Bureau – to bring actions directly to the Competition Tribunal (“Tribunal”) from June 2025 onwards. Until then, the Bureau remains the gatekeeper for greenwashing enforcement in Canada, albeit it remains statutorily bound to commence an inquiry on receipt of “six-resident complaints,” a mechanism whereby six residents of Canada can file a complaint to compel the Bureau

to begin an inquiry. This tactic has been widely used by environmental and social justice groups, leading to several ongoing greenwashing investigations in the retail, banking, energy, and forestry industries, many of which were initiated by a complaint filed by six residents.

Moving forward, however, the same environmental groups (and other private litigants) will be able to bring private applications to the Tribunal to challenge environmental and other deceptive marketing claims. Litigants will need to obtain leave from the Tribunal to bring a case, but recent amendments arguably lower the hurdle for obtaining leave, requiring that the Tribunal be satisfied than an application is "in the public interest." It will be the Tribunal's responsibility to strike a balance between ensuring that the bar to leave is low enough to broaden the scope of potential litigants but not so low as to open the floodgates to vexatious claims.

The next 12 months promise to be a period of transition in greenwashing enforcement in Canada as the Bureau, companies that make environmental claims and potential complainants acclimatize to the contours and enforcement possibilities of the amended deceptive marketing regime under the *Competition Act*.

For more information on the amendments to the *Competition Act*, please refer to our in-depth analysis here.

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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.

Authors: Michael Caldecott, Daphne Anastassiadis

McCarthy Tétrault LLP