



ACCC CRACKDOWN ON GREENWASHING IN AUSTRALIA WITH A SWEEP OF WEBSITES FOR MISLEADING ENVIRONMENTAL AND SUSTAINABILITY CLAIMS

The ACCC has launched a review of over 200 company websites to identify misleading or deceptive environmental and sustainability claims as part of a focus on so called "green washing" claims in Australia.

In this briefing we provide some background to the ACCC review and highlight potential strategies for Australian businesses to mitigate the risks of regulatory scrutiny.

FOCUS ON GREENWASHING AND MISLEADING SUSTAINABILITY CLAIMS

Greenwashing is a form of advertising, with the ACCC's regulatory concern being that making false or unsubstantiated statements to gain an unfair commercial advantage distorts competition to the detriment of Australian consumers, businesses and investors.

Green advertising is said by regulators to involve a significant element of trust between companies and consumers, mainly because of a consumer's inability to verify the accuracy of such claims. As consumers become increasingly conscious of making greener purchasing choices, there is a greater regulatory focus on ensuring that green claims are truthful and accurate, as false or misleading claims undermine consumer trust and market confidence.

On 4 October 2022, the ACCC announced that it had launched a sweep of at least 200 company websites to identify misleading environmental and sustainability marketing claims across a range of sectors including: energy, vehicles, household products and appliances, food and drink packaging, cosmetics, and clothing.¹ The ACCC has indicated that it will publish its findings once collated and analysed, and this will likely be followed up by compliance and education initiatives as well as potential enforcement action.

This announcement comes following a recent speech given by the ACCC Deputy Chair Delia Rickard on 20 September 2022 at the Sydney Morning Herald Sustainability Summit.² In this speech, Ms Rickard noted that although a crackdown on misleading environmental and sustainability claims is part of

Key issues

- On 20 September 2022, Australian Competition and Consumer Commission (ACCC) Deputy Chair Delia Rickard delivered a speech to the Sydney Morning Herald Sustainability Summit, flagging greenwashing as a regulatory focus for the ACCC.
- On 4 October 2022, the ACCC commenced an internet sweep of at least 200 company websites to identify misleading environmental and sustainability marketing claims.
- The ACCC has warned that it will not hesitate to take enforcement action where it sees consumers are being misled or deceived by green claims, including those made inadvertently through a lack of due diligence and poor reporting practices.
- There are a number of ways companies can seek to mitigate risks of regulatory scrutiny of their environmental claims, including through the use of reputable third-party certification, and undertaking a review of their supply chains.

¹ 4 October 2022 ACCC [Announcement](#).

² 20 September 2022 Delia Rickard [Speech](#) to SMH Sustainability Summit.

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the ACCC's compliance and enforcement priorities for 2022-2023, these issues are not new.

Moreover, the ACCC has indicated that making sustainability work for businesses and consumers requires a multi-pronged approach where businesses are held accountable not only by the ACCC through the *Competition and Consumer Act 2010* (Cth) (**CCA**), but also by standards bodies, certification schemes, industry and governments via policy reform.

POTENTIAL CHALLENGES AND FURTHER REGULATORY ACTION ON THE HORIZON

With the sweep of websites now underway, the ACCC plans to use the collected data to update guidance for businesses and information for consumers on environmental claims. The ACCC is said to be working closely with the Australian Securities and Investment Commission (**ASIC**) and the Clean Energy Regulator on these matters and will be taking a coordinated approach to address these issues.

Notably, the ACCC has warned that it will not hesitate to take enforcement action where it sees consumers are being misled or deceived by green claims. Please see our [previous briefing](#) on this topic for examples of past ACCC enforcement action against greenwashing in the context of Australian carbon credit units. In addition, the public announcement of ACCC enforcement action may spawn parallel private litigation based on the same claims, including in jurisdictions outside of Australia – for example, please see our [previous blog post](#) on various greenwashing consumer class actions and enforcement actions in the United States.

In looking at green claims, Ms Rickard noted that the ACCC is concerned with what the ordinary consumer will understand a claim to mean and while a claim may technically be true, the ACCC considers it may nonetheless mislead consumers. This may give rise to uncertainty in compliance, with businesses having previously raised concerns with the lack of a common definition or standard in Australia for terms such as 'biodegradable', 'recyclable' and 'compostable' as there is no benchmark for which a product's performance can be measured against. As such, the ACCC has noted that it might be necessary to consider introducing clearer standards and regulations in Australia, but that the inconsistency in standards from a global perspective presents several additional challenges for businesses.

STRATEGIES FOR BUSINESSES

Given the ACCC's ongoing scrutiny of greenwashing conduct, businesses making sustainability claims may seek to mitigate their risks of falling foul of the relevant provisions of the CCA through ensuring that such claims are accurate and truthful, including by:

- reviewing their supply chains and reporting practices and having transparent supply chain information. Where businesses do not know the environmental practices and impacts of each of the businesses involved in its supply chain, it should be wary of making any general environmental / sustainability claims;
- undertaking due diligence before making marketing claims, including through reliable independent scientific reports / experts and keeping these underlying facts / standards up to date;

- using reputable third-party certification, and / or ensuring that trust marks and trademarks (whether third-party or created by the business) are used appropriately and are verifiable;
- making clear what sustainability benefit the product offers and using specific, non-technical language;
- ensuring comparisons with other products, services and companies are fair and verifiable;
- making sure that visual claims and labels are useful to consumers and not confusing;
- considering the entire lifecycle of a product when making environmental and sustainability claims. If a claim only relates to one aspect of a product lifecycle, this should be made clear to consumers and negative impacts should not be hidden or downplayed; and
- considering the use of creative avenues for consumers to seek further information. In the context of bricks-and-mortar advertising, this may take the form of providing consumers with QR-code-facilitated infographics.

The ACCC has indicated that it seeks to recognise that a business's sustainability transition takes time to occur and can be a long process up and down the supply chain. Businesses should therefore be able to promote the steps they are taking in this transition but should be mindful not to overstate the status of their transition through the claims made.

Similarly, the ACCC has noted that businesses engaging in corporate sustainability rebranding should ensure that statements made about such initiatives fully align with the products and services being provided, noting that this is an ongoing area of interest for both the ACCC and ASIC as these rebranding exercises are often complex and may involve significant investments in Government-backed offset schemes.

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