

THE FAIR TRADING ACT

ENVIRONMENTAL CLAIMS

Environmental or 'green' claims are increasingly being used by businesses as a point of difference in the marketing of products and services.

While consumers are becoming more discerning about the impact of their purchasing decisions on the environment and are prepared to pay a premium to reduce this impact, it is an area where they can easily be misled.

Consumers are entitled to rely on any environmental claims made about a product or service and to expect these claims to be truthful and not misleading.

Businesses making environmental claims – including statements about sustainability, recycling, carbon neutrality, energy efficiency, use of natural products or impact on animals and the natural environment – should ensure those claims are accurate, scientifically sound and substantiated.

EXAMPLE

A taxi company claimed as part of its 'going green' campaign that its LPG cars reduced CO₂ pollution by up to 25 per cent and that its Nissan Maxima fleet was 20 per cent more fuel efficient than traditional automatic transmissions. The claims were proven to be inaccurate. The company received a formal warning from the Commerce Commission and the case attracted considerable media interest resulting in bad publicity for the business.

MORE SPECIFICALLY

Providing only partial information to consumers about the environmental benefits of a product, or making broad, unqualified claims is likely to mislead them, even if this is not the intention.

When making environmental claims, businesses should aim to be as specific as possible, adequately explaining the environmental benefit and the part or parts of the product or production process to which it applies.

Using broad or unqualified claims, such as 'green', 'environmentally friendly', 'energy efficient', 'recyclable' and 'recycled', with no further substantiation can risk breaching the Fair Trading Act as they are ambiguous and do not explain any specific environmental benefit. Stating a product is 'recycled' when only the packaging has been made of recycled material would be misleading, whereas specifically stating 'packaged in recycled material' would prevent customers from being misled.

While the environmentally conscious consumer is becoming more savvy, care should be taken to limit the use of scientific language or technical jargon when making environmental claims. Businesses should not assume that their customers have any particular degree of knowledge, so claims should be clear and unambiguous.

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FIRST IMPRESSIONS

Businesses should be careful that the overall impression created about a product is not misleading.

Seeking to convey an image of being environmentally friendly by using scenery in advertising, or designs featuring images or icons associated with the environment such as dolphins or plants, will breach the Fair Trading Act if that imagery is found to create an impression which cannot be substantiated.

Likewise, care should be taken when choosing a business or product name, that the name does not use environmental terminology or imply green credentials that cannot be substantiated.

ENDORSEMENTS

Businesses must not represent that goods or services have any sponsorship, approval or endorsement they do not have. This includes claiming some form of backing from a third party such as a government agency, licensing board or celebrity, when this has not been given, or using the trademark or logo of a third party to imply approval or endorsement.

EXAMPLE

A catering business claimed it was Wellington's only registered sustainable catering company, when no such registration existed, and was found to be substituting non-organic for named organic products in some instances. As a result of the Commission's investigation, the company changed its claims on its website and in its marketing and undertook to comply with the Act in the future. The case attracted considerable media interest resulting in bad publicity for the business.

CARBON FOOTPRINTS

As climate change gains more attention around the world, many businesses are using carbon reduction or offsetting to differentiate themselves and their products or services from their competition. Consumers can choose to purchase carbon offsets for their activities as well as a wide variety of carbon neutral products. However, the increase in carbon neutral or low carbon claims has created the potential for confusion, particularly as there are no universally accepted definitions of these terms.

It is therefore essential that businesses provide their customers with accurate and full information about carbon reduction and offset claims associated with products or services.

For more information on making carbon claims, the publication *The Fair Trading Act – Guidelines for Carbon Claims* is available for download from the Commission's website www.comcom.govt.nz/fair-trading-resources

MORE INFORMATION ON GREEN MARKETING

A comprehensive guide for businesses, *The Fair Trading Act – Guidelines for Green Marketing*, is available for download from the Commission's website www.comcom.govt.nz/fair-trading-resources

To check for updates to this fact sheet visit:
www.comcom.govt.nz/fair-trading

This fact sheet is part of a series looking at the Fair Trading Act. Other fact sheets can be downloaded from www.comcom.govt.nz/fair-trading

CONTACT

Contact the Commerce Commission with information about false or misleading trading practices.

TELEPHONE

Our Contact Centre during office hours on 0800 943 600

WRITE

To us at Contact Centre, PO Box 2351, Wellington 6140

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Us at contact@comcom.govt.nz

This fact sheet is a guideline only, and reflects the Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

The Commerce Commission enforces legislation that promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.

Only the courts can make an authoritative ruling on breaches of the Fair Trading Act. Courts may fine companies found guilty of breaching provisions of the Fair Trading Act up to \$600,000 and individuals up to \$200,000.