

JULY 2020

Environmental Claims Guidelines

a guide for traders



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Introduction

These guidelines aim to help traders understand their obligations when making environmental claims, sometimes known as 'Green Marketing'.

Consumers are increasingly considering the environment when buying goods or services.

Environmental claims can be a powerful marketing tool and traders are using environmental claims as a point of difference with their competitors. They are aware that many consumers want to make environmentally responsible purchasing decisions. Goods and services promoting environmental benefits often attract a price premium over those not claiming the same or similar benefit.

However, consumers expect claims to be true and that traders can back up their claims. Many consumers find it difficult to check the accuracy of environmental claims and they may also lack the time or resources to do so.

Consumers need to be able to make confident and informed purchasing decisions based on reliable information, and traders who make researched, clear and accurate environmental claims need to know that they are competing on a level playing field.

All traders, large and small, must make sure their environmental claims are substantiated, truthful, and not misleading to avoid breaching the Fair Trading Act 1986.

There are serious penalties for breaching the Fair Trading Act – companies can be fined up to **\$600,000** and individuals up to **\$200,000** per breach. A penalty can also damage your business' reputation.

What are environmental claims?

An environmental claim is a representation about the environmental impact of the production, distribution, use and disposal of a good or service. Environmental claims generally give consumers the impression that the good or service is beneficial for the environment or has a lesser impact on the environment than an alternative good or service.



Claims can be made in many forms, including both words and pictures and they can be either express or implied.

Express claims are claims that are literally stated in advertising or other materials, such as "Scientific tests prove..." or "100% recyclable". There is nowhere to hide with express claims – they mean what they say and must be true, accurate and have a factual foundation.

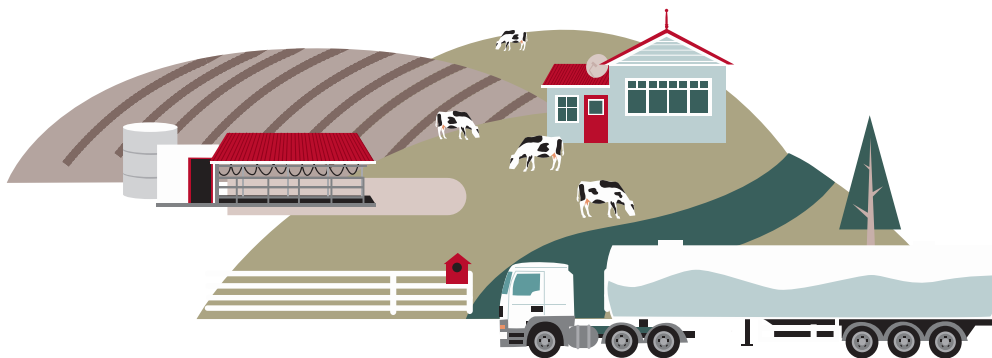
Implied claims are less specific than express claims. Claims are made by inference and often from the overall impression created, for example, by the use of imagery (pictures of forests, flowers, the earth, mountains, glistening water and animals) and/or words (referring to goods or services as 'green' or 'eco'). Implied claims are still capable of being misleading.

EXAMPLE

A New Zealand smallgoods producer was fined \$180,000 for misleading consumers about the place of origin of ham products. Its ham packaging used images of rural scenery and a farm building, together with words like "100% NZ owned, Farmland Fresh, made in the country" and "Made by New Zealanders, for New Zealanders ... it's where good things grow". The combination of the imagery, choice of words and overall presentation of the packaging including references to New Zealand, the country farm and a rural address on the packaging, gave consumers the false impression that the products were made from New Zealand-reared pork, when in fact 87% of the pork was imported.

Some common forms of environmental claims include:

- composition claims (eg, "contains no harmful chemicals", "non-toxic", "plant based")
- claims about production processes (eg, "made with renewable energy", "contains recycled content", "zero waste")
- claims about the future (eg, "breaks down in landfill", "biodegradable", "here today ... gone tomorrow")
- comparative claims (eg, "better for the environment", "uses 30% less energy than other leading brands"), and
- certification claims (eg, "organic certification").



Getting it right

If you want to make an environmental claim about a good or service, you should take care to stay within what the law permits.

Be truthful and accurate

Whether a claim is false or misleading is a question of fact, considered from an objective perspective. This means that you need to consider what a 'reasonable consumer' would understand the claim to mean. It is irrelevant that you did not intend to mislead.

Whether you have reasonable grounds for making a claim is also a matter of fact – see our 'Substantiate your claims' section on page 5. Claims made about goods and services must accurately reflect the facts that the trader holds, and not stretch beyond what is known and has been proven.

EXAMPLE

The Commission warned a taxi company for making what it believed were false or misleading representations about its fleet when claiming that its "LPG cars reduce CO₂ pollution by up to 25% ..." and that one of its vehicles was "20% more fuel efficient than traditional automatic transmissions". This was misleading because the representations overstated the positive features of the taxi fleet.

EXAMPLE

If you represent a product as biodegradable and reference a biodegradable standard, that standard should be relevant and directly applicable to the biodegradable claim. Otherwise, the biodegradability claim could mislead consumers.

Environmental claims might become inaccurate over time, so information should be kept up to date to avoid misleading consumers. Claims you make on a continuing basis (such as on packaging and websites) should be regularly reviewed to ensure they remain accurate. For example, a claim that a product is "made from 100% sustainably sourced materials" may become false if there are changes in your supply chain over time.

How often you should review your claims will depend on the nature of the good or service, the type of claim, and the market you operate in.

Be specific

Claims that are vague can be difficult to make sense of and can have multiple meanings. Such claims can easily mislead consumers because consumers may take the claim to mean something different from what the trader intended to communicate. It may also be difficult to back up if the Commission asks you to do so.



Providing incomplete information can mean you risk misleading consumers by not providing an accurate picture of the good or service.

A claim should clearly detail the specific part of a product or the production process that it relates to, such as its extraction, transportation, manufacture, use, packaging, or disposal. Otherwise, you might be giving a misleading impression that the general environmental claim applies to the whole product or its lifecycle. For example, if the packaging of a product is made from recycled material, but components of the product itself are not, a general “made from recycled material” claim may mislead consumers. However, stating clearly that it is the packaging only that is made from recycled material is unlikely to mislead consumers.

The intention of the trader is not relevant to the assessment of whether a claim is false or misleading. If a claim is capable of being interpreted in different ways, it risks breaching the Act if any of those possible interpretations are false or misleading.

Substantiate your claims

You must have reasonable grounds for a claim when you make it. ‘Reasonable grounds’ means having evidence, research, test results or similar credible information to demonstrate a solid factual foundation for the claim being made.

What are reasonable grounds will depend on the type of claim being made, the context and circumstances, and the Court will consider a range of factors:

- the nature of the goods or services
- the nature of the claim
- any research undertaken by or on behalf of the person or business before it made the claim
- the nature and source of information relied on by the person or business making the claim
- whether any relevant standards, codes or practices have been complied with
- the actual or potential effects of the claim.

You should keep records and copies of information that you have gathered when developing or sourcing a good or service. You should consider making the evidence you have to back up your claims accessible to customers so they can review it and better understand the information your claims rely on.

Claims referring to scientific proof, such as “independent tests prove”, need to be supported by a high level of substantiation involving reliable and credible scientific evidence. You should not rely on anecdotal evidence, assumptions, and unsupported opinions to support your claims.

EXAMPLE

A heat pump supplier was fined \$310,000 for making unsubstantiated and misleading claims about the energy efficiency and performance of some of its heat pumps. Certain advertising materials made performance claims about the heat output per \$1 of electricity spent. The Court held that the claims were misleading because a reasonable consumer would get the impression that they would always receive the stated benefits, in all conditions, without qualification. In fact, the heat pumps could only achieve these heat-performance levels under laboratory – and not real-world – conditions, other than at a narrow ‘sweet spot’ where the outside temperature was seven degrees and interior temperature was 20 degrees and the pump was operated at full load.

The heat pump supplier also claimed to have “New Zealand’s most energy efficient heat pump range”. It did not have reasonable grounds for making the representations. It relied on the fact that it had more energy star marks awarded to it as part of a voluntary energy star programme than any other brand of heat pump in New Zealand. An energy star is awarded on a pass/fail basis and a star rating does not show how energy efficient the product is compared to other products which also have an energy star mark. The company, in pleading guilty, accepted that the number of stars could not (of itself) substantiate the claim.

EXAMPLE

The Commission successfully prosecuted a water filter company for making unsubstantiated claims about its water filtration product. It involved claims that were scientific in nature (eg, “scientifically proven”), but there was no adequate scientific proof to substantiate the claims. The company had sought to rely on literature it had reviewed on the Internet, its own limited product trials and anecdotal evidence that users of the system had reported satisfactory results, but this was not sufficient to substantiate the scientific and efficacy claims.

The judge considered the company did not go far enough in its testing and research before it made the representations and commented that the company’s testing was “simply inadequate” and its own field tests were “plainly insufficient”. The company was fined \$162,000 for making unsubstantiated representations.

See our website for more information on substantiation and a helpful video ‘If you can’t back it up, don’t say it’: <https://comcom.govt.nz/business/dealing-with-typical-situations/making-accurate-claims>

Use plain language

Claims should be clear and easy for consumers to understand. Scientific or technical language may confuse or mislead customers who are unfamiliar with such terms.

Do not exaggerate

Claims should not expressly or implicitly overstate an environmental benefit. You should avoid implying a significant environmental benefit if the benefit is small.

You should avoid using a general claim for your products if the claim does not apply to every product in the range. An environmental claim that is true for one product will likely be misleading in relation to other products if consumers are given the impression that the claim applies more widely.

EXAMPLE

A claim of “now 100% more recycled content” is capable of creating a misleading impression if the product contains only 1% recycled content initially. The doubling may be accurate, but the recycled content is proportionately negligible, so the claim is liable to create an exaggerated impression about the environmental impact of the new formulation.



Take care when relying on tests or surveys

Care should be taken when relying on scientific or other test claims. Make sure that you interpret the test results correctly – seek expert help if you are unsure – and only make claims that are true to the results.

Test results must not be shown in a way that makes them look more positive or credible than they are, such as by leaving out material information about the test that limits or does not support your claim.

Make sure it is clear whether any testing has been conducted in-house or by an independent entity. Do not describe testing as ‘independent’ if that is not the case. Testing is unlikely to be independent if it is carried out in-house or by an associated testing house.

Consider the overall impression

Whether a claim is misleading will depend on the overall impression created by the goods, services, packaging, or promotional materials.

You must not rely on fine print to correct a misleading impression. If the overall impression given by an advertisement is misleading, it will breach the Act no matter what information is provided in fine print.

If there is important qualifying information, any advertising should show these in a bold, clear and compelling way. If your claim requires significant qualifications in the fine print, then you should reconsider your headline claim. Fine print can elaborate on the main message, but not contradict it. Any additional information that helps consumers understand the claim made should be readily accessible to them. However, it must not alter the overall impression created by the goods, services, packaging or promotional materials.

EXAMPLE

If you made a headline claim RECYCLABLE* and in the fine print point out that the product can only be recycled in limited areas, you risk breaching the Act. You are unlikely to breach the Act, however if your headline claim is RECYCLABLE IN SOME AREAS.



Lifecycle claims

Consumers are showing more interest in the lifecycle of goods and packaging. Lifecycle claims include claims that relate to the composition, production processes or disposal of a good or its packaging. Care should be taken when highlighting the environmental benefits of a good, if only one aspect of a good has an environmental benefit but other key characteristics of the good do not.

Here are some things to look out for when making lifecycle claims.

Composition claims

Recycled content

A recycled content claim should clearly explain whether it relates to the entire good, including the packaging or only part of it. For example, a claim made on a tissue box saying “100% recycled” does not make it clear whether the box only is made from recycled materials or the box and the tissues inside are made from recycled materials.

If a non-recycled good has been packaged in recycled materials, then the difference should be clear – a simple “packaged in recycled material” could prevent you misleading consumers.



Free-of claims

If you promote a good or service as being “free-of” an ingredient or component, the claim could be misleading if:

- it includes other ingredients or components that can result in similar harmful effects to the omitted ingredients
- the omitted ingredient or component is not commonly used in comparable goods or services
- the product is free of the ingredient, but the packaging is not, and this is not made clear to consumers.

EXAMPLE

Two cleaning product manufacturers were warned for advertising that some of their products were free of particular chemicals. The Commission considered that this could give a misleading impression that those ingredients were commonly present in comparable products, when they were not.



EXAMPLE

Promoting a deodorant as being “CFC-free” is capable of being misleading, even if it is true. This is because no deodorants in New Zealand contain CFCs. If the promotional material gives consumers the overall impression that being CFC-free is a desirable characteristic of the product, compared to similar products, then the claim may be misleading.

WasteMINZ and Plastics New Zealand advise that if you make a claim that a product is “plastic-free” consumers are likely to think that the product does not contain any of the chemical characteristics of a plastic. However, a plastic made from plant materials can have the same characteristics and impact as traditional plastics.

EXAMPLE

Plant-based or bio-based plastics should not be advertised as “plastic-free”. WasteMINZ and Plastics New Zealand advise that if a product or packaging is made with mouldable polymers (including fully plant-based/bio-based polymers) it is a plastic.

Organic

You must be able to prove that goods described as “organic” are organic and were produced organically. Likewise, if you claim that your goods are “certified organic” you must be able to provide the certificate to back this up.

Before making an organic claim, you should consider both the source of the raw ingredients and production process.

If you want to claim some part of your goods are organic but the whole item is not organic, then you should be clear exactly what part is organic. The advertising must not create an overall impression that the good contains organic ingredients if this is not the case.

ORGANIC RULES ARE CHANGING

The Organic Products Bill 2020 has been introduced to Parliament. Your obligations when making organic claims may change once the Bill becomes law. You can check on the progress of the Bill at www.parliament.nz.

EXAMPLE

The Commission successfully prosecuted a butchery who falsely advertised chicken as “certified organic chicken” – the chicken had been sourced from certified organic farms but the butchery itself (where the chicken was butchered and sold) had never been certified in New Zealand. This butchery also falsely advertised its honey soy chicken nibbles as “organic” when the marinade was not.

EXAMPLE

The Commission successfully prosecuted another butchery for claiming products were “certified organic” when they were not. The false claims included saying that some sausages were organic when they were not (including instances where the meat was organic but other ingredients were not).

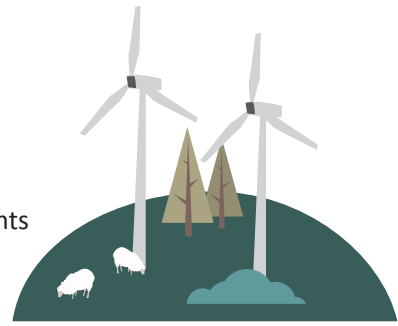
EXAMPLE

Labelling honey as “100% organic” may be misleading if it is produced using a synthetic varroa treatment (a non-organic compound).

Production claims

Made with renewable energy

Care should also be taken when advertising renewable or 'green' energy to ensure that any representations made about cost, amounts supplied, or the associated benefits, are truthful and correct.



Sustainable materials and durability claims

Many consumers are keen to purchase goods made from sustainable materials and goods that will last longer.

If only part of your product is made from materials that have been sourced from sustainable resources, make this clear to your customers. You must also ensure you can back up any claims that your goods are sustainable.

You should make sure that claims about how long a good will last are accurate and are substantiated.

Carbon-offsets/'Carbon neutral'

Carbon-offsets are credits for emission reductions gained by projects such as tree planting or energy efficiency. The offsets can be used to cancel out the negative environmental impact of carbon emissions, by achieving lower emissions elsewhere. Businesses might use carbon-offset claims to promote themselves and/or their good or service, or they might allow customers to participate in carbon-offsetting (ie, by purchasing carbon credits as part of the sales process).

Carbon-offset claims should clearly inform consumers about what is being offset and how it is being offset.

Ministry for the Environment guidance notes that carbon-offsets must be from tangible activities that have been implemented. Guaranteeing to plant trees cannot be counted as a carbon-offset until those trees have removed the carbon from the air.

The term 'carbon neutral' may have a wide range of meanings in the minds of consumers. For example, it could be seen as an absolute term suggesting to consumers that the same amount of all emissions of a business have been eliminated through emissions reductions and offsets. Care should be taken not to use the term if you cannot back up the claim.

EXAMPLE

Ministry for the Environment has published specific guidance for voluntary emissions offsetting. That guidance states the term 'carbon neutral' is used when an activity, process, organisation, event or building has zero net greenhouse gas emissions.

Carbon neutral claims should take into account the whole lifecycle of the good or service. General claims of carbon neutrality could be misleading if the claim only relates to one aspect of a good or service, for example, to carbon produced during a good's production process, but not to its delivery and use.

EXAMPLE

The Commission investigated another taxi company for making carbon-related claims that the Commission believed were misleading. The company had advertised that it “will be working with groups such as carboNZero to fund sustainability initiatives which consist of tree planting and native bush regeneration”. The Commission considered that it was not clear that the trees it would be purchasing were not in New Zealand. Also, that the statement was liable to mislead consumers that the company had a formal association with the carbon reduction programme, when it did not.



Disposal claims

Making claims that show an environmental benefit that while literally true is unlikely to arise in practice can also mislead consumers.

Biodegradable

Biodegradable claims should be clearly and prominently explained to avoid misleading consumers about the ability of the good or packaging to break down in environments where it is commonly disposed, and the rate and amount it will biodegrade.

It should be clear if the biodegradability claim relates to the whole good or just to part of it.

EXAMPLE

A manufacturer of plastic rubbish bags was fined \$60,000 in relation to “oxo-biodegradable” bags it marketed and sold. The Court found that the website and product claims were liable to mislead the public as the bags would not biodegrade in a landfill readily or swiftly, or within the timeframe the average consumer expects (whether 12 months or 24 months or less). The Court also found that statements on the website were liable to mislead the public because important limitations on the availability of composting options in New Zealand were not made clear.

Compostable

Compostable claims should be backed up by firm evidence (such as proof of compliance to an international composting standard) that the good or packaging will break down into usable compost in an industrial composting facility or a home composting system.

Compostable claims should clearly and prominently display the correct way of composting the specific good or packaging, for example, at a commercial composting facility or at home.

To avoid misleading consumers, you should also consider the availability of composting facilities for consumers likely to acquire the goods. Any known limitations or qualifications around access to or availability of such facilities should be clearly and prominently shown. For example, “Check our website for options for disposal”.



Recyclable

Goods and packaging should be recyclable if making unqualified recyclable claims. If the whole item is not recyclable, then it should be clear which parts are.

If you are marketing a product as recyclable, you should consider whether appropriate recycling facilities are available to consumers likely to acquire the goods to avoid misleading them. Items that are widely accepted at kerbside recycling or council drop offs can be labelled as recyclable but other items that are less widely accepted, or that are not recycled through kerbside recycling, should specify where they can be recycled. For example, “Recycle at store drop off” or “Contact supplier for recycling options”.



Other common environmental claims

Comparative claims

Comparative claims are claims that compare the qualities of one product with another product or a range of products.

Express comparative claims state clearly what attributes are being compared and which competitor the comparison is made against. For example, “Our product breaks down in landfill 50% faster compared to the market leader”. Traders making such claims should ensure the comparison has been made using comparable conditions, and regularly check that the comparison remains accurate.

Vague claims such as “greener” or “friendlier on the environment” are also comparative claims. These types of claims do not make it clear what the good or service is being compared with. Traders who use these terms should carefully consider the context the claim is being made in, what consumers will likely understand the claim to mean, and whether they can back up the claim.

EXAMPLE

A bathroom fittings company claimed consumers could achieve significant energy and water savings by using a particular type of shower head, compared with conventional showers. The claims gave consumers the overall impression that installing the showerhead in an average New Zealand shower would result in the savings. However, the claim was misleading because the savings could only be achieved by consumers using high-pressure systems and most New Zealand households at the time only had low-pressure systems.

Branding

A brand name or company name can be a representation. A brand name could contribute to an overall misleading impression if it implies environmental benefits that are not true.

Dolphin's Friend
TUNA

COMPOSTO
SACKS

PLANETSAVER
WIPES

EXAMPLE

A beverage company was convicted for breaching the Fair Trading Act in relation to its juice products. The company's name, Freshly Squeezed Limited, contributed to the impression that the product was 100% freshly squeezed orange juice when that was not the case.

A misleading representation can also be created by a brand logo if it gives consumers the overall impression that the product has positive environmental qualities when that is not the case.

Certification stamps

Certification stamps are commonly used to show that environmental qualities of a good or service have been verified. Businesses should be careful of creating their own environmental logos because they may give consumers the idea that the product has been independently certified when it has not.

Using rigorous independent certification schemes can give consumers confidence in the environmental qualities of your goods or services, but using similar-looking images to genuine certification marks may destroy consumer confidence and you risk breaching the law.

Other information

This document provides general guidance about what to consider when making environmental claims about goods or services. We may update it from time to time.

However, the guidance is not exhaustive and is not intended to be legally binding. For specific advice about the application of the Act to your advertising or goods or services, we recommend you seek legal advice. A relevant industry association may also be a source of useful information.

Making a complaint

You can make a complaint through our complaint form at www.comcom.govt.nz or by calling us on **0800 943 600**.

Further information sources:

WasteMINZ www.wasteminz.org.nz

Ministry for the Environment www.mfe.govt.nz

Parliamentary Commissioner for the Environment
www.pce.parliament.nz

Environmental Choice New Zealand
www.enviro-choice.org.nz

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Contact us with information about possible breaches of the laws we enforce:

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