

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

CALIFORNIA SUIT HIGHLIGHTS RISKS OF ENVIRONMENTAL MARKETING

In 2008, California amended its environmental marketing law to prohibit the sale of food or beverage containers within the state that are labeled with the terms “biodegradable,” “degradable,” or “decomposable.” Now, California Attorney General Kamala D. Harris has filed the state’s first court action under the law against three companies that allegedly made false and misleading claims by marketing plastic water or beverage bottles as 100 percent “biodegradable” and “recyclable.”

The Attorney General’s office is seeking injunctions and civil penalties, and to recover its costs of investigation and litigation, from the defendants, ENSO Plastics, LLC, Balance Water Company LLC, and Aquamantra, Inc. Although it may take some time for the action to be finally resolved, the complaint should serve as a reminder to companies about the need to take special care when making environmental marketing claims in advertising and on websites, product labels, product brochures, and other marketing materials.

THE ALLEGATIONS

The Attorney General’s complaint alleges that the defendants unlawfully sell, or participate in the arranging for the sale of, plastic beverage containers in or into California that are labeled, advertised, or otherwise marketed as 100 percent or completely “biodegradable.” The action objects

to contentions that these plastic containers completely biodegrade and leave only natural remains, that this process occurs within one to five years, and that it can take place in a landfill, compost, or other environment, including by the side of the road. The Attorney General argues that these claims are false, deceptive, and misleading to consumers because the plastic bottles “will not biodegrade as claimed, either in a landfill or any other environment.” Furthermore, the complaint contends that the claim “biodegradable” on the labeling of plastic beverage containers “is inherently misleading to consumers in reference to a disposable plastic food or beverage container” under California’s 2008 law.

The complaint also objects to claims that the defendants’ bottles are “recyclable.” In particular, it continues,

>> continues on next page

THE BOTTOM LINE

California law makes it unlawful for any person to make any untruthful, deceptive, or misleading “environmental marketing claim.” For the purpose of this law, “environmental marketing claim” includes any claim contained in the Federal Trade Commission’s “Guides for the Use of Environmental Marketing Claims.” When contemplating environmental marketing claims, advertisers should ensure that they are fully familiar with the requirements of the FTC’s Guides, as well as all applicable state laws.

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ENSO claims to have developed a resin or resin component that contains microbial agents that will render a standard polyethylene terephthalate (PET) plastic bottle into a “biodegradable” plastic bottle. The complaint asserts that ENSO states or implies that plastic bottles made from this resin will break down, fragment, biodegrade, or decompose in a landfill or other environment. Additionally, the Attorney General asserts, ENSO sells or otherwise provides this resin, directly or indirectly,

to Balance and Aquamantra, as well as to other companies selling beverages in “biodegradable” plastic bottles in California.

In the Attorney General’s view, items containing degradable additives “are considered contaminants by postconsumer plastic recyclers.” Therefore, the claim of recyclability on these bottles “is deceptive and misleading to consumers.”

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