


New Commerce Commission guidance on environmental claims: It's not easy being green

'Eco-friendly', 'plant based', 'biodegradable' – in recent years, these sorts of claims have become increasingly common on everything from dishwashing liquid to fruit rollups. But how can consumers be sure they accurately understand these sorts of 'green' claims, and how can businesses make sure they don't fall foul of the law?

To provide clarity, the Commerce Commission last month released its new Environmental Claims Guidelines, which are intended to help businesses understand their Fair Trading Act obligations when making 'green' claims. The guidelines, replacing the Commission's earlier Guidelines for Green Marketing from 2008, show that the Commission is taking environmental claims seriously, and businesses need to exercise care when using these sorts of claims in the marketplace.

What is an environmental claim?

An environmental claim is any representation, express or implied, about the environmental impact of the production, distribution, use, or disposal of a product or service. An environmental claim gives the impression that a product or service is environmentally superior, or is beneficial for the environment. Claims can include words, imagery, or even colours used, as well as representations like 'biodegradable', 'organic', 'recyclable', or claims about what is (or is not) in the product, such as 'plastic-free'. For example, if your brand is 'PlantPlay' and your toy products come in natural looking packaging covered in forest imagery, your toys are creating an environmentally beneficial impression that needs to be legitimate.

Environmental claims can also include brand or company names which imply an environmental impact (e.g. brands containing the words 'green', 'world' or 'eco'), certification claims (e.g. 'certified organic' or the Seedling composting logo ) or comparative claims ('better for the environment' or 'uses 30% less energy than other leading brands').

What do the new guidelines say?

The guidelines include general principles about not misleading or deceiving consumers, but also provide new guidance on a number of popular green claims, including 'organic', 'compostable', 'biodegradable', 'sustainable', 'free-of' and 'plastic free', and are a good reminder about what types of environmental claims can raise issues under the Fair Trading Act. However, it is important to remember that the overall impression is key.

Understanding the risks of making 'green' claims in relation to your products and services can be challenging. Nevertheless, it's important that any claims made are able to be substantiated and that suppliers never lose sight of the need for New Zealand consumers to be able to understand what each claim means.

Green claims often deliver a price premium in the market, so using them correctly could make all the difference to your business. However, it is important to distinguish your product or service for all the right reasons (and not become a test case for the Commerce Commission).

Key things to think about:

- **Be truthful and accurate:** Make sure the 'reasonable consumer' would understand what your claim means, and make sure you regularly review your claims to make sure they remain accurate. It does not matter if you did not mean to mislead.

- **Be specific:** Vague or incomplete claims can mislead consumers. Make sure you are clear about the specific part of the product or service your claim relates to. For example, if a product is advertised as made from 'recycled materials' or 'organic', but this is only true for some components of the product, make sure you specify the particular part or material the claim relates to. Bear in mind that packaging must be as eco-friendly as the product within in order to justify eco-based claims.
- **Substantiate your claims:** Make sure you have a reasonable basis for making any claim (like test results, evidence, or research). What is considered reasonable will depend on the type of claim made, as well as the context and circumstances. However, things to consider include the amount of research undertaken prior to making a claim, whether there are any relevant standards, and the potential or actual effects of the claim. It's important to keep records of the information relied on to support claims, and the Commission suggests making the evidence available to consumers to review.
- **Use plain language:** Consumers should be able to easily and clearly understand your claims.
- **Don't exaggerate your claims:** Avoid overstating the benefits of your product or service, and don't make general claims if they only apply to part of a range.
- **Be cautious with test or survey results:** Data needs to be interpreted and communicated clearly and accurately. Only make claims that accurately reflect test results, and don't show the results in a way that makes testing look more positive or credible than it is. Businesses should also clearly state whether the testing was conducted in-house or by an independent entity.
- **Look at the overall impression:** Make sure you stand back and consider the overall impression created by a product or service, including packaging or related marketing materials. Fine print cannot be used to correct a misleading impression, so if there are important qualifiers make sure these are clear.

Further thoughts

It's evident the Commission will be keeping a close eye on environmental claims in future, and will be holding businesses to account. Moving forward, we believe there may be particular attention given to the following areas:

- **Plastic free claims:** Following on from WasteMINZ's advice regarding 'plastic free' claims earlier this year, the Commission has made it clear that bio-based or plant-based plastics (including PLA) should not be advertised as plastic free. Manufacturers of plastic packaging should be particularly careful.
- **Consider the lifecycle:** Increasingly, consumers want to understand the lifecycle of a product, including supply chain, transport, storage and disposal issues. It is important businesses accurately represent the environmental benefits across the whole lifecycle of a product or service, to avoid misleading consumers. For example, the benefits of glass as a reusable and recyclable option for product storage should be balanced against the transport emissions associated with transporting glass material long distances.
- **Certification marks are not a complete shield:** The Commission has highlighted the risks of over-reliance on certification marks as an excuse to use sweeping environmental claims on products. Certifications must not be used to mislead. For example, while a product may have an 'industrially compostable' certification, if the practical reality is that there are limited industrial composting and collection facilities in New Zealand, broad claims that the product is environmentally superior are likely to mislead.

We recommend businesses review their environmental claims carefully in light of this new guidance, to ensure claims are consistent with the guidelines and are clear, accurate, up to date, scientifically sound, and able to be substantiated at the time when the claim is being made.

If you have any questions about the Commission's new guidelines, or would like to discuss any environmental claims you are making, please contact us.



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