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Are All Saabs Green?

Australian Competition and Consumer Commission (ACCC) takes action against GM Holden and releases a guide to green marketing claims

The Australian Competition and Consumer Commission (“ACCC”) recently released its ‘Green Marketing and the Trade Practices Act’ guidelines (“guidelines”).

The guidelines have been put into place as a result of the growing importance that consumers place on the environmental credibility of a product. The introduction to the guidelines states:

“Environmental claims can be a powerful marketing tool. Companies are increasingly using environmental claims in an attempt to differentiate themselves and their products from the competition. These claims come in a wide range of forms, including statements about environmental sustainability, recycling, energy and water efficiency or impact on animals and the natural environment”.

The Trade Practices Act 1974 (Cth) (“Act”) applies to, among other things, all aspects of advertising, marketing, packaging and labelling of goods/services. The main and relevant provisions relating to green marketing are set out in Part V of the Act. In particular, section 52 of the Act prohibits a corporation from engaging in conduct that is misleading or deceptive or which is likely to mislead or deceive. Sections 53(a)-(g) prohibit, among other things, making false representations about goods or services with respect to their standard, quality, value or grade, or in respect of their characteristics or any approval that they may have. Contravention of section 53 by a corporation can result in fines of up to AUD\$1.1million, and other penalties.

The guidelines warn that in order to not contravene the Act, anyone who makes a green claim “should ensure that their claims are scientifically sound and appropriately substantiated. Consumers are entitled to rely on any environmental claims that are made and to expect these claims to be truthful”.

While the guidelines do not have legal force or add anything to the Act, they do provide guidance as

to what, up until now, have been relatively uncharted waters for advertisers. The guidelines set out the way in which the ACCC will approach any complaints made in respect of green claims, the standard it will apply in determining what constitutes an appropriate claim in respect of a product, and what is appropriate substantiation for such a claim.

The guidelines reinforce that green claims (like any other claims) must be accurate and substantiated. Some examples of recommendations the guidelines make are:

- > claims should be specific (in light of the substantiation) and not general or unqualified;
- > claims should only be made for a real benefit and not where the ‘benefit’ is essentially trivial or insignificant, or simply advertises the compliance with an existing law (ie that a product is ‘CFC’ free, when CFCs are a prohibited ingredient in aerosols, so no competitor product will contain CFCs);
- > claims must not overstate a benefit;
- > care must be taken when using images as they too can convey a green claim;



- > claims should be clear as to whether they relate to the product's packaging or contents;
- > claims should consider the whole life cycle of the product (the guidelines give the example of a car which may be advertised as 'fuel efficient' as opposed to 'green');
- > caution must be taken when using endorsement certification; and
- > care must be exercised in evaluating substantiation of claims (particularly if there is significant credible debate on the issue).

The guidelines also set out the ACCC's view relating to the interpretation of common green claim definitions such as "green", "environmentally friendly", "environmentally safe", "energy efficient", "recyclable", "carbon neutral", "renewable energy" or "green energy".

As set out earlier, while the guidelines have no legal effect, they do set out the way in which the regulator will approach green marketing and may indicate the way in which the courts view such claims.

The ACCC has recently taken action against GM Holden Ltd in respect of a number of claims made in advertisements for Saab motor vehicles in late 2007. The advertisements included claims such as "Grrrrreeeen", "every Saab is green", "carbon emissions neutral across the entire Saab range" and "switch to carbon neutral motoring". The advertisements also stated that Saab would plant 17 native trees in the first year following a Saab vehicle purchase as a carbon offset.

The ACCC took the view that, among other things, the representations implied that:

- > the net amount of carbon dioxide released into the atmosphere by any Saab vehicle, over the life of that vehicle, would be zero; and
- > that the planting of 17 native trees on behalf of the Saab purchaser would offset the carbon dioxide emissions of the vehicle for the life of the vehicle;

when in fact the ACCC believes those representations are not true.

Whilst the GM Holden Ltd case is still before the courts, the release of the ACCC's guidelines are a timely reminder to companies who use environmental claims in an attempt to differentiate themselves and their products from their competitors, to ensure that their claims are accurate and substantiated.

Kieran Gamble - Associate
+61 2 8248 5850
kgamble@thomsonplayford.com.au

For further information on this topic, please contact:

Kieran Gamble - Associate
+61 2 8248 5850
kgamble@thomsonplayford.com.au

Peter Le Guay - Partner
+61 2 8248 3424
pleguay@thomsonplayford.com.au

Matthew Prescott - Senior Associate
+61 8 8236 1147
mprescott@thomsonplayford.com.au

Adrian Tembel - Partner
+61 8 8236 1312
atembel@thomsonplayford.com.au

Adelaide

101 Pirie Street
Adelaide SA 5000
T: +61 8 8236 1300 . F: +61 8 8232 1961

Melbourne

Level 40, 140 William Street
Melbourne VIC 3000
T: +61 3 8608 7000 . F: +61 3 8608 7199

Sydney

Australia Square Tower
264 George Street Sydney NSW 2000
T: +61 2 8248 5800 . F: +61 2 8248 5899