



Mari Galloway
416-865-2904
mgalloway@litigate.com



Donya Tamehi
416-475-7529
dtamehi@litigate.com

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The Competition Bureau's Final Word on Greenwashing: What Businesses Need to Know

In light of concerns that unsubstantiated or misleading sustainability claims are eroding consumer trust, Canadian legislators took steps last year to increase oversight into environmental claims under the *Competition Act*.

Last week, following two rounds of public consultation, the Competition Bureau released its final guidelines on Environmental Claims and the *Competition Act* ("Guidelines"). The Guidelines complement the *Act* by providing clarification from the Competition Bureau's perspective on what compliance with the *Act*'s provisions on environmental claims looks like in practice.

While the Guidelines are not legally binding and do not constrain the Competition Tribunal, they reflect how the Competition Bureau is likely to interpret and enforce the *Act* going forward. The Tribunal may also refer to them when considering environmental claim applications. Businesses should therefore review the Guidelines to ensure that they understand the Competition Bureau's approach.

Overview of the Guidelines

The Guidelines describe the Competition Bureau's approach to the four civil provisions of the *Act* that are most relevant to environmental claims.

Under the amended *Act*, businesses making environmental claims – whether about a business, service, or product's sustainability, recyclability, emissions impact, or broader environmental benefits – should ensure that their claims are substantiated by adequate and proper testing, using recognized and credible methodologies. A failure to meet this standard may expose firms to enforcement action under the *Act*.

Below is a high-level overview of some key insights and examples from the Guidelines regarding the application of these provisions of the *Act*:

- **Section 74.01(1)(a) – False or Misleading Representations:** This is a general provision that prohibits materially false or misleading representations

made for the purpose of promoting a product or business interest. Environmental claims about a product, service, or business attributes may fall within its scope.

To comply with this provision, businesses should be careful to avoid false or misleading representations that, viewed as a whole, create a general misleading impression that is likely to influence consumer behaviour.

Example from the Guidelines:

Section 74.01(1)(a) – False or Misleading Representations

A bath bomb company advertises its packaging as being made from 100% post-consumer recycled cardboard, when in fact it is made entirely from virgin fibre paper.

Competition Bureau’s Likely Assessment

The representation is factually incorrect and materially misleading. The claim is likely to influence consumer purchasing decisions and would therefore be considered a contravention.

- **Section 74.01(1)(b) – Product Performance Claims:**

This provision prohibits performance-related claims – including those concerning a product’s environmental performance, such as efficiency or durability. Importantly, this provision applies exclusively to products, and not to claims about business operations or practices.

To comply with this provision, performance-related claims should be supported by adequate and proper testing. Its testing should be product specific and methodologically sound rather than based on anecdotal evidence or testing conducted on similar products.

Example from the Guidelines:

Section 74.01(1)(b) – Product Performance Claims

A fuel additive company claims its product reduces emissions by up to 20%, based on similar claims made by a competitor, without conducting its own product-specific testing.

Competition Bureau's Likely Assessment

The claim relates to product performance but is not backed by testing specific to the business' own product. Reliance on competitor data is insufficient and does not meet the "adequate and proper testing" standard.

- **Section 74.01(1)(b.1) – Claims About the Environmental Benefit of a Product:** This newly enacted provision builds on the product performance claims provision in section 74.01(1)(b), requiring that certain types of claims be evidence-based.

To comply with this provision, representations about a product's environmental benefits – such as claims that a product "protects," "restores," or "mitigates" environmental or climate-related harm – must be supported by adequate and proper testing. Given the novelty of this provision, the Guidelines list key concepts set out in the provision such as "benefit", "environment", "protecting", "restoring", "mitigating", "social", "ecological", and "climate change" and their ordinary meaning. For example, "benefit" is defined as "any specific advantages of favourable attributes."

Example from the Guidelines:

Section 74.01(1)(b.1) – Environmental Benefit of a Product

A clothing company advertises that its sweaters do not release microplastics during washing, based on prior yarn testing. However, the testing did not simulate actual washing machine conditions.

Competition Bureau's Likely Assessment

The environmental benefit claim must be based on testing that reflects real-world conditions. Since the testing did not replicate actual use, the claim lacks adequate and proper support.

- **Section 74.01(1)(b.2) – Claims About the Environmental Benefits of a Business or Business Activity:** This second newly enacted greenwashing

provision targets claims about the environmental impact of a business or business activity.

To comply with this provision, claims that a business has, for example “carbon neutral operations” must be supported by adequate and proper substantiation in accordance with internationally recognized methodology.

The Competition Bureau views “substantiation” as proof or competent evidence that may require third party verification where the international methodology calls for it. A methodology will be “international” if it is validated in two or more countries. Further, it will be treated as “internationally recognized” if it is endorsed by a credible authority such as a standards-setting body, regulator, or widely-accepted industry practice.

Example from the Guidelines:

Section 74.01(1)(b.2) – Environmental Benefit of a Business or Business Activity

A business promotes itself as “on its way to net-zero by 2050” without having completed a baseline emissions assessment or used an internationally recognized methodology to support the claim.

Competition Bureau’s Likely Assessment

The claim lacks substantiation and does not meet the requirement of using an internationally recognized methodology. The absence of a concrete plan or credible evidence undermines the representation.

Key Takeaways for Businesses

The following takeaways highlight the key compliance considerations for businesses to keep in mind when making environmental claims, in light of the Competition Bureau’s updated Guidelines:

- **Due Diligence Can Shield Companies from Penalties:**
The Guidelines reaffirm due diligence as a defence to certain remedies that might be ordered in cases of deceptive marketing. This means that a business that has been found to have shown due diligence may be ordered to stop certain marketing practices but cannot be ordered to pay an administrative monetary penalty or be required

to publish a corrective notice. Due diligence can include implementing compliance protocols, documenting evidence, and consulting experts.

- **The Competition Bureau Focuses on Marketing Claims, Not Regulatory Disclosure:** The Guidelines clarify that the Competition Bureau is not concerned with environmental claims made solely within regulated frameworks, such as securities filings. However, if those claims are reused in advertising, investor presentations, websites, or other promotional materials, they will fall under the *Act*. Businesses should consider carefully how representations made in securities filings are used in other promotional material.
- **Environmental Claims Must be Backed by Credible, Product-Specific Evidence:** Environmental claims must be supported by adequate and proper testing, conducted before such claims are made. Businesses should be aware that scientific data and third-party verification may be required to back up environmental claims made, especially where substantiation relies on internationally recognized methods. Firms should consider what information is necessary to include in their sustainability claims and make a realistic plan to achieve any forward-looking goals.
- **Third-Party Verification Can Be Important:** While the Guidelines do not require businesses to make third-party verification of their testing publicly available, doing so can be a prudent, proactive step. Voluntarily disclosing verification details may help demonstrate transparency and credibility, reducing the likelihood of enforcement action.
- **Penalties for Non-Compliance Are Significant:** Breaching the *Act*'s deceptive marketing rules can result in major fines – up to 3% of global revenue or \$10 million for corporations (whichever is greater), and up to \$15 million for repeat violations. Individuals can face fines of up to \$750,000 or \$1 million for subsequent offences.

Conclusion

For companies operating in an increasingly environmentally conscious marketplace, these Guidelines serve as both a caution and a framework for navigating the evolving compliance landscape. The Competition Bureau has made its enforcement priorities clear and existing interpretations under the *Act* remain relevant. Nonetheless, uncertainties remain around how certain terms will be interpreted and how substantiation requirements

will be enforced. Businesses should invest in compliance systems, document due diligence, and proactively assess the credibility of their sustainability messaging.