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MARQUE LAWYERS AND GECA

**ENVIRONMENTAL CLAIMS
GUIDE**

2022

WHO WE ARE



MARQUE LAWYERS

We're a boutique law firm based in Sydney, formed in 2008 with the goal of changing the way that law is practised. We have extensive experience advising on Australian Consumer Law, advertising and marketing review, and helping you structure your claims in the best way for your business without waving a red flag to regulators or your competitors.

We are different to other law firms. We invest in long term relationships with our clients. We measure the value we provide in the same way that you do, by reference to your commercial goals, risks and constraints. We see your legal needs as a business risk and our role as helping you to manage that risk.

We prefer to be clear about the costs of our engagement. We agree with you the fixed fees for work to be undertaken; whether on an item, project or staged fixed fee basis. No surprises at the end of the month. Wouldn't that be a nice change?

To top it off, we love doing what we do. We see that the law should be a force for good. Our purpose is to do just that, and it infuses our whole business from taking pride in our expertise, to knowing our clients' businesses deeply, to being vocal about the social justice issues that matter to us and lobbying against unfair and outdated laws. And to prove our commitment to our purpose, we've proudly become a certified B Corporation.

GECA

We're a purpose-driven nonprofit, helping individuals and organisations to make, buy and do better for people and the environment. We offer a suite of services designed for anyone committed to continuous improvement in their sustainability journey. So, whether you're starting from scratch or are a leader in your sector, we help you address your unique social and environmental challenges.

We're primarily known for running Australia's only not for profit multi-sector lifecycle ecolabelling program. GECA certified products and services must meet criteria for a wide range of environmental, human health and social impacts across their entire lifecycle while proving fit-for-purpose.

We also deliver a Claims Authentication service that provides you and your customers with independent third-party assurance that your claim has been substantiated. And our LCA Suite offers both Life Cycle Assessments and Environmental Product Declarations to deliver meaningful data about your environmental footprint and areas for improvements.

Team GECA is highly skilled and passionate, with technical knowledge on the entire lifecycle of a product or service. GECA has proudly been a certified B Corporation since November 2015, achieving top scores for our overall mission, ethics, accountability, and transparency.

ABOUT THIS GUIDE

There's a right way and a wrong way to go about making environmental claims.

Done properly, you can not only sell your product but educate people about the broader environmental issues in your market, driving brand value and meaningful environmental change.

Greenwashing has the opposite effect. It harms brand value and can undermine credibility of the whole industry, creating scepticism around environmental claims. It can also expose you to serious legal risk.

We're all about doing things the right way, and for the right reasons. So we've made this guide. Think of this as a tasting plate of the issues to consider when you're making environmental claims. And if you'd like some further help, just drop us a line.



ADVERTISING & MARKETING



The Australian Consumer Law (ACL) governs a lot of what you can and can't do when advertising and marketing to consumers. It will constrain the types of claims you can make, including environmental ones. Given the maximum penalties for breaching the ACL start from \$10M, and can be as high as 10% of the annual turnover of a business, it is important to get it right. The basic rule is don't be misleading. That applies to the whole ad, the 'general thrust' of it; literally – the vibe. So here are a ten tips to help you get it right!

1

Overall impression: Look at the overall impression of your ad, taking account the headlines, graphics, layout additional wording and any qualifiers. Consider whether most people reading it would get an accurate picture. For example, if you claim a product is recyclable, people will likely expect that it will end up being recycled. If suitable recycling facilities aren't readily available then the claim may be misleading.

2

Substantiation: Ensure that you can substantiate any factual claim. Keep records of all sources supporting your claims. These sources should be up to date and reflect the body of data available. Where a scientific claim is disputed or inconclusive, avoid implying that it is universally accepted. Tie your claim to the supporting data and don't be tempted to overstate the environment benefit. For example, it labelling a car as 'fuel-efficient' may be more accurate (and have less risk of misleading people) than calling it 'eco-friendly', where the latter claim may not consider the entire manufacturing process for the car.

For increased certainty around making an accurate claim, you may like to choose independent third-party verification. Choose a reputable assurance organisation that is trusted and transparent about its verification processes, and where your claim can be substantiated via a thorough assessment and audit. The organisation should follow ACL, Australian Competition and Consumer Commission (ACCC) green marketing guidelines, and internationally recognised principles outlined in ISO 14021 – Environmental labels and declarations: Self-declared environmental claims (type II environmental labelling).

ADVERTISING & MARKETING



3

Simple and accurate language: Be clear about the specific claim you are making, use simple language to convey the significance of the benefit to the environment, and ensure you can support your claim with objective data. Broad claims like 'green' or 'environmentally friendly' can be misleading because they are vague and open to a range of interpretations. Choose language which is clear, precise as to the benefit, and in terms that the average reader would understand.

4

Complete information: Provide complete information about your claim. What you exclude can be just as meaningful (or misleading) as what you include. For example, claiming that your product packaging is now 50% less plastic might be strictly accurate, but could still be misleading as to the environmental impact if the packaging was only 1% plastic to start with. Another example is if you claim that your labelling product is made from 100% recycled paper yet fail to recognise the adhesive ingredients.

5

Comparisons: Comparisons sell well, but they're high risk. Competitors will often challenge a comparison, so make sure it is balanced and that you keep records to prove the accuracy of the comparison. Samsung got in 'hot water' over misleading comparisons of the energy efficiency of its washing machines versus conventional washing machines. The ACCC required Samsung to provide enforceable undertakings to resolve its concerns and avoid prosecution.

6

Masking other serious impacts: Consumers won't be fooled! If your company is making a specific environmental claim about a product or service, but then causing other environmental damage at the same time, expect raised eyebrows. Claiming a t-shirt is made from recycled materials where hazardous toxins are used for dyeing is not a true environmental benefit. A genuine commitment and transparency about your company's environmental journey in parallel to your environmental claims will help build consumer trust for your brand.

ADVERTISING & MARKETING



7

Relevancy and material benefits: Let's face it, a gluten-free table is meaningless (or maybe an unsuspecting gap in the market just waiting to be filled...?). Your claim should be relevant to the type of product or material category. Not only that, but it should show an environmental improvement for that category. Make a claim that shows market leadership for your product category with an increased environmental benefit to what the current market is doing.

8

Qualifiers: Qualifiers can enhance headline information, but they can't change the headline's meaning. For example, an ad claiming that products are made of 50% recyclable material will be misleading if a qualifier specifies that only one product available in the range is made from 50% recyclable material, even if the qualifier information is complete and accurate

9

Certification and safety claims: It goes without saying, but don't claim a certification that you don't have. Also be aware that graphics can be taken as implying certification or safety for a product. A picture of a dolphin might imply that a fish product is sourced in a dolphin-friendly manner. A picture of an orangutan on food packaging might imply that a product is palm-oil free. A rabbit image also carries connotations because there are a range of rabbit icons which imply a product is cruelty-free, not tested on animals, or vegan. This can be misleading, and also infringe certification trade marks.

10

Socials: The same rules all apply to social media. And if you use an influencer, they need to make it clear that they're #spon or #ad. Other influencer tips? Do your due diligence on them to avoid nasty surprises, and pin them to a contract to manage your risk if they go rogue.

TRAINING

If you would like more information about these issues, we offer a marketing handbook and training session **tailored to your business**. These are designed to educate your employees, marketing team and management, helping to raise awareness about how to correctly make and substantiate your claims, and ensure compliance with your business' legal obligations.

QUESTIONS?

We would be happy to answer any other questions you may have. Needless to say, we would love to work with you.

Contact **Jess Mutton**, Head of Business & Strategy at GECA – jessica@geca.org.au or **Danielle Kroon** at Marque Lawyers – daniellek@marquelawyers.com.au.



NICE TO MEET YOU!



HANNAH MARSHALL



PARTNER AT MARQUE LAWYERS

Having literally consumed the Competition and Consumer Act, Hannah can tell you without blinking whether your advertising claims for the health benefits of cage-free, organically grown charcoal tea leaves will pass muster or leave you with a major regulatory headache. She also knows why they call it "third line forcing" and how to make the ACCC roll over like a playful puppy.



DANIELLE KROON



SENIOR ASSOCIATE AT MARQUE LAWYERS

A member of our competition and regulatory team, Danie digs deep when it comes to heavy duty regulatory regimes or the insane intricacies of competition law, producing perfectly formed answers that a normal person could only unearth with an excavator and a few drinks. She can equally process deep technical analysis into a quick and practical ad clearance solution. It's magical to behold.



KENDALL BENTON-COLLINS —○

STRATEGIC COMMUNICATIONS MANAGER AT GECA

Kendall is a communications specialist and sustainability advocate who has driven campaigns for a range of organisations on sustainable consumption and production, environmental philanthropy and threatened species conservation. She has over a decade of experience working in environmental conservation and holds an Honours degree in Environmental Politics and a Fellowship with the Centre for Sustainability Leadership. Kendall is passionate about using creativity for good and isn't averse to delivering sustainability storytelling via a haiku or cat meme.



JESS MUTTON —○

HEAD OF BUSINESS & STRATEGY AT GECA

A renaissance woman, Jess brings a strategic eye and a holistic perspective to GECA. Whether you're coming from industry, government, academia, or the community, she's ready to work with you to identify collaborative opportunities for sustainability action! She's passionate about fair play and always keen to increase transparency and accountability within sustainability and beyond. Whether you're struggling with policy, frameworks, guidelines, roadmaps, processes or training, help is never far away with Jess.

LET'S CONNECT



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