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Canada's New Guidelines for Claiming Consumer Products Are Eco-friendly

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The environment is on the minds of consumers these days. And in response, a multitude of products and services claiming to be “green” or “eco-friendly” are stacking supermarket aisles. The Trade-marks Register confirms the proliferation of trademarks with an environmental angle: the term “green” appears in 2,688 active marks incorporating the term; “eco” appears in 1,145 active marks; and “enviro” appears in 532 active marks.

As a result of new guidelines on the use of “green” terminology, obtaining a trademark registration for a brand that includes an environmental claim does not mean that the registrant can necessarily make that claim, regardless of how environmentally friendly the product actually is. These guidelines,¹ developed by the Canadian Standards Association in partnership with the Competition Bureau, were seen as necessary to protect consumers from being misled by the wide use of environmental claims as a marketing tool. The guidelines are not law, but the Competition Bureau will use them to evaluate whether a claim is false or misleading when it enforces the *Competition Act*, the *Consumer Packaging and Labelling Act* or the *Textile Labelling Act*.

In implementing the guidelines, the Competition Bureau recognized that as consumers become more aware of the impact of their purchasing decisions on the environment, they increasingly turn to environmentally friendly products. Seeing a trademark with an environmental claim, consumers may assume that the product is more environmentally friendly than competitive or predecessor products; however, the products may not always be better for the environment.

According to the new guidelines, environmental claims must be specific and provable, and supporting data for these claims must be made available on request. Having the data publicly available on a website may be a good way of complying with the guidelines and managing customer service inquiries. If the packaging design allows for an explanation, it may be wise to include a specific provable statement about the product, such as, “This product is designed to have a life that is X% longer than the previous model.”

The guidelines discourage the use of terms such as “green,” “environmentally friendly,” “all natural” and “eco” because these terms are both difficult to prove and vague. Although the use of these terms has not been prohibited, businesses should be

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¹ Available at [www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/vwapj/guide-for-industry-and-advertisers-en.pdf/\\$FILE/guide-for-industry-and-advertisers-en.pdf](http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/vwapj/guide-for-industry-and-advertisers-en.pdf/$FILE/guide-for-industry-and-advertisers-en.pdf).

prepared to provide backup data to support such claims, if requested. The guidelines also indicate that using natural objects (e.g., fish, trees) in a product logo may be viewed as misleading unless there is a direct and verifiable link between the object and the benefit claimed.

The Competition Bureau recognizes that companies may wish to reassess their advertising and labelling in light of the new guidelines. Therefore, a one-year transition period has been provided before the guidelines are fully implemented. In the meantime, particularly egregious cases of false or misleading environmental advertising may prompt action by the Competition Bureau.

Environmental claims that raise concerns of misleading advertising will be examined on a case-by-case basis. Should the Competition Bureau determine that further action is warranted, it may investigate or seek the business's voluntary compliance. If the Competition Bureau concludes that a business has contravened the misleading advertising provisions of the *Competition Act*, the *Consumer Packaging and Labelling Act* or the *Textile Labelling Act*, it can take action to impose one of the following penalties:

- Under the criminal regime, the maximum penalty for an individual or a corporation is a fine at the discretion of the court and/or imprisonment for up to five years.
- Under the civil regime, the maximum penalty is an administrative monetary penalty of up to \$50,000 for an individual and \$100,000 for a corporation.
- Under the labelling statutes, there are provisions for product seizure as well as potential criminal penalties for contravening either labelling Act mentioned above, which could result in fines of up to \$10,000, as well as imprisonment of up to one year. **11**