



## Substantiating Environmental Claims in the Cleantech Industry

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By Ian McMillan, Ainslie Parsons and Amanda Branch

*“100% sustainable!”*

*“Our product has the lowest environmental impact of any product on the market today!”*

As consumers become increasingly concerned about the environmental impact of the products they purchase, companies often seek to emphasize the environmental friendliness of their offerings. While accurate, substantiated claims about the environmental effect of a product may be permissible, “greenwashing”, the provision of misleading information about the environmental soundness of a company’s products and processes, must be avoided.

Clean technology (“cleantech”) solutions are a key factor in driving sustainability and improved environmental outcomes. Efforts are ongoing to improve environmental outcomes by, for example, reducing carbon and greenhouse gas emissions, and reducing water, air and land impacts. We have previously [written](#) about the focus of the Canadian government on cleantech and the investment it is making in the industry, as well as CIPO’s Green Technologies Program which is designed to fast-track prosecution of [patent](#) applications relating to green technologies.

While “greenwashing” itself is not new, there has been an increased focus of late on the dangers of this practice. Indeed, as the acting President of the International Consumer Protection and Enforcement Network (ICPEN; an organization composed of consumer protection authorities from over 65 countries) from July 1, 2020 to June 30, 2021, the Canadian Competition Bureau has [announced](#) that one of the themes they will be focusing on is misleading environmental claims and misleading activities that attempt to exploit consumer concern about the environment.

In Canada, claims on labels and marketing materials must comply with a number of federal statutes including, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Competition Act*. These Acts contain general prohibitions against the making of false or misleading statements. The *Competition Act* also prohibits the making of representations that are not based on “adequate and proper” testing. What constitutes “adequate and proper” testing is not defined in the *Competition Act*, but rather is determined on a case-by-case basis. Such testing must be conducted prior to the representation is made publicly, and the onus is on the advertiser to prove the adequacy and propriety of the testing. To determine whether a claim is false or misleading in a material respect, both the general impression conveyed by a claim, as well as its literal meaning, are taken into account.

To help businesses ensure their environmental claims are not misleading, the Competition Bureau has published a [guide](#) to environmental claims on labels and marketing materials (Environmental Claims: A Guide for Industry and Advertisers). The Guidelines are based on the CAN/CSA ISO 14021-00 standards and are consistent with the federal statutes. The Guidelines discourage vague or non-specific claims like “environmentally friendly” or “safe for the environment” preferring specific and qualified statements that describe the environmental feature or benefit. For example, specific claims like “this product uses 20% less electricity in normal use than our previous model” is preferred over broad claims like “this product uses green electricity” and instead recommends more. The Guidelines also discourage advertisers from making claims of a unique feature that generally applies to the product category. For example, it would be misleading to make a substance “free” claim (e.g., lead free, pesticide free) if the substance was never present, or is no longer present, in the product category.

The Guidelines encourage businesses to consider making any claims based on third party certifications or standards where



available. For example, instead of making a claim like “this wood is sustainable”, the Guidelines state that it is preferable to make a claim that refers to a specific third-party certification or standard such as “this wood comes from a forest that was certified to a sustainable forest management standard (e.g., Sustainable Forestry Initiative, Forest Stewardship Council, etc.).”

Should a claim contravene the Guidelines, the Competition Bureau is responsible for investigating and commencing actions. In addition, individuals may file private complaints against companies or individuals that they believe have violated the statutes listed above.

In view of the increased attention to “greenwashing” by both the public and the Competition Bureau, companies are advised to carefully scrutinize any environmental claims on their labels and marketing materials to ensure that they are accurate, substantiated and not misleading.

For guidance on making environmental claims in the cleantech industry, please contact a member of our [Cleantech](#) or [Regulatory, Advertising & Marketing](#) Groups.

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