

Greenpeace Canada Submission to Competition Bureau on the new greenwashing provisions in the *Competition Act*

Greenpeace Canada strongly supports the new greenwashing provisions in the *Competition Act*, in particular the requirement that businesses have testing or substantiation to support certain environmental claims. The Greenpeace network has extensive experience addressing greenwashing, both in Canada and internationally, and we, as Greenpeace Canada, would like to offer some recommendations on how these new provisions should be interpreted based on this experience.

Table of Contents

1. Background on Greenpeace Canada and Action on Greenwashing
2. Views of Canadians on Greenwashing
3. Greenwashing and Anti-Competitive Behaviour
4. 74.01(1)(b.1): Product Claims
5. 74.01(1)(b.2): Benefits of a business or business activity claim
6. Final Thoughts from Greenpeace Canada to the Competition Bureau

1. Background on Greenpeace Canada and Action on Greenwashing

Greenpeace Canada has had a long history of investigating and calling out greenwashing, whether it be the source of paper products from the Canadian Boreal forest, seafood supply chains, or the recyclability of plastic bottles. Much of our campaigning and advocacy work has revolved around holding business accountable to their environmental claims they've made to promote their products or business interests. As an example, in the late-1990s Greenpeace Canada ran a "Play Safe" campaign against the use of PVCs in children's toys including soothers and teethers due to high levels of harmful chemicals contained within them.¹ At the time Greenpeace was criticized by industry and promoted these products as safe but in subsequent years PVCs have been banned by the Canadian government.

¹ W.T. Stanbury (2000) *Safe Enough? Managing Risk and Regulation*. Page 107: Much Ado about (Almost) Nothing Greenpeace and the Allegedly Toxic Teethers and Toys. *The Fraser Institute*. <https://www.fraserinstitute.org/sites/default/files/Ch2-much-ado-about-nothing-greenpeace.pdf>

More recently in 2014 we filed a complaint with Advertising Standards Canada with respect to what we argued was false advertising by the group Friends of Science, but they referred us to the Competition Bureau on the grounds that an adjudication of this matter would require assessment of scientific evidence that was beyond the resources of their volunteer Council.² A related complaint was subsequently filed with the Competition Bureau in 2015.³

In 2021, Greenpeace Canada filed a complaint with the Competition Bureau over Shell's "Drive Carbon Neutral" ad campaign.⁴ That complaint argued that Shell's campaign was misleading, and cited the company's inability to prove its program could actually offset fossil fuel emissions.

In 2023, we filed a complaint with the Competition Bureau regarding a national advertising campaign from a coalition of the six largest oil sands producers under the banner of the Pathways Alliance. We argued that the Alliance had been running a misleading advertisement campaign in order to influence federal regulations and manipulate public support for oil sands development.⁵

Over the last 18 months, Greenpeace Canada has also published reports assessing whether Canada's big five banks⁶ or three major oil sands companies⁷ meet international standards set by the United Nations (for banks) and International Energy Agency (for oil companies) for being able to claim that they are on the path to net zero greenhouse gas emissions by 2050.

Beyond using legal and regulatory mechanisms to hold corporations accountable, Greenpeace Canada campaigns publicly to call out corporations on their false and/or misleading claims about their products, practices and services.

² Communication with the Advertising Standards Council (ASC) is deemed confidential and legally privileged so cannot be posted publicly. We also learned that there is no mechanism by which the ASC can enforce its rulings.

³ The complaint is available at

<https://ecojustice.ca/wp-content/uploads/2015/12/Dec.-3-2015-.Application-to-Commissioner-of-Competition-re-Clima-te-science-misrepresentations.submitted.pdf>

⁴ Dina Ni (10 November, 2021). "Greenpeace Canada files Competition Bureau complaint against misleading Shell advertising."

<https://www.greenpeace.org/canada/en/press-release/50740/driving-carbon-neutral-with-fossil-fuels-greenpeace-canada-files-competition-bureau-complaint-against-misleading-shell-advertising/>

⁵ Greenpeace Canada (March 2023). "Application for Inquiry into false and misleading representations made by the Pathways Alliance about their climate action and the climate impact of their business."

<https://www.greenpeace.org/static/planet4-canada-stateless/2023/03/8c835b91-amended-competition-bureau-submission-for-pathways-alliance-ad-campaign.pdf>

⁶ Keith Stewart (June 2023). *What to do about Canadian banks 'quiet quitting' their climate commitments?* Greenpeace Canada.

<https://www.greenpeace.org/static/planet4-canada-stateless/2023/06/6da352b8-cdn-banks-quiet-quitting-climate-commitments-greenpeace-june-2023.pdf>

⁷ Keith Stewart (March 2024). *Walking the Talk: Why RBC is obligated to stop funding some of its biggest oil company clients.* Greenpeace Canada and Greenpeace Canada Educational Fund.

<https://www.greenpeace.org/static/planet4-canada-stateless/2024/03/2ea3392a-walking-the-talk-en.pdf>

1. Views of Canadians on Greenwashing

Canadians overwhelmingly support the core of the new federal anti-greenwashing legislation. A survey conducted for Greenpeace between September 16 and September 18, 2024 among a representative sample of 1,515 online Canadians who are members of the Angus Reid Forum found that 93% agree with the statement that “Companies should face penalties for making environmental claims that they can’t prove are true” and 66% strongly agree with this statement. There was no significant difference between ages and gender in support for the statement.

The survey also found that 31% of Canadians have heard about the new anti-greenwashing laws passed by the Government of Canada, with awareness highest in BC (39%) and Alberta (41%), and lowest in Saskatchewan, Manitoba, and Quebec (all 26%). When asked whether the removal of environmental claims from oil companies' websites after the anti-greenwashing law passed increases or decreases trust in the environmental efforts of these companies:

- 9% say it increases their trust.
- 40% say it decreases their trust.
- 38% say it has no impact on their trust.
- Younger Canadians aged 18-34 (48%) are by far the most likely age group to say this decreases their trust.

2. Greenwashing and Anti-Competitive Behaviour

Businesses stand to gain from anti-competitive behaviour by posing and posturing as environmentally friendly, sustainable, or climate friendly among other terms to broadcast that their activities and/or their products will be able to reduce emissions, conserve natural resources or benefit the natural environment and therefore support the wellbeing of current and future generations.

Beyond selling products, these claims are often an attempt to shape how policy makers and the public view their business and thereby empower the business further through government funding or other political bolstering. If a businesses' comments are false or misleading, they unfairly gain an advantage (political support, social license etc) over their competition and risk not only undermining businesses actually engaging in these practices, but additionally contributing to the harm to our environment instead of helping it. “As Canadians seek out eco-conscious products and services[,] greenwashing results in people making less educated choices for themselves and their families. It means businesses that do offer genuinely sustainable products may lose potential customers to dirtier competitors[,]” thereby stifling green innovation and competitive behaviour.⁸ Investors want to know whether a business' practices

⁸ Carl Meyer & Fatima Syed (February 9 2024) “What do ‘clean’ and ‘green’ actually mean? Canadian watchdog receives complaints about environmental claims by Shell, RBC, Enbridge?” *The Narwhal*. <https://thenarwhal.ca/competition-bureau-greenwashing-investigations/>

are impacting their investment returns while stakeholders and the public want to know what business to support in the face of climate change and environmental issues.

For example a fast fashion company may promote an in-store recycling program giving the impression that much of their products are being returned and recycled but upon further investigation it may turn out that due to the composition of the products the recycling solutions were not actually available and only recycled a fraction of what was collected. Consumers need the full, honest and transparent picture readily available to them about the environmental benefits that businesses claim that their products and/or services provide in order to make decisions.

3. 74.01 (1) (b.1): Product Claims

1. What kinds of claims about environmental benefits are commonly made about products or services in the marketplace? Why are these claims more common than others?

Greenwashing claims span countless products across countless industries. There are some claims of environmental benefits that are commonly made about products or services in the marketplace because they are familiar to consumers or consumers may impute what the product is trying to convey. People want to feel good about their consumption and products or services and the marketplace will cater to that. Both WWF⁹ and Ecojustice¹⁰ set out great guides for spotting greenwashing buzzwords. The FTC also provides a guide for the use of environmental marketing claims that the Bureau can refer to when outlining its own guidelines.¹¹

Below are examples of types of common claims as discussed by the FTC. On the website itself are the FTC standards for interpreting and substantiating these claims and this is an excerpt of common claims plus examples (some included and amended by Greenpeace Canada).

- Overstatement of an environmental attribute
 - Example: An area rug is labeled “50% more recycled content than before.” The manufacturer increased the recycled content of its rug from 2% recycled fiber to 3%. Although the claim is technically true, it likely conveys the false impression that the manufacturer has increased significantly the use of recycled fiber.
- Comparative claims
 - Example: An advertiser claims that its packaging creates “less waste than the leading national brand.” The advertiser implemented the source reduction several years ago and supported the claim by calculating the relative solid waste

⁹World Wildlife Federation. WWF Guide to Greenwashing <https://www.wwf.org.uk/learn/guide-to-greenwashing>

¹⁰ Ecojustice (March 2024). Words to watch: A marketer’s guide to spotting greenwashing in Canada. <https://ecojustice.ca/news/words-to-watch-a-marketers-guide-to-spotting-greenwashing-in-canada/>

¹¹ Code of Federal Regulations: PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS. 16 CFR Part 260 <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-260>

contributions of the two packages. The advertiser should have substantiation that the comparison remains accurate.

- General Environmental Benefit claims
 - These claims can use vague buzzwords, unqualified environmental claims, imply specific benefits while omitting important information
 - Example: The brand name “Eco-friendly” likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive. A claim, such as “Eco-friendly: made with recycled materials,” would not be deceptive if: (1) The statement “made with recycled materials” is clear and prominent; (2) the marketer can substantiate that the entire product or package, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and (4) the advertisement's context does not imply other deceptive claims.
- Carbon Offsets
 - Example: An offset provider claims that its product “will offset your own ‘dirty’ driving habits.” The offset is based on methane capture at a landfill facility. State law requires this facility to capture all methane emitted from the landfill. The claim is deceptive because the emission reduction would have occurred regardless of whether consumers purchased the offsets.
- Certifications and Seals of Approval
 - An advertisement for paint features a “GreenLogo” seal and the statement “GreenLogo for Environmental Excellence.” This advertisement likely conveys that: (1) the GreenLogo seal is awarded by an independent, third-party certifier with appropriate expertise in evaluating the environmental attributes of paint; and (2) the product has far-reaching environmental benefits. If the paint manufacturer awarded the seal to its own product, and no independent, third-party certifier objectively evaluated the paint using independent standards, the claim would be deceptive. The claim would not be deceptive if the marketer accompanied the seal with clear and prominent language: (1) indicating that the marketer awarded the GreenLogo seal to its own product; and (2) clearly conveying that the award refers only to specific and limited benefits.
- Compostable Claims
 - Example: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive, provided the manufacturer has substantiation that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If so, the extent of local municipal or institutional composting facilities is irrelevant.
- Degradable Claims
 - Example: A marketer advertises its trash bags using an unqualified “degradable” claim. The marketer relies on soil burial tests to show that the product will decompose in the presence of water and oxygen. Consumers, however, place

trash bags into the solid waste stream, which customarily terminates in incineration facilities or landfills where they will not degrade within one year. The claim is, therefore, deceptive.

- Free-of Claims
 - Example: A package of t-shirts is labeled “Shirts made with a chlorine-free bleaching process.” The shirts, however, are bleached with a process that releases a reduced, but still significant, amount of the same harmful byproducts associated with chlorine bleaching. The claim overstates the product's benefits because reasonable consumers likely would interpret it to mean that the product's manufacture does not cause any of the environmental risks posed by chlorine bleaching. A substantiated claim, however, that the shirts were “bleached with a process that releases 50% less of the harmful byproducts associated with chlorine bleaching” would not be deceptive.
- Non-Toxic Claims
 - Example: A marketer advertises a cleaning product as “essentially non-toxic” and “practically non-toxic.” The advertisement likely conveys that the product does not pose any risk to humans or the environment, including household pets. If the cleaning product poses no risk to humans but is toxic to the environment, the claims would be deceptive.
- Ozone Safe/Friendly
 - Example: An aerosol air freshener is labeled “ozone-friendly.” Some of the product's ingredients are volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation. The claim likely conveys that the product is safe for the atmosphere as a whole, and, therefore, is deceptive.
- Recyclable Claims
 - Example: A plastic product or type of packaging has the recyclable symbol on it with, or without, a corresponding number. Consumers interpret this as being able to place this product in their blue bin for collection or other recycling program. However, despite a product or type of packaging being able to be recycled in theory, that does not mean it can be recycled in that municipality. This is misleading to consumers and perpetuates industry misinformation.
 - Example: A packaged product is labeled with an unqualified claim, “recyclable.” It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim likely conveys that both the product and its packaging, except for minor, incidental components, can be recycled. Unless the manufacturer has substantiation for both messages, it should clearly and prominently qualify the claim to indicate which portions are recyclable.
- Recycled Content Claims
 - Example: Fifty percent of a greeting card's fiber weight is composed from paper that was diverted from the waste stream. Of this material, 30% is post-consumer and 20% is pre-consumer. It would not be deceptive if the marketer claimed that

the card either “contains 50% recycled fiber” or “contains 50% total recycled fiber, including 30% post-consumer fiber.”

- Further, recycled fiber can consist of post-consumer material or post-industrial material, with the former having a higher environmental benefit.¹² With such claims specifics should be provided in such cases.
- In plastic products, brands market packaging as containing recycled content often without specifics on the recycled content origin or percentage. Recycled plastic products can be more toxic than virgin products, and therefore associated claims of environmental benefit are misleading.¹³ Similarly, claims of recycled content associated with reduced waste generation or pollution are misleading due to the end product’s negative environmental impacts mirroring non-recycled products. Greenwashing complaints and legal action have been taken in other jurisdictions.¹⁴
- Refillable and Reusable Claims
 - Example: A container is labeled “refillable three times.” The manufacturer has the capability to refill returned containers and can show that the container will withstand being refilled at least three times. The manufacturer, however, has established no collection program. The unqualified claim is deceptive because there is no means to return the container to the manufacturer for refill.
- Renewable Energy Claims
 - Example: A marketer advertises its clothing line as “made with wind power.” The marketer buys wind energy for 50% of the energy it uses to make the clothing in its line. The marketer’s claim is deceptive because reasonable consumers likely interpret the claim to mean that the power was composed entirely of renewable energy. If the marketer stated, “We purchase wind energy for half of our manufacturing facilities,” the claim would not be deceptive.
- Renewable Materials Claims
 - Example: A marketer makes the unqualified claim that its flooring is “made with renewable materials.” Reasonable consumers likely interpret this claim to mean that the flooring also is made with recycled content, recyclable, and biodegradable. Unless the marketer has substantiation for these implied claims, the unqualified “made with renewable materials” claim is deceptive. The marketer could qualify the claim by stating, clearly and prominently, “Our flooring is made from 100 percent bamboo, which grows at the same rate, or faster, than we use it.” The marketer still is responsible for substantiating all remaining express and reasonably implied claims.
- Source Reduction Claims

¹² Government of Canada (2023) Recycled content and labelling rules for plastics: Regulatory Framework Paper. <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/recycled-content-labelling-rules-plastics.html>; Gustav Sandin, Greg M. Peters (7 March 2018) *Environmental impact of textile reuse and recycling – A review*. Journal of Cleaner Production, Volume 184, 2018, Pages 353-365, ISSN 0959-6526. <https://www.sciencedirect.com/science/article/pii/S0959652618305985>

¹³ Plastic Pollution Coalition (4 June 2024) *Plastic “Recycling” is a False Solution to Plastic Pollution*.

<https://www.plasticpollutioncoalition.org/blog/2024/6/4/plastic-recycling-is-a-false-solution-to-plastic-pollution>

¹⁴ Theo Leggett & Nick Edser (7 November 2023). “Coca-Cola and Nestle accused of misleading eco claims.” <https://www.bbc.com/news/business-67343893>

- Example: An advertiser claims that disposal of its product generates “10% less waste.” The marketer does not accompany this claim with a general environmental benefit claim. Because this claim could be a comparison to the advertiser's immediately preceding product or to its competitors' products, the advertiser should have substantiation for both interpretations. Otherwise, the advertiser should clarify which comparison it intends and have substantiation for that comparison. A claim of “10% less waste than our previous product” would not be deceptive if the advertiser has substantiation that shows that the current product's disposal contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the product.
- Responsibly sourced claims
 - Example: Various fishing, aquaculture and seafood companies claim their products are responsibly sourced on packaging or promotional materials. Consumers likely understand this to mean the species was caught or fished without harm to the environment or people; however, companies do not use it consistently and there is no set standard. Clover Leaf Seafoods, a company known to source from destructive fisheries/farms and whose parent company is linked to human rights concerns displays responsibly sourced on its products¹⁵.
 - These claims are also made for forest derived and meat products.
- Sustainably Sourced
 - Various companies that source nature-derived materials claim their products are sustainably sourced without being able to substantiate the claims. Companies across sectors have been challenged on their sustainability or corporate social responsibility (CSR) claims by Greenpeace, other organizations, Indigenous groups, scientists and other stakeholders; however, they are rarely or not held accountable for claims made. This undermines companies that do operate more sustainably from an evidence-based standpoint. The term sustainable does not have an agreed upon definition within or across industries and this contributes to its misuse.¹⁶ In a biodiversity and climate crisis, it is critical that companies meet strict environmental and social responsibility criteria that allows global biodiversity protection and restoration, zero waste, circularity and climate goals to be met, while upholding human and Indigenous rights.
- Plant-/bio-based
 - Example: Companies have created single-use products and/or packaging derived from some or almost all plant/bio-based material. They usually market and label the products or packaging as made from plants, biodegradable, plant-based, and/or compostable. Consumers are led to believe that the product or packaging does not contain plastic and is an alternative to single-use plastic. However, many bio-based products or packaging still contain fossil fuels or cause similar

¹⁵ Greenpeace East Asia (September 2022). *Fake My Catch: The Unreliable Traceability in Our Tuna Cans*. <https://www.greenpeace.org/static/planet4-eastasia-stateless/2022/09/2a3caec4-online-version-en-fakemycatch.pdf>

¹⁶ Greenpeace UK. “Sustainability A simple guide to a vital idea.” <https://www.greenpeace.org.uk/challenges/sustainability/>

pollution or waste problems to plastic.¹⁷ Depending on the source material they may also contribute to deforestation and problems associated with industrial agriculture.¹⁸¹⁹

2. Are there certain types of claims about environmental benefits of products or services that are less likely to be based on adequate and proper testing? Is there something about those types of claims that makes them harder to test?

Unfortunately a lot of claims may be based on inadequate and proper testing, or no testing at all. All when adequate and proper testing does in fact exist. Businesses may bank on the knowledge that the average consumer (and often sophisticated ones too) will not have the time and energy to dig into the claims and instead trust the business to be providing them accurate information about their products. Therefore, it is important that the Bureau develop principles for adequate and proper testing standards more generally. In some instances, the particular standard being used to measure the environmental benefit is important whereas in other instances it is important that businesses are guided to know what types of testing standards are adequate to rely on in order to not only comply with legislation but in fact, create the environmental benefit.

The Competition & Markets Authority in the UK has provided guidance on Making Environmental Claims on Goods and Services that the Bureau can look to. The UK guidance²⁰ sets out principles which are designed to help businesses comply with the law. It explains each of these principles. It gives examples of how each of them applies and more detailed case studies where multiple principles apply. The guidance also sets out the legal framework on which these principles are based.

Carbon Offsets

¹⁷ Packaging Europe (19 November 2021). "An expert view on Coca-Cola's new 100% plant-based bottle." <https://packagingeurope.com/features/an-expert-view-on-coca-colas-new-100-plant-based-bottle/7644.article>

¹⁸ Greenpeace USA (30 September 2019). *Throwing Away the Future: How Companies Still Have It Wrong on Plastic Pollution Solutions*.

<https://greenpeace.org/usa/wp-content/uploads/2019/09/report-throwing-away-the-future-false-solutions-plastic-pollution-2019.pdf>

¹⁹ Beyond Plastics. "The False Promise Of Bioplastics and Compostable Plastics."

<https://www.beyondplastics.org/fact-sheets/bad-news-about-bioplastics>

²⁰ Competition and Markets Authority (20 September 2021). "Guidance Making environmental claims on goods and services."

<https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims-on-goods-and-services>

As discussed in the complaint that Greenpeace Canada brought to the Competition Bureau regarding Shell's 'Drive Carbon Neutral' ad campaign,²¹ carbon offsets are highly problematic. To be considered valid, they need to meet four criteria:

1. Additional: This involves several key tests:
 - a. Is the project not already mandated under existing laws or regulations?
 - b. Is the activity already "widespread" and effectively a business-as-usual (BAU) practice within the region?
 - c. Will the offsets truly help overcome either financial, technological, or institutional barriers to enable the project to go forward?
2. Permanence: To limit climate change, greenhouse gas emissions have to be kept out of the atmosphere forever. That can be a difficult action to guarantee especially when the project involves ecosystems and natural cycles that are beyond human control.
3. No double-counting: Once an entity (e.g. a company) purchases an offset and counts it on their carbon balance sheet, the underlying emissions reduction should not be sold or transferred for use on another entity's (e.g. a government) carbon balance sheet.
4. No leakage: An environmental rule to stop an action and avoid emissions in one location can sometimes drive people to go to another location where they can continue the action which results in the emissions occurring anyways. For example, in the case of forest offsets leakage can occur when an area of forest is designated for protection and leads to increased logging in unprotected areas.

Very few projects can meet these criteria, and it will become even more difficult to meet the additionality requirement as climate policies address more and more sectors (so fewer processes are not mandated under existing laws) and zero carbon processes become business as usual. Forest-based offsets have particular challenges and should not be accepted, as we argued in our Competition Bureau complaint regarding Shell's Drive Carbon Neutral program.

3. What should the Bureau consider when it evaluates whether testing to support claims about the environmental benefits of products or services is "adequate and proper"?

There is no need for the Bureau to necessarily reinvent the wheel but look to existing consumer protection laws and legal standards to create a framework for testing whether the products or services are adequate or proper. Following clear protocols should allow businesses to test their products and services and decide how to market them accordingly.

The Bureau may be included to interpret adequate and proper testing in the context of whether the interpretation of the claims are reasonable. "In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and

²¹ Greenpeace Canada (2021). "Driving carbon-neutral" is impossible with fossil fuels: Complaint to the Competition Bureau of Canada against Shell's misleading promotion of forest-based "offsets" as sustainable, climate action. URL: <https://www.greenpeace.org/canada/en/press-release/50740/driving-carbon-neutral-with-fossil-fuels-greenpeace-canada-files-competition-bureau-complaint-against-misleading-shell-advertising/>

evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.”²²

As provided above, the UK CMA guidance contains principles that can be considered as a starting point for the Bureau in establishing their own. Particularly looking to the section entitled “Claims Must be Substantiated”

Claims must be substantiated

Most environmental claims are likely to be objective or factual claims that can be tested against scientific or other evidence. Given the requirement that claims must be truthful and accurate, businesses should have evidence to support them.

What this means is:

Some advertising claims can be purely subjective or hyperbole. In those cases, consumers may recognise them as such or treat them as advertising ‘puff’ that they do not take literally. Consumers are unlikely to expect those claims to be based on particular evidence.

The claims businesses commonly make about environmental impacts are likely to be different. They are likely to relate to ascertainable matters that can be assessed against the scientific or other evidence.

Businesses should therefore be able to back up their claims. They should hold robust, credible, relevant and up to date evidence that supports them. Where they compare their products or activities to one or more competitor’s, that evidence should cover all of them.

When investigating potentially misleading claims, the CMA or other enforcers can seek evidence from businesses to support their claim(s). If enforcement action ends up before the courts, the courts can require a business to provide evidence of the accuracy of claims. If a business does not provide it, or it is inadequate, the court may consider the claim inaccurate.

Environmental claims which are made with no regard to whether the business actually knows there is evidence to support them are also likely to be problematic, even if they turn out to be true. The nature of most environmental claims means consumers are likely to expect them to be based on supporting evidence. Where they are not, businesses are likely to have fallen below the standards of diligence and care consumers are entitled to expect of them.

Before making a claim, you should ask yourself:

Is the claim you are making subjective or objective?

²² Code of Federal Regulations: PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS. 16 CFR Part 260 <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-260>

Most environmental claims are likely to be about things that can be measured against the evidence. They are likely to be objective or factual claims, or based on underlying facts, that are capable of substantiation. That is likely to apply even to claims that products, for example, are the 'cleanest,' 'safest' or 'best' for the environment. Those are matters which can be tested against a range of measures for which evidence can be gathered.

Do you have appropriate evidence to support your claim?

When thinking about making, or making, a green claim, businesses should think carefully about whether they have appropriate evidence to support it. What is required will depend on the circumstances and may vary depending on the nature of the product and the claim being made.

In general, the evidence should be robust, credible and up to date. It may come from published research, for example, or studies a business has commissioned or conducted. The more independent and widely supported the evidence, the more likely it will be to support a claim.

Broader and more ambitious claims may be more difficult to substantiate, particularly where they are also ambiguous. For example, a claim a product is 'environmentally friendly' may refer to a number of environmental aspects, such as its impacts on the air, soil and water, its packaging, its components and production processes, its use and/or its disposal. It is likely to suggest the product has a positive overall effect on the environment (or no negative one). A high level of strong evidence is likely to be required to substantiate such a claim.

Is the evidence based on accepted science or understanding or is it contested or unproven?

Where a claim is not based on accepted scientific or other evidence it is likely to be more difficult to substantiate. Claims based on material that departs significantly from accepted scientific understanding or methodology, or for which there is conflicting evidence, are more likely to be misleading.

Has the evidence been subject to independent scrutiny?

Being able to demonstrate that the evidence for a claim has been subjected to independent scrutiny, particularly where it is complex or controversial, may help ensure that it is robust.

Is the evidence up to date?

It is also important to keep claims under review and it may be necessary to revisit them, and the evidence that supports them, over time. Keeping evidence up to date is likely to be particularly important where claims are maintained for longer periods or in areas where

scientific understanding or consumers' expectations are developing quickly.

Does the evidence reflect 'real world' conditions?

If you are using, for example, the results of laboratory tests to support a claim about the way in which a product might break down over time, does this reflect conditions that will generally or normally be experienced by consumers in the 'real world'? If a claim is based on evidence where the conditions are unlikely to be replicated in normal day-to-day use, or only replicated in very specific circumstances, then it could be misleading.

Is evidence available to or from others in your supply chain?

Businesses, including manufacturers and those further up the supply chain, that engage in commercial practices directly connected with promoting the sale or supply of products to consumers are responsible for the impact of those practices.

Where one business manufactures or supplies products to another, whether for resale or incorporation into other products, both businesses may be liable for claims and may have to substantiate them. Businesses should make sure they can do so. That may mean ensuring they obtain evidence from others in the supply chain.

Is the evidence publicly available and can consumers verify the claims?

Claims are less likely to mislead where the supporting evidence is publicly available and it is clear where and how consumers can verify the claims. This will help those who are interested in understanding a claim in more detail. Where a claim makes specific reference to the evidence that supports it, for example, to a study or survey, this should be publicly available in a way that is easily accessible to consumers (see Principle (c)).

4. What challenges may businesses and advertisers face when complying with this provision?

The challenge for business will be aligning and balancing the promotion of their business with the reality of their environmental claims. For businesses this means:

- Creating (at first instance) advertising/promotional/marketing language to reflect the reality of their environmental claims. Businesses should do their due diligence

before producing misleading ads that would then require amending them when the damage (being that the consumer is misled) is already done.

- Changing their practices and products. For example, if Nestle²³ is pledging to eradicate child labour they must then take the steps to identify all the farms from which their cocoa comes from and whether child labour was used in producing it. This costs money, time and effort into actualizing these goals that goes beyond lip service. Practices need to change to ensure that the environmental goals are met. Actions must line up with words.
- Removing ambiguous or uncertain claims. If businesses are unsure whether the claims are accurate or they can live up to their commitments, they should remove them. Backtracking on existing claims may mean that businesses and advertisers may lose the confidence of the public and consumers and must manage their expectations.

This does not mean businesses cannot tout their progress on sustainability but they should be honest and truthful claims.

5. What other information should the Bureau be aware of when thinking about how and when to enforce this provision?

Below there is a section provided on how other jurisdictions have handled greenwashing that the Bureau can turn to for further guidance.

4. 74.01(1)(b.2): Benefits of a business or business activity claim

We congratulate legislators for clarifying the responsibility of businesses who make claims about the nature of the business rather than just the characteristics of a specific product. We believe this is a vitally important development corporate competition.

1. What kinds of claims about environmental benefits are commonly made in the marketplace about businesses or business activities? Why are these claims more common than others?

Below are some examples of claims and narratives that as Greenpeace Canada we encounter when we are engaging in corporate accountability work.

- **Net Zero**

Companies are increasingly pledging to be 'net zero' by 2050 (net zero is sometimes described as carbon-neutral). These claims are an attempt to shape how the public and policy makers view their business and should be examined in light of Canada's national commitment. Many

²³ Peter Whoriskey, & Siegel, R. (5 June 2019). Cocoa's child laborers. Washington Post. <https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/>

types of companies are making these pledges, and of them the highest profile, and most controversial, are Canada's biggest banks and oil sands companies.

We are in the midst of what the International Energy Agency (IEA) calls the energy transition, which involves a shift from fossil fuels to non-emitting sources of energy as well as enhanced energy efficiency. In its Global Energy Transitions Stocktake, the IEA notes that "Reaching net zero emissions requires a complete transformation of how we power our daily lives and the global economy."²⁴

There is, in effect, a global competition between fossil fuels and non-emitting sources of energy like wind and solar power. This translates into a struggle between powerful oil, gas and coal companies entrenched at the heart of the current energy model, and the clean energy firms and community-based organizations that will replace them.

It is not an exaggeration to say that this is the most important corporate competition issue in the world today. So efforts to shape public discourse and policy on this issue in a way that slows (or accelerates) the transition are significant both economically and in terms of the future of our civilization.

In 2021, the Government of Canada enshrined its commitment to achieve net-zero greenhouse gas emissions by 2050 in legislation (the *Canadian Net-Zero Emissions Accountability Act*) and included this commitment as an element of Canada's international obligations under the United Nations Framework Convention on Climate Change.²⁵ The federal government subsequently launched the Net-Zero Challenge, which encourages businesses to develop and implement credible and effective plans to transition their facilities and operations to net-zero emissions by 2050.²⁶

There are currently 216 participants in the Net Zero Challenge but the highest profile, and most controversial, are Canada's biggest banks and oil sands companies. Canada's six largest banks (RBC, TD, CIBC, BMO, Scotiabank and National Bank) all made public net zero commitments in October 2021 as they joined the United Nations-organized Net-Zero Banking Alliance (NZBA), a global, industry-led initiative to accelerate and support efforts to address climate change.²⁷

²⁴ International Energy Agency (2023). Global Energy Transitions Stocktake: Tracking progress toward the Paris Agreement. URL: <https://www.iea.org/topics/global-energy-transitions-stocktake>

²⁵ Government of Canada (2022). Canada's Eighth National Communication and Fifth Biennial Report on Climate Change (2022). URL: <https://www.canada.ca/en/environment-climate-change/services/climate-change/greenhouse-gas-emissions/fifth-biennial-report-climate-change-summary.html>

²⁶ Government of Canada (2022). The Net Zero Challenge. URL: <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/challenge.html>

²⁷ BMO Financial Group (October 15, 2021). "Six of Canada's Largest Banks Join United-Nations-convened Net-Zero Banking Alliance". URL: <https://www.newswire.ca/news-releases/six-of-canada-s-largest-banks-join-united-nations-convened-net-zero-banking-alliance-801190199.html>

In a 2023 report co-published by Greenpeace Canada and the Canadian Association of Physicians for the Environment, we highlighted how contemporary fossil fuel greenwashing is particularly insidious because so much of it falls under what is called “issue or advocacy advertising” or “market-place advocacy”. This type of advertising—in contrast to ads that promote a product—aims to influence a legislative outcome or a policy debate.

In that report, we found that there are three key consequences of this kind of greenwashing:

1. It enables industry to cover up the harms of their products. Just like tobacco companies lied about the health risks of smoking, fossil fuel companies like Exxon denied climate change for decades. Now, people here in Canada and around the world are paying the price as they lose their lives and homes in climate disasters and to fossil fuel pollution.
2. By normalising fossil fuels, greenwashing delays the much-needed shift to more sustainable energy options. Industry knows that the public cares about the environment. By falsely positioning itself as part of the solution, it can lead consumers to erroneously believe that fossil fuels have a place in a climate-safe future.
3. It delays policy action. Advocacy advertising aimed at influencing decision-makers can contribute to governments dragging their heels on climate action and help lock in subsidies that keep big polluters going. Together with the above tactic, this dictates what energy options are available, cheap, desirable and convenient for consumers.

Greenpeace Canada’s 2023 complaint to the Competition Bureau about the Pathways Alliance illustrates the critical importance of applying competition standards to businesses and business activities. In June 2021, five oil companies representing 90 percent of Canadian oil sands production (Suncor, Cenovus, CNRL, Imperial Oil and MEG Energy) announced their commitment to net zero²⁸ under the banner of what came to be called the Pathways Alliance. ConocoPhillips joined the alliance in November 2021, bringing the total to 95% of oil sands production.²⁹ The Pathways Alliance launched a massive, widespread ad campaign claiming that together these companies were “clearing the air” and on a “path to net zero” while neglecting to count the full lifecycle of their products, and relying heavily on unbuilt and untested technologies to reduce their emissions. These claims weren’t made about a particular product or products, but about the businesses and their activities as a whole.

- **Justification for a business or industry’s existence**

A common claim is that a business or an industry at large is critical in solving other societal or environmental issues and therefore: 1) business as usual is justifiable and outweighs the harm

²⁸ Suncor Energy (June 9, 2021). “Canada’s largest oil sands producers announce unprecedented alliance to achieve net zero greenhouse gas emissions.”
<https://www.globenewswire.com/news-release/2021/06/09/2244216/0/en/Canada-s-largest-oil-sands-producers-announce-unprecedented-alliance-to-achieve-net-zero-greenhouse-gas-emissions.html>

²⁹ Oil Sands Pathways to Net Zero (November 3, 2021). “ConocoPhillips Canada joins Oil Sands Pathways to Net Zero alliance.”
<https://www.newswire.ca/news-releases/conocophillips-canada-joins-oil-sands-pathways-to-net-zero-alliance-893490630.html>

of the business' environmental impact or 2) their actions are the solution to our environmental/climate crisis and they are in fact the only sustainable option (colloquially put: there is no alternative). If businesses are successful in presenting themselves as the only viable option in tackling the environmental and climate crisis it may undermine competition that are in fact better alternatives.

Below are some direct examples of this:

PLASTIC SAVES LIVES: The plastic industry has been under scrutiny for misleading claims about the merits of plastic including most recently with the Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC) launching billboards and other ads in Ottawa to coincide with the UN Global Plastics Treaty negotiations. Such broad claims do not reflect the well-documented harm and loss of life also caused by plastic across its life cycle.³⁰³¹³²³³

CANADIAN FORESTRY IS SUSTAINABLE FORESTRY: The Forest Products Association of Canada (FPAC) claims that "Canada's forest products industry is internationally recognized as an environmental leader. Canada's forestry industry is committed to clean and sustainable solutions that protect our environment, fight climate change, and provide Canadians with quality lumber and paper products that build toward a more sustainable future." At the same time this narrative is called into question by peer-reviewed science that finds Canada's forestry sector is responsible for far more greenhouse gas emissions than show up in official tallies, potentially leading to policies that aren't in line with the country's climate goals, a new study suggests.³⁴ According to the study's authors, the underreporting of emissions from the forestry sector comes from failing to account for all the carbon emissions associated with managed forests. The study adds to a growing body of research and reports calling into question the way forestry sector emissions are calculated, and the way the industry is managed. A spokesperson for the Forest Products Association of Canada, an industry group, said it didn't have time to review the study in detail, but stressed that overall "Canada's forest sector remains committed to supporting Canada's greenhouse gas emissions reduction targets" and sustainable harvesting practices. Furthermore a Nature Canada report alleges emissions from logging would be the third highest emitting sector of Canada's economy.³⁵ Such reports and the assertions by FPAC require further

³⁰ David Azoulay et al. (February 2019) *Plastic & Health: The Hidden Costs of a Plastic Planet*. Center for International Environmental Law (CIEL). <https://www.ciel.org/plasticandhealth/>

³¹ David Azoulay et al. (February 2019) *Plastic & Health: The Hidden Costs of a Plastic Planet*. Center for International Environmental Law (CIEL). <https://www.ciel.org/plasticandhealth/>

³²The Scientists' Coalition for an Effective Plastics Treaty (2023) *Fact Sheet: Plastic pollution at each life stage*. <https://ikhapp.org/material/fact-sheet-plastic-pollution-at-each-life-stage/>

³³Ocean Blue Project (2021) *Plastic Pollution in the Ocean: How Many Animals Die from Pollution?* <https://oceanblueproject.org/wp-content/uploads/2023/02/how-many-animals-die-from-plastic-pollution-ocean-blue-report.pdf>

³⁴ Benjamin Shingler (16 January 2024). Why scientists say Canada's logging industry produces far more emissions than tallied. *CBC*. <https://www.cbc.ca/news/climate/canada-logging-emissions-1.7081906>

³⁵ Inayat Singh & Benjamin Shingler (4 September 2024). Logging is the 3rd highest emitter in Canada. It should be measured that way, a new report says. *CBC*. <https://www.cbc.ca/news/science/logging-emissions-forestry-trees-wildfires-1.7309504>

investigation to determine whether the FPAC claims about the industry's sustainability are valid or are a practice of greenwashing, or need to be revised to internalize the realities of the science. Or perhaps the assertions need qualifiers as perhaps comparatively, the Canadian forestry industry is more sustainable to other forestry industries globally.

2. Are there certain types of claims about the environmental benefits of businesses or business activities that are less likely to be based on “adequate and proper substantiation in accordance with internationally recognized methodology”? Is there something about those types of claims that makes them harder to substantiate?

As discussed above as it pertains to product claims, all claims require substantiation and the Bureau should provide guidelines and principles for what adequate and proper substantiation and testing should look like. Below are two examples that have come to the forefront and attention of Greenpeace Canada that are critical claims to substantiate based on sound methodology.

- **NET ZERO CLAIMS**

Net zero claims have historically been a bit of a wild-west, with companies using dubious standards and cherry-picking emissions. Fortunately international norms and methodologies have emerged in the past few years.

Claims with respect to a business being net-zero can be complicated by what a business is counting as their emissions. Some fossil fuel companies, like the members of the Pathways Alliance, have stated previously on their website that they will only consider the emissions associated with extracting and refining the oil (what are called Scope 1 and 2 emissions).³⁶ They don't include Scope 3 emissions (those resulting from burning the oil and gas products that the Pathways members sell) in their net zero accounting, even though the vast majority of fossil fuel emissions (roughly 80%) are Scope 3.³⁷

There are numerous international standards that offer criteria to define net-zero. As outlined below, we strongly recommend adhering to those that uphold the standard in the Competition Bureau's guide, which states that environmental claims must be subject to a consideration of the life cycle of a product.³⁸

In addition, many net zero claims are essentially “future-washing,” with companies making claims about something they say they will do in the future when they are not taking action, or not

³⁶ Pathways Alliance (October 23, 2023). “Home” Accessed via the Internet Archive. <https://web.archive.org/web/20231023101041/https://pathwaysalliance.ca/>

³⁷ Wood Mackenzie. (October, 2022). “How Will Oil and Gas Companies Get to Scope 3 Net Zero” <https://www.woodmac.com/press-releases/few-oil-and-gas-companies-commit-to-scope-3-net-zero-emissions-as-significant-challenges-remain/>

³⁸ This is discussed in greater detail in the Greenpeace Canada complaint to the Bureau regarding the Pathways advertising campaign.

taking adequate action, in the present. Businesses may gain unfair competitive advantage by using future-washing to make false or misleading claims about actions they have not yet taken.

- **CARBON OFFSETS/CARBON CREDITS**

Greenpeace Canada's 2021 complaint to the Competition Bureau regarding Shell's 'Drive Carbon Neutral' ad campaign,³⁹ illustrates how carbon offsets are highly problematic. To be considered valid, carbon offsets need to meet four criteria:

1. Additional: This involves several key tests:
 - a. Is the project not already mandated under existing laws or regulations?
 - b. Is the activity already "widespread" and effectively a business-as-usual (BAU) practice within the region?
 - c. Will the offsets truly help overcome either financial, technological, or institutional barriers to enable the project to go forward?
2. Permanence: To limit climate change, greenhouse gas emissions have to be kept out of the atmosphere forever. That can be a difficult action to guarantee especially when the project involves ecosystems and natural cycles that are beyond human control.
3. No double-counting: Once an entity (e.g. a company) purchases an offset and counts it on their carbon balance sheet, the underlying emissions reduction should not be sold or transferred for use on another entity's (e.g. a government) carbon balance sheet.
4. No leakage: An environmental rule to stop an action and avoid emissions in one location can sometimes drive people to go to another location where they can continue the action which results in the emissions occurring anyways. For example, in the case of forest offsets leakage can occur when an area of forest is designated for protection and leads to increased logging in unprotected areas.

Currently, very few projects meet these criteria, and it will become even more difficult to meet the additionality requirement (#1) as climate policies address more and more sectors (so fewer processes are not mandated under existing laws) and zero carbon processes become business as usual.

As we argued in our complaint regarding Shell's Drive Carbon Neutral program, forest-based offsets have particular challenges and should not be accepted.

³⁹ Greenpeace Canada (2021). "Driving carbon-neutral" is impossible with fossil fuels: Complaint to the Competition Bureau of Canada against Shell's misleading promotion of forest-based "offsets" as sustainable, climate action. <https://www.greenpeace.org/canada/en/press-release/50740/driving-carbon-neutral-with-fossil-fuels-greenpeace-canada-files-competition-bureau-complaint-against-misleading-shell-advertising/>

3. What internationally recognized methodologies should the Bureau consider when evaluating whether claims about the environmental benefits of the business or business activities have been “adequately and properly substantiated”? Are there limitations to these methodologies that the Bureau should be aware of?

For evaluating net-zero claims, two reputable standards already exist, the United Nations High Level Expert Group on Net Zero Emissions Commitments of Non-State Entities and the International Energy Agency.

- **UNITED NATIONS HIGH-LEVEL EXPERT GROUP ON NET ZERO EMISSIONS COMMITMENTS OF NON-STATE ENTITIES**

The UN has become increasingly concerned over greenwashing.⁴⁰ To provide coherence across various sectors and guard against greenwashing, the UN established what it describes as a ‘red line around greenwashing’: a common set of criteria that would clarify what constitutes a science-based approach to achieving net zero emissions by 2050.

These criteria were first laid out in June 2022 by the Expert Peer Review Group to the UN’s Race to Zero initiative.⁴¹ The criteria were formalized in *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions*,⁴² a report of the High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (which was chaired by Canada’s former Environment Minister Catherine McKenna). The report was released at the November 2022 UN Climate Conference in Egypt with the personal participation of the Secretary General of the UN, who said “We must have zero tolerance for net-zero greenwashing. Today’s Expert Group report is a how-to guide to ensure credible, accountable net-zero pledges.”⁴³

More recently, the UN High Level Expert Group established checklists for businesses and financial institutions that transcribe the recommendations of the *Integrity Matters* report into a list of criteria, as well as provide guidance on what non-state entities need to consider through each stage of their progress towards being credibly 1.5°C-aligned. These checklists could be used by the Bureau to assess net zero claims.

⁴⁰ António Guterres (08 November 2022). “Secretary-General’s remarks at launch of report of High-Level Expert Group on Net-Zero Commitments.” United Nations.
<https://www.un.org/sg/en/content/sg/statement/2022-11-08/secretary-generals-remarks-launch-of-report-of-high-level-expert-group-net-zero-commitments-delivered>

⁴¹ United Nations (June 15, 2022). “‘Race to Zero’ campaign updates criteria to raise the bar on net zero delivery”.
<https://climatechampions.unfccc.int/criteria-consultation-3-0/>

⁴² UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (November 8, 2022). *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions*.
https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

⁴³ António Guterres (08 November 2022). “Secretary-General’s remarks at launch of report of High-Level Expert Group on Net-Zero Commitments.” United Nations.
<https://www.un.org/sg/en/content/sg/statement/2022-11-08/secretary-generals-remarks-launch-of-report-of-high-level-expert-group-net-zero-commitments-delivered>

As detailed in Greenpeace Canada's 2023 *What to do about Banks Quiet Quitting their Climate Commitments* report, none of Canada's major banks meet the UN net zero criteria.⁴⁴

In addition, the arguments in Greenpeace Canada's complaint to the Competition Bureau about the Pathways Alliance⁴⁵ shows how they do not meet this criteria, as, by limiting their emissions accounting to only their operations (Scopes 1 and 2), they do not account for the lifecycle of their products. In addition, they increased production while making net zero claims, which also goes against the guidelines.

- **INTERNATIONAL ENERGY AGENCY**

For oil and gas companies specifically, the Bureau may want to use the methodology developed by the International Energy Agency (IEA) that assesses whether oil and gas company corporate business plans are aligned with the IEA's Net Zero scenario. The IEA is widely considered to be the world's leading energy authority. It was established by Canada and 16 other nations in the wake of the 1973 oil crisis when an oil embargo by major producers pushed prices to historic levels and exposed the vulnerability of industrialized countries to dependency on oil imports. Its initial purpose was to ensure the stability of the international oil supply but that mandate has been expanded to include a full range of energy issues, including climate change and decarbonisation. The IEA now has 31 member governments, who agreed in March 2022 to further expand the Agency's mandate to include guiding countries as they build net-zero emission energy systems to comply with internationally agreed climate goals, as well as to broaden the Agency's scope to include the critical minerals and metals needed to develop clean energy technologies.⁴⁶

As part of its mandate to provide advice on decarbonization, the IEA published a report on the role of the oil and gas industry in net zero transitions in November 2023 that argued the industry faced a "moment of truth" over its role in the energy transition. IEA President Fatih Birol's foreword to the report stated:

"The uncomfortable truth that the industry needs to come to terms with is that successful clean energy transitions require much lower demand for oil and gas, which means scaling back oil and gas operations over time – not expanding them. There is no way

⁴⁴ Keith Stewart (June 2023). *What to do about Canadian banks 'quiet quitting' their climate commitments?* Greenpeace Canada.

<https://www.greenpeace.org/static/planet4-canada-stateless/2023/06/6da352b8-cdn-banks-quiet-quitting-climate-commitments-greenpeace-june-2023.pdf>

⁴⁵ Greenpeace Canada (March 2023). "Application for Inquiry into false and misleading representations made by the Pathways Alliance about their climate action and the climate impact of their business." <https://www.greenpeace.org/static/planet4-canada-stateless/2023/03/8c835b91-amended-competition-bureau-submission-for-pathways-alliance-ad-campaign.pdf>

⁴⁶ See IEA web page: "History: From oil security to steering the world toward secure and sustainable energy transitions." URL: <https://www.iea.org/about/history>. Accessed January 25, 2024.

around this. So while all oil and gas producers need to reduce emissions from their own operations, including methane leaks and flaring, our call to action is much wider.”⁴⁷

The report noted that oil and gas producers were largely sitting on the sidelines. They account for only 1% of total clean energy investment globally, with more than 60% of this coming from just four companies. The report points out that although many oil companies claim they’ll be the last one standing in a world using less oil, they can’t all be right, and high-cost producers like Canada will be forced to shut in production.

According to the IEA, oil and gas companies have two options if they want to be aligned with a net zero transition.

The first option is to wind down their current operations by not investing in new oil and gas extraction while making their existing operations as efficient as possible. The second option is to transition from being oil and gas companies to become clean energy companies. In this case, they should avoid investing in new fields, allocate 50% of the capital to clean energy by 2030 and reduce upstream (scopes 1 and 2) emissions by at least 60% (or to be aligned with current best practices) by 2030:

“Not all oil and gas companies have to diversify into clean energy, but the alternative is to wind down traditional operations over time. Some companies may take the view that their specialisation is in oil and natural gas and so decide that – rather than risking money on unfamiliar business areas – others are better placed to allocate this capital. But aligning their strategies with net zero transitions would then require them to scale back oil and gas activities while investing in scope 1 and 2 emissions reductions.”

"An oil and gas company is fully aligned with the outcomes of the NZE Scenario only if it no longer plans to invest in new oil and gas projects and if it has a target for its scope 1 and 2 emissions intensity to be aligned with current best practices by 2030 or for these emissions to be cut by 60% by 2030.

However, if a company plans to continue to invest in new projects, it is assessed on its 2030 target to limit scope 1 and 2 emissions and 2030 target for the share of its capital budget going towards clean energy technologies. A target for a share greater than 50% in 2030 would allow the company to claim it is making a fair contribution to the scaling up clean energy necessary to achieve net zero emissions by 2050.”⁴⁸

The IEA also makes it very clear that oil and gas companies cannot use carbon capture as a rationale for business-as-usual, stating:

⁴⁷ International Energy Agency (November 2023). *The Oil and Gas Industry in Net Zero Transitions*, page 4. <https://www.iea.org/reports/the-oil-and-gas-industry-in-net-zero-transitions>. Accessed January 25, 2024.

⁴⁸ International Energy Agency (November 2023). *The Oil and Gas Industry in Net Zero Transitions*, , page 16, 146-147. <https://www.iea.org/reports/the-oil-and-gas-industry-in-net-zero-transitions>.

“Carbon capture, utilisation and storage is an essential technology for achieving net zero emissions in certain sectors and circumstances, but it is not a way to retain the status quo. If oil and natural gas consumption were to evolve as projected under today’s policy settings, this would require an inconceivable 32 billion tonnes of carbon captured for utilisation or storage by 2050, including 23 billion tonnes via direct air capture to limit the temperature rise to 1.5 °C. The necessary carbon capture technologies would require 26 000 terawatt hours of electricity generation to operate in 2050, which is more than global electricity demand in 2022. And it would require over USD 3.5 trillion in annual investments all the way from today through to mid-century, which is an amount equal to the entire industry’s annual average revenue in recent years.”⁴⁹

Greenpeace Canada’s 2024 *Walking the Talk* report details how Suncor, CNRL and Cenovus (who are all members of the Pathways Alliance) do not come close to meeting the IEA criteria.⁵⁰

4. What other factors should the Bureau take into consideration when it evaluates whether claims about the environmental benefits of businesses or business activities are based on “adequate and proper substantiation in accordance with internationally recognized methodology”?

What constitutes an “adequate and proper substantiation in accordance with internationally recognized methodology” may evolve over time as our scientific knowledge expands and methodology is refined. The guidelines should be periodically updated to reflect this improved understanding.

5. What challenges may businesses and advertisers face when complying with this new provision of the law?

As discussed in the sections above, challenges businesses and advertisers may face when complying with this new provision will include:

- meeting international standards that may be more rigorous than the internal standards that they hold for themselves
- learning to advertise in an effective way that is also truthful
- aligning their practices to what is being advertised

Consumers are looking for honest and transparent advertising upon which they can make environmentally conscious choices. These new laws will allow companies who can stand behind

⁴⁹ International Energy Agency (November 2023). *The Oil and Gas Industry in Net Zero Transitions*, page 16. <https://www.iea.org/reports/the-oil-and-gas-industry-in-net-zero-transitions>

⁵⁰ Keith Stewart (March 2024). *Walking the Talk: Why RBC is obligated to stop funding some of its biggest oil company clients*. Greenpeace Canada and Greenpeace Canada Educational Fund. <https://www.greenpeace.org/static/planet4-canada-stateless/2024/03/2ea3392a-walking-the-talk-en.pdf>

their advertising and who actually provide an environmental benefit to rise to the top. Those who align their words and actions will come out as the truly competitive option for consumers.

6. What other information should the Bureau be aware of when thinking about how and when to enforce this new provision of the law?

- **Violation of Free Speech**

Businesses that may be subject to the new laws may pose them as a threat to free speech or even a direct violation of free speech.⁵¹ In our view, this issue may be used as a delay tactic to avoid enforcement of the provisions and to question the legitimacy of them. The Bureau should inform their response to this rhetoric by looking at the tactics used by the tobacco industry regarding advertising reform including seeking the suspension of legislation forcing them to place warning signs on cigarette packaging pending constitutional challenge of the legislation.⁵² The tactic of businesses using the free speech argument to defend their misleading and false claims is well trodden territory. In the United States “for years, the fossil fuel industry has maintained that the First Amendment protects its right to mislead the public about the climate crisis, but that criticism and protest of its operations violates the law.”⁵³ Taking the tobacco companies and opioid companies as an example, these industries, while fighting lawsuit after lawsuit regarding the harm their products caused, used multiple avenues of marketing and advertising to push their ultimately harmful products under false and misleading pretenses. These instances should serve as examples of tactics companies may use to obfuscate responsibility under this and other legislation that may hold them accountable.

The Bureau has the expertise and needs to make its own determination on the constitutionality of the provisions and its enforcement but, in our view, producing false and misleading advertising (commercial expression) is not a constitutionally held right. It should not be and feasibly cannot be the responsibility of consumers to bring forward private actions in order to address false and misleading advertising.

The businesses calling into question the greenwashing provisions need to turn their attention inward to examine whether they can advertise in a truthful manner or whether the only way in which they can talk about their alleged environmental benefits is to be deceptive, misleading or create a false impression. If businesses must be truthful in their disclosure to shareholders, investors and regulatory bodies, then they should also be truthful in advertising.

⁵¹ Derek Evans (24 August 2024) Opinion: How Canada’s Competition Act became an overnight threat to free speech. *Calgary Herald*.
<https://calgaryherald.com/opinion/columnists/opinion-how-canadas-competition-act-became-an-overnight-threat-to-free-speech>

⁵² See: RJR-MacDonald Inc and Imperial Tobacco Ltd v The Attorney General of Canada [1995] 3 S.C.R. 199

⁵³ Emily Sanders (8 January 2024) Big Oil Is Weaponizing The First Amendment. *The Lever*.
<https://www.levernews.com/big-oil-is-weaponizing-the-first-amendment/>

- **International Jurisdictional Comparison**

There are many comparable jurisdictions that have been or are starting to crack down on greenwashing that the Competition Bureau can refer to and rely on in how greenwashing legislation is interpreted and enforced. Below are a few of many examples of this trend towards enforcement. This section won't delve deeply into making a comparative analysis but serves as important guidance for the Bureau in advancing their own agenda and interpreting its new legislation.

United States

There are multiple legal mechanisms in the United States used to address greenwashing claims. The Federal Trade Commission (FTC) and the Securities Enforcement Exchange Commission have also taken on addressing greenwashing through their respective mandates. In 2022 a complaint was filed with the FTC alleging that an oil major was misleading consumers about its efforts to reduce greenhouse gas emissions. The complaint was the first brought before the FTC alleging that a fossil fuel company has breached its guidelines on the use of environmental marketing claims.⁵⁴ The FTC has outdated Green Guides⁵⁵ and have acknowledged the need to update them in "a sea of misinformation."⁵⁶

For some time now, the SEC has been discussing mechanisms to crack down on greenwashing. On September 20, 2023, the SEC announced amendments to the "Names Rule" made under the Investment Company Act, signaling a deeper crack down on greenwashing. As a result of the amendments, any funds that suggest a specific focus based on its name (e.g., funds that use words like "green", "sustainable", "ethical" and so on in its name), must ensure that at least 80% of its investments are actually invested in a way that aligns with that name. Funds are now also required to review their assets at least every quarter to ensure they're meeting this threshold, and if they find they're out of compliance, they have 90 days to rectify it.⁵⁷ In addition to the SEC's efforts at the federal level, action has already been brought under securities laws by state governments and investors themselves alleging deceptive practices and misleading advertising. Complaints have included allegations that companies have misled the public and investors about their role in climate change in general and the impact that climate change poses for the companies' long-term business prospects. Other claims have challenged statements made about the environmental credentials of products marketed as sustainable or eco-friendly.

⁵⁴ Norton Rose Fulbright (April 2022) Greenwashing disputes on the rise.

<https://www.nortonrosefulbright.com/en/knowledge/publications/e87c69e7/greenwashing-disputes-on-the-rise>. See complaint at: <https://www.greenpeace.org/usa/news/greenpeace-jointly-files-ftc-complaint-against-chevron/>

⁵⁵ Federal Trade Commission. *Environmentally Friendly Products: FTC's Green Guides*.

<https://www.ftc.gov/news-events/topics/truth-advertising/green-guides>

⁵⁶ Tom Perkins (4 May 2023) "This article is more than 1 year old 'A sea of misinformation': FTC to address industry greenwashing complaints." *The Guardian*.

<https://www.theguardian.com/environment/2023/may/04/federal-trade-commission-industry-recycle-regulation>

⁵⁷ FigBytes (31 October 2023) "The SEC Is on a Quest to Quell Greenwashing. Here's What You Should Know."

<https://figbytes.com/blog/sec-is-on-a-quest-to- quell-greenwashing-of-esg-funds/#:~:text=The%20SEC%20defines%20greenwashing%20as,rampant%20in%20the%20investment%20industry.>

Beyond regulatory complaints, many groups or governments have brought civil proceedings in court against companies at the state or federal level. A lot of greenwashing cases in the US are still pending, notably cases like the one brought by the New York Attorney General in 2024 an enforcement action alleging that JBS USA Food Company and JBS Food Company Holdings (JBS) misled the public about the environmental impacts of its operations and marketed sustainability to increase sales. New York alleges JBS committed to reducing its emissions to “Net Zero by 2040” while simultaneously increasing meat production without having a viable plan to meet its emissions goal.⁵⁸ In another case *Dorris v. Danone Waters of America*, a putative class of “Evian Natural Spring Water” purchasers allege that the labels and packaging of the defendant’s bottled water include false representations that the product is “carbon neutral” while ignoring that the manufacturing processes cause carbon dioxide emissions. Plaintiffs asserted that the defendant’s purchase of carbon offsets is false and misleading under the FTC Green Guides. In January 2024, the judge denied a motion to dismiss plaintiffs’ breach of express warranty, unjust enrichment, and fraud claims and found that it was “plausible . . . that the ambiguous term ‘carbon neutral’ . . . could mislead a reasonable consumer.”⁵⁹

UK

The Advertising Standards Authority (ASA) + the Competition and Markets Authority (CMA) are two agencies who have the authority to investigate greenwashing claims in the UK.

The Advertising Standards Authority (ASA) is the UK’s independent advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Advertising Codes). While the ASA does not have direct enforcement powers, companies keep in mind that its activities also increase the compliance risks in this area because the ASA may refer potential violations to the CMA for further investigation and enforcement.⁶⁰ The Advertising Standards Agency (ASA) in June 2023 updated its position on misleading environmental claims and social responsibility.⁶¹ Importantly we would point to the sections to help the Bureau clarify any uncertainty around adequate and proper substantiation. The guidance delves into clarity around terms, substantiation of claims, and how to approach differing scientific opinions.

The ASA has been active in taking up environmental claims. For example, complaints about two posters advertising a bank were upheld because they omitted significant information about the brand’s contribution to greenhouse gas emissions.⁶² One ad included the claim that the bank

⁵⁸ Brook Detterman et al (18 April 2024). Mitigating “Greenwashing” Litigation Risk in the U.S. and Beyond. *Beveridge & Diamond*. <https://www.bdlaw.com/publications/mitigating-greenwashing-litigation-risk-in-the-u-s-and-beyond/>

⁵⁹ Brook Detterman et al (18 April 2024). Mitigating “Greenwashing” Litigation Risk in the U.S. and Beyond. *Beveridge & Diamond*. <https://www.bdlaw.com/publications/mitigating-greenwashing-litigation-risk-in-the-u-s-and-beyond/>

⁶⁰ Jones Day (May 2024) *The UK Competition and Markets Authority Takes Action Against Allegedly Misleading Environmental Claims*. <https://www.jonesday.com/en/insights/2024/05/the-uk-cma-takes-action-against-allegedly-misleading-environmental-claims>

⁶¹ Advertising Standards Authority (June 2023) *The environment: misleading claims and social responsibility in advertising*.

<https://www.asa.org.uk/static/d819e399-3cf9-44ea-942b82d5ecd6dff3/4d3c736f-1e59-471f-bf77e10614544b3b/CAP-guidance-on-misleading-environmental-claims-and-social-responsibility.pdf>

⁶² HSBC UK Bank plc 19 October 2022.

was “aiming to provide up to \$1 trillion in financing and investment globally to help...clients transition to net zero”. The second highlighted that the bank was “helping to plant 2 million trees, which [would] lock in 1.25 million tonnes of carbon over their lifetime.” The ASA concluded that these unqualified claims about environmentally beneficial work, while accurate in isolation, were misleading because they did not make clear that the advertiser was simultaneously involved in financing businesses which made significant contributions to carbon dioxide and other greenhouse gas emissions and that it would continue to do so for many years into the future. The ruling noted the emissions (more than 65.3 million tonnes) which were produced by businesses financed by the bank’s investment.⁶³ The ruling also highlighted that the natural world imagery which went along with these claims contributed to the impression that the advertiser was making a meaningful contribution towards reducing greenhouse gas emissions.⁶⁴ The ASA have also found instances of greenwashing in cases pertaining to airlines, food products, automobiles and gasoline to name a few.

The CMA which is the principal competition regulator in the UK and very much akin to the Competition Bureau has published a Green Claims Code⁶⁵ to provide guidance⁶⁶ to businesses regarding their obligations under consumer protection law when it comes to making environmental claims about their goods and services. The guidelines aim to ensure that such claims are not only accurate and substantiated but also clear and unambiguous. They have also started enforcing misleading environmental claims since 2022 and have been investigating all kinds of environmental claims including eco-friendly claims in the fast fashion industry and household essentials. The recent *Digital Markets, Competition and Consumer Act* that received Royal Assent in May 2024 grants expanded the CMA's existing investigation and enforcement powers in respect of competition issues; and equips the CMA with powers to enforce breaches of consumer protection laws directly, including through the imposition of fines of up to 10% of global annual turnover for non-compliance.⁶⁷

New Zealand

Akin to the Competition Bureau, in New Zealand the Commerce Commission is New Zealand’s primary competition, fair trading, consumer credit and economic regulatory agency. All representations made by companies, including environmental and sustainability claims, must comply with the Fair Trading Act 1986 (FTA), and must not be either misleading or deceptive, or likely to mislead or deceive. One of the primary purposes of the FTA is to ensure consumers are buying products or services based on accurate information.

⁶³ Advertising Standards Authority (29 May 2024) *Environmental claims: General “Green” claims*.
<https://www.asa.org.uk/advice-online/environmental-claims-general-green-claims.html>

⁶⁴ *Ibid*

⁶⁵ Competition and Markets Authority (26 January 2023) *Misleading environmental claims*.
<https://www.gov.uk/government/collections/misleading-environmental-claims>

⁶⁶ Competition and Markets Authority (20 September 2021) *Green claims code: making environmental claims*.
<https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims>

⁶⁷ Dentons (5 June 2024) “The Digital Markets, Competition and Consumers Act: a watershed moment in consumer protection law.”
<https://www.dentons.com/en/insights/articles/2024/june/5/the-digital-markets-competition-and-consumers-act>

The Commerce Commission's Environmental Claims Guidelines (Guidelines) provide specific guidance to assist traders to ensure that environmental claims comply with the FTA. Environmental claims are defined by the Commerce Commission as representations "about the environmental impact of the production, distribution, use and disposal of a good or service." The Guidelines remind traders that environmental claims must be substantiated by a credible source of information and should be clear and specific. The Guidelines encourage the use of plain language to ensure consumers can understand the claimed environmental benefit.⁶⁸

Akin to Ad Standards Canada or the UK ASA, the NZ ASA has also been active in addressing complaints of greenwashing. The NZ ASA in 2021 considered a complaint about an advertisement by natural gas distributor Firstgas Group for claiming that its gas "is going zero carbon." There were no details about the timeline or means by which this would be achieved were given. The board determined that the ads were unsubstantiated, incorrect, and misleading environmental claims and ordered the removal of the advertisement.⁶⁹

Australia

Akin to the Competition Bureau, the Australian Competition and Consumer Commission (ACCC) is Australia's national competition, consumer, fair trading and product safety regulator. Likewise the ACCC's legal framework is akin to the Competition Bureau's. The ACCC is a leader in addressing greenwashing claims and has also published a green marketing guide.⁷⁰ It has pursued a number of actions for alleged deceptive or misleading practices against automobile and industrial manufacturers under the Competition and Consumer Act 2010.

The ACCC clearly indicates the onus is on the business to substantiate their claims.⁷¹ The ACCC has put out updated guidance⁷² for businesses making environmental claims in December 2023. Importantly the guidance addresses emissions related claims on page 24 that can guide the Bureau in making its own guidance. In 2023 the ACCC commenced an investigation against "a number of businesses for potential 'greenwashing', following an internet sweep which found more than half of the businesses reviewed made concerning claims about their environmental or sustainability practices. Of the 247 businesses reviewed during the sweep, 57 per cent were identified as having made concerning claims about their environmental credentials. The cosmetic, clothing and footwear and food and drink sectors were found to have the highest proportion of concerning claims among the industries targeted in the operation."

⁶⁸Commerce Commission New Zealand (July 2020) *Environmental Claims Guidelines: a guide for traders*. https://comcom.govt.nz/__data/assets/pdf_file/0021/353460/Environmental-claims-guidance-July-2020.pdf

⁶⁹ASA Complaints Board Complaint 21/194 Firstgas Group Television and YouTube. <https://cdn.asa.co.nz/backend/documents/2021/07/06/21194.pdf>

⁷⁰ ACCC (12 December 2023) *ACCC releases eight principles to guide businesses' environmental claims*. <https://www.accc.gov.au/media-release/accc-releases-eight-principles-to-guide-businesses%E2%80%99-environmental-claims>

⁷¹ACCC. *Environmental and sustainability claims*.

<https://www.accc.gov.au/business/advertising-and-promotions/environmental-and-sustainability-claims#:~:text=We%20consider%20a%20business%20to,Sometimes%20businesses%20accidentally%20mislead%20consumers.>

⁷² ACCC (12 December 2023) *Making environmental claims: A guide for business*.

<https://www.accc.gov.au/about-us/publications/making-environmental-claims-a-guide-for-business>

In April 2024 the ACCC commenced proceedings in the Federal Court of Australia against Clorox Australia Pty Ltd (Clorox) for allegedly making false or misleading representations that its GLAD-branded kitchen tidy and garbage bags were made of “50% ocean plastic.” This case followed another public enforcement outcome in relation to greenwashing regarding yogurt manufacturer, MOO Premium Foods Pty Ltd (MOO), in respect of false or misleading claims that its product packaging was made from “100% ocean plastic.”⁷³

The Australia Securities & Investment (ASIC) also has the mandate to pursue greenwashing allegations via the *Australian Securities and Investments Commission Act 2001*. According to the Chair, “ASIC has been active in enforcing the law in this area.”⁷⁴ The ASIC have issued 17 infringement notices and won its first greenwashing civil penalty action against Vanguard Investments⁷⁵ in March 2024. In August 2024, the Federal Court ordered Mercer Superannuation (Australia) Limited to pay a \$11.3 million penalty after it admitted it made misleading statements about the sustainable nature and characteristics of some of its superannuation investment options. ASIC has two further cases before the Federal Court concerning greenwashing, with action against Vanguard Investments Australia (23-196MR) and Active Super (23-215MR).

ASIC has also issued over \$270,000 in infringement notices in response to concerns about alleged greenwashing, which include Tlou Energy Limited (22-294MR), Vanguard Investments Australia (22-336MR), Diversa Trustees Limited (22-379MR), Black Mountain Energy (23-001MR), Future Super (23-110MR) and Morningstar (23-324MR).

The main types of conduct that have caused ASIC to intervene can be summarized into a few categories:

- Net zero statements and targets, that were either made without a reasonable basis or that were factually incorrect
- The use of terms such as ‘carbon neutral’, ‘clean’ or ‘green’, that weren’t founded on reasonable grounds
- The overstatement or inconsistent application of sustainability-related investment screens, and
- The use of inaccurate labelling or vague terms in sustainability-related funds.

EU

⁷³ Gilbert + Tobin (19 April 2024). “Not so glad to be green: ACCC commences first Federal Court case on greenwashing.”

<https://www.gtlaw.com.au/knowledge/not-so-glad-be-green-accc-commences-first-federal-court-case-greenwashing>

⁷⁴ Keynote speech by ASIC Chair Joe Longo at the RIAA Conference Australia, 2 May 2024.

<https://asic.gov.au/about-asic/news-centre/speeches/greenwashing-a-view-from-the-regulator/>

⁷⁵ ASIC (28 March 2024). “ASIC wins first greenwashing civil penalty action against Vanguard.”

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-061mr-asic-wins-first-greenwashing-civil-penalty-action-against-vanguard/>

In March 2024 the European Parliament adopted its position on new rules for explicit environmental claims and environmental labels. The new rules require information to be provided to authorities and the public before publishing an explicit environmental claim, in addition to details on third-party verification and penalties. The proposed Green Claims Directive (GCD or Directive) will complement and operationalize the ban on greenwashing recently adopted by the European Parliament under the "Empowering Consumers for the Green Transition" Directive.

Under the proposed GCD rules, businesses will be required to substantiate explicit environmental claims before publishing, providing consumers with transparent, reliable, and valuable information. The Directive outlines specific requirements for substantiating explicit environmental claims — for example, by requiring lifecycle considerations, disclosing scientific evidence and explaining any deviation from law or industry and sector standards.

Information must be disclosed together with the product, through use of a URL or QR code. In general, the disclosure information is expected to cover:

- Environmental aspects, impact and performance included in the claim
- Relevant EU or international standards used as part of the substantiation
- How improvements related to the claim are achieved
- Information on greenhouse gas (GHG) off-setting
- Underlying studies or calculations used to assess, measure and monitor impacts, aspects or performance
- Certificate of conformity
- In case of comparative advertising, appropriate comparative data

The rules place greater emphasis on considering the relative significance of the environmental impacts, aspects or performance. It is therefore increasingly important not to publish environmental claims without considering the balance, weight and precision of those claims.⁷⁶

Other cases to Highlight for the Competition Bureau to draw from

- Germany: This case concerned advertising on detergents as 'climate neutral' by using a respective logo which the claimant, a competitor of the defendant, alleged was misleading and in breach of the German Act against Unfair Competition. The Court held that advertising of a company or a product as climate neutral may have a significant influence on a purchase decision. It further stated that the term 'climate neutral' had a clear meaning. The Court found the advertising to be misleading regarding the scope of the assessment basis, as the consumers could not know which emissions were included in the accounting methods. It held that, in principle, consumers assumed that all significant emissions were compensated. Because the defendant had not considered

⁷⁶ EY (14 March 2024) "European Parliament adopts new rules on green claims." <https://taxnews.ey.com/news/2024-0607-european-parliament-adopts-new-rules-on-green-claims#:~:text=The%20aim%20of%20the%20Green,benefits%20from%20using%20green%20claims.>

significant scope 3 emissions and there was no explicit information clarifying this, the Court found this to be misleading.⁷⁷

- Netherlands: *FossielVrij NL v. KLM*– In a greenwashing case brought by the campaign group Fossielvrij, the district court of Amsterdam ruled on Wednesday that KLM broke the law with misleading advertising in 15 of the 19 environmental statements it assessed. They include claims that the airline is moving towards a “more sustainable” future and statements on its website about the benefits of offsetting a flight.⁷⁸
- Switzerland: In *Stiftung für Konsumentenschutz v. Hipp* The Foundation for Consumer Protection (Stiftung für Konsumentenschutz) filed a complaint with the FAC (non judicial body) against a German producer of baby food (Hipp) concerning the company’s advertisement of its baby food jars as “climate positive” (case 169/23). The FAC held that this advertisement was misleading and recommended that the company refrain from it. The FAC was recommended to refrain from making the contested statement “Our jars are climate-positive” in future, unless it can provide full proof at the time of communication of the calculation of all climate-relevant effects associated with production carried out in accordance with generally accepted methods, on the one hand, and unambiguous proof of the full overcompensation of these effects, on the other. climate-relevant effects associated with the production on the one hand and, on the other hand, unquestionable proof of the complete overcompensation of these climate-relevant effects climate-relevant effects.”
- Italy: In *Alcantara S.p.A. v. Miko S.r.l.* A manufacturer of a microfibre product filed a request for an injunction against a competitor. According to the manufacturer the competitor’s green claims constitute an act of unfair competition under the Italian Civil Code alleging the claims were vague, false, non-verified or non verifiable. In 2021 the Court ruled in favour of the claimant stating that these statements were vague, generic, false, and non-verifiable and needed to be immediately removed from any website, social media platform, tv advertisement, magazines, and other promotional material.⁷⁹

Other Resources for the Bureau

- A number of complaints have also been filed with National Contact Points under the OECD Guidelines for Multinational Enterprises relating to allegedly misleading statements made by companies about the environmental credentials of their operations. In one case, this led to the marketing campaign being withdrawn before the complaint was determined, highlighting that filing a claim or complaint can be enough to prompt companies to change course.

⁷⁷ Higher Regional Court of Frankfurt am Main’s decision on climate neutral claims regarding detergents (2022) Az. 6 U 104/22; Az. 3-12 O 15/22.
<https://climatecasechart.com/non-us-case/higher-regional-court-of-frankfurt-am-mains-decision-on-climate-neutral-claims-regarding-detergents/>

⁷⁸ Wynne Lawrence et al (25 March 2024) “First-ever greenwashing judgment against an airline delivered in the Netherlands. *Clyde &*

Co. <https://www.clydeco.com/en/insights/2024/03/first-ever-greenwashing-judgment-against-an-airlin>;

<https://climatecasechart.com/non-us-case/fossielvrij-nl-v-klm/> or

<https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2024:1512> (in dutch).

⁷⁹ *Alcantara S.p.A. v. Miko S.r.l.* (2021) Court of Gorizia – Civil Division – case no. 712/2021

<https://climatecasechart.com/non-us-case/alcantara-spa-v-miko-srl/>

- Oxford Law on Greenwashing Case Law⁸⁰

5. Final Thoughts from Greenpeace Canada to the Competition Bureau

False or misleading representations and deceptive marketing practices can have serious economic consequences, especially when directed toward large audiences or when they take place over a long period of time. They can affect both business competitors who are engaging in honest promotional efforts, and consumers. As articulated in the Parliamentary Briefing Note from CDQE, Ecojustice, and CAPE: “Greenwashing in Canada is a systemic issue that harms consumer and investor trust, undermines competitive markets, and hinders progress toward climate and environmental goals[.] If Canadians cannot distinguish between genuinely green companies and pretenders (or if they lose trust in all green claims), then the incentive for Canadian companies to invest in green innovation and tackle climate change will be diminished. Without a focus on genuine sustainability, Canadian companies will be less competitive in jurisdictions that have strong greenwashing regulations.”⁸¹

⁸⁰<https://blogs.law.ox.ac.uk/oblb/blog-post/2023/12/greenwashing-exposed-close-look-existing-case-law-part-1>

⁸¹ Matt Hulse et al (28 May 2024) *Briefing Note: addressing greenwashing through the Competition Act*.
https://sencanada.ca/Content/Sen/Committee/441/NFFN/briefs/SM-C-59_Brief_ECOJ-CAPE-QELC_e.pdf