

JUST A LITTLE GREEN LIE?

As consumers become increasingly more environmentally aware, it has become a real advantage for businesses to be seen as “green”, or environmentally friendly.

While many businesses are validly making their products more eco-friendly, others are finding themselves on the wrong side of the law for making exaggerated environmental claims, known as “greenwashing”.

The *Fair Trading Act 1986* (one of New Zealand’s main consumer protection laws) prohibits any business conduct which is misleading or deceptive or which is likely to mislead or deceive. Also against the law are false or misleading claims that goods or services have certain benefits (think “recyclable” or “green energy”) or performance characteristics, such as claims about the environmental impact of a product (like “carbon neutral”, or “environmentally safe”).

Environmental claims are well and truly under the regulator’s microscope, so it’s worth noting that breaches of these laws can result in a wide range of penalties, including substantial fines (up to \$60,000 for an individual, or \$200,000 for a company, for each offence), corrective advertising and a requirement to pay refunds to consumers.

To help New Zealand businesses avoid “the little green lie”, the Commerce Commission has released Guidelines for Green Marketing. To deal with a particular hotspot, there are also Guidelines for Carbon Claims. Both of these are available free of charge from the Commerce Commission’s website and are a valuable starting point for any business considering promoting its green credentials.

In a nutshell, to avoid being accused of greenwashing, businesses should follow the same practices that they should be following for all their advertising: make sure any claims made in an advertisement, packaging, or other marketing materials are completely truthful and can be substantiated. It doesn’t matter whether your intentions were pure, if the average person would be misled by the claim, then the advertisement is vulnerable to a lawsuit.

There are a few key principles to bear in mind when making green claims:

Use environmental claims only when there is a genuine environmental benefit.

- Avoid exaggerating any benefit or overstating the level of endorsement of your product or scientific acceptance of your claim.
- Be specific. Avoid using vague or unqualified claims like “green”, “safe” or “friendly”.
- Use plain language to spell out exactly what is beneficial about your product, and avoid technical jargon where possible.
- Remember that pictures can be just as powerful as words, so use with care.

This is a rapidly developing area of the law, so if you would like training or advice about your business’ green or carbon claims, or help developing an advertising compliance program for your business, we invite you to contact Penny Moss.

Penny Moss

Lane Neave Lawyers, Level 15, 119 Armagh St, Christchurch 8011

Tel: +64 3 379 3720, Fax: +64 3 379 8370, www.laneneave.co.nz