

# SO YOU'RE GREEN – PROVE IT OR BE PROSECUTED: ACCC SWEEP FINDS 57% OF GREEN CLAIMS "CONCERNING"

Date: 3 March 2023

## **Australia Antitrust, Competition, and Trade Regulation Alert**

By: Ayman Guirguis, Jessica Mandla, James Gray, Thomas Farinelli

### **IN BRIEF**

The ACCC has published the findings of its recent internet sweep of environmental and sustainability marketing claims made by businesses. Across 247 company websites, the ACCC found that 57% of businesses had made concerning claims about their environmental practices.

The ACCC's report provides useful guidance for businesses about the regulator's views on when environmental and sustainability claims may breach the Australian Consumer Law (ACL), including:

- Vague and unqualified claims or those without substantiating information may amount to misleading or deceptive conduct: examples include packaging which "contains post-consumer recycled plastic" and goods produced using "sustainable materials" without further information to explain the basis for the claim or qualify its meaning;
- Exaggerating benefits or omitting relevant information may amount to misleading or deceptive conduct: examples include a claim by a business that its offsetting carbon emissions has a "positive" impact on the environment when it has not taken steps to reduce its overall emissions, and claims of sustainability benefits based on broad scientific opinion rather than specific features of the product; and
- The use of forward looking or aspirational claims without supporting information about how goals will be achieved may amount to misleading or deceptive conduct: the ACCC highlighted that many businesses' goals were expressed in general terms and it was not clear how businesses will reach these targets.

The ACCC has signaled that it will now commence investigating a number of businesses with claims of concern identified in its review. Businesses should act quickly to:

- Identify any claims that have an environmental or sustainability aspect;
- Assess whether these claims comply with the ACCC's guidance;
- Make changes to the claims where needed and evidence the basis for the claims; and
- Put in place internal processes to keep track of and update claims as scientific data progresses or circumstances change.

## IN MORE DETAIL

The ACCC has [published](#) the findings of its internet sweep of environmental and sustainability marketing claims. The ACCC's comprehensive review assessed 247 businesses across 8 industries (see Figure 1 below).

## NUMBER OF BUSINESSES MAKING CONCERNING CLAIMS BY

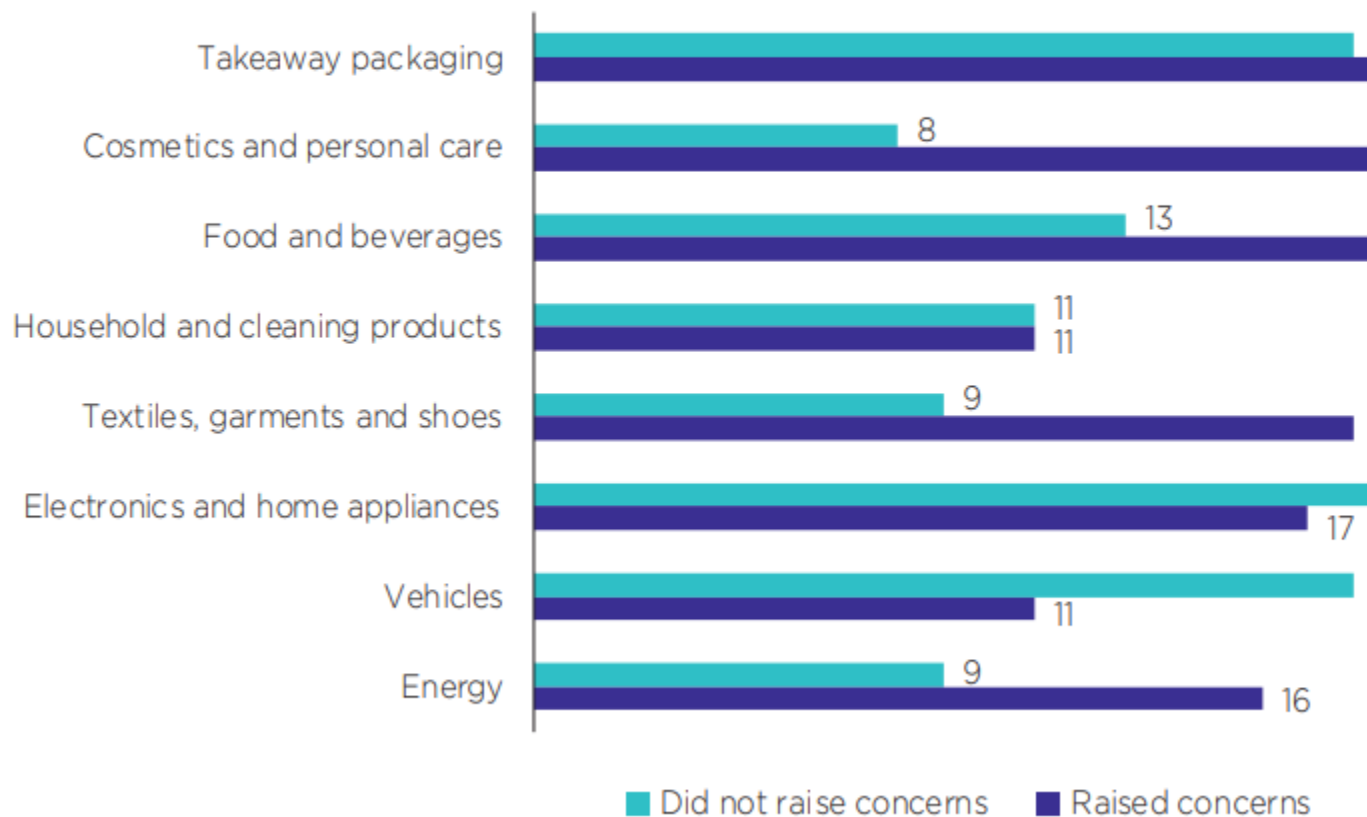


Figure 1: ACCC, 'Greenwashing by businesses in Australia' [report](#) (March 2023), page 2.

### What Issues were Identified by the ACCC and What Guidance did the ACCC Provide?

The ACCC identified eight key issues with the marketing of environmental and sustainability practices by the businesses reviewed:

Issues	Examples of Concerning Conduct	ACCC Guidance
<b>1. Vague and unqualified claims</b>	<b>Vague Terms</b> <ul style="list-style-type: none"> <li>Vague terms to describe products like 'green', 'kind to the planet', 'eco-friendly',</li> </ul>	<ul style="list-style-type: none"> <li>This was the most common issue identified.</li> </ul>

Issues	Examples of Concerning Conduct	ACCC Guidance
	<p>'responsible' or 'sustainable' are of little value for consumers.</p> <p><b>Unqualified Claims</b></p> <ul style="list-style-type: none"> <li>Products made using 'sustainable materials' without qualifying the materials used and why they are sustainable.</li> <li>'Post-consumer recycled plastic' packaging without qualifying the proportion.</li> <li>'Biodegradable' packaging without explaining how customers should dispose of it.</li> </ul>	<ul style="list-style-type: none"> <li>Businesses need to explain the meaning of the terms used, the aspect of the business/product the claim refers to, and why it has the benefit claimed.</li> <li>Claims need to be appropriately qualified and be specific.</li> <li>If claiming emissions reductions, offsets or carbon neutrality, specify the methodology used and provide details of the action taken.</li> </ul>
<b>2. A lack of substantiating information</b>	<ul style="list-style-type: none"> <li>Not providing any information to assist customers to understand/ validate the claims.</li> <li>Links to information containing further unqualified claims, that provides no additional detail, or that is outdated.</li> </ul>	<ul style="list-style-type: none"> <li>Provide evidence to back-up environmental and sustainability claims.</li> <li>Substantiation information should be provided near the relevant claims, using accessible click-through links, and be presented in a clear and digestible way.</li> </ul>
<b>3. Use of absolute claims</b>	<ul style="list-style-type: none"> <li>'100% plastic free', '100% recyclable', 'made from 100% recycled content', 'zero emissions'.</li> <li>Claiming a product is 100% plastic free if it contains small amounts of plastic (likely to be false or misleading).</li> </ul>	<ul style="list-style-type: none"> <li>Absolute claims give a very strong impression to consumers, and may be misleading unless they are completely accurate.</li> <li>100% claims should not</li> </ul>

Issues	Examples of Concerning Conduct	ACCC Guidance
	<ul style="list-style-type: none"> <li>Strong claims about sourcing or disposal of products, e.g., that a product is 'kerbside recyclable' where most recyclers will not accept it.</li> </ul>	<p>be used if there are small amounts that do not meet the description.</p>
<b>4. Use of comparisons</b>	<ul style="list-style-type: none"> <li>Claiming the business uses fewer raw materials to produce a product, without explaining how much fewer or what the point of comparison is.</li> <li>Claiming a product generates less waste compared to conventional alternatives, without providing information about the calculation methodology.</li> <li>Claiming a product made from certain materials has a lower environmental impact compared to products made from other materials, without providing sufficient details.</li> </ul>	<ul style="list-style-type: none"> <li>Businesses should exercise caution when comparing the benefits of their products to those sold by other businesses, or made from other materials, as well as when comparing within their own product range.</li> <li>Points of comparison should be identified and sufficiently explained so as to allow customers to accurately assess the merits of one product over another.</li> </ul>
<b>5. Exaggerating benefits or omitting relevant information</b>	<ul style="list-style-type: none"> <li>Concerns that businesses may be exaggerating sustainability benefits or omitting negative attributes of potential relevance to a customer's purchasing decision.</li> <li>Promoting renewable energy investments while still sourcing most products from fossil-fuel based industries.</li> <li>Stating a product is recyclable when there is no existing collection system.</li> <li>Statements about environmental protection measures introduced by a business where those measures were required by law.</li> </ul>	<ul style="list-style-type: none"> <li>Claims must reflect the entire lifecycle of a product. Claiming a product generates zero emissions while not including emissions from production, transport or disposal of the product may be misleading.</li> <li>Businesses should be transparent about negative aspects of their operations and steps being taken to address these issues.</li> </ul>

Issues	Examples of Concerning Conduct	ACCC Guidance
<b>6. Use of aspirational claims, with little information on how these goals will be achieved</b>	<ul style="list-style-type: none"> <li>Goals related to using renewable energy, reducing waste to landfill, and net zero targets.</li> <li>Goals which are very general and not able to be measured, goals where it is unclear what practical changes are being implemented to achieve the goals.</li> </ul>	<ul style="list-style-type: none"> <li>Businesses should clearly set out their goals, have comprehensive plans in place for achieving these, and actively monitor their progress.</li> <li>Take care that updates provided about progress against aspirational targets are not outdated.</li> </ul>
<b>7. Use of third-party certifications</b>	<ul style="list-style-type: none"> <li>Not clearly describing the nature of the certification scheme or how it applies to a product or business.</li> <li>Use of the word 'certified' in relation to an entire product when only some components are certified may be misleading.</li> </ul>	<ul style="list-style-type: none"> <li>Think about the impression created where claiming affiliation with certification schemes, such as through use of a certification trade mark.</li> <li>Be specific about what exactly the certification applies to (eg, a product, product range or business operations) and how it is relevant to the product/business.</li> </ul>
<b>8. Use of images which appear to be trustmarks</b>	<ul style="list-style-type: none"> <li>Some businesses used symbols or logos on their packaging/websites appearing to be trustmarks (e.g. using nature-based imagery like leaves and the colour green) which were not associated with a certification scheme, potentially misleading consumers into believing the relevant business/product was certified by a third party when it was not.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure that Trustmarks do not give the impression that the product or business has certification by a third party.</li> </ul>

**What's Next**

The ACCC has stated that it will:

- Be issuing economy-wide guidance material and targeted guidance for some sectors, and will engage with businesses and industry associations to improve ACL compliance; and
- In parallel, be investigating whether a number of the environmental claims identified during the sweep may be in breach of the ACL and that the relevant businesses will then be subjected to compliance or enforcement action, including administrative resolutions, infringement notices or legal proceedings if appropriate.

The ACCC is also actively asking consumers and businesses to contact it to report any potentially misleading environmental or sustainability claims. It is also encouraging businesses that may have made false or misleading claims to come forward, stating,

"businesses who cooperate and advise of any issues with their operations, will be considered more favourably than those who wait for the ACCC to unearth these problems."

### **Key Takeaways For Businesses**

Businesses in all industries (but particularly those in the industries identified in the ACCC sweep) should act quickly to:

- Identify any claims that have an environmental or sustainability aspect;
- Assess whether these claims comply with the ACCC's guidance;
- Make changes to the claims where needed and evidence the basis for the claims; and
- Put in place internal processes to keep track of and update claims as scientific data progresses or circumstances change.

## KEY CONTACTS



**AYMAN GUIRGUIS**  
PARTNER

SYDNEY  
+61.2.9513.2308  
AYMAN.GUIRGUIS@KLGATES.COM



**JESSICA MANDLA**  
SENIOR ASSOCIATE

SYDNEY  
+61.2.9513.2323  
JESSICA.MANDLA@KLGATES.COM



**JAMES GRAY**  
LAWYER

SYDNEY  
+61.2.9513.2428  
JAMES.GRAY@KLGATES.COM

---

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.