Canada's greenwashing crackdown: New guidelines & private right of action

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The Competition Bureau (the Bureau) recently issued its final guidelines on environmental benefits claims (Guidelines), hot on the heels of its Annual Plan for 2025-2026 which pledged continued efforts to combat misleading environmental benefits claims (greenwashing). The Guidelines respond to the recent amendments to the *Competition Act*, which now explicitly prohibits greenwashing.

This timely release is particularly significant as it precedes a major shift in the enforcement landscape in Canada. As of June 20, private applicants now have the ability to bring greenwashing complaints directly before the Competition Tribunal if they can show "public interest."

While the Guidelines offer insight into the Bureau's enforcement approach, they are not binding, and some legal uncertainties persist. Businesses must therefore carefully consider how to meet growing consumer demand for environmental action without exposing themselves to legal challenges based on their environmental claims.

Overview of the Guidelines

Following a public consultation earlier this year, the Bureau's proposed guidelines have largely been adopted in this final version of the Guidelines, with a few notable updates:

- **"Adequate and proper substantiation in accordance with internationally *recognized* methodology":** For environmental benefit claims about a business or its activities, the Guidelines clarify that an "internationally **recognized** methodology" can stem from "*a variety of sources, including but not limited to standards-setting bodies, regulatory authorities, or even industries or other entities using methodologies that are commonly accepted internationally.*" If no single internationally recognized methodology exists, advertisers may rely on a combination of two or more, or those used for similar claims, to substantiate their claims. The Bureau also indicates that it is unlikely to pursue enforcement for claims following methodologies required or recommended by Canadian federal, provincial, or territorial government programs. However, even with such methodologies, businesses must ensure the overall impression of their claims is not false or misleading. Ultimately, substantiation must be "adequate and

proper," and the Bureau advises selecting a reputable and robust methodology appropriate for the claim. This approach aligns with established Canadian case law, where "adequate and proper" means fit, apt, or suitable for the circumstances, and its determination depends on the claim's nature and general meaning.

- **Voluntary or mandatory claims to investors:** The Guidelines offer welcome clarity that the Bureau will not concern itself with the communication of certain environmental information to current and prospective securities investors, whether voluntary or mandatory. However, if such environmental claims promote a product or business interest beyond securities sales, the Bureau says the *Competition Act* provisions will apply.
- **Claims made by foreign entities:** The Guidelines explicitly state that foreign businesses marketing in Canada must comply with the misleading advertising and deceptive marketing practices provisions of the *Competition Act*. Even if a business does not have a physical presence in Canada, if it markets goods or services to consumers in Canada, the business will need to be careful that it does not run afoul of the *Competition Act*.
- **Private right of action before the Competition Tribunal:** As of June 20, private parties, including environmental activists and climate advocacy groups, can initiate deceptive advertising cases directly before the Competition Tribunal if they can demonstrate "public interest." This means individuals and businesses will no longer have to rely on the Bureau to address greenwashing complaints. While the Bureau's Guidelines outline its perspective, they are not law and may not fully reflect the views of potential private parties. However, the Competition Tribunal may consider the Bureau's approach when deciding whether to grant leave for an application. The Bureau's Annual Plan for 2025-2026 reiterated its commitment to strengthening private access to the Competition Tribunal through monitoring cases, updating guidance, and intervening on key legal issues to foster greater competition.

Key takeaways

As greenwashing claims become more sophisticated and common, businesses should be careful as they could face substantial risks under the *Competition Act*, including penalties up to $10 million or 3 per cent of their annual worldwide gross revenue. Amidst legal uncertainties and Canada's shifting enforcement landscape, it's crucial to meticulously review, assess, and adapt all public-facing environmental claims and ESG frameworks for full legal compliance.

To learn more about how to manage your risk from allegations of greenwashing, please reach out to any of the authors or key contacts listed below.

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