

WOOLWORTHS' "GREEN PLATE SPECIAL". WOOLWORTHS RUNS INTO TROUBLE WITH THEIR 'ECO-FRIENDLY' PRODUCTS

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As you would be aware, since our society started becoming more conscious of our collective footprint and worried about protecting the Earth we live in, companies turned their attention to emphasising the environmentally friendly aspects of their products in their advertising. For many years, "green washing" was a priority, hot-button area for the ACCC to consider, but then everything settled down in this space, relatively speaking, as companies generally did the right thing and avoided strife.

Plating up trouble with Woolworths

Eco-friendliness remains a desirable product feature for consumers - one they are willing to pay a premium for – and advertisers need to look out for some common traps and ensure that such claims are true and qualified appropriately (if necessary), to ensure that these claims are not misleading and deceptive.

While the buzz around green washing may have died down a bit of late, the underlying law certainly never changed. Now, a cautionary tale is playing out in the Federal Court of Australia in a case the Australian Competition and Consumer Commission (ACCC) has commenced against Woolworths Limited.

The ACCC has alleged that the environmental claims made by Woolworths in respect of its "W Select Eco" picnic products were false, misleading and deceptive, and in contravention of the *Australian Consumer Law*.

Namely, between November 2014 and November 2017, Woolworths labelled disposable bowls, plates and cutlery in its 'W Select Eco' range as '*Biodegradable and Compostable*', without any qualifications as to the meaning of these terms. For instance, over a long enough timeline, a lot of material is technically 'biodegradable', but this may not wash with consumer's expectations of that phrase. Similarly, with compostability – what a consumer may reasonably interpret that to mean may be at odds with what a brand considers that it means, regarding toxic residue, timelines, etc.

The ACCC alleges that: (a) Woolworths represented that the products would biodegrade and compost within a reasonable period of time, when disposed of in domestic compost bins or conventional landfills in Australia; and (b) failed to make reasonable and adequate efforts to substantiate these claims, despite the fact it was aware there was confusion among consumers and businesses about the meaning of 'biodegradable' and 'compostable'. In fact, the ACCC Commissioner Sarah Court has indicated that "One of the suppliers of the W Select Eco line had significant qualifications on its website about the biodegradability and compostability of its products". These qualifications were not passed on by Woolworths to its own customers, the end users of these products.

The ACCC also claims that Woolworths acted against its own Environmental Claims Policy, when making these representations. The ACCC is seeking pecuniary penalties, injunctions, declarations, publication orders and costs.

The take away

While this case is still before the courts and the outcome is uncertain, it highlights the difficulties and traps that can arise for brands when using green claims, as well as the importance of doing proper due diligence on substantiation and support for such claims. Green claims may require clarification by way of appropriate qualifications, or they may not be valid at all. The question

brands must ask themselves is not only whether the claim they are making is technically true, but under what circumstances is it true and what would the ordinary consumer justifiably interpret when viewing the claims made? When a claim is open to interpretation, unless it is qualified appropriately, you leave yourself (or your client) open to a valid interpretation that you may not be able to substantiate. And that is a legally precarious position to be in indeed, which may leave the brand exposed.

Contact us

If you would like more information about this case, or anything related to environmental claims specifically or the Australian Consumer Law generally, please get in touch with either of our team below.

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