

Environmental Claims in Advertising and Marketing Code

Practice Note

This Practice Note is an attachment to the AANA *Environmental Claims in Advertising and Marketing Code* (the Code) as a guide to interpretation only. Not all sections have attributed notes as they are considered self-evident. The interpretations offered are based on the original intent of the Code, and may be expanded by the AANA Board as considered necessary including on the advice of the Advertising Standards Bureau as informed by the experience of public complaint adjudication by the Advertising Standards Board (ASB) and subsequent review and amendments of this Practice Note.

This Practice Note alone should not be relied on to address every aspect of the Code. Please refer to the Code, Edition 1, September 2009, for all provisions.

Given the range of industry sectors and environmental issues to which the Code applies and the dynamic political, regulatory, technical and social environment in which it will operate, rules that relate to specific concerns tend to become quickly out-of-date. The Code provides general principles, and not overly prescriptive rules. AANA considers that a Practice Note is an appropriate format for providing up-to-date advice on specific issues.

A number of international and national examples of guidance documents are available and are useful references to assist in the interpretation of the Code. **Attachment 1**, which is not exhaustive, includes relevant examples.

DEFINITIONS & INTERPRETATIONS

Advertising or marketing communications

The definition of 'advertising or marketing communication' in the Code does not include 'labels and packaging' (also refer to definition of 'excluded communications'). Notwithstanding, images of labels or packaging contained within an 'advertising or marketing communication' will be considered to be an element of that 'advertising or marketing communication'.

Environmental Claim

AANA acknowledges there are currently many interpretations, and no universal consensus, of what an 'environmental claim' is. AANA considers it useful to include a definition in order to clarify the scope of the Code.

An environmental claim in relation to goods or services, their consumption/ use/ interaction or their disposal may include representations that state or imply:

- benefit to the environment; or
- no effect on the environment; or
- no or only limited effect on the environment in itself or if used or delivered in a particular way.

Environmental claims may be made in relation to single or multiple attributes or all product or service attributes such as those based on full life-cycle assessment.

1 - TRUTHFUL AND FACTUAL PRESENTATION

Section i - *shall not be misleading or deceptive or be likely to mislead or deceive.*

An advertisement may be misleading or deceptive directly or by implication or through emphasis, comparisons, contrasts or omissions. It is not the intent for the ASB to apply legal tests in its determination of whether advertisements are, or likely to, mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to the Code.

Advertising 'puffery' or 'hyperbole' etc may be acceptable where the 'advertising or marketing communication' would not reasonably be understood to be literally true. Such statements do not require substantiation.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the ASB will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes the Code in regard to the stated or implied environmental claim.

Section ii - *must not be vague, ambiguous or unbalanced.*

Advertisers should accurately consider the overall impression they convey to the general public.

Section iii - *must display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.*

A disclaimer can clarify, expand or reasonably qualify a representation but should not contradict, diminish or retract it. One matter that may be considered to contribute to a potential contradiction, diminution or retraction of a representation is the failure to mention a relevant matter in an advertisement.

As a general guideline, the main body of the advertisement, apart from the disclaimer, should be capable of standing alone without being misleading.

Section iv - *must be supported by evidence that is current and reflects legislative, scientific and technological developments.*

AANA acknowledges the dynamic nature of legislative, scientific and technological developments. AANA also recognises there may be various options that advertisers and marketers may take in meeting environmental aims, thus promoting innovation.

The intent of this section is not to require a consensus view in relation to scientific or technological matters; it is that advertisers and marketers support the claim with sufficient substantiation. What advertisers and marketers consider to be sufficient will vary from organisation to organisation, and in the circumstances, and is, ultimately, a commercial decision for the advertiser or marketer.

Section v - *that make any claim relating to future matters or commitments must be based on reasonable grounds.*

Claims relating to future matters carry the risk that the substance of those claims may not eventuate. However, even if the future matter does not come to pass, the Code will only be breached if, when the statement as to that future matter was made, there was no reasonable ground for believing that the state would come to pass. The fact that a person may believe in a particular state of affairs does not necessarily mean that there are reasonable grounds for the belief. Care needs to be taken with any claim that relates to a future matter to satisfy the requirement that there is a reasonable basis for the belief prior to making a claim.

Section vi - *must not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.*

Self-evident.

Section vii - *must not imply a product or service is endorsed or certified by another organisation when it is not.*

Self-evident.

Section viii - *The environmental claim must not be extended, or implied to be extended, to a whole product or service when it relates only to one aspect of the product eg packaging or energy use, or service.*

An environmental claim must represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. For example, if the claim relates to the:

- packaging only, but not the use of that product, the claim should not imply that it relates to the product as well as the packaging;
- energy use in the manufacture of a product only the claim should not imply that it relates to the energy use in the manufacture of the packaging as well.

Section ix - *must reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.*

An environmental claim may be able to be substantiated (as required by the Code, see section iv above), but there is a dispute among relevant authorities as to the veracity, accuracy or completeness of the matter, or the claim is not widely accepted by the relevant scientific or technical community. In these circumstances, in addition to being satisfied that the claim is substantiated, the advertising or marketing communication needs to make it clear that the claim is not widely accepted. Section x is also relevant, as it is necessary to clearly identify the particular source that is relied on when there is scientific or authoritative disagreements.

Section x - *That use of scientific terminology, technical language or statistics must do so in a way that is appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed. Publication of research results must identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.*

This section is intended to be read as two mutually exclusive parts.

Scientific or technical terminology or presentation of statistics should be relevant and used in a way that can be readily understood by the intended audience without specialist knowledge. Irrelevant data and scientific terminology should not be used to make claims appear to have a scientific basis they do not possess. Technical terminology and jargon should not be used to 'blind with science' and to make simple claims sound impressive.

Publication of (published or unpublished) research results includes, but is not limited to, any direct or indirect reference to the research, a direct or indirect quote from the research, or paraphrasing the research results.

PART 2 – A GENUINE BENEFIT TO THE ENVIRONMENT

Section i - *be relevant, specific and clearly explain the significance of the claim.*

Self-evident.

Section ii - *not overstate the claim expressly or by implication.*

Advertisers and marketers should avoid making or implying significant environmental benefit if the benefit is not significant. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute.

Section iii - *in comparative advertisements, be relevant and balanced either about the product/service advertised or class of products or services, with which it is compared.*

Any comparative claim should be specific and make clear the basis for the comparison. Points of comparison, where appropriate, should reflect a body of evidence including recognised benchmarks or standards where appropriate.

Comparisons should be made with like products, and if there are a number of different models or options, there must be a clear statement as to which product is in fact being compared. Consideration should be given to quantifying the claims for example by use of percentages or absolute values, making comparisons against comparable products/services serving similar functions or making a claim against the advertisers own prior products/services or processes or another organisation's products/services or processes.

Section iv - *not imply that a product or service is more socially acceptable on the whole. The use of Environmental Claims must not reduce the importance of non-environment attributes / detriments of a product or service.*

Consideration should be given to the relationship of the environmental claims to other aspects of a product/service. For example, advertisers should use care not to imply a product or service is more socially acceptable overall by implying another non-environmental attribute/detriment is of lesser importance such as a product that is perceived by consumers to be better for them when there are community health concerns about the use of that product.

Also refer to AANA *Code of Ethics* clause 2.6 Advertisements shall not depict material contrary to prevailing community standards on health and safety.

Section v - *not imply direct relationship to social initiatives of a business where there is no correlation to environmental benefits or attributes or improvements to a product or service.*

Environmental claims should not be made in a manner that implies, directly or indirectly, a correlation between the environmental aspects of the product/service and any social initiative of the advertiser when none exists. For example, the advertising of a "partnership" with or "sponsorship" of an environmental group should not imply that the partnership has improved environmental aspects of the company's product/services where this is not the case.

PART 3 – SUBSTANTIATION

Section i - *Environmental Claims must be able to be substantiated and verifiable. Supporting information must include sufficient detail to allow evaluation of a claim.*

Advertisers and marketers should have a reasonable basis for making a claim and therefore should hold appropriate, balanced, comprehensive and credible evidence to substantiate all express and implied claims.

Information to support a claim may include, but is not limited to, documentary evidence or data evidencing conformity with an identified standard, research, studies, or an expert independent audit. There is no requirement to use third party verification or certification before an environmental claim is made. An advertiser's own internal procedures may be able to provide the necessary substantiation.

In testing the validity of any claim the ASB will only rely on information/material provided by the advertiser and the complainant. The ASB may seek expert advice to assist in the consideration of material provided in relation to the complaint. It is not the intent for the ASB to act as an arbiter of scientific fact, or of philosophical approaches to understanding or addressing environmental concerns.

Section ii - *Environmental Claims must meet any applicable standards that apply to the benefit or advantage claimed.*

This section does not apply where standards exist that are not legally mandated i.e. the standard is a voluntary standard, however, the section will apply in circumstances where the advertiser represents voluntarily compliance with a specified voluntary standard.

Section iii - *The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.*

An unqualified general environmental claim may convey that the product or service has far-reaching environmental benefits or conveys to consumers a broad range of environmental attributes it does not have. Unqualified claims (stated or implied), such as 'green' or 'eco friendly' should therefore be evidenced with a high level of substantiation, for example, such as that based on a full life-cycle assessment.

Unqualified claims, if they relate to an authoritative source, are not considered to necessarily require similar evidentiary material as those claims where they do not relate to an authoritative source. For example, where a claim is made relating to participation in a government program that happens to be titled with what could be considered an unqualified term, for instance, the Commonwealth Governments Green Car Innovation Fund.

Use (by themselves) of scientific terms, business names, trademarks that may be considered to be an unqualified general claim will not automatically constitute a breach of this section. However, use of such terminology in an advertisement may contribute to an 'advertising or marketing communication' to imply an environmental claim.

Section iv - *Environmental Claims and comparisons that are qualified or limited may be acceptable if advertisers can substantiate that the product/service provides an overall improvement in environmental terms either against a competitor's or their own previous products.*

An environmental claim should be relevant to the particular product or service and relate only to the environmental aspects that exist or are likely to be realised during that product or service's life.

Section v - *Claims relating to sponsorships, approvals, endorsement or certification schemes must be current.*

Self-evident.

Section vi - *The use of any symbol or logo must be explained unless the symbol is required by law, or is underpinned by regulations or standards, or is part of an authoritative certification scheme.*

Symbols or logos should only be used in an advertisement when the source of the symbol or logo is clearly indicated, and there is no confusion over the meaning.

In the case of symbols and logos associated with non-accredited certification schemes, special consideration should be given to any explanation of the scheme as it may have no independent audit or monitoring and therefore be open to question regarding achieving stated outcomes.

Section vii - *Substantiation information should be readily accessible, or made available in a timely manner in response to a reasonable written request.*

Consumers must be provided with all information reasonably necessary for them to make an informed purchase decision.

Advertisers have a variety of avenues available for making such information available to consumers, for example, websites, brochures, labels, shelf-talkers; such information does not need to be included in the advertising or marketing communications itself.

Section viii - *Testimonials must reflect genuine, informed and current opinion of the person giving the testimonial.*

Self-evident.

SELECTED REFERENCES

(This is not an exhaustive list. The references are included to provide additional information to assist advertisers and marketers to comply with the Code)

Government

Australia

ACCC, 2008. *Green marketing and the Trade Practices Act*.
<http://www.accc.gov.au/content/index.phtml/itemId/826938>

ACCC, 2008. *Carbon claims and the Trade Practices Act*
<http://www.accc.gov.au/content/index.phtml/itemId/833334>

Canada

Competition Bureau. 2008. *Environmental Claims: A Guide for Industry and Advertisers*.
<http://www.cb-bc.gc.ca/eic/site/cb-bc.nsf/eng/02701.html>

EU

EC, Directorate-General Health & Consumer Protection. 2000. *Guidelines for Making and Assessing Environmental Claims*.
http://www.forbrug.dk/fileadmin/fs-images/jura/lovereagl/mfl/eu/pdf/green_guidelines_en.pdf.

UK

DEFRA, 2003. *Guidance on environmental claims on Greeting Cards*.
<http://www.defra.gov.uk/environment/business/marketing/glc/pdf/greetingscardsguide.pdf>

DEFRA, 2003. *Green Claims – Practical Guidance, How to Make A Good Environmental Claim*.
<http://www.defra.gov.uk/environment/business/marketing/glc/pdf/genericguide.pdf>

US

Federal Trade Commission. *Guides for the use of Environmental Marketing Claims*.
<http://www.ftc.gov/bcp/grnrule/guides980427.htm>

Industry Codes and Standards

Chartered Institute of Public Relations. 2008. *CIPR Best Practice Guidelines for Environmental Sustainability Communications*. <http://www.cipr.co.uk/environmentalcomms/>

UK, Committee of Advertising Practice, 2003. *British Code of Advertising, Sales Promotion and Direct Marketing* [Environmental Claims section]. http://www.asa.org.uk/asa/codes/cap_code

International Chamber of Commerce, 2010. *ICC Framework for Responsible Environmental Marketing Communications*
<http://www.iccwbo.org/uploadedFiles/ICC/policy/marketing/Statements/330%20Final%20version%20of%20the%20Consolidated%20Code%20with%20covers.pdf>

NZ Advertising Standards Authority. *Code for Environmental Claims*.
http://www.asa.co.nz/code_environmental.php

Standards Australia/New Zealand. *AS/NZS ISO 14021:2000 Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling)*. [Available on purchase]
<http://www.saiglobal.com/PDFTemp/Previews/OSH/as/as10000/14000/14021-2000.pdf>

Other

BSR, Futerra Sustainability Communications, 2009. *Understanding and Preventing Greenwash: A Business Guide*.
http://www.bsr.org/reports/Understanding_Preventing_Greenwash.pdf

Forum for the Future. 2008. *Eco-promising: communicating the environmental credentials of your products and services*. http://www.forumforthefuture.org.uk/files/Ecopromising_160408.pdf

Futerra Sustainability Communications. 2008. *The Greenwash Guide*.
http://www.futerra.co.uk/downloads/Greenwash_Guide.pdf

Total Environment Centre, 2008. *The End of Greenwash*.
http://www.tec.org.au/index.php?option=com_content&task=view&id=692&Itemid=331

Total Environment Centre, 2008. *The Green Cred Checklist*.
http://www.tec.org.au/index.php?option=com_content&task=view&id=692&Itemid=331