

Creating a smarter regulatory environment that protects consumers, allows businesses to thrive, and helps save the earth too.



Jeffrey A. Greenbaum
Chair,
IAA Public Policy Council



In 2021, the International Consumer Protection Enforcement Network released the results of a first-of-its-kind review conducted on environmental claims being made on websites around the world. The review, which was led by the United Kingdom’s Competition and Markets Authority and the Netherlands Authority for Consumers and Markets, found that 40% of those websites may be engaged in greenwashing.

These findings didn’t come as a big surprise to regulators and others who have been paying attention to the ways that marketers are promoting the environmental benefits of their products. The International Chamber of Commerce, for example, had already embarked on a project to update its “Framework for Responsible Environmental Marketing Communications,” which it released later that year. During an IAA “fireside chat” I recently had with Raelene Martin, ICC’s Head of Sustainability, she explained that one of the reasons the ICC decided to update its guidelines was that “with the proliferation of environmental marketing claims, there was some concern around greenwashing and whether some of those claims were actually substantiated.”

It’s not just the ICC that has taken notice. A little more than a year ago, for example, the UK’s Competition and Markets Authority published its own “Green Claims Code.” In releasing the Code, Andrea Coscelli, the CMA’s Chief Executive, said, “We’re concerned that too many businesses are falsely taking credit for being green, while genuinely eco-friendly firms don’t get the recognition they deserve.” Further, in the United States, the Federal Trade Commission just announced that it is planning to update its “Guides for the Use of Environmental Marketing Claims,” for the first time in over a decade.

With regulators and self-regulators believing that we have a serious greenwashing problem, and actively engaging in efforts around the world to address it through regulation, enforcement, and other means, what steps should advertisers be taking right now to help protect the great value that their green credentials bring to their brand and to avoid staying out of legal trouble?

While green marketing might feel like the wild west right now in in some areas, and while there are certainly some unanswered questions, for the most part, the rules governing green marketing in many jurisdictions are well-established. With the risk of enforcement (as well as the risk of claims being brought by competitors and consumers) increasing as attention turns to green marketing issues, advertisers should be proactively reviewing their environmental marketing claims to ensure that they are legally compliant.

Although the specific rules vary by jurisdiction, one thing that every advertiser should do is to review their marketing with a view toward replacing ambiguous, general environmental benefit claims that could have the capacity to mislead consumers with claims that promote specific environmental benefits that are backed up by proper substantiation, in accordance with local legal requirements. When talking about environmental benefits that consumers may not be as familiar with or that may be interpreted in multiple ways – such as “sustainable,” “carbon neutral,” or “circularity” – marketers should, at a minimum, take the time to explain to consumers what they mean by those terms, so consumers don’t take away unintended messages.

Jeffrey A. Greenbaum: Creating a smarter regulatory environment that protects consumers, allows businesses to thrive, and helps save the earth too.

This is also a critical time for advertisers to engage in a meaningful dialogue about the regulation of environmental marketing with regulators and self-regulatory organizations. At IAA, we believe that smart regulation – which is the product of an open dialogue with industry and other stakeholders -- can both protect consumers and create a regulatory environment that allows businesses to thrive. And when we're talking about green marketing, smarter regulation can also incentivize businesses to create environmentally preferable products, making it easier and cheaper for consumers to get them, and ultimately, help address the world climate crisis.

These are lofty goals, but we're much more likely to achieve them if industry gives regulators and self-regulators the information and tools they need to create more effective rules and guidance.

Is complying with a patchwork of different laws around the world the best approach or should governments try to harmonize their rules? Would you rather have rules and guidance that leave room for interpretation and flexibility, or do you want specific, bright-line standards to follow? Are there rules on the books now that are acting as disincentives for you to develop environmentally preferable products? Are there standards out there that prevent you from effectively talking about the environmental attributes of your products? What about standards that are out-of-date or regulatory schemes that fail to provide guidance on the types of environmental claims that marketers are making today? Are you hesitating to make long-term corporate environmental commitments for fear that you may be held responsible if you fail to ultimately achieve them, notwithstanding the best of intentions?

Right now, marketers should identify the barriers that are preventing them from achieving their environmental marketing objectives – as well as their overall environmental goals -- and then they should work closely with governments and others to come up with real-world solutions.

This is the time for marketers to take action and ensure that their voices are heard. It's not just the value of your brand that is at stake. With smarter regulation, we can better protect the earth as well.

