Greenwashing claims: how to avoid becoming an eco-fraud target

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Green is the new black in consumer product marketing. Gone are the days when the local co-op was the only business pushing products labelled as environmentally friendly. Even large, mainstream retailers and manufacturers have joined the green revolution and are reaping the benefits to be had from green marketing. Environmentally friendly products are in greater demand, and companies are repackaging their products as “clean and green” in order to stay competitive. Unfortunately, the more aggressive a company is with its environmental claims, the more likely it is to become a target in an “eco-fraud” or “greenwashing” action brought on behalf of consumers, competitors or the government.

What is “greenwashing” or “eco-fraud”?

The term “greenwashing,” a derivative of “white-wash,” has recently come into vogue to describe the promotion of environmental benefits through consumer advertising and labelling practices that are perceived to be false, deceptive, misleading or vague. The term “greenwashing” is widely attributed to a 1986 essay penned by suburban New York environmentalist Jay Westerveld criticising the hotel industry’s use of placards suggesting guests could help “save the environment” by reusing their towels. Westerveld maintained that the hotels were more motivated by profit than by any real environmental agenda.

Legal actions arising from alleged greenwashing can best be described as “eco-fraud” litigation. Such claims, which may be brought by a purported class of consumers, competitors, state attorneys general or government agencies, seek recovery and/or injunctive relief based on allegedly deceptive trade practices and fraudulent advertising of environmental benefits. These actions essentially challenge labels such as “Environmentally Friendly,” “Eco-conscious,” “Carbon Neutral,” “Energy Efficient,” “Sustainable,” “Renewable,” “Organic,” “Non-toxic,” “Chemical free,” “All Natural,” “Recycled,” and “Biodegradable.”

Part of the recent interest in eco-fraud litigation has been triggered by aggressive publicity and publications by eco-activists and advocacy groups, such as Greenpeace, decrying the environmental practices of corporate America. One oft-cited study responsible for focusing public attention, and the plaintiffs’ bar, on eco-fraud is The “Six Sins of Greenwashing™” — A Study of Environmental Claims in North American Consumer Markets, which was published by the environmental marketing firm TerraChoice in November 2007. The study, intended to describe and quantify the pervasiveness of greenwashing, conducted a survey of six category-leading big box stores in which more than one-thousand so-called green consumer products were examined. A host of consumer products, such as shampoo, paper towels, televisions, light bulbs, copy paper, laundry detergent and lumber, were tested for compliance with current best practices in environmental marketing as found in sources such as the International Organisation for Standardisation (ISO), the US Federal Trade Commission (FTC), the US Environmental Protection Agency (EPA), Consumers Union, and the Canadian Consumer Affairs Branch. All but one of the products made environmental claims that were judged to be “demonstrably false” or misleading.

The study identified the following six patterns, or “sins,” of greenwashing: (1) sin of the hidden trade-off, (2) sin of no proof, (3) sin of vagueness, (4) sin of irrelevance, (5) sin of lesser of two evils and (6) sin of fibbing.

1 The sin of hidden trade-offs is described as advertising a product as “green” based on one attribute, without considering other important environmental issues related to the product. This first sin is demonstrated with reference to household insulation products that promote indoor air quality without paying attention to other environmental aspects of the insulation, such as manufacturing impact or recycled content.

2 The sin of no proof arises when a claim cannot be substantiated by easily accessible information, such as household lamps and lights that promote energy efficiency or facial tissues and paper towels that claim post-consumer recycled content without providing evidence.

3 The sin of vagueness occurs when a claim is so poorly defined or overly broad that an intended consumer is likely to misunderstand it. Examples of such claims include insecticides promoted as...
“chemical-free,” “natural” hair mousse, and wax paper that claims “recycled” content, but fails to quantify that content.

4 The sin of irrelevance is committed when an environmental claim is made that may be truthful, but is unimportant or unhelpful to the environmentally conscious consumer. The most common example of this “sin” is the allegedly irrelevant claim that a product is free of chlorofluorocarbons (CFCs), which the study notes have been banned for almost thirty years.

5 The sin of lesser of two evils is made when a claim may be true, but it risks distracting the consumer from the greater adverse environmental impacts of the product’s entire category, with cited examples including organic cigarettes and “green” insecticides and herbicides.

6 The final sin, the sin of fibbing, occurs when a claim is false. The study cites as examples of this sin several shampoos that claimed to be “certified organic,” but for which no confirmation of that claim could be found.

The conclusions of the TerraChoice study are difficult to verify, because the study does not mention any specific brands, stores or companies by name, and the methodology has been questioned. One thing that is not questionable, however, is the interest in it by the media. The study has been covered on CNN, MSNBC, The Today Show, The New York Times, and a host of other national publicity outlets. Not only has the study, and publications like it, brought greenwashing into the American consciousness, but it essentially provides a road map for plaintiffs’ attorneys looking for the next big consumer fraud case.

**Eco-fraud: today’s flavour of consumer class litigation**

The rise of no-injury consumer product class actions has been chronicled on the legal blogs and the seminar circuit for the past several years. The term “consumer product class action” is a catch-all phrase used to describe “no-injury” class actions involving a consumer product claim typically based on a hybrid collection of state and federal consumer protection statutes and traditional theories of recovery. The common paradigm in these cases involves a statewide or sometimes nationwide class action targeting a single product or a discrete class of products by plaintiffs seeking recovery for an alleged economic injury. A familiar charge is that the product failed to deliver the “benefit of the bargain” because the product was not delivered as advertised, and thus the plaintiffs seek a return of the purchase price or the premium paid. The plaintiffs typically allege the defendant either failed to disclose the product’s alleged health risks (eg, failure to disclose alleged harms from Teflon® coated cookware) or deceptively advertised the product to possess some health benefit or premium attribute that cannot be substantiated (eg, “probiotic” yogurt or tools “made in the USA”). The goal in bringing such claims is clear: attain certification and extort a settlement.

The consumer class action is an alluring avenue for a number of reasons. First, the bar for class certification is far lower in these types of cases than in personal injury or medical monitoring actions, where individualised injuries often defeat the class certification requirements of commonality and typicality. Second, these actions usually dispense with the hurdle of proving scientific or medical causation and the associated expense of hiring a cadre of scientific experts. Third, these actions give rise to large classes with high monetary payoffs due to the many consumers who purchase the types of everyday products being targeted.

Historically, the class model could be avoided in product liability actions alleging personal injury because in such cases the differences among individual plaintiffs on issues of liability, comparative fault, causation, and the nature and degree of injuries tend to overshadow the commonality of the class. By eliminating the personal injury element in consumer fraud class actions, however, plaintiffs can avoid the biggest hurdle to class certification.

An important and current debate relevant to the defense of consumer class actions concerns the issue of individual reliance, the traditional causal element of a common law misrepresentation claim. It is believed that the courts’ relaxation of the reliance requirement — a showing that the misrepresentation induced the consumer to purchase the product — is a significant factor in the rise of these consumer product class actions. In recent years many have described a national trend dispensing with the need for plaintiffs to prove reliance under consumer protection claims. Most recently, however, it seems there is a reversal of this trend and more courts are finding that the “as a result of” language in most consumer protection statutes requires actual causation in the form of reliance.

In the light cigarette case of *McLaughlin*, the Second Circuit held that “proof of misrepresentation — even widespread and uniform misrepresentation — only satisfies half of the equation; the other half, reliance on the misrepresentation, cannot be the subject of general proof.” The court stated that individualised proof of reliance on the misrepresentation is needed to overcome the possibility that a member of the purported class purchased the product for some other reason. Eco-fraud is just the latest flavour of consumer product class...
litigation, as such claims fit squarely within the paradigm, and the reliance debate, described above. It would be very easy to craft a purported class action based on any of the examples described within the TerraChoice study cited above. For example, products with labels purporting to be “chemical free” are subjecting themselves to fraud claims on the ground that nothing is truly free of chemicals. Similarly, claims that a product is “non-toxic” may be subject to attack since most anything, including water, oxygen or salt, will become toxic if ingested in excess amounts. Your product may be “all natural,” but so are arsenic, mercury, uranium and formaldehyde.

One such consumer eco-fraud class action was recently filed in San Francisco Superior Court against Fiji Water Company and its corporate owner alleging that Fiji "misrepresented... to consumers that Fiji Water is an environmentally sound product."9 Plaintiffs in the case challenged the company’s “Green Drop” seal of approval, the use of term “Fijigreen,” and the company’s overall green marketing campaign as misleading given the environmental costs (burning of fossil fuels and creation of greenhouse gases) associated with transporting the bottles and the impact of the containers tossed in landfills. The action seeks disgorgement of profits, restitution, declaratory and injunctive relief and compensatory and punitive damages under California’s consumer fraud statutes and other state law. The company will likely defend with evidence of its commitment to reduction in packaging, investment in rainforest renewal and reduction of carbon emissions to support its eco-friendly campaign, but the costs of defending the suit, the impact of any follow-on actions and the negative publicity will take its toll regardless of the outcome.

The same strategies employed for defeating class certification in typical consumer fraud actions apply in eco-fraud cases. Defendants will want to emphasise the dissimilarity of consumer experiences and behaviour among putative class members in order to show that the of commonality, typicality, predominance, and superiority cannot be met.10 Members of a purported eco-fraud class likely would not have received the same information, made purchasing decisions in the same way, used the product in a similar way and for the same reasons, or reacted in a uniform manner. A recognised and reliable market research firm is invaluable to conduct the studies, surveys and other market research needed regarding consumers’ consideration and awareness of green claims, motivations, processes and choice behaviours. In most cases, expert testimony on these points is essential to defeat the commonality, typicality, superiority and predominance requirements.

Likewise, reliance is likely to be a difficult challenge for plaintiffs in cases of alleged greenwashing. Following the logic of McLaughlin, specific proof of reliance on the alleged environmental marketing should be an element in most of these claims.11 Consumers purchase products such as milk, toothpaste, televisions and lumber for a variety of reasons, and it cannot be assumed that a class of consumers all purchased the product because of the advertised green benefits. In order to attack reliance, evidence as to the plaintiff’s environmental practices and ecological behaviours will be relevant and persuasive. For example, it would be a hard sell to suggest a plaintiff relied on a particular green claim in purchasing a household product when it can be shown that the same plaintiff never recycles, drinks his coffee from polystyrene cups, and drives a gas-guzzling SUV.

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In such a case it is likely the consumer relied on the price, the name brand, or other attribute of the product rather than the green claim.

Nonetheless, the climate of concern over consumer class action lawsuits is mounting, and corporate defendants should be particularly wary of potential eco-fraud consumer class actions. Despite the difficulty of plaintiffs being able to prove reliance in these cases, there are several other factors that render these types of cases more troublesome than the average consumer fraud case. First, there is a legitimate public policy argument in favour of protecting the environment and encouraging corporate environmental responsibility, which is absent in the typical consumer product case. Whereas courts may be more willing to take a common sense approach or “buyer beware” stance as to an exaggerated product label touting more trivial claims such as “calorie-burning” benefits of a soft-drink or the failure to provide an obvious warning that playing an MP3 player at full volume might damage your hearing, they may be more sympathetic to the environmental cause and the public policy in favour of conservation.

Second, the plaintiffs have very strong allies when it comes to punishing corporate defendants for perceived
greenwashing. The number and the strength of the environmental watchdog groups is unparalleled. Public interest and advocacy groups such as Greenpeace are well-funded, active and very willing to take on a fight against a corporate defendant over greenwashing. The group sponsors a website, <www.stopgreenwash.com>, featuring its own slick logo, “Clean up your act, NOT your image.” Similarly, Co-op America, whose stated mission is to “harness economic power — the strength of consumers, investors, businesses, and the marketplace — to create a socially just and environmentally sustainable society,” sponsors the website <www.responsibleshopper.org>, where consumers can search literally hundreds of company profiles by name or by industry and quickly compare corporate responsibility records. Groups like The Cornucopia Institute, Center for Science in the Public Interest, Organic Consumers Association, and US Public Interest Research Group have also shown that they are willing to promote consumer eco-fraud litigation, by providing the needed funding or helping to identify class representatives, to further their missions.

Advocacy groups occasionally have sought to bring such actions solely on their own behalf, although standing is a significant barrier to such direct claims. In order to establish standing to sue, such a group must establish that it suffered an injury in fact, that there is a causal nexus between injury and the defendant’s conduct, and the likelihood that the injury will be redressed through a favourable decision. Specifically, the organisation must demonstrate that it has suffered a “concrete and demonstrable injury” to its activities, not merely “a setback to the organisation’s abstract social interests.”

Third, the PR costs to a company targeted in eco-fraud claims can be huge. A corporate green campaign can quickly backfire, doing more harm than good, if the consuming public believes the claims are untruthful or misleading. Environmental responsibility is a deeply felt conviction held by many people, from private citizens to professionals, to religious devotees, politicians and extremists. Environmental consciousness is a hot topic for the media outlets, and they will be quick to disseminate any story involving an alleged “greedy corporation” taking advantage of “innocent” consumers’ efforts and desires to “save the earth.” Meanwhile, both the plaintiffs’ attorneys and the public interest groups will fuel the fire of media attention, if for no other reason than to promote their own profiles.

Finally, unlike most other areas of consumer fraud, there are published guidelines and standards by which green marketing claims can be objectively measured for deceptiveness, including those found within the FTC Green Guides, the USDA organic standards, the ISO’s standards, and state environmental marketing statutes. These standards provide a benchmark for measuring the claims and criteria on which consumers can base their complaints. As discussed below, the FTC is expected to issue revised Green Guides in 2009 to include more specific guidance for companies facing this dilemma. While the additional guidance is welcome clarification for many, it is also likely to give rise to increased litigation when companies’ labelling does not comply, even though the Guides do not carry the force of law.

Third-party claims — competitors, regulators and public prosecutors

While the biggest threat to companies accused of greenwashing are the eco-fraud consumer class actions, companies should also be concerned about actions brought by competitors, regulatory agencies and public prosecutors such as state attorneys general. Companies have been known to initiate litigation over a competitor’s green claims in order to eliminate the competitor’s market advantage gained by a misleading environmental marketing claim.

Tyson Foods, Inc, the second largest domestic chicken producer, was reportedly sued for eco-fraud by competitors contending that its chicken products were fraudulently advertised as “raised without antibiotics.” Both Tyson and its competitors added an antibiotic known as ionophores to its chicken feed to help prevent consumers from contracting disease. Tyson also injected a vaccine containing antibiotics into the chicken eggs right before they hatched. The “antibiotic free” label was believed to enhance Tyson’s profits because consumers were willing to pay more for the environmentally “green” product.

The Tyson labels, at issue, were initially approved by the US Department of Agriculture’s (USDA) Food Safety and Inspection Service. However, USDA later claimed that the approval was a mistake based on misinformation provided to it by Tyson. Thus, the label was rescinded to avoid claims that it was false and misleading. The court ordered an injunction barring Tyson from similar advertising and Tyson subsequently voluntarily withdrew its label. Tyson’s antibiotic free labels, advertising, and corresponding marketing materials have spawned a purported class action on behalf of consumers as well as a petition to the USDA by Tyson’s competitors.

In another competitor suit in 2008, Dr Bronner’s Magic Soaps filed a lawsuit in California Superior Court against Estee Lauder and numerous other personal care brands to force them to stop making alleged misleading organic labeling claims. Dr Bronner’s and the Organic Consumers Association (OCA) had threatened offending brands that they would be sued unless they either dropped their organic claims or reformulated their products. The suit maintained that organic labelling standards set by the USDA’s NOP for food and beverages set the
bar for consumer expectations of “organic” cosmetic products, even though the USDA standards do not necessarily apply to cosmetics, body care or personal care products.

Government agencies such as the USDA, the FTC and state attorneys general are also willing to get involved in challenges to perceived greenwashing by corporate defendants, either in connection with consumer class actions or independently. As an example, the FTC and various states became involved in watchdogging environmental marketing as early as 1988 when they pursued actions against Mobil for its Hefty® brand trash bags advertised as “biodegradable.”17 To be biodegradable, the bag would have had to be capable of being fully metabolised by microorganisms and assimilated into the natural biological cycle in soil and water. The bags were made from polyethylene and were alleged not to be fully biodegradable as they would break down only slightly if left in the sun but not fully degrade. The FTC and seven states filed suit against Mobil, and the company eventually entered into a consent agreement with the FTC whereby it agreed to stop making the allegedly unsubstantiated claims. Mobil also settled with the states, paying a total of $165,000 and agreeing to remove the term “biodegradable” from the Hefty® bags.

The risk of eco-fraud claims extends beyond US borders, as government entities in several other countries also have pursued eco-fraud enforcement actions in recent years. In 2008, for example, eight Japanese paper companies were reportedly sanctioned by Japan’s Fair Trade Commission for exaggerating the percentage of recyclable material in their paper products.18

In Australia, the Australian Competition and Consumer Council (ACCC) recently brought legal proceedings against SeNevens International Ltd in relation to its claims that its disposable Safeties Nature Nappy were “100% biodegradable.”19 The ACCC alleged that SeNevens engaged in false, misleading and deceptive conduct in violation of ss 52 and 53 of the Trade Practices Act 1974 (Cth), which prohibit misleading or deceptive conduct and false representations about a product’s composition, performance or benefits. In December 2008, the court declared the biodegradability claims were false and misleading because SeNevens Safeties Nature Nappy product contained plastic polymers such as polypropylene, polyethylene and polyethylene terephthalate that are not chemically capable of being broken down by the biological activity of living organisms.20

As these examples illustrate, companies should be prepared to defend eco-fraud claims on multiple fronts and in multiple geographic regions, as competitors, various government agencies and individual states may pursue independent actions. Aside from the civil penalties involved, the expense and burden of defending a product in various arenas can mount quickly, with each having its own set of discovery and investigatory obligations.

The FTC’s Green Guides and other sources

Subsequent to the Mobil case, the Federal Trade Commission (FTC), with the cooperation of the EPA, released the “Green Guides” to provide guidance to companies in their environmental marketing.21 Originally released in 1992 as “Guides for the Use of Environmental Marketing Claims,” and last updated in 1998, these provisions are the primary tool for federal regulation of environmental marketing. The Guides are intended to aid companies in their compliance with s 5 of the FTC Act, which makes unlawful deceptive acts and practices in or affecting commerce.

Given the flurry of green marketing claims and growing concern about alleged greenwashing, the FTC has promised the Guides will be revised for 2009 to better address these issues. To that end, the FTC has accepted public comments and held a series of workshops in 2008 to discuss the Green Guides and needed areas of revision. The FTC is currently investigating a variety of environmental claims and is expected to show renewed interest in pursuing claims against corporate defendants once the Guides are updated.

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The Green Guides apply to environmental claims included in labelling, advertising, promotional materials and all other forms of marketing, as well as claims about the environmental attributes or “carbon footprint” of a product, package or service.22 Some states, such as California, also have their own, more stringent environmental marketing statutes.23 Familiarity with these guidelines and state statutes is essential to avoid, and defend against, litigation and enforcement actions.
Because the Guides are not legislative rules under s 18 of the FTC Act, they are not enforceable regulations, nor do they have force and effect of law. They do, however, provide the basis for voluntary compliance with such laws. The FTC notes that conduct inconsistent with the positions articulated in the Guides may result in corrective action by the FTC under s 5 if the FTC believes that the behaviour falls within the scope of conduct declared unlawful by the statute. Currently the Guides set forth general principles and specific guidance, as well as a number of relevant examples. The four general principles are as follows:

- Any qualifications or disclosures such as those described in the Guides should be sufficiently clear, prominent and understandable so as to prevent deception;
- An environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging, a service or to a portion or component of the product, package or service;
- An environmental marketing claim should not be presented in a manner that overstates the environmental attribute or benefit, expressly or by implication; and
- Environmental marketing claims that include a comparative statement should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception.

In addition to these general principles, specific guidance is offered about the use of environmental marketing claims involving the following terms: degradable, biodegradable, photodegradable, compostable, recyclable, recycled content, source reduction, refillable, ozone safe, ozone friendly, and “general environmental benefit claims,” such as eco-safe or environmentally friendly. For example, the Guides point out that a product labelled as “degradable,” “biodegradable” or “photodegradable,” “should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.”

Specific guidance is also provided for use of the term “recyclable” in marketing. Such language may be used only when a product or package “can be collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program.” Similarly, the Green Guides advise that a lawn care product advertised as “essentially non-toxic” or “practically non-toxic” may be deceptive if the label applies to health effects but not to the toxic effects on the environment. The Green Guides currently provide around sixty such specific examples with further guidance. Additionally, companies should refer to the FTC’s publication entitled “Complying with the Environmental Marketing Guides,” which is available on the FTC’s website.

There are a number of additional sources for environmental advertising standards and guidance. The International Organisation for Standardisation (ISO) has published “Global Green Standards” for environmental labeling. The Consumer Union, who publishes Consumer Reports, also maintains a website with an extensive searchable database showing report cards for a wide variety of environmental labels and logos and the products on which they appear. Australia, France, Canada, the UK and other countries have published their own guidance, some mandatory and some voluntary, regarding environmental marketing of consumer products. For example, in 2008 the Australian Competition and Consumer Council issued a guidance publication very similar to the FTC’s Green Guides entitled “Green marketing and the Trade Practices Act,” which is available online at <www.accc.gov.au/content/index.phtml/itemId/815763>.

Moreover, a number of independent third-party certifiers and eco-labeling organisations, such as Green Seal and members of the Global Ecolabelling Network, are available to evaluate and certify products as environmentally preferable. Thus, there are a number of resources available to help set the standard for acceptable environmental marketing claims, and voluntary adherence to these will help companies avoid litigation and bolster their defense in the event they are targeted.

“Organic” labelling and the USDA

The USDA's regulations include strict requirements for the labelling of organic products, and labelling violations can carry severe penalties. The Organic Foods Production Act (OFPA) authorised the USDA's National Organic Program (NOP) to develop, implement, and administer the national production, handling, and labeling standards for organic agricultural products. The NOP also accredits the certifying agents, foreign and domestic, who inspect organic production and handling operations to certify that they meet USDA organic standards. Agricultural commodities or products that meet the NOP standards for certification can be certified under the NOP and therefore be labelled as “organic” or “made with organic” pursuant to the NOP regulations. To qualify for such certification, a producer or handler must comply with the applicable NOP regulations as set forth...
in the C.F.R. USDA has accredited certifying agents whose job is to certify that handlers and producers representing their products as organic have complied with NOP regulations.

USDA defines three levels of organic labelling for food and beverages. A product can be labelled “100% organic” if it is made entirely with 100% organically produced ingredients, not counting added water and salt. Generally, the label “organic” may be used if the product contains at least 95% organic ingredients with no added sulfites. Both of these categories may also display the USDA organic seal. Products may be labelled as “made with organic ingredients” if they contain a minimum of 70% organic ingredients and no added sulfites, except that wine may contain sulphur dioxide. Recently, the advocacy group Organic Consumers Association (OCA) has pushed for tightened restrictions on organic labelling of cosmetics and personal care articles. Currently, cosmetics and personal care products may be certified and labelled as “USDA organic” if they meet the production, handling, processing, labelling, and certification standards, although such products are not required to comply. Currently the USDA has no authority governing the production or labelling of personal care products not made of agricultural ingredients or products that do not make claims to meet USDA organic standards. Generally, cosmetics, body care products and personal care products may be labelled and marketed as “natural” or “organic” or may display other green labels without being subject to the USDA NOP program.

Failure to comply with the USDA labelling requirements can subject companies to hefty fines, as well as civil suits for alleged misrepresentation. In 2007, multiple purported class actions were filed against Aurora Dairy Corp. alleging that it labelled and sold its milk as organic, which yields much higher prices than conventional milk, without following federal standards for organic products. In what follows a familiar pattern, an advocacy group first made complaints to the USDA, which then launched an investigation into the company’s practices. Class action lawsuits, at least six in total, were filed on the heels of the USDA investigation alleging violations of various statutes and common law, including consumer fraud, unjust enrichment, breach of warranty, negligence and false advertising.

Conclusion

Recent developments suggest companies and their counsel should be prepared for the new wave of eco-fraud litigation. Greenwashing has become a buzzword for consumers, advocacy groups and the media, and this is fertile ground for no-injury consumer class actions and regulatory enforcement actions. Unfortunately, the rules are not always clear, consistent or static when it comes to responsible environmental marketing. As companies become more aggressive with their “green and clean” campaigns, they must be careful not to become a target for these eco-fraud and greenwashing claims.

Footnotes

3. See, eg, In re Vioxx Prods Liab Litig, 239 FRD 450 (ED La 2006).
6. See McLaughlin v Am Tobacco Co, 522 F3d 215 (2d Cir 2008) (holding that individualised proof of reliance is a required element); see also Castano v Am Tobacco Co, 84 F3d 734, 745 (5th Cir 1996) (“a fraud class action cannot be certified when individual reliance will be an issue”).
7. McLaughlin, 522 F3d at 223.
8. Above, note 7; See also Thorogood v Sears, Roebuck and Co, 2008 WL 4709500 (7th Cir October 28, 2008) (decertifying a
class of purchasers of clothes dryers advertised with “stainless steel” drums after finding a presumption of reliance “implausible”.

9. See Ayana Hill, on behalf of herself and all others similarly situated, v Roll International Corporation and Fiji Water Company LLC, Case No CGC-09-487547, filed April 22, 2009.


14. Sanderson Farms, Inc v Tyson Foods, Inc, 547 F Supp 2d 491 (D Md 2008); See also Emily Chasen, Tyson sues USDA over antibiotic-free labeling, Reuters, June 14, 2008; Erin Marie Daly, Tyson Yanks Antibiotic-Free Chicken Claim, Law360, June 3, 2008.

15. See Sanderson, 547 F Supp 2d 491

16. All One God Faith, Inc d/b/a Dr Bronner’s Magic Soaps v The Hain Celestial Group, Inc, Case No CGC-08-47401, Superior Court of California, County of San Francisco, Department 305.


22. Above, note 20, at § 260.2.


24. 16 CFR at § 260.1.


27. Above, note 24.


31. 7 USCA §§ 6501–22.

32. 7 CFR § 205.

33. (7 CFR § 205.300 et seq.)

34. Above, note 33.

35. Above, note 33.

36. Above, note 33.