

Article Information

Authors: Tom Griffith, Chelsea Shinkfield

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Wave of misinformation? ACCC commences Federal Court proceedings against Clorox over Ocean Plastic Representations

The ACCC has commenced proceedings in the Federal Court against Clorox Australia Pty Ltd for allegedly making false and misleading representations that its GLAD Kitchen Tidy and Garbage Bags were comprised of recycled ‘ocean plastic’.

In the Commission’s announcement of its Enforcement and Compliance Priorities Speech in March this year, the ACCC confirmed that sustainability will be a priority for 2024, with a focus on misleading environmental claims.

Ocean Plastic Representations

Kitchen Tidy Bags

The ACCC contends that between June 2021 and November 2022, Clorox displayed on the packaging of their small, medium and large GLAD Kitchen Tidy Bags, in large font, that they were “50% OCEAN PLASTIC RECYCLED BAGS”. In smaller font, the packaging also displayed that they were “MADE USING 50% OCEAN PLASTIC”. Between mid to late 2022 and July 2023, the packaging of each of the kitchen tidy bag products was updated. The text was changed to read, “MADE USING 50% OCEAN BOUND PLASTIC”.

The ACCC further allege that Clorox paired these statements with wave imagery and used blue coloured bags, which created the impression that these GLAD bags were made from plastic waste collected from the ocean or sea.

Garbage Bag Products

Between about May 2022 and July 2023, the ACCC alleges that the packaging of each of the GLAD Garbage Bag products displayed “GLAD to be GREEN” in green font, followed by underlaying words “to be GREEN”. The packaging also displayed that the bags were “50% OCEAN PLASTIC RECYCLED GARBAGE BAGS” and in smaller font, stated they were “MADE USING 50% OCEAN BOUND PLASTIC”.

Again, the ACCC allege that the use of the green font and the specific wording “GLAD to be GREEN” implied that the bags were at least partially made of recycled ocean plastic.

Why does the ACCC consider the Representations to be false and misleading?

The ACCC argues that this packaging constituted a representation that each of the GLAD products were comprised of 50% recycled plastic waste collected from the ocean or sea, or alternatively, from an ocean or a sea (Ocean Plastic Representation). The ACCC argues that the Ocean Plastic Representation was the dominant message conveyed by the packaging, notwithstanding the references to ‘ocean bound plastic’. Each time a product was supplied, presented for sale, or viewed, was considered to be a separate representation.

The ACCC alleges that the products were in fact, not comprised of 50% recycle plastic waste collected from the ocean or sea, or from an ocean or a sea, but rather, that they were comprised of resin, up to 50% of which was derived from recycled plastic that had been collected from communities situated up to 50 kilometres from a shoreline in Indonesia. The remaining 50% was comprised of non-plastic waste resin, processing aid and dye or ink.

The ACCC submits that each time an Ocean Plastic Representation was made, Clorox allegedly:

- engaged in misleading or deceptive conduct under section 18 of the *Australian Consumer Law (ACL)* contained in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*
- made false or misleading representations as to the:
 - composition of each product in contravention of s 29(1)(a) of the ACL; and
 - environmental benefits of each product, in contravention of s 29(1)(g) of the ACL.
- engaged in conduct that was liable to mislead the public as to the nature, manufacturing process and characteristics of each product in contravention of s 33 of the ACL.

The ACCC has sought declarations, penalties, injunctions, an order to implement a compliance program, corrective notices, costs and other orders.

The ACCC argued that Clorox took advantage of consumers' concerns about environmental pollution, particularly plastic waste in the ocean. This conduct deprived customers of the opportunity to make informed purchasing decisions and put other businesses making genuine claims at a competitive disadvantage.

In the annual announcement of the Commission's Enforcement and Compliance Priorities in March 2024, ACCC Chair Gina Cass-Gottlieb stressed the importance of ensuring that environmental claims are accurate, substantiated and aligned with the understanding of the ordinary and reasonable consumer to allow those who want to reduce the negative impacts of their consumption on the environment to make informed decisions.

Similar Findings

In November 2023, the ACCC undertook an investigation into MOO Premium Foods Pty Ltd, a yoghurt manufacturer, following representations displayed on their yoghurt packaging that their tubs were "100% ocean plastics". It emerged from this investigation that the plastic resin used in MOO's yoghurt packaging was actually collected from coastal areas in Malaysia, and not directly from the ocean as they had represented. The ACCC accepted an enforceable undertaking involving an admission by MOO that these representations likely contravened the ACL.

Key Takeaways

- It is clear that the ACCC will continue to investigate and crackdown on environmental and sustainability based claims made by businesses.
- To avoid breaching the ACL, businesses should ensure that any environmental claims they make are truthful and accurate, and can be substantiated if required.
- Businesses should also review the [ACCC guide for making environmental claims](#) issued in December 2023, which includes the eight principles for trustworthy environmental claims, to ensure they are not misleading consumers.