




Australian
Competition &
Consumer
Commission

NEWS FOR BUSINESS



Biodegradable, degradable and recyclable claims on plastic bags

Companies are increasingly using environmental claims as a way to differentiate themselves and their products from their competitors.

Environmentally aware customers are increasingly using these claims when buying products and services—and they do not deserve to be misled by misleading or deceptive environmentally friendly claims.

Businesses that make claims such as biodegradable, degradable or recyclable on their plastic shopping bags and packaging must ensure those claims can be substantiated and are appropriately qualified.

Not only is this good business practice—it is law.

The **Trade Practices Act 1974** (the Act) requires that businesses provide consumers with accurate information about goods and services. Manufacturers and/or retailers that make false or misleading representations on their packaging (including their plastic bags) or on any other product—even on imported items—will find themselves in breach of the Act.

The Australian Competition and Consumer Commission and consumers and business competitors can take legal action against a company over potential breaches of the Act. The ACCC's enforcement powers are extensive—it can seek remedies such as damages, compensation, injunctions to prevent ongoing conduct, adverse publicity orders, corrective advertising orders, refunds and establishing trade practices compliance programs.

Remember: conduct is misleading or deceptive if it has led, or could lead, a person into error, taking all circumstances into account.

So, when claiming that your plastic bags, or other plastic items, are biodegradable, degradable or recyclable, it makes good sense to comply with the Trade Practices Act.

What else should you consider?

Overall impression

Be careful that the overall impression your claim could create in the minds of consumers is not misleading. It does not matter whether a representation is technically or narrowly correct—its overall impression **must not lead** consumers into error. Your intention when making a claim is irrelevant in determining whether the actual conduct breaches the Trade Practices Act.

Misleading conduct can include **what is not said** if, in all the relevant circumstances, there is a reasonable expectation that something will be disclosed. If, for example, you put 'recyclable' on a product when it can be recycled only in limited circumstances, this could be a misrepresentation through silence.

Be aware that images can act like words—they can be representations, too. If you have an image of the earth or a forest on your plastic bags or packaging, this may be considered a sweeping claim that a product has environmental benefits, which may be misleading.

Similarly, an official-looking logo may suggest a product has been endorsed or certified by an environmental organisation or system—and may risk misleading consumers. To alleviate potential confusion and reduce your risk of breaching the Trade Practices Act, it's a good idea to provide consumers with information about the organisation or system identified by any logo you use on your plastic bags or packaging.

Keep advertising specific

Keeping advertising specific, precise and detailed reduces the risk of inadvertently misleading consumers. Using broad or unqualified statements or vague or ambiguous wording is risky because they may not adequately explain the environmental benefits of your product to your target audience.

Use great care in making broad claims on your plastic bags or packaging:

- **Environmentally friendly, environmentally safe, planet safe or green** are vague claims that could mislead consumers into thinking that a product causes no, or minimal, harm to the environment in its production, usage and disposal. In reality, almost all products have some adverse impact on the environment at some stage in their life cycle. Do not use these claims unless they can be supported through verifiable testing methods.
- **Degradable**—material can be called degradable under particular environmental conditions if it undergoes degradation to a specified extent within a given time measured using a relevant and identified standard test method. Most substances will degrade or deteriorate given sufficient time and exposure to the right conditions, so it may be misleading to claim that a product is 'degradable' without qualifying how the process occurs.
- **Biodegradable**—no single understanding of or definition for 'biodegradable' exists. The term itself may convey a range of meanings to consumers and should not be used indiscriminately. As with any unclear or uncertain term, extra care should be taken to avoid misleading consumers and breaching the Trade Practices Act.
- **Recyclable**—using the term 'recyclable' or symbols suggesting a plastic product can be recycled may be misleading unless you qualify that a product can be only recycled through specialised independent recycling and collection facilities. This is particularly the case when no or only a few facilities exist, when they are not available to the public or they are only pilot plants.
- **Recycling**—consumers may assume that a recycling claim means that something has been through a previous life cycle or has been recycled by another consumer. However, if only some of the material has been recovered and reused, you should specify the amount of pre-consumer and post-consumer waste included in your product.
- **100% biodegradable or 100% degradable**—this descriptor is **an absolute claim** that usually means 'entirely' or 'totally'. Describing a product as '100% biodegradable' or 100% degradable indicates that the whole of the product will biodegrade or degrade in the same way and over the same time period—and that's not likely.

CASE STUDY

SeNevens '100% Biodegradable' Safeties Nature Nappy

SeNevens marketed its disposable nappy and nappy disposal bags as '100% biodegradable'. In fact the nappy was found to contain plastic components incapable of being broken down by the biological activity of living organisms.

The Federal Court of Australia declared that the company had breached ss. 52 and 53 of the Trade Practices Act by engaging in misleading conduct about the biodegradability of its nappy and nappy disposal bags.

The court imposed an injunction preventing the company from engaging in similar conduct in the future and ordered it to publish a corrective advertisement on its website, to establish a trade practices compliance program and to pay ACCC costs.

Be able to substantiate your claims

Being able to substantiate claims is particularly important if those claims predict future outcomes, such as whether plastics will biodegrade or degrade within a certain time-frame and under certain conditions. Under the Trade Practices Act, a company making representations about a future matter should do so on reasonable grounds.

Remember: you must be able to substantiate any claim you make on your products and packaging.

Tips

Environmentally friendly claims should:

- be honest and truthful
- detail the specific part of the product or process referred to by the claim
- use language the average member of the public can understand
- explain the significance of the benefit but not overstate it
- be able to be substantiated.

100% biodegradable or 100% degradable claims:

- Don't make them—it's less risky to give information about specific degradation rates of plastics rather than make 100 per cent degradable claims.
- Specify the parts of the product to which the biodegradable or degradable claim applies. For example, state what parts of the packaging are biodegradable, degradable, recyclable or reusable.

Claiming that your plastic bags are biodegradable, degradable or recyclable:

- Do your homework—before buying plastic bags to distribute to consumers, ask your supplier some detailed questions about any representations made on the bags.
- Be cautious—do not rely solely on the supplier's assurances. Before you distribute any bags, check that the representations made on them are accurate—remember, you will be held responsible if the claims are misleading.

CASE STUDY

Earthstrength environmental bags

Earthstrength produced 'environmentally friendly' plastic kitchen, garbage and freezer bags. It promoted these claims by stating that 'Even if this bag isn't thrown in the bin, it won't end up as litter' and 'This bag won't contribute to the landfill problem. It will make it disappear'.

Earthstrength claimed that the tapioca starch used in manufacturing its bags would make them 'compost just like kraft paper bags, sticks and twigs, yard trimmings and food scraps which are quickly broken down', and that when composted they would biodegrade within 28 days.

However, the company could not substantiate its environmental benefit claims.

The Federal Court declared that Earthstrength had engaged in false or misleading conduct, misrepresented the bags' benefits and performance characteristics, and misled the public about the nature and characteristics of the bags.

The court made orders against Earthstrength, including injunctions restraining it for three years from supplying its bags in their current packaging and from promoting that they would biodegrade, disintegrate or benefit the environment without independent scientific evidence to support such claims. The court also required Earthstrength to establish a trade practices compliance program.

Standards

Australia has no mandatory standard on biodegradability or degradability. However, the voluntary Australian standard (AS) 4736–2006, *Biodegradable plastics—Biodegradable plastics suitable for composting and other microbial treatment* has stringent requirements for the time frame in which a product must break down in a commercial composting environment, its toxicity and the amount of organic material it contains.

Various voluntary standards and tests for biodegradability exist in overseas jurisdictions, along with an emerging view of best practice in this area, and referring to these may help consumers and businesses to assess claims. See, for example, AS/NZS ISO 14021:2000, *Environmental labels and declarations—Self declared environmental claims*, and European (EN 13432) and American (ASTM 6400) biodegradability standards.

These standards have different tests and requirements; however, if you claim your product complies with a certain standard, it must actually adhere to that standard no matter where it was developed. If your product does not meet that standard's requirements or has not been accredited as claimed, you risk breaching the Trade Practices Act.



Do you need to comply with other laws?

Lightweight plastic shopping bags have been banned in South Australia since 4 May 2009. All retailers—including supermarkets, takeaway food and specialty shops—must comply with the ban, which prohibits the sale or giving away of polyethylene polymer bags fewer than 35 microns thick. Only compostable bags that comply with AS4736–2006 are now permitted in South Australia. Supplying non-compliant plastic bags will result in a \$20 000 fine and an expiation fee of \$315 for each bag supplied to a customer.

Further information about biodegradability

Refer to the Department of Environment, Water, Heritage and the Arts website, www.environment.gov.au, and to a joint publication by the department and the Plastics and Chemicals Industries Association, www.pacia.org.au, *Using degradable plastics in Australia*.

Some universities have specialist departments dedicated to research in biodegradability.

Further information about the South Australian ban, can be found at www.byobags.com.au

ACCC contacts

ACCC Infocentre
1300 302 502

Small business helpline
1300 302 021

ACCC website
www.accc.gov.au

For other business information go to
www.business.gov.au

Publications to help businesses comply with the Trade Practices Act

The ACCC website has a wide range of publications for businesses. You can download them for free or order copies through the ACCC Infocentre.

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra
Australian Capital Territory 2601

© Commonwealth of Australia 2010

10 9 8 7 6 5 4 3 2 1

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

ISBN 978 1 921581

ACCC 01/10_39601