Insights: Alert

Aspirational Environmental Green Advertising Claims: Don’t Over-Promise Current Impacts and Be Sure to Substantiate Claims

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On the heels of the FTC's announcement that it plans to revise its Green Guides in the coming months, challenges to environmental claims are increasing across many venues. Recent NAD decisions and newly proposed consumer protection directives in the European Union illustrate the growing scrutiny of so-called “greenwashing,” including for aspirational claims (e.g., environmental-related goals). Recent decisions suggest that advertisers should tread carefully when making aspirational environmental claims, develop adequate substantiation prior to making such claims, and expect targeted challenges and enforcement actions when prominently touting environmental benefits or goals.

In a recent NAD case evaluating aspirational net-zero claims made by JBS USA Holdings, Inc., NAD essentially found certain aspirational claims premature, and therefore deceptive. JBS strongly touted its aspirational goal of achieving “net zero” emissions by 2040, but NAD recommended discontinuing claims such as:

• “Global Commitment to Achieve Net - Zero Greenhouse Gas Emissions by 2040”;
• “Bacon, chicken wings and steak with net zero emissions. It's possible.”; and
• “Leading change across the food industry and achieving our goal of net zero by 2040 will be a challenge. Anything less is not an option.”

The challenger – a not-for-profit organization – initiated the challenge, arguing that JBS's claims were misleading because they conveyed that JBS had an “operational plan in place to achieve its net zero goals and is implementing such a plan.” NAD agreed, finding that the claims reasonably conveyed that JBS is *currently* acting toward specific objectives with measurable outcomes. What is surprising about the JBS decision is that JBS had presented evidence of multiple steps it had already taken to bring the net zero claims to fruition, among them:

• Signed a contract with environmental consulting company to provide a detailed “Net Zero” emission plan for JBS, which was to include detailed steps for lowering emissions;
• Issued a $1 billion Sustainability-Linked Bond, linked to its net zero climate goals; and
• Partnered with experts and research universities to help JBS reach net-zero by 2040.

While NAD acknowledged these steps as “helpful” and agreed JBS submitted “evidence of a significant preliminary investment” toward its net zero goal, NAD explained such evidence did “not support the message conveyed by the claim that JBS has a plan it is implementing today,” which should have included “specific objectives and measurable outcomes likely to be achieved” and “science-based targets.” Consumers were therefore, according to NAD, likely to be misled as to the current extent of the JBS programs and actions.

The key learning from JBS is that aspirational claims should not be too future-oriented, such that the claims overpromise the current impact of any program. NAD emphasized that aspirational environmental benefit claims create reasonable expectations in consumers' minds, and thus require substantiation, stating, “when aspirational claims are tied to measurable outcomes, an advertiser must be able to demonstrate that its goals and aspirations are not merely illusory and to provide evidence of the steps it is taking to reach its stated goal.” This sort of rule follows prior NAD decisions where advertisers like Chipotle and Georgia Pacific largely were able to substantiate their claims using similar evidence, evidencing a shift in NAD's expectations.

NAD was similarly exacting in its November 2022 review of American Beverage Association's (ABA) aspirational environmental claims centered around its “Every Bottle Back” campaign. NAD recommended a number of modifications, including discontinuing the claim that bottles are “collected and separated from other plastics so they can be turned back into material that we use to make new bottles” because it conveys the message that bottles are ***actively*** being recycled. No such program was in effect. NAD treated the claim that ABA “reduces plastic waste” similarly. Reduction is measurable, and thus, must be substantiated by specific evidence. NAD also was critical of ABA's claims concerning its relationships with non-profits. NAD explained that companies may tout their partnerships with environmental organizations, but that such claims must be narrowly tailored to reflect the *specific efforts* and *documented results* of the partnership. NARB affirmed NAD's decision.

Across the pond, environmental marketing claims are likewise at the forefront of regulatory developments. On March 22, 2023 the European Commission proposed a new Green Claims Directive, which, if approved, would create (1) rules requiring specific evidence-based assessments to substantiate environmental claims, (2) a requirement that environmental claims be verified and certified by an official accreditation body prior to use, and (3) an obligation to provide information to consumers concerning the substantiation of each green claim. Additionally, the Directive would require third-party certification programs, referred to as labeling schemes, established by public authorities outside of the EU, such as the US, to be approved by the European Commission prior to entering the EU market.

Key Takeaways:

1. Aspirational green claims are not mere puffery and should not convey illusory promises.
2. Companies rolling out aspirational claims should consider having a specific, current plan it is actively implementing to achieve a given goal *prior* to advertising the aspirational claim.
3. Objective future goals specifying measurable impacts should have direct substantiation; evidence of sustainable practices planned to be implemented in the future is not enough to support claims implying specific measurable results.
4. Claims regarding environmental efforts taken in partnership with non-profits and environmental organizations

should be narrowly tailored to reflect specific efforts and measurable results of the partnership.

If you have any questions or concerns about making environmental benefit claims, or any advertising claims, please feel free to contact us. Kilpatrick Townsend's Advertising and Marketing team

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