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Analysing developments impacting business

PRE-REQUISITE CAVEATS - CCPA RING-FENCES GREENWASHING AND MISLEADING ENVIRONMENTAL CLAIMS

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India's emergence as an investment haven and a shining market for consumer products, has augmented a spurt in green consumerism with environmentally conscious customers, and their sensitivity is being manipulated by companies, with an upsurge in greenwashing claims rampantly creating a false impression of being environmentally sustainable.

To maintain environmental accountability, the Central Consumer Protection Authority (CCPA) has in line with global best practices implemented in U.S.A, Australia and Europe, issued the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 (Guidelines), to promote transparency and integrity in such environmental claims by fostering honest practices in the interest of consumer protection.

These Guidelines mandate the manufacturers and service providers to ensure that their advertisements are substantiated, with verifiable cogent evidence, backed by qualifiers, providing complete disclosures, without use of any grandiose, ambiguous 'sustainable' or 'green' terminology, designed to mislead the public.

Background

On 9 June 2022, the CCPA had notified the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements. In continuation thereof, the Government constituted a greenwashing committee whose recommendations were incorporated in the draft greenwashing guidelines published on 20 February 2024, seeking feedback from the public and relevant stakeholders. Consequently, on 15 October 2024, CCPA has notified the new Guidelines, to prohibit any manufacturers, service providers, traders, advertising agencies and endorsers from raising any deceptive or misleading environmental or greenwashing claims.

As per the Guidelines, environmental claims, refers to a representation provided in any form whatsoever, made in relation to goods or services (in their entirety or any portion thereof), their manufacturing, use, disposal or the process involved, implying environmental responsibility, environmentally friendly attributes, or eco-friendliness.

Greenwashing is a deceptive or misleading advertising practice, which either conceals, omits, or obscures relevant information from the public, by exaggerating, making vague, false, or unsubstantiated environmental claims; or using misleading words, symbols, or imagery, or only placing emphasis on positive environmental aspects while downplaying or concealing the harmful attributes.

Key Highlights

- **Clarity and substantiation:** The Guidelines expressly prohibit vague, generic and broad terminology being used in advertisements or environmental claims, and stipulate that terms such as *clean*, *green*, *eco-friendly*, *natural*, *carbon-neutral*, *sustainable*, *'eco-consciousness'*, *'good for the planet'*, *'minimal impact'*, *'cruelty-free'*, *'organic'*, *'pure'*, *regenerative* or *other analogous claims* must not be used without valid, accurate, accessible, qualifiers, disclosures and quantifiable data substantiating the information. Hence these Guidelines are quintessential for building consumer trust and prevent any misleading advertisement by the business corporations.
- **Consumer-friendly use of technical jargons:** The Guidelines require an entity using technical terms like *Green House Emission*, *Ecological Footprint*, and *Environmental Impact Assessment* to explain the meaning and implication of those terms in a simple manner, that can be easily understood by a layman consumer. This prevents the use of technical jargons to mislead the consumers, enabling them to independently determine the reliability of the environmental claims made.
- **Fundamental Disclosures:** The Guidelines mandate the businesses to provide clear and adequate disclosures in their advertisements related to the environmental claims. These disclosures include the following:
 - **Inclusion of Material Information:** As per the Guidelines, the advertisements should have all material facts in the communication or should make all relevant information accessible via QR codes or other digital means like URL links. Additionally, they prohibit enterprises from selectively highlighting the favourable data and omitting any adverse findings or negative impact of the products, goods or services.
 - **Claim Specification:** There must be a clear specification of the scope by the company as to whether the environmental claims refer to its services, products, or goods, in entirety or a part thereof, or their packaging, manufacturing or disposal process. This requirement prevents companies from marking a product or service as green based upon a single aspect, thereby enabling the customer to know exactly which part of the product is environmentally friendly.
 - **Comparative Claims:** If any comparison is employed by the company vis-à-vis any competitive product, it must be inferred from verifiable and relevant data specifying exactly what is being compared, thereby basing it upon rational grounds ensuring transparency, clarity and avoiding any misleading comparisons using cherry-based data, intending to influence public opinion.
- **Supporting Evidence for Environmental Claims:** For all environmental and sustainability claims (including specific claims like compostable, degradable, non-toxic, plastic-free, 100% natural, recyclable, refillable, renewable, plastic positive, climate-positive, and net-zero claims), the CCPA Guidelines mandate that credible certifications and accessible verifiable scientific data must be provided. These certifications must be issued by statutory bodies or reliable independent third parties, thereby holding a company accountable and ensuring that only legitimate claims can be used by the companies to promote their products as environmentally friendly.
- **Aspirational or futuristic environmental claims:** require clear, actionable plans detailing how these laudable goals will be realized.

These Guidelines are to be read harmoniously with other laws (governing this subject matter) including the Consumer Protection Act, 2019 (the Act) and in case of contravention,

the Act shall prevail. In case of any interpretational ambiguity or dispute, CCPA's decision shall be final.

Conclusion

These Guidelines provide a robust framework for preventing greenwashing and misleading environmental claims, encouraging sustainable business practices, by mandating companies to ensure transparent, unambiguous and accurate substantiation, adequate disclosures, with fair and meaningful comparisons and verifiable evidence, backed by credible certifications, in support of their green marketing claims.

These guidelines equip the consumer to make sound choices based upon unbiased scientific data by requiring the businesses to ensure their marketing strategies do not cause any consumer manipulation, thereby fostering the customer's trust and integrity in the marketplace.

- Achint Kaur (Counsel)

For any queries please contact: editors@khaitanco.com