



## Article

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### Environmental/ Green Claims - ASCI's Guidelines for Advertising

#### Introduction

In today's world the conservation of natural environment and sustainable development is crucial and everyone from corporates and governments to society at large and individuals, are trying their best to contribute towards the sustainable development and to reduce their carbon footprint. Businesses have also recognized the need to introduce products which can help in achieving the goals of sustainable development and in doing so they have adopted a marketing strategy to influence the consumers based on eco-friendly features of products, thus claiming that the products or services offered provide environmental benefit or are less harmful to the environment when compared to corresponding products ("**Green Claim Strategy**"). Adopting the Green Claim Strategy gives businesses a competitive advantage, thus leading to exaggerated environmental claims which are specifically designed to target consumers perspective and values, influencing consumers based on partial truth and misleading green claims to drive sales. This marketing behaviour/strategy is also known as green washing. With an aim to supervise the green claims and prevent green washing, the Advertising Standard Council of India ("**ASCI**") has issued green claim guidelines ("**Green Claim Guidelines**") which have come into effect on 15 February 2024.

#### Key points of the Green Claim Guidelines

- Absolute and comparative claims: These claims include claims of products being "environment friendly", "eco-friendly", "sustainable", "planet friendly", "greener", "friendlier", etc. Green claims generally imply that the entire product advertised lives true to the claim made. Such claims will now have to be substantiated by robust data and/or well-recognised and credible accreditations. For example: Businesses using environment friendly packaging cannot claim the entire product to be environment friendly and will have to be clear in all their advertising and unambiguously disclose that only the packaging used is environment friendly.
- 'Free-of' claims: Businesses are required to avoid making claims about the product to be 'free-of' certain substances or ingredients when such ingredients are not usually found in such products. In other words, when a toxic substance does not form part of the ingredients of the product in general, businesses shall not make a claim of not using any toxic substance while manufacturing the product. Also, when the environmental benefit of the product is due to compliance of legal obligations, businesses shall refrain from claiming environmental benefits when the products of the competitors are also subject to same compliance requirements and competitor's product also provide similar environmental benefits.
- Carbon offset claims: When businesses make claims pertaining to carbon offset and if such carbon off-set does not occur within next 2 years, the same shall be disclosed to the consumers and when

such carbon offset or carbon reduction by businesses are required due to statutory compliance requirement(s), business shall refrain from making any carbon offset claim in advertisements.

- Usage of visual elements: ASCI being mindful of circumstances where businesses may attempt to circumvent the guidelines, by using visual elements that could lead the consumers to apprehend that the product consist of certain environment friendly properties has through the Green Claim Guidelines restricted advertisers from intentionally or even unintentionally using visual elements which could mislead the consumers to believe the product may have environmental benefits. An example of this could be using packaging of green colour or packaging displaying a picture of the earth on the product to claim environment friendliness.
- Aspiration based claims: Businesses can make aspirational claims only when they have a clear and achievable plan in place along with the detailed method to achieve the stated objectives.
- Biodegradable properties of product: Where a product has a certificate or seal of approval creating an impression that the product is environment friendly the advertiser is required to duly explain what attributes of the product were evaluated when the seal of approval was granted. Similarly, claims pertaining to bio-degradable, composite properties of the product or that it can easily be recycled, must be based on reliable and credible scientific evidence, duly explaining whether the product as a whole or the component of the product has such bio-degradable properties.

## Conclusion

To conclude, the Green Claim Guidelines issued by the ASCI represent a significant step towards promoting transparency and accountability in environmental advertising in India. By requiring businesses to substantiate their green claims with robust data and credible accreditations, these guidelines aim to prevent greenwashing and ensure that consumers are not misled. However, it is still too early to gauge the impact or sufficiency of these guidelines with certainty.

Further, ASCI being a voluntary non-government organisation, the guidelines issued by ASCI are advisories lacking stringency due to limited enforcement. However, this does not mean ASCI guidelines can be ignored, as multiple courts have particularly in recent past, reaffirmed the authority of ASCI, including in the recent case of Dabur India Limited vs The Advertising Standards Council of India (2023/DHC/000128), before the Hon'ble Delhi High Court, where ASCI passed orders to restrain Dabur Vita's advertisement from Dabur's website and social media. While deciding the question regarding the authority of ASCI to restrict an advertisement the Hon'ble Delhi High Court held that "*It would be unfair on the part of the appellant (Dabur), who is a member of the respondent (ASCI), to enjoy the privileges of self-regulation and in the same breadth question the authority of the respondent to enforce its code*".

Considering the above mentioned recent developments, doors could be opening for a better regulated and adequately monitored advertising industry in India with a focus on countering unsubstantiated Green Claims. However, the measures introduced to prevent greenwashing though welcome are to an extent belated, as in India companies have been relying on Green Claim Strategy for over a decade now. Further these guidelines are not the best answer to address the issue of green washing, since the guidelines have not been issued under any statutory legislation and are viewed by companies as a harmless bite of a toothless tiger.

Nonetheless, it is a right step in the right direction. In order to effectively prevent companies from green washing, in our opinion, in addition to the above guidelines it is crucial to expand the definition of "Misleading Advertisement" under the Consumer Protection Act, 2019 to include greenwashing and similar deceptive practices within its scope. This expansion would not only enhance the protection provided to consumers under the Consumer Protection Act, 2019 but will also provide consumers with enforceable legal rights and a right to legal recourse. Moreover, it would serve as a deterrent for companies, who would face statutory consequences, penalties, litigation, and higher legal costs for engaging in such misleading practices which will help in achieving the end result of countering green washing effectively and efficiently.

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