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Eco-Friendly Claims Under Fire: The Legal Risks of Greenwashing for Businesses

Proskauer on Advertising Law on **June 24, 2024**

In today's market, eco-friendly claims can serve as a tool for companies looking to attract environmentally conscious consumers. However, this surge in green marketing has also caught the attention of the plaintiffs' bar, which is increasingly scrutinizing these claims for lucrative opportunities in potential lawsuits. As demonstrated by recent legal actions, companies must tread carefully to avoid the pitfalls of greenwashing and the ensuing legal challenges. In one such action, the Northern District of California affirmed its refusal to dispose of claims challenging the use of eco-friendly labeling on Rust-Oleum's KRUD KUTTER products. *Bush v. Rust-Oleum Co.*, No. 20-cv-3268 (N.D. Cal. Jan. 26, 2024). At the center of the case are the Green Guides—guidance published by the FTC which provides direction on the use of environmental marketing claims in connection with "green" products and services.

The plaintiff alleged Rust-Oleum improperly labeled its KRUD KUTTER products as "Non-Toxic" and "Earth Friendly," allegedly contradicting warnings on the packaging stating the products were eye and skin irritants. In support, the plaintiff cited the Safety Data Sheets for each product, which outlined hazards associated with the products including "serious eye damage," "skin irritation," and harm "if inhaled . . . or swallowed." Rust-Oleum moved to dismiss, arguing that a reasonable consumer would not understand "non-toxic" to mean that the product "did not pose any risk to humans, animals or the environment"—as argued by the plaintiff—because the plaintiff's proposed understanding differed from the dictionary definition of the word "toxic," as well as FTC guidance on the term "non-toxic" in the Green Guides. The Court denied that motion in 2021.

The Court revisited these issues on Rust-Oleum's motion for summary judgment, and denied that motion too. Like at the pleading stage, the Court found it could not say as a matter of law that the plaintiff's proffered definitions of "non-toxic" and "earth friendly" were unreasonable, and Rust-Oleum had failed to show that no reasonable consumer would be misled. The Court noted that while the Green Guides were not dispositive under the reasonable consumer test, Rust-Oleum's reliance on deposition testimony from the plaintiff and his expert acknowledging that it was impossible to reduce all toxic risk was insufficient to show there was no risk of consumer deception. The Court also rejected Rust-Oleum's argument that "earth friendly" was puffery, finding the term was not so general or nonspecific as to make it "extremely unlikely" that a consumer would rely on it, and that any puffery argument was undermined by California statutory law defining the term.

As seen in this case, "going green" isn't as simple as it might seem. While not binding, the Green Guides can play a key role in shaping the contours of both how environmental claims are made and how they may be interpreted. Advertisers can avoid costly legal battles by carefully reviewing relevant guidance before touting the environmental benefits of their products. It's crucial to engage experienced trial counsel knowledgeable in the Green Guides and environmental sciences to meticulously review advertising claims and to defend against overaggressive enforcement by the plaintiffs' bar. Our team is equipped to provide the expertise needed to navigate these complex issues and protect your business from allegations that threaten your business and its reputation.

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