

Advertising + Marketing

Aspirational Green Claims: NARB Finds Net Zero Claims Unsupported

The Bottom Line

- A recent decision from NARB helps illustrate the fine line between a feasible plan to achieve an environmental goal, and the exploratory stages of an aspirational effort.
- Environmental marketing claims continue to present risk and may lead to challenges – companies must ensure that express and reasonably implied claims are true and supported.
- Most importantly, NAD's aggressive enforcement of environmental claims is supported by NARB. So, the expectation is: more cases are coming.

Environmental marketing remains a priority for regulators, self-regulators and the class action bar. As the Federal Trade Commission (FTC) continues its process of reviewing and potentially revising the Green Guides, we are paying close attention to self-regulatory decisions, as they may inform FTC guidance and guide business decisions.

A recent decision from the National Advertising Review Board (NARB) regarding environmental “net zero,” or carbon neutral, advertising is particularly worth noting since the FTC’s request for public comment on potential updates to the Green Guides specifically addressed climate change-related claims such as “net zero,” “carbon neutral,” “low carbon” or “carbon negative.”

NAD Decision

[As we previously discussed](#), the National Advertising Division (NAD) established that companies making aspirational environmental benefit claims must be able to (i) demonstrate that its goals are not merely illusory and (ii) provide evidence of the steps being taken to reach the stated goals.

Earlier this year, NAD determined that aspirational environmental benefit claims made by the second-largest food company and the largest animal protein producer in the world, JBS, were not substantiated. The challenged claims included:

- “JBS is committing to be net zero by 2040”

- “Global Commitment to Achieve Net Zero Greenhouse Emissions by 2040”
- “Bacon, chicken wings and steak with net zero emissions. It’s possible”
- “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 SBTi [Science Based Targets Initiative] recognized the net zero commitment of JBS.”

JBS was able to demonstrate that it had taken several steps to plan and prepare for its net zero goal, including the issuance of a \$1 billion Sustainability-Linked Bond and signing a contract with the Carbon Trust Advisory Limited to provide a detailed “Global Footprinting and Net Zero” plan. NAD, however, found that these “substantial preliminary efforts” were not sufficient to support the broad implied message that JBS had a plan that it was implementing today to achieve its net zero operational impact goal.

NARB Decision

On appeal, JBS emphasized that its target date (2040) is 17 years in the future – meaning that consumers would not expect JBS to have made more progress toward achieving that goal than it actually had. Therefore, JBS argued that the steps already taken represent an operational plan, and not merely stages of a planning phase.

NARB disagreed. Like NAD, NARB found that the challenged claims communicated that JBS was already in the process of implementing a documented plan that was evaluated and found to have a reasonable expectation of achieving “net zero” by the year 2040. But, JBS did not have such a plan. Instead, NARB determined that JBS was in the “exploratory stage of its effort” and, given the nature, size and scope of JBS’s worldwide business, failed to provide sufficient scientific support to show that its goal was feasible.

Importantly, NARB considered the 17-year lead time for the net zero goal to be a question related to substantiation, rather than to consumer expectation. NAD noted that “consumers are unlikely to understand what is involved in a business enterprise reaching net zero. Consumers are, however, likely to interpret the challenged advertising as communicating that the goal is a feasible one, and a feasible plan is being implemented.”

NARB recommended that each of the challenged “net zero” claims be discontinued, but noted that its decision did not preclude JBS from:

- Making narrower truthful and not misleading claims regarding its efforts at researching potential methods for reducing emissions and any efforts it is undertaking to reduce emissions,

- Making narrower truthful and not misleading claims regarding the steps it is taking to align its activities with SBTi criteria and engagement in such process and
- Making the claim “Leading change across the food industry and achieving our goal of net zero by 2040 will be a challenge,” when the claim is presented by itself (without the “anything less is not an option” language).

Consider Venue

Ultimately, it seems that NARB was not convinced that JBS’ aspirational goal was achievable – and the fact that JBS was still working out how to address critical emissions made NARB believe that the goal was, essentially, illusory.

However, different venues may come out differently on environmental marketing claims. Last year, a court granted Coca-Cola’s motion to dismiss in a case concerning aspirational environmental benefit claims. In direct contrast to NAD/NARB’s JBS decision, the court found that statements with specific measurements, such as “[p]art of our sustainability plan is to help collect and recycle a bottle or can for every one we sell globally by 2030,” hold the potential to be a promise to a consumer. However, as goals are set significantly in the future, these statements cannot create a valid claim until they are found to be inaccurate or misleading.

While other courts may come out differently, a greenwashing case against H&M, concerning its “Conscious Choice” fashion line, was also recently dismissed. The court took a narrow view of H&M’s claims, finding that consumers would not reasonably believe that its clothing line was inherently “sustainable” or that H&M’s clothing is “environmentally friendly” because neither of those representations were expressly made. Instead, the court found that consumers would take away the truthful message that the “Conscious Choice” line includes H&M’s most sustainable products.

For More Information

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