

Let's Just Be Friends: When “-Friendly” is More Than Mere Puffery

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“Kid-friendly.” “Reef-friendly.” “Earth-friendly.” “Pet-friendly.” There’s no shortage of products that are marketed as being “-friendly.”

There’s also no shortage of litigation that accuses products of not being as “friendly” as advertised. When does the use of “-friendly” cross the line from mere puffery to actionable false advertising?

The Line Between Puffery and False Advertising

Courts across the country have provided different definitions of puffery. Under the Lanham Act, which prohibits the use of any “false or misleading description of fact” in promotional statements, puffery is non-actionable. In general, puffery may be used to enhance the perception of a product, often as a subjective opinion, a promotional technique where exaggerated or vague claims are used to enhance the appeal of a product or service without necessarily providing concrete evidence or guarantees. If the statement includes a specific falsehood or a blatant deception, the language may cross the line from mere puffery into false advertising. In the context of environmental advertising, courts have increasingly been skeptical of claims related to so-called “greenwashing,” in which the alleged misleading statements are focused on a product’s environmental soundness or a company’s environmental processes.

How Have Courts Treated “Friendly” Marketing?

The answer is that sometimes it isn’t clear. Courts do not evaluate “-friendly” marketing in a vacuum and will consider context and other marketing statements that accompany the product at-issue.

For example, in *White v. Kroger Co.*,^[1] a California federal court ruled against the defendant supermarket chain in a proposed class action lawsuit accusing the company of falsely advertising its sunscreen as not harmful to coral reefs. The court rejected the supermarket’s argument that the phrase “reef-friendly” on the labels was just a marketing term and not something that should be regulated by law. The court further determined that “reef-friendly” was not just a marketing phrase and pointed to the more specific language of “reef-friendly” versus “environmentally friendly” and

the California legislature's and the Federal Trade Commission's (FTC) statements stances on various environmental and eco-friendly statements set forth in the FTC's Green Guides.

Similarly, in *US v. Kohl's*,^[2] the FTC alleged that the defendant retailer falsely claimed that certain home textile products were made from bamboo when they were made of rayon. The retailer had advertised many of these products as "environmentally-friendly" and "eco-friendly & sustainable." The FTC alleged the various friendly representations violated the FTC Act and the Textile Act, in part, because the products were made of rayon, not bamboo, and were produced via chemical processes that required and produced hazardous chemicals and pollutants. The party ultimately agreed to a settlement imposing civil penalties of \$2.5 million, and injunctive relief that required it change how it makes textile representations and bamboo-related environmental claims.

Conclusion

While puffery can be a powerful marketing tool, companies should be cautious in ensuring that their claims are grounded in truth and should remember to evaluate their marketing claims in context. Claims related to "-friendly" marketing are likely to continue. In *Bush v. Rust-Oleum Corp.*,^[3] the Ninth Circuit upheld the class certification of a group of consumers who alleged that the defendant misleadingly labeled some of its grease, stain remover, and cleaning products as "non-toxic" and "Earth-friendly" despite containing harmful ingredients. The parties have agreed to participate in private mediation, to be completed by August 16.

Nardeen Billan contributed to this article

[1] 2022 WL 888657, at *1 (N.D. Cal., Mar. 25, 2022).

[2] *U.S. v. Kohl's*, No. 22-964 (D.D.C. Apr. 8, 2022).

[3] No. 24-913 (9th Cir.)

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