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Environmental Marketing Claims for Plastic Products Subject to Additional Requirements in California

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“Green claims” for plastic products? Not so fast. In response to continuing concerns about false and misleading advertising and marketing claims regarding the environmental benefits of plastic bags and plastic food and beverage products, the California Legislature adopted Assembly Bill 1972 (A.B. 1972) to prohibit the use of certain terms for such products. Violations may result in injunctive relief and significant civil penalties.

A.B. 1972 became effective on January 1, 2009. It prohibits the sale of plastic bags and plastic food and beverage containers labeled as “biodegradable,” “degradable,” or “decomposable,” or displaying any other term that implies the container will break down, biodegrade, or decompose in a landfill or elsewhere, until standards for those terms are approved by the legislature. The definition of “food and beverage containers” expansively includes products composed of plastic, paper with plastic coatings, paper with plastic modifiers, and molded fiber.

A.B. 1972 applies to both “manufacturers” and “suppliers” of plastic bags and plastic food and beverage containers. While there may be room to argue as to how far the statute was intended to reach in speaking to suppliers, it is conceivable that an aggressive prosecutor may assert that the new law’s requirements apply to food processors, grocers, and restaurants that provide food and beverages to the public in “plastic” bags and/or “plastic” food and beverage containers with the proscribed green marketing claims.

The sale of food and beverage containers or utensils labeled as “compostable” or “marine degradable” is also prohibited by this new law unless the containers or utensils meet certain standards set by the American Society for Testing and Materials, or alternative standards to be approved by the California Integrated Waste Management Board. A.B. 1972 also requires the Integrated Waste Management Board to review any changes to the ASTM Standards specified in the statute; the Board may adopt the revised standard only if it determines that the standard is more stringent and more protective.

These new requirements could come as a surprise to many unwary companies who commonly use or supply food or beverages in plastic bags and containers if such bags or containers contain green marketing claims, even if such claims meet the requirements of existing law, including the U.S. Federal Trade Commission’s “Green Guides.” For additional information on A.B. 1972 or the FTC’s Green Guides or with respect to other issues related to environmental marketing claims, please contact Peter Hsiao, Robert Falk, or Brooks Beard at Morrison & Foerster.