STATE OF NEW YORK

9889

IN SENATE

August 14, 2024

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to unlawfully deceptive acts or practices regarding environmental marketing claims

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 349-h to read as follows:

§ 349-h. Unlawfully deceptive acts or practices involving environmental marketing claims. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Environmental marketing claim" means a representation about the environmental attribute, including climate impact, of a product or service in connection with the marketing, offering for sale, or sale of such product or service to the public. For purposes of this paragraph, the term "marketing" includes but is not limited to labeling, advertising, promotional materials, and any other form of appeal to the public in any medium, whether asserted directly or by implication, through words, symbols, logos, depictions, product brand names, or other means.

(b) "Net zero claim" means a representation that an entity has achieved an overall balance between greenhouse gas emissions produced and greenhouse gas emissions removed from the atmosphere.

(c) "Paltering" means the use of a truthful statement relating to an industry, business, product, or service that creates an overall false, deceptive, or misleading impression or implication to the public that a specific benefit is significant when it is in fact negligible as to such industry, business, product, or service.

(d) "Reputational advertising" means a representation to the public designed to create a perception of an industry, business, or brand by highlighting positive environmental qualities of or action taken by such industry, business, or brand, regardless of whether such representation is made in connection with the sale of a good or service.

2. The following are unlawfully deceptive acts or practices for the purposes of this article:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD16032-01-4

(a) Making an untruthful, deceptive, or misleading environmental marketing claim, including, but not limited to:

(i) engaging in paltering that misleads or deceives consumers as to the overall environmental impact of an industry, business, product, or service; or

(ii) engaging in reputational advertising that misleads or deceives consumers as to the overall environmental impact of an industry, business, product, or service; and

(b) Making an untruthful, deceptive, or misleading net zero claim, including, but not limited to, a claim that:

(i) does not clearly identify the covered portion of an entity's emission portfolio and value chain, including all greenhouse gas emissions, all emission scopes, and all joint ventures, subsidiaries, and specific product categories;

(ii) does not distinguish between a business's emission reductions, post-emission compensation, both offsets and removals, and emission divestments, or otherwise relies on vast amounts of offsets; or

(iii) is not substantiated by a company plan or action.

3. If an action is brought under this section alleging an unlawfully deceptive act or practice described in this section, it shall not be required that the person who brought such action suffered any ascertainable loss as a result of the use or employment of such unlawfully deceptive act or practice.

§ 2. This act shall take effect immediately.