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Attorney General

State of California
DEPARTMENT OF JUSTICE



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November 2, 2022

Peter Kung
Chief Executive Officer
Metro Polybag
1651 Aurora Drive
San Leandro, CA 94577
peter.kung@metropolybag.com

Via Overnight Mail and E-Mail

RE: Demand to Substantiate Claims Regarding Recyclability of Plastic Bags Sold in California

Dear Mr. Kung,

I write concerning express and implied claims made by Metro Polybag that the reusable plastic bags it sells for distribution in California are “recyclable” and/or “recyclable in the state.”

The Attorney General is charged with the enforcement of California’s laws, including, as relevant here, statutory provisions setting forth standards that reusable plastic bags sold in the state must meet (e.g., Pub. Resources Code, § 42281, subs. (a), (b)), and unfair competition and false advertising laws (Bus. & Prof. Code, §§ 17500, et seq. and 17200, et seq.).

It is the Attorney General’s understanding that Metro Polybag produces and sells in California reusable grocery bags made from plastic film that purport to meet the criteria established by SB 270 (2014, codified at Pub. Resources Code, §§ 42280–42288). In the certifications Metro Polybag submits to CalRecycle pursuant to California Public Resources Code section 42282 (as it must to be included on the list of certified reusable grocery bag producers that the Legislature has directed CalRecycle to publish on its website), Metro Polybag certifies that the reusable grocery bags it provides for sale in California are “recyclable in the state.”

We have also observed that reusable plastic bags sold by Metro Polybag in California are labeled with the “chasing arrows” symbol (which is widely understood to indicate that the item is recyclable), and/or other symbols and language suggesting that the bag is recyclable.

With respect to any claims regarding the recyclability of reusable plastic bags sold in California, in addition to certifying that the bags are “recyclable in the state,” the Public Resources Code requires reusable plastic bags sold in the state to comply with all of the requirements of the Federal Trade Commission (“FTC”) Green Guides (16 C.F.R. § 260.12).

(§ 42281, subd. (a)(6).) The FTC Green Guides provide specific guidance for making recyclable claims on items offered for sale to consumers. Per Section 260.12, “It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.” (Subd. (a).)

Further, marketers must “clearly and prominently qualify recyclable claims” based on actual “availability of recycling programs and collection sites to consumers.” (16 C.F.R. § 260.12, subd. (b).) Unqualified recyclable claims are appropriate only where recycling facilities for the item marked as recyclable are available to a “substantial majority” of consumers, which is defined as “at least 60 percent” of consumers. (16 C.F.R. § 260.12, subd. (b)(1).)

The Attorney General, like any “member of the public,” is authorized to request “information and documentation” regarding environmental claims. (See Bus. & Prof. Code, § 17580, subd. (b).) This includes Metro Polybag’s claims that the reusable plastic bags it sells for distribution in the state of California are in fact “recyclable in the state,” as required by S.B. 270 and as represented in Metro Polybag’s certification to CalRecycle, and “recyclable,” generally, as represented by the explicit and/or implicit claims Metro Polybag prints on the bags.

The Attorney General is also specifically authorized by Business and Professions Code section 17508 to request any person or entity doing business in California, and on whose behalf claims that purport to be based on fact are made to consumers in California, to substantiate its claims. (*Id.*, subd. (b).) Such authority is also provided by section 17580.¹

Pursuant to those authorities, **the Attorney General hereby formally demands, under Business and Professions Code sections 17508 and 17580, that Metro Polybag produce all evidence that substantiates:**

- (1) its claims, whether express or implied, that the reusable plastic bags that it sells in California are “recyclable;” and**
- (2) its certified claim that the reusable plastic bags that it sells in California are “recyclable in the state.”**

¹ Section 17580 provides that any person who represents a product as “not harmful to” the natural environment must “maintain in written form” certain “information and documentation supporting the validity of the representation.” (*Id.*, subd. (a).) If the entity uses the term “recyclable” or a chasing arrows symbol, or otherwise directs a consumer to recycle the product, the entity must maintain a written record of whether the product “meets all of the criteria for statewide recyclability” and also whether it conforms to uniform standards contained in the FTC Green Guides for use of the term “recyclable.” (*Id.* subd. (a)(5)-(6).) This information and documentation “shall be furnished to any member of the public upon request.” (*Id.* subd. (b).)

Please respond by November 16, 2022, and include with your response a copy of any document on which your response relies or to which it refers.

Your failure to meet the deadline set forth above, or to provide materials that adequately substantiate your claims, may be cause for our office to take immediate enforcement action against Metro Polybag. Such action may include, but may not be limited to, a complaint seeking injunctive relief and civil penalties for each false and misleading representation. (See, *e.g.*, Bus. & Prof. Code, §§ 17500, 17508, subd. (c), 17535, and 17536.)

Please provide the information requested to the Attorney General's Office at the above address with attention to me, Deputy Attorney General Liz Rumsey, and please feel free to contact me directly if you have any questions.

Sincerely,



LIZ RUMSEY
RAISSA LESSER
Deputy Attorneys General

For ROB BONTA
 Attorney General