



FTC Proposes Revisions to Its Green Guides

The Federal Trade Commission issued proposed revisions to its Guides for the Use of Environmental Marketing Claims, also known as the Green Guides. The FTC has proposed changes relating to marketing claims that are already addressed in the current Guides, as well as claims that were not common when the Guides were last reviewed in 1998, such as "renewable energy" claims, "renewable materials" claims, and "carbon offset" claims. The Guides do not address use of the terms "sustainable," "natural," and "organic."

The FTC invested significant time and resources in the revision process, including conducting its own study of how consumers understand certain environmental claims. According to the FTC, the Guides explain how consumers are likely to interpret environmental marketing claims so that marketers can avoid making false or misleading claims. The Guides give environmental claims the meaning that consumers give them, not necessarily the technical or scientific definition of terms. Also, they do not establish standards for environmental performance or prescribe testing protocols.

The Guides are guidance rather than law, but conduct that is inconsistent with the Guides may result in an FTC investigation.

Below are some of the proposed changes to the Green Guides:

General Environmental Benefit (e.g., "green," "eco-friendly")

- Marketers should not make unqualified general environmental benefit claims. The FTC's consumer perception study concludes that such claims are likely to suggest that the product has specific and far-reaching environmental benefits. Very few products, if any, have all the attributes consumers seem to perceive from such claims, making these claims difficult to substantiate. Qualifications should be clear and prominent, and should limit the claim to a specific benefit.

Certifications and Seals of Approval

- This new section emphasizes that certifications/seals are endorsements covered by the FTC's Endorsement Guides and provides new examples illustrating how those Guides apply to environmental claims (e.g., marketers should disclose material connections to the certifier).
- Because an unqualified certification/seal (one that does not state the basis for certification) likely conveys a general environmental benefit claim, marketers should use clear and prominent language limiting the claim to particular attribute(s) for which they have substantiation.
- Third-party certification does not eliminate a marketer's obligation to have substantiation for all conveyed claims.

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Degradable

- For solid waste products other than those destined for landfills, incinerators, or recycling facilities, the proposal clarifies that the "reasonably short period of time" for complete decomposition is no more than one year after customary disposal.
- Marketers should not make unqualified degradable claims for items destined for landfills, incinerators, or recycling facilities because decomposition will not occur within one year.

Renewable Materials and Renewable Energy

- The FTC's consumer perception research suggests that consumers could be misled by these claims because they interpret them differently than marketers intend. Because of this, the Guides advise marketers to provide specific information about the materials and energy used. Moreover, marketers should not make unqualified renewable energy claims if the power used to manufacture any part of the product was derived from fossil fuels.

On the FTC's Business Center page, there is a useful description of the Guides with specific examples: <http://business.ftc.gov/documents/bus42-complying-environmental-marketing-guides>.

The FTC is seeking public comments on the proposed changes until December 10, 2010, after which it will decide which changes to make final. For assistance with submitting comments, or for any other questions about the Green Guides or other advertising issues, please contact an attorney in our Advanced Media and Technology group.

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