

# Going Green: Updates and Best Practices in Green Marketing

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Presented by:

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# Today's Agenda

- The FTC's Green Guides
- NAD and green marketing claims
- Challenges to green claims
- What's next

# Green Marketing – The Legal Landscape

- Advertisers increasingly market products as being “green”
- Today we’ll talk about the legal implications and risks associated with making green claims
- Most advertisers are already familiar with the FTC’s Green Guides (Guides for the Use of Environmental Marketing Claims, 16 CFR 260) which are currently being revised by the FTC
- State and federal consumer protection and false advertising laws apply to green claims, and at least one state (California) has enacted a strict law about labeling plastic packaging as “biodegradable”
- Another risk for advertisers is consumer watchdog groups that publicize companies making questionable green claims (called “greenwashing” - see the Greenwashing Index at <http://www.greenwashingindex.com/> where consumers can vote for the “worst offender”)

feedstock content      renewable      **Bioenergy**      safe      sustainable

sustainability      cradle to grave      photodegradable      cradle to cradle

**CLEAN ENERGY**      greenhouse gases      *renewable*      **CARBON OFFSETS**      eco-friendly

LIFE CYCLE      alternative fuels      *resource*      energy intensity

ozone-friendly      naturally derived      recycled      **environmentally friendly**

*renewable energy credits*      environmentally preferable      non-toxic      compostable

degradable      green purchasing      RENEWABLE      biodegradable      environmental management systems (EMS)

*BIO-BASED*      earth-friendly      carbon neutral      **carbon footprint**

environmentally safe      **recyclable**

NATURAL CONTENT

# Who is Looking at Green Marketing?

- FTC
  - Section 5 of the FTC Act
  - Green Guides
  
- State attorneys general
  
- National Advertising Division
  
- False advertising litigation
  
- Consumer class actions

# FTC Green Guides

- General environmental benefit
- Certifications and seals
- Degradable
- Compostable
- Ozone-friendly
- Recyclable (three-tiered analysis)
- Free of/non-toxic



# Proposed FTC Guides for “New Generation” Claims

- Made with renewable materials
- Made with renewable energy
- Carbon offsets

# Renewable Energy

- Marketers should qualify claims by specifying the source of renewable energy (e.g., wind or solar)
- Marketers should qualify claims if less than all of the significant manufacturing processes were powered with renewable energy or “RECs”
- Marketers that sell RECs for all of the renewable energy they generate, should not represent that they use renewable energy

# Certifications and Enforcement

- FTC settlement
  - "Tested Green" certifications that were neither tested nor green
- Company allegedly charged up to \$549.95 for worthless environmental labels



# National Advertising Division

- Seeks to protect the integrity and credibility of advertising by ensuring that claims are truthful and accurate
- Cost-effective means of resolving disputes between competitors
- Success rate: 95%

# NAD Case Reports

- Available via online subscription at:  
<http://www.nadreview.org>



# Issues Examined by NAD

- Product testing
- Testimonials
- Surveys
- Disclosures
- **Green claims**

*“Tastes as good as the leading brand!”*

*“4 out of 5 Pediatricians Recommend...”*

*“Cleans 80% better\*”*

**“Better for the Environment!”**

# Challenges to Green Claims

- Claims of general environmental benefits/overly broad “green” claims
- Biodegradable and degradable claims
- “Natural” claims
- Product denigration/overstating consequences of using competitor’s product
- Safe or “free” of harmful ingredients
- Claims that products are made using renewable energy
- Seals and certifications

# Substantiating Green Claims

- What messages/claims are conveyed to consumers by the advertisement?
- Does the advertiser have “competent and reliable” evidence to substantiate those claims?
  - Scientific evidence: test, analyses, and research studies
  - FTC Green Guides
  - Industry standards

Environmentally friendly

## NAD's Concern:

- The granting of an award by the EPA in 1999 (for a use in an agricultural product) is insufficient to support the general description of this flea control product as “environmentally friendly”

Comfortis®  
(spinosad)

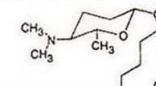
## Environmentally friendly

The introduction of spinosad for use in agriculture resulted in the receipt of a Presidential Green Chemistry Challenge Award in 1999 from the US Environmental Protection Agency. The award criteria for judging included health and environmental benefits, scientific innovation and industrial applicability.<sup>9</sup>



COMFORTIS™  
(spinosad)  
Chewable Tablets

Caution: Federal (USA) law restricts this drug.  
**Description:**  
COMFORTIS chewable tablets (spinosad) are for oral administration to dogs and puppies. It is formulated to provide a minimum spinosad is a member of the spinosyns class of insect macrolides. Spinosad contains two major naturally occurring bacterium, *Saccharopolyspora spinosa*.  
The chemical composition is 2-[[6-deoxy-2,3,4-dimethylamino)-tetrahydro-6-methyl-2H-pyridin-1(5a,16b)-tetradecahydro-14-methyl-1H-as-indolizino[1,2-b]pyridin-9-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11H-as-indaceno[3,2-d]oxacyclododecin-7,15



Elanco Animal Health Division, #5134 (2010)

# Biodegradable SUPER 8 Loosefill



## Biodegradable SUPER 8® loosefill Environmentally Friendly Packaging from FP International

**Biodegradable SUPER 8® loosefill is the right choice for the environment and for protecting your valuable products.**

Biodegradable SUPER 8 loosefill is the next generation of sustainable packaging. From manufacturing to disposal, Biodegradable SUPER 8 is made to provide superior product protection while being environmentally friendly packaging. Biodegradable SUPER 8 loosefill is the only biodegradable packaging loosefill made from 100% recycled polystyrene that includes postconsumer polystyrene foam packaging that would otherwise end up in the waste stream. If not recycled, Biodegradable SUPER 8 loosefill will decompose completely within 9 to 60 months in the presence of microorganisms, whether it is sent to a landfill or ends up as litter in the soil. Not only is Super 8 loose fill packing truly biodegradable packaging, but it is cost effective while providing superior product protection.

**Biodegradable Packaging SUPER 8 loosefill is a better environmental choice than starch loosefill or paper.**

### Benefits over starch loosefill

1. Made from 100% recycled polystyrene that is biodegradable  
\* Starch loosefill uses crops which may increase food prices and decrease food supply
2. Biodegrades in 9-60 months in the presence of microorganisms
3. Emits 83% less greenhouse gas emissions than starch in its production
4. Can be recycled or reused
5. Has no attraction to rodents
6. Environmental humidity does not affect product performance
7. Superior interlocking secures the product and prevents it from shifting in the box
8. 64% lighter than starch loosefill to lower shipping costs

■ *“will breakdown naturally within one year and disappear completely following customary disposal”*

– FTC Guides

FP International (Biodegradable SUPER 8 Loosefill Environmentally Friendly Packaging), Case #5256

## "100% Naturally Derived Surfactants"



- The claim is *literally true*
- However, the coconut oil is chemically processed – the composition of the resulting surfactants is dramatically altered (27% of coconut alkyl ethoxylate plant-derived and 43% of coconut alkyl ethoxy sulfate plant-derived)
- The remainder of the surfactant is petroleum-based

### NAD's Concern:

- The evidence does not support the implied claim that the product is natural, in whole or in substantial part

Church & Dwight (Arm & Hammer Essentials),  
Case #4848

## NAD's Concern:

- The evidence was insufficient to support claims linking particular health effects with the levels of VOCs found in competitive paints

Southern Diversified Products, LLC (Mythic Paints),  
Case #5009

If you knew what their  
paint was doing to you,  
it'd take your breath away.  
**Literally.**



0% TOXIC.

100% SMART.™

Introducing Mythic™ paint, a revolutionary new paint line designed specifically to protect your health and the environment. Traditional household paints contain cancer-causing toxins that can still be released into the air for years after drying. But now there's Mythic™ paint, a premium paint that offers legendary performance without the toxins or odor. It's stronger, safer, smarter paint.

Mythic™ paint is based on breakthrough patented technology that improves on latex paint at its core. It's been scientifically formulated to offer all of the premium qualities of conventional water-based paints without the need for toxic solvents. That means zero VOC's, zero harmful toxins released into the air and your home, and virtually no unpleasant odor when painting.

Our advanced formulation also means unprecedented performance. Mythic™ paint is fully washable in any sheen and exceeds other national brands for durability. It goes on the wall easy, covers brilliantly, and provides a safe and lasting coating for years. All backed by a performance guarantee.

Mythic™ paint comes in a healthy array of beautiful colors. We can also match colors from any other paint manufacturer using our proprietary toxin-free coloring system. With Mythic™ paint, you get the color you want and guaranteed performance. All in a paint that's safer for the health of your family, pets, and the environment.



**Zero VOC**  
Volatile Organic Compounds



SAFE FOR  
PEOPLE



SAFE FOR  
PETS



SAFE FOR  
EARTH

**Zero  
Carcinogens**

2714 Hardy Street · Hattiesburg, MS 39401 · Contact Us: 1.888.714.9422 · Fax: 1.888.714.9423

[www.mythicpaint.com](http://www.mythicpaint.com)

## ■ “Clean with the Power of Clorox”

Clorox (GreenWorks) Case #5089 (2009)

Just what the world needs,  
another cleaning product.

They're 99% natural and biodegradable, but clean with the power of Clorox®.

Actually, they're exactly what the world needs.

green works naturally.  
natural  
biodegradable  
cleaning wipes  
original scent

greenworkscleaners.com ©2008 The Clorox Company

Green Works® is a proud supporter of the Sierra Club's efforts to preserve and protect the planet. SIERRA CLUB



BETTER FOR THE ENVIRONMENT.  
STILL ZIPLOC™ FRESH.™



INTRODUCING ZIPLOC™ EVOLVE.™

The new ultra light bag that's better for the environment.  
Made with 25% less plastic\* and made with wind energy!

***The new ultra light bag that's better for the environment. Made with 25% less plastic and made with wind energy.***

\*When compared to regular Ziploc® storage bags made with renewable wind energy and energy from trees.

- The advertiser provided a reasonable basis for making claims that wind energy is used in the making of Ziploc Evolve bags

## NAD's Concern:

- The disclosure was neither sufficiently clear nor conspicuous to appropriately qualify the “made with wind energy” message

S.C. Johnson & Son, Inc., (Ziploc Evolve),  
Case #5225



## Performance Fabric Landscape

Below is a technical evaluation of various characteristics of Nano-Tex and Nano-Tex with DuraBlock® technology compared with the competitive products.

PERFORMANCE LEVELS +	STAIN PREVENTION	STAIN PREVENTION	STAIN PREVENTION & LIQUID BARRIER	STAIN PREVENTION & MOISTURE RESISTANCE
Technology comparison +	Nano-Tex	Competitive Brand	Nano-Tex with DuraBlock	Competitive Brand
Product Description +	Permanent Spill and Stain Resistance	Variable Spill and Stain Resistance. (not standard, not permanent)	Permanent Spill and Stain Proof with Durable Liquid Barrier	Soil & Stain Treatment with Moisture Resistance Backing
Applications +	Upholstery, Drapery, Panel Fabric, Top of Bed, Cubicle Curtains	Upholstery	Upholstery	Upholstery, Bedding
Environmental +	Recyclable	No Claims or Results Provided	Recyclable	Cannot be Recycled
Recommended Cleaners +	Water, Detergents, Solvents, Bleach <sup>1</sup>	Not Durable to Washing	Water, Detergents, Solvents, 10% diluted bleach <sup>1</sup>	Special Detergents No solvents or bleach solutions
Barrier Effectiveness + Cushion/furniture protection <i>Note: Sitting events 3-5 psi, cleaning events 5-9 psi</i>	Not Intended	Not Intended	Meets ASTM F1670, F1671 for resisting penetration of blood & blood borne pathogens (virus and bacteria). Liquid barrier, 13psi.	Minimal cushion protection (moisture resistant 0.5 psi)
Comfort / Breathability +	Very Breathable	Very Breathable	Breathable 3538 to 4464gm/m2	Minimal <sup>2</sup> 500gm/m2
F.R. Tests +	Cal 117, NFPA 260, E84, UFAC, NFPA 701 <sup>3</sup> , CAL 133 <sup>4</sup>	No Claims or Results Provided	Cal 117, NFPA 260, UFAC, CAL 133 <sup>4</sup>	Cal 117, NFPA 260, UFAC
Abrasion +	Improves Wyzenbeck significantly (average 50%)	No Claims or Results Provided	Improves Wyzenbeck significantly (average 50%)	N/A
Hand of Fabric +	No Change	Change Evident Depending on Processor	Slight Change	Moderate Change
Cost +	1x	1x	3x	5x
Availability in China +	Yes	Yes	No	No

<sup>1</sup> Fabric Appropriate

<sup>2</sup> Similar to vinyl performance

<sup>3</sup> Inherently fire resistant fabrics such as 100% Trevira or Avora®, which pass NFPA 701 prior to any treatment have also passed NFPA 701 after the application of Nano-Tex, through at least 20 commercial washings.

<sup>4</sup> Test varies with seating products

To spec Nano-Tex or DuraBlock call 866.891.NANO (6266) or visit [ProtectBeauty.com](http://ProtectBeauty.com)



Applied Textiles, Inc. & Nano-Tex, Inc., Case #5279

## CLAIMS & CERTIFICATIONS

Oeko-Tex Standard 100

MBDC Cradle to Cradle Certification

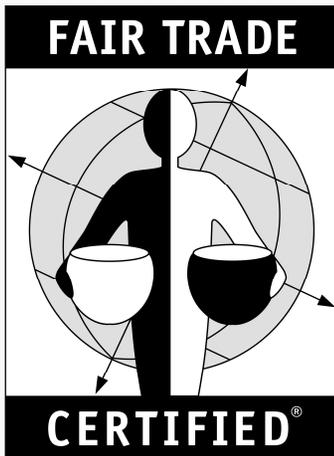
EPA approved

Occupational Safety and Health Administration (OSHA)

Consumer Product Safety Commission (CPSC)

## NAD's Concern:

- Oeko-Tex Standard 100 and MBDC Cradle to Cradle certifications lapsed
- The product was not “EPA Approved”
- All manufacturers in the United States must comply with OSHA
- No evidence that the challenged products are governed by the CPSC or that CPSC even issues certifications



*\*By choosing this Fair Trade Certified product, you are directly supporting a better life for farming families through fair prices, direct trade, community development, and environmental stewardship.*



mark.

clean up time

CONDITIONING BATH SOAP  
SAVON REVITALISANT POUR LE BAIN

Made with Fair Trade Certified™ ingredients:  
**SHEA BUTTER, COCOA BUTTER, WHITE TEA EXTRACT**  
Fabriqué à partir d'ingrédients certifiés équitables  
selon le label Fair Trade Certified™ :  
**BEURRE DE KARITÉ, BEURRE DE CACAO,  
EXTRAIT DE THÉ BLANC**

Contains 3 Bar Soaps / Contient 3 savons  
96.4 g NET WT 3.4 OZ EA/CH.

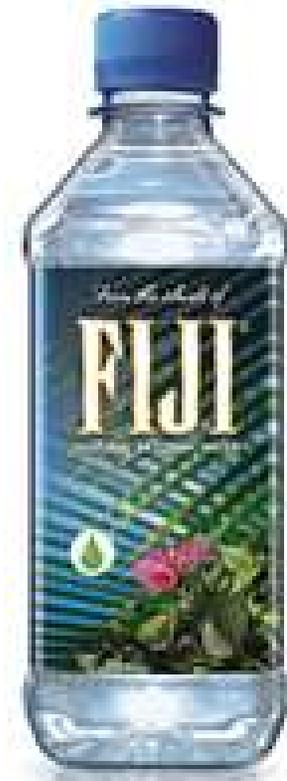


TransFair USA (Fair Trade Certified  
Ingredients Seal), Case #5337

# Fiji Water Litigation

Plaintiffs alleged that the Fiji label:

- “[M]isrepresented . . . to consumers that Fiji Water is an environmentally sound product”
- Contained a Green Drop “seal of approval”
- “Carbon negative” claim



# What's Next?

- Seals and certifications
- Other terms: “natural” and “sustainable”
- Qualification of claims
- Self-regulation



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# Q&A

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