



FTC Approves First Settlement Under Revised Green Guides

The Federal Trade Commission March 6, 2013, approved final orders [C-4385](#) and [C-4386](#) settling charges that two paint manufacturers made false and unsubstantiated claims that some of their paints contained zero volatile organic compounds (VOCs) after tinting. The cases are the first to apply the FTC's recently revised Green Guides, and while they deal with some unique properties associated with the marketing of the paints in question, they also provide useful guidance for anyone making environmental marketing claims, particularly "free of" claims.

VOCs are carbon-containing compounds that evaporate at room temperature, some of which can be harmful to human health and the environment. Many interior paints have contained VOCs. The companies subject to the orders marketed certain paints as containing "zero" VOCs. While this statement was true for uncolored base paints, it was not true of the paints once they were tinted, and most consumers only purchased tinted paints. The FTC found that marketing the paints as containing zero VOCs was deceptive because this was not a true statement, given how the paints were typically used.

Section 260.9 of the FTC's Green Guides provides guidance on free-of claims, stating that a person may claim that a product is free of a substance, even if the substance is present in the product, if:

(1) the level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance's presence does not cause material harm that consumers typically associated with that substance; and (3) the substance has not been added intentionally to the product.

Footnote 4 of § 260.9(c) notes that what constitutes a trace contaminant or background level depends on the substance at issue and requires a case-by-case analysis.

1. With regard to these paints, the FTC's view is that, in assessing VOC-free claims, consumers are concerned with the impacts on both health and the environment after the paint is applied. Therefore, an important determination is whether the paints are VOC-free when used. Noting that it is not aware of any scientific or regulatory body that has recognized a specific trace contaminant level of VOCs in paint, the FTC focused on whether the levels of VOCs exceeded background levels when applied. Because the levels allegedly exceeded background, the FTC asserted that the claim that the product was VOC-free was deceptive.

In addition to approving the orders, the FTC issued a new enforcement policy statement regarding VOC-free claims for architectural coatings that addresses these points: <http://www.ftc.gov/os/caselist/1123160/130306ppgpolicystatement.pdf>. While the settlements and policy statement directly impact marketers of paints and other architectural coatings, they may have implications for marketers of other products as well.

Most marketers do not sell products that must be modified by adding another product in order for the product to be used, as was the case with the paints, and the situation is arguably limited to its facts. How the FTC applied the Green Guides in this case can be of assistance in determining how the agency might approach other marketing claims, however.

First, the FTC reiterated that its primary concern is how consumers view the claim. In this case, the FTC noted that consumers likely viewed the VOC-free claim in the context of the potential harm posed to health and the environment of the paint as actually applied. Marketers must be very

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careful not only to ensure that the claims they make are true, but to evaluate how consumers are likely to perceive claims. Claims must be true based on the consumers' understanding of the claims in the context of the conditions and circumstances under which the product is likely to be used.

Second, the FTC specifically noted that it was not aware of any "scientific or regulatory body that has recognized a specific trace contaminant level of VOCs in paint." All claims involving health, safety or product efficacy must be verifiable and supported by competent and reliable scientific evidence.

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