

Fashion Apparel Law Blog

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[An End to "Greenwashing?": The Federal Trade Commission's Efforts to "Wash Away" Deceptive Advertising](#)

As it becomes increasingly common to find "green" environmentally-friendly products on retailers' shelves, the Federal Trade Commission is taking active steps to guarantee the legitimacy of "green" labeling and ensure that such labels do in fact represent accurate descriptions of the products' environmental benefits. Consequently, the Federal Trade Commission (FTC) is about to release updated "Green Guides," which are expected to narrowly redefine and limit companies' and marketers' abilities to make environmental claims about their products. Once the updated guides are released, they will be the first environmental-marketing guidelines to be issued in the past twelve years. Currently, there are approximately 300 products and packages on the market stamped with environment seals of approval, such as "recyclable" or "chemical free." Experts are predicting that the new Guides could render many labels such as these useless, or even more drastically, in violation of the new Federal Trade Commission standards.

The new Green Guides are likely to include stricter regulations of packaging standards for products claiming to be "recyclable" or "biodegradable," more control over when terms such as "carbon neutral" can accurately be used, ensuring the accuracy of labeling when a retailer or manufacturer deems a product to be "green," and defining broad terms such as "sustainability." An additional goal is to end companies' "greenwashing"—portraying the products and packaging as environmentally friendly, when in reality their products or their processes negatively impact the environment.

Given the fact that the FTC's Green Guides have not been updated in the past twelve years, the standards for a company calling itself environmental- or eco-friendly had been extremely low (though the Obama administration has changed this standard, and in the past two years, seven environmental advertising enforcement actions have been brought, compared to none brought by former-President Bush in his eight years of presidency). It is speculated that the new Green Guides will require a stricter and more detailed showing of environmental benefit before the manufacturer can freely label the product as "green" or environmentally-friendly. Given the Green Guides are not laws themselves, they are not independently enforceable. However, because the Guides are interpretations of Section 5 of the Federal Trade Commission Act (which authorizes the FTC to intervene when companies are misrepresenting their practices and policies), the Federal Trade Commission can take action for violations of the Green Guides under Section 5. Consequences for violating the Act include refunding consumers who bought the products, ceasing from running the advertisements that make the false claims, issuing corrective advertisement, and submitting reports to the FTC illustrating new advertising claims.

Additionally, the Green Guides are also often enforceable through state law. California for instance has specifically incorporated the Guides into both the state's environmental and marketing laws, deferring to the Green Guides whenever environmental marketing claims are made by manufacturers or retailers. Consequently, such deference subjects violators to criminal penalties and civil suits, as opposed to strictly administrative action by the FTC.

The FTC's updated Green Guides are likely to heavily impact the textile industry in particular, and more specifically, the vast mislabeling of rayon clothing as sustainable bamboo. Bamboo is considered to be very "environmentally friendly" when referring to bast bamboo fiber—the physical fiber of the plant. Such fibers are pesticide-free, anti-microbial, and biodegradable. However, when the fibers are chemically processed, the chemical composition changes to rayon and should be properly labeled "rayon from bamboo." Chemically processing original bamboo is a common occurrence in the textile manufacturing process in order to make the material and fabric soft. In addition to mislabeling the rayon as purely "bamboo," researchers claim the chemical process is detrimental to the environment as the chemical processing requires both high water and energy consumption, contributing to air and water pollution.

Many feel that the current standards for environmental marketing are inadequate. When a company markets its product as "green" or "environmentally safe," such labeling often only reflects superficial aspects of the products, while negative environmental impacts do in fact still exist. Examining the designing, sourcing, distributing, and disposing processes often reveals the lack of environmentalism and eco-friendliness that the products often claim.

Once put into effect, the FTC's updated Green Guides are expected to bolster the recent efforts to stop greenwashing and to have a tremendous impact on manufacturers and marketers by limiting the companies' ability to make environmental claims about their products. Once the Green Guides are updated, there will likely be a significant increase in FTC violations given that the Guides will be better specified and narrowed. There is also the likely effect of increased litigation. The Federal Trade Commission authorizes filing of a complaint whenever there is reason to believe that the law is violated or that a proceeding would be in the public's interest. Additionally, marketers and manufacturers, to avoid liability, will have to show that the products do have the positive environmental benefits they claim.

The updated Green Guidelines are expected to be completed shortly. They are currently in the review and comment period of the process before becoming final. Once new FTC guidelines become final, companies are often given a grace period to allow their practices to come into compliance, a process that is often complicated and costly.