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FTC Questions Carbon-Offset Claims

As more companies use carbon-offset programs to give their products an environmental stamp of approval, the Federal Trade Commission has raised concerns that some green marketing claims don't hold up. Environmentalists call such misleading advertising "greenwashing."

Carbon offsets — essentially pledges to spend money on ways to reduce carbon emissions — are big business. Last year U.S. businesses and consumers spent more than \$54 million on credits toward wind and solar energy projects, tree farms, and other schemes to balance the emissions created by, for example, flying on a plane or driving a car.

Recently, in the FTC's first hearing in a series on green marketing, the agency expressed concern that some of the money may not be going where it is advertised. With the rise of green programs like carbon offsets, "there's a heightened potential for deception," said FTC Chairwoman Deborah Platt Majoras.

The FTC has not updated its environmental ad guidelines, called the Green Guides, since 1998. A decade ago the agency did not have definitions for common phrases used today such as renewable energy, carbon offsets, and sustainability. The agency is now requesting comments on updating its guidelines and collecting information about carbon-offset programs.

UPCOMING EVENTS

October 21, 2008
ACI: Sports Sponsorship Advertising and IP

Topic:
"When Retired Players Sue From Coscarart v. Major League Baseball to Parrish v. NFLPA"

Ronald S. Katz

"Morality and an Agreement Mortality--Taking Appropriate Measures to Avoid the Termination of an Endorsement Deal"

Linda Goldstein

The Carlton Hotel
New York, NY

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October 22, 2008
D.C. Bar CLE Seminar

Topic:
"Copyright Law and Litigation"

Kenneth M. Kaufman

D.C. Bar Conference Center
Washington, D.C.

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November 20-21, 2008
PMA's 30th Annual Promotion Marketing Law Conference

Topic:
"Navigating the Potholes: Th Evolving Landscape of Sweepstakes, Games"

Consumers are increasingly inundated with green offers. Volkswagen told drivers last year that it would offset their first year of driving by planting trees in the lower Mississippi alluvial valley. Dell lets Web site visitors fill shopping carts with carbon offsets for printers, monitors, and even themselves.

Most companies use little-known outfits like TerraPass and Carbonfund.org to handle their green programs. These groups also service corporations looking to become "carbon-neutral" by buying offsets for the carbon dioxide they release. Majoras noted that spokesmen for events like the Super Bowl and the Academy Awards have recently started saying that their events are carbon-neutral (though the Academy Awards drew criticism for the way its offsets were handled).

Although the FTC has yet to accuse anyone of wrongdoing, environmentalists say — and the hearings suggest — it is only a matter of time until regulators turn their attention to this growing market.

Panelists at the FTC's session raised a number of questions about certifications behind the claims, wondering if the offset companies might be double-counting carbon reductions that would have happened even without their efforts.

There is even disagreement over how much carbon dioxide can be neutralized by tree planting, which is the type of offset that is easiest to grasp. Most suppliers of carbon offsets say that the cost of planting a tree is roughly \$5, and the tree must live 100 years to fully compensate for the emissions in question.

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FCC Probing Comcast for Data Discrimination

Kevin Martin, Chairman of the Federal Communications Commission, said the agency would be investigating whether cable provider Comcast was involved in data discrimination.

"Sure, we're going to investigate and make sure that no consumer is going to be blocked," Martin said.

In October 2007 the Associated Press said it had run a test that proved Comcast was blocking access to peer-to-peer networks. Digital freedom advocate Electronic Frontier Foundation then conducted its own experiment that it said confirmed AP's findings. Comcast accused both groups of using too narrow a focus with its tests. It admitted to "delaying" certain P2P traffic but denied that it was blocking access to any content.

Contests"

Linda Goldstein

Topic:

"Consumer Product Safety: Hear from the Regulators How the New Laws Affect Your Promotion"

Kerrie L. Campbell

Marriott Downtown Magnificent Mile
Chicago, IL

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December 4-5, 2008 Film & Television Law

Topic:

"Product and Music Placement Branded Entertainment: Issue and Litigation"

Linda Goldstein

Topic:

"The Value of Fame: Understanding the Right of Publicity"

Mark S. Lee

Century Plaza Hyatt Regency
Los Angeles, CA

[For more information](#)

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Two months ago the SavetheInternet.com coalition and several academics filed a complaint with the FCC urging the agency to stop Comcast from violating customer rights. They were predictably pleased by Martin's remarks. "We hope the Chairman's statements, made two months after we filed our complaint, will lead to immediate and accelerated action at the FCC on the critical issue of whether Comcast. . .and other Internet service providers can block the services people want to use," Marvin Ammori, general counsel of Free Press, said in a statement.

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U.S. Arrests Eight in Online Gambling Operation

In the federal government's ongoing battle against Internet gambling, U.S. prosecutors have arrested eight people in connection with a Costa Rica-based online sports-betting operation.

Twelve men face charges, including conspiracy and illegal gambling, in an indictment unsealed in Manhattan federal court for their involvement in operating a gambling site and call center servicing U.S.-based sports bookies.

U.S. prosecutors said that starting in 2005, a Costa Rican operation headed by Carmen Cicalese charged several hundred U.S. bookies weekly fees of \$15 to \$30 for each gambler they registered. The gamblers then placed sports bets either via a toll-free number or on sites including datawager.com and betwestsports.com, the indictment said. The operation set the odds and the bookies handled the payouts. U.S.-based "runners" collected the fees and transferred the money back to Costa Rica through couriers, credit cards, and electronic funds bank transfers.

Eight arrests were made in New York, Massachusetts, and Maryland. Cicalese remains at large, authorities said.

Foreign online gambling companies have accused the Justice Department of violating World Trade Organization rules by singling them out. In December the European Union agreed to let Washington withdraw a 13-year-old commitment to allow foreign firms to offer gambling services in exchange for U.S. trade concessions in other areas. The deal followed U.S. legislation in 2006 that made it illegal for credit card companies to accept charges for online gambling, effectively closing the market to foreign companies. These and other laws effectively make it illegal in the U.S. to offer online gambling, which federal authorities worry could be used to launder money.

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NY Passes Airline Passenger Bill of Rights

Most airline customers today take for granted that their flights will be beset by delays, cancellations, lost luggage, and other hassles of 21st-century air travel, especially if a New York airport is involved. More delays occur at John F. Kennedy and LaGuardia airports than any other U.S. airport.

A modicum of relief may be at hand. On New Year's Day the first-in-the-nation airline passengers' bill of rights became law, requiring airlines to provide stranded passengers at New York airports with services and supplies to ease the pain of delays.

The law was passed primarily in response to an incident in which thousands of passengers were kept in grounded aircraft at JFK during a snow and ice storm last Valentine's Day, some for up to 10 hours.

The law requires that once airplanes leave gates in New York and have been on the tarmac for more than three hours, there must be drinking water, snacks, other refreshments, electric-generation service for fresh air, lights, and removal of waste from holding tanks for on-board restrooms. It carries a penalty of \$1,000 per passenger per violation.

Legislators in New Jersey, Rhode Island, and Connecticut are considering similar laws. Congress may also include protections for stranded passengers when it deliberates on a bill reauthorizing the Federal Aviation Administration later this year.

The Air Transport Association of America, the trade association representing the major U.S. air carriers, is fighting the New York law, arguing that such decisions need to rest in the hands of cockpit crews, and that commercial aviation is best regulated by the federal government, not individual states.

Last month Judge Lawrence Kahn dismissed the association's challenge, ruling that the New York law covers legitimate health and safety issues and is not preempted by the federal Airline Deregulation Act of 1978, since it does not affect an airline's fares, routes or service.

The trade association said it is weighing an appeal.

Airlines are also fighting at least two lawsuits by customers stranded for hours on tarmacs, accusing the companies of false imprisonment, intentional infliction of emotional distress, negligence, and breach of contract. Both suits are seeking class action status on behalf of some 12,000 American passengers who were confined for hours in airplanes "in poor to deplorable conditions" on December 29, 2006. They allege that tarmac confinements are intended to avoid "expenses and lawful obligations to passengers associated with strandings, diversions, and canceled flights."

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