

What Do You Mean When You Say It's Green?

New guidance from the FTC on eco-friendly marketing

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If you market products, packaging, or services that claim to be “green” or “eco-friendly” or that display green certifications or seals of approval, what should you do to avoid a claim that your advertising is misleading? Under [proposed revisions](#) to the Guides for the Use of Environmental Marketing Claims (Green Guides), issued by the Federal Trade Commission (FTC), marketers should be prepared to limit such claims to what they can specifically substantiate with demonstrable evidence.

The FTC first introduced the Green Guides in 1992 to “help marketers make truthful and substantiated environmental claims” about their products and services. In the years since the Green Guides’ last amendment in 1998, consumers have grown increasingly concerned about the environmental impact of the products and services they use. This has led to a marked increase in the number of product manufacturers and services making environmental benefit claims, as well as a proliferation in the language used to make such claims and in the number of agencies providing “green” certifications and seals of approval.

Extensive studies conducted by the FTC prior to proposing the new Green Guides revisions indicate that consumers and marketers do not see eye to eye on the question of what it means when a product or service is marketed as “green.” In the FTC’s words, “Very few products, if any, have all of the attributes consumers seem to perceive from [unqualified claims that an item is ‘environmentally friendly’ or ‘eco-friendly’]. Therefore, these claims may be impossible to substantiate” Through the proposed Green Guides revisions, the FTC aims to bring needed clarity to the issue of how to avoid misleading consumers when marketing the “greenness” of products.

Revision fundamentals

The essence of the proposed revisions is that “marketers should not make unqualified general environmental benefit claims,” and that “qualifications should be clear and prominent and should limit the claim to a specific benefit.” Accordingly, the proposed revisions include a list of commonly used green marketing terms and establish criteria for measuring whether a product or service qualifies for the use of the terms.

To illustrate: For a product to be called “degradable” under the proposed revisions, it must typically decompose within a year after customary disposal. Further, if only a portion of the product is degradable (such as the packaging), the marketer must make it clear that the claim of “degradable” is limited to the packaging itself and does not include the remainder of the product.

The proposed revisions establish similar standards for other terms such as

“compostable,” “ozone-safe” or “ozone friendly,” “recyclable,” “free of” or “non-toxic,” “made with renewable materials,” “made with renewable energy,” “employs carbon offsets,” and others. If you don’t find your particular choice of green terminology listed in the proposed regulations, do not rest easy, since the FTC will likely get around to your choice, and perhaps sooner rather than later.

The proposal with perhaps the broadest potential impact on existing green marketing claims relates to the use of the term “recyclable.” The revised Green Guides would create three tiers of possible claims based upon the general availability of recycling programs to consumers.

If a “substantial majority” of consumers or communities have access to relevant recycling facilities, a marketer can make an unqualified claim that the product is recyclable. If only a “significant percentage” of consumers or communities have access to relevant recycling facilities, qualifications such as “the product may not be recyclable in your area” must be used. If less than a “significant percentage” of consumers or communities have access to the relevant recycling programs, the marketer must state that “the product is recyclable only in the few communities that have relevant recycling programs.”

The revised Green Guides would also clarify that they apply to agencies offering “green” certifications and seals of approval. Marketers must note material connections to a certifying agency, and if a certifying agency states that a product is “eco-friendly,” the statement must be properly qualified in the same way it would be if the marketer made the statement.

Public comment on the proposed revisions closed in December 2010 and, although the FTC has not yet published the final revised Green Guides, it is only a matter of time before some version is adopted. While it remains to be seen how aggressive the FTC will be in future enforcement actions, it is clear that this is a subject of significant interest to the agency.

Conclusion

Even as they await publication of the final version of the revised Green Guides, company executives should require that their marketing departments engage in the essential homework of reviewing all existing marketing materials in all forms of publication (websites, print advertising, marketing materials, packaging, etc.) that include environmental benefit claims to determine whether the claims meet the new substantiation and specificity standards and, if not, what qualifications should apply.

In analyzing the results of this homework, company executives should keep firmly in mind that in the event of an investigation, the company will have the burden of proving the truth of each such statement, not the FTC.

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