

New Green Guides Proposed

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"Eco-Friendly," "Green," "Degradable," "Compostable," "Recyclable," "Non-Toxic:" Since 1992, such environmental claims have been guided by the Federal Trade Commission's "Green Guides," in order to prevent "greenwashing" -- untruthful or misleading claims of environmental superiority or benefit. Yesterday, the FTC proposed significant changes to the Green Guides, which were last revised in 1998.

As explained by FTC Chairman Jon Leibowitz, "businesses have increasingly used green marketing to capture consumers' attention and move Americans toward a more environmentally friendly future. But what companies think green claims mean and what consumers really understand are sometimes two different things." The proposed changes attempt to bridge this gap by revising the Green Guides with regard to certain claims, by supplementing the Green Guides to address new claims, and by prompting discussion via an open comment.

Proposed Revisions

The FTC's proposed revisions clarify and more fully define certain areas of green marketing.

- **No more unqualified claims of general environmental benefit:** While the current Green Guides permit unqualified claims (e.g. "green," "eco-friendly") if they can be substantiated, the FTC proposes to eliminate this allowance altogether as general environmental claims are difficult, if not impossible, to substantiate.
- **Tighter reign on certifications and seals of approval:** While the current Green Guides barely address certifications and seals, the FTC proposals emphasize that certifications and seals are official endorsements governed by the FTC's Endorsement Guides, as well as mandate new qualifications and substantiation of such seals.
- **Degradability:** While the current Green Guides permit unqualified degradable claims if the product or package will break down "within a reasonably short period of time," the revised guides propose that the product or package must break down no more than a year after customary disposal. Furthermore, the claim must be qualified if the items are destined for landfills, incinerators or recycling facilities.
- **A three-tier analysis of "recyclable" claims:** While the current Green Guides only address this analysis in example, the FTC proposes to highlight a three-tier analysis of recyclability. Whether and how a claim should be qualified will depend on whether a "substantial majority," "significant percentage," or a "less than significant percentage" of consumers have access to recycling facilities.

Proposed Additions

The FTC's proposed revisions also incorporate new claims that are not addressed in the current Green Guides.

- **Renewable materials claims:** The revised Green Guides provide that renewable material claims should include specific information about the renewable material (e.g., what it is, how it is sourced, why it is renewable); as well as information if the item is not made entirely with renewable materials.
- **Renewable energy claims:** Renewable energy claims must specify if any part of the manufacturing process utilized fossil fuels, and should identify the source of renewable energy (e.g., wind or solar). Additional qualifications should be made if renewable energy certificates (RECs) are used to offset conventional energy use. Marketers that generate renewable energy but sell RECs for all of it should not make renewable energy claims.
- **Carbon offset claims:** The carbon offset claims should be supported by competent scientific evidence, including appropriate accounting methods. Further, such claims should be qualified unless the emission reductions will occur within two years, and should not be made at all if the underlying activity is already required by law.

Comments

The FTC is seeking comment on all aspects of its proposal until December 10, 2010.

If you are interested in filing a public comment regarding the revised Green Guides, or have any questions, please contact Warner Norcross & Judd's Advertising and Marketing Law group: Janet Ramsey (jramsey@wnj.com or 616.752.2736), Amanda Fielder (afielder@wnj.com or 616.752.2404), or Mary Tell (mtell@wnj.com or 616.752.2793).