

Revisions to the 'Green Guides'

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By Lynn L. Bergeson

Companies that make claims that their products are green need to heed the warnings from the FTC.

Early in October, the Federal Trade Commission (FTC) released important revisions to its Guides for the Use of Environmental Marketing Claims (Green Guides) to make them easier for companies to use and understand.

Product manufacturers are keenly aware of the purchasing public's desire to go green. Last revised in 1998, the FTC has struggled to keep the guides current with a burgeoning number of claims purporting to reflect a product's environmentally friendly profile. Some states have adopted and exceeded the FTC's guides. For example, Florida and California require manufacturers to maintain records corroborating such claims.

The proposed guides

Changes to existing guidance cautions marketers from making unqualified general claims that a product is "environmentally friendly" or "eco-friendly." These types of claims suggest the product has specific and far-reaching environmental benefits that are difficult to substantiate.

Importantly, the proposal adds a new section advising marketers that it is deceptive to misrepresent that a product has been endorsed or certified by a third-party organization, or that third-party certifications are endorsements that meet criteria set forth in the FTC Endorsement Guides. The FTC is aware of the jumble of domestic certification programs and is concerned about consumer confusion.

The Green Guide also advises marketers on public perception and use of the terms such as degradable, compostable, ozone-safe/ozone-friendly, recyclable and free-of/non-toxic.

There is advice about claims for products made with renewable materials or renewable energy. The FTC suggests marketers qualify such claims with specific information about the renewable material (e.g., what it is, how it is sourced, why it is renewable) or renewable energy (e.g., wind or solar) and cautions against unqualified claims if any part of the product is made with non-renewable material or manufactured using fossil fuels. The proposal provides advice on carbon-offset claims. It suggests marketers have competent and reliable scientific evidence to support the carbon-offset claim and disclose if any offset purchase funds emissions reductions that will not occur for more than two years.

To avoid potentially duplicative rules or guidance issued from other agencies, the proposal expressly does not address use of the terms "sustainable," "natural" or "organic." Organic claims, for example, may be subject to Department of Agriculture regulations if made in association with

agricultural products under the National Organic Program. "Natural" claims made in association with pesticide products are subject to EPA regulations.

The proliferation of green product claims in recent years has considerably complicated purchasing decisions and invited abusive marketing practices. While the proposal responds to many questions that have arisen over the years, they also raise new issues while leaving others unanswered. The quality of information and level of specificity to substantiate such green claims remains unclear and somewhat fluid. For example, a manufacturer's claim that a product is "formaldehyde free" would not be deceptive if the manufacturer is able to substantiate that any formaldehyde emissions "likely are inconsequential to consumers." Reasonable people can be expected to disagree as to what is inconsequential. The proposal takes a much needed stab at renewable energy claims and renewable materials claims.

A careful read of the proposal is essential and the FTC is plainly solicitous of specific and meaningful public comment. Such comment will undoubtedly improve and help FTC to address any specific issues raised by the current proposal, which clearly reflects a great deal of thought and effort. PE

Lynn L. Bergeson