

Management Alert



FTC Issues Revised “Green Guides”

On October 1, 2012, the Federal Trade Commission (FTC) published final changes to its [Guides for the Use of Environmental Marketing Claims](#), commonly known as the “Green Guides.” The FTC first issued the Green Guides in 1992 to help marketers ensure that environmental claims they make about their products and services are true and substantiated. The Green Guides apply to environmental claims in labeling, advertising, promotional materials, and all other forms of marketing whether asserted through words, symbols, brand names, logos, or other means. The Green Guides contain: 1) general principles that apply to all environmental marketing claims; 2) specific guidance on how consumers are likely to interpret particular claims and how marketers can substantiate these claims; and 3) examples of environmental claims that would not be considered deceptive or misleading.

The Green Guides are published at 16 CFR Part 260. As agency guidance, they do not have the force and effect of law and are not independently enforceable. The FTC can, however, take action under [Section 5 of FTC Act](#) (the “Act”), which prohibits unfair or deceptive practices, if a marketer makes an environmental claim inconsistent with the Green Guides. Deception under the Act is based on whether marketing is likely to mislead consumers. The Green Guides are based on evidence from consumer perception studies and public workshops on how the average consumer understands environmental claims.

Although the agency revised the Green Guides in 1996 and 1998, it [proposed](#) the current revisions in 2010 due to the recent increased usage of environmental claims in the marketplace and the emergence of new claims. Accordingly, the updated Green Guides address emerging environmental claims, namely renewable material claims, renewable energy claims, and carbon-offset claims. They also clarify and supplement existing guidance on general environmental benefit claims, ozone-safe, compostable, degradable, recyclable, recycled content, source reduction, refillable, free-of/non-toxic claims, and the use of certifications and seals of approval. Although some public comments requested that the agency add a section to the revised Green Guides discussing organic and natural claims, the FTC declined because the Food and Drug Administration (FDA) and United States Department of Agriculture (USDA) also regulate the use of these terms. The agency also does not address sustainable claims in the revised Green Guides, primarily because studies show that consumers do not have a consistent understanding of the term “sustainable.”

The updated Green Guides are a clear signal from the FTC that marketers must be cautious in touting the environmental attributes of their products. The agency has brought several actions in the past few years related to deceptive environmental claims. Private actions under State unfair practices laws are also on the upswing. Government enforcement and private party actions, however, are not the only ways improper environmental marketing can hurt companies. Deceptive use of environmental claims, also known as “green washing,” can diminish consumer confidence in a product or brand. Companies should evaluate any current or future environmental-attribute claims they make in view of the revised Green Guides.

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Seyfarth Shaw has established a Green Marketing Compliance Team to assist clients with green marketing and green washing issues. The Green Marketing Compliance Team will hold a Webinar on December 4, 2012, at noon CST, to discuss the latest developments with respect to the Green Guides and green marketing. For more information on this topic or the upcoming webinar please visit the [Green Marketing Compliance Team](#) webpage.

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