

Green Guides

Background

On October 15, 2010, the Federal Trade Commission (FTC) proposed revisions to the Guides for the Use of Environmental Marketing Claims (“Green Guides;” 16 CFR part 260), due to a “proliferation of green claims in the marketplace.” This voluntary guidance, which was first published in 1992 and then updated 1998, is the FTC’s interpretation of section 5 of the Federal Trade Commission Act’s (FTCA) prohibition against using “unfair or deceptive acts or practices in or affecting commerce.”

Under the Green Guides, environmental claims are any express or implied claims that involve the environmental attributes of a product or its components, package, or service, and which are asserted through advertising and marketing materials such as words, symbols, logos, product brand names, etc. The fundamental principle underlying this guidance is that all claims must be truthful and a party making a claim “must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim.” For environmental claims, this typically means “competent and reliable scientific evidence,” and the existence and nature of an implied claim is based on the perspective of a “reasonable consumer.” The proposed revisions caution marketers to avoid general environmental claims, such as "environmentally friendly" or "eco-friendly" because they are "nearly impossible to substantiate" and likely to suggest "specific and far-reaching" environmental benefits that few, if any, products possess. The revised guides also caution against the use of unqualified certifications or seals of approval, and that third-party certification does not eliminate a marketer's obligation to have substantiation for all express or implied claims.

Update

On December 10, 2010, CPDA submitted comments on the revised Green Guides that generally support the FTC’s use of volunteer, flexible guidance instead of formal regulations. The Green Guides provide helpful insight on the nuances of environmental benefit claims and methods for marketing products in accordance with the FTCA. However, CPDA also expressed its concern about the FTC possibly considering third-party certifications and seals (which the FTC considers endorsements) to be implied general environmental claims if packaged in certain ways (e.g., green colors agricultural/rural graphics). CPDA asked the FTC to provide additional guidance on what advertising conditions would cause the mere presence of an unqualified seal to cause a reasonable consumer to perceive an unintended implied environmental benefit claim.