

# GOING GREEN:

## *green technology & developments*

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### Marketing Green:

## The FTC's *Guides for the Use of Environmental Marketing Claims*

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Corporate logos have sprouted leaves. A cereal box professes to help save endangered species and conserve habitats. Ad campaigns claim that large-screen televisions can help minimize your environmental footprint. Terms like “green,” “locally grown,” “eco-friendly,” “sustainable,” “carbon neutral,” “carbon offset” and “climate change” dot the current marketing landscape.

Ten years ago, when the Federal Trade Commission last looked at environmental marketing trends, these terms and marketing practices were not nearly as common as they are today. Customers bombarded with such claims get the impression that the marketed goods or services help the environment, but what do these claims really mean or imply? The FTC is examining these and other trends in green marketing practices as well as consumer perception as part of their periodic review of the FTC's *Guides for the Use of Environmental Marketing Claims*, simply known as the “Green Guides.”

The FTC has been hosting a series of public workshops to determine whether the Green Guides should be updated. (The FTC's Web site, [www.ftc.gov](http://www.ftc.gov), provides detailed information about the workshops, as well as publicly filed comments.) Although at the time of this writing the FTC has scheduled no workshops, they may hold more during this review process.

The FTC initially published the Green Guides in 1992, around the time of marketing claims related to concerns about the ozone layer, and they revised them in 1998 to address the use of the terms “recyclable,” “recycled content” and “compostable.” The Green Guides provide the FTC's administrative interpretations of how the statutory prohibitions against deception and unfairness in the marketplace apply to statements about an environmental attribute of a product, package or service. The Green Guides put forth general principles as well as specific guidance related to particular environmental claims.

The Green Guides counsel that marketers must have a reasonable basis substantiating their environmental claims at the time they make them. They also provide some common sense dictates for marketing clarity, including the following:

- Qualifications and disclosures should be clearly and prominently displayed;
- Environmental claims should specify whether they relate to the product, package, service or portion thereof;
- An environmental attribute or its significance should not be overstated or overimplied; and
- Comparison claims should specify the foil.

To flesh out these principles, the Green Guides discuss eight specific types of environmental claims: general environmental benefit; degradable, biodegradable or photodegradable; compostable; recyclable; recycled content; source reduction; refillable; and ozone-safe and ozone-friendly. For each type of



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claim, the Green Guides teach the same fundamental points. An environmental claim must be substantiated and its intended benefit must be a reality for the intended consumer.

For instance, marketers deceive consumers when they label a product “compostable,” without qualification, if a product cannot be composted in a backyard bin. Likewise, it is deceptive to market a product's package as recyclable, without qualification, if most communities where the package is sold do not have the necessary recycling facilities. The Green Guides provide many other specific examples of both good and bad environmental claims.

As administrative interpretations, the Green Guides are not themselves enforceable regulations. If marketers take actions inconsistent with the Green Guides, however, the FTC may take corrective action directly under the FTC Act on the ground that the marketer is making false or misleading claims. Starting in the George H.W. Bush administration and continuing throughout the Clinton administration, the

FTC brought 37 such enforcement actions.

One of the most notable cases was *In the Matter of Mobil Oil Corp.*, which challenged an unsubstantiated claim that Hefty degradable trash bags would deteriorate with exposure to the elements. Although the trash bags may have had the capacity to deteriorate under special circumstances, they apparently would not deteriorate in normal landfill conditions. The matter was settled with a consent order. According to the FTC's Web site, the FTC's most recent enforcement action related to the Green Guides, *In Re Dura Lube Corp.*, came in 2000 when it challenged claims that a motor oil additive reduced emissions. This eight-year lull in enforcement actions may soon end. Participants in the FTC's workshops have called for the FTC to renew their enforcement efforts.

Even if the FTC does not take heed, sloppy green marketing claims pose risks. Most state statutes broadly prohibit deceptive trade practices, and state prosecutors have joined forces to fight against deceptive environmental claims, sometimes moving more quickly than the FTC. For example, in 1990 — one year before the FTC took action — 10 states brought suit against a disposable diaper manufacturer for making unsubstantiated claims of biodegradability. Similarly, seven states, led by California, weighed in on the Hefty trash bag matter by seeking an injunction in state court.

Avoiding consumer backlash is another good reason to be careful about green marketing claims. Not surprisingly, a recent survey conducted by the marketing firm BBMG found that overstated and unsubstantiated green marketing claims create cynicism and distrust in consumers. Consumers want reli-

able and accurate information about the environmental impacts and benefits of not only a product but also its producer, and they will reward companies who are transparent and accountable for their environmental deeds.

Marketers, however, are making mistakes. Another marketing firm, TerraChoice, recently surveyed six big box stores and found that almost 100 percent of green marketing claims were either demonstratively false or potentially misleading. For instance, TerraChoice found shampoo marked as "certified organic," but they could not verify the certification. Their findings are in line with an April 2008 study of consumer perceptions. Burst Media surveyed over 6,000 Internet users and found that less than a quarter of those surveyed usually believe green marketing claims.

Findings like these will impact the FTC's revision of the Green Guides. The FTC wants to make sure that the Green Guides take into account changes in consumer perceptions and seek only relevant data. Data like those from TerraChoice and Burst Media, of course, are not uncontested. A group of advertising trade associations contend that "there is no evidence that consumers are confused or misled by the types of environmental marketing claims being made in today's marketplace, or that advertisers are using environmental claims to create false or misleading advertising." The FTC anticipated that consumer perceptions of green marketing claims would be a subject of debate and suggested in the Federal Register Notice that they would devote a future workshop to this topic.

In addition to consumer perceptions, the

FTC is also concerned about the economic impact of the Green Guides and has solicited feedback from the public. The comments submitted reflect a range of thinking from pro-regulation to pro-free market. Some see a need for strict definitions, third-party verifications and enforcement actions. Some manufacturers look to the Green Guides for concrete marketing guidance and would welcome additional clarity and a wider reach for the Green Guides. Others would like to see the Green Guides align with ISO standards for environmental labeling. Still others want to make sure that any revisions to the Green Guides would not hinder the free-market development of environmentally preferable practices. Others believe that there is no need for revisions because consumers armed with the Internet will quickly see through deceptive claims and walk away from the transactions.

When the Green Guides emerge from the review process, they will likely provide guidance for the use of some of the new terms that have sprouted up on the marketing landscape. Although it is difficult to predict which terms will be added or further explained, it is not difficult to predict that green marketing will continue to grow. Over 40 percent of large companies recently surveyed by McGraw Hill identified "green" as a growth strategy. Regardless of which specific terms are addressed, the Green Guides will continue to press for clarity and substantiation. Savvy businesses will make sure that their marketing departments understand the current Green Guides as well as the new revisions to be confident that they do not end up littering the marketing landscape with unsubstantiated environmental claims. •