

FTC Proposes to Significantly Tighten “Green” Marketing Advertising Guidelines

What does it mean to be “green”? For the first time in a dozen years, the Federal Trade Commission (FTC) is weighing in on this topic by providing updated proposed guidelines to companies that market “environmentally friendly” products. The new guidelines would delineate what may be considered “unfair or deceptive,” under the FTC Act, 15 U.S.C. 45. The FTC issued its Guides for the Use of Environmental Marketing Claims (the “Green Guides”) in 1992. While the Green Guides did not have the force of agency regulation, they did serve to describe what the FTC would consider deceptive, and in turn became *de facto* standards for green marketing.

On October 6, the FTC issued its long-awaited proposed revisions to the Green Guides. The major themes in the FTC’s proposals are a shift toward further protecting the “green” consumer by requiring companies to substantiate specific environmental claims. Some of the more significant revisions are:

- **General environmental benefits claims:** Companies should not make unqualified general environmental benefit claims, such as “environmentally friendly” or “eco-friendly.” This increasingly clear prohibition represents a shift from the existing Guides, which allow companies to make unqualified general environmental benefit claims as long as they can substantiate any express or implied claims.
- **Certifications and seals of approval:** The proposed revisions also require certifications and “seals of approval” to be objectively qualified where appropriate. While companies generally should use independent third-party certification, use of their own certification process will not be deemed deceptive as long as they clearly and prominently disclose that they created the certification process and limit the representations that the product has environmental benefits to particular product attributes that the company can objectively substantiate.
- **Degradability claims:** Under the current Green Guides, a company marketing its product as “degradable” must be able to substantiate that the “entire product or package will completely break down and return to nature within a **reasonably short period of time** after customary disposal.” The proposed revisions attempt to clarify this rule by stating that a “reasonably short period of time” **cannot exceed one year** after customary disposal.
- **Made with renewable materials/renewable energy:** The proposed revisions offer guidance related to marketing products that are made with renewable materials and/or manufactured using renewable energy. Companies should qualify claims that their products are made with renewable material by explaining what renewable material is contained in the product, how it is



sourced, and what makes it renewable. Moreover, if the products contain both renewable and non-renewable materials, the company should qualify the scope of renewable materials that are used in the product.

- **Carbon offsets:** Under the proposed revisions, companies that sell carbon offsets (a type of credit or certificate that can be purchased to neutralize one's "carbon footprint" by funding projects that reduce greenhouse gas emissions) must have competent and reliable scientific evidence to support their carbon offset claims in order to advertise that they participate in such programs.

These revisions, however, are not yet final. The FTC has invited public comment until December 10, 2010 regarding the proposed revisions. The FTC has indicated that it will consider the public feedback prior to finalizing the revised Green Guides and could make significant additional revisions based on that feedback.

Thus, it is important to evaluate your environmental marketing content and strategy to determine if it is potentially impacted by the Green Guides' proposed standards. If so, it is important to start to consider how to meet these standards, but at the same time, it is not too late to influence the process and the final scope of these mandates. Your participation in the FTC's request for public comment could have a positive impact on its final decision regarding what exactly we can all call "green."

FOR MORE INFORMATION

For more information, please contact:

Kip T. Bollin	216.566.5786	Kip.Bollin@ThompsonHine.com
Heidi B. Goldstein	216.566.5559	Heidi.Goldstein@ThompsonHine.com
Elizabeth B. Wright	216.566.5716	Elizabeth.Wright@ThompsonHine.com
Thomas F. Zych	216.566.5605	Tom.Zych@ThompsonHine.com

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