



THE GREEN GUIDES

WHAT, WHY AND HOW OF GREEN MARKETING CLAIMS

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Executive Summary

Federal Trade Commission (FTC) Green Guides were first introduced in 1992 with the aim of ensuring that consumers who wish to purchase green (environmentally friendly) products and producers who wish to sell them are able to do so effectively. The Guides help marketers to avoid making “misleading environmental claims” and ensure that claims made by marketers are “truthful and non-deceptive”. The FTC revised the Green Guides in 1996 and 1998. A third revision process began in 2010 and the current version of the Guides was released in October 2012. The most recent revision process updated existing sections and added new sections addressing claims related to carbon offsets, “green” certifications and seals of approval (e.g. Good Housekeeping or Better Business Bureau), renewable energy, renewable materials, non-toxic products, and ozone-safe or ozone-friendly materials. The Guides are not agency rules or regulations; however, the FTC can take enforcement action under Section 5 of the Federal Trade Commission Act “if a marketer makes an environmental claim inconsistent with the guides.”¹ Action taken against marketers making claims considered to be deceptive often results in the prohibition of such claims and fines.

This report summarizes the requirements of the Green Guides as they relate to renewable and recyclable materials, including wood and fiber products. This report also highlights recent changes to the Green Guides and the overall impact of the guidelines on green marketing efforts. As the FTC clarifies the definition of terms for marketing purposes, it behooves natural resource-based industries to pay attention to and, whenever possible, to participate in the process to ensure their thoughts and concerns are considered. This is particularly important as long-used broad generalizations (e.g. biodegradable) now have specific and somewhat different meanings when used for promotional purposes.

Introduction

Federal Trade Commission (FTC) Green Guides were first introduced in 1992 with the aim of ensuring that consumers who wish to purchase green products, and producers who wish to sell them, are able to do so effectively. The Guides help marketers avoid making “misleading environmental claims” and ensure that claims made by marketers are “truthful and non-deceptive”. The Green Guides describe the environmental marketing claims that the FTC may or may not consider deceptive. Guidance is provided for environmental marketing claims as well as for how consumers likely interpret such claims, and how marketers can substantiate or qualify their claims in order to avoid deception.

The FTC revised the Green Guides in 1996 and 1998. A third revision process began in 2010 and the current version of the Guides was released in October 2012. Released along with the newly updated guides was a summary of the guides, a video explaining the highlights of the changes, and a Statement of Basis and Purpose. The most recent revision process updated existing sections and added new sections addressing claims related to carbon offsets, “green” certifications and seals,

¹ Part 260 - Guides for the Use of Environmental Marketing Claims. (n.d.). Retrieved June 1, 2014, from <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>

renewable energy, renewable materials, non-toxic products, and ozone-safe or ozone-friendly materials. During the process, the FTC took into account public comments and held public workshops. The process also incorporated results from a 2009 FTC study of how consumers perceive and understand environmental claims. The study included more than 3,700 participants and examined how they understood general environmental claims such as “green” and “eco-friendly,” as well as “sustainable,” and “made with” claims such as *made with renewable energy, renewable materials, and/or recycled materials*. To determine whether consumer’s interpretation varied by associated product the study tested these claims as they appeared on wrapping paper, a laundry basket, and kitchen flooring. A second portion of the study tested carbon offset and carbon neutral claims.

This broad FTC study, in conjunction with the “Bristol Windows” research report (Hastak & Murphy, 2012) illustrate the FTC’s commitment to developing the Green Guides based on better understanding of consumers’ actual interpretations and expectations from marketing language such as “Up To” (e.g., “up to \$100 off retail”) rather than its specific grammatical meaning. In this effort, the FTC is raising the bar relative to that of many states and the Better Business Bureau in terms of expectations for the marketer to understand exactly how a perspective customer is likely to respond to a promotional message and their product’s (or service’s) ability to meet those expectations. Natural resource-based materials are likely affected by the changes in the Green Guides, especially as they relate to broad general claims. Associated firms (including associations and certification agencies) should be cautious to avoid unsubstantiated or misleading claims.

This report summarizes the requirements of the Green Guides as they relate to renewable and recyclable materials, including wood and fiber products. This report also highlights recent changes to the Green Guides and the overall impact of the guidelines on green marketing efforts.

Background

Businesses have sought to promote the environmental benefits of their products or services since at least the late 1960s. Companies such as Whole Foods in Austin, Texas and Tom’s of Maine have since gained national acclaim for their environmental stance. By the early 1980s companies across a variety of sectors sought to take advantage of growing environmental awareness by promoting the relative “greenness” of their various products and services. Some firms made vague or questionable claims about environmental stewardship, while others used language that could be considered misleading or difficult to precisely define. To help address this, the FTC in 1983 developed the “FTC Policy Statement Regarding Advertising Substantiation.” This policy statement requires the marketer to have a reasonable basis for express or implied claims that make objective assertions about the item or service advertised including, at a minimum, the level of substantiation advertised. For example, claims such as, “studies show...” must be based on actual independent studies. However, by the mid 1980s questionable marketing practices were sufficiently common that the term “greenwashing” was coined for ads and labels that promised more environmental benefit than they could deliver.

TerraChoice Environmental Marketing (since acquired by Underwriters Laboratories) assessed thousands of products in the U.S. and Canada and identified a number of practices they described as the “seven sins of greenwashing.” These include:

- Hidden Trade-offs: promoting an unreasonably narrow set of attributes without attention to other important environmental issues

- No Proof: making a claim that cannot be easily substantiated
- Vagueness: defining a claim in a way that is easily misunderstood by the public
- Irrelevance: making a claim that is truthful, but unimportant or unhelpful
- Lesser of Two Evils: making a claim that may be specifically truthful, but distracts from a more important issue associated with the product
- Fibbing: making false claims
- False Labels: exploiting interest in third-party labeling with fake labels or claims of third-party endorsement

False or misleading claims may be committed by individuals or organizations that are well-meaning but ignorant of the issues, implications, or regulations linked to them. For example, making a claim that a product is broadly “environmentally” friendly simply because it is made from “renewable” or “biodegradable” materials would be inappropriate if that attribute is not meaningful in the overall environmental scope of the product. The Green Guides revision in 2012 attempted to address concerns raised by TerraChoice and others.

Key Phrases in the Green Guides

- *“Clear and prominent(ly)”*: This phrase is used to describe how marketers should use the evidence which substantiates the claim(s)
- *“Competent and reliable scientific evidence”*: This phrase is used to describe the type of evidence marketers should use to substantiate claim(s)

Requirements of the Green Guides

The Federal Trade Commission Act was first established in 1914 to prevent unfair methods of competition, and unfair or deceptive acts or practices in/ or affecting commerce. Under the provisions of the act, the Commission can:

- seek monetary redress and other relief for conduct injurious to consumers;
- prescribe trade regulation rules defining with specificity acts or practices that are unfair or deceptive, and establish requirements designed to prevent such acts or practices;
- conduct investigations relating to the organization, business, practices and management of entities engaged in commerce; and
- make reports and legislative recommendations to Congress.

The Guides are not agency rules or regulations; however, the FTC can take enforcement action under Section 5 of the Federal Trade Commission Act “if a marketer makes an environmental claim inconsistent with the guides.”² Action taken against marketers making claims considered to be deceptive often results in the prohibition of such claims and fines.

² Part 260 - Guides for the Use of Environmental Marketing Claims. (n.d.). Retrieved June 1, 2014, from <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>

Deceptive or Not Deceptive

The FTC bases their decision of what is and is not deceptive on how a “reasonable consumer” would interpret the claims. *Therefore, a claim is considered deceptive if it is likely to “mislead consumers acting reasonably under the circumstances and is material to consumers’ decisions.”* This “reasonable consumer” concept applies to environmental claims that are asserted either directly or indirectly through words, depictions, brand names, or any other means.

Substantiating Claims

The Guides have elaborated on the 1983 Policy statement and now state that marketers must provide “*clear and prominent*” evidence to prevent a claim from being misleading. This evidence also should be “*sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence.*” Also, the substantiating evidence should appear in close proximity to the claim that it is qualifying.

Using Life Cycle Analysis (LCA) to Substantiate Claims

Marketers may rely on the results of an LCA³ to substantiate their claims so long as the LCA is comprised of “competent and reliable scientific evidence.” However, the FTC also advises marketers to disclose the “uncertainty and variability of LCA science.”⁴

Relation to Other Laws

The Guides cannot preempt other laws. Thus, even if a claim may not be considered deceptive under the Guide, a marketer should not make such claims if another law forbids it. For example, previous versions of the Guides allowed “free-of” claims if there was a *de minimus* amount of certain substances within the product; however, the Environmental Protection Agency (EPA) could still consider this claim false or misleading.

³ Sometimes referred to as “cradle to grave” analysis, LCA provides a mechanism for systematically evaluating the environmental impacts linked to a product or process and in guiding process or product improvement efforts. LCA-based information also provides insights into the environmental impacts of raw material and product choices, and maintenance and end-of-product-life strategies. For more information about LCA, see: Life Cycle Assessment & Environmental Product Declarations. (n.d.). Retrieved September 1, 2014, from http://www.dovetailinc.org/programs/responsible_materials/lca_and_epds

⁴ III. Life Cycle Issues. (n.d.). Retrieved June 1, 2014, from <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>

What Types of Products and Claims do the Guides Address?

The Green Guides address a number of product attributes and claims pertinent to natural resource-based industries, including:

- Generalized environmental claims
- Recyclable or recycled content
- Compostable
- Degradable
- Free-of
- Use of carbon offsets
- Use of certification labels
- Renewable energy
- Renewable materials
- Non-toxic
- Ozone safe/friendly

Each of these is discussed briefly below.

Generalized Environmental Claims

The Guides strongly caution marketers from making broad, generalized claims such as “environmentally friendly” or “eco-friendly”. Section 260.3 clarifies that marketers should not “overstate, directly or by implication, an environmental attribute or benefit.” If a marketer chooses to use general environmental claims they should use clear and prominent language to convey that the claim(s) refers to “specific and limited environmental benefits.”

Recyclable or Recycled Content

The Guides provide detailed guidance regarding recyclable and recycled content claims. However, the guidance is not always intuitive, so it is important to be aware of what the Guides specifically say about these claims. The Guides indicate that a product can carry a *recyclable* claim if it *can be collected, separated, and otherwise recovered through an established recycling program* for reuse or use in manufacturing or assembling other products. The Guides further state that if any attribute (e.g., shape or size) limits the recyclability of a product it is deceptive to market it as recyclable. Following this guidance, marketers should qualify recyclability claims in a way that avoids deception about the availability of recycling programs and collection sites to consumers. Marketers may make recyclable claims if a “substantial majority” of consumers or communities where the product is sold have access to recycling facilities. The Green Guides indicate that 60% qualifies as a “substantial majority”. A *recycled content* claim means that the *product contains recycled raw materials, used, reconditioned or re-manufactured materials*. In order for a recycled material claim to be considered non-deceptive by the FTC the materials used must have been *recovered or diverted from entering the waste stream* pre- or post-consumer use. Marketers should avoid deception about the amount of recycled content in their product(s).

Compostable

In order to make a compostable claim *all* materials of a product and its packing must break down into usable compost in a safe and timely manner. As with recyclability claims, if a composting facility (municipal or institutional) is not available or if its availability is limited, the marketer should clearly and prominently clarify compostable claims. Marketers should also qualify claims that may mislead a reasonable consumer about environmental benefits of disposing of the product in a landfill. Qualifying information should be based on “competent and reliable scientific evidence”.

Degradable

Guidance for degradable claims is very similar to that for compostable claims. In order for a product to carry a degradable claim the marketer should have competent and reliable scientific evidence that the *entire* product will breakdown and “decompose into elements found in nature” within a reasonably short period of time after disposal.⁵ Degradable claims should also be substantiated in a way that avoids deception about 1) the product’s ability to degrade in the environment where it is customarily disposed; and 2) the rate and extent of degradation. A degradable claim can be considered deceptive if placed on products that are customarily disposed of in landfills, incinerators, or recycling facilities that may not present conditions under which complete decomposition can occur within one year.

Summary of Key Green Guide Claims

- *Recyclable*: can be collected, separated, and otherwise recovered through an established recycling program
- *Recycled Content*: product contains recycled raw materials, used, reconditioned or re-manufactured materials recovered or diverted from entering the waste stream
- *Compostable*: all materials of a product and its packing break down into usable compost in a safe and timely manner and composting facilities are established
- *Degradable*: the entire product will breakdown and “decompose into elements found in nature” within a reasonably short period of time after disposal

Free-of Claims

Older versions of the Guides allowed “free-of” claims on products that contained a *de minimis* amount of certain substances. However, the current Green Guides now indicate that it can be considered deceptive to claim that a product, package, or service is free-of or does not use a substance in certain situations even if the claim is factually accurate. For example, marketers should not link free-of claims with general environmental claims (e.g. GMO-free wood) unless they can prove the product is overall more environmentally beneficial due to the exclusion of the substance. Free-of claims can also be considered deceptive if the product, package, or service contains other substances that pose the same risk as the excluded substance. Finally, it can also be considered a misleading practice if the substance the product, package or service is claimed to be free-of was never associated with that item, and especially if that substance is highly unlikely or even impossible to be included in the item. Again, GMO-free would act as an example here as well, since there are no GMO trees, other than in research areas in the U.S. today. Thus, claiming a wood product is GMO-free suggests that product has a benefit over another wood product that simply doesn’t exist.

In contrast, free-of claims may be appropriate for products, packages, or services that even contain trace amounts of a substance when: 1) the amount is no more than would be found as a trace contaminant or “background level”, 2) the substance does not cause harm that consumers typically associate with the substance, or 3) the substance has not been added intentionally.

⁵ “Reasonably short period of time” is considered to be 1 year after disposal. FTC Issues Revised "Green Guides" (2012, October 1). Retrieved May 25, 2014, from <http://www.ftc.gov/news-events/press-releases/2012/10/ftc-issues-revised-green-guides>

Newly Added Sections

The most recent revisions to the Green Guides incorporated new sections to address emerging and evolving environmental claim categories, including carbon offsets, certification programs, renewable energy and materials, non-toxic, and ozone impacts.

Carbon offset programs are relatively new and the FTC provides three recommendations for this topic: 1) marketers should “employ competent and reliable scientific and accounting methods to properly qualify claimed emission reductions;” 2) marketers should disclose if the reductions will not occur for two or more years; and 3) if the reduction is required by law it is deceptive to claim directly or by implication that a carbon offset represents a reduction in environmental impact.

“Green” Certifications and Seals

The FTC guidance includes the recognition that the use of certification or a seal may imply general environmental benefits and therefore these certifications or seals may be deceptive or misleading to consumers. Therefore, all certifications and seals of approval (hereafter seal or seals) should be accompanied by clear and prominent language that addresses the specific or limited benefits to which the certification or seal refers. Also, the FTC recognizes that connections between an endorser and seller may affect the credibility of an endorsement; therefore, marketers should make clear whether or not a seal or certification is an endorsement from a third-party. For example use of FSC or SFI⁶ logos on a company’s website should carefully follow those organization’s strict guidelines for placement and associated language to ensure implied endorsement is clear and not misleading.

Renewable Energy

The newly revised Guides have added a section for products carrying renewable energy claims. The Guides advise against making renewable energy claims unless all or virtually all of the manufacturing processes are powered by renewable energy or by a non-renewable energy that is matched by renewable energy certificates (RECs).⁷ If a marketer chooses to make renewable energy claims the Guides advise that the type or source of energy underlying the claim be disclosed. If a product is made from a mixture of energy sources the Guides suggest specifying the source that makes up the greatest percentage of the portfolio for that product. If only certain parts of the product or production process are powered by renewable energy a marketer may make a renewable energy claim if these parts or processes are specified.

Renewable Materials

Marketers should substantiate renewable materials claims by disclosing which material was used, how it was sourced, and why it is renewable. The Guides also recommend marketers to include the amount of renewable material contained in the product.

Non-toxic Claims

⁶ Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI) are certification programs for forest products.

⁷ “A REC represents the property rights to the environmental, social, and other nonpower qualities of renewable electricity generation. A REC, and its associated attributes and benefits, can be sold separately from the underlying physical electricity associated with a renewable-based generation source” Renewable Energy Certificates (RECs). (2014, April 15). Retrieved August 1, 2014, from <http://www.epa.gov/greenpower/gpmarket/rec.htm>

Guidance for non-toxic claims follows the same outline as free-of claims. In order for a product to carry a non-toxic claim marketers must have competent and reliable evidence that it is non-toxic for humans and the environment. Marketers are also advised to follow the law governing toxicity of products.

Ozone-safe and Ozone-friendly

The Guides consider it deceptive to directly or indirectly represent a product as ozone-safe or ozone-friendly if the product contains any substances known to deplete the ozone layer of the atmosphere. Such substances include those named under the Clean Air Act Amendments of 1990 and those designated by the Environmental Protection Agency.

What Do the Guides Not Address?

The guides do not contain sections addressing terms such as sustainable, natural, and organic. The FTC has indicated that “natural” and “sustainable” can have a wide array of meanings to consumers including some that do not convey environmental benefits. Therefore the FTC chooses not to address such claims at this time. It is possible the FTC feels that in situations where the terms natural or sustainable specifically imply an environmental benefit that may be misleading. Other aspects of the green guides such as the need to be able to demonstrate such claims have scientific validity may adequately cover the situation. Also, the U.S. Department of Agriculture’s National Organic Program addresses organic claims for food, textiles, and other products; therefore, the FTC does not wish to duplicate or create inconsistent advice around this topic.

What has been the Impact of the Green Guides?

According to the TerraChoice research, there were more than 2,000 products with green claims on the market in 2009 – a 79% increase from the company’s first report done in 2007.⁸ TerraChoice also found that green claims increased again by 73% between 2009 and 2010. They also reported that only 4.5% of the products with green claims were “sin free” (e.g., did not include one or more of the issues from their listing of the “seven sins of greenwashing”). They concluded that of nearly 400 cleaners and cleaning products assessed, all but three made unsubstantiated or unverifiable green claims. The report also noted that green advertising in magazines grew from 3.5 percent of all ads to over 10 percent between 2006 and 2009. TerraChoice’s report identified product categories with the greatest use of environmental claims, including: building + construction, office products, housewares, cleaning products, and health and beauty. Product categories with lower use of green claims included: lawn + garden, toys, and electronics. As further guidance from the FTC and others increasingly defines inaccurate or inappropriate green promotion it is easier to identify problems in the marketplace. A first step in resolving a problem is defining it, so the fact that so many product claims appear to be treading on the wrong side of the law is potentially linked to the fact that we are finally starting to measure and address the issue.

Since the release of the newest version of the Green Guides on October 1st, 2012 the Federal Trade Commission has brought disputes against nine companies for using deceptive or misleading

⁸ Numbers are based on visits to 24 stores across the country The Sins of Greenwashing: Home and Family Edition 2010. (2010, January 1). Retrieved June 26, 2014, from <http://sinsofgreenwashing.org/index35c6.pdf>

environmental claims on their products. These include: free-of claims on paints and mattresses; various products – including plastics – falsely advertised as biodegradable; general environmental claims by diaper and plastic lumber producers; and one company which labeled its textiles as “made from bamboo” when in reality they were made from rayon (which is most commonly a wood fiber product). These actions by the FTC provide some indication that they are serious about expecting producers and marketers to follow the guidelines. In fact, the suit against the plastics companies claiming their products to be biodegradable was the first time the FTC challenged biodegradable claims of plastics and also the first time it has brought a suit against a company that does not sell directly to consumers.

Conclusion

Inaccurate, inappropriate or false environmental marketing claims have been increasing concurrently with the growth in the market for green products. The Federal Trade Commission (FTC) Green Guides were first introduced in 1992 with the aim of ensuring that consumers who wish to purchase green products and producers who wish to sell them are able to do so effectively. The Guides help marketers avoid making “misleading environmental claims” and ensure that claims made by marketers are “truthful and non-deceptive.” As the FTC clarifies the definition of terms for marketing purposes, it behooves natural resource-based industries (e.g. forest products) to pay attention to FTC changes to ensure they are not making claims that are now considered false or misleading under the revised guidelines. This is particularly important as long-used broad generalizations (e.g., biodegradable) now have specific and in some cases new meaning when used for promotional purposes.

The requirements of the Green Guides impact marketing claims related to a variety of product attributes, including renewable and recyclable materials and a range of wood and fiber products. The recent changes to the Green Guides expand their impact to carbon offsets, certifications, renewable energy and other considerations. The FTC has indicated a willingness to enforce the Green Guides and they are having an impact on green marketing efforts.

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