Intergovernmental Group of Experts on Consumer Law and Policy

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Environmental Marketing:
FTC Green Guides, Cases & Business Guidance and Consumer Education

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Environmental Marketing: FTC Green Guides, Cases & Business Guidance and Consumer Education

4th Intergovernmental Group of Experts on Consumer Protection Law and Policy
U.S. Federal Trade Commission
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Roadmap

Sustainable Consumption/Environmental Marketing – OECD, UNCTAD and ICPEN

FTC Legal Framework, Green Guides, Consumer Perception, Certifications & Cases

Business Guidance & Consumer Education
2018 Agreed Conclusions adopted by the Intergovernmental Group of Experts on Consumer Protection Law and Policy at its Third Session, . . . focus on the contribution of consumer protection to sustainable consumption in terms of how consumer protection authorities address environmental marketing claims, including consumer education and business guidance.
FTC & Preventing Deception in Environmental Marketing Claims
FTC Statutory Authority

• FTC Act Section 5 (15 USC § 45): “Unfair or deceptive acts or practices . . . are hereby declared unlawful.”

• Main principles of Section 5:
  – Tell the truth
  – Substantiation for all express and implied claims
  – Competent and reliable scientific evidence
Green Guides
Overview
What are the Green Guides?

- Not a certification program; Not a rule
- Administrative interpretation of Section 5 of FTC Act in the environmental marketing context

Purpose is to prevent deception (not set environmental policy) based on how consumers understand claims
Green Guides Example

• Marketers **should not make** unqualified general environmental benefit claims.
  – “**Highly unlikely** marketers can substantiate all reasonable interpretations of these claims.”

• Qualifications **may** be sufficient if they:
  – Are clear and prominent.
  – Limit the claim to a specific benefit(s).
  – Context→ no other deceptive implications (trade-offs?)
Consumer Perception of “Recycled Content” and “Organic” Claims

Joint Staff Report of the Bureau of Economics and Bureau of Consumer Protection
Federal Trade Commission

A Report on a Study Co-funded by the U.S. Department of Agriculture

Dated August 10, 2016
Consumer Perception Study Findings

“Recycled Content”
- Asked consumers whether a “Made with Recycled Content” claim accurately described products made from pre-consumer material (i.e., materials that had been diverted from the waste stream) as opposed to post-consumer material.
- The portion of consumers who thought the recycled content claim was inaccurate was insignificant.
- No additional guidance needed to consumers regarding recycled content.

“Organic”
- Study focused on organic claims made for non-agricultural products such as shampoos, mattresses, or dry cleaning services.
- Asked consumers whether organic claims accurately described a product containing a small percentage of non-organic material. A significant minority of consumers disagreed that the claims were accurate.
- Additional guidance needed to convey organic claims non-deceptively.
Renewable Claims
Renewable Materials & Energy

- Minimize deception → specify source.
- Must qualify if entire product (less incidental components) is not made with renewable materials.
- Must qualify if any significant manufacturing processes are not powered with renewable energy OR energy from fossil fuels is matched by RECs.
- Few consumers understand various concepts (i.e. recyclable, made with recycled content, biodegradable) to mean what marketers are trying to convey.

“Made with fast-growing bamboo, which grows at the same rate or faster than we use it!”
CERTIFICATIONS
Certifications/Logos/Seals

- These are considered endorsements.
- Need substantiation.
- General environmental benefit claim.
- Disclose Material Connections
- Clear and prominent qualification:
  - Refers only to specific, limited environmental benefit.
CASES
The Volkswagen Settlements

• German automaker Volkswagen AG and agreed to settle allegations of cheating emissions tests and deceiving customers.

• Court awarded $10.03 billion in 2016 for the Volkswagen 2.0 Liter Settlement and an additional $1.5 billion in 2017 for the Volkswagen 3.0L Settlement.
FTC Returns more than $14 Million to Consumers Deceived by Misleading Light Bulb Claims

FOR RELEASE
August 27, 2018

TAGS: consumer refunds | deceptive/misleading conduct | Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Energy Savings

The Federal Trade Commission (FTC) is mailing 499,105 checks totaling more than $14.4 million to people who bought Lights of America brand LED light bulbs.

The FTC sued Lights of America Inc., Usman Vakil, and Farooq Vakil for violating federal law by overstating the light output and life expectancy of their LED bulbs, and falsely comparing the brightness of their LED bulbs with that of other light bulbs.

A federal court ordered the defendants to pay $21 million to the FTC to provide refunds and banned them from misrepresenting material facts about lighting products. People who bought Lights of America LED light bulbs between 2007 and 2011, and do not receive a check, can apply for a refund at www.ftc.gov/led. The deadline to apply for a refund is October 26, 2018.

Check recipients are receiving full refunds. The average check amount is $28.88. Recipients should deposit or cash checks within 60 days, as indicated on the check.

If consumers have questions about the refund program, they should contact the FTC’s refund administrator, Analytics Consulting LLC, at 800-419-4695.

To learn more about the FTC’s refund program, visit www.ftc.gov/refunds.

PRESS RELEASE REFERENCE:
FTC Shines a Light on Company’s Deceptive Claims for its LED Bulbs
FTC Action Leads to Court Order Barring Misleading Light Bulb Claims
Moonlight Slumber

• first-ever case against a company making “organic” product claims
• Baby mattresses labeled “organic”
• substantial majority of the content of these mattresses is non-organic and synthetic
• falsely claimed that testing proved there were no volatile organic compounds (VOCs) from its products, even though Moonlight Slumber did not actually possess such evidence
Four U.S. National Retailers Mislabeled Bamboo

Claims: Falsely Labeling Rayon Textiles as “Bamboo”

Facts: Actually rayon

Businesses Required to pay civil penalties totaling $1.3 million.
Nano-UV Disinfectant Devices

- Unsubstantiated Advertising, claiming to wipe out fungus and dangerous bacteria such as E.coli and Salmonella
- Businesses Required to pay settlement judgement of over $1.3 million
- Over 2,000 refund checks to consumers
Consumer Education & Business Guidance
Environmental Marketing

Companies are offering consumers an ever-growing assortment of “green” options. But whether your environmental claims are about the product or the packaging, you’ll need competent and reliable scientific evidence to support what you say. Find out more by consulting the FTC’s revised Green Guides. Have you spotted what you think might be a deceptive claim or practice? File a complaint.

FEATURING

Environmental Claims: Summary of the Green Guides

If your company makes environmental claims in your ads or on your products, you’ll want to know about the FTC’s Green Guides. This summary of the Guides introduces how truth-in-advertising principles apply to green marketing and highlights terms often used in environmental ads.

GUIDANCE

EnergyGuide Labeling: FAQs for Appliance Manufacturers

FAQs to help manufacturers comply with the Appliance Labeling Rule

Environmental Claims: Summary of the Green Guides

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Related Posts

NOV 5, 2018
Do you have a 2012, 2013, or 2014 VW Passat TDI?

JAN 19, 2018
So You Received a CID: FAQs for Small Businesses

DEC 28, 2017
2017: The consumer protection year in review

SEP 28, 2017
FCC says company didn’t have support for “organic” mattress claims

JUL 11, 2017
Paint settlements suggest caution with broad-brush VOC, safety claims

Legal Resources on Environmental Marketing

Case (85)
Closing Letter (12)
Press Release (6)
Going Green

Want to make choices that are good for the environment (and your wallet) when you shop?

Learn how to question green advertising claims, shop for products that use less energy, and save gas without wasting your money.

Shopping Green

If environmental impact is a priority when you shop, you’ll want to check out these resources.

Shopping Green

Here’s what to know if you want to buy products that are better for the environment.
THANKS!

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