

## Seller Beware: Scrutiny of Green Claims Used to Promote Products and Services

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Marketing a product or service as “energy efficient” or “environmentally friendly” can help target specific customers and generate sales. However, sellers are well-advised to exercise caution in crafting and substantiating environmental benefit claims in light of recent action by the Federal Trade Commission (FTC) to address marketing tactics it views as misleading or deceptive.

The FTC recently published its revised “Guides For The Use Of Environmental Marketing Claims” to assist companies who make “green claims.” The following are some important tips for complying with those guidelines:

Have a documented “reasonable basis” to support every environmental claim.

- This will often require competent and reliable scientific evidence.

The customer’s perception is everything.

- An environmental benefit claim is not assessed by what you intend, but by how your potential customers might reasonably understand it.
- Under the guidelines, a claim can be literally true, but deceptive when viewed from the perspective of the customer. As an example, if a product is described as being “made with recycled materials”, customers may reasonably expect the product to be made wholly from recycled materials. If that understanding is inaccurate, the FTC views the claim to be deceptive.

Think through the various ways that potential customers might reasonably interpret your claim.

- Take the big picture into account: the words and images used in marketing materials, the context within which the environmental benefit is claimed, the sophistication of the audience, and the availability of resources (such as recycling centers) needed to realize the claimed environmental benefit.
- One deceptive claim example offered by the FTC is an advertisement featuring a photo of a printer in an obviously “environmentally friendly” setting with the tag line, “Buy our printer, make a change.” Although the words do not expressly state an environmental benefit claim, placing the product in an environmental context might be reasonably interpreted to convey such a claim.

## Published Articles (Cont.)

Narrow the scope of the claim to one you have a reasonable basis to support.

- Add qualifying or limiting language to the claim to minimize the potential for an overbroad interpretation by reasonable consumers. The FTC offers specific guidance for 14 types of environmental benefit claims, including certifications and seals of approval claims (such as a LEED certification) and recycled content claims.
- Alternatively, restrict your audience to potential customers for whom the claims are not misleading. For example, an unqualified claim that a product is recyclable is deceptive if sold in an area where a “substantial majority of consumers or communities” do not have access to recycling facilities. However, it is not deceptive if use of the recyclable claim is restricted to areas in which recycling facilities are more readily available.

Exercise caution if the net effect of the environmental benefit is insignificant or diminished by some other aspect of the product.

- For example, it is deceptive to claim a “compostable” benefit for a clippings bag if the bag releases a toxin when composting, thereby rendering the compost unusable.

Beyond FTC enforcement, overstated environmental benefit claims can be the basis for negligence, fraud, malpractice or breach of contract litigation. Concerned parties can access information on the FTC’s revised “Green Guides” at <http://www.ftc.gov/news-events/press-releases/2012/10/ftc-issues-revised-green-guides>.

For additional information on the FTC guidelines or other product stewardship or environmental concerns, please contact **Daniel Flynn** of our Environmental Department: [dflynn@greenbaumlaw.com](mailto:dflynn@greenbaumlaw.com) or 732-476-2678.