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## FTC RAMPS UP ENFORCEMENT ACTIONS UNDER REVISED GREEN GUIDES TO INCLUDE DECEPTIVE BIODEGRADABLE PLASTICS CLAIMS

As United States consumers are progressively willing to pay more for environmentally friendly products, businesses catering to this market are making an ever-growing number of representations about the “green” qualities of their products and packaging. But not all green claims are what they claim to be, and now the Federal Trade Commission (FTC), which is generally responsible for preventing deceptive and misleading advertising, has been “cracking down” on companies with unsubstantiated environmental marketing claims. On October 29, 2013, the FTC for the first time expanded its anti-“greenwashing” campaign to companies making biodegradable plastic claims. Five actions were brought against two types of companies – a company making additives that it claimed would make plastic products biodegradable, and four companies marketing products as biodegradable based on the use of such additives. These cases, along with additional recent FTC settlements and guidance documents, send a clear message to the business community that the FTC is intent on ensuring compliance with its recently revised *Guides for the Use of Environmental Marketing Claims* (Green Guides).

### The Evolution of the Green Guides

The FTC issued its first version of the Green Guides in 1992 to provide notice to the business community of the conditions and limitations on the types of green marketing claims a company can make about the environmental attributes of a product or its packaging. After an extensive public process to reassess and revise the Green Guides, the revised Green Guides were finally issued in October 2012. With the arrival of the new guidelines, the FTC ramped up enforcement on green marketing claims. In the last year, the agency has brought at least 12 actions alleging deceptive and misleading claims based on the Green Guides.

Like other FTC guidelines, the Green Guides do not have the force of law, but the FTC relies heavily on them to measure whether any claim of environmental benefits is deceptive or misleading and therefore actionable under the FTC ACT. Since the purpose of the Green Guides is to prevent deceptive and misleading claims, the guides focus on requiring companies to substantiate with scientific evidence any “green” claim made about a product or its packaging.

In addition to the federal consumer protection laws, many states have adopted their own “little FTC Acts.” Some states, like California and Minnesota, have gone even further and have expressly adopted the Green Guides as binding authority. It therefore is



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reasonable to expect that the Green Guides, and FTC precedents construing them, will be cited and followed in suits based on state-law claims that particular green marketing claims are deceptive or misleading.

### **Recent Enforcement Actions Regarding Biodegradable Plastic Claims**

ECM Biofilms Inc. manufactures an additive which it claims makes plastic products biodegradable. The FTC filed an administrative complaint against the company claiming that ECM made false or misleading claims regarding biodegradability to distributors and plastic product manufacturers by distributing promotional materials to convince them that its additive makes plastic products biodegradable – without having any reliable scientific evidence to substantiate these claims. Further, the FTC charged ECM with providing its customers and independent distributors, with “the means and instrumentalities for the commission of deceptive acts or practices,” because the plastic product manufacturers and distributors in turn treat their various plastics with ECM’s additives and advertise them as biodegradable to their customers and consumers. The FTC brought similar complaints against four other companies (two of them ECM customers), charging them with misrepresenting that plastics treated with additives are biodegradable without the required scientific evidence.

### **Conclusion**

The FTC’s recent flurry of enforcement activities provide notice to companies that supply additives or ingredients to the manufacturers of end-products that they should familiarize themselves with the Green Guides before making any advertising or marketing statements about the environmental effects of their materials on finished products. It is also a reminder to manufacturers and distributors of consumer goods that they should verify any environmental claims themselves, rather than relying on marketing materials provided by the manufacturer of the materials that go into their products.

