

Your product is green, but how do you advertise it?



Todd A. Benni | Friday, January 2, 2015

Ads making beneficial environmental claims must comply with the FTC Green Guides

The amount of “Green” claims, i.e., environmental marketing claims, in product advertising has increased over the last few years as consumers more often look for products that have a beneficial environmental impact. The FTC, in response, has increased its enforcement of these green claims. To assist advertisers, however, with making proper green claims, the Federal Trade Commission (FTC) published its Green Guides.

The Green Guides consist of general principles, specific guidance on the use of particular environmental claims, and examples of proper and improper claims. Claims may raise issues that are addressed by more than one example and in more than one section of the Green Guides. Therefore, a comprehensive knowledge of the Green Guides is important to ensure that your green claims will comply and you avoid enforcement actions from the FTC or your competitors. The examples in the Green Guides provide the Commission's views on how reasonable consumers likely interpret certain claims. They are a powerful resource to assist in assessing compliance of advertising.

Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions. To determine if an advertisement is deceptive, one must ensure that all reasonable interpretations of the claims made are truthful, not misleading, and supported by a reasonable basis before the claim is made. This not only includes the direct claims in the advertisement, but also includes those claims that can be implied from the advertisement. Therefore, it is important to understand the implied claims in an advertisement. Once you understand the claims, one

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must analyze the claims to ensure that they are supported by a reasonable basis.

In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence may comprise tests, analyses, research, or studies that were conducted and evaluated in an objective manner by a qualified person. This evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields to substantiate that each of the marketing claims is true. It is important, therefore, to set up a robust testing system to substantiate all green claims in advance of making them in advertisements.



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