

It's Not Easy Being Green: Understanding and Avoiding the Pitfalls of Green Marketing

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A current trend among businesses is to identify their products and services as "green," "environmentally safe," "ozone friendly" or otherwise good for the environment. Companies do this to show that they are good stewards of the Earth and to attract customers who are interested in purchasing products that are "environmentally friendly." But what does that phrase—or similar terminology—really mean? What sort of information must a business have in order to support these kinds of claims? Not surprisingly, there are a number of federal and state regulations, rules and guidelines that govern green marketing.

The Federal Trade Commission (FTC) Act prohibits deceptive representations in advertising, labeling, product inserts, catalogs and sales presentations. If statements concerning the environmental benefits of a product or service cannot be substantiated, they may be found to be deceptive by the FTC. Customers, competitors and environmental citizen groups often monitor green marketing and can file administrative complaints with the FTC if a company's claims are misleading. Such complaints not only hurt businesses monetarily (legal expenses, administrative penalties, etc.), but can also damage the goodwill that the environmental claim was attempting to establish.

Federal Guidance

To help businesses determine when green marketing claims are acceptable and when they have gone too far, the FTC and the United States Environmental Protection Agency (EPA) have developed guidelines to ensure that environmental marketing claims do not mislead consumers. Advertising, labeling, promotional materials, presentations and other forms of marketing that run afoul of the guidelines created by the FTC and EPA can result in such conduct being declared unlawful under the FTC Act.

The following guidelines apply broadly to all environmental marketing efforts—whether they are consumer-focused claims or business-to-business claims directed at suppliers, affiliated companies, distributors or other customers:

- Clearly identify whether the advertised environmental benefit is with the product itself, the packaging, a service, or some other portion or component of the product, service or packaging. For example, if a box of aluminum foil is labeled "recyclable" without further elaboration, this claim would be considered deceptive if any part of either the box or the foil cannot be recycled.
- Avoid overstatements of environmental benefits. For example, a package might be labeled "50% more recycled content than before" after the manufacturer upped the amount of recycled material from 2% to 3%. Although the claim is technically true, it gives a false impression that the amount of recycled material was significantly increased.
- Be ready to substantiate any comparisons between products. For example, if an ad claims that a package creates "less waste than the leading national brand," the advertiser must be able to substantiate the comparison with calculations comparing the relative solid waste contributions of the two packages. If it cannot, the ad runs afoul of the FTC Act and may create liability.

The guidelines created by the FTC and EPA also address the following specific environmental claims:

- Avoid general, unqualified terms (such as "environmentally friendly" and "green") that cannot be quantified and may convey a wide range of meanings to customers. The broader the term (a brand name like Eco-Safe, for example), the more likely it will be found deceptive by the FTC.
- Reliable, scientific evidence must support claims that a product or package is degradable, biodegradable or photodegradable, as well as compostable or made with recycled, pre-consumer or post-consumer products. For example, if a shampoo is advertised as "biodegradable" with no qualifications, the manufacturer must have reliable scientific evidence that the product, which is customarily disposed of in sewer systems, will break down and decompose into elements found in nature in a short period of time. These specific terms have precise environmental meanings, and the guidelines give numerous examples of acceptable and deceptive uses of them.

The Guidelines in Action

Assume that a manufacturer wants to identify its entire product line of plastic buckets as being "made of recyclable material." However, only one type of bucket in the line is made of post-consumer plastic and the post-consumer content averages just 20% annually. How can the manufacturer properly advertise the recycled content of its bucket line? According to the FTC and EPA guidelines, it is deceptive to identify the entire line as "green" or as being "made of recycled materials." These broad, unquantifiable terms should also be avoided when advertising the one type of bucket that actually is made from post-consumer plastic. However, it is acceptable to use the 20% annual average of recycled material in marketing that particular bucket type. Such averaging is permissible, provided the company's claims can be substantiated with scientific evidence.

The FTC Act and related guidance is just one example of regulations that are potentially applicable to green marketing claims. The EPA has established additional regulations and guidance under its Consumer Labeling Initiative and EPA Environmentally Preferable Procurement Program. The International Organization for Standardization also has developed environmental labeling criteria for products sold worldwide. Many states have their own environmental disclosure and marketing requirements as well.

Given the numerous requirements associated with environmental marketing, along with the potential risks of being found deceptive, it really isn't easy being green. So, before your business makes any environmental claims about its products or services, carefully consider how you will state the environmental benefits, whether they can be supported with scientific evidence and what regulations may govern your claims.

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