

# The Sustainable Materials Management Webinar Series

## Federal Trade Commission Green Guides

Tuesday July 15, 2014/ 1:30 – 2:45PM EDT

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# The Green Guides



National Recycling Coalition/ Pennsylvania  
Recycling Markets Center  
July 15, 2014



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**Federal Trade Commission**

# Overview

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- FTC and Advertising Law.
- The 2012 Guides for Environmental Marketing (“Green Guides”).
- Views expressed today are my own.

# The FTC's Statutory Authority

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“Unfair or deceptive acts or practices . . . are hereby declared unlawful.”



FTC Act, Section 5  
(15 USC § 45)



# FTC Act (15 USC §§ 41-58)

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Tell the truth.

Substantiation for all express and implied claims.

Competent and reliable scientific evidence.



*The Green Guides help  
marketers comply.*

# Green Guides Review

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- Federal Register Notices
- Workshops
- Consumer Perception Research
- Public Comments
- Revised Guides issued Oct. 2012

# Green Guides Basics

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- How do consumers understand claims?
- All forms of marketing claims.
  - Business → consumer.
  - Business → business.
- Purpose is to prevent deception (not set environmental policy).

# General Principles

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1. Consumer perception controls.
2. Be specific.
3. Don't overstate.
4. Use clear, prominent qualifications.

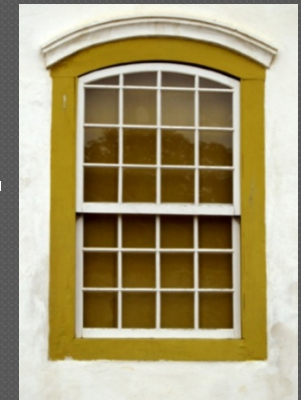


# “Windows” Cases

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Don't overstate environmental benefits!

Unsupported energy efficiency and money-savings claims (“up-to” claims).



Gorell Enters., Inc., No. 112 3053;  
Long Fence & Home, LLP, No. 112 3005; Serious  
Energy, Inc., No. 112 3001;  
THV Holdings LLC, No. 112 3057;  
Winchester Indus., No. 102 3171 (Feb. 2012)

# Qualifications Should Be:

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**CLEAR.**

**Prominent.**



**Understandable.**

Plain language.

Sufficiently large type.

Close to qualified claim.

# Specific Claims Covered

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- General Environmental Benefits
- Carbon Offsets
- Certifications and Seals
- Compostable
- Degradable
- Free-Of
- Non-Toxic
- Ozone-Safe/Ozone-Friendly
- Recyclable
- Recycled Content
- Refillable
- Renewable Energy
- Renewable Materials
- Source Reduction





## General Claims

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Suggest wide-reaching environmental benefits (27% → no negative impact).

“Highly unlikely marketers can substantiate all reasonable interpretations of these claims.”

Marketers should not make unqualified general environmental benefit claims.



# Pure Bamboo, LLC, et al., No. 082 3193, (Dec.15, 2009)



“Bamboo Fiber” Textiles

Actually rayon.

Doesn't retain the natural attributes of the bamboo plant (such as anti-microbial properties).



# Qualified Claims

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- Qualifications may work if:
  - Clear and prominent.
  - Limit the claim to a specific benefit(s).
  - Context → no other deceptive implications (trade-offs?)

# Certifications/Logos/Seals

- Endorsements.
- Need substantiation.
- General environmental benefit claim.
- Clear and prominent qualification:
  - Refers only to specific, limited environmental benefit.



# Disclose Material Connections

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A “connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement.”

\*Not payment of a reasonable fee alone.



# Example



***GreenLogo For  
Environmental  
Excellence***

## **IMPLICATIONS:**

- **Awarded by independent, third-party with appropriate expertise;**
- **Far-reaching environmental benefits.**



# Multi-Attribute Certification

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## Qualify.

*Virtually all products impact the environment. For details on which attributes we evaluated, go to [website discussing product].*



# “Tested Green”

(Nonprofit Mgmt., LLC, No. 102 3064 (Feb. 23, 2011))

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- Sold environmental certifications.
- Claimed Tested Green was the “nation’s leading certification program.”
- FTC alleged Tested Green never tested any of companies it provided with certifications, and would “certify” anyone willing pay a fee.



# Compostable

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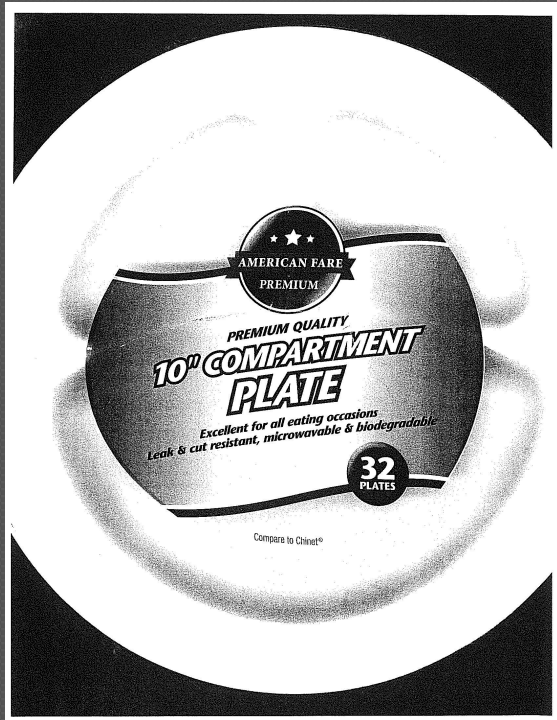
## Qualify if:

- Cannot be composted in home compost;
- Claim misleads about environmental benefit if the item is disposed in a landfill; or
- Facilities not available to substantial majority.





# Degradable



(K-mart Corp., No. 082  
3186 (June 9, 2009))

Qualify Unless: *“Entire  
[item] will completely  
breakdown and return to  
nature within a reasonably  
short period of time\* after  
customary disposal.”*

*\*1 year for items entering solid  
waste stream.*

# Free-of Claims



- Truthful claim may be deceptive if:
  - Product contains substances posing same/similar risk.
  - Substance never associated with product.
- **Trace amounts may be okay IF:**
  1. No more than trace contaminant/background level;
  2. Won't cause material harm typically associated with the substance; AND
  3. Not intentionally added.

# VOC-Free Paints

Sherwin Williams Co., No. 112 3198 (March 5, 2013)

PPG Architectural Finishes, Inc., No. 112 3160

- **CLAIM:** Paints have “zero” volatile organic compounds (“VOCs”).
- **FTC:** Perhaps true for base paints; not true for tinted paints.
  - Consumers typically purchase tinted paints.
- Orders incorporate “trace” test.



# No-VOC Mattresses

(Relief-Mart, Inc., C-4412 (Sept. 2013); Ecobaby Organics, Inc., C-4416 (Nov. 2013); Essentia Natural Memory Foam Co., C-4417 (Nov. 2013))

- Companies made unsupported claims that mattresses contained no VOCs.
- Orders incorporate “trace” test.
- Ecobaby: National Association of Organic Mattress Industry (NAOMI) seal
  - Seal conveyed that NAOMI was an independent certifying organization with appropriate expertise that grants its seal based on objective standards.
  - NAOMI was run by Ecobaby/alter ego of the company. Seal was self-awarded.



# Non-Toxic

“... [L]ikely conveys that the [item] is non-toxic  
both for humans and for the environment  
generally.”



# Recyclable

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Who has access to recycling facilities?

- If substantial majority ( $\geq 60\%$ ), no qualification necessary.
- If less than substantial majority ( $< 60\%$ ), qualify.
  - Exact percentage
  - Sliding scale



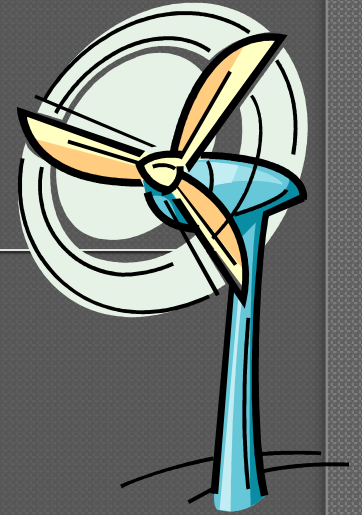


# Recycled Content

- **Basic premise: Waste stream diversion.**
- Easy for post-consumer.
- Pre-consumer is harder.
  - Minimal reprocessing of scraps normally reused within the original manufacturing process is insufficient.



# Renewable Energy



- No unqualified claims UNLESS:
  - All, or virtually all, significant manufacturing processes are powered with renewable energy; OR
  - Energy from fossil fuels is matched by RECs.
- Minimize deception → specify source.
- “Hosting” implies use → “We generate renewable energy, but sell all of it to others.”



# Renewable Materials

- What material did you use?
- What makes that material renewable?
- Qualify if entire product (less incidental components) is not made with renewable materials.



*"Made with fast-growing bamboo, which grows at the same rate or faster than we use it!"*

# No Guidance

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- Sustainable
- Organic
- Natural



# More Information?

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<http://business.ftc.gov/advertising-and-marketing/environmental-marketing>



# QUESTIONS?

PLEASE USE THE GO TO WEBINAR DIALOGUE BOX

