

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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Overview

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

The FTC's Statutory Authority

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



FTC Act, Section 5
(15 USC § 45)

FTC Act (15 USC §§ 41-58)

Tell the truth.

Substantiation for all express and implied claims.

Competent and reliable scientific evidence.

The Green Guides help marketers comply.



Green Guides Review

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

Green Guides Basics

- 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

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



“Windows” Cases

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:

CLEAR.

Prominent.



Understandable.

Plain language.

Sufficiently large type.

Close to qualified claim.

Specific Claims Covered

- 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





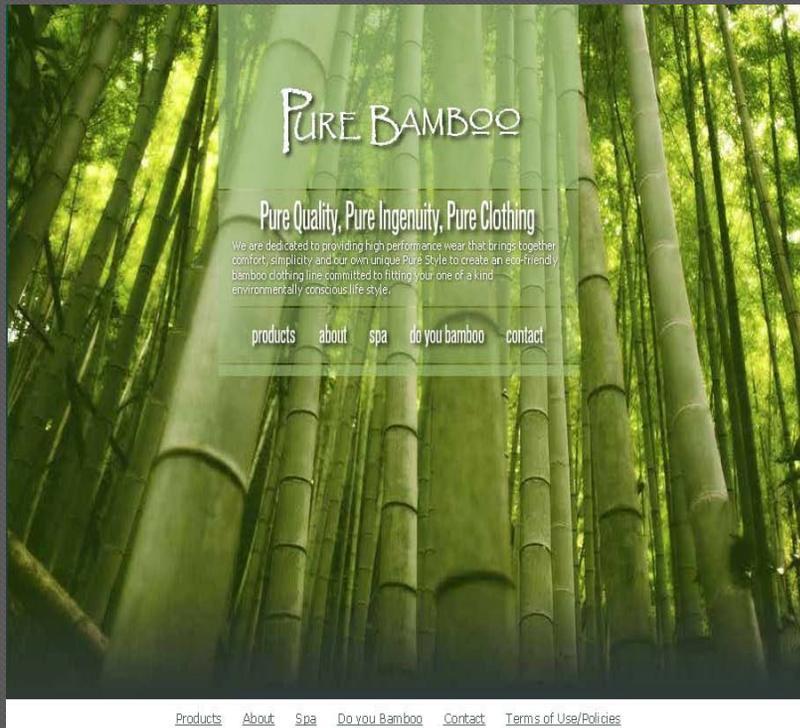
General Claims

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

- 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

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

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))

- 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.



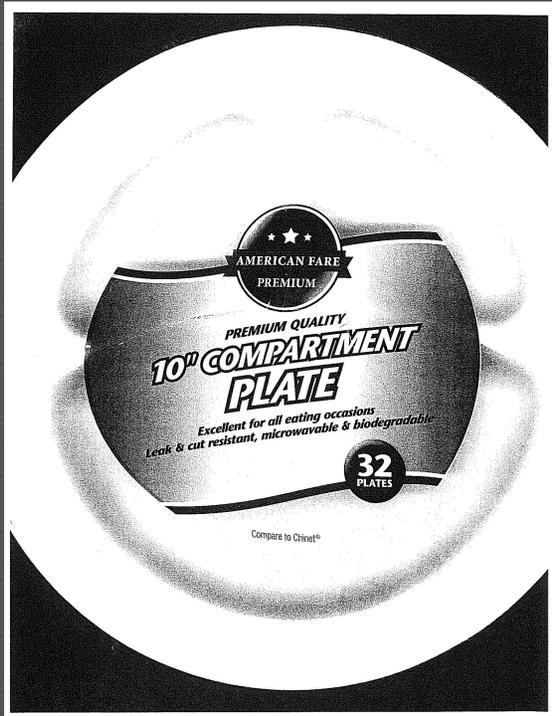
Compostable

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

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

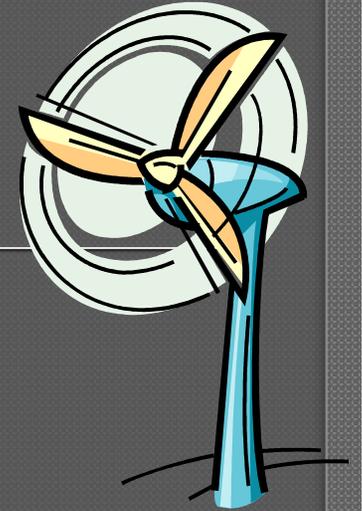


Recycled Content

- **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

- Sustainable
- Organic
- Natural



More Information?

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



QUESTIONS?

PLEASE USE THE GO TO WEBINAR DIALOGUE BOX

