

Publications

It's Not Easy Being Green, and It Could Get Harder - FTC Considering Changes to Green Guides

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The Federal Trade Commission (FTC) is considering **changes** to its **Green Guides**, a guidance document for how businesses should qualify environmental claims about their products or services so that these claims do not deceive consumers. Lawsuits and enforcement actions about false environmental claims that rely on the guides are already on the rise—if the FTC expands the guides or makes them enforceable, we can expect this trend to increase. Businesses should familiarize themselves with the guides, and ensure their environmental claims are compliant.

What Are the Green Guides?

The guides are non-binding guidelines to help businesses avoid making “unfair” or “deceptive” environmental benefit claims. An environmental benefit claim is any direct or implicit claim made to an individual or another business about the environmental attributes of a product, package, or service. The guides apply to claims made in almost any form, including labels, advertisements, symbols, logos, and product brand names. If you advertise on social media with words like “renewable” or “eco-friendly,” if a recycling symbol appears on your product, or even if you just have a logo with green font, the guides apply.

When making an environmental benefit claim, the guides advise businesses to think carefully about whether a consumer can clearly interpret it. For example, if a business puts a “recyclable” label on a plastic package containing a shower curtain without explanation, the guides state that this claim is **deceptive** because a buyer cannot tell whether the label refers to the recyclability of the package, the curtain, or both.

Why Do the Changes to the Green Guides Matter?

While the guides are currently non-binding, public and private entities use them when bringing false environmental advertising claims (a.k.a. greenwashing)—we are seeing more and more of these greenwashing

lawsuits and enforcement actions. The FTC recently ordered **Kohl's** and **Walmart** to pay \$5.5 million for falsely claiming their products were “free of” harmful chemicals and “non-toxic,” which are both environmental claims currently covered by the guides.

Potential changes under consideration include making the guides enforceable, and adding guidance for “sustainable” and “climate change-related” claims. These types of claims have become common both in marketing strategies and greenwashing lawsuits--Coca-Cola was **recently sued** because its tweets about “sustainability” were allegedly deceptive and false marketing.

How Should My Business Prepare for the Changes?

Vorys will continue to track the potential changes to the guides. In the meantime, businesses should:

1. Familiarize themselves with the guides;
2. Identify and audit any environmental benefits claims in the marketing for their products or services; and
3. Ensure all environmental benefits claims comply with the guides.

Please contact Kristin Watt, Brooke Zentmeyer, or your Vorys attorney with any questions or concerns about how the Green Guides may apply to your business.