



FTC Undertakes Review of Guides for the Use of Environmental Marketing Claims, Plans Workshop on Carbon Offsets

December 1, 2007

The Federal Trade Commission (FTC) recently announced that it would hold a series of workshops and accept comments on a variety of environmental marketing issues. The emergence of new claims, such as “renewable” and “sustainable,” and claims about carbon offsets and renewable energy, in part prompt the review, which will include an examination of the FTC’s Guides for the Use of Environmental Marketing Claims. Given the resurgence of interest in environmental marketing, new technologies, and new ways of delivering information to consumers, this proceeding will likely be of broad interest to a wide array of stakeholders.

Background

In the late 1980’s and early 1990’s, environmental claims became more prominent in marketing as environmental concerns increased. Fears of closing landfills put the spotlight on solid waste. Common claims included “recyclable,” “degradable,” “source reduced,” and “recycled content”. The thinning ozone layer prompted switches to new alternatives, leading to “CFC-free” and “ozone-friendly” claims. General environmental marketing claims like “eco-safe” and “environmentally-friendly” also began to appear. Various states began considering regulations on recycling targets and minimum recycled content. State Attorneys Generals began proposing restrictions on environmental advertising claims, prompting the business community to actively seek guidance from the FTC. The FTC ultimately adopted its Guides for the Use of Environmental Marketing Claims (Green Guides) in 1992. The Green Guides were subsequently revised in 1996 and again in 1998. *See* 16 C.F.R. Part 260.

Environmental concerns have shifted over the past few years. Corporate responsibility and sustainability initiatives have prompted companies to reduce emissions and identify innovative ways to minimize environmental impacts. Concern about global climate change and high energy prices, and mandatory restrictions on greenhouse gas emissions in some regions, have fueled interest in renewable energy, carbon footprint/offset initiatives, and ways to save energy. New types of bio-based materials have been introduced. Private initiatives to identify products and packaging with reduced environmental impacts have been announced. As companies undertake new environmental initiatives, many are interested in providing truthful information to business customers, consumers and other stakeholders about their efforts. However, many claims that reflect these more recent environmental concerns, including claims about contributions to global warming, use of renewable resources, or sustainability, are not covered by the FTC Guides.

Within this backdrop, the FTC announced on November 26, 2007 that it would undertake a review of the Green Guides, beginning with a workshop to examine the emerging market for carbon offsets and renewable energy claims, and related advertising claims. This will be the first time the FTC has examined the Green Guides since 1998, and indeed much has changed.

The FTC's proceedings will likely be the start of a longer dialogue on an extraordinarily complex issue critical to both businesses and consumers. A series of workshops and comment opportunities are available, and interested parties are encouraged to submit comments and data. Details are available at <http://www.ftc.gov/opa/2007/11/enviro.shtm>, but we provide a summary below.

Carbon Offset/Renewable Energy Claims

The first planned initiative will be a workshop on carbon offset and renewable energy claims on January 8, 2008. The focus is on consumer protection issues, including consumer perception of carbon offset and renewable energy certificate (REC) claims and substantiation. Importantly, the FTC emphasizes that it has neither the authority nor the expertise to establish environmental performance standards. Instead, its focus is on addressing unfair and deceptive practices under the FTC Act.

The FTC describes offset and REC claims as “challenging” because they are not easily verifiable by consumers. The FTC is particularly interested in whether these claims can be verified, and seeks information on consumer perception of these claims. The notice highlights in particular difficulties related to “additionality” – payments for offsets that would have occurred without the offset market.

The Federal Register notice lists a number of specific questions the FTC hopes to explore during the workshop, as well as topics on which it seeks written comments. Written comments are due January 25, 2008.

Green Guides Review

The FTC is also soliciting comments on the Green Guides as part of its systematic review of FTC rules and guides. The Guides, last updated in 1998, address general environmental benefit claims, as well as specific claims such as degradable, compostable, recyclable, source reduced, and ozone friendly, and claims regarding recycled content. The Guides provide examples of how to qualify specific claims to serve as a “safe harbor” for marketers making those claims. They serve as an indication of the FTC's administrative interpretation of the law and are not independently enforceable.

The FTC is soliciting comments on whether there is a continuing need for the guides, their effect on the accuracy of claims, and interaction with other environmental marketing regulations. It notes that new green claims are being made, specifically related to renewable energy, carbon offsets and sustainability, among others, that are not covered by the Guides. It also notes that marketers are publicizing the environmental attributes not only of products and packaging, but of services and manufacturing processes as well.

The FTC is soliciting comments on a broad array of issues, including whether modifications should be made to the Guides, the impacts and costs of the Guides, whether new claims should be addressed, whether guidance on certain claims is no longer needed, the extent of industry compliance, and technology or economic changes that should be considered. It also specifically asks if there are international laws, regulations or standards that the FTC should consider, including, specifically, ISO 14021.

With respect to possible new claims, like renewable, sustainable, carbon offset, etc., the FTC asks for evidence that supports any particular position. With respect to recycled content claims, it asks if guidance adequately covers claims for textile products, and if recycled content should be revised to consider alternatives to the current annual weighted average approach for calculating recycled content. With respect to degradability claims, the FTC asks if the Guides should be revised to more specifically address the timeframes in which products must break down and return to nature.

Conclusion

The current environment for environmental marketing claims is changing, and the resurgence in claims has generated renewed interest by the FTC in environmental advertising. The Commission plans to hold additional public workshops on environmental claims and will issue further notices on these workshops. This proceeding thus offers opportunities to identify issues and concerns in this highly complex area.

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