"The FTC Green Guides: A Spray Foam Perspective"

February 15, 2013

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Outline

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- FTC and Environmental Marketing
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- What’s New in the 2012 Green Guides
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Disclaimer

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Social marketing definition: The development and marketing of products designed to minimize negative effects on the physical environment or to improve its quality.
Greenwashing
Greenwashing

Public relations initiatives by a business or organization, e.g., advertising or public consultation, that purport to show concern for the environmental impact of its activities.
The Federal Trade Commission (FTC) and Environmental Marketing

- Section 5 of the FTC Act
  - Prohibits **deceptive** acts or practices
  - Requires marketers’ **claims** to be:
    - Truthful
    - Not misleading
    - Supported by a reasonable basis
  - Authorizes the FTC to take action
Background on The Green Guides

- Designed to help marketers make truthful claims
- Claims about environmental attributes
- B2B, B2C
- Labels, ads, promotional materials
- Voluntary -- No force of law
- Action can be taken
What’s New in the 2012 Green Guides?

- Revised in October 2012
- Most substantial revision since launched
- Significant public commentary
- Updated general guidelines
- Added 6 new specific guidance topics
- Expect more enforcement as a result

EXPECT MORE SCRUTINY ON CLAIMS!
Green Guide Overview

STEP ONE
ALL CLAIMS MUST MEET FOUR GENERAL PRINCIPLES

Then

STEP TWO
CHECK FOR SPECIFIC GUIDANCE ON A PARTICULAR CLAIM
Green Guide Overview

FOUR GENERAL PRINCIPLES — APPLY TO ALL CLAIMS

1. Qualifications and Disclosures
2. Distinction of source of benefit
3. Overstatement of environmental attribute
4. Comparative claims
General Principle #1: Qualifications and Disclosures

- May need a disclosure
- Make it clear, prominent, understandable
  - Use plain language.
  - Make it visible
  - Use sufficiently large font
  - Place in close proximity to claim it qualifies

NEW IN 2012: FTC EXPANDED THIS SECTION TO PREVENT CONSUMER CONFUSION!
General Principle #2: Distinction Between Benefits

- Must distinguish if the environmental benefit is from:
  - PRODUCT
  - PACKAGE
  - SERVICE

- State if it is just a portion of above

- May leave out qualification if attribute is majority
General Principle #3: Overstatement of Environmental Attribute

- Do not overstate an environmental attribute or benefit.

Example: “We have increased our recycled content in the rug by 50%.”

- Supplier increased content from 2% to 3%
- Technically true
- Claim conveys increase is significant
- Deceptive to consumer
General Principle #4: Comparative Claims

- Clearly disclose what is being compared.
  Example: “20% more recycled content”
- Not clear whether comparison is
  - to the previous version of the product?
  - competitor’s product?
- Qualify the claim
- Substantiate!

HELPS PREVENT CONSUMER CONFUSION!
# Green Guide Overview – *New Guidance in 2012*

**SPECIFIC GUIDANCE** – RELEVANT FOR CERTAIN TYPES OF CLAIMS

<table>
<thead>
<tr>
<th>General Environmental Benefit</th>
<th>Carbon Offsets</th>
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<tbody>
<tr>
<td>Certifications and Seals</td>
<td>Compostable</td>
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<tr>
<td>Degradable</td>
<td>“Free-Of”</td>
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<tr>
<td>Non-Toxic</td>
<td>Ozone-safe and Ozone-friendly</td>
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<tr>
<td>Recyclable</td>
<td>Recycled Content</td>
</tr>
<tr>
<td>Refillable</td>
<td>Renewable Energy</td>
</tr>
<tr>
<td>Renewable Materials</td>
<td>Source Reduction</td>
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</tbody>
</table>

**KEY:**
- Green - New guidance
- Grey - Updated guidance
Spray Foam Example – General Principle: Overstatement

- **POOR**

  “Our ‘green’ spray foam insulation is a natural polyurethane that's made from good old-fashioned soybeans.”

- **BETTER**

  “Our spray foam incorporates renewable material from soy-based polyols. Up to 8% bio-content has been measured in our foams using the ASTM D6866 method.”

General Principle:

*Avoid overstatement of an environmental attribute.*
Spray Foam Example – Specific Guidance: “Non-Toxic”

- **POOR**
  “Our spray foam insulation is made from natural, non-toxic ingredients”

- **BETTER**
  “During application, liquid spray foam chemicals must be installed by professionals wearing appropriate PPE to reduce exposure hazards. Once it cures, it becomes a solid, non-toxic foam insulation product.

Specific Guidance:
Qualify your “non-toxic” claim by indicating that spray foam is non-toxic only after it cures.
Spray Foam Example – Specific Guidance: “Free-Of”

- OK or NOT?
  “Our insulation is formaldehyde-free”

- No added formaldehyde binder
- Substantiation of trace amounts
- Similar to background levels
- Data showing no material harm with trace amounts

Specific Guidance:

In this case the seller’s “Free-of” claim would not be deceptive
Spray Foam Example – Specific Guidance: “Recycled Content”

- **POOR**
  
  “Our spray foam contains a high level of recycled plastic.”

- **BETTER**
  
  “Our spray foam contains 20% recycled content, including 10% post-consumer content.”

Specific Guidance:

*For items with partial recycled material, the marketer should indicate weight of recycled content in the finished product.*
Green Guide Overview - Recap

1. STEP ONE
MEET THE FOUR GENERAL PRINCIPLES

1. Qualify clearly ✔
2. Specify ✔
3. No overstatement ✔
4. Comparison to? ✔

Then

2. STEP TWO
CHECK FOR SPECIFIC GUIDANCE
FTC Green Enforcement Example – Bamboo Fiber

Company Claims:
- 100% Bamboo fiber
- Biodegradable
- Anti-microbial properties
- Environmentally friendly process

The FTC Findings:
- Fabric was Rayon (bamboo was cellulose source)
- Not bio-degradable
- Bamboo anti-microbial properties not retained
- Toxic chemicals and hazardous air pollutants released in the process

Source: www.ftc.gov/opa/2009/08/bamboo.shtm
The FTC Can Take Enforcement Action!

- Cease and desist orders, civil penalties, monetary penalties, etc.

<table>
<thead>
<tr>
<th>Date</th>
<th>Company</th>
<th>Claim</th>
<th>Outcome</th>
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<tr>
<td>August 2009</td>
<td>Jonano</td>
<td>Biodegradable Bamboo Fiber</td>
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<td>August 2009</td>
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<td>August 2009</td>
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*** FTC warning letter sent to 78 companies in early 2010 ***

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<th>Date</th>
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<th>Penalty</th>
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<tbody>
<tr>
<td>January 2013</td>
<td>Amazon</td>
<td>Biodegradable Bamboo Fiber</td>
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<td>January 2013</td>
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<td>January 2013</td>
<td>Sears</td>
<td>Biodegradable Bamboo Fiber</td>
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The Federal R-value Rule

- In 1970s exaggerated R-value claims from insulation marketers were common.
- FTC passed consumer protection laws.
- The Federal R-value Rule - 16 CFR Part 460
- Defines how to test, label and market insulation products.
- Defines acceptable ASTM R-value tests.
  - PU insulation must report Aged R-value.
  - Does not include “effective R-value” tests.
FTC 16 CFR 460 and R-value Advertising

- Manufacturers must have:
  - Installer fact sheet
- Installers must have:
  - Customer fact sheet
  - Receipt
- R-values
  - List at use thickness
- Savings claims
  - Must have data
  - Must maintain data for 3 years
FTC R-value Enforcement Examples

March 2009: Enviromate LLC

- Sold PolyCell cellulose insulation treated with a chemical additive
- Actual product R-value was less than half of what was claimed in ads

The FTC findings:

- Claims not supported by tests
- Actual R-value differed by more than 10% from labeled R-value
- Thickness not indicated

Outcome

- Settlement with reporting provisions

Source: www.ftc.gov/opa/2009/03/rvalue.shtm
FTC R-value Enforcement Examples

March 2009: Meyer Enterprises

- Sold Insul-Tarp - a thin blanket to be installed under concrete slab floors
- Claimed Insul-Tarp’s R-value is 7.54 – in reality R-value was 2

The FTC findings:

- Did not use required testing procedures
- Did not provide consumers with R-value disclosures
- Did not report R-value at use thickness

Outcome

- Court order with monitoring and record-keeping terms
- Civil penalty of $155,000

Source: www.ftc.gov/opa/2009/03/rvalue.shtm
FTC R-value Enforcement Examples

USA vs. Edward Sumpolec (dba Thermakool)

- Liquid coating
- Sold as a radiant barriers
- Claims:
  - “equals R-100 insulating value”
  - “Saves 40 to 60% on energy bills.”

The FTC findings: January 2013

- Penalty of $350,000
- FTC won without trial
- Largest civil penalty in a home insulation case

Source: www.ftc.gov/opa/2009/03/rvalue.shtm
R-value Guidelines

**DO:**
- Read the R-value rule
- Quote an aged R-value – ask your supplier
- Provide owner with fact sheets
- Maintain evidence to support claims
- Support industry testing for advanced methods

**DON’T:**
- R-value exaggerations
- Use of “effective” R-value
- Installing a lower insulation thickness – meet the code
- Quoting a 1 inch R-value – quote R-value at installed thickness
Summary:

- Green Marketing is a growing trend
- Green Guides developed to help marketers
- SPF has “green” attributes
- Know the rules
- Be Truthful
- Substantiate

REVIEW THE GREEN GUIDES. MAKE SURE YOUR CLAIMS COMPLY!
Questions