

Client Alert

Tort Litigation & Environmental Practice Group

October 4, 2012

FTC's New Green Guides For Making Environmental Claims

Purpose of the Green Guides

The Federal Trade Commission (FTC) recently adopted revised *Guides for the Use of Environmental Marketing Claims* (Green Guides). The 2012 Green Guides, which modify a 1998 version, are not binding regulations but are intended as guidelines for companies making environmental marketing claims. The Green Guides are intended to “help marketers avoid making environmental marketing claims that are unfair or deceptive under Section 5 of the FTC Act.” The FTC notes that the revised Green Guides will help it evaluate environmental marketing claims and decide whether to use its statutory enforcement powers. Over the years, the FTC has brought several actions involving deceptive environmental marketing claims, and the revised Green Guides likely indicate areas that the Commission may focus on in the future.

General Principles For Acceptable Marketing Claims

The Green Guides outline general principles that apply to any environmental marketing claims. They stress that all reasonable interpretations of environmental marketing claims must be truthful, must not be misleading, and must be supported by a reasonable basis. According to the FTC, “[i]n the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence.” The Commission asserts that the Green Guides will help companies through this process by explaining how reasonable consumers are likely to interpret claims, describing the basic elements considered necessary to substantiate claims, and presenting options for qualifying a claim in order to avoid perceptions of deception. The Green Guides address claims about the environmental attributes of a product, package, or service, regardless of whether it is being marketed to individuals or in a notable clarification, in a business-to-business context.

Modifications To FTC's Prior Guidance

The 2012 Green Guides advise companies not to make broad, unqualified environmental claims, such as “green” or “eco-friendly.” The FTC cautions that general claims need to be qualified with clear and prominent statements identifying the specific environmental benefits that justify the claim. In addition, the 2012 Green Guides emphasize the need to avoid unqualified claims about a product's ability to degrade in the environment. Other

For more information, contact:

Harold M. Shaw
+1 202 626 5603
hshaw@kslaw.com

Jeffrey H. Perry
+1 202 626 5521
jperry@kslaw.com

King & Spalding
Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4707
Tel: +1 202 737 0500
Fax: +1 202 626 3737

www.kslaw.com

Client Alert

Tort Litigation & Environmental Practice Group

sections clarify the FTC's previously published views on other environmental claims, including claims about a product's compostability, effect on atmospheric or stratospheric ozone, recyclability, recycled content and source reduction.

New Topics In The Green Guides

The Green Guides feature new sections addressing types of environmental claims that were not in wide use previously. One new section notes that references to environmental certifications and seals of approval may be endorsements and explains when they should be accompanied by disclosures or avoided altogether. Other new sections address how to avoid deception when making "carbon offsets" claims, "free-of" certain materials claims, "non-toxic" claims, "made with renewable energy" claims and "made with renewable materials" claims. Throughout these new sections, the FTC stresses the need to provide proper qualifying information within the claim and to have reliable scientific data that support the claim.

Notably, the Green Guides do not address "sustainability," "organic" and "natural" claims, but such environmental claims will not necessarily escape the FTC's scrutiny. Other agencies, such as the U.S. Department of Agriculture with its authority over "organic" claims for agricultural-based products, also monitor some of these claims.

Immediate Effect

Since the Green Guides represent an administrative interpretation, not a rule, they take effect immediately. While the Green Guides are not legally binding, the FTC will be using them to assess whether particular environmental marketing claims run afoul of the legal duty to avoid deceptive advertising. Given these developments, all companies marketing products or services should apply the FTC's latest guidance before developing or making any environmental claims.

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.