

“Green” Trademarks to Receive Greater Scrutiny By USPTO

by KENNETH C. OH on OCTOBER 18, 2012

The Federal Trade Commission is not the only federal agency taking a stand against “greenwashing,” or the increasing practice of using deceptive environmental claims to tout products and services. The U.S. Patent and Trademark Office is reportedly taking a more rigorous review of trademark applications using “green” in their marks.

Much like the FTC’s Green Guides, the new USPTO approach requires applicants to provide supporting evidence to trademark applications that contain “environmentally friendly” claims.

The USPTO is already authorized to regulate “green” trademarks under Section 2(a) of the Lanham Act, which addresses false and deceptive marks. Under existing federal precedent, a trademark is considered deceptive when (1) the term is misdescriptive of the character, quality, function, composition or use of the goods; (2) prospective purchasers are likely to believe that the misdescription actually describes the goods; and (3) the misdescription is likely to affect the decision to purchase.

Under this test, it is easy to see how trademark examiners could find unsubstantiated “green” trademarks to be deceptive. With regard to consumers, studies have shown that the public is increasingly placing greater weight on a product’s environmental impact when making purchasing decisions.

If you have any questions about the new UPTO trademark policy or would like to discuss how it may impact your business, please contact me, Kenneth Oh, or the Scarinci Hollenbeck attorney with whom you work.