

# It's Not Easy Being Green: Could Your Marketing Claims Lead to Legal Trouble?

by Donald Scarinci

As consumers become more environmentally conscious, businesses are increasingly looking to add “green” claims to their marketing campaigns. However, before jumping in the [green marketing](#) bandwagon, it is important to make sure you can back up your claims.

The explosion of green marketing has resulted in increased scrutiny by both the federal government and consumers. Deceptive green marketing has become such a hot-button issue that it even has its own nickname—green washing. [Businesses using green marketing are subject to a number of legal concerns](#), including Federal Trade Commission (FTC) corrective actions, consumer breach of contract lawsuits related to product claims, and false advertising allegations by competitors.

In a recently announced [settlement with the FCC](#), five window companies were ordered to stop making exaggerated and unsupported claims about the energy efficiency of their windows, and how much money consumers could save on their heating and cooling bills by having them installed.

So how can businesses avoid a similar fate? The FTC's [Green Guide](#) is an excellent resource for businesses looking to ensure that their green marketing claims do not lead to liability. Below are a few key tips to keep in mind:

- An environmental marketing claim must be substantiated by reliable evidence.
- An environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging, a service or to a portion or component of the product, package or service.
- An environmental marketing claim should not be presented in a manner that overstates the environmental attribute or benefit, expressly or by implication. Marketers should avoid implications of significant environmental benefits if the benefit is in fact negligible.
- Environmental marketing claims that include a comparative statement should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception. In addition, the advertiser should be able to substantiate the comparison.

The FTC is currently working on an update to its current Green Guide. The proposed changes establish additional guidelines for products made with renewable energy or materials, products marketed as “non-toxic,” and carbon offset claims.

The FCC's continued focus on green marketing highlights that it will continue to be a high-priority enforcement area in years to come. In addition, while consumers have shown that they

are willing to spend more money on green products, they also expect company's to back up the claims.