

Guides for the Use of Environmental Marketing Claims (“Green Guides”)

Food Forum
October 12, 2023



Julia Solomon Ensor
Staff Attorney, Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission

Overview

- ▶ FTC and Advertising Law.
- ▶ Green Guides.
- ▶ Views expressed are my own.

The FTC's Statutory Authority

Section 5 of the FTC Act 15 U.S.C. § 45(a)



“[U]nfair or deceptive acts or practices in or affecting commerce are . . . unlawful.”

Three General Principles

1. Tell the truth.



Three General Principles

2. Consumer perception controls.

What express or implied claims does my ad convey?

- ▶ Test in context to determine consumer takeaways, OR use tools to guide perception.
- ▶ Avoid deception through:
 - Specificity.
 - Not overstating the product's benefits.
 - Clear, prominent qualifications.
 - Understandable/plain language.
 - Legible.
 - Close to qualified claim.

Three General Principles

3. Substantiate all claims.

- ▶ Marketers must have a **reasonable basis** for claims.
- ▶ Collect substantiation **before** making a claim.

Policy Statement on Advertising Substantiation:

<https://www.ftc.gov/legal-library/browse/ftc-policy-statement-regarding-advertising-substantiation>

Green Guides

16 C.F.R. Part 260

- ▶ Guidance to marketers on how to make non-deceptive environmental advertising claims.
- ▶ Designed to prevent consumer deception, not set environmental policy.
 - ▶ FTC has no environmental regulatory authority; authority derives from Section 5.
- ▶ Follow general Section 5 principles:
 - ▶ Understand how consumers interpret claims.
 - ▶ Maintain appropriate substantiation.

Green Guides

Claim Substantiation

- ▶ For environmental claims, a reasonable basis is “competent and reliable scientific evidence.” 16 C.F.R. 260.2
 - ▶ Tests, analyses, research, or studies that:
 - ▶ Have been conducted and evaluated in an objective manner,
 - ▶ By qualified persons, and
 - ▶ Are generally accepted in the profession to yield accurate and reliable results.
 - ▶ Sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.

Claims Covered

- General Environmental Benefits
- Carbon Offsets
- Certifications and Seals
- Compostable
- Degradable
- Free-Of
- Non-Toxic
- Ozone-Safe/Ozone-Friendly
- Recyclable
- Recycled Content
- Refillable
- Renewable Energy
- Renewable Materials
- Source Reduction



General Claims

Study: 52% - Product had specific green attributes.
27% - Product had no negative environmental impact.

“[I]t is highly unlikely marketers can substantiate all reasonable interpretations of such a claim.”

Marketers should not make unqualified general environmental benefit claims.

Qualified Claims

Qualifications may work if:

- ▶ Clear and prominent.
- ▶ Limit the claim to specific benefit(s).
- ▶ Significant - not trivial - benefit.
- ▶ Context→ no deceptive implications.

Certifications/Logos/Seals

- Endorsements (disclose material connection).
- Need substantiation.
- General environmental benefit claims.
- Clear and prominent qualifications about specific benefit.

Multi-Attribute Certification

Qualify.

“Virtually all products impact the environment. For details on which attributes we evaluated, go to [website discussing product].”

Recyclable

Who has access to recycling facilities?

- If substantial majority ($\geq 60\%$), no qualification necessary.
- If less than substantial majority ($< 60\%$), qualify.
 - Exact percentage.
 - Sliding scale.



Green Guides Do Not Address:

- ▶ Organic
- ▶ Natural
- ▶ Sustainable

*Covered by the FTC's general
Section 5 authority.*

What's Next?

- ▶ Initiated review December 2022.
- ▶ Solicited public comments through April 24, 2023.
- ▶ Workshop on “Recyclable” claims May 23, 2023.
- ▶ Likely to be multiple opportunities for public input.



Questions?

www.ftc.gov/green

jensor@ftc.gov

202-326-2377

