



Vol. 77
No. 197

Thursday,
October 11, 2012

Part VII

Federal Trade Commission

16 CFR Part 260
Guides for the Use of Environmental Marketing Claims; Final Rule

¹ The FTC issued the Green Guides in 1992, with subsequent updates in 1996 and 1998. To avoid confusion, we refer to the current Guides as the "1998 Guides."

² In October 2010, the Commission proposed changes to the 1998 Guides. 75 FR 63552 (Oct. 15, 2010).

³ The Commission additionally makes a minor change to an example in the Source Reduction section (16 CFR 260.17, Example 1) and retains the guidance on Refillable claims (16 CFR 260.14) without change.

⁴ The final Guides do not include specific

The final Guides also advise that an environmental certification or seal likely conveys a general environmental benefit claim when it does not clearly convey, either through its name or other means, the basis for the certification.¹⁶ Because it is highly unlikely that marketers can substantiate such a claim, they should not use environmental certifications or seals that do not convey the basis for the certification. The final Guides further state that marketers should accompany such seals or certifications with clear and prominent language that effectively conveys that the certification or seal refers only to specific and limited benefits. This may be particularly challenging with certifications based on comprehensive, multi-attribute standards. Therefore, a new example illustrates one way of qualifying such certifications.¹⁷

Finally, the Guides clarify that third-party certification does not eliminate a marketer's obligation to have substantiation for all conveyed claims.¹⁸

IV. Compostable

The final Guides adopt the 1998 guidance on compostable claims with one clarification. The 1998 Guides stated that marketers should possess competent and reliable scientific evidence showing that "all the materials in the product or package will break down into, or otherwise become a part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and effective manner in an appropriate composting program or facility, or in a home compost pile or device."¹⁹ The final Guides clarify that "timely manner" means "in approximately the same time as the materials with which it is composted."²⁰ The final Guides also reiterate the 1998 guidance that marketers clearly qualify compostable claims, if, for example, their product cannot be composted safely or in a timely manner at home, or if necessary large-scale facilities are not available to a substantial majority of the marketer's consumers.²¹

V. Degradable

The 1998 Guides stated that a marketer should qualify a degradable claim unless it has competent and reliable scientific evidence that the "entire product or package will completely break down and return to nature, i.e., decompose into elements

found in nature within a reasonable time after customary disposal."²² The final Guides state that marketers should not make unqualified degradable claims for items destined for landfills, incinerators, or recycling facilities because complete decomposition in those specific environments will not occur within one year.²³ The final Guides also clarify that a marketer making an unqualified degradable claim for solid items other than those destined for landfills, incinerators, or recycling facilities should substantiate that the entire item will fully decompose within one year after customary disposal.²⁴

VI. Free-Of Claims

The final Guides include a new section on claims that products or services have no, are free of, or do not contain certain substances ("free-of claims").²⁵ This new section advises that, even if true, claims that an item is free of a substance may be deceptive if: (1) The item contains substances that pose the same or similar environmental risk as the substance not present; or (2) the substance has not been associated with the product category.²⁶ This two-part analysis prevents deception resulting from two implied claims. The first prong addresses the implied claim that a product is free of negative attributes associated with that substance. Thus, a free-of claim would still be deceptive even if a product is free of a particular substance if it has another substance that causes the same or similar environmental harm. The second prong cautions that free-of claims may deceive consumers by falsely suggesting that competing products contain the substance or that the marketer has "improved" the product by removing the substance.

The final Guides also clarify that a free-of claim may, in some circumstances, be non-deceptive even though the product contains a "trace amount" of the substance. A marketer can make a claim for a product that still contains some amount of a substance only if: (1) The level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance's presence does not cause material harm that consumers typically associate with that substance;

and (3) the substance has not been added intentionally to the product.

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¹⁶ 16 CFR 260.6(d).

¹⁷ 16 CFR 260.6, Example 7.

¹⁸ 16 CFR 260.6(c).

¹⁹ 16 CFR 260.7(c) (emphasis added) (1998 Guides).

²⁰ 16 CFR 260.7(b).

²¹ 16 CFR 260.7(c), 260.7(d).

²² 16 CFR 260.7(b) (emphasis added) (1998 Guides).

²³ 16 CFR 260.8(c).

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²⁵ 16 CFR 260.9. The 1998 Guides covered these claims only in examples. 16 CFR 260.6(c), Example 4; 16 CFR 260.7(h), Example 3.

²⁶ 16 CFR 260.9(b).

²⁷ 16 CFR 260.9(c).

²⁸ 16 CFR 260.10. The 1998 Guides did not include a non-toxic section but addressed these claims in an example in the General Environmental Benefit section.

²⁹ 16 CFR 260.10, Example 1.

³⁰ 16 CFR 260.11.

³¹ 16 CFR 260.12(b).

X. Recycled Content

The final Guides include minor changes to the 1998 guidance for recycled content claims.³² Like the 1998 Guides, they provide that marketers should make such claims only for materials that were recovered or otherwise diverted from the waste stream, either during the manufacturing process (pre-consumer) or after consumer use (post-consumer).³³ Additionally, the final Guides continue to advise marketers to qualify claims for products or packages only partially made from recycled material.³⁴ The Commission, however, slightly revises Examples 11 and 12 to recognize alternative auto recyclers.³⁵

XI. Renewable Energy Claims

A new section on renewable energy claims advises marketers to avoid making unqualified renewable energy claims based on energy derived from fossil fuels.³⁶ This section clarifies that marketers may make such claims if they purchase renewable energy certificates (“RECs”) to match their energy use.³⁷ Additionally, based on the Commission’s study, the section cautions marketers that consumers likely interpret renewable energy claims differently than marketers may intend. Accordingly, unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable energy claims. The Guides suggest that one way to minimize the risk of deception is to specify the renewable energy source (e.g., wind or solar energy).³⁸

The Guides also advise against making unqualified claims unless all, or virtually all, of the significant manufacturing processes involved in making a product are powered with renewable energy or non-renewable energy matched with RECs. Finally, the Guides adopt the proposed advice that using the term “hosting” is deceptive when a marketer generates renewable power but has sold all of the renewable attributes of that power. An example, however, clarifies that not all generation

claims by such marketers are deceptive.³⁹

XII. Renewable Materials Claims

The final Guides include a new section on renewable materials claims.⁴⁰ Similar to the renewable energy guidance, this section advises that consumers likely interpret renewable materials differently than marketers may intend. Accordingly, the final Guides advise that unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable materials claims.⁴¹ The final Guides provide an example of one way marketers can minimize the likelihood of unintended implied claims, such as recyclable, degradable, and made with recycled content. Specifically, they suggest that marketers specify the material used and why the material is renewable.⁴² Additionally, the Guides state that marketers should further qualify these claims for products containing less than 100 percent renewable materials, excluding minor, incidental components.⁴³

XIII. Areas Not Addressed by Final Guides

The final Guides do not address organic, sustainable, and natural claims. In the case of organic claims, the Commission wants to avoid providing advice that is duplicative or inconsistent with the USDA’s National Organic Program (“NOP”), which provides a comprehensive regulatory framework governing organic claims for agricultural products. For organic claims outside the NOP’s jurisdiction, and for sustainable and natural claims, the Commission lacks sufficient evidence on which to base general guidance.

XIV. Conclusion

For a complete analysis of comments and the final guidance, please see the Statement on the FTC’s Web site, available at <http://www.ftc.gov/oc/2012/10/121012a.htm>.

XV. Revised Green Guides

List of Subjects in 16 CFR Part 260

Advertising, Environmental protection, Labeling, Trade practices.

For the reasons stated above, the Federal Trade Commission revises 16 CFR part 260 to read as follows:

³² 16 CFR 260.7(e) (1998 Guides).
³³ 16 CFR 260.13(b). The final Guides eliminate Example 2, which provided circular advice.
³⁴ 16 CFR 260.13(c).
³⁵ These examples appeared in the 1998 Guides as Examples 12 and 13. The Commission makes this change because in the auto context, a recycled content claim for reused parts is true regardless of the type of recycler who sells them.
³⁶ 16 CFR 260.15.
³⁷ 16 CFR 260.15(a).
³⁸ 16 CFR 260.15(b).

³⁹ 16 CFR 260.15(d), Example 5.
⁴⁰ 16 CFR 260.16.
⁴¹ 16 CFR 260.16(b).
⁴² Id., Example 1.
⁴³ 16 CFR 260.16(c); Example 2.

examples. Claims may raise issues that are addressed by more than one example and in more than one section of the guides. The examples provide the Commission's views on how reasonable consumers likely interpret certain claims. The guides are based on marketing to a general audience. However, when a marketer targets a particular segment of consumers, the Commission will examine how reasonable members of that group interpret the advertisement. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue. In addition, although many examples present specific claims and options for qualifying claims, the examples do not illustrate all permissible claims or qualifications under Section 5 of the FTC Act. Nor do they illustrate the only ways to comply with the guides. Marketers can use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. All examples assume that the described claims otherwise comply with Section 5. Where particularly useful, the Guides incorporate a reminder to this effect.

§ 260.2 Interpretation and substantiation of environmental marketing claims.

Section 5 of the FTC Act prohibits deceptive acts and practices in or

(b) Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.

(c) Marketers can qualify general environmental benefit claims to prevent deception about the nature of the environmental benefit being asserted. To avoid deception, marketers should use clear and prominent qualifying language that limits the claim to a specific benefit or benefits. Marketers should not imply that any specific benefit is significant if it is, in fact, negligible. If a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit(s), marketers should analyze trade-offs resulting from the benefit(s) to determine if they can substantiate this claim.

(d) Even if a marketer explains, and has substantiation for, the product's specific environmental attributes, this explanation will not adequately qualify a general environmental benefit claim if the advertisement otherwise implies deceptive claims. Therefore, marketers should ensure that the advertisement's context does not imply deceptive environmental claims.

Example 1: The brand name "Eco-friendly" likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive. A claim, such as "Eco-friendly: made with recycled materials," would not be deceptive if: (1) The statement "made with recycled materials" is clear and prominent; (2) the marketer can substantiate that the entire product or package, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and (4) the advertisement's context does not imply other deceptive claims.

Example 2: A marketer states that its packaging is now "Greener than our previous packaging." The packaging weighs 15% less than previous packaging, but it is not recyclable nor has it been improved in any other material respect. The claim is deceptive because reasonable consumers likely would interpret "Greener" in this context to mean that other significant environmental aspects of the packaging also are improved over

previous packaging. A claim stating "Greener than our previous packaging" accompanied by clear and prominent language such as, "We've reduced the weight of our packaging by 15%," would not be deceptive, provided that reducing the packaging's weight makes the product more environmentally beneficial overall and the advertisement's context does not imply other deceptive claims.

Example 3: A marketer's advertisement features a picture of a laser printer in a bird's nest balancing on a tree branch, surrounded by a dense forest. In green type, the marketer states, "Buy our printer. Make a change." Although the advertisement does not expressly claim that the product has environmental benefits, the featured images, in combination with the text, likely convey that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, this advertisement is deceptive.

Example 4: A manufacturer's Web site states, "Eco-smart gas-powered lawn mower with improved fuel efficiency!" The manufacturer increased the fuel efficiency by 1/10 of a percent. Although the manufacturer's claim that it has improved its fuel efficiency technically is true, it likely conveys the false impression that the manufacturer has significantly increased the mower's fuel efficiency.

Example 5: A marketer reduces the weight of its plastic beverage bottles. The bottles' labels state: "Environmentally-friendly improvement. 25% less plastic than our previous packaging." The plastic bottles are 25 percent lighter but otherwise are no different. The advertisement conveys that the bottles are more environmentally beneficial overall because of the source reduction. To substantiate this claim, the marketer likely can analyze the impacts of the source reduction without evaluating environmental impacts throughout the packaging's life cycle. If, however, manufacturing the new bottles significantly alters environmental attributes earlier or later in the bottles' life cycle, manufacturing the bottles requires more energy or a different kind of plastic, then a more comprehensive analysis may be appropriate.

§ 260.5 Carbon offsets.

(a) Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.

(b) It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.

(c) It is deceptive to claim, directly or by implication, that a carbon offset

represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.

Example 1: On its Web site, an online travel agency invites consumers to purchase offsets to "neutralize the carbon emissions from your flight." The proceeds from the offset sales fund future projects that will not reduce greenhouse gas emissions for two years. The claim likely conveys that the emission reductions either already have occurred or will occur in the near future. Therefore, the advertisement is deceptive. It would not be deceptive if the agency's Web site stated "Offset the carbon emissions from your flight by funding new projects that will begin reducing emissions in two years."

Example 2: An offset provider claims that its product "will offset your own 'dirty' driving habits." The offset is based on methane capture at a landfill facility. State law requires this facility to capture all methane emitted from the landfill. The claim is deceptive because the emission reduction would have occurred regardless of whether consumers purchased the offsets.

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⁴⁴The examples in this section assume that the certifiers' endorsements meet the criteria provided in the Expert Endorsements (§ 255.3) and Endorsements by Organizations (§ 255.4) sections of the Endorsement Guides.

⁴⁵ Voluntary consensus standard bodies are "organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. * * * A voluntary consensus standards body is defined by the following attributes: (i) Openness, (ii) balance of

to the extent necessary to avoid deception if:

(1) The item cannot be composted safely or in a timely manner in a home compost pile or device; or

(2) The claim misleads reasonable consumers about the environmental benefit provided when the item is disposed of in a landfill.

(d) To avoid deception about the limited availability of municipal or institutional composting facilities, a marketer should clearly and prominently qualify compostable claims if such facilities are not available to a substantial majority of consumers or communities where the item is sold.

Example 1: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive, provided the manufacturer has substantiation that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If so, the extent of local municipal or institutional composting facilities is irrelevant.

Example 2: A garden center sells grass clipping bags labeled as "Compostable in California Municipal Yard Trimmings Composting Facilities." When the bags break down, however, they release toxins into the compost. The claim is deceptive if the presence of these toxins prevents the compost from being usable.

Example 3: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive, provided the manufacturer has substantiation that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If so, the extent of local municipal or institutional composting facilities is irrelevant.

⁴⁶The Guides' treatment of unqualified degradable claims is intended to help prevent deception and is not intended to establish performance standards to ensure the degradability of products when littered.

⁴⁷"Trace contaminant" and "background level" are imprecise terms, although allowable manufacturing "trace contaminants" may be

limited availability of recycling programs. If the manufacturer places the RIC, without more, in an inconspicuous location on the container (e.g., embedded in the bottom of the container), it would not constitute a recyclable claim.

Example 3: A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into another product or package. Any claim that the container is recyclable would be deceptive.

Example 4: A paperboard package is marketed nationally and labeled either "Recyclable where facilities exist" or "Recyclable B Check to see if recycling facilities exist in your area." Recycling programs for these packages are available to some consumers, but not available to a substantial majority of consumers nationwide. Both claims are deceptive because they do not adequately disclose the limited availability of recycling programs. To avoid deception, the marketer should use a clearer qualification, such as one suggested in § 260.12(b)(2).

Example 5: Foam polystyrene cups are advertised as "Recyclable in the few communities with facilities for foam polystyrene cups." A half-dozen major metropolitan areas have established collection sites for recycling those cups. The claim is not deceptive because it clearly discloses the limited availability of recycling programs.

Example 6: A package is labeled "Includes some recyclable material." The package is composed of four layers of different materials, bonded together. One of the layers is made from recyclable material, but the others are not. While programs for recycling the 25 percent of the package that consists of recyclable material are available to a substantial majority of consumers, only a few of those programs have the capability to separate the recyclable layer from the non-recyclable layers. The claim is deceptive for two reasons. First, it does not specify the portion of the product that is recyclable. Second, it does not disclose the limited availability of facilities that can process multi-layer products or materials. An appropriately qualified claim would be "25 percent of the material in this package is recyclable in the few communities that can process multi-layer products."

Example 7: A product container is labeled "recyclable." The marketer advertises and distributes the product only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents but are not yet available nationally. Because programs are available to a substantial majority of consumers where the product is sold, the unqualified claim is not deceptive.

Example 8: A manufacturer of one-time use cameras, with dealers in a substantial majority of communities, operates a take-back program that collects those cameras through all of its dealers. The manufacturer reconditions the cameras for resale and labels them "Recyclable through our dealership network." This claim is not deceptive, even though the cameras are not recyclable through conventional curbside or drop-off recycling programs.

Example 9: A manufacturer advertises its toner cartridges for computer printers as "Recyclable. Contact your local dealer for details." Although all of the company's dealers recycle cartridges, the dealers are not located in a substantial majority of communities where cartridges are sold. Therefore, the claim is deceptive. The manufacturer should qualify its claim consistent with § 260.11(b)(2).

Example 10: An aluminum can is labeled "Please Recycle." This statement likely conveys that the can is recyclable. If collection sites for recycling these cans are available to a substantial majority of consumers or communities, the marketer does not need to qualify the claim.

§ 260.13 Recycled content claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled content. Recycled content includes recycled raw material, as well as used, reconditioned, and re-manufactured components.

(b) It is deceptive to represent, directly or by implication, that an item contains recycled content unless it is composed of materials that have been recovered or otherwise diverted from the waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). If the source of recycled content includes pre-consumer material, the advertiser should have substantiation that the pre-consumer material would otherwise have entered the waste stream. Recycled content claims may—but do not have to—distinguish between pre-consumer and post-consumer materials. Where a marketer distinguishes between pre-consumer and post-consumer materials, it should have substantiation for any express or implied claim about the percentage of pre-consumer or post-consumer content in an item.

(c) Marketers can make unqualified claims of recycled content if the entire product or package, excluding minor, incidental components, is made from recycled material. For items that are partially made of recycled material, the marketer should clearly and prominently qualify the claim to avoid deception about the amount or percentage, by weight, of recycled content in the finished product or package.

(d) For products that contain used, reconditioned, or re-manufactured components, the marketer should clearly and prominently qualify the recycled content claim to avoid deception about the nature of such

Therefore, the advertiser must clearly and prominently disclose the source of recycled content used in the finished product or package. If the source of recycled content is pre-consumer material, the advertiser should clearly and prominently disclose the percentage of pre-consumer material in the finished product or package. If the source of recycled content is post-consumer material, the advertiser should clearly and prominently disclose the percentage of post-consumer material in the finished product or package. The advertiser should also disclose the source of recycled content used in the finished product or package. If the source of recycled content is pre-consumer material, the advertiser should clearly and prominently disclose the percentage of pre-consumer material in the finished product or package. If the source of recycled content is post-consumer material, the advertiser should clearly and prominently disclose the percentage of post-consumer material in the finished product or package.

⁵¹ The term "rebuilding" means that the dealer dismantled and reconstructed the transmission as necessary, cleaned all of its internal and external parts and eliminated rust and corrosion, restored all impaired, defective or substantially worn parts to a sound condition (or replaced them if necessary), and performed any operations required to put the

that the manufacturer uses renewable energy. It would not be deceptive, however, for the manufacturer to advertise, "We generate renewable energy, but sell all of it to others."

§ 260.16 Renewable materials claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable materials.

(b) Research suggests that reasonable consumers may interpret renewable materials claims differently than marketers may intend. Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable materials claims. For example, marketers may minimize the risk of unintended implied claims by identifying the material used and explaining why the material is renewable.

(c) Marketers should also qualify any "made with renewable materials" claim unless the product or package (excluding minor, incidental components) is made entirely with renewable materials.

Example 1: A marketer makes the unqualified claim that its flooring is "made

with renewable materials." Reasonable consumers likely interpret this claim to mean that the flooring also is made with recycled content, recyclable, and biodegradable. Unless the marketer has substantiation for these implied claims, the unqualified "made with renewable materials" claim is deceptive. The marketer could qualify the claim by stating, clearly and prominently, "Our flooring is made from 100 percent bamboo, which grows at the same rate, or faster, than we use it." The marketer still is responsible for substantiating all remaining express and reasonably implied claims.

Example 2: A marketer's packaging states that "Our packaging is made from 50% plant-based renewable materials. Because we turn fast-growing plants into bio-plastics, only half of our product is made from petroleum-based materials." By identifying the material used and explaining why the material is renewable, the marketer has minimized the risk of unintended claims that the product is made with recycled content, recyclable, and biodegradable. The marketer has adequately qualified the amount of renewable materials in the product.

§ 260.17 Source reduction claims.

It is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume, or toxicity.

Marketers should clearly and prominently qualify source reduction claims to the extent necessary to avoid deception about the amount of the source reduction and the basis for any comparison.

Example: An advertiser claims that disposal of its product generates "10% less waste." The marketer does not accompany this claim with a general environmental benefit claim. Because this claim could be a comparison to the advertiser's immediately preceding product or to its competitors' products, the advertiser should have substantiation for both interpretations. Otherwise, the advertiser should clarify which comparison it intends and have substantiation for that comparison. A claim of "10% less waste than our previous product" would not be deceptive if the advertiser has substantiation that shows that the current product's disposal contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the product.

By direction of the Commission.

Donald S. Clark