



UPDATE Environmental & Utilities

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So, You Are Telling Me Your Product is Green. Will the FTC Agree?

On October 6, 2010, the Federal Trade Commission (FTC) announced updates to its "Green Guides." Section 5 of the Federal Trade Commission Act (15 USC §§ 41-58) prohibits unfair and deceptive trade practices.¹ As environmental claims such as "recyclable" or "natural" became prevalent in the early 1990s, the FTC published the "Green Guides" to help the regulated community understand how the FTC interprets and enforces Section 5 against environmental marketing and advertising practices. While the Green Guides themselves are not enforceable as law, the FTC is authorized to take enforcement action against companies whose marketing materials are unfair or deceptive.

The Green Guides were last updated in 1998. Since that time, the use of "green" terms, such as "natural," "recycled," "green," and "earth friendly," has become much more prevalent in consumer marketing. To address the increase in this more broadly based usage of environmental and green claims, the FTC held a number of public hearings, which resulted in this latest update.

Specifically, the updated "Green Guides" include new guidance on marketers' use of product certifications and seals of approval, "renewable energy" claims, "renewable materials" claims, and "carbon offset" claims. The updates also provide useful guidance in how marketers can qualify claims to avoid the risk of deception.

The FTC is seeking public comments on the proposed changes until December 10, 2010, after which it will decide which changes to make final.

The revised Green Guides can be found at <http://www.ftc.gov/opa/2010/10/greenguide.shtm>.

¹ Most states have FTC Act equivalents, such as Connecticut's Unfair Trade Practices Act and New York's Consumer Protection from Deceptive Acts and Practices.

FOR MORE INFORMATION

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