

It's Not Easy Being Green: FTC's Revised Green Guidelines May Adversely Affect the Little Guy

Article By:

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Earlier this month, the **Federal Trade Commission** [released its revised Green Guidelines](#), providing parameters for advertising and marketing claims of supposedly eco-friendly products. The publication completes a two-year revision process that the FTC undertook, involving the updating of guidelines last visited in 1998. The Commission touted the new guidelines as helping marketers “avoid making misleading environmental claims” and leveling the playing field for “honest business people.”

The revised guidelines address 14 categories of claims, including general environmental claims, carbon offsets, certifications and seals of approval, and claims of recyclability and renewability. Under the guidelines, marketers and advertisers are cautioned to avoid general claims that products are green or eco-friendly: “Marketers should qualify general claims with specific environmental benefits. Qualifications for any claim should be clear, prominent, and specific.”

Marketers are further cautioned to disclose material connections to any certifying organization. And when it comes to claims of compostability, degradability, recyclability and other claims about product and packaging content, the FTC advises that marketers be able to substantiate such claims and avoid deceiving consumers by replacing one environmental red flag with another. For instance, the guidelines note that “[i]t would be deceptive to claim that a product is “free-of” a substance if it is free of one substance but includes another that poses a similar environmental risk.”

The FTC's revisions appear to take on a holistic approach to environmental claims. A company cannot willy-nilly claim that its product or packaging is recyclable if it is only recyclable in limited locations, and it cannot claim it is “green” and made with recycled content “if the environmental costs of using recycled content outweigh the environmental benefits of using it.” The guidelines require the marketer to limit and qualify green claims based on a thorough review of the production, distribution, and disposal stream for the product and its packaging.

In many ways, this new guidance seems fair – it should help ferret out the unscrupulous marketer who wants to charge a premium, or carve a market niche, based on dubious environmental claims.

But how much benefit will the new guidelines bring? The guidelines, in and of themselves, do not truly bring more enforcement power to the FTC. With or without Green Guidelines, old or new, the FTC can bring enforcement actions against marketers for false and deceptive claims – [like several](#)

[enforcement actions from 2009 forward that the FTC highlights on its website](#). With or without the guidelines, the truly unscrupulous marketer remains subject to FTC oversight and liability.

Our concern is that the guidelines may discourage some well-intentioned market entrants. An entrepreneur may have a good green idea but opt not to pursue it because of heightened advertising and labeling standards. For instance, the FTC guidelines caution companies about the need to provide “competent and reliable scientific evidence” for several categories of environmental claims. That could necessitate big R&D bucks to the exclusion of Mom & Pop.

More importantly, the guidelines could provide more ammunition for big companies to pursue claims against small competitors and effectively shut out upstarts. NAD, the advertising industry’s self-regulatory body, apparently plans on using the guidelines. There have been [a host of cases by companies like Clorox and Procter & Gamble](#) taking to task smaller companies marketing eco-friendly alternatives. In the end, while the revised Green Guidelines may be a good faith effort by the FTC to level the playing field and may have some positive impact, it will be important to monitor its unintended consequences.

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