

California Passes Sweeping Package of “Green” Bills

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In October 2021, Governor Gavin Newsom signed into law a sweeping package of six bills aimed at reducing plastic waste, improving recycling efforts, and clarifying labeling standards for recyclables and compostables. These new laws will likely mean significant changes for many companies. They come at a time when multiple states are passing similar environmentally focused bills, signaling a renewed effort to promote recycling and regulate green advertising.

The package of bills included the following:

- **[SB 343](#): Truth in labeling for recyclables.** Products and packaging must meet new more stringent specifications before they can be labeled as recyclable and feature the chasing arrows symbol (i.e., the mobius loop).
- **[AB 1201](#): Truth in labeling for compostables.** Products and packaging must meet new more stringent specifications before they can be labeled compostable.
- **[AB 1276](#): Single-use food ware and packaged condiments.** Dine-in customers must request plastic utensils, straws and condiment packs. Restaurants can ask drive-through customers if they want them.
- **[AB 818](#): Disposable wipes.** Requires “Do not flush” labeling on certain wipe products.
- **[AB 881](#): Exporting waste.** Aims to reduce the export of mixed plastics that ultimately are not recycled.
- **[AB 962](#): Reusable glass bottles.** Expands current program, in which the state pays a per-bottle recycling payment for those who recycle glass by crushing it and making it available to melt into fresh glass, to also include those who wash and reuse the bottle.

To date, the most prominent effort to regulate environmental marketing claims is the Federal Trade Commission’s (“FTC”) Guides for the Use of Environmental Marketing Claims, commonly known as

the “[Green Guides](#),” published at 16 CFR Part 260 originally in 1992. The FTC issued the Green Guides to ensure that the environmental claims that marketers make about their products and services are true and substantiated. As agency guidance, they do not have the force of law nor are they independently enforceable. If a marketer makes an environmental claim inconsistent with the Green Guides, however, the FTC has the ability to take action under Section 5 of FTC Act, which prohibits unfair or deceptive practices.

Of greatest impact to many advertisers are the heightened requirements for recyclable and compostable labeling in SB 343 and AB 1201 which go well beyond the Green Guides. For recyclability, SB 343 gives Cal Recycle until January 1, 2024 to develop a list of commonly recycled materials at facilities in the state. Based on that report, the law then provides that a product may only be labeled as “recyclable” if it meets the following requirements:

1. The product is collected in curbside recycling programs that cover at least 60% of the state’s population;
2. It can be sorted into defined streams; and
3. It can be reclaimed at appropriate facilities.

Products collected by non-curbside programs can only be labeled as “recyclable” if the program “recovers at least 60% of the product or packaging in the program” and the material can be sorted and aggregated in defined streams. Eighteen months after Cal Recycle releases the list (and after each subsequent update to the list), manufacturers would then have to ensure that their products meet the new standard. This means companies will start selling the new products in 2025.

Companies responsible for labeling products as compostable should be cognizant that AB 1201 requires anyone selling a product that is labeled as “compostable” or “home compostable” to ensure these products meet the applicable ASTM standard specification.[1]

California is not alone in passing stricter environmental regulations. New York also has pending legislation that would ban products from falsely advertising recyclability. Similarly, both Maine and Oregon passed laws over the summer that require corporations to pay for the cost of recycling their packaging. More and more, environmental organizations are filing lawsuits seeking to combat misleading claims of recyclability by major companies, making it clear that advertisers will need to redouble their efforts on compliance for their environmental marketing claims.

FOOTNOTES

[1] These include either the ASTM Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities D6400, as published in 2019, or the ASTM Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities D6868, as published in 2019.

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