



## *Corporate Responsibility* Observers Expect Federal Trade Commission To Release Revised Green Marketing Guides

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Revisions to Federal Trade Commission guidelines for making environmental claims in product advertising and marketing, which have not updated since 1998, could be released in the coming weeks.

While FTC spokesman Mitchell Katz would only say the updates are expected to be released "this year," Christopher Cole, an advertising law partner at Manatt, Phelps & Phillips, told BNA Sept. 13, "The last we had heard is that they would certainly come out after Labor Day. Now we are well after Labor Day."

The commission's revisions to the *Guides for the Use of Environmental Marketing Claims*, commonly called the Green Guides, are expected to address new terms that have arisen in environment-focused marketing over the past decade, such as "carbon neutrality" and "sustainability." They also are expected to offer guidelines on the sale of carbon offsets and renewable energy certificates to consumers looking to offset greenhouse gas emissions associated with their businesses or personal lives.

While the content of the new guidelines and their timing are unclear, Cole advised caution for companies planning their marketing strategies for the coming year.

"I would be wary of investing in a unique environmental claim with a horizon of more than 10 months without knowing what these guidelines are going to say," he said. He added that he expects the release "any day."

Cole said he expects FTC to give companies several months to make sure they are compliant with the revised guidelines and then "they will bring, without a doubt, a few high-profile enforcement cases to show that they mean business."

### **Review Began in 2007**

FTC began a review of the guides in November 2007, soliciting comments and holding public meetings (227 DEN A-1, 11/27/07).

A meeting to discuss the sale of carbon offsets and renewable energy certificates was held in January 2008. The second meeting, in April

2008, focused on claims made about product packaging—such as “biodegradable” and “recyclable”—as well as “sustainable” or “renewable” materials or processes. Some of the terms are addressed in the current version of the guides, but the definitions may need to be updated.

A third meeting in July 2008 focused on environmental claims made about green buildings and textiles (137 DEN A-5, 7/17/08).

Exactly what will be included in the updated guidelines is unclear. People who focus on environmental marketing were divided about how significantly the revisions could affect a marketplace filled with diverse claims about environmentally friendly products and many third-party certification and labeling options.

Cole said he expects the guidelines to offer clarification on terms such as “carbon neutrality,” particularly with regard to the question of how much the lifecycle of a product—from requirements to produce the raw materials to what happens to a product when it is disposed—needs to be considered when measuring and offsetting associated greenhouse gas emissions.

He also said that the guidelines could force companies that offer third-party certification and labeling to rethink the requirements for certification. “There have been a proliferation of these third-party [labels] ...and as a consumer it's very hard to know which one of these things is reputable and which isn't,” he said.

### **Enforcement Needed**

Scott McDougall, president and chief executive officer of the environmental marketing firm TerraChoice, said he expects the revisions to

have few practical effects. He predicted they will focus on clarified definitions for environmental terms and on the sale of carbon offsets and renewable energy certificates.

“We could be proven wrong—and I think that clarification and tighter definition is certainly going to help the marketplace—but in and of itself it is not going to make a dramatic change to the way green claims operate today,” he told BNA Sept. 14.

TerraChoice, which partners with EcoLogo to offer third-party labeling to indicate a standard for environmentally friendly products, also researches trends in green marketing. McDougall said there are “many, many, many” third-party labels that companies can request for their product packaging, but most are “not very useful.” He said he not heard that the guidelines would change rules for third-party labeling, but that he would support FTC providing guidance on what a useful label should look like and what standards it should meet.

McDougall said enforcement, not clarification, is what is really needed to ensure that companies do not make false environmental claims. But “regulators have a difficult balance to strike” in clamping down on inflated claims while still encouraging the development of environmentally friendly products.

There is a need to “encourage more and more green innovation” and to “get more green products in the marketplace,” he said. But “if regulators become too suspicious ... marketers would be too afraid to try.”

Christine Chase, an environmental scientist for Green Seal, which certifies a range of products that meet specified environmental standards, said that while FTC may clarify guidelines for green labeling, she did not expect Green Seal

to have to make any major changes.

"We make sure that any claims are specific, meaningful, and verifiable," as is already required by FTC, she said. "Our standards are available and all of our terms are defined, so it's different than [it would be for] a certification body that perhaps relies on subjectivity," she said.

FTC's current *Guides for the Use of Environmental Marketing Claims* is available at <http://ftc.gov/bcp/grnrule/guides980427.htm>.