



# Green Chemistry & Commerce Council

Moving Business Toward Safer Alternatives

## *A GC3 Retailer Webinar Series*



September 12, 2012

# The Federal Trade Commission's Green Guides: What Retailers Need to Know

Laura Koss, Senior Attorney at the Federal Trade Commission

*This Retailer Webinar is Sponsored by Bureau Veritas*



# Webinar Discussion Instructions



- Due to the number of participants on the Webinar, all lines will be muted.
- If you wish to ask a question, please type your question in the question box located on the right side panel of your webinar control panel.
- All questions will be answered at the end of the presentation.



# **“THE GREEN GUIDES”**

GC3 RETAILER WEBINAR, SEPT. 12, 2012



**Laura Koss**  
**Senior Attorney**  
**Federal Trade Commission**

# OVERVIEW

- **FTC and Advertising Law**
- **The Green Guides**
  - The Basics
  - Claims
  - Enforcement
- **The Review**




# SEC. 5, FTC ACT (15 U.S.C. §§ 41-58)



- **Tell the truth.**
- **Have substantiation for:**
  - Express and implied claims.
- **Competent and reliable scientific evidence**

# RETAILER LIABILITY

- Catalog marketers/infomercials
  - Higher risk of law enforcement:
    - Repeats or embellishes manufacturer's claim for questionable product
    - Health or safety claims
  - Private label brands
- 

## GREEN GUIDES BASICS

How do consumers understand claims?

Apply to all forms of marketing claims.

Business → consumer.

Business → business.

NOT performance standards or eco-labels.



# GENERAL GREEN GUIDES PRINCIPLES

1. Consumer perception controls.
2. Be specific.
3. Don't overstate attributes.
4. Use clear and prominent qualifications.





**QUALIFICATIONS SHOULD BE:**

**CLEAR.**

**Prominent.**

**Understandable.**

- Plain language.
- Sufficiently large type.
- In close proximity to qualified claim.



# TYPES OF MARKETING CLAIMS

- General environmental benefits
- Degradable, biodegradable & photodegradable
- Compostable
- Recycled content
- Recyclable
- Source reduction
- Free-of
- Ozone safe/ozone friendly
- Non-toxic



# GREEN GUIDES REVIEW

## Federal Register Notices

## Workshops


- Carbon Offsets/RECs
- Green Packaging
- Green Buildings and Textiles

## Consumer Perception Research



# FTC CONSUMER PERCEPTION STUDY

## Internet study - Harris Interactive

- General (“green,” “eco-friendly”)
  - Sustainable
  - Renewable (“made with renewable energy/materials”)
  - Carbon neutral/Carbon offset
- 

# GENERAL CLAIMS - CURRENT GUIDES

- Suggest wide-reaching environmental benefits.
- Difficult to substantiate.
- Avoid or qualify.



Credit: muttropolis.com



## STUDY: “GREEN” OR “ECO-FRIENDLY”

**52% - Product had specific green attributes.**

- Made with recycled materials – 61%
- Recyclable – 59%
- Made with renewable materials – 54%
- Biodegradable – 53%



**27% - NO NEGATIVE ENVIRONMENTAL IMPACT**

## BEWARE OF GENERAL BENEFIT CLAIMS.

“Highly unlikely marketers can substantiate all reasonable interpretations of these claims.”



- Marketers should not make unqualified general environmental benefit claims.



# QUALIFICATIONS – USE CAUTION

They may work if:

- They are clear and prominent.
- They limit the claim to a specific benefit(s).
- Context → no other deceptive implications.





# GENERAL ENVIRONMENTAL CLAIMS



PURE BAMBOO

Pure Quality, Pure Ingenuity, Pure Clothing

We are dedicated to providing high performance wear that brings together comfort, simplicity and our own unique Pure Style to create an eco-friendly bamboo clothing line committed to fitting your one of a kind environmentally conscious life style.

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# “BAMBOO FIBER” TEXTILES

Actually rayon.

Doesn't retain the natural attributes of the bamboo plant (such as anti-microbial properties).



Credit: poorandpretty.com

# DEGRADABILITY – TIME AND PLACE

*Qualify claims unless*

*“Entire product/package will completely breakdown and return to nature within a reasonably short period of time after customary disposal.”*



# DEGRADABILITY

Unqualified degradable claims are deceptive for products destined for landfills, incinerators, or recycling facilities – where products won't decompose in a reasonably short period of time.



# CERTIFICATIONS/LOGOS/SEALS



Pre-consumer  
SCIENTIFIC CERTIFICATION SYSTEMS  
SCS-MC-01140



GOLD CERTIFIED JANITORIAL FIRM

# CERTIFICATIONS/LOGOS/SEALS

“Earth Smart” seal may imply that product is superior.

Explain basis for award.

Limit superiority claim to attributes that can be substantiated.



# CERTIFICATIONS/LOGOS/SEALS

- **Endorsements.**
- **Need substantiation.**
- **General environmental benefit claim.**
- **Clear and prominent qualification:**
  - Refers only to specific, limited environmental benefit.



# CERTIFICATIONS MAY BE ENDORSEMENTS

**Marketers must disclose a “material connection”:**

A “connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement.”



# PROPOSED EXAMPLE



Certified by the  
Renewable Energy  
Association

Certified by the Renewable Energy Association.  
Acme is a dues-paying member of this organization.

# “TESTED GREEN”

- Sold environmental certifications
- Claimed Tested Green was the “nation’s leading certification program”
- FTC alleged Tested Green never tested any of companies it provided with certifications, and would “certify” anyone willing pay a fee.

# NEW SECTION – FREE-OF CLAIMS

Truthful claims may be deceptive if:

- Contains substances that pose same/ similar risks as substance not present.
- Never associated with product.

Small amount may be okay, depending on context.



# NON-TOXIC

“ . . . likely conveys that the [item] is non-toxic both for humans and for the environment generally.”



# RENEWABLE MATERIALS

**Confusion with other environmental claims.**

**Specify material used; how sourced; why it is renewable.**

**Qualify unless entire product (minus incidental components) is made with renewable materials.**



# RENEWABLE ENERGY

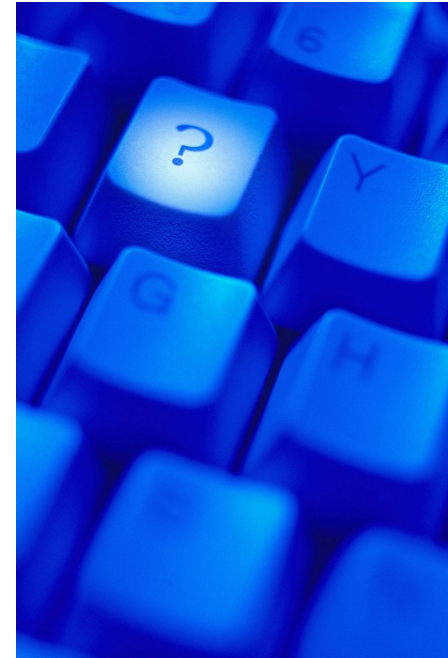
**Confusion with other environmental claims:**

**Specify source of renewable energy.**



**NO PROPOSED GUIDANCE**

**Sustainable**  
**Organic**  
**Natural**



**MORE INFORMATION?**

[ftc.gov/green](http://ftc.gov/green)

[business.ftc.gov/advertising-and-marketing/environmental-marketing](http://business.ftc.gov/advertising-and-marketing/environmental-marketing)





The audio recording and slides shown during this presentation will be available to GC3 Members on the GC3 Website:

<http://www.greenchemistryandcommerce.org>

*Non- GC3 Member Attendees who would like to view these slides please contact Sarah Shields at [sarah\\_shields@uml.edu](mailto:sarah_shields@uml.edu)*



***SAVE THE DATE!***

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