

CLIENT ADVISORY

FTC EXAMINES MARKETING OF “GREEN” BUILDINGS AND TEXTILES

OVERVIEW

On July 15, 2008, the Federal Trade Commission (FTC) hosted a workshop to address “green” marketing in the building and textile industries.¹ The workshop was the last in the series of three announced workshops that the FTC conducted during its review of its *Guides for the Use of Environmental Marketing Claims*, known as the *Green Guides*.² James Kohm, Associate Director of the Division of Enforcement for the FTC, encouraged panelists to identify current trends in green claims to guide the FTC’s revision of the *Green Guides*. In his opening remarks, FTC Chairman William E. Kovacic highlighted the importance of fostering better communication among the FTC, industry, and public institutions in order to devise a wide range of policy tools that can provide clarity to businesses and protection to consumers.

GREEN CLAIMS IN THE TEXTILE INDUSTRY

The workshop panelists identified several key trends in the textile industry regarding misleading green claims. One panelist addressed the liberal use of the term “organic,” pointing out that “organic” is a legal term regulated by the US Department of Agriculture (USDA) and refers only to a specific method of production (i.e., a textile fiber is “organic” if its production process meets the relevant crop rotation, ecosystem, and habitat criteria) rather than a product’s contents. The misuse of the term “organic” in the textile industry is particularly concerning because of the dramatic increase in consumer demand for textiles made from “organic” fibers.

The same panelist suggested that growing consumer demand makes it more important that all marketing claims be true, all label wording not be misleading, all percentages of the product’s fiber content be disclosed, and all organic fiber be certified by accepted bodies such as the USDA’s National Organic Program. Lastly, if a company wishes to use the term “organic” to refer to the product’s contents, it must be clear whether a “made with organic” label refers to all or only part of the product’s contents.

¹ Workshop materials are available at <http://www.ftc.gov/bcp/workshops/buildingandtextiles/index.shtml>.

² 16 C.F.R. pt. 260, <http://www.ftc.gov/bcp/gmrule/guides980427.htm>; see also *Complying with the Environmental Marketing Guides*, <http://www.ftc.gov/bcp/online/pubs/buspubs/greenguides.pdf>.

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Washington, DC
+1 202.942.5000

New York
+1 212.715.1000

London
+44 (0)20 7786 6100

Brussels
+32 (0)2 517 6600

Los Angeles
+1 213.243.4000

San Francisco
+1 415.356.3000

Northern Virginia
+1 703.720.7000

Denver
+1 303.863.1000

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Some panelists also requested that the FTC provide uniform and specific definitions for key “green terms” that can be used by industry to properly characterize environmentally friendly textiles. The panelists also requested that these green claims clarify whether they also refer to the product’s packaging as well as its more minor features, such as buttons and zippers. The substantiation of these claims, the panelists noted, must be based on science rather than peer review or outmoded public data. Moreover, the panelists also urged the FTC to revise the *Green Guides* to restrict the use of misleading or vague labels that deceive consumers. These include overly broad claims such as “renewable,” “sustainable,” “reused,” “earth friendly,” “environmentally engineered,” “pure,” and “chemical-free”—terms that lack any definitive meaning.

Other panelists also noted the challenges arising from the marketing of textiles made of bamboo-based cellulose fibers. These fibers can be produced naturally or chemically, and it is difficult to differentiate between them. Thus, it is easy to pass off chemically produced fibers as naturally produced fibers. The panelists requested that the FTC provide guidance on this issue.

SUBSTANTIATING GREEN TEXTILE CLAIMS

The workshop also addressed different methods for substantiating green claims in the textile industry. The panelists noted that organizations that verify and certify green claims do so only when solicited voluntarily by industry. These organizations develop green standards based on internally developed criteria. However, the panelists stated that industry often finds ways to wiggle through loopholes. Moreover, because there is a need for a substantiating organization to keep its client base, there is a structural tendency to maintain lax standards and lenient enforcement. To make matters worse, manufacturers are sometimes protective of their specific production process. Thus, the panelists recommended that the FTC regulate the certification process more strictly than has been the case to date.

The panelists also stated that consumers often assume that an “organic” label refers both to a product’s content and the manner of its production when in reality it often refers only to the latter. These organizations requested that the FTC clarify to consumers whether an “organic” label applies to both content and process. The panelists also noted that often the main purpose of these organic labels is to minimize the environmental impact of producing a product and not necessarily to substantiate a product’s healthiness or quality. Consumers, however, sometimes see green certifications as guarantees of health and quality.

GREEN CLAIMS AND CERTIFICATIONS IN THE BUILDING INDUSTRY

Workshop panelists addressing misleading green claims in the building industry also expressed concern with the widespread use of vague eco-friendly labels. They pointed to broad claims such as “non-toxic,” “clean air,” “great green,” “up to 70% recyclable content,” “toxic-free,” and “pure water-based” as labels that confuse consumers and are devoid of real meaning. They argued that the rush to develop green buildings has caused poor discipline with regard to making green claims. Panelists suggested three general approaches to correcting this trend in the building industry.

First, they recommended that the FTC provide guidance as to what actually constitutes a “green” home or to at least provide a staggered level of “green” labels that have universal meaning in the building industry. Second, they suggested that the FTC find some way to clearly distinguish between green labels that describe the product’s content (product attributes, toxicity, etc.) and green labels that describe the product’s manner of production. And third, the panelists suggested that assessments of a product’s “green-ness” focus on a life cycle evaluation of the product’s environmental friendliness from beginning to end. This assessment would accurately convey to the consumer the product’s greenness by considering together key environmental factors such as the product’s impact on climate change, ozone depletion, acidification, smog formation, resource depletion,

human health pollutants, exotoxicity, and habitat alteration, among other factors. This type of approach, the panelists stressed, would increase clarity and accuracy in green building claims and boost consumer confidence in green buildings. This is especially true, the panelists stated, if the life cycle assessment includes a review of the environmental friendliness of the product’s “use-phase”—the environmental impact or benefit of its usage.

Some panelists also stated that third-party certification organizations have more credibility when sponsored by non-profits and when they include a transparent certification process. However, one panelist also recommended that the FTC provide stronger scientific guidelines for certification organizations because some lack proper integrity in their certifications. The panelists also recommended maintaining competition between certification programs.

Various building certification organizations also stressed the need to maintain certification legitimacy by protecting the credibility of their respective certification labels. Many stated that the voluntary nature of these certifications pose a daunting challenge, especially with regard to gaining access to scientific data. Some panelists recommended that the FTC provide universal definitions for the common vernacular of the green building industry, such as “sustainability,” to ensure uniformity and reliability. Other panelists recommended that the FTC issue its own evaluation of the different certification organizations so consumers will know which certifications are credible. Others also requested that the FTC ensure that companies do not imply that because a product is environmentally friendly with respect to a single attribute, such as “toxicity,” that the product is then environmentally friendly more generally without regard to its other attributes or its manufacturing process.

CONCLUSION

In the last session of the workshop, James Kohm, the FTC roundtable moderator, highlighted the recommendations offered by the various panels. He reiterated that these recommendations might serve as possible areas for FTC revision of the *Green Guides* with regard to the textile and

building industries, but did not signal any particular revisions that the FTC was considering. However, the panelists’ recommendations raised several issues that the FTC will need to evaluate, including the following:

- How does satisfying one individual “green” criterion fit within the larger context of whether a product is environmentally friendly generally? For example, how does a company make general green claims if the product involves a complex system whose life cycle is green at times and not at others?
- How should the FTC catalogue, rate, and explain the different levels of confidence consumers should have in various green organization certifications?
- How can the FTC require life cycle assessments given the difficulty of evaluating the use-phase of a product, which depends on variations in use, climate, and maintenance, all of which are difficult to predict?
- What should be the clear, specific, uniform, and objective definitions assigned to commonly used green attributes? How can the FTC differentiate between claims regarding the product’s contents and claims regarding the product’s mode of production?
- What is the correct way to regulate misleading or overly broad claims?
- What is the correct way to require scientific data as the basis for green claims and comparative claims?

We do not expect the FTC to adopt definitions or detailed standards for many of the specific issues raised by the panelists. The FTC has emphasized many times that its focus is protecting consumers from deceptive environmental marketing claims, and neither its mission nor expertise involves environmental science or policy. So, for example, the FTC is unlikely to provide scientific guidelines for certification organizations or for undertaking life cycle analyses. Instead, the FTC will likely provide guidance on what types and amounts of substantiation are acceptable. In the case of certifications, the current *Green Guides* already require advertisers to disclose the basis of certifications and third-party certifiers to be independent and to have

relevant expertise. Thus, the FTC will likely expand on this current guidance rather than attempt to develop specific certification standards.

Until the new *Green Guides* are issued, advertisers should continue to follow the current version and traditional advertising principles, applying these to environmental claims that may not be specifically addressed. Most important among these is that broad environmental claims are difficult to substantiate. Green claims should be as specific as possible and adequately substantiated.

The comment period for the green buildings and textiles workshop will be open until August 15, 2008.

We hope that you find this brief summary helpful. If you would like more information on the issues raised in this client advisory, please feel free to contact:

Randy Shaheen

+1 202.942.5734
Randal.Shaheen@aporter.com

Amy Ralph Mudge

+1 202.942.5485
Amy.Mudge@aporter.com

Matthew Shultz

+1 202.942.6147
Matthew.Shultz@aporter.com