



## **Environmental Marketing Guidelines**

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*The Use Less Stuff Report*

### **I. INTRODUCTION**

The marketplace increasingly demands products that deliver high levels of functionality with reduced levels of environmental impact. Businesses are looking for ways to meet these demands, and in so doing must effectively communicate both the functional and environmental benefits of their offerings.

On the functional side, strong companies usually have a history of providing customers with data that support their product claims. Over time, this has become increasingly easier to do, as customers today are quite knowledgeable about the information needed to make decisions.

The environmental side is quite different, as benefits such as “more sustainable,” “greener,” and “eco-friendly” cannot be assigned numerical values, since they are qualitative in nature. Also, as of yet there are no agreed-upon mechanisms or third party organizations that can evaluate these types of claims or enforce protocols, methodologies, and use of terms.

Significantly, environmental claims are different in a third way. Unlike functional benefits, which become a tangible part of your customers’ products, environmental benefits have the potential to be communicated by your customers as part of the marketing message to *their* customers. This means that companies must work hard to meet regulations and legislation designed to protect “consumers” at all levels.

### **II. THE BASICS**

The key body of U.S. law and regulations governing marketing communications is The Federal Trade Commission Act of 1914, which established its namesake, the FTC. Section 5 of the Act prohibits “unfair methods of competition” and was amended in 1938 to also prohibit “unfair or deceptive acts or practices.” A representation, omission, or practice is *deceptive* if: (1) it is likely to mislead consumers acting reasonably under the circumstances; and (2) it is likely to affect consumers’ conduct or decisions with respect to the product at issue.

Further, the FTC works jointly with the Environmental Protection Agency (EPA) to ensure that an organization's environmental claims meet legal requirements. *The EPA is as concerned about business-to-business activities as it is about business-to-consumer communications, as its literature regarding "deception" specifically calls out advertising, labeling, catalogs and sales presentations<sup>i</sup>.*

### III. THE BIG PICTURE

Listed below are the four areas that are of most concern to the FTC regarding advertising claims of all types, but specifically those relating to the environment. Please keep in mind that the FTC makes it clear that *you must comply with all of these concerns, not just those you feel are most advantageous or especially relevant to your product or message:*

1. *The single most important point to remember when making claims is to be as specific as possible.* Doing so will require that claims be substantiated by communicating all of the following:

- What is being claimed -- *Reduced energy consumption during production*
- By how much -- *By 12%*
- Compared to what -- *Versus the previous product formulation*

Claims that are general or vague are not only considered to be meaningless, *the FTC considers them to be deceptive*. Technically, this means that claims which appear to be simple and harmless, such as "eco-friendly" and "green," are actually open to scrutiny and legal action at the federal level. Such action can occur when the FTC is made aware of claims, either by their reviewing your materials or, more likely, via complaints from competitors, special interest groups, state attorneys general, etc.

2. To further prevent deception, *any qualifications or disclosures relating to your claims should be clear, prominent and easily understood.* According to the FTC, "Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent."<sup>ii</sup>
3. *Environmental claims, attributes and benefits should not be explicitly or implicitly overstated.* This requires that both the absolute and relative merits of a claim be considered.

- **Example:** Claiming that a package has been reduced in weight by 50% would be considered deceptive by the FTC if the package in question now weighed 1 gram, versus 2 grams in the past. However, a 50% move from 16 oz. to 8 oz. would probably be considered acceptable, based upon the absolute change in question.
- **Example:** A resin is described simply as being “recyclable.” However, the current recycling infrastructure cannot handle this resin. Even if the resin is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no significant or meaningful benefit exists.

4. Comparative claims must be stated in a way that makes the basis for comparison as clear as possible. The comparison should also be substantiated.

- **Example:** You want to promote the fact that your production process produces 25% fewer greenhouse gas (GHG) emissions than competitive processes. You must be able to state the specific GHG levels for your process and all of your competitors, and ensure that the competitive data is both accurate and current.

Based upon FTC general regulations and its guidelines relating to advertising claims and substantiation, and the environmental guidelines developed by the FTC either singly or jointly with the EPA, all marketing and sales materials should meet the following criteria:

## IV. ENVIRONMENTAL-SPECIFIC CLAIMS

### A. General

Unless substantiation can be provided, broad environmental claims must either be avoided or qualified. Further, claims must not create broader positive impressions than what is communicated by the specific claim.

- **Example:** Naming or describing a product as “Eco-Friend” would be deceptive if it leads to the belief that the product has environmental benefits which you cannot substantiate. However, the claim would *not* be deceptive if “Eco-Friend” were followed by clear and prominent qualifying language limiting the positive representation to a particular product attribute that could be substantiated, providing that no other deceptive implications were created by the context.

Note that the same standards hold true for any graphic seal, design or icon designed to communicate positive environmental attributes or benefits. Each must be accompanied by prominent qualifying language limiting the positive representation to a particular product attribute that could be substantiated, providing that no other deceptive implications were created by the context.

- **Example:** A product is labeled “environmentally preferable.” This claim is qualified by stating that it “contains no harmful VOCs.” However, if the production or use of the product creates any other harmful emissions, the claim is deceptive, as it can be interpreted in a broader context than what is specifically described.

## B. Recyclability

A product or package should not be marketed as recyclable unless it can be collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program. However, unqualified claims of recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable.

To further avoid the potential for deception:

1. *If a product or package is made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to clearly state which portions or components are recyclable.*
2. *Claims of recyclability should be qualified to the extent necessary to avoid consumer deception about any limited availability of recycling programs and collection sites.*
  - **Example:** A nationally marketed 8 oz. plastic cottage-cheese container displays the Society of the Plastics Industry (SPI) code (which consists of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin) on the front label of the container, in close proximity to the product name and logo. The manufacturer's conspicuous use of the SPI code in this manner constitutes a recyclability claim.

Unless recycling facilities for this container are available to a substantial majority of consumers or communities, the claim should be qualified to disclose the limited availability of recycling programs for the container. If the SPI code, without more, had been placed in an inconspicuous location on the container (e.g., embedded in the bottom of the container) it would not constitute a claim of recyclability.

Note from this example, taken directly from FTC documents, how important it is for marketers of plastics used in packaging to understand the guidelines: *The FTC considers the “chasing arrows” symbols to be potentially deceptive to consumers if not handled in the manner described.*

*If recycling is not widely or generally available, claims should be qualified to indicate the limited availability of programs.* Two examples are “This container may not be recyclable in your area,” or “Recycling programs for

this container may not exist in your area.” Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

3. *No incidental components should be present that significantly limit the ability to recycle a product or package.* For example, if labeling significantly reduces recyclability of a package, it would be deceptive to refer to the package as recyclable.
4. *A product or package that is made from recyclable material, but is not accepted in recycling programs for such material, should not be marketed as recyclable.* In such a situation, it would be appropriate to communicate that “This package contains 20% recycled material” but it would be deceptive to state that the package can (once again) be recycled.

### **C. Recycled Content**

*A recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer).* Specific conditions include:

1. *To the extent the source of recycled content includes pre-consumer material, the manufacturer or advertiser must be able to substantiate that the pre-consumer material would otherwise have entered the solid waste stream. This is particularly important for plastics molders, fabricators and processors:*
  - **Example:** A molder routinely collects spilled resin and scraps left over from the original manufacturing process. After a minimal amount of reprocessing, the molder combines the spills and scraps with virgin material for use in further production of the same product. A claim that the product contains recycled material is deceptive because the spills and scraps to which the claim refers are normally reused by industry within the original manufacturing process, and would not normally have entered the waste stream.
2. *In asserting a recycled content claim, distinctions may be made between pre-consumer and post-consumer materials.* Where such distinctions are asserted, any express or implied claim about the specific pre-consumer or

post-consumer content of a product or package must be substantiated.

3. *For products or packages that are only partially made of recycled material, a recycled claim should be adequately qualified to avoid deception about the amount, by weight, of recycled content in the finished product or package.*

- **Example:** A “juice box” (aseptic package) is made from layers of foil, plastic, and paper laminated together. The label claims that “one of the three layers of this package is made of recycled plastic.” The plastic layer is made entirely of recycled plastic. The claim is not deceptive provided the recycled plastic layer constitutes a significant component of the entire package.

#### **D. Biodegradation**

Claims of degradability should be qualified “by competent and reliable scientific evidence” to avoid consumer deception about (1) the product or package’s ability to completely break down into elements found in nature, (2) in the environment where it is customarily disposed, and (3) the rate and extent of degradation.

Unless otherwise specified, a product must biodegrade or photodegrade in the environment in which it is usually disposed (e.g., a sanitary landfill), and must do so at a reasonably fast rate. Unless clearly stated, degradation must also be complete, with no leftover synthetic or complex byproducts or residue.

- **Example:** According to the law, paper cannot be described as simply “biodegradable”, as it will not break down in its typical disposal environment, a landfill, at a reasonably fast rate. Technically, a paper product which claims to be biodegradable should qualify this statement by including a statement such as: “When composted in a facility designed to handle this type of paper, usually an industrial composting facility.”

However, clearly stating an exception to an unqualified claim can legitimize the claim and remove the potential for deception:

- **Example:** Loop carriers are described as “Photodegradable” and qualified with the phrase “Will break down into small pieces if left uncovered in sunlight.” The claim is supported by competent and reliable scientific evidence that the product will break down in a reasonably short period of time after being exposed to sunlight and into sufficiently small pieces to become part of the soil. *Because the claim is qualified to indicate the limited extent of breakdown, the manufacturer does not have to meet the elements for an unqualified photodegradable claim, i.e., that the product will not only break down, but also will decompose into elements found in nature.*

## E. Composting

A compostability claim must be substantiated by “competent and reliable scientific evidence” that all the materials in the product or package will (1) break down into, or otherwise become part of, usable compost (e.g., soil-conditioners, mulch, (2) in a safe and timely manner, (3) in an appropriate composting program or facility, or in a home compost pile or device. Claims must be substantiated, and will be considered deceptive if:

1. Composting cannot occur in a home compost pile or device, and/or it is not revealed that composting must occur in municipal or institutional facilities *and that the availability of these facilities is limited.*
2. Consumers are misled into believing that landfilling will produce results similar or equal to backyard composting,
3. The results of composting are not 100% usable as conditioners or mulch.
  - **Example:** The description of a corn-based plastic as compostable (and/or biodegradable) is deceptive if it is not clearly stated that products made from this plastic must be composted in an institutional facility, and that the availability of such facilities is limited.

However, limiting the sale of products to areas in which they can be composted, or stating specifically where they can be composted, is acceptable and not considered deceptive. In the example just mentioned, a description such as “Compostable only in the area where this product or package was purchased” or “Compostable in Northern Oregon” would typically not be considered deceptive.

## F. Source Reduction

Source reduction claims should be qualified to the extent necessary to avoid consumer deception about both the amount of reduction and the basis for any comparison that is asserted. It is perfectly fine to say “This package creates 10% less waste than our previous package.” However, simply stating “This package creates 10% less waste” is ambiguous, and open to being considered deceptive.

## V. IT'S BETTER TO BE SAFE...

As you can see, the laws are clear regarding the need for environmental claims to be specific and substantiated. However, please keep these points in mind:

1. Whether a claim is specific enough, or provides proper substantiation, is open to interpretation.
2. The FTC staff routinely issues new interpretations of the law. These may complement or conflict with previous interpretations, *including those included here*.
3. As an active participant in the development of communications materials, it may be hard for you to be completely objective when it comes to evaluating the legality of proposed environmental marketing claims.
4. This document was written from a U.S. perspective, but it is fairly safe to assume that the FTC philosophy of specificity and substantiation is valid globally. *However, if marketing products outside of the United States, please check the appropriate statutes and regulations for that region. This is especially important in Europe, where product comparison claims are either outlawed outright or considered to be a form of unfair competition.*
5. *Finally, please remember that the potential financial and perceptual costs of making a mistake regarding environmental claims are high. Consult with your Legal and Environmental Affairs Departments before making public any environmental claim.*



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### FOOTNOTES

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<sup>i</sup> *Environmental Marketing Claims: Message to Vendors from the EPA and the Federal Trade Commission (FTC)*, EPA-744-F-97-005, June 1997.

<sup>ii</sup> FTC, Part 260, *Guides for the Use of Environmental Marketing Claims*.