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[Use of "Made with Renewable Materials" and "Made with Renewable Energy" claims in Advertising under the FTC's Proposed Revised Green Guides](#)

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The Federal Trade Commission recently unveiled long-awaited proposed revisions to its Guides for the Use of Environmental Marketing Claims, known as the "Green Guides," which were last updated in 1998 (available at http://www.ftc.gov/os/fedreg/2010/october/101006green_guidesfrn.pdf). The Green Guides help marketers comply with basic advertising law principles when making "green" advertising claims by ensuring claims are true and substantiated. As part of its revision effort, the FTC relied on public workshops, comments and a study of consumers' perceptions of environmental claims. Moreover, the FTC has requested public comments on the proposed revisions, through December 10, 2010, after which time the FTC will decide what changes to make final.

We previously addressed the revised Green Guides' position on:

- General environmental benefit claims (see [FTC's Proposed Revised Green Guides Warn Against General "Green" Claims](#));

- Degradability claims (see [Degradable Claims Under FTC's Proposed Revised Green Guides](#));

- "Free-of" / "Non-Toxic" claims (see [FTC's Proposed Revised Green Guides Provide New Guidance on "Free-of" and "Non-toxic" Claims](#));

- "Organic" claims (see [Using "Organic" In Advertising: FTC Declines to Issue Guidance in Proposed Green Guides Revisions, Defers to U.S. Dept. of Agriculture](#));

- "Recycled Content" claims (see ["Recycled Content" Claims under the FTC's Proposed Revised Green Guides](#)); and

- "Certification and Seals of Approval" claims (see [Use in Advertising of Certifications and Seals of Approval Under the FTC's Proposed Revised Green Guides](#)).

We now turn to the revised Green Guides' treatment of "renewable material" and "renewable energy" claims, which were not covered in the original Green Guides.

Renewable Material Claims

The FTC's consumer impression studies revealed that consumers' understandings of "renewable materials" differ widely. What are renewable materials — are they merely "biobased" materials, or are they more correctly materials "having the capacity of being regenerated either through natural processes or within human assistance?"

Given this lack of consensus, the FTC's concern is that what marketers attempt to convey using a "made from renewable materials" claim fails to align with consumer expectations. Accordingly, the revised Green Guides propose that marketers should qualify such claims if the product or package (excluding minor, incidental components) is not made entirely of renewable materials and should also indicate "what the renewable material is, how it is sourced and why it is renewable" (e.g. "made with fast growing bamboo").

The FTC believes that providing consumers with specific information about the renewable material used in the products helps to avoid misunderstanding and to reduce consumer confusion.

Notwithstanding this, the FTC did not attempt to provide a uniform definition for "renewable materials," nor did the FTC include requirements to detail the elements of "renewable materials," such as the time frames for renewability. Furthermore, the FTC does not offer guidance on the specific technical protocols or technical standards that marketers could apply to substantiate such claim. What the FTC did do, however, is specifically request comments providing a basis for standards of how marketers can qualify a "renewable materials" claim.

Renewable Energy Claims

The FTC did find a general consensus of consumer understanding that at the very least, fossil fuels do not count as "renewable energy." Thus, the Green Guides propose that marketers cannot make unqualified claims that products are made with renewable energy if energy used to manufacture any part of the products was derived from fossil fuels. The Green Guides also recommend identifying the type or source (e.g., wind, solar) of the renewable energy in order to prevent consumer deception, although they fail to specify which sources of energy are regarded as renewable.

The FTC was also concerned about the scope of consumer impression around renewable energy claims. Specifically, the concern was that consumers may take away from a renewable energy claim that the advertised product was, at every stage of its life, made with renewable energy, when that may not be true. The FTC referenced its "Made in USA" guides, that when less than all (or virtually all) of the products were made in the USA (or in this instance, made with renewable energy), the marketers should include qualifications, such as identifying which components within the advertised product were made in the USA (or made with renewable energy). The FTC further seeks comments on whether the criteria for use of an unqualified claim should extend to product distribution as well as manufacture.

The FTC also declined to offer guidance around marketers' use in advertising of renewable energy certificates, or RECs. RECs are certificates representing the renewable attributes associated with the production of renewable energy and are often sold by energy producers to third parties, which then market their use of renewable energy. The revised Green Guides address the question of whether an advertiser that merely purchases RECs, rather than generating the renewable energy itself, can advertise that they use "renewable energy." The FTC answers this question affirmatively, equating the purchase of RECs with originating renewable energy — an advertiser that purchases RECs can use "renewable energy" claims in advertising, even though the advertiser does not itself generate the renewable energy.

The revised Green Guides do, though, prohibit "double counting," meaning if a marketer generates renewable energy (e.g. using wind power) but sells RECs for all of the renewable energy it generates, then it cannot represent that it uses renewable energy.

In view of the above, under the proposed, revised Green Guides, marketers should give considerable thought when using unqualified renewable materials claims, or an unqualified renewable energy claim, and do so only when they have appropriate substantiation.

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