

## Federal Trade Commission Unwinds Green Textile Claims and Frames Up Green Building Claims

*On July 15, the Federal Trade Commission (“FTC” or “Commission”) held its third in a series of public workshops on the “Guides for the Use of Environmental Marketing Claims” (“Green Guides”).<sup>1</sup> The July 15 workshop focused on developments in “green” textile and building claims and consumers’ perception of such claims.<sup>2</sup> Organizations on the panels included the U.S. Environmental Protection Agency (“EPA”), Patagonia, Consumer Reports, the Organic Exchange, the National Association of Home Builders (“NAHB”), and the Sustainable Design Group.*

The FTC periodically reviews all of its guides, including the Green Guides, to ensure that they are consistent with the current marketplace. In November 2007, the Commission announced that it would review the Green Guides a year ahead of schedule, due to the proliferation of environmental product and packaging features and the use of new types of environmental marketing claims that are not covered by the current Green Guides ([http://www.kelleydrye.com/resource\\_center/client\\_advisories/0299](http://www.kelleydrye.com/resource_center/client_advisories/0299)).

### GREEN TEXTILE CLAIMS

The textile discussions at the recent FTC workshop focused primarily on organic cotton and bamboo claims.

### Organic Cotton

A number of the panelists felt that advertisers should look at the entire life cycle of a product. They pointed out that products often have other environmental consequences that they argued should be disclosed to avoid misleading consumers. For example, one panelist explained that the raw fiber of certain clothing may be organically grown, but the processing of the fiber to make the clothing may be harmful to the environment. Some of the panelists asserted that cotton should only be advertised as organic if both the production and the processing is certified organic. In contrast, the Green Guides currently allow advertisers to make these types of single attribute claims without disclosing other environmental consequences, as long as the representation can be substantiated and the context does not create deceptive implications.

LaRhea Pepper from the Organic Exchange explained that her organization encourages companies to blend small percentages of organic cotton into their clothing to stimulate organic cotton production. She said that many companies are using 3–5 percent blends of organic fiber in all of their products. These companies are not making organic product claims; rather, the claims are coming through in a corporate social responsibility report or on the company website, which typically describes the company’s willingness to support organic fiber agriculture.

### Bamboo

Pat Slaven spoke on behalf of Consumer Reports about deceptive advertising claims relating to bamboo. According to Ms. Slaven, many companies are

<sup>1</sup> Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260 (2007).

<sup>2</sup> See FTC, Press Release, *FTC Announces Workshop on ‘Green Guides’ and Environmental Claims for Buildings and Textiles*, at <http://www.ftc.gov/opa/2008/06/greenguides.shtm>.

interested in making claims that their products are made from bamboo, a renewable and sustainable plant. However, when consumers see these claims, they do not understand that when bamboo is used to make finished products, such as apparel or towels, it undergoes a chemical process that converts it into rayon. Rayon is the cellulose component of any plant that has undergone a chemical process.<sup>3</sup> According to Ms. Slaven and other panelists, bamboo claims should be qualified to say, for example, “100% rayon from bamboo,” rather than “100% bamboo,” to avoid misleading consumers.

### Natural

John Girman from the EPA and Allen Blakey from the Vinyl Institute both noted that many companies are advertising their products as “natural” to suggest to consumers that the product is “green.” The panelists pointed out that natural products may not always be environmentally preferable to synthetic products because there may be other environmental consequences from the manufacture, use, or disposal of the product that outweigh the benefits of being natural. The Green Guides do not currently cover “natural” claims; however, some of the comments that have been filed with the FTC on the Green Guides review have included requests that the Commission update its guides to include these types of claims.

### Patagonia’s Initiatives

Todd Copeland spoke on behalf of Patagonia about some of the green textile initiatives underway at the company. In 2005, Patagonia launched the Common Threads Recycling Program. Most recently, Patagonia launched the Footprint Chronicles, a website that shows the entire manufacturing process for some of Patagonia’s products. The website features ten products and tracks the energy used to make the products and the waste created by the products. For each supply chain, this website shows short videos or slide shows of each step. The purpose of the website is to provide traceability and transparency to consumers. Mr. Copeland also noted that Patagonia uses the global textile industry standard called Bluesign, which focuses on the use of fewer chemicals and safer chemicals, the

measure and reduction of water and air pollution, and worker and consumer safety.

### GREEN BUILDING CLAIMS

Kirsten Ritchie spoke on behalf of Gensler, the largest architectural firm in the United States. Ms. Ritchie highlighted five factors that she believes should be part of any environmental standard or certification of building products. Products should be:

- Based on transparent, scientifically sound standards;
- Substantiated by data;
- Certified by a third-party;
- Displaying a graphic that does not overstate the environmental benefits, directly or by implication; and
- Reliant on a cost-competitive environment.

Carlos Martín spoke on behalf of the National Association of Home Builders. He explained that an energy efficient home will not guarantee a specific utility bill because there are many other factors to consider, including utility rates, consumer behavior, and long-term maintenance. Therefore, NAHB recommends making a claim that says, for example, “*A may achieve X energy efficiency, which can decrease operating costs,*” but not one that says, “*A provides Y energy savings*” or “*A provides X decrease in utility bills.*”

According to John Spears from the Sustainable Design Group, consumers’ interests in green building issues rank as follows:

1. Indoor air quality
2. Energy efficiency
3. The home’s environmental footprint

John indicated that the latter issue is difficult to measure because a home is a complex system comprised of many products. Along these same lines, the moderator of the panel, James Kohm, Associate Director, Division of Enforcement at the FTC, commented that claims about a home may be akin to general claims of environmental benefit, which are currently covered by the Green Guides because they are very hard to substantiate.

<sup>3</sup> See 16 C.F.R. § 303.7(d).

According to Allen Blakey from the Vinyl Institute, studies have shown that the use phase in an extended-use product like a building will dominate in a life cycle assessment. Therefore, the chemical basis of a product can become less relevant than the organic basis of a product.

## CONCLUSION

The FTC has not established a timeline for its review of the Green Guides. While we do know that the Commission intends to hold a series of workshops on individual topics, it has not yet disclosed the number of additional workshops it will hold, the proposed timeline, or the evaluation process moving forward. Businesses will benefit from continuing to pay close attention to the developments as the Commission considers making revisions to its existing environmental marketing policies.

The attorneys in Kelley Drye & Warren's Advertising Law Practice Group have broad experience at the FTC, the offices of state attorneys general, the National Advertising Division ("NAD"), and the networks; substantive expertise in the areas of advertising, promotion marketing and privacy law, as well as consumer class action defense; and a national reputation for excellence in advertising litigation and NAD proceedings. We are available to assist clients with developing strategies to address issues contained in this Advisory.

**For more information about this  
Client Advisory, please contact:**

**WILLIAM MACLEOD**

(202) 342-8811

[wmacleod@kelleydrye.com](mailto:wmacleod@kelleydrye.com)

**CHRISTIE L. GRYMES**

(202) 342-8633

[cgrymes@kelleydrye.com](mailto:cgrymes@kelleydrye.com)

**KATIE ROGERS**

(202) 342-8677

[kr Rogers@kelleydrye.com](mailto:kr Rogers@kelleydrye.com)