

California Imposes New Restrictions on Recyclability Claims

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Last week, California's Governor signed a law that will likely impose significant limitations on companies' abilities to make recyclability claims or use the popular "chasing arrows" symbol in California.

The law states that using a "chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement" on a product or package to indicate that it is recyclable, "or otherwise directing the consumer to recycle the product or packaging" is deceptive or misleading, unless the product or package is considered recyclable pursuant to specific criteria to be developed by the state's Department of Resources Recycling and Recovery.



The Department is required to publish standards on or before January 1, 2024, specifying what sorts of material types and forms are considered recyclable. Among other things, the material type and form must be collected by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of California, and they must be sorted into defined streams for recycling processes by large volume transfer or processing facilities. The standards will be updated every five years.

Fortunately, the law provides a grace period for products or packages that are manufactured up to 18 months after the Department issues its standards. A similar 18-month grace period will be available after each five-year update, provided that a product or package met the recyclability requirements under the previous version of the standards. There are also other narrow exemptions for items that are covered by other state recycling laws, such as certain kinds of batteries and beverage containers.

The new law will create challenges for marketers because it is likely that a product that could be advertised as "recyclable" under the FTC's Green Guides will not be able to be advertised as such in California. That said, the FTC has indicated that it will initiate a review of the Green Guides in 2022. Although it's too early to predict what will come out of that review, it wouldn't be surprising if the Commission also updates its standards for "recyclable" claims. Stay tuned.