

FTC Starts Process of Updating Green Guides

Gonzalo E. Mon

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Green marketing is very much in vogue, and so is suing companies over their green marketing. If you want to avoid those suits, you should generally start by looking at the FTC's Green Guides. But a lot has changed since the Green Guides were last updated in 2012, so they don't always provide clear answers to today's questions. That may change, now that the FTC has started the process of updating the Guides.

Last week, the FTC announced that it is inviting the public to submit comments in response to a series of 31 broad questions, most of which have various sub-questions. (To save you the trouble of counting, there are 128 question marks in the document.) Here are some of the areas on which the FTC is seeking input:

- **Carbon Offsets and Climate Change:** The FTC asks whether it should revise its guidance relating to carbon offsets and whether it should address other claims related to carbon offsets or climate change, such as "net zero" or "carbon neutral," which are becoming more popular.
- **Recyclable:** The FTC asks a number of questions about "recyclable" claims, including whether marketers should be able to make those claims for products that are collected by recycling programs, but ultimately not recycled "due to market demand, budgetary constraints, or other factors." That issue has come in in cases like [this one](#).
- **Recycled:** The FTC asks whether unqualified claims about recycled content – particularly claims related to "pre-consumer" and "post-industrial" content – are widely understood by consumers, as well as whether alternative methods of substantiating recycled content claims may be appropriate.
- **Sustainable:** In 2012, the FTC declined to address "sustainable" claims. Those have gotten more popular over the past ten years, and we've seen a number of lawsuits and NAD challenges involving those claims. Click [here](#) and [here](#), for example. The FTC asks whether it's time to revisit that.

In addition to these (and many other) questions about specific types of claims, the FTC asks some bigger picture questions, including questions about how consumers perceive green claims, whether the Guides conflict with other laws or regulations, and whether the Commission will initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive or unfair environmental claims. Comments are due on February 21, 2023. Given the level of detail in the FTC's request, this is likely to be a lengthy review process that will lead to substantial changes to the Green Guides.