

Plastic Lumber Company Nailed Over "Green" Claims

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The FTC [announced](#) last week that it had reached a settlement with N.E.W. Plastics Corp., d/b/a Renew Plastics, over allegedly improper recyclability and recycled content claims. The company manufactures plastic lumber products – including its Evolve and Trimax brands – used primarily in outdoor decking and furniture. According to the FTC’s complaint, the company claimed that its Evolve brand was 100% recyclable and contained over 90% recycled high density polyethylene (ReHDPE) material. The company also advertised its Trimax brand as recyclable and made of 90% post-consumer recycled material.

The FTC alleges that the claims were deceptive because Evolve contains (at most) 58% recycled plastic, while the recycled plastic in Trimax contains (on average) less than 12% post-consumer recycled content. FTC also alleges that the products are not “recyclable” because local recycling centers where the products are sold do not accept the products due to their non-plastic content and size and weight. Furthermore, the cost of shipping the products to the manufacturer under its take-back program generally exceeded the amount consumers were paid for returning the items.

The proposed consent order prohibits the company from misrepresenting the recycled content of its products, including the amount of post-consumer recycled content. The order also prohibits advertising the products as “recyclable” unless: (1) the entire item, excluding minor incidental components, can be collected through an established recycling program; and (2) recycling facilities are available to a substantial majority (*i.e.*, more than 60%) of consumers or communities where the products are sold; otherwise, the advertising must clearly and prominently disclose the limited availability of recycling and the extent to which it is limited.

This is the first time the FTC has enforced its 60% substantial majority threshold for recycling claims. Marketers can be sure, however, that the FTC will continue to look closely at these kinds of claims.