

Is “Green” The New Gold Standard?

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Robert Frost famously declared that “Nature’s first green is gold.” Today, companies are trying to emphasize their concern for the environment, nature and conservation of resources, and in this respect, “going green” is the gold standard of company image projection and product marketing. Everyone is jumping on the “green” bandwagon, adopting catchy slogans and touting their environmentally friendly or “green” products or behavior. Even the most cynical among us can see the good in this shift within the marketplace. But what happens when it turns out that these “green” claims are exaggerated or, worse, completely false? As it turns out, that is a really good question and one that the Federal Trade Commission (FTC), state regulators and competitors are likely to be asking more and more.

“Green” terminology is ubiquitous in the marketplace. Companies are identifying themselves and their products as “recyclable,” “biodegradable,” “compostable,” “ozone-safe,” “reusable,” “eco-safe,” “eco-friendly,” “sustainable,” “natural,” “organic” and “carbon neutral.” These are great buzzwords, but businesses need to be careful in their use of “green” terminology so as not to find themselves on the wrong end of a false advertising claim or a claim for unfair or deceptive trade practices. Companies are often very cautious when it comes to scrutinizing how to advertise their products or services. Advertising campaigns are carefully vetted with market researchers and legal experts before they ever reach the public. However, it is not clear that companies have given the same careful consideration to their “green” marketing claims. It is simply too easy to drop tag lines and catchy phrases in e-mail and on websites without much thought about what such claims actually mean in a legal sense.

Here are some guidelines to think about when considering your company’s “green” marketing claims.

- Tell the truth.
- Be specific.
- Don’t overstate the benefits.
- Give prominent qualifications if they exist.
- Have substantiation for the claims you make.
- Consider third party certification or verification.
- Be careful about making implied claims.



While they are currently under review, the FTC has issued “Guides for the Use of Environmental Marketing Claims,” commonly referred to as the “Green Guides.” The Green Guides define many of the “green” terms. Businesses that use such defined terms to describe their products without being able to establish compliance with all of the elements of the definitions do so at their peril even though the Green Guides may not technically have the force of law.

In addition to the many generic “green” marketing terms, there are a number of third party environmental certifications that businesses can pursue in connection with their products and projects. For example, Green Seal is a non-profit organization that provides certifications for various products by looking at their whole lifecycle from raw materials to manufacturing to use and disposal. Energy Star, a joint program of the U.S. Department of Energy and Environmental Protection Agency, rates energy efficiency in products. The U.S. Green Building Council provides various LEED® (Leadership in Energy and Environmental Design) certifications for “green” building in major construction and renovation projects. These certifications have various levels of credibility in the marketplace. While going through a certification process does provide some third party independent verification of “green” claims, having such a certification does not necessarily insulate businesses from claims of false advertising or unfair or deceptive trade practices. These claims will depend on the totality of the circumstances, and the certification will be but one consideration. While a product may well have achieved the certification standard, the marketing claims associated with the product may still be misleading when viewed through the eyes of consumers.

Stewardship of our environmental resources is obviously an important and desirable goal. Consumers are increasingly demanding it, and it’s just the right thing to do. At Shipman & Goodwin LLP, we, in fact, work with businesses in connection with their energy needs to help them develop cost-saving strategies through creative contracting and by assisting with the selection of engineered solutions. So we understand the “green” marketplace and the benefits to the environment and the bottom line. We also understand the pitfalls and perils of making claims that inaccurately tout the benefits that follow from these various conservation, energy efficiency and good business efforts.

QUESTIONS OR ASSISTANCE?

If you have any questions about the information contained in this update, please contact Erik Ness at (860) 251-5906 or eness@goodwin.com.

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