

## *Federal Trade Commission Examines Carbon Offsets and Renewable Energy Certificates*

### INTRODUCTION

A workshop at the Federal Trade Commission held on January 8, 2008 brought official scrutiny to advertising claims relating to carbon offsets and renewable energy certificates (“RECs”). Carbon offsets are credits that represent the right to claim responsibility for greenhouse gas emission reductions and RECs represent renewable assets of electricity from wind, solar, and other renewable energy resources sold separately from electricity produced. The FTC is examining the emerging market for carbon offsets and RECs as part of an overall review of its environmental marketing guidelines (the “Green Guides”).<sup>1</sup> This review comes in light of the increased marketing of environmental product and packaging features, and the use of “green” advertising claims, such as “carbon neutral,” “sustainable,” and “bio-based,” which are not currently covered by the Green Guides.

FTC chairwoman Deborah Platt Majoras commented in her opening remarks that the workshop’s goal was to focus on the substantiation for these types of claims, especially where consumers cannot evaluate the claims themselves: “Unlike tangible goods like cars or breakfast cereal, carbon offsets and RECs don’t offer consumers a way to verify they receive the product for which they’ve paid ...

With this much uncertainty, there’s a heightened potential for deception.”

Environmental organizations, such as Environmental Resources Trust, Inc., Carbonfund.org, Center for Resource Solutions, and Terrapass, constituted most panels; the only industry representative was PepsiCo. Consumers Union was also represented and conveyed that some of the terminology, such as “carbon free” and “carbon neutral,” is confusing to consumers and should be clarified.

The hot topics discussed at the workshop included:

- The importance of “Additionality” (e.g., whether a claimed offset increased reductions beyond what would have occurred anyway);
- The potential for double counting offsets and credits; and
- Third-party certification programs.

The workshop reached no conclusions regarding how consumers perceive carbon offset and REC advertising claims or what types of data are required to substantiate such claims. None of the participants provided consumer-perception data to show how consumers actually perceive these claims, although many expressed opinions on the type of scientific support needed to back

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

them. We anticipate that this workshop will be just one of several forums in which the FTC explores these complex issues.

### I. ADDITIONALITY

The consensus among the panelists was that carbon offsets and RECs should reflect “additional” emission reductions (i.e., the claimed emission reduction would not have otherwise occurred in the ordinary course of business). According to panelists, activities that lacked additionality included those required by government mandate. For example, RECs that are produced in states with renewable portfolio standards (“RPS”), a policy that requires electricity providers to obtain a minimum percentage of their power from renewable energy resources by a certain date, would not pass the test of additionality, because renewable energy already must be produced to meet the RPS goal. The dialog demonstrated the difficulties of determining whether an activity achieves an emission reduction that is “additional” to a reduction that would have already occurred. Some argued that it is impossible to establish with certainty what would have happened in the absence of a particular project.

### II. DOUBLE COUNTING

Double counting can occur when multiple parties take credit for one carbon offset or one REC. RECs should have measures to prevent this outcome, according to the panelists. Some options available in the marketplace include tracking systems and serial numbers that allow parties to check the history of RECs and avoid double counting. However, such systems are not in place in all regions of the country and, in the absence of such tracking mechanisms,

it is difficult for consumers to determine that a particular REC or carbon offset was not claimed more than once.

### III. THIRD-PARTY CERTIFICATION

Numerous voluntary third-party certification programs have arisen to provide legitimacy and transparency to transactions and practices in the marketplace. Several organizations that participated in the workshop offer certification programs for RECs and carbon offsets. Although certification standards may slightly differ, in most cases, by purchasing certified products, an independent third party is guaranteeing that:

1. Additionality is met;
2. The credit has not been counted more than once; and
3. Full and accurate disclosures will be provided about the product on an ongoing basis.

### CONCLUSION

These complex issues surrounding carbon offsets and RECs reinforce the need for businesses to carefully craft environmental benefit advertising claims, and to review the substantiation for such claims before publishing the claims. The FTC will hold marketers responsible for the accuracy of the claims and the evidence behind them, and the Green Guides will forecast the investigations and prosecutions. We encourage marketers in this area to participate in the ongoing review of the Green Guides, and to pay close attention to developments at the Commission as it considers revisions to its environmental marketing policies.

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**FOR MORE INFORMATION**

For more information about this Client Advisory, please contact:

Bill MacLeod  
(202) 342-8811  
wmacleod@kelleydrye.com

Katherine Rogers  
(202) 342-8677  
krogers@kelleydrye.com