

Federal Trade Commission Announces Second Public Workshop on Green Packaging Claims

INTRODUCTION

The Federal Trade Commission (“FTC”) recently announced that it would be holding a second public workshop as part of its regulatory review of the Guides for the Use of Environmental Marketing Claims (the “Green Guides”).¹ This workshop will be held on April 30, 2008 and will examine developments in “green” packaging claims and consumers’ perception of such claims. Businesses are encouraged to participate in the workshop itself or through written comments, as contributions to this and future workshops will help develop policy on the use of green advertising claims and may help to guide FTC enforcement actions.

The FTC periodically reviews all of its guides, including the Green Guides. In November 2007, it announced that it would review the Green Guides one year ahead of schedule, due to the increase in environmental product and packaging features by businesses and the use of new types of “green” packaging claims, such as “sustainable,” “renewable,” and “bio-based,” which are not currently covered by the Green Guides.² In addition to these new claims, the FTC has also noticed an increase in environmental

claims based on a “cradle-to-cradle”³ philosophy, third-party certifications, and environmental seals, and has noted its interest in reviewing consumer perception and substantiation issues related to these types of claims.

WORKSHOP DISCUSSION TOPICS

The FTC has proposed the following specific topics for discussion at the upcoming workshop:

- Trends in packaging and the resulting environmental packaging claims;
- Consumer perception of the packaging terms currently covered by the Green Guides, including:
 - “Recyclable”;
 - “Recycled content”;
 - “Source reduction”;
 - “Degradable,” including “biodegradable” and “photodegradable”;
 - “Compostable”; and
 - “Refillable.”
- New green packaging claims not currently addressed in the Green Guides, including:
 - “Sustainable”;
 - “Renewable”; and

¹ See FTC, Press Release, *FTC Announces Workshop on ‘Green Guides’ and Packaging*, at <http://www.ftc.gov/opa/2008/02/greenguides.shtm>.

² Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260 (2007).

³ Cradle-to-cradle means that a product and its packaging are specifically designed to be easily and continuously recyclable.

- “Bio-based.”
- Claims that are based on third-party certification, and consumer perception of these claims;
- The impact of changes in science and technology on environmental packaging claims, including the use of new packaging materials and the use of new recycling, composting, and disposal techniques;
- The state of substantiation for environmental packaging claims; and
- The need for additional or updated FTC guidance in these areas.

CONCLUSION

Businesses will benefit from paying close attention to the developments at the FTC as it considers making revisions to its existing environmental marketing policies. Businesses that are engaged in green advertising, or are interested in marketing their products or packaging as “green” are encouraged to participate in the FTC’s review of these issues. Comments are due no later than April 11, 2008 to inform discussion at the workshop, and will continue to be accepted after the workshop until May 19, 2008.

KELLEY DRYE & WARREN LLP

ADVERTISING LAW PRACTICE

Kelley Drye’s Advertising Law Practice Group has a national reputation for excellence in advertising litigation and National Advertising Division (“NAD”) proceedings; substantive expertise in the areas of advertising, promotion marketing and privacy law, as well as consumer class action defense; broad experience at the

Federal Trade Commission (“FTC”), the offices of State Attorneys General, the NAD, and the networks; and extensive expertise in comparative advertising and trademark cases under Section 43(a) of the Lanham Act.

FOR MORE INFORMATION

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