

# Sustainability Marketing Claim Regulation and Enforcement

When crafting public statements about the sustainability or environmental safety of their products and services, companies should consider advertising rules and principles, including guidelines specifically designed to help marketers avoid making deceptive environmental marketing claims, and labeling rules for particular types of products or claims.



Here are the key questions and issues to consider:

How are environmental advertising claims regulated?



What are some of the consequences of making deceptive environmental marketing claims?



What are the main principles expressed in the FTC's Green Guides?



Are any other labeling rules applicable to sustainability claims?



Do the Green Guides provide advice on how to make specific environmental marketing claims in a non-deceptive manner, such as recyclable claims or carbon offset claims?



Are companies bound by voluntary standards?





# How are environmental advertising claims regulated?

The Federal Trade Commission (FTC) polices environmental marketing claims in advertisements, product packaging, and standalone sustainability reporting by enforcing Section 5 of the FTC Act, which prohibits “unfair or deceptive acts or practices.”

- In 2012, the FTC issued the current version of the [Green Guides](#) to help marketers avoid making deceptive environmental claims.
- All 50 states and the District of Columbia also have laws that forbid false and misleading advertising claims.



## What are the main principles expressed in the FTC’s Green Guides?

The Green Guides: (1) describe how consumers are likely to interpret particular claims and how marketers can substantiate these claims; and (2) explain how marketers can qualify claims to avoid deception.

### **Substantiation of Environmental Marketing Claims**

- The FTC has stated that advertisers should have a reasonable basis for their sustainability claims.
- The level of substantiation required for claims depends on a variety of factors, including the type of claim, the burden of developing substantiation, and the consequences of an unsupported claim.

“In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.”

16 C.F.R. § 260.2

- Marketers should clearly indicate whether marketing claims relate to a product, its packaging, or a service to avoid consumer confusion. If this is not clearly conveyed, marketers should have substantiation for all reasonably implied claims.

### **General Claims of Environmental Benefit (e.g., “Eco-Friendly”)**

- The FTC has stated that marketers should not make unqualified claims of general environmental benefit because consumer perception testing shows that such claims are likely to convey many meanings to reasonable consumers, including that a product has no negative environmental impact.
- Statements that a product is “sustainable” or “environmentally-friendly” without further information, are likely to be deceptive because it is “highly unlikely that marketers can substantiate all reasonable consumer interpretations of these claims.” 16 C.F.R. § 260.4(b).
- Any qualifications or disclosures associated with an advertising claim must be made in a clear, prominent, and understandable manner to prevent deception.

### **Comparative Claims**


- Marketers should clearly craft environmental marketing claims to avoid consumer confusion about the comparison.
- Comparative claims should plainly indicate whether a comparison relates to competitors’ products or the advertiser’s immediately preceding product.
- Where comparative claims are vague, advertisers should have substantiation for all reasonable consumer interpretations.



Do the Green Guides provide advice on how to make specific environmental marketing claims in a non-deceptive manner, such as recyclable claims or carbon offset claims?

**Yes. The Green Guides include general advice regarding consumer interpretation of specific green claims.**

- Topics covered include claims of recycled content, recyclability, compostability, renewable energy, and carbon offsets.
- The Green Guides' recommendations for certifications and seals includes specific guidance regarding the non-deceptive use of third-party certifications and seals, including the need to comply with the FTC's [Endorsement Guides](#).



What are some of the consequences of making deceptive environmental marketing claims?

Since 2010, the FTC has brought more than 45 enforcement actions against a wide variety of companies for allegedly false or misleading environmental marketing claims, including “free-of,” biodegradable, natural, and organic.

### Recent FTC Actions


- In September 2019, the Miami-based retailer Truly Organic Inc. and the company's CEO settled an FTC complaint for \$1.76 million.
  - The complaint alleged Truly Organic made deceptive claims that its products were certified organic by the US Department of Agriculture (USDA), when many of the company's products contained non-organic ingredients and none of the company's products were certified organic in compliance with the USDA's National Organic Program.

- The FTC also alleged that several of Truly Organic’s products containing animal products like honey and lactose were deceptively labeled as vegan.
- In April 2018, the FTC brought action against YOLO Colorhouse, LLC for allegedly claiming that their paint products are “VOC-free” and “emission-free.” The Company settled with the government, agreeing not to use “free of” claims unless both VOC content and emissions are at zero or trace levels.

## State-level Actions

- Florida’s Attorney General sued a restaurant Icebox Café in May 2018 for alleged violations of Florida’s Deceptive and Unfair Trade Practices Act.
  - Florida asserted that the company deceptively claimed that menu items were “sustainable,” “farm to table,” and “locally sourced,” and that the company’s marketing claims created the false impression that most, if not all, of defendant’s menu items were made with locally-sourced or sustainable products when few were made with products from local farms or nearby sources.
- In addition to applying general advertising laws to sustainability claims, some states such as California have passed laws or published specific guidance about sustainability marketing practices.
  - [California law](#) restricts the use of the terms “degradable,” “biodegradable,” and “decomposable” in reference to plastic products and there have been numerous cases involving violations of these laws.





# Are any other labeling rules applicable to sustainability claims?

**Yes. Companies should make sure that their products comply with any federal or state requirements applicable to specific categories of products. Agencies including the Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA) impose labeling requirements for particular categories of products.**

- For instance, marketing for pesticides, which include household disinfectant products, must meet specific EPA labeling requirements in addition to conforming to FTC advertising principles.
- In some cases, EPA labeling rules impose more specific requirements than FTC's guidelines for environmental marketing claims.
  - For example, while the Green Guides generally permit comparative claims that are truthful, clear and adequately substantiated, the EPA disallows non-numerical and/or comparative statements on the safety of a pesticide. This is because EPA has determined that, in the context of pesticide labeling, statements such as "contains all natural ingredients" or "among the least toxic chemicals known" are false or misleading representations that would constitute misbranding.
- As another example, organic claims must comply with USDA production and labeling requirements. Unlike the Green Guides, which do not require third-party certification of any particular claims, USDA regulations provide that a product that includes organic claims on the principal display panel or the USDA organic seal must be certified. Any food or cosmetics that include organic claims must also comply with FDA regulations for labeling and safety.

# Are companies bound by voluntary standards?

Many companies also commit to voluntary standards related to their sustainability plans, such as the New Plastics Economy Global Commitment. These standards are often intended to commit organizations to exceeding current legal standards related to environmental protection.

- By joining these voluntary commitments, companies generally signify that they should be held to a standard higher than the minimum legal requirements, thereby exposing themselves to heightened scrutiny.
- Companies should exercise care in making claims regarding such commitments, as they could be subject to negative media attention for failing to meet the goals or standards they have promised to adhere to.
- In addition, FTC guidelines indicate that it is deceptive to represent either directly or by implication that a product or service has been endorsed or certified by an independent third party when this is not the case.

## Sustainability Toolkit

 Explore the topics	Defining Sustainability	Public Policy: Climate Change	Public Policy: COVID-19	Public Policy: Environmental Justice	Public Policy: UN Sustainable Development Goals
Engaging and Advising BODs	Investor Expectations	Corporate Disclosure: The Basics	Corporate Disclosure: Standards and Initiatives	Setting Corporate Goals	M&A and JV Transactions
Green Bonds and SLLs	Carbon Markets	Marketing Claims	Crisis Management	Insurance Implications	Sustainability NGOs