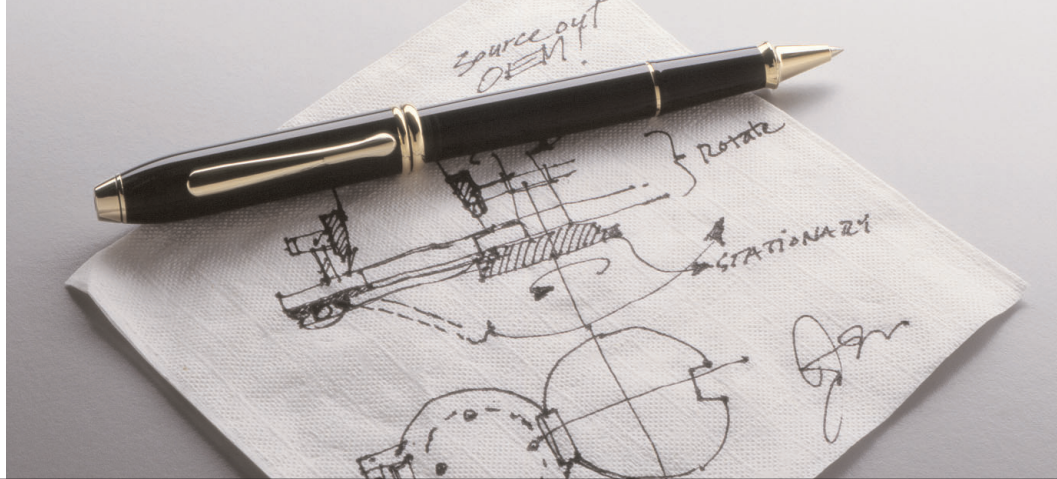




## Intellectual Property Bulletin

### FTC PROPOSES REVISED “GREEN GUIDES” AND SEEKS PUBLIC COMMENT

The Federal Trade Commission (FTC) recently proposed revisions to its Green Guides, the guidance that the agency gives to help businesses avoid making misleading environmental claims.

As “green” marketing becomes more prevalent to capture the attention of increasingly environmentally conscious consumers, the Green Guides seek to align the claims made by businesses and the expectations of consumers regarding those claims. The Green Guides include guidance on the use of product certifications and seals of approval such as “renewable energy” claims, “renewable materials” claims, and “carbon offset” claims.

#### Proposed Revisions to the Existing Guidelines

- Marketers should not make unqualified general environmental claims that a product is, for example, “environmentally friendly” or “eco-friendly” because such claims are nearly impossible to substantiate.
- Marketers should not use unqualified certifications or seals of approval.
- Qualifications should use clear, specific, and prominent language limiting the claim to particular attributes for which substantiation exists.
- The guidelines advise marketers how consumers are likely to understand certain environmental claims, including that a product is degradable, compostable, ozone-safe, recyclable, and non-toxic or free of a particular substance. For example, if a marketer claims that a product is “degradable,” it should decompose in a “reasonably short period of time” - no more than one year.
- Marketers should qualify carbon offset claims. Carbon offsets fund projects that reduce greenhouse gas emissions in one place in order to counterbalance or “offset” emissions that occur elsewhere.
- Marketers should disclose whether the emission reductions that are being offset by a consumer’s purchase will not occur within two years and to avoid advertising an offset if the activity that produces the offset is already required by law.

#### Proposed New Guidelines

- When claiming that a product is made with renewable materials, marketers should qualify the claim with specific information about the renewable materials (e.g., what it is, how it is sourced, etc.) and non-renewable materials in the product.
- When claiming that a product is made with renewable energy, marketers should not make unqualified claims if the power used to manufacture any part of the product was derived from fossil fuels.
- Marketers should specify the source of the renewable energy (e.g., wind, solar, etc.) and make distinction regarding whether less than all of the making of the product was powered with renewable energy or conventional energy offset by renewable energy certificates (REC).

The Guides do not address use of the terms “sustainable,” “natural,” and “organic” because agricultural products are currently covered by the U.S. Department of Agriculture’s National Organic Program and therefore the FTC wants to avoid duplication in guidelines.

The FTC is seeking public comments on all aspects of the proposed changes until December 10, 2010, after which it will decide which changes to make final.

#### Additional Information

##### LUIS A. CARRION

is an associate in the Intellectual Property Practice Group and can be reached at 216.363.4635 or [lcarrion@beneschlaw.com](mailto:lcarrion@beneschlaw.com).

*As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.*

UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT, UNLESS EXPRESSLY STATED OTHERWISE, ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (i) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.