

RECYCLABLE, COMPOSTABLE, BIODEGRADABLE, OH MY!



CONSIDERATIONS IN MAKING ENVIRONMENTAL MARKETING CLAIMS

With the growing interest in the environmental attributes of foodservice packaging, it's critical that companies throughout the foodservice packaging value chain understand what they can and – perhaps more importantly – cannot claim about their packaging.

REGULATING BODIES

In the United States, the **Federal Trade Commission** holds the authority to ensure that environmental marketing claims are neither unfair nor deceptive and that claims are adequately substantiated. The FTC's resource, "Guides for the Use of Environmental Marketing Claims" (also known as the "Green Guides") provides information such as:

- General principles that apply to all environmental marketing claims;
- How consumers are likely to interpret particular claims and how marketers can substantiate these claims; and
- How marketers can qualify their claims to avoid deceiving consumers.

In Canada, responsibility for marketing claims falls to the **Competition Bureau**. The Bureau, in partnership with the **Canadian Standards Association**, developed "Environmental Claims: A Guide for Industry and Advertisers." The document serves as a best practice guide to complying with provisions of various statutes that prohibit false or misleading representations in the Canadian marketplace.

REGULATORY RESOURCES

These resources are designed to help marketers make sure claims about the environmental attributes of products are truthful and non-deceptive. Claims are evaluated legally from the standpoint of the reasonable consumer who is the target of the advertisement. In the absence of consumer perception evidence, the regulator stands "in the shoes" of the consumer to determine the reasonable take-away of the claim. Broad, unqualified claims can lead consumers to believe that products have environmental properties or benefits that either



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they do not have or that cannot be adequately substantiated. Very few products actually contain all of the attributes a consumer may perceive from broad claims like “environmentally friendly,” “green” or “eco-friendly.”

WHY YOU SHOULD CARE

The FTC and Competition Bureau can and do investigate unsubstantiated or unqualified environmental marketing claims. They can and do enforce applicable laws and will file lawsuits. Fines and penalties have been and are levied against offending companies, and consent agreements typically include bans on specific claims absent substantiation, as well as training, recordkeeping and other obligations. Moreover, a typical FTC consent agreement remains in force for 20 years. State Attorneys General in the U.S., provincial authorities in Canada, competitors and consumers – and consumer class action attorneys – can also challenge advertising claims.



MADE IN THE USA/CANADA

Although not of an environmental nature, another claim increasingly used is “Made in USA.” To make sure you’re in compliance, check out [this resource](#) from the FTC. And check out [this resource](#) for guidance on “Made in Canada” claims.



PRODUCT ENDORSEMENTS

Looking to have your product endorsed by a third party because of its environmental attribute? Check out the FTC’s [“Endorsement Guides.”](#)

WHAT YOU CAN DO

If you are making claims in the U.S., you are strongly encouraged to read the full [“Green Guides.”](#) If you are making claims in Canada, review the [“Environmental Claims: A Guide for Industry and Advertisers.”](#) Another helpful resource is the International Chamber of Commerce Marketing and Advertising Commission’s [“Framework for Responsible Environmental Marketing Communications.”](#) In all of these materials, you’ll find guidance on claims that could apply particularly to foodservice packaging, such as:

- Certifications and Seals of Approval
- Compostable
- Degradable
- Free-Of
- Recyclable
- Recycled Content
- Renewable Materials
- Source Reduction

For approval seals, this [press release distributed by the FTC](#) includes a graphic illustrating a “good” versus a “bad” seal of approval. And note that even though the guidance documents do not cover all environmental claims, general principles of false advertising can and do apply even where a specific claim is not covered.



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email fpi@fpi.org | web www.fpi.org



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ENVIRONMENTAL CLAIM REMINDERS

If you are making environmental claims about your products, here are some reminders:

- **Get your colleagues educated and involved.**

Everyone has to be clear on what you can and cannot claim on existing products and new products under development. Colleagues in sales, marketing, communications, product development, etc., should all have a solid understanding of the rules related to environmental marketing claims. And don't forget about outside public relations firms!

- **Discuss your claims with your supply chain.**

Make sure your suppliers and customers are all on the same page when it comes to environmental marketing claims.

- **Seek legal counsel, whether internal or external.** Making an environmental marketing claim is making a legal claim about your products. Better to seek counsel before you make the claim than afterwards.

- **Keep in mind that the guidance on environmental marketing claims applies to all of your communications:** on-package claims, as well as any collateral material associated with those products, like press releases, sell sheets, websites, etc.

- **Consider other laws and rules related to claims (particularly at the state level).** For example, it's illegal in California to label a plastic product "biodegradable." More information may be found [here](#).

- **Have the data to back up your claim before you make the claim.** Environmental claims must be supported by "competent and reliable scientific evidence." Your legal counsel can help advise you on the type of data that meets this standard.



**THIS PACKAGE IS RECYCLABLE
CET EMBALLAGE EST RECYCLABLE
ESTE EMPAQUE ES RECICLABLE**

? NEED MORE HELP? Looking for data to help back up "recyclable" claims in the U.S.? Contact FPI. FPI members have access to reports that include data on the percentage of the U.S. population with access to recycling facilities for certain foodservice packaging products, and also whether the foodservice packaging products are truly likely to be recycled after being collected. Understanding whether a product is truly "recyclable" depends on acceptance by material recovery facilities and actual transformation of the recovered materials into another useful product, which may depend on the predominance of end markets for the recovered material.

Legal Note: FPI has developed this update to inform member companies and others of the general requirements to consider when making environmental marketing claims. However, nothing herein shall be construed as an interpretation by FPI of the FTC's and/or the Competition Bureau's guides as legal advice regarding specific claims for member company products. Users are solely responsible for the accuracy of their own environmental and other claims. FPI shall not be liable for damages of any nature, including, but not limited to, injury to persons, property or business, which may arise as a result of the use of the information presented herein.

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