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# Sustainability Marketing: How to Avoid Legal Problems from “Green” Advertising

International Sleep Products Association (ISPA) Sustainability Conference



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# Agenda

- Regulatory Landscape
- Claim Substantiation
- Green Claims & FTC's Green Guides
- Trends in Green Claims
- Questions





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# The Regulatory (and Self-Regulatory) Landscape

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# Risks of Non-Compliance

- Regulator Civil Investigative Demand or Subpoena
- Regulator Lawsuit or Administrative Action
- Class Action Plaintiff's Lawsuit
- Competitor Challenge
- Monetary Penalties and Redress
  - Civil penalties, disgorgement, restitution
  - In some cases, monetary penalties can be business-ending
- Injunctions
  - Sometimes impose higher standards than otherwise required by law
- Warning Letters
- Seizure
- Reputational Risk
- Business Disruptions

# Know the Landscape



# What is the Federal Trade Commission?

- The Federal Trade Commission (FTC) is a bipartisan federal agency tasked with:
  - Protecting consumers
  - Promoting competition
  - Preventing deceptive and unfair acts or practices
- Headed by five commissioners, but currently only four:
  - Chair Lina M. Khan
  - Commissioner Alvaro Bedoya
  - Commissioner Rebecca Kelly Slaughter
  - Commissioner Christine S. Wilson
- The FTC also:
  - Regulates advertising and marketing practices
  - Reviews consumer complaints
  - May bring allegations against marketers for claims (e.g., “green” claims) that are unsubstantiated or unqualified



*Source: FTC*



## Section 5 of the FTC Act

- **15 U.S.C. § 45** – Section 5 of the Federal Trade Commission Act (“FTC Act”) prohibits unfair and deceptive acts, practices, and statements
- Uses its authority to challenge deceptive advertising to address Green Claims
- Deception Standard:
  - Representation or omission likely to mislead consumers.
  - Examine from the perspective of a reasonable consumer.
  - Representation must be material, which means likely to affect consumer’s conduct or decision with regard to a purchase.
  - Unsubstantiated claim is considered deceptive.

# FTC's Regulatory Tools

- Warning letter
- Investigation
- Administrative or judicial process
  - Enforcement action
  - Lawsuit
  - Civil penalties
    - Temporary or permanent injunctive relief
    - Equitable monetary relief (N.B. *AMG Capital Management v. FTC*)
- Rulemaking and guidance
- Education and outreach



# State Attorneys General

- State unfair competition and consumer protection laws (“Baby FTC” and “Baby FDA” acts):
  - Can be brought by state-level or local prosecutors
    - California:
      - Sherman Food, Drug and Cosmetic Act
      - Proposition 65
      - False Advertising Law, Unfair Competition Law, Consumer Legal Remedies Act
    - New York:
      - Consumer Protection from Deceptive Acts and Practices Law
    - Florida:
      - Deceptive and Unfair Trade Practices Act

# Self-Regulation: The National Advertising Division

- National Advertising Division (NAD)
  - Voluntary self-regulatory body
  - Reviews cases on its own initiative or through a competitor or third-party challenge
  - Reviews advertising for truthfulness and accuracy (i.e., substantiation)
    - Product performance claims
    - Superiority claims
    - Scientific/technical claims
  - NAD also reviews disclosures, such as social media and influencer marketing

# NAD Cases May Be Referred to the FTC

- **Simply Gum, Inc. (Case #7079)**
  - **February 2022:** The NAD referred a case to the FTC because the advertiser elected to not participate and did not file a response.
  - *Among many others, challenged claims from the product packaging and the Internet included:*
    - “All Natural and Plastic Free”
    - “Natural”
    - “Nothing Synthetic”
  - **April 2022:** The FTC issued a resolution letter on the NAD referral, noting that:
    - “After FTC staff explained the reason for NAD’s referral and its potential consequences, the company agreed to re-engage with NAD.”
    - “Accordingly, it appears no additional FTC action is warranted at this time. Our decision is not to be construed as a determination that a violation has not occurred. The Commission reserves the right to take such further action as the public interest may require. *The FTC fully supports NAD’s self-regulatory process, and we sincerely appreciate your referral and the opportunity to continue to assist in supporting NAD.*”

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# Claim Substantiation

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# What Is a Claim?

There are three types of claims:

1. Express claims
2. Implied claims
3. Puffery



# Express Claims

- Claim is clear (expressly stated)
  - *“Waterproof, through and through”*
  - *“Our mattresses last 30 years”*
  - *“Scratch-resistant”*



# Implied Claims

- Claims made indirectly or by inference
- Pictures and video can make a claim
- Not just the most likely interpretation of an ad – can be multiple claims from one ad
  - Look at the context of an ad as a whole
  - What a reasonable person can take away
- Advertisers must have substantiation to back up all implied claims that reasonable consumers may take away from the ad, even if the advertiser does not intend to make the claim
  - Consumer perception survey
  - Regulators will use “expertise” to interpret
- May be literally true, but have a tendency to deceive a substantial portion of target audience

*“A new mattress is an investment. You can do more than hope it will serve you for years—with mattress company, you know they will.”*

# Puffing – Not Actionable

- Claims concerning general, subjective matters that cannot be objectively proved or disproved
- Statements of opinion; exaggerated statements of bluster or boast
- Statements are distinguishable from representations of specific characteristics that are measurable by research or test
- Viewed in the context of the entire ad and campaign

*“Mattress so comfortable that you feel like you’re sleeping on clouds”*

*“Fido’s favorite mattress”*

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# Substantiating Your Claims

- Must have substantiation *before* making the claim
- Retain the substantiation
- When an ad lends itself to more than one reasonable interpretation, must have substantiation for each interpretation
- An advertiser must have a “**reasonable basis**” for any verifiable claim (whether express or implied)

Regulators consider the following factors:

- **Type of claim**
- **The product**
- **The consequences of a false claim**
- **The benefits of a truthful claim**
- **Ease and cost of developing substantiation for the claim**
- **The amount of substantiation experts in the field believe is reasonable**

# What is “Greenwashing”?

- Some environmental marketing claims may be perceived as deceptive, misleading, or false when consumers could reasonably believe that either the entirety or portion of a product, its packaging, or a service is more environmentally beneficial or “green” than in actuality
- *Koh v. S.C. Johnson & Son, Inc.* (N.D. Cal. Jan. 6, 2010) (“This case arises out of allegations of so-called ‘greenwashing,’ the practice of making one’s products seem more environmentally friendly than in actuality.”)



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# FTC's Green Guides

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# What are Environmental Claims?

- Under the FTC's Green Guides, environmental claims could be:
  - General environmental benefit claims
  - Carbon offsets
  - Certifications and seals of approvals
  - Compostable
  - Degradable
  - Free-of
  - Non-toxic
  - Ozone-safe and ozone-friendly
  - Recyclable
  - Recycled content
  - Refillable
  - Made with renewable energy or renewable materials
  - Source reduction

# FTC's Green Guides: Scheduled Review

- Background Statutory Authority: FTC Act
- Guides for the Use of Environmental Marketing Claims (“Green Guides”)
  - 16 C.F.R. Part 260
  - Administrative interpretation of law; thus, does not have force and effect of law
  - First Issued: 1992
  - Last Revised: 2012
  - To be Reviewed: In 2022, the FTC will initiate review of and seek public comments on the Green Guides
    - Potential Updates: The 2012 revision did not cover “sustainable,” “organic” (outside of the USDA’s National Organic Program’s scope), and “natural” claims, which all could be explored in the 2022 review



# Environmental Claims and the FTC's Green Guides

- Under the FTC's Green Guides, among other things, advertisers should:
  - Have a “reasonable basis” for the green claims they made (e.g., level of substantiation could require a scientific basis)
  - Avoid environmental marketing claims that exaggerate or overstate the attributes, qualities, or benefits for a product/service
  - Be careful of non-specific, general words like “green” or “eco-friendly” that could be *per se* deceptive
  - Qualify broad environmental benefit claim with clear and prominent language (e.g., “Environmentally Friendly: Now Using 30% Less Packaging”)
  - Clearly identify that the claim applies to the product, the packaging, or the advertised service (in whole, in part, or with respect to a limited aspect)



# Environmental Claims (cont.)

Broad claims should be qualified.

- Identification of the specific attribute to which the claim refers
- Use of clear and prominent qualifying language
- “Bottle uses 25% less plastic than before” vs. “Eco-Friendly Package”

Generally, a recycling claim is considered deceptive marketing where a product cannot be “collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.”

- Recycling claims should be properly qualified to avoid deception on the availability of recycling programs for consumers (e.g., must be collected for recycling in a substantial majority of communities or by a substantial majority of consumers)
- Recycling claims should not misconstrue increased recyclability (e.g., claiming a product is 50% more recyclable than before where the recyclability went from 1% to 1.5%)
- Where a product is made of recyclable materials, but cannot be recycled because of its shape, size, or other attribute, it cannot feature a recycling claim
- Same applies to products containing recycled content (e.g., a product can only feature this claim when it actually contains recycled materials)

# Environmental Claims and the FTC's Green Guides

## Recycled Content

- Marketers should make recycled content claims only for materials that have been recovered or diverted from the waste stream during the manufacturing process or after consumer use.
- Marketers should qualify claims for products or packages made partly from recycled material – for example, “Made from 30% recycled material.”
- Marketers whose products contain used, reconditioned, or re-manufactured components should qualify their recycled content claims clearly and prominently to avoid deception about the components.

Source: FTC

## Made with Renewable Materials

- Unqualified claims about renewable material may imply that a product is recyclable, made with recycled content, or biodegradable. One way to minimize that risk is to identify the material used clearly and prominently, and explain why it is renewable.
- Marketers should qualify renewable materials claims unless an item is made entirely with renewable materials, except for minor and incidental components.

“Our flooring is made from 100% bamboo, which grows at the same rate, or faster, than we use it.”

“This package is made from 50% plant-based renewable materials. Because we turn fast-growing plants into bio-plastics, only half of our product is made from petroleum-based materials.”



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# **Litigation Trends: Green Guides-Related Claims**

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# Note: Legal Requirements and Greenwashing



- Cases involving green claims often include multiple claims.
- Legal requirements and positions advocated by environmental proponents are not always the same.
- Greenwashing has become a well-known term but not all greenwashing is necessarily unlawful.
- Sin of hidden trade-off
  - FTC Position: Can claim a specific environmental benefit without having to “confess” your other environmental sins
  - Exception if the attribute is related — reduced carbon but increased methane emissions
- Lesser of two evils
  - Not unlawful to advertise a specific brand has an environmental benefit, even if entire product category is viewed as environmentally undesirable

# General Environmental Benefit Claims



Several cases and challenges over the years have shown plaintiffs' willingness to battle overbroad environmental claims without regard to product category, and often implicating multiple types of claims, both specifically addressed by the green guides and outside its scope.

One recent class action challenges numerous ECOS products marketed as “non-toxic,” “safer,” made without known carcinogens, reproductive toxins, or endocrine disruptors,” “climate positive,” “Earth Friendly,” and/or “sustainable.” Here, plaintiffs not only challenge the claims as **unsubstantiated**, but raise **product safety issues** due to the presence of a certain chemical (phenoxyethanol in this case). *De Santiago et al. v. Venus Laboratories, Inc. d/b/a Earth Friendly Products, Inc.* 22-cv-841, E.D. Mo. (Aug. 2022).

Settlements are common, but any litigation is costly, even when rightly winning on dismissal, as Allbirds accomplished earlier this year in a *claim qualification success story*. The claims challenged by the plaintiff included “Sustainability Meets Style,” “Low Carbon Footprint,” “Environmentally Friendly,” “Made with Sustainable Wool,” “Reversing Climate Change ...” and “Our Sustainable Practices.” Ultimately, though, Allbirds relied on established methodologies such as the Higg Materials Sustainability Index, which although heavily criticized by the plaintiff, those criticisms were ultimately found insufficient to show that the claims were false or misleading. In addition, “Defendant does not mislead the reasonable consumer because it makes clear what is included in the carbon footprint calculation, and does not suggest that any factors are included that really are not.” *Dwyer v. Allbirds, Inc.*, No. 21-CV-5238 (CS), 2022 WL 1136799 (S.D.N.Y. Apr. 18, 2022).

# Recent NAD Cases on Environmental Claims

- ***Blueland Cleaning Products (Case #6416)*** (“An environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit.”)
  - The NAD’s Conclusions Relating to Environmental Claims:
    - Describing bottles with “forever” did not convey misleading message
    - Finding reasonable basis for biodegradable and compostable claims relating to tablet wrappers
    - Recommendations include:
      - Discontinuing Forever bottle’s unqualified recyclability claims and the claim that “every piece of packaging – from our tablet wrapper, shipping materials, our Forever Bottles (which aren’t intended for you to recycle) – is 100% recyclable”
      - Modifying recyclability claims and clarify the “Blueland’s take-back program” as the “only” way to recycle Forever bottles
      - Modifying “better for your home and our planet” claim to clearly indicate packaging’s specific environmental benefits
      - Discontinuing or modifying “bad for germs, good for earth” claim to identify specific environmental benefits of both product and packaging

# Recyclable and Biodegradable Claims

## ■ **Recyclable**

- Product can be collected, separated, or otherwise recovered from the solid waste stream and used again.
- To make unqualified claims, the item must be available for recycling in a substantial majority of communities or by a substantial majority of consumers where product sold.

## ■ **Biodegradable**

- Most common environmental case brought by FTC
- Entire product or package will decompose into elements found in nature within a reasonably short period of time after customary disposal
  - Reasonably short period of time for solid waste = one year
  - No guidance on liquid waste

## ■ **Compostable**

# Recyclable: Private Enforcement

- Numerous private challenges regarding recycling claims for all kinds of products, including plastic bags, clothing, and plastic bottles.
  - Notably, Niagara Bottling defended a challenge to the recyclability of its plastic bottles, as the judge made clear that “focus of the Green Guides is on the availability of recycling facilities, not the incidence of recycling.” *Duchimaza v. Niagara Bottling, LLC*, No. 21 CIV. 6434 (PAE), 2022 WL 3139898 (S.D.N.Y. Aug. 5, 2022).
  - 7-Eleven also successfully defeated a challenge, as the judge pointed out that if the recyclable nature of a product hinged on whether it is recycled, “a consumer of any run-of-the-mill recyclable product [could] sue the manufacturer, on the theory that the product is unlikely to be recycled?” *Curtis v. 7-Eleven, Inc.*, No. 21-CV-6079, 2022 WL 4182384 (N.D. Ill. Sept. 13, 2022).
  - Still, recycling challenges remain popular, and questions and expectations for how recyclable a product is arise in suits involving other terms like “sustainable” as well.
    - For example, H&M has been the subject of several challenges to its “conscious choice” clothing line, which H&M markets as a “sustainable choice” and a way for consumers to “close the loop” because the company prevents its textiles from going to landfill through its recycling program. See, e.g., H&M suit from July in the Southern District of New York, *Commodore v. H&M Hennes & Mauritz LP*, Docket No. 7:22-cv-06247 (S.D.N.Y. July 22, 2022), and second suit filed in the Eastern District of Missouri, *Lizama et al v. H&M Hennes & Mauritz LP*, Docket No. 4:22-cv-01170 (E.D. Mo. Nov 03, 2022)



# Recent NAD Cases on Environmental Claims

- ***Everlane ReNew Clothing (Case #7019)***

- “Qualified general environmental benefit claims are permissible as they can ‘prevent deception about the nature of the environmental benefit being asserted’ by using ‘clear and prominent qualifying language that limits the claim to a specific benefit or benefits.’”
- Reasonable basis found for certain environmental benefit claims, including:
  - “No New Plastic: There are already over 8 billion tons of plastic on our planet—and they’re not going away. So in 2018, we set out to remove virgin plastic from our entire supply chain by 2021.”
  - “Recycled Materials: This product is made from recycled plastic bottles, diverting waste from landfills and lessening dependency on fossil fuels.”
  - “To date, we have recycled over nine million plastic bottles.”
- The NAD recommended modification of a claim to further qualify third-party certification:
  - Claim: “Safer For The Environment: This product is dyed with bluesign®-approved dyes, which are safer for dyehouse workers and better for the environment”
  - Further Recommended Qualification: “Bluesign’s limited environmental impact on manufacturing practices and Everlane’s nascent incorporation of Bluesign certification in its clothing line.”

# Degradable Claims: Private Enforcement Trends

Products that are marketed as “biodegradable” or “compostable” could be targeted as a result of the presence of per- and polyfluoroalkyl substances (PFAS), which plaintiffs view two ways:

1. PFAS presents a **safety issue**, such as in a recent suit against CAVA, where plaintiffs argue that PFAS, even at extremely low levels, is harmful and unfit for human consumption. *Hamman et al v. Cava Group, Inc.*, 3:22CV00593.
2. PFAS **precludes** the ability of the marketer to call the product “biodegradable” or “compostable” at all, such as in a recent case involving NatureStar North America’s single-use tableware. Indeed, plaintiffs are arguing in this case that a product containing any PFAS at all cannot be considered “compostable” because PFAS itself persists in the environment for a very long period of time and cannot be broken down further. *Little v. NatureStar, LLC, et al.*, 1:22CV00232.

# Degradable Claims: FTC Cases

- **October 2013:** The FTC announced six enforcement actions, five specifically relating to biodegradable plastic claims:
  - *ECM Biofilms, Inc.* (additive that makes plastics biodegradable)
  - *American Plastic Manufacturing* (biodegradable plastic shopping bags)
  - *CHAMP* (biodegradable plastic golf tees)
  - *Clear Choice Housewares, Inc.* (reusable, biodegradable plastic food containers)
  - *Carnie Cap, Inc.* (“100% biodegradable” plastic rebar cap covers)
- **January 2014:** After a public comment period, the FTC announced its approved final orders for: CHAMP; Clear Choice Housewares, Inc.; and Carnie Cap, Inc.
- **May 2014:** After a public comment period, the FTC announced its approved final order for American Plastic Manufacturing

# Degradable Claims: FTC Cases

- ***ECM BioFilms, Inc. v. FTC, 851 F.3d 599 (6th Cir. 2017)*** (holding that manufacturer’s marketing materials violated Section 5 of the FTC Act and applying FTC’s Green Guides)
  - Manufacturer claimed its additive accelerated rate plastics biodegrade (e.g., within 9 months to 5 years, plastic would “fully biodegrade” in a “landfill”)
  - **Unqualified Biodegradability Claim:** Manufacturer appealed the FTC’s finding relating to “its representation that ECM plastic is ‘biodegradable’ without reference to any time frame”
    - FTC found that manufacturer needed “competent and reliable scientific evidence” to substantiate an unqualified claim (i.e., claim that simply uses “biodegradable”)
  - The Sixth Circuit:
    - Cited FTC’s 1996 Green Guides that “advised that an unqualified claim that a product is biodegradable ‘should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature ... within a reasonably short period of time after customary disposal.’”
    - Concluded there was “substantial evidence” (e.g., consumer surveys) to support the FTC’s finding that the manufacturer’s unqualified biodegradability claim conveyed an implied claim that the plastics completely biodegrades within five years

# Non-Toxic, Free-of, Renewable Materials, Made with Renewable Energy, Carbon Offsets

- **Non-Toxic Claims:** Should typically be qualified, and/or otherwise substantiate that the product is non-toxic for humans and the environment.
- **Free-of:** True, but misleading, if product still has substances that pose same or similar risk to environment
- **Renewable Materials:** Guides propose disclosing what the material is, how it is sourced, why it is renewable
- **Made with Renewable Energy:** Means no power used to manufacture product comes from fossil fuels
  - Specify source of renewable energy
- **Carbon Offsets:** Requires competent and reliable scientific evidence to calculate emissions and amount of offset
  - Must disclose if it will take two years or more to offset emissions

# Free-of Claims

Free-of claims are popular for all kinds of products, including mattresses, and include claims such as VOC-free, Chemical-free, or free-of fiberglass/flame retardants, or other similar claims.

Almost 10 years ago, the FTC conducted an enforcement sweep of several mattress brands claiming to be free of VOCs, including Relief-Mart, Essentia, and Ecobaby Organics. These cases also included claims that mattresses were 100 percent natural, or certified organic. The FTC has not conducted another enforcement sweep of this kind, but has certainly put its stake in the ground.



# Recent National Advertising Review Board Decision

- *The National Advertising Review Board (NARB) is the NAD's appellate division*
- ***Appeal of the NAD Final Decision Regarding Claims for S.C. Johnson & Son, Inc. for Windex Vinegar Glass Cleaner (NARB Panel #266)*** (advertiser appealed the NAD's recommendation to discontinue "non-toxic" claim for its product's front-label "NON-TOXIC FORMULA")
  - The NARB:
    - Determined that using the FTC's Green Guides and precedent was the "proper approach for industry self-regulation."
    - Cited the Green Guides' language on non-toxic claims: "Non-toxic claims should be clearly and prominently qualified to the extent necessary to avoid deception." (emphasis added by NARB).
    - Found the "non-toxic" claim unsupported and unqualified and recommended that it should be discontinued

# Reminder: “Green” Seals and Warning Letters

- **“Green” Seals:** Advertisers may use seals or certifications to show that their products meet an organization’s standard for some environmental benefit
- **Green Guides (16 C.F.R. § 260.6):** “A marketer’s use of the name, logo, or seal of approval of a third-party certifier or organization may be an endorsement, which should meet the criteria for endorsements provided in the FTC’s Endorsement Guides”
- **September 2015:** The FTC sent warning letters to:
  - 5 “green” certification seal providers
  - 28 businesses using the seals

## Green Certification Examples

### Good Example



If this seal is accurate, it’s **not deceptive** because it lists the specific attributes that form the basis for the product’s certification.

In the FTC’s Green Guides, Section 260.6, example 7, there is an example for when it is impractical to clearly list all applicable attributes adjacent to the seal itself.

### Bad Example



This seal **may be deceptive** because it does not convey the basis for the certification. It is highly unlikely that marketers can substantiate all the attributes implied by general environmental benefit claims. That’s why marketers should only use environmental certifications or seals that convey the basis for the certification.

Source: FTC





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# **Litigation Trends: Other Green Claims and Issues**

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# Natural and Organic

- “Natural” typically means no synthetic materials used
- “Organic” is a term typically regulated by United States Department of Agriculture, and typically applies to crops and poultry or livestock.
  - 4-tier system for organic labeling
    - 100% organic
    - “Organic” (95% organic content)
    - “Made with organic ingredients” (> 70% organic)
    - Identification of “organic \_\_\_\_\_” in ingredient statement

# Organic

- In its first “Organic” case in 2017, FTC settled with Mattress manufacturer *Moonlight*, over its numerous organic and other “green” claims. *In the Matter of Moonlight Slumber, LLC*, FTC Decision and Order, Docket No. C-4634 (Dec. 11, 2017).
  - FTC alleged that the substantial majority of the content of these mattresses is non-organic, and as to “natural” claims also present, that the latex used in the mattress is synthetic.
  - The marketer had also used several other claims that in settlement agreed to discontinue, such as “VOC-free,” “plant-based,” “natural,” the use of the company’s own “Green Safety Shield” certification, and claims that certain benefits are scientific or clinically proven.
- The Commission also approved its first monetary relief (\$1.76m) for “organic” claims in 2019, in *FTC v. Truly Organic Inc.*, Civil Action No. 19-23832-Civ-Scola, (S.D. Florida, 2019).
  - Together, these cases show that FTC is ready and willing to take action against companies making false organic claims, even those falling outside of typical USDA authority.

## Organic (cont.)

The Global Organic Textile Standard (GOTS) and Global Organic Latex Standard (GOLS) are certification parties that do defend the use of their marks, such as in *Global Standard gemeinnützige GmbH v. Serta Simmons Bedding, LLC et al*, Eastern District of Virginia Case No. 1:15-cv-01486), which resulted in a permanent injunction prohibiting unauthorized uses of the GOTS certification trademark. This suit actually led to a complaint submitted by GOTS to FTC alerting the Commission to the use of “organic” on textile products.

# “Sustainable” Claims

- *As discussed, H&M has been targeted for its marketing of clothing as a sustainable or conscious choice as a result of the company’s purported efforts to “close the loop” on the products’ lifecycle.*
- **April 2019:** The FTC sent 8 warning letters to jewelry marketers of lab-created or simulated diamonds, and several of these letters noted that there must be a “reasonable basis” for “eco-friendly” or “sustainable” claims (The letters also noted potential violations under the FTC’s Jewelry Guides.)
  - The FTC’s sample warning letter notes the significance of the Green Guides:

Finally, your advertising also touts the environmental benefits of your jewelry compared to mined diamonds. We note that marketers must have a reasonable basis for any environmental benefit claims they make for their products, and qualify any such claims adequately to avoid deception. The FTC has issued “Green Guides” providing guidance on making such claims non-deceptively. You can find information about the Green Guides at <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/green-guides>.

Please advise us by April 8, 2019 of the steps you plan to take to revise your marketing so that it follows the Jewelry Guides and therefore complies with Section 5 of the FTC Act.

*Source: FTC*

# The NAD and Recent Cases on Environmental Claims

- *The National Advertising Division (NAD) of the Better Business Bureau (BBB) National Programs provides for independent dispute resolution and self regulation of advertising issues*
- **Butterball, LLC (Case #6930)**
  - Animal rights non-profit challenged turkey producer's website and video advertisements on its products, including environmental claims within a corporate social responsibility report and press release
  - The NAD on Sustainability: The NAD cites to the Green Guides, which note that the evidence indicates that a “sustainable” claim “has no single environmental meaning.
  - The NAD's Recommendation on “Sustainable” Claims:
    - Discontinue claim of “making good food in the most responsible and sustainable way,” or modify to prevent conveying message of practices' broad environmental benefit
    - Discontinue claim of “Embracing Sustainable Practices Defines a Butterball Grower” because NAD finds no support that the farmers use sustainable practices that are widely implemented or “embraced” or their “significant efforts to reduce their impact on the environment”

# Recent NAD Cases on Environmental Claims

- ***Georgia-Pacific Consumer Products LP (Case #7018)***
  - NAD acknowledged that although the Green Guides does not address “sustainable,” their Statement of Basis and Purpose reminds advertisers to substantiate consumers’ reasonable understanding of claims as well as notes that “depending on context, ‘sustainable’ may convey a wide range of meanings”
  - Challenged Sustainability Claims on Product’s Packaging:
    - “Premium comfort made sustainably.”
    - “Premium design with the environment in mind”
  - The NAD on Sustainability: *To determine if sustainability claims convey general environmental benefits, it’s all about context...*
  - Aspirational Claims Require Substantiation: NAD found a reasonable basis for Georgia-Pacific’s goal to “plant 2 million new trees by the end of 2021” because Georgia-Pacific’s “current projections for the remainder of 2021 indicate that it is likely to fund the planting of more than 3.8 million trees...”
  - The NAD’s Conclusion: Some claims were substantiated but recommended modifications for others to avoid confusion, as well as to make claims more clearly disclosed and limited to specific environmental benefit (e.g., tree planting)

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# Questions?

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