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## FTC Considering Updates to Environmental “Green Guides”

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On December 14, 2022, the Federal Trade Commission (FTC) **announced** that it is seeking public comment “on potential updates and changes to the Green Guides for the Use of Environmental Marketing Claims” (the Notice). The purpose of the FTC’s Green Guides, first published in 1992, is to assist marketers in avoiding making environmental marketing claims that are unfair or deceptive under Section 5 of the FTC Act.

In issuing the Notice, FTC Bureau of Consumer Protection Director Samuel Levine highlighted the increasing consumer attention paid to environmental claims by marketers, saying that “Consumers are increasingly conscious of how the products they buy affect the environment, and depend on marketers’ environmental claims to be truthful.”

The Commission identified the following specific issues on which it seeks comment:

- Carbon Offsets and Climate Change: Whether historical guidance on carbon offsets and renewable energy claims sufficient or should future Guides include additional information on related claims and issues?
- The Term “Recyclable”: Whether the current thresholds are adequate, and whether recycling programs should consider whether items are ultimately recycled or merely picked up at recycling collection sites?
- The Term “Recycled Content”: Whether consumers understand “pre-consumer” and “post-industrial” content claims, and whether alternative methods of substantiating recycled content claims may be appropriate.
- The Need for Additional Guidance: Whether there is a need for additional guidance regarding claims such as “compostable,” “degradable,” “ozone-friendly,” “organic,” and “sustainable,” as well as those regarding energy use and efficiency.

The vote to issue the Notice was unanimous. Chair Lina Khan issued a separate statement noting that American consumers increasingly want to buy Green. She said, “[b]efore making a purchase, many American consumers want to know how a product contributes to climate change, or pollution, or the spread of microplastics. Businesses have noticed. Walk down the aisle at any major store – you’re likely to see packages trumpeting their low carbon footprint, their energy efficiency, or their quote-unquote ‘sustainability.’ ” Of particular interest, Chair Khan emphasized a practical aspect to all this, pointing out that many consumers believe that the plastics they set out for recycling actually end up in landfills and are not recycled at all. She called for comments and research about this possible perception and whether it should be addressed by marketing claims.

**Taking the Temperature: As Chair Khan outlined, environmental claims made by businesses in the financial sector and the broader economy are on the rise. The Commission has a history of enforcement actions under Section 5 brought based on allegedly deceptive environmental claims and it is telling that the notice links to those cases. Given this record, it is not surprising that the vote to update the FTC Green Guides was unanimous. Of course, different marketers and consumer groups are likely to hotly dispute the appropriateness of many of the specific proposals that may be reflected in the coming public comments. We will continue to report on this area as it develops further.**