

What You Can (and Can't) Say About ESG: FTC-Style

As a securities disclosure attorney, you probably spend far more time worried about the latest disclosure rules and guidance from the Securities & Exchange Commission than thinking about advertising laws enforced by the Federal Trade Commission (FTC). When it comes to ESG issues, it might be useful to know some basics because there could be times when there's an overlap. These days, company stakeholders of all types - including both investors and consumers - are interested in what companies are doing about sustainability. If you're working on investor-facing ESG disclosures, you might also want to think about whether any of the same claims are being made in marketing materials (and might potentially violate consumer protection laws). You might also want to spend a minute considering whether the company could face material risks related to potentially problematic marketing practices. When it comes to sustainability, the main source of the FTC's guidance comes in the form of their "[Green Guides](#)." My colleagues Jason Howell and Caitlin Hoerberlein recently explained these Green Guides in detail in this alert entitled "[Sustainability Advertising: Key Takeaways](#)." Here is an excerpt from that:

The Green Guides warn marketers against making broad and unqualified environmental claims. This is because, according to the FTC, such claims may convey a wide range of meanings and brands likely cannot substantiate all reasonable interpretations of these claims. For example, the Green Guides warn that a broad claim such as "eco-friendly" or "green" may convey multiple meanings to consumers. At a high level, the Green Guides caution advertisers to: - Not overstate the claimed environmental attribute or benefit; - Identify what component of the product or service the environmental claims apply to; and - Comply with guidance for various specific environmental claims, such as advertising regarding carbon offsets, the ability to compost a product or package, "non-toxic" claims, and "ozone-safe" or "ozone-friendly" claims, to name only a few. The Green Guides also reiterate general truth-in-advertising standards, including: - Ensure that the basis for any comparative claim is clear and substantiated; - Support green advertising and other technical and science-based claims with competent and reliable scientific evidence; and - Clearly and prominently disclose necessary qualifications in an understandable manner. Some states, such as [Rhode Island](#) and [Maine](#), have explicitly incorporated the Green Guides by reference into state law. Other states, such as California, have enacted statutes with their [own guidelines](#) for environmental marketing claims while also [incorporating](#) the Green Guides by reference.

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