

National Advertising Review Council and Council of BBB's

whether a product, package, or service is recyclable, “made with renewable energy,” or possesses another environmental attribute is being promoted. The Green Guides therefore play an important role in ensuring that consumers can make well-informed decisions about their choices, and that sellers fulfill their promises about the products they offer.

The Guides perform this important function by outlining general principles applicable to all environmental marketing claims, and also by providing specific guidance regarding particular green claims. We advise marketers about how reasonable consumers are likely to interpret certain claims, how marketers can substantiate these claims, and how marketers can qualify them to avoid consumer deception.

The Commission last revised the Green Guides in 1998. Twelve years later, you can’t watch television or go to the grocery store without seeing advertising claims for products that are “eco-friendly” or “green.” The sheer number of these claims is staggering, and we find them across a very broad array of products. No doubt this is a result of a heightened awareness of environmental concerns among consumers, many of whom place an increased importance on buying products and services that will cause less harm to the environment. As such, the Guides are probably more relevant to today’s advertising landscape than ever before, and that’s why the Commission’s current review is so important – and such a substantial undertaking. And here, I want to congratulate and commend the staff who did such an extraordinary job on this project: Jim Kohm, of course, and his team, including Laura Koss and Laura DeMartino

Responding to the veritable explosion of “green” claims in the marketplace, as well as evolving consumer perceptions about those claims, the Commission began its current review of the Guides a year earlier than originally planned. We conducted three public workshops to explore emerging environmental marketing claims. These workshops brought together more than 450 people representing industry, government, consumer groups, the academic community, and non-profit environmental organizations. We also asked for public comments, and received 200 in total throughout the review process.

In addition, as Jim described this morning, we commissioned an extensive consumer perception study to provide us with additional information on how consumers interpret various types of environmental claims. The consumer perception study tested general environmental claims such as “green” and “eco-friendly,” as well as claims about specific attributes such as:

- “degradable”
- “made with renewable materials”
- “made with renewable energy,” and
- “made with recycled materials.”

(2002), citing Darby & Karni, Free Competition and the Optimal Amount of Fraud, J. LAW & ECON. 67 (1973).

be misbranded and unlawful in interstate commerce under the Food Drug and Cosmetic Act – so, extending that principle to other forms of advertising is not really much of a stretch and should not impose any additional substantiation burden on the companies under order.

I also want to emphasize that the requirement in the 1994 and 1995 orders that certain disease and other health claims be approved by FDA, in fact, quite consistent with long-standing Commission policy articulated in our 1994 Food Advertising Policy Statement. Our 1994 Policy Statement made clear that the FTC generally expects unqualified health claims for foods and dietary supplements to be backed by the FDA's standard for a "significant scientific agreement" level of support. Specifically, the Policy Statement says that the Commission regards the "significant scientific agreement" standard, as set forth in the Nutrition Labeling and Education Act and the FDA's regulations, to be the principal guide to what experts in the field of diet-disease relationships would consider reasonable substantiation for an unqualified claim.⁷ And the Commission imposed the requirement that, for particular claims, clinical trials would be needed as part of the requisite substantiation as far back as the 1980s and 1990s.

Finally, I want to be clear that, even for a marketer that is required by order to have FDA pre-approval for certain claims moved forward, there is still some room for making qualified claims that would not be subject to that requirement. For example, the marketer could try to craft an advertising claim that characterizes limited scientific evidence supporting a relationship between a covered product and a particular disease. If the marketer can show – through reliable empirical

claims and what our experts tell is appropriate substantiation for the claims at issue. We believe that these provisions will facilitate order compliance by providing clearer guidance to companies about the precise levels of substantiation required going forward, depending on the type of health claim and the type of product at issue.

Endorsement Guides & *Reverb* Settlement

Finally, I'd like to return briefly to the world of "Guides" – but this time, to the Commission's Guides on Endorsement and Testimonials in Advertising. It was, coincidentally, just about one year ago that the FTC announced its final revisions to the Endorsement Guides. This was the first update since 1980 and, needless to say, the world

the example I just gave, and the Commission will carefully evaluate the relevant facts in each case.

would have been material to consumers viewing the iTunes posts in deciding whether or not to buy the games.

The Reverb settlement confirmed what we said when we announced the revised Guides – that our well-settled truth-in-advertising principles apply to new forms of online marketing. We expect – and the law demands – the same transparency in online marketing as in offline marketing. In either context, it is deceptive for an advertiser to pass itself off as an ordinary consumer promoting a product, and it is deceptive for an endorser to conceal the fact that he or she has a material financial connection to the product seller.

I think the revisions to the Commission's Endorsement Guides provide important new and expanded guidance to advertisers across the vast array of marketing media, including new media like social networks and blogs. I am confident that industry will put the new Guides into practice.

Thanks so much for your attention this afternoon. I'm happy to answer any questions you might have.