

Commonly Asked Questions (and Answers) About California's Environmental Marketing Claims Law

Q: What part of the California Code contains the Environmental Marketing Claims Law?

A: California's Environmental Representations Law is contained in the Business and Professions Code, Sections 17580 and 17580.5.

[Note: The Environmental Marketing Claims Law was created by Assembly Bill 3994 (Sher, Statutes of 1990, Chapter 1413), which contained California-specific requirements. A code reference was changed in a code maintenance amendment made by Assembly Bill 1487 (Statutes of 1991, Chapter 1091). In 1995, Senate Bill 426 (Leslie, Statutes of 1995, Chapter 642) significantly altered the requirements by deleting the California-specific requirements, and, in lieu of those, providing that it is unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claims, and requiring those claims to be consistent with claims contained in the Guides for the Use of Environmental Marketing Claims published by the Federal Trade Commission (FTC).]

Q: What specific terms are identified under California's Environmental Marketing Claims Law for which requirements have been established?

A: The law, under Section 17580(a) requires, among other things, that when the terms "recycled," "recyclable," "biodegradable," "photodegradable," or "ozone friendly" are used, there must be documentation to show whether FTC standards are applicable and the use of the terms conforms with those standards. Please see the *FTC Guides for the Use of*

Environmental Marketing Claims for an explanation of these terms. Copies of the FTC guides can be obtained by contacting:

Federal Trade Commission
Public References Branch, Room 130
6th Street and Pennsylvania Avenue NW
Washington, D.C., 20580
(202) 326-2222

The guides are also available on the World Wide Web at the following address:
<http://www.ftc.gov/bcp/gmrule/guides980427.htm>

*[Note: Effective May 1, 1998, the FTC revised its environmental marketing guides, 16 Code of Federal Regulations Part 260, which included modifications to the "compostable," "recyclable" and "recycled content" guides, which have been reflected in this document. FTC published the modifications in the Federal Register May 1, 1998 (63 FR 24239 [1998]). A copy of the Federal Register publication can be obtained by contacting the FTC at the address or telephone number listed above or through the World Wide Web at the following address:
<http://www.ftc.gov/os/1998/9804/greengui.fr1.htm>]*

The use of terms that are similar to those listed still require accountability by the user. Section 17580 of the California Business and Professions Code states that use of "such terms as *environmental choice, ecologically friendly, earth friendly, environmentally friendly, ecologically sound, environmentally sound, environmentally safe, ecologically safe, environmentally lite, green product, or any other like term*" [emphasis added] requires the user to maintain records, as described in the law, supporting the validity of the representation.

Q: Who is the lead agency for the California Environmental Marketing Claims Law?

A: No lead agency is designated by the law.

Q: Why is there no lead agency for implementing California's Environmental Marketing Claims Law?

A: This law is intended to operate like any other truth-in-advertising law, with affected parties bearing the responsibility for becoming informed of the law's requirements.

Q: Who enforces the Environmental Marketing Claims Law?

A: The law is enforced by the same law enforcement agencies that enforce other truth-in-advertising laws: the offices of some city attorneys, district attorneys, and the State attorney general.

While State agencies such as the California Integrated Waste Management Board (CIWMB) and the Department of Consumer Affairs do not actively seek out violations of the law, gross violations identified by these agencies will likely be reported to the Attorney General's Office.

Q: Where can I get information about the Environmental Marketing Claims Law?

A: The CIWMB, the lead agency for most aspects of recycling in California, provides general information about the law. Contact the Policy and Analysis Office of the CIWMB at (916) 341-6292 for general information only. The CIWMB cannot assume liability or responsibility for the use of this information generally or specifically to any particular situation or product. Manufacturers and distributors who choose to make environmental claims regarding consumer goods are advised to consult their own legal counsel. Information about compliance can also be obtained from the Consumer Law Section of the State Attorney General's Office.

Q: What general principles apply to all environmental marketing claims?

A: In addition to the Environmental Marketing Claims listed under 16 CFR 260.7 of the FTC guides, there are general principles under 260.6 that apply to all environmental marketing claims. Claims should be in accordance with all relevant provisions of these guides, not simply the provision that seems most directly applicable. The general principles can be viewed on the FTC web site and include "Qualifications and Disclosures," "Distinction between Benefits of Product and Package," "Overstatement of Environmental Attribute," and "Comparative Claims."

Q: What are the guides for using the term *recyclable*?

A: As with other terms identified in the law, representing consumer goods as *recyclable* requires the user to maintain records, as described in the law, supporting the validity of the representation.

The FTC Guides recommend that caution should be exercised in representing a consumer good, including packaging, as *recyclable*. A product or package should not be marketed as *recyclable* unless it can be collected, separated, or otherwise recovered from the solid waste stream for reuse in the manufacture or assembly of another package or product, through an established recycling program. Even though a consumer good may be fully recyclable from a *technical* standpoint, it may not be recyclable from a *practical* standpoint if the opportunities for consumers to recycle the consumer good are very limited. Qualification of the term should be made for products that (1) contain both recyclable and nonrecyclable components, (2) do not meet size or shape restrictions of recycling programs, or (3) recycling programs or collection sites are not available to a substantial majority of consumers or communities.

[Note: See the FTC web site mentioned on page 1 for examples that illustrate accordance with this guide.]

Q: What are the guides for using the term *recycled content*?

A: The FTC guides specify appropriate use of the term "*recycled content*." A recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (preconsumer), or after consumer use (postconsumer). To the extent the source of recycled content includes preconsumer material, the manufacturer or advertiser must have substantiation for concluding that the preconsumer material would otherwise have entered the solid waste stream. In asserting a recycled content claim, distinctions may be made between preconsumer and postconsumer materials. Where such distinctions are asserted, any express or implied claim about the specific preconsumer or postconsumer content of a product or package must be substantiated.

It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled material, which includes recycled raw material, as well as used, reconditioned and remanufactured components. Unqualified claims of recycled content may be made only if the entire product or package, excluding minor, incidental components, is made from recycled material. For products or packages that are only partially made of recycled material, a recycled claim should be adequately qualified to avoid consumer deception about the amount, by weight, of recycled content in the finished product or package. Additionally, for products that contain used, reconditioned or remanufactured components, a recycled claim should be adequately qualified to avoid consumer deception about the nature of such components.

[Note: The standard for recycled content may be higher for representations to California State, federal, or local governments for procurement purposes specific to the type of product. They have specific requirements set in statute or by ordinance for certain materials. These requirements were enacted to stimulate industry to expand its capacity to use materials containing recycled content by providing a

sizable and consistent demand at varying government levels.]

[Note: See the FTC web site mentioned on page 1 for examples that illustrate accordance with this guide.]

Q: What are the guides for using the terms *degradable, biodegradable, or photodegradable*?

A: The FTC guides caution that it is deceptive to misrepresent, directly or by implication, that a product or package is degradable, biodegradable, or photodegradable. An unqualified claim that a product or package is degradable, biodegradable, or photodegradable should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

Claims of degradability, biodegradability, or photodegradability should be qualified to the extent necessary to avoid consumer deception about (1) the product or package's ability to degrade in the environment where it is customarily disposed; and (2) the rate and extent of degradation.

[Note: See the FTC web site mentioned on page 1 for examples that illustrate accordance with the guide.]

Q: What are the guides for using the term *compostable*?

A: The FTC guides provide that claims of *compostability* should be qualified to show that all of the materials in the product or package will break down into usable compost in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile. An unqualified claim may be deceptive if (1) the claim misleads consumers about limited availability of municipal or institutional composting facilities, (2) the claim misleads consumers about the environmental benefit provided when the product is disposed of in a landfill, or (3) the

package can not be safely composted in a home compost pile, or device.

[Note: See the FTC web site mentioned on page 1 for examples that illustrate accordance with this guide.]

Q: What are the guides for using the term *source reduction*?

A: The FTC guides caution it is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume, or toxicity. Source reduction claims should be qualified to the extent necessary to avoid consumer deception about the amount of the source reduction and about the basis for any comparison asserted.

[Note: See the FTC web site mentioned on page 1 for examples that illustrate accordance with this guide.]

Q: What are the guides for using the term *refillable*?

A: The FTC guides caution it is deceptive to misrepresent, directly or by implication, that a package is refillable. An unqualified refillable claim should not be asserted unless a system is provided for (1) the collection and return of the package for refill, or (2) the later refill of the package by consumers with product subsequently sold in another package. A package should not be marketed with an unqualified refillable claim, if it is up to the consumer to find new ways to refill the package.

[Note: See the FTC web site mentioned on page 1 for examples that illustrate accordance with this guide.]

Q: What are the guides for using the terms *ozone safe and ozone friendly*?

A: The FTC Guides caution it is deceptive to misrepresent, directly or by implication, that a product is safe for or "friendly" to the ozone layer or the atmosphere. For example, a claim that a product does not harm the ozone layer is deceptive

if the product contains an ozone-depleting substance.

[Note: See the FTC web site mentioned on page 1 for examples that illustrate accordance with this guide.]

Q: If I use a recycling symbol indicating either *recyclable* or *recycled* without any wording on a consumer good, does the consumer good have to meet the same criteria for *recyclable* or *recycled* as if I used the actual terms?

A: The FTC Guidelines provide under "Scope of Guides" that the guidelines apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means, including marketing through digital or electronic means, such as the Internet or electronic mail.

The FTC Guidelines specifically address the use of the Society of the Plastics Industry (SPI) code (which consists of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin). Placement of this logo in a conspicuous place on the package (e.g., on the front label of the container, in close proximity to the product name and logo) constitutes a recyclability claim, whereas if the SPI code, without more, were placed in an inconspicuous location (e.g., embedded in the bottom of the container) it would not constitute a claim of recyclability.

Q: What should I do if I'm not sure whether a particular claim is consistent with California's Environmental Marketing Claims Law?

A: Consult your own attorney to determine whether your product's advertisements and/or labeling claims meet all the requirements of the law.

Excerpts From the California Business and Professions Code

Section 17580.

(a) Any person who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of such terms as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, shall maintain in written form in its records the following information and documentation supporting the validity of the representation:

- (1) The reasons why the person believes the representation to be true.
- (2) Any significant adverse environmental impacts directly associated with the production, distribution, use, and disposal of the consumer good.
- (3) Any measures that are taken by the person to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good.
- (4) Violations of any federal, state, or local permits directly associated with the production or distribution of the consumer good.
- (5) Whether or not, if applicable, the consumer good conforms with the uniform standards contained in the Federal Trade Commission Guides for Environmental Marketing Claims for the use of the terms "recycled," "recyclable," "biodegradable," "photodegradable," or "ozone friendly."

(b) Information and documentation maintained pursuant to this section shall be furnished to any member of the public upon request.

(c) For the purposes of this section, a wholesaler or retailer who does not initiate a representation by advertising or by placing the representation on a package shall not be deemed to have made the representation.

(d) It is the intent of the Legislature that the information and documentation supporting the validity of the representation maintained under this section shall be fully disclosed to the public, within the limits of all applicable laws.

Section 17580.5

(a) It is unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. For the purpose of this section, "environmental marketing claim" shall include any claim contained in the Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.

(b) It shall be a defense to any suit or complaint brought under this section that the person's environmental marketing claims conform to the standards or are consistent with the examples contained in the "Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.

Section 17581.

Any violation of this article is a misdemeanor punishable by imprisonment in the county jail not to exceed six months, or by a fine not to exceed two thousand five hundred dollars (\$2,500), or by both.