

## Client Alert

### FTC Seeks Public Comments on the Green Guides

December 15, 2022

The Federal Trade Commission (“FTC”) announced it is seeking public comment on *potentially* updating, expanding, and/or altering the Guides for the Use of Environmental Marketing Claims, known as the Green Guides (16 CFR pt 260). Yesterday, December 14, 2022, the FTC held an open Commission meeting where the Commissioners voted 4-0 to approve the publication of a Federal Register notice announcing a public comment period. The notice is expected to be published in mid-January. Once the notice is published in the Federal Register, comments will be due within sixty days.

The FTC’s Green Guides are designed to help advertisers avoid making environmental claims that may mislead consumers. 77 Fed. Reg. 62122 (Oct. 11, 2012). The Green Guides discourage unqualified environmental benefit claims, noting that they are difficult, if not impossible, to substantiate. The Green Guides were first issued in 1992 and last updated in 2012. An update to the Green Guides has been expected and desired by many as the Green Guides help businesses to make accurate environmental marketing claims and, if followed, help businesses ward off allegations of deceptive advertising claims.

At the open Commission meeting, Chairperson Khan and Commissioners Slaughter and Bedoya all made brief statements in support of a public comment period. Commissioner Wilson was unable to attend the meeting and provide remarks, but voted via proxy in support of the public comment period. Beyond those statements, the Commissioners provided little substantive detail about the updates to the Green Guides and did not provide their own opinions on potential updates. Even Chairperson Khan, who gave the only lengthy statement, highlighted just a few categories of questions that are included in the request for public comment. Those included carbon offset claims, net zero claims, alternative substantiation methods, biodegradability claims, and organic claims. Chairperson Khan has released a written statement as well. Four public participants, including two trade associations, gave statements about potential changes to the Green Guides as well.

The FTC has not issued any specific amendments or planned alterations to the Green Guides for public comment. Instead the FTC has requested generalized comments within a nineteen-question framework. The framework includes multiple questions suggesting the possibility of potentially broad modifications, and the final question asks if the FTC should consider a rulemaking related to deceptive or unfair environmental claims. The framework seeks comments regarding 1) the need for the guides, 2) their economic impact, 3) their effect on the accuracy of environmental claims, 4) their interaction with other environmental marketing regulations, and 5) evidence of consumer perception of environmental claims. Finally, the FTC provided twelve specific claim terms where it expects to receive comments, including: 1) carbon offsets and climate change, 2) compostable, 3) degradable, 4) ozone-safe, 5) recyclable (two issue areas), 6) recycled content (three issue areas), 7) energy use and efficiency, 8) organic, and 9) sustainable. Given the list, recyclability claims appear to be a focus and the notice seeks to address issues such as whether the FTC should distinguish between products that may be

collected for recycling and products that are collected *and* ultimately recycled as well as consumer understanding of unqualified recycled content claims (for example, “pre-consumer” or “post industrial”).

Crowell & Moring can offer clients counseling on specific advertising practices currently addressed in the Green Guides or assist clients in drafting comments on proposed edits to the Green Guides.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Preetha Chakrabarti**

Partner – New York

Phone: +1.212.895.4327

Email: [pchakrabarti@crowell.com](mailto:pchakrabarti@crowell.com)

**Roy A. Abernathy**

Associate – Washington, D.C.

Phone: +1.202.654.6722

Email: [rabernathy@crowell.com](mailto:rabernathy@crowell.com)