§ 260.3 General principles.

The following general principles apply to all environmental marketing claims, including those described in §§ 260.4 through 240.16. Claims should comport with all relevant provisions of these guides.

(a) Qualifications and disclosures. To prevent deceptive claims, qualifications and disclosures should be clear, prominent, and understandable. To make disclosures clear and prominent, marketers should use plain language and sufficiently large type, should place disclosures in close proximity to the qualified claim, and should avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.

(b) Distinction between benefits of product, package, and service. Unless it is clear from the context, an environmental marketing claim should specify whether it refers to the product, the product’s packaging, a service, or just to a portion of the product, package, or service. In general, if the environmental attribute applies to all but minor, incidental components of a product or package, the marketer need not qualify the claim to identify that fact. However, there may be exceptions to this general principle. For example, if a marketer makes an unqualified recyclable claim, and the presence of the incidental component significantly limits the ability to recycle the product, the claim would be deceptive.

Example 1: A plastic package containing a new shower curtain is labeled “recyclable” without further elaboration. Because the context of the claim does not make clear whether it refers to the plastic package or the shower curtain, the claim is deceptive if any part of either the package or the curtain, other than minor, incidental components, cannot be recycled.

Example 2: A soft drink bottle is labeled “recycled.” The bottle is made entirely from recycled materials, but the bottle cap is not. Because the bottle cap is a minor, incidental component of the package, the claim is not deceptive.

(c) Overstatement of environmental attribute. An environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit. Marketers should not state or imply environmental benefits if the benefits are negligible.

Example 1: An area rug is labeled “50% more recycled content than before.” The manufacturer increased the recycled content of its rug from 2% recycled fiber to 3%. Although the claim is technically true, it likely conveys the false impression that the manufacturer has increased significantly the use of recycled fiber.

Example 2: A trash bag is labeled “recyclable” without qualification. Because trash bags ordinarily are not separated from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no meaningful benefit exists.

(d) Comparative claims. Comparative environmental marketing claims should be clear to avoid consumer confusion about the comparison. Marketers should have substantiation for the comparison.

Example 1: An advertiser notes that its glass bathroom tiles contain “20% more recycled content.” Depending on the context, the claim could be a comparison either to the advertiser’s immediately preceding product or to its competitors’ products. The advertiser should have substantiation for both interpretations. Otherwise, the advertiser should make the basis for comparison clear, for example, by saying “20% more recycled content than our previous bathroom tiles.”

Example 2: An advertiser claims that “our plastic diaper liner has the most recycled content.” The diaper liner has more recycled
content, calculated as a percentage of weight, than any other on the market, although it is still well under 100%. The claim likely conveys that the product contains a significant percentage of recycled content and has significantly more recycled content than its competitors. If the advertiser cannot substantiate these messages, the claim would be deceptive.

Example 3: An advertiser claims that its packaging creates “less waste than the leading national brand.” The advertiser implemented the source reduction several years ago and supported the claim by calculating the relative solid waste contributions of the two packages. The advertiser should have substantiation that the comparison remains accurate.

Example 4: A product is advertised as “environmentally preferable.” This claim likely conveys that the product is environmentally superior to other products. Because it is highly unlikely that the marketer can substantiate the messages conveyed by this statement, this claim is deceptive. The claim would not be deceptive if the marketer accompanied it with clear and prominent language limiting the environmental superiority representation to the particular attributes for which the marketer has substantiation, provided the advertisement’s context does not imply other deceptive claims. For example, the claim “Environmentally preferable: contains 50% recycled content compared to 20% for the leading brand” would not be deceptive.

§ 260.4 General environmental benefit claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service offers a general environmental benefit.

(b) Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.

(c) Marketers can qualify general environmental benefit claims to prevent deception about the nature of the environmental benefit being asserted. To avoid deception, marketers should use clear and prominent qualifying language that limits the claim to a specific benefit or benefits. Marketers should not imply that any specific benefit is significant if it is, in fact, negligible. If a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit(s), marketers should analyze trade-offs resulting from the benefit(s) to determine if they can substantiate this claim.

(d) Even if a marketer explains, and has substantiation for, the product’s specific environmental attributes, this explanation will not adequately qualify a general environmental benefit claim if the advertisement otherwise implies deceptive claims. Therefore, marketers should ensure that the advertisement’s context does not imply deceptive environmental claims.

Example 1: The brand name “Eco-friendly” likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive. A claim such as “Eco-friendly: made with recycled materials,” would not be deceptive if: (1) The statement “made with recycled materials” is clear and prominent; (2) the marketer can substantiate that the entire product or package, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and (4) the advertisement’s context does not imply other deceptive claims.

Example 2: A marketer states that its packaging is now “Greener than our previous packaging.” The packaging weighs 15% less than previous packaging, but it is not recyclable nor has it been improved in any other material respect. The claim is deceptive because reasonable consumers likely would interpret “Greener” in this context to mean that other significant environmental aspects of the packaging also are improved over previous packaging. A claim stating “Greener than our previous packaging” accompanied by clear and prominent language such as, “We’ve reduced the weight of our packaging by 15%,” would not be deceptive, provided that reducing the packaging’s weight makes the product more environmentally beneficial overall and the advertisement’s context does not imply other deceptive claims.

Example 3: A marketer’s advertisement features a picture of a laser printer in a bird’s nest balancing on a tree branch, surrounded