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Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC - 5610 (Annex J)
Washington, DC 20580

RE: Green Guides Review, Matter No. P954501

The American Association of Advertising Agencies (“the 4A’s”) is pleased to provide feedback on proposed revisions to the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (“Green Guides”).

I. Our Industry And Who We Are

The 4A’s was established in 1917 to promote and advance the interests of our member agencies and the advertising and marketing industries overall. Today, the organization serves more than 600 member agencies across 1,200 offices, which help direct more than 85% of total U.S. advertising spend. Advertising is a significant contributor to the U.S. economy.

By providing consumers with information on products and services, advertising fuels economic growth through its ability to support competitiveness. 2021 research from the IHS Markit found that advertising contributed \$7.1 trillion in business sales activity and supported 28.5 million U.S. jobs in 2020. Advertising and its multiplier effects represent 18.5 percent of U.S. gross domestic product (GDP) and nearly one-fifth of all American jobs in 2020. Furthermore, every dollar of ad spending supported nearly \$21 of sales, on average¹.

¹ IHS Markit, 2021, The Economic Impact of Advertising on the US Economy 2018 – 2026 , https://aro36532638-my.sharepoint.com/:b:/g/personal/amelendez_capitolcounsel_com/EV5UvewoC1dGs9ZSTvf3eZwB_MjplWrDU MWn381-vH3G9w?e=ZkhRKS.

In addition to directly contributing to the U.S. economy through direct spending, the advertising industry itself is also a major U.S. employer, with over 316,800 American professionals employed in advertising, promotions, and marketing management positions at a median pay of \$141,490 per year in May 2020².

Digital advertising is uniquely important because it is the financial foundation of most of the free services that people across the U.S. and the world utilize at little or no cost. News sites, online social networks, email services, weather websites, and video and entertainment platforms are primarily funded through online advertising. Collaborating closely with their nationwide and global advertiser clients, 4A's members are a critical part of the advertising ecosystem, serving as the creative visionaries and business strategists behind how ads resonate with and effectively reach consumers.

II. General Issues

First issued in 1992, the Green Guides have served as invaluable guideposts in helping U.S. companies understand the rules of the road when it comes to making environmental marketing claims. But in the decade since their last update in 2012, the urgency of global climate concerns have evolved in such a way as to put new pressures and expectations on companies to address these concerns and communicate about their own action. And while companies will perennially be dealing with variance and shifting consumer expectations in this area, they are increasingly in need of clear guidance from authorities as to how they can talk about these efforts.

Advertising can play a positive role in driving sustainable consumer behaviors, and the opportunity is significant. A recent report by global agency holding company WPP highlighted the following:

Driving behavioral change at scale can deliver real impact. The PCC (People, Planet, Clients report) estimates that behavioral change could reduce global emissions by 40 – 70% by 2050. And consumers want to make changes – in a survey conducted by Wunderman Thompson, 85% of GenZ respondents said they believe people must be prepared to rethink the way they live and spend to tackle climate change. In the same survey, 70% of respondents indicated that they were prepared to make dramatic changes to their lifestyle if it would help tackle climate change³.

² Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Advertising, Promotions, and Marketing Managers, at <https://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm>

³ <https://www.wpp.com/-/media/project/wpp/files/sustainability/2023/sustainability-report-2022/wpp-sustainability-report.pdf?la=en>

But for advertisers to achieve these kinds of scalable gains in driving consumer behavioral change, they're going to need a lot more clarity and guidance into how they should be communicating transparently with consumers.

A. The Green Guides Benefit Businesses And Consumers

The last decade has seen enormous growth in consumer interest in supporting companies working to offer more sustainable and environmentally friendly products and services⁴. And while it's obviously a net positive to see this growth of interest from consumers and response from companies, it has led to new concerns about how companies communicate these efforts to consumers in a fair and transparent way. Recent research indicates that consumers are confused about some environmental claims, and that better standardization of terms could help⁵.

As businesses work harder to make their supply chains more sustainable and improve their carbon footprint, their efforts to communicate these efforts to consumers can be curtailed by unclear guidance via a new development known as "greenhushing":

"Firms engage in greenhushing when they are actively working to reduce their carbon footprint, produce less waste, manufacture less plastic, and build greater sustainability, but they don't tell anyone about their efforts."⁶

The increasing amount of scrutiny placed on companies' environmental claims has made some extremely reluctant to communicate these efforts, due to fears of backlash and accusations of greenwashing. And while this issue on first impression might seem trivial given the alternative of greenwashing, it's worth remembering that companies look to other companies for inspiration and guidance on best practices and processes. The shared benefit of companies learning from each other and improving their own sustainability efforts via public communications cannot be understated. Clear guidance and standardization of terms in the updated Green Guides would give companies more confidence in making environmental claims, ultimately a benefit to both companies and consumers⁷.

⁴

<https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets>

⁵ <https://www.thedrum.com/news/2022/10/20/confusing-environmental-claims-are-damaging-brand-reputations-says-asa-research>

⁶ <https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/greenhushing-why-some-firms-keep-quiet-about-esg/>

⁷ Examples of best practices in this area would be very beneficial to companies.

B. Cost Considerations

While compliance with the Green Guides is fundamentally a cost of doing business for advertising agencies and their clients, there are some very recent developments in other jurisdictions that could have a significant impact on costs if these approaches were to be incorporated into the updated Green Guides.

In March of 2023, the European Commission adopted proposed rules called the “Green Claims Directive⁸.” The proposed rules will require brands to back-up any eco-marketing claims with robust and verified evidence, or risk fines of at least 4 percent of revenue. The Directive introduces several new requirements including obtaining a certificate of conformity for green claims; green claims will have to be accompanied by information on their substantiation; green claims can only cover environmental impacts that are “significant” for the product or business; and much more.

Despite the extensive list of new requirements for companies, the European Commission has remained somewhat vague on the technical details and standards that will be required to make credible claims, causing companies to become even more unsure about what can be said in some cases.

If some of the new proposed requirements of the EU’s Green Claims Directive were adopted in the revised Green Guides (i.e. third-party verification of claims, etc.), it will result in higher costs for companies. And while larger companies might be able to better absorb these costs, it will introduce meaningful new burdens on mid-size and small companies. Additionally, given its current state of regulatory complexity and its lack of clear guidance in application, proposed rules like those in the EU’s Green Claims Directive in the U.S. would require many companies to seek outside legal counsel for interpretation, an additional cost to their already tight budgets.

For many small and mid-size companies, one of the biggest challenges to compliance is trying to understand what they are being asked to do. To the extent that the updated Green Guides can be reimagined in a clear, digestible format with the incorporation of copious best practices, it would be very helpful to these small and mid-size companies.

C. Consumer Perception Of Environmental Claims

⁸ https://environment.ec.europa.eu/topics/circular-economy/green-claims_en

The past decade has seen a growing proliferation of studies seeking to establish how consumers view and internalize environmental marketing claims, as well as how consumers feel about sustainability and environmental issues in general. Several 4A's member companies are actively engaged in producing best-in-class research in this area. Some examples include:

- **Edelman Trust Barometer⁹** - For more than 20 years, Edelman has studied the influence of trust across society — government, media, business, and NGOs — to shape conversation, drive results and earn action. In late 2022, Edelman released an extensive special report on “Trust And Climate Change.¹⁰” The report covers how consumers feel about how governments and companies should be responding to climate change issues, among other topics.
- **Kantar Sustainability Sector Index¹¹** - Released in 2022, the Kantar Sustainable Sector Index seeks to help companies achieve the challenge of converting corporate sustainability strategies into clear brand actions that connect with consumers. The Index is based on more than 33,000 interviews with consumers in 38 sectors across 32 countries.
- **McCann Worldgroup Truth Central¹²** - The McCann Worldgroup Truth Central's global study has many provocative insights into people's behavior and opinions on sustainability; it offers up actionable counsel for brands to bridge the divide between what people say and what they do.

In addition to the above, there has been a growing body of research looking at how consumers specifically perceive environmental marketing claims, including:

- **Advertising Standards Authority UK (ASA) Research On Advertising Claims¹³** - Recent research from the ASA takes a closer look at how consumers perceive certain claims around carbon neutral, net zero, etc.
- **Deloitte Study On Consumers And Sustainability¹⁴** - Now in its third year, the Deloitte study on consumers and sustainability asks consumers key questions such as “what

⁹ <https://www.edelman.com/trust/trust-barometer>

¹⁰ <https://www.edelman.com/trust/2022-trust-barometer/special-report-trust-climate>

¹¹ <https://www.kantar.com/campaigns/sustainability-sector-index>

¹² <https://www.interpublic.com/about/collective-intelligence/the-truth-about-sustainability-and-actions-for-a-hopeful-future/>

¹³ <https://www.asa.org.uk/news/new-research-into-understanding-of-environmental-claims.html>

¹⁴ <https://www2.deloitte.com/uk/en/pages/consumer-business/articles/sustainable-consumer.html>

consumers consider a sustainable product” and “how do consumer attitudes and behaviors around sustainability vary by type of product or service.”

D. Modifications To The Green Guides That Could Benefit Business

There are several modifications that could be made to the Green Guides that would aid companies in their understanding and compliance. Two areas where companies could use more guidance are in the specific area of aspirational claims, and in the more general area of offering companies more detailed guidance via training materials.

The issue of aspirational claims has increasingly been an area of focus by self-regulatory bodies and courts in the U.S and around the world¹⁵. Aspirational claims are essentially where a company makes a claim that might have some degree of variability based on future conditions, but at the time the claim is being made a company is working towards achievement of the claim. The issue of aspirational claims has increasingly come into focus in the environmental marketing space, as many initiatives such as carbon footprint reductions are long-term endeavors that require ongoing adjustments.

Given the long-term nature of many of the environmental and sustainability initiatives being undertaken by companies, the traditional metric of substantiation for claims comes into question, as the long-term and evolving variables involved can make it very difficult to achieve verifiable precision when it comes to substantiation.

With a growing schism between how courts¹⁶ and self-regulatory bodies are treating the issue of aspirational claims, companies would greatly benefit from clear guidance from the FTC as to how they should be thinking about aspirational claims, and what they should be doing to ensure that they are compliant.

In addition to the issue of aspirational claims, companies would also greatly benefit from an updated Green Guides that provides more granular guidance into how companies should be thinking about environmental marketing claims by business categorization, i.e. automotive, consumer packaged goods, etc. Different industries have different parameters when it comes to these issues (i.e. automotive requires a complex supply chain, etc.).

¹⁵

<https://www.mondaq.com/unitedstates/advertising-marketing--branding/1285550/nad-finds-advertiser-cant-support-aspirational-net-zero-claims>

¹⁶ <https://www.lexology.com/library/detail.aspx?g=b4caa2a2-4718-4580-b58e-a0291a798777>

E. Claims Not Currently Covered In The Guides

Given the rapid speed at which new areas of focus and new business models are evolving in the sustainability space, companies would overall prefer a principles-based approach by the FTC that can be used by companies to help evaluate claims in the gaps between the Green Guides refreshes.

However, the Green Guides current focus on looking at specific claims that are most commonly used is still a very useful approach for companies. Companies could use more guidance from the FTC around the usage of newer claims such as “carbon-friendly”, “green”, and “sustainably-sourced.”

F. Overlap With Or Conflict With Other Laws

For many companies that operate internationally, the growing patchwork of laws and regulations in the environmental space is becoming an increasingly heavy compliance burden. As mentioned in the above section II.B, the EU’s recent Green Claims Directive is a sweeping new law addressing the issue of environmental claims in the EU.

To the extent that the FTC can seek to create a baseline that harmonizes with best practices in global environmental claims regulation, this streamlining of regulation would be a great benefit to U.S. companies that operate internationally. However, given some of the provisions of the new EU Green Claims Directive that would introduce new costs, as well as unclear liabilities, the FTC should seek to find a balance in international harmonization of laws that codifies best practices as the floor, while simultaneously not overly restricting an evolving space.

III. Specific Claims

The 4A’s appreciates the ability to provide feedback on issues and opportunities for improvements regarding specific claims. Since the Green Guides were last updated in 2012, the use of several of the specific claims highlighted in the 2012 update has grown dramatically. For many of these specific claims, companies could greatly benefit from more clarity from the FTC as to how these claims can be used to aid in transparency to consumers.

A. Carbon Offsets And Climate Change

In the current version of the Green Guides, the Guides refer to Carbon Offsets in Section 260.5 as follows:

- (a) *Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emissions reductions and to ensure that they do not sell the same reduction more than one time.*
- (b) *It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emissions reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.*
- (c) *It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.*

The growth of the carbon offsets market in the last decade has been significant, and it has not been without its challenges¹⁷. While carbon offsets will play a role in many company's efforts going forward, it's worth noting that for many companies, there is increasingly an acknowledgement that the focus needs to be on carbon reduction first, and any focus on offsets should only occur after as much carbon reduction as possible has taken place¹⁸.

Given some of the recent turmoil in the carbon offsets market, companies could use more guidance as to what they should be thinking about when utilizing carbon offsets, and what they should be aware of when communicating their use of carbon offsets to consumers. Despite some of the recent negative press, there is still a valid role for carbon offsets when appropriately validated with legitimate oversight. While it would likely be difficult to set a specific framework for offsets as they can vary so much due to their specific nature, a recent piece by MIT Sloan Professor John Sterman suggested the following framework¹⁹:

“Sterman calls his framework AVID+. To truly offset their emissions, companies must ensure any offsets they buy are Additional, Verifiable, Immediate, and Durable — and, if all four of these requirements are met, then firms should favor offsets that also help meet other societal goals such as creating good jobs, improving health, and fostering social justice (the “plus” of AVID+).²⁰”

¹⁷ <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>

¹⁸ Many 4A's members work with Science Based Targets initiative (SBTi) which requires that its members set targets based on emission reductions through direct action within their own boundaries or their value chains. Offsets are only considered to be an option for companies wanting to finance additional emission reductions beyond their science-based target (SBT) or net-zero target.

¹⁹ This is just one example of a possible evaluation framework, there are many others being proposed.

²⁰ <https://mitsloan.mit.edu/ideas-made-to-matter/how-to-choose-carbon-offsets-actually-cut-emissions>

While it's likely to be a topic of much debate, companies would greatly benefit from having some kind of framework to utilize when evaluating possible carbon offset projects. The greater the guidance the FTC can offer, the better companies can do when not only ensuring they're utilizing the best possible carbon offsets that will have real impact, but also in ensuring they are transparently conveying any benefit of these offsets to consumers. In addition to the above, it's also worth considering that there is likely some confusion in the marketplace as to the difference between a carbon credit and a carbon offset²¹. A clarification between the two would be beneficial for many companies.

The FTC has asked for feedback as to whether or not consumers are confused by the emergence of new terms such as "net zero" "low carbon" "carbon negative", etc²². Given the relatively new usage of these terms and the varying usage of them by companies and consumers, a generalized terminology glossary from the FTC would be very beneficial to companies. Due to the timeline at which these various terminologies are emerging and evolving, it would be helpful to have them updated on a relatively short interval cycle. In addition to a terminology glossary, it would be helpful to have the FTC give companies more guidance as to how they should go about substantiating these types of claims.

The term "climate change" is used so broadly in so many different contexts, it's increasingly difficult to pinpoint a standard usage of the term. To the extent that the FTC seeks to identify any "deceptive" use of the term, companies could use further clarification from the FTC as to how companies should be thinking about the phrase both in isolation and in context.

B. Energy Use/Energy Efficiency

As the current iteration of the Green Guides does not contain guidance around the specific claims of energy use/energy efficiency, this is a new topic for the Green Guides. The question of energy use/energy efficiency is a growing one, particularly in light of the push by the Administration to electrify much of America's transportation and infrastructure sectors²³.

²¹ <https://carboncredits.com/carbon-credits-vs-carbon-offsets-whats-the-difference/>

²² Note that many terms in the climate space are contained in the United Nations Framework Convention On Climate Change (UNFCCC), and to the extent where terms can be harmonized internationally, it would be a benefit to companies operating around the world - https://unfccc.int/resource/cd_roms/na1/ghg_inventories/english/8_glossary/Glossary.htm#L

²³

<https://www.whitehouse.gov/ostp/news-updates/2022/12/14/fact-sheet-new-innovation-agenda-will-electrify-homes-businesses-and-transportation-to-lower-energy-bills-and-achieve-climate-goals/>

Fortunately, in many areas, the use of reliable benchmarks and standards in this area do not have to start from scratch. The Environmental Protection Agency (EPA) has been working with companies for decades to help establish these types of reliable benchmarks and standards, including²⁴:

- **EPA's Energy Star Program²⁵** - Energy Star is a long-standing public-private partnership that works with industry to set energy efficiency specifications that companies can meet and then utilize Energy Star's voluntary labeling program. The program has been around since 1992, and in that time, it has helped American families and businesses save 5 trillion kilowatt-hours of electricity, avoid more than \$500 billion in energy costs, and achieve 4 billion metric tons of greenhouse gas reductions. The EPA works with a broad spectrum of partners to establish these energy efficiency specifications, including building owners and managers, congregations, energy rating companies, energy services companies, industrial manufacturers, industry associations, non-profit energy programs, product manufacturers, residential builders and developers, retailers, small businesses, schools, state and local governments, and utility companies.
- **EPA Updated Fuel Economy Labeling²⁶** - The EPA's updated fuel economy labeling contains several key data points for consumers looking to understand the fuel economy performance of cars, including vehicle technology and fuel, fuel economy, comparing fuel economy to other vehicles, save/spend comparison over five years compared to average vehicle, fuel consumption rate, estimated annual fuel cost, fuel economy and greenhouse gas rating, CO2 emissions information, smog rating, details in fine print, a QR code, driving range, and charge time. Note that the charge time is based on the EPA's standard for how long it would take to charge a fully empty battery using a 240-volt electrical service.

Given that so much great work has been done by EPA and the Department of Energy (DOE) thus far in collaborating with much of industry to establish benchmarks and standards around energy efficiency for many products, it would be helpful if the FTC were to consider and build upon this work when considering any new guidance around energy use/energy efficiency claims in marketing. And where there may be current gaps in the work done thus far by the EPA and the DOE, as well as other federal, state and local bodies²⁷, it would be helpful if the FTC were to

²⁴ The Department of Energy's Office of Energy Efficiency & Renewable Energy also offers guidance on energy efficiency across a wide spectrum of industries.

²⁵ https://www.energystar.gov/about/how_energy_star_works/history

²⁶ <https://www.epa.gov/fueleconomy/interactive-version-electric-vehicle-label>

²⁷ Additionally, there's some good work being done in the private sector worth reviewing, for example, <https://globalelectronicscouncil.org/>

provide companies with a general framework as to how to think about energy use/energy efficiency claims.

C. Sustainable

When the FTC last updated the Green Guides in 2012, it was determined that the FTC lacked a basis to give specific guidance on how consumers interpret “sustainable” claims. Since that time, the use of the term “sustainable” has decidedly grown in a multitude of contexts, not just in the context of environmental claims. At its most basic level, the term “sustainable²⁸” is defined by Merriam-Webster as:

- 1.) *Capable of being sustained;*
- 2.) *a. Of, relating to, or being a method of harvesting or using a resource so that the resource is not depleted or permanently damaged;*
b. Of, or relating to a lifestyle involving the use of sustainable methods.

Given the broadness of the definition, the use of the word sustainable can mean different things to different parties all operating from a place of a reasonable company and/or consumer. With that variance in mind, companies would benefit from more granular guidance from the FTC as to how to think about the use of the term sustainable in the context of environmental marketing. There’s no shortage of research across a broad spectrum of different industries showing that consumers can be confused by the use of the term “sustainable”.²⁹ Companies could use more granular best practices and guidance in understanding transparent ways in communicating with consumers when using the term “sustainable”. It would be helpful for the FTC to think about providing guidance in terms of channel - i.e., sustainable production, sustainable sourcing, sustainable consumption, etc.

IV. Conclusion

With the first issuance of the Green Guides in 1992, it’s clear that the FTC has long understood the importance of ensuring that environmental claims are conveyed to consumers fairly and transparently. But in the over thirty years since then, much has changed and evolved - the U.N.’s IPCC (Intergovernmental Panel on Climate Change) reports have become increasingly

²⁸ [Sustainable Definition & Meaning - Merriam-Webster](#)

²⁹ <https://www.meatpoultry.com/articles/27727-consumers-confused-about-sustainability-definitions/>;
<https://www.packaging-gateway.com/features/consumer-confusion-around-sustainable-packaging/>;
<https://www.seafoodsource.com/news/premium/foodservice-retail/us-consumers-remain-confused-about-what-sustainable-means>

more alarming,³⁰ and consumers are more aware than ever about how their choices in products and services can help to move the needle on environmental challenges. As companies continue to work to improve their own environmental challenges across a complex array of challenges (i.e., supply chain sourcing, etc.), they have the layered challenge of ensuring that they're communicating these improvements and challenges in a transparent way to consumers.

The 4A's appreciates this opportunity to provide feedback on possible updates to the FTC Green Guides. The Green Guides are an important source of guidance for advertising agencies wanting to ensure that, on behalf of their clients, they're conveying any environmental claims in a fair and transparent manner to consumers.

The 4A's thanks the FTC for their consideration of these comments.

Sincerely,



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³⁰ <https://www.ipcc.ch/report/ar6/syr/>