

Federal Trade Commission's Workshop on Recyclable Claims

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Key Takeaways

- **What's happening?** On May 23, 2023, the Federal Trade Commission (FTC) hosted a public workshop – “Talking Trash at the FTC: Recyclable Claims and the Green Guides” – to discuss “recyclable” advertising claims as part of its [regulatory review](#) of its Guides for the Use of Environmental Marketing Claims (Green Guides).
- **What's the background?** The FTC initiated its review of the Green Guides in late 2022, when it sought comment on several topics, such as the enforceability of the Green Guides, recyclability claims, and recycled content claims. The public workshop is the latest in the FTC's efforts to update the Green Guides.

The FTC's Recyclability Workshop

The FTC's [workshop](#) consisted of three different panels discussing three main topics related to “recyclable” advertising:

- the current state of the recycling market and recycling-related claims
- consumer perception of recyclable claims
- the future of the Green Guides concerning “recyclable” claims

Key Themes From the Workshop

The workshop's discussion focused predominantly on recyclability claims related to plastic. Some of the key topics discussed include:

- **Confusion over the use of resin identification codes (RICs).** The FTC staff sought input on general consumer perception of the use of RICs and whether the FTC should issue guidance regarding their use. Panelists generally agreed that the use of RICs is a source of consumer confusion but emphasized that they are an important tool for recyclers and were never intended for consumer use.
- **Advanced recycling.** Panelists on all three panels stated that advanced recycling is still in its infancy, and some expressed an opinion that it should not be considered recycling if it is used to create fuel. Some panelists suggested that industry should be able to substantiate that advanced recycling actually supports a “recyclable” claim in that there are end markets and it meets the current 60% threshold in the Green Guides for unqualified recyclability claims.
- **Access to recycling threshold.** The FTC staff sought input from panelists on whether access to recycling is the appropriate threshold for making unqualified recyclability claims and, if so, whether the current 60% threshold is sufficient. Many panelists expressed a desire for FTC to incorporate end markets into the access to recycling threshold.
- **Qualified claims.** In order to prevent a claim from being deceptive, marketers qualify a claim with additional information about the claim. Qualifying information can, for example, inform consumers that a recyclability claim applies only to the packaging and not the product. A majority of panelists said that the FTC should provide clear guidance on how marketers use qualified claims. Some panelists suggested that qualified claims be universal so that if a consumer reads a qualified claim, then they know how to interpret it. Other panelists suggested that marketers should have to earn the right to use a qualified claim through the presentation of data.
- **Capable of being recycled.** There was robust discussion about what “recyclable” means. A few panelists noted that consumers perceive “recyclable” to mean a product is collected, sorted, and that it has end markets where the product can become something new. One panelist suggested that recyclability should turn on whether the products adhere to predetermined design guides. Overall, there was a lack of consensus on whether the claim “recyclable” includes theoretically or technically recyclable products.
- **Rulemaking.** Panelists were divided on whether the FTC should engage in a rulemaking. One panelist expressed the need for standards that companies can use to test the recyclability of their products prior to making recyclability claims, while another panelist expressed concern over a formal rule because it would be more difficult to change and it would not allow for the expected advance in recycling technology.

Looking Forward

Given increased litigation surrounding green marketing claims, including recyclability claims, it will be important for marketers and companies to track the FTC's updates to the Green Guides. If this refresh is similar to the last regulatory review, then we expect the FTC to hold additional public workshops and provide more opportunities for stakeholder involvement. Companies should use the opportunities to educate the FTC on consumer perception data regarding different claims. The presence and participation of numerous state and federal enforcement personnel at the FTC workshop suggest that recyclability claims will be a focus of future enforcement efforts regardless of what form the Green Guide revisions take.

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