



Canada's New Environmental Claims Guidelines



Putting the Guide in the context of False or Misleading Advertising

Advertising Standards Canada (ASC)

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Outline of Discussion Topics



Section

Topic

- I – *Who we are*
- II – *The issue*
- III – *Our role*
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- V – *The Guide*
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Section I

Who We Are



Who We Are



Competition Bureau (“Bureau”)

- Independent agency
- **Mandate** – contribute to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice
- Headed by Commissioner of Competition, Sheridan Scott

Fair Business Practices Branch (“FBP”)

- Administers and enforces provisions of *Competition Act* relating to false or misleading representations and deceptive marketing practices
- Also responsible for administering and enforcing *Consumer Packaging & Labelling Act (non-food products)*, *Textile Labelling Act* & *Precious Metals Marking Act*
- Headed by Andrea Rosen, Deputy Commissioner of Competition





Section II

The Issue



The Issue – Confusion, Uncertainty, Skepticism

Current Market Situation:

- Proliferation of green advertising (good and bad) across all sectors of economy
- *Niche marketing* has evolved into *mass-marketing*
- Consumers having difficulty navigating through wide range of claims

Issue: A lack of common understanding and standardization regarding use of environmental marketing terms

Result:

- (1) Consumer confusion that risks becoming skepticism
- (2) Uncertainty from legitimate businesses with innovative green products/services wanting to make proper environmental claims



The Issue – Risks of False or Misleading Claims

Risk to Consumers:

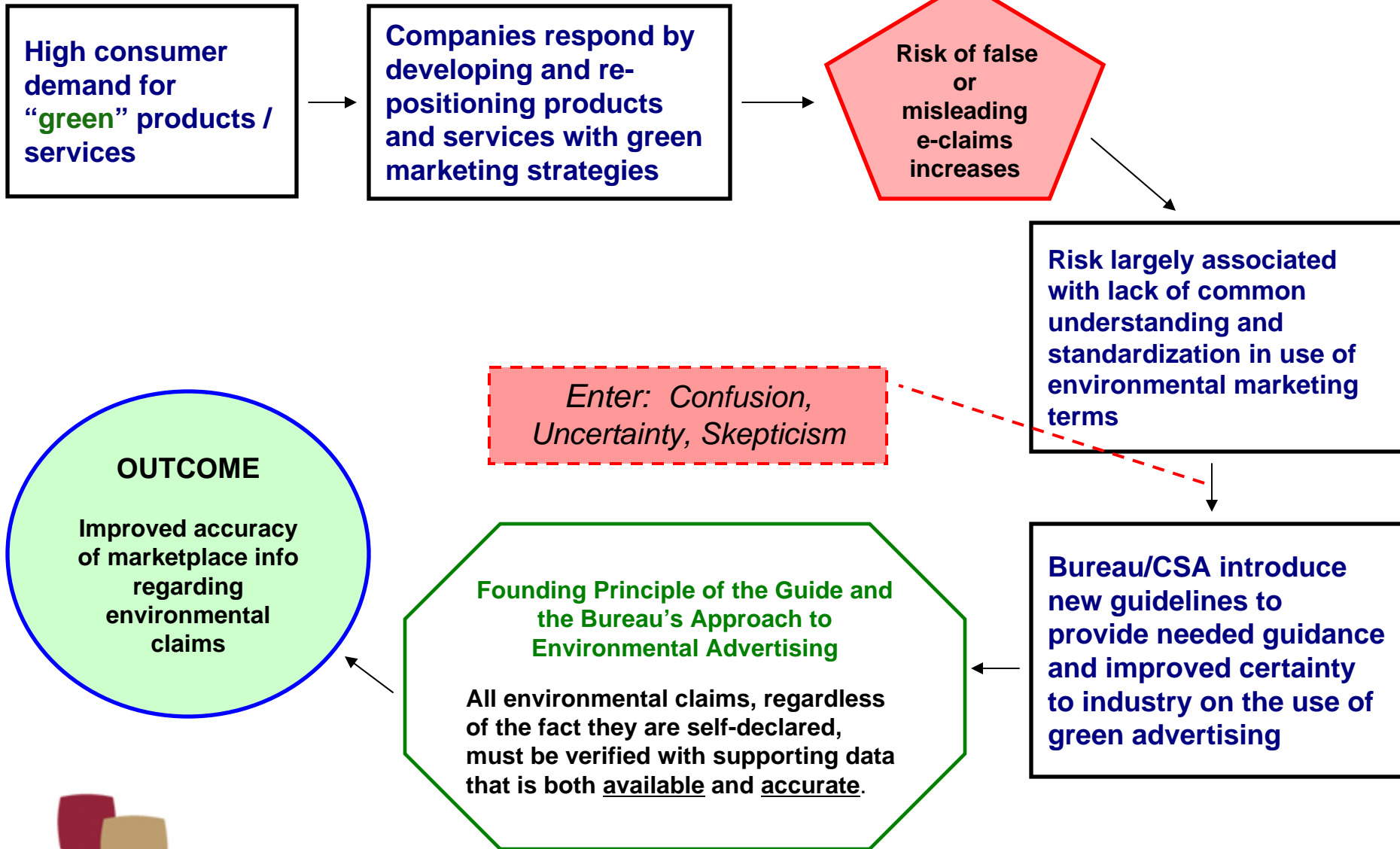
- Confusion could lead to consumers making poor purchase decisions
 - E.g. buying a product they think will benefit the environment, when it actually doesn't

Risk to Businesses:

- Damage to a brand or company's reputation
- Loss of consumer confidence in green marketing (i.e. skepticism)
 - 75% of Canadians in a recent survey said they believe environmental claims to be a 'marketing ploy'
 - The rise of consumer indifference and loss of profitable, long-term market opportunity



The Issue – Response / Outcome





Section III

Our Role



Our Role – Providing Needed Guidance



- **Provide guidance to businesses and industry on acceptable/unacceptable claims through:**
 - Guide’s “best practices”
 - Education and outreach (e.g. workshops, speeches, publications, etc.)
 - Enforcement activities (e.g. letters, product seizure, litigation, etc.)
 - Advisory opinion program
- **Improve accuracy of marketplace information regarding environmental claims**
 - **Consumers:** help individuals make more informed purchase decisions regarding products and services that make environmental claims
 - **Industry:** create a common understanding of, and standardization in, the use of environmental terms which will lead to genuine market innovation and sustainable, long-term growth





Objective of the Guide – *Bureau Perspective*:

- An interpretation of how CSA/CAN-ISO 14021 relates to the relevant provisions of the *Competition Act, Consumer Packaging & Labelling Act (non-food products)* and *Textile Labelling Act*
- Provide greater certainty to industry and advertisers on how to comply with Bureau provisions when making environmental claims





Section IV

Legal Context



Legal Context – Guide is Voluntary



- **Guide is not a law or regulation** – guidelines advocated in document based on established international best practices
 - Environmental claims that raise concerns may be examined by Bureau on case-by-case basis pursuant to legislation
 - Deviation from Guide does not necessarily mean contravention of law
 - Guide will be used as a reference for evaluating environmental claims
- **Environmental claims treated same as all other claims:** are subject to Bureau's misleading advertising and labelling provisions



Legal Context – Relevant Bureau Legislation



[c. 2.2-2.4, p 4-5]

1. **Competition Act** (*discussed later*)
2. **Consumer Packaging & Labelling Act (CPLA)**
 - Representations relating to prepackaged products [ss. 7(1)]
3. **Textile Labelling Act (TLA)**
 - Representations relating to consumer textile articles [ss. 5(1)]

Key Concept: All 3 laws prohibit false or misleading representations





- **General Impression:** The general impression conveyed by an environmental claim, as well as its literal meaning, will be taken into account when determining whether such a claim is false or misleading in a material respect under Canadian law (Guide, p 9)

Take Away: General impression should be properly considered when making any environmental claims – not just the literal meaning.



Legal Context – Enforcement Process



Principled Approach - The Conformity Continuum

- A variety of actions designed to obtain compliance, ranging from “soft” to “hard” responses

Conformity through Education			Facilitating Conformity		Responses to Non-Conformity		
Publications	Communication	Advocacy	Monitoring	Voluntary compliance	Suasion	Consent	Adversarial
information bulletins	speeches	interventions	info centre	advisory opinions	warning letters	negotiated settlements	Prosecutions
enforcement guidelines	seminars / conferences / trade shows	policy development / research	pre-notification	pre-mkt assessment	compliance meetings	consent orders + prohibition	Tribunal Applications
news releases	website	liaison	targeted inspections	corp. compliance programs	newsletters	corrective notices	Product Seizures
discussion papers / reports	media contacts	partnerships	contacts / consultations	voluntary codes	contacting target	voluntary product recalls	Contested Prohibition Orders
GENERAL APPLICATION				SPECIFIC APPLICATION			





- **Competition Act**
 - **Criminal Fine:** max penalty for corporation/individual is a fine at the discretion of the court and/or imprisonment up to 5 years [s. 52]
 - **Civil Penalty:** max penalty is \$50,000 for an individual, \$100,000 for a corporation [ss. 74.01]
- **Labelling Statutes (CPLA / TLA)**
 - product seizure [CPLA – ss. 15(1), TLA – ss. 10(1)]
 - potential criminal penalties
 - fines up to \$10,000 and up to 1 year of imprisonment





Lululemon

- Unsubstantiated performance claims surrounding “VitaSea” clothing line
- Resulted in removal of all related labelling and advertising

UV clothing

- Exaggerated performance claims re: UV protection of “Sunveil Sunwear” clothing line
- Resulted in removal of all related claims from clothing tags and company website





Fuel saving devices

- False claims regarding the benefits (e.g. improved fuel efficiency, reduced emissions, etc.) of so-called “fuel saving devices”
- Examples: “*Econopro*”, “*Fuel Save Pro*” and the “*Platinum Vapour Injector*”
- Resulted in companies ceasing to make such claims

Chimney cleaning logs

- False performance claims regarding the ability of chimney cleaning and conditioner products to reduce creosote and prevent chimney fires
- Resulted in order to stop making related claims, an AMP of \$25,000, a corrective notice and complete product withdrawal





Section V

The Guide



The Guide – What Is An Environmental Claim?

- **Environmental Claim:** *“Any statement or symbol that refers to, or creates the general impression that it reflects, the environmental aspects of any product or service”* (Clause 4.1, p 7)
 - Broad definition
 - Essentially applies to any form of green marketing regardless of medium used (e.g. print, television, radio, Internet, etc.)
- **Proper environmental claims should:**
 - *“...allow consumers to more easily differentiate between products in the market, so consumers can make better purchasing decisions in relation to the environment.”* (Guide, p 1 – emphasis added)





- **What are “best practices”?**
 - Widely accepted methods recognized as “best way” to manage an issue
- Guide uses best practice examples to illustrate how to develop good environmental claims
 - Presented as practical examples often in the form of “preferred” or “discouraged” scenarios
- Best-practices effectively represent “safe harbour” for Industry
- **Clause 4.3** (p 8)
 - Summary list of Guide’s underlying principles and best practices



The Guide – Overview



Clause 1 – Introduction (p 1-3)

- How to use Guide, History of environmental claims guidelines

Clause 2 – Applicable Acts (p 4-5)

- Overview of relevant Bureau legislation and provisions

Clauses 3-4 – Overall Considerations & General Requirements (p 5-12)

- Underlying principles, objectives and basic considerations of Guide
- Applicable to all subsequent sections
- Concepts of substantiation/verification, life cycle analysis, environmental improvement
- Vague claims, claims of “...free” and claims of sustainability

Clause 5 – Specific Requirements (p 12-21)

- An elaboration of the 18 requirements outlined in the “quick ref” Clause 4.3

Clause 6 – Symbols (p 21-23)

- Proper use of symbols when making environmental claims





Clause 7 – Möbius Loop (p 24-25)

- Proper use of Möbius loop symbol for recyclable and recycled content claims

Clause 8 – Evaluations and Claim Verification (p 26-28)

- Responsibilities of claimants in supporting claims
- How to properly verify claims

Clause 9 – Comparative Claims (p 29-30)

- Seriousness of improper comparative claims
- Guiding principles on how to make proper comparative claims

Clause 10 – Selected Claims Defined in CAN/CSA-ISO 14021 (p 30-55)

- **Compostable** (32), **Degradable** (35), **Designed for disassembly** (37), **Extended life product** (39), **Recovered energy** (40), **Recyclable** (42), **Recycled content** (44), **Reduced energy consumption** (48), **Reduced resource use** (49), **Reduced water consumption** (51), **Reusable and refillable** (52), **Waste reduction** (55)





1. Cornerstone Principle: all claims must be substantiated and verified with supporting info that is accurate and available (upon request)

Take Away: Supporting info must be based on adequate and proper tests and be specific to product/claim – regardless of verification method (e.g. 1st, 2nd or 3rd party)

2. Life Cycle Analysis (c. 3.3, p 6; c. 5.9 p 16)

- “*Consideration*” of a product’s life cycle (cradle-2-grave) is required – not full analysis
- Incorporates the concept of avoiding “hidden trade-offs” when making e-claims
 - i.e. Exaggerating the environmental benefits of a single product attribute / life-cycle phase (e.g. organic tobacco)

Take Away: Key is ensure that a product has a net environmental benefit, using best available information, before claims are made





- **Reasonable Proportion** (c. 10.1.3, p 31-32) – the % of population that has access to facilities where product is sold
- Applicable to claims of “...where facilities exist”, **recyclability, degradability, compostable, designed for disassembly, reusable/refillable**
- 3 options:
 - Less than 50% - qualification req'd (e.g. identify specific markets)
 - 50% or More – unqualified claims can be made (e.g. “*recyclable*”)
 - “*This product may not be recyclable in your area*”
- Companies are responsible for identifying the facilities/programs available in the markets where they wish to make claims

Take Away: Best practice is to disclose as much information as feasible when making these claims, even if “reasonable proportion” requirement has been met





Vague & Non-Specific Claims (c. 4.4, p 9)

- Claims should be clear and specific and based on adequate and proper tests before public representations are made
- General impression of target audience should be taken into account
- Examples: “*Green*”, “*Environmentally Friendly*”, “*Energy Saving*”, “*All Natural*”, “*Eco*”, “*Environmentally Safe*”

Take Away #1: Vagueness and substantiation are positively correlated – greater the vagueness, greater the substantiation required to back it up!

Take Away #2: Don’t use claims that can’t be supported through verifiable test methods and/or data inventory analysis





Claims of “...free” (c. 4.5, p 11; c. 5.16-17, p 19-20)

- Two key concepts:
 - (1) **Trace Contaminant** – manufacturing impurity
 - (2) **Background Level** – naturally occurring substances

Take Away #1: Should not be made on ingredients/inputs that were (a) never in a product category; (b) at a background level; and/or (c) a trace element added during manufacture

Take Away #2: While claims may be “literally true”, general impression could still be considered false or misleading

- Preferred Examples: “*As Always, Phosphate Free*”, “*Like All Similar Products, Lead Free*”





Claims of “...free” (cont'd) – BPA example

- BPA identified as potentially harmful substance – used in plastic drinking containers (e.g. baby bottles, reusable water bottles, etc.)
- Most products pulled from market and reformulated plastics introduced with “BPA Free” claim - APPROPRIATE
- Other existing alternatives, glass and stainless steel, also marketed as “BPA Free” - INAPPROPRIATE

Take Away # 1: Unqualified “BPA Free” claims on reformulated plastics okay for a period of one year – following initial year, general impression should be considered

Take Away # 2: Glass and stainless steel products should qualify claims as they have never contained BPA – e.g. “*As Always, BPA Free*”





Claims of Sustainability (c. 4.6, p 11)

- No definition of term provided (at this time) due to complexity and ongoing study of subject
- Do not encourage any product claims of sustainability – difficult to substantiate

Take Away: Claims referring to specific certified management systems are acceptable provided they can be verified (e.g. SFI, FSC, PEFC, etc.)

Exaggerated Claims (c. 5.7, p 13; c. 5.10-5.11, p 16-17)

- Claim/explanatory statement should not overstate environmental improvement of a product or single attribute
 - Example: Reduced GHG emissions are “saving the planet”

Take Away: Avoid exaggeration by taking net environmental impact of a product/attribute into consideration before a claim is made





Comparative Claims (c. 5.15, p 19; c. 9, p 29-30)

- Claims of “superiority” – requires highest degree of accurate verification
- Greatest potential to mislead purchasers and harm competition – PROCEED WITH CAUTION
- Two different forms: (1) current vs. old model (2) company vs. competitor(s)
 - Have received a number of complaints about company vs. competitor claims
 - In most cases, claims are unsubstantiated and/or exaggerated
- Should always have an explanatory statement
 - Statements should be precise and clear about improvement
- Verification criteria/methodology outlined in clause 9, p 29

Take Away: Don't make comparative claims if you don't have accurate and verifiable info about a competitor or a previous product version, DON'T MAKE THE CLAIM....period!





Claims of “...where facilities exist” (c. 10.1.3, p 31)

- Involves claims of *compostable*, *degradable*, *designed for disassembly*, *extended life*, *recyclable*, *reusable* and *refillable*
- Guide departs from PGELA, which permitted such claims
- **Reasonable Proportion** – the % of population that has access to facilities where product is sold
- 3 options:
 - Less than 50% - qualification req'd (e.g. identify specific markets)
 - 50% or More – unqualified claims can be made (e.g. “*recyclable*”)
 - “*This product may not be recyclable in your area*”
- Companies are responsible for identifying the facilities/programs available in the markets where they wish to make claims

Take Away: Best practice is to disclose as much information as feasible when making these claims, even if “reasonable proportion” requirement has been met





Compostable Claims (c. 10.2, p 32-35)

- Products/packages that will break down or become part of usable compost in a timely manner (e.g. 1 year)
- Normally require an explanatory statement regarding (1) Type of composter (home or municipal) (2) Components which are compostable (3) Any steps required to compost (e.g. separation of components, proper conditions)
- If home composting not appropriate, must ensure facilities available to reasonable proportion – if not available, qualified statement required
 - **Preferred Example:** This package is compostable in municipal composting programs in Southern Ontario only
 - **Discouraged Example:** This package is compostable where municipal facilities exist

Take Away: Compostable claims should clearly indicate what is compostable, where it is compostable, and under what conditions – avoid hidden trade-offs!





Claims of Degradability (c. 10.3, p 35)

- Refers to all types of degradability – including “*biodegradable*”
- All claims should be supported by proper scientific testing within reasonable timeframe (e.g. 1 year)
 - CAN/CSA-ISO 14021 bibliography identifies several recognized tests (Annex D)
- Should not make such claims where harmful substances are released during degradation
- Example # 1: “Biodegradable” shampoos/body-washes or detergents should be supported with tests that prove product degrades in wastewater treatment system
- Example # 2: “Biodegradable” products destined for landfill should not make such claims due to degradability limitations

Take Away: Degradability claims should be supported by proper scientific testing, incorporate a reasonable timeframe and consider how consumers are likely to dispose product





Claims of Recovered Energy (c. 10.6, p 40-42)

- Should state type and quantity of waste used to generate energy

Take Away: These claims should only be made if there is a net environmental benefit – provide as much explanation as feasible – avoid exaggeration!

Claims of Reduced Energy (c. 10.9, p 48-49)

- Comparative claim – should abide by best practices for these claims
- E.g. “energy-efficient”, “energy-conserving”, “energy-saving”
- Should only refer to reductions in “use/delivery” phase, not “manufacturing” phase of product life cycle

Take Away: Comparisons should be made between products/services with equivalent functions.





Recyclable Claims (c. 10.7, p 42-44)

- Product must be diverted from waste stream for re-manufacturing
- **Key Consideration**: Reasonable Proportion
- May use Möbius Loop symbol with/without words depending on whether reasonable proportion threshold met
 - *Preferred Example*: This container is recyclable through blue box programs in Southern Ontario and at recycling deposits in Winnipeg and Edmonton.
 - *Discouraged Example*: Recyclable where facilities exist

Take Away: Best practice is to disclose as much information as feasible when making these claims, even if “reasonable proportion” requirement has been met





Claims of “refillable/reusable” (c. 10.12, p 52-54)

- **Reusable:** “product disposal” phase of life cycle

Take Away: Best practice is to make these claims only when product is reusable for its original purpose (e.g. plastic and glass food containers)

- **Refillable:** product can be refilled for original use

– E.g. windshield washer fluid, propane tanks, baby wipes, beer bottles

Take Away: Best practice is to make unqualified claims of “refillable” only when product can be refilled in all markets where it is sold – otherwise, explanatory statement required





Claims of Reduced Resource Use (c. 10.10, p 49-50)

- Should only involve production phase(raw input materials, water and energy)
- Should state type of resource

Take Away: These claims should only be made if there is a net environmental benefit – provide as much explanation as feasible – avoid exaggeration!

Claims of Reduced Water Consumption (c. 10.11, p 51-52)

- Applicable only to use/delivery phase
- E.g. water-efficient, water-conserving, water-efficient, low-flow

Take Away: These claims should only be made if there is a net environmental benefit – provide as much explanation as feasible – avoid exaggeration!





Waste Reduction Claims (c. 10.13, p 55)

- Appropriate at any stage of life cycle – as long as waste is reduced
- Comparative claim – should abide by best practices for these claims
- Types include air, water and solid waste
- Should ensure that waste reduction does not result in increased environmental burden in another life cycle phase
- Should not include re-utilization of manufacturing rework, regrind or scrap

Take Away: These claims should only be made if there is a net environmental benefit – provide as much explanation as feasible – avoid exaggeration!





Section VI

Transition Period



Transition Period



- 1 year in length (approx late June 08 – late June 09)
 - Provide businesses with opportunity to review and modify practices, if necessary
- Focus during period is on education and awareness
 - Building common understanding and standardization
 - Primary vehicles for dissemination: workshops, speeches and other public appearances
 - Potential roundtable being planned for winter/spring 2009
- 1 year period will be used for intelligence gathering
 - Opportunity to identify and target most problematic claims
 - Strongly encourage industry to bring potentially false or misleading claims to Bureau's attention
 - Will continue to pursue egregious cases





Section VII

What's Next? Looking Ahead



What's Next? – Looking Ahead



- **Enforcement**
 - Will become greater priority
 - Monitor targeted claims identified during transition period
 - Actions may include: letters; meetings with companies regarding conduct; product seizure; litigation
- **Education and awareness**
 - Focus will shift to publications (e.g. website, policy/position statements, etc.) and public appearances
 - Will be targeted to specific issues which require most attention
 - Consumer “Guide to the Guide”





Section VIII

Wrapping it Up! A Summary



Wrapping it Up! – A Summary



- **Recap of major principles**

- Cornerstone Principle: If you make a claim, be prepared to “back it up”!
- More explanation is always a good thing
- Net environmental impact – should always be considered
- Exaggeration – nobody wins, especially not the environment or consumers
- Avoid comparative claims if you can’t meet the higher threshold of verification and accuracy
- Consequence of bad “green” marketing not only a risk of Bureau intervention, but most importantly, could result in damage to brand/product or consumer indifference to green movement

- ***QUESTIONS?***



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