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**A Consumer's Guide to Greenwashing**

**By**

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**An Honors Thesis in partial fulfillment of the requirements for the degree Bachelor of  
Science in Business Administration in Marketing**

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### **Abstract**

Over the past 37 years since the term greenwashing was coined, there have been sparse attempts to regulate this deceptive environmental marketing. The Federal Trade Commission (FTC) created its Guides for the Use of Environmental Marketing Claims, also known as the Green Guides, in 1992. The Guides have been revised on three separate occasions – 1996, 1998, and 2012 – in an attempt to remain relevant with the proliferation of environmental marketing claims and trends. However, the Guides were created as interpretive rules that do not give the FTC the authority to enforce the regulations unless they can prove that an environmental claim violated Section 5 of the FTC Act. The lack of authority to enforce the Guides in addition to the outdated revision indicates the need for improvements to make the Green Guides more effective. There are current revisions of the Green Guides in progress, so the FTC should take this opportunity to make the appropriate adjustments. Based on the literature, it was determined that the FTC should transform the Guides into binding, legislative rules and include guidance on new claims such as “organic” and “sustainable.”

*Keywords:* greenwashing, Green Guides, environmental marketing, sustainability

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## History of Greenwashing

Merriam-Webster defines greenwashing as “the act or practice of making a product, policy, activity, etc. appear to be more environmentally friendly or less environmentally damaging than it really is” (Merriam-Webster, 2023). This term was first used by Jay Westervelt in 1986 in an essay he wrote about the hospitality industry. He noticed signs in his hotel room encouraging customers to save water by reusing their towels, but upon further inspection, he realized this was a deceptive marketing tactic. The hotel’s main reason for encouraging the reuse of towels was for their own benefit, as it would save them money on laundering. While the hotel deceived its customers by withholding its true intentions, it could feel like a trivial issue to the layperson since this campaign, did in fact, save water. The hotel’s misleading advertising may seem like an inconsequential argument to some; however, I believe Westervelt’s essay, and his creation of the term greenwashing opened the conversation on deceptive environmental marketing tactics at a broader level. This has allowed us to look at businesses and marketing schemes more critically and identify those schemes with a defining term. Almost 40 years later there are companies and brands still engaging in greenwashing and the conversation has persisted.

These days consumers are more wary of marketing tactics, due to the countless scandals that have taken place in recent years. One of the more well-known scandals happened in 2015 with Theranos. This company and its founder, Elizabeth Holmes, were trying to revolutionize the medical industry. They created a device that allowed blood tests to be completed with a finger prick of blood. With this innovative technology and new blood testing devices, the startup quickly became the talk of the town. Unfortunately, this was all a façade. In reality, Theranos’ blood testing device did not work. A whistleblower exposed this fraud and “claim[ed] that the results were unreliable and that the firm had been using commercially available machines made by other manufacturers for most of its testing” (Thomas, 2022). This blatant fraud lost investors millions of dollars as well as put the customers that got tested using these methods at risk. Another scandal that occurred around 2016 involved Monsanto, the company that owns Roundup weed killer. It was found that glyphosate, Roundup’s most active ingredient, “might cause illness to humans and cause damage to the environment. The International Agency for Research on Cancer categorizes glyphosate as possibly carcinogenic to humans—essentially, the IARC is saying this toxin may cause cancer” (Gaines, 2022). Since this discovery, Monsanto and Bayer, the parent company which acquired Monsanto in 2018, have been involved in thousands of lawsuits. The University of Washington conducted a study that “found that exposure to glyphosate increased an individual’s risk of non-Hodgkin’s lymphoma by 41%” (Gaines, 2022). Monsanto failed to provide an adequate warning to consumers about its product’s link to cancer, and therefore this scandal unfolded. In addition to Theranos and Monsanto, various other corporations experienced scandals such as FIFA’s corruption, Deepwater Horizon’s oil spill, and Volkswagen’s fraud. While the scandals described are not specifically related to greenwashing, they provide a good explanation of corporate scandals and how they may impact consumer perception and trust in a business or industry. Unfortunately, “we have witnessed some of the more spectacular violations of consumer trust in the history of business. This has led to negative consequences, such as loss of competitive advantage, rage, lack of commitment and decrease in turnover” (Bozic, 2017, p. 538). Trust is an important factor in keeping brand loyalty, so scandals could prove detrimental to a business.

This violation of consumer trust is partially responsible for the deterioration of the public opinion of marketing. The perception of marketing is drastically different coming from industry

professionals versus common consumers. Professionals generally accept the American Marketing Association's (AMA's) definition: "Marketing is the activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large" (AMA, 2017). Conversely, consumers viewed marketing as "'persuading', 'convincing', or 'leading' consumers to do something (usually to buy) in the interest of the company [and this] was expressed spontaneously by almost all participants, indicating the prevalence of a manipulation-oriented view of marketing" (Heath & Chatzidakis, 2012, p. 285). The consensus from this study was that consumers found marketing to be manipulative, although they longed for the simplistic and positive definition of marketing that the AMA provided. In addition to this, the study found that "[a] popular theme was that marketing and advertising are so powerful and sophisticated in their techniques and rhetoric that consumers find it hard to fully scrutinize and resist the messages they are exposed to" (Heath & Chatzidakis, 2012, p. 286). So, while consumers are warier of these schemes, marketers continue to be clever. Since environmental marketing is still a fairly new concept, it is difficult for consumers to spot greenwashing tactics.

### **Types of Greenwashing**

Jay Westervelt's example of hotel sustainability initiatives is not the only way that greenwashing rears its head. Many forms of greenwashing are discreet and can be easy to miss unless one knows what to look for. Examples of hard to identify greenwashing include vague language, unjustified claims, and just outright lies about corporate environmental performance. "In 2007, in an effort to describe, understand and quantify the growth of greenwashing, TerraChoice" conducted "a study of environmental claims made on category-leading big box store shelves" (UL Solutions, 2023). From this study, TerraChoice developed what they call the seven sins of greenwashing to demonstrate the various ways companies can partake in misleading environmental marketing. The Green Business Bureau (2021) compiled a comprehensive overview of these sins:

- **Sin #1: Hidden Trade-Off**  
The sin of hidden trade-off is deceiving because while the company is solving one environmental issue, its solution negatively contributes to another environmental issue. For example, McDonald's was involved in a hidden trade-off scandal in 2019. The company attempted to reduce its plastic waste by switching from plastic straws to paper straws. It was a trade-off because the plastic straws were recyclable whereas the paper straws were not. So, while McDonald's reduced the amount of plastic used in their business, they were not reducing their overall waste.
- **Sin #2: No Proof**  
The sin of no proof is simply that; companies do not provide proof of their environmental claim in the form of "factual evidence or third-party certification[s]" to back their environmental claims (Green Business Bureau, 2021). To elaborate a bit more, "TerraChoice says 'no proof' occurred if supporting evidence was not accessible at either the point of purchase or at the product website" according to NPR (2007). This sin is incredibly common and can be found in any number of products and within various industries. It is almost impossible to validate whether these claims are true without factual evidence or certifications. A simple example would be a water bottle that a company says is made partly from recycled content. If the company does not provide evidence or

specifics about the recycled content, whether on the bottle or on its website, it may be greenwashing. Without this evidence, there is no way to verify whether the product is actually made with some recycled content. NPR (2007) provided several examples of their own to explain this sin:

- Household lamps and lights that promote their energy efficiency without any supporting evidence or certification.
- Personal care products (such as shampoos and conditioners) that claim not to have been tested on animals but offer no evidence or certification of this claim.
- Facial tissues and paper towels that claim post-consumer recycled content without providing evidence.

As seen above, none of these advertisements substantiate the claims that are made. Examples of the sin of no proof can be tricky because many times they can also be examples of other sins. For instance, the water bottle example could also be considered the claim of vagueness since the claim of recycled content is incredibly vague. If this claim is true, it still does not give any clarity on what percentage of the water bottle is recycled or even which aspect of the water bottle is recycled. This language is deceptive because the company could state this claim and in reality, the only aspect that is made with recycled content is the bottle cap. Or the water bottle is only made with 2% recycled content, making the claim true. However, it is deceptive as it leads consumers to believe the water bottle is made with a high percentage of recycled content. While this example can depict the sin of vagueness, I am using it to describe the sin of no proof because there is no other findable information on the company's platforms or packaging about the recycled content. There is no proof to verify how much if any, recycled content is used in the production of any aspect of the product.

- Sin #3: Vagueness

The sin of vagueness refers to ambiguous environmental claims that “lack specificity and so are deemed meaningless” (Green Business Bureau, 2021). These claims are general words, phrases, and images that evoke environmental thoughts such as eco-friendly, green, sustainable, and natural. A great example of this sin is H&M's Conscious Choice labeled products, which were launched in 2013. These were green labels that misled consumers into believing they were making an environmentally “conscious” purchasing decision. The word conscious along with the green label insinuated that the products were more environmentally friendly than some of H&M's other product lines. A Stockholm University Graduate student states that “*H&M Conscious* fits into the ‘sin of vagueness’... considering *Conscious* deals with words like ‘eco-conscious’ and ‘green’ and the font is written in a forestry green color” (Blessersholt, 2021, pp. 32-33). On the surface, consumers would think that this Conscious Choice line was a more sustainable choice than other H&M lines. While the tags were vague and only depicted the “sustainable” material that the products were made with, the labels did include a link to H&M's Conscious page which had additional information on this line. As such, this example would be classified as vagueness rather than no proof. This link gave consumers the opportunity to learn more about a product and clear up any vagueness the label depicted. However, upon closer inspection, the Higg Index, which H&M used to rate the sustainability of their products, was faulty. This rating system, “an industry-developed metric known as the Higg Index, merely grades the impact of producing an article of

clothing compared to the status quo. It has been widely adopted by apparel makers but brutally criticized by environmental groups” (Shendruk, 2022). The intention was to provide consumers with a tool they could use to evaluate the environmental impact of their purchases. Unfortunately, it was found that:

[I]n many cases, H&M displayed data that gave a totally wrong picture of a garment’s impact on the environment. Those errors came about because the retailer’s website ignored negative signs in Higg Index scores. For instance, a dress with a water-use score of -20%—as in, it uses 20% more water than average—was listed on H&M’s website as using 20% *less*. (Shendruk, 2022)

This was an egregious failure to properly represent the data and resulted in misleading marketing of the “Conscious Choice” line. Rather than being more environmentally friendly, many of H&M’s products within this line were in fact more harmful to the environment. It was not until mid-2022 that the Sustainable Apparel Coalition (SAC) suspended the “use of the Higg Index in all consumer-facing contexts and [initiated] an independent review of the data and how it’s compiled” (Shendruk, 2022). So, there are efforts to stop this instance of greenwashing.

- Sin #4: Worshipping False Labels

The sin of worshipping false labels illustrates the act of creating false sustainability certifications or ecolabels. The language surrounding this sin is a bit confusing as it seems to put the blame on the consumers for “worshipping false labels.” Although, I would argue that the main fault is with the companies that are creating or using these false labels. The manufactured labels fool consumers into “believing a product or service went through a legitimate green screening process” (Green Business Bureau, 2021). There are many sustainable certifications and ecolabels that are deemed reliable such as USDA Organic, Energy Star, and LEED. The sin of worshipping false labels would be imitating those labels or certifications that are already seen as reliable. This can appear as counterfeit versions of reliable labels or new, completely falsified certifications or labels. Arguably, there could be some fault that rests on consumers if they do not do their due diligence to verify the labels before falling for their claims. However, most consumers would have no reason to suspect that a label or certification was fake.

- Sin #5: Irrelevance

The sin of irrelevance describes marketing schemes that highlight a feature of a product or service that is inconsequential. These highlighted features are irrelevant because they do not “represent a strategic business shift, cultural change, or change of core values to operate in a more environmentally friendly way” (Green Business Bureau, 2021). This sin can be explained through CFC-free advertising. It is irrelevant to advertise a product as CFC-free because CFCs have been banned for decades and therefore this is not new or astounding information for consumers. This is a harmful marketing tactic because it “creates the impression that the product is better for the environment than a competitor, when in fact, they are the same” (Green Business Bureau, 2021). This is simply an attempt at differentiation from the competition that is misleading.

- Sin #6: Lesser of Two Evils

The sin of the lesser of two evils occurs when companies “[make] a claim that is true within one category, but distracts a consumer from other harmful aspects of the product” (Bradley, 2011, p. 40). Marketers use this tactic to move the focus off the harmful aspects of their products. There are certain products or even industries that are objectively bad for



the environment. However, businesses still attempt to market their product or service as more environmentally friendly. For example, the transportation industry contributes to approximately 27 percent of total greenhouse gas emissions in the United States (EPA, 2023a). Yet companies try to redirect consumers' focus to their new initiatives such as better fuel efficiency. While these vehicles present less of an environmental impact than before, the industry still contributes greatly to emissions and climate change. In another sense, Landslide gives the example of organic cigarettes (Bradley, 2011). No matter the context, cigarettes are going to be bad for human consumption as well as contribute to air pollution. So, even though these cigarettes are organic, they are still inherently bad for humans and the environment. The organic aspect is the lesser of two evils, with the two evils being the overarching harm cigarettes cause.

- **Sin #7: Fibbing**

The sin of fibbing “describes environmental claims that are blatantly false” (Green Business Bureau, 2021). A well-known case of fibbing is the Volkswagen scandal many characterized as “dieselgate.” In the late 2000s and early 2010s, the German Volkswagen was attempting to break into the American car market. The company was not prepared to meet the strict emission standards in the United States and rather than work to improve these emissions, they created a device that would falsify the emission reports. Yet, Volkswagen marketed its vehicles as “clean diesel.” Obviously, this was a false claim and can therefore be classified as fibbing.

These forms of greenwashing require asking several why questions: why do we still need to worry about greenwashing after so many decades? Why does greenwashing even matter? Why are we still allowing companies to get away with greenwashing? To answer these questions, we must first look at the current trends surrounding the environmental movement and how we got our current standing.

## **History of the Environmental Movement**

There is a bit of debate over when the environmental movement began. One article says that “it was not until the end of World War II, in the shadows of the first atomic bombs, that the modern movement we think of today when we hear the term ‘environmentalism’ began to emerge” (Jundt, 2008, p. 16). Although environmental ideals were nothing new, it is understandable that many people began thinking retrospectively about life and death and what the future may entail, particularly after witnessing so much death during the war. Jundt used a quote by Fairfield Osborn that stated:

There are two major threats in the world today, either one of which would cause incalculable loss of human life, if not the breakdown of the entire structure of our civilization. The first is the misuse of atomic energy. . . . The other is the continuing destruction of the natural living resources of this earth. (Jundt, 2008, p. 16)

I believe this time after the war, during the 40s and 50s, is truly when the movement began. Environmental historians believe that there are three changes during that period that point to the emergence of the environmental movement:

First, the unprecedented affluence of the postwar years encouraged millions of Americans to reject the old argument that pollution was the price of economic progress. Second, the development of atomic energy, the chemical revolution in agriculture, the proliferation of synthetic materials, and the increased scale of power generation and resource extraction technology created new environmental hazards. Third, the insights of ecology gave

countless citizens a new appreciation of the risks of transforming nature. (Rome, 2003, p. 526)

However, one could argue that the modern environmental movement that we know today did not really begin to gain momentum until the 60s. A big part of this shift in momentum was due to Rachel Carson and the release of her *New York Times* best seller *Silent Spring* in 1962.

According to *The New York Times*:

Carson used the era's hysteria about radiation to snap her readers to attention, drawing a parallel between nuclear fallout and a new, invisible chemical threat of pesticides throughout "Silent Spring." "We are rightly appalled by the genetic effects of radiation," she wrote. "How then, can we be indifferent to the same effect in chemicals that we disseminate widely in our environment?" (Griswold, 2012, p. 5)

This simplification of the environmental issue helped to solidify environmental concerns for the average U.S. citizen. Particularly, this concern further reached mothers in America and encouraged them to act to ensure the health and safety of their children. Women had been leaders in the environmental movement for many years prior to the release of *Silent Spring*. The Journal of American History reported that:

In the Progressive Era women actively supported the conservation movement. They also lobbied for smokeless skies, clean water, pure food, and urban parks, and they often justified their efforts as "municipal housekeeping" and "civic mothering." Women continued to press for environmental protection in the decades after World War I. For several reasons, however, the number of women active in the environmental cause increased dramatically in the late 1950s and 1960s. (Rome, 2003, pp. 534-535)

Women interest in the environmental movement was described as "a natural extension of their concerns as housewives and mothers" (Rome, 2003, p. 538). The article goes on to say that "[w]omen's organizations helped make Rachel Carson's *Silent Spring* both a best seller and a political force" (Rome, 2003, p. 536). So, women helped make Carson's book so widely known that it was able to reach even more women and mothers that subsequently joined the movement. Several years later in 1969, the Cuyahoga River in Cleveland, Ohio caught fire. Public outcry ensued after *Time* published an article shedding light on this event. Their article included a photo of the burning river, although the photo turned out to be from the 1952 fire rather than the 1969 fire. The inclusion of the photo is what sparked nationwide concern, as many people had never witnessed a burning river. With the masses "[t]he fire took on mythic status, and errors of fact became unimportant to the story's obvious meaning" (Stradling & Stradling, 2008, p. 518). The obvious meaning being the decreased level of water quality. This river was so polluted that the people of Cleveland barely paid any mind to the ecological disaster as it was the 10<sup>th</sup> (recorded) time the river had caught fire. The fire of 1969 was infamous to locals because of the 50 million dollars of damage as well as several deaths caused by the event. However, the rest of the nation became brutally aware of how bad the water quality had gotten in many places in America. This event, along with other factors such as the San Francisco oil spill of 1969, led to the formation of many environmental policies, agencies, and laws in the 60s and onward.

Another event that helped urge policies and legal action such as the Clean Water Act and the Clean Air Act was the first Earth Day. Millions of Americans celebrated the first Earth Day on April 22<sup>nd</sup>, 1970. This was arguably one of the most important environmental events that helped to create nationwide and eventually worldwide publicity on the environmental crisis:

Earth Day 1970 was a success for the environmentalists. As had been the case for the Vietnam War, civil rights and feminism, the environmental movement ignited student

interest. More importantly, the consciousness of the American people was raised by Earth Day, and the public began to give its support to the environmental movement. (Gallagher, 1997, p. 120)

While this celebration technically occurred on April 22<sup>nd</sup>, there were plenty events that happened before or after the designated “Earth Day.” The Journal of American History states that:

[A]pproximately 20 million Americans joined together to demonstrate concern about the environmental crisis. About fifteen hundred colleges held Earth Day teach-ins. Around the country, people gathered in parks and schools, on city streets, and in front of corporate and government office buildings. (Rome, 2003, p. 550)

Earth Day was a monumental moment in the environmental movement because of the publicity and education that spread to the masses. This event, in turn, created a shift in the American people. As previously mentioned, this was a pivotal time in the environmental movement because the concern began to bleed over into Congress and the law. Loyola of Los Angeles Law Review states:

[A] structural paradigm shift from the mid-1960s has also been critically important to the formation of American environmental law: the shift in the structure of governance from a bipolar, Market/ Regulatory Government Paradigm to a multipolar, actively Pluralist Model.' Environmental law has been, and had to be, predominantly created and shaped by active citizens, operating from positions outside official private and public governing institutions. (Plater, 1994, p. 982)

The Earth Day movement made great strides in promoting environmental preservation and resulted in policy and law changes. The EPA (2022a) has an extensive list of the laws and acts that were passed during this transformative time. Some of those include:

- The National Environmental Policy Act (NEPA) of 1969
  - This act was written and formed in late 1969 and “was signed into law on January 1, 1970” (EPA, 2022b).
- The Clean Air Act of 1970
  - *Amended in 1977 and 1990* (EPA, 2022c).
- The Occupational Safety and Health Act of 1970
  - “In order to establish standards for workplace health and safety, the Act also created the National Institute for Occupational Safety and Health (NIOSH) as the research institution for the Occupational Safety and Health Administration (OSHA)” (EPA, 2022d).
- The Clean Water Act of 1972
  - Originally the Federal Water Pollution Control Act of 1948 until it was reorganized and expanded in 1972 to become the Clean Water Act (EPA, 2022e).
- The Endangered Species Act of 1973
  - *Amended in 1982, 1988, and 2004* (U.S. Fish & Wildlife Service, 2023).
- The Safe Drinking Water Act (SDWA) of 1974
  - *Amended in 1986 and 1996* (EPA, 2023b).
- The Pollution Prevention Act (PPA) of 1990
  - “Pollution prevention includes practices that increase efficiency in the use of energy, water, or other natural resources, and protect our resource base through conservation” (EPA, 2022f).

I believe the implementation of environmental regulation legislation reflects the increase in public interest and concern in the environmental movement. Likewise, this interest and concern

began to influence consumer decision making. Long before Earth Day and key moments of the environmental movement, it was found that:

In the 50s, shopping and spending were considered a patriotic way to prop up the US economy after years of economic depression and war. The modern shopper's sense of civic duty has evolved to be less about "saving America" and more about mindful consumption that's good for communities and good for our planet. (Wise, 2021)

This quote describes the evolution from patriotic shopping after the war to mindful shopping that reflects personal interests of the shopper. I believe this mindful consumerism has shifted in more recent years as environmental concerns became more severe and consumers began "voting with their wallets." This is evident in the trends surrounding sustainable purchasing. IBM reported that "[i]n 2022, purpose-driven consumers, who choose products and brands based on how well they align to their values, became the largest segment (44%) of consumers across all product categories. And their impact appears to be growing" (IBM, 2022, p. 7). In addition to this, IBM (2022) found that "49% of consumers say they've paid a premium for products branded as sustainable or socially responsible in the last 12 months" (p. 3). Public interest has caused this increase in demand for environmentally friendly products and businesses. Unfortunately, I believe that having seen the economic benefits of operating sustainably and ethically, many companies have attempted to meet that demand in ways that are not sustainable or ethical. This failure to meet these demands can be both intentional and unintentional. In order to protect both businesses and consumers from greenwashing, the Federal Trade Commission (FTC) released its Green Guides.

### **FTC's Green Guides**

The Green Guides were first released in 1992 and have since been revised in 1996, 1998, and 2012. The FTC explains that companies partake in environmental marketing to promote their product or service, however, "sometimes what companies think their green claims mean and what consumers really understand are two different things. The Federal Trade Commission's Green Guides are designed to *help* [emphasis added] marketers avoid making environmental claims that mislead consumers" (FTC, 2023a). The language that the FTC uses here is very telling. They say that the Green Guides are meant to "help" marketers rather than enforce non-deceptive environmental marketing. One would think that there would need to be stronger language used here if the Guides are meant to deter greenwashing. I will go further into the regulations and enforcement of the Green Guides in a later section. Back to the Green Guides, the FTC (2023a) states that they provide guidance in 3 broad areas:

1. General principles that apply to all environmental marketing claims
2. How consumers are likely to interpret particular claims and how marketers can substantiate these claims
3. How marketers can qualify their claims to avoid deceiving consumers

More specifically, the Green Guides address distinct claims such as compostable, degradable, and recyclable. The most recent update of the Green Guides "create[d] the following new sections: Carbon Offsets, Certifications and Seals of Approval, Free-of, Non-toxic, Made with Renewable Energy, and Made with Renewable Materials" (FTC, 2012a). The Guide thoroughly addresses each of these claims, providing explanations as well as examples.

#### **I. General Environmental Benefit Claims**

Marketers are cautioned against making broad statements that claim environmental benefits. These claims include phrases such as "green" or "sustainable" and they can be

difficult, if not impossible, to validate. Nevertheless, marketers can make this claim under the condition that they can provide clear, specific benefits of their statement. However, if the benefit they state is minuscule or irrelevant they should avoid making this claim. Because consumers will assume the benefit is significant, if it is not, adding no positive impact to the product, this is misleading marketing. In addition to this, if a company makes a general claim insinuating “that a product has an overall environmental benefit because of a specific attribute, marketers” should show the trade-offs to prove that the benefit is significant (FTC, 2012b). If the benefit is not significant, the marketers may be committing the sin of hidden trade-off. The last part of this guidance advises that marketers should be aware of the context of their advertisements. They could substantiate the significance of their statement, yet their advertisements could still convey deceptive claims.

*Example 1:* A laundry detergent brand creates an “eco-friendly” line of detergent. This “likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact” (FTC, 2012a). This is deceptive marketing because, by the claim of “eco-friendly” alone, it will be very difficult for the company to prove that claim. “Eco-friendly” is incredibly vague, so the company will need to give more context as to how and why the product is “eco-friendly.” They could do this by adding a statement to the claim such as “Eco-friendly: made with recycled materials” (FTC, 2012a). This minimizes confusion by clarifying how the product is eco-friendly. However, the marketer should still ensure that: (1) the statement “is clear and prominent;” (2) they can prove “that the entire product or package, excluding minor, incidental components, is made from recycled material;” (3) the use of recycled materials “makes the product more environmentally beneficial overall; and (4) the advertisement’s context does not imply other deceptive claims” (FTC, 2012a).

*Example 2:* A product package has a claim that says it is “Greener than our previous packaging” (FTC, 2012a). This claim is true because the new packaging is made with 2% of recycled material. Even though this claim is technically true, the marketer should not advertise this claim because 2% is an insignificant amount, and the “greener than” claim insinuates that the product has far-reaching environmental benefits.

## II. Carbon Offsets

The FTC (2012b) tells marketers that if they are going to advertise carbon offsets, they should have factual, scientific evidence to back up their claims. This guideline helps marketers abstain from committing the sin of no proof. If they were to claim a product or service resulted in carbon offsets without providing this evidence, they would be greenwashing. Likewise, the FTC states that this evidence should “use appropriate accounting methods to ensure they measure emission reductions properly and don’t sell them more than once” (FTC, 2012b). Essentially, the FTC says marketers need to provide factual and properly accounted for evidence. In addition to this, they advise marketers to “disclose whether the offset purchase pays for emission reductions that won’t occur for at least two years” (FTC, 2012b). This means that businesses should inform their consumers of the delay in emission reductions if they are marketing for carbon offsets. This ensures that consumers have the whole picture. Lastly, the guides suggest that marketers should refrain from advertising “carbon offset[s] if the law already requires the activity that is

the basis of the offset” (FTC, 2012b). There is no need to advertise an environmental benefit if it is required by law because it would therefore be the sin of irrelevance.

*Example 1:* Recently, when buying airline tickets there are options to select a “low emission” flight. This insinuates that the flights booked will be low emission or that the carbon emissions will be offset in a timely manner. If that is not the case, the marketer should clarify the time frame of the emission reduction. For instance, the marketer should disclose if the emissions will not be offset for two or more years and by what means, whether it will be the flight itself that has reduced emissions, or if the company is buying carbon offsets.

*Example 2:* A marketer is selling carbon offsets and claims that they will negate consumers’ negative impact from driving. These offsets are “based on methane capture at a landfill facility” where the law “requires [the] capture [of] all methane emitted from the landfill” (FTC, 2012a). Therefore, the claim that the offsets will negate consumers’ driving impact “is deceptive because the emission reduction would have occurred regardless of whether consumers purchased the offsets” (FTC, 2012a).

### III. Certifications and Seals of Approval

These certifications and seals are perfectly acceptable to advertise, however, marketers should be careful about how they do so. The FTC (2012b) advises marketers to disclose the company’s relationship to the certifying entity. This helps ensure the credibility of the certification. For instance, if a subsidiary of the company is the one administering the certification, then the certification could be biased and therefore uncredible. In addition to this, marketers should clarify what the basis of the certification or seal is. It is assumed that environmental certifications and seals will have, or at least convey, environmental benefits. Thus, marketers should specify what exactly the seals and certifications accomplish to avoid committing the sin of vagueness. They should clearly state the benefit of the certification, which can be difficult to accomplish if there is limited space on product packaging or due to other circumstances. In this case, it is acceptable for marketers to provide a link to a site that contains more details. The details should include the basis of the certification as well as what attributes the certification is addressing. These details must also be factual and accurate. Lastly, marketers need to be careful when using certifications and seals because they will still need to clarify whatever else may be deceiving. The FTC (2012b) states that “[a] marketer with a third-party certification still must substantiate all express and implied claims.” Certifications are not the “cure-all” for greenwashing. Marketers should be vigilant and address whatever claims may be deceptive.

*Example 1:* A marketer at a paper company advertises a ream of paper that is sustainably certified by forestry experts. This conveys that the certification is obtained through an “independent, third-party certifier” and that the paper has “far-reaching environmental benefits” (FTC, 2012a). If that is not the case, the marketer should clearly disclose that the certifier is a subsidiary of the paper company and that the certification “refers only to specific and limited benefits” (FTC, 2012a). This will allow consumers to be aware of any biases that may be present as well as the extent of the environmental benefits of the certification.

*Example 2:* Many certifications encompass various environmental aspects of products or businesses. A marketer is advertising this seal for its product but does

not have space on the packaging to give details. Next to the seal, the marketer includes a link and a statement that consumers can visit the link for information on what aspects of the product have environmental benefits. This would not be deceptive marketing; however, marketers should be careful to “ensure that the advertisement does not imply other deceptive claims, and that the certifier’s criteria are sufficiently rigorous” to prove the claims “communicated by the certification” (FTC, 2012a). Marketers should not rely solely on the seal or certification to prove their environmental claims. The FTC states that “[t]hird-party certification does not eliminate a marketer’s obligation to ensure that it has [proof] for all claims reasonably communicated by the certification” (FTC, 2012a).

#### IV. Compostable

Marketers that make a compostable claim “need competent and reliable scientific evidence that all materials in the product or package will break down into — or become part of — usable compost safely and in about the same time as the materials with which it is composted” (FTC, 2012b). So, marketers need to prove that these products will become usable compost in the same time frame as other compostable materials. It is also beneficial for marketers to clarify whether materials can be composted at home or if they must be taken to a composting facility. Marketers need to be careful when making compostable claims because there are a lot of circumstances where the claim may be irrelevant. For instance, the claim is irrelevant if the material cannot be “composted at home or in a timely way” or if the materials can only be composted in a municipal or institutional facility and the “facilities aren’t available to a substantial majority of consumers” (FTC, 2012b). It is deceptive to claim that a product is compostable if it is only compostable in finite circumstances or if many consumers do not have proper access to composting facilities.

*Example 1:* A marketer is selling grass clipping bags and advertising them as compostable. On the bags, the marketer specifies that the grass clipping bags are compostable in municipal composting facilities that are widely available to their consumer base. However, when the bags break down, “they release toxins into the compost” (FTC, 2012a). This claim would therefore be deceptive since these grass clipping bags will compromise the rest of the compost.

*Example 2:* The to-go cups at a local coffee shop are marketed as compostable. These cups clarify that they are only compostable at institutional facilities that are not located nearby. Since most consumers do not have access to the facilities needed to compost these cups, the compostable claim is then irrelevant.

#### V. Degradable

When making degradable claims, marketers need to prove that “the entire item will completely break down and return to nature (i.e., decompose into elements found in nature)” within a year of disposal (FTC, 2012a). Marketers should not make degradable claims for products that are “destined for landfills, incinerators, or recycling facilities” because these conditions will not allow for degradation within a year (FTC, 2012b).

*Example 1:* A trash bag company creates a new line of trash bags that they advertise as degradable. The company “relies on soil burial tests to show that the product will decompose in the presence of water and oxygen” (FTC, 2012a). However, consumers will dispose of these trash bags through their trash service.

The “degradable” trash bags will then enter “the solid waste stream, which” usually ends up “in incineration facilities or landfills where [the trash bags] will not degrade within one year” (FTC, 2012a). This claim is therefore deceptive since the trash bags are destined for the landfill or incineration facility.

*Example 2:* A marketer advertises a plant that comes in a “biodegradable” pot, which “is customarily buried in the soil along with the plant” (FTC, 2012a). The pot will completely break down in the soil after it is buried. The decomposition will occur throughout “the growing season, allowing the roots of the plant to grow into the surrounding soil” (FTC, 2012a). Since the pot is able to fully decompose in a timely manner without harming the plant or the soil, this claim is not deceptive.

#### VI. Free-of

In many cases, a product cannot be entirely free of certain materials. It is acceptable to make free-of claims “for a product that contains some amount of a substance if:” 1) there is only trace amounts of the substance, 2) the amount of product does not cause the harm generally associated with the substance, or 3) “the substance wasn’t added to the product intentionally” (FTC, 2012b). However, it is deceptive to make a free-of claim if another substance is still causing the same harm as the substance the product is “free-of.” Finally, it is deceptive to claim a product is “free-of” a substance that has never “been associated with that product category” (FTC, 2012b). This will help marketers avoid committing the sin of irrelevance.

*Example 1:* The FTC gives an example of t-shirts that are labeled “Shirts made with a chlorine-free bleaching process” that are now bleached through a new process that “releases a reduced, but still significant, amount of the same harmful byproducts associated with chlorine bleaching” (FTC, 2012a). This claim is deceptive because consumers will most likely interpret the claim as the “manufact[uring] does not cause any of the environmental risks posed by chlorine bleaching” (FTC, 2012a). In order to make this claim the marketer could clarify that “the shirts were ‘bleached with a process that releases 50% less of the harmful byproducts associated with chlorine bleaching’” (FTC, 2012a).

*Example 2:* A marketer is selling various fruits that they’re advertising as gluten-free. The fruits that the marketer is selling are gluten-free, however, gluten has never been associated with fruit. According to the Mayo Clinic (2023), “Gluten is a protein found in wheat, barley, rye and triticale.” Since gluten has never been associated with fruit, this claim is irrelevant and therefore deceptive.

#### VII. Non-Toxic

It is assumed that the claim of “non-toxic” means the product is both non-toxic for people and for the environment. So, marketers need to provide evidence that the product is both safe for people and the environment.

*Example:* A marketer advertises a cleaning product as “non-toxic.” This cleaning product is safe for humans to use, but it uses chemicals that are toxic to the planet. Since this claim conveys that the product is safe for both people and the environment, it is deceptive.

#### VIII. Ozone-Safe and Ozone-Friendly

The FTC only provides one piece of guidance for ozone-safe and ozone-friendly claims. They state that “[i]t is deceptive to misrepresent, directly or by implication, that a



product, package, or service is safe for, or friendly to, the ozone layer or the atmosphere” (FTC, 2012a). While this statement does not provide much technical guidance as with the other claims, it helps marketers avoid committing the sin of fibbing. The FTC is currently seeking comment on ozone-safe and ozone-friendly claims for the current revision of the Green Guides (FTC, 2022a). So, there may be more guidance in this area with the next revision.

*Example 1:* A product is advertised as “ozone-friendly” although it contains chlorofluorocarbons (CFCs). This chemical is an “ozone-depleting substance,” so this claim would be deceptive (FTC, 2012a).

*Example 2:* A marketer advertises an aerosol cooking spray as “ozone-friendly,” however, “[s]ome of the product’s ingredients are volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation” (FTC, 2012a). This claim would be deceptive since it insinuates that “the product is safe for the atmosphere as a whole” (FTC, 2012a).

## IX. Recyclable

Marketers should clarify when recycling is not widely available to the public. The FTC (2012b) gives advice for when this is the case:

If recycling facilities for a product are not available to at least 60 percent of consumers or communities, a marketer can state, “This product may not be recyclable in your area.” If recycling facilities for a product are available to only a few consumers, a marketer should use stronger qualifying language: “This product is recyclable only in the few communities that have appropriate recycling programs.”

The less access there is to facilities, the more marketers should emphasize that fact. It is misleading to claim a product is recyclable if most of the consumers do not have access to the necessary recycling facilities. In addition to this, marketers should be clear about which aspects of the product are recyclable. Recyclable claims should only be made for “a product or package if the entire product or package, excluding minor incidental components, is recyclable” (FTC, 2012a). If only a portion or aspect of a product or package is recyclable, then marketers should clearly identify those components. Lastly, marketers should not make recyclable claims “[i]f any component significantly limits the ability to recycle the item” (FTC, 2012a).

*Example 1:* A “recyclable” claim is on the cardboard packaging of a plastic product, however, the claim is unclear whether it is describing the packaging or the product. The claim insinuates that both the product and the packaging are recyclable since there was no further information supplied. This claim would be deceptive unless the company specifies which aspect(s) is recyclable.

*Example 2:* A marketer claims that a package “includes some recyclable material” however it is not specified which aspects are recyclable (FTC, 2012a). The package has four different layers, only one of which “is made from recyclable material” (FTC, 2012a). Access to recycling facilities for the single recyclable material is available to a majority of consumers, however, many of these facilities do not “have the capability to separate the recyclable layer from the non-recyclable layers” (FTC, 2012a). This claim is deceptive because 1) it does not specify which aspect of the product is recyclable, and 2) “it doesn’t disclose the

limited availability of facilities that can” separate and recycle the material (FTC, 2012a).

#### X. Recycled Content

Marketers should only make recycled content claims if the materials “have been recovered or diverted from the waste stream” either “during the manufacturing process or after consumer use” (FTC, 2012b). In addition to this, marketers should specify whether the product or package was made only partly with recycled content. Otherwise, they would be committing the sin of vagueness or no proof. The percentage of recycled content the product is made with should be clear to consumers. Marketers should also specify whether the recycled material is used, reconditioned, or re-manufactured.

*Example 1:* A company collects clothing that would have been discarded and entered the waste stream. That company then recycles the clothing to reuse the materials in new products. A marketer advertises these new products as “made with 20% recycled material.” This claim would not be deceptive since the waste was diverted from the waste stream and the marketer specified that the products were only made partially from recycled materials.

*Example 2:* The FTC provides an example of “a manufacturer [that] advertises its printer toner cartridges [as] ‘65% recycled’” (FTC, 2012a). However, this claim is deceptive because “[t]he cartridges contain 25% recycled raw materials and 40% reconditioned parts” (FTC, 2012a). Consumers would not assume that an aspect of this product would be made with reconditioned parts. The claim “recycled” conveys that only recycled materials would be used to manufacture the product. If the advertisement specified that a portion of the product was made with reconditioned parts, then the claim would not be deceptive.

#### XI. Refillable

Marketers should only claim a product is refillable if they provide consumers with the means to do so. The company could either offer a collection and refill system or sell a separate product that serves to refill the original packaging.

*Example 1:* A company advertises its hand soap as “refillable.” The company does not have a system to collect the empty soap bottles to refill them, nor do they sell the hand soap in bulk for consumers to refill their bottle. This claim is therefore deceptive. If the company sold a bulk package of hand soap that consumers could purchase, then the claim would not be deceptive.

*Example 2:* A local artisan sells “refillable” candles. The artisan does not offer a separate product that consumers could buy to refill their candles on their own, however, they have a drop-off center for the empty candle containers. The artisan is then able to refill the candle containers that consumers drop off. This claim would not be deceptive.

#### XII. Made with Renewable Energy

These claims should only be made if a product or package was truly made with renewable energy or if the company buys renewable energy certificates (RECs) to offset/match their fossil fuel energy use. The language made with “renewable energy” may be confusing and misunderstood as “made with recycled content or renewable materials” (FTC, 2012b). The FTC (2012b) advises marketers to “specify the source of renewable energy” such as “wind” or “solar” in order to avoid this misunderstanding. Marketers should also not make this claim unless essentially all the significant

manufacturing operations are “powered with renewable energy or non-renewable energy, matched by RECs” (FTC, 2012b). This prevents companies from deceiving their consumers. Finally, firms that generate renewable energy should not claim that they use renewable energy if they sell all the energy in the form of RECs. In this case, even though the firms may use this energy for their operations, they are transferring the “use” to the firms that buy the RECs.

*Example 1:* The FTC gives an example of “a company [that] uses 100% non-renewable energy to manufacture all parts of its product” however, its assembly process is powered entirely with renewable energy (FTC, 2012a). The claim would not be deceptive if a “marketer advertised its product as ‘assembled using renewable energy’” (FTC, 2012a). This language is clear so that consumers know exactly what aspect of the production process was powered by renewable energy.

*Example 2:* A poster company uses solar panels “to generate power, and advertises that its plant is ‘100% solar-powered’” (FTC, 2012a). However, the company sells RECs “based on the renewable attributes of all the power it generates” (FTC, 2012a). Even if the poster company uses the renewable energy it generates for its operations, “it has, by selling [RECs], transferred the right to characterize that electricity as renewable” (FTC, 2012a).

### XIII. Made with Renewable Materials

The language surrounding renewable materials may be confusing and difficult for consumers to interpret. To rectify this, the FTC (2012b) suggests that marketers should “identify the material used clearly and prominently” as well as “explain why it is renewable” as opposed to recyclable, biodegradable, or made with recycled content. Marketers should also explain which aspect of the product is made with renewable materials if it is not entirely made with renewable materials (aside from minor and inconsequential components).

*Example:* A marketer advertises a shelving unit as “made with renewable materials.” Marketers should specify what renewable materials the product is made with since many consumers will “interpret this claim to mean that the [shelving unit] is also made with recycled content, recyclable, and biodegradable” (FTC, 2012a). By clarifying the claim with the statement: Our shelving unit “is made with 100 percent bamboo, which grows at the same rate, or faster, than we use it” the claim is not deceptive (FTC, 2012a).

### XIV. Source Reduction

Marketers should be careful when they make source reduction claims. They should clarify whether “a product or package is lower in weight, volume, or toxicity clearly and prominently to avoid deception” (FTC, 2012b).

*Example 1:* A marketer claims that a new product generates “15% less waste by weight than our previous product.” This claim would not be deceptive because the marketer specified the source reduction by the amount and type. The marketer should still be careful with their advertising and make sure they can prove these claims.

Both the FTC Green Guides and the Seven Sins of Greenwashing focus on many of the same principles. The FTC’s approach to the Green Guides can be beneficial in educating marketers on how to refrain from greenwashing, however, they are hardly binding. The language surrounding these different claims is incredibly mild. The FTC primarily focuses on what

marketers “should” or “should not” do. There were very few instances where the FTC used stricter language such as “must” or “need”. This goes back to the introduction to the Green Guides and how they are designed to “help” marketers rather than enforce non-deceptive environmental marketing. In fact, the FTC has a sparse history of enforcement of the Green Guides.

### **Enforcement and Regulation of Environmental Marketing**

The FTC has the authority to take action against deceptive environmental marketing claims under the FTC Act. However, when the Green Guides were first created, “[t]he FTC categorize[d] the Green Guides as interpretive rules,” rather than legislative rules, “meaning that they are ‘general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce’” (Rotman, Gossett, & Goldman, 2020, pp. 426-427). This categorization has affected the way the FTC can enforce these Guides. Penn State Environmental Law Review states:

The Green Guides are an administrative interpretation of the law illustrating how the FTC will apply Section 5 of the FTC Act to environmental advertising and marketing practices. They are intended to promote voluntary compliance with the law, and conduct inconsistent with the position taken by the Guides may result in corrective action under Section 5 of the FTC Act. The Guides are not themselves enforceable, nor do they preempt other regulations by federal agencies or state and local bodies. Moreover, the guides apply to *any* environmental claim in *all forms* of marketing, whether express or implied. (Swartz, 2009, p. 100)

This gives the FTC the authority to take action, however, they can only do so if they can prove “that each Green Guides violation also violates [Section] 5 of the FTC Act” which “is the sole piece of legislation that grants the [FTC] statutory powers of enforcement over deceptive advertising and other forms of marketing” (Rotman, Gossett, & Goldman, 2020, p. 429). Section 5 states that “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful” (FTC, 2012c). In addition to this, as Swartz mentioned, the Green Guides will never take precedence over federal, state, or local regulations and laws. Due to this, many states have implemented laws that were adopted from the Green Guides to restrict deceptive environmental marketing. Since the states have the jurisdiction to enact their own laws, each state law may vary slightly or drastically. This makes it difficult for companies to comply with these laws because “state-by-state litigation may also result in disparities that ‘ultimately confuse rather than clarify,’ so that manufacturers are required to simply comply with the highest state standard” (Lorance, 2010, p. 12). Aside from the various state laws, the Green Guides have been beneficial “in cases of greenwashing because courts often defer to them in litigation of environmental claims” (Feinstein, 2013, p. 243). So, even though the FTC has to jump through some hurdles to take action on its own, the Green Guides are still used as a reference in many environmental marketing cases.

Legislative rules, on the other hand, give the FTC the authority to “define with specificity acts or practices which are unfair or deceptive” and incorporate them into law, unlike interpretive rules which are exclusively general, unbinding guides (Rotman, Gossett, & Goldman, 2020, p. 427). This is interesting considering the Green Guides do take on some of this specific language regarding what is or is not deceptive. In fact, “former FTC Commissioner Mary L. Azcuenaga issued a statement of dissent upon the release of the Green Guides in 1992, questioning whether the Green Guides were legislative rules masquerading as interpretative guidance” (Rotman,

Gossett, & Goldman, 2020, p. 428). I believe the use of this language paired with the interpretive guidance gives the wrong impression to consumers. It makes the Green Guides seem binding when they are not. The Administrative Law Review states that “[t]hese industry guidelines occupy a middle ground between being truly voluntary and legally binding” (Rotman, Gossett, & Goldman, 2020, p. 428). This is a fine line to walk considering the enforcement of voluntary and binding rules, respectively, are so different.

In addition to the enforcement, the process for developing interpretive rules is much less stringent than developing legislative rules, as the FTC must meet the requirements of various acts such as the Administrative Procedure Act, the FTC Act, and the FTC Improvement Act. Meeting these additional requirements “are intended to, and generally do, slow the FTC rulemaking process” (Rotman, Gossett, & Goldman, 2020, p. 427). These authors theorized that the FTC wanted to get the Green Guides released quickly due to the rising number of environmental marketing claims, so, they were formed as interpretive rules to avoid the obstacles associated with legislative rules. While this decision helped to release the Green Guides quickly, it has greatly lessened their impact.

There have been minimal enforcements of the Green Guides over the past 30+ years since the Guides were first introduced (see FIGURE). Not only are there restrictions put forth based on the interpretive rules, but the enforcement of the Green Guides is also dependent upon who is in office. Unfortunately, the information regarding past enforcement of the Guides is ambiguous. The Agricultural Law Update states that “[i]n the 1990’s, under the Clinton and the first Bush administrations, the FTC brought 37 enforcement actions against green marketers making invalid claims” (Redick, 2009, p. 4). Another source reports that the 37 enforcements were brought forth specifically “[f]rom 1999 to 2000”, although the author’s FTC citation is outdated and no longer navigable as directed (Lorance, 2010, p. 10). Aside from the specific dates of the 37 actions, there are more inconsistencies in that the FTC only has 32 cases listed from the years 1990 to 1999 on its “Cases Tagged with Environmental Marketing” page (FTC, 2023b). This is odd considering Lorance obtained her information directly from the FTC. Unfortunately, the site she gathered her information from is no longer found. This must mean that the FTC has updated its website since 2009 when that source was used. However, this still does not explain the five missing cases. Furthermore, I cross-referenced the cases listed on the “Cases Tagged” page with the cases listed on the FTC’s “Legal Library: Cases and Proceedings” page and found even more inconsistencies (see TABLE) (FTC, 2023c). There are seven cases and five proceedings listed on the “Legal Library” page that do not appear on the “Cases Tagged” page. Additionally, there is one case listed on the “Cases Tagged” page that does not appear on the “Legal Library” page. This discrepancy in reporting is concerning. Not only does the information shared by these external sources not add up with what the FTC is showing, but the FTC’s information does not line up internally either. A full investigation of these discrepancies will not fit within the scope of this paper; however, further research could be conducted in this area.

Regardless of the discrepancies, the actions that the FTC has taken correlate with the changes in administration and what each administration values. As discussed earlier, there were over 30 actions taken against greenwashing in the 1990s. Conversely, there were no actions taken from 2000 to 2009 during the George W. Bush administration. All the sources discussed earlier agree on this point except for a single case in 2008 that was listed on the “Legal Library” page. These inconsistencies are due to the allocation of funding throughout each administration:

The limited number and subject of FTC enforcement actions, especially compared with the growing incidence of greenwashing, reveal that the FTC is not sufficiently enforcing

claims. Such limited enforcement is due to its budget constraints, which force it to pursue major deceptive claims. (Lorance, 2010, p. 11)

This statement is describing how the FTC tackles certain issues at a time. For instance, the FTC issued a press release in 2013 describing actions it was taking against biodegradable claims from six different companies: 1) ECM Biofilms, Inc., 2) American Plastic Manufacturing, 3) CHAMP, 4) Clear Choice Housewares, Inc., 5) Carnie Cap, Inc., and 6) AJM Packaging Corporation (FTC, 2013). The FTC had already taken action against three companies in 2009 for “misleading claims of biodegradability,” but it needed to reinforce the new guidelines after the 2012 revisions of the Green Guides (Lorance, 2010, p. 10). Additionally in 2009, the FTC brought actions against four other companies for marketing “rayon fabrics as bamboo” (Lorance, 2010, pp. 10-11). These instances as well as four actions against recyclable claims in 1994, five actions against energy efficiency and cost saving claims in 2012 (FTC, 2012d), and four actions against all-natural claims in 2016 (FTC, 2016) show how the FTC pursues these major deceptive claims in groupings. By focusing on single issue actions, the FTC is not working to enforce the other forms of deceptive environmental marketing, essentially letting companies greenwash with no repercussions.

### **Current Revisions of the Green Guides**

After a decade the FTC is working on new revisions of the Green Guides. The organization announced on December 14, 2022, that the FTC “is seeking public comment on potential updates and changes to the Green Guides” (FTC, 2022a). It is important to obtain this public comment since the Guides are primarily based on consumer perception. Originally, this comment period was set to last 60 days, ending on February 21, 2023, however, the FTC has extended this period to now end on April 24, 2023 (FTC, 2023d). The FTC (2022a) expects to receive comments on:

- Carbon Offsets and Climate Change
  - The FTC already provides guidance on this area in the current version of the Green Guides, but “invites comments on whether the revised Guides should provide additional information on related claims and issues” (FTC, 2022a).
- The Term “Recyclable”
  - The FTC is seeking “comments on whether it should change the current threshold” on what is an acceptable use of “recyclable” (FTC, 2022a). Additionally, the FTC wants to know if it should further address “claims for products that are collected (picked up curbside) by recycling programs but not ultimately recycled” (FTC, 2022a).
- The Term “Recycled Content”
  - The FTC is interested in comments on whether recycled content claims “– particularly claims related to ‘pre-consumer’ and ‘post-industrial’ content – are widely understood by consumers, as well as whether alternative methods of substantiating recycled content claims may be appropriate” (FTC, 2022a).
- The Need for Additional Guidance
  - The FTC wants comments on whether additional guidance is needed “regarding claims such as ‘compostable,’ ‘degradable,’ ‘ozone-friendly,’ [*sic*] ‘organic,’ and ‘sustainable, [*sic*] as well as those regarding energy use and energy efficiency” (FTC, 2022a).

In addition to these various aspects, the FTC is also considering making the change from interpretive rules to legislative rules. This “would greatly increase the FTC’s ability to impose financial penalties for violations and also increase the number of states where violation of an actual ‘regulation’ (not just a prescriptive ‘guide’) could establish violation of state unfair and deceptive practices laws” (GT Law, 2023). Transformation into legislative rules would give the Guides explicit authority over greenwashing, reducing the hurdles currently in place.

As of April 8, 2023, there have been hundreds of public comments posted on Regulations.gov under the FTC’s (2022c) post seeking public comment on the current Green Guides revision. Many of these comments do not follow the exact submission guidelines that the FTC (2022b) stated in its official filing request for comments. The FTC (2022b) asked that:

Responses should be as specific as possible, and reference the question being answered, as well as empirical data or other evidence wherever available and appropriate.

Additionally, the Commission also invites comments on any issues related to the Green Guides not specifically mentioned in the questions below. (FTC, 2022b)

The majority of the comments are informal and include vague statements and sparse evidence supporting their suggestions. The inclusion of these trivial comments is to give an understanding of the content that the FTC is sifting through before revising the Guides. The comments show that consumers are concerned about the environment and are interested in the relevancy of the Green Guides. However, many of these comments do little to advise the FTC on scientific and factual reasons to make certain changes or adjustments to the Guides. Regulations.gov (2022c) has all the comments filed under the FTC’s request for comment. Here are a few excerpts of the general statements and suggestions:

- “I am a concerned citizen and I care deeply about environmental issues...I seek to align my purchasing decisions with my values, which include protecting our environment, this includes America’s backyard. The prevalence of greenwashing makes this difficult. I ask that the FTC's revision of the Green Guides increase the transparency of environmental marketing claims and seek to deter corporate greenwashing at all levels of its operations. The guides should scrutinize anyone or entity claiming to be Green, or any manner speaking of environmental protection. Proof without a doubt must be evident.” (Anonymous, 2023)
- “I strongly urge you to prohibit the use of the word "recyclable," the chasing arrows recycling symbol, or other statements that imply a product is recyclable unless the item is actually recyclable.” (Snyder, 2023)
- “As you go through this revision process, I ask that you please consult consumers along the way. Ask them about what types of claims they are confused by. Ask them how they are being negatively impacted. Most importantly ask them what type of guidance would be most helpful to them.” (Sharb, 2023)
- “I am asking that the FTC strictly limit a company’s ability to use blanket terms such as sustainable, environmentally friendly, eco-friendly, and so on, when they describe their products—unless they are able to provide objective data that backs up their claims. I would also ask that the FTC limit fossil fuel companies’ ability to portray their products as environmentally beneficial, because all evidence points to the contrary. I am glad your agency is taking these steps to combat the growing threat of greenwashing, but I urge you to go further and create binding regulations and enforce strict penalties for companies that deceive consumers in this way.” (Rosenblum, 2023)
- “There is no Earth 2[.]” (Thomason, 2023)

The comments range from vague observations and statements to more informed suggestions. Additionally, five comments appear when searching for comments specifically tagged “Green Guides Review (16 CFR part 260) (Matter No. P952501)” as per the FTC request:

Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “Green Guides Review (16 CFR part 260) (Matter No. P952501)” on your comment, and file your comment online at <https://www.regulations.gov/>, by following the instructions on the web-based form. (FTC, 2022b, p. 1)

These five comments are more formal and detailed than many of the general comments posted under the FTC’s post. They specifically answer all or some of the questions the FTC listed in its press release in addition to providing evidence for their suggestions (Regulations, 2023). The comments were submitted by various businesses, organizations, and individuals:

- Beta Analytic issued a comment for the Green Guides revision “to address the lack of clarity under the current section 260.16 Renewable Materials Claims” (Beta Analytic, 2023, p. 1). The company suggests the adoption of the term “Biobased (biobased carbon content)” to simplify the language and establish a clear definition of “what qualifies as a renewable material” (Beta Analytic, 2023, p. 1). This would standardize the definition and “put the FTC in the same guidance as the USDA BioPreferred Voluntary Labels Program” which has used the Biobased term “to define biobased carbon content for over 10 years and certifies products making renewable material claims based on the actual biobased carbon percentage” (Beta Analytic, 2023, p. 1).
- The National Consumer Law Center, Public Citizen, the Maryland Energy Advocates Coalition, and the Pennsylvania Utility Law Project; came together to propose changes to the Green Guides in areas that “relate to protections for low-income energy consumers” (Joint Consumer Groups, 2023, p. 1). Specifically, these consumer groups want to see a reduction in greenwashing in “claims associated with energy supply contracts, renewable energy certificates, gas and alternative gas utility services, and other products” (Joint Consumer Groups, 2023, p. 1). To do this they suggest that the FTC offer more clarity in the Green Guides on renewable energy certificates and renewable energy claims. Additionally, they suggest the FTC add sections to the Green Guides that address “competitive energy supply claims” and “misrepresentation and unsupported environmental claims associated with gas, renewable gas, hydrogen, and other alternatives to gas” (Joint Consumer Groups, 2023, pp. 3, 7).
- Kelly Humrichouser, a concerned citizen, issued a comment advising the FTC to update its criteria on carbon offsets. She claims that “the Guides fail to address offset quality” which is an important aspect of carbon offsets (Humrichouser, 2023, p. 3). To rectify this, she suggests that the Guides “encourage corporations utilizing carbon offsets to register with one of the existing registries to increase transparency” (Humrichouser, 2023, p. 4). These existing registries include “Climate Action Reserve (CAR), American Carbon Registry (ACR), Verra (VCS), and Gold Standard” (Humrichouser, 2023, p. 4). Lastly, Kelly suggests that the FTC add “guidance to encourage marketers to specify what types of offsets are being offered to a consumer (whether renewable energy, forestry and conservation, community, projects, or waste to energy)” as well as other categories (Humrichouser, 2023, p. 4).
- Naturepedic Organic Mattresses & Bedding requested an extension of the comment period (Naturepedic Organic Mattresses & Bedding, 2023).



- Heirloom Carbon Technologies commented, requesting “stronger global scientific standards” of carbon removal and offsets (Heirloom Carbon Technologies, 2023, p. 2). The company believes the new revision should “demand a more robust level of scientific evidence, specifically in regard to credit quality” and “define what constitutes ‘high quality’ carbon removal” (Heirloom Carbon Technologies, 2023, p. 2). Heirloom also advises the FTC to “work in conjunction with the Commodity Futures Trading Commission [(CFTC)] as well as the Securities Exchange Commission (SEC), both of which recently signaled their interest (CFTC) and intent (SEC) for regulating disclosure of offset use” (Heirloom Carbon Technologies, 2023, p. 6). Both the quality and scope of carbon offsets should be disclosed according to Heirloom. Lastly, regarding the Green Guides as interpretive rules, “Heirloom believes the Commission should initiate a proceeding to consider rulemaking under the FTC Act” (Heirloom Carbon Technologies, 2023, p. 6).

These comments are all thorough and offer scientific evidence to support their claims. As of right now, all these comments are merely suggestions, so the public will not know what the 2023 Green Guide revisions will include until the comment period is up on April 24<sup>th</sup>, 2023, and the FTC has been able to deliberate.

### **Green Guides Case Study**

The FTC has taken over 90 actions against deceptive environmental marketing in the past 30+ years, and all these cases contain many of the same elements. The repercussions of greenwashing require the Defendant (the company accused of greenwashing) to pay a settlement and adhere to compliance reporting, recordkeeping, and compliance monitoring. The settlement will vary depending on the extent and severity of the infraction. Additionally, the FTC issues marketing restrictions for the companies. Most recently, the FTC took action against Kohl’s and Walmart for deceptively marketing rayon products as bamboo and claiming they were “eco-friendly” or “sustainable.” Both companies received a warning letter from the FTC in 2010 regarding their deceptive marketing of rayon products. They were both warned that “the failure to correct improper labeling or advertising of textile products could subject the company to civil penalties” (Fair, 2022). Therefore, the complaints that were brought in 2022 found these companies to be “in violation of Section 5 of the FTC Act” (Fair, 2022). The combined settlement of these firms totaled \$5.5 million in penalties. Additionally, “the proposed settlements with Kohl’s and Walmart include injunctive provisions that will change how the companies make textile representations and bamboo-related environmental claims in the future” (Fair, 2022). The provisions restricted the companies from making unsubstantiated environmental claims regarding “bamboo or bamboo fiber” (United States v. Kohl’s Inc., 2022, p. 4) and (United States v. Walmart, 2022, p. 4). In addition to these provisions, both companies must adhere to compliance reporting, recordkeeping, and compliance monitoring, as mentioned earlier.

Compliance reporting essentially keeps the FTC up to date with Defendants and their business ordeals. Specifically, Defendants must submit a report to the FTC one year after the case is filed that includes the current primary contact information and location of the primary company and its subsidiaries; business activities; and status of compliance (United States v. Kohl’s Inc., 2022, pp. 10-12) and (United States v. Walmart, 2022, pp. 10-11). Furthermore, Defendants must keep the FTC up to date for 10 years on business activities that include the change of location or structure of the business and “the filing of any bankruptcy petition,

insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing” (United States v. Kohl's Inc., 2022, p. 11) and (United States v. Walmart, 2022, p. 11). Recordkeeping requires Defendants to keep records pertaining to the case for 10 years “and retain each such order for 5 years” (United States v. Kohl's Inc., 2022, p. 12) and (United States v. Walmart, 2022, p. 11). These records are kept to demonstrate compliance with the Order. Compliance monitoring requires Defendants to respond and submit any necessary reports, files, or information to the FTC within 14 days per written request. This ensures direct communication with Defendants and gives the FTC permission to interview Defendants. This is the basis of any action the FTC takes against a company for greenwashing, with minor updates and clarifications of the language over the years (Baruch, Hoffman, & Bureau of Competition, 2019). It was also seen in the 2017 United States v. Volkswagen case (2020) which was finalized in 2020. Volkswagen was charged for deceptively marketing its vehicles as “clean diesel” and using an “illegal emission defeat device” (FTC, 2020). The settlement consisted of a greater than \$9.5 billion repayment to consumers and the option for consumers “to (a) have Defendants take back their vehicle (buying it back at favorable pre-negotiated prices or terminating leases early with compensation), or (b) have Defendants modify their vehicle and provide compensation” (United States v. Volkswagen, 2020, p. 2). Additionally, the FTC issued “an independent ‘Claims Supervisor’ (a monitor) tasked with supervising Defendants’ compliance” and was subject to compliance reporting, compliance monitoring, and recordkeeping (United States v. Volkswagen, 2020, p. 3) and (United States v. Volkswagen, 2016).

These cases show that the FTC follows the same general enforcement guidelines with each action they take against greenwashing. Defendants will be subject to pay a fine; complete compliance reporting, recordkeeping, and compliance monitoring; and they may be subject to specific penalties such as restrictions on making certain claims or being issued a Claims Supervisor. All in all, the enforcement does not stretch too far. While companies may want to avoid fines and financial penalties, this type of punishment is generally a slap on the wrist, especially for wealthy corporations. Lund and Sarin (2020) from the Regulatory Review state:

In theory, high fines can supply adequate deterrence by themselves, but our results indicate that it might not be politically feasible or legally possible to levy a sufficiently high fine to deter future incidents of corporate crime. For large companies, criminal penalties may be just another cost of doing business—and a reasonable cost at that.

Additionally, a “major problem with the FTC’s case-by-case approach is that it is very time-consuming. Considering each case individually makes it impossible to regulate all of the manufacturers making environmental claims about hundreds of types of products” (Sherman, 2012, p. 25). The amount of effort it takes for the FTC to take action against greenwashing, paired with the lack of deterrence caused by fines, does not bode well for current greenwashing enforcement.

## **Recommendations**

It has been over ten years since the Green Guides were last revised and it is safe to say that environmental trends, as well as marketing, have changed quite drastically (IBM, 2022). The primary language used has changed so that we see phrases like “sustainable” or “sustainably sourced” more often as well as “organic,” particularly when it is associated with non-agricultural products. Currently, organic claims are only regulated under the United States Department of Agriculture (USDA) which strictly deals with agricultural organic claims (Feinstein, 2013). This

has left a gap for organic regulation regarding home and personal care products. The new revision of the Green Guides needs to reflect this shift in language and fill in these gaps. I suggest that the FTC provide guidance on these new generic phrases and establish the context in which marketers can use them. It should follow the same structure as the guidance for “compostable,” “degradable,” or “general environmental benefit” claims where the FTC provides specific guidance on what marketers should or should not do. Additionally, and most importantly, I recommend that the FTC transforms the Green Guides from interpretive rules to legislative rules. Currently, the Green Guides may provide satisfactory guidance for marketers, however, they are incredibly difficult to enforce. With legislative rules, the FTC will not have to jump through hoops to prove that marketers violated Section 5 of the FTC Act. Instead, the Guides will be law binding in and of themselves. Converting the Guides to be binding would also alleviate the middle ground stance the FTC has taken in using legislative language with its interpretive rules and subsequently clear up the confusion surrounding the use of the Green Guides. This will also allow the FTC to take action on a wider range of issues rather than focus on single issue actions due to the resources needed to enforce interpretive rules. Enacting a higher standardization of these rules would give the FTC more authority, as they would no longer be second to federal, state, and local laws. Furthermore, I suggest that the FTC alleviate the concerning discrepancies in its case reporting. It is difficult to fully trust the historical impact of the Green Guides with this faulty and inconsistent reporting.

I believe that the FTC should take the current revision of the Green Guides as an opportunity to clarify the language, make the Guides binding, and establish a better reporting system. This combination of improvements will help to increase consumer trust in environmental marketing as well as make the process more standardized for businesses. This, in turn, will make environmental marketing more accessible and increase the amount of positive impact that comes from environmental improvements (Rotman, Gossett, & Goldman, 2020). With a standardized and binding system, I believe that we will be able to fully experience the benefits of environmental marketing through truthful claims and the reduction of false environmental products.

### **Changing Unbinding Regulations to Binding Laws**

History has shown that it is possible to make the suggested changes to transform the Green Guides into binding laws. Nutrition labeling was not regulated until 1972 when the Federal Drug Administration (FDA) saw the growing consumer interest in nutrition details. Initially, the regulation required nutrition labels to include a number of various ingredients such as calories, protein, carbs, and fat (Wartella, Lichtenstein, & Boon, 2010, p. 20). The next decade brought changes in the regulation and several government organizations came together to address this:

FDA, USDA, and the Federal Trade Commission held hearings in 1978 to gather information on food labeling issues and suggestions on how to make improvements. The vast majority of comments from the hearing favored mandatory nutrition labeling but also suggested making changes to the format to make it more useful. (Wartella, Lichtenstein, & Boon, 2010, p. 20)

The public hearing brought an assurance of consumer interest in these labels. Unfortunately, it also brought “an assortment of new, undefined claims on product labels that attempted to state or imply something about the special value of the food, such as ‘extremely low in saturated fat,’ in order to catch consumers’ attention” (Wartella, Lichtenstein, & Boon, 2010, p. 20). Additionally,

it was stated that “[t]he proliferation of ambiguous claims on labels and in advertising led to charges that the government was tolerating claims that were ‘at best confusing and at worst deceptive economically and potentially harmful’” (Wartella, Lichtenstein, & Boon, 2010, p. 20). This instance mirrors how the FTC is currently addressing the Green Guide revisions and displays similar issues to greenwashing. The “ambiguous claims” on nutrition labels emulate the ambiguous claims the Green Guides are attempting to regulate. To address this issue, the FDA created a proposal that was altered several times and ultimately finalized in 1990. In his proposal, the FDA “defined appropriate health claims more narrowly and set new criteria to be met before allowing a claim” (Wartella, Lichtenstein, & Boon, 2010, p. 21). At this stage, the proposal imitates the Green Guides, where guidelines are in place, but the labels are not nationally regulated and enforced. In addition to the mandatory ingredients, many companies wanted to include health-related claims. Consumers wanted to shop based on the nutritional value of food, and thus, nutrition labels were created in the same way environmental claims have proliferated over the past several decades. To include these health claims the “FDA initiated rulemaking to provide more flexibility in making claims on foods that could be useful in” a number of health-related factors (Wartella, Lichtenstein, & Boon, 2010, p. 21). To start this rulemaking process, in 1989, the FDA “ask[ed] for public comment and a notice of public hearings to be held across the country to address the content and format of the nutrition label, ingredient labeling, and both nutrient content and health claims” (Wartella, Lichtenstein, & Boon, 2010, p. 21). This was different than the outcome of the 1978 hearing because:

[A] number of forces, such as advances in science, recommendations for dietary change, food industry use of the label, and the entry of state governments into the food labeling arena, coalesced to propel important changes in the regulatory framework for food labeling. (Wartella, Lichtenstein, & Boon, 2010, p. 21)

The FDA deliberated to determine the criteria that would need to be included on nutrition labels and how to enforce them. These deliberations “culminated in November 1990 with the passage of the NLEA” (Nutrition Labeling and Education Act) (Wartella, Lichtenstein, & Boon, 2010, p. 23). This act is what gave the “FDA explicit authority to require nutrition labeling on most food packages and specified the nutrients to be listed in the nutrition label” (Wartella, Lichtenstein, & Boon, 2010, p. 23). Eventually, this act was implemented in other areas that were not regulated by the FDA such as the FSIS (Food Safety and Inspection Service) with meat and poultry products, and the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with alcoholic products (Wartella, Lichtenstein, & Boon, 2010, p. 23). The criteria for the nutrition labels were slightly altered to reflect the respective products, although the enforcement of the labels was the same under the NLEA.

This process of mandating nutrition labels reflects many of the issues the FTC is dealing with regarding greenwashing regulation. The lack of legislative ruling in both cases caused deceptive practices. The FDA was able to be proactive about this deception by getting the Nutrition Labeling and Education Act passed. The FTC needs to do the same with the Green Guides. This process shows that it is possible to go through the rulemaking process to transform the Guides into legislative rules.

## **Conclusion**

Greenwashing has evolved over time and regulations have followed suit. Unfortunately, these regulations do not currently have the teeth they need to put a stop to deceptive environmental marketing. As interpretive rules, the Green Guides do not have total authority

over greenwashing. Instead, much of the enforcement is left up to state or local laws. The FTC should address this enforcement gap through the new revision of the Green Guides by converting the Guides into legislative rules. This would create a nationwide standard that would eliminate the variation of laws between states and subsequently make environmental marketing more accessible to businesses. A higher standardization would also increase consumer trust as there would not be as many scandals associated with greenwashing. Additionally, just as regulations have adapted over time, so have the trends associated with environmental marketing. The Green Guides need to reflect this change to include the buzzwords such as “organic” and “sustainable.” This will keep the FTC up to date on the current trends and reduce the amount of greenwashing associated with these types of claims. Further research on the responsibility of the consumer cannot be sufficient until the FTC implements the changes needed to keep corporations accountable.

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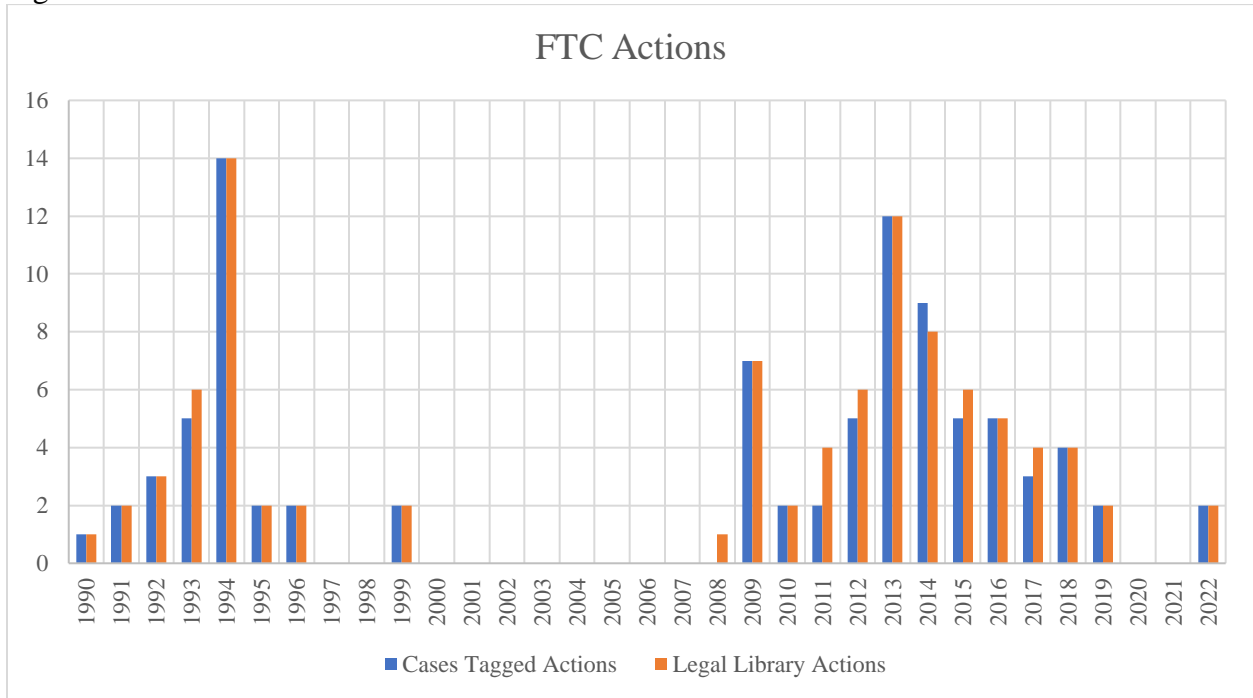
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## Appendix

Figure



*Note.* This figure depicts the actions the FTC took from 1990 to 2022. This data was gathered from the FTC (2023b) & (2023c).

Table

Cases Tagged with Environmental Marketing		Legal Library: Cases and Proceedings	
Vons Companies, Inc.	August 27, 1990	Vons Companies, Inc.	August 27, 1990
Zipatone, Inc.	July 9, 1991	Zipatone, Inc.	July 9, 1991
Jerome Russell Cosmetics, USA, Inc.	August 21, 1991	Jerome Russell Cosmetics, USA, Inc.	August 21, 1991
American Enviro Products, Inc.	March 18, 1992	American Enviro Products, Inc.	March 18, 1992
Tech Spray, Inc.	March 25, 1992	Tech Spray, Inc.	March 25, 1992
RMED International, Inc.	May 14, 1992	RMED International, Inc.	May 14, 1992
Mobil Oil Corporation	February 1, 1993	Mobil Oil Corporation	February 1, 1993
PerfectData Corporation	August 2, 1993	PerfectData Corporation	August 2, 1993
DeMert & Dougherty, Inc.	August 16, 1993	DeMert & Dougherty, Inc.	August 16, 1993
Nationwide Industries	August 26, 1993	Nationwide Industries	August 26, 1993
G.C. Thorsen, Inc.	October 7, 1993	G.C. Thorsen, Inc.	October 7, 1993
		Texwipe Company	October 8, 1993
White Castle System, Inc.	January 6, 1994	White Castle System, Inc.	January 6, 1994
Redmond Products, Inc.	February 10, 1994	Redmond Products, Inc.	February 10, 1994
Mr. Coffee, Inc.	March 25, 1994	Mr. Coffee, Inc.	March 25, 1994
Archer Daniels Midland Company	April 11, 1994	Archer Daniels Midland Company	April 11, 1994
Orkin Exterminating Company, Inc.	May 25, 1994	Orkin Exterminating Company, Inc.	May 25, 1994
America's Favorite Chicken Company	July 13, 1994	America's Favorite Chicken Company	July 13, 1994
AJM Packaging Corporation	July 19, 1994	AJM Packaging Corporation	July 19, 1994
Oak Hill Industries Corporation	July 19, 1994	Oak Hill Industries Corporation	July 19, 1994
LePage's, Inc.	July 19, 1994	LePage's, Inc.	July 19, 1994
Keyes Fibre Company	August 2, 1994	Keyes Fibre Company	August 2, 1994
Amoco Foam Products Company	August 8, 1994	Amoco Foam Products Company	August 8, 1994
North American Plastics Corporation	September 8, 1994	North American Plastics Corporation	September 8, 1994
BPI Environmental, Inc.	October 16, 1994	BPI Environmental, Inc.	October 16, 1994
Chemopharm Laboratory	December 6, 1994	Chemopharm Laboratory	December 6, 1994
Creative Aerosol Corporation	January 13, 1995	Creative Aerosol Corporation	January 13, 1995
Mattel, Inc.	June 23, 1995	Mattel, Inc.	June 23, 1995

The Safe Brands Corporation, Warren Distribution Inc., and ARCO Chemical Company, In the Matter of	March 26, 1996	The Safe Brands Corporation, Warren Distribution Inc., and ARCO Chemical Company, In the Matter of	March 26, 1996
Benckiser Consumer Products, Inc.	May 21, 1996	Benckiser Consumer Products, Inc.	May 21, 1996
OneSource Worldwide Network, Inc., et al.	July 1, 1999	OneSource Worldwide Network, Inc., et al.	July 1, 1999
Dura Lube Corporation, American Direct Marketing, Inc., et al., In the Matter of	December 23, 1999	Dura Lube Corporation, American Direct Marketing, Inc., et al., In the Matter of	December 23, 1999
		Johns Manville Corporation (fiberglass insulation)	August 1, 2008
Enviromate, LLC, and Philip A. Geddes, individually and as the managing member of the corporation, United States of America (for the Federal Trade Commission)	March 5, 2009	Enviromate, LLC, and Philip A. Geddes, individually and as the managing member of the corporation, United States of America (for the Federal Trade Commission)	March 5, 2009
Meyer Enterprises, LLC, et al., United States of America (for the Federal Trade Commission)	March 5, 2009	Meyer Enterprises, LLC, et al., United States of America (for the Federal Trade Commission)	March 5, 2009
Tender Corporation, a corporation, in the Matter of	July 17, 2009	Tender Corporation, a corporation, in the Matter of	July 17, 2009
Kmart Corporation, in the Matter of	July 17, 2009	Kmart Corporation, in the Matter of	July 17, 2009
Sami Designs, LLC, also d/b/a Jonäno, and Bonnie Siefers, individually and as owner of the limited liability company, In the Matter of	December 18, 2009	Sami Designs, LLC, also d/b/a Jonäno, and Bonnie Siefers, individually and as owner of the limited liability company, In the Matter of	December 18, 2009
CSE, Inc., also d/b/a MAD MOD, and Chris Saetveit and Cyndi Saetveit, individually and as owners of the corporation, In the Matter of	December 18, 2009	CSE, Inc., also d/b/a MAD MOD, and Chris Saetveit and Cyndi Saetveit, individually and as owners of the corporation, In the Matter of	December 18, 2009
Pure Bamboo, LLC, et al.	December 18, 2009	Pure Bamboo, LLC, et al.	December 18, 2009
M Group, The, Inc., d/b/a Bamboosa, and Mindy Johnson, Michael Moore, and Morris Saintsing, In the Matter of	April 9, 2010	M Group, The, Inc., d/b/a Bamboosa, and Mindy Johnson, Michael Moore, and Morris Saintsing, In the Matter of	April 9, 2010
Dyna-E International, Inc., and George Wheeler, Dyna-E International, Inc., In the Matter of	April 12, 2010	Dyna-E International, Inc., and George Wheeler, Dyna-E International, Inc., In the Matter of	April 12, 2010
Nonprofit Management LLC, also d/b/a Tested Green, et al., In the Matter of	March 1, 2011	Nonprofit Management LLC, also d/b/a Tested Green, et al., In the Matter of	March 1, 2011
		Scott Kay, Inc.	August 23, 2011
		Kent Nutrition Group, Inc. (World's Best Cat Litter)	November 9, 2011
Dutchman Enterprises, LLC, et al.	December 20, 2011	Dutchman Enterprises, LLC, et al.	December 20, 2011
		Temple-Inland Inc. and Scientific Certifications Systems, Inc.	March 27, 2012
Gorell Enterprises, Inc., In the Matter of	May 18, 2012	Gorell Enterprises, Inc., In the Matter of	May 18, 2012
THV Holdings LL	May 18, 2012	THV Holdings LL	May 18, 2012
Serious Energy, Inc.	May 18, 2012	Serious Energy, Inc.	May 18, 2012
Long Fence & Home, LLLP	May 18, 2012	Long Fence & Home, LLLP	May 18, 2012
Winchester Industries, In the Matter of	May 18, 2012	Winchester Industries, In the Matter of	May 18, 2012
Sears, Roebuck and Co.; Kmart Corporation; and Kmart.com, LLC, United States of America (for the Federal Trade Commission)	January 3, 2013	Sears, Roebuck and Co.; Kmart Corporation; and Kmart.com, LLC, United States of America (for the Federal Trade Commission)	January 3, 2013
Macys, Inc., United States of America (for the Federal Trade Commission)	January 3, 2013	Macys, Inc., United States of America (for the Federal Trade Commission)	January 3, 2013
Leon Max, Inc., also d/b/a Max Studio	January 3, 2013	Leon Max, Inc., also d/b/a Max Studio	January 3, 2013
Amazon.com, Inc., United States of America (for the Federal Trade Commission)	January 3, 2013	Amazon.com, Inc., United States of America (for the Federal Trade Commission)	January 3, 2013
Edward Sumpolec, individually and d/b/a Thermalkool, Thermalcool, and Energy Conservation Specialists	January 31, 2013	Edward Sumpolec, individually and d/b/a Thermalkool, Thermalcool, and Energy Conservation Specialists	January 31, 2013
Sherwin-Williams Company, The	March 6, 2013	Sherwin-Williams Company, The	March 6, 2013
PPG Architectural Finishes, Inc.	March 6, 2013	PPG Architectural Finishes, Inc.	March 6, 2013
Green Millionaire, LLC, et al.	October 18, 2013	Green Millionaire, LLC, et al.	October 18, 2013
AJM Packaging Corporation	October 29, 2013	AJM Packaging Corporation	October 29, 2013
Essentia Natural Memory Foam Company, In the Matter of	November 14, 2013	Essentia Natural Memory Foam Company, In the Matter of	November 14, 2013
EcoBaby Organics, Inc., In the Matter of	November 14, 2013	EcoBaby Organics, Inc., In the Matter of	November 14, 2013
Relief-Mart, Inc, In the Matter of	November 14, 2013	Relief-Mart, Inc, In the Matter of	November 14, 2013
Carnie Cap, Inc., In the Matter of	January 6, 2014	Carnie Cap, Inc., In the Matter of	January 6, 2014
MacNeill Engineering Company, Inc., d/b/a CHAMP, In the Matter of	January 6, 2014	MacNeill Engineering Company, Inc., d/b/a CHAMP, In the Matter of	January 6, 2014

Clear Choice Housewares, Inc., also d/b/a FARBERWARE® EcoFresh, In the Matter of	January 6, 2014	Clear Choice Housewares, Inc., also d/b/a FARBERWARE® EcoFresh, In the Matter of	January 6, 2014
N.E.W. Plastics Corp.	February 28, 2014	N.E.W. Plastics Corp.	February 28, 2014
Down to Earth Designs, Inc d/b/a gDiapers, In the Matter of	March 19, 2014	Down to Earth Designs, Inc d/b/a gDiapers, In the Matter of	March 19, 2014
Green Foot Global, LLC, d/b/a Green Foot Global, Greenfoot Global, GFG, GFG Commercial, GFG Industrial, www.GreenFootGlobal.com, GFG Fuel Tech, LLC, and GWO Network	April 30, 2014	Green Foot Global, LLC, d/b/a Green Foot Global, Greenfoot Global, GFG, GFG Commercial, GFG Industrial, www.GreenFootGlobal.com, GFG Fuel Tech, LLC, and GWO Network	April 30, 2014
American Plastic Manufacturing, Inc., In the Matter of	May 2, 2014	American Plastic Manufacturing, Inc., In the Matter of	May 2, 2014
American Plastic Lumber, Inc., In the Matter of	July 28, 2014		
Engineered Plastic Systems, LLC, In the Matter of	September 11, 2014	Engineered Plastic Systems, LLC, In the Matter of	September 11, 2014
		Terro Novo, Inc. (EarthGuard Fiber Matrix Industrial-Use Soil Erosion Control Products)	June 10, 2015
		Opinion of the Commission, By Commissioner Terrell McSweeney - In the Matter of ECM BioFilms	October 19, 2015
		Partial Dissent of Commissioner Maureen K. Ohlhausen - In the Matter of ECM BioFilms, Inc	October 19, 2015
Nice-Pak Products, Inc., In the Matter of	November 2, 2015	Nice-Pak Products, Inc., In the Matter of	November 2, 2015
J.C. Penney Company, Inc.	December 9, 2015	J.C. Penney Company, Inc.	December 9, 2015
Backcountry.com, LLC	December 9, 2015	Backcountry.com, LLC	December 9, 2015
Bed Bath & Beyond Inc.	December 9, 2015	Bed Bath & Beyond Inc.	December 9, 2015
Nordstrom, Inc.	December 10, 2015	Nordstrom, Inc.	December 10, 2015
ABS Consumer Products, In the Matter of	July 13, 2016	ABS Consumer Products, In the Matter of	July 13, 2016
Beyond Costal, In the Matter of	July 13, 2016	Beyond Costal, In the Matter of	July 13, 2016
The Erickson Marketing Group Inc., In the Matter of	July 13, 2016	The Erickson Marketing Group Inc., In the Matter of	July 13, 2016
Trans-India Products, Inc., In the Matter of	July 13, 2016	Trans-India Products, Inc., In the Matter of	July 13, 2016
		Statement of Commissioner Maureen K. Ohlhausen Concurring in Part and Dissenting in Part In the Matter of California Naturel, Inc.	December 12, 2016
California Naturel, In the Matter of	December 12, 2016	California Naturel, In the Matter of	December 12, 2016
ECM BioFilms, Inc., also d/b/a Enviroplastics International, In the Matter of	March 16, 2017	ECM BioFilms, Inc., also d/b/a Enviroplastics International, In the Matter of	March 16, 2017
Volkswagen Group of America, Inc.	May 17, 2017	Volkswagen Group of America, Inc.	May 17, 2017
		Procter & Gamble (flushable wipes)	August 29, 2017
Moonlight Slumber, In the Matter of	December 12, 2017	Moonlight Slumber, In the Matter of	December 12, 2017
Imperial Paints, In the Matter of	April 27, 2018	Imperial Paints, In the Matter of	April 27, 2018
ICP Construction, Inc, In the Matter of	April 27, 2018	ICP Construction, Inc, In the Matter of	April 27, 2018
YOLO Colorhouse, In the Matter of	April 27, 2018	YOLO Colorhouse, In the Matter of	April 27, 2018
Benjamin Moore & Co., Inc., In the Matter of	April 27, 2018	Benjamin Moore & Co., Inc., In the Matter of	April 27, 2018
		Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule	December 10, 2018
Lights of America, Inc., Usman Vakil, and Farooq Vakil	July 19, 2019	Lights of America, Inc., Usman Vakil, and Farooq Vakil	July 19, 2019
		Statement of Commissioner Rohit Chopra in the Matter of Truly Organic	September 19, 2019
Truly Organic Inc.	September 19, 2019	Truly Organic Inc.	September 19, 2019
Kohl's Inc., U.S. v.	May 5, 2022	Kohl's Inc., U.S. v.	May 5, 2022
Walmart, U.S. v.	May 5, 2022	Walmart, U.S. v.	May 5, 2022

*Note.* This table depicts the actions the FTC took from 1990 to 2022. The yellow cells highlight the case discrepancies, and the orange cells highlight the statement discrepancies. This data was gathered from the FTC (2023b) & (2023c).