Collective Fashion Justice commentary on the FTC’s Green Guides

Green Guides Review, Matter No. P954501

Introduction

Collective Fashion Justice (CFJ) is grateful for the opportunity to offer our comments on the Federal Trade Commission (FTC)'s Green Guides and how they may be refined, extended upon and improved. Our charity exists to create a ‘total ethics fashion system’, one which prioritizes the life and wellbeing of people, our fellow animals and the planet we share before profit. Green-washing is an enormous issue in the fashion industry, and the Guides could work to significantly reduce this problem and the deception of citizen consumers.

Knowing how key data is for the FTC to make appropriate revisions to the Guides, we have provided evidence and some new public polling to substantiate our claims throughout our comments.

As part of our commentary on the Guides, we have included suggestions on:

- how to improve the Guides in order to support investigations and legal action to prevent green-washing.

- the need for the Guides to be more directly relevant and useful to the fashion industry, as this industry has both a significant impact on the environment and a high prevalence of green-washing.

- revisions of existing definitions and guidance, based on new and existing research.

- opportunities for the Guides to recognize additional terms, expand on General Principles, as well as broader and interconnected issues such as ethics-washing, in order to address a more holistic view of sustainability as well as misleading advertising and marketing relating to it.
We appreciate the questions provided by the FTC in their December 14th announcement, and our comments provided in the form of answers to these questions. We look forward to further ways to provide insights and assistance to the FTC as it further refine its Guides.

Answers to FTC General Questions:

“1. Is there a continuing need for the Guides? Why or why not?”

Collective Fashion Justice supports the continued and growing need for more comprehensive Green Guides. Green-washing has become increasingly widespread since the first iteration of the Guides in 1992. The Green Guides must be updated, and improved, in order for them to be in line with the codes and standards of other nations and regulatory bodies around the world.

A 2022 survey showed that 68%¹ of surveyed US CEOs and other C-suite leaders admitted that their companies were guilty of green-washing. International surveying across Britain,² the EU,³ and the US⁴ continually shows that while consumers want to make greener choices, they are confused by marketing terms and distrustful of green claims due to the pervasiveness of green-washing. In March 2023, CFJ analysis using the Answer the Public tool which tracks monthly Google searches⁵ showed that the term ‘greenwashing’ in the US had a monthly search volume of 22,200.

“15. What potentially unfair or deceptive environmental marketing claims, if any, are not covered by the Guides?”

a. What evidence demonstrates the existence of such claims?
b. With reference to such claims, should the Guides be modified? If so, why, and how? If not, why not?

(1) Inclusion of the term ‘natural’

‘Natural’ is a term that is being used more often as a synonym for ‘sustainable’. However, as many ‘natural’ things are not inherently ‘sustainable’ things, a clear definition with guidance

¹ https://www.fastcompany.com/90740501/68-of-u-s-execs-admit-their-companies-are-guilty-of-greenwashing
² https://www.ft.com/content/afa4e118-388a-45cb-8095-ce271d914b45
⁵ https://answerthepublic.com/reports/c058aa52-89c3-45e7-942f-86363c31dfc7 - data retrieved on 14th March 2023
relating to use should be provided for this term. For example, fossil fuel industries have begun referring to ‘natural gas’, in an effort to green-wash a non-renewable methane product which contributes significantly to the climate crisis. Global Witness filed a complaint with the Securities and Exchange Commission relating to Shell Oil’s use of the term, which they classified as an investment in ‘renewable energy’, in February 2023.6

Research shows that the ‘natural-is-better’ bias leads many consumers to believe something that is ‘natural’ is more environmentally beneficial, regardless of whether or not this is the case.7 For example, a material like Tencel lyocell can have a far smaller land, water and climate impact than cotton,8 but due to the closed-loop chemical processing involved in Tencel manufacturing which is not ‘natural’, consumers may prefer cotton, even if it is not sustainably grown.

‘Natural’ should be defined as ‘derived from nature, not made or caused by humankind’. It should be specified that ‘natural’ is not equivalent to ‘sustainable’ and therefore should not be used as an environmentally-friendly qualifier on its own, without the addition of clear evidence as to why a product may also be beneficial to the natural environment, not only extracted from it.

Collective Fashion Justice commissioned polling of United States citizens from April 2023 found that 51% of people believe that if a product is labeled as ‘natural’ it is ‘made from nature without harm to nature’. Another 20% believe this label means the product is ‘good for nature’, while only 19% understood the label meant ‘made from nature but it may cause harm to nature’, with the rest of the surveyed population unsure.9 This data highlights the importance of our recommended inclusion and definition of ‘natural’.

(2) Inclusion of the term ‘regenerative’

‘Regenerative’ is another sustainability buzzword becoming increasingly popular in product marketing, including in the food and fashion industries. There is no clear consensus10 of what ‘regenerative’ means and what can qualify as such,11 particularly as a number of studies and prominent proponents of regenerative agriculture have had their work face scrutiny for scientific inaccuracy.12

The term ‘regenerative’ is not well understood by many consumers, and as a result should not be used to imply sustainability in lieu of more clear information. As few as 19%,13 of surveyed Americans were aware of what regenerative agriculture really means. Similarly, only 14%14 of

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6 https://www.washingtonpost.com/politics/2023/02/01/oil-giant-shell-accused-greenwashing-misleading-investors/
11 https://publications.lib.chalmers.se/records/fulltext/244566/local_244566.pdf%20
British consumers surveyed on the matter could define the term. When consensus\textsuperscript{15} on the definition of ‘regenerative agriculture’ has been met, it has been to point out that it is context-specific, and as a result, different practices may be used in different contexts.

A number of heavily promoted studies in support of some heavily marketed forms of regenerative agriculture and regenerative products have been criticized as being supported by biased funding sources,\textsuperscript{16} as well as being scientifically unsound,\textsuperscript{17} even promoting misinformation.\textsuperscript{18}

Based on our review of numerous definitions of regenerative agriculture, ‘regenerative’ agriculture should be defined as ‘a system which strives to move beyond sustainability and towards replenishment of the Earth, which focuses on soil health as a primary pillar for wider ecological system health. Regeneration can be achieved through a diverse range of practices which leave the environment in a better condition than it was first found. Regenerative systems are not to be confused with systems which use more holistic management practices, but which are still ultimately unsustainable at scale or resulting in negative environmental outcomes for the climate, land, biodiversity or creatures within nature.’ Given the breadth of this definition and wider stakeholder definitions, the Green Guides should encourage marketers to refrain from reference of ‘regenerative’, and instead to specific practices utilized for the benefit of the environment and its replenishment.

(3) Inclusion of the term ‘bio-based’

As bio-based synthetic materials, bio-based alternatives to animal-derived materials, bio-based packaging and other bio-based innovation progresses rapidly, it is important this term be defined. There also need to be clear boundaries for how ‘partly bio-based’ products should be defined. Without this clarification, consumers may not understand that their purchases are not totally bio-based, and as a result, potentially not biodegradable or as sustainable as they may assume.

A number of leather alternatives are promoted as ‘bio-based’ despite being ‘partly bio-based’. For example, Desserto,\textsuperscript{19} is a material which is partly derived from prickly pear cacti and partly made of polyurethane. A number of partly bio-based leather alternatives are not advertised as ‘partly’, despite the inclusion of fossil-fuel derived ingredients in the materials.

\textsuperscript{15} https://www.mdpi.com/2071-1050/14/22/15261
\textsuperscript{16} https://jacobin.com/2022/03/big-agriculture-funding-regenerative-ranching-amp-grazing-soil-carbon/
\textsuperscript{17} https://publications.lib.chalmers.se/records/fulltext/244566/local_244566.pdf%20
\textsuperscript{18} http://dx.doi.org/10.1155/2014/163431%20
\textsuperscript{19} https://thecircularlaboratory.com/marketing-hype-why-plant-and-plastic-hybrids-are-the-worst-of-both-worlds
Similarly, animal-derived leather is also promoted as ‘bio-based’, even when the tanning process may render it non-effectively-biodegradable with the use of non-biological chemical tanning substances and even fossil-fuel based plastic coatings.

A number of studies – including in Ireland and the Netherlands, Denmark, Germany, Italy, and the United States show that consumers are interested in purchasing bio-based products, particularly over fossil-fuel based products, but that the term is not always clearly understood. Therefore, consumers should be informed as to if their purchases are wholly or partly bio-based.

‘Bio-based materials’ should be defined as ‘materials which are derived wholly from biological sources’. Any material which is bio-based but processed with inorganic means must not be referred to as ‘bio-based’ without further qualifiers. Bio-based raw materials that are further chemically or otherwise processed unnaturally, as well as bio-based materials which are blended or coated with plastic, synthetic, human-made materials, should be referred to as ‘partly bio-based’. Brands should be encouraged to include the proportionate breakdown of bio- and other inputs in their products and materials.

Our April 2023 US polling also highlighted the need for a more clear definition of ‘bio-based’, with 43% of people believing the term means a product or material is ‘made from plants and other natural, organic matter’ (rather than a blend of this and synthetic inputs), and another 27% believing such a labeled product or material ‘is biodegradable’.

(4) Inclusion of the terms ‘by-product’ and ‘co-product’

In order to effectively define what is ‘recycled content’, it is important that additional definitions be added into the Green Guides to clarify what is a ‘by-product’ and what is a ‘co-product’, as these relate to what may be considered a recycled ‘waste material’ or not. Industry use of the term ‘by-product’ in place of ‘co-product’ impacts consumer views of how sustainable a product is, with the potential to mislead.

When people surveyed for Leather UK market research were told that leather is a ‘by-product’ which contributes to waste reduction, they were more likely to consider purchasing the material. However, leather is a profitable co-product and the American Leather and Hide Council and

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20 https://usleather.org/press/USLeather_Industry_to_Volvo_Leather_is_the_Ultimate_Bio_Based_Recycled_Natural_Material
21 https://tannerymagazine.com/SSIP-biodegradability/
23 https://www.mdpi.com/2071-1050/13/11/6062
25 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9045599/
26 https://www.collectivefashionjustice.org/articles/new-polling-green-washing-prevention-us
other industry references\textsuperscript{29} collated by CFJ highlight that the profitability of hides impacts the number of cattle reared – therefore making leather not simply a waste reduction initiative, but a profit-driven business tied to environmental outcomes of cattle rearing.

We recommend that a by-product should be defined as ‘an incidental or secondary product made in the manufacture of something else, and which is not profitable or desirable’.

Contrastingly, a ‘co-product’ should be defined as ‘a material that is not a primary product, but which is of such a quality that it is considered a desirable secondary good designed into the wider manufacturing process, and able to be profitably sold towards use as a trade commodity in lieu of another primary product’.

(5) Inclusion of ‘ethics-washing’ definition and related term definitions

As recognised by the United Nations endorsed concept of ‘one health\textsuperscript{30}’, the wellbeing of humans and our fellow animals is essential to environmental health. CFJ would recommend FTC consideration of expanding the Guides beyond green-washing and environmental claims to incorporate ‘ethics-washing’ definitions and related term definitions, in order to address a more holistic view of sustainability and marketing related to it.

The one health approach is growing in recognition and is endorsed by the UN’s Food and Agricultural Organization,\textsuperscript{31} which adheres to its definition as ‘an integrated, unifying approach that aims to sustainably balance and optimize the health of people, animals and ecosystems. It recognizes the health of humans, domestic and wild animals, plants, and the wider environment (including ecosystems) are closely linked and interdependent.

With a growing number of marketing claims relating not only to environmental sustainability, but to human and labor rights, as well as animal welfare, which in turn have consequences for the environment, the Guides should recognize the interconnectedness of these issues.\textsuperscript{32}

In order to do so, ‘ethics-washing’, as well as related terms frequently used to make products appear more ethically produced, such as ‘cruelty-free’, ‘fair’, ‘ethical’, and others would need to be defined.

Fashion-related research highlights this interconnectedness, with one relevant academic hypothesis proposing that raising the world’s 35 million garment worker wages just an extra
$100 a week would immediately cut 65.3 million metric tons of CO2 out of the global economy.\textsuperscript{33} Similarly, modern slavery and particularly environmentally destructive industries have been found to be frequently linked.\textsuperscript{34}

FOUR PAWS surveying shows that there is a global increase in consumer interest related to fashion products and their ethical credentials, such as the protection of animals,\textsuperscript{35} not only their sustainability credentials. Additional surveying included in CFJ reporting highlights consumer interest in animal protection.\textsuperscript{36}

There is a need to address these issues to prevent ethics-washing. Brands such as Sheep Inc, for example, benefit from marketing which refers to causing ‘no harm’ to animals, and to ‘happy sheep’,\textsuperscript{37} despite sheep being slaughtered in their supply chains. Additionally, their chosen wool certification permits tail docking without pain relief in some instances,\textsuperscript{38} selective breeding which increases lamb mortality and other cruel practices.\textsuperscript{39} Consumers are likely to assume animals are not in pain if these terms are used in relation to them.

Terms like ‘cruelty free’ have no current legal definition in the United States, despite their wide use. Most often, the term is used synonymously with ‘not tested on animals’, however, some brands apply this label inaccurately\textsuperscript{40} (when their suppliers still test on animals) or provide false certification\textsuperscript{41} of this. Similarly, the term may be used to infer that animal testing was not used, but consumers may assume the term is more broad, relating also to the use of ethical labor, or of animal-derived ingredients which can be cruelly sourced.\textsuperscript{42} Finally, the term is also increasingly used unrelated to cosmetics testing, for example synonymously with ‘non-mulesed’ in the case of wool, despite other cruel practices occurring in the wool supply chain described.\textsuperscript{43}

Another ethical issue tied to potentially misleading marketing is ‘fair wages.’ CFJ is regularly asked by consumers whether a brand telling them they pay fair wages is accurately representing itself. However, a fair wage is generally not legally defined,\textsuperscript{44} leaving brands to decide what is fair without oversight, even if workers are being paid poverty wages and being made to work excessive overtime.

\textsuperscript{33} https://www.forbes.com/sites/elizabethcline/2022/01/17/could-living-wages-help-solve-fashions-climate-crisis-new-research-says-yes/?sh=762caeff6b27
\textsuperscript{34} https://doi.org/10.1016/j.erss.2021.102096
\textsuperscript{36} https://www.collectivefashionjustice.org/under-their-skin (‘a just transition beyond leather’ report, ‘shifting consumer perceptions’ section)
\textsuperscript{37} https://static1.squarespace.com/static/5f5f02dd9b510014ef4fc4f/t/621826dce44451524323d760/1645749995269/Ad+Standards+Sheep+Inc+Complaint+++PUBLIC.pdf
\textsuperscript{38} https://www.collectivefashionjustice.org/articles/wool-standards-explained
\textsuperscript{39} https://www.collectivefashionjustice.org/wool
\textsuperscript{40} https://www.crueltyfreekitty.com/cruelty-free-101/petas-cruelty-free-list-cant-be-trusted/
\textsuperscript{41} https://www.crueltyfreekitty.com/cruelty-free-101/cruelty-free-bunny-logo/
\textsuperscript{43} https://www.collectivefashionjustice.org/ban-mulesing
\textsuperscript{44} https://www.collectivefashionjustice.org/articles/how-to-spot-ethics-washing
'Ethics-washing' should be defined as 'unsubstantiated claims which either intentionally or unintentionally deceive consumers into believing a product was made in a way which sustains, prioritizes and ensures the life and wellbeing of humans or other animals.'

Marketers should be encouraged to use more specific language which clearly relates to a part of their production which is more responsible, in order to avoid implying other elements of a product’s total supply chain are ‘ethical’ when this may not be accurate. The term ‘ethical’ in relation to production should be defined as ‘produced with strong moral principles which ensure the life, wellbeing and safety of people and animals alike are maintained’.

The term ‘fair’ in relation to production should be defined as ‘produced fairly, in a way which does not impede on the rights, wellbeing and protection of people and animals’.

The term ‘cruelty free’ in relation to production should be defined as ‘produced without cruelty to people or other animals, including through the use of animal testing, painful procedures applied to animals, the needless slaughter of animals, the unjust payment and treatment of working people, and, as far as is practically possible, the general exploitation of both people and animals’.

The need for clear definitions to prevent misleading consumers was again highlighted by our April 2023 commissioned polling from the US. Here, if a garment is labeled as ‘cruelty-free’, 39% of people believed this meant ‘no animal testing was involved in the making of the garment’ (despite testing for materials in fashion not being a standard practice), 37% believing this meant ‘no animals were hurt or killed to make this garment’, and another 15% believing this label meant neither ‘animals or people were hurt or killed to make the garment’. The significance of these assumptions demands brands understand how to use this term correctly, to allow people to make purchases aligned with their values.

“18: Are there international laws, regulations, or standards with respect to environmental marketing claims the Commission should consider as it reviews the Guides? If so, what are they? Should the Guides be modified to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?”

Many other countries address terms which may be used to green-wash terms through laws and regulations in a way that the United States does not. For example, France banned terms including ‘environmentally friendly’ and placed heavy restrictions on the use of terms such as ‘recyclable’ in 2020, and the UK’s Green Claims Code offers more hands-on guidance to

40 https://www.collectivefashionjustice.org/articles/new-polling-green-washing-prevention-us
47 https://greenclaims.campaign.gov.uk/#check_your_green_claims
businesses and consumers alike, while including the capacity to be used for investigation and legal action against (potential) offenders. The European Commission also recently released proposed new rules to cut down on greenwashing.

“19. Should the Commission initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive or unfair environmental claims?”

For the Green Guides to best protect consumers against green-washing, they must be not only recommendations but enforceable standards. CFJ recommends rulemaking under the FTC Act be produced to improve enforcement and compliance.

Many brands have continued to use green-washed marketing tactics until legal action was taken against them. H&M’s swift removal of green-washed claims following warning of economic sanction risks if potentially misleading language was not removed by the Norwegian Consumer Authority is one strong example of this.

Comparable guides for green claims created by the UK’s Competition and Markets Authority, the Australian Competition and Consumer Commission, The Netherlands’ Authority for Consumers and Markets, and others which are backed by the capacity for legal action against businesses which fail to meet their requirements of proper environmental claims. The European Commission and other bodies have similar proposed rules in review currently.

Answers to Specific Questions:

“The Commission seeks comments on specific issues that have generated increased attention and interest over the last several years. The following questions are designed to facilitate comment on those issues, and the inclusion or exclusion of any topic does not indicate that specific modifications to the Guides are currently under consideration.”

“1. Carbon Offsets and Climate Change, 16 CFR 260.5. The Guides currently include guidance relating to carbon offsets. Should the Commission consider revising this section or provide additional guidance addressing other types of advertising claims related to carbon offsets and/or climate change?

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48 https://www.gov.uk/government/publications/green-claims-code-for-shoppers/green-claims-code-for-shoppers
49 https://www.gov.uk/cma-cases/asos-boohoo-and-asda-greenwashing-investigation
52 https://greenclaims.campaign.gov.uk/#check_your_green_claims
54 https://www.acm.nl/en/publications/rules-thumb-sustainability-claims-have-been-finalized-serving-basis-acms-enforcement
a. Are there any specific claims related to carbon offsets not currently addressed by the Green Guides that are appropriate for further consideration during the review?

b. What, if any, evidence is there of deceptive claims related to climate change in the market?

c. If such evidence exists, what specific guidance should the FTC provide to help marketers avoid deceptive claims?

d. Is there any consumer research available regarding consumer perception of climate change-related claims such as “net zero,” “carbon neutral,” “low carbon,” or “carbon negative”?

e. Are there any specific deceptive claims related to climate change prevalent in the market?

f. If evidence of deception exists, what specific guidance should the FTC provide to help marketers avoid deceptive claims? What evidence supports your proposed revision?”

While the Guides already include language relating to ‘carbon offsets’, other terms such as ‘carbon neutral’, ‘carbon positive’ and ‘carbon negative’ have become increasingly used to promote products. These terms should also be defined and advised to be restricted in their use. Carbon offsets should also not be able to be used to label a product as ‘carbon negative’ or similar without clear specification.

Carbon offsets do not change the amount of emissions involved in the production of a product, they simply offset them. As a result, if offsets are used to refer to products themselves as ‘carbon negative’ or ‘carbon neutral’, consumers may be misled into believing the creation of this product itself resulted in no emissions or climate impact.

CFJ’s recent commissioned polling in the US also emphasizes the green-washing risks associated with promotion of carbon offsets without improved definitions and guidance. Currently, when US surveyed citizens were asked what they think it means if a product is ‘carbon offset’, more than a third believed this meant that ‘making the product results in no carbon emissions’. This serious misunderstanding of carbon offsetting risks significant green-washing if use of the term is not addressed.56

Fashion brands have often promoted the sustainability of carbon offsets which have then been found to be ‘useless’. For example, an analysis57 of a significant percentage of carbon offset projects found that ‘more than 90% of their rainforest offset credits – among the most commonly used by companies – are likely to be “phantom credits” and do not represent genuine carbon reductions.’ Brands including Gucci were linked to these bogus offsets. Offsets can be ineffective due to double counting, impermanence and other issues.58

The importance of carbon ‘insetting’59 as compared to ‘offsetting’, where brands address the emissions in their own supply chains through, for example, installation of renewable energy

56 https://www.collectivefashionjustice.org/articles/new-polling-green-washing-prevention-us
59 https://www.weforum.org/agenda/2022/03/carbon-insetting-vs-offsetting-an-explainer/
sources in their factories, or transition to materials with a smaller climate impact, is clear. As described by the World Economic Forum, the former focuses on ‘doing more good rather than doing less bad in the value chain’.  

Products from companies which buy, or otherwise implement carbon offsets, should not refer to their products as ‘carbon neutral’ or ‘carbon negative’ without a clear disclaimer that a product and its manufacturing released emissions into the atmosphere, but that these emissions were then offset. Linked documentation to prove this should be provided, as is now required under French Climate and Resilience Law. As outlined in the European Commission’s Proposal for a Directive on Green Claims, information on the integrity of the offsets and the accounting methodologies behind them should also be required as public information.

Carbon offset promotion should be followed by a disclaimer that reminds consumers that direct carbon (and equivalent greenhouse gas) emissions reductions are preferable for climate change mitigation, as compared to offsetting.

Purchased carbon offsets should be treated in the same way as carbon offsetting within the supply chain. For example, if wool production releases methane emissions, but trees on the farm are planted in order to offset these emissions, this practice can be marketed as environmentally beneficial in itself, but the wool should not be labeled as ‘carbon neutral’ or ‘carbon negative’ as a result of this tree planting – just as it would not be if the trees planted were done so outside of the supply chain, through an external offsetting program. Otherwise, it is not clear that this is an ‘offset’ rather than an innate part of the production system. Such a practice is different from ‘insetting’ where emissions are actually reduced within the supply chain (such as if said methane emissions could be directly reduced).

‘Carbon negative’ products should be defined as those which ‘remove CO2 from the atmosphere through its direct production, sequestering more CO2 than is emitted through its direct production’. ‘Direct production’ should be defined as those processes with which a product could otherwise not exist. Such a definition would therefore, for example, include the growth of cotton with improved soil management practices resulting in improved carbon sequestration in the soil it is planted into, but not the planting of trees on the property where cotton is grown conventionally. It should also be noted that soil can reach soil-carbon equilibrium, and thus a soil management system which sequesters carbon at one point may no longer have capacity to do so in the future.

‘Carbon neutral’ products should be defined as those which generate emissions, but which capture and store these specific emissions within direct production (for example, a coal-fired power plant fitted with carbon capture and storage technology), or which is produced in a system that does not add to global warming. This definition should also apply to any wording of

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60 https://www.weforum.org/agenda/2022/03/carbon-insetting-vs-offsetting-an-explainer/
61 https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924
64 https://www.oxfordmartin.ox.ac.uk/downloads/reports/fcrn_gnc_report.pdf
equivalent or similar meaning or scope such as ‘net zero’, ‘zero carbon’, ‘zero carbon footprint’, or ‘climate neutral’.

‘Carbon positive’ should be avoided as a term. While research shows that many consumers still do not understand the meaning of ‘carbon neutral’, more complicated terms will not be helpful to improving carbon literacy. The complication of ‘positive emissions’ (meaning an increase in emissions, with a negative environmental impact) compared to a ‘positive impact’ on the climate (related to negative emissions or reduced emissions) is likely to confuse consumers further.

All reference to the above terms should also include carbon equivalent emissions in order to address the significant contribution of methane to the climate crisis, particularly through fashion supply chains producing fibers and skins from ruminant animals, as well as fossil-fuel derived synthetic fibers. A disclaimer to explain ‘equivalent emissions’ should be provided.

2. “Compostable, 16 CFR 260.7. The Guides currently advise marketers claiming products are “compostable” in municipal or institutional facilities that they should qualify such claims if appropriate facilities are not available to a substantial majority of consumers or communities where the item is sold. Should this guidance be revised to define “substantial majority” consistent with the “recyclable” section? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision(s)?”

CFJ supports revising the definition of ‘substantial majority’ to be consistent with the ‘recyclable’ section. Distinct labeling of ‘home compostable’ and ‘industrially compostable’ should be mandatory, with ‘industrially compostable’ labeling only being provided when such composting is available in the area of sale.

A UK study found that nearly two-thirds of compostable plastics failed to ‘deliver as promised’, and similar issues would be highly likely to be mirrored in the US. This failure to deliver was due to misunderstandings (due to poor labeling) on the difference between products which are industrial- and home-compostable.

In Australia, different certifications are provided based on the quality of compostability. For example, the Australian Standard AS 5810-2010 is a ‘home compostable verification’ supported by robust testing regimes. Products which are compostable in industrial settings only cannot be labeled with this verification. This distinction is useful and reduces the risk of the wrong products being placed in the wrong disposal settings.

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Legislation in other parts of the world, such as France, support this move. In that country, plastic products and packaging can only legally be labeled as compostable if they can be home composted.69

3. “Degradable, 16 CFR 260.8. The Guides provide that an unqualified claim indicating a product or package is degradable, biodegradable, oxo-degradable, oxo-biodegradable, or photodegradable should be substantiated by competent and reliable scientific evidence demonstrating the entire item will completely break down and return to nature within a reasonably short period of time after customary disposal. For products customarily disposed in a landfill, “reasonably short period of time” is defined as one year.”

“a. Should the Commission revise the Guides to provide an alternative timeframe for product decomposition for all or any category of products? Does the timeframe differ for liquid products?
b. If so, why, and what should the timeframe be? If not, why not? What evidence supports your proposed revision(s)?
c. Should the Commission clarify or change existing guidance on degradable claims in light of its decision in the ECM Biofilms matter? 69 If so, how?”

Due to the substantial amount of confusion amongst consumers about what ‘biodegradable’, ‘degradable’, ‘compostable’ and other terms means, CFJ recommends that these terms always be supported by specific disposal advice (for example, ‘put me in the compost’, ‘put me in your regular trash bin’ for packaging).

CFJ’s recent polling again supports the importance of our proposed additions in relation to biodegradable and other related terms. When asked what it means if a product is labeled as 'biodegradable', 61% of surveyed Americans believed that ‘if that product is buried in soil it will quickly break down without harming the planet’, despite this often being untrue. Just 2% of people thought this label meant the product could ‘only biodegrade in a commercial system, not just soil’, as is often the case.70

5. “Recyclable, 16 CFR 260.12. Should the Commission revise the Guides to include updated guidance on “recyclable” claims? If so, why, and what guidance should be provided? If not, why not?”

“a. What evidence supports your proposed revision(s)?
b. What evidence is available concerning consumer understanding of the term “recyclable”?
c. What evidence constitutes a reasonable basis to support a “recyclable” claim?
6. Recyclable, 16 CFR 260.12. The Guides provide that marketers can make an unqualified “recyclable” claim when recycling facilities are available to a substantial majority of consumers or communities where the item is sold. “Substantial majority” is defined as 60%.
a. Should the Guides be revised to update the 60% threshold? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision? Is there any recent consumer perception research relevant to the 60% threshold?

70https://www.collectivefashionjustice.org/articles/new-polling-green-washing-prevention-us
b. Should the Guides be revised to include guidance related to unqualified “recyclable” claims for items collected by recycling programs for a substantial majority of consumers or communities but not ultimately recycled due to market demand, budgetary constraints, or other factors? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?”

The current sole focus on recyclable packaging is an issue given the major environmental impacts of products themselves which are increasingly viewed as disposable.\(^7\) Due to the high portion of ‘wish-cycling’\(^7\) – where people place products and packaging in the recycling bin in hopes it will be recycled, even without evidence to support this – a ‘recyclable’ claim should be more difficult to obtain, available only to those marketers whose product or packaging is available for recycling for a ‘substantial majority’, 90%, of consumers or communities.

‘Wish-cycling’\(^7\) sees US consumers recycle things even when they are not able to, in hope that this is not true. An Oregon legislative task force found the FTC’s Guides ineffective: “the guides allow positive recycling claims to be made, in part, when 60% of communities nationally have access to recycling an item, some items that are not recyclable in Oregon will likely be labeled with recyclability claims. Due to the patchwork of access to recycling across the United States, the Green Guides have not proven effective in reducing confusing or misleading claims in Oregon.”\(^7\)\(^4\) This capacity for recycling relates to packaging, with textile and other product recycling even more scarce, contributing to problematic wish-cycling if labeling accuracy is not improved.

Brands should only include ‘recyclable’ labeling on products and packaging when they have capacity to recycle the total mass of products produced. Product as well as packaging labels must align with these requirements, in addition to any brand ‘services’ or schemes (such as take-back programs) that claim products will be recycled into new garments or products of similar value or use. At the moment, brands use related terms more loosely. For example, a product in an ASOS ‘Circular Collection’ made from 100% virgin synthetic materials was claimed to be made to ‘be remade’ because it is a mono-material, despite no technology existing at scale to recycle polyester garments into new fiber for fashion.\(^7\)\(^5\)

In France, recycling must be available state-wide or a product cannot be claimed as ‘recyclable’.\(^7\)\(^6\)

Our polling also supports this recommendation. Nearly 57% of recently surveyed US citizens believe that if a product is labeled as ‘recyclable’, ‘it can be recycled no matter where I live and dispose of it’.\(^7\)\(^7\)

\(^7\)\(^1\) https://ehjournal.biomedcentral.com/articles/10.1186/s12940-018-0433-7
\(^7\)\(^2\) https://theconversation.com/what-is-wishcycling-two-waste-experts-explain-173825
\(^7\)\(^5\) https://greenwash.com/brands/asos/
\(^7\)\(^6\) https://www.voguebusiness.com/sustainability/france-has-laid-down-the-law-on-sustainability-what-does-it-mean-for-fashion
\(^7\)\(^7\) https://www.collectivefashionjustice.org/articles/new-polling-green-washing-prevention-us
7. “Recycled Content, 16 CFR 260.13. The Guides state marketers may make “recycled content” claims only for materials recovered or otherwise diverted from the solid waste stream, either during the manufacturing process or after consumer use. Do the current Guides provide sufficient guidance for “recycled content” claims? If so, why? If not, why not, and what guidance should be provided? What evidence supports your proposed revision(s)?”

8. “Recycled Content, 16 CFR 260.13. The Guides suggest marketers can substantiate “recycled content” claims using per-product or annual weighted average calculation methods. Should the Guides be revised to provide guidance on making “recycled content” claims based on alternative method(s), e.g., mass balance calculations, certificate (i.e., credit or tagging) systems, or other methods? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?”

9. “Recycled Content, 16 CFR 260.13. What changes, if any, should the Commission make to its guidance on pre-consumer or post-industrial recycled content claims? How do consumers interpret such claims? Please provide any relevant consumer perception evidence.”

There is confusion between what renders a product able to be defined as ‘recycled’ or ‘upcycled’. Recycled content claims should be specified as either ‘pre-consumer recycled content’ or ‘post-consumer recycled content’. The use of otherwise wasted products or by-products which are not transformed during a recycling process should not be referred to as ‘recycled’ or ‘upcycled’ products.

Similarly as with ‘organic’ (see Q11), a product should only be able to be referred to as ‘recycled’ if the majority (70% or more) of it is so, and percentage breakdown should always be disclosed. This recommendation is supported by CFJ’s recent polling, in which over 62% of surveyed Americans believed a product labeled ‘recycled’ was made ‘only’ from recycled materials.78

The issue of minimal recycled content being used to green-wash products is documented. The UK’s Competition and Marketing Authorities investigated ASOS, Boohoo and George at Asda, finding that products made of as little as 20% recycled materials were labeled as ‘responsible’ and more sustainable, despite being predominantly derived from virgin synthetic materials.79

As a further example, New York brand ‘Real Sheepies’ states they use ‘100% upcycled merino sheepskin’.80 The brand claims the sheep skins are ‘upcycled’ because they are sourced from the wool industry in which sheep are ultimately slaughtered for either lamb or mutton meat, as well as skins.81 While the brand claims to ‘upcycle the hides’, the hides are from newly

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78 https://www.collectivefashionjustice.org/articles/new-polling-green-washing-prevention-us
80 https://burkelman.com/products/real-sheepie-personal-golden-olive
81 https://www.collectivefashionjustice.org/shear-destruction
slaughtered sheep, tanned and processed as with any new leather. The brand’s justification for using the term is that skins may be discarded in landfill, as they are a less valuable co-product compared to primary products such as wool shorn earlier in the sheep’s life cycle. This should not be a permitted definition of ‘upcycled’ or else any newly produced product that is cheaply made or produced as a valuable co-product could be claimed as ‘upcycled’, such as cottonseed oil used for cooking, cupro made from cottonseed lint, sawdust and chips from the lumber industry (derived from offcuts of new logging production) and other products which still contribute profit to supply chains creating new goods.

‘Upcycled’ should be defined in the Guide, in line with the Oxford Language Dictionary definition: ‘(of discarded objects or material) reused in such a way as to create a product of higher quality or value than the original.’ ‘Discarded objects and materials’ should be those sourced from waste disposal facilities and recycling donation bins, rather than from supply chains where it is only assumed that a product has potential to be discarded if not purchased and used by another producer.

Similarly, the cow hide leather industry often refers to leather as ‘recycled’. Leather Naturally, a promotional campaign designed to promote leather as sustainable which is funded by the industry, states that ‘leather is a recycled material’ despite it being a profitable co-product which funds the continuation of cattle ranching. The Leather and Hide Council of America makes similar claims that their industry exists as a kind of recycling initiative, rather than a clearly profitable industry (worth hundreds of billions of dollars worldwide).

CFJ’s polling makes clear that US public perception of the term ‘recycling’ is out of line with how it is often used, resulting in likely green-washing. Just 3% of surveyed people believed that if leather is labeled as ‘recycled’ it’s made of new leather, highlighting the dangerous misuse of the term by the leather industry. 55% of people believed such a labeled product would feature ‘leather made from other leather products that were recycled’, with another 44% assuming it featured ‘leather made 100% from recycled leather scraps from tanneries’.

‘Recycled’ should be defined more clearly to only include products which convert ‘waste’ into usable goods. ‘Recycled contents’ labels should specify if materials are derived from ‘post-consumer’ or ‘pre-consumer’ settings, with the two defined as ‘derived from materials discarded by end users rather than generated during a manufacturing process’ (as defined by the Oxford Language Dictionary) and ‘derived from waste materials created during the process of manufacturing goods prior to their delivery to a consumer’.

‘Waste’ and ‘waste materials’ should not include profitable co-products, as earlier defined.

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82 https://www.leathernaturally.org/Education/Fact-Sheets/Environment/Leather-is-a-recycled-material
84 https://usleather.org/press/USLeather_Industry_to_Volvo_Leather_is_the_Ultimate_Bio_Based_Recycled_Natural_Material
85 https://www.collectivefashionjustice.org/articles/new-polling-green-washing-prevention-us
11. “Organic. In 2012, the Commission declined to issue guidance on “organic” claims for non-agricultural products. Should the Commission revisit this determination? If so, why, and what guidance should be provided? If not, why not?”

“a. What evidence supports making your proposed revision(s)?
b. What evidence is available concerning consumer understanding of the term “organic” with respect to non-agricultural products?
c. What evidence constitutes a reasonable basis to support an “organic” claim in this context?”

The Green Guides must include a definition of the term ‘organic’. Products must not be allowed to be prominently labeled or marketed as such unless the vast majority of the product is organic. This would help to prevent green-washing when products include a small amount of organic cotton blended with a large portion of conventional cotton, for example.

‘Organic’ labeling is often exploited and used to green-wash largely non-organic products. For example, sometimes ‘organic certified’ seals are created by brands, despite seals not officially existing and thus being subject to no regulation or control. Additionally, in some cases, an organic label is given to a product made of a small, minority portion of organic material.

The USDA requires ‘made with organic’ labeling to be given only to products derived from at least 70% organic certified ingredients, as does the Global Organic Textile Standard.

The organic definition in the Green Guides should be in line with the definition used by globally trusted sources such as GOTS. Additionally, only certified organic products should be permitted to use the term for their promotion. Following best practices, a minimum portion of organic material in a blended material or composition should be set. In line with the USDA and GOTS, this portion should be marked at 70% organic for food, as well as clothing and other goods.

A distinction between the definition of ‘organic matter’ as compared to ‘organic’ in relation to the use of pesticides, herbicides and fungicides should be made for scientific and biological accuracy.

12. “Sustainable. In 2012, the Commission determined it lacked a basis to give specific guidance on how consumers interpret “sustainable” claims. Should the Commission revisit this determination? If so, why, and what guidance should be provided? If not, why not?”

“a. What evidence supports making your proposed revision(s)?

https://iamplasticfree.org/en/blogs/magazin/10-beispiele-greenwashing
https://www.usda.gov/media/blog/2014/05/16/organic-101-understanding-made-organic-label
https://letsdoitfoundation.org/2022/05/02/greenwashing-in-fast-fashion-is-there-a-way-out/
b. What evidence is available concerning consumer understanding of the term “sustainable”?  
c. What evidence constitutes a reasonable basis to support a “sustainable” claim?”

The term ‘sustainable’ is used ceaselessly in marketing, particularly in the marketing of ‘sustainable fashion’91. Peer-reviewed research shows that “sustainable fashion production is not understood and efforts to apply sustainability concepts were often misunderstood”92 by consumers, as demonstrated in a recent study in which consumers ranked Amazon and Primark as the most sustainable retailers in 2022.93

The Green Guides must include the term ‘sustainable.’ While the term may be challenging to properly define, without any guidance on its use, businesses are free to use it however they like without guidance. A more broad definition, such as ‘able to be produced long-term without exceeding planetary boundaries or causing ecological destruction’ could be added to the Guides.

Brands should be encouraged to avoid use of this vague term and instead focus on providing clear information about their environmental practices, which will improve consumer literacy on the topic of sustainability in fashion. For example, a brand should state they use a material that is ‘recycled and using less energy’ rather than stating they are using a ‘sustainable material’.

The Guides should state that if brands are using the term, it must always be directly followed by evidence to support its use which consumers and the FTC can evaluate. Use of the term ‘sustainable’ should be limited to references of efforts towards ‘improved sustainability’ rather than total sustainability.

This recommendation is once again supported by our recently commissioned polling, which saw 34% of surveyed US consumers believe that a product or material labeled as ‘sustainable’ was ‘made without any harm to the environment’. Perhaps even more concerningly, another 33% of people believed that such a labeled product actually ‘helps protect the environment’.94

Additional Recommendations:

1. Broadening of sector examples

A large portion of examples used in the current Guides are related to packaging and household consumer goods. As both food and fashion industries involve significant environmental impacts and are tied to a large amount of green-washed claims, more examples from these sectors would be helpful to include.

91 https://www.businessoffashion.com/articles/sustainability/green-or-greenwashing-who-gets-to-decide/  
92 https://www.emerald.com/insight/content/doi/10.1108/JFMM-03-2021-0075/full/html  
94 https://www.collectivefashionjustice.org/articles/new-polling-green-washing-prevention-us
The fashion industry is responsible for up to 4-8% of global greenhouse gas emissions,\(^95\) an estimated 20% of the world’s wastewater,\(^96\) as well as significant desertification and deforestation,\(^97\) and major chemical pollution.\(^98\) Given the significant impact of this sector, any environmental claims made by brands and businesses in this industry must be scrutinized and regulated, while the industry is supported to consider the importance of accurate marketing.

Unsurprisingly, green-washing is also particularly prevalent in fashion. In 2021,\(^99\) The International Consumer Protection and Enforcement Network found that 40% of the industry’s environmental claims could be misleading consumers making purchasing decisions. Changing Markets Foundation’s peer-reviewed ‘License to Greenwash’ report\(^100\) highlights the pervasiveness and importance of tackling green-washing in fashion.

Further, extensive\(^101\) mainstream\(^102\) and industry media\(^103\) coverage charts the rise of green-washing practices among marketers in the industry. While a number of campaigns\(^104\) have been established to raise awareness of the issue, this responsibility should not be left to the charitable sector.

A number of examples are provided throughout our comments on the Guides, and any of these could be expanded on and used to further inform marketers.

### 2. Revision of 260.6 Certifications and Seals of Approval

If certifications applied to products only relate to specific parts of the supply chain or manufacturing process, this must be disclosed, and the certification should not be used to imply the completed product is wholly certified as adhering to the values outlined in the certification.

A number of certifications do not address impacts across the entire value chain despite brands using them to imply total sustainability. For example, the Leather Working Group (LWG) which certifies leather.\(^105\) Brands have described the certification as ensuring ‘sustainable’ and ‘ethical’

\(^95\) https://www.mckinsey.com/industries/retail/our-insights/fashion-on-climate
\(^96\) https://www.sciencedirect.com/science/article/pii/S2452223622001225#bib32
\(^97\) https://stand.earth/resources/nowhere-to-hide-how-the-fashion-industry-is-linked-to-amazon-rainforest-destruction/
\(^98\) https://www.cdp.net/en/research/global-reports/interwoven-risks-untapped-opportunities
\(^99\) https://www.voguebusiness.com/sustainability/the-big-global-greenwashing-crackdown
\(^100\) https://www.sciencedirect.com/science/article/pii/S2452223622001225#bib32
\(^102\) https://www.forbes.com/sites/retailwire/2022/07/13/hm-case-shows-how-greenwashing-breaks-brand-promise/?sh=19cc9b31171
\(^103\) https://www.businessoffashion.com/articles/sustainability/greenwashing-fashion-marketing-sustainability-hm-regulation/
\(^104\) https://greenwash.com/
\(^105\) https://www.collectivefashionjustice.org/articles/what-is-the-leather-working-group-certification-and-does-it-make-for-sustainable-and-ethical-leather
leather yet LWG certification includes no assurances for labor rights or animal welfare, and is limited to the tannery for environmental impacts, excluding all impacts relating to climate, on-farm water use, eutrophication and pollution, biodiversity on existing farms, and more.

Brands use certifications and initiatives to exaggerate their overall sustainability. For example, Primark’s Primark Cares collection have used their participation in the Ellen McArthur Jeans Redesign certification to promote their green credentials and claim proximity to more sustainable circular fashion. However, the jeans tied to this certification only contain 20% recycled cotton, the rest being conventional cotton. 2% elastane, which contaminates recycling processes, is also included. While the certification may improve practices, such a product should not be promoted as a circular or responsible choice.

Use of certification marks on product labeling and marketing should always be accompanied by qualification of the certification’s breadth or limits, both in relation to the aspects of the supply chain and scope of the areas (i.e. social, environmental, economic, animal welfare dimensions) it covers.

3. Revision of 260.10 Non-toxic claims

Distinction between toxicity during the production process and toxicity of the end product should be made clear to consumers, so that some non-toxic elements of a supply chain are not mistaken for an entirely non-toxic process from tier four through to finished product.

For example, a viscose garment may not contain any toxins in the finished product purchased by a consumer, however, many toxic chemicals may be used when the wood pulp is treated with chemicals during the manufacturing process to turn it into a fine thread, impacting the health of plant workers and the local environment is it produced in.

Any claims that an end product is non-toxic to humans or the environment should be accompanied by a disclaimer that acknowledges that this does not necessarily mean that no toxic ingredients were used in the process of manufacture.

4. Revision of 260.16 Renewable materials claims

Similar to ‘natural’, ‘renewable’ is a term that is commonly used by marketers to imply ‘sustainable’. However, as many ‘renewable’ things are not inherently ‘sustainable’, a clear

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106 https://static1.squarespace.com/static/5f5f02dd9b510014eef4fc4f1/v/638f61b3de4f936c190f0f6b/1670279088924/Collective-Fashion-Justice-Leather-Report-Part+2-Planet.pdf (see section on green-washing from page 40)

107 https://greenwash.com/brands/primark/

108 https://goodonyou.eco/material-guide-viscose-sustainability/
definition with guidance relating to use should be provided for this term. It is also important to consider how the term ‘renewable’ is used outside of the energy space where it is most prevalent, and when considering other materials in the production of goods and services such as textiles, apparel and footwear.

While many materials used in the fashion industry can technically be defined as ‘renewable’ such as natural fibers like cotton, they can still be enormously detrimental to the environment and unsustainable if produced irresponsibly. For example, fertilizers and pesticides used to grow conventional cotton can result in water and soil pollution impacting biodiversity, local water sources diverted for irrigation can be depleted, while land and soil can be degraded due to extractive cultivation practices.\(^{109}\)

‘Renewable materials’ should be defined as “materials that can be replaced or replenished at the same time as it takes to use them”. It should be specified that ‘renewable’ is not equivalent to ‘sustainable’ and therefore should not be used as an environmentally-friendly qualifier on its own, without the addition of clear evidence as to why a renewable product or material may also be beneficial to the environment.\(^{110}\)

5. Additional ‘General Principle’ for ‘Full Life Cycle of Products & Services’

An additional General Principle should be added to the Guides that requires businesses and marketers to consider the entire life-cycle of their product or service, and of their overall business activities, when making environmental claims.

This is particularly relevant to fashion companies\(^{111}\) that produce very limited ‘sustainable collections’\(^{112}\) which can be used and marketed to mislead consumers into believing the overall business is more sustainable than it really is. The Guides should not accept marketing which highlights the environmental benefits of a small part of a company or production process while omitting interconnected aspects that have more severe and negative environmental impact.

The recent CMA Green Claim Code guidelines in the UK require marketers to consider the full life-cycle of a product when making environmental claims,\(^{113}\) including component parts, how and where it is manufactured, produced or carried out, how it is transported from its place of manufacture or origin, its use or performance, the disposal of a product, and any waste or by-products.

\(^{109}\) https://www.worldwildlife.org/industries/cotton
\(^{110}\) https://study.com/academy/lesson/renewable-non-renewable-resources-definition-differences.html
\(^{111}\) https://www.panaprium.com/blogs/i/fast-fashion-sustainability
\(^{112}\) https://www.voguebusiness.com/sustainability/impact-fashion-sustainable-capsule-collectionsc
CFJ recommends that while claims may be based on a specific part of a product’s life-cycle, or part of a brand’s activities, it should be clear which aspect to which they refer. They should not mislead consumers about the total environmental impact or benefit of a product, service, collection or business overall. Furthermore, it is important that marketers do not omit important information that would enable or even encourage consumers to make informed, environmentally harmful choices.

Thank you

Thank you for your consideration of our commentary. We believe the Guides have the capacity to be extremely useful in efforts to prevent green-washing, should even some of these recommendations be addressed. We are available to the FTC at any time, should further advise, information or discussion be useful.

Please contact founding director, Emma Hakanssson, at emma@collectivefashionjustice.org