HOW TO AVOID GREENWASHING FINES AND LIABILITY WHEN MARKETING YOUR PRODUCTS OR SERVICES AS ENVIRONMENTALLY FRIENDLY

As environmentally friendly construction practices become increasingly prevalent and attractive to property owners, roofing contractors understandably are seeking to capitalize on providing products and services to meet the demand. By describing services as “environmentally friendly” or “green,” roofing contractors can obtain additional business from potential new sources and create a new niche or specialty focus. In the current competitive business environment, finding ways to differentiate your products and services from other contractors becomes critical to long-term success.

However, as with many emerging business trends, you need to be mindful of rules affecting the scope of permissible claims and business practices in this arena—blindly marching forward may subject you to liability for “greenwashing” in the form of fines or contractual exposure. By being mindful of the available guidelines and restrictions in this still-evolving business sector, you can avoid making the kinds of mistakes that could result in long-lasting consequences.

WHAT IS GREENWASHING?

The term “greenwashing” is used to refer to situations when a business makes environmentally friendly claims about products or services that are exaggerated, misleading or simply untrue. The term has acquired a negative connotation and is used by pro-environmental groups to attack unsubstantiated claims by businesses trying to take advantage of the possible “good press” of producing environmentally friendly products or services. Consequently, you need to be aware of not only possible issues with government regulations but also negative publicity from environmental
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COMPLYING WITH REGULATIONS

The Federal Trade Commission (FTC) issued its revised Green Guides in October 2012. The guides are designed to provide businesses with guidance concerning claims that may be made in labeling, advertising or other forms of marketing and promotion; the guidance applies to business to business transactions, not just consumer-oriented marketing. The FTC has the authority under the FTC Act to take action against any company that engages in unfair or deceptive trade practices, and failure to abide by the Green Guides could expose you to such liability. In particular, the FTC cautions not to make broad, unqualified claims that a product or service is “environmentally friendly” (or the like) because such claims often suggest the product or service has a much greater or far-reaching effect than the product or service actually provides.

The guides also provide a couple of other general guidelines. First, you should qualify any general claims of environmental benefits with specific details. The qualifications for any claim should be clear, prominent and specific. Furthermore, the guides caution if you provide information about specific benefits, these often will be understood as being significant. Therefore, to avoid creating a false impression, do not highlight minimal or unimportant benefits when marketing environmentally friendly products or services.

Perhaps the most important concept provided by the Green Guides is the notion that you need to ensure the claims you make are not misleading and are supported by a reasonable basis. In the context of environmental claims, competent and reliable scientific evidence often is required to establish a reasonable basis for the claim. The evidence should be found in studies that have been conducted by objective third parties and generally accepted as reliable sources. Any qualifications
or limitations should be clear, prominent and understandable. And, any comparison claim needs to specifically refer to the applicable portion of the goods or services being compared.

**USING CERTIFICATIONS OR SEALS OF APPROVAL**

Using certifications or seals of approval also can be problematic. The reference to a certification generally is understood as a reference to an independent third party, so such a claim could be misleading if, in fact, the certifying group is not an independent organization. Although the certifying party may be a third party, the marketing company retains an obligation to ensure it has substantiation for all claims reasonably communicated by the certification. Again, a key element in this situation is to use clear and prominent language regarding the identity of the certifying company and the nature of the claims.

The Green Guides discuss specific types of environmental claims and the potential problems that can develop if you attempt to promote these particular claims. Of special interest to roofing contractors are claims that a particular product, service or process is “free of” a particular substance, is nontoxic and/or uses renewable energy. The key in each of these cases is confirming there is substantial evidence to support any claim being made and not overstating the benefits claimed.

**BE MINDFUL**

Potential liability for greenwashing can be avoided by paying attention to the nature of any “green” marketing claims being promoted and being mindful of the general principles discussed in the FTC’s Green Guides. Be clear, use easily understood language that is prominently displayed and try to avoid broad, unsupported claims regarding the product’s or service’s potential environmental benefits.

Being mindful of the marketing tactics used by other businesses and contractors with whom you associate also can be helpful. Avoid becoming involved with companies that are intent on
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greenwashing because guilt by association is inevitable. Instead, focus on the actual benefits that do exist and present your products and services in a manner that promotes the legitimate positive effects to the customer.

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