

Don't Be Bamboozled by Environmental Benefit Claims

\$5.5 Million FTC Settlements for Bamboo Textile and Environmental Benefit Claims Under Penalty Offense Authority

The Bottom Line

- These settlements illustrate how the FTC intends to use its Penalty Offense Authority. Sellers of “bamboo” textile products should review product claims, and ensure they are truthful and not misleading.
- Companies making green and sustainability claims should ensure they are not overstating the environmental benefits of their products and are including appropriate qualifying language. As the FTC undergoes its review of the Green Guides, we expect these claims to receive heightened attention.

The FTC recently announced that it has reached a [\\$2.5 million settlement with Kohl's](#) and a [\\$3 million settlement with Walmart](#) for allegedly making misleading representations that textile products were made of bamboo fabric and provided environmental benefits because those products were derived from bamboo. The FTC asserted that the products were, in fact, made of rayon (derived from bamboo), using a chemical process that is harmful to the environment.

Under the Textile Labeling Act and Textile Fiber Rule, advertisements for products that reference or imply fiber content must disclose the generic fiber names recognized or established by the FTC. While bamboo (or any plant) can be used as a source-material to create rayon, the FTC has taken the position that the textile fiber ultimately created is rayon. As such, products not made directly of bamboo fiber, but made of a manufactured fiber for which bamboo was the plant source, should be labeled and advertised as viscose, rayon or “rayon made from bamboo.”

Moreover, the FTC's Green Guides note that unqualified general environmental benefit claims are misleading because they might imply a number of reasonable claims (including that a product has no negative environmental impact) that are nearly impossible to substantiate. These claims typically must be qualified to relate to a specific, supportable benefit, and companies should ensure that they do not overstate the environmental benefit.

In the instant cases, because rayon typically is made using environmentally toxic chemicals in a process that emits hazardous pollutants into the air, the FTC challenged general environmental benefit claims made by the retailers, such as “sustainable,” “renewable” and “environmentally friendly.” Unless true and substantiated, companies should not claim that products made of bamboo or bamboo fiber:

- are produced free of harmful chemicals, using non-toxic materials, in a way that is safe for the environment; or
- have any other environmental benefits because such products are derived from bamboo.

As we [previously discussed](#), the FTC’s Penalty Offense Authority under Section 5 of the FTC Act enables the agency to impose civil penalties, provided the company knew the challenged conduct was unfair or deceptive, and the FTC had already issued a written decision categorizing the conduct as unfair or deceptive.

The FTC has brought a number of enforcement actions over bamboo textile claims, including sending warning letters to 78 retailers (including Kohl’s and Walmart), taking the position that the retailers had actual knowledge that falsely or deceptively advertising textile products would subject them to civil penalties. The FTC imposed combined civil penalties totaling \$5.5 million and included injunctive provisions in the proposed settlements regarding how the companies make textile representations and bamboo-related environmental claims in the future.

For More Information

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