DECEPTIVE ADVERTISING & MARKETING CLAIMS

While U.S. companies in general have considerable leeway in marketing their products, candle manufacturers, distributors and retailers should be aware of existing laws and regulatory guidelines that impact candle labeling and marketing claims.

The Federal Trade Commission (FTC) holds authority to take action against false or deceptive advertising and marketing practices under Section 5 of the Federal Trade Commission Act.

Specifically, the FTC Act prohibits false, misleading or deceptive claims or other marketing practices that are likely to mislead a consumer or affect a consumer's decision to purchase a product. This includes claims (actual or implied) made in labeling, advertising, product inserts, catalogues, sales presentations or other marketing mediums, including the Internet.

Although the FTC Act declares deceptive advertising and marketing practices to be unlawful, it provides no clear-cut definitions as to what constitutes a deceptive or misleading practice. Instead, over the years, FTC has developed a series of principles framing the Commission's approach to defining deception:

- Deception involves material representations, omissions or practices that are likely to mislead a reasonable consumer or affect a consumer's decision to purchase a product.
- Marketers should make truthful claims and have reasonable and credible substantiation for making any material claim about the attributes of a product.
- When determining whether a marketing claim is deceptive or misleading, the FTC always views the claim from the perspective of the consumer, i.e., how a reasonable consumer is likely to perceive the claim, regardless of its technical accuracy.

In addition to the basic precepts of deceptive marketing outlined above, the FTC also offers its Guides for the Use of Environmental Marketing Claims (16 CFR, Part 260). Commonly known as the “Green Guides,” they address how to avoid making deceptive claims about the “green” or environmental attributes of a product. First issued in 1992, with revisions in 1996 and 1998, the Guides were extensively revised in 2012 to address emerging issues.

The 2012 Green Guides emphasize that competent and reliable scientific evidence is likely to be needed to substantiate environmental claims, and that overly broad or unqualified claims, such “eco-friendly” or “green,” should be avoided since it is difficult, if not impossible, to substantiate them. In addition, the Guides give information on addressing certifications and seals of approval, as well as claims relating to compostability, ozone safety, recycled content, and renewable energy use, as well as biodegradable, refillable, recyclable, non-toxic, and other environmental marketing claims.

FTC policy statement on deception: [http://www.ftc.gov/bcp/policystmt/ad-decept.htm](http://www.ftc.gov/bcp/policystmt/ad-decept.htm)