



April 24, 2023

VIA EMAIL

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex J)
Washington, DC 20580

Re: Green Guides Review, Matter No. P954501

Truth in Advertising, Inc. (“TINA.org”) welcomes the opportunity to submit the following in conjunction with the Federal Trade Commission’s (“Commission,” “Agency” or “FTC”) December 20, 2022 request for comments regarding its Guides for the Use of Environmental Marketing Claims (“Green Guides” or “Guides”).¹

As explained in more detail below, TINA.org’s work tracking and exposing deceptive environmental benefit claims in marketing makes clear that greenwashing is a pervasive problem across a wide range of industries. Further, because environmental issues are so complex, consumers – a majority of whom prefer eco-friendly products and are even willing to pay more for them – are frequently forced to rely on the environmental marketing claims being made because there is generally no easy way to verify the truthfulness of such marketing claims. As such, brands take advantage of this informational asymmetry to deceive consumers, who have no choice but to rely on the marketing claims, which, when false, cause harm not only to consumers and honest competitors, but to the environment as well. While the FTC’s Green Guides can be helpful to honest companies trying to ensure their marketing complies with the FTC Act, deceptive marketers will continue to flout the law and take advantage of consumers unless the FTC steps in with a heavier hand. Therefore, TINA.org urges the Commission to initiate a proceeding to consider a rulemaking relating to unqualified recyclable claims, among other potential topics, under its FTC Act authority. TINA.org also urges the Commission to revise its Green Guides to provide additional guidance regarding sustainability and aspirational claims.

INTEREST OF COMMENTER

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government

agencies to advance countermeasures that effectively prevent and stop deception in the economy. At the center of TINA.org's efforts is its website, www.tina.org, which provides information about common deceptive advertising techniques, consumer protection laws, and alerts about specific deceptive marketing campaigns—such as nationally advertised “Built in the USA” vans manufactured abroad;² pillows and essential oils falsely marketed as being able to treat chronic diseases;³ and a delivery meal kit service that falsely advertises free meals.⁴

The website functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates and, when appropriate, takes up with businesses and regulatory authorities. The website is also a repository of information relating to consumer protection lawsuits and regulatory actions. Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud, and has testified before Congress on issues related to consumer protection, deceptive marketing and economic justice.⁵

TINA.org regularly draws on its expertise to advocate for consumer interests before the FTC and other governmental bodies and appears as *amicus curiae* in cases raising important questions of consumer protection law.⁶ Since its inception, TINA.org has filed legal actions against hundreds of companies and entities, published more than 1,300 ad alerts, written over 1,000 news articles, and tracked more than 4,000 federal class actions alleging deceptive marketing. Notably, since 2015, state and federal agencies have obtained more than \$250 million from wrongdoers based on TINA.org legal actions and evidence, and returned millions in ill-gotten gains to consumers.

GREENWASHING IS PERVASIVE

Over the last 10 years, TINA.org has taken an active role in working to expose marketers who engage in greenwashing, as well as educating consumers about such deceptive marketing campaigns. TINA.org's experience demonstrates that this tactic is a serious, widespread and insidious problem present throughout the economy. The following are some examples of greenwashing that TINA.org has highlighted on its website over the years.

- **Ad Alerts:** TINA.org has published dozens of alerts to warn consumers regarding greenwashing occurring in a wide range of industries, including:
 - For-profit bracelet sellers, ReGrow Australia, 4Amazonia, and Treehuggers, claiming that every purchase of a bracelet planted one tree in Australia, which, at the time, had been ravaged by wildfires, without disclosing that the companies were keeping the vast majority of sales as profit and donating only a nominal amount to the advertised cause;⁷

- HSBC misleading consumers as to the bank’s contributions to climate change by failing to disclose its support of oil and gas industries that emit notable levels of carbon dioxide and other greenhouse gases;⁸
- United Airlines and KLM Royal Dutch Airlines claiming consumers could offset their air travel (i.e., balance out the emissions of their flights) by purchasing a carbon offset or carbon credit that then finances environmental work intended to reduce greenhouse gas emissions, such as reforestation, when such carbon offsets did not actually reduce greenhouse gas emissions from flying;⁹
- Abu Dhabi-based airline Etihad Airways misleadingly advertising “sustainable aviation”;¹⁰
- Mercedes-Benz using environmental ads to promote a new line of electric vehicles while also being accused of cheating on emissions tests;¹¹
- Clothing retailer H&M misleading consumers as to the environmental impact of its “Conscious” collection, which contained items that were comprised of unsustainable materials, as well as misleadingly advertising a recycling program that promoted recycling solutions that did not exist or were not commercially available on a large scale;¹²
- Countertop composter company Lomi claiming its product would turn product packaging into “nutrient rich fertilizer” when only a limited number of non-food items can be broken down by the product into usable compost;¹³
- A fashion industry trade group creating a flawed sustainability ratings tool called the Higg Index that supposedly measured the environmental impact of products but portrayed synthetic materials as sustainable;¹⁴
- Kim Kardashian’s skin care line, SKKN, being marketed as sustainable when the products come in excess packaging;¹⁵
- Simply Gum marketing its gum as natural, not synthetic, plastic-free, biodegradable, and better for the environment, when it contains chicle, a form of rubber;¹⁶
- Oat milk company Oatly overstating the environmental impact of eating a dairy- and meat-free diet;¹⁷
- Earth Rated advertising “compostable” dog poop bags without disclosing that there are no composting facilities in the U.S. that accept products containing pet waste;¹⁸

- Hefty claiming that its recycling bags are “perfect for all your recycling needs” without disclosing that they are not themselves recyclable;¹⁹
- Dish detergent brand Cascade claiming that running a less-than-full dishwasher daily is good for the environment because it would use less water than handwashing dishes in the sink;²⁰
- Tide marketing its purclean laundry detergent as a “powerful, plant-based clean you can feel good about” when 25 percent of the detergent consisted of non-plant-based ingredients, including some derived from petroleum;²¹
- Cleaning products company Blueland claiming its packaging was “100% recyclable” when some materials were only compostable;²²
- Meat alternative brand Quorn Foods claiming one of its food products “helps us reduce our carbon footprint” when the product was packaged in single-use plastic containers that were only partially recyclable;²³
- Bumble Bee misrepresenting that its tuna is sourced using “dolphin safe” methods when its fishing methods may actually cause harm to dolphins and other marine life, as well as deceptively claiming that it is a member of a “sustainability” foundation (which was created, in part, by the company itself);²⁴
- Kauai Coffee claiming its coffee pods were “100% compostable” without properly disclosing that the pods could only decompose at difficult-to-find industrial facilities, not in home compost piles;²⁵
- GreenPan making improperly substantiated eco-friendly claims about its nonstick ceramic cookware;²⁶
- Natural American Spirit deceptively marketing cigarettes as eco-friendly, among other things, when cigarettes emit thousands of chemicals into the environment;²⁷
- The American Beverage Association conflating current recycling practices and outcomes with aspirational practices and outcomes in its Every Bottle Back recycling initiative;²⁸
- Chiquita bananas being marketed with a Rainforest Alliance certification seal to give the impression the bananas – and the alliance – are environmentally and socially sustainable when the banana farms reportedly use chemical fumigation, among other things, near schools, homes, and rivers, which contaminates drinking water.²⁹

- **Class-Action Tracker:** TINA.org has also tracked and published information about numerous class-action lawsuits against a multitude of companies in various industries alleging they engage in greenwashing, including the following allegations:
 - *Automotive Industry:*
 - Automobile companies, including Volkswagen, Audi, General Motors, Mercedes-Benz, BMW, and Ford, misleadingly marketing cars as being “Clean Diesel” and environmentally-friendly when the cars emit high levels of nitrogen oxides.³⁰
 - *Airline Industry:*
 - KLM Royal Dutch Airlines falsely marketing that consumers who purchase carbon credits when buying airline tickets offset and reduce the environmental impact of flying when purchasing credits does not negate the effects flying has on the environment.³¹
 - *Bottled Water Industry:*
 - Bottled water brands, such as Dasani and Poland Spring, misleading consumers about the impact of drinking single-use plastic water bottles by claiming they are “100% recyclable” without properly disclosing that the plastic used to make some of the bottle caps and all of the plastic labels is generally not recyclable;³² and
 - Danone falsely marketing Evian Natural Spring Water as “carbon neutral” when carbon dioxide is released into the atmosphere during manufacturing.³³
 - *Food Industry:*
 - Tuna companies, including StarKist Tuna and Chicken of the Sea, claiming their tuna products are “dolphin safe” when the fishing methods used injure and kill dolphins and other marine life;³⁴
 - Restaurants and other companies, including Red Lobster, Aldi, Walmart and ConAgra, misleadingly marketing seafood products as sustainable when inhumane practices that harm the environment are used to harvest the fish, lobster, and shrimp;³⁵
 - Nestlé USA deceptively labeling chocolate products using phrases such as “sustainably sourced” and “supports” farmers to make consumers believe that the cocoa used in them was produced

following environmentally and socially responsible standards when the cocoa comes from supply chains that have “virtually no environmental standards in place” and which uses chemicals that pollute waterways, kills wildlife and harms communities;³⁶

- Fast food restaurants, including McDonald’s and Burger King, falsely marketing menu items as “safe” and “sustainable” when product packaging contains per- and polyfluoroalkyl substances (PFAS), which makes them unsafe for humans and harmful to the environment;³⁷
- BioSteel Sports Nutrition falsely marketing its sports drink as clean, eco-friendly, and good for consumers and the environment when the drink itself contains PFAS, which are synthetic chemicals that are harmful to people and the environment;³⁸
- Whole Foods Market misleadingly touting its commitment to sustainability and environmental stewardship when its packaging uses an excess of raw materials and creates waste when packaging is discarded;³⁹
- Cameron’s Coffee and Distribution Company misleadingly marketing its coffee pods as being 100% compostable, environmentally friendly, and generating less waste when the pods are only compostable in commercial composting facilities;⁴⁰
- Keurig Green Mountain falsely marketing plastic single-serve coffee pods as recyclable when the pods cannot be recycled and end up in landfills;⁴¹ and
- Grimmway misleadingly marketing food products, including carrots, juices, protein drinks, and salad dressings, by claiming that its manufacturing processes benefit and restore the ecosystem when the methods it uses actually harm the ecosystem and neighboring communities.⁴²

○ *Clothing Industry:*

- Clothing companies, including H&M and REI, misleading marketing products as sustainable and free of harmful chemicals when they contain unsustainable materials, as well as chemicals – including PFAS and silver nanoparticles – that are harmful to people and the environment;⁴³

- Allbirds misleadingly claiming that its running shoes have a low carbon footprint, and falsely claiming to use sustainable and humane practices to harvest wool from sheep;⁴⁴ and
- Canada Goose falsely marketing that the fur used in its clothing had been ethically and sustainably sourced in accordance with humane trapping standards when the company’s fur suppliers used cruel methods that harmed animals.⁴⁵

○ *Personal Care Products Industry:*

- Various companies, including Target, Edgewell Personal Care, and The Kroger Co., falsely marketing sunscreens as having a “reef-conscious formula” when they contain ingredients that are harmful to coral reefs and marine life;⁴⁶
- Feminine hygiene companies, including Procter & Gamble, falsely marketing tampons as organic and free from chemicals that harm people and the environment when testing shows they contain PFAS; as “90% Plant Based” to make consumers think they are compostable and biodegradable when they are not; and as containing no dyes or chlorine bleaching when they contain titanium dioxide, which dyes and bleaches;⁴⁷
- WaterWipes falsely marketing wipes as “100% biodegradable” when they do not completely decompose within a reasonable time after being thrown in the trash;⁴⁸ and
- Cosmetics company Burt’s Bees falsely marketing makeup products as containing “ingredients from nature” that are obtained using “responsible sourcing” methods that “help[] to safeguard access to clean water ... and promote health, safety and biodiversity” when the products contain PFAS.⁴⁹

○ *Cleaning Products Industry:*

- Various companies, including S.C. Johnson & Son, Procter & Gamble, Church & Dwight, and Costco Wholesale Corporation, falsely advertising cleaning products and detergents as having safe, environmentally friendly, and non-toxic formulas when the products contain toxic chemical ingredients that are harmful to people, animals, and the environment;⁵⁰ and
- Procter & Gamble falsely marketing that Tide purclean laundry detergent is “plant based” when the detergent contains ingredients that come from petroleum.⁵¹

- *Trash Bags and Other Household Products Industry:*
 - Ecosmartplastics falsely marketing Repellem and Eco-Friendly trash bags as 100% natural, biodegradable, and eco-friendly when the trash bags are made from a chemical material, and the bags are not biodegradable or eco-friendly;⁵²
 - Walmart and Hefty misleadingly marketing products as “recycling” bags when the bags are not themselves recyclable;⁵³
 - 7-Eleven misleadingly marketing products – including dishes and bags – as recyclable when they are made of plastics that are not recyclable in many municipal recycling facilities;⁵⁴
 - Earth Rated deceptively marketing its dog poop bags as compostable;⁵⁵
 - Several companies, including Amazon, Target, and The Kroger Co., falsely marketing disposable plates and bowls as “eco-friendly” and compostable when the products contain substances that do not break down into usable compost;⁵⁶
 - Charcoal company The Kingsford Products Company falsely claiming that coals provide a “cleaner burn” and are less harmful to the environment;⁵⁷ and
 - The Cookware Company misleadingly advertising that its GreenPan cookware is “good for the environment” when it negatively impacts the environment.⁵⁸
- **Companies Accused of Greenwashing by Regulators and Others:** TINA.org has also published a chart on its website that tracks companies accused of greenwashing by various regulatory entities, including federal, state, municipal, and international regulators and self-regulatory bodies, as well as watchdog groups, among others.⁵⁹ Examples of such actions include the following:
 - The National Advertising Division (NAD) determining that Green Gobbler was deceptively marketing its drain cleaner as green without sufficient substantiation, that LEI Electronics was deceptively marketing its Eco Alkaline batteries as carbon neutral without providing information on when emissions reductions would occur, and that Nest was deceptively marketing its thermostats by claiming other programmable thermostats waste energy without sufficient evidence to substantiate the claim;
 - The Advertising Standards Authority (ASA) in the U.K. determining that Quorn Foods misrepresented its commitment to reducing its carbon

footprint, that Oatly overstated the environmental impact of eating a dairy- and meat-free diet, and that HSBC Bank claimed to help clients transition to net zero while failing to disclose its role in the climate crisis;

- Belgium-based nonprofit Carbon Market Watch determining that FIFA misleadingly advertised the 2022 World Cup in Qatar as the first-ever carbon-neutral tournament in the competition's history when carbon credits being purchased to offset emissions are unlikely to benefit the climate;
- The City of New York and the State of Connecticut each pursuing ExxonMobil for misrepresenting its impact on the environment;⁶⁰ and
- The FTC determining that Kohl's and Walmart deceptively marketed rayon textile products as bamboo and overstated the environmental benefit of using bamboo in products.

As the examples above make clear, greenwashing has been and continues to be a widespread issue impacting numerous industries and millions of consumers.

GREENWASHING CAUSES SIGNIFICANT AND WIDESPREAD HARM

Consumer demand for greener products and services is on the rise. At present, a majority of U.S. consumers prefer environmentally-friendly products, and nearly two-thirds of them are willing to pay more for such products.⁶¹ In fact, U.S. consumers are spending more than \$120 billion a year on products marketed as sustainable, a figure that continues to grow⁶² as consumers' concerns for the environment increase.⁶³

At the same time, it is incredibly difficult for consumers to verify the accuracy of eco-friendly marketing claims. It has been reported that approximately three-quarters of consumers do not know how to accurately identify sustainable products.⁶⁴ And some environmental issues, like recyclable claims, are so complex that U.S. consumers rank recycling as more confusing than doing their taxes or investing in the stock market.⁶⁵ As such, consumers are generally at the mercy of brands' marketing claims when seeking environmentally-friendly products.

Brands, eager to capitalize on the demand for environmental-friendly products and services, are taking advantage of the informational asymmetry that exists between companies and consumers to engage in greenwashing. In fact, in a 2022 study, 72 percent of U.S. company executives surveyed admitted that their companies had engaged in this deceptive marketing practice.⁶⁶ This report, coupled with the information supplied above, makes clear that greenwashing is a pervasive marketing tactic being used to exploit eco-conscious consumers.

Moreover, the injury caused by this widespread corporate exploitation is not limited to consumer harm. Greenwashing also harms honest businesses and the one thing eco-conscious consumers are trying to protect with their purchases – the environment.⁶⁷

The central danger in greenwashing is that it can mislead people into acting unsustainably. If a company says they're eco-friendly, you may want to buy their products. If these environmental claims turn out to be false, then you've accidentally contributed to harming the environment by supporting the company.⁶⁸

Even just one incorrectly labeled product can cause widespread harm.⁶⁹

TARGETED LAW ENFORCEMENT IS NOT AN ADEQUATE SOLUTION

At present, greenwashing is a lucrative proposition for many companies.⁷⁰ On the Agency's watch, deceptive environmental claims have become the norm for many brands. Greenwashing claims are widespread and the problem is increasing in scope over time. Law enforcement actions against individual companies simply cannot keep pace with the amount of deceptive environmental claims flooding marketing channels. Even before *AMG*, legal actions against greenwashing practices were so resource-intensive that nowhere near enough cases could be brought to keep pace with the violations. After *AMG*, such actions are even more resource-intensive and protracted, making targeted law enforcement action against individual companies still less viable as the principal method of regulating deceptive environmental claims. That is to say, targeted law enforcement is woefully inadequate by itself to protect the public against greenwashing.

Initiating a rulemaking(s) with regard to marketing environmental claims would not only prevent consumer (and environmental) harm by clarifying all companies' legal obligations to adequately and accurately inform consumers, but would also enable more effective enforcement by allowing the Commission to seek immediate monetary penalties for violations, as well as compensate victims ensnared by the deception. As explained by a former FTC Acting Chair, "rules provide clarity about the boundaries of illegal behavior, and in exchange for the clarity companies can face penalties even for first-time violations. As a result, rules create strong incentives to comply with the law."⁷¹

As the FTC undertakes its review of the Green Guides, now is the time to remedy the information deficit and surfeit of misinformation by which companies take advantage of millions of eco-conscious consumers by initiating a rulemaking process to address issues raised by deceptive environmental marketing. While there are several paths the Commission could (and should) consider with regard to such rulemaking possibilities, at this time, TINA.org proposes one such option by way of example as opposed to by way of limitation.

TINA.org recommends the initiation of a proposed rulemaking proceeding concerning unqualified recyclable claims. While such claims accompany a multitude of products, from garbage bags to food and drink containers and beyond, actually recycling such

products is, at best, challenging, and in many cases, impossible,⁷² and an issue that confuses the overwhelming majority of U.S. consumers.

America's recycling systems are increasingly complicated. The network of symbols on products do more to confound than explain. To add to the complexity, we are forced to navigate a labyrinth of local rules unique to each of the thousands of communities across the United States. Then there is the question of what recyclables are getting processed. There is growing evidence that much of our recycling may be going into landfills anyway. Shifts in the global economy, notably in China, are forcing cities across America to reduce or suspend recycling programs that are no longer economically viable. ... [T]he problems with America's recycling system — chiefly confusion, contamination and cost — are real...⁷³

Given these complexities, companies should face strict penalties if they exploit consumer confusion and lack of knowledge and market products with deceptive unqualified recyclable claims. In other words, companies, not consumers, should bear the burden of navigating and understanding the complicated recycling landscape in the U.S. and ensure their claims are not misleading or deceptive.

THE FTC MUST ADDRESS SUSTAINABILITY AND ASPIRATIONAL CLAIMS

For far too long, the FTC has remained largely silent with regard to sustainability and aspirational claims. And as a result, brands have filled the void with claims that deceive consumers. As TINA.org's Ad Alerts and Class-Action Tracker make clear, a plethora of companies deceptively use the term "sustainable" to mislead consumers.⁷⁴ Similar to general environmental benefit claims, which are addressed in the Green Guides,⁷⁵ sustainability claims can convey a wide range of meanings. Even honest companies trying to comply with the law may still inadvertently mislead consumers by using this currently undefined term. Further, the lack of guidance or standards regarding the meaning of sustainability makes it challenging to hold wrongdoers accountable.

The same is true of aspirational claims, which are also on the rise with numerous companies claiming to achieve "net zero" emissions by a certain date, or deceptively conflating current practices with future goals.⁷⁶ The FTC has clearly recognized the danger of promoting corporate ambitions as the Green Guides specifically address carbon offsets and require that marketers clearly and prominently disclose if the promoted carbon offset represents emissions reductions that will not occur for two years or longer in order to avoid deception.⁷⁷ But the Guides are otherwise silent with respect to touting long-term environmental objectives. Without clear FTC guidance regarding aspirational claims more generally, it is all too easy for marketers to advertise illusory goals rather than evidence-based objectives and outcomes.⁷⁸

CONCLUSION

To make rational economic decisions concerning eco-friendly marketed goods and services, consumers must have accurate information. However, the serious informational imbalance between companies and consumers concerning environmental claims coupled with the abundance of misinformation present in eco-friendly marketing puts consumers at a distinct disadvantage and allows companies to easily exploit consumers. Unlike other types of marketing claims, the vast majority of consumers do not have the resources or technical education to vet most environmental marketing claims. As a result, consumers are very much dependent on the FTC to protect them from greenwashing.

To that end, the FTC must strengthen its Green Guides by, among other things, addressing the rampant use of false and misleading sustainability and aspirational claims, initiating a rulemaking to address false and deceptive environmental claims, including but not limited to, unqualified recyclable claims, and utilizing every arrow in its quiver to protect consumers, honest businesses and the environment from harmful greenwashing claims.

Sincerely,



Bonnie Patten
Laura Smith
Truth in Advertising, Inc.

¹ Guides for the Use of Environmental Marketing Claims, 87 Fed. Reg. 77766 (Dec. 20, 2022), <https://www.federalregister.gov/documents/2022/12/20/2022-27558/guides-for-the-use-of-environmental-marketing-claims>.

² TINA.org's Mercedes-Benz Investigation, <https://truthinadvertising.org/brands/mercedes-benz>.

³ TINA.org's MyPillow Investigation, <https://truthinadvertising.org/brands/mypillow/>; TINA.org's doTerra Investigation, <https://truthinadvertising.org/brands/doterra/>; TINA.org's Young Living Investigation, <https://truthinadvertising.org/brands/young-living/>.

⁴ TINA.org's HelloFresh Investigation, <https://truthinadvertising.org/brands/hellofresh/>.

⁵ *Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com.*, 117th Cong. (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/house-testimony-2021-summary-action/>; *Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp.*, 117th Cong. (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), <https://truthinadvertising.org/action/senate-testimony-2021-summary-action/>.

⁶ For example, TINA.org participated as amicus curiae in *AMG Capital Management, LLC v. Federal Trade Commission*. Brief of Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, No. 19-508 (U.S. Dec. 7, 2020), https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf. TINA.org also filed an amicus curiae brief in *Federal Trade Commission v. Quincy Bioscience Holding Co., Inc.*, which reinstated a Section 13(b) suit against a business falsely marketing a dietary supplement to the elderly as clinically proven to improve memory. Brief of Amici Curiae Truth In Advertising, Inc. et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.*, 753 Fed. Appx. 87 (2d Cir. 2019) (No. 17-3745), https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.

⁷ *ReGrow Australia Ad Alert*, Truth In Advertising, June 30, 2020, <https://truthinadvertising.org/articles/regrowaustralia/>; *4Amazonia Ad Alert*, Truth In Advertising, Jan. 30, 2020, <https://truthinadvertising.org/articles/4amazonia/>; *Treehuggers Bracelets Ad Alert*, Truth In Advertising, Feb. 13, 2020, <https://truthinadvertising.org/articles/treehuggers-bracelets/>.

⁸ *HSBC's Environmental Claims*, Truth In Advertising, Oct. 20, 2022, <https://truthinadvertising.org/articles/hsbcs-environmental-claims/>.

⁹ *United Airlines' 'Offset Your Flight' Booking Option Ad Alert*, Truth In Advertising, Sept. 15, 2022, <https://truthinadvertising.org/articles/united-airlines-offset-your-flight-booking-option/>; *KLM Royal Dutch Airlines' CO2ZERO Carbon Offset Program Ad Alert*, Truth In Advertising, Oct. 3, 2022, <https://truthinadvertising.org/articles/klm-royal-dutch-airlines-co2zero-carbon-offset-program/>.

¹⁰ *Etihad Airways Ad Alert*, Truth In Advertising, Apr. 13, 2023, <https://truthinadvertising.org/articles/etihad-airways/>.

¹¹ *Mercedes Accused of Greenwashing with 'Nature or Nothing' Ads*, Truth In Advertising, Sept. 1, 2022, <https://truthinadvertising.org/articles/mercedes-accused-of-greenwashing-with-nature-or-nothing-ads/>.

¹² *H&M's Sustainability Profiles, Environmental Claims*, Truth In Advertising, Aug. 18, 2022, <https://truthinadvertising.org/articles/hms-sustainability-profiles-environmental-claims/>.

¹³ *Lomi Ad Alert*, Truth In Advertising, Mar. 20, 2023, <https://truthinadvertising.org/articles/lomi/>.

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- ¹⁴ *The Higg Index Ad Alert Ad Alert*, Truth In Advertising, Aug. 22, 2022, <https://truthinadvertising.org/articles/the-higg-index/>.
- ¹⁵ *SKKN by Kim’s Sustainability Claims Ad Alert*, Truth In Advertising, June 30, 2022, <https://truthinadvertising.org/articles/skkn-by-kims-sustainability-claims/>.
- ¹⁶ *Simply Gum Ad Alert*, Truth In Advertising, Mar. 1, 2022 (updated Mar. 3, 2022), <https://truthinadvertising.org/articles/simply-gum/>.
- ¹⁷ *Oatly’s Environmental Claims Ad Alert*, Truth In Advertising, Feb. 2, 2022, <https://truthinadvertising.org/articles/oatlys-environmental-claims/>.
- ¹⁸ *Earth Rated ‘Compostable’ Dog Poop Bags Ad Alert*, Truth In Advertising, May 6, 2021, <https://truthinadvertising.org/articles/earth-rated-compostable-dog-poop-bags/>.
- ¹⁹ *Hefty Recycling Bags Ad Alert*, Truth In Advertising, May 13, 2021, <https://truthinadvertising.org/articles/hefty-recycling-bags-2/>.
- ²⁰ *Cascade Platinum Ad Alert*, Truth In Advertising, June 30, 2020, <https://truthinadvertising.org/articles/cascade-platinum/>.
- ²¹ *Tide Purclean Ad Alert*, Truth In Advertising, Sept. 16, 2020, <https://truthinadvertising.org/articles/tide-purclean/>.
- ²² *Blueland Ad Alert*, Truth In Advertising, Nov. 17, 2020, <https://truthinadvertising.org/articles/blueland/>.
- ²³ *Quorn Foods Thai Wonder Grains Ad Alert*, Truth In Advertising, Sept. 30, 2020, <https://truthinadvertising.org/articles/quorn-foods-thai-wonder-grains/>.
- ²⁴ *Bumble Bee Tuna’s ‘Dolphin Safe’ Claims*, Truth In Advertising, June 27, 2019, <https://truthinadvertising.org/articles/bumble-bee-tunas-dolphin-safe-claims/>.
- ²⁵ *Kauai’s ‘100% Compostable’ Coffee Pods Ad Alert*, Truth In Advertising, May 24, 2017, <https://truthinadvertising.org/articles/kauais-100-compostable-coffee-pods/>.
- ²⁶ *GreenPan Ad Alert*, Truth In Advertising, Apr. 22, 2020, <https://truthinadvertising.org/articles/greenpan/>.
- ²⁷ *Natural American Spirit Ad Alert*, Truth In Advertising, Aug. 31, 2015 (updated Oct. 5, 2015), <https://truthinadvertising.org/articles/natural-american-spirit/>.
- ²⁸ *American Beverage Association’s Every Bottle Back Recycling Initiative*, Truth In Advertising, Apr. 6, 2023, <https://truthinadvertising.org/articles/american-beverage-associations-every-bottle-back-recycling-initiative/>.
- ²⁹ *Group Challenges Rainforest Alliance Earth-Friendly Seal of Approval*, Truth In Advertising, Apr. 20, 2015, <https://truthinadvertising.org/articles/group-challenges-rainforest-alliance-eco-friendly-seal-of-approval/>.
- ³⁰ TINA.org’s Class-Action Tracker: Volkswagen “Clean Diesel” Vehicles, <https://truthinadvertising.org/class-action/volkswagen-clean-diesel-vehicles/>; TINA.org’s Class-Action Tracker: Chevrolet Cruz, <https://truthinadvertising.org/class-action/chevrolet-cruze/>; TINA.org’s Class-Action Tracker: BlueTEC Vehicles, <https://truthinadvertising.org/class-action/bluetec-vehicles/>; TINA.org’s Class-Action Tracker: BMW X5 and 255d Diesel Vehicles, <https://truthinadvertising.org/class-action/bmw-x5-355d-diesel-vehicles/>; TINA.org’s Class-Action Tracker: Ford F-250 and F-350 Super Duty Diesel Vehicles, <https://truthinadvertising.org/class-action/ford-f-250-and-f-350-super-duty-diesel-vehicles/>.

³¹ TINA.org’s Class-Action Tracker: CO2ZERO Program at Royal Dutch Airlines, <https://truthinadvertising.org/class-action/co2zero-program-at-royal-dutch-airlines/>.

³² *CATrends: ‘100% Recyclable’ Water Bottles*, Truth In Advertising, Sept. 28, 2021, <https://truthinadvertising.org/articles/catrends-100-recyclable-water-bottles/>; TINA.org’s Class-Action Tracker: Recyclability Claims on Arrowhead, Poland Spring, Niagara, and Other Bottled Waters, <https://truthinadvertising.org/class-action/recyclability-claims-on-arrowhead-poland-springs-niagara-and-other-bottled-waters/>; TINA.org’s Class-Action Tracker: Recyclability Claims on Niagara, Kirkland, and Other Bottled Waters, <https://truthinadvertising.org/class-action/recyclability-claims-on-niagara-kirkland-and-other-bottled-waters/>; TINA.org’s Class-Action Tracker: Recyclability Claims on Dasani, Poland Spring and Other Bottled Waters, <https://truthinadvertising.org/class-action/recyclability-claims-on-bottled-waters/>.

³³ TINA.org’s Class-Action Tracker: Evian’s “Carbon Neutral” Claims, <https://truthinadvertising.org/class-action/evians-carbon-neutral-claims/>.

³⁴ TINA.org’s Class-Action Tracker: Starkist Tuna’s Dolphin Safe Representations, <https://truthinadvertising.org/class-action/starkist-tunas-dolphin-safe-representations/>; TINA.org’s Class-Action Tracker: Fancy Feast Tuna Products, <https://truthinadvertising.org/class-action/fancy-feast-tuna-products/>; TINA.org’s Class-Action Tracker: Chicken of the Sea’s Dolphin-Safe Claims, <https://truthinadvertising.org/class-action/chicken-of-the-seas-dolphin-safe-claims/>; TINA.org’s Class-Action Tracker: Bumble Bee’s Dolphin Safe Representations on Tuna Products, <https://truthinadvertising.org/class-action/bumble-bees-dolphin-safe-representations-on-tuna-products/>; TINA.org’s Class-Action Tracker: Aldi Tuna Products, <https://truthinadvertising.org/class-action/aldi-tuna-products/>; TINA.org’s Class-Action Tracker: Kirkland Signature White Albacore Tuna in Water, <https://truthinadvertising.org/class-action/kirkland-signature-white-albacore-tuna-in-water/>.

³⁵ TINA.org’s Class-Action Tracker: Red Lobster’s Sustainability Claims, <https://truthinadvertising.org/class-action/red-lobsters-sustainability-claims/>; TINA.org’s Class-Action Tracker: ALDI Atlantic Salmon, <https://truthinadvertising.org/class-action/aldi-atlantic-salmon/>; TINA.org’s Class-Action Tracker: Gorton’s Grilled Tilapia, <https://truthinadvertising.org/class-action/gortons-grilled-tilapia/>; TINA.org’s Class-Action Tracker: Great Value and Sam’s Choice Seafood, <https://truthinadvertising.org/class-action/great-value-and-sams-choice-seafood/>; TINA.org’s Class-Action Tracker: Bumble Bee Seafoods, <https://truthinadvertising.org/class-action/bumble-bee-seafoods/>; TINA.org’s Class-Action Tracker: Mrs. Paul’s and Van De Kamp’s Seafood Products, <https://truthinadvertising.org/class-action/mrs-pauls-and-van-de-kamps-seafood-products/>.

³⁶ TINA.org’s Class-Action Tracker: Nestlé USA’s Chocolates, <https://truthinadvertising.org/class-action/nestle-usas-chocolates/>.

³⁷ TINA.org’s Class-Action Tracker: Big Mac, <https://truthinadvertising.org/class-action/big-mac/>; TINA.org’s Class-Action Tracker: Whopper, <https://truthinadvertising.org/class-action/whopper/>. *See also* TINA.org’s Class-Action Tracker: Grain and Salad Bowls from CAVA, <https://truthinadvertising.org/class-action/grain-and-salad-bowls-from-cava/>.

³⁸ TINA.org’s Class-Action Tracker: BioSteel Blue Raspberry Sports Drink, <https://truthinadvertising.org/class-action/biosteel-blue-raspberry-sports-drink/>.

³⁹ TINA.org’s Class-Action Tracker: 365 Whole Foods Market Long Grain & Wild Rice, <https://truthinadvertising.org/class-action/365-whole-foods-market-long-grain-wild-rice/>.

⁴⁰ TINA.org’s Class-Action Tracker: Cameron’s Coffee BetterBrew Eco Coffee Pods Compostable Claims, <https://truthinadvertising.org/class-action/camerons-coffee-betterbrew-eco-coffee-pods-compostable-claims/>.

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- ⁴¹ TINA.org’s Class-Action Tracker: Keurig Green Mountain Plastic Coffee Pods, <https://truthinadvertising.org/class-action/keurig-green-mountain-plastic-coffee-pods/>; TINA.org’s Class-Action Tracker: The Recyclability of Keurig Green Mountain Coffee Pods, <https://truthinadvertising.org/class-action/the-recyclability-of-keurig-green-mountain-coffee-pods/>.
- ⁴² TINA.org’s Class-Action Tracker: Grimmway Products, <https://truthinadvertising.org/class-action/grimmway-products/>.
- ⁴³ TINA.org’s Class-Action Tracker: H&M’s Sustainability Claims, <https://truthinadvertising.org/class-action/hms-sustainability-claims/>; TINA.org’s Class-Action Tracker: Thinx Products, <https://truthinadvertising.org/class-action/thinx-products/>; TINA.org’s Class-Action Tracker: REI’s Waterproof Apparel, <https://truthinadvertising.org/class-action/reis-waterproof-apparel/>.
- ⁴⁴ TINA.org’s Class-Action Tracker: Allbirds Running Shoes, <https://truthinadvertising.org/class-action/allbirds-running-shoes/>.
- ⁴⁵ TINA.org’s Class-Action Tracker: Fur in Canada Goose Products, <https://truthinadvertising.org/class-action/fur-in-canada-goose-products/>.
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- ⁴⁹ TINA.org’s Class-Action Tracker: Burt’s Bees Products, <https://truthinadvertising.org/class-action/burts-bees-products/>.
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- ⁵² TINA.org’s Class-Action Tracker: Repellem and Eco-Friendly Trash Bags, <https://truthinadvertising.org/class-action/repellem-and-eco-friendly-trash-bags/>.
- ⁵³ TINA.org’s Class-Action Tracker: Great Value Recycling Drawstring Bags, <https://truthinadvertising.org/class-action/great-value-recycling-drawstring-bags/>; TINA.org’s Class-Action Tracker: Hefty Recycling Bags, <https://truthinadvertising.org/class-action/hefty-recycling-bags/>; TINA.org’s Class-Action Tracker: Hefty Recycling Bag, <https://truthinadvertising.org/class-action/hefty-recycling-bag/>.
- ⁵⁴ TINA.org’s Class-Action Tracker: 7-Eleven’s Recyclable Claims, <https://truthinadvertising.org/class-action/7-elevens-recyclable-claims/>.
- ⁵⁵ TINA.org’s Class-Action Tracker: Earth Rated Certified Compostable Poop Bags, <https://truthinadvertising.org/class-action/earth-rated-certified-compostable-poop-bags/>.
- ⁵⁶ TINA.org’s Class-Action Tracker: Compostable Plates and Bowls from Amazon, <https://truthinadvertising.org/class-action/compostable-plates-and-bowls-from-amazon/>; TINA.org’s Class-Action Tracker: Matter Plates, Bowls, and Bags, <https://truthinadvertising.org/class-action/matter-plates-bowls-and-bags/>; TINA.org’s Class-Action Tracker: Compostable Plates and Bowls at The Kroger Co., <https://truthinadvertising.org/class-action/compostable-plates-and-bowls-at-the-kroger-co/>; TINA.org’s Class-Action Tracker: Chinet Plates and Bowls, <https://truthinadvertising.org/class-action/chinet-plates-and-bowls/>; TINA.org’s Class-Action Tracker: Disposable Plates and Bowls from Albertsons, Safeway and Lucerne Foods, <https://truthinadvertising.org/class-action/disposable-plates-and-bowls-from-albertsons-safeway-and-lucerne-foods/>.
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- ⁵⁸ TINA.org’s Class-Action Tracker: GreenPan Cookware, <https://truthinadvertising.org/class-action/greenpan-cookware/>.
- ⁵⁹ *Companies Accused of Greenwashing*, Truth In Advertising, Apr. 22, 2022 (Oct. 26, 2022), <https://truthinadvertising.org/articles/companies-accused-greenwashing/>.
- ⁶⁰ The City of New York also pursued Shell and BP for making misleading environmental benefit claims. Verified Complaint, *City of New York v. Exxon Mobil Corp.*, No. 0451071/2021 (N.Y. Sup. Ct., Apr. 22, 2021), <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2021/Earth-Day-Lawsuit.pdf>.
- ⁶¹ Press Release, GreenPrint, GreenPrint Survey Finds Consumers Want to Buy Eco-Friendly Products, but Don’t Know How to Identify Them (Mar. 22, 2021), <https://www.businesswire.com/news/home/20210322005061/en/GreenPrint-Survey-Finds-Consumers-Want-to-Buy-Eco-Friendly-Products-but-Don%E2%80%99t-Know-How-to-Identify-Them>. See also Greg Petro, *Consumers Demand Sustainable Products and Shopping Formats*, Forbes, Mar. 11, 2022, <https://www.forbes.com/sites/gregpetro/2022/03/11/consumers-demand-sustainable-products-and-shopping-formats/?sh=4403831e6a06> (“In the two years since First Insight’s first report on Gen Z and sustainability was published, Gen X consumers’ preference to shop sustainable brands increased by nearly 25% and their willingness to pay more for sustainable products increased by 42%. In fact, consumers across all generations—from Baby Boomers to Gen Z—are now willing to spend more for sustainable products. Just two years ago, only 58% of consumers across all generations were willing to spend more for sustainable options. Today, nearly 90% of Gen X consumers said that they would be willing to spend an extra 10% or more for sustainable products, compared to just over 34% two years ago.”); Andrew Martins, *Most Consumers Want Sustainable Products and Packaging*, Bus. News Daily, Feb. 21, 2023,

<https://www.businessnewsdaily.com/15087-consumers-want-sustainable-products.html> (“According to a survey from McKinsey & Co., 66% of all respondents and 75% of millennial respondents say that they consider sustainability when they make a purchase. ... [R]esearchers said 72% of respondents reported that they were actively buying more environmentally friendly products than they did five years ago, while 81% said they expected to buy even more over the next five years. ‘The shift in consumer buying, with more consumers willing to pay extra for environmentally friendly products, reinforces the need for companies to increase their commitments to responsible business practices.’”); *Majority of US Consumers Say They Will Pay More for Sustainable Products*, Sustainable Brands, Aug. 29, 2022, <https://sustainablebrands.com/read/marketing-and-comms/majority-of-us-consumers-say-they-will-pay-more-for-sustainable-products> (“66 percent of US consumers and 80 percent of young US adults (ages 18-34) surveyed are willing to pay more for sustainable products versus less sustainable competitors, according to the second *Business of Sustainability Index* by GreenPrint, a PDI company.”); Jordan Bar Am et al., *Consumers Care About Sustainability – And Back It Up With Their Wallets*, McKinsey & Co., Feb. 6, 2023, <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets> (“in a 2020 McKinsey US consumer sentiment survey, more than 60 percent of respondents said they’d pay more for a product with sustainable packaging. A recent study by NielsenIQ found that 78 percent of US consumers say that a sustainable lifestyle is important to them. ... Products making ESG-related claims averaged 28 percent cumulative growth over the past five-year period, versus 20 percent for products that made no such claims.”); Press Release, DS Smith, *Consumers More Likely to Buy Goods With Clearer Recycling Directions as DS Smith Reveals Its Top 12 Hard-To-Recycle Items* (Mar. 24, 2022), <https://www.businesswire.com/news/home/20220324005752/en/> (“Nearly two thirds (63%) of those polled say they’re more likely to purchase those well-marked products, yet another sign of environmental concerns driving shopper preferences.”).

⁶² Jane Courtneil, *What Is Greenwashing? 5 Signs to Spot & Stop Greenwashing*, Green Bus. Bureau, Feb. 13, 2023, <https://greenbusinessbureau.com/green-practices/what-is-greenwashing-and-how-to-spot-it/> (“U.S. consumers are estimated to spend \$150 billion on products marketed as sustainable by 2021. This figure demonstrates consumer willingness to pay a premium for such goods and unfortunately, some companies are still using greenwash tactics to capitalize on this trend.”); Jeff Gelski, *Sustainable Product Market Could Hit \$150 Billion in U.S. by 2021*, Food Bus. News, Jan. 10, 2019, <https://www.foodbusinessnews.net/articles/13133-sustainable-product-market-could-hit-150-billion-in-us-by-2021> (“Consumers in the United States by Oct. 20 had spent \$128.5 billion in 2018 on sustainable fast-moving consumer goods, according to Nielsen. The figure already had eclipsed \$125.4 billion in 2017. Sales have risen nearly 20% since 2014 with a compound annual growth rate of 3.5% and a push from millennials. New York-based Nielsen forecasts the market to reach somewhere between \$142.4 billion and \$150.1 billion by 2021.”); *Was 2018 the Year of the Influential Sustainable Consumer?*, NielsenIQ, Dec. 17, 2018, <https://nielseniq.com/global/en/insights/analysis/2018/was-2018-the-year-of-the-influential-sustainable-consumer/> (“Nearly half (48%) of U.S. consumers say they would definitely or probably change their consumption habits to reduce their impact on the environment. And these consumers are putting their dollars where their values are, spending \$128.5 billion on sustainable fast-moving consumer goods (FMCG) products this year. Since 2014, these influential shoppers have grown sustainable product sales by nearly 20%, with a compound average growth rate (CAGR) that’s four times larger than conventional products (3.5% vs -1.0% comparatively). By 2021, we expect these sustainability minded shoppers to spend up to \$150 billion on sustainable FMCG goods an increase of \$14 billion -- \$22 billion. Today, sales of products with sustainable attributes make up 22% of the total store, with organic, sustainable and clean attributes driving the majority of the sustainable category’s growth. Notably, sustainability’s share between 2014 and 2017 grew nearly three percentage points, while conventional products’ share of sales dropped by almost four. By 2021, we expect sustainable goods will make up 25% of store sales.”); Olivia Montgomery, *Consumer Expectations for Sustainability Are Accelerating Despite Inflation*, Capterra, Sept. 15, 2022, <https://www.capterra.com/resources/consumer-expectations-for-sustainability-are-accelerating-despite-inflation/> (“In 2022, 95% of surveyed consumers consider the sustainability of a product to be important. And more consumers are putting their money where their mouth is: 84% of these consumers have purchased a sustainable product in the past six months, up from 67% in 2021.”); Jordan Bar Am et al., *Consumers Care About Sustainability – And Back It Up With Their Wallets*, McKinsey & Co. and NielsenIQ, Feb. 2023,

<https://nielseniq.com/wp-content/uploads/sites/4/2023/02/Consumers-care-about-sustainability%E2%80%94and-back-it-up-with-their-wallets-FINAL.pdf> (“Over the past five years, products making ESG-related claims accounted for 56 percent of all growth – about 18 percent more than would have been expected given their standing at the beginning of the five-year period: products making these claims averaged 28 percent cumulative growth over the five-year period, versus 20 percent for products that made no such claims. . . . Products making ESG-related claims therefore now account for nearly half of all retail sales in the categories examined.”).

⁶³ *Reduce. Reuse. Confuse.*, Consumer Brands Association, at 2 (2019), https://consumerbrandsassociation.org/wp-content/uploads/2019/04/ConsumerBrands_ReduceReuseConfuse.pdf (“The CPG industry is leading on recycling at a time when concern about the environment is on the rise. A decade ago, just 38 percent of Americans considered themselves extremely or very concerned about the environment. Today, the figure is 74%. Environmental concern among American consumers is translating to a behavioral change. The vast majority (75 percent) say they have changed their behavior in recent years to be more environmentally conscious, taking steps to recycle more, buying sustainable products or reducing waste, for example.”); *Is Your Business Resilient Enough to Handle the Era of Rapid Change?*, Growth From Knowledge, Sept. 15, 2021, <https://www.gfk.com/insights/is-your-business-resilient-enough-to-handle-the-era-of-rapid-change> (“While some trends have been overshadowed by the day-to-day realities of the pandemic, others have taken center stage — including environmental sustainability. In fact, consumers placed a greater emphasis on decreasing their environmental footprint in 2020 than ever before.”); Growth From Knowledge’s Eco-Actives Infographic, <https://www.gfk.com/hubfs/Eco-Actives-Infographic.pdf> (reporting that 22 percent of shoppers are “eco-actives,” i.e., shoppers who care about the environment and take actions to reduce their footprint, and that eco-actives will make up half of the population by 2030); Olivia Montgomery, *Consumer Expectations for Sustainability Are Accelerating Despite Inflation*, Capterra, Sept. 15, 2022, <https://www.capterra.com/resources/consumer-expectations-for-sustainability-are-accelerating-despite-inflation/> (“In 2022, 95% of surveyed consumers consider the sustainability of a product to be important. And more consumers are putting their money where their mouth is: 84% of these consumers have purchased a sustainable product in the past six months, up from 67% in 2021.”).

⁶⁴ Press Release, GreenPrint, *A Large Majority of Americans Are Willing to Pay More for Sustainable Products, Study Finds* (June 21, 2022), <https://www.businesswire.com/news/home/20220621005065/en/A-Large-Majority-of-Americans-Are-Willing-to-Pay-More-for-Sustainable-Products-Study-Finds> (“78% of Americans say they don’t know how to identify environmentally friendly companies, despite wanting to buy from them.”); Press Release, GreenPrint, *GreenPrint Survey Finds Consumers Want to Buy Eco-Friendly Products, but Don’t Know How to Identify Them* (Mar. 22, 2021), <https://www.businesswire.com/news/home/20210322005061/en/GreenPrint-Survey-Finds-Consumers-Want-to-Buy-Eco-Friendly-Products-but-Don%E2%80%99t-Know-How-to-Identify-Them> (“[N]early two-thirds (64%) of Americans are willing to pay more for sustainable products but most (74%) don’t know how to identify them....”); Federal Trade Commission Annual Performance Report for Fiscal Year 2022 and Annual Performance Plan for Fiscal Years 2023 to 2024, at 8, https://www.ftc.gov/system/files/ftc_gov/pdf/p859900fy22apr_fy23-24app.pdf (“The FTC recognizes that consumers cannot always identify whether unfair or deceptive practices have occurred. For example, consumers cannot evaluate for themselves the truthfulness of an environmental marketing claim, such as “made with recycled content.””).

⁶⁵ *Reduce. Reuse. Confuse.*, Consumer Brands Association, at 8 (2019), https://consumerbrandsassociation.org/wp-content/uploads/2019/04/ConsumerBrands_ReduceReuseConfuse.pdf (“For many Americans, recycling ranks ahead of some of the most confusing things in life — more confusing than building Ikea furniture, doing their taxes, playing the stock market or understanding the opposite sex.”).

Environmental issues like recycling are complex for a variety of reasons, including the fact that “recyclable in theory” (i.e., capable of being recycled somewhere) is not the same as “will actually be recycled at a facility near you.” See, e.g., *Circular Claims Fall Flat Again: 2022 Update*, Greenpeace, Oct. 2022,

https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf; John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, Greenpeace, Feb. 2020, <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf>. As such, national marketing campaigns making recyclable claims are frequently untenable as recycling generally boils down to whether consumers' local communities are capable of recycling the products at issue. See James Brien, *Recycling is Rubbish: Reinvent, Realign, and Restructure U.S. Material Management*, 52 Env't L. Rep. 10539, 10542 (2022) ("The U.S. recycling system depends upon 20,000 different municipal waste management systems, which vary widely in standards and acceptable items."). See also Press Release, DS Smith, Consumers More Likely to Buy Goods With Clearer Recycling Directions as DS Smith Reveals Its Top 12 Hard-to-Recycle Items (Mar. 24, 2022), <https://www.businesswire.com/news/home/20220324005752/en/> ("The poll indicated that while a majority of consumers embrace recycling, many are unsure what items can be – and that means too many throwaways being put into mixed or paper recycling streams that shouldn't be."); *Reduce. Reuse. Confuse.*, Consumer Brands Association, at 6 (2019), https://consumerbrandsassociation.org/wp-content/uploads/2019/04/ConsumerBrands_ReduceReuseConfuse.pdf ("... a total of 92 percent of Americans did not understand labels: 68 percent said they assume that any product with symbols for all seven codes would be recyclable; the other 24 percent said they did not know. Only eight percent said no. Upon learning that only two of the seven codes were typically recyclable curbside, 73 percent were surprised. Even more confusing, those codes are intended for the recycling processing centers, but consumers are interpreting them — and incorrectly at that. When asked to identify a set of four recycling symbols, fewer than half got even one correct. The most common response across all four was, 'I don't know,' even for the universal recycling symbol ..."); Alison Borochoff-Porte et al., *Applying Consumer Protection Basics to Greenwashing Recyclability Cases*, Harv. L. Rev., Apr. 10, 2023, at 12 ("Research suggest that a significant portion of consumers exhibit confusion about the term recyclable and could in fact view the label 'recyclable' to mean that the product would always or would likely be recycled. One survey suggests that most consumers mistakenly believe that plastic is endlessly recyclable. And the National Consumers League has written that symbols like the green, three-arrow recycle symbol 'add[s] to consumer confusion,' and that 'the language used on ... packaging related to recycling or recyclability is often vague, inconsistent, and relatively unhelpful to even savvy consumers.' More concretely, one article suggests that '85 percent of Americans are somewhat-to-very confident that what they throw in the recycling bin is actually recycled.' In another survey, where participants were asked to describe what would happen if they were an item in a recycling bin, 32 percent of respondents said 'I am turned into a new item,' versus a lower 31 percent who simply said 'I am sorted/separated based on the type of product.' Likewise, consumer research by a group that administers a labeling system for recyclable consumer goods, indicates that a significant portion of consumers believe that 'recyclable' means an item will be recycled most of the time, and that 30 percent of consumers surveyed agreed with the claim that 'recyclable' meant an item would be recycled 100 percent of the time.")

⁶⁶ *CEOs Are Ready to Fund a Sustainable Transformation*, Google Global, https://services.google.com/fh/files/misc/google_cloud_cxo_sustainability_survey_final.pdf. See also Richard Dahl, *Green Washing*, 118 Env't Health Persp. A246, A247 (2010), <https://ehp.niehs.nih.gov/doi/full/10.1289/ehp.118-a246> (discussing the findings of an advertising consultancy report, including that 98% of products identified as making green claims "were guilty of greenwashing" and that the problem is escalating); Press Release, Changing Markets Foundation, Brands Exposed for 'Misleading and Mendacious' Packaging Claims (June 30, 2022), <https://changingmarkets.org/wp-content/uploads/2022/06/Greenwash.com-packaging-press-release.pdf> (discussing how many big name companies, including IKEA, Coca-Cola, Unilever, and Kim Kardashian's clothing company SKIMS, among others, are engaged in greenwashing).

⁶⁷ Jenna Tsui, *The Negative Effects of Corporate Greenwashing*, Sea Going Green, Feb. 26, 2020, <https://www.seagoinggreen.org/blog/the-negative-effects-of-corporate-greenwashing> ("There are several documented examples of greenwashing being harmful to the environment. In 2008, a Malaysian palm oil commercial claimed that palm oil plantations provided homes for native flora and fauna. In reality, these plantations contribute to deforestation and habitat loss, so anyone who bought palm oil hoping to protect nature inadvertently did the opposite."); Kasey A. West, *Goodbye to Greenwashing in the Fashion Industry: Greater Enforcement and Guidelines*, 101 N.C. L. Rev. 841, 845 (2023),

<https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=6922&context=nclr> (“Greenwashing also harms the environment by inspiring inaction, allowing brands to say they are acting sustainably without taking actions to support those claims.”); *Id.* at 851 (“Instead of inspiring solutions to these environmental and social hazards, greenwashing ultimately inspires inaction. Brands can take the easy route and say they are substantially improving the environment without doing so, which is why regulatory changes and enforcement measures must be made.”). See also Richard Dahl, *Green Washing*, 118 *Env’t Health Persp.* A246, <https://ehp.niehs.nih.gov/doi/full/10.1289/ehp.118-a246>.

⁶⁸ Jenna Tsui, *The Negative Effects of Corporate Greenwashing*, *Sea Going Green*, Feb. 26, 2020, <https://www.seagoinggreen.org/blog/the-negative-effects-of-corporate-greenwashing>.

⁶⁹ Megan Manning et al., *Making It Usable Again: Reviving the Nation’s Domestic Recycling Industry*, 50 *Golden Gate Univ. L. Rev.* 107, 119 (2020) (“[Consumer] uncertainty is costly because a single incorrectly recycled item can contaminate an entire bin of recyclable materials.”). See also Megan Manning et al., *Making It Usable Again: Reviving the Nation’s Domestic Recycling Industry*, 50 *Golden Gate Univ. L. Rev.* 107, 143 (2020) (“The recycling numbers currently found on most recyclables confuse consumers, contribute to America’s contamination problem, and do not correlate to municipalities’ processing capabilities.”).

⁷⁰ Alana Semuels, *Is This the End of Recycling?*, *The Atlantic*, Mar. 5, 2019, <https://www.theatlantic.com/technology/archive/2019/03/china-has-stopped-accepting-our-trash/584131/> (“For now, it’s still often cheaper for companies to manufacture using new materials than recycled ones. ... because companies don’t bear the costs of disposal, they have no incentive to manufacture products out of material that will be easier to recycle.”); Andrew Krososky, *The Cost of Environmentalism: Why Sustainable Products Are More Expensive*, *Green Matters*, Aug. 27, 2021, <https://www.greenmatters.com/p/are-sustainable-products-more-expensive> (“...sustainable products are more expensive than mainstream versions.”); Megan Manning et al., *Making It Usable Again: Reviving the Nation’s Domestic Recycling Industry*, 50 *Golden Gate Univ. L. Rev.* 107, 144 (Aug. 2020) (“In Congress, Representative Betty McCollum has been attempting to help address this issue by advocating for funding to expedite the standardization of recycling labels. McCollum specifically pushed for such funding in a 2020 appropriations bill, arguing it would be a cost-effective means of improving recycling rates nationwide and decrease contamination. However, such standardization has faced some pushback from private industry because it would require countless manufacturers and companies to add new labels to their packaging.”).

⁷¹ Rebecca Kelly Slaughter, Acting Chairwoman, Fed. Trade Comm’n, Keynote Remarks of FTC Acting Chairwoman Rebecca Kelly Slaughter at the Consumer Federation of America’s Virtual Consumer Assembly, at 2 (May 4, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589607/keynote-remarks-acting-chairwoman-rebecca-kelly-slaughte-cfa-virtual-consumer-assembly.pdf.

⁷² John Hocevar, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, *Greenpeace*, Feb. 18, 2020, <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf>; *Circular Claims Fall Flat Again: 2022 Update*, *Greenpeace*, Oct. 2022, https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf.

⁷³ *Reduce. Reuse. Confuse.*, *Consumer Brands Association*, at 1 (2019), https://consumerbrandsassociation.org/wp-content/uploads/2019/04/ConsumerBrands_ReduceReuseConfuse.pdf.

⁷⁴ See, e.g., *Etihad Airways Ad Alert*, *Truth In Advertising*, Apr. 13, 2023, <https://truthinadvertising.org/articles/etihad-airways/>; *H&M’s Sustainability Profiles, Environmental Claims*, *Truth In Advertising*, Aug. 18, 2022, <https://truthinadvertising.org/articles/hms-sustainability-profiles-environmental-claims/>; *The Higg Index Ad Alert*, *Truth In Advertising*, Aug. 22, 2022,

<https://truthinadvertising.org/articles/the-higg-index/>; *SKKN by Kim's Sustainability Claims*, Truth In Advertising, June 30, 2022, <https://truthinadvertising.org/articles/skkn-by-kims-sustainability-claims/>; Bumble Bee Tuna's 'Dolphin Safe' Claims, Truth In Advertising, June 27, 2019, <https://truthinadvertising.org/articles/bumble-bee-tunas-dolphin-safe-claims/>; TINA.org's Class-Action Tracker: Red Lobster's Sustainability Claims, <https://truthinadvertising.org/class-action/red-lobsters-sustainability-claims/>; TINA.org's Class-Action Tracker: ALDI Atlantic Salmon, <https://truthinadvertising.org/class-action/aldi-atlantic-salmon/>; TINA.org's Class-Action Tracker: Gorton's Grilled Tilapia, <https://truthinadvertising.org/class-action/gortons-grilled-tilapia/>; TINA.org's Class-Action Tracker: Great Value and Sam's Choice Seafood, <https://truthinadvertising.org/class-action/great-value-and-sams-choice-seafood/>; TINA.org's Class-Action Tracker: Bumble Bee Seafoods, <https://truthinadvertising.org/class-action/bumble-bee-seafoods/>; TINA.org's Class-Action Tracker: Mrs. Paul's and Van De Kamp's Seafood Products, <https://truthinadvertising.org/class-action/mrs-pauls-and-van-de-kamps-seafood-products/>; TINA.org's Class-Action Tracker: Nestlé USA's Chocolates, <https://truthinadvertising.org/class-action/nestle-usas-chocolates/>; TINA.org's Class-Action Tracker: Grain and Salad Bowls from CAVA, <https://truthinadvertising.org/class-action/grain-and-salad-bowls-from-cava/>; TINA.org's Class-Action Tracker: Big Mac, <https://truthinadvertising.org/class-action/big-mac/>; TINA.org's Class-Action Tracker: Whopper, <https://truthinadvertising.org/class-action/whopper/>; TINA.org's Class-Action Tracker: 365 Whole Foods Market Long Grain & Wild Rice, <https://truthinadvertising.org/class-action/365-whole-foods-market-long-grain-wild-rice/>; TINA.org's Class-Action Tracker: H&M's Sustainability Claims, <https://truthinadvertising.org/class-action/hms-sustainability-claims/>; TINA.org's Class-Action Tracker: Thinx Products, <https://truthinadvertising.org/class-action/thinx-products/>; TINA.org's Class-Action Tracker: REI's Waterproof Apparel, <https://truthinadvertising.org/class-action/reis-waterproof-apparel/>; TINA.org's Class-Action Tracker: Fur in Canada Goose Products, <https://truthinadvertising.org/class-action/fur-in-canada-goose-products/>; TINA.org's Class-Action Tracker: Allbirds Running Shoes, <https://truthinadvertising.org/class-action/allbirds-running-shoes/>.

⁷⁵ Guides for the Use of Environmental Marketing Claims §260.4.

⁷⁶ See, e.g., *American Beverage Association's Every Bottle Back Recycling Initiative*, Truth In Advertising, Apr. 6, 2023, <https://truthinadvertising.org/articles/american-beverage-associations-every-bottle-back-recycling-initiative/>; *Etihad Airways Ad Alert*, Truth In Advertising, Apr. 13, 2023, <https://truthinadvertising.org/articles/etihad-airways/>.

⁷⁷ Guides for the Use of Environmental Marketing Claims §260.5.

⁷⁸ In fact, one need look no further than hundreds of the largest consumer packaged goods companies to find such claims. A report by the Consumer Brands Association found that 250 of the largest consumer packaged goods companies, including Coca-Cola, Colgate-Palmolive, Henkel, Kellogg, McCormick, PepsiCo and Reckitt Benckiser, to name a few, committed that 100 percent of their plastic packaging will be reusable, recyclable or compostable by 2025. *Reduce. Reuse. Confuse.*, Consumer Brands Association, at 2 (2019), https://consumerbrandsassociation.org/wp-content/uploads/2019/04/ConsumerBrands_ReduceReuseConfuse.pdf. Given the complexities at play with regard to recycling, it is difficult to imagine how these corporations can substantiate the reuse, recycling or composting of *all* plastic packaging within less than two years in reality (as opposed to theoretically).