



September 11, 2023

VIA EMAIL

Liz Rumsey
Deputy Attorney General
California Attorney General's Office
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Re: Colgate-Palmolive's Deceptive "Recyclable" Toothpaste Tube Campaign

Dear Ms. Rumsey:

A recent Truth in Advertising, Inc. ("TINA.org") investigation into Colgate-Palmolive has revealed that the company is engaged in a greenwashing campaign to gain market advantage and persuade consumers to purchase its Colgate and Tom's of Maine toothpastes. Specifically, the products are marketed as being packaged in "the first of its kind recyclable toothpaste tube," which prominently bears the chasing arrows symbol. The reality, however, is that these toothpaste tubes, while recyclable in theory as they are made with a widely-recycled material,¹ end up in landfills due to a number of factors, including contamination issues, size and shape, and visual similarity to non-recyclable products. As such, Colgate's recycling claims violate California law.²

TINA.org filed a complaint regarding Colgate's deceptive marketing campaign with the Federal Trade Commission, which is attached here in its entirety, but we bring this matter to your attention as well in light of the State of California's strong focus on environmental marketing issues in general, and the improper use of the chasing arrows logo and recyclability claims on products and packaging in particular.³

TINA.org urges your office to open an investigation into Colgate and Tom's of Maine and take appropriate enforcement action.

¹ The Colgate and Tom's of Maine toothpaste tubes are made of HDPE, or high-density polyethylene, plastic.

² Cal. Bus. & Prof. Code §§17580, 17580.5.

³ TINA.org has also notified regulators in the state of Connecticut of these marketing issues.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

Cc via email: Candace Sady, Chief Marketing Counsel, North America, Colgate-
Palmolive Company

Tom O'Brien, Chief Executive Officer, Tom's of Maine



September 11, 2023

VIA EMAIL

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James A. Kohm, Associate Director, Division of Enforcement
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Re: Colgate-Palmolive's Deceptive "Recyclable" Toothpaste Tube Campaign

Dear Mr. Levine and Mr. Kohm:

A recent Truth in Advertising, Inc. ("TINA.org") investigation into Colgate-Palmolive has revealed that the company is engaged in a greenwashing campaign to gain market advantage and persuade consumers to purchase its Colgate and Tom's of Maine toothpastes. Specifically, the products are marketed as being packaged in "the first of its kind recyclable toothpaste tube."¹ The reality, however, is that these toothpaste tubes, while recyclable in theory as they are made with a widely-recycled material,² end up in landfills due to a number of factors, including contamination issues, size and shape, and visual similarity to non-recyclable products.



Whether a product or packaging is recyclable or not depends on where it ultimately ends up – and if it is a landfill then brands and companies have no business claiming their products or packaging are recyclable. Nevertheless, while Colgate-Palmolive is well aware that its toothpaste tubes are not recycled, it appears to be embracing a theoretical or technical definition of recyclable that ignores the tenets of the FTC Green Guides and consumer perception data in order to take advantage of consumer demand for eco-friendly products and packaging. And as a result, Colgate’s recycling claims violate FTC law.

Deceptive Marketing at Issue

What appears on labeling and packaging plays a key role in shaping consumers’ perception of what is and is not recyclable, and there is a plethora of data indicating that reasonable U.S. consumers believe that marketing an item as “recyclable” means that the product or packaging will be recycled in practice.³ Colgate and Tom’s of Maine toothpaste products are both widely – and deceptively – marketed as recyclable products that can presently be recycled.

A. Tom’s of Maine Toothpaste Marketing

Tom’s of Maine – a brand long known for its eco-friendly ideals⁴ – markets one of its toothpaste tube as “THE FIRST OF ITS KIND RECYCABLE TUBE,” which appears to have been created to meet (or manipulate) consumer demand – as the packaging says, “You asked... We Delivered!” Accompanying this claim on its cardboard container are phrases like “HAPPY PLANET HAPPY PEOPLE,” “DOING GOOD EVERYDAY” and “SUSTAINABLE BUSINESS PRACTICES,” along with the following story:

at tom’s of maine, we don’t just say good, we do good. Our story starts in 1970 when tom and kate had a vision about companies taking action and doing real good: good for you, our planet and our communities. Fifty years later we’re doing even more. We make wonderfully-natural products, give back 10% of our profits, and work for real change... like developing the first of its kind recyclable tube!

On the toothpaste tube itself, there is an image of a tube with the words “THIS TUBE IS RECYCLABLE,” as well as a large chasing arrows logo, the universal recycling symbol, with the following recycling instructions underneath the logo: “Once empty, replace cap and recycle with #2 plastics.”⁵



“THIS TUBE IS RECYCLABLE”



“♻️ Once empty, replace cap and recycle with #2 plastics.”



“We introduced the first-of-its kind recyclable tube!...”

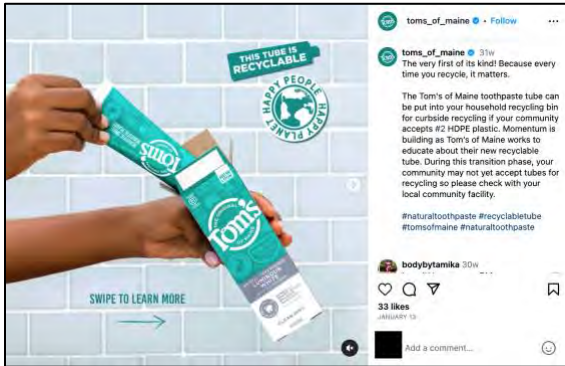


“THE FIRST OF ITS KIND RECYCLABLE TUBE. You asked... We delivered!”⁶

Tom’s of Maine further drives home this recyclability message on its website, social media platforms, and Amazon, among other places, as shown below.

Website⁷

Instagram⁸



“The very first of its kind! Because every time you recycle, it matters. The Tom’s of Maine toothpaste tube can be put into your household recycling bin for curbside recycling if your community accepts #2 HDPE plastic...”



“[Image:] RECYCLE Our tube is made of #2 HDPE recyclable plastic.”*
“[Caption:] The Tom’s of Maine toothpaste tube can be put into your household recycling bin for curbside recycling if your community accepts #2 HDPE plastic. . . “

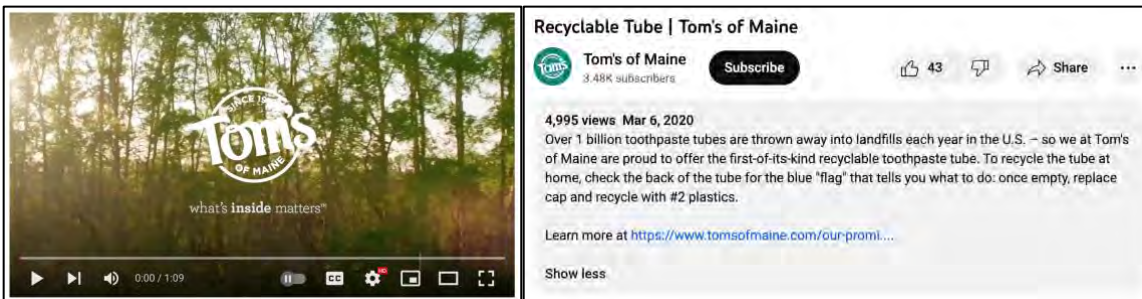
Facebook⁹



Amazon¹⁰



YouTube¹¹




“The first of its kind recyclable toothpaste tube for Tom’s of Maine is a momentous occasion. It really goes to the heart of who we are as a brand. We are very thoughtful of

innovating in ways that ultimately help to minimize our impact on the environment. We designed the number two plastic in our tube to be circular so it can be reprocessed and turned into new packaging or new products in the end. We've put on our packaging a blue flag that says: 'We've switched to a recyclable toothpaste tube' so you'll know when you're using the tube whether or not it is one of our recyclable tubes..."

Influencer Marketing¹²



"The packaging for their toothpaste (which is ) is completely recyclable..."

Additional examples of marketing materials that deceptively promote Tom's of Maine toothpaste products as being able to be recycled are available at <https://truthinadvertising.org/evidence/toms-of-maine-toothpaste-tube-marketing/>.

B. Colgate Toothpaste Marketing

The Colgate brand toothpaste tube is marketed in a similar deceptive fashion, as the below examples illustrate.

Website and Packaging¹³



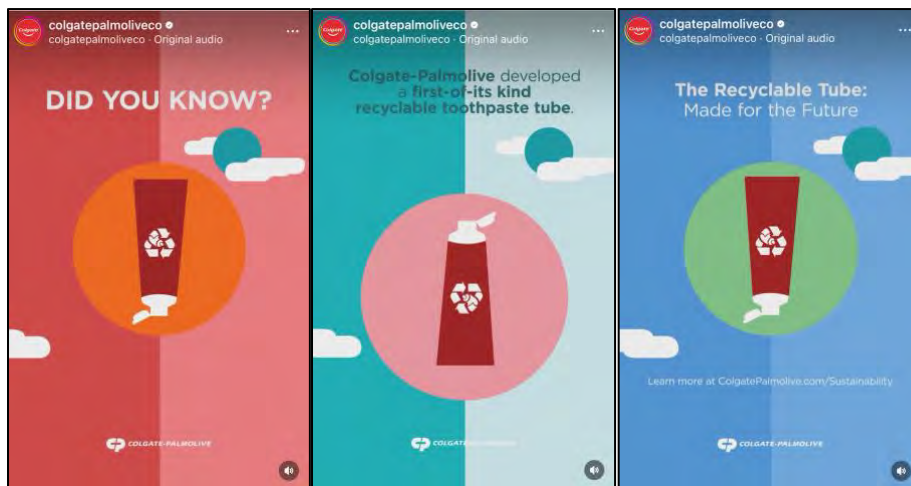
YouTube¹⁴



Twitter¹⁵



Instagram¹⁶

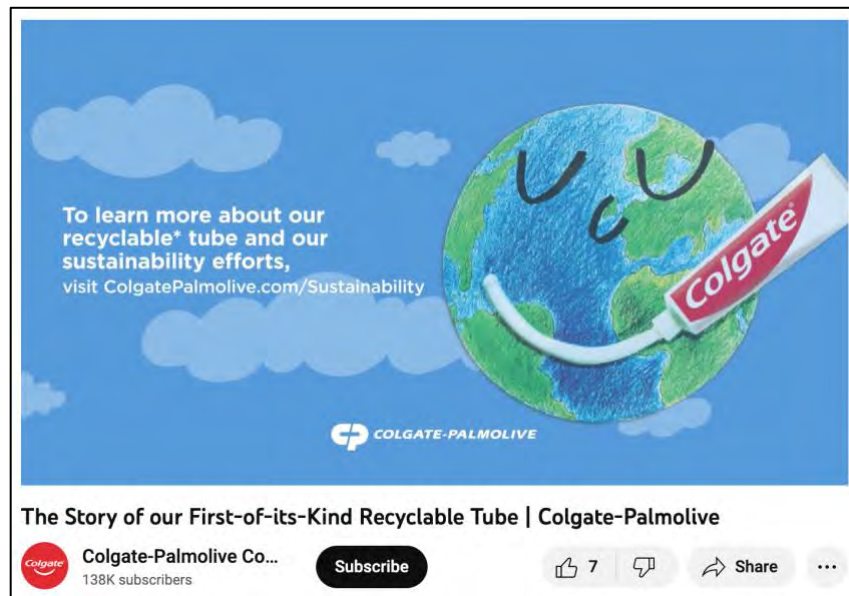


[Caption:] "Happy Earth Month! 🌍 At Colgate-Palmolive, we're committed to designing sustainable products that help consumers everywhere live more sustainable lives ♻️ That's why we're excited to spotlight our *recyclable tube, which reduces waste and helps us reimagine a healthier future for ALL. Learn more about our sustainability commitment and actions by clicking the link in the bio. Together, let's make every day Earth Day! 🌱"

#ColgatePalmolive #EarthMonth #Sustainability #RecyclableTube
#colgate #recycling #earthday

*Your community may not yet accept tubes for recycling. Check locally. Learn more at colgate.com/faq."

YouTube¹⁷



Additional examples of marketing materials that deceptively promote Colgate toothpaste products as recyclable are available at <https://truthinadvertising.org/evidence/colgate-toothpaste-tube-marketing/>.

In short, Colgate-Palmolive repeatedly refers to its Tom’s of Maine and Colgate toothpaste tubes, which bear the chasing arrows logo, as “recyclable” and tells consumers that the tubes can be thrown in the recycling bin and recycled.

Consumers’ Understanding of These Marketing Messages

Consumer demand for greener products and services is on the rise with a majority of U.S. consumers preferring environmentally friendly products, and nearly two-thirds of them willing to pay more for such products.¹⁸ At the same time, it is incredibly difficult for consumers to verify the accuracy of eco-friendly marketing claims. As such, consumers are generally at the mercy of brands’ marketing representations when seeking environmentally friendly products. And brands like Tom’s of Maine and Colgate, eager to capitalize on the demand for such products, are taking advantage of the informational asymmetry that exists between companies and consumers to engage in greenwashing with deceptive unqualified recyclable claims.

Indeed, most consumers believe that the word “recyclable” means that a product will be recycled most of the time and 30 percent (a substantial minority) of surveyed consumers think that “recyclable” means a product will be recycled 100 percent of the time.¹⁹ Further, 82 percent of consumers trust that the recycling information on a product label is accurate and believe it is dishonest to put a label on a product saying it is recyclable if it will not really be recycled.²⁰ In addition, when it comes to the chasing arrows logo, the vast majority of consumers interpret the logo to represent a universal recycling symbol with 81 percent of consumers believing that the chasing arrows logo means a product

and/or packaging could definitely be recycled.²¹ And with respect to claims that an item can be thrown in a recycling bin, 85 percent of American consumers are “somewhat-to-very confident that what they throw in the recycling bin is actually recycled.”²²

As such, the Colgate and Tom’s of Maine’s toothpaste tube recyclable campaigns deliver the clear message to consumers that if they toss the tubes in their recycling bins, the tubes will be recycled.

Toothpaste Tubes are Not Recycled

While developing toothpaste tubes that may someday be recycled is an admirable goal, it is just that: a goal, and one that has not yet been achieved, as Tom’s of Maine and Colgate toothpaste tubes are currently ending up in landfills.²³ Despite being made of recyclable HDPE plastic, the reality is that they are not presently recycled due to a variety of factors, including the impracticability of cleaning out empty (or mostly empty) tubes of toothpaste, which raise issues of contamination; the small size and flat shape of the tubes making them incredibly difficult for the vast majority of recycling centers to effectively sort and process; and the tubes being indistinguishable from other similar small tubes that are not recyclable, making them prime targets for intentional removal from the recycling process.

Colgate-Palmolive, as well as experts in the field and waste management companies, acknowledge that toothpaste tubes are not currently recycled in reality.

A. Company statements

Colgate knows that its tubes are not recycled in practice. That is to say, when consumers deposit their Tom’s of Maine and/or Colgate toothpaste tubes in recycling bins to “recycle with #2 plastics” the brands know that, in all likelihood, the tubes will end up in a landfill. The company has admitted as much.

For example, when asked about the ability to recycle Tom’s of Maine toothpaste tubes in November 2020, a Colgate-Palmolive representative admitted that the claim was rooted in theory rather than in reality:²⁴



Colgate-Palmolive representative: “So we’re here today to showcase our first of its kind recyclable tube.”

Frontline reporter: “So if, if you put this in your curbside tonight, do you think that this tube would be recycled?”

Colgate-Palmolive representative: “Uh, we need more work; we’re working with other organizations to get the word out...”

Frontline reporter: “So not yet.”

Colgate-Palmolive representative: “Not yet.”

Frontline reporter: “Not yet.”

Colgate-Palmolive representative: “Not yet.”

Frontline reporter: “I noticed that you guys put the big chasing arrows...”

Colgate-Palmolive representative: “Correct.”

Frontline reporter: “Do you think that because it’s not quite recyclable yet that that might be a little misleading?”

Colgate-Palmolive representative: “We don’t think that we’re being misleading because technically it is recyclable.”

In another video, Colgate-Palmolive’s Packaging Sustainability Manager stated, “We recognize that it was important to continue the work beyond technical recyclability of the tube towards acceptance of tubes and recycling systems globally. . . . We don’t want to stop at creating a recyclable tube. We want to ensure that all tubes globally are collected and recycled in practice and at scale.”²⁵

And on the company’s Tom’s of Maine and Colgate-Palmolive websites,²⁶ the brands admit that the toothpaste tubes are merely “recyclable” in theory but not “recycled” in reality.

Tom’s of Maine website²⁷

In addition to helping the industry transition their tubes, Tom’s, in partnership with the Colgate-Palmolive Company, is focused on working with the recycling community by sharing our work on compatibility of recyclable tubes within the current recycling system, and partnering with key third parties to address turning “recyclable” into widely accepted and “recycled.”

Colgate-Palmolive website²⁸

We’ve been sharing the technology and partnering with third parties to help turn “recyclable” into widely accepted and “recycled.” During this transition phase, however, your community may not yet accept tubes for recycling. Consumers should check with their local community programs.

These company statements have been echoed by experts in the industry as well.

B. Expert statements

At the FTC’s May 23, 2023 workshop, Talking Trash at the FTC: Recyclable Claims and the Green Guides,²⁹ Chief Operating Officer and Senior Vice President of Regulatory Affairs for the National Waste & Recycling Association (NWRA) explained why toothpaste tubes are not currently recycled despite being made of a recyclable type of plastic.

NWRA: So in general, one, twos and fives are ones that are pretty widely recyclable. So your plastic bottle here, this’ll be a two. Your milk jugs, your laundry detergent bottles, all those are ones. And then we have a lot of fives, polypropylene, that have entered the market. So in general, one, twos and fives are widely recyclable, in the shape formats that we discussed. If it gets to another shape, like there’s a toothpaste that has switched to a two. Or actually, I’m sorry, switched to an HDPE. That toothpaste tube, while the plastic might be recyclable, because of the shape, it’s not going to make it through our systems. It will be looked at as contaminant and it’ll be removed by the workers on the, because they don’t have a lot of time, they’re pulling out contaminants and there’s a conveyor belt going by super fast. So there’s no opportunity until all toothpaste tubes go to that format, that will be regarded as contamination.

FTC: Okay. . . . So these configurations or shapes, tubes, are they widely understood across the country to be...

NWRA: Not recyclable.

FTC: ... problematic?

NWRA: Yes.

FTC: Or is it kind of a facility by facility?

NWRA: I don’t know of a facility that accepts tubes.

Similarly, the Association of Plastic Recyclers has stated that most U.S. recovery facilities do not take tubes because the recyclable and traditional versions are so similar. “The old tubes could cause contamination if consumers put them in the recycling bin . . . so it’s still easier for recycling facilities to reject toothpaste tubes across the board.”³⁰

C. Waste management company statements

The three largest waste management companies in the United States, which collectively own and/or operate more than 60 percent of the materials recovery facilities, or MRFs (i.e., plants that receive, separate and prepare recyclable materials to end-user manufacturers) in the U.S., do not accept toothpaste tubes for recycling.

Specifically, Waste Management, Inc., the largest waste management company in the U.S., operating more than one-quarter of the MRFs in the country,³¹ does not accept toothpaste tubes for recycling.³² Neither does Republic Services, Inc., the second largest waste management company in the U.S., operating approximately one-quarter of the MRFs in the country,³³ nor does Waste Connections, the third largest waste management company in the U.S., operating approximately 11 percent of the MRFs in the country.³⁴

In short, toothpaste tubes are not yet being recycled in the United States.

Colgate and Tom's of Maine's Marketing Campaigns Violate FTC Law

The FTC's Green Guides state that products should not be marketed as "recyclable" unless the products "can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item."³⁵

The Guides go on to state that brands can only make unqualified recyclability claims – such as those made by Colgate and Tom's of Maine – "[w]hen recycling facilities are available to a substantial majority of consumers or communities where the item is sold," which means 60 percent according to the FTC.³⁶ As such, "[t]o make a non-deceptive unqualified claim, a marketer should substantiate that a substantial majority of consumers or communities have access to facilities that will actually recycle, not accept and ultimately discard, the product."³⁷

Colgate and Tom's of Maine toothpaste tubes do not yet meet this bar.³⁸ As such, the marketing for the toothpaste tubes should be properly qualified in order to accurately communicate the true recycling availability (or lack thereof) for the product.³⁹

While some marketing materials for the toothpaste tubes are accompanied by disclosures (i.e., "Your community may not yet accept tubes for recycling. Check locally. Learn more by visiting our website."), there are several significant issues with these disclosures:

1. Many Colgate and Tom's of Maine "recyclable" marketing claims are not accompanied by any disclosure,⁴⁰ and when a disclosure is present, it is commonly not conspicuous as it is generally relegated to avoidable fine print and/or "below the fold."⁴¹
2. The disclosure –informing consumers that they may not be able to recycle the tube – contradicts the marketing claims⁴² that the tube will be recycled and consumers can put the tube in their curbside recycling.⁴³
3. And finally, the disclosure does not satisfy Section 260.12(b)(2) of the Green Guides, which instructs marketers to use stronger qualifying language when recycling facilities are not generally available to consumers for the product at issue.⁴⁴

In short, Colgate and Tom's of Maine's "recyclable" toothpaste tube campaigns are deceptive and in violation of FTC law.

Conclusion

Greenwashing is a pervasive problem and nowhere is that more apparent than in the case of deceptive and misleading unqualified recyclable claims. Alarming, the injury caused by this type of corporate deception 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. While Colgate-Palmolive's efforts at developing a toothpaste tube that may one day be recycled are admirable, its decision to jump the gun and advertise its toothpaste tubes to consumers as items that they can currently recycle is misleading and deceptive.

TINA.org strongly urges the FTC to commence an investigation into the deceptive marketing by Colgate and Tom's of Maine and take appropriate enforcement action.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

Cc via email: Candace Sady
Chief Marketing Counsel-North America
Colgate-Palmolive Company

¹ See, e.g., Tom's of Maine, *Recyclable Tube | Tom's of Maine*, YouTube (Mar. ,6, 2020), <https://www.youtube.com/watch?v=V42ls6DVr54&t=2s>; Colgate-Palmolive Company (@colgatepalmoliveco), Instagram (Apr. 23, 2023), <https://www.instagram.com/p/CrYOHidJqjh/>.

² The Colgate and Tom's of Maine toothpaste tubes are made of HDPE, or high-density polyethylene, plastic.

³ See *How Consumers Feel About and Respond to Recycling & How2Recycle: A Consumer Research Summary*, How2Recycle, July 29, 2022, <https://how2recycle.info/news/2022/how-consumers-feel-about-and-respond-to-recycling-how2recycle-a-consumer-research-summary>.

⁴ See e.g., Sher Warkentin, *Living an Eco-Friendly Life at Home and at Work: A Tom's of Maine Story*, Tom's of Maine: Thinking Sustainably, <https://www.tomsomaine.com/good-matters/thinking-sustainably/living-an-eco-friendly-life-at-home-and-at-work-a-toms-of-maine-story>.

⁵ Other Tom's of Maine toothpaste flavors are similarly packaged. See Images taken by TINA.org of sampling of Tom's of Maine toothpaste products, <https://truthinadvertising.org/wp-content/uploads/2023/09/Toms-of-Maine-Toothpaste-Product-Packaging-Images.pdf>.

⁶ Additional images of Tom's of Maine packaging are below:



⁷ Tom's of Maine Sustainable Packaging: Recyclable Toothpaste Tube, <https://www.tomsomaine.com/our-promise/caring-for-the-planet/recyclable-tube>.

⁸ Tom's of Maine (@toms_of_maine), Instagram (Jan. 13, 2023), <https://www.instagram.com/p/CnXRb-UuvkT/>; Tom's of Maine (@toms_of_maine) Instagram (July 28, 2023), <https://www.instagram.com/p/CvP40ZUuKmu/>.

⁹ Tom's of Maine, Facebook (Aug. 18, 2022), <https://www.facebook.com/officialtomsomaine/photos/10159310141969372>.

¹⁰ 3-Pack of Tom’s of Maine Fluoride-Free Antiplaque & Whitening Natural Toothpaste on Amazon, https://www.amazon.com/Toms-Maine-Fluoride-Free-Antiplaque-Toothpaste/dp/B09MZXFNMZ/ref=asc_df_B09MZXFNMZ/?tag=hyprod-20&linkCode=df0&hvadid=564699459741&hvpos=&hvnetw=g&hvrnd=5135127350266077459&hvpone=&hvptwo=&hvqmt=&hvdev=c&hvdvcmldl=&hvlocint=&hvlocphy=9003332&hvtargid=pla-1598748721910&psc=1.

¹¹ Tom’s of Maine, *Recyclable Tube | Tom’s of Maine*, YouTube (Mar. 6, 2020), <https://www.youtube.com/watch?v=V42ls6DVr54>.

¹² Shelby Johnson (@shelbyjohnson), Instagram (Apr. 26, 2021), <https://www.instagram.com/p/COJjZYdgy2/>.

¹³ Colgate® Launches its Groundbreaking Recyclable Toothpaste Tube with “Recycle Me!” Packaging in the U.S., Colgate-Palmolive Co., Feb. 17, 2022, <https://www.colgatepalmolive.com/en-us/who-we-are/stories/recyclable-toothpaste-tube-recycle-me-packaging-us>.

¹⁴ Colgate US, *Colgate Smiling Planet*, YouTube (Mar. 24, 2022), <https://www.youtube.com/watch?v=HQkFnT6GOs0>.

¹⁵ Colgate-Palmolive (@CP_News), Twitter (Apr. 18, 2022, 10:35 AM), https://twitter.com/CP_News/status/1516062775415611401.

¹⁶ Colgate-Palmolive Company (@colgatepalmoliveco), Instagram (Apr. 23, 2023), <https://www.instagram.com/p/CrYOHidJqjh/>.

¹⁷ Colgate-Palmolive Company, *The Story of our First-of-its-Kind Recyclable Tube | Colgate-Palmolive*, YouTube (May 8, 2023), <https://www.youtube.com/watch?v=JyLhLZZQu0c>. See also Colgate-Palmolive Company, *How Colgate Developed a First-of-its-kind Recyclable Tube*, YouTube (Oct. 29, 2020), <https://www.youtube.com/watch?v=s5C6EEghCkQ> (“It’s very exciting to be able to take toothpaste tubes and to be able to easily put them into your recycle bin and know that they will be sorted and recycled.”).

¹⁸ 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#:~:text=The%20first%20Dever%20edition%20of,know%20how%20to%20identify%20the> [m](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#:~:text=The%20first%20Dever%20edition%20of,know%20how%20to%20identify%20the). 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=4df40d1b6a06> (“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.”).

¹⁹ See *How Consumers Feel About and Respond to Recycling & How2Recycle: A Consumer Research Summary*, How2Recycle, July 29, 2022, <https://how2recycle.info/news/2022/how-consumers-feel-about-and-respond-to-recycling-how2recycle-a-consumer-research-summary>.

²⁰ *Consumer Research on Recycling Behavior and Attitudes Regarding On-Pack Labeling*, Recycling Partnership, Mar. 10, 2023, <https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/>.

²¹ Carl Latkin et al., *The (Mis)Understanding of the Symbol Associated with Recycling on Plastic Containers in the U.S.: A Brief Report*, 14 Sustainability 9636 (2022), <https://www.mdpi.com/2071-1050/14/15/9636>.

²² Suzanne Shelton, *Managing Packaging Perception vs. Realities for a Truly Circular Future*, GreenBiz, Sept. 2, 2019, <https://www.greenbiz.com/article/managing-packaging-perceptions-vs-realities-truly-circular-future>. See also Alison Borochoff-Porte et al., *Applying Consumer Protection Basics to Greenwashing Recyclability Cases*, Harv. L. Rev., Apr. 10, 2023, at 12; Suzanne Shelton, *Managing Packaging Perceptions vs. Realities for a TRULY Circular Future*, Shelton Group, Aug. 29, 2019, <https://sheltongrp.com/managing-packaging-perceptions-vs-realities-for-a-truly-circular-future/>.

²³ *Colgate Launches Recyclable Toothpaste Tube*, Glob. Bus. Club, Mar. 8, 2022, <https://globuc.com/news/colgate-launches-recyclable-toothpaste-tube/>; CGFTheForum, *The Recyclable Plastic Transforming Toothpaste Tubes*, YouTube (June 18, 2021), <https://www.youtube.com/watch?v=7pCX--uxiMo>; *Plastic Squeeze Tubes: Achieving*

Recyclability Beyond Design, More Recycling, June 2020, https://www.plasticmarkets.org/jsfcontent/TubesProgress2020_jsf_3.pdf.

²⁴ FrontLine: Plastic Wars (PBS Mar. 31, 2021), <https://www.pbs.org/wgbh/frontline/documentary/plastic-wars/>.

²⁵ CGFTheForum, *The Recyclable Plastic Transforming Toothpaste Tubes*, YouTube (June 18, 2021), <https://www.youtube.com/watch?v=7pCX--uxiMo>.

²⁶ Tom's of Maine also has a webpage devoted to explaining its partnership with TerraCycle, "an organization that creates recycling and upcycling solutions" and "the global leader in recycling products made of hard-to-recycle materials." Mali Anderson, *How to Recycle with TerraCycle and Tom's of Maine*, Tom's of Maine: Thinking Sustainably, <https://www.tomsomaine.com/good-matters/natural-products/how-to-recycle-with-terracycle-and-toms-of-maine>. There, the brand explains that it entered into this partnership because items thrown in the recycling bin may not end up "where you intended" and "can easily end up in the landfill." *Id.* Therefore, instead of tossing toothpaste tubes in the recycling bin, Tom's explain that consumers can send them to TerraCycle to be recycled.

²⁷ Tom's of Maine Sustainable Packaging: Recyclable Toothpaste Tube, <https://www.tomsomaine.com/our-promise/caring-for-the-planet/recyclable-tube>.

²⁸ Colgate's Sustainable Dental Care Products, <https://www.colgate.com/en-us/power-of-optimism/faq#>.

²⁹ Transcript of *Talking Trash at the FTC: Recyclable Claims and the Green Guides* (May 23, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/Talking-Trash-at-the-FTC-Recyclable-Claims-and-the-Green-Guides.pdf.

³⁰ Daniela Sirtori-Cortina, *Colgate's 9 Billion Toothpaste Tubes Defy Effort to Recycle Them*, Bloomberg, Dec. 9, 2022, <https://www.bloomberg.com/news/articles/2022-12-09/colgate-cl-made-toothpaste-tubes-recyclable-but-do-they-get-recycled#xj4y7vzkg>.

³¹ *Circular Claims Fall Flat Again: 2022 Update*, GreenPeace, Oct. 2022, https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf (reporting that there are 375 residential MRFs operating in the U.S. as of 2022); Waste Management WM 101, <https://investors.wm.com/why-invest/wm-101#:~:text=Recyclable%20materials%20collected%20from%20residential,%E2%80%9Cmurf%E2%80%9D%20for%20processing> (Waste Management stating it operates approximately 100 MRFs). See also *Top 10 Largest Waste Management and Recycling Companies*, P3 Cost Analysts, Mar. 28, 2022, <https://www.costanalysts.com/top-waste-management-companies/>; Revenue of Leading Waste Management Companies in the United States in 2022, Statista, Mar. 2023, <https://www.statista.com/statistics/1046508/us-canada-ranking-waste-haulers-by-revenue/>; Cole Rosengren & Rina Li, *10 Insights from Public Waste Company 10-Ks*, Waste Dive, Mar. 18, 2019, <https://www.wastedive.com/news/10-insights-from-public-waste-company-10-ks/549576/>.

³² The company has been quoted as stating that "tubes are not in its list of acceptable items." Daniela Sirtori-Cortina, *Colgate's 9 Billion Toothpaste Tubes Defy Effort to Recycle Them*, Bloomberg, Dec. 9, 2022, <https://www.bloomberg.com/news/articles/2022-12-09/colgate-cl>

[made-toothpaste-tubes-recyclable-but-do-they-get-recycled#xj4y7vzkg](#). Further, toothpaste tubes (sometimes referred to as squeeze tubes) are not on the company’s list of recyclable plastics on its website. Waste Management Recycling 101, <https://www.wm.com/us/en/recycle-right/recycling-101>. And the company tells consumers that “[t]he ‘chasing arrows’ symbol doesn’t mean it’s recyclable” and that “[j]ust because an item is made from plastic, or contains plastic parts, doesn’t mean recycling facilities can handle it...” Waste Management Recycling 101, <https://www.wm.com/us/en/recycle-right/recycling-101>; *Mixed Curbside Residential Recycling Myths*, Waste Management: Recycle Right, 2022, <https://www.wm.com/content/dam/wm/documents/RecyclingResources/Posters-Guides-Tools/Recycling-Myths.pdf>.


³³ *Circular Claims Fall Flat Again: 2022 Update*, GreenPeace, Oct. 2022, https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf (reporting that there are 375 residential MRFs operating in the U.S. as of 2022); ReCommunity is now part of Republic Services, <https://www.republicservices.com/recommunity> (Republic Services stating it operates approximately 90 recycling centers nationwide). *See also* Republic Services Recycling Centers Nationwide, https://www.republicservices.com/cms/documents/recycling_centers_nationwide.pdf; *Top 10 Largest Waste Management and Recycling Companies*, P3 Cost Analysts, Mar. 28, 2022, <https://www.costanalysts.com/top-waste-management-companies/>; Revenue of Leading Waste Management Companies in the United States in 2022, Statista, March 2023, <https://www.statista.com/statistics/1046508/us-canada-ranking-waste-haulers-by-revenue/>; Cole Rosengren & Rina Li, *10 Insights from Public Waste Company 10-Ks*, Waste Dive, Mar. 18, 2019, <https://www.wastedive.com/news/10-insights-from-public-waste-company-10-ks/549576/>.

The company has been quoted as stating that leftover toothpaste causing contamination is a concern when it comes to recycling. Daniela Sirtori-Cortina, *Colgate’s 9 Billion Toothpaste Tubes Defy Effort to Recycle Them*, Bloomberg, Dec. 9, 2022, <https://www.bloomberg.com/news/articles/2022-12-09/colgate-cl-made-toothpaste-tubes-recyclable-but-do-they-get-recycled#xj4y7vzkg>. And the company, which informs consumers that “not everything made of plastic can be recycled in your recycling bin,” does not list toothpaste or squeeze tubes in its list of recyclable plastics on its website. Republic Services Recycling Plastic, <https://www.republicservices.com/recycling/plastic>. *See also* Republic Services Residential Recycling Services, <https://www.republicservices.com/residents/recycling>.

³⁴ *Circular Claims Fall Flat Again: 2022 Update*, GreenPeace, Oct. 2022, https://www.greenpeace.org/usa/wp-content/uploads/2022/10/GPUS_FinalReport_2022.pdf (reporting that there are 375 residential MRFs operating in the U.S. as of 2022); Waste Connections Recycling Services, <http://w.wasteconnections.com/locations/services.aspx#:~:text=We%20own%20or%20operate%20almost,parties%20for%20processing%20before%20resale> (Waste Connections stating it owns or operates almost 40 MRFs). *See also* Republic Services Recycling Centers Nationwide, https://www.republicservices.com/cms/documents/recycling_centers_nationwide.pdf; *Top 10 Largest Waste Management and Recycling Companies*, P3 Cost Analysts, Mar. 28, 2022, <https://www.costanalysts.com/top-waste-management-companies/>; Revenue of Leading Waste Management Companies in the United States in 2022, Statista, Mar. 2023, <https://www.statista.com/statistics/1046508/us-canada-ranking-waste-haulers-by-revenue/>; Cole Rosengren & Rina Li, *10 Insights from Public Waste Company 10-Ks*, Waste Dive, Mar. 18, 2019, <https://www.wastedive.com/news/10-insights-from-public-waste-company-10-ks/549576/>.

The company specifically states on its website that plastic squeeze tubes cannot be recycled via curbside collection. Waste Connections Disposal/Recycle Guide, <https://www.wasteconnections.com/disposal-recycle-guide/>.

What residential items CAN'T be recycled via curbside collection

Items:	Plastic Containers:	Glass Bottles & Jars:
<ul style="list-style-type: none"> Propane canisters Needles Flammable liquids Helium tanks Knives Butane canisters Bear spray Ammunition Flares Electronics Batteries for e-cigarettes Lighters and matches Household batteries Ceramic plant pots Paint Straws 	<ul style="list-style-type: none"> Containers for motor oil, vehicle lubricant or antifreeze products Packaging labeled biodegradable or compostable Liquid-absorbing pads, e.g., in trays of meat, poultry, fish, etc. Plastic wrap Plastic blister packs, e.g. plastic/foil protective packaging for chewing gum and pills Lawn edging, tarps, plastic furniture or toys Garden hoses Plastic string or rope Plastic paint cans Pails for lubricants and oils Microwavable bowls with metal rims Plastic or foil lids from coffee and tea pods 	<ul style="list-style-type: none"> Drinking glasses or dishes, cookware Whole or broken window glass or mirrors Ceramic products Light bulbs and light fixtures
<p>Paper:</p> <ul style="list-style-type: none"> Hardcover or paperback books (donate or sell) Ribbons or bows Musical greeting cards with batteries Rubber bands 	<p>Aluminum Containers:</p> <ul style="list-style-type: none"> Spray paint cans Aerosol cans with any contents remaining Propane cylinders Foil-lined cardboard take-out containers and lids 	<p>Plastic Bags/Overwrap:</p> <ul style="list-style-type: none"> Kitchen stretch wrap Packaging labeled biodegradable or compostable Lumber or construction wrap Garbage bags
<p>Paper Packaging/Cardboard:</p> <ul style="list-style-type: none"> Cardboard boxes with wax coating Paper bags with multiple layers that include a foil layer Paper bags with a plastic layer Paper towels, napkins Tissues 	<p>Steel Containers:</p> <ul style="list-style-type: none"> Steel paint cans Coat hangers (return to dry cleaners) Pots, pans and baking trays Propane cylinders Metal toys Appliances Metal hardware or other scrap metal Wiring or metal cords, extension cords 	<p>Foam Packaging:</p> <ul style="list-style-type: none"> Liquid-absorbing pads used in trays for meat, poultry, fish, etc. Labels, tape, paper and cardboard on foam packaging Foam peanuts, packing chips, or noodles Blue or pink foam board insulation Squishy or flexible foam Furniture cushions
		<p>Misc. Flexible Plastic Packaging:</p> <ul style="list-style-type: none"> Plastic squeeze tubes  Plastic-lined paper Cellophane wrap Plastic strapping 6-pack ring Biodegradable plastic PVC/vinyl Squishy foam Plastic blister packs e.g. plastic/foil protective packaging for chewing gum and pills

Local recycling facilities across the country reiterate these statements.

For example, according to one local California waste collection and recycling company, toothpaste tubes are “undesirable for plastic recyclers” due to their small size and variability, among other things.

TOOTHPASTE TUBES

TRASH

Please place toothpaste tubes in your mixed material container.

Toothpaste tubes are not recovered for recycling by Athens. The small size, excess printing, and variable plastic resin type (among brands) makes toothpaste tubes undesirable for plastic recyclers. In your city, Athens collects recyclables and landfill bound items in the same container. We sort this material at our [Material Recovery Facility \(MRF\)](#), where recyclables are recovered and diverted from the landfill.

Athens Services What Goes Where: Toothpaste Tubes, <https://athensservices-2bin.recyclist.co/guide/toothpaste-tubes/?embeddedguide=true>.

Similarly, according to the city of Madison, Wisconsin, toothpaste tubes are not recycled because of their size and residual toothpaste left inside.

TOOTHPASTE TUBES

Do not place toothpaste tubes in your recycling cart.

At the curb, they belong in the trash cart. The [Streets Division drop-off sites](#) do not have a recycling program for toothpaste tubes, either.

[Artisan Dental](#) does offer a dental supplies drop-off recycling program at their office. Tubes may be acceptable for their TerraCycle [drop-off program](#).

WHY ARE THEY GARBAGE? IT SAYS RIGHT THERE ON THE PACKAGE IT CAN BE RECYCLED.

There are a couple prominent brands that [state on the tubes](#) it can be recycled.

While that may be true in other places around the country, it is not true here in Madison yet.

[The facility that sorts and sells the recyclables](#) collected by the Streets Division does not want to accept these materials yet.

The tubes and caps of these brands are made from a plastic that *could* be recycled, but there are problems. If you think of an empty toothpaste tube, they are usually squeezed flat, which means in a sorting facility they will act more like cardboard than a plastic bottle and that means these tubes are more likely to wind up in the cardboard than with correct plastic containers. Also, they very likely have plenty of residual toothpaste left inside.

The labeling on these tubes is too broad. It would be better for the tubes to ask consumers to check locally to see if it can be recycled instead of the blanket advice printed there now.

City of Madison Streets & Recycling: Toothpaste Tubes, <https://www.cityofmadison.com/streets/recycling/ToothpasteTubes.cfm>.

In Athens, Georgia, the local government informs its citizens that Tom's of Maine toothpaste tubes are "not yet" recyclable.

MeRFi's Corner



Dear MeRFi,

My Tom's of Maine toothpaste tube says it's now recyclable with #2 plastics- is this accurate?

~Mystified Melissa

Dear Mystified Melissa,

Short answer is "not yet". It is hard to designate a material as recyclable by brand. The Athens recycling center sorts plastic by hand and they do not have time to check for the brand name or the "blue flag" as stated on Tom's of Maine's website. If other toothpaste companies can jump on board and ALL toothpaste tubes are made recyclable then we can talk. We are working with an institution on recycling small #2 and #5 plastics that wouldn't make it through the recycling center to get them recycled at CHaRM. Once we work out those kinks and ensure it can get recycled, this program could open up to other plastic like Tom's toothpaste.

MeRFi's Corner, In the Loop, Issue 2 (Athens-Clarke County),
<https://www.accgov.com/9830/Newsletter>.

The San Francisco Environment Department in California expressly states that toothpaste tubes belong in the landfill bin.

San Francisco Environment Department

SF Recycles

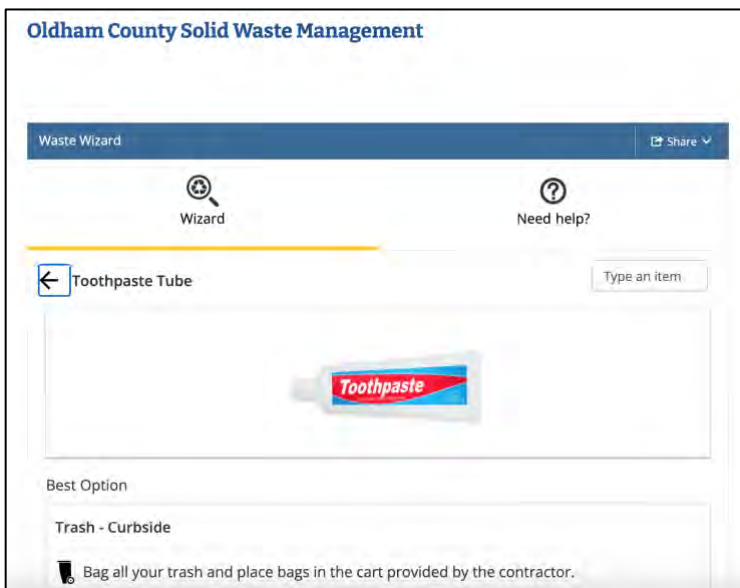
toothpaste tube Enter zip code or SF address Search

Toothpaste tubes, cream, ointment (empty)

LANDFILL BIN
Return to homepage
Share this page
tube of ointment

San Francisco Env't Dept. SF Recycles: Toothpaste Tube,
<https://sfrecycles.org/items?words=toothpaste%20tube&address=all>.

The Oldham County Solid Waste Management in Kentucky informs consumers that toothpaste tubes belong in the trash.



Oldham County Solid Waste Management Waste Wizard,
https://www.oldhamcountyky.gov/oldham-county-solid-waste-management#!rc-cpage=wizard_search.

And according to the Springfield, Massachusetts Materials Recycling Facility, plastic toothpaste tubes should not be placed in recycling bins.



Springfield MRF Recycling Brochure: Inside Recycling Containers,
<http://springfieldmrf.org/docs/brochure-mar23.pdf>.

³⁵ Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.12(a) (2012).

³⁶ 16 C.F.R. § 260.12(b)(1).

³⁷ FTC The Green Guides: Statement of Basis and Purpose, at 174-5, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>.

³⁸ Sort Smart Recycling Guide: Toothpaste Tubes, <https://ssfs.recyclist.co/guide/toothpaste-tubes/?embeddedguide=true>; Earth911: How to Recycle Bathroom Products, <https://earth911.com/recycling-guide/how-to-recycle-bathroom-products/>.

³⁹ 16 C.F.R. § 260.12(b)(2).

⁴⁰ *See, e.g.*, Tom’s of Maine, Facebook (Aug. 18, 2022), <https://www.facebook.com/officialtomsofmaine/photos/10159310141969372>; Shelby Johnson (@shelbyjohnson), Instagram (Apr. 26, 2021), <https://www.instagram.com/p/COJjZYdgy2/>.

⁴¹ *See, e.g.*, Colgate-Palmolive Company (@colgatepalmoliveco), Instagram (Apr. 23, 2023), <https://www.instagram.com/p/CrYOHidJqhl/>; Colgate US, *Colgate Smiling Planet*, YouTube (Mar. 24, 2022), <https://www.youtube.com/watch?v=HQkFnT6GOs0>. *See also* FTC’s Dot Com Disclosures: Information About Online Advertising (May 2000), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-issues-guidelines-internet-advertising/0005dotcomstaffreport.pdf>.

⁴² FTC’s .com Disclosures: How to Make Effective Disclosures in Digital Advertising (Mar. 2013), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

⁴³ *See, e.g.*, Tom’s of Maine (@toms_of_maine), Instagram (July 28, 2023), <https://www.instagram.com/p/CvP40ZUuKmu/>; Tom’s of Maine (@toms_of_maine), Instagram (Jan. 13, 2023), <https://www.instagram.com/p/CnXRb-UuvkT/>; Tom’s of Maine (@toms_of_maine), Instagram (Dec. 22, 2023), <https://www.instagram.com/p/Cme8eFgjGwQ/>; Tom’s of Maine (@toms_of_maine), Instagram (Nov. 9, 2022), <https://www.instagram.com/p/Ckv5AzBDwdP/>.

⁴⁴ Example 4 under Section 260.12 of the Guides is instructive:

A paperboard package is marketed nationally and labeled either “Recyclable where facilities exist” or “Recyclable – Check to see if recycling facilities exist in your area.” Recycling programs for these packages are available to some consumers, but not available to a substantial majority of consumers nationwide. Both claims are deceptive because they do not adequately disclose the limited availability of recycling programs. To avoid deception, the marketer should use a clearer qualification, such as one suggested in § 260.12(b)(2).

16 C.F.R. § 260.12.