

California Law Adds New Restrictions on Recyclability Claims

Publications

October 15, 2021

On October 5, 2021, California Governor Newsom signed SB 343, addressing recyclability claims on products and in advertising. The Act amends existing sections of California's Business and Professions Code as well as the Public Resource Code relating to environmental advertising. These laws collectively provide California's version of recyclability consumer protection laws, similar to but going beyond the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (Green Guides).

Prior to SB 343, existing California law made it unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, and required that environmental marketing claims be substantiated by competent and reliable evidence. Additionally, a person making any recyclability claims was required to maintain written records supporting the validity of those representations, including whether, the claims conform with the Green Guides.

Those requirements are generally left intact, with additional obligations added by SB 343. The first big change made by SB 343 is to specifically add the use of the chasing arrow symbol as a way that a person might make a misleading environmental marketing claim in marketing or on a product label. (Business and Professions Code § 17580(a).) Next, SB 343 requires the Department of Resources Recycling and Recovery, by January 1, 2024, to update regulations requiring disposal facilities to provide information on recycling data. Based on the information published by the department, a product or packaging is considered recyclable only if the product or packaging is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60% of the population of the state. (Public Resources Code § 42355.51(d)(2).) The new law also provides additional criteria related to curb-side recycling, that grow more stringent over time, and PFAS content of plastic material, among other provisions. (Public Resources Code § 42355.51(d)(3).) A person making recyclability claims must keep written records of whether the consumer good meets all of the criteria for statewide recyclability pursuant to these new provisions. (Business and Professions Code § 17580(a)(6).)

Finally, while existing California law governed what resin identification code could be placed on plastic containers (*i.e.*, #1 PETE, #2 HDPE), SB 343 states that resin identification code numbers cannot be placed inside a chasing arrows symbol unless the rigid plastic bottle or rigid plastic

container meets the new statewide recyclability criteria discussed above. (Public Resources Code § 18015(d).)

This new law is another hurdle facing companies making environmental marketing claims. For companies selling products in California, it is not sufficient to simply follow the FTC Green Guides. Instead, companies must be aware of the specific nuances and requirements in California and developments in other states.

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