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*"The Eastern Pennsylvania Chapter of AIA is the voice of our regional architectural profession dedicated to serving and empowering its members. Our Vision is to inspire a better built environment by engaging the community through a culture of excellence and innovation."*

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## 2009 President's Night Dinner

**Thank you and congratulations to our new board members!**

### Secretary

Michael J. Metzger, AIA - Project Manager with Spillman Farmer Architects

### Associate Rep.

Angela Nunez, Assoc. AIA

**Check out the AIA Eastern PA website for all of this year's submissions and Awards!**

[www.aiaeasternpa.org](http://www.aiaeasternpa.org)

**The evening's brochure has also been posted giving recognition to our citizen architects and sponsors.**

## AIA EPC Scholarship

*Students wanted! Send us your application today!*

Eligible students must have completed at least one year at an accredited undergraduate program, or be pursuing a graduate degree at an accredited architecture school. More information regarding the scholarship, including downloadable applications is available on our chapter website.

## Talking Green: The Legal Hazards of "Green" Building Advertisement

**By Andres Quintana, Esq., Quintana Law Group, APC**

"GOING GREEN." Few marketing taglines have burgeoned into our jargon as rapidly as this largely ambiguous play on words. This is no surprise. Escalating energy costs, increased consumer acumen about environmental accountability, and greater demand for eco-friendly products and services have sprouted a variety of "green"-related industries, including "green building". However, city, state and federal regulations and statutes related to "green" advertising may impose risks on design professionals if "green" advertising laws are not duly adhered to or deceptive or misleading "green" building claims are made about designs, building materials or furnishings. This article briefly summarizes the potential sources of legal risks associated with deceptive "green building" advertising.

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### ***FTC Green Guides And Eco-Friendly Claims***

For over a decade, the Federal Trade Commission (“FTC”), through its Guides for the Use of Environmental Marketing Claims (“Green Guides”), has overseen advertising claims related to eco-friendly products. The FTC started to revise the Green Guides in 2008 to focus on new environmental terms about “green” building marketing—such as those for carbon offset claims. The Green Guides also provide guidance for the use in consumer advertising of specific buzz terms like “sustainability” and “renewability,” and also address “greenwashing”— a term describing the disingenuous business practice of misleading consumers about the environmental benefits or performance of a product or service. With respect to all environmental claims, the Green Guides require product manufacturers and service providers to procure scientifically valid information supporting the claims before making them.

According to the Federal Trade Commission Act, the FTC has authority to charge a person or business for making deceptive or unsubstantiated “green” claims. Penalties for deceptive advertising include agency orders requiring businesses to (a) repay (in full or in part) monies paid by consumers who purchased falsely advertised products; (b) issue advertisements intended to correct the detriment caused by previous deceptive or misleading advertising; (c) provide frequent reports to the FTC to substantiate new advertising claims; and (d) cease and desist from further making deceptive or misleading advertisements.

Consequently, design professionals and builders should use caution in specifying and recommending products, building materials and furnishings that purportedly offer environmental benefits and demand that vendors and manufacturers making such claims meet the FTC’s guidelines. Likewise, design professionals and builders should be careful when using appellations like “green”, “renewability” or “sustainable” without grasping what these terms signify and should be able articulate those concepts to their clients. Design professionals should also make measurable (not subjective) representations about “sustainability” that can be verified by a credible, independent third-party evaluator as well as manage their client’s apprehension and ambitions by clearly annotating what clients can really expect from “green” residences.

### ***State Law Regulation of “Green” Claims***

Depending on the State, deceptive or misleading “green” advertisements may be litigated or contested by consumers (or State attorneys general acting on behalf of consumers) under consumer protection statutes related to deceptive advertising, consumer fraud, or unfair business practices. A handful of States have enacted laws particularly governing environmental advertising claims. If so-called “eco-fraud” lawsuits related to “green” building or design begin to emerge similar to other products and industries, it is reasonable to anticipate more States enacting similar “green” advertising laws. Thus, in addition to the Green Guides, design professionals should also be mindful of actual or potential State advertising regulations.

### ***Possible Application Of Federal Law To “Green” Claims***

A separate federal statute known as the Lanham Act prohibits deceptive or misleading representations in the advertising of goods, services or commercial activities. Lawsuits under the Lanham Act are a risk where a competitor believes another’s “green” claims are deceptive or misleading. Although this federal law has not yet been used in court with regards to environmental advertising claims, its wide scope could make it a means to address “greenwashing.” This federal law provides no cause of action to consumers; only business competitors may bring private enforcement lawsuits. Thus, under the Lanham Act, unverified, subjective (intentional or unintentional) overstatements of environmental benefits or performance may theoretically result in additional legal exposure to design professionals from their competitors.

### ***Industry Regulation And “Green” Claims***

The United States Green Building Council (USGBC), a non-profit organization, devised the Leadership in Energy and Environmental Design (LEED) rating system to identify and implement practical and measurable “green” building design, construction, operations and maintenance solutions. The system is credit-based, allowing projects to earn points for environmentally friendly actions taken during construction and use of a building. While, the advantages and concerns over the LEED scoring system are still debated, LEED is generally considered an important measurement tool for “green” design.

Legally speaking, it is reasonable to assume that a LEED certified design professional could rely on the certification in defense of accusations of deceptive or misleading “green” advertising. However, it is noteworthy that no published legal decisions currently exist scrutinizing the LEED criteria or the legal affect of LEED certification in connection with deceptive or misleading “green” building claims, let alone any published decisions in which such criteria or certification was asserted as a defense to these types of advertising claims. While seemingly influential, the LEED criteria and rating system have not been codified into federal law.

**ABOUT THE AUTHOR**

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