

## Government Preparing to Tackle 'Greenwashing' Phenomenon

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Members of the House Energy and Commerce Committee met recently to discuss fair green marketing practices.

The Commerce, Trade and Consumer Protection Subcommittee is investigating the emerging phenomenon of "greenwashing," which is the false or misleading claims about "green" or "eco-friendly" products.

The Subcommittee is also exploring ways in which the Federal Trade Commission can establish clear standards about which products can qualify as "green" and how companies can prove environmental claims backing their products.

Certain consumer advocate groups scheduled to testify before the Subcommittee are expected to encourage lawmakers to develop comprehensive "green" product certification programs.

Witnesses will include representatives from the FTC's Enforcement Division, the American National Standards Institute, Consumers Union, and TerraChoice.

In April 2009, TerraChoice released a study entitled "The Seven Sins of Greenwashing" which found that the total number of "green" products available to consumers increased 79 percent between 2007 and 2008.

The study suggests that greenwashing is becoming more pervasive with increasingly significant consequences for both well-

intentioned consumers and for the marketplace.

Illegitimate environmental claims taking market shares away from products offering more legitimate benefits, which can result in a slow-down in true environmental innovation in the marketplace and increased cynicism about what's green about "green" other than the profits reaped by the company touting the product.

Manufacturers and marketers of consumer products are not alone in their green quest. "Going green" is becoming good business. More and more companies in virtually every economic sector are finding new shades of green to attract customers, investors, stakeholders, lenders and underwriters and improve their market position. These new shades of green include not only marketing techniques for products and services, but also "eco-friendly" disclosures in corporate annual reports, corporate governance policies, loan and insurance applications, and "voluntary" disclosures made by publicly-traded companies in their filings.

The trouble with all of these "shades of green" is that there is no real definition of what constitutes "green," nor are there reliable green measuring sticks yet available to sort out legitimately green products and services from those that are not so "green."

To date, no regulatory standards, interpretive releases or other guidance govern green marketing or disclosure practices.

Consequently, it is becoming increasingly difficult for consumers, investors and other stakeholders to assess shades of green.

The House Energy and Commerce Committee's efforts to explore and—hopefully—to develop fair green marketing practices reflects growing pressure by environmental and consumer advocate groups on the federal government to develop uniform "green" standards.

Ironically, the Subcommittee may find that it is easier to define "greenwashing"—i.e. what companies should not be doing when it comes to touting their eco-friendly efforts to consumers—than to define what actually constitutes "green" or "eco-friendly" in products and services and thereby create reliable green standards or guidelines that consumers and companies alike could use when assessing shades of green in products or services.