

HOSPITALITYLAWYER.COM PRESENTS
**THE 2010 HOSPITALITY LAW
CONFERENCE**
FOCUSING ON WORLDWIDE LEGAL, SAFETY & SECURITY SOLUTIONS
FEBRUARY 3-5, 2010 • HOUSTON, TEXAS

It Ain't Easy Bein' Green

Getting Green Advertising Right

Presenter



Patricia A. Foster is a litigator and IP attorney whose practice includes business, advertising, media, and IP issues.

Prior to entering the legal profession, Mrs. Foster enjoyed many years in the hospitality industry. With an HRI degree from Michigan State University, she worked in operations, sales, and marketing for two international hotel chains.

She then worked overseas as a hospitality consultant with projects in Europe, Australia, and North Africa that included advising hoteliers and tourist boards, researching tourism markets, and predicting financial feasibility for new hotels and resorts.

Presenter

**The Elm Consulting Group
International, LLC**

Lawrence Heim, CPEA, is a partner with The Elm Consulting Group International, LLC, an international EHS risk and sustainability consultancy.

Mr. Heim is a Certified Professional Environmental Auditor with more than 23 years of environmental experience encompassing regulatory consulting, auditing, environmental accounting and risk management.

He has previously been a Senior Vice President with the Environmental Practice of Marsh USA and in-house corporate environmental affairs staff with Georgia-Pacific Corporation.













HUMMER HUMMER OF SIOUX FALLS HUMMEROFSIOUXFALLS.COM

LAMAR

"GREENWASHING"



The Basic Rule of Advertising

Be Fair and
Truthful.

FTC Act Section 5(a)(1)

Unfair methods of competition in or affecting commerce, and **unfair or deceptive acts or practices** in or affecting commerce, are hereby declared unlawful.

Unfair Advertising

Three Inquiries:

1. Whether the practice injures consumers;
2. Whether it violates established public policy;
3. Whether it is unethical or unscrupulous.

Unfair Advertising



Deceptive Advertising

The Commission will find an act or practice deceptive if there is:

1. a misrepresentation, omission, or other practice,
2. that misleads the consumer acting reasonably in the circumstances,
3. to the consumer's detriment.

Interpreting an Advertisement

- Consider the overall impact of the advertisement without dissection.
- View textual and visual messages in context.
- Consider the nature and sophistication of the target audience.
- Assess effect, if any, of disclosures or disclaimers.

Substantiation

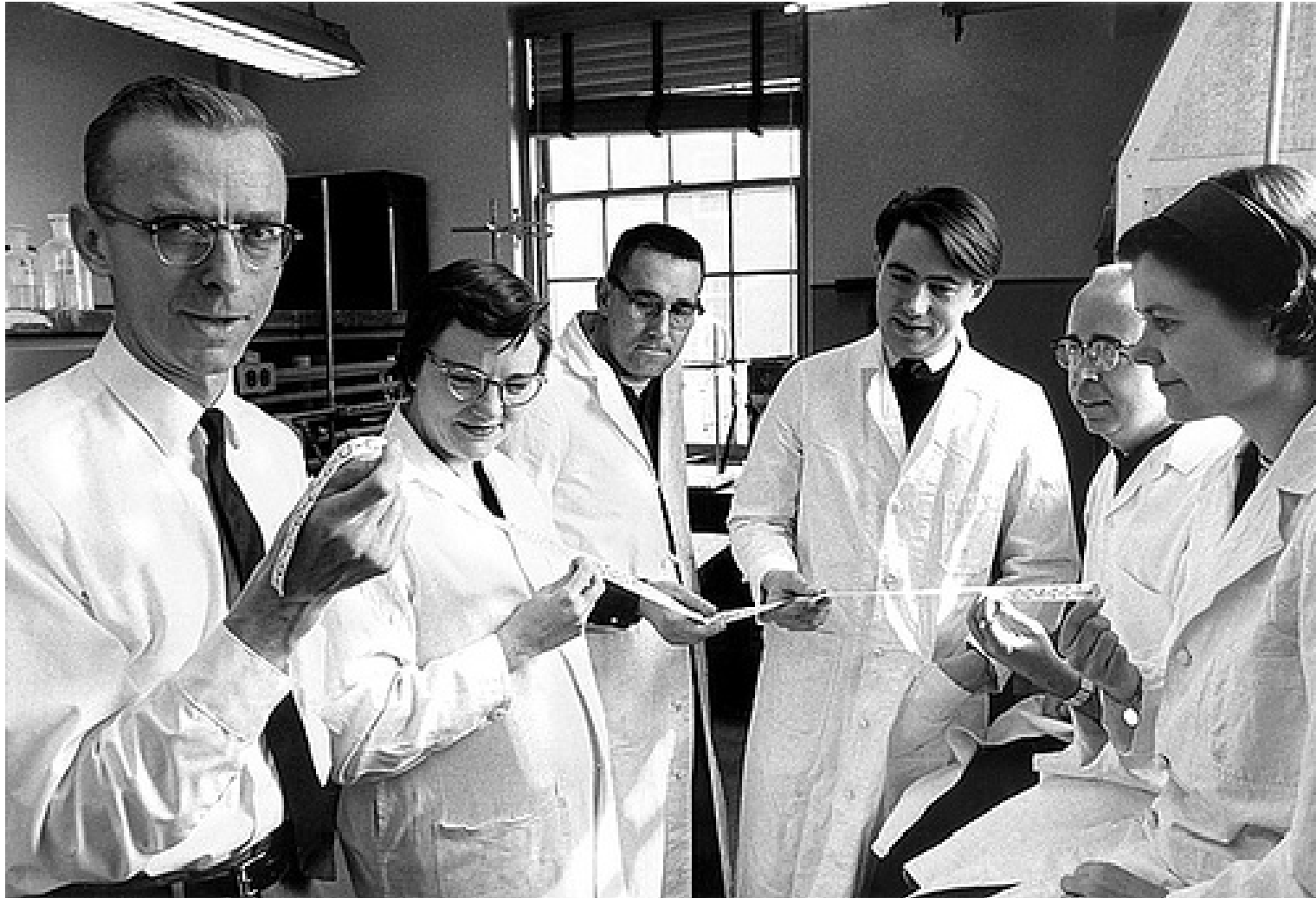


Photo by Sol Goldberg

Regulatory Bodies: NAD



Regulatory Bodies: FTC



Regulatory Bodies: FTC

Remedies:

- Cease and Desist Orders
- Fencing-in
- Corrective Advertising
- Disclosures
- Consumer Education
- Financial Awards

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Assessing and Managing Sustainability's Business Risk

Turning Green...

With envy?

- Keeping pace with competitors

With cash?

- Capture cost savings/more revenue

With dizziness?

- Myriad of options, determining relevance, measuring payback

Making the Decision

- Sustainability is a business decision
 - Cost/benefit
 - Risk management
- But also new ground and emotional
 - Potential for unforeseen events and unintended consequences is high
 - New products, technologies, business drivers and operating requirements

Activities Relevant to Hospitality

- Energy use, including transportation/vehicles
- Water use
- Sanitation/chemicals
- Landscaping/site maintenance
- Waste management/recycling
- LEED certification
- Branding/marketing

What Could Go Wrong?

A Few Examples

- Supplier decisions
 - Fewer green options means consolidating suppliers
 - Increased potential for supply chain disruption
- New “green” product liability
 - Toiletry products
 - Failure to meet manufacturer claims
 - Inadequate sanitation chemical efficacy

What Could Go Wrong?

A Few Examples

- Energy
 - Fuel source/type (electricity, heating, boiler)
 - Cost, availability
 - Impact on customer choice
 - Future greenhouse gas (GHG) regulatory requirements
 - Impact on future construction/retrofit
 - Ground transportation/fleet
 - Vehicle and fuel type, availability, cost

What Could Go Wrong?

A Few Examples

- Recycling programs
 - Off-site waste disposal liability
- LEED certification
 - Failure to meet LEED claims or desired level
 - Emerging ordinances, codes and regulations
 - New building materials and technologies
- Branding
 - Failure to generate expected revenues
 - Advertising claims

Capturing Value and Reducing Risk

- Determine if/why sustainability program is desired
 - This guides definition of “value” and scopes risks
- Choose appropriate performance metrics
- Identify risks, implement risk reduction measures and contingency plans
- Monitor progress and changes

FTC's Green Guides



Photo by Adam Fagen

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- There must be a clear distinction between the benefits of the product and the package.
- Advertisers must not expressly or impliedly overstate environmental attributes.
- The basis for comparative claims must be made clear, and advertisers should substantiate their claims.

FTC's Green Guides

**50% More
Recycled Content!!**

Recent Action

**This product will
biodegrade
eventually.**

Best Practices

Be Specific.

Best Practices

**Substantiate
Claims.**

Best Practices

**Maintain
Documentation.**

Best Practices

Study Up.

The Revised Green Guides Are Coming.

Best Practices

Seek Counsel.