

Are you LEGALLY green?

In 2005, General Electric Chairman and CEO Jeff Immelt—in announcing GE's Ecomagination commitment to address the world's need for cleaner, more efficient sources of energy, reduced emissions, and clean water—stated that increasingly for business, “green” is green. Today, companies of all shapes and sizes are recognizing that being environmentally conscious and sensitive to the sustainability of our planet not only makes sense for our survival, but is also a business opportunity.

Harnessing these opportunities and understanding how to make them work can require experienced legal counsel.

Reed Smith is positioned to be a partner with companies seeking to turn “green” initiatives into green investments. With its international footprint and nationally recognized renewable energy and advertising practices, Reed Smith can help companies develop their sustainability strategies, as well as execute them and bring them to the marketplace.

OUR EXPERIENCE

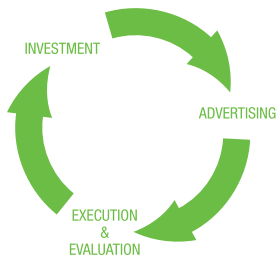
Reed Smith has a broad and extensive range of experience in investments and contracts relative to renewable energy and the purchase and sale of electricity as well as the marketing of environmental initiatives. Examples of this work are:

- Representing food manufacturer in assessing/calculating the carbon footprint of its manufacturing and transportation of a product.
- Representing an energy company in evaluating the effects of climate change legislation on its business strategy.
- Representing a national clothing retailer in the installation of a 1 MW solar facility at its distribution center in California, and the negotiation of a net metering interconnection agreement with local utility.
- Counseling manufacturers in industries ranging from building material, to processed food, to beverages, to textiles in connection with advertising claims in various media and on packaging and analyzing underlying substantiation for compliance with federal and state advertising laws.
- Representing a national consumer products company in the installation of a small cogeneration facility at a Kentucky manufacturing plant that uses waste heat and gas as a fuel source.
- Representing owners of renewable power plants in the sale of renewable energy credits and third-party investments relative to the federal production tax credits generated by the projects.
- Representing a client in the investment in a fund sponsored by a large investment fund that focused on renewable energy projects.
- Representing the owners of geothermal, wind and solar projects in the sale of their electric output and the related renewable energy credits.

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Reed Smith LLP stands in a unique position as an expert in “green” marketing and the regulation of that activity as well as renewable energy project development and the manner in which companies can make investments in that industry. There are a variety of ways that a company can make an investment in renewable energy to support its marketing claims. Making sure that your marketing claim is supported by a substantive investment in renewable energy is critical, as lack of substance could lead to a claim of “greenwashing”, or even worse, a claim by the Federal Trade Commission under its new environmental marketing regulations.

PROJECT TYPE : INSTALLATION OF A SMALL RENEWABLE POWER PLANT

PROJECT REVIEW Our clients are increasingly interested in installing projects such as a small solar facility that can be installed on a rooftop or adjacent to a building, or a small cogeneration facility that can turn excess heat and gas into clean electricity. Reed Smith attorneys can handle all of the legal aspects of these types of projects, including real estate, permitting, construction, power purchase and transmission contracts, and allocation of “green” credits.

ADVERTISING CLAIMS These types of projects are often structured so that a third-party takes responsibility (and risk) associated with the installation of the power facility, and then contracts to sell the electric output at a rate that is lower than what is available from the local utility. Ownership of renewable energy credits and other environmental attributes are often key negotiating points. Because this type of project allows our clients to directly use electricity generated from renewable or recycled energy, our clients can always claim that they are using renewable/recycled energy and reducing their greenhouse gas emissions. Beyond cost savings, our clients also must determine how to effectively present the “green” benefit of these projects.

PROJECT TYPE : PURCHASE OF RENEWABLE ENERGY CREDITS

PROJECT REVIEW An indirect way for our clients to make an investment in renewable energy is to purchase renewable energy credits (RECs) that, under some state laws, are generated as a result of the use of renewable energy to produce electricity. RECs are available for purchase from the renewable power plant owner and from organizations such as Green-e that purchase credits from many sources and makes them available for resale. In many cases, however, a utility that purchases the electric output from a renewable power plant will often want to purchase RECs so it can comply with state renewable portfolio standards that require that a certain percentage of its power comes from renewable sources. Reed Smith attorneys have handled these types of transactions, are familiar with different state laws regarding RECs, and the required certifications to make sure that the RECs are legitimate.

CLAIM The motivation for a company to purchase RECs is to claim that it is offsetting its consumption of electricity from fossil-fuel sources. Companies need to consider how this investment relates to its use of electricity generated by fossil fuels, and whether it can make a claim of reducing its “carbon footprint” or,, if it purchases enough RECs, being “carbon neutral.”

PROJECT TYPE : INVESTMENT IN RENEWABLE POWER PLANTS

PROJECT REVIEW A different type of indirect investment in renewable power is a purchase of an ownership interest in a renewable power plant or renewable technology company. There are several private equity and venture capital funds that are focused on renewable energy that, in addition to the investment benefits, can offer an investor the right to be an owner of a renewable energy company. For some investors, this type of investment can be made relative to federal and state tax credits. Besides the securities law issues, Reed Smith lawyers are experts in the requirements to take advantage of renewable based tax credits and the associated risks.

CLAIM From a marketing perspective, a company that makes this type of investment can claim that they have made a socially-conscious investment decision to support renewable energy or new renewable energy technologies.

PROJECT TYPE : ADVERTISING, LABELING AND PACKAGING

REVIEW What can a company say about its investments? How does it communicate to the consumer effectively and truthfully?

CLAIMS Has the Company complied with the current FTC Guides on Environmental Marketing Claims? Has it effectively differentiated between the packaging and the product to the extent environmental claims relate to one but not both? Does the Company have substantiation for its environmental claims? What sort of third-party certification would benefit the company as it seeks to support its “green” marketing initiatives?