

CONSTRUCTION LAW ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

U.S. Green Building Council Sued Over LEED Certification System

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The U.S. Green Building Council (USGBC) has been sued in United States District Court in New York by a putative class of plaintiffs claiming that USGBC engages in false and misleading advertising in connection with its Leadership in Energy and Environmental Design (LEED) certification system. The plaintiffs are non-LEED accredited design and construction professionals who advise real estate developers and other clients on the design and construction of energy efficient buildings. The plaintiffs claim they are losing business because false and misleading information disseminated by USGBC causes consumers to utilize LEED accredited professionals who provide advice about obtaining LEED certification, mistakenly believing that such professionals will deliver a building that is verified by a third party to be more energy-efficient than a building that plaintiffs would provide. According to the suit, "USGBC's false advertisements mislead the consumer into believing that obtaining LEED certification incorporates construction techniques that achieve energy-efficiency."

The plaintiffs point to certain statements by USGBC that they contend are false, including that LEED-certified buildings perform, on average, "25-30% better than non-[LEED] certified buildings in terms of energy-use," and that LEED "provid[es] third-party verification that a building or community was designed and built using strategies aimed at improving performance across all the metrics that matter most." According to the plaintiffs, USGBC's own study data indicate that, on average, LEED-certified buildings use 41 percent more energy than non-LEED buildings, and LEED does not verify that buildings are energy efficient because applicants essentially "self-certify" with no site investigation by USGBC.

The suit includes claims for false advertising, deceptive trade practices and unfair competition. The plaintiffs seek unspecified compensatory and punitive damages, including all profit derived from the allegedly unlawful conduct by USGBC (the suit states that USGBC reported revenues of \$64 million in 2008). The suit also seeks an injunction requiring USGBC to cease dissemination of the allegedly false and misleading information, to issue corrective advertising and literature, and to disclose the actual energy use of LEED-certified properties. The disclosure element would require all LEED-certified properties to upload utility bills into a publicly accessible online database, once a year, for ten years following certification.

The case is *Gifford v. U.S. Green Building Council*, No. 10-cv-7747-LBS (S.D.N.Y. amended complaint filed Feb. 7, 2010).

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