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Federal Trade Commission
Office of the Secretary
Room H-135 (Annex B)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Green Packaging Workshop – Comment, Project No. P084200

To Whom It May Concern:

In recent years, there has been an explosion of consumer interest in protecting the environment, and a corresponding influx of “green” products and services into the marketplace. The U.S. Green Building Council (“USGBC”) celebrates this trend as an important signal of the market’s ability to transform itself to meet the climate and energy challenges now before us. At the same time, we are concerned about the use of unsupported and untruthful claims of environmental superiority, or “greenwashing,” by some marketers to sell products and bolster reputations.

USGBC values the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims (“Guides”) as an important tool for preventing consumer deception in the midst of an ever-expanding array of environmental claims and terms. We appreciate the opportunity to provide input about future revisions to the Guides and offer the following comments in response to the March 3, 2008 notice and the April 30, 2008 workshop. Please do not hesitate to contact us if we can provide any additional information to you.

Background

About USGBC

Founded in 1993, USGBC is a 501(c)(3) non-profit organization composed of leaders from across the building industry working to advance buildings that are environmentally responsible, profitable and healthy places to live and work. Driving its mission to transform the built environment is the Council’s LEED® (Leadership in Energy and Environmental Design) Green Building Rating System™, a nationally-recognized third-party certification program for the design, construction and operation of high performance green buildings. Today, USGBC has more than 15,300 member companies and organizations, including real estate developers, architecture, design and engineering firms, contractors, product manufacturers, government agencies, educational institutions, and nonprofit organizations. Additionally, individuals throughout the United States participate in USGBC’s work through USGBC’s more than 70 local chapters, affiliates and organizing groups.



About LEED

LEED is a voluntary third-party certification system for green building, and was developed to promote leadership in the building industry by providing an objective, verifiable definition of “green.” LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas, with an additional category to recognize innovation: sustainable site development, water savings, energy efficiency, materials and resources, and indoor environmental quality. Each category includes certain minimum requirements (“prerequisites”) that all projects must meet, followed by additional optional credits that are earned by incorporating green design and construction techniques. Four progressive levels of LEED certification – Certified, Silver, Gold and Platinum – are awarded based on the number of points achieved.

USGBC provides independent, third-party verification to ensure a building meets these high performance standards. As part of this process, USGBC requires technically rigorous documentation that includes information such as project drawings and renderings, product manufacturer specifications, energy calculations, and actual utility bills. This process is facilitated through a comprehensive online system that guides project teams through the certification process. All certification submittals are audited by third-party reviewers.

Originally developed for new commercial construction projects, LEED has been expanded in recent years to respond to market demand for additional tools to address different building types and lifecycle phases. USGBC released rating systems for the operations and maintenance, and commercial interiors markets in 2006, for the schools sector in 2007, and for the residential market earlier this year. Additionally, USGBC is now pilot-testing and nearing completion of rating systems for neighborhood developments, healthcare facilities, retail spaces, labs, and campuses.

Since its initial public launch in 2001, LEED also has completed a series of improvement cycles to respond to technical innovations and market needs. The next major update of LEED, known as LEED 2009, will be released for its first public comment period on May 19, 2008.

Comments

Claims and Terms

Are there other environmental claims concerning packaging not currently addressed by the Guides, and if so, what are they? Please provide any evidence to support your answer.

Since the Guides were last revised in 1998, numerous terms have appeared in the



market to describe the environmental attributes of products and services. Words such as “green” and “sustainable,” while understood to refer to environmental impact, are used to describe a diverse range of products and services. USGBC recognizes the potential for consumer confusion regarding the manner in which these terms are used (for example, whether they are intended to refer to discrete attributes of a product, or instead, to a product in its entirety). USGBC thus recommends that the FTC add guidance identifying such terms and providing additional examples of how marketers can qualify and substantiate claims that use them to avoid deceiving consumers. As other commenters have noted, however, words such as “green” and “sustainable” may be used independently of product claims to communicate important information about a company or organization’s mission and vision. USGBC recommends that the FTC distinguish between statements such as these, which are used to convey broad organizational goals and should not require substantiation, and product claims, which make assertions about specific product attributes.

Eco-seals, Seals-of-approval and Certifications

Why are marketers using these third-party certifications and seals, labels, or symbols on packaging? Please provide any evidence that supports your answer.

Increasingly, marketers are turning to third-party seals and logos as a means of communicating to consumers that their products and services do not cause harm to the environment. Third-party certification, when properly administered by certifying organizations truly independent of the product manufacturer and appropriately represented by marketers, provides consumers with a common language for and a trusted means of evaluating environmental attributes. Moreover, third-party certification takes the guesswork out of consumer purchases, providing an independent and expert assessment of technical product claims that may be difficult for consumers to interpret or verify on their own.

Should the Guides be revised to include additional guidance regarding these claims? If so, how?

The Guides currently instruct that when using seals-of-approval, marketers should provide qualifying language that clarifies which attributes of a product they claim to be environmentally superior (16 C.F.R. § 260.7 Environmental Marketing Claims, Example 5). This guidance aids consumers in interpreting the meaning of logos and symbols, and protects certifying organizations from having their logos used in ways they do not intend. USGBC recommends that the FTC expand the Guides to provide additional examples of inappropriate and deceptive uses of logos and seals on packaging in light of the rapid proliferation of new certification



programs and the great potential for consumer confusion and deception posed by their misuse.

Specifically, USGBC recommends the addition of language clarifying that marketers should take caution when using logos and seals awarded for a specific purpose to be sure that they do not indicate approval or endorsement of environmental attributes that have not actually been evaluated by the certifying program. This is particularly important in cases in which logos or seals address some, but not all, aspects of a product or service. For example, although USGBC provides third-party certification of buildings through LEED, it does not certify individual products or building components as “green” or “environmentally friendly.” Despite this fact, some marketers have used the USGBC logo on product packaging and in advertisements alongside claims that products are certified by USGBC or LEED, or can be used to achieve LEED credits. Claims of this kind mislead consumers and pose similar challenges to third-party certifiers, who are unknowingly linked to products they have not in fact reviewed or endorsed.

USGBC also recommends the addition to the Guides of language advising that verifiers should make publicly available—through the Internet or other means—the criteria by which they are evaluating products to enable consumers to evaluate the basis of third-party certifications and endorsements. Mindful that the FTC does not set environmental performance standards, USGBC also recommends that the Guides be modified to clarify and reference appropriate sources of substantiation for third-party claims, including but not limited to established tests and scientific processes.

Conclusion

USGBC appreciates the opportunity to comment on desired revisions to the Guides and hopes to have the opportunity to comment specifically on environmental marketing as it relates to green building at a future date. We would welcome the addition of a future workshop to discuss this rapidly expanding field and stand ready to assist you in any way possible.

Sincerely,

Michelle Moore
Senior Vice President of Policy and Public Affairs