



Aug. 15, 2008

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

Re: Green Building and Textiles Workshop – Comment, Project No. P084203

The Vinyl Institute, Inc. (“VI”)¹ appreciates the opportunity to submit these comments on the Federal Trade Commission (“FTC” or “Commission”) Guides for the Use of Environmental Marketing Claims; Green Building and Textiles, pursuant to the Announcement of Public Workshop and Request for Public Comment published in the *Federal Register* on June 10, 2008, 72 *Fed. Reg.* 32662. VI recently submitted comments on the Guides for the Use of Environmental Marketing Claims (“Guides”) pursuant to the Commission’s November 27, 2007 *Federal Register* notice, 72 *Fed. Reg.* 66091. Vinyl is the largest volume plastic used in building construction and has wide application in a range of consumer and industrial products.

VI is an advocate for transparency and fairness with regard to the criteria and processes used by organizations that establish “green” building standards and certifications, and urges the FTC to more fully address these issues in its revision of the Guides. In addition, VI believes that the next revision of the Guides should appropriately address false, misleading, and deceptive environmental claims, including “free” or “no” claims, “sustainability” and “environmentally-friendly” claims, “recyclable” claims, and the use of “eco” in product names. Finally, in accordance with the comments previously filed in this proceeding, VI urges the FTC to affirm substantiation principles, expand education and outreach, and enhance enforcement to protect consumers from false or misleading claims.

Comments

¹ VI is a U.S. trade association representing the leading manufacturers of vinyl, vinyl chloride monomer, vinyl additives and modifiers, and vinyl packaging materials. VI’s mission is to advocate the responsible manufacture of vinyl resins, lifecycle management of vinyl products, and promotion of the value of vinyl to society. VI member companies include CertainTeed Corporation, Formosa Plastics Corporation, U.S.A., Georgia Gulf Corporation, Oxyvinyls, LP, PolyOne Corporation, Shintech, Inc., and Westlake Chemical Corporation.

I. The Guides Should Ensure Transparency and Fairness for Certifications and Standards Applicable to Green Claims

The FTC seeks comment on several questions regarding environmental claims for textile and building products of interest to the VI. One issue in particular on which the Commission seeks comment is the effectiveness of provisions in the Guides regarding third party certifications and seals. VI believes some organizations influencing the green-building market today are advertising themselves or are being accepted as open, transparent, consensus-based authorities on environmentally preferred products and issues, when, in fact, they are not.

VI believes there are several criteria or processes that should be required of third-party organizations that purport to establish independent “green” standards and certifications for buildings or for other products or activities. We note that there is an obvious difference in the process needed to develop standards at an organization like the VI (where the industry relationship is evident through the name and the organization does not hold itself out as an independent standards body), and at a body that purports to issue independent, consensus standards. Independent or consensus-based standards organizations issuing “green” standards should: 1) require balanced representation of diverse interests in the standards development phase, before proposed standards are issued for public comment, 2) provide for an open public comment period, and 3) consider and address comments based on scientific evidence. An appeals process is also an important procedural safeguard adopted and utilized by nationally recognized consensus standards organization.

Additionally, the Guides do not address claims based on a lifecycle theory of environmental benefits, but lifecycle evaluations should obviously be part of the standards process for organizations seeking to promote broad “green” standards for buildings.

VI is a strong advocate for transparency and fairness in the establishment of third-party standards and certifications issuing “green” product criteria. Particularly for standards and certification bodies that might be recognized by government or other bodies, balanced representation can be a key issue. This obviously can be a challenge, since it is inappropriate to assume that every industry participant in development of such standards has an identical interest. In the context of building materials, for example, wood, aluminum, brick, stucco and other materials compete with vinyl in siding or exterior finish applications. Metal and other plastics compete with vinyl in the piping market. Carpeting, ceramic and stone tile, wood, bamboo and other materials compete with vinyl in the floor finishing market. It is obvious that no one “industry representative” could possibly represent all these diverse interests in any organization seeking to identify “green” materials or to assign points to the environmental attributes.

In VI’s experience, in some organizations, a small group of active participants with a vested interest in deselecting a particular material will have the ability to direct or influence the development of so-called “green” standards. Thus, they may not approach the environmental analysis with an unbiased view, and the resulting standard or proposed standard may reflect a bias not necessarily apparent to the outside world. By contrast, those who support the material are not always provided an opportunity to participate in the process at the developmental phase,

based on membership restrictions or rules that foreclose participation because the “industry” seats are filled. This can be especially problematic when the standards effectively ban or deselect a particular product or material or offer “credits” for material avoidance. In such circumstances, a standard may be proposed for public comment based on inadequate information about the technical basis or feasibility of the proposed action because the affected industry was not given opportunity to provide input during development of the proposal.

Put another way, just because an organization issues a proposed “green” standard for public comment does not in itself resolve these inherent biases, because typically rules of standards-making organizations merely require that public comments be acknowledged, not that they be adopted, or that technical inaccuracies be addressed by independent reviewers. The deficiency is exacerbated further where the organization lacks an adequate process for technical review of and response to public comments and an appeals process.

Furthermore, conflicts of interest in organizations working on “green” standards can extend beyond direct financial relationships, so it is not enough for organizations to merely review financial conflicts. An example of a non-financial arrangement where conflicts often arise is public ideological positions that affect a party’s opinion on a particular matter under consideration. For standards-setting organizations issuing “green” standards to adequately obtain a balance of interests in the standards development phase, they should, at a minimum, require participants in standard development activities to disclose not only financial conflicts or interests, but also memberships in organizations or other factors that might influence their positions. Thus, the fact that standards are adopted by “third parties” does not necessarily assure that they can be relied upon to be neutral. Organizations that have an ideological position may still develop their own standards and recommendations, but they should be taken for what they are worth and not as standards based on neutral and independent evaluations of environmental benefits and impacts unless they follow appropriate procedures designed to assure the integrity of the consensus standards process.

It is VI’s understanding that the FTC has experience in considering potential competition implications from the development of building and other codes. VI urges that the FTC consider applying similar principles to organizations that purport to set standards for “green” buildings or products. It is particularly important that government agencies and others not rely on “seal” programs or standards established by groups whose processes cannot stand up to appropriate scrutiny in terms of balanced representation during the developmental process. In addition, with regard to matters relating to buildings and other code-related issues, VI submits that it is inappropriate to assume that there is one “industry” position from the standpoint of identifying potentially interested and affected parties to assure that the standards development process is balanced, open and fair. Addressing criteria for independent standards organizations developing “green” standards fits with both the FTC’s consumer protection and competition missions.

II. The Guides Should Address False, Misleading, and Deceptive Environmental Claims

VI reiterates its view that the next revision of the Guides should address false, misleading, and deceptive environmental claims, including “free” or “no” claims, “sustainability” and “environmentally-friendly” claims, “recyclable” claims, and the use of “eco” in product names. In its earlier comments, VI requested that the FTC provide guidance on “free” or “no” claims and broad claims like “sustainable.” VI again urges the Commission to address these types of claims, and also review its guidance on “recyclable” and “eco” claims.

With regard to “free” or “no” claims in connection with vinyl, such as “PVC-free” or “No Vinyl,” as well as claims that products are “free” of or contain “no” other chemicals, there are several issues. Most importantly, even if a product or material does not contain the referenced substance, these claims are generally intended to imply that the advertised product is both safer for the environment *and* safer for human health than the referenced substance (e.g., vinyl or chlorine). Thus, it is not simply a matter of suggesting that such claims be avoided if the product never included the referenced ingredient. “Free” or “no” claims are also often intended to be a general claim of environmental benefit. Such claims should not be permitted absent clear qualifying language that substantiates both the express and all implied claims. In addition, to the extent “free” and “no” claims are often intended as comparative claims between competing products or materials, such claims should provide a basis for comparison and should disclose other adverse environmental impacts associated with the advertised product or material.

VI also requests that the FTC provide guidance on “sustainable” claims. There is little question that, like “eco-safe” or “environmentally friendly,” “sustainable” claims are general environmental benefit claims subject to the same obligations of disclosure and substantiation described in Section 260.7(a) of the Guides. Use of “eco” in product names or as part of a general claim, e.g., “eco-friendly,” should also be addressed. The Guides currently indicate that a brand name such as “Eco-Safe” would be deceptive if it leads consumers to believe the product has environmental benefits that cannot be substantiated. The FTC should reinforce this interpretation in light of the growth of environmental brand names. As with “free” or “no” claims, where such claims are intended as comparative claims, the basis for the comparison should be clear, and adverse environmental or other attributes of the advertised product should be disclosed.

In addition to these types of claims, the Guides should address the use of unqualified “recyclable” claims for building products, considering how to avoid misleading claims while offering the ability to use qualifiers that are more likely to prompt consumers to at least inquire about recycling programs. Many commenters in this proceeding have suggested that the FTC revise the standard it applies for making “recyclable” claims to match ISO 14021, the International Standard for self-declared environmental claims. We agree that the “substantial majority” test currently enunciated in the Guides should be reevaluated based on both international standards and the current U.S. recycling infrastructure.

In addition, however, the FTC should consider providing additional guidance on more empowering qualifiers for situations where a product or material is not recyclable to a

“reasonable proportion” of consumers. There appears to be broad recognition that some changes are desirable to provide more of an incentive for consumers to seek out information on how to recycle products and that revisions to “safe harbor” qualifiers should be considered. While recycling infrastructure for some products may be nascent at best, and thus an unqualified claim of “recyclable” is clearly inappropriate, the FTC should identify appropriate and positive disclosures for such products likely to be useful to consumers. Guidance is also needed on how companies can advertise their individual take back programs.

III. The FTC Should Affirm Substantiation Principles, Expand Education and Outreach, and Address Claims that Fail to Meet Current Standards

VI offers three additional steps for the FTC to take to protect consumers from false and misleading environmental marketing claims: (1) affirm substantiation principles; (2) expand education and outreach; and (3) take action on the most egregious examples of environmental claims in the marketplace that do not comport with current advertising standards.

As VI previously commented, the Commission should affirm principles of substantiation in lieu of requiring third party certification for all environmental claims. Advertisers should provide support for every express and implied claim about an objective quality, feature or attribute of a product or service at the time the claim is made, and should avoid a “six degrees of separation rule.” The FTC should make clear that advertisers cannot simply cite third party sources (which may have their own ideological or other biases) without conducting or evaluating the environmental impacts. Opinions do not - and should not - constitute substantiation.

VI also urges the FTC to conduct more public workshops and similar outreach activities to facilitate discussions on these important issues. In addition, the FTC should take appropriate action against environmental claims that do not comport with current advertising standards. Examples include broad, general “recyclable,” “sustainability,” and “environmentally-friendly” claims. Appropriate FTC action, coupled with additional examples of impermissible general claims of environmental benefit, will benefit industry and consumers.

Conclusion

VI is pleased to have the opportunity to submit comments in this important proceeding. VI believes that the Guides have generally provided an effective means of promoting responsible, sound advertising, but respectfully submits that more is needed in the way of transparency and fairness in establishing “green” building standards and certifications, guidance on deceptive environmental claims, substantiation, education and enforcement.

Respectfully submitted,

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