



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20580

Division of Enforcement
Bureau of Consumer Protection

Hampton Newsome
Attorney

Direct Dial:
(202)326-2889
Fax:
(202)326-2558

October 16, 2006

Mr. Richard H. Karney
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Dear Mr. Karney:

This staff opinion letter responds to your August 25, 2006 request regarding model numbers for clothes washers and dishwashers. In particular, you asked whether manufacturers should modify a product's model number when they alter the design or construction of the model in a way that changes its energy consumption. In brief, we have concluded that failure to modify model numbers in such situations may raise concerns under the Federal Trade Commission Act's (FTC Act's) prohibition against unfair and deceptive practices. We have prepared this staff opinion letter pursuant to 16 C.F.R. § 1.1(b) of the Commission's regulations.

According to your letter, appliance manufacturers currently are in the process of modifying existing dishwasher and clothes washer models to meet new 2007 ENERGY STAR criteria. The new, re-engineered versions are more efficient than the older ones. In making these alterations, however, many manufacturers are not changing the appliances' model numbers. As a result, units with identical model numbers will have different energy consumption ratings, and thus inconsistent energy performance information on their EnergyGuide labels. In your view, this practice makes it very difficult for consumers, rebate providers, and the ENERGY STAR program to determine if a particular model is ENERGY STAR qualified. In addition, labels displayed on showroom units may be inconsistent with units actually delivered to consumers. You have asked for our views on this matter.

The Commission's Appliance Labeling Rule (16 C.F.R Part 305) does not specify how manufacturers must number or otherwise identify their models.¹ The Federal Trade Commission Act, however, contains a general prohibition against "unfair or deceptive acts or practices." (15 U.S.C. § 45(a)(1)). The FTC's Policy Statement on Deception states that the Commission "will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."² Under these standards, we are concerned that the practice described in your letter may create unintentionally deceptive representations under certain circumstances. For example, if a consumer researches a model on the internet but then purchases the product in a brick and mortar store using the model number, there is no reasonable way to ensure that the unit in the store's inventory will match the energy performance of the model the consumer found online.³ As suggested in your letter, the same problem may occur if a floor model in a showroom is different from the unit actually delivered to the consumer. Therefore, we urge manufactures to consider these concerns carefully as they assign model numbers to re-engineered models.

The views expressed in this letter are those of the staff assigned to enforce the Commission's Appliance Labeling Rule. In accordance with Section 1.3(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), this is a staff opinion only and has not been reviewed or approved by the Commission or by an individual Commissioner. It is not binding upon the Commission and is given without prejudice to the right of the Commission later to rescind the advice and, when appropriate, to commence an enforcement proceeding. In conformance with Section 1.4 of the Commission's Rules of Practice, 16 C.F.R. § 1.4, this letter and your request, are being placed on the public record. If you have any further questions, please contact me at (202) 326-2889.

Sincerely,



Hampton Newsome

¹ The Rule's reporting requirements direct manufacturers to provide new data to the FTC for "models subject to design or retrofit alterations" which change the energy data for the models (see § 305.8). That provision does not specifically indicate that manufacturers must use different models numbers for such re-engineered products. In addition, we are not aware of any specific DOE requirements regarding to the assignment of model numbers, but we defer to your agency's counsel on that issue.

² See FTC Policy Statement on Deception, Appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984).

³ We expect that consumers and retailers would have to verify which version of the model they have by opening the product's shipping box to examine the EnergyGuide label affixed to the unit.