

U.S. FEDERAL TRADE COMMISSION

Project No. P074207

COMMENT
of
WAL-MART STORES, INC.
on the
GUIDES FOR THE USE OF
ENVIRONMENTAL MARKETING CLAIMS
CARBON OFFSETS AND
RENEWABLE ENERGY CERTIFICATES
PUBLIC WORKSHOP

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CARBON OFFSET WORKSHOP—COMMENT, PROJECT NO. P074207
SUBMITTED TO THE FEDERAL TRADE COMMISSION
ON BEHALF OF WAL-MART STORES, INC.

As a large national retailer, one of the largest consumers of electricity in the United States, and the owner of the one of the largest private truck fleets in the world, Wal-Mart has unique opportunities to affect the environment in positive ways. While constructing more energy-efficient stores combined with a mix of environmentally friendly products, Wal-Mart supports a corporate strategy that sustains our environmental resources. Wal-Mart believes that focusing on the environment is key to its mission to improve the quality of life for people around the world. Being a good steward of the environment and being profitable are not mutually exclusive.

Wal-Mart's sustainability strategy has become integral to its business model. In October 2005, President and CEO Lee Scott announced the launch of Wal-Mart's sweeping business sustainability strategy to reduce drastically the company's global environmental impact and to contribute positively to environmental protection measures. Committed to protecting the environment, Wal-Mart established three aggressive goals: (1) to be supplied 100% by renewable energy; (2) to create zero waste, and (3) to sell products that sustain our resources and environment.

Wal-Mart has made great progress toward those goals over the last 27 months, including developing, selling, and using products that sustain resources, such as sustainable seafood and compact fluorescent light bulbs. On January 23, 2008, in remarks at the Year Beginning Meeting of Wal-Mart U.S., Lee Scott emphasized the progress that Wal-Mart's sustainability strategy has achieved and reconfirmed the Company's commitment to leadership in bringing

about a more energy efficient future. He reinforced the goals he had set out 27 months earlier, as well as announced initial steps Wal-Mart hopes to achieve by 2010.

One new objective is to make the most energy intensive products in the Wal-Mart stores 25 percent more energy efficient within three years. Key to this objective is to sell energy efficient products -- which typically come at a premium -- at an affordable price, and to ensure that Wal-Mart suppliers are themselves energy efficient. To this end, Lee Scott stated, "In the coming months, we will work with our suppliers to reduce prices on more items that have a significant impact on energy use for our customers. Our goal is to double the sale of products that make homes more energy efficient."

Wal-Mart recognizes the potential of the market for carbon offsets and Renewable Energy Certificates ("RECs") is to bring renewable and energy-efficiency technologies into the mainstream. Renewable energy and energy-efficient generation results in valuable benefits, including U.S. economic development and job creation, increased energy diversity and security, improved air quality, reduced price volatility in energy markets, and improved energy reliability. Characteristics of carbon offsets and RECs, such as their less tangible nature and their flexibility, provide opportunities for consumer participation, and drive the need for consumer education and awareness of the importance of well-designed markets.

The current Guides for the Use of Environmental Marketing Claims (the "Green Guides"), 16 C.F.R. § 260, apply general FTC principles to specific claims relevant to environmental issues. Generally, the Green Guides note that it is deceptive to make unsubstantiated claims about specific environmental benefits,¹ and identify the type of

¹ *E.g.*, 260.7(d) "It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. ..."

substantiation necessary to support different types of claims.² Specific provisions identify when unqualified claims about an environmentally relevant attribute are permissible, and when qualification is necessary to avoid the risk of deception.³ A series of examples apply the general principles to very specific hypothetical situations to offer further guidance on which claims are permissible.⁴

Like the existing Green Guides, the Commission should focus revised Green Guides to address newly emerging claims on the likely consumer interpretation of the basic message of claims about carbon offsets and RECs. Marketers who make claims should, in accordance with standard FTC principles, have a reasonable basis to substantiate those claims.⁵

There are currently four proposed U. S. regional greenhouse gas cap-and-trade programs, approximately thirty mandatory U.S. State renewable portfolio standards, and voluntary REC and carbon offset markets, all with varying, and sometimes conflicting, requirements. As a result, standards for what constitutes an offset or a REC are not necessarily consistent from one provider to another. In addition, these current programs could all change or be eliminated with the enactment of federal legislation, or they could continue in forms that supplement any forthcoming federal programs. Although some may urge otherwise, the Commission should

² *E.g.*, 260.7(c). "...A claim that a product or package is compostable should be substantiated by competent and reliable scientific evidence that all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. ..."

³ *E.g.*, 260.7(d), "...Unqualified claims of recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable. ..."

⁴ *E.g.*, 160.7(d) example 3, "A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into another product or package. Any claim that the container is recyclable would be deceptive."

⁵ *See* Federal Trade Commission, *Policy Statement regarding Advertising Substantiation* (1984).

resist the temptation to define what constitutes an eligible offset or REC. Doing so would require the Commission to resolve highly technical environmental debates that are beyond its expertise.

Rather than attempting to define offsets or RECs, the Commission should rely on the flexibility inherent in the “reasonable basis doctrine.” The fact that standards may differ from one seller to another simply reflects the fact that there is no consensus about what does, or should, constitute a carbon offset. Different authoritative and expert institutions have adopted different, but reasonable, approaches. Although the Commission should insist that all carbon offset claims are supported by a reasonable basis, FTC precedent provides no reason to choose one reasonable approach over another.

Wal-Mart commends the Commission’s timely and important effort to update the Green Guides. The Green Guides should treat claims about carbon offsets and RECs as they treat other environmental claims. They should identify the likely meaning of the claim to consumers, along with the amount of substantiating evidence that is required. They should resolve more specific questions through the use of examples to address common scenarios relevant to such claims.

The Commission should recognize that in the absence of a governmental definition or a widespread consensus about the precise contours of what constitutes a carbon offset or a REC, there may be multiple ways to establish a reasonable basis for such claims.

Wal-Mart looks forward to participating in further workshops on these subjects and to offering comments on other aspects of the Guides.

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