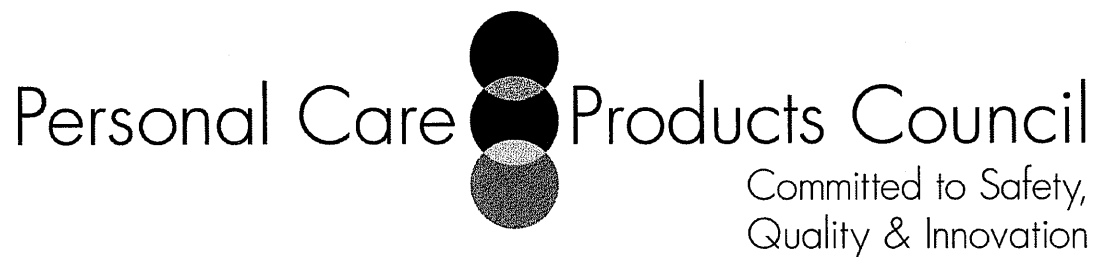
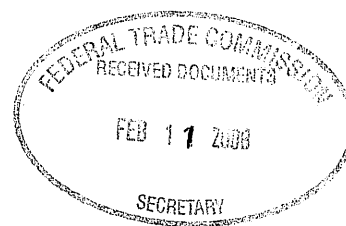


COMMENTS SUBMITTED BY



GREEN GUIDES REGULATORY REVIEW

16 CFR Part 260

Comment, Project No. P954501

February 11, 2008

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

**Re: Green Guides Regulatory Review, 16 CFR Part 260,
Comment, Project No. P954501**

The Personal Care Products Council (the "Council") (formerly, the Cosmetics Toiletry and Fragrance Association) is pleased to provide these comments in response to the Federal Trade Commission's ("FTC" or "Commission") request for public comment regarding the *Guides for the Use of Environmental Marketing Claims* (the "Guides")¹ as part of the Commission's review of its current regulations and guides.²

Based in Washington, D.C., the Council is the leading national trade association representing the \$250 billion global cosmetic and personal care products industry. Founded in 1894, the Council's more than 600 member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the U.S. As the makers of a diverse range of products that millions of consumers rely on everyday, from sunscreens, toothpaste and shampoo to moisturizer, lipstick and fragrance, personal care products companies are global leaders committed to product safety, quality and innovation.

We support FTC in its efforts to update the Guides and believe there will be substantial value for all concerned by the Commission undertaking this review. Caring for the environment is a priority for Council member companies and we believe it is important to ensure our environmental claims are truthful and non-misleading. While we feel the current Guides are relevant and useful, we believe there are opportunities to enhance them and make them even more valuable for industry. Thus, to facilitate review of our comments, we have structured the remainder of this document in two parts: 1. existing areas of the Guides that should be modified to enhance effectiveness; and 2. new areas of the Guides that should be addressed.

1. There are existing areas of the Guides that should be modified to enhance effectiveness

The current Guides address specific environmental claims such as, degradable, biodegradable, recyclable, and compostable, as well as general environmental claims such as eco-safe, environmentally friendly, environmentally safe, and environmentally

¹ 16 C.F.R. Part 260.

² See *Request for Public Comment; announcement of public meetings*, 72 Fed. Reg. 66091 (Nov. 27, 2007).

preferable. Many of these claims are widely used today and FTC guidance addressing these claims remains important and relevant. However, over time some of the examples contained in the Guides lack sufficient clarity or details with respect to the aforementioned claims. Therefore, we are providing our views in the area of claims related to degradability, recyclability, and the use of seals and logos where industry could benefit from clarification from the Commission.

a. Claims related to Degradability

Section 206.7(b) provides guidance on degradability claims and notes that claims should be qualified to the extent necessary to avoid consumer deception about the product or packages ability to degrade in the environment where it is customarily disposed. We agree with this principle and believe the Guides should be updated to provide more explicit guidance on the relevance of biodegradability claims in the United States and the need for appropriate disclaimers for any such claims.

b. Claims related to Recyclability

Section 206.7(d) provides guidance on recyclable claims. The current Guides discourage the use of recyclable claims unless materials are universally recyclable. This result is the unfortunate situation where tons of valuable fiber and plastic are discarded across the country because of relatively minor inconsistencies in recycling efforts. To support the United States Environment Protection Agency's ("EPA") efforts to increase recycling and reduce the amount of recyclable materials in municipal landfills, consumers need to understand that many types of paper and plastic are recyclable in most communities. According to 2006 EPA statistics, 35% of the volume of municipal solid waste is paper and cardboard, and the recovery rate for those products is just 52%. Consideration should be given to a broadening of the allowance for claims – with appropriate qualifications – related to recyclability.³

c. General Environmental Benefit Claims – Use of Seals and Logos

Section 260.7(a) provides useful guidance on general environmental benefit claims. Example 5 of this section addresses the need for appropriate qualifying language for certain types of seals/logos that could connote general environmental benefits. Given the increased use of environmental seals and logos, FTC should revise the current Guides to include further information on this point. Seals and eco-labels that communicate a general "environmentally friendly" message to consumers should be treated as environmental claims within the scope of the guides and be subject to applicable principles and criteria.

³

U.S. Environmental Protection Agency (EPA) – Solid Waste Management, Paper and Paperboard Products <http://www.epa.gov/msw/paper.htm>.

2. There are new areas of the Guides that should be addressed in the Guides

Over the past decade, new environmental concerns have gained prominence. As companies strive to address these concerns via their operations, so have the number of new terms used to describe the same. Some examples include: claims based on “lifecycle theory,” renewable energy, carbon offsets, renewable energy certificates (“RECs”), carbon neutral, carbon footprint, and sustainable. Industry-wide guidelines relating to these new terms would be very useful. Thus, we recommend that the Commission supplement the Guides to address these types of environmental benefit claims.

a. Lifecycle Theory

The Guides currently include a footnote indicating the guides do not address claims based on “lifecycle theory.” We believe the Guides should address claims related to Life Cycle Assessment (“LCA”).

EPA defines the term “life cycle” to refer to “the major activities in the course of the product’s life-span from its manufacture, use, and maintenance, to its final disposal, including the raw material acquisition required to manufacture the product.” Additionally, since the Guides were originally published, internationally recognized standards for LCA have been developed (e.g., ISO 14040).⁴

LCA is a way to evaluate and disclose the environmental benefits of products over their full commercial cycle. It has become a leading tool within companies to understand and manage risks or opportunities associated with products over their entire life cycle and to show how the impact of a specific product on the environment compares to that of products already on the market.⁵

We acknowledge that LCAs are complex; however, there have been significant advances in the use of LCAs over the past fifteen years. As noted above, companies are increasingly using LCAs to measure the impact of their products on the environment. Consequently, we believe the Commission should add a discussion in the Guides that recognizes the increased use of claims based on LCAs. The discussion might address the fact that there are a variety of organizations that have adopted standards, and companies are adopting their own criteria, all seeking to measure LCAs accurately and reliably.

⁴ See e.g., ISO 14040 (2006), *Environmental management - Life cycle assessment - Principles and Framework*, International Standard Organization (ISO). While not all claims require a full LCA, recognizing accepted international standards for LCA will help ensure consistency in claims that do rely upon LCAs for substantiation.

⁵ United Nations Environmental Programme, *Why Take a Life Cycle Approach?* (2004) at <http://www.unep.fr/pc/sustain/reports/lcini/UNEPBooklet.ENGprint.pdf>.

b. Claims Related to Renewable Energy, RECs, Carbon Offsets, Carbon Neutrality, and Carbon Footprints

In FTC's public workshop on Carbon Offsets and Renewable Energy Certificates held on January 8, 2008, the Commission examined claims relating to renewable energy, RECs, carbon offsets, carbon neutrality, and carbon footprints. Discussion during the workshop included the value of such claims in promoting environmentally friendly practices, and the variety of questions associated with consumer understanding of these terms and how they are substantiated.

A "carbon footprint" has been defined as a measure of the amount of carbon dioxide (or greenhouse gases) emitted as a result of making a product.⁶ One descriptor used in the industry for such claims is "carbon neutral," which has been used to indicate a balance between the amount of carbon released from making a product and the amount sequestered or offset in the activity.⁷

According to FTC's Policy Statement Regarding Advertising Substantiation, substantiation generally requires that one have a reasonable basis for any product claim at the time it is made.⁸ The Guides state:

[i]n the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.⁹

Therefore, we believe that carbon footprint claims should be based on competent and reliable scientific evidence and the claims should be properly qualified to define boundaries (*e.g.*, whether the carbon footprint calculation accounted for carbon emissions from the production of raw materials and extended all the way to the product's use by consumers) in a transparent and meaningful way.

⁶ See Carbon Footprint LTD, <http://www.carbonfootprint.com/>.

⁷ The New Oxford American Dictionary (2nd ed.) (carbon neutral was its 2006 word of the year).

⁸ Federal Trade Commission Policy Statement Regarding Advertising Substantiation; *see, e.g., Sears, Roebuck and Co. v. FTC*, 676 F.2d 385, 389 (9th Cir. 1982) (a reasonable basis consists of "(c)ompetent and reliable tests' or other evidence that substantiates such claims.") The court stated that a "[c]ompetent and reliable test' means a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner, using test procedures that insure accurate and reliable results. Such tests must be truly and fully representative of expectable consumer usage." *Id.* (quoting 95 F.T.C. 406, 524-27 (1980)).

⁹ 16 C.F.R. § 260.5.

c. Guidance on Claims Related to Sustainability

Claims regarding environmental “sustainability,” like other general environmental benefit claims, can be difficult to interpret and, depending on its context, may convey a wide range of meanings to consumers.¹⁰ However, when companies make claims about product attributes or company practices as they relate specifically to that product, such claims – with appropriate qualification – can be substantiated and should be addressed by the Guides. For example, if the sustainability claim refers to a product, the claim should indicate to which phase of the product’s life cycle the claim is relating.

It is important to note that FTC describes the Guides as covering claims about products, packages, or services.¹¹ We believe this is an appropriate definition of the scope of the Guides and statements not relating to product attributes (e.g., general descriptions of company philosophy, efforts, or activities) should remain outside the scope of the Guides.¹²

In conclusion, we believe updating the Guides and holding stakeholder workshops on issues of concern is a positive step towards ensuring broad awareness of and adherence to the *Guides for the Use of Environmental Marketing Claims*. We look forward to continued dialogue on the important issue of environmental marketing.

If you have any questions, please contact Farah K. Ahmed, Assistant General Counsel, Personal Care Products Council at 202-331-1770.

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¹⁰ See Information Resources, Inc., *Sustainability 2007: Consumer-Focused CPG Growth Opportunities* (Dec. 2007) at http://us.infores.com/filelib/timestrends/TT_December_2007_Sustainability.pdf (“[s]ustainability marketing is fraught with challenges – principally consumer skepticism and lack of understanding”).

¹¹ 16 C.F.R. § 260.2.

¹² Examples of these areas would include, but not be limited to, company website sections on environmental activities and discussions of activities in annual reports or other comparable communication vehicles.