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May 19, 2008



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

Dear Sir or Madam:

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

Thank you for the opportunity to comment on the Federal Trade Commission's (FTC) review of the "Green Guides" and packaging. We appreciated participating in the April 30, 2008 workshop. These comments will supplement our letter of February 11, 2008 to address issues raised by the FTC or discussed in the packaging workshop.

Sustainability

The Commission is appropriately asking whether new "green" claims have the potential to mislead consumers, and asked for information on the claim "sustainable" or "sustainability." Speakers at the workshop tended to fit "sustainable" into one of two categories: either it was a broad claim and potentially misleading if not backed up one or more specific claims, or it was a term of art – a claim with a precise meaning that could be untrue or misleading in many contexts.

For better or for worse, in our experience consumers place little weight on the word "sustainable." For example, in November 2006, a consultant for Weyerhaeuser conducted focus groups in four major U.S. cities. No one in any of the groups could offer a definition of "sustainable." A participant noted, "Sustainable sounds like a made up word to me." In September 2007, Conservation International described the results of research at a meeting of its Business and Biodiversity Council, which included Weyerhaeuser. The presenter said, "'Sustainability' is meaningless to consumers." The report noted, "Sustainability is a buzzword. While most of the participants were familiar with the term, just about as many couldn't really define what it really meant or how they should apply it to their lives." This shows little change from research Weyerhaeuser conducted in 2001, in which respondents had a low understanding of "sustainability," equating it somewhat negatively to maintaining the status quo.

We therefore recommend the Commission treat "sustainability" as a broad claim (if not puffing), which should be backed up with specific claims. We agree with Kathy Abusow, President of the Sustainable Forestry Initiative, that a claim of "sustainable forestry" in the context of a forest certification system provides consumers with specific, factual information and is not a broad claim. We know of no basis for treating it like "recyclable," a term of art important to consumers.

Environmental seals and certifications

The emergence of environmental seals and third-party certifications is one of the most important trends the FTC identified as posing potential problems for consumers. These seals and certifications also present potential benefits to consumers, and reflect a long-standing practice in U.S. markets of using voluntary standard-setting organizations. They are especially useful in technical areas, where consumers face difficulty in understanding or directly measuring benefits. To realize their value and not be misleading, however, private sector standards must endorse options that are indeed environmentally superior, based on competent scientific evidence.

The best way to fully develop the facts about the environmental attributes of a certain product or service is to develop standards in a consensus forum with balanced representation reflecting diverse points of view, based on a foundation of objective technical criteria. OMB Circular No. A-119 requires that voluntary, private sector standards be set by a body that is open, reflects a balance of interests, operates by due process, includes an appeals process, and operates by consensus. OMB Circular A-119 is important because it is the basis for deference under the anti-trust laws, and it establishes the requirements voluntary, private sector standards must meet if federal agencies wish to use them in meeting their own requirements, such as for government procurement. These principles are also reflected in the American National Standard Institute's (ANSI) due process requirements. The Commission may want to consider adding guidance around these processes to the Guides.

At a minimum we recommend adding to the Guides, or creating clear cross references to, the FTC's rules and guidelines on the use of endorsements and testimonials in advertising. "Green" labels and marketing are growing so rapidly, both new certification schemes and companies using their labels may not understand that the name or seal of an organization is an endorsement, which consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. This would raise awareness of the basic requirements of the use of third-party seals and labels:

- Endorsements must reflect honest opinions or experience of the endorser, and may not contain factual representations that would be deceptive or could not be substantiated if made directly by the advertiser.
- Expert endorsers must in fact be qualified experts, whose endorsements are supported by exercise of special expertise in areas relevant to consumers.
- If an endorsement implies a comparison to competing products, the comparison must have been actually made, considered in the expert's evaluation, and contributed to the expert's good faith conclusion that the endorsed product is at least equal to the competing product in features relevant and available to ordinary consumers.
- Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member, and is generally free of subjective factors which vary from individual to individual. Therefore an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization members.
- Advertisers must fully disclose any connections with an endorser that might materially affect the weight or credibility of the endorsement if the connection is not already known or reasonably expected by the audience.

The Guides could add value by clarifying these requirements for both the advertisers and the endorsing certification systems.

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Thank you again for the opportunity to comment.

Cassie Phillips
Vice President
Sustainable Forests & Products