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February 11, 2008

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

Dear Sir or Madam:

Enclosed is the response of the Grocery Manufacturers Association (“GMA”), the American Bakers Association, the Food Marketing Institute (“FMI”), the International Bottled Water Association (“IBWA”), the International Dairy Foods Association (“IDFA”), and the Soap and Detergent Association to the Federal Trade Commission’s request for comment on its Guides for the Use of Environmental Marketing Claims. We appreciate the Commission’s attention to this matter.

Sincerely,

William C. MacLeod

Enclosure

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
Comments On Guides For The Use)	Grocery Manufacturers Association;
Of Environmental Marketing Claims)	American Bakers Association;
)	Food Marketing Institute;
Commission File No. P954501)	International Bottled Water Association;
)	International Dairy Foods Association; and
)	Soap and Detergent Association
)	
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**COMMENTS ON THE COMMISSION’S GUIDES FOR THE USE OF
ENVIRONMENTAL MARKETING CLAIMS**

The Grocery Manufacturers Association (“GMA”), the American Bakers Association, the Food Marketing Institute (“FMI”), the International Bottled Water Association (“IBWA”), the International Dairy Foods Association (“IDFA”), and the Soap and Detergent Association are pleased to provide these comments for the record in response to the Federal Trade Commission’s (“FTC” or “Commission”) request for public comments regarding its Guides for the Use of Environmental Marketing Claims (the “Guides”)¹ as part of the Commission’s systematic review of all current regulations and guides.²

GMA is the world’s largest association of food, beverage, and consumer product companies. The \$2.1 trillion food, beverage and consumer packaged goods industry employs 14 million workers, and contributes over \$1 trillion in added value to the nation’s economy. The association applies legal, scientific, and political expertise from its member companies to promote sound public policy, champions initiatives that increase productivity and growth, and helps to protect the safety and security of the food supply throughout the world. GMA is led by a Board of fifty-two member company chief executives. GMA speaks for food and consumer product manufacturers at the state, federal, and international levels on legislative and regulatory issues.

For over 100 years, the American Bakers Association has represented the interests of the wholesale baking industry and its suppliers – companies that work together to provide over 80 percent of the wholesome and nutritious bakery products purchased by American consumers.

¹ 16 C.F.R. Part 260.

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

FMI conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies - food retailers and wholesalers - in the U.S. and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$680 billion - three-quarters of all retail food store sales in the U.S. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 50 countries.

IBWA is the authoritative source of information about all types of bottled waters, including spring, mineral, sparkling, well, artesian, groundwater and purified bottled water products. Founded in 1958, IBWA's membership includes U.S. and international bottlers, distributors and suppliers. Contact IBWA at 1-800-WATER-11 or log onto IBWA's website, www.bottledwater.org, for more information about bottled water and a list of members' brands.

IDFA, Washington, DC, represents the nation's dairy manufacturing and marketing industries and their suppliers, with a membership of 530 companies representing a \$90-billion a year industry. IDFA is composed of three constituent organizations: the Milk Industry Foundation (MIF), the National Cheese Institute (NCI) and the International Ice Cream Association (IICA). IDFA's 220 dairy processing members run more than 600 plant operations, and range from large multi-national organizations to single-plant companies. Together they represent more than 85% of the milk, cultured products, cheese and frozen desserts produced and marketed in the U.S. IDFA can be found online at www.idfa.org.

The Soap and Detergent Association is a 100 plus-member national trade association representing the formulators of soaps, detergents, and general cleaning products used in household, industrial, institutional and commercial settings, and the companies that supply ingredients and packaging for these products.

The members of all of these organizations ("the members") are committed to assisting the Commission in its efforts to update the Guides and believe there will be substantial value for all concerned by the Commission undertaking this review. In this spirit, the members offer suggested revisions on some aspects of the current Guides and proposals for possible supplementation of the Guides to address the emerging market for new "green" advertising claims. GMA, the American Bakers Association, FMI, IBWA, IDFA, and the Soap and Detergent Association were original supporters of the Guides in the early 1990s when the increasing popularity of environmental protection trends stimulated consumer demand for products that offered these types of benefits, and the marketing of such products provoked inconsistent regulatory reactions.³ GMA, FMI, and IDFA, in cooperation with eight other associations,⁴ spearheaded an effort to petition the FTC to adopt a consistent set of guidelines for

³ See Roscoe B. Starek, III, *The Federal Trade Commission's Green Guides: A Success Story*, prepared remarks before the Alliance for Beverage Cartons and the Environmental Symposium, Brussels, Belgium (Dec. 4, 1996).

⁴ These associations included: the National Food Processors Association (now merged with GMA), the American Association of Advertising Agencies, the American Frozen Food Institute, the Association of National Advertisers, the Can Manufacturers Institute, the Chemical Specialties Manufacturers Association, the Food

marketers on environmental marketing claims.⁵ In response to this petition and the requests by other industry and governmental representatives, the Commission issued the 1992 Guides. Over the past fifteen years, the Guides (as revised in 1998) have continued to meet the needs of industry. They have promoted truthful environmental advertising and have encouraged industry to make environmental improvements by providing us with the incentive to confidently and fairly advertise those improvements to the public.

The members have found the examples in the Guides to be particularly useful in gleaning how the FTC staff may interpret various statements of environmental benefit. However, fifteen years of changes in technology and science have opened opportunities for examples in the Guides to be enhanced to provide more useful and current guidance. Consumers are increasingly using the Internet and other sources to access information about product benefits and services. In addition, the growing concern over global warming has inspired a flurry of economic activity and a new wave of environmental benefit claims relating to greenhouse gas emissions. As a consequence, the Guides are now revealing gaps in the area of new “green” claims. These gaps raise the risk that incompatible regulations and standards may again fill the voids and, more importantly, that consumers may be confused by inconsistent claims made in the absence of any guidance. The application of inconsistent standards to these types of environmental claims could retard environmental improvements by stifling the ability to impart truthful and valuable information about environmental benefits. We believe that the same general principles that the Commission applied in the 1990s to claims in use at that time can be readily applied to new claims that we are seeing in the marketplace today.

I. Specific Areas of Interest for Revision of the Guides

The current Guides address specific environmental claims such as, recyclable, compostable, degradable, and biodegradable, as well as general environmental claims like eco-safe, environmentally friendly, environmentally safe, and environmentally preferable. Many of these claims remain popular today and the FTC guidance addressing these claims is still very important and relevant. Over time, however, the members have found that some of the examples lack sufficient clarity or details concerning a specific issue. Therefore, we would like to point out a few issues in the area of seals, logos, certifications, and source reduction claims where industry would benefit from clarification from the Commission.

A. Additional Guidance on the Use of Seals and Logos Should be Provided.

The section dealing with general environmental benefit claims, 16 C.F.R. § 260.7(a), provides useful guidance. It refers to the Commission’s Policy Statement Regarding Advertising

Marketing Institute, the Grocery Industry Committee on Solid Waste, the Grocery Manufacturers of America, the International Dairy Foods Association, and the Steel Can Recycling Institute.

⁵ See Petition for Industry Guides for Environmental Claims Under Section 5 of the Federal Trade Commission Act, Feb. 14, 1991.

Substantiation,⁶ which states that “every express and material implied claim that [a] general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product or service must be substantiated. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.”⁷ Example 5 of this section specifically addresses the need for qualifying language for environmental seals and logos that could connote general environmental benefits:

A product label contains an environmental seal, either in the form of a globe icon, or a globe icon with only the text “Earth Smart” around it. Either label is likely to convey to consumers that the product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive. The claims would not be deceptive if they were accompanied by clear and prominent qualifying language limiting the environmental superiority representation to the particular product attribute or attributes for which they could be substantiated, provided that no other deceptive implications were created by the context.⁸

Logos and seals remain popular devices to communicate claims of all kinds. The types of logos and seals used on products today vary from seals of certification issued by third-parties to logos developed internally by company-specific standards. Given the continued use of logos and seals to convey environmental benefits, the members believe the Guides should be revised to include additional examples to illustrate when qualifications are necessary and ways in which qualifying language could successfully limit claims of this type. The Commission might consider the following example:

Example: Company X’s product label contains an environmental seal, *Name-Your-Green Seal*, and the following qualifying language: *Company X makes this product with recycled ingredients. To learn about Company X’s Name-Your-Green Seal program, go to www.companyx/nameyourgreenseal.com.* The qualified claim would not be deceptive because it limits the environmental representation to a particular product attribute, that it is made from recycled material, there is no context suggesting a broader claim, and the company has proper substantiation for this claim. The reference to the website adds helpful information, but does not alter the legal analysis.

B. Additional Guidance on the Use of Certifications Should be Provided.

The members believe that industry would benefit from additional guidance on certifications. We recognize that guidance on this topic currently exists in the introduction to the Guides, but we think this guidance – namely, “[i]f the seal-of-approval implies that a third party has certified the

⁶ *Federal Trade Commission Policy Statement Regarding Advertising Substantiation*, appended to *Thompson Medical Co.*, 104 F.T.C. 648 (1984).

⁷ Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.7(a) (2007).

⁸ *Id.*

product, the certifying party must be truly independent from the advertiser and must have professional expertise in the area that is being certified” – should be included in the Guides under § 260.7(a).⁹ Third-party certification organizations are required to meet the criteria for endorsements and testimonials, espoused by the Commission in its Guides Concerning Use of Endorsements and Testimonials in Advertising; specifically, the certification organization must have reached its determination about the product by a process sufficient to ensure the endorsement (or certification) fairly reflects the collective judgment of the entire organization.¹⁰ If that organization is represented as expert, it must apply that expertise in evaluating the features or characteristics of the product,¹¹ or apply previously devised standards to judge the merits of the advertised products.¹²

The Guides should also explain the circumstances in which “[t]hird-party certification does not insulate an advertiser from Commission scrutiny or eliminate an advertiser’s obligation to ensure for itself that the claims communicated by the certification are substantiated.”¹³ Industry would benefit from an example on this point, importantly, to clarify the circumstances in which an advertiser must ensure for itself that the claims communicated by the certification company are substantiated. If the certification company is independent from the advertiser and has professional expertise in the area that is being certified, and the advertiser has no reason to believe that the company departed from its typical practices in providing the certification, we believe that the advertiser would not need to undertake an investigation of the certifying company to ensure that the claims communicated are substantiated.

C. Additional Guidance on the Use of Source Reduction Claims Should be Provided.

The section dealing with comparative claims, 16 C.F.R. § 260.6(d) and the introduction to the Guides provide guidance on source reduction claims. The introduction to the Guides states: “[t]o avoid being misleading, source reduction claims must qualify the amount of the source reduction and give the basis for any comparison that is made.”¹⁴ The section in the Guides on comparison claims further notes that “the advertiser should be able to substantiate the comparison.”¹⁵ The members would like to see an additional example under section 260.6(d) to illustrate how a company might substantiate these types of claims. We believe that, provided the information that serves as the basis for the comparison is from a reputable source, it should qualify as proper substantiation for the comparison. The following example illustrates this point:

⁹ See Introduction to the Guides.

¹⁰ *FTC Guides Concerning Use of Endorsements and Testimonials in Advertising*, 45 FR 3873, Jan. 18, 1980, as amended, 16 C.F.R. § 255.4, available at <http://www.ftc.gov/bcp/guides/endorse.htm>; see, e.g., *Black & Decker (U.S.), Inc.*, 113 F.T.C. 63 (1990) (endorsement by National Fire Safety Counsel was deceptive because the group did not have the expertise to evaluate or test appliance’s safety).

¹¹ *Id.* at § 255.3(b).

¹² *Id.* at § 255.4

¹³ *Id.*

¹⁴ Introduction to the Guides.

¹⁵ 16 C.F.R. § 260.6(d).

Example: An advertiser claims that *its washing machines are 30% more efficient than typical washing machines were in 2006*. The advertiser uses data on energy expended by washing machines in 2006, which it obtained from a reputable source and compares that value to the amount of electricity used by its current washing machines to substantiate this claim. The qualified claim would not be deceptive.

II. Specific Areas of Interest for Supplementing the Guides

Since the 1990s, new environmental concerns have gained prominence, and a number of new terms are evolving to address those concerns. Some examples include: renewable energy, carbon offsets, renewable energy certificates (RECs), carbon neutral, carbon footprint, and sustainable. As advertisers and marketers seek to communicate with consumers about these issues, we find ourselves in circumstances similar to those in the early 1990s; consumers are interested in buying products with new environmental benefits while businesses are eager to advertise their efforts in this area.¹⁶ Without industry-wide guidelines relating to these new terms, however, advertisers may be reluctant to make such claims for fear that the claims may be allowed in some jurisdictions and prohibited in others. Accordingly, we urge the Commission to supplement the Guides to address these types of environmental benefit claims. To assist the Commission in this effort, we provide the following suggestions and comments:

A. The Guides Should Be Supplemented to Include Guidance on Claims Related to Renewable Energy, RECs, Carbon Offsets, Carbon Neutrality, and Carbon Footprints.

In its workshop on January 8, 2008, the Commission staff examined claims relating to renewable energy, RECs, carbon offsets, carbon neutrality, and carbon footprints. There are a variety of questions associated with consumer understanding of these terms and how these claims 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.¹⁷ 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.¹⁸ If a product is advertised as “carbon neutral,” however, will consumers understand the claim the same way? If so, how would a company substantiate such a claim? Industry would benefit from the Commission’s guidance on these complex issues. The Commission might consider the following example to be a properly substantiated claim:

Example: A product is advertised as *Carbon Neutral Packaging* and qualified with the statement: *No net carbon emissions generated in the packaging of this product*. The qualified claim would not be deceptive because it discloses the fact that the carbon

¹⁶ 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.

¹⁷ See Carbon Footprint LTD, <http://www.carbonfootprint.com/>.

¹⁸ The New Oxford American Dictionary (2nd ed.) (carbon neutral was its 2006 word of the year).

neutrality claim is limited to the advertiser's activities in packaging the product and it is properly substantiated by the company, as systems are in place internally to measure, validate, and offset all carbon emissions in the packaging of the product.

Under the 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.¹⁹ The Guides explain that "[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."²⁰

Most companies are not equipped to evaluate the scientific details of carbon offsets or RECs they are purchasing. For example, if a company is purchasing a carbon offset from a third-party, it would be very difficult for that company to ensure that the offset is real and measurable. In addition, some of the members know from experience that carbon footprint labels for individual products can have significant uncertainty and calculated scores can be imprecise. The current lack of a standard methodology, inherent assumptions, and choice of boundary conditions make it very difficult for companies to communicate carbon footprint values for individual products to consumers in a meaningful and transparent way.²¹ Given the lack of a standard methodology and numerous complexities in this area, it is important that the Commission provide guidance on carbon footprint labels for individual products. In principle, the members believe that carbon footprint labels must be accurate, based on sound science, and properly qualified to communicate 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 and disposal), assumptions, and methodology used in a transparent and meaningful way.

Carbon offset claims that involve a valid third-party certification of a carbon offset or a REC should be sufficient substantiation for these types of claims. Certification programs address many of the complex issues that businesses or individuals cannot address on their own. Although certification standards may differ, in most cases, the third-party certifier is verifying that carbon offset or REC purchases are real and measurable. In light of the foregoing, we ask that the Commission consider using the following example to provide a "safe harbor" for carbon-related claims:

¹⁹ 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 went on to explain 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)).

²⁰ 16 C.F.R. § 260.5.

²¹ *See e.g., "Carbon Conundrum," Consumer Reports* (Feb. 2008) at <http://www.consumerreports.org/cro/money/travel/carbon-output-2-08/overview/carbon-output-ov.htm?resultPageIndex=1&resultIndex=2&searchTerm=carbon> on the variability of measuring carbon footprints.

Example: A clothing line is advertised as *carbon neutral* and qualified with the phrase *We purchase Name-Your-Green Certifier certified carbon offset credits to offset 100% of the carbon dioxide we emit from manufacturing X clothing line.* Name-Your-Green Certifier is a reputable third-party certification program. In addition, the organization's certification criteria are available on its website and these criteria appear to be based on professional expertise. The advertiser has no reason to doubt the bona fides of the offsets purchased. Therefore, the qualified claim would not be deceptive.

B. The Guides Should Be Supplemented to Include Guidance on Claims Related to Sustainability.

The concept of environmental “sustainability” has generated increasing interest among manufacturers, suppliers, retailers, consumers and policy-makers.²² According to a recent survey of over 22,000 U.S. consumers, roughly half consider at least one sustainability factor when selecting brands to buy or stores to shop.²³ The term “sustainable” can be subjective and include a wide variety of economic, social, and environmental considerations. A commonly adopted definition of sustainability is development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”²⁴ However, like other general environmental benefit claims, the term “sustainable” is difficult to interpret and, depending on its context, may convey a wide range of meanings to consumers.²⁵ We believe that the Guides should be updated to include a discussion of “sustainable” claims and what constitutes a reasonable basis for substantiating such claims. The Guides should reflect that general claims about environmental sustainability should be properly qualified to avoid consumer deception.

The FTC describes the Guides as covering claims about products, packages, or services.²⁶ We believe this is an appropriate definition of the scope of the Guides. Statements that do not relate to product attributes – for example, general descriptions of company philosophy, efforts, or activities – should remain outside the scope of the Guides.²⁷ On the other hand, when companies make claims about product attributes or company practices as they relate specifically to that

²² For example, the Keystone Center's “New Agriculture Sustainability Initiative” is exploring specific criteria for companies to meet sustainability outcomes for agriculture and agricultural products.

²³ Information Resources, Inc., *Sustainability 2007: Consumer-Focused CPG Growth Opportunities* (Dec. 2007) at http://us.infores.com/filelib/timestrends/TT_December_2007_Sustainability.pdf.

²⁴ United Nations, *Report of the World Commission on Environment and Development* (also known as the Brundtland report) (Dec. 11, 1987) at <http://www.un.org/documents/ga/res/42/ares42-187.htm>. The U.S. Environmental Protection Agency (EPA) has also adopted this definition of sustainability: <http://www.epa.gov/sustainability/>.

²⁵ 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”).

²⁶ 16 C.F.R. § 260.2

²⁷ 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.

product, such claims – with appropriate qualification – can be substantiated and should continue to be addressed by the Guides. For example, as part of its sustainability efforts, a company purchases crops from nearby farmers. The following example should be considered by the Commission to be a properly qualified claim:

Example: *As part of our sustainability efforts, we purchase Product Z from nearby farmers and transport it in energy-efficient hybrid vehicles.* This qualifier limits the environmental representation to a particular aspect of the company’s business practice, and the company can substantiate this claim.

C. The Guides Should Be Supplemented to Include Guidance on Claims Based on a Life Cycle Assessment.

The U.S. Environmental Protection Agency (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.”²⁸ A Life Cycle Assessment (LCA) is a way to evaluate and disclose the environmental benefits of products over their full commercial cycle.²⁹ 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.³⁰

The Guides currently include a footnote indicating that claims based on “lifecycle theory” have not been addressed because the Commission “lacks sufficient information on which to base guidance on such claims.”³¹ The members believe the Guides should address claims based on LCAs by adding to the existing footnote or including a brief discussion of LCAs in the Guides. The members acknowledge that LCAs are complex; however, there have been significant advances in the use of LCAs over the past fifteen years and, as noted above, companies are increasingly using LCAs to measure the impact of their products on the environment. Consequently, the members would like the Commission to 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,³² and companies are adopting their own criteria, all seeking to measure LCAs accurately and reliably and to provide transparency and boundaries to the measurement.

²⁸ See Scientific Applications International Corporation (SAIC), *Life Cycle Assessment: Principles and Practice* (May 2006) at <http://www.epa.gov/nrmrl/lcaccess/pdfs/600r06060.pdf>.

²⁹ *Id.*

³⁰ United Nations Environmental Programme, *Why Take a Life Cycle Approach?* (2004) at <http://www.unep.fr/pc/sustain/reports/lcini/UNEPBooklet.ENGprint.pdf>.

³¹ Footnote 2 of the Guides.

³² See e.g., ISO 14040 (2006), *Environmental management - Life cycle assessment -Principles and Framework*, International Standard Organization (ISO).

III. Conclusion

As a final note, the members would like the Commission to emphasize the importance of the Guides as an indication of potential enforcement. We are confident that most advertisers will use the Guides as intended – to communicate accurate and substantiated claims to the marketplace. The occasional advertiser may need a reminder, however, that the Commission intends to apply Section 5 of the FTC Act, which prohibits unfair and deceptive acts and practices, to environmental claims that fail to measure up to the standards in the law. We welcome the Commission's efforts to provide guidance on the application of the law, and the Commission's enforcement of the law when advertisers fail to heed the guidance.

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GMA, the American Bakers Association, FMI, IBWA, IDFA, and the Soap and Detergent Association appreciate this opportunity to share their views and stand ready to participate in continued work of the FTC staff.