



February 11, 2008

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

Re: Comments to the Green Guides Regulatory Review, 16 CFR Part 260, Project No. P954501

Dear Sir or Madam:

The American Beverage Association (“ABA”) is pleased to submit these comments to the Federal Trade Commission (“FTC” or “Commission”) in response to the Commission’s request for public comment on the Guides for the Use of Environmental Marketing Claims (“Green Guides”) published in the Federal Register on November 27, 2007. The ABA and its member companies strongly support the Green Guides as an important tool to guide industry in accurately communicating important messages to consumers about recyclability and other positive environmental attributes of our members’ products and packages. We also strongly support the Commission’s review of the Green Guides as a means to assure that they appropriately reflect changing consumer perceptions regarding environmental claims, while at the same time preserving flexibility to permit future claims based on further innovation in packaging resource management and environmental sustainability.

As explained below, we believe the Green Guides should: (1) be amended to reflect the implied claims for recyclability associated with the use of Society of the Plastics Industry (“SPI”) codes on product packaging; (2) encourage industry to invest in sustainable packaging innovation; and (3) provide clear guidance to industry to ensure consumer comprehension of environmental claims.

The ABA is the trade association for America's non-alcoholic refreshment beverage industry. Founded in 1919 as the American Bottlers of Carbonated Beverages and renamed the National Soft Drink Association in 1966, the ABA today represents hundreds of beverage producers, distributors, franchise companies and support industries. ABA’s members employ more than 211,000 people responsible for U.S. sales in excess of \$100 billion per year. Members market hundreds of brands, flavors and packages, including carbonated soft drinks, ready-to-drink teas and coffees, bottled waters, fruit juices, fruit drinks, sports and energy drinks.

The ABA is a founding sponsor of America Recycles Day and is a founding member, along with the U.S. Environmental Protection Agency (EPA), of the National Recycling Partnership. The National Recycling Partnership is a coalition coordinated by the National Recycling Coalition to revive consumers' interest in recycling by educating them on what, how, and why to recycle. The ABA also continues to promote the availability of its award-winning Recycle It Now advertising spots, which communities across the country, both large and small, are using to encourage recycling among consumers.

The beverage industry has a longstanding commitment to recycling; we are proud of our industry's leadership efforts and our strong partnerships designed to promote recycling throughout the country. Our members are strongly committed to packaging our products with materials that are widely accepted in recycling programs and are designed to be recyclable with other, similar materials (primarily, aluminum and PET). In fact, the beverage industry's bottles and cans are among the most recycled consumer packaging in the United States - as more than 95 percent of our members' packaging is recyclable.

I. Importance of the FTC Green Guides to Accurately Communicate Environmental Claims to Consumers

As a committed leader in sustainable packaging practices, the ABA believes the Green Guides have been an essential tool to communicate truthful environmental claims to consumers. In order to protect consumers and to promote innovation in environmentally-friendly packaging, it is important that the Commission strongly and consistently apply the Green Guides to ensure environmental claims are accurate and not misleading, and that environmental claims provide useful information to consumers in order to promote positive environmental outcomes.

In order for an environmental claim to be useful to a consumer, a claim must be carefully crafted to anticipate consumer perceptions and avoid consumer confusion. In this regard, the ABA is troubled by the Commission's current stance in the Green Guides regarding the display of SPI codes on containers.

According to the Green Guides, if the SPI code is "placed in an inconspicuous location on the container (e.g., embedded in the bottom of the container) it would not constitute a claim of recyclability." 16 CFR § 260.7(d). In our view, however, consumers often interpret this symbol to mean the package can be recycled regardless of where the code is located or what number is inside the code. While the ABA recognizes the need for resin code identification on plastic containers, we strongly believe the SPI code in its current format constitutes a claim of recyclability wherever it is located.

Although packaging for the vast majority of products marketed by ABA members bear SPI codes for recyclable plastics, the plastic packaging for many other products with SPI codes cannot be recycled; there are seven types of resins and because resins three through seven are not easily recycled, packages with these resins are not always accepted by local recycling programs. Not only is this a problem for consumers, who because of a "chasing arrow" symbol have the mistaken belief that they are purchasing a recyclable package, but for our partners in the recycling community as well. Due to the incorrect belief that the presence of chasing arrows indicates recyclability,

consumers discard non-recyclable packaging into recycling bins that then require either extra sorting or ultimately result in contamination of the recycled plastic feedstock.

Accordingly, to avoid consumer confusion, we urge the Commission to revise the Green Guides to classify the SPI code as a claim of recyclability and to require a qualifying statement if there are only limited recycling programs for the container. Such action by the FTC would provide clear guidance to the industry, assist consumers in recycling efforts, and protect the increasingly important supply of recycled materials from inadvertent contamination.

The ABA is also concerned about the integrity of broad climate change claims. Due to increasing public concern for the environment, the Commission should expect an increase in environmental marketing claims that attempt to characterize or assess a product's contribution (through recycling programs or other environmentally conscious production efforts) to total greenhouse gas reduction or broader climate change. Although, the Commission's guides should be flexible enough to permit such claims when they are accurate and non-deceptive, it is important to limit climate change claims that would confuse consumers about the extent of the overall benefits derived from recycling or purchasing products manufactured using environmentally friendly techniques. The ABA encourages the Commission to make changes to the Green Guides to ensure that claims made under the broad umbrella of "climate change": 1) are made within a clearly defined framework to avoid confusion; and 2) do not give undeserved credit for the overall reduction of greenhouse gases.

II. Importance of the Green Guides to Promote Environmental Innovation in Product Packaging

To date, the Green Guides have had a highly positive impact on environmental innovation. Specifically, the Green Guides have encouraged the beverage industry to constantly innovate and improve its packaging while reducing the overall environmental footprint. From lightweight packaging to biodegradability, our members proactively invest in, and develop, innovative sustainable packaging.

Currently, the Green Guides allow both qualified and unqualified environmental marketing claims. This allows consumers to have access to accurate information that is not misleading, while at the same time encouraging industry to invest in innovation that can eventually lead to stronger environmental claims regarding their product and/or its packaging. To promote industry commitment to innovation and investment, the ABA urges the Commission to maintain flexibility in the Green Guides so that environmentally-conscious industries, such as the beverage industry, can be assured that they will ultimately be able to market their innovations to consumers. Any Green Guide modifications should be carefully crafted to ensure adequate flexibility to encourage industry to invest in sustainable packaging innovation, while at the same time providing clear guidance to industry such that consumers can ultimately comprehend environmental claims.

III. Conclusion

Environmental stewardship is a critical part of the ABA members' operating philosophy. Beverage producers have a long history of providing environmental leadership and our industry will continue to innovate and undertake sustainable environmental practices to perform our role as a good steward of our planet. We applaud the Commission's efforts to reassess the Green Guides to ensure current environmental claims are based on competent and reliable scientific evidence and do not

mislead consumers. The ABA strongly supports changes to the Green Guides that will foster accurate environmental marketing claims, reduce consumer confusion surrounding environmental claims, and allow for the flexibility necessary to foster environmentally-conscious innovation.

The ABA welcomes the opportunity for further comment on any changes the FTC may propose in response to these and other comments submitted as part of the Green Guides review process.

Sincerely,

Susan Neely
American Beverage Association