



SUSTAINABLE TECHNOLOGY & POLICY PROGRAM  
SCHOOL OF PUBLIC HEALTH  
21-293 CHS, BOX 951772  
LOS ANGELES, CA 90095-1772

Donald S. Clark  
Secretary of the Commission  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

November 16, 2012

**RE: Comment on September 20, 2012 Notice of Proposed Rulemaking for Care Labeling Rule, 16 CFR Part 423, Project No. R511915**

Dear Commissioner Clark:

The purpose of this letter is to voice support for alternative amendment to the 2012 Notice of Proposed Rulemaking (NPR) to require the use of a 'Professional Wetclean' label when there is a reasonable basis for the label and where the manufacturer believes that the item needs professional cleaning, or recommends professional cleaning, or any other instances in which a 'Dryclean' or 'Dryclean Only' label is also listed on the label. We request an opportunity to present our views orally, and further request that an informal hearing or workshop be developed in order that the full body of evidence supporting the required use of the label be fully discussed.

Initial support in the 1990s for the professional wet clean instruction came from the United States Environmental Protection Agency because professional wet cleaning represented a viable pollution prevention alternative to traditional dry cleaning. The vast majority of dry cleaners in the United States operate machines with perchloroethylene (PCE); a chemical listed in the Clean Air Act as a hazardous air pollutant and a leading source of soil and drinking water contamination.

In 2000, the last time the FTC proposed amendments to the care label rule, the Commission favored creating the professional wet cleaning instruction, but deferred moving forward until both a standardized definition had been developed and until a standardized methodology for testing was established. In 2007, the International Standardization Organization (ISO) finalized a professional wet clean care label instruction, which includes a definition of professional wet cleaning, standardized test procedures for professional wet cleaning, and a symbol system corresponding to the test procedures.<sup>1</sup>

<sup>1</sup> ISO 3175-4:2003(E). (2003) *Procedure for testing performance when cleaning and finishing using simulated wetcleaning*. ISO 3758:2005(E). (2005) *Textiles -- Care labelling code using symbols*.

The 2011 Advanced NPR asked for comments on amendments to the care label rule, including whether the FTC should proceed with a ‘Professional Wetclean’ care label. The overwhelming majority of comments that referenced wetcleaning supported developing a professional wet cleaning label. And of those commenting on whether to allow or require its use, the vast majority supported a requirement.

The 2012 NPR recommended adopting the ISO professional wet clean instruction, seeing a specific societal benefit – “a professional wetcleaning instruction would provide consumers with useful information regarding the care of the apparel they purchase.”<sup>2</sup> On the question of whether to simply permit the use of the ‘Professional Wetclean’ label or to require its use, the NPR states the following: “None of the comments provided evidence that the absence of a wetcleaning instruction for products that can be wetcleaned would result in deception or unfairness under the FTC Act. Nor did they provide evidence that the benefits of requiring a wetcleaning instruction would exceed the costs such a requirement would impose on manufacturers and importers. Thus, the Commission declines to propose amending the Rule to require a wetcleaning instruction.”<sup>3</sup>

The NPR next suggests that the benefits of the new ‘Professional Wetclean’ label could be generated through customer demand for the label: “If consumers prefer wetcleaning to drycleaning and make their purchase decisions accordingly, manufacturers and importers will have an incentive to provide a wetcleaning instruction either in addition to, or in lieu of, a drycleaning instruction.”<sup>4</sup> While the NPR does acknowledge the current unfair advantage of the ‘Dry Clean’ label over the new “Professional Wetclean” label, the FTC suggests that the market mechanism will correct this, stating: “Furthermore, by treating drycleaning and wetcleaning in a similar fashion—as care procedures that manufacturers and importers can disclose to comply with the Rule—the Rule as proposed would help level the playing field for the drycleaning and wetcleaning industries.”<sup>5</sup> While it is clear that the FTC believes the benefits of the professional wetclean instruction can, in theory, be generated by consumer demand and that a market mechanism is sufficient to correct the competitive disadvantage that the drycleaning industry has over the wetcleaning industry, the NPR provides no evidence that such a mechanism will work.

An analysis of existing evidence not only strong supports the two criteria identified in the NPR for requiring the use of the ‘Professional Wetclean’ instruction but, equally strongly, refuses a market mechanism/customer demand approach to generate benefits of a professional wet clean instruction. The following sections of this comment are designed to showcase the evidence supporting the two criteria necessary for moving forward with a required use as well as evidence that undermines a market approach.

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<sup>2</sup> 2012 NPR, p.58345.

<sup>3</sup> 2012 NPR, p.58345.

<sup>4</sup> 2012 NPR, p.58345.

<sup>5</sup> 2012 NPR, p.58345.

Evidence that absence of a wetcleaning instruction for products that can be wetcleaned would result in deception or unfairness under the FTC Act.

The main purpose of the care label rule administered by the FTC is to assist consumers in making informed purchase decisions and to enable consumers and cleaners to avoid product damage.<sup>6</sup> That said, FTC's principal mission is the promotion of consumer protection, including reducing deception and unfair acts or practices. The Commission defines an act or practice as deceptive if there is a misrepresentation, omission, or other practice that misleads the consumer acting reasonably in the circumstances, to the consumer's detriment.<sup>7</sup> The Commission defines an act or practice to be unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.<sup>8</sup>

As defined by the FTC Act, there is substantial evidence that the absence of a wetcleaning instruction for products that can be wetcleaned would result in deception. The evidence provided shows who is potentially being deceived, the prevalence of deception, and the mechanism causing the "misrepresentation, omission, or other practice that misleads the consumer acting reasonably in the circumstances."

There is a substantial body of evidence that the vast majority of garments labeled 'Dryclean Only' or 'Dryclean' can be successfully wetcleaned. This evidence comes from peer review studies and third party research of drycleaners who have removed their drycleaning machines and installed professional wet cleaning equipment as well as comments to the ANPR submitted by dry cleaners who have converted to professional wet cleaning.<sup>9</sup> These studies and comments demonstrate that virtually all 'Dryclean Only' or 'Dryclean' labeled garments previously processed at dry cleaners are being successfully wet cleaned by these same cleaners after converting to professional wet cleaning. This evidence strongly suggests that the prevalence of potential deception is widespread.

In addition, there is a substantial body of evidence that customers using dry cleaning services interpret a "Dryclean" label as meaning that dry cleaning is the only method or recommended method of cleaning. In the 1999 FTC care label workshop, Clorex and Proctor and Gamble presented results from two separate surveys which demonstrated that a significant percentage of customers interpret 'Dryclean' label to mean that dry cleaning is the proper method to clean the garment or the preferred method.<sup>10</sup> Elaine Kolish the FTC co-chairperson of the workshop, in

<sup>6</sup> <http://www.ftc.gov/bcp/rulemaking/carelabel/990129car.pdf>, p.10, Line 20

<sup>7</sup> <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>.

<sup>8</sup> [www.ftc.gov/bcp/policystmt/ad-unfair.htm](http://www.ftc.gov/bcp/policystmt/ad-unfair.htm).

<sup>9</sup> Sinsheimer P, Grout C, et al. (2007) The Viability of Professional Wet Cleaning as a Pollution Prevention Alternative to Perchloroethylene Dry Cleaning *Journal of the Air & Waste Management Association* 57:172-178; Onasch, J. "A feasibility and cost comparison of perchloroethylene dry cleaning to professional wet cleaning: case study of Silver Hanger Cleaners, Bellingham, Massachusetts." *Journal of Cleaner Production* 19(5): 477-482; Sinsheimer, P., Saveri, G, Namkoong, A. Commercialization of Environmental Technologies in the Garment Care Industry. January 31, 2008. Final Report to the United States Environmental Protection Agency and the Bay Area Air Quality Management District; <http://www.ftc.gov/os/comments/carelabelinganpr/00025.html>; <http://www.ftc.gov/os/comments/carelabelinganpr/00102.html>; <http://www.ftc.gov/os/comments/carelabelinganpr/00101.html>.

<sup>10</sup> <http://www.ftc.gov/bcp/rulemaking/carelabel/990129car.pdf>

summarizing the findings of the two surveys stated: "What I think it shows is that a greater percentage, about 80 percent of consumers believe that dry clean means you should not wash it."<sup>11</sup>

What makes this misleading is that while most customers interpret a 'Dryclean' label as meaning the garment should not be washed, the FTC defines a "Dryclean" label to mean that it is one method for cleaning the garment and does not warn against washing and does not require proof that washing would harm the item.<sup>12</sup> In the FTC's 1995 ANPR they concluded that "when a washable garment is labeled "Dryclean," consumers may be misled into believing that the garment cannot be washed at home."<sup>13</sup> In the 2000 NPR the FTC states the following: "There is also evidence that some consumers believe a "Dryclean" instruction means that a garment cannot be washed; thus, they may be misled by the instruction."<sup>14</sup>

This interpretation that a 'Dryclean' label means that the garment should be dry cleaned comes from evidence provided by the Professional Wet Cleaners Association in their comment to on the 2011 ANPR: "Customers come into professional wet cleaners every day and ask for their garments to be dry cleaned because the garments are labeled 'Dry Clean' or 'Dry Clean Only'."<sup>15</sup>

While this reinforces the fact that the 'Dryclean' label is misleading it is also fundamentally unfair to professional wet cleaners. The Professional Wet Cleaners Association goes on to state: "If we tell them we will be wet cleaning their garments they may decide to go to a dry cleaner. If we say "yes" we are deceiving our customers."<sup>16</sup> Put differently, the 'Dryclean' provides a comparative analysis to cleaners with dryclean equipment because the label corresponds with the label.

Evidence that the benefits of requiring a wetcleaning instruction would exceed the costs such a requirement would impose on manufacturers and importers.

The benefits of requiring the use of a 'Professional Wetclean' label -- when there is a reasonable basis for the label and where the manufacturer believes that the item needs professional cleaning, or recommends professional cleaning, or any other instances in which a 'Dryclean' or 'Dryclean Only' label is also listed on the label -- are that consumers will be fully educated about the viability of using professional wetcleaning as a method for cleaning their garments. Because the professional wetcleaning instruction provides specific information about how best to process the item it further avoids the potential of harming the item. Given that the vast majority of garments labeled 'Dryclean' or 'Dryclean Only' can be successfully wet cleaned, this represents a substantial societal benefit. Since the FTC's stated purpose for developing the care label rule is to "assist consumers in making informed purchase decisions and to enable consumers and cleaners to avoid product damage" these benefits associated with requiring the 'Professional Wetclean' label should be weighted extremely high by the Commission.

<sup>11</sup> <http://www.ftc.gov/bcp/rulemaking/carelabel/990129car.pdf>, p.36, line 11.

<sup>12</sup> <http://www.ftc.gov/os/statutes/textile/alerts/dryclean.shtm>

<sup>13</sup> <http://www.ftc.gov/os/2000/07/carelabelingrule.htm>

<sup>14</sup> <http://www.ftc.gov/os/2000/07/carelabelingrule.htm>

<sup>15</sup> <http://www.ftc.gov/os/comments/carelabelinganpr/00102.html>

<sup>16</sup> <http://www.ftc.gov/os/comments/carelabelinganpr/00102.html>

Beyond these direct benefits, requiring a professional wet clean instruction will likely have the effect of increasing the demand for professional wet cleaning and thereby reducing the use of PCE dry cleaning. The USEPA asked the FTC to initiate the development of the professional wetcleaning label with the expressed goal of reducing PCE releases. PCE releases for dry cleaners create societal harm both as an ambient air emission, as an occupational hazard, and as a source of soil and groundwater contamination.<sup>17</sup> In each of these areas, PCE dry cleaning is highly regulated adding costs associate with its continued use. While these costs have not been precisely quantified, there is good evidence of the magnitude of the cost of soil and groundwater contamination from a number of states.<sup>18</sup> These costs become benefits if garment care industry move away from perc dry cleaning and towards professional wet cleaning. An additional environmental benefit is that there is significant evidence that professional wet cleaning is significantly less energy intensive than PCE dry cleaning.<sup>19</sup>

Another benefit of professional wet cleaning is that there is systematic evidence that the costs of processing garments are lower than for perc dry cleaning.<sup>20</sup> Given the competitive nature of the garment care industry, these costs saving could be passed onto customers in terms of lower pricing.

There is substantial evidence that consumers will choice environmentally preferable alternatives when costs are comparable.<sup>21</sup> Given that environmental agencies in the United States, such as the United States Environmental Protection Agency and the California Air Resources Board, which identified professional wet cleaning as an environmentally preferable service, it should be expected that such validation would result in a significant diffusion of professional wet cleaning if customers are fully informed about professional wet cleaning through a required care label.

With respect to the costs of requiring a professional wet cleaning instruction, it is likely that most of the costs would be associated with establishing a reasonable basis for the care instruction. The 2012 NPR does not provide any estimate of these costs.

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<sup>17</sup> Sinsheimer P, Gottlieb R, Farrar C (2002) Integrating Pollution Prevention Technology into Public Policy: The Case of Professional Wet Cleaning, *Environmental Science & Technology*, Vol. 36, No. 8; Onasch, J. "A feasibility and cost comparison of perchloroethylene dry cleaning to professional wet cleaning: case study of Silver Hanger Cleaners, Bellingham, Massachusetts." *Journal of Cleaner Production* 19(5): 477-482; Sinsheimer, P., Saveri, G, Namkoong, A. Commercialization of Environmental Technologies in the Garment Care Industry. January 31, 2008. Final Report to the United States Environmental Protection Agency and the Bay Area Air Quality Management District.

<sup>18</sup> <http://www.drycleancoalition.org/>

<sup>19</sup> Sinsheimer P (2009) Comparison of Electricity and Natural Gas Use of Five Garment Care Technologies. Southern California Edison Design & Engineering Services, ET 05.11. <http://www.srpnet.com/energy/powerwise/business/pdfx/sws/wetcleaning.pdf>.

<sup>20</sup> Sinsheimer P, Grout C, et al. (2007) The Viability of Professional Wet Cleaning as a Pollution Prevention Alternative to Perchloroethylene Dry Cleaning *Journal of the Air & Waste Management Association* 57:172-178; Onasch, J. "A feasibility and cost comparison of perchloroethylene dry cleaning to professional wet cleaning: case study of Silver Hanger Cleaners, Bellingham, Massachusetts." *Journal of Cleaner Production* 19(5): 477-482; Sinsheimer, P., Saveri, G, Namkoong, A. Commercialization of Environmental Technologies in the Garment Care Industry. January 31, 2008. Final Report to the United States Environmental Protection Agency and the Bay Area Air Quality Management District.

<sup>21</sup> Roe, Brian, et al. Characteristics of Consumer-Preferred Labeling Policies: Experimental Evidence from Price and Environmental Disclosure for Deregulated Electricity Services." *Journal of Consumer Affairs*, Volume 35, Issue 1, pages 1-26, Summer 2001; Björner, T. B., L. G. r. Hansen, et al. (2004). "Environmental labeling and consumers choice an empirical analysis of the effect of the Nordic Swan." *Journal of Environmental Economics and Management* 47(3): 411-434; Banerjee, A. and B. D. Solomon (2003). "Eco-labeling for energy efficiency and sustainability: a meta-evaluation of US programs." *Energy Policy* 31(2): 109-123.

It is important to note that there are a number of different paths that manufacturers can use to establish a reasonable basis including: (1) reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions; (2) reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label; (3) reliable evidence, like that described in (1) or (2), for each component part; (4) reliable evidence that the product or a fair sample of the product was successfully tested; (5) reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or (6) other reliable evidence.<sup>22</sup>

Use industry expertise would appear an extremely appropriate and very low cost method for manufacturers to use to establish a reasonable basis. There are over two hundred dedicated professional wet cleaners in the United States who have the expertise and experience in processing delicate garments currently labeled 'Dryclean' or 'Dryclean Only'. Since each option for determining a reasonable basis is equally valid, the least cost option should be used to determine the total cost.

Given the enormity of the benefits that requiring the 'Professional Wetclean label generates and the fact that there exists a valid low cost method for garment manufactures to determine a reasonable basis for a professional wetclean instruction, despite the fact that not all the benefits have a monetary value (i.e. reducing deception, increasing fairness, reducing environmental impact) there is no doubt that the benefits of requiring the professional wet clean instruction exceed the costs. This conclusion is all more likely given the importance that the FTC places on providing consumers information in helping the make purchase decisions.

Lack of evidence that customer demand and market mechanism able to generate benefit of professional wet clean instruction and even the playing field between the drycleaning industry and the wetcleaning industry

The NPR argues that because there was no evidence provided to support the required use of the professional wet clean care label, by allowing manufactures to use the label, customer demand for the label would provide an incentive for its use thereby creating an even playing field between the drycleaning industry and the wetcleaning industry.

Yet, the FTC provides no evidence to support this claim. The fact that the ISO professional wet clean instruction was finalized in 2007 provides an ideal experiment to determine whether simply allowing manufacturers to use the label would create the market demand envisioned by the FTC. In my August 30, 2011 letter to the FTC I stated "(w)hile the ISO professional wet clean instruction has been adopted by many countries, no country has required testing and use for items that require professional cleaning or where professional cleaning is recommended. As a voluntary option, adoption of the ISO 'Professional Wet Clean' care label has been very slow."<sup>23</sup> This statement was based on discussions with professional wet cleaning manufacturers located in Europe, where the ISO test method was developed and where it has been adopted.

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<sup>22</sup> 2012 NPR.

<sup>23</sup> <http://www.ftc.gov/os/comments/carelabelinganpr/00084-80502.pdf>

Since the FTC is looking for evidence support statements, I asked one professional wet cleaning machine manufacturer, Miele, to collect evidence about the prevalence of the professional wet cleaning care label in Europe. The data Miele has collected to date shows very little evidence that garment manufacturers are labeling any garments with a professional wetclean instruction.<sup>24</sup> Searching the website of one prominent garment manufacture in one European country, the United Kingdom, shows several hundred garments, representing a wide range of garment types (e.g. suits, jackets, dresses, etc) with a 'dry clean' care instruction and only one with a wet-clean instruction.<sup>25</sup>

Taken as a whole, there is substantial evidence for the FTC to move forward with a requirement for the professional wet clean label.

Sincerely,

  
Peter Sinsheimer, Ph.D., MPH  
Executive Director

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<sup>24</sup> See comments submitted by Miele associated with this NPR.

<sup>25</sup> <http://store-uk.hugoboss.com/>