

Green Building and Textiles Workshop – Comment, Project No.P084203
Comments of Weyerhaeuser Company
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The FTC's review of green building claims is timely, as national green building standards are now marketing to homeowners, a different group of consumers than previous commercial building standards. The Commission's focus on consumers is the right way to approach the claims made by green building rating systems or standards. The Green Guides make clear that LEED, Green Globes, and other green building labels are making environmental claims. 16 C.F.R. section 260.2 provides that the Green Guides "apply to environmental claims included in . . . all . . . forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means"

The Green Guides provide important direction for the National Association of Homebuilders, the US Green Building Council (USGBC), the Green Building Initiative, and other voluntary standards development organizations. These organizations are defining green building for consumers, and the claims embodied in their standards are regulated by the FTC. The FTC should consider revising the Green Guides to provide examples from green building, to make this relationship clear to new players in the marketplace, including the standards developers themselves.

The FTC should be asking two basic questions about the claims embodied in green building rating systems and standards: First, are consumers getting what they pay for? That is, do the decisions reflected by the green building point systems, backed up adequate substantiation, actually deliver better environmental performance, without compromising safety or structural integrity? Second, are consumers given the most affordable options? That is, do the standards encourage competition and innovation, so the point systems offer consumers choices among products without excluding less expensive or more available alternatives delivering equal or better environmental performance?

Green building rating systems and standards are valuable innovations and it should be no surprise that they grapple with contentious issues. Stakeholders disagree over values, products, processes, and whether participation should be open or even reflect a consensus. They disagree, for example, about whether a locally manufactured product really has better environmental attributes than a product manufactured farther away. They disagree over whether a product with recycled content is always better than one without. They disagree over whether specific criteria reflect environmentally preferable products. As the FTC saw in its workshop, credits for wood and other "bio-based" materials have been an issue, along with treatment of polyvinyl chloride, carpets, textiles, and bamboo.

The FTC cannot resolve all these issues, but the Green Guides provide direction on how they should be resolved. A standards development organization's decision to award points to – i.e., endorse – a product as environmentally preferable is an environmental claim, "asserted directly or by implication" through its logo. The points may also reflect an implied comparative claim, by rejecting alternative products. Both those claims need to be substantiated by competent and reliable evidence.

Weyerhaeuser's interest is in how green building standards treat wood products, which has been an especially contentious issue in the LEED rating system. Life cycle analyses show wood to be an environmentally preferable building material, but the principle LEED standard awards points to steel and concrete to the disadvantage of wood. To the limited extent wood can earn points, the points are restricted to wood certified exclusively to standards adopted under one international umbrella system, the Forest Stewardship Council (FSC). Wood certified under a competing international system, the Programme for Endorsement of Forest Certification (PEFC), is treated as if it were uncertified and awarded no points. This disadvantages the three standards most widely adopted by forest owners in the U.S. and Canada: the Sustainable Forestry Initiative (SFI) standard, Canadian Standards Association (CSA) Sustainable Forest Management standard, and the American Tree Farm System. In short, LEED favors imported wood, often produced under lower environmental standards than those in North America.

The USGBC has struggled to address this issue objectively. It announced four years ago that it was reviewing the wood issue through a technical advisory committee, but only this month published a draft approach. The committee has not taken a consensus processes, operating in closed meetings and declining to include producers competing with those benefited by the existing point system.¹ It is thus difficult to assess whether the USGBC will approach the issues from the viewpoint of the consumer. So far, however, the USGBC appears to be viewing the issues from the perspective of advocates for the certifications systems rather than looking at the products themselves and what consumers expect from them.

A simple change in perspective offers a more objective approach. Green building labels apply to homes or commercial buildings, that is, physical, long-lived products. The points awarded by these systems lead to decisions about tangible things: heating systems, water systems, building frames, paint, lighting, landscaping. Consumers – building owners and users – will live with the choices resulting from these point systems for many years. If the products match their expectations, they should enjoy the results. If they have been misled to expect something more or different, they will be disappointed.

To avoid consumer harm, green building standards organizations can tap into the extensive body of law and expertise around green marketing claims and substantiation behind the Green Guides. For a controversial product or service favored by a rating system or standard, the development organization should be asking:

- What claims does our label make or imply about the product or service (including comparative claims)?
- How do reasonable consumers interpret those claims?
- Can we substantiate those claims based on competent and reliable evidence?

This is already the law. Through revisions to the Green Guides, we believe the FTC can make its requirements clearer and more accessible to the green building community.

¹ Process standards are important in evaluating voluntary standards-development organizations, because they run the risk of anti-competitive behavior. Until recently environmental standards have been defined through regulation, and advocates have been protected by the Noerr-Pennington doctrine. Market-based standards bodies, however, have anti-trust exposure, albeit under a rule of reason approach. The best way organizations ensure their actions are not anti-competitive is by developing standards in a consensus forum with balanced representation reflecting diverse points of view. These principles are reflected in ANSI's due process requirements. Similarly, OMB Circular No. A-119 requires that voluntary, private sector standards be set by a body that is open, reflects a balance of interest, operates by due process, includes an appeals process, and operates by consensus. OMB Circular A-119 is important because it establishes the requirements private sector standards must meet if federal agencies wish to use them in meeting their own requirements, such as for government procurement. The same criteria apply under the Standards Development Organization Advancement Act of 2004, which offers limited anti-trust immunity to certain standards-development organizations.