



american cleaning institute®
for better living

December 9, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Proposed Revisions to Green Guides

Dear Sir or Madam:

The American Cleaning Institute® (“ACI,” formerly The Soap and Detergent Association) appreciates the opportunity to comment in response to the request issued by the Federal Trade Commission¹ (“FTC” or “Commission”) in connection with review of its Guidelines for Environmental Marketing Claims² (“Guides”).

Background

ACI is the trade association representing the \$30 billion U.S. cleaning products market. ACI members include the formulators of soaps, detergents, and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and oleochemical producers. ACI and its members are dedicated to improving health and the quality of life through sustainable cleaning products and practices. ACI’s mission is to support the sustainability of the cleaning product and oleochemical industries through research, education, outreach and science-based advocacy.

From the Guides inception in 1992, ACI has worked with the Commission to provide our industry’s perspective, submitting comments when the Guides were reviewed in 1996 and 1998 and at each opportunity during the current review. We believe that Guides that promote truthful, accurate representations about environmental characteristics improve marketplace communication, thereby allowing consumers to drive the movement toward environmentally safer products.

We commend the FTC for its thoughtful, thorough approach in reviewing the Guides and support many of the updates included in the current proposal. However, there are several points where clarification is needed to allow industry and consumers to properly understand the FTC’s intent. In addition, ACI urges the FTC to reconsider its positions on a few critical issues to provide the

¹ 75 Fed. Reg. 199 (Oct. 15, 2010).

² 16 C.F.R. 260.

guidance and practical sensibility that will allow our members to accurately communicate with their consumers.

ACI is continually assessing consumer perceptions relating to various aspects of our industry. Given the relatively short timeframe between the issuance of the proposal and the deadline for comments, the comments provided in this submission include our observations to date. However, ACI requests that the FTC extend the deadline to accept additional data that ACI or others may seek to provide in the next several months prior to issuance of the final Guides.

Claims Addressed by the Current Green Guides

General Environmental Benefit Claims

ACI fully supports the Commission's proposal that marketers not make unqualified general environmental benefit claims. Such claims should be properly qualified to identify for the consumer the specific environmental benefit the product offers. However, we suggest that the revised Guides provide clearer guidance as to how to effectively qualify general environmental claims. Additional examples demonstrating when a specific attribute is not adequately qualified would be helpful.

In its request for comment, the FTC asks whether it should "advise marketers that a qualified general environmental claim is deceptive if a particular attribute represents an environmental improvement in one area but causes a negative impact elsewhere that makes the product less environmentally beneficial than the product would otherwise be."³ We believe that the guidance currently provided in §260.2 – 260.4 adequately addresses this principle and that additional guidance is not needed. However, should the FTC decide to further address this question, ACI requests guidance and examples of the type of information and evaluation the FTC would expect a marketer to conduct to demonstrate there are no negative impacts that make a product less environmentally beneficial than it would otherwise be due to the environmental improvement being claimed.

In addition, we agree with the FTC's proposal that life cycle assessment (LCA) should not be adopted as a mandatory standard for claim support purposes. However, we request additional guidance and examples with respect to acceptable parameters for substantiating and qualifying claims when LCA is used.

Third Party Certifications and Seals

ACI supports the Commission's proposal that advises marketers to accompany seals or certifications with clear and prominent language limiting the general environmental benefit claim to the particular attribute or attributes for which they have substantiation. When properly qualified, seals and certifications can be useful in alerting consumers to products with genuine environmental benefits.

The FTC also proposes that third-party certifications and seals constitute endorsements to be covered by the Endorsement Guidelines and provides examples of when certain disclosures are

³ 16 CFR 260, p. 63597

required. ACI requests additional guidance on what constitutes a “material connection” in this context that would trigger a disclosure under the Endorsement Guidelines. The Endorsement Guidelines state that “[W]hen there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed.”⁴ Additional guidance on what the FTC believes a reasonable consumer would expect is critical to avoid uncertainty on the part of the marketer. For example, payment of a fee for use of a certification or seal is typical. If a marketer pays a fee to an independent third party to use the seal on its product, would payment of that fee be considered a “material connection”? Similarly, would a company’s membership in a third party accreditation or “logoing” organization be considered a “material connection” even if the evaluation criteria and decisions to grant the accreditation/seal are the same for both members and non-members?

In addition, we are concerned that the proposed language in §260.6 discriminates against association sponsored programs for certification and seals of approval in favor of strictly third-party managed programs. It is commonplace for associations to create industry certifications and standards of quality, ethics, sustainability and safety. Requiring a special disclosure for such programs can mislead consumers to believe that association certifications and seals of approval are somehow inferior to similar programs administered by other private entities. We recommend that certification and seals of approval sponsored by associations be treated the same way as other third-party programs, provided that the marketer can substantiate that decisions on awarding the certification or seal of approval meet the same standards of independent action and integrity that are applied to these programs.

Degradable Claims

Section 260.8b states that “[A] marketer making an unqualified degradable claim should have competent and reliable scientific evidence that the entire item will completely break down and return to nature (i.e. decompose into elements found in nature) within a reasonably short period of time after customary disposal.” ACI supports the principle behind this statement. However, ACI requests greater definition with respect to oxo-degradable and oxo-biodegradable claims, and clarification of the acceptable methods for substantiating biodegradable claims.

The proposed amendments impose a one year time limit for degradation of solid waste. However, most solid waste in the United States is disposed of in landfills, incinerators or recycling facilities. Generally, these methods of disposal do not allow for decomposition in a one year period. Therefore, marketers will not be able to make any degradable claims for products or packages that are destined to be disposed of in landfills, incinerators or recycling facilities, if this standard is adopted.

Further, under the proposal, unqualified degradable claims will only be possible for a solid item that is disposed of in a manner that promotes “total and rapid decomposition” within the one year period. Since the Commission is not proposing any particular technical standard setting out how to replicate the physical conditions found in the relevant disposal environment, it will likely be

⁴ 16 CFR 255.5.

very difficult to find a technical standard to support the requirement of “total and rapid decomposition” in the one year period.

In addition, in a footnote included in the proposal it is suggested that the 28-day ready biodegradability test may not be sufficient to substantiate a claim of biodegradability because this test “does not appear to ensure the complete decomposition of the substance.”⁵ Since the Commission has not identified an alternative test method, ACI is concerned that our members may be precluded from making degradability claims, which would limit their incentive to produce degradable products. Given that the 28-day ready biodegradability test has been accepted by the Environmental Protection Agency (EPA) and is a generally accepted test used world-wide for degradability, ACI believes that the test should be acceptable to substantiate a degradable claim when supporting information is available to demonstrate complete mineralization within a reasonably short period of time. If there remains concern about the adequacy of the test, we would welcome the opportunity to work with the Commission to develop other tests the Commission would find to be appropriate to substantiate such claims.

Compostable Claims

The proposed guidance states that the marketer should have evidence that a compostable material “will break down into, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch)”. ACI expects that consumers believe a compostable material will break down into natural materials and ultimately fully degrade in the environment. Materials which break down into soil conditioning material include the material known as hydrogel, a synthetic, hydrophilic polymer which improves soil water holding capacity. Since many hydrophilic polymers could be considered soil conditioning agents, defining compost as any “soil conditioning material” could be misleading to consumers. Mulch is defined as a material placed onto soil to retain moisture, reduce erosion, etc. and includes glass and plastics. ACI does not believe consumers expect a compostable material to break down into pieces of glass and plastic. ACI recommends replacing the words “soil-conditioning material” and “mulch” with “a compostable material should become materials found in nature in a safe and timely manner”.

In addition, ACI recommends that the FTC amend its proposed guidance that compostable materials break down in a “composting program or facility or in a home compost pile or device.” Some consumers know about large-scale composting facilities, others do not know about these facilities. These systems are operated differently than home composting systems and typically achieve higher temperatures during composting. An unqualified compostability claim will likely mean the material will break down in large scale facilities to some consumers, but will likely mean the material will break down in home compost piles and devices to other consumers. Thus, we recommend the guidance reflect that an unqualified compostability claim should refer to the ability of the material to breakdown in large-scale and home composting systems.

Recyclable Claims

ACI requests that the FTC reassess current consumer perceptions of positive disclosures for recyclability. Given significant efforts on consumer education over the last 15 years and the increased use of the internet, it is likely that consumers would interpret these statements

⁵ 16 CFR 260, p. 63570, Footnote 204.

differently today than when the Guides were first issued. As a result, the statement “Recyclable – check to see if recycling is available in your area” should be an accepted qualification for materials that are recyclable for a significant percentage of the population.

In addition, ACI seeks guidance on the recyclability of multi-material containers, where all materials can be mechanically separated in existing recycling infrastructure. For example, if a folding carton passes the industry standard test for repulpability, ACI believes that it should be permitted to be labeled recyclable.

Recycled Content Claims

ACI supports the Commission’s proposed continued use of the annual weighted average approach for determining recycled content and the Commission’s current position with respect to implied claims of recyclability.

The FTC asked the following question in its request for comments: “If a product is advertised as ‘made with recycled materials,’ either in whole or in part, should the Commission advise marketers to qualify that claim to indicate that the product is not recyclable if it is not?”⁶ The FTC states in its comments that it “...does not propose advising marketers that make unqualified recycled content claims to disclose that the product is not recyclable.”⁷ ACI agrees and urges the FTC to retain this position. There are many consumers who do understand the difference between recyclability and recycled content and requiring such a qualification may actually create confusion rather than obviate it.

Free-of Claims

The FTC proposes “advising that free-of claims may be appropriate where a product contains a *de minimus* amount of a substance that would be inconsequential to consumers.”⁸ The Commission goes on to say that such claims will be analyzed on a case-by-case basis. To provide marketers with greater certainty in making such claims, ACI seeks clarification and examples of the appropriate standard for determining when a product contains a *de minimus* amount of a substance to support a finding that the amount is “inconsequential to consumers”.

New Claims Addressed in the Proposal

Natural and Organic Claims

There are an increasing number of claims relating to natural and organic ingredients and products that are not easily understood by consumers. ACI supports the Commission’s proposal that such claims should be specific and verifiable.

In its request for comment, the FTC asks whether it should provide guidance concerning organic claims for non-agricultural products. ACI believes that the FTC should provide guidance for marketers making such claims. The absence of uniform guidelines creates uncertainty for marketers and the potential for consumer confusion. Industry and consumers would benefit from the FTC providing guidance in this area.

⁶ 16 CFR 260, p. 63598.

⁷ 16 CFR 260, p. 63577.

⁸ 16 CFR 260, p. 63580.

Sustainable Claims

The Commission also declined to provide guidance on the use of sustainable as an environmental claim. ACI encourages the FTC to clarify that such claims should be treated as general environmental claims that should be properly qualified to identify the specific environmental benefit(s) that the product offers.

The Commission goes on to say that marketers are responsible for substantiating consumers' understanding of sustainable claims in the context of their advertisements. ACI requests that the FTC provide additional guidance and examples of the type of evidence that would be needed to substantiate such claims.

Renewable Materials Claims

The Commission's proposed Example 1 suggests that a "made with renewable materials" claim should include qualifying information about (1) the material used, (2) how the material is sourced, and (3) why the material is renewable.⁹ ACI believes that these qualifiers are not necessary in situations where this information can be reasonably inferred by the consumer. ACI requests that the Commission revise Example 1 to provide flexibility to marketers to use appropriate qualifiers, if necessary, depending on the context of the claim.

Carbon Offsets/Carbon Neutral Claims

ACI welcomes the proposed revisions limiting offset claims to those that fully occur in less than two years and in those cases where the offset is significant to the overall process.

Additional Issues for Consideration

Use of Websites

In our previous comments, ACI noted that company websites have become an increasingly valuable source of information for consumers. We asked the FTC to provide guidance as to when information on a company website could be used to substantiate an environmental benefit claim. In its analysis, the Commission notes its agreement that the internet can provide consumers with useful information about products, packages, and services. However, the Commission states that websites cannot be used to qualify such claims and that qualifying information must be in "close proximity" to the claim itself.¹⁰

While ACI agrees that ideally all the information needed to qualify the claim would be provided at the point of purchase, to meet FTC's goal of providing more accurate, less potentially deceptive information to the consumer, marketers should be permitted to utilize other options to provide the level of detail the Commission proposes. Requiring marketers to fully substantiate environmental claims, to the degree proposed by these revisions, in close proximity to the product, is impractical in many situations, such as when a claim or qualifier is very complex or the size of the package limits the amount of information that can be displayed. In such cases,

⁹ 16 CFR 260.15.

¹⁰ 16 CFR 260, p. 63557.

ACI would propose that a manufacturer include information on the product label directing a consumer to the manufacturer's website where the qualifying information can be easily accessed.

Conclusion

For nearly a decade, the Guides have been instrumental in helping to define acceptable claims and advertising activity. They support the communication of accurate information on environmentally beneficial products to consumers while maintaining the flexibility needed to accommodate rapidly changing technology. ACI applauds the FTC's efforts to ensure that the Guides are periodically updated to address this changing environment. We appreciate the opportunity to once again provide our perspective on these Guides that are so important to our industry, and look forward to providing additional information on consumer perspective as it becomes available.

Respectfully submitted,

Michelle Radecki
General Counsel