



The Association of Postconsumer Plastic Recyclers

December 7, 2010

The United States Federal Trade Commission
Letter of Public Comment
Subject Category: Guides for the Use of Environmental Marketing Claims;
Project No. P954501
Sent via Email Comment Form

RE: Comments on Proposed Green Guides

The Association of Post-Consumer Plastic Recyclers, APR, is the largest plastics recycling organization in the United States, Canada and Mexico. Our members are the businesses who acquire, process, and sell reclaimed postconsumer plastics. We represent more than 90% of the postconsumer recycling capacity in North America.

We appreciate the opportunity to provide comments on the Commissions' proposed Guides for Use of Environmental Marketing Claims,' published in October.

The most critical quality definition issue facing plastic reclaimers and the plastic recycling industry are the materials that are marketed as 'recyclable' or 'compatible with recycling' when those claims are not substantiated by sufficient and appropriate data. In addition, we are concerned about the language governing the use of and designation of Certification Seals by a trade organization.

Recyclable does not necessary mean a material is being recycled.

The proposed Green Guides address in §260.11 the subject of 'Recyclable Claims'. While paragraph (a) acknowledges the need for a recycled item to be made into another item to be considered recyclable, the subsequent text and examples stress 'recyclable' to mean access for the consuming public to place items into the stream of goods to be recycled, i.e. the item is being collected. As many collection programs are encouraged by public policy to accept broader definitions of items for collection ('all plastic packaging' vs. '#1 PET beverage bottles'), the acceptability of any collected item for reclamation cannot be properly assumed. The Guides should address claims of recyclability for packages that are not accepted by the reclaiming industry. For instance, a plastic bottle container with inappropriate additives or fillers represents waste to the reclaimer and is not recycled even though collected.



The Association of Postconsumer Plastic Recyclers

As an example of claims of recyclability, there are statements to the general public that certain additives included in durable plastics to facilitate degradation do not interfere with the recycling or recyclability of those otherwise durable plastics. In particular, marketers of some degradation additives claim no recycling problems when their materials are included in PET water bottles. To be recyclable, those water bottles must be collected, must be successfully processed in current reclamation systems, must be suitable to make all of the end uses satisfied by bottles not containing the additives, and those end uses service lives must be unimpaired by the inclusion of the additives. Until definitive proofs are shown to confirm accomplishment of these four requirements, claims of recyclability for bottles with those additives should be regarded as deceptive.

We suggest an additional example be included in the Green Guide under §260.11

Example ZZ:

A package with a certain component is claimed to be recyclable without qualification. The reclaiming industry processing that type of package has published guidance which excludes packages containing that certain component unless specific testing shows a manufacturer's offering of the certain component meets stated criteria developed by the reclaiming industry. The claim of recyclable is deceptive if the certain component fails to meet the reclaiming industry's stated criteria.

Future Work

While the 2009 Harris Interactive consumer perception study did uncover some of the public attitudes and expectations relative to recycling, recyclability, and recycled content for all materials, more study is needed to more completely understand public attitudes and expectations. At a future time, the Federal Trade Commission should consider a further investigation.

We respectfully suggest that the consuming public be surveyed on its expectations and beliefs relative to any package being claimed recyclable. Such a survey would potentially ask the following for all materials:

1. Should all packaging and other items collected for recycling be processed into new products?
2. What do you expect a recycled package to be made into?
3. What do you expect happens to packages collected for recycling?
4. What do you think should happen to packages collected for recycling?
5. If a package is accepted for collection, should the material be made into a new product?
6. What does the term 'recyclable' communicate to you?



The Association of Postconsumer Plastic Recyclers

Certification and Seals of Approval

Of particular concern to APR is §260.6 dealing with Certifications and Seals of Approval. In the text we see “(A)n environmental seal may imply that a product is environmentally superior to other products” (Pg 50) and “(T)hird-party certifications are endorsements” (pg 59).

The matter of third party certifications as discussed in the Endorsement Guides creates a conundrum. The proposed Guides state that if a third party certifier is a trade association to which a marketer pays dues, the certification cannot be independent and membership in the trade association must be disclosed to avoid being deceptive. Next the Guides state a third party certifier must be independent of the marketer to meet the public expectation of objectivity. The implication is the trade association cannot be objective.

It is understood that the third party certifier is paid to make the certification, so monies are paid either as dues to a trade association or as a certification fee either to a fee-paid independent third party or to a trade association. In all cases, monies are paid for a service.

The question arises, how is the independent third party to have an objective basis upon which to make decisions? A trade association of an industry may develop decision criteria upon which the third party accepts a fee to test and certify. How then should the relationship of the marketer, the independent third party, and a trade association be judged?

The issue is resolved when objective criteria are determined by the trade association technical experts to be relevant and pertinent to the environmental issues under discussion. For example, a trade association of recyclers is the best group to determine the technical criteria for recyclability acceptance of a candidate item. A third party would need the inputs of tests, test methods, and decision criteria from experts in the field to make any certifying decisions. If the trade association itself develops an objective certification program wherein members and non-members are treated equally with specific relevant performance goals to be met, it is not deceptive for either a trade association member or non-member to advertise the certification without making reference to membership. The material connection of the dues payer is superseded by objective testing against a validated, stated standard.

We suggest an addition be included to §260.6, **Example 2:** as underlined below.

Example 2: A product advertisement includes a seal with the text “Certified by the Renewable Energy Association”. The product manufacturer is a dues-paying member of the association. Even if the association certified that the manufacturer uses only renewable energy, the seal is deceptive because it conveys that the association is independent from the product manufacturer. To avoid deception, the manufacturer should accompany the seal with clear and prominent language disclosing the material connection. If the decision criteria for certification are objectively derived and are published and are relevant to the environmental issue and are applied equally to members and non-members alike and are not dictated by the manufacturer, membership need not be disclosed to avoid being deceptive.



The Association of Postconsumer Plastic Recyclers

At APR, we have developed several recognition programs that are designed to determine whether new product innovations impact a material's ability to be recycled, as well as the potential impact on the existing recycling infrastructure. We are concerned that the current proposed language would have a deleterious impact on our long standing programs which have been recognized by the recycling industry as having significant value.

Again, we thank you for the opportunity to provide comments, and we look forward to working with you to address these issues.

Yours sincerely,

Stephen Alexander
The Association of Postconsumer Plastic Recyclers
1001 G Street, NW
Suite 500 W
Washington, DC 20001
salexander@cmrgroup4.com
202-316-3046