



BERGESON & CAMPBELL, P.C.

1203 Nineteenth Street, NW | Suite 300 | Washington, DC | 20036-2401 | tel 202.557.3800 | fax 202.557.3836 | web www.lawbc.com

Lynn L. Bergeson

direct dial 202.557.3801

e-mail lbergeson@lawbc.com

December 10, 2010

Via E-Mail

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

Re: Proposed, Revised Green Guides, 16 CFR Part 260, Project No.
P954501

Dear Sir or Madam:

Bergeson & Campbell, P.C. (B&C) is pleased to submit these comments on the proposed, revised Guides for the Use of Environmental Marketing Claims issued on October 15, 2010 (Green Guides).¹ B&C compliments the Commission on its proposed revisions to the Green Guides. The revisions reflect a great deal of thought, public outreach, and research, and provide significant and much needed clarity on a number of key points and provide guidance on important new green marketing claims. As discussed below, we comment on two key areas of concern -- recycle content claims and general environmental benefit claims.

Recycle Content Claims

Sources of Recycle Content (Section VII.8; 75 Fed. Reg. at 63598)

The Commission seeks comment on a number of important issues, one of which relates to whether consumers should continue to consider materials as recycled content when those materials have been diverted from the waste stream by processes that have become standard practice for an industry.

We believe the answer to this question is a resounding yes. Regardless of whether manufacturing processes that divert material from the waste stream become standard practice in an industry, the fact remains that the material is still being diverted from the waste

¹ 75 Fed. Reg. 63552.



Office of the Secretary
December 10, 2010
Page 2

stream, and the material should be considered recycled content. That a process becomes standard industry practice should be immaterial to the detriment of whether the material meets the definition of “recycled.” It should therefore be permissible to market the material accordingly. The fact remains that in the end, the material has been diverted from the waste stream, which we believe is what consumers are interested in knowing when it comes to recycled content claims.

Manufacturers and marketers that continue to invest in assets and technological innovation to divert materials long-term should continue to be rewarded with the ability to claim recycled content in their products. Assuring innovative development is essential, and should be appropriately incentivized through such rewards. Introducing qualifiers that would be difficult to substantiate and are inherently subjective such as “standard industry practice” would be prejudicial to manufacturers and marketers that lead the industry by finding creative ways to reduce waste from their manufacturing processes and diminish their use of virgin raw materials in ways benefiting the environment. Using such criteria to restrict claims introduces ambiguity and uncertainty, rather than protecting consumers from the potential for deceptive marketing practices. Such action will introduce confusion into a topic that is currently well-framed in the Green Guides in a clear and straightforward manner.

General Environmental Benefit Claims

Example of a Qualified but Deceptive Claim (Section VII.2; 75 Fed. Reg. at 63597-63598)

The Commission also requests comment on whether it would be helpful to include an example of a qualified general environment benefit claim that would be deemed deceptive by the Commission. While we agree that the inclusion of an example would be valuable guidance for marketers, we believe the example that the Commission has proposed is inappropriate and in fact telegraphs the wrong message.

The bamboo/rayon example illustrates that there are subtle trade-offs in many marketing situations, meaning that certain practices may offer benefits to the environment in one respect but may negatively impact the environment in another respect. We acknowledge that an unqualified general environmental benefit claim could be deceptive. This is why we support the avoidance of general environmental benefit claims whenever possible and believe that marketers should instead make specific claims about the environmental attributes of their products.



BERGESON & CAMPBELL, P.C.

Office of the Secretary
December 10, 2010
Page 3

That said, we are concerned with the way the example involving the production of a synthetic fiber (rayon) from a renewable resource (bamboo) is constructed. We believe that as currently worded, it could suggest that because the resulting product is synthetic fiber, there can be no environmental benefit due to the use of chemicals during the manufacturing process.

All living things as well as inanimate materials -- whether they are synthesized or naturally occurring -- are composed of chemicals. Every day around the world chemicals are used in a manner that is protective of human health and the environment. The example the Commission uses should not suggest or imply that the claim is deceptive simply because it involves the use of chemicals to process the bamboo to manufacture rayon. Instead, it should emphasize what would make the claim deceptive to consumers. In simply stating that a material is "made from" or "contains" bamboo, the consumer will assume that the fiber is, in fact, wholly or substantially comprised of bamboo, similar to the way that a cotton fiber is comprised of cotton. To avoid deception, we believe that the example could be improved and clarified if it were revised to convey something similar to "made from rayon derived from bamboo, a renewable resource."

We appreciate the opportunity to comment on the proposed, revised Guides for the Use of Environmental Marketing Claims. Should you have any questions or need additional information, please contact me at (202) 557-3800 or at lbergeson@lawbc.com.

Sincerely,

Lynn L. Bergeson