

**Comments of ISSA on the Subject of
The Proposed Revisions to the FTC Green Guides
December 10, 2010**

To Whom It May Concern:

ISSA greatly appreciates this opportunity to comment on the proposed revisions to the FTC “Green Guides” as they relate to certifications and seals of approval programs administered by trade associations.

ISSA is a non-profit, 501(c)(6) trade association that is comprised of over 5,500 member companies including distributors and manufacturers of institutional and industrial cleaning products as well as cleaning service providers.

Historically, trade associations have established standards and certification programs that are used by their members, the public, and even the government for the purpose of evaluating services and products provided or produced by their members and others that are in the industry. In fact, it is common for associations to create industry certifications and standards of quality, ethics, sustainability and safety. This critical role played by associations is part of the quasi-governmental functions that associations have performed in order to guarantee and identify superior products and / or services. These programs, by their very nature, encourage companies to continually improve their products and services in order to achieve the high standards and certifications that are awarded to superior performers in the marketplace. Ultimately it is the public that benefits from these programs in the form of improved products and services.

In general, certification programs administered by trade associations fall into two categories. The first and most common situation is for associations to contract out these certifications to credentialed and independent third-party entities such as assessors, auditors or laboratories. The association helps establish and manage the program. Sometimes the association sets the standards that are to be met but often outside, independently developed private or governmental standards are used. In administering these programs, the association relies on independent experts, assessors and labs to determine if products or services meet these standards. In fact, the independent laboratories’ national and international accreditations depend on maintaining their independence, objectivity and professionalism in their testing and evaluation. The same is true for assessors and auditors.

The second, though far less common situation, is for associations to develop in-house labs or testing facilities to determine compliance with relevant standards. These labs or testing facilities, just like independent labs, must meet strict standards often set by national or international entities in order to ensure the integrity of the testing and certification program.

ISSA is concerned that the proposed language in § 260.6 discriminates against legitimate and highly valuable association sponsored standard and certification programs in favor of strictly third-party managed programs. Under this proposed language, all association programs must comply with special disclosure requirements regardless of the validity, structure or rigorous

nature of their standards. This requirement can mislead consumers to believe that association certifications and seals of approval are somehow inferior to similar programs administered by private entities.

However, the proposed revisions to the Green Guides would allow third-party certification programs not administered by associations to be used without further disclosure. It is important to note that companies pay substantial fees to these third party programs in exchange for having their products or services reviewed and certified. These fees are often much greater than annual membership dues to a trade association. Moreover, many third party programs charge fees that are based on sales of the certified product or service, thereby giving them a direct financial interest in the success of the underlying product or service.

The exchange of fees and financial interest in sales of certified products by third party organizations would appear to create a “material connection” in these situations based on FTC’s logic as set forth in the proposed. Yet FTC does not propose that marketers disclose the fact that fees were exchanged for the third party certification.

Thus, FTC is proposing to treat similarly situated certification programs in a distinctly different manner under the proposed revisions to the Green Guides. Such disparate treatment will send a strong, yet erroneous signal, to the marketplace that trade association programs are inferior to their third party administered counterparts.

Moreover, ISSA is extremely concerned that this disparate approach proposed by FTC would act as a severe disincentive to the creation and maintenance of trade association administered standard and certification programs that ultimately benefit the general public. Good green certification programs — those that are national in scope, uniform, use a third party auditor, assessor or laboratory and are publicly recognized – are created out of a process that benefits both commercial and public interests. The process often requires concerted efforts by affected parties and other stakeholders – for which associations have historically provided an ideal forum.

The assumption that no economic disclosure is needed if a program is developed and managed by an “independent” third-party auditor or lab is based on a false premise. Just because a trade association, rather than the manufacturer directly, is employing the third-party auditor or laboratory does not mean that the results of such certification programs are less accurate, cannot be trusted as much or are more likely to be deceptive. In either arrangement, the outside lab’s revenues are based on fees from its customers.

For the benefit of its members, trade associations often undertake the creation and management of third-party certification programs where they employ unbiased, independent, credentialed, reputable third parties to assess the services or products of members, or other participants. In most cases, other than acting as intermediaries between the manufacturers and the labs, by contract and as a condition of the auditors or labs credentials the trade associations do not have any influence on the auditing and/or testing of specific products or services. But, in return for administering an effective program which benefits their members and the public, trade associations often seek to “brand” the program through their names and logos.

A required disclosure that the party whose name is on the logo is a trade association and/or that the certified company is a dues paying member is likely to undermine or vitiate the value or viability of many association administered certification programs. The consumer may then be led to believe that the product is not certified by an unbiased, reputable third-party laboratory, even though it is. Moreover, the use of the suggested prominent language in many certifications and logos is impractical because there is extremely limited space available on packaging and products for elaborate disclaimers about corporate association membership.

ISSA proposes that, similar to the proposal for third-party programs, certification and seals of approval sponsored by associations should not be required to disclose that the marketer or manufacturer of the product or service is a member of or pays dues to the association, provided that the marketer or manufacturer can substantiate that decisions on awarding the certification or seal of approval meet that same standards of independent action and integrity that are applied to third-party programs that do not collaborate with industry associations.

The proposed rule by the FTC has the potential of undermining many good programs, which is not in the public interest. Rather, we encourage the FTC to focus on whether legitimate third party or other arrangements for integrity and objectivity are used by all certifying entities.

Respectfully submitted,

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ISSA