



December 10, 2010

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comments on Guides for the Use of Environmental Marketing Claims

Dear Sir or Madam:

The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of approximately 240 companies engaged in the manufacture, formulation, distribution and sale of approximately \$80 billion annually in the U.S. of hundreds of familiar consumer products that help household and institutional customers create cleaner and healthier environments. Our products include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care®, and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products.

CSPA commented in November, 2008, on the previous draft of the Green Guides. Those comments emphasized the valuable service the Green Guides provide to marketers of consumer specialty products. The Guides serve as signposts to marketers on the appropriate boundary and content of environmental marketing claims and avoidance of making false and misleading claims. In addition, the Guides ensure a level playing field for industry members who want to make appropriate environmental marketing claims. CSPA's 2008 comments attempted to highlight areas for revision, for expansion, and for new initiatives. To the extent those suggestions have not been accepted by the FTC for the Guides, we incorporate the CSPA November 2008, comments by reference.

Accurate and compliant labels and marketing materials are important in our industry and to our members. It is just as important to create the conditions for a level and competitive playing field when it comes to marketing products that make environmental marketing claims.

The Green Guides provide a valuable function for industry, and in particular, the consumer products industry. Consumers are more conscious about the attributes of products they purchase. Being provided with clear and concise labeling eliminates confusion over environmental claims and enables consumers to make informed decisions.

We were pleased to see that the FTC incorporated some of CSPA's suggestions. In our comments, we included a call for appropriate qualifying language when making environmental benefit claims, for more guidance for solid waste biodegradability claims, for proper qualification of certifications and seals of approval, and for holding claims the Guides now denominate as "Free-of and Non-toxic Claims" deceptive if they are based on the absence of a substance that has never been associated with the product category.

The revised Guides provide for tighter strictures for unqualified general benefit claims and the new section dealing with certifications and seals of approval echoes that approach by calling for clear and prominent language that qualifies a certification or seal by conveying that it refers to specific and limited benefits. In both cases, the FTC's overriding concern appears to be the likely inability of the marketer to substantiate "all reasonable interpretations of these claims...." (Section 260.4).

General Environmental Benefit Claims

Section 260.4 deserves a closer look because of the growing interest among consumers in making purchasing decisions based on information they see and use about the very kind of claim or brand name that the section addresses. This issue of brand names is very important for consumer specialty products. Companies make significant investments in searching for the appropriate brand name and protecting it. Therefore, understanding what Section 260.4 does and does not view as deceptive is very important to us.

Our understanding is that Section 260.4 makes it deceptive to misrepresent that a product, package, or service confers a general environmental benefit; it contains guidance on the pitfalls of making general environmental benefit claims, such as using as a brand name "Eco-friendly" or claiming that a product wrapper is "environmentally friendly." In the case of "Eco-friendly," the agency believes that "Eco-friendly" as a brand name conveys far-reaching environmental benefits and possibly the absence of any negative environmental impact. These are claims that

the FTC believes the marketer is highly unlikely to be able to substantiate. However, a qualified claim that the product is “eco-friendly” because it is made with recycled materials is not deceptive, provided: 1) the statement is clear and prominent, 2) the marketer has substantiation for it, and 3) the context of the advertisement does not imply other deceptive claims.

Seals and Certifications

In the new Certifications and Seals of Approval Section 260.6, the FTC states that a marketer’s use of a certification or seal constitutes an endorsement, and therefore, must comply with the criteria in the FTC’s Endorsement Guides, found at 16 C.F.R. Part 255. Because the use of an unqualified certification or seal by itself may convey a general benefit claim, marketers are advised not to use unqualified certifications or seals. Certifications or seals should be accompanied with “clear and prominent” language that explains that the certification or seal applies only to “specific and limited” benefits. (Section 260.6)

Consumers can be misled into believing that an unqualified environmental seal or logo on a package means the product is either a “good” one or a “bad” one without inquiring about or understanding the nature of the environmental claim on the package. The new provision seems to be aimed at addressing this concern. Further guidance on what would be acceptable qualifying language would help marketers comply with the requirement that the accompanying language should be “clear and prominent.” In addition, if there is a distinction between the way the FTC views certification and seals awarded by government agencies and certification and seals awarded by third party/private entities, then this distinction should be set out in the Guides.

Biodegradability

Claims of biodegradability, without appropriate qualifying language regarding the product or package’s ability to degrade where it is customarily disposed, can foster customer misconceptions. The consumer survey information the FTC reviewed on this point indicated that 60% of consumers believe that a biodegradable package will disappear in a year or less.

The FTC has indicated that an unqualified “biodegradability” claim must be based on evidence that the items “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.” (Section 260.8(b) Additionally, Section 260.8(c) provides that an unqualified degradable claim for solid items is deceptive if the items “do not completely decompose within one year after customary disposal.”

However, the FTC’s within a reasonably short period of time after customary disposal” in Subsection b is not clear. There is no designation of the type of test

method that would support the biodegradability standard in Subsection c. . Also, the FTC suggests that the current generally accepted 28-day readily 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.” However, the 28-day readily biodegradability test has been accepted by the U.S. Environmental Protection Agency (EPA) and is a generally accepted test used world-wide for degradability. Until a new test is developed and accepted by the Commission or further clarification and guidance are provided on the length of time required for decomposition and complete degradation, CSPA believes that the current 28-day test should be acceptable to substantiate such degradable claim.

Additional clarification on the data necessary to substantiate a biodegradability claim is necessary. Marketers need to know whether they need to have data on the individual components or on the full product.

Renewable Materials Claims

The FTC suggests that a “made with renewable materials” claim should include qualifying information about the material used, how the material is sourced, and why the material is renewable. CSPA does not believe that all three qualifiers are necessary in certain situations in which the information can be reasonably inferred by the consumer. CSPA requests that the FTC revise its example to provide marketers the flexibility to use one or more of these qualifiers depending on the context of the claim.

Allow Use of Company Websites

In our previous comments filed in February, 2008, CSPA urged the FTC to specifically address the Internet and the opportunities it provides for increasing consumer access to product information in the revised Guides, including explanation of environmental claims. Online technology, we noted, has greatly advanced since the Guides first came about in the early 1990s and company websites are now a valuable and growing source of clarifying information for consumers about product benefits and services. In its analysis, the FTC essentially agrees that the Internet can provide consumers with useful information about products, packages, and services, but also states that websites cannot be used to qualify such claims and that qualifying information must be in “close proximity” to the claim itself. While CSPA agrees that all information needed to qualify the claim ideally would be provided at the point of purchase, we request that the FTC allow some degree of flexibility for circumstances where this is impractical, 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, CSPA recommends that a manufacturer include information on the product label that directs a consumer to

the manufacturer's website where the qualifying information can be accessed. The FTC could provide examples of such label language, or in the alternative, the FTC could suggest some minimal language for the label that would be acceptable provided a more complete website explanation is available.

Importance of Enforcement

CSPA also noted in its earlier comments that an essential component of protecting consumers from misleading, deceptive, or vague claims is swift enforcement. CSPA believes the FTC should emphasize the importance of the Guides as an indication of potential enforcement. To that end, we welcome the FTC's efforts to provide guidance on the application of the law, and FTC's enforcement of the law when advertisers fail to heed the guidance.

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Data still show that there is consumer misunderstanding that CFCs are still in aerosol products. CSPA has an affiliated education foundation, the Consumer Aerosol Products Council (CAPCO), the purpose of which is to educate the public about aerosol products and the environment.. As a result of scientific discovery that CFCs may cause damage to the stratospheric ozone layer, American aerosol manufacturers voluntarily switched from CFC propellants to suitable alternatives, and by 1978 when the U.S. EPA banned the use of CFC propellants, most aerosol manufacturers already had voluntarily stopped using CFCs, This completed the phase out of all CFC propellants in consumer aerosol products produced and sold in the U.S. Despite this history and phase out of CFCs, a recent survey showed that 7 out of 10 people thought that CFCs were still used in the products. This points out not only the continuing need for consumer education about the elimination of CFCs, but also the appropriateness of claims that consumer products do not contain CFCs. Rather than misleading consumers, such CFC environmental benefit claims will educate them regarding this important development in the aerosol product form.

Conclusion

CSPA respectfully recommends that the FTC consider the suggested changes set out above.

Respectfully submitted,

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