



**Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580**

COMMENTS

of the

DIRECT MARKETING ASSOCIATION, INC.

on the

PROPOSED REVISED GREEN GUIDES

16 C.F.R. 260

PROJECT NO. P954501

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I. Introduction

The Direct Marketing Association ("DMA") appreciates the opportunity to comment on the Federal Trade Commission's ("FTC" or "Commission") request for public comments on the Commission's proposed revised *Guides for the Use of Environmental Marketing Claims*, or "Green Guides."¹

The DMA (www.the-dma.org) is the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing tools and techniques. DMA advocates industry standards for responsible marketing; promotes relevance as the key to reaching consumers with desirable offers; and provides cutting-edge research, education, and networking opportunities to improve results throughout the end-to-end direct marketing process. Founded in 1917, DMA today represents thousands of companies from dozens of vertical industries in the U.S. and 50 other nations, including a majority of the Fortune 100 companies, as well as nonprofit organizations. Included are Internet-based businesses, cataloguers, financial services, book and magazine publishers, retail stores, industrial manufacturers, and a host of other segments, as well as the service industries that support them.

We commend the Commission for seeking broad input from the public on its review of the Green Guides. We welcome opportunities for collaboration and we look forward to continuing to work with the Commission on this important matter.

II. The DMA (through its Committee on Environment and Social Responsibility) encourages its members to use environmental best practices and provides them with the information and tools to do that.

The DMA is proud of its efforts to encourage greener marketing practices. DMA's Committee on Environment and Social Responsibility ("CESR") was established by the DMA Board of Directors in March 2005 to promote the use of environmental best practices by DMA members, and to provide them with the education and tools they need to do that. The CESR's

¹ "Request for public comment on proposed, revised Guides for the Use of Environmental Marketing Claims," 75 Fed. Reg. 63552 (Oct. 15, 2010).

key initiatives, which can be accessed through the DMA Environmental Resource Center (www.the-dma.org/environment), have included the following:

- **DMA Environmental Planning Tool and Policy and Vision Statement Generator.** A free web-based tool that provides marketers with over one hundred strategies to improve their environmental footprint, and educates marketers on the complexity and variety of environmental issues facing the direct marketing community.
<http://www.the-dma.org/envgen/>
- **DMA "Recycle Please" campaign.** An ongoing, national industry-wide campaign to improve consumer awareness and improve recycling rates for catalogs and direct mail. DMA obtained FTC and Environmental Protection Agency support for this initiative, which was coordinated with the Environmental Media Association and the Magazine Publishers Association.
www.recycleplease.org
- **DMA Green Goal.** The first industry-wide goal in the area of list hygiene, the DMA Green Goal encourages companies to reduce undeliverable-as-addressed advertising mail by 25% and reduce carbon emission from production and delivery of direct mail by one million tons by 2013.
<http://www.the-dma.org/cgi/dispanouncements?article=1112>
- **DMA ECHO Green Marketing Award.** DMA expanded its ECHO Awards for excellence in direct marketing with a Green Marketing Award to honor the most innovative campaign employing environmentally responsible and sustainable marketing strategies and techniques.
<http://www.dmaresponsibility.org/Environment/greenaward/>
- **DMA Environmental Resource Center.** Created a web page for marketers providing tools for them to reduce the environmental impact of their direct mail and packaging.
<http://www.dmaresponsibility.org/Environment/#3>

- **DMA Green 15™ Pledge Program.** A public recognition program that asks marketers and suppliers to pledge that their organizations are taking certain steps throughout the direct marketing process to improve their environmental footprints and "triple bottom-line" (profit, planet and people) performance.

<http://www.dmaresponsibility.org/Environment/G15MarketerPledge/>

- **DMA Green 15™ Toolkit.** A web page that provides marketers with information, strategies, plans and ideas to reduce the environmental impact of their mailings.

www.the-dma.org/Green15Toolkit

In addition, the CESR has authored articles promoting environmental best practices in a number of industry trade publications. These articles have addressed topics including list hygiene and data management; "reduce, reuse, recycle;" environmental planning; and mail production and design.

III. The DMA supports the FTC's efforts to provide clearer guidance concerning environmental marketing claims, which we believe will benefit consumers and marketers alike.

Since information about the environmental characteristics of products and services is of increasing significance to consumer purchase decisions, the FTC first provided guidance to advertisers concerning environmental claims when it issued its original Green Guides in 1992. The Commission most recently revised those guides in 1998, but much has changed since then. DMA agrees with the FTC's decision to re-examine the current Green Guides, revise the original provisions and, where necessary, supplement the guides with new provisions designed to address changing consumer perceptions and new environmental claims.

The *DMA Member Principles* – ten fundamental tenets at the core of the DMA's extensive and effective self-regulatory efforts – state that a DMA member "[c]learly, honestly, and accurately represents its products, services, terms and conditions." However, with the environmental landscape evolving rapidly, there are considerable differences of opinion

concerning the meaning and validity of certain claims. It is not always easy for a responsible marketer to know whether a particular "green" claim "clearly, honestly, and accurately" represents what it is selling.

We believe that the FTC's revised proposed guides generally provide useful guidance to advertisers, and we commend the Commission for using illustrative examples in the guides to help clarify its views concerning environmental claims.

IV. Qualifying a general environmental claim should be sufficient to reduce consumer misperceptions that an advertiser is claiming that its product has specific, unstated benefits, or no negative environmental impact.

One of the most important provisions in the proposed revised guides is Part 260.4, which discourages unqualified general environmental benefit claims (*e.g.*, "environmentally friendly"). The Commission believes that such claims "likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact."

We agree that potential consumer misperceptions of general environmental benefit claims can be prevented by qualifying such claims to identify the particular environmental benefit that the advertised product or service offers. The FTC's consumer perception study found that qualified green claims "focus consumers on the specific advertised benefit and significantly reduce misperceptions"

The Commission has correctly chosen this approach rather than a full prohibition of general environmental benefit claims. Such a policy would not be consistent with the long-established principle that the best way to help consumers make good decisions is to provide them with more information, not less.

We also applaud the Commission's decision not to require a marketer to undertake a life-cycle analysis ("LCA") before making environmental claims. In many instances, the science of LCAs is uncertain – there is considerable debate over what factors should be included in an LCA and how those factors should be weighed. LCAs can be complex and costly, and could impose significant costs that might discourage even the largest companies from providing useful information to consumers concerning the environmental benefits of their products and services in

their advertising. The use of an LCA should remain an option, not a requirement, for green advertising.

While we generally agree with the FTC's endorsement of qualified general environmental benefit claims, the *Federal Register* notice that requests public comment on the proposed revised Green Guides contains some language which makes that endorsement somewhat ambiguous. It states that "a general environmental benefit claim, in combination with a particular attribute, may imply that the particular attribute provides the product with a net environmental benefit."

The notice then offers the following example: "[A] marketer that claims its product is 'Green – Now contains 70 percent recycled content,' needs to import more materials from a distant source, resulting in increased energy use which more than offsets the environmental benefit achieved by using recycled content. If consumers interpret the claim 'Green – Now contains 70 percent recycled content' to mean that the product has a net environmental benefit, the claim would be deceptive."

The example seems to raise the possibility that marketers who want to make a simple and presumably truthful claim about a specific environmental benefit of a product may be found guilty of making a much broader and deceptive claim. This seems inconsistent with the finding of the FTC's own consumer perception study that "when qualified, the use of a general green claim did not appear to significantly contribute to consumers' propensity to see implied claims or to believe a product had no environmental impact." It is also inconsistent with the Commission's decision (which we support) not to require marketers to conduct a life-cycle analysis to substantiate environmental claims. We believe that the agency should correct this apparent inconsistency if it issues revised Green Guides.

V. The DMA believes that environmental certifications and seals of approval should be judged on their merits, and that certification and seal of approval programs created by industry associations should not be assumed to be less valid or credible than those created by other entities.

As the Commission has noted, the use of certifications and seals of approval is a significant environmental marketing trend. Such certifications and seals of approval can help businesses effectively communicate information about highly technical issues that may be

difficult for consumers to interpret or verify directly. DMA believes it is appropriate for the FTC to include more detailed guidance concerning the use of such certifications and seals of approval in the Green Guides. However, DMA is concerned by the Commission's apparent bias against certification and seal of approval programs created and/or administered by industry trade associations.

The FTC should avoid making any implication that third-party certification deserves to be given greater weight by consumers, government, and others than certification from a trade association. Many third-party seal programs require marketers to pay for use of the seal to cover the costs of running and verifying the program. The fees to use a third-party seal of approval may cost thousands of dollars, and that fact may be just as material to consumers as the fact that an advertiser who uses a trade association's seal of approval is a dues-paying member of that association.

Example 2 of proposed Part 260.6 of the Green Guides states that an advertisement by a member of a trade association that features a certification or seal of approval from that trade association is deceptive unless the ad discloses the "material connection" between the advertiser and the association. While making such a disclosure may not impose a significant burden on advertisers in most instances, we question whether the fact that the advertiser is a member of the association is in itself a "material connection," the nondisclosure of which would be deceptive.

In our view, the most relevant question to ask about an environmental certification program is not the nature of the entity behind it, but whether the certification is valid and sufficient to substantiate any claims that its presence in the advertisement creates about a product or service's environmental benefits.

The Green Guides notice correctly recognizes that a marketer may rely on third-party certification for all or part of its substantiation for environmental claims only if that certification constitutes "competent and reliable" evidence. In other words, the certification must support the marketer's claims with "tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results."

If an association's seal of approval does not provide substantiation for the claimed environmental benefit or benefits, or if it grants the seal to its members regardless of whether they truly qualify to use the seal, then we agree that there is a problem. However, the

Commission seems to believe that the most significant question is whether the certification has been granted by an independent third party.

If a third-party certifier offers a seal of approval that is not meaningful and *bona fide*, or if that entity sells permission to use its seal to any marketer who is willing to pay its price – without verifying that the marketer truly qualifies to claim that its product or service offers an environmental benefit – the fact that the third party is "independent" doesn't really matter.

A third-party certifier may be a profit-making entity motivated primarily by the desire to make money from its environmental certification or seal of approval program. Such a certifier may generate all of its income from the sale of its certificate or seal. An industry trade association may generate income from membership dues, but most such associations provide a wide variety of services to their members and, thus, are less likely to be dependent economically on their certification programs as a third-party entity may be.

There are a number of exemplary third-party certification and seal of approval programs that provide valuable information to consumers and are administered with integrity. The same is true of a number of certification and seal of approval programs administered by industry trade associations. DMA believes that there is no reason for the Commission to favor third-party certification and seal of approval programs over those created and administered by trade associations.

In any event, the real issue is whether the certification or seal of approval is meaningful and whether the program is honestly administered. The disclosure of a supposed "material connection" does consumers little good if the certification or seal of approval does not provide substantiation for the environmental claims made by the advertiser, or if the certifying entity's decisions are dictated by financial considerations.

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We thank you for the opportunity to submit these comments and look forward to working with you on this important matter.