

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

NEW YORK, NY

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

FACSIMILE

(202) 342-8451

www.kelleydrye.com

(202) 342-8400

WILLIAM C. MACLEOD

DIRECT LINE: (202) 342-8811

EMAIL: wmacleod@kelleydrye.com

December 10, 2010

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

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

Dear Sir or Madam:

Enclosed is the Grocery Manufacturers Association ("GMA") comment in response to the Federal Trade Commission's request for comment on the topic of the proposed Guides for the Use of Environmental Marketing Claims.

We appreciate the work the Commission is doing and its attention to this matter.

Sincerely,

/ s /

William C. MacLeod

Enclosure

**COMMENT OF THE GROCERY MANUFACTURERS ASSOCIATION IN RESPONSE
TO THE FEDERAL TRADE COMMISSION REQUEST FOR COMMENTS ON
PROPOSED REVISIONS TO GUIDES FOR THE USE OF ENVIRONMENTAL
MARKETING CLAIMS, 16 CFR Part 260, Project No. P954501**

Grocery Manufacturers Association

The Grocery Manufacturers Association (“GMA”) is pleased to provide these comments for the record in response to the Federal Trade Commission’s (“FTC” or “Commission”) request for public comment on Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954501.¹

GMA represents the world’s leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps ensure the safety and security of consumer packaged goods through scientific excellence. The GMA board of directors comprises chief executive officers from the Association’s member companies. The \$2.1 trillion food, beverage and consumer packaged goods industry employs 14 million workers, and contributes over \$1 trillion in added value to the nation’s economy. For more information, visit the GMA Web site at www.gmaonline.org.

GMA is committed to assisting the FTC in its efforts to update the Green Guides and believes there will be substantial value for all concerned by the Commission undertaking this review. To this end, the members submitted comments in February 2008 in response to the Commission’s request during its initial Green Guides regulatory review² and look forward to providing further comment on the Commission’s proposals.

The Proposed Guides Offer Many Useful Revisions

GMA applauds the Commission on its work in effectively synthesizing industry’s written comments and discussions at the workshops. The FTC has developed useful proposed guidance that reflects a careful analysis of complex issues.

GMA agrees with the Commission’s analysis on a number of topics and finds its analysis helpful in many respects. In particular, we agree with the FTC that certifications and seals of approval should be viewed as endorsements. We also agree with the Commission’s decision not to provide specific guidance on “sustainable” claims. As we noted in our last comment on the Green Guides review, the term sustainable can include a wide variety of economic, social, and environmental considerations, which makes it difficult for the Commission to provide meaningful guidance on the use of the claim as an environmental marketing term. Moreover, we agree with the Commission’s decision not to address the terms, “organic” (as it relates to agricultural products) and “biobased” since its sister agencies have already provided standards or guidance on the use of these terms. We also understand why the Commission declined to create

¹ Federal Trade Commission, Guides for the Use of Environmental Marketing; Proposed Rule, 75 Fed. Reg. 63552 (Oct. 15, 2010) (“*Notice*”).

² See Comment 533431-00045.

an environmental standard for the term, “natural,” but we do appreciate the informal guidance it provided for this term on page 139 of its Notice.

Specific Areas Would Benefit From Clarification or Further Review

Summary of Points

While we believe the proposed Green Guides address many of the important issues that are likely to arise in the marketplace, we do think there are some areas that could benefit from further elaboration of the Commission’s proposed guidance.

Specifically, we believe companies and consumers would benefit from further guidance on what negative impacts should be disclosed. For example, the proposed Guides advise marketers that a qualified-general environmental claim is deceptive if a particular attribute represents an environmental improvement in one area, but causes a negative impact elsewhere that makes the product less environmentally beneficial than the product otherwise would be. It is unclear when this principle might apply.

In addition, marketplace participants would benefit from an elaboration or some examples in the Green Guides highlighting what “product category” means in the context of “free-of” claims.

GMA also asks the Commission to take another look at its proposal to require additional disclosures for renewable materials and recyclable products. GMA is unaware of evidence that would suggest that these types of disclosures are necessary in most cases to avoid confusion or are material to consumers’ decisions.

Disclosing Negative Impacts Should be Clarified

The Commission specifically requested comments on whether it should advise marketers that a qualified-general environmental claim is deceptive if a particular attribute represents an environmental improvement in one area, but causes a negative impact elsewhere that makes the product less environmentally beneficial than the product otherwise would be.

There are few, if any, human activities that do not have some impact on some aspect of the environment, and consumers understand that already. Disclosures that tell them what they already know would not reduce confusion or advance understanding of environmental effects. Nor would disclosures of trivial or evanescent effects. Therefore, if the Commission proposes the disclosure of negative impacts in guidance, GMA believes that industry would benefit from guidance as to the methodology that should be used to determine what negative impacts should be disclosed and what should not. Some examples in this area would help as well.

Product Categories Should be Clarified

The proposed Green Guides state that “free-of” claims may be deceptive if the substance has never been associated with the *product category*. The Commission does not, however, define “product category” in the proposed guides. GMA believes that industry would benefit from an example in the Green Guides highlighting what “product category” means. The Commission

might consider adding an example to the Green Guides similar to the one in the ISO standard, which references “detergent category” as a “product category.”

Some of the Renewable Materials Disclosures Are Not Necessary

The Commission explained in the Notice that “the results of the Commission’s consumer perception study suggest there is a disconnect between consumer understanding of ‘made with renewable materials’ claims and what marketers appear to intend to convey. Marketers, for example, may intend to communicate that a product is made from a material that can be replenished at the same rate, or faster, than consumption. Consumers, however, likely believe the product has other specific environmental benefits, such as being made with recycled content, recyclable material, and biodegradable material.” Therefore, the Commission proposes adding guidance that advises marketers to qualify these claims. It goes on to state in the Notice that, “[w]hile it did not test particular qualifiers, it nevertheless believes that providing specific information about the renewable material may correct consumers’ misimpressions about [renewable materials] claim[s].” To this end, the Commission suggested qualifying these claims with information about which renewable materials were used, how the materials were sourced, and why the materials are renewable.

GMA agrees that renewable materials claims may well merit qualification in certain instances, and that disclosing information about which renewable materials were used may, indeed, help ensure consumer understanding of these claims. However, we believe that requiring additional disclosures concerning how the materials were sourced and why the materials are renewable is not necessary to avoid deception, and may be counterproductive in many cases where there is no consumer perception evidence suggesting that these facts would be material to consumers or necessary to dispel a misimpression.

Similarly, while the Commission’s consumer perception testing indicates that consumers are confused about recyclable claims, there has been no parallel suggestion in the Notice that there is a need to qualify recyclable claims with additional information about how the material is recycled and why it is recyclable.

The Commission is well aware that adding disclosures could limit the ability of marketers to make claims. For example, if renewable materials claims become so voluminous that a package cannot accommodate them, then disclosures could inadvertently deny consumers relevant and factual information about the use of renewable materials. Therefore, GMA believes the Commission does not have a sufficient basis to advise marketers to disclose how a renewable material is sourced and why it is renewable.

Recyclable and Degradable Disclosures Could Discourage Progress

Disclosures that undermine the use of recyclable and degradable claims could discourage the promotion of environmental improvements. The effect of the guidelines should not be to discourage such valuable claims that could be beneficial to consumers.

As the Commission noted, recycling facilities and systems are not uniform across the land.

Consumers, especially those interested in products that can be diverted from the waste stream, are likely to have knowledge of the options available to them. It is not apparent to GMA that it is necessary to qualify all such claims when the availability of facilities or systems falls below a particular threshold. The qualification could well diminish demand for the systems and make the unavailability a self-fulfilling prophecy. Accordingly, GMA suggests that the guidelines contain their own qualification and advise marketers that such disclosures would be appropriate in cases where claims are likely to mislead consumers about the availability of facilities.

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GMA appreciates this opportunity to share its views and stands ready to participate in continued work of the FTC staff.