



December 9, 2010

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

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

As principals of EnviroMedia Social Marketing, we offer our comments on the FTC's proposed Guides for the Use of Environmental Marketing Claims; Project No. P954501.

As marketing communications professionals, we have both managed environmental marketing and communications since the early 1990s. In 1997, we cofounded EnviroMedia Social Marketing, the nation's first advertising and public relations agency specializing in improving public health and the environment.

In our work, we have produced hundreds of environmental marketing campaigns for corporate, government, and not-for-profit clients.

Since 2007, we have given many presentations about authenticity in green marketing across the United States to business and trade groups, NGOs, and universities. We are an active member of advertising industry groups, encouraging our peers to avoid "greenwashing."

Our current and future clients will be affected by the proposed revisions to the Green Guides. Our own industry trade group appears reluctant to endorse revisions to the standards or to work to educate marketers about authentic green marketing. We have called the American Advertising Federation since the FTC released its proposed guidelines revisions this fall and have received no information about our own trade organization's response to the updates. Meanwhile, we are not aware of any educational efforts on the part of AAF to educate our membership on environmental marketing claims in the past three years.

Why Strong Revisions to the Green Guides Are Necessary

We are contributing our perspective having been the only business delegates from our industry to the United Nations Climate Change Conference, now for the fourth consecutive year (2007-2010). It was the U.N. scientific report that humans contribute to global climate change that led to the explosion of interest in environmentalism and sustainability in 2007. Meanwhile, this explosion of green marketing has occurred in a day and age when claims of “carbon neutral” have become more common-place than “recyclable.”

While some believe “going green” is a fad, it is, in fact, a social movement responding to multiple facets of environmental degradation, the foremost being the climate crisis. This movement requires significant changes to the way we live and do business. To achieve the necessary greenhouse gas emission reductions, industry, businesses, and consumers must find ways to reduce energy use and conserve natural resources in innovative ways.

Misleading or untruthful environmental claims (greenwashing) allow companies to say they’re green, but act otherwise. Some of these general claims are a result of a lack of understanding about the technical, economic, political, and social aspects of air, water, waste, and energy policies. Other claims are deceptive and may cause financial damage or public health problems. Our global challenges are too important to allow this matter to go unaddressed.

In the future, companies may be required to conduct a “life-cycle analysis” of how their products are manufactured, addressing packaging and distributing products in a cleaner way, but those environmental regulations appear to be years away.

Yet, consumers are continuing to demand green products now. In a random national telephone survey of more than 1,000 American consumers, 81 percent said they continue to buy green products despite the weak economy.¹ Green buying habits are relatively unchanged from the last time EnviroMedia asked Americans the same question (January 2009), with 82 percent saying they were still buying green despite the recession.

We believe the green marketplace will only continue to expand as more consumers demand that companies find innovative ways to deliver products and services with less harm to the environment. Companies that innovate for the environment will understandably seek to highlight this differentiation in their marketing.

¹ EnviroMedia Social Marketing commissioned the telephone survey of 1,022 adults 18 years of age and older living in private households in the continental United States, conducted November 5-8, 2010, by Opinion Research Corporation. Margin of error +/- 3.2 percent.

In general, we believe a revision to the FTC Green Guides is long overdue. The published proposal (October 6, 2010) is on the right track and, with revisions and clarification, should be adopted by the Commission. The new guides will promote environmental authenticity, increase consumer confidence, and set the playbook for the marketing industry to follow.

We participated in all three of the FTC's "Eco in the Marketplace" workshops in 2008 and, as members of the American Advertising Federation, encouraged the AAF to help solve the greenwashing problem through voluntary education. Self-regulation is not working.

One example has been use of the term "clean coal" by the coal mining trade group and the lawyerly "cleaner coal" espoused by a multitude of others, the latter of which may be true in the strictest sense but adds to the overall perception that one of the dirtiest substances we could use for energy can be made clean. Millions of dollars have been spent by the industry to mislead the public and avoid costly environmental regulations. In fact, their campaign has been successful. In a November 2010 national survey, one out of four Americans in the telephone survey said coal — the fossil fuel that powers 45 percent of homes in the United States — is a renewable energy source.²

The FTC should not allow this industry to make this claim, which is false and deceptive. Coal, when burned, causes air pollution. Continuing use of "clean coal" puts true renewable energy companies at a disadvantage at a time when we need to begin a transition to pollution-free energy.

Worst of all, claiming coal is clean could lead consumers to believe coal is pollution-free, thus encouraging them to consume even more of it. This registers on the highest possible scale when it comes to greenwashing — claiming a polluting product is clean and thus encouraging unknowing customers to consume more of it, and ultimately leading to the detriment of our environment.

Education and Enforcement Are Critical

Due to the seriousness of global sustainability challenges, we urge the Commission to make the necessary changes to the proposed guides as soon as possible. Additional updates should be completed every two years as new innovative technologies and terminologies develop.

When the revised Green Guides are published in 2011, we urge the Commission to conduct extensive outreach and education to both consumers and the marketing and advertising industry.

² Ibid.

It is also clear that the FTC needs additional resources to enforce the Green Guides. For the new rules to be effective, we can't wait years to have a few token cases brought forward. Administrative penalties may be able to offset the cost of such resources.

Collaborate with Federal Government Partners on "Sustainable"

We understand the Commission's reluctance to provide a definition for terms such as "sustainable" and "carbon neutral" due to a lack of clear standards. However, these terms will become increasingly important and more widely used. We encourage the FTC to work closely with the U.S. Department of Energy and U.S. Environmental Protection Agency to develop those criteria as soon as possible.

Consider the Greenwashing Index as a Body of Evidence

In responding to your 18 questions from the public notice, we have included in our comments several Internet hyperlinks to examples of ads and comments posted by consumers on the EnviroMedia Greenwashing Index website, found at www.greenwashingindex.com. As we state on the website, "The ads posted and evaluated here are not submitted or rated by EnviroMedia Social Marketing staff, and the opinions, views, and statements found on this site do not necessarily reflect those of EnviroMedia Social Marketing, its principals, or its employees." More than 300 TV, print, online, and outdoor ads have been posted to the site by consumers from all over the United States.

While consumer desire to do right by the environment was exciting in 2007, it became clear that some marketers were taking advantage of that goodwill by making false or misleading environmental claims.

The problem grew so fast, the Federal Trade Commission sped up its timeline to revamp its green advertising guidelines. We knew consumers could not wait for government action to protect them from greenwashers — companies that spend more time and money advertising green claims than actually implementing environmentally friendly practices. If consumers didn't learn how to discern authentic green advertising from false green advertising, companies with genuine environmental stories would be threatened, and the merits of green advertising would be discredited.

EnviroMedia recruited University of Oregon faculty to help develop the Greenwashing Index with three goals: Help consumers become more savvy about evaluating environmental marketing claims, hold businesses accountable for their environmental marketing claims, and stimulate demand for sustainable business practices that truly reduce the impact on the environment. Deborah Morrison, Ph.D., and Kim Sheehan, Ph.D., from the University of Oregon School of Journalism and Communication played key roles in developing the site's guidelines for what constitutes greenwashing.

EnviroMedia built the site to be educational and interactive for consumers, investing \$43,000 in developing, implementing, and promoting the Greenwashing Index. The centerpiece of the website is an automated tool that scores consumers' responses to the following five statements about the relevance of marketing claims in an ad. The score is included in the ad's overall score, and comments are added to the tally. Scoring is similar to golf: High scores are undesirable (for the advertiser). The average score falls on a simple scale ranging from 5 (bogus ad/greenwashing) to 1 (authentic ad/not greenwashing).

1. THE AD MISLEADS WITH WORDS

Do you believe the ad misleads the viewer/reader about the company's/product's environmental impact through the things it says? Does it seem the words are trying to make you believe there is a green claim when there isn't? Focus on the words only — what do you think the ad is saying?

2. THE AD MISLEADS WITH VISUALS AND/OR GRAPHICS

Do you think the advertiser has used green or natural images in a way designed to make you think the product/company is more environmentally friendly than it really is?

3. THE AD MAKES A GREEN CLAIM THAT IS VAGUE OR SEEMINGLY UNPROVABLE

Does the ad claim environmental benefits without sufficiently identifying for you what they are? Has the advertiser provided a source for claims or for more information? Are the claims related to the company/product?

4. THE AD OVERSTATES OR EXAGGERATES HOW GREEN THE PRODUCT/COMPANY/SERVICE ACTUALLY IS

Do you believe the advertiser is overstating how green the product/company actually is? Are the green claims made by the ad believable? Do you think it's possible for the product/company to do the things depicted/stated?

5. THE AD LEAVES OUT OR MASKS IMPORTANT INFORMATION, MAKING THE GREEN CLAIM SOUND BETTER THAN IT IS

Do you think the ad exists to divert attention from something else the company does? Do you believe the relevant collateral consequences of the product/service are considered in the ad? Does it seem to you something is missing from the ad?

When www.greenwashingindex.com went live in early 2008, it not only empowered consumers to post and rate ads, but also provided basic information for consumers to use when shopping for green products. EnviroMedia timed the site launch to coincide with the FTC's "Eco in the Marketplace" workshops.

National news coverage for www.greenwashingindex.com included NBC's *Today Show*, *TIME*, *U.S. News and World Report*, *Washington Times*, *Environmental Leader*, and *Brandweek* magazine. Local television news coverage included the Austin, Dallas, Seattle, Portland, and San Diego markets.

Interpretation of Qualified General Environmental Benefit Claims

In 2009, we surveyed American consumers to reveal how they evaluate green marketing claims.³

- About one in three consumers say they don't know how to tell if green product claims are true.
- One in 10 consumers blindly trusts green product claims.
- Consumers are verifying green claims by reading the packaging (24%) and turning to research (going online, reading studies; 17%).

Consumers Want One Green Certification

It seems self-evident that the higher the number of self-appointed authorities in any given field, the more dubious each one's claim to authority becomes. With more than 350 green certifications currently in the marketplace, the credibility of them all is imperiled. It is almost impossible for the average consumer to know all the technical requirements or specifications for packaging, recyclability, energy and water use, and carbon footprint. They are all important, but now they are competing with each other for mindshare and product label space.

In a recent national survey, we asked Americans "There are several hundred labels or seals of approval designed to help consumers know whether a product is green or healthy. Would having just one seal for all green products give you more confidence that you were buying green?"

What we found:

The EnviroMedia/Opinion Research Corporation findings⁴ show:

- Two-thirds of Americans (65 percent) say having one seal for all green products would give them more confidence that they were buying green. Only 26 percent said it would not.
- The largest percentage of Americans (41 percent) think the primary enforcer of green product claims should be a third-party certification system, beating out the government (Federal Trade Commission) with 26 percent.

³ EnviroMedia commissioned a telephone survey conducted among a national probability sample of 1,001 adults 18 years of age and older, living in private households in the continental United States. Conducted by Opinion Research Corporation January 23-26, 2009. The margin of error is +/- 3.2 percent.

⁴ EnviroMedia Social Marketing commissioned the telephone survey of 1,022 adults 18 years of age and older living in private households in the continental United States, conducted November 5-8, 2010, by Opinion Research Corporation. Margin of error +/- 3.2 percent.

- Only 16 percent of Americans think the marketing/advertising industry should self-regulate. And, as we've seen, that's not working.

Following are our responses to the 18 questions posed by the proposed Green Guides:

1. Do consumers interpret general environmental claims, when qualified by a particular attribute, to mean that the particular attribute provides the product with a net environmental benefit? Please provide any relevant consumer perception evidence. Should the Commission 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? Why or why not?

According to the Greenwashing Index, this is called "masking" — omitting or obscuring important information, making the green claim sound better than it is. The Greenwashing Index asks consumers, "Do you think the ad exists to divert attention from something else the company does? Do you believe the relevant collateral consequences of the product/service are considered in the ad? Does it seem to you something is missing from the ad?"

In one example from GreenwashingIndex.com, a consumer questioned the "negative impact" of a billboard reading "Coal, Clean Green Energy." A related consumer comment reads, "The coal industry is currently the biggest greenwasher out there, in my opinion. They think if they keep telling us it's a clean option then we'll eventually start believing it. They're not even saying something more subtle like 'cleaner.'"

Another example is Fiji Water's "Every drop is green" ad. One consumer commented, "They are misleading their audience when saying that 'Every Drop is Green' because the thing that they are forgetting about is that their product is from Fiji! That's all the way down by Australia (aka: Really far away!)."

When posting an example of Huggies Pure & Natural packaging, a consumer wrote, "The only part of the actual diaper that is eco friendly is the OUTSIDE of it with its organic cotton. Having organic cotton on the outside of the diaper does not improve the inside of the diaper, the part that is most important. It isn't even specified exactly how much organic cotton is on the diaper. Also, the product's packaging is composed of 20% recycled materials; that fact doesn't do much good considering it's only the packaging, not the diaper itself."

It is important for the FTC to advise in its Green Guides that ads should not mislead with images and graphics.

For example, one consumer reacted to this Ozarka bottled water print ad with, "The tree is literally a cliché that should be legally banned from advertising that isn't about trees." Another consumer points out other environmental considerations: "Over 80 percent of plastic water bottles are thrown away every year instead of being recycled. Unless Ozarka will be actively trying to change any of this data, their new 'eco-friendly' water bottles will have a minute effect on the environment."

An example of how imagery in a TV ad can be questionable is found in a Ford Escape Hybrid ad on GreenwashingIndex.com. One consumer wrote, "It seems as though the SUV has shed its 'muddy' image for a 'clean' facade simply because it's labeled as a 'hybrid.' The animals in this video, the deer, are less afraid of humans than ponies at a petting zoo."

GreenwashingIndex.com advises consumers to consider visuals and/or graphics when scrutinizing environmental claims: "Do you think the advertiser has used green or natural images in a way designed to make you think the product/company is more environmentally friendly than it really is?"

2. Would it be helpful to include an example in the Guides illustrating a qualified general environmental claim that is nevertheless deceptive? For example, a marketer advertises its product as "Eco-friendly sheets - made from bamboo." Consumers would likely interpret this claim to mean that the sheets are made from a natural fiber, using a process that is similar to that used for other natural fibers. The sheets, however, are actually a man-made fiber, rayon. Although bamboo can be used to make rayon, rayon is manufactured through a process that uses toxic chemicals and releases hazardous air pollutants. In this instance, the advertisement is deceptive.

Yes. It would be helpful for the Guides to illustrate a proper and improper use of a qualified general environmental claim.

On the issue of bamboo, there is much confusion in the marketplace. We spoke with one of the owners of a company that was subject to the FTC's recent enforcement action about use of bamboo fiber. He explained his situation by stating, "With our upstream suppliers calling it 'bamboo fiber' how would we know they were using the wrong terminology? The fiber is 'rayon from bamboo' or 'viscose from bamboo.' So, it is a 'fiber from bamboo' but not 'bamboo fiber.' That's a pretty fine line."

Clearly, with the FTC's lack of enforcement for so many years, this is an example of how the green wave took over before many textile companies knew FTC guides even existed on this subject. Or perhaps they saw the lack of enforcement against others using bamboo in flooring as a green light to continue deceptively marketing clothing, sheets, and socks.

Another area requiring employee education is in the retail sector. We witnessed at a Macy's store an endcap with men's shirts and shorts labeled as "made with bamboo fiber." Equally wrong was the retailer's signage in front of the clothing stating, "Turn over a new leaf. Look for this symbol (leaf) with environmentally-friendly products throughout our store." So here in one store are two inaccurate environmental claims, but the average consumer is led to believe these two claims must clearly be accurate.

Another example from GreenwashingIndex.com features an outdoor billboard sponsored by Chevrolet, posted from the New York City area. The green background includes simple large text "Gas-friendly to gas-free" and the company logo and chevy.com website. There is no substantiation for these words, although it is good that a website is offered for more information. Billboards are an especially difficult medium on which to support environmental claims, with drivers only having a few seconds to read them. At the time of this billboard's posting, several people were confused about what gas-free car Chevrolet was selling. It seems that one electric vehicle was in the concept stage.

One commenter wrote, "I would rate Chevy's "gas-friendly to gas-free" marketing campaign as a 4 on the Greenwashing Index. This particular ad definitely exaggerates how green the company is. First, Chevy produces a wide range of trucks and SUVs that are some of the least gas-friendly automobiles. These gas guzzlers include the Suburban, Silverado, Tahoe, and Avalanche. The Chevy website does not even give the average gas mileage for the Suburban and the Silverado truck because the mpgs are so low. Therefore, it is false for Chevy to claim that all of their cars, trucks, and SUVs are anywhere from "gas-friendly to gas-free." Also, after looking at the Chevy website, the only current hybrid "gas friendly vehicles" Chevy offers are a Hybrid Tahoe and Hybrid Silverado. Both of these vehicles only get at best 22 MPG. This is not much considering the fact that Chevy and many other manufactures offer non-hybrid vehicles that that can get close to double that MPG. The Chevy company is greenwashing when it claims that these vehicles are gas friendly. Not only are the words on the ad misleading, the ad also misleads with visuals. Billboards on roads are meant for really quick advertising. The simple green background easily grabs the attention of people driving that only have time to see the green background and Chevy logo."

3. The Commission's consumer perception study found that 27 percent of respondents interpreted the claims "green" and "eco-friendly" as suggesting that a product has no (rather than "some") negative impact. Viewing this finding alone, would it be deceptive for a product to be advertised with an unqualified general environmental benefit claim if the product had a negligible environmental impact? Please provide any relevant consumer perception evidence.

All products have some environmental impact, even if steps have been or are being taken to lessen their impact.

In one example from GreenwashingIndex.com, a consumer posted a GE ad featuring its “advanced cleaner coal technology.” One consumer commented, “Disregarding the undoubtable fact that coal is not an infinite resource, GE aims to ameliorate their image by promoting their ‘clean coal’ methods. But clean coal is disgusting when compared with wind, solar, water, and hydrogen power methods ... GE must invest more into sustainable, zero-imprint techniques, rather than mediocre techniques. This commercial simply promotes the cleaner [rather than the worst] coal method that is leaving only a ‘nearly undetectable impression on the horizon.’”

Another example is a “100% recyclable plastic” message posted on a bottled water distributor truck. One consumer reacted to the irony with, “This doesn’t address what it takes to make the bottles in the first place and ship ‘em all over the world on their way to you ... rather than just using the tap.” Another consumer added, “There are many recyclable plastics out there ... the hard part is finding a place that will take the particular plastic you want to recycle. And, so what if the bottles are recyclable ... where did they come from? Are they made from recycled materials? Was the water harvested sustainably?”

4. If a marketer makes an unqualified degradable claim for a liquid substance (or dissolvable solid), how long do consumers believe the substance will take to completely degrade? Please provide any relevant consumer perception evidence. Should the Commission provide guidance concerning this time period in the Guides? Why or why not?

We do not have research on this specific question, but it is our belief that consumers believe liquid or dissolvable solids may degrade or dry up in a landfill. Use of the term biodegradable may only apply to the liquid, but not the plastic packaging. This is too confusing and should be discouraged.

A relevant greenwashing example is a printed poster from a local paint store, promoting a Benjamin Moore Aura-brand paint. The ad shows a bucket of green paint being spilled, with trees seemingly falling out of the paint can. The headline reads, “Organic Comfort.” and “Colors for your home. Step into nature.” There are no specific substantiations for why this paint has any environmental benefit, yet the word “organic” and the green tree images make a misleading, unqualified claim.

We believe most consumers understand that foods are certified as organic by the USDA. But should a paint company be using the word “organic” in a paint ad? We don’t believe so.

5. The Commission proposes adopting a maximum period of one year for

complete decomposition of solid materials marketed as degradable without time qualification. Would this guidance lead to deceptive claims in circumstances where consumers would expect a material to degrade in less than one year?

Yes, this could be misleading. How many products take less than a year to decompose? We believe advertisers should be specific about how long it will take the product or its packaging to degrade, even if it is less than a year. Advertisers should also be specific about which parts of its product are degradable.

For example, one consumer posted a TV ad for the PaperMate biodegradable pen. The attending comment reads, "Only part of the pen is biodegradable, for one thing. Secondly, the pen will never be able to degrade since our waste stream ends up in landfills, which simply do not promote proper decomposition. I hate claims of being biodegradable (which usually should say compostable) that manipulate peoples' lack of knowledge about product life cycle in terms of how our waste stream actually works."

As Lesley Fair with FTC's Division of Consumer and Business Education said at FTC's first Green Guides review workshop in January 2008, "What the headline giveth, the footnote cannot taketh away."

Here is one example where there is no substantiation for biodegradable plastic cups. Just a rotating "EcoWisdom" quote, such as: "I would feel more optimistic about a bright future for man if he spent less time proving that he can outwit Nature and more time tasting her sweetness and respecting her seniority." — E. B. White."

On GreenwashingIndex.com, we ask consumers to consider whether companies are making claims that are vague or seemingly unprovable. Does the ad claim environmental benefits without sufficiently identifying for you what they are? Has the advertiser provided a source for claims or for more information? Are the claims related to the company/product?

All of this applies to decomposition and biodegradability in a big way. The more specific the better, and why not be specific?

6. Should the Commission quantify the "substantial majority" threshold in the recyclable section of the Guides? If so, how? If not, why not?

With more than 20 years of experience in recycling public education, we have worked with several clients on the issue of recyclability.

First, the FTC should conduct additional education about the 1992 guidelines related to the chasing arrows. Confusion remains about the difference between "recycled" and "made with recycled content."

Second, we do believe the FTC should develop a simple standard for product manufacturers to determine if a recyclability claim may be used on the package. Consumers are often frustrated when they are encouraged to recycle a type of product that is not frequently accepted. In some cases, residential recycling haulers will punish residents who add items they do not accept by leaving the entire recycling bin behind.

For those new packages that are indeed capable of being recycled into new products, it is incumbent upon their producing companies to collaborate with local, state, and national recycling organizations to promote acceptance of these new materials and the development of end-user markets.

Perhaps an easy-to-understand criterion could be that a product must be accepted by 100 percent of curbside recycling programs in major metropolitan areas (top 100 cities by population). These program areas are certainly generating the greatest volume of waste and recycling. The standard does not apply to surrounding and rural areas.

7. Should the Commission quantify the “significant percentage” threshold in the recyclable section of the Guides? If so, how? If not, why not?

An ad posted to GreenwashingIndex.com shows a print ad for Nestle’s Ice Mountain Bottled water. The ad is helpful in explaining to consumers the environmental impact of the different parts of their new water bottle. However, stating that the bottle cap is 100 percent recyclable is misleading. While it is true the material could be recycled into new products, some recycling material recovery facilities refuse to accept bottle caps because the lids tend to clog up their sorting line due to the size and rigidity of the plastic. This technology may change, but until it does a claim of “100% recycled” on the bottle cap is incorrect.

Claims about recyclability for products with more than one type of packaging should be based on current technology of the vast majority of recycling material recovery facilities in the top 100 cities by population. This information should be available from the United States EPA.

8. What changes, if any, should the Commission make to its guidance on pre-consumer recycled content claims? How do consumers interpret such claims? Please provide any relevant consumer perception evidence.

a. If the Commission should retain its guidance that pre-consumer recycled materials be diverted from the solid waste stream: (1) should the Commission continue to consider “reuse in the original manufacturing process” and “significant reprocessing” to determine if material is diverted from the solid

waste stream; (2) what factors should the Commission consider to determine whether material was diverted from the solid waste stream; and (3) when processes that divert material from the waste stream become standard practice in an industry, do consumers continue to consider that material recycled content?

“Reuse in the original manufacturing process” should not count, but “significant reprocessing” should count as being diverted. We’re assuming “reuse in the original manufacturing process” refers to a manufacturer’s using its own scrap as feedstock, without having to significantly reprocess that material. “Recycling” that material would be so easy that it’s probably the industry standard and need not be recognized. On the other hand, having to “significantly reprocess” a material competes with disposal, so it should be encouraged.

b. If materials have historically been diverted from the solid waste stream and reused for one purpose (e.g., fiber fill in toys), but now may be reused for other higher purposes (e.g., as raw fiber for textiles), do consumers still consider that material to be recycled content even though the material was already being diverted from the solid waste stream?

Yes, consumers should consider the higher purpose use to be recycled content because this new use diverts material from the solid waste stream either indirectly or directly. In the example, using fiber fill as a raw fiber for textiles diverts fiber fill that is to be used in toys. If the toy use still exists, additional fiber fill would have to be diverted from disposal to make the toys. Thus, the new use as textile fiber diverts material from disposal indirectly. If the toy use disappears, then the textile fiber use diverts material directly from disposal.

9. Do consumers understand the difference between pre-consumer and post-consumer recycled content? Please provide any relevant consumer perception evidence.

A Wilson Tennis Ball ad featuring its 25 percent post-consumer-waste container was posted by a consumer on GreenwashingIndex.com. Some reactions:

- “By using a term that most people are not familiar with, post consumer recycled PET, as well as having a disclaimer on the side of the page, I feel that Wilson’s statement is not as sincere as consumers may think.”
- “The ad reads, ‘Wilson uses a minimum of 25% post consumer recycled PET in all recycled tennis ball cans, reducing landfill waste by at least 400,000 lbs in 2008.’ I agree, yes, that this is a step in the right direction and does have an impact on the amount of waste produced, but I feel that the way they have worded this is misleading and that they have neglected to tell you all the information. They tell you how many pounds they have reduced waste but they don’t tell you how much they are still responsible for or what percentage 400,000 pounds is of the total waste they produce.”

- “Also, this ad makes no mention of the tennis balls themselves, which are almost never recycled. Each year approximately 300 million tennis balls are produced world-wide, and almost none of them are recycled, producing 14,700 metric tons of rubber that is not easily biodegradable. For every one can, there are three tennis balls, and thus three more sources of waste, but that is not mentioned in this ‘green’ ad. So while this ad does not lie, it does leave out important information, exaggerating the role that Wilson plays in environmental sustainability.”

GreenwashingIndex.com also encourages consumers to scrutinize environmental claims for exaggerations. They should ask: Do you believe the advertiser is overstating how green the product/company actually is? Are the green claims made by the ad believable? Do you think it’s possible for the product/company to do the things depicted/stated?

10. Should the Commission continue to advise marketers that recycled content claims may be based on the annual weighted average of recycled content in an item? If so, why? If not, why not? Are recycled content claims based on this method likely to mislead consumers? Would qualifying the claim avoid that deception? If so, please describe what the disclosure should be, and why. Please also provide any relevant consumer perception evidence.

A company that has surges in its products’ recycled content and that does not comply with green marketing guidelines could use varying standards to make claims that are accurate at the moment, but not over time. For example, consider a product that has a high recycled content at certain times of the year and low at other times, but averaged over the year as having a modest level of recycled content. Without a requirement that the company report the “annual weighted average of recycled material,” it could claim the high content when it was high and the weighted average when it was low. Both would be correct but misleading, because the manufacturer never disclosed the low recycled content for certain parts of the year.

Some have suggested that not only an annual average but also a product-line or company-wide annual average of recycled content should be used. This is a complicated matter that may require a work group with industry and the United States EPA. Claims related to either a product line or a company’s entire line of products should follow that suggestion. But claims that are clearly for a single product shouldn’t need to report either product-line or company-wide average recycled content.

Any lack of resolution of this matter, should not delay the publication of the rest of the Green Guides.

11. If a product is advertised as “made with recycled materials,” either in whole or in part, should the Commission advise marketers to qualify that claim to indicate that the product is not recyclable if it is not? Why or why not? If a disclosure is needed, please describe what the disclosure should be, and why.

Marketers of recycled-content products should not have to disclose that it is not recyclable — as long as it doesn’t mislead consumers into thinking it is recyclable by including language such as “please recycle.”

We applaud the FTC for adding the language to the Green Guides for products making recyclable claims that a “substantial majority” of consumers/communities have access to recycling facilities.

We recommend that the FTC take that one step further to ensure that all parts of the product are easily recyclable, not just some parts. For instance, an Ice Mountain water bottle claim posted on GreenwashingIndex.com says the cap is 100 percent recyclable. However, many recycling authorities don’t want the caps even if they are made of the same recyclable plastic, because they say the caps can jam processing equipment.

12. Are consumers aware that manufacturers are no longer permitted to use CFCs in their products? Do no-CFCs claims imply that other products still contain CFCs? Please provide any relevant consumer perception evidence.

We agree that “no-CFC” claims are empty claims, and that they could lead consumers to believe that products are still allowed to contain CFCs. Here’s an example posted on GreenwashingIndex.com for CLR Power Plummer: “I am pretty sure CFCs are banned by law, yet this add brags that they don’t have any. Should that go without saying? Under the seven sins of greenwashing, this is considered the sin of irrelevance.”

13. What guidance, if any, should the Commission provide concerning free-of claims based on substances which have never been associated with a product category? How do consumers understand such claims? Please provide any relevant consumer perception evidence.

Transparency is key. Here is an example from GreenwashingIndex.com of a paint company that says its product is VOC-free and gets consumer praise for its transparency: “I think this is a good example of a non-greenwashing ad. Mystic Paint clearly states that their paint is non-toxic and is free of VOCs. This means it’s healthy for humans, pets, and the earth. Even if the end user of the ad doesn’t know what the difference is between toxic and non-toxic paint or what VOCs are, their web address is provided at the bottom and they have a FAQ section with the definitions.”

14. What guidance, if any, should the Commission provide concerning organic claims about non-agricultural products? How do consumers interpret organic claims for non-agricultural products? Do consumers understand such claims as referring to the products' ingredients, manufacturing, or processing, or all three? Please provide any relevant consumer perception evidence.

Makeup is not an agricultural product. Consider [the consumer scrutiny of environmental claims by Lush cosmetics](#) as posted on GreenwashingIndex.com.

Lush: "We believe in making effective products out of fresh organic* fruit and vegetables, the finest essential oils and safe synthetics, without animal ingredients, and in writing the quantitative list on the outside. We also believe in buying only from companies that test for safety without the involvement of animals and in testing our products on humans. We believe in making our own fresh* products by hand, printing our own labels and making our own fragrances. We believe in long candlelit baths, massage, filling the house with perfume and in the right to make mistakes, lose everything and start again. We believe that our products should be good value, that we make a profit and that the customer is always right. *We also believe words like 'fresh' and 'organic' have honest meaning beyond marketing."

Consumer: "I actually really like Lush cosmetics; they're a chain but not a very big one and all their skin care products are safe, mostly organic, natural, and when they do use synthetics they're very careful about which ones. They use minimal (and often recyclable) packaging, and yet they somehow don't sacrifice effectiveness. I think they're probably a touch greenwashy, but much greener than most alternatives."

Another consumer: "I agree, after recently purchasing some shampoo from Lush, I received a copy of 'The Lush Times', which lists all the ingredients. Although there are many plant extracts, there are also harmful dyes. If the SLS is actually from coconuts they should put an asterisk and put 'plant derived' and from what plant; otherwise we are just taking their word for it. But this is also where we really have to get on our governments. The companies will continue to use what is cheap to sell their products if our governments don't step up and require a) full disclosure on ingredients and b) work towards what Europe has and start banning some of these harmful chemicals (eg. Why is a little bit of lead ok for lipstick? It shouldn't even be there!). So I blame the government more, but with Lush putting themselves out there as super green and even attacking the tar sands when they are not exactly as green as they say, is a shame."

If by "non-agricultural products" FTC is referring to products that are not food, you could also reference examples for organic clothing found at Target. One consumer said, "I have run into some conflicting evidence on this clothing line ... In this ad, Rogan states 'all the cotton in this line is 100% certified organic'... Well I was

perusing the line on Target's website, and only a small fraction of the line has the description 'organic' cotton ... Most of the descriptions just say 'made of 100% cotton'. I know this guy is known for his eco-friendly designs, I'm just a little confused ... I don't want to slam a good designer if I have the wrong info, so if anyone has any more info, please let me know. I tried to write him through <http://www.rogannyc.com/> but it kept getting bounced back.

Another consumer replied, "This is Target's comments to me regarding this issue ... 'Thanks for inquiring about our new Go International Line, Rogan. I've double checked with our Buyers, and all of the cotton used in this line is 100% certified organic. Target.com team members are working to update all descriptions to include this bullet point information.'"

FTC should advise marketers to substantiate all "organic" claims in their marketing.

15. How should marketers qualify "made with renewable materials" claims, if at all, to avoid deception? Does disclosing the type of material, how the material was sourced, and the reason the material is renewable adequately qualify the claim? Why or why not? Are there other disclosures that would adequately qualify a "made with renewable materials" claim? Please describe such disclosures. Please also provide any relevant consumer perception evidence.

Consumer knowledge about renewable materials is so low, we suggest marketers should not use the phrases "made with renewable materials" or "made with renewable fibers," but instead always mention the type of material sourced.

While paper and paperboard are made from trees, the products are technically renewable only if the wood came from a sustainably managed forest.

Marketers should help educate consumers about the types of materials that are renewable and why.

16. How, and under what circumstances, should marketers qualify "made with renewable energy" claims to avoid deception?

a. Does disclosing the source of the renewable energy adequately qualify the claim and prevent deceptive implications that the advertised product is made with renewable or recycled materials? Why or why not? Are there other disclosures that would adequately qualify a "made with renewable energy" claim? Please describe such disclosures. Please also provide any relevant consumer perception evidence.

In addition to claims of "made with renewable energy" for products, the Commission

should advise electric utilities and power providers to be truthful in their claims. As more states begin to offer customers a renewable green power product, it is important that consumers know what renewable fuels they are purchasing. For example, some utilities offer a "mix" of hydroelectric, solar, and wind power. Others may offer a mix of coal and wind power, but still claim to sell "renewable energy." Currently, state electric utilities commissions are requiring electric providers to justify what type of power they are buying from the electric grid. We believe utilities should be transparent about the type of power they are selling to consumers.

Also in the electric utility marketing arena, there has been some concern raised that use of the words "pollution-free" by some renewable fuels may be a general environmental claim. We disagree. Our study shows 60 percent of consumers know coal is not renewable, and we presume they understand coal pollutes when burned. If a provider selling renewable energy specifies clear substantiation, we believe "pollution-free" to be a legitimate differentiator from utilities selling only fossil fuel-generated energy.

b. Should the Commission advise marketers to qualify a "made with renewable energy" claim if the advertised product is not made entirely with renewable energy? If so, should marketers qualify such claims if all or virtually all significant processes used in making a product are powered by renewable energy? Why or why not? Please provide any relevant consumer perception evidence.

Yes. A good example of consumer perception evidence related to product not being made entirely with renewable energy can be found on GreenwashingIndex.com in an ad for [Sun Chips](http://SunChips.com) and its use of solar panels. One consumer wrote, "This ad is very deceptive. If you do a minimal amount of research on the Frito Lay website, you will see the following: 1. The Modesto plant is one of 8 plants; 2. Even at the Modesto plant, solar power only 'helps' power the plant; 3. The solar system was not installed by Frito Lay but with an outside energy partner (read-Renewable Energy Credits financed the installation); 4. The backup pdf file on the Frito Lay website then confuses the reader by mixing thermal BTUs needed to run the Modesto line per hour with annual thermal BTUs needed. In the end, there is no way to calculate the percentage of energy actually being generated by solar or no way to know who bought the Renewable Energy Credits. The commercial certainly leaves the viewer with the idea that solar runs the entire plant. Greenwashing!"

17. How do consumers understand "carbon offset" and "carbon neutral" claims? Is there any evidence of consumer confusion concerning the use of these claims? Please provide any relevant consumer perception evidence.

Four out of 10 Americans don't know coal is not a renewable resource (EnviroMedia, Opinion Research Corporation, November 2010), so we doubt consumers understand what "carbon offset" and "carbon neutral" mean and why

these claims might be important to their purchases.

Reference the Volkswagen Carbon Neutral Project, which was featured in the New York Times (after the FTC's Green Guides workshop on carbon credits/offsets) in January 2008) and posted on GreenwashingIndex.com. Consumers give the ad a 3.4, which is "pushing it" on the Greenwashing Index.

According to the updated Green Guides, this VW ad, which ran in 2007, would need to disclose that "the offset purchase funds emission reductions that will not occur for two years or longer." According to the *New York Times*, "Most suppliers of carbon offsets say that the cost of planting a tree is roughly \$5, and the tree must live for at least 100 years to fully compensate for the emissions in question." What consumer would know this already?

This VW ad is also a good example of a case where consumers should scrutinize the imagery — a tree coming out of the tailpipe of a car — just as much as the words.

Further, consumers don't understand the myriad environmental certifications, including those for "carbon neutral." In the same study referenced above, EnviroMedia found that 65 percent of Americans agree having just one seal for all green products would give them more confidence that they were buying green.

18. How should marketers qualify carbon offset claims, if at all, to avoid deception about the timing of emission reductions? Should marketers disclose if their offsets reflect emission reductions that are not scheduled to occur in two years? Should marketers make a disclosure if emission reductions are not scheduled to occur in some other time period? If so, what time period, and why? Would such a disclosure adequately qualify an offset claim to avoid deception? Please provide any relevant consumer perception evidence about this issue or on carbon offsets, generally.

Generally, we believe that emission reductions from the sale of offsets should occur no longer than two years from the sale. By not immediately investing in clean development mechanisms, we are prolonging the challenges of global climate change.

CONCLUSION

Our professional experience tells us authentic green marketing is possible, and it will help with our global environmental challenges. We appreciate the opportunity to provide our comments as well as the hard work of the FTC in tackling this issue.

Sincerely,

Valerie Davis
CEO and Cofounder

Kevin Tuerff
President and Cofounder

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