



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

**April 7, 1997**

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**Michael J. Machado**  
**Assemblymember, Seventeenth District**  
**California Legislature**  
**State Capitol**  
**P.O. Box 94248-0001**  
**Sacramento, CA 94248**

Dear Assemblymember Machado:

Thank you for your March 14, 1997 letter requesting our views on the effectiveness of the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims, or the "Guides," 16 C.F.R. Part 260 (1996).(1)

Your letter notes that in 1995 California enacted legislation that brought California's existing environmental product labeling standards into conformance with the FTC Guides. You state further that new legislation, Assembly Bill 362, has now been introduced, which essentially restores California's previous labeling law, in apparent conflict with the FTC Guides, as well as other state laws. You request our opinion of the benefits to consumers and businesses in establishing uniform guidelines for interpreting environmental marketing claims, and in particular "whether firms doing business nationally would find it difficult and costly to comply with different definitions in different states."

The impetus for the FTC Guides dates back to the late 1980s, when consumer concerns about the environment led to enormous interest in the environmental characteristics of products and packaging. The market responded to this increased consumer demand with a rapid proliferation of claims, many of which appeared to be deceptive and unsubstantiated. The Commission initiated a number of investigations to determine whether such claims violated Section 5 of the FTC Act, which generally prohibits "unfair or deceptive acts or practices," including advertising or labeling that is false or misleading. These investigations led to the acceptance of several consent orders in which companies agreed to stop making the challenged claims and to take other remedial action.(2)

The proliferation of environmental marketing claims and the resulting consumer deception led to multiple responses by other federal, state, and local authorities in the U.S. with authority over environmental and marketing issues. Both the federal and several state governments began considering legislative remedies to eliminate deceptive claims and consumer confusion.

By the early 1990s, there were reports of uncertainty by businesses and advertisers about the potential development of differing or inconsistent standards on a state-by-state basis. At the same time, state law enforcers and environmental groups continued to express concern about preventing deceptive claims. Business, industry, consumer groups, and the state Attorneys General, including California's Attorney General, petitioned the Commission to provide national industry-wide guidance to reduce consumer deception and skepticism, in order to promote the use of truthful and substantiated environmental marketing claims. The Commission, working with the U.S. Environmental Protection Agency and the state Attorneys General, responded to these concerns by issuing the Guides in 1992.

Although the FTC Guides help ensure that environmental claims are not deceptive and are adequately supported, they are not law, and they do not preempt state law. The Guides are administrative interpretations of Commission policies, laws, and cases. They are intended to help advertisers voluntarily comply with the law by indicating how the Commission intends to apply Section 5 of the FTC Act to environmental claims.

When the Commission issued the Guides in 1992, it determined to review the Guides in three years and to seek public comment on the effectiveness of the Guides and on whether and how they should be modified to reflect changes in consumer understanding and developments in environmental technology. The comments the Commission received during the 1995-1996 review period from industry, environmental groups, and federal and state authorities indicated that the Guides were working well and that industry largely was complying with them.

During the review, the Commission focused on the Guides' effect on environmental marketing. The Commission received empirical data and comments that we found encouraging. For example, the University of Utah submitted a study of trends in the frequency, content, and format of green claims on supermarket product labels for the past several years.<sup>(3)</sup> The Utah study shows that the number of environmental claims on products actually increased substantially between 1992 and 1994, indicating that the Guides did not discourage manufacturers from making environmental claims. The first audit suggested that compliance with the Guides was not widespread, but later audits found a significant improvement in the presentation of several types of environmental claims. In their 1995 report, the authors concluded that environmental claims had improved in quality (that is, they had become more specific and more qualified) without any decrease in their frequency. We also determined, independently, that the most egregious, deceptive claims had disappeared from the marketplace, and the total number of deceptive claims had also been reduced.

Because the Guides received such broad support during the review process, few changes were made to them.<sup>(4)</sup> In the Federal Register notice announcing the publication of the revised Guides in October 1996, the Commission stated: "There was a general consensus among commenters that the guides benefit consumers by stemming the tide of spurious environmental claims; bolster consumer confidence; increase the flow of specific and accurate environmental information to consumers, enabling them to make informed purchasing decisions; and encourage manufacturers to improve the environmental characteristics of their products and packaging."<sup>(5)</sup>

In addition, the Commission noted: "Commenters generally agreed that the guides benefit industry by providing uniform, consistent guidance regarding the making of non-deceptive environmental claims; promoting national consistency in the treatment of environmental marketing claims; assisting advertisers in determining what claims would likely lead to Commission challenge; encouraging network review and industry self-regulation; and allowing flexibility for manufacturers to improve the environmental attributes of their products and to communicate those improvements to consumers." Since the Guides were issued, several states, including California, New York, and Rhode Island, either repealed or modified their pre-existing laws concerning environmental marketing claims to be consistent with the Guides. Other states are also following the Commission's approach. The Commission has closely cooperated with the State Attorneys General for the past several years in bringing law enforcement cases against firms engaged in allegedly deceptive environmental advertising. This collaborative approach has proven effective, and has been consistent and non-duplicative.<sup>(6)</sup> Although the Commission sought comment specifically about the Guides' costs and benefits, it received no financial data on the subject. Many industry members, however, did comment generally on the difficulties that differing state standards for environmental marketing claims pose to marketers. The following excerpts are illustrative of those views (see attached comments):

According to Mobil Chemical Company:

As a result of these inconsistencies [among state laws], manufacturers have to:

- *Make no environmental claims, thereby withholding information that the consumer could use to make purchasing decisions,*

- *Produce and market jurisdictionally specific products which increases costs due to shorter production runs, multiple inventories, and higher labeling and record keeping costs, or*
- *Risk noncompliance at the federal or state level, because once a product enters the distribution chain, manufacturers cannot control its entry into a particular jurisdiction*

(Comment of Mobil Chemical Co., p.2.)

The Association of National Advertisers commented:

*In the absence of a uniform, national regulatory policy, advertisers faced a bewildering array of inconsistent state laws which would make it very difficult, if not impossible, to make environmental claims on a national basis. The most egregious example was the California law adopted in 1990. ... Under threat of criminal law, many companies have decided that the only safe speech is no speech.* (Comment of the Association of National Advertisers, pp. 2-3.)

One national advertiser, Kodak, expressed the following view:

*The lack of consistency between the FTC Guides and various state and local laws has been problematic for Kodak and other companies that market their products on a nationwide basis.* (Comment of Kodak, p. 1.)

Finally, the Food Marketing Institute reiterated:

*Prior to the guides, states were adopting environmental marketing laws that were so inconsistent it was difficult if not impossible for marketers to comply, making the abandonment of useful labels an unfortunate necessity.* (Comment of the Food Marketing Institute, p. 2.)

The Commission noted in the Federal Register Notice that "[a] significant number of ... industry representatives voiced strong opposition to changing the guides in any way that would undermine the important state support the Guides are now receiving." In short, we believe the Commission has established a consistent approach to environmental marketing regulation that has resulted in substantial benefits for consumers and businesses alike. I hope these views will be helpful to the Committee as it considers AB 362.

Very truly yours,

**Joan Z. Bernstein**  
Director

Attachments

1. The views expressed in this letter are those of the Bureau of Consumer Protection and do not necessarily represent the views of the Commission or any individual Commissioner.

2. See, e.g., *RMED Int'l*, 115 F.T.C. 572 (1992); *Tech Spray, Inc.*, 115 F.T.C. 433 (1992); *American Enviro Prods.*, 115 F.T.C. 399 (1992); *First Brands Corp.*, 115 F.T.C. 1 (1992); *Jerome Russell Cosmetics, U.S.A.*, 114 F.T.C. 514 (1991); *Zipatone, Inc.*, 114 F.T.C. 376 (July 9, 1991); *The Vons Cos.*, 113 F.T.C. 779 (1990).

3. R.N. Mayer, B. Cude, J. Gray-Lee & D.L. Scammon, *Trends in Environmental Marketing Claims Since the FTC Guides: Technical Report* (May 1, 1995).

4. The Commission is continuing to review the Compostable and Recyclable sections of the Guides, § 260.7(c)-(d). These sections remain in effect during the review process. The Commission is also considering whether product parts that can be reconditioned and/or reused in the manufacture of new products can claim to be "recyclable" under

the Guides, and whether products manufactured from reconditioned and/or reused parts can be labeled "recycled" under the Guides.

5. 61 Fed. Reg. 53,311, 53,312 (1996) (copy attached).

6. Since the Guides were issued, the Commission has entered into 26 consent agreements concerning environmental claims: *RBR Prods.*, Docket No. C-3696 (Dec. 10, 1996); *Benckiser Consumer Prods.*, Docket No. C-3659 (May 22, 1996); *Amoco Oil Co.*, Docket No. C-3655 (May 7, 1996); *Safe Brands Corp.*, Docket No. C-3647 (Mar. 26, 1996); *Mattel, Inc.*, Docket No. C-3591 (June 23, 1995); *Creative Aerosol Corp.*, Docket No. C-3548 (Jan. 13, 1995); *Chemopharm Laboratory*, No. C-3545 (Dec. 6, 1994); BPI Env'l, Docket No. C-3535 (Oct. 17, 1994); *North American Plastics Corp.*, Docket No. C-3526 (Sept. 7, 1994); *Amoco Foam Prods.*, Docket No. C-3514 (Aug. 9, 1994); *Keyes Fibre Co.*, Docket No. C-3512 (Aug. 2, 1994); *AJM Packaging Corp.*, Docket No. C-3508 (July 20, 1994); *LePage's, Inc.*, Docket No. C-3506 (July 19, 1994); *Oak Hill Indus.*, Docket No. C-3507 (July 19, 1994); *America's Favorite Chicken Co.*, Docket No. C-3504 (July 5, 1994); *Orkin Exterminating Co.*, Docket No. C-3495 (May 25, 1994); *Archer Daniels Midland Co.*, Docket No. C-3492 (Apr. 12, 1994); *Mr. Coffee, Inc.*, Docket No. C-3486 (Mar. 25, 1994); *Redmond Prods.*, Docket No. C-3479 (Feb. 10, 1994); *White Castle Sys.*, Docket No. C-3477 (Jan. 13, 1994); *G.C. Thorsen, Inc.*, 116 F.T.C. 1179 (1993); *Texwipe Co.*, 116 F.T.C. 1169 (1993); *Nationwide Indus.*, 116 F.T.C. 853 (1993); *DeMert & Dougherty, Inc.*, 116 F.T.C. 841 (1993); *PerfectData Corp.*, 116 F.T.C. 769 (1993); *Mobil Oil Corp.*, 116 F.T.C. 113 (1993).