



May 19, 2008

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex B)
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Green Packaging Workshop -- Comment, Project No. P084200

Dear Sir or Madam:

The Soap and Detergent Association (“SDA”) appreciates the opportunity to comment in response to the request issued by the Federal Trade Commission (“FTC”)¹, in connection with review of its Guidelines for Environmental Marketing Claims (“Guides”)².

Background

The Soap and Detergent Association is a 100 plus-member national trade association representing the formulators of soaps, detergents, and general cleaning products used in household, industrial, institutional and commercial settings, and the companies that supply ingredients and packaging for these products. Throughout our 82 year history, sound technical, risk-based research by SDA and its members has demonstrated the benefits of cleaning products and their ingredients, and our long-standing educational programs have provided consumers with credible information on the safe and proper use of these products.

SDA submitted comments earlier this year in response to the FTC’s Federal Register Notice announcing its review of the Guides. In those comments, we noted SDA’s general support for the Guides in substantially their current form and made some suggestions for enhancing the existing guidance and addressing new issues. The following comments reflect SDA’s suggestions relating to some of the issues raised during the April 30, 2008 workshop and the questions posed in the March 3, 2008 Federal Register Notice.

Green Packaging Claims

The Guides require that environmental claims be substantiated, specific and qualified. SDA supports these basic principles that form the backbone of the Guides for all types of environmental marketing claims, whether they apply to the package or to the product itself.

Sustainability, Renewable, Bio-based and Safer Claims

The Guides should make clear that unqualified or general claims of “sustainable” or “sustainability” will be considered under the same parameters that govern general environmental benefit claims. Such claims may be addressed in a similar fashion to other environmental marketing claims in §260.7. The Guides should be updated to provide examples of what

¹ 73 Fed. Reg. 11371(March 3, 2008).

² 16 C.F.R. 260.

qualifiers are necessary and what constitutes a reasonable basis for substantiating sustainability claims.

Similarly, the Guides should be revised to address “renewable” and “bio-based” claims in reference to an energy or raw material source. The Guides should provide clear guidance on what environmentally beneficial attributes are associated with a renewable or bio-based material or energy source (e.g., reduced energy requirements, reduced greenhouse gas emissions, etc.) and the assessment of those attributes should cover the entire lifecycle of those sources so as to account for any potential adverse environmental or health impacts during the lifecycle (e.g., depletion of resources at a rate exceeding their replenishment, loss of biodiversity, overall increases in environmental burdens such as energy or water consumption).

In the same vein, claims of general environmental superiority, such as “safer,” must be supported by scientific evidence and qualified on a case by case basis. Section 260.5(d) of the Guides provides that “[E]nvironmental marketing claims that include a comparative statement should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception. In addition, the advertiser should be able to substantiate the comparison.” The Guides should make it clear that general comparison claims, such as “safer,” must be specific as to what environmentally preferable attributes of the product are being referenced (e.g. lower hazard profile) and be supported by product specific data.

Recycled Content

SDA endorses the current use of an annual weighted average calculation for the determination of recycled content in packaging, or a similar mass balance approach. Standardized methods are available for measuring recycled content in packaging such as those contained in California’s Rigid Plastic Packaging Container Program (Chapter 4, Resource Conservation Programs, Article 3, Section 17942).

Degradability Claims

SDA supports the proposition behind §206.7(b) of the Guides that degradability claims should be qualified to the extent necessary to avoid consumer deception about the product’s ability to degrade in the environment where and how it is customarily disposed. However, more explicit guidance is needed on claims of degradability, specifically illustrations relating to new products on the market. The FTC should develop examples that address these new product categories. In addition, further guidance should be provided on methods for establishing the relevance of degradability claims and appropriate disclaimers.

Source Reduction Claims

The Guides describe “source reduction” claims as referring to “reducing or lowering the weight, volume or toxicity of a product or package.” The Guides emphasize that such claims should “qualify the amount of the source reduction and give the basis for any comparison that is made.” SDA agrees that such claims should be properly qualified and based on a standardized method. We support the standards contained in the California Public Resources Code, Section 42301, that measure source reduction through a “package weight per unit or use of the product” approach as well as physical reduction of packaging material.

Since the Guides were last reviewed, the cleaning products industry has developed new product formulations that reduce the amount of water and packaging used. The Guides should be revised to include examples of what qualifiers are necessary and what constitutes a reasonable basis for substantiating claims relating to these newer concentrated products that are now on the market.

Lifecycle Assessment and Cradle-to-Cradle Claims

A footnote in §260.7 states that the “guides do not currently address claims based on a ‘lifecycle’ theory of environmental impact.” SDA encourages the FTC to guide companies making environmental claims to engage in more lifecycle thinking, considering the whole product and any potential “trade-offs” that might occur in the process of improving a particular environmental attribute.

Since the Guides were last reviewed, lifecycle assessment (LCA) has become a more accepted and better defined analytical process for comparing the relative environmental impacts of competing products and services, or for establishing a baseline against which improvements in a product or service could be judged. The procedures for LCA are part of the ISO environmental management standards found under ISO 14000. FTC should acknowledge the effectiveness of LCA as a tool for evaluating environmental claims and encourage its application where feasible.

At the same time, the Agency should recognize that conducting a formal LCA is not, and should not become, a prerequisite to marketers making properly qualified, well-supported claims of a product’s environmentally relevant attributes. The FTC should also take into account that LCA costs may not be economically feasible for some small businesses or products with relatively low sales volumes. The issue is not the use of a particular procedure, but sufficient inquiry to avoid the use of claims of environmental attributes that do not acknowledge other significant environmental impacts associated with a product’s formulation process or its use.

Third Party Certifications and Seals

Given the proliferation of third party certifications and seals on product labels, this area is ripe for consumer confusion. We are particularly concerned with seals or logos that communicate a general claim of “environmental preferability,” with no means for the consumer to learn the environmental benefits that form the basis for that claim. It is essential that organizations and companies that use eco-seals and logos provide specificity with regard to the attributes that cause them to endorse the products and be held to the same standards for substantiation as other general benefit claims. It is also important that such specificity be provided at the point of sale or that consumers are made aware at the point of sale where such information can be readily obtained. For example, the manufacturer’s website or a toll-free telephone line might be provided. Section 260.7(a) should be revised to include additional examples that specifically address today’s environmental seals and logos.

SDA is also concerned that these symbols not distract from or conflict with the most important information on the product: the safety and use instructions. FTC should consult with other Federal agencies that have oversight for communicating safety information on products to address this concern.

Internet Access

SDA urges the FTC to consider the Internet and the opportunities it provides for increasing consumer access to product information. In many instances, labels and advertising alone cannot convey the information that can help the consumer fully appreciate the bases for and limitations on environmental claims. The quality and accessibility of online technology has greatly advanced since the Guides first came about and manufacturer websites have become an increasingly popular source of clarifying information for consumers about product benefits and services. The FTC should consider and determine appropriate circumstances in which information on a company website should be sufficient to explain an environmental claim.

Enforcement

SDA would support the Commission's increased exercise of its existing enforcement authority under Section 5 of the FTC Act. One way to increase voluntary compliance could be for the FTC to publicize its actions on a regular basis. As we mentioned in our February 6 comments, SDA members would welcome any explanatory guidance the FTC could provide on its intentions with respect to enforcement of the Guides.

Conclusion

SDA commends the FTC for engaging in this thoughtful, transparent and inclusive process for evaluating and updating the Guides. The Guides are looked to by many diverse parties for instruction, including state and local governments. It is important that the Commission consider its many audiences in providing clear guidance on these new and emerging issues.

SDA appreciates the opportunity to comment and we look forward to participating in future workshops.

Respectfully submitted,


Michelle Radecki
General Counsel and Secretary