



December 9, 2010

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

Re: Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P9545501

Submitted via Electronic Submission on December 9, 2010

Dear Sir or Madam:

The Procter & Gamble Company (P&G)<sup>1</sup> appreciates the opportunity to provide the following comments in response to the Federal Trade Commission's request for public comments on the proposed revisions to the *Guides for the Use of Environmental Marketing Claims* (Green Guides). P&G takes our obligation to ensure environmental claims are truthful and meaningful very seriously, and we believe the proposed revisions to the Green Guides will help to advance our common objective of protecting consumers from misleading claims. We thank the Commission for your thoughtful consideration and analysis of the initial comments you received and for making your consumer perception study publicly available. While we are generally supportive of the proposed revisions, we are offering the following comments in the spirit of trying to further enhance the potential value of the guides. As you will see, we have organized our comments by the new section numbers in the proposed revisions.

### **Section 260.3 General Principles**

§260.3(a) states disclosures should be in close proximity to the claim. The examples in §260.3 all provide helpful guidance, but they do not include sufficient parameters or interpretation regarding the location of disclosures and qualifications. As written, P&G believes a reasonable interpretation of the guidance would be, in the case of an on-pack claim, any required disclosure and/or qualification would simply need to be somewhere on the package, i.e. not necessarily on the same panel. Additional examples or guidance on what constitutes "close proximity" – including guidance for small packages and claims that do not appear on-pack (e.g. displays, digital advertising, etc.) – would be a valuable addition to the guides.

### **Section 260.4 General Environmental Benefit Claims**

Comment 1:

In the Federal Register notice, the Commission posed the following question: "*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?*"

We believe the guidance currently provided in §260.2 – 260.4 adequately addresses this principle and that additional guidance is not needed. However, should the commission decide to specifically advise marketers on the issue outlined above, the Commission should also provide principle-based guidance on how a marketer would determine when an offset in one area outweighs benefits achieved in another. We believe this would be fairly complex and ultimately come back to the guidance already provided in §260.2 - §260.4, which is why we believe additional guidance is not needed.

Comment 2:

While the FTC decided not to address the term "sustainable", we believe unqualified use of the term "sustainable" is equivalent to other terms such as "eco-friendly" and "green" and the guides would benefit

from an additional example in §260.4 that addresses this term. We offer the following as one example that could be used:

A shoe polish manufacturer changes from metal to plastic containers. As a result, its products are labeled “Now, in a more environmentally sustainable package.” In the absence of data on the comparative environmental burdens associated with the manufacture and disposal of these packages, and the consequent packaging operations, this claim is not verifiable, and is therefore deceptive. In the absence of these data, only a factual claim, such as “now packaged in a lighter weight package,” is acceptable.

### **Section 260.6 Certifications and Seals of Approval**

P&G strongly supports the Commission’s creation of §260.6, Certifications and Seals of Approval. While the core principles of this section are consistent with earlier general guidance provided by the Commission, the increased use of seals and logos and the resulting consumer confusion warrant the expanded guidance. We offer the following as suggestions to further enhance this section:

#### **Comment 1:**

In the revised guidance, Example 2 of §260.6, the statement is made that the claimant should disclose the “material connection” between the manufacturer and the association it pays dues to. Since all seals of approval that P&G is aware of, whether administered by a trade organization or an independent party, require payment of some sort (even if simply administrative in nature), there appears to be a material connection between *all* claimants and organizations providing seals and certifications. FTC’s Disclosure of Material Connections (§255.5) is not sufficiently detailed to address these facts. P&G recommends that FTC specifically state whether payment of any kind for a seal is a material connection, and if not, what types of payments would be excluded. In addition, FTC should be aware that company representatives often serve on committees that advise third party seal organizations on seal criteria. Given this is a common practice, FTC may wish to consider guidance regarding whether this type of relationship constitutes a material connection.

#### **Comment 2:**

There are numerous third party organizations that assign ratings or rankings to products based on a variety of environmental factors. These third parties then publish these rankings online or otherwise communicate them directly to consumers (i.e. these are not claims made or initiated by brand owners, but rather are product specific environmental claims communicated to consumers by third party organizations). It has been our experience that these ratings often do not involve input from the manufacturer and are often based on inaccurate or inappropriate data. Because this type of communication essentially constitutes an environmental claim that could be misleading to consumers, we believe the FTC should include guidance indicating that these types of systems are within the scope of the guides. Section 260.6 would be an appropriate place to include such guidance.

### **Section 260.7 Compostable Claims**

#### **Comment 1:**

The guidance states that the marketer should have evidence that a compostable material “will break down into, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch).” P&G recommends that the FTC modify this statement. P&G expects consumers believe a compostable material will break down into natural materials and ultimately fully degrade in the environment. Among the materials that break down into soil conditioning material is hydrogel, a synthetic, hydrophilic polymer which improves soil water-holding capacity. Since many hydrophilic polymers could be considered soil conditioning agents, defining compost as any “soil conditioning material” could be misleading to consumers. Mulch is defined as a material placed onto soil to retain moisture, reduce erosion, etc. and includes glass and plastics. P&G does not believe consumers expect a compostable material to break down into pieces of glass and plastic. P&G recommends deleting the words “soil-conditioning material” and “mulch” from this statement and consider stating that “a compostable material should break down into elements found in nature within a reasonably short period of time” as alternative language.

Comment 2:

P&G recommends that FTC change its guidance that compostable materials break down in a “composting program or facility or in a home compost pile or device.” Some consumers know about large-scale composting facilities; others do not. These large-scale systems are operated differently than home composting systems and typically achieve higher temperatures during composting. Therefore, there are products that may be compostable in a large scale facility, but not in a home system. If an advertiser makes an unqualified compostability claim for a product, we would expect a significant number of consumers to assume that the product would be compostable in a home composting system as well as in a large-scale facility. Thus, we recommend the guidance reflect that an unqualified compostability claim should refer to ability to breakdown in large-scale and home composting systems.

### **Section 260.8 Degradable Claims**

§260.8b states that “A marketer making an unqualified degradable claim should have competent and reliable scientific evidence that the entire item will completely break down and return to nature (i.e., decompose into elements found in nature) within a reasonably short period of time after customary disposal.”

Recently, P&G has observed marketers of cleaning products making unqualified biodegradable claims for down the drain products (e.g. laundry detergents, cleaners, etc.), which might be deceptive. The sources of such possible deception are highlighted in the following hypothetical examples:

#### *Interpretation of “competent and reliable scientific evidence”:*

A marketer wishes to claim that a laundry detergent is biodegradable. To support this claim, the entire formula is tested in an OECD (Organization for Economic Cooperation and Development) test or comparable biodegradation screening test. These are the most common and readily available biodegradation tests. The detergent meets the pass level prescribed in the test guideline. Based upon these data, the marketer makes an unqualified biodegradability claim. However, it is important to note the referenced tests are designed to test pure materials or mixtures of chemically similar molecules, and are not meant for mixtures of dissimilar materials<sup>2</sup>, which are what cleaning product formulas would be considered. We consider this claim misleading because the test method was intended for pure materials or simple mixtures and does not have the power to detect low (<10% on a carbon basis), but nonetheless significant, levels of non-biodegradable ingredients in complex mixtures like cleaning products. The test method used was simply not designed for the type of product being evaluated.

Given claims of this nature have been observed in the marketplace, we believe an example like the one above, noting the inappropriate nature of the test methodology, would provide valuable guidance to industry and would reinforce the need to ensure referenced test methods are being used as intended.

#### *What is meant by “entire item” and the relevancy of biodegradable claims:*

We believe the guidance should more explicitly state that the item needs to break down into elements found in nature after degradation. This would be a valuable clarification because we believe biodegradable claims that include water content of a product are inappropriate since biodegradability is not a relevant attribute for water (i.e. water does not biodegrade into water, water is water). FTC could consider incorporating an example like the one below to further clarify this point:

A product contains 20% biodegradable ingredients, 20% non-biodegradable materials and 60% water on a weight basis. The manufacturer claims the product is 80% biodegradable on the basis it is 60% water and 20% biodegradable ingredients. This is deceptive, since biodegradability is not a relevant attribute for water and the water content should be excluded from the calculation. The manufacturer could claim the product is 50% biodegradable on the basis that half of the non-water ingredients are biodegradable.

### **Section 260.11 Recyclable Claims**

We believe FTC should reassess current consumer perceptions of positive disclosures for recyclability (e.g. “Recyclable – check to see if recycling is available in your area”). Due to the short time available for review and comment of the proposed revisions to the Green Guides, P&G did not have the opportunity to commission new consumer research, but notes the basis for the FTC’s conclusion that positive disclosures are misleading is based on recycling systems in 1998. Given significant efforts in consumer education over the last 15 years and the greatly increased use of the internet, we believe consumers would interpret these statements differently today. As a result, we believe the statement “Recyclable – check to see if recycling is available in your area” should be an accepted qualification for materials that are recyclable for a significant percentage of the population.

### **Section 260.12 Recycled Content Claims**

Comment 1:

FTC asked the following question in the federal register notice: *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?* While there may be some level of consumer confusion that the claim “made with recycled materials” connotes recyclability, we urge the Commission to conduct additional consumer research on the impacts of requiring the aforementioned qualification prior to issuing any final guidance. There are many consumers who do understand the difference between recyclability and recycled content and it is our belief that adding the aforementioned disclaimer may create confusion rather than prevent it.

Comment 2:

FTC asked the following question in the federal register notice: *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?* We strongly support FTC’s current position that recycle content claims can be based on the annual weighted average of recycle content and believe Example 8 in Section 260.12 appropriately illustrates this guidance. This approach accounts for the complexity and reality of the supply chain while still ensuring meaningful information on the use of recycled materials is communicated to consumers.

### **Section 260.15 Renewable Material Claims**

The proposed revisions to the Green Guides suggest marketers clearly and prominently qualify their renewable materials claims by specifying the material used, how the material is sourced, and why the material is renewable. The basis for this extensive qualification is the Commission’s consumer perception study that indicated consumers interpret the term “renewable” to mean a variety of things. While disclosing the type of material may be a reasonable qualification to help ensure consumer understanding, we do not believe describing how the material was sourced and why the material is renewable should be required. Such lengthy disclosures would not only be impractical, but would likely exacerbate the issue.

We take our obligation to provide consumers meaningful and factual information very seriously, but the proposed guidance on renewable materials seems to establish an unusually high bar for qualifications that define the term “renewable” and are not required for other types of claims. For example, the FTC’s consumer perception data related to the term “recyclable” demonstrated that 74% of consumers thought the claim meant the product was made with recycled materials, 40% thought the product was made with renewable energy, and 22% thought the product was “new and improved.”<sup>3</sup> While these results may point to the need for continued consumer education on the term “recyclable,” few would argue there is a need for recyclable claims to also describe how a material is recycled and how it may be re-used at end of life.

While there is clearly opportunity to better educate consumers on the meaning of the term renewable, the stringent qualifications outlined in the guidance would make it extremely difficult to make any renewable material claims due to space constraints and thus may inadvertently deny consumers relevant and factual information about the use of renewable materials. In addition, the complexity of describing how a renewable material is sourced and why it is considered renewable could add to consumer confusion (e.g. assessing renewable materials involves not only the material itself, but how it was produced, where it was sourced, etc.) The same material class could have very different impacts depending on its specific supply chain and trying to communicate this information to consumers via a disclaimer would be difficult and

likely confusing. Prior to finalizing the proposed revisions, we would suggest the Commission test the consumer perception of claims both with and without the proposed qualifications to see what impact, if any, they have on consumer understanding. Should the Commission choose to maintain the current guidance, it would be helpful if the commission specified if disclosure of the % renewable material should be on a mass or volume basis.

#### **Natural Claims not addressed in the Green Guides**

FTC stated that it does not propose addressing natural claims due to the difficulty in establishing a consumer meaningful definition, the lack of consumer perception evidence, and the broad range of uses of the term “natural.” Thus, the Commission has suggested they will leave the matter to marketers to ensure they can substantiate claims conveyed by the term. We realize this is a difficult area to provide clear guidance. However, this difficulty suggests guidance from the Commission is needed. A 2010 consumer perception survey conducted by P&G (attached as Exhibit 1) showed that, for a product described as “natural,” a large majority of consumers (59.9%) of consumers believed that *all* ingredients in the product were natural, 52.9% believed that none of its ingredients were chemically altered or processed, and 58.6% believed that all of its ingredients were biodegradable. These perceptions are clearly inconsistent with the reality of the “natural” products in the marketplace. Hence, we believe it is in the best interest of the consumer if FTC provides additional perspective on what constitutes “natural” for consumer products. Without such guidance, marketers will likely continue to use definitions set forth by a spectrum of third parties. For example, the Natural Products Association sets 95% (excluding water) as the minimum target for a claim of natural. However, the NPA guidance allows for use of catalysts such as thionyl chloride and toluene sulfonic acid, reactants such as hydrogen from natural gas, and reactions such as sulfation and sulfonation, which are chemically and energetically intense. We recommend that FTC provide information for the formulated products industry on what constitutes a natural material (i.e., type of processing, minimum fraction of atoms derived from natural materials, etc.).

P&G believes the Green Guides provide valuable guidance to industry and serve to help protect consumers from misleading environmental claims. In general, we believe the proposed revisions will serve to make the guides more valuable and applaud the Commission for their efforts. Our comments are intended to suggest areas where the proposed revisions could be further enhanced. Should you have any questions on the comments, please do not hesitate to contact me at 513-983-5948 or email [mcaneny.j@pg.com](mailto:mcaneny.j@pg.com).

Regards,

Jack McAneny  
Procter & Gamble – Global Sustainability

---

#### <sup>1</sup> **About Procter & Gamble**

Four billion times a day, P&G brands touch the lives of people around the world. The company has one of the strongest portfolios of trusted, quality, leadership brands, including Pampers®, Tide®, Ariel®, Always®, Whisper®, Pantene®, Mach3®, Bounty®, Dawn®, Gain®, Pringles®, Charmin®, Downy®, Lenor®, Iams®, Crest®, Oral-B®, Duracell®, Olay®, Head & Shoulders®, Wella®, Gillette®, Braun® and Fusion®. The P&G community includes approximately 127,000 employees working in about 80 countries worldwide. Please visit <http://www.pg.com> for the latest news and in-depth information about P&G and its brands.

<sup>2</sup> Paragraph 44 of Section 2.7 in Revised Introduction to the OECD Guidelines for Testing of Chemicals, Section 3, Part 1: Principles and Strategies Related to the testing of Degradation of Organic Chemicals. (<http://puck.sourceoecd.org/vl=15475903/cl=11/nw=1/rpsv/ij/oecdjournals/1607310x/v1n3/s1/p1> )

<sup>3</sup> Please see FTC Consumer Perception Study, Q.656\_1