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December 10, 2010

The Honorable Jon Liebowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

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

Dear Chairman Liebowitz:

The Green Products Roundtable (GPR) is working to improve the decision-making capabilities of green product makers, institutional buyers, and consumers by bringing further clarity to the green products marketplace. Membership is comprised of approximately 35 stakeholders involved in different aspects of green products manufacturing, distribution, certification, research, and consumer education (see attached membership list).

The GPR continues to be keenly interested in the revision of the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims ("Green Guides") that is currently underway within the Agency. This diverse group of stakeholders had achieved consensus on a set of recommendations for FTC's consideration last spring and would like to submit the following to reinforce those recommendations as you work toward finalization of the Green Guides. Members of the GPR would welcome an open dialogue with you and offer any appropriate assistance that might be useful.

Enforcement

The GPR strongly supports recent enforcement actions and encourages further enforcement by the FTC. The barrage of misleading and deceptive environmental marketing claims and product (brand) names bombarding consumers today is desensitizing consumers to valid and credible messaging. This is also confusing to both manufacturers and purchasers, limiting significant progress toward environmentally preferable purchasing.

The GPR agrees with commenters who stated that lack of enforcement can also have a significant impact on companies that practice proper use of environmental marketing claims by creating a competitive advantage for those who routinely use misleading or deceptive environmental claims.

ISO/FTC Alignment in Definitions

The GPR disagrees with the FTC's position that alignment with ISO 14021 is not needed. Given the global nature of commerce, it is critical that the Green Guides be in alignment with ISO 14021, which has been adopted by other countries, including Canada, Australia, and the UK. For example, differences currently exist in the application of an accessibility threshold for recyclability that has created an inability to use the term for items that may cross international borders. As "recyclability" is a term that is readily recognizable by consumers, the possibility of valuable consumer messaging is lost.

Specific Definitions on Existing Claims in the Green Guides

Recyclability: The use by both ISO and the FTC of narrative definitions as opposed to specific numeric thresholds for an unqualified claim of recyclability has resulted in high levels of consumer and industry confusion. The GPR agrees with the FTC providing a numeric threshold that can be used to substantiate a claim of recyclability.

Biodegradability: The emergence of oxo- and organic additives that claim to degrade fossil fuel-based plastics under landfill conditions have created confusion in a marketplace where the term "biodegradable" is considered as equally beneficial as "recyclable." The GPR agrees with the FTC position that these claims must meet the same conditions for a claim as degradability. We also agree with the FTC's position that degradability should require that all of the organic carbon can be converted into biomass, water, carbon dioxide and/or methane via the action of naturally occurring micro-organisms, such as bacteria and fungi, in time frames consistent with the disposal method. While we understand the reluctance to specify testing methods, we believe that the Green Guides should emphasize that substantiation should be through testing and validation by means of globally recognized testing methodologies, such as those adopted under ISO, ANSI, ASTM, and OECD standards. Additionally, we suggest that conditions under which degradation will occur – litter, landfill, and marine environments – should be included in the qualifying language.

Specific Definitions for New Claims to add to the Green Guides

Sustainability:

Sustainability is measurable over long periods of time and is a journey rather than a destination. It is therefore very difficult to make a definitive claim of sustainability at one point in time. The GPR agrees with the FTC's position that claims relating to sustainability must meet the same standard for qualification as those relating to general environmental claims of superiority. However, claims that refer to specific, registered management systems or standards are acceptable provided that they can be verified.

Example:

Preferred

This wood comes from a forest that was certified to a sustainable forest management standard [*specific standard must be identified*].

Discouraged

This wood is sustainable.

A claim about a product's sustainability cannot be based on a single attribute of the product such as how it was managed and extracted. If the wood for a product came from a forest that was certified to a sustainable forest management standard, it is not necessarily true that the entire wood product is sustainable.

Natural: The GPR agrees with the FTC position that "Natural" and plant-based claims should be qualified as the use of these terms implies general environmental benefits. Naturally occurring ingredients can have both positive and negative environmental, health and safety impacts and the extent to which a product is sourced from natural ingredients may vary significantly. We recommend, however, that the FTC go further to recommend that use of the term should be accompanied by disclosure of environmental or health impacts related to natural ingredients, the percentage of ingredients that are of natural origin, and the percentage of the finished product made of natural ingredients.

Life Cycle Assessment (LCA): The GPR disagrees with the FTC position not to provide guidance on the use of life cycle information either in marketing or as substantiation for environmental claims. The GPR suggests that the term "life cycle assessment" should be used only when the study is performed and verified in a manner consistent with ISO Standard 14040 series, or other internationally accepted equivalent standards. If data are being used to make comparative claims, the GPR strongly suggests that the study conform to, and be made available, as required under the ISO Standard 14040 series.

Broad claims relating to saving natural resources: The GPR agrees with the FTC's position that claims of general environmental benefit be qualified; we further suggest that broad claims relating to saving natural resources, such as "trees saved", should be restricted as the tools available to support these claims are not sufficiently accurate to avoid consumer deception. Examples of broad claims relating to natural resource savings include:

- "(XYZ) Paperless Display Technology Saves Trees and the Environment."
- "We balance the effect of the carbon emitted from your flight by supporting UN certified projects like Perlabi Hydroelectric in Ecuador."

None of the claims provide substantiation as to how the natural resources are actually "saved," or carbon balanced, rather than, for example, to simply transfer an ongoing resource use somewhere else, how the amount of savings or support are quantified, or that the natural resources saved and used are equivalent.

Communicating Recyclability

Currently, there is no standardized label for communicating recyclability of a specific product or package to consumers, even though the term, benefits, and positive consumer reaction to it are widely recognized. There are several efforts underway to create such a communication tool, including the labeling project currently underway by the Sustainable Packaging Coalition (US) and the related WRAP (UK) labeling program. The GPR would encourage FTC to participate in an open dialogue with each of these initiatives to discuss how such programs can be implemented within the boundaries of the FTC Act. The GPR would be pleased to participate in such discussions as well.

Third-party standards, labels, seals and endorsements

The FTC should clarify that any label, third-party standards or certifications used as an environmental marketing claim must be capable of providing competent and reliable scientific evidence, based on transparent standards, and the use of professional expertise to support the label. When third party certifications are relied upon, the status of certifications and methodology used for awarding the certification shall be publicly available.

In addition, some environmental marketing claims are endorsed by environmental non-governmental organizations (ENGOS) through “cause-related” marketing. The GPR encourages the FTC to clarify that the same level of substantiation is needed for cause-related advertising claims as for other green marketing claims.

Suggested revision to 16 CFR § 260.5: add examples of cause-related marketing after this section

Endorsement Guides

The GPR also recommends that the FTC add a new section to the Green Guides drawing attention to its Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR Part 255 (the “Endorsement Guides”). Several elements of the Endorsement Guides are relevant to environmental marketing, especially cause-related marketing. We recommend the FTC develop examples to illustrate the broad definition of endorsements and how they apply to organizations involved in environmental cause-related marketing, particularly regarding:

- The need for processes to ensure that expert organizations apply sufficient expertise, conduct adequate investigation, and make objective decisions when lending their name or logo to a third-party company or product.
- The fact that endorsements are not a substitute for substantiation.
- The requirement to disclose any material connections between an endorser and an advertiser if they are not already known or reasonably expected by the audience.

Thank you for considering the comments of the Green Products Roundtable.

Sincerely,

Member of the Keystone Green Products Roundtable

[Membership List will follow]