



Chemical Producers & Distributors Association

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VIA E-MAIL

Federal Trade Commission
Office of the Secretary
Room H135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Guides for the Use of Environmental Marketing Claims; Proposed revisions to guidelines; 75 Fed. Reg. 63552 (October 15, 2010).

Dear Sir or Madam:

The Chemical Producers & Distributors Association (“CPDA”) appreciates this opportunity to comment on the above-referenced draft guidance governing environmental marketing claims (“Green Guides”), and supports the Federal Trade Commission’s (“FTC” or “Commission”) ongoing efforts to assist manufacturers in marketing their products in conformance with section 5 of the Federal Trade Commission Act (“FTCA”).¹ CPDA is the primary advocate on federal legislative and regulatory issues for generic pesticide registrants, adjuvant and inert ingredient manufacturers, and product formulators and

¹ FTCA §§ 1-18; 15 U.S.C. §§ 41-58.

distributors. We represent over \$7 billion worth of pest control products used on food, feed and fiber crops, and in non-crop segments of the pesticide industry.

General Comment

CPDA supports the FTC's use of the voluntary Green Guides instead of legislative rules to educate marketers about the nuances of environmental benefit claims and methods for marketing their products in accordance with requirements of the FTCA. Use of multiple example fact patterns in the Green Guides to illustrate compliance and non-compliance with the FTCA's prohibition on "unfair or deceptive acts or practices" is very effective. Moreover, in developing the new proposed examples, the Commission continues to properly focus on educating marketers on how "reasonable consumers are likely to interpret particular claims."² This approach facilitates compliance with the FTCA through a flexible educational system, which benefits the majority of consumers without imposing unnecessary regulations.

As the Commission states in the proposed revisions, "[t]he Guides' purpose is to help marketers avoid making unfair or deceptive environmental claims"³ and "not to encourage or discourage particular environmental claims or consumer behavior based on environmental policy concerns."⁴ CPDA encourages the Commission to continue this approach in addressing environmental benefit claims. The recent "explosion in green marketing"⁵ is likely to continue, and the proposed revisions to the Green Guides demonstrate the FTC's appreciation of the need to maintain flexible guidance to inform marketers' decisions about how to communicate product environmental benefits consistent with the FTCA.

² 75 Fed. Reg. 63552 (October 15, 2010) and proposed 16 C.F.R. § 260.1. (*See also*, "FTC Policy Statement on Deception" (1983), Part III, regarding assessment of the effects of marketing claims or practices on a reasonable member of a group targeted for such claims or practices.).

³ *Id.* at 63556.

⁴ *Id.* at 63558.

⁵ Kohm, James A., Associate Director of the Enforcement Division, Bureau of Consumer Protection, FTC; Prepared Statement Before the Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection (June 9, 2009).

Specific Comments

Certifications and Seals of Approval. The FTC proposes to add a section on third-party environmental certifications and seals to the Green Guides to clarify the conditions under which they may be used without violating section 5 of the FTCA. The Commission considers certifications and seals to be endorsements, and cautions that they may imply a general environmental benefit claim that is difficult to substantiate.⁶ Accordingly, the FTC cautions that marketers using third-party certifications and seals have an obligation to anticipate and substantiate “all claims reasonably communicated” by a certification or seal.⁷

CPDA is concerned that the Commission may, in some instances, incorrectly consider marketers of certain products having third-party certifications or seals to be communicating implied general environmental claims. For instance, a product with the word “certified” and an acronym for a trade association name affixed to a product certified by the trade association⁸ could be construed as an implied environmental claim by the FTC if packaged in certain ways (e.g., green colors and agricultural/rural graphics). However, the seal is typically used without qualification, and the products are not accompanied by express environmental claims. Therefore, we ask that the Commission provide additional guidance/examples on what advertising conditions would cause the mere presence of a seal (without qualifying language) to result in a reasonable consumer perceiving an unintended implied environmental benefit claim.

Organic and Natural Claims. The FTC has decided not to develop new guides for “organic” claims at this time. For organic claims involving agricultural products, the FTC has deferred to the U.S. Department of Agriculture (“USDA”) and its National Organic Program to avoid proposing duplicate or inconsistent guidance. CPDA supports this decision, and the FTC’s decision to postpone development of guidance on non-agricultural

⁶75 Fed. Reg. 63552, 63566 and proposed 16 C.F.R. § 260.6. *See also*, 16 C.F.R. part 255 – “Guides Concerning Use of Endorsements and Testimonials in Advertising.”

⁷ Proposed 16 C.F.R. § 260.6.

⁸ The certification program is voluntary and open to members and non-members. Authorized use of the certification seal is partially based on compliance with technical and good product manufacturing and stewardship standards, which include having a formal process in place to self-assess compliance with applicable laws and regulations (including environmental).

organic products until sufficient consumer perception evidence is available for those products.

The FTC has also declined to develop guides for “natural” claims because it has no basis for such guidance at this time. Although, this term is used for a few specific products in other federal programs (e.g., “natural flavor” (Food and Drug Administration), “natural meat and poultry” (USDA), and “natural fiber” (FTC)), the Commission does not have sufficient consumer perception evidence to develop general guidance for using the term “natural.” Again, CPDA supports the FTC’s decision on this term, and the related caution that marketers using the term “natural” still need to ensure they can substantiate all claims perceived by reasonable consumers.⁹

CONCLUSION

CPDA supports the FTC’s work in developing clear guidance for environmental marketing claims and appreciates the significant effort the Commission has made during the past 3 years to obtain public input for revising the Green Guides and in maintaining an education-based enforcement approach under section 5 of the FTCA. We also ask that the Commission provide further clarification and examples of conditions that would result in unqualified third-party certifications or seals being deemed environmental benefit claims on a product when a marketer does not intend them to be such claims.

Michael C. White, Ph.D., J.D.
Director of Regulatory Affairs

⁹ 75 Fed. Reg. 63552, 63586. *See also*, “FTC Policy Statement Regarding Advertising Substantiation,” (1983).