



Graphic Arts Coalition

Representing the Graphic Communications Industries

December 10, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Proposed, Revised Green Guides, 16 CFR Part 260, Project No.
P954501, *Federal Register* 63552, October 15, 2010

Dear Sir/Madam:

The Graphic Arts Coalition (GAC), including the Flexographic Technical Association, the Specialty Graphic Imaging Association, and the Printing Industries of America, offers the following comments on the proposed revisions to the Federal Trade Commission's Green Guides. Many of the requirements apply to marketing claims printed on packaging, and to the environmental attributes of packaging as well as other printed products.

The GAC represents the collective interests of the printing industry, one of the largest and most viable manufacturing industries in the United States. According to the Bureau of Labor Statistics, printing and related activities (NAICS 323) employed more than 560,000 individuals in 2009. The printing industry is a prime example of small business involved in manufacturing. Approximately 90% of the industry employs fewer than 100 employees and over 80% employ 20 or fewer employees.

The GAC appreciates the Federal Trade Commission's effort to revise and expand its existing marketing guidelines for environmental claims. It is important to create a consistent set of guidelines for marketing products based on environmental claims in order to ensure both consumer understanding and equality for manufacturers. Without clear guidelines, companies may face unfair competition from competitors making unfounded environmental claims. We do agree that these guides impact not only the business to consumer marketplace, but the business to business market as well. Our comments focus primarily on the application of these guides to the business to business marketplace.

Generally, the GAC supports the direction that the FTC has taken in the updated Green Guides. Although we represent facilities that are engaged in manufacturing products, the manufacturing is done at the direction of customers who specify the input materials and manufacturing process. While it is our customers that are engaged in the marketing of the finished product, our members need to be aware of the requirements within this document. Their operations impact the final printed product and the subsequent marketing claims that are made regarding the finished product. As such, there are areas of concern which need more clarification.

Section 260.4 General Environmental Benefit Claims

The GAC agrees with the Commission's changes to this section of the marketing guides advising marketers to not use unqualified general environmental claims. We agree that the use of these unqualified terms does convey far reaching as well as possible misleading assumptions regarding the environmental attributes of a product.

Section 260.5 Carbon Offsets

We understand that the FTC is not responsible for defining environmental terms or creating environmental regulations, however, the GAC is concerned with the lack of information provided in the Green Guides on how marketers may properly convey carbon offset issues.

The GAC agrees with the Commission that any offsets claimed need to be properly quantified, by a competent authority, and that the offset should only be claimed once. Similar to the sections addressing claims of renewable energy, we recommend that this section require marketers to specify which part of a product or process that produced carbon emissions was offset, or what percentage of the product was offset. Similar to other sections, claims of carbon offsets should be qualified as to what percentage and what aspect of the product's life (e.g. transportation, production, sourcing) was offset. With the proposed Green Guides, consumers still face uncertainty when assessing any carbon offsetting claims.

Section 260.6 Certifications and Seals of Approval

The GAC agrees that certification claims must be clear as to who created the certification, and that claims must be qualified and substantiated. The GAC is concerned with the requirement to list the particular attribute of the product that is certified per the seal. While some certification programs are single attribute and identifying the individual benefit may be easy, other certification programs are multi-attribute, in that they look at many aspects of a product or process to determine if it meets the criteria for certification. It would be unrealistic to expect a multi-attribute certification program to list every aspect of their program on a claim. A better scenario for this situation would be to allow multi-attribute programs to make their certification criteria publically accessible and state on the final product that the certification is multi-attribute and direct the consumer to a website or other resource to obtain more information.

Section 260.9 Free-of and Non-Toxic Claims

The GAC disagrees with the statement made by the FTC that all free-of claims need not be qualified. In the marketing between business to business free-of claims are possibly the single most violated marketing concept. We also disagree that the FTC should include a statement that allows a marketer to use a free-of claim if a de minimis amount of the substance can be found in the product. Without defining or setting a numeric limit as to what constitutes a de minimis amount, the FTC has failed to provide effective guidance in this area. Without a clear definition of this term, the FTC is allowing each manufacturer to determine what the de minimis amount is. The guidance, as currently written, does not provide any continuity or specificity to the marketplace. It only continues to create turmoil and possible misrepresentations.

The GAC recommends that in addition to the examples provided in (b) of this section, the FTC add that Non-Toxic or “free of” claims are misleading if the substance that is absent from the product or packaging is forbidden to be included by law. For example, if a certain a product is advertised as free from PCBs, which are banned for use in the United States, the claim is misleading.

Section 260.11 Recyclable Claims

The use of the terms “recyclable” and “recycled” in Sections 260.11 and 260.12 differ from the use established by the U. S. Environmental Protection Agency (USEPA), as the FTC considers “reuse” a form of recycling, while the USEPA does not. Deviating from the previously established USEPA definitions is confusing and has resulted in contradicting examples in Section 260.12 as well as 260.11.

In section 260.11, the term “recyclable” is expressed as “...otherwise recovered from the solid waste stream through an established recycling program for reuse or use in manufacturing or assembling another.” The U.S. Environmental Protection Agency defines source reduction as ways to reduce, reuse or recycle an item. The EPA states that recycling includes collecting recyclable materials that would otherwise be considered waste, sorting and processing recyclables into raw materials such as fibers, manufacturing raw materials into new products, and purchasing recycled products. The Agency’s eCycle program (<http://www.epa.gov/wastes/partnerships/plugin/reuse.htm>) gives the examples:

- Reuse - When you retire your computers, cell phones and other electronics, and pass them onto new users, that's reuse.
- Recycle - If you can't reuse, repair, or refurbish the electronic device, the next best thing is to recycle it.

Example 8 in this section directly contradicts Section 260.12, in that a camera that is collected for reconditioning and reuse may be labeled as “recyclable” while a product that is reconditioned or reused may not be labeled as “recycled” unless it is clear that the product has been remanufactured or reused.

The FTC needs to revise these two sections to eliminate conflicting definitions between the EPA and the FTC as well as conflicting examples within the document.

Another concern with this section is the requirement for claims to be based on whether recycling is available in a “community”. There is no clear definition of what constitutes a community. One individual may feel that their community includes an entire metropolitan area where they live and work, while another may feel that their community includes only the town or municipality in which they live.

Additionally, this term becomes even more difficult to apply for a business to business transaction. If a community is defined as a geographic area or other boundary, and a business is unique to a specific geographic area, it may be the only consumer of a certain product in that community, and a company marketing to that business would be responsible for determining the availability of recycling for every business in every community that might use the same product in order to make any recyclability claims. In

this situation, it is unrealistic to limit recyclability claims only to a “substantial majority” or “significant percentage” of “communities” that have access to recycling programs. The FTC should reevaluate the use of the availability of recycling based on a “community” basis and focus on availability of recycling to consumers regardless of their geographic location.

The GAC encourages the FTC to formalize the definition of “substantial majority” and supports the use of 60% as a formal interpretation of substantial majority in a business to consumer situation. However, the GAC recommends that the FTC revise the Green Guides recommendation for recyclability claims on a business to business basis, as the circumstances are very different. The GAC also encourages the FTC to formalize the term “significant percentage,” as it is similarly vague and open to interpretation, and again recommends that different criteria be used to define this term in the context of business to business marketing.

Section 260.12 Recycled Content Claims

The GAC requests that the FTC revisit the examples given to illustrate (d) of this section to ensure clarity of this section. Examples 11 and 12 in which used products are being marketed as recycled give two opposing outcomes to the same claim. In Example 11, claiming that a used helmet is recycled is deceptive, while in Example 12, claiming that a used engine is recycled is not deceptive. Based on these two examples, the acceptable relationship regarding the use of the term “recycled” on a used product is unclear. For example, some graphic arts facilities purchase equipment that has previously been used in other facilities. It is unclear if a claim describing used manufacturing equipment as “recycled” would be deceptive or not.

Section 260.15 Renewable Materials Claims

Marketers should not be required to change the meaning of common terms such as “renewable” because of the perception of a select group of consumers surveyed. While using the responses from the consumer group is insightful, it is not appropriate to make such a significant change based on their response, as the level of understanding was not fully examined. In many instances, consumers may not have been given enough information to form an accurate understanding of some environmental terms; however this does not mean that marketers should be responsible for this lack of knowledge or possible misunderstanding. Merriam-Webster (m-w.com) defines renewable as “Capable of being replaced by natural ecological cycles or sound management practices.” A renewable material is derived from a source that can be regenerated in a reasonable period of time, unlike materials from non-renewable sources, such as those derived from fossil fuels or rare earth metals.

However, the FTC states that a reasonable consumer may assume that “renewable materials” are those made with recycled content and that are recyclable and biodegradable. In reality, this definition is unrelated to renewability. By requiring marketers to associate the use of renewable material claims with end of life issues and recyclable content, the FTC would be supporting the improper use of a claim. Instead of perpetuating an incorrect definition of the term “renewable” the FTC should clarify that renewable materials claims do not relate to end of life issues of a product such as recyclability or biodegradability or to recycled content.

A common substrate for printing is paper or paperboard. Paper products are derived from trees and other natural fibers, which are renewable resources. As such, it would be truthful to claim that a printed product or packaging that is composed of paper is made from a renewable material. However, the proposed Green Guides state that in order to claim a product is made from renewable materials; it must also be recyclable and biodegradable or made from recycled content. While some paper is made from recycled fiber and is generally considered biodegradable, not all paper is made from recycled fiber, which would preclude the use of the term “renewable” to market paper.

The GAC recommends that the FTC remove references to recyclability, biodegradability and recycled content from (b) and Example 1 of this section. While consumers may not currently understand the term “renewable”, including unrelated concepts in the Green Guides will not lead to increased understanding. The strategy provided in Examples 1 and 2 in this section, of defining renewability in the marketing claim suffices to increase understanding. Any requirement to state that a product is recyclable, biodegradable or made from recycled content in order to claim that it is renewable, as suggested in (b) and Example 1 of this section, is further misleading to consumers.

Additionally, it is not clear what is meant by “how the material is sourced” in (b), or why that information would be required to substantiate a renewable claim. Consumers would gain the most understanding of the claim that a product is made from renewable resources by explaining why the material is renewable. The GAC recommends that the FTC remove the term “how the material is sourced” from (b) of this section.

Conclusion

The Graphic Arts Coalition agrees that the proposed revisions do offer a substantial step forward regarding the use of environmental marketing terms. There are several, most notably Sections 260.5, 260.9 and 260.15, where changes need to be adopted before the guides are issued as final.

We hope that the comments provided will be of assistance as the FTC continues to develop this guidance and would welcome the opportunity to discuss our comments with you. Please contact anyone of the representatives listed below.

Sincerely,

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