



December 10, 2010

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

REF: Guides for the Use of Environmental Marketing Claims; Project No. P954501

To Whom It May Concern:

I am writing on behalf of the Secondary Materials and Recycled Textiles Association (SMART) to provide input on the Federal Trade Commission (FTC) proposal to revise the Guides for the Use of Environmental Marketing Claims (the so-called “Green Guides”).

Founded in 1932, SMART is a non-profit trade association that represents nearly 200 small and medium-sized companies involved in using, converting and recycling pre- and post-consumer textiles and other secondary materials. The industry’s activities are very diverse. Some SMART members recover and process “pre-consumer” by-products from the textile and fiber industries for use in new materials in the automotive, home furnishings and a variety of other sectors. Others are involved in buying and selling of “post-consumer” second hand textiles. These companies typically source clothing collected by charities like the Salvation Army and Goodwill, buying bulk quantities of excess donations (thereby serving as a major and critical source of operating revenue for these groups). They then sort these goods and grade them based on condition. Some recovered textiles become wiping and polishing cloths used in institutional and industrial settings while others are reprocessed into fibers for furniture stuffing, upholstery, insulation, building and other materials. More information about SMART and our members can be found by going to our website at [www.smartasn.org](http://www.smartasn.org).

We commend the Commission for its efforts to update the Green Guides to address concerns that have arisen as a result of the exponential growth of the “green” movement in recent years. We share the FTC’s concern that the proliferation of environmental marketing without clear and common guidance can lead to confusion and uncertainty both for the companies trying to promote their products and consumers eager to know the implications of what they are buying. At the same time, we are concerned that overly rigid guidelines could unintentionally impede the development of environmentally friendly activities and products by creating impossible to achieve standards and elevating the threat of liability/risk of being declared a deceptive marketing practice to unacceptable thresholds.

To avoid this outcome, SMART has a number of common-sense recommendations for the Commission to consider as it finalizes the guidelines.

## **The Green Guides Should Place a Greater Emphasis on Business To Business Practices**

We applaud the FTC's proposal to revise the Guides to more clearly emphasize that they also apply to business-to-business (B2B) transactions and not just business-to-consumer marketing.<sup>1</sup> However, the clear emphasis throughout the Guides appears to be on consumer transactions, as evidenced by the fact that many of the proposed revisions rest on conclusions drawn from consumer perception data. While we believe consumer perception data is important, we believe that business perceptions (including business perception data) and standard business and industry practices should play an equal role. Many companies use a wide range of tools that are intended to provide their supply chain partners with greater information about environmental or sustainable attributes of particular supply chains, making it critical for the FTC to adequately address business perceptions.

We recommend additional revision to the "Purpose, Scope, and Structure of the Guides" (§260.1(c)) to further clarify the Commission's intended emphasis on B2B transactions, and suggest including additional examples covering B2B scenarios to solidify this point.

## **Material Disclosure Guidance For Endorsements, Seals, Certifications, and Associations Does Not Provide Useful Information**

We are concerned about the Commission's proposed handling of endorsements, seals, certifications, and association memberships, which calls for treating a wide range of different entities and initiatives – trade associations, good housekeeping seals, certification schemes backed by rigorous third party testing – with a single approach, emphasizing the need to disclose material interest in the certifying body, trade association, or seal. While we understand greater disclosure of material relationships is required so that consumers and presumably businesses can more fully assess the credibility of such seals, certifications, associations, and endorsements, given the broad range of organizations and trade associations involved in the environmental movement, we are concerned this material relationship disclosure will not prove truly informational and could erroneously imply an inappropriate relationship where none exists. For example, an individual who sits on the board of a certifying agency but does not play any role in reviewing certifications suddenly becomes suspect in the eyes of the consumer as the result of the required relationship disclosure.

In this section, we think the more relevant information is what steps the seals, certifications, and endorsements take to back up the claims they make. Given the variety of such initiatives that are backed up by a wide range of legitimate but varying procedures and protocols, we recommend the Commission allow businesses to freely avail themselves of seals, certifications, endorsements or association memberships as long as they can substantiate a factual basis for such initiatives. If a business wants to make a further claim that such affiliations represent an endorsement or certification by an entity, that additional claim should be substantiated and verifiable (by for example having information on a website or a point of sale if appropriate).

Examples offered in §260.6 are even more concerning for an organization like SMART. Our organization's name has contained the word "recycled" for more than 30 years because it legitimately

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<sup>1</sup> Proposed Guides, p.20.

describes the activities in which our member companies are involved and always have been involved. Because our industry is mostly comprised of small businesses that have limited resources for participation in trade associations, our members consider their participation in SMART particularly meaningful, and frequently tout their membership on their websites and in other informational materials. While SMART does not offer or claim to offer any kind of seal or certification, and never has, we believe the guidance and examples as written could prevent our members from making simple statements about their industry affiliation because they believe a consumer or other entity could potentially conjure up some imaginary certification or endorsement status. We strongly suggest the Commission include an example that clearly describes the situation just outlined that clarifies that disclosing membership in an organization like ours would not represent a deceptive marketing practice.

### **Recycled Content Guidance Penalizes Current Recyclers**

The guides emphasize that recycled content can be disclosed only if such content has been diverted from the waste stream. While we generally support the approach, we believe the FTC has adopted too narrow a definition of exactly what waste stream diversion entails that could suggest that manufacturing processes that efficiently capture scraps for reuse and repurpose (i.e. post-industrial, pre-consumer waste) might not meet the definition of “recycled” since it may be difficult to prove that the waste might have otherwise gone to the waste stream that the FTC has in mind. Such an approach can be highly subjective and appears to penalize companies who have already adopted a high standard of what byproducts can be discarded, and whose activities clearly result in the overall goal of recycling – waste being diverted from landfills and less use of virgin materials. Indeed, the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) rating system, which is regarded by the private and public sector as the recognized standard for measuring building sustainability, recognizes the value of pre-consumer, post-industrial recycled content because it reduces the “impacts resulting from extraction and processing of new virgin materials.”<sup>2</sup>

In textile manufacturing, ensuring a ready stream of pre-consumer recycled textile materials is important, since post consumer recycled textiles present challenges due to costs associated with isolating textiles that are not treated or free from accessories (such as buttons and snaps). Removing the ability of companies to describe products made with such pre-consumer inputs as made with recycled materials will discourage companies from finding innovative, higher value uses of waste or regarding waste as a useful and marketable by-product. Despite the Commission’s good intentions, such limitations will have a disproportionately negative impact on the environment as it will more than likely result in a greater amount of pre-consumer waste being diverted to landfills and an increase in the generation of virgin materials. Pre-consumer recycled content disclosure should be permitted in all cases where a company uses materials that might have been discarded by another manufacturing or producing entity.<sup>3</sup>

### **Conclusion**

We commend the FTC on revising and updating the guides and acknowledge the extraordinary complexity involved in balancing the need to ensure marketers avoid deceptive claims while at the same

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<sup>2</sup> LEED Credit MR 4.1, <http://www.tpub.com/content/gsa/criteria/gsaleed/gsaleed0103.htm>

time preserving the positive environmental advancements going on in the world around us. While we broadly support the proposed revision's main idea that claims ought to be properly qualified and substantiated so that they are not misleading, we also remind the Commission of the importance of both preserving market drivers that contribute to development, opportunities and innovation in "green" and avoiding penalizing businesses that make positive environmental contributions through their day-to-day operations.

Thank you for providing us this opportunity to comment.

Sincerely Yours,

Jackie King  
SMART Executive Director