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Submitted Electronically

Ms. Laura Koss, Esq.
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
Office of the Secretary, Room H-135 (Annex J)
600 Pennsylvania Ave., NW
Washington, DC 20580

<https://ftcpublishcommentworks.com/ftc/revisedgreenguides>

Re: AHAM Comments On Guides For The Use Of Environmental Marketing Claims;
Proposed Rule, 75 Fed. Reg. 63552 (Oct. 15, 2010)

Dear Ms. Koss:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Federal Trade Commission (FTC) on its Notice of Proposed Rulemaking on Guides for the Use of Environmental Marketing Claims, 75 Fed. Reg. 63552 (Oct. 15, 2010).

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

In its proposed revisions to its Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides"), the FTC has proposed to create a new section on the use of certifications and seals of approval in advertising. We believe the FTC is unnecessarily concerned that as the number of purported, perceived, and actual third-party certifications and seals of approvals have spiked in green advertising, consumers may be unable to distinguish between legitimate and misleading certifications and seals. The FTC should be careful that in attempting to address that concern, it does not cast too wide a net, unintentionally covering (and impairing) trade association certification or verification programs that are useful to consumers and administered

in connection with credible, credentialed, and truly independent third party laboratories. Trade associations serve a necessary and consumer-related function by bringing together the technical expertise of the industry with the product information the consumer needs in order to make an informed product choice. The proposed Guides, if enacted without change, would greatly restrict that function.

The relevant section of the proposed Green Guides states:

§ 260.6 Certifications and seals of approval.^{1/}

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third-party.

(b) A marketer's use of the name, logo, or seal of approval of a third-party certifier is an endorsement, which should meet the criteria for endorsements provided in the FTC's Endorsement Guides, 16 CFR Part 255, including Definitions (§ 255.0), General Considerations (§ 255.1), Expert Endorsements (§ 255.3), Endorsements by Organizations (§ 255.4), and Disclosure of Material Connections (§ 255.5).

The proposed section further provides hypothetical situations to illustrate how the Endorsement Guides apply to the environmental claims, certifications and seals. Examples 2 and 3 are relevant to these comments.^{2/}

Example 2: *A product advertisement includes a seal with the text "Certified by the Renewable Energy Association." The product manufacturer is a dues paying member of the Association.*

According to the FTC, the seal is misleading because the seal of approval implies that a third-party evaluated and likely certified the product, and so consumers likely expect that the endorsing party is truly independent from the marketer. But, the FTC believes that the certifier is not a truly independent entity because the marketer pays membership dues to the association. The FTC requires that the seal disclose in clear and prominent language the dues paying or economic connection between the manufacturer and the association.

Example 3: *A manufacturer advertises its product as "certified by the American Institute of Degradable Materials." The advertisement does not mention that the American Institute of Degradable Materials is an industry trade association.*

The FTC finds this advertisement deceptive because it likely leads consumers to believe that the *American Institute of Degradable Materials* is an independent certifying body and that the product is certified by an independent third party laboratory rather than the trade association itself. The FTC would not find the

^{1/} 75 Fed. Reg. at 63601.

^{2/} *Id.*

advertisement to be deceptive if the advertiser stated in clear and prominent language that the Institute is an industry trade association.

FTC's concern about broad and unqualified green claims communicated through certifications and seals is understandable. But the examples above will cause substantial issues for many legitimate and consumer-useful trade association activities. The rules and examples, if finalized as proposed, would disincentivize the creation and maintenance of exactly the kind of credible industry self-governance efforts FTC should encourage. Green certification programs which are national in scope, uniform, publicly recognized, and based on nationally accredited, open, and transparent standards are not created out of thin air. They often require technical expertise from industry and concerted efforts by affected parties and other stakeholders—for which associations can be an ideal forum.

Trade associations often undertake the creation and management of third-party certification (generally pre-market qualification) and/or verification (generally post-market monitoring) programs for the benefit of their members and of consumers. To run these programs fairly and accurately, trade associations often employ unbiased, independent, credentialed, reputable third-party laboratories to test members/participants/licensees' products. And many trade associations open these programs to member companies and non-member companies alike. In most cases, trade associations essentially act as intermediaries, coordinators, or program managers between the manufacturers and the laboratories. By contract, and as a condition of the laboratory's credentials, the trade associations do not have any influence on the testing of specific products. But, in return for administering an effective program which benefits their members and the public, trade associations often seek to "brand" the program through their names and logos.

Examples 2 and 3, above, should not apply to trade association certification/verification programs that employ unbiased, independent, credentialed, reputable third-party laboratories to test products. In fact, in that situation, a required disclosure that the party whose name is on the logo is a trade association and/or that the certified company is a dues paying member is likely to undermine or vitiate the value or viability of many legitimate and valuable programs. For example, such a disclosure might lead consumers to believe that the product, rather than being tested by an unbiased, reputable third party laboratory, is tested and/or significantly influenced by the trade association or the dues paying member, when in fact it is not.

Moreover, the use of the suggested prominent language in many certifications and logos is often impractical because the amount of space available to make such disclosures is limited. Package and product space is crowded, and space is at a premium. And too many words or disclosures can overwhelm a consumer, with the potential result that little gets read or understood. Accordingly, information on retail packaging is meant to quickly inform the consumer about which products are certified/verified (as compared to those which have not been tested by an independent laboratory at all). It is critical to communicate as much information to consumers in as efficient a way as possible. A disclaimer: "X is a member of Y association" or "Z is an industry trade association" may take up too much space and/or divert attention from the salutary objective of the certification. Indeed, in some cases even fully spelling out an association name—assuming even that is adequate disclosure for the FTC—may be graphically impractical.

Our research shows that many consumers do their “homework” before they shop at retail for appliances. For example, consumers use the websites that track, rate, or compare products. For that reason, combined with the need for efficient communications on packaging, in many cases, the information on the retail packaging is linked to the association’s website where more information is available to the consumer that explains, in detail, the nature of the trade association and the certification/verification program.

Similarly, the underlying assumption of Example 2, that no economic disclosure is needed if a program is developed and managed by an “independent” third party laboratory, is based on the false premise that just because a trade association, rather than the manufacturer directly, is employing the third-party laboratory, the results of such certification/verification programs are less accurate, cannot be trusted as much, or are more likely deceptive. This is not the case—in either arrangement, the laboratory’s revenues are based on fees from its customers. And there is not likely a scenario under which testing or certification would be done without fees charged to those having products tested. The fact that fees are charged, either to the manufacturer or a trade association administering a certification/verification program, do not result in bias or influence on testing or its results. In fact, laboratories used for most third-party certification/verification programs are accredited by national or international bodies under such international standards as ISO Guide 65, which require independence. Accordingly, no disclosure should be required when a program is developed and managed by a trade association which contracts with a third party laboratory to conduct the testing and the trade association and its members have no influence on that testing or its results.

The unintended consequence of the revisions in the proposed Guides regarding certifications and seals as endorsements is that many good programs that provide value to consumers will be undermined. The examples are too broad—the FTC should focus its guidance and examples on whether trade associations use legitimate third party testing arrangements rather than on impractical, confusing, and unhelpful disclosures.

AHAM appreciates the opportunity to submit these comments on the FTC’s Notice of Proposed Rulemaking on Guides for the Use of Environmental Marketing Claims and would be glad to further discuss this matter.

Respectfully Submitted,

Jennifer Cleary
Director, Regulatory Affairs