



WineAmerica
The National Association of American Wineries

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”

Dear Sir or Madam:

Wine Institute is the public policy trade association for California wineries. Our membership includes over 900 operating California wineries. California produces about 90% of all wines produced in the United States; our membership alone represents approximately 85% of all US wine production.

WineAmerica, the National Association of American Wineries, is a public policy trade association that represents the interests of American wineries and promotes the advancement of the American wine industry. Our membership includes approximately 800 members in 48 states. WineAmerica is the only winery trade association with a national membership.

We appreciate this opportunity to respond to the Federal Trade Commission on its Proposed, Revised Green Guides.

We would like to bring to your attention what could result in overlapping jurisdiction and unnecessary redundancy relating to environmental marketing claims for wine and other alcohol beverages. The Alcohol & Tobacco Tax and Trade Bureau (TTB), which is an independent bureau within the Department of the Treasury, has jurisdiction over the marketing of all alcohol beverages sold or offered for sale in interstate or foreign commerce. TTB is legislatively mandated by law to regulate the labeling, packaging, advertising and sale of such beverages by producers, wholesalers and importers (Title 27 USC Section 8) and has promulgated and enforces regulations in this regard (27 CFR parts 1-13). Those regulations can be found at <http://www.ttb.gov/other/regulations.shtml>. The TTB website <http://www.ttb.gov> provides a substantial amount of information on their authorities and responsibilities as well as the organization and how they administer their rules.

Since the repeal of prohibition, TTB and its predecessor bureaus, have a long history of closely regulating the production, marketing and sale of alcohol beverages at the Federal level. As part of that responsibility and jurisdiction, TTB enforces regulations on the labeling and advertising of all alcohol beverages that enter interstate or foreign commerce. The principle goal of those regulations (and TTB's legislative mandate) is to ensure that all advertising and labeling is truthful and accurate and does not deceive or mislead consumers. *See* 27 U.S.C. § 205(e), (f); *e.g.*, 27 C.F.R. Part 4, subparts D, G (wine). Additionally, many States have adopted TTB's regulatory framework to likewise ensure that consumers in their States are not deceived or misled by representations on labels or in advertising.

With regard to TTB's labeling regulations, TTB is required by statute to pre-approve all labels before the products enter the commerce of the United States. TTB administers a system whereby companies must submit all labels for review and approval prior to their use. TTB reviews label applications for compliance with law and regulations including any organic or environmentally related claims. They will not approve any label if any information is misleading or confusing to the consumer. *See* 27 U.S.C. § 205(e). Companies rely on these approvals when they invest substantial amounts of money in advertising and marketing campaigns as well as production equipment and supplies.

With advertising, no pre-approval process is required by TTB but, as a matter of policy, they encourage companies to informally submit advertising for TTB review and many do take advantage of this. The TTB standards on advertising are similar to the labeling standards and they likewise prohibit any statement, symbol or depiction that would be misleading or which could cause consumer confusion. *See* 27 U.S.C. § 205(f). TTB employs an aggressive advertising enforcement program which includes the review of all types of advertising in the marketplace, including print, TV, radio and the web. *E.g.*, TTB. Results of the FY 2010 Alcohol Beverage Sampling Program, *available at* <http://ttb.gov/sampling/10sampling-results.shtml> (last visited Dec. 8, 2010).

Penalties for violations of TTB's advertising and labeling provisions include "fines" (in the form of offers in compromise) as well as permit suspension and revocation. *E.g.*, 27 U.S.C. §§ 204(e), 207. In addition, TTB has the power to compel companies to recall products from the market for either relabeling or destruction, *see* 26 U.S.C. §§ 5601 *et seq.*, and they can require companies to alter or withdraw advertising. *See* 27 U.S.C. § 205(f), 207.

Wine Institute and WineAmerica are concerned that wine producers, who are closely regulated by TTB, will face a secondary level of scrutiny from the FTC, most likely well after TTB has completed its review and has given these industry members their approval. This could result in a form of double jeopardy or at the very least a level of overlapping scrutiny that should and could be avoided. At the least, the current situation suggests closer coordination between the FTC and the TTB on environmental marketing claims.

We suggest that the FTC consider developing a protocol with the TTB such as currently exists between the USDA and TTB on organic references. Under an agreement with the USDA, organic references on wine labels and in ads must comply with USDA's National Organic Program (NOP) rules as well as comply with TTB regulations. TTB enforces compliance with all such rules and relies on the USDA to assist TTB in determining compliance with the NOP. In 2002, TTB labeling and advertising regulations were amended to cross reference the USDA's

NOP rules and to require that alcohol beverage labels and advertising must comply with those rules as well as rules administered by TTB (See T.D. ATF-483, October 8, 2002¹).

Under this arrangement, TTB is ultimately responsible for ensuring that industry members comply with the NOP and any actions required to enforce the rules is TTB's responsibility. Working in close coordination with the USDA's Agricultural Marketing Service, TTB can impose administrative fines, suspend and revoke permits, or take other remedial measures to ensure that deceptive organic marketing practices are not employed. TTB has at its disposal administrative procedures that do not require the assistance of the courts or the Justice Department but also has those tools available if they are required.

We believe that a similar agreement between TTB and the FTC will help limit overlapping enforcement for environmental claims. In addition, industry members will be assisted with timely compliance with both Green Guide rules and TTB regulations if they can rely on one Federal agency for label approvals and rules enforcement.

Sincerely,

Allison Jordan
Director of Environmental Affairs
Wine Institute

Cary Greene
Chief Operating Officer
WineAmerica

¹ Please note that in January, 2003, ATF and its law enforcement functions were transferred to the Department of Justice and ATF's tax collection and regulatory responsibilities for alcohol and tobacco products remained at Treasury. At that time the Alcohol and Tobacco Tax and Trade Bureau (TTB) was established as an independent Treasury bureau.