



COMPOSITE PANEL ASSOCIATION

*Advancing the wood-based panel and decorative surfacing industries
Celebrating 50 Years of Service (1960 – 2010)*

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

RE: Proposed Green Guides 16 CFR Part 260, Project No. P954501

These comments are submitted by the Composite Panel Association ("CPA") in response to the Federal Trade Commission's Proposed Guides for the Use of Environmental Marketing Claims (the "Green Guides"), 75 Fed. Reg. 63551 (October 15, 2010).

CPA's comments are limited to the FTC's provisions regarding trade association certifications and seals of approval. We respectfully submit that these provisions unfairly and unnecessarily disparage trade associations and are not germane to the purpose of mitigating deception in environmental advertising.

I. The Composite Panel Association

Founded in 1960, CPA represents North American manufacturers of particleboard, medium density fiberboard ("MDF") and hardboard, as well as manufacturers of decorative surfaces for these substrates and others in related industries. The association provides a wide range of services to its members. Most germane to these comments are CPA's extensive and longstanding activities in the development of consensus standards for industry products, and the testing and certification of the physical and mechanical properties, as well as the emission characteristics of these products.

II. Comments and Recommendations

CPA applauds the Commission's basic premise that marketers should avoid blanket claims that a product is "environmentally friendly" or "eco-friendly" when they cannot be factually substantiated. However, we respectfully submit that the Commission has misjudged industry trade associations in suggesting a compliance regimen that would be awkward in

its complexity and inappropriately disparaging of trade associations in its effect. There is an erroneous premise permeating the Green Guides that dues payments to, or affiliation with, an industry trade association implies an inappropriate influence or taint that must be disclosed to consumers and commercial customers.

In particular, Section 260.6 is a new provision dealing with certifications and seals of approval. Basic to this section is the finding in subsection (b) that:

[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 C.F.R. Part 255 ...

We submit that this assertion is overly broad.

The Commission also asserts that the logical extension of the endorsement finding is that every company certified by a trade association must disclose its membership in the group (presumably because dues were paid, See § 260.6, Example 2) and that the association is an "industry association" (presumably because an industry trade association cannot be objective, See § 260.6, Example 3). These requirements arise under concepts of disclosure of "material connections" and lack of "independence."

The presumption that certain activities of an industry trade association are necessarily tainted is belied by the broad range of salutary, objective, and readily verifiable requirements imposed by many associations on their members. In particular, none of CPA's certification programs have membership in the association as a pre-requisite, nor does CPA membership in any way ensure certification of a member's products. To the contrary, companies that are not members of CPA have had their products certified, and member companies have had their products rejected when they fail to meet established certification standards.

While the Commission is correct that companies pay for ongoing certification services for their products, this is true irrespective of whether the certifier is a not-for-profit trade association or a for-profit third party certifier. Payment for services is inherent in the nature of a certification service or any other fee-for-service enterprise.

The requirement to disclose that a certifying body is an industry trade association reflects an unfounded assumption that industry trade groups treat their certification customers differently than do for-profit companies. Moreover, CPA's name clearly and accurately conveys the scope of the products covered. Although certain association names might suggest an environmental endorsement, others simply identify the scope of the association's interests, as is the case with CPA. It is thus wrong to lump all associations together with a single pejorative characterization. Examples 2 and 3 of section 260.6(e) cite the hypothetical "Renewable Energy Association" and "American Institute of Degradable Materials," two names that imply an environmental attribute. The name "Composite Panel Association" on the other hand does not have any such implication. Instead, it simply describes the products represented by the association, as does our tag line "advancing the wood-based panel and decorative surfacing industries."

The examples in the Endorsement Guides underscore the principle that it is consumer perception that is the determining factor as to whether disclosure is necessary. For example, in Section 255.5, Example 2, the Commission makes clear that the payment to a celebrity offering a product endorsement need not be made because reasonable consumers would expect that he or she is being paid. Certifications should be considered similarly. Reasonable consumers should expect that the certifier is being compensated for its evaluation and confirmation of product characteristics. Nor should a reasonable consumer be surprised to know that industry associations collect dues.

The Commission has presumed a taint that does not exist; it has presumed a material connection that in CPA's case and many others is transparent to the public. CPA thus recommends that the examples cited regarding disclosure of (1) association membership and (2) that a certifier is an industry association be removed from the final Green Guides. While the "requirements" may seem innocuous, they are unfair to trade associations and unduly favor those for the for-profit community with which trade associations may compete. At a minimum, the examples should be modified to describe those situations which require disclosure and those that do not, as in the Endorsement Guides.

III. Background

The following information is supplied to provide the Commission with more perspective on CPA's comments and recommendations.

CPA is accredited by the American National Standards Institute ("ANSI") to develop and maintain national consensus standards in accordance with its requirements for due process, openness and balance. Proposed standards must be circulated to a broad-based committee that represents not only manufacturers, but also governmental agencies, user industries and other impacted stakeholders. Final standards have been subjected to a rigorous review process with full opportunity for comment and objection. All objections must be addressed, resolved or found to be non-persuasive in order for the required consensus to be declared and recognized by ANSI. Finally, existing standards must be reviewed and subjected to this same process at least every five years.

The following standards are sponsored by CPA under ANSI's auspices:

- ANSI A208.1, Particleboard
- ANSI A208.2, Medium Density Fiberboard for Interior Applications
- ANSI A135.4, Basic Hardboard
- ANSI A135.5, Prefinished Hardboard Paneling
- ANSI A135.6, Hardboard Siding

Product certification has also been a significant activity of the association. Since 1985, CPA¹ has maintained a voluntary certification program for formaldehyde emissions that has been embraced by the overwhelmingly majority of North American manufacturers. HUD has designated CPA as a "nationally recognized test laboratory" to confirm manufacturer compliance with its regulations. More recently, CPA was the first entity to be recognized by the California Air Resources Board (CARB) as a third party certifier for purposes of its regulation of formaldehyde emissions from composite wood products, passed in 2008. CPA operates its certification programs under the accreditation of the American National Standards Institute (ANSI) for ISO Guide 65.

¹ CPA was then known as the National Particleboard Association. The name was changed in 1997 after its merger with the Canadian Particleboard Association.

CPA also operates the International Testing and Certification Center (ITCC), in Leesburg, Virginia, a state-of-the-art laboratory facility with the capability of conducting emission as well as physical and mechanical property testing for industry products. The ITCC is accredited by the National Voluntary Laboratory Accreditation Program to ISO Guide 17025 and is widely recognized as one of the most reputable facilities of its kind in the world.

We appreciate the opportunity to contribute our comments to this important discussion, and look forward to the adoption of final Green Guides that are fairly crafted and administered for the benefit of all affected parties.

Very truly yours,

Thomas A. Julia
President