



BY EMAIL

December 10, 2010

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

Re: Comments on Proposed Revised Green Guides, 16 C.F.R. Part 260, Project No. P954501

Dear Sir or Madam:

The Glass Packaging Institute (“GPI”) welcomes the opportunity to submit comments to the Federal Trade Commission (“FTC”) regarding the FTC’s Proposed Revised Guides for the Use of Environmental Marketing Claims (the “Green Guides” or the “Guides”).¹ Below GPI details its comments on the FTC’s proposed Guides.

I. Background

A. Glass Packaging Institute Scope and Activities

GPI is a trade association representing the North American glass container industry. GPI’s over 40 members and associate companies manufacture glass containers for such products as foods, beverages, and cosmetics, and manufacture or integrate components of glass packaging. GPI serves its members by promoting sound environmental and health policies, and by facilitating and ensuring the adequate education of packaging professionals concerning those policies.

Glass containers used for packaging are made of natural materials: sand, soda ash, limestone, and recycled glass, or cullet. Glass’ physical properties (strength, insolubility, chemical resistance, formability, and recyclability) and its aesthetic qualities (purity, transparency, form, and color) make it an excellent packaging material. Due to glass’ impermeable and inert nature, glass containers can store food, beverages, chemicals, and other products for many years without imparting taste to its contents, and while also preventing degradation of the contents or the glass itself.

¹ Proposed Revised Guides for the Use of Environmental Marketing Claims, 75 Fed. Reg. 63552 (Oct. 15, 2010).



Glass packaging companies represent a significant portion of both the national and international economies. Such companies comprise a \$5.5 billion dollar industry in terms of annual sales, and employ approximately 18,000 skilled workers in 50 glass manufacturing plants in 23 states, with additional thousands of jobs supporting the industry that contribute to local economies. Glass packaged beverages made up 75% of the global glass packaging market and nearly 80% of the domestic glass packaging market in 2006. This is the fastest-growing portion of the glass packaging industry. A report from Global Industry Analysts, Inc., reported that Europe accounts for about 42% of the demand for glass beverage packaging. According to this report, glass has a “premium and superior quality packaging material image” for beverages such as wine, beer, and similar drinks, and can be “fully recycled and reused.”

B. Glass Packaging Industry Commitment to Preserving the Environment

Glass is unlike any other packaging material as it is the gold standard for sustainable packaging. Glass has a 4,000 year legacy of safe use in contact with food. Moreover, glass is an unparalleled environmentally-friendly packaging material; glass is endlessly recyclable, and it is the only widely-used food and beverage packaging material deemed by the Food and Drug Administration to be generally-recognized-as-safe (“GRAS”) for use in contact with foods and beverages..

As the glass industry’s advocate for environmental policy, GPI is a primary source of guidance to its members and consumers regarding the environmental benefits of glass and glass recycling programs. Recognizing the steadily increasing consumer preference for glass packaged foods and beverages, both because it is sustainable and because of its health implications as the only packaging material that has FDA GRAS status, GPI is committed to bringing awareness about glass recycling programs and the advantages of glass as a safe and natural packaging material. GPI and its members are therefore significantly interested in the Green Guides generally, and in the specific application of the Guides to environmental packaging claims.

II. FTC’s Proposed Revisions to the Green Guides

A. GPI’s Agreement with Particular Proposed Revisions

GPI concurs with many of the FTC’s suggested revisions to the Green Guides and encourages the FTC to retain certain of its proposals, as set out in detail below. GPI fully agrees that there is a continuing need for the Green Guides.² As stated in our May 19, 2008 Comments to the Commission on its Green Packaging Workshop questions, the Green Guides ensure that the packaging industry can share and consumers can receive truthful and non-misleading

² *Id.* at 63556.

information regarding the environmental benefits imparted by products.³ Because consumers value environmentally friendly products now more than ever, it is imperative that the Guides be updated to reflect the current public understanding of the terms used now by marketers to promote their products.

GPI also reaffirms its support of the proposed Guides' approach to qualifications regarding the amount of recycled materials in a final product or package. According to an April 2008 poll conducted by Opinion Research Corp., consumers frequently misunderstand marketers' use of the term "recyclable" with respect to products they purchase. Of 1,000 respondents, a majority believed that over 50% of a product claiming to be recyclable must be able to be returned to its original use. This is not the case for many products. By only permitting unqualified recyclable claims to be made by final products which can be recycled in their entirety, the FTC will make certain that consumers understand how recyclable their purchases actually are.⁴ Further, by requiring qualification regarding the amount of recycled content final products contain, the FTC is enabling consumers to make informed environmental choices.⁵

In response to the FTC's inquiry as to averaging of recycled content, GPI believes that the FTC should make clear in the final version of the Guides that such averaging for a manufacturer is permissible and appropriate, since individual production runs and plants unavoidably may differ somewhat with respect to recycled content. Any statements of recycled content can properly be qualified by use of the term "on average" in describing recycled content. However, the FTC also should expressly limit the use of averaging statements to ensure that the claims are meaningful to consumers, by restricting the use of averaging to only those instances where the products or packages using recycled content are manufactured using the same general process and recycling stream. Limitation on this basis would ensure that claims would not misleadingly be based on averaging recycled content of much different types of products or packages, such as averaging together plastic containers and park benches.

GPI further agrees with the FTC's adoption of GPI's and similar comments regarding "degradable," "compostable," and "refillable" claims. By clarifying that products making degradable claims must break down within one year, and products making compostable claims must safely break down within the same period of time as those materials with which it is composted, the FTC will protect customers from misleading and deceptive product promotion.⁶ Moreover, by retaining the current limitations on "refillable" claims, the FTC will make certain

³ Comments of the Glass Packaging Institute to the Federal Trade Commission, at 2-4 (May 19, 2008)..

⁴ 75 Fed. Reg. 63604.

⁵ *Id.* at 63605.

⁶ *Id.* at 63602-63603.

that consumers will understand whether there are means to refill purchased packaging.⁷

GPI additionally supports the specific guidance that the FTC has provided with regard to multi-layer packaging materials. Consumers cannot be expected to understand the composition or recyclability of the varied materials used in multi-layer packages. Thus, the FTC should ensure through the revised Guides that consumers can make informed choices when purchasing products packaged in these materials. By requiring multi-layer packages to disclose the availability of recycling facilities and state which layer is composed of recycled materials, if any, if they make claims of recycled content, the FTC will allow environmentally concerned consumers to purchase products that address their environmental concerns.⁸ However, as set out below, GPI believes that it is important that the FTC provide further guidance in the final Guides regarding the recycling capability of the various materials used to comprise multi-layer packaging to ensure there is no consumer deception or misunderstanding regarding recycling capabilities of each element of such packaging.

GPI also supports in part the FTC's proposed revisions to the Guides regarding the Society of the Plastics Industry's SPI Code icon, and regarding "free-of" claims. GPI agrees with the FTC's view that the conspicuous use of the SPI code constitutes a recyclable claim, requiring qualification.⁹

GPI also concurs that truthful claims that a product, package, or service is "free of" or does not contain or use a substance may be deceptive if the same product, package, or service contains or uses other substances that pose the same or similar risks.¹⁰ As discussed below, however, GPI believes it important for the FTC to revise its proposed approach to "free-of" claims in the context of materials or products that compete in the same broad market in order to allow provision of information useful and important to consumer choice.

For the above terms and issues, GPI believes the FTC's Green Guides will assist marketers in their compliance with Section 5 of the FTC Act, while also facilitating educated consumer purchasing. GPI thus respectfully requests that the FTC retain the revisions proposed for the Guides in the above discussed areas, subject to the clarifications for some of them set out below.

⁷ *Id.* at 63606.

⁸ *Id.* at 63605-63606.

⁹ *Id.* at 63605. As stated in GPI's May 19, 2008 Comments, however, GPI does not agree that the SPI Code and Mobius Loop are not general environmental benefit claims when the symbols are placed in inconspicuous locations. Comments of the Glass Packaging Institute, to the Federal Trade Commission, at 6-7 (May 19, 2008).

¹⁰ 75 Fed. Reg. 63603.

B. Suggested Additions and Changes to FTC's Proposed Revisions to the Green Guides

While GPI concurs with many of the revisions that the FTC proposes, GPI believes that it is important, in order to ensure consumer understanding and prevent consumer deception, that the FTC revise its proposed approach to several terms and claims: (1) "recyclable" claims, (2) multilayer packaging products, (3) the misleading conflation of the terms "recyclable" and "recycled," (4) "free-of" claims, and (5) "non-toxic" claims. In these areas, GPI asks that the FTC modify the proposed Green Guides in accordance with the below comments.

1. "Recyclable" Claims

Even though FTC has proposed a substantial majority threshold for "recyclable" claims, GPI believes that the FTC has not provided sufficient guidance to avoid consumer misunderstanding and potential deception.¹¹ GPI is particularly concerned that the proposed Guides do not adequately address that consumers do not understand that many marketers are using "recyclable" to refer to downcycling, rather than recycling.

According to William McDonough and Michael Braungart, downcycling is the practice of reusing materials in such a way that it reduces the materials' quality over time.¹² In their book, *Cradle to Cradle: Remaking the Way We Make Things*, McDonough and Braungart state that

...most recycling is actually *downcycling*; it reduces the quality of a material over time. When plastics other than those found in soda and water bottles are recycled, they are mixed with different plastics to produce a hybrid of lower quality, which is then molded into something amorphous and cheap, such as a park bench or a speed bump. . . . Aluminum is another valuable but constantly downcycled material. The typical soda can consists of two kinds of aluminum: the walls are composed of aluminum manganese alloy with some magnesium, plus coatings and paint, while the harder top is aluminum magnesium alloy. In conventional recycling these materials are melted together, resulting in a weaker—and less useful—product.¹³

Thus, through this process, much of the recycled materials' value is lost.¹⁴

¹¹ *Id.* at 63604.

¹² W. McDonough & M. Braungart, *Cradle to Cradle: Remaking the Way We Make Things*, at 56 (2002).

¹³ *Id.* at 56-57.

¹⁴ *Id.*

An even greater concern, that consumers are likely not aware of, is that downcycling can harm both humans and the environment. For instance, when downcycling plastic products, into recycled steel, paint and plastics are melted together.¹⁵ During this melting, the materials emit harmful chemicals into the biosphere.¹⁶ Similarly, because paper fibers are shortened during the recycling process, the fibers of recycled paper products, such as newspapers, are more likely to abrade into the air and be inhaled.¹⁷ Consequently, newspapers have been the source of human allergies.¹⁸

Despite these hazards, consumers believe that products claiming recyclability are environmentally friendly. A 2008 poll conducted by Opinion Research Corp., of 1,000 respondents, found that 77% of people believe that more than half of a product claiming to be recyclable must be able to be returned to its original state for the claim to be accurate. 54% of people understood the term “recyclable” to mean that a product is able to be reprocessed into its original form an unlimited number of times. This, however, is simply not the case. Many marketers claim that their products are recyclable when, in reality, their products can only be down-sourced into a different, and perhaps lower quality, product that eventually, through progressive downcycling, ends up in a landfill or incinerator.¹⁹

Because a majority of consumers do not understand that the term recyclable does not mean that the product they are buying could be recycled into that same product again, but rather may only or predominantly be repurposed to produce a different item, perhaps of lower value, GPI proposes that the FTC make clear in the final Guides that only those products or packages, excluding minor incidental components, that have the capability of being used or reused in the manufacture or assembly of another like product or package may be permitted to use the unqualified term “recyclable.” All other products or packages which, excluding minor incidental components, that have only the capability of being used or reused in manufacturing or assembly of a different product or package, should be required to qualify claims of recyclability with the statement “may only or usually be repurposed into a different product.”

Through this clarification, consumers will be able to make an informed choice when trying to make environmentally-responsible choices through their purchases.

¹⁵ *Id.* at 57.

¹⁶ *Id.*

¹⁷ *Id.* at 58.

¹⁸ *Id.*

¹⁹ *Id.* at 59.

2. Multi-layer Packaging Materials

GPI further requests that the FTC provide additional guidance regarding the use of the term “recyclable” on multi-layer packages in the final Guides. FTC has acknowledged that the issue of multilayer packaging is complex. The Commission has proposed specific multilayer packaging guidance on the availability of recycling facilities and the amount of recycled material in a multilayer package.²⁰ GPI supports the FTC’s approach to multilayer packaging in these two instances.

The FTC has not, however, in its proposed Guides addressed the equally-important issue of whether marketers of such multilayer packages must qualify claims of recyclability to account for differing levels of recyclability among the components of the package layers. Under the proposed Guides, “[m]arketers can make unqualified recyclable claims for a product or package if the entire product or package, excluding minor incidental components, is recyclable. For items that are partially made of recyclable components, marketers should clearly and prominently qualify the recyclable claims to avoid deception about which portions are recyclable.”²¹ Moreover, if any component significantly limits the ability to recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable material, but because of its shape, size, or some other attribute, is not accepted in recycling programs, should not be marketed as recyclable.”²²

Under this proposed guidance, however, GPI is concerned that some multilayer packages may claim recyclability when not every single layer is in fact capable of being recycled to the same degree. For instance, some multilayer packaging is made from paper, aluminum, and polyethylene. While the paper layer may be recyclable, other layers may not be capable of being recycled to the same extent. Yet, when marketers make blanket recyclability claims for such products, consumers would not understand that the different layers have significantly differing levels of recyclability.

Consequently, GPI believes that the FTC should clarify in the final Guides that multilayer products with layers of differing recyclability must separately state the recycling capability of each layer. Alternatively, GPI suggests that the FTC clarify in the final Guides that marketers of multilayer products must qualify any claims of recyclability by stating the lowest level of recycling capability among the layers. Through either of these clarifications, consumers thus will be provided sufficient information properly to be able to understand that, even though one of the package’s layers may be completely recyclable, other layers may have much more limited or no recyclability.

²⁰ 75 Fed. Reg. at 63605-6306.

²¹ *Id.* at 63604.

²² *Id.*

3. Misleading Conflation of the Terms “Recyclable” and “Recycled”

GPI believes it important that the FTC revise the proposed Guides to eliminate an improper conflation of the terms “recyclable” and “recycled content,” which can be expected to be misleading to consumers if unchanged. Claims of recyclability and recycled content are distinctly different kinds of assertions. “Recyclable” claims properly should be viewed simply as communications that a material is capable of being recycled. The term does not in any way imply that the particular product being sold to customers or consumers that is made from the material contains any recycled content in that product. Indeed, because all recycled material must originally be virgin material with a recycling capability, it would not be reasonable for the Commission to conclude that consumers must believe that claims of recyclability of a material imply claims of recycled content for particular products made of that material. To do so would eliminate the original source of all recycled products. For example, glass containers are endlessly recyclable; however, particular glass containers sold to consumers may or may not be made with recycled content. A claim that glass containers are, by reason of their content and their production process, “endlessly recyclable” is thus truthful, and the Guides should therefore not inadvertently and inappropriately limit the potential use of such a claim. This is particularly important for the Commission to clarify to ensure that business-to-business claims are not improperly constrained, in view of the intended reach of the Guides.

Consequently, GPI urges that the FTC clarify in the final Guides that truthful claims regarding recyclability of a material can be made, and that such claims do not imply and are separate and independent of whether particular products made from that material contain any recycled content.

While “recyclability” claims for a material thus properly do not imply that a particular product is composed of any recycled content, the converse is not true -- “recycled content” claims for a particular product or package do imply that the particular product or package is recyclable. As discussed above, the 2008 Opinion Research Corp. poll found that, of 1,000 people, 54% understood the term “recyclable” to mean that a product could be reprocessed into its original use an unlimited number of times. Additionally, 77% of people believed that more than half of a product claimed to be recyclable must be able to be returned to its original state for the claim to be accurate. Because a majority of consumers believe that recycled products can be recycled again, it is likely that consumers would assume that a particular product making a “recycled content” claim is also further recyclable. This, however, is not true. As previously discussed, not all products containing recycled materials can be re-recycled. Rather, after progressive downcycling, some materials are destined only for landfills or incinerators.²³

²³ W. McDonough & M. Braungart, *Cradle to Cradle: Remaking the Way We Make Things*, at 59 (2002).

Consequently, in order to avoid consumer misunderstanding and potential deception, GPI believes that the FTC should clarify in the final Guides that marketers making “recycled content” claims must have evidence to support second-use recyclability. If such substantiation is not available, marketers making recycled content claims should be required to state that “this package cannot be further recycled.”

4. “Free-Of” Claims

GPI agrees with the Commission that a truthful claim that a product, package or service is “free of,” or does not contain or use, a substance may nonetheless be deceptive if the product, package or service also contains or uses another substance that poses the same or similar risks as the substance that is not present.²⁴ GPI, however, believes that it is important, in order to ensure consumers and customers receive truthful information important to their informed purchasing decisions, that the FTC revise in its final Guides the statement that “free-of” claims may be deceptive if the substance has never been associated with the product category.²⁵ GPI believes that the FTC should clarify and more broadly define the term “product category” in order to avoid inadvertently limiting provision of truthful and useful information to consumers and customers.

Although a product may never have been associated with a potentially harmful substance, it is important to consumers to receive useful and truthful information regarding whether alternative packaging is “free of” a substance of potential health or environmental concern. For example, glass containers compete in the same beverage packaging market as plastic containers. While plastic containers may contain bisphenol A (“BPA”), which is a substance of current scientific and consumer interest and concern as a potential endocrine disruptor, glass containers do not contain this or any similar substances.²⁶ In the event that consumers and beverage product customers are interested in identifying alternative, BPA-free, packaging, glass container manufacturers or other packaging suppliers whose products also do not contain that or any similar substances, properly should be able to inform consumers and customers that their products do not contain BPA or do not contain endocrine disruptors. Without such clarification, the Guides may inadvertently limit the provision of truthful information of interest and use to consumers and customers in evaluating alternative packaging alternatives and making informed choices.

²⁴ 75 Fed. Reg. 63603.

²⁵ *Id.*

²⁶ Bisphenol A (BPA), The Centers for Disease Control, Jan. 2010, http://www.cdc.gov/exposurereport/pdf/BisphenolA_FactSheet.pdf (last visited Nov. 30, 2010).

Consequently, GPI requests that the FTC clarify the term “product category” in the final Guides, to make clear that the term includes all products that are alternatives for uses in that category.²⁷ For example, the final Guides should be revised to make clear that all food and beverage packaging comes within the same product category, and thus manufacturers are not prohibited in making “free of” claims solely because they have never had the substance present in their products. Without such clarification, truthful information of importance to consumers and customers in evaluation and selection of alternative products in a category might be improperly proscribed.

5. “Renewable Materials” Claims

While GPI appreciates the FTC’s efforts to clarify “renewable materials” claims by requiring qualifications regarding the material used, how the material is sourced, and why the material is renewable, GPI believes that the Commission should provide further clarification for this term.²⁸ Without a more clear definition of renewable, marketers will have insufficient guidance as to how to properly qualify their claims, and the potential for consumer misunderstanding or deception would thereby be presented.

For example, glass is a completely renewable source of packaging material as it does not lose its quality or performance through repeated processing and is endlessly recyclable, that is, it can be reprocessed (*i.e.*, recycled) an unlimited number of times without depleting non-renewable resources. Other packaging materials, however, may not have such a profile, but nonetheless might make renewable claims based on other, more limited definitions of the scope of the term. In order to reduce the potential for consumer misunderstanding or deception, the Commission consequently should provide clarification in the final Guides regarding the scope of the term “renewable.”

In view of the broad understanding that consumers have of the term, GPI suggests that the FTC make clear in the final Guides that materials properly can be described as “renewable” only if they can be endlessly produced or reprocessed without depleting the environment of non-regenerative materials and without causing the material’s quality or performance to degrade.

III. Conclusion

GPI and its members commend the FTC’s continuing commitment to reviewing and updating the Green Guides, and appreciate the opportunity to provide comments concerning our views and suggestions. GPI strongly believes that environmental packaging claims must be clear and supported, to avoid consumer misunderstanding and potential deception, while also

²⁷ 75 Fed. Reg. 63603.

²⁸ *Id.* at 63607.

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permitting marketers to truthfully educate consumers regarding the environmental qualities of their products. GPI would be pleased to provide additional information or respond to any questions that the Commission Staff may have regarding these Comments.

Sincerely,

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