



December 10, 2010

RE: Request for Public Comment Regarding Proposed Revised Guides for the Use of Environmental Marketing Claims

To Whom It May Concern:

This letter provides the comments of Environmental Packaging International (EPI) with regards to the proposed revisions to the FTC's Guides for the Use of Environmental Marketing Guidelines. EPI is a consultancy specializing in worldwide environmental packaging requirements and product stewardship.

Please find below our general comments, as well as comments to several of the FTC's specific questions outlined in the proposed revisions.

Sincerely,

Victor Bell,
EPI President



EPI Comments Regarding Proposed Revised FTC Guides for the Use of Environmental Marketing Claims

1. General Environmental Benefit Claims

a. FTC Question:

Would it be helpful to include an example in the Guides illustrating a qualified general environmental claim that is nevertheless deceptive? For example, a marketer advertises its product as “Eco-friendly sheets - made from bamboo.” Consumers would likely interpret this claim to mean that the sheets are made from a natural fiber, using a process that is similar to that used for other natural fibers. The sheets, however, are actually a man-made fiber, rayon. Although bamboo can be used to make rayon, rayon is manufactured through a process that uses toxic chemicals and releases hazardous air pollutants. In this instance, the advertisement is deceptive.

EPI Comment: EPI strongly supports adding examples, such as the one stated above, to help avoid making deceptive claims. Understanding what is not acceptable is as important as understanding what is acceptable. When guidance is ambiguous, marketers are more likely to make claims that do not conform to the intent of the Guides, even if they are not explicitly prohibited. The more examples that can be provided of both deceptive and non-deceptive claims, the clearer an understanding marketers will have about what types of claims are appropriate.

A recurring theme in our work with clients is the role that environmental claims have in shaping consumers’ understanding and awareness of environmental attributes and issues generally (beyond the scope of the product or package for which a claim is being made). The FTC Guides acknowledge this indirectly in their treatment of “Free” claims. For example, a factually accurate claim that a food product is “hormone-free” may mislead the consumer not about the product itself, but about the relevance or importance of the issue. After reading many of these claims, a consumer may believe that the issue is relevant for that product. In other words, claims can contribute to the education or miseducation of consumers. As a result, we are concerned by the claims such as “green - made with renewable materials” as they imply that a single attribute is equivalent to a general benefit. We disagree with the conclusion that the 6 to 8 percent increase in perceived general benefits implied by adding a general term (“green” or “eco-friendly”) to a specific-attribute claim is not significant. We feel that they contribute to the misperception that one preferable attribute constitutes a general environmental benefit.

b. FTC question:

For example, a marketer that claims its product is “Green – Now contains 70 percent recycled content,” needs to import more materials from a distant source, resulting in increased energy use which more than offsets the environmental benefit achieved by using recycled content. If consumers interpret the claim “Green – Now contains 70 percent recycled content” to mean that the product has a net environmental benefit, the claim would be deceptive. The Commission, therefore, requests comment on consumer interpretation of qualified-general environmental benefit claims and on whether to include guidance concerning this issue.

We share with the Commission’s concern “that a general environmental benefit claim, in combination with a particular attribute, may imply that the particular attribute provides the product with a net



environmental benefit.” While we do not have quantitative consumer data to provide, we believe there has been considerable evidence in the form of numerous market research surveys and reports in recent years indicating that most consumers do not have a sophisticated enough understanding of environmental issues to consider unstated upstream or downstream impacts such as energy or water consumption when reading specific-attribute claims such as the recycled content example. This is evident in the FTC research related to life-cycle analysis, which found that on average, only 9 percent of respondents thought about all four stages of the lifecycle when considering a claim. Not is a typical consumer likely to consider the weightings or equivalencies of one impact category vs. another in a quantitative way, such as whether the use 70 percent recycled content saves enough resources to yield a net benefit.

2. Recycled Content

a. FTC Question:

What changes, if any, should the Commission make to its guidance on pre-consumer recycled content claims?

EPI Comment: EPI feels that the recycled content section should continue to allow for companies to make claims based on both pre and post consumer recycled content. Both types of recycled content are widely used and make meaningful contributions to waste avoidance. It would be beneficial to clarify the definition of “post-consumer” to indicate that the word “consumer” as used in the term is the end user of the product and may refer to a business or institution, not merely to a private household consumer.

b. FTC Question:

Should the Commission continue to advise marketers that recycled content claims may be based on the annual weighted average of recycled content in an item? If so, why? If not, why not? Are recycled content claims based on this method likely to mislead consumers? Would qualifying the claim avoid that deception? If so, please describe what the disclosure should be, and why. Please also provide any relevant consumer perception evidence.

EPI Comment: These Guides should continue to allow this type of calculation. This type of flexibility is needed given the common production processes used in manufacturing packaging and other items. It is important that the guides reflect the realities of the way materials are purchased and used. Many companies have multiple suppliers of raw materials and produce the same item in multiple locations – their input flows can vary. Using averages allows making this type of claims more consistent and less confusing for the consumers.

3. Recyclable Claims

a. FTC questions:

- *Should the Commission quantify the “substantial majority” threshold in the recyclable section of the Guides? If so, how? If not, why not?*
- *Should the Commission quantify the “significant percentage” threshold in the recyclable section of the Guides? If so, how? If not, why not?*



EPI Comment: EPI encourages FTC to provide guidance for what constitutes a substantial majority in the form of a percentage threshold. As FTC has noted in its analysis, what constitutes a substantial majority has been open to interpretation; one company could view substantial majority as 70 percent while others view it as 55 percent. Based on our interactions with many companies, it is clear that numerous interpretations of this term exist. Furthermore, we have often been asked what it means in percentage terms. In our experience, this varying interpretation by companies is also true when trying to determine what constitutes a “significant percentage.” Therefore, EPI also encourages the FTC to provide guidance in either the form of as to what constitutes a significant percentage for purposes of making a recyclability claim.

EPI does not believe that the guidance on either of these terms needs to be formalized, but it should be in written form in proximity to the rest of the guidance, e.g, as a footnote or in the text.

In looking at what should be the threshold for significant percentage, FTC should consider the work of Waste & Resources Action Programme (WRAP) UK which has an On-Pack Recycling Label that uses a three-tiered approach. Their threshold for making claims for items that are not widely recycled, but for which some recycling infrastructure exists, is 15%. WRAP has been operating in UK for over 10 years and is a government funded non-profit agency that works to increase resource efficiency in the United Kingdom.

4. Degradable Claims

a. FTC is proposing to add a “maximum period of one year for complete decomposition of solid materials marketed as degradable without time qualification.”

EPI supports this clarification. Many businesses have interpreted differently the current phrasing in the Guide “reasonable short period of time” to mean less than a year to over a year. Providing more clarification in the guidelines will ensure that there is a more level playing field for companies making claims, and help avoid consumer deception regarding these types of claims.

5. Renewable Claims

a. FTC Question:

How should marketers qualify “made with renewable materials” claims, if at all, to avoid deception? Does disclosing the type of material, how the material was sourced, and the reason the material is renewable adequately qualify the claim? Why or why not? Are there other disclosures that would adequately qualify a “made with renewable materials” claim? Please describe such disclosures. Please also provide any relevant consumer perception evidence.

EPI Comment: EPI supports FTC’s proposed guidance on renewable claims in regard to disclosing the type of material, how the material was sourced and the reason the material is renewable. We would also encourage the FTC to require disclosure on whether the material is from a well managed source.



One concern is that consumers could perceive a renewable claim to infer that a material is produced in a way that minimizes environmental damage. Companies should be required to disclose if materials claimed to be renewable are from a well managed source, based on criteria similar to those established by the Forest Stewardship Council, or the Sustainable Forestry Initiative, for paper products. Conversely, material grown in a way that resulted in rainforest destruction, or the destruction of old growth forests, or similar negative environmental outcome, should either be prevented from making a renewable claim, or required to disclose this impact.

In general, EPI strongly supports adding examples or statements that clarify how to avoid making deceptive claims. The more direction that can be provided to marketers, the less likely marketers will make deceptive claims. When guidance is ambiguous, marketers are more likely to make claims that do not conform to the intent of the Guides, even if they are not explicitly prohibited.