



December 10, 2010

Federal Trade Commission
Office of the Secretary
Room 113 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Commissioners:

AZS Consulting thanks you for the opportunity to comment on the proposed revisions to the Guides for the Use of Environmental Marketing Claims; Project No. P954501. This update is extremely important to consumers and industry alike. To that end, I request that the Commission consider the following comments as they specifically apply to business to business marketing within the green building sector:

1. Provide guidance on the acceptability of single-attribute claims
2. Provide specific guidance on certification/endorsement as it relates to building products
 - Examine how "third-party" is defined and applied in reference to building product certification
 - Provide an example in the Guides specific to building product approval
3. Require marketers to make substantiation available

AZS Consulting believes that address the unique nature of business to business (B2B) marketing is extremely important and encourages the Commission to provide as much guidance as possible for the sector. B2B marketing, which can resemble mainstream retail marketing in looks, tends to be more advanced because business audiences are inevitably more knowledgeable about their specific products. However, professionals buying products are still ultimately consumers of those products and should be afforded comparable consumer protection. Therefore B2B can and should be held to a slightly different, arguably more advanced standard of disclosure and specificity than the Guides are expected to address. To that end, please find a discussion of the suggestions listed above.

1. Provide guidance on the acceptability of single-attribute claims

The proposed update of the Guides does not include a definition for general environmental claims, like 'green' or environmentally-friendly', noting that these vary instance by instance. Rather it seems that all the proposed revisions support the key concepts of substantiation and

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specificity of marketing claims as uniquely applied to any given subfield, reinforcing that one size does not fit all.

Unfortunately, the proposed revisions only briefly touched upon the broad spectrum that many ‘experts’ adhere to – that green products must address multiple ‘green’ attributes, rather than solitary ones. A manufacturer can comply with Green Guide criteria all day long and still be convicted in the court of public opinion as deceptive because those opinions, even among so-called experts, vary so widely about what green actually is. Any given business can be accused of greenwashing merely because of those differing opinions on the definition of green.

While addressing greenwashing is not an FTC responsibility, “the Guide’s purpose is to prevent the dissemination of misleading claims...” Is not part of this purpose also to say what is permissible, as well as what is not? Is it not just as misleading for an ‘expert’ to indicate deception when there is no clear citation to what IS allowed? Is it right to punish a business for only being able to prove ONE thing? Do green products have to have more than one attribute?

A citation on single-attribute claims will reinforce the overall intent of the Guides that accuracy in advertising is in fact the statutory intent. Such clarification could be important to small businesses who cannot afford elaborate studies, nor elaborate defense against those who are absolutely certain they know what green is. As the demand for green products grows, these businesses are liable to face not being able to compete because they face unreasonable skepticism, even though they may be able to substantiate limited claims. Without a definitive citation that single attribute claims are permissible, business may find that a lack of advertising may turn out to be more cost effective, effectively putting them at a competitive disadvantage with those that can afford studies or legal fees.

Therefore, AZS Consulting suggests that the new version of the Green Guides either definitively permits single attribute claims or if single-attribute claims are not permissible, include more specific guidance on multiple attribute claims.

2. Provide specific guidance on certification/endorsement as it relates to building products

The proposed revision to the Guides on the topic of certification, and by extension, endorsement, highlights a very key difference between B2C and B2B markets, especially when it comes to building products. How parties are counted and the roles and activities of those parties should play a role in the required disclosure of material connections.

Third-party certifications/endorsements are highly touted as more reputable, more valuable. The proposed Green Guide examples appear to be a mainstream context. Third-party, according to Wiktionary.org, “someone not directly involved in a transaction. A third entity in the Seller (first party) and Customer (second party) relationship.” This definition, meaning

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independent party, is much different than third-party in a building product approval context, where parties are counted by the layers of examination and verification.

For many product certifications, the certification entity not only promulgates a standard, but also administers a certification program to ensure products are produced to that standard. Consequently, the parties are as follows:

- 1st party is the laboratory that tests the product for performance according to standards
- 2nd party is the inspection agency that inspects that manufactured product matches the laboratory results
- 3rd party is certifying organization that qualifies both the laboratory and the inspection agency for accuracy

If the product fails to meet criteria at any stage, it is not certified. This seems to be a variance from the examples found in the endorsement guide, especially where there is possible deception where the outcome might be skewed because of a sympathy for who paid for the study.

From my experience in the standards arena in building products, it is almost impossible to develop a standard and subsequent certification that would not be deemed suspect and deceptive. The manufacturer pays a fee for service to each entity. Does that qualify as a material connection that needs to be disclosed?

In many ways, it seems to be a catch 22 for companies who wish to develop consensus standards to have to disclose in such a way that the standard that they worked so hard on becomes suspect. Commission analysis indicates that “Experts in the field are in the best position in a dynamic marketplace to determine how to establish certification programs to assess the environmental attributes of products.” Yet those experts expect to be compensated. How can this be done without undermining the very credibility that those experts provide? The funding for the long process of creating a standard tends to be generated by membership and fees paid to the certifying entity. Conversely, in the one case where an evaluation was done by an entity that had no ties to industry, that evaluation did not meet the criteria of being accomplished by experts, making it technically unsound. If the disclosure required is the same as a certification that is simply paid for and disclosed, why bother?

Therefore, AZS Consulting suggests that the Commission examine certification in a B2B context as it exists in the building products industry. It is a mature, highly credible infrastructure that already serves the building codes enforcement community. For products that meet these existing criteria, disclosure should not be required as it would only serve to undermine its inherent credibility that many program strive so hard to meet and maintain.

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3. Require marketers to make substantiation available

The proposed guides indicate that while marketers must have substantiation before making claims, they are not required to provide it. This provision should be revised. While the Commission can exercise its authority to investigate deceptive claims and thus require a company to provide its substantiation, the marketplace is quite large. The odds that a company will face Commission action are quite low. While companies are required to comply, a dynamic is quite like speeding laws are likely to arise. If there is little likelihood of meeting a cop, there is no reason not to speed.

By revising this guidance, the Commission can foster a reduced workload since it is entirely likely that industries will self police themselves. This will reduce the workload the Commission might face and ensure that those who think they won't get caught will think twice.

Thank you for the opportunity to comment on the Green Guides. Please do not hesitate to contact me if you have questions or require additional information. Thank you for the work the Commission and staff have done to prevent deception in the green marketplace.

Sincerely,

Arlene Z. Stewart
President