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

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

Dear Sir or Madam:

The International Bottled Water Association (IBWA) appreciates this opportunity to comment on the proposed, revised Guides for the Use of Environmental Marketing Claims (the "Green Guides"). IBWA is the trade association representing all segments of the bottled water industry, including spring, artesian, mineral, sparkling, well, groundwater, and purified bottled waters. Founded in 1958, IBWA member companies include United States and international bottlers, distributors and suppliers.

IBWA member companies work hard to protect the environment and play an important role in promoting recycling of plastic containers and groundwater management. IBWA and its members are actively engaged in promoting curbside recycling, and bale studies now show PET plastic water bottles to be the single most recycled object in U.S. curbside recycling programs. And, those bottles are being recycled more and more frequently. According to brand new data from the National Association for PET Container Resources (NAPCOR), the national recycling rate for those bottles now stands at 31% for 2009 – nearly double the 2004 rate of 16.6%. IBWA and its members also actively support comprehensive ground water management practices that are science-based and provide for future needs of this important resource. Even though it is a small ground water user, the bottled water industry has been instrumental in encouraging states to develop comprehensive, science-based ground water management and sustainability policies and laws.

IBWA applauds the Commission's efforts to review and revise the Green Guides. Given the increasing prevalence of environmental marketing claims on all types of products, IBWA believes that this review is necessary and important. In an effort to support this review, this letter provides responses to five of the questions for which the Commission sought public comment and in which the bottled water industry has a vested interest. We cover the following environmental claims: recyclable, recycled content, free-of, and renewable materials.

## **GENERAL COMMENTS**

The Commission is not proposing to revise the section of the Guides concerning source reduction claims. Before answering the Commission's specific questions concerning other proposed changes, however, IBWA would like to voice its support for the Commission's current approach to source reduction claims. These claims are now widely used by the bottled water industry to communicate the significant steps many companies have taken to reduce the weight of bottles and size of labels. IBWA agrees that marketers using source reduction claims should continue to qualify them to the extent necessary to avoid deception about the amount of the source reduction and the basis for any comparison.

## **RESPONSES TO FTC QUESTIONS**

### **Recyclable**

*Question 6: Should the Commission quantify the "substantial majority" threshold in the recyclable section of the Guides? If so, how? If not, why not?*

IBWA agrees that the Commission should quantify the "substantial majority" threshold that serves as the basis for an unqualified "recyclable" claim. While 60% may be an appropriate threshold, estimates of access to recycling vary widely, as do estimates of actual rates of recycling. Further clarification is therefore necessary to provide guidance to marketers as they seek authoritative sources to substantiate that a 60% threshold has been met. There are several authoritative sources available that may be able to provide the Commission with substantiation on access to recycling, including the Environmental Protection Agency (EPA), as well as Earth 911, a privately owned, for-profit company that specializes in providing consumers with recycling information across the country. We believe the Commission should consider providing guidance on what it considers credible sources to validate that certain levels of recycling are reached, and we encourage the Commission to consider not just governmental statistics, but also those collected by private groups. In the alternative, it would be immensely helpful to marketers and consumers if the Commission would consider simply declaring that certain materials, such as PET plastic, are considered to meet the "substantial majority" threshold. This would lend consistency to the meaning of the "recyclable" claim and, therefore, reduce the risk of consumer deception.

### **Recycled Content**

*Question 10: 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? Are recycled content claims based on this method likely to mislead consumers? Would qualifying the claim avoid that deception?*

IBWA believes that the Commission should continue to advise marketers that recycled content claims may be based on the annual weighted average of recycled content, but that these claims

should not be deceptive or misleading. A bottled water company may use different size containers (e.g., 8 oz., 16 oz., 20 oz.) for one or more of its product brands, and it is possible that the company would not use recycled material in all of these containers. For example, a company might only use recycled content in two of its three container sizes. With regard to the two container sizes that use recycled material, the company should be allowed to make claims based on the annual weighted average of the recycled content. However, no recycled content claims should be made for the container size that does not use recycled material. IBWA also believes that marketers who make recycled content claims should be prepared to substantiate those claims.

*Question 11: If a product is advertised as “made with recycled materials,” either in whole or in part, should the Commission advise marketers to qualify that claim to indicate that the product is not recyclable if it is not? Why or why not? If a disclosure is needed, please describe what the disclosure should be and why.*

IBWA believes that the Commission should advise marketers to qualify claims of “made with recycled materials,” when the product to which it refers is not recyclable. The Commission’s own consumer perception study found that 52% of respondents believe a “made with recycled materials” claim suggests that an advertised product is recyclable. This is a significant percentage. Accordingly, a disclosure statement, such as “not recyclable,” would be appropriate.

In addition, IBWA believes the Commission should take this opportunity to clarify the appropriate use of the three-chasing-arrows symbol (Möbius loop) discussed in 16 C.F.R. 260.12, Example 9. IBWA members may use this symbol and often a “please recycle” message to encourage consumers to recycle empty water bottles. Marketers should be encouraged to use these messages, and not be discouraged to use those messages if the packaging on which the symbol appears is not from recycled material. We ask that the Commission clarify this point in the Guides so that important messaging to encourage recycling practices will continue.

### **Free-Of; Does Not Contain**

*Question 13: What guidance, if any, should the Commission provide concerning free-of claims based on substances which have never been associated with a product category?*

If a substance touted in a “free-of” claim has never been associated with the product on which the claim appears, this could, indeed, be misleading to consumers. However, the Commission should take a broad view of the concept of association in this instance. Some products have never actually contained a chemical but, through false media reports or other miscommunications have been associated with potentially harmful substances. For example, single-serving, PET water bottles have repeatedly been cited by media reports as containing BPA, even though the substance has never been used in these bottles. In this case, a “free-of BPA” claim may be appropriate on these bottles. BPA was never used in the bottles, but it is indisputable that the substance has been “associated” with the bottles in the minds of some consumers. Accordingly, the Commission should restrict “free-of” claims when a substance has

never been associated with a product, but such claims should be permitted when necessary to correct a public misperception.

**Renewable Materials**

*Question 15: 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?*

IBWA agrees with the Commission’s proposed position not to define the claim “made with renewable materials” or endorse any particular test to substantiate such claims. Industry’s efforts to develop materials and practices that lead to renewable resources and materials are evolving. For example, the bottled water industry consistently seeks to ensure the sustainability of the resources it uses, and, in particular, ensures that through proper aquifer and watershed management practices. Narrowly defining this claim might limit marketers’ ability to discuss these efforts and, therefore, stifle innovation.

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Again, thank you for the opportunity to provide these comments. If IBWA can be of further assistance to the Commission during this important undertaking, please do not hesitate to contact us.

Sincerely yours,

Daniel Felton  
Vice President, Government Relations  
International Bottled Water Association