



Federal Trade Commission

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FEDERAL TRADE COMMISSION

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Good Afternoon, I appreciate the opportunity to join you today to discuss the "Greening" of the American Marketplace and the FTC's work in this area.¹

Our economy is driven by the powerful engine of competition in which marketers are eager to respond to consumers' choices about the products they buy. Consumer choice drives marketers to improve their products and to promote those improvements in competition with each other. During the past three years, there has been a powerful expression of concern by individual consumers over how their purchasing decisions affect the environment of our planet. It has been referred to by many as the "green revolution."

A July 1991 study reported that 85% surveyed are "doing something" about the "solid waste problem." This concern has been translated into purchasing decisions. This same study reported that 76% of those surveyed said that they would pay up to 5% more for "environmentally sound" packaging, a response that had jumped from 64% in 1989.² Some marketers are now emphasizing

¹ The views expressed are those of the Chairman and do not necessarily reflect those of the Federal Trade Commission or the other Commissioners.

² Consumer Solid Waste, Awareness, Attitudes and Behavior Study III, Gerstman & Meyers, Inc. July 1991.

more environmentally sound products. During the first half of 1991, approximately 13% of all new products introduced made some kind of environmental benefit claim. This compares to 11.4% of all new product launches for 1990.

Green marketing is obviously no panacea for the nation's environmental concerns, and there is evidence that despite the high level of consumer interest shown by the various surveys and polls, green marketing is having a hard time effectively responding to consumer demand for informative environmental claims. One marketing expert testifying at our hearings has graphically illustrated the problem. He said that only 14% of consumers can remember seeing "green" advertising or labeling. He further reported that in some focus groups an overwhelming majority of consumers were skeptical of manufacturers' environmental claims.³ The recent Gerstman & Meyers survey confirms this skepticism finding that only 15% of consumers find environmental claims on packaging believable. The same survey showed consumers want more, not less, information about products. More than 95% of those surveyed agreed with the statement that more information is needed about packaging materials.⁴

³ Walter Coddington, Persuasion Environmental Marketing, Inc. (H.T. pp. 102-103, 105, Vol I).

⁴ Gerstman & Meyers at page 9.

A clear dilemma thus emerges. Survey data show that consumers want information about the environmental attributes of the products and packaging they buy. However, they mistrust many marketing claims that they see in advertising. At the same time, as we learned at the Commission hearings last July, many marketers, large and small, are reluctant to make environmental marketing claims because they fear law enforcement action. Confusion about green claims is simultaneously keeping useful information from reaching consumers and leaving them distrustful about the information they do receive.

Green benefits, to be fair, are not the easiest to convey in creative marketing. One recent trade press article pointedly asked advertisers to try using "polyethylene terephthalate" in a jingle.⁵ Many of the issues that green marketing addresses are complex. We have only to look at the ongoing debate over whether cloth diapers are better than disposable diapers or plastic bags better than paper bags to understand this point. Some of the most popular claims that have been made, such as "degradability" or "ozone friendliness," have been accompanied by charges that they are themselves deceptive. When asked whether consumers should choose paper or plastic bags at the grocery store, a

⁵ Ad Week "Try Using Polyethylene Terephthalate in a Jingle, (June 17, 1991) at 12.

spokesperson of an environmental group said confidently, "it depends."⁶

So what is the FTC's role in all of this? As you know, the FTC is primarily a law enforcement agency. Its consumer protection expertise lies in preventing deceptive practices, thereby guaranteeing consumer freedom of choice. The FTC has been involved in environmental marketing issues for many years. The Commission brought its first case challenging landfill degradability claims for a plastic-coated milk carton in 1973.⁷ In the early '70's it provided guidance for the soap and detergent industry to facilitate labeling of phosphate content and degradability of detergents. For the past two years we have maintained a heavy caseload of environmental advertising investigations, some of which have already been completed.⁸ As environmental claims in advertising and labeling increase, you may rest assured so too will our environmental advertising enforcement actions.

Nevertheless, there is a growing sentiment that in the area of environmental claims more needs to be done. Specifically,

⁶ Nutrition Action Healthletter (April 1990) at 5.

⁷ Ex-Cell-O Corporation, 82 F.T.C. 36 (1973).

⁸ See, Zipatone, Inc. et al., C-3336 (Final Consent 7/9/91); Jerome Russell Cosmetics, USA, Inc., et al., C-3341 (Final Consent (8/2/91)); and American Enviro Products, Inc., File No. 902 3110 (Consent Accepted for Public Comment 8/30/91).

there seems to be a strong feeling in most corners of the marketplace that the Commission should issue some form of public guidance on green marketing claims. It is my view on this subject that I want to discuss with you today.

This July, in response to petitions filed by a coalition of trade associations, as well as requests by the National Association of Consumer Agency Administrators, and the National Association of Attorneys General, the Commission held hearings on green advertising. There were basically two issues the Commission wanted to address during these hearings. The first issue was whether there is a need for Commission guidance in the area of environmental claims. The second issue was, assuming there is a need for such guidance, what form should it take.⁹

During two days of hearings, the Commission heard testimony from forty witnesses. These included representatives of federal, state and local government, trade associations, large and small businesses, market researchers, environmental groups, advertising agencies, certification groups and the Better Business Bureau. In addition to this oral testimony, we received more than 100 written comments, many supported by numerous documents. The Commission staff is currently preparing a recommendation to the Commission based on the testimony and written comments. All of the Commissioners will want to carefully review that

⁹ 56 Fed. Reg. 24,968 (May 31, 1991).

recommendation. At the same time I can tell you it is my belief, based on the two days of testimony we heard, that the Commission has an important role to play in providing guidance to companies that wish to make claims about the environmental attributes of their products, and that the Commission ought promptly to propose guidelines for public comment. I believe we should try to rise to the green claims challenge.

There are several things about the hearings that lead me to this conclusion. First, in the absence of a national approach to the green marketing problem, marketers told us they are being confronted by a patchwork of differing and sometimes conflicting state and local regulations. Second, there is near unanimity of opinion that Federal Trade Commission guidelines could be useful to both businesses and consumers and provide a helpful framework for environmental claims. Third, most witnesses stressed the need for a quick resolution of the problem.

Repeatedly during the hearings, representatives of industry testified that in the absence of a federal policy, the potential for inconsistent or conflicting state and local regulation of environmental claims would put national advertising and marketing legally at risk. A representative of one major national manufacturer, for example, testified that the absence of national guidelines and the emerging pattern of state-by-state regulation may eliminate advertising and labeling as a source of

environmental information.¹⁰ The representative of a national trade association said that conflicting state standards "present significant, if not insurmountable, barriers"¹¹ and a small businessman who characterized himself as an "endangered species" said simply that he would "dare not put" environmental claims on his products absent national standards.¹²

One representative of the advertising community reported that some advertisers were beginning to view environmental claims, not as an opportunity, but as the "third rail of advertising. Touch it and you die." He also cited testimony by small and large companies during the hearings that they had either refrained from making environmental claims or were rethinking continuing the claims they were already making. This witness noted that during the last quarter of 1990 there had been only 22 insertions of print ads that talked about the environmental attribute of specific products. A trend he characterized as "virtually nothing in terms of the noise level in the marketplace."¹³

¹⁰ L. Ross Love, Procter & Gamble (H.T. p. 227, Vol II).

¹¹ Red Cavaney, American Paper Institute (H.T. pp. 254-55, Vol II).

¹² Hal Lightman, Independent Cosmetic Manufacturers and Distributors (H.T. p. 202, Vol I).

¹³ Hal Shoup, American Association of Advertising Agencies, (H.T. pp. 356-358, Vol II).

These trends are of concern, especially because the testimony also indicates that consumers want truthful information about the environmental impact of the products they buy and because there is significant confusion about the environmental effect of the products consumers do buy. One witness, for example, testified that surveys show that 70% of Americans still believe that aerosol products contain CFCs despite the fact that the use of CFCs in virtually all aerosols has been banned in the United States since 1978.¹⁴

At the federal level, EPA's Deputy Administrator, Hank Habicht, told us that, "clear federal guidance on environmental labeling will help clarify the information provided to consumers, and thus help markets operate more efficiently."¹⁵ His words were echoed by Clayton Fong who testified on behalf of the United States Office of Consumer Affairs, (USOCA).

At the state level, Minnesota Attorney General Hubert Humphrey reiterated the position of 11 states Attorneys General that a federal presence is needed.¹⁶ Commissioner Thomas Jorling of the New York Department of Environmental Conservation, testified that he believed "the Commission working with EPA does

¹⁴ Richard Bednarz, Chemical Specialties Manufactures Association (H.T. pp. 193-194, Vol I).

¹⁵ EPA written Comments, July 17, 1991, p. 2.

¹⁶ Hubert H. Humphrey III, Attorney General of the State of Minnesota, (H.T. p. 50, Vol I).

have an appropriate role in establishing a broader national framework for truth in advertising... ."17 The statements of these federal and state regulatory officials were shared by environmental groups who testified before us. Dr. Richard Denison, speaking for the Environmental Defense Fund, said that "guidelines are critically important to clarify for industry how the FTC believes consumers will respond to particular categories of claims."18 And Jeanne Wirka of the Environmental Action Foundation testified that her organization wanted the FTC "to vigorously pursue enforcement actions and issue guidance against misleading environmental claims."19

Similarly, trade associations, representing some of the country's large and small corporations alike, urged the Commission to move forward on guidelines. Cal Collier, a former Chairman of the FTC, testifying for the National Food Processors Association, characterized the need for national guidance, taking the particular form of FTC guides, as "immediate and compelling."20 In sum, much of what I heard at the hearings reinforced the words of General Humphrey, on behalf of a group of 11 state Attorneys General, "Never before have the business

¹⁷ (H.T. p. 42, Vol I).

¹⁸ (H.T. p. 141, Vol I).

¹⁹ (H.T. p. 139, Vol I).

²⁰ National Food Processors Association, written comment p. 5.

community, state regulators, and consumer activists, been so much in agreement on any single point and that is for the need for federal guidelines that will fit the national marketplace."²¹

Of course, the Federal Trade Commission cannot base a decision on whether to issue federal guidelines merely on the idea's popularity. We must undertake a close examination of the likely impact on the business community and on consumers. That is why, in publishing its notice announcing the hearing, the Commission asked witnesses to address a series of ten probing questions focusing on the need for guidelines, their feasibility and potential costs, and the benefits to be derived from them.

Here again, I was impressed both by the reasons given for supporting federal guidelines, and by the consistency of the reasoning across diverse groups.

Perhaps most important, there was broad based support for the idea that environmental marketing can play an important role in improving the environment. Richard Denison of the Environmental Defense Fund observed that "consumers armed with accurate and reliable information have a critical role to play in shifting industrial systems and production toward more environmentally defined products and processes."²²

²¹ Hubert H. Humphrey, III (H.T. p. 34, Vol. I).

²² (H.T. p. 140, Vol I).

Attorney General Humphrey, on behalf of the National Association of Attorneys General agreed, "Green marketing is truly an area where all of us want to see more, not less, information available to the public," the statement said, "the states do not seek to stamp out the green revolution."²³

In summary, I believe our hearing record presents a compelling body of testimony that federal guidelines could make an important contribution to promoting truthful advertising of product attributes responsive to consumer concern for the environment.

I have no illusions that consensus for a guidelines approach can be read to show support for any particular guidelines that might be written. Consumer groups and industry come at the problem differently, and do not necessarily agree on what a guideline should say. I only want to assure you that any Commission project would be conducted in the full sunshine of public review and debate. That, after all, is what our public hearings were all about and what, as a public agency, the FTC is all about.

There are other difficulties with any endeavor to draft guidelines. Drafting guidelines on environmental claims will be

²³ (H.T. pp. 33-34, Vol I).

difficult because it is a rapidly developing technological area. Any FTC guidelines would have to walk the line between being too strict, and thus unlikely to accommodate future developments, and too weak, thus permitting claims that may be misleading.

In addition to the changing nature of the technology there are also concerns that the Commission has less data on how consumers actually interpret environmental claims than we would like to have in an ideal world. In that regard, much has remained the same since as long ago as 1973, when the FTC promulgated guidelines on laundry detergents. Nearly two decades ago there were also problems of consumer perception. For example, the Commission learned that there was not much information on how the average consumer interprets the term biodegradable, except that a significant number of people vaguely believe that being biodegradable is somehow good for the environment. The Commission faces similar problems today in determining consumer perception.

A related issue is industry's perception of the problem. One of the common threads in FTC cases against deceptive or misleading green marketing claims is that, in many instances marketers have rushed to propose solutions to environmental concerns without fully conveying either the problem or the usefulness of the product to a solution. For example, enhancing the degradability of trash bags or disposable diapers intuitively

seems like a good idea to respond to consumer concerns about the environmental attributes of plastic versus paper products. It is only when one considers that in the United States, much of our plastic and paper waste winds up in landfills, and that landfills are managed in a way that actually retards degradability, that you can see the advertising promise may be illusory.

Moreover, there has been concern that if the FTC promulgates environmental marketing guidelines, it will inevitably be drawn into setting environmental policy, rather than protecting consumers from deception, the role that Congress intended the FTC to play. In my opinion, the FTC is not and should not, be engaged in setting environmental policy. That is a matter appropriately left to the EPA and Congress. But many of the witnesses during the July hearings seemed to understand that there are separate communication issues in marketing that the FTC could and should address.

Finally, there have been concerns, echoed by several of the witnesses at our hearing, that, because FTC guidelines would not preempt or legally displace different state laws, FTC guidelines would have little practical effect on the problem of potentially inconsistent or conflicting state laws or regulations. This concern seemed to be the focus of much of the industry's testimony and the Commission's questions during the hearings.

These are all important concerns and none of them have been fully answered. But again, I believe that the hearings provide a strong basis for going forward; the testimony I heard at the hearings suggest that the greatest risk of stifling information stems from the lack of guidance. Moreover, the proposal for guidelines made by both the State Attorneys General and industry, in general, strive for approaches that avoid rigid definitions most likely to lock in today's technology, leaving a potential defect of rendering guidelines obsolete in the future.

Guidelines would not be the only answer to the problem that we face. As a law enforcement agency, we will continue vigorously to pursue cases of deceptive and false advertising of environmental claims. Likewise, you can anticipate that any guidelines would draw heavily from the principles -- both legal and economic -- that are represented in the Commission general case law and enforcement actions.

In conclusion, I want to leave you with my view that green marketing guidelines are a unique opportunity for business, government, and public interest groups to build on a broad consensus to develop an approach that can serve the interest of consumers and the environment. To be sure, there are difficult challenges to be faced, and the success of any FTC effort, if undertaken, is certainly not assured. The key to success in forging federal policy in environmental advertising requires a

partnership between government, industry, and consumer groups, which presents a unique opportunity for cooperation. The result could be the development and promotion of more environmentally sound products within the proven success record of the free market system. Thank you.