



February 11, 2008

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

Re: Green Guides Regulatory Review, 16 CFR part 260, Comment, Project No. P954501

Dear Sir or Madam:

The Soap and Detergent Association (“SDA”) appreciates the opportunity to comment in response to the request issued by the Federal Trade Commission (“FTC”)¹, in connection with review of its Guidelines for Environmental Marketing Claims (“Guides”)².

Background

The Soap and Detergent Association is a 100 plus-member national trade association representing the formulators of soaps, detergents, and general cleaning products used in household, industrial, institutional and commercial settings, and the companies that supply ingredients and packaging for these products. Throughout our 82 year history, sound technical, risk-based research by SDA and its members has demonstrated the benefits of cleaning products and their ingredients, and our long-standing education programs have provided consumers with credible information on the safe and proper use of these products.

When the FTC circulated its initial request for comment prior to its promulgation of the Guides in 1992, SDA submitted substantial comments in favor of issuance of the Guides. When the Guides were reviewed in 1996 and 1998, SDA again submitted comments generally supportive of the Guides. We believed then as we do now that Guides that promote truthful, accurate representations about environmental characteristics will improve marketplace communication, thereby allowing consumers to drive the movement toward environmentally safe products, while protecting competition.

SDA member companies operate in highly competitive markets where advertising plays a central role. Uniform national guidelines for environmental marketing claims are critically important to maintain the integrity of the industry as it communicates with consumers on existing and emerging environmental issues. The Guides should seek to balance the need for flexibility, which is essential in the fluid world of green technology, with the dangers of inconsistent or ambiguous standards.

¹ 72 Fed. Reg. 66091 (Nov. 27, 2007).

² 60 C.F.R. § 260.

It is difficult to quantify the overall impact of the Guides on environmental marketing claims. Certainly, the Guides have reduced areas of uncertainty for advertisers and channeled a significant amount of environmental advertising into safe harbors. They have provided consumers with more consistent messages and have advanced the case for environmental stewardship. While SDA continues to support the Guides in substantially their current form, the following comments include suggestions for: (1) enhancing the existing guidance; (2) addressing new issues; and (3) additional considerations.

Enhancing Existing Guidance

Use of Seals and Logos

SDA believes the Guides should more firmly proscribe unqualified claims of such general environmental benefit that they confuse and/or provide little useful information to consumers. Such generalized claims achieve none of the appropriate goals of environmental marketing. They do not inform consumers about a product's measurable environmental attributes. They do not give significant encouragement for development of products with measurable environmental benefits. Generalized claims of environmental benefit also detrimentally impact companies attempting to incorporate valid, specific environmental qualities into products.

Unqualified environmental seals and eco-labels are inherently counterproductive. They both chill the incentive for new product development and deny consumers access to specific, actionable information. They are simply a variation on a general environmental benefit claim. Given the proliferation of various groups offering environmental logos and seals, this area is ripe for consumer confusion. We are particularly concerned with seals or logos that communicate a general claim of "environmental preferability."

Nevertheless, properly qualified environmental claims, eco-seals and logos can be useful in alerting consumers to products with genuine environmental benefits, provided that the consumer can readily find the specific attributes of the product upon which they are based. It is essential that eco-seals and logos provide enough specificity with regard to the attributes of the product they endorse that they can be held to the same standards for substantiation as other general benefit claims. It is also important that specificity be available at the point of sale or information be available at the point of sale informing the consumer where such information can be readily obtained, such as through the manufacturer's website or toll-free telephone line. Section 260.7(a) should be revised to include additional examples that specifically address today's environmental seals and logos.

Lifecycle Assessment

In a footnote in §260.7, the FTC regulations for environmental marketing claims state that the "guides do not currently address claims based on a 'lifecycle' theory of environmental impact." Since the Commission published its rules, lifecycle assessment (LCA) has become a common analytical process for comparing the relative environmental impacts of competing products and services, or for establishing a baseline against which improvements in a product or service could be judged. For example, procedures for LCA are part of the International Organization for Standardization (ISO) environmental management standards found under ISO 14000.

The FTC should acknowledge the effectiveness of LCA as a tool for evaluating certain comparative environmental claims and encourage its application where appropriate. At the same time, the Agency should recognize that conducting an LCA is not a prerequisite to marketers making properly qualified, well-supported claims of a product's environmentally relevant attributes. The FTC should also take into account that LCA costs may not be economically feasible for some small businesses. The issue is not the use of a particular procedure, but sufficient inquiry to avoid the use of claims of environmental attributes that do not acknowledge other significant environmental impacts associated with a product or its use.

Degradability Claims

We support the proposition behind §206.7(b) of the Guides that degradability claims should be qualified to the extent necessary to avoid consumer deception about the product's ability to degrade in the environment where, or in the manner in which, it is customarily disposed. However, more explicit guidance on claims of degradability is needed, particularly with respect to new products on the market. The FTC should develop examples that address these new product categories. In addition, further guidance should be provided on methods for establishing the relevance of degradability claims and appropriate disclaimers.

Packaging

We endorse the current use of an annual weighted average calculation for the determination of recycled content in packaging, or a similar mass balance approach.

New Issues

Natural and Organic Claims

There are an increasing number of claims relating to "natural" and "organic" ingredients and products that are not easily understood by consumers. As with any ingredient or product, claims of natural or organic ingredients must be specific and verifiable. The FTC should direct advertisers to appropriate definitions for these terms and assure that they are used with adequate qualifiers that are easily understood by consumers. Uniformity in the criteria for the expression of these claims is essential to provide meaning to consumers.

With respect to "natural claims," there are no well-accepted standards or guidelines. Industry and consumers would benefit from the FTC providing guidance in this area, including guidance related to the acceptable types or level of processing that would allow a product and/or its ingredients to be claimed as "natural," the degree to which inorganic ingredients can be claimed as "natural," and the degree to which a material's potential to cause or to avoid harm should be considered in making a "natural" claim.

Sustainability Claims

Similarly, the Guides should make clear that unqualified or general claims of "sustainable" or "sustainability" will be considered under the same parameters that govern general environmental benefit claims. The Guides should be updated to provide examples of what qualifiers are necessary and what constitutes a reasonable basis for substantiating such claims.

As with other types of product claims, the scope of the Guides relating to sustainability should focus on factors intrinsic to the product and its conditions of use, rather than on such extrinsic factors as company philosophy and economic sustainability.

Renewable and Bio-based Claims

The Guides should be revised to include guidance regarding claims of “renewable,” “derived from renewable sources,” and “bio-based” in reference to an energy or raw material source. Such claims should be addressed in a similar fashion to other environmental marketing claims in Section 260.7. The Guides should provide clear guidance on what environmentally beneficial attributes are associated with a renewable or bio-based material or energy source (e.g., reduced energy requirements, reduced greenhouse gas emissions, etc.) and the assessment of those attributes should cover the entire lifecycle of those sources so as to account for any potential negative consequences during the lifecycle (e.g., depletion of resources at a rate exceeding their replenishment, loss of biodiversity, overall increases in environmental burdens such as energy or water consumption).

Climate Change/Carbon Footprinting

The Guides should be revised to address claims of reduced impact on climate change through reduced emission of greenhouse gases during the lifecycle of a product. Many companies are beginning to make claims about the relative greenhouse gas emissions associated with their products. Perhaps most popular right now is a claim of “carbon neutral,” which is intended to communicate that there are no net greenhouse gases (indexed to carbon dioxide) associated with the product. One bottled water company is even marketing its product as “carbon negative.” Currently, there is no standardization for assessing carbon impact and it will be difficult for consumers to fully assess such claims in the absence of further guidance.

A private organization in the United Kingdom (the Carbon Trust) is working with consumer product manufacturers to develop a product label which would indicate the inherent greenhouse gases (as CO₂ equivalents) in a particular product (i.e., carbon footprint label) and indicate a commitment on the part of the manufacturer to further reduce the greenhouse gas emissions. Products to be sold in the US are among those being assessed for application of this carbon footprint label. Last year, the largest retailer in the United Kingdom, TESCO, committed to placing a carbon footprint label on every one of its products. TESCO opened the first of 122 planned stores in the US last fall.

Claims regarding impact on greenhouse gas emissions are already being made on products in the US, and carbon footprint labels will soon be found on products in the US. The Guides should be revised to provide guidance regarding such claims and labels. Emphasis should be given to defining terms and identifying rigorous methodologies for substantiating claims and labels. Uniformity in calculation of these claims is essential to provide consumers with a valid system of comparison. In particular, any approach to such claims must include reductions in carbon emissions that are related to use, not just to the product or its lifecycle prior to final sale.

Additional Issues for Consideration

Use of Websites

Given that online technology has greatly advanced since the Guides were first issued, the FTC should consider the role that company websites can play in providing specificity for general benefit claims.

Enforcement

One of the basic tenants of SDA's initial support of the Guides related to the inadequacy of case-by-case enforcement by the Commission. The FTC's planned stakeholder workshops will be helpful in broadening the reach of the Guides. In addition, an explanation as to the FTC's intentions with respect to enforcement of the Guides would be valuable to our industry.

Consumer Education

SDA applauds the FTC for its flexibility in accelerating the time frame for review of the Guides in light of substantial changes in consumer product advertising since 1998. We agree that the proliferation of environmental marketing claims gives rise not only to the need for guidance for advertisers, but also for consumers to assist them in making informed purchasing decisions. SDA would support the FTC in outreach to consumers in this regard. The FTC and SDA have worked in cooperation to educate consumers on fabric care symbols and we see value in creating a similar partnership to assist in outreach to consumers on the Guides.

Harmonization

In keeping with the basic principles that form the foundation of the Guides, the FTC should seek to harmonize the Guides with other standards where possible, particularly in North America.

Conclusion

The Guides have been instrumental in helping to define acceptable claims and advertising activity. They support the communication of accurate information on environmentally beneficial products to consumers while maintaining the flexibility needed to accommodate rapidly changing technology. As such, they should be maintained in substantially their current form.

SDA appreciates the opportunity to comment and we look forward to participating in workshops focusing on specific issues that are relevant to the industry we represent.

Respectfully submitted,



Ernie Rosenberg
President & CEO