



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

would be authorized under the regulations and would actually constitute two separate claims. The statement "Recycled Paper" is an unqualified claim implying that the paper is 100% recycled content. The statement "25% Post-Consumer Fiber" is a secondary claim which modifies, but does not define the first claim. An environmental claim made in this manner is misleading and in potential violation of the FTC guidelines.

The response to this comment was:

Part 368 has been modified to require that the post-consumer percentage be indicated. Our interpretation of the statement presented is that the paper only contains 25 percent post-consumer fiber and in the absence of any number, nothing else. With the post-consumer content identified we do not believe that there is an implication that the paper is 100% recycled.

Although we currently have no empirical evidence of how consumers perceive this claim, we too are concerned that the proposed revised recycled emblem with its disclosure might mislead consumers to believe that the product or package is made entirely of recycled material of which the specified percentage consists of post-consumer material.(2) In order to ensure that consumers will not be misled by the proposed revised recycled emblem, you may want to consider conducting consumer research to determine what message or messages are conveyed by the proposed revised recycled emblem. We are also concerned that the proposed revised recycled emblem might be interpreted to mean that even a disclosure of post-consumer recycled content is not required when the term "recycled" is used independent of the emblem and when the product or package contains the specified minimum percentage of post-consumer material as described in section 368.4(a) of the regulations.(3)

A second concern is that the proposed regulations may be interpreted to mean that even a disclosure of post-consumer recycled content is not required when the term "recycled" is used independent of the emblem and when the product or package contains the specified minimum percentage of post-consumer material as described in section 368.4(a) of the regulations.(4)

that unqualified claim of recycled content imply to consumers that the product or package is made entirely from recycled material (excluding minor incidental components). We are concerned that the proposed regulation may therefore inadvertently sanction misleading "100% recycled" claims. While the Commission's 1318(um)-3(13)ay states that the amended regulations will require the display of post-consumer content with either the emblem or the term "recycled," we could not find any such requirement for the use of the term "recycled" in the amended regulation.(4)

A third concern involves the proposed authorization of a recyclable emblem for certain broad categories of products or packages, based on the recycling rate of the overall category. We believe it will be helpful to share the Commission's experience with you on this issue. In § 6.4 of the Environmental Marketing Guidelines, 16 C.F.R. § 260.7(d), the Commission states that a product or package that is recyclable material, but, because of its shape, size or some other attribute, is not accepted in recycling program for such material, should not be marketed as recyclable. In fact, this issue has been the subject of several Commission cases. Keyes Fibre Company, C-351s2, August 2, 1994 and AJM Packaging Corp., C-3508, July 20, 1994 involved a recyclable claim for paper plates. White Castle Systems, Inc., C-3477, January 13, 1994 and America's Favorite Chicken Co., C-3504, July 5, 1994 involved a recyclable claim for paper fast food packaging. Even though the plates and fast food packaging are made from types of paper which might be recyclable in the few communities that recycle mixed paper, they are in fact seldom recycled because ordinary use renders them food-contaminated. We are enclosing the Commission comments and consent agreements in these cases. Staff believes that similar issues may arise within some of the categories for which a recyclable claim may be sought from New York.

We acknowledge that the request for authorization of section 368.4(b)(2) addresses this concern, and may do so adequately. You may wish, however, to consider revising the proposed regulation to clarify that approval will not be

granted to a product or package that falls within an approved material