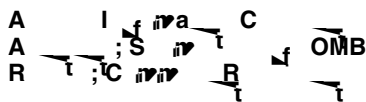


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FEDERAL TRADE COMMISSION



AGENCY: Federal Trade Commission (“Commission” or “FTC”).

ACTION: Notice.

SUMMARY: The FTC plans to conduct a study to examine consumer perception of environmental marketing claims. The study is part of the Commission’s regulatory review of the Guides for the Use of Environmental Marketing Claims (“Green Guides” or “Guides”). This is the second of two notices required under the Paperwork Reduction Act (“PRA”) in which the FTC seeks public comments on its proposed consumer research before requesting Office of Management and Budget (“OMB”) review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be received on or before June 11, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Green Marketing Consumer Perception Study, Project No. P954501” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .” as provided in Section 6(f) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled

“Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-GreenGuidesReview>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (<https://secure.commentworks.com/ftc-GreenGuidesReview>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov/> to

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

² The Commission issued the Green Guides in 1992 (57 FR 36363) and subsequently revised them in 1996 (61 FR 53311) and 1998 (63 FR 24240).

describe the basic elements necessary to substantiate claims and present options for qualifying specific claims to avoid deception.³ The illustrative qualifications provide “safe harbors” for marketers who want certainty about how to make environmental claims, but do not represent the only permissible approaches to qualifying a claim.

II. Regulatory Review of the Green Guides

The Commission reviews all of its rules and guides periodically to examine their efficacy, costs, and benefits, and to determine whether to retain, modify, or rescind them. On November 26, 2007, the FTC commenced its review of the Green Guides and sought public comment.⁴ As part of this comprehensive review, the FTC also announced a series of public workshops to explore emerging environmental marketing issues and, through subsequent notices, opened public comment periods in connection with each workshop.⁵ The Commission sought comment on a number of issues, including the continuing need for and economic impact of the Guides, the effect of the Guides on the accuracy of environmental claims, and whether the Guides should include certain environmental claims—such as carbon neutrality, sustainability, and renewability—not currently addressed in the Guides.

The Commission also sought specific consumer survey evidence and consumer perception data addressing environmental claims. Few commenters submitted consumer survey evidence or consumer perception data. The Commission, therefore, is considering conducting its own study related to consumer perception of environmental marketing claims. This study would aid the Commission in determining what revisions, if any, it should make to the Guides to ensure that the Guides are appropriately responsive to any changes in consumer perception of environmental claims.

III. Paperwork Reduction Act Notice

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means

agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2) of the PRA, the FTC published a notice seeking public comment on the proposed rule on July 11, 2008. In response, the Commission received one comment, which was submitted by General Electric Company (“GE”).⁶ Section V below sets forth the Commission’s analysis of the GE comment.

Pursuant to the Commission’s decision, 73 FR 32662 (2008), the Commission is providing this second opportunity for public comment. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before June 11, 2009.

IV. FTC’s Proposed Study of Consumer Perception

A. Methodologies

1. Environmental Marketing Claims

This proposed study will focus on consumer understanding of certain environmental marketing claims that are prevalent in today’s marketplace. Specifically, the proposed study will examine: general environmental benefit claims (e.g.

stustainable; enewable(

³ The Guides do not, however, establish standards for environmental performance or prescribe testing protocols.

⁴ 72 FR 66091.

⁵ See 72 FR 66094, Carbon Offsets and Renewable Energy Certificates (held on January 8, 2008); 73 FR 11371, Green Packaging Claims (held on April 30, 2008); and 73 FR 32662, Green Building and Textiles (held on July 8, 2008).

⁶ General Electric Company Comment in FTC Project No. P954501 (Dec. 15, 2008), pp. 1-4, available at (<http://www.ftc.gov/os/comments/greenguidespra/00001.pdf>).

benefits of various data collection methods, FTC staff has concluded that the most efficient way to collect data to meet the research objectives within a feasible budget is to use an Internet panel with nationwide coverage.

Thus, the FTC has contracted with Harris Interactive, Inc. ("Harris Interactive"), a consumer research firm that has substantial experience assessing consumer communications via the Internet and other alternative protocols, to design an Internet study that, while not strictly representative of the nation as a whole, nonetheless reflects the views of a broad population. The Harris Interactive Internet panel consists of more than four million individuals drawn from throughout the country, derived from a series of convenience sampling procedures, rather than true probability sampling. Harris Interactive has studied the relationship between samples from its Internet panel and samples collected using more traditional probability sampling techniques, such as telephone surveys. Based on these studies, Harris Interactive has developed procedures to ensure that differences between the results of Harris' Internet panel studies and those based on true probability samples of the nation are minimized. In particular, Harris Interactive has used a variety of methods, including demographic weighting, propensity scoring, and quota sampling to obtain accurate estimates of national views from its Internet panel. Through study administration, FTC staff will work with Harris Interactive to ensure that the sample is as representative of the nation as possible.

B. PRA Burden Analysis

Staff is revising certain prior assumptions,⁷ based on a more precise target population for completing the questionnaire and further consultation with Harris Interactive regarding the anticipated response rate. Harris Interactive anticipates that 6.3% of those invited to participate in the survey will respond and will fit within the desired distribution of demographic characteristics. Accordingly, Harris might contact as many as 59,000 persons to achieve the contracted aim of surveying 3,700 respondents.

As before,⁸ staff estimates that respondents to the Internet questionnaire will require, on average, approximately 25 minutes to complete.

⁷ See 73 FR at 60704.

⁸ See *id.*

nothing about environmental characteristics.

GE asserts that the questionnaire should ask consumers about marketing terms in conditions that are as real-world as possible, suggesting that participants be shown actual advertisements and suggesting that the study include a control. GE also expresses concern, however, "that no matter how a specific term is tested, the relevance of the data may be limited to the particular scenario presented." Thus, GE urges the FTC to consider how to conduct research on "specific terms in a manner that will both be relevant and will have broader applicability."

While the proposed study does not test actual advertisements, the environmental marketing claims are based upon actual claims FTC staff has observed in the marketplace. In addition, the study protocol tests each claim with three different products—kitchen flooring, a laundry basket, and wrapping paper. While costs prohibit conducting a study with more products, examining three products will provide useful information about the extent to which product variation affects participants' interpretation of the claims being studied.

GE urges the FTC to include non-leading questions and stimuli, specifically recommending that the study include open-ended questions. FTC staff agrees with these recommendations and it has designed questions that are as non-suggestive and non-leading as possible. Many parts of

the questionnaire include a combination of open- and closed-ended questions, which ask about the same concept. Moreover, the questionnaire uses phrasing that minimizes the risk that participants will give answers that they think *should be* correct. For example, some participants will randomly be shown the claim "Sustainable" in connection with wrapping paper. The questionnaire then asks: "Which of the following most accurately describes what this statement suggests or implies *to you* about any negative environmental impact that may come from this wrapping paper?" (emphasis added). The response choices to this question then take the form: "The statement suggests or implies that there is no negative environmental impact from this wrapping paper;" "The statement suggests or implies that this wrapping paper causes less negative environmental impact than other wrapping paper. . .," etc. The FTC staff also plans to conduct a pretest, which will help identify any remaining problems in this area.

Finally, GE notes that Internet study participants may consult outside reference materials or other persons in responding to the questionnaire. While there is a possibility that participants could consult such sources, FTC staff believes that this not a significant problem. Based on its extensive Internet study experience, Harris Interactive assures that participants in such studies generally are most interested in completing the study in a relatively

short period of time; thus, they are unlikely to choose to spend the additional time needed to do any such research. In addition, the questionnaire expressly informs each participant that the study designer is interested in what the individual thinks, rather than any supposedly "right" answer. For example, some participants will randomly be shown the claim "Eco-friendly" in connection with kitchen flooring. The questionnaire then asks: "What, if anything, *does this statement suggest or imply to you* about the kitchen flooring?" (emphasis added). Moreover, the final phase of the questionnaire contains a standard question for all participants asking whether they consulted outside sources. Again, based upon its extensive experience with Internet-protocol studies, Harris Interactive reports that participants tend to answer such questions honestly. Finally, Harris noted that if a participant consults outside sources while completing the questionnaire, samt the exteo jT(floDfubGsuch)TjT