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FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims; Green Building and Textiles; Public Workshop

AGENCY: Federal Trade Commission.

ACTION: Announcement of public workshop; request for public comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is planning to host a public workshop on July 15, 2008, to examine developments in green building and textile claims and consumer perception of such claims. The workshop is a component of the Commission's regulatory review of the Guides for the Use of Environmental Marketing Claims, announced on November 26, 2007.

DATES: The workshop will be held on Tuesday, July 15, 2008, from 9:00 AM to 5:00 PM at the FTC's Satellite Building Conference Center, located at 601 New Jersey Avenue, N.W., Washington, D.C. Any written comments in response to this Notice must be received by August 15, 2008.

REGISTRATION INFORMATION: The workshop is open to the public, and there is no fee for attendance. The FTC also plans to make this workshop available via webcast, see (<http://www.ftc.gov/bcp/workshops/buildingandtextiles/index.shtml>). For admittance to the Conference Center, all attendees will be required to show a valid photo identification such as a driver's license. The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged so that we may better plan this event. To pre-register, please email your name and affiliation to buildingandtextilesworkshop@ftc.gov. When you pre-register, we will collect your name, affiliation, and your email address. This information will be used to estimate how many people will attend. We may use your email address to contact you with information about the workshop.

Under the Freedom of Information Act ("FOIA") or other laws, we may be required to disclose to outside organizations the information you provide. For additional information,

WRITTEN AND ELECTRONIC COMMENTS: The submission of comments is not required

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 Commission Rule 4.9(c), 16 CFR 4.9(c).

² The Federal Register Notice announcing this review is at 72 FR 66091 (Nov. 27, 2007), and can be found at (<http://www.ftc.gov/os/2007/11/P954501ggfrn.pdf>). The Commission reviews all of its rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's existing rules and guides and their regulatory and economic impact. The information obtained during these reviews assists the Commission in identifying rules and guides that warrant modification or rescission.

claims.³ Industry guides, such as these, are administrative interpretations of the law. Therefore, they do not have the force and effect of law and are not independently enforceable. The Commission can take action under Section 5 of the FTC Act, however, if a business makes environmental marketing claims inconsistent with the Guides. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive.

The Green Guides outline general principles that apply to all environmental marketing claims. The Guides provide that all marketers making express or implied claims about the environmental attributes of their product or service must have a reasonable basis for their claims at the time they make them. They describe the basic elements necessary to substantiate environmental marketing claims and present options for qualifying specific claims to avoid deception.⁴ The provisions focus on the way in which consumers understand environmental claims and not necessarily the technical or scientific definition of various terms. The Guides advise marketers to: make qualifications and disclosures needed to prevent deception clearly so that consumers read and understand them; not overstate an environmental attribute or benefit, expressly or by implication; and present comparative claims in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception.

The Guides then specifically address general environmental benefit claims, such as:

³ The Commission issued the Green Guides in 1992 (57 FR 36363), and subsequently revised them in 1996 (61 FR 53311), and in 1998 (63 FR 24240). The current Green Guides are available at <http://www.ftc.gov/bcp/grnrule/guides980427.htm>.

⁴ The Guides do not, however, establish standards for environmental performance or prescribe testing protocols. In the realm of environmental advertising, a reasonable basis often requires competent and reliable scientific evidence. Such evidence includes tests, research, studies, or other evidence, based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

⁵ 72 FR 66091 (Nov. 27, 2007).

⁶ The Commission's Federal Register Notice announcing its first public workshop relating to carbon offsets and renewable energy certificates is at 72 FR 66094 (Nov. 27, 2007).

⁷ The Commission's Federal Register Notice announcing its second public workshop relating to green packaging claims is at 73 FR 11371 (Mar. 3, 2008).

⁸ Diane von Furstenberg, Preface to Earth Pledge's Future Fashion White Papers, at x (1st ed. 2007).

⁹ The U.S. Department of Agriculture through its National Organic Program ("NOP") has requirements for labeling products as organic and containing organic ingredients. Organic cotton cannot be marketed in the U.S. unless it meets the NOP standards.

¹⁰ <http://www.aboutorganiccotton.org/woven-world.html>.

four years.¹¹ Also, marketers assert that compared with conventional cotton plants, which require large amounts of pesticides and fertilizers, bamboo cultivation requires neither pesticides nor fertilizer.¹²

Marketers' assertions about the environmental benefits of textile products raise issues regarding consumer perception of, and substantiation for, such claims. It is unclear how consumers perceive claims regarding the environmental benefits of textile products, such as organic cotton and bamboo, and the type of substantiation necessary to support such claims. For example, consumers could believe that claims that textiles made from bamboo are "sustainable," "renewable," or "natural"¹³ relate both to the material used—bamboo—and the production process. Substantiating claims that textiles made from bamboo are produced in an environmentally friendly manner may pose challenges for marketers. Bamboo fibers, which are naturally tough, are often softened through intense chemical treatment prior to weaving. These chemical treatments may contribute to pollution. We plan to explore these kinds of issues at the workshop.

B. Green Claims for Building Products and Buildings

The market for green homes and products is growing. A 2007 study found that the market for green homes is expected to rise from \$2 billion to \$20 billion over five years.¹⁴ This study also found that 40% of homeowners choose green products to remodel their homes. In response, today's market offers a myriad of green choices, including paint, carpeting, wallpaper, flooring, cabinetry, lighting, windows, insulation, appliances, as well as heating and cooling systems. This growth provides benefits to consumers and businesses alike. However, it also poses challenges to marketers seeking to highlight the environmental attributes of their products.

Claims that building products are "environmentally friendly" raise potential consumer perception and substantiation issues. Sellers and marketers are making green claims for a wide variety of products and are making

claims not presently addressed in the Green Guides, including such terms as "sustainable" and "renewable." In addition, some marketers advise consumers to consider the life cycle of the building products before purchasing, e.g., whether the products are made of materials that are rapidly renewable or sustainable and whether the materials can be reused or recycled when the item wears out. How consumers interpret these claims and the substantiation necessary to support them are issues we plan to discuss at the workshop.

In the green building market, many sellers use certification programs to highlight the environmentally friendly aspects of homes and buildings. There are several third-party certification programs that establish criteria for green homes.¹⁵ Typically, the home must meet certain thresholds, set forth in the certification program; however, builders frequently may choose among numerous options to reach the desired goal. For example, a green-certified home might generate less waste during construction; be located near public transportation; include appliances, windows, and insulation that reduce energy use; and utilize high efficiency water fixtures. The criteria for, and meaning of, these certifications raise a variety of consumer protection issues that we plan to explore at the workshop.

IV. Questions for Discussion at the Workshop

The Commission invites written comments on any or all of the following questions regarding environmental claims for textile and building products. The Commission requests that responses to these questions be as specific as possible, including a reference to the question being answered, and reference to empirical data or other evidence wherever available. The Commission also requests that responses address the following questions:

¹¹ Rich Delano, *The Lowdown on Bamboo*, in *Earth Pledge's Future Fashion White Papers* at 160-161 (1st ed. 2007).

¹² *Id.* at 161.

¹³ The Green Guides do not address these terms.

¹⁴ "Ownership of 'Green' Homes Expected to Increase Rapidly, According to new Report from McGraw Hill Construction," available at www.cnmoney.com/news/newsfeeds/articles/prnewswire/NYM15222102007-1.htm

¹⁵ Three examples of these programs are: the Green Building Council's Leadership in Energy and Environmental Design program ("LEED"); the National Association of Homebuilders' Green Building Standard; and Green Globes' Green Building Initiative. Builders also can obtain an "environmentally friendly" certification from the federal government through the Energy Star program, which certifies homes based on energy use.

provide any evidence that supports your answer.

(4) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs that following the Guides may impose on businesses, particularly small businesses, with respect to environmental claims for organically grown or natural textiles. Please provide any evidence that supports your answer.

C. Green Building Claims

(1) How effective have the Guides' provisions regarding general environmental claims been in preventing consumer deception and providing business guidance with respect to environmental claims for building products and buildings? Please provide any evidence that supports your answer.

(2) Has there been a change in consumer perception of environmental claims for building products and buildings since the Guides were revised?

(a) If so, please describe this change and provide any evidence that supports your answer.

(b) Should the Guides be revised to address any such change? If so, how?

(3) Are there environmental claims for building products and buildings in the marketplace that are misleading? If so, please describe these claims and provide any evidence that supports your answer.

(4) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs that following the Guides may impose on businesses, particularly small businesses, with respect to environmental claims for building products and buildings. Please provide any evidence that supports your answer.

D. Third-Party Certifications and Seals

(1) How effective have the Guides' provisions regarding third-party certifications and seals been in preventing consumer deception and providing business guidance with respect to environmental claims for textiles, building products, or buildings? Please provide any evidence that supports your answer.

(2) Has there been a change in consumer perception claims using third-party certifications and seals for textiles, building products, or buildings since the Guides were revised?

(a) If so, please describe this change and provide any evidence that supports your answer.

(b) Should the Guides be revised to address any such change? If so, how?

(3) What criteria are third-party certifiers using to substantiate claims made with third-party certification or seals for textiles, building products, or buildings? Are those criteria appropriate? Please provide any evidence that supports your answers.

(4) Are there environmental claims for textiles, building products, or buildings using third-party certifications and seals in the marketplace that are misleading? If so, please describe these claims and provide any evidence that supports your answer.

(5) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs that following the Guides may impose on businesses, particularly small businesses, with respect to environmental claims using third-party certifications and seals for textiles, building products, and buildings. Please provide any evidence that supports your answer.

E. Green Building and Textiles Claims Currently Not Addressed by the Green Guides

(1) Should the Guides be revised to include guidance regarding "sustainable" or "renewable" claims for textiles and building products? If so, why, and what guidance should be provided? If not, why not?

(a) What evidence supports making your proposed revision(s)? Please provide this evidence.

(b) What evidence is available concerning consumer understanding of the terms "sustainable" or "renewable" with respect to textiles and building products? Please provide this evidence.

(c) What evidence constitutes a reasonable basis to support a "sustainable" or "renewable" claim with respect to textiles and building products? Please provide this evidence.

(2) Should the Guides be revised to include guidance regarding life cycle claims for building products?

(a) If so, why, and what guidance should be provided? If not, why not? Please provide any evidence that supports your answer.

(b) What evidence is available concerning consumer understanding of life cycle claims with respect to building products? Please provide this evidence.

(c) Is there an appropriate scientific methodology to evaluate life cycle

claims for building products? If so, please provide any evidence that supports your answer.

(3) Are there other environmental claims concerning textiles or building products not currently addressed by the Guides, and if so what are they? Please provide any evidence that supports your answer.

(a) Should the Guides be revised to include guidance regarding these claims? If so, why, and what guidance should be provided? If not, why not?

(b) What evidence is available concerning consumer understanding of these claim(s)? Please provide this evidence.

(c) What evidence constitutes a reasonable basis to support these claim(s)? Please provide this evidence.

By direction of the Commission.

Donald S. Clark,
Secretary.

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of
Engineers

33 CFR Part 334

Restricted Area at Blount Island
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AGENCY: United States Army Corps of
Engineers, Department of Defense.

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