

FEDERAL TRADE COMMISSION

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GREEN PACKAGING CLAIMS

Wednesday, April 30, 2008

9:00 a.m.

Federal Trade Commission
FTC Conference Center
601 New Jersey Avenue, N.W.
Washington, D.C.

For The Record,

1 with workshops at the FTC before, the moderator then will
2 ask as many of the questions as there is time for. These
3

1 you are in the building. If you leave the building for
2 any reason, you have to come back through security. We
3 will be starting exactly on time after lunch. So, please
4 leave enough time to get through security. This morning,
5 fortunately, everybody kind of came in a staggered
6 fashion. At lunchtime, everybody will be coming quickly,
7 so leave enough time to get back in so you will be here
8 for that first panel.

9 In case of a fire emergency, there are two
10 exits through the pantry right in the hall in back of us
11 and out the G Street corridor or out the front of the
12 conference center, out the front doors of the building
13 and we will all congregate diagonally to the left as you
14 are facing away from the building next to Georgetown Law
15 School, in front of their student union building.

16 If there is an emergency that requires us to
17 stay here, we may have to go up or down, and please stay
18 calm. There will be an announcement and we will tell
19 everybody whether we need to go up in the building or
20 come down.

21 This is a green marketing workshop. There are
22 recycling bins out front, so please use those. There
23 will be some sodas in the afternoon and with the coffee
24 and the pastries this morning.

25 Finally, the most important announcement and

1 the reason that I am really up here this morning, the
2 bathrooms are across the hall. If you go out the
3 conference center, particularly for those of you who are
4 going to be with us the whole day, out the conference
5 center, across the hall to the left of the guard desk,
6 take the hallway around to the left and you will see the
7 restroom facilities.

8 This event is the second in the series of
9 workshops that the Commission is holding on green
10 marketing. The first event was opened by our previous
11 Chairman. Today's event was originally scheduled to be
12 opened by Commissioner Kovacic. But events intervened,
13 and I am not saying, at least out loud, that it is
14 because he is speaking with us today, but today's event
15 will be opened by Chairman Kovacic. The agency could
16 hardly be in better hands.

17 Chairman Kovacic has had the opportunity to
18 study the FTC from multiple vantage points serving as a
19 staff attorney, General Counsel and a Commissioner before
20 assuming his current role. So, without further ado, I am
21 proud to introduce the Chairman of the Federal Trade
22 Commission, William Kovacic.

23 **(Applause.)**

24
25

1 a series of wrenching policy developments that literally
2 turn the institution upside down, two highly critical
3 studies of the agency's operations published in 1969, one
4 by Ralph Nader and a group sponsored by Ralph's
5 organization, somewhat more flamboyant, and a more
6 prosaic but, nonetheless, poignant assessment by the
7 American Bar Association which formed a Blue Ribbon
8 Commission to examine the agency's work.

9 These two reports catalyzed a fundamental
10 transformation of the agency and set in motion policy
11 developments that truly account for the use of the policy
12 instrument that we are engaged in today.

13 These prescriptions for the FTC boil down to
14 three basic propositions for the way ahead. The first
15 was that the appropriate substantive focus of this agency
16 should be state-of-the-art policy issues and that the
17 agency, both in the consumer protection domain and
18 competition policy domain, ought to stake out the most
19 difficult policy making frontiers. That is, we should
20 allow the simpler and less interesting issues to be
21 dedicated to treatment by other public institutions. It
22 was the unique capacity and purpose of the Federal Trade
23 Commission to deal with what my students in law school
24 call the hard stuff. Leave the easier questions to
25 others, but take on especially developments in dynamic,

1 again, I think, is so pleasing to us because it is a
2 manifestation of the realization of that vision.

3 Where do green claims fit into the role of the
4 Commission? First, they are precisely the kind of
5 state-of-the-art issue that the ABA and the Nader report
6 scoped out for the Commission in 1969. And the way in
7 which those issues were to be identified was, in many
8 respects, taking account and following the way in which
9 public consciousness for specific issues brought
10 particular policy concerns to the agency.

11 In this respect, the host of non-government
12 organizations represented here play a crucial role in
13 stimulating policy developments that become subjects of
14 our concern. That is, it is both media organizations,
15 interest groups and advocacy groups that raise public
16 awareness to specific issues and create a demand in many
17 respects in the commercial sector for industry changes
18 that become matters of keen concern for us.

19 We were also charged with taking account of
20 developments in science, not to have a large body of
21 scientists on our own. That is, we are not prescribing
22 the environmental policies that provide the backdrop for
23 our discussion today. We are not the scientists at EPA
24 and a host of other affiliated bodies. But our role is
25 complimentary, to take account of that science and to

1 commercial responses.

2 inc.

1 to them.

2 Finally, by what means have we tried to work in
3 this area? Well, the first and most important perhaps is
4 law enforcement. Law enforcement could be seen as the
5 anchor tenant of the mall of FTC competition policy.
6 Many malls, when they get started, have a showcase
7 department store or other retailer that provides the main
8 focal point for the mall. No anchor tenant, no mall.
9 The project simply is not inspired. But if all you have
10 is the anchor tenant, the Nordstrom's, for example, in a
11 specific commercial complex, you do not have a mall. It
12 has to be complemented by other retail outlets.

13 But in many respects it is what gives our
14 program the greatest credibility, but, in isolation, it
15 cannot be the only element of what we do. And its most
16 important contribution in consumer protection has been to
17 underscore the importance of making truthful claims in
18 advertising. We have an active program, both under Jim's
19 supervision and in affiliated bodies within our agency,
20 to ensure that claims, in fact, are properly
21 substantiated.

22 The second element is advocacy, to go to other
23 public authorities, because ours is a world of fragmented
24 policy decision making, both at the national and state
25 levels and, increasingly, we devote resources to ensuring

1 that we work in a complementary collaborative fashion
2 with other public institutions to ensure that shared
3 public policy goals are realized.

4 The last two elements I underscore because they
5 are critical ingredients of today's proceedings.

6 Education. Education of consumers, but education for the
7 business community. That's a critical element of the
8 Green Guides themselves. To provide effective guidance
9 to business, to answer the straightforward question, tell
10 me what I can and cannot do. In this instance, the Green
11 Guides are an effort to provide that kind of instruction.

12 And, fourth, and indispensable to today's
13 proceeding, is to build knowledge. One of the main
14 criticisms of this agency going back four decades was it
15 did not spend enough time looking outside of its own
16 walls, that it relied too much on its own indigenous,
17 organic capacity. And a basic response to that was to
18 devote more and more effort to the consultation with wise
19 bodies outside of our own building. Academics, different
20 interest groups, industry representatives, consumer
21 bodies, think-tanks, a variety of different institutions
22 to guide us.

23 As Jim suggested a moment ago, we today devote
24 enormous resources to doing that. This is a dilemma for
25 the policymaker in Washington. Why? What is the typical

1 measure of whether I am doing a good job or my colleagues
2 are? How many cases have you brought? If you go to an
3 academic conference or professional society and you begin
4 talking about an event such as this one, you see people
5 nervously turning through the program to see if they can
6 attend a parallel session, or to begin making plans for
7 lunch, running out the hallway to deal with the cell
8 phone. These projects are not seen in the simple-minded
9 way in which we are sometimes measured as paying the
10 rent.

11 But I would suggest this is the very foundation
12 for making wise policy in other areas. These are the
13 equivalent of the capital investment in knowledge that
14 determines whether we can do a good job.

15 One of Washington's favorite aphorisms, as you
16 know, is pick the low-hanging fruit. There's no suitable
17 aphorism in Washington that tells people to plant trees.
18 Because, as you know, if you have nothing other than a
19 group of fruit gatherers running around the mall with
20 baskets looking for fruit, and by the way, when it's
21 cold, chopping down the trees to warm their hands, you
22 don't end up with a foundation for effective policy.

23 So, one reason for which I so much admire Jim
24 and his colleagues is the willingness to make the
25 long-term investments that will not necessarily make our

1 policy better informed tomorrow or the week after, but it
2 will ensure that over time, five years out from now when
3 political appointees like me are gone, that this agency
4 and my successors will be making wiser choices about
5 policy.

6 Let me finish with a couple of specific
7 thoughts about the Green Guides and why, again, I think
8 this policy, even if you might not agree with every
9 specific element of it, I think represents a very
10 sensible process for making good policy over time.

11 The Green Guides originate in 1992. There's a
12 continuing assessment that takes place in '98 and today.
13 What's good about that? The recognition that the
14 industry developments are dynamic, the social norms are
15 changing, and that there has to be a continuing process
16 of reassessment, a norm that refuses to accept the status
17 quo as being good enough and presses us on a regular
18 basis to reassess assumptions made only in the recent
19 past.

20 Second, the basic aim of the Guides is to
21 encourage truthful representations, to develop a social
22 norm by which legitimate business operators who are
23 seeking to satisfy consumer desires in this dimension can
24 have confidence that their efforts will not be tainted by
25 unscrupulous operators. You can put, in many ways,

1 You can that there is a lot of misconceptions out there
2 in the public. I think this points out several major
3 questions. What does it mean to be green, eco-friendly
4 and sustainable? How can I take advantage of the
5 movement? How much will it cost? And how much of a
6 commitment do I have to make?

7 If you look at the screens, there are several
8 trends out there in the packaging markets and in the
9 environmental area. Oftentimes, these just do not add
10 up. As consumers, we are demanding more portability. We
11 want to be able to throw that package away and we do not
12 care what happens. Yet, it has to have a long shelf-life
13 so it stays in our refrigerator or on the pantry shelf
14 longer. It just does not add up if we are interested in
15 protecting our environment also.

16 I think one thing that is important here is
17 that we have to consider how the message is delivered.
18 It is not just on the packaging, although the two most
19 important functions of packaging are, number one, to
20 protect the product, to prevent spoilage and wastage and,
21 number two, to sell the product. So, it is a big part of
22 the advertising and the marketing message, but it all
23 works in with the advertising, the in-store displays, how
24 it is being covered in the market, what kind of
25 promotions they are doing. It all adds up to a total

1 their survey only 17 percent of the people in the market
2 were truly green-motivated. That means they felt it was
3 important enough to consider all of this when they were
4 making their purchase decisions.

5 On the other hand though, 60 percent of the
6 consumers in another study said that they really admire
7 companies that are tackling climate change, and consumers
8 want brands to play a bigger role in how they do this.
9 But there are other things that were surprising. More
10 people are selecting a brand for environmental reasons
11 than to avoid one.

12 What is a sustainable packaging? The best
13 definition we have comes from the Sustainable Packaging
14 Coalition. So, I will not spend a lot of time on this
15 because I am sure we are going to talk about this more
16 later, but I wanted to talk about a few things. One of
17 the concerns that we have is, what do some of these terms
18 mean? What does it mean to be green, to be natural, to
19 be eco-friendly or even sustainable? Sustainability was
20

1 environmentally sustainable and green could mean the use
2 of less material and recyclable and degradable materials.

3 I have a few examples here. I am not
4 questioning whether these companies are actually green
5 companies, but look at the messages that they are
6 sending. In this case, we have a soy milk. A lot of
7 people who are environmentalists tend to drink things
8 that might be considered more healthful. So, they are
9 trying to portray that image. In this case, you are
10 looking at a wind farm. It is saying that helping the
11 earth is a breeze if you drink this Silk product. Well,
12 the big thing here is it has a green cap on there, and I
13 guess the implication is that by drinking this, you are
14 going to be helping the environment. I do not question
15 that, but it makes me wonder exactly how that message
16 gets carried through.

17 Here is another one. These are recycled paper
18 products. You can see here that the packaging itself
19 really has a green theme to it. Sunrise, what a nice
20 image that is. Over the green forests. If it is
21 recyclable, they are helping to keep natural resources
22 moving back through the system. Is it really green?

23 One of the biggest targets these days are
24 bottles. Water bottles. In this case, here is a company
25 that is using a bottle that has plastic that is 100

1 percent recycled. It is a 30 percent smaller label, 30
2 percent less plastic, it is easier to carry, flexible.
3 But does that mean that it is really green?

4 I happen to be a big proponent of bottled water
5 ever since the night that I saw my cat drinking out of
6 the glass that I kept by my bed.

7 **(Laughter.)**

8 MR. KALKOWSKI: But here are a few other
9 things. Here is a Coca-Cola bottle. These are things
10 that we see every day. They designed a new bottle, it is
11 slightly smaller, has less materials, lower transport
12 costs. Does that qualify it to be green?

13 The Arrowhead water bottle, much like the one
14 we saw in the previous picture.

15 Big Mac, they went from Styrofoam clam shells
16 to paper-based ones.

17 Crest toothpaste. This is an interesting one
18 because they went to a stiffer rigid tube that does not
19 require an outer box and it allows them to display it
20 better on the shelves. Instead of being horizontal, it
21 is vertical. Does this mean they are green?

22 I think there are factors here that we have to
23 consider. You have to evaluate. Are the materials that
24 they are using needed? Are there options that they can
25 use with their primary materials so that they can

1 eliminate secondary packaging all together? You have to
2 validate any claims that they are making. You have to
3 confirm those assumptions and claims.

4 Another big thing is, is the product or package
5 certified? Although you will see on my next slide you
6 have to be careful with that, too.

7 Minimize size and weight and optimize with
8 cubilization (phonetic) of materials.

9 Here is a quick look at the groups that are
10 doing certification. How do you know which one is most
11 important?

12 So, finally, I just want to highlight a couple
13 of items. Most green packaging these days and the
14 advertising that goes with it emphasizes the type of
15 materials that are being used. I think that the next
16 phase will emphasize the processing of the packaging and
17 the elements that are involved. These will include the
18 components and the automation that are used in the
19 processing materials and in the energy that is consumed
20 and the efficiency of the packaging machines.

21 One thing I think we must do though is look not
22 just at the packaging, but at the total environmental
23 impact of a product. Because the packaging itself is
24 often a very small part of the total environmental impact
25 of a product.

1 package.

2 In addition, packaging and material claims have
3 become more important. Is it recycled? Is it
4 recyclable? Is it a smaller size? Is it designed for
5 reuse?

6 In October of 2005, Lee Scott, Wal-Mart Stores,
7 Inc. CEO, gave his 21st Century leadership speech and
8 made commitments across three areas for Wal-Mart stores.
9 The first one is to be supplied by 100 percent renewable
10 energy. The second one is to create zero waste. And
11 third one is to sell products that sustain our resources
12 and environment. The details of this speech are
13 available on Wal-Mart Stores Inc. and Wal-Martfacts.com.

14 After this speech, we had a lot of suppliers
15 coming to talk to us about opportunities. And the
16 Packaging Sustainable Value Network created their
17 principles of sustainability in 2006 as a response to a
18 lot of these claims and a lot of products and packaging
19 that were going to help us meet our goals. We know, as a
20 company, we cannot do this by ourselves. We need our
21 product suppliers, our packaging suppliers. We need
22 academic institutions and the think-tanks to make sure
23 that we are getting all of these technologies.

24 But our hierarchy was removing, eliminating
25 unnecessary materials. We want to reduce material usage,

1 making sure things are right sized. We want to reuse
2 materials that are appropriate and choose renewable
3 materials when we can and have them be biodegradable. We
4 threw in three ASTM methods under that as a response to
5 some of the information we were receiving. We also want
6 things that are designed of recycled materials and to be
7 recyclable. And, of course, we put in that they need to
8 be recyclable post-use and follow FTC guidelines for
9 label claims.

10 After that, we got a lot more packaging claims
11 and they were more specific. Our buyers meet with
12 product suppliers every day. I personally meet with
13 packaging suppliers at least every day, have
14 conversations with them on the phone about what their
15 materials and products can do for us. So, after we were
16 very specific about what we were looking for to meet our
17 goals, we continued to get other claims. Things are
18 photo-degradable, landfill degradable. They are
19 compostable. They could be renewable. They are designed
20 for refill. They are recyclable in municipalities or
21 they are recycled in somebody's facility. These are
22 examples only. If I listed every claim that we have
23 received in the last three years, that would be the
24 speech alone in ten minutes. So, this is just an
25 example of what we are receiving within Wal-Mart and

1 Sam's Club.

2 And the thing I want to point out is these are
3 all claims that people are making. It does not mean
4 these are claims we want. These are things people are
5 bringing to us without having a benefit stated.

6 So, when you go to translate this to our
7 consumers and our members, here is just a very few
8 graphics that could end up on our packaging. Possibly
9 incorrectly. The green dot symbol should not be on any
10 packaging within the U.S. However, we have seen
11 suppliers that have put it on because they understand it
12 to mean recyclable graphic. So, there has been a lot of
13 misinterpretation on graphics. And as we see them, we
14 send our suppliers and our packaging suppliers to the FTC
15 guidelines to make sure that they are making correct
16 claims.

17 So, in the beginning of this year, our CEO made
18 another speech at our year beginning meeting. We were
19 talking about the supply chain of the future and energy
20 efficient products. We want to pre-qualify our
21 factories. We want to make sure that they are certified
22 to international standards. We want to make things more
23 energy efficient, not just our own stores and trucks, but
24 also products that we sell.

25 So, after this speech, we were wondering what

1 the next claims are that we are going to receive. Is it
2 going to be produced in a certified facility and does
3 that certification mean ISO 14001? How many less
4 greenhouse gases were produced in making this package?
5 Was it sourced sustainably, produced with renewable
6 energy? And if these are the claims that are going to be
7 brought to us, how do our buyers verify them?

8 So, how are Wal-Mart and Sam's Club attempting
9 to manage the packaging claims overload? All of these
10 things are great. The fact that we have every meeting
11 going on at Wal-Mart and Sam's Club, discussing more
12 sustainable products and packaging is a great thing. But
13 how do we interpret this to our customers and members and
14 help us reach our sustainability goals?

15

1 Earth Month for Wal-Mart. And we actually had marketing
2 campaigns on how our products help our customers save
3 money and live better. And here are a couple of the ads.
4 We talk about how the product packaging, when recycled,
5 can actually make a new product. So, we are helping our
6 customers and our members understand that they are
7 closing the loop by purchasing from us.

8 Sam's Club has actually taken a step by putting
9 this logo on products within our club. Simple steps to
10 saving green. On our website, we actually explain that
11 when you purchase Sam's Club products with this symbol,
12 you are choosing products that are taking a step to
13 become more environmentally sustainable. So, what we are
14 saying is they have not been certified by Sam's Club to
15 be green, they have not been certified to be sustainable,
16 these are things that are actively taking a step compared
17 to their peer set in that category to be more
18 sustainable.

19 We have also tried to have behavioral changes
20 within Sam's Club and Wal-Mart, and I think this is the
21 biggest trend that I have noticed in the last three years
22 of being with Wal-Mart Stores, Inc. Our suppliers are
23 differentiating their products and their company by what
24 they are doing, to use better materials, to recycle more,
25 to design differently. Our buyers are also now receiving

1 consistently better decisions. Thank you.

2

1 These are some of the companies we worked with.
2 John mentioned in the beginning McDonald's and the
3 original Styrofoam to clam shell issue. That was our
4 first major corporate partnership.

5 In the 1990s, we were really about paper and
6 packaging. The corporate partnership efforts that we
7 were engaged in were really looking at reducing, reusing,
8 recycling the paper calculator which has just been
9 reinvigorated with a new set of functionalities was
10 really kind of where our focus and energy were. And what
11 we were looking at when we looked at the FTC guides made
12 our comments at the last iteration. We are looking at
13 claims on degradability, compostability, differentiating
14 pre and post consumer recycled waste. We were just
15 beginning to question the emergence of certifications
16 and sustainability attributes that were beginning to show
17 up.

18 What we are dealing with now are the types of
19 things that Amy mentioned, looking at retailers, looking
20 at a much different interface with organizations. When
21 you are dealing with claims at this level, a lot of what
22 we are about is trying to ensure transparency, trying to
23 ensure accuracy, and as we did with McDonald's in that
24 first corporate partnership, what we are really looking
25 to do is to find a way to move the business case so that

1 the environment comes out the winner.

2 So, did somebody say green at Wal-Mart? This
3 is what the buyers feel like. One of the roles that I
4 have played is to support the training, the
5 sustainability training for the buyers at Wal-Mart. And
6 this includes the Sam's Club as well. We talk Wal-Mart
7 holistically, but it is actually the two organizations.
8 This is where the buyers -- there is 2,800. One of the
9 things John mentioned, the consumers are not really
#0 This is where the buyers -- there is 2,800. One of the

For T

1 The opening Commissioner spoke about the hard
2 tackling things that people are going to have to do. You
3 get it all right this week, you figure it all out and
4 next week there is something else.

5 Green is not easy. It is not. It is the
6 reason that we partner with folks. I do want to make it
7 clear, we partner. We do not get paid for the corporate
8 clients we work with. Our donors support us so that we
9 can be there without conflict of interest. Because we
10 know that the people trying to be green are oftentimes
11 just as stymied as the customers, they are just as
12 stymied as the people all the way up the supply chain.

13 There are bad actors, there is no question.
14 There are bad actors that are humans, there are bad
15 actors that are chemicals. But the majority of people
16 are trying to be good. They are trying to do the right
17 thing. They do not know how. The Green Guides are a
18 real help, but they are way out-of-date, and the
19 opportunity today is to figure out how to help the people
20 that want to make the claim so when your mom goes to buy
21 a product she does not have to think about it. She can
22 buy something and the planet is the better for it. Thank
23 you.

24 **(Applause.)**

25 MR. KAYE: Thank you, Michelle.

1 from we are number one to some very technical performance
2 claims and that includes, of course, green claims.

3 Now, when we talk about the trends in green
4 packaging and marketing, we have to recognize that not
5 all of this is new. Back in the 1990s, we had a first
6 wave of green claims and problems ensued when the
7 ambitions of marketers outstripped the actual product
8 design changes that were being made. For example, we had
9 degradable garbage bags that were, in fact, degradable if
10 they were exposed to the sun. Well, you can appreciate
11 that the penetration of sunlight into landfills is not
12 very high. And in the case of the lightbulbs, you did,
13 in fact, have choices that were made to design a
14 lightbulb that ran on less energy, and they did that by
15

1 marketing. We are seeing carbon neutral financial
2 institutions and we are seeing environmentally-friendly
3 electronic equipment.

4 Perhaps though the most important trend
5 concerns the consumer and the consumer understanding an
6 expectation. Quite simply, we have a different consumer
7 today, with a different level of environmental
8 consciousness. The consumer today wants to do something.
9 There is an imperative. The consumer wants to make
10 choices and believes that the purchasing choices can
11 actually drive policy, make a significant or meaningful
12 impact on the environment, and that is the expectation of
13 the consumer.

14 So, as far as the recent trends and the things
15 that we have seen, one of the trends, of course, concerns
16 life cycle analysis. This was an advertisement for
17 nuclear energy and the claim was that nuclear energy is
18 environmentally clean and that the plants do not burn
19 anything to produce electricity, so they do not pollute
20 the air. And the problem here was that while the plants
21 produce no emissions, nuclear energy involved the mining
22 of uranium, the enriching of uranium and the burning of
23 coal. So, while there may be environmental advantages to
24 nuclear energy, the suggestion that no emissions are
25 produced was not accurate.

1 So, this was a claim where we felt that a sort
2 of a life cycle analysis was certainly appropriate. And
3 then that sort of begs the question, do I have to do a
4 life cycle analysis and look at cradle to grave every
5 time I make an environmental claim? And that, of course,
6 is going to depend on the claim itself, but certainly
7 broad claims are going to require broad support.

8 This is an advertisement for a pet food that
9 was claiming to be eco-friendly, Pets for the Planet.
10 And in this case the company was prepared to hold up its
11 supply chain and talk about the choices that it made all
12 along the line from the renewable energy on the farms to
13 the choice of ingredients to the actual packaging of the
14 product itself. They were prepared to demonstrate all
15 that.

16 The more common trend that we see, however, is
17 probably the case where a company seizes upon one
18 environmental feature and wants to parlay that into a
19 fairly broad and general environmental claim. Isn't it
20 good to know that you can sit on your couch and watch
21 football on a giant screen TV and still do your part for
22 the planet? That would be fantastic. The claim here was
23 that the plasmas are environmentally-friendly. We see
24 this sort of thing sometimes and you have what is a
25 legitimate product distinction that the company can make

1 and it is perfectly truthful. This is a product that
2 does not contain lead or mercury and the competitors do
3 and they should be able to call attention to that fact.
4 But that is not going to be justification for a general
5 claim that a product is environmentally-friendly.

6 Another trend that we see is in the competitive
7 realm. Sometimes we will see a company that is probably
8 ahead of the curve in terms of the green choices that it
9 is making. But then there is some advertising that
10 exaggerates the degree to which their competition is
11 either harming the environment, creating dangerous or
12 toxic chemicals.

13 In this particular case, there was advertising
14 which suggested that competitive detergents with chlorine
15 were not only hazardous in harming the environment, but
16 were actually creating danger out there and were unsafe.
17 So, sometimes there is exaggeration that we need to scale
18 back a bit because that is not the sort of advertising
19 that is really helpful for credibility either.

20 The final trend that we need to talk about, and
21 I know that we are going to get into this a little bit
22 later today, concerns third party certifications. We
23 have looked at third party certifications in some related
24 areas, animal care and fair trade. And one important
25 thing to consider is that a certification program or a

1 seal program not only needs to be internally valid and
2 subject to the appropriate audits, but you also have to
3 step back and consider how they are used on the package
4 and how they are used in advertising and what messages
5 are conveyed and whether, in fact, they correspond to
6 what it is that is actually being certified.

7 And there is something that is true of the
8 third party certifications that is true of most green
9 marketing claims. And it is this, they are the kinds of
10 claims that consumers cannot typically verify for
11 themselves and because of that, there is a heightened
12 degree of trust involved and there is a heightened degree
13 of credibility that is at stake.

14 Green marketing claims contain a promise to
15 consumers that, w T000 cm2 0.0 0.000in a promise to

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1 self-regulation needs to play in this important area.
2 Thank you very much for your time.

3 **(Applause.)**

4 MR. KAYE: Thank you, David. Thank you,
5 everyone. Again, if you have questions, just raise your
6 hand and someone will come by and pick up a card.

7 But I would like to start off, Michelle, I
8 heard you say it, that the Guides were way out-of-date
9 and, so, I did want to start and ask you to comment on
10 some of the areas where you think the Guides could reduce
11 some of the confusion, maybe address some of the sin
12 areas you referred to and make some progress.

13 MS. HARVEY: I think probably the most
14 confounding one really probably falls in the area of
15 vagueness. I think the amount of terminology that has
16 creatively come out of the marketing departments to
17 describe attributes of green rivals the ability to name
18 paint as far as I am concerned. How many ways can you
19 name a green color? You can look at the Sherman Williams
20 chart or you can look at the advertising claims and they
21 are just as numerous. I think that is probably the most
22 challenging area. Then I think substantiating things
23 like certifications and those kind of things. The eco
24 labeling areas, is it a real eco label or not? But I
25 think the main one probably is vagueness.

1 MR. KAYE: David, let me kind of throw that
2 over to you then. In terms of these new terminologies
3 and the like, what are some of the terms that are
4 gathering attention that people are complaining to you
5 about in the green packaging area that maybe the FTC
6 should be focusing more on in terms of the guidance it
7 provides?

8 MR. MALLEEN: Well, the things that we are
9 seeing the most is probably the same area of vagueness.
10 There are certainly concerns about terms like
11 sustainability and renewable and what these things mean.
12 But I think the more prevalent issue, at least from our
13 review and the cases that come before us, are the
14 general, the broad, the vague, the notion that this whole
15 thing is green and then isolating just a couple of steps
16 or a couple of measures that may be taking place but do
17 not give you the true picture.

18 Michelle had the slide with the six sins of
19 greenwashing, and we see elements of them in the
20 challenges that are brought before us. Probably all six.

21 MR. KAYE: So, when you are looking at an ad
22 like the Panasonic ad that you presented where there is a
23 general claim and then there may be some specifics within
24 it, but you sort of took the perspective of, well, but
25 that does not tell the whole story and I think that is

1 sort of what you are talking about now. What kind of
2 standards -- and I would open this up to everyone on the
3 panel. What kinds of standards should be put in play to
4 evaluate those claims? Where should the line be drawn
5 when the general is too general, too vague, too
6 inaccurate? I know that is a real easy question.

7 MR. MALLIN: I'll just start. I do not know if
8 I can answer it directly, but the starting point has got
9 to be from the point of view of the consumer. The claims
10 are different and the contexts are different and the
11 starting point has got to be, at least from our
12 perspective, what does the consumer think this means and
13 does the consumer think that this claim is telling them
14 that it is going to either be carbon neutral or have the
15 kind of effect on the environment that they are
16 expecting?

17 I think we need to learn a lot more about
18 consumers' interaction with these kinds of claims because
19 the support for them, regardless of what the standards
20 ve tv.000000087j104.4000 0.0000 TD()i.gardleause

1 MS. ZETTLEMOYER-LAZAR: I think one of the
2 biggest things Wal-Mart has learned and Sam's Club, is
3 that if we have a good item that is also more sustainably
4 sourced, uses less energy in production and has a better
5 package than its peer group, that is exactly what our
6 customers and members want. If it is not a good product
7 that they want to begin with, it does not matter what
8 claims you are making, they are not going to buy it. So,
9 making sure it is the right item for our customers and
10 members and then making sure that you clearly outline how
11 that benefit impacts them, not just how that benefit
12 impacts the environment, but how it impacts them and
13 their purchasing decisions. We have seen, in general, a
14 good return.

15 MR. KAYE: Is it your impression that consumers
16 understand what these terms mean? I know you talked a
17 lot about making sure that the businesses putting on
18 these claims have a degree of specificity to the claim.
19 Is that enough or are there claims being made that you
20 have concerns still the consumer does not really know
21 what it means?

22 MS. ZETTLEMOYER-LAZAR: There are definitely
23 claims that they do not know what it means. Compostable
24 versus biodegradable, I think is a huge confusion for our
25 members and our customers. But when we translate the

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1 advertised or marketed to them just the way a product
2 would be marketed.

3 MR. KAYE: Michelle, is that also your
4 experience, that you are an educator about that the FTC
5 Guides are out there or are businesses coming to you in
6 the first instance with some understanding that there are
7 some guidelines that have to be adhered to?

8 MS. HARVEY: No. I think most of the vendors
9 that we are dealing with are not aware of the Guides. I
10 think part of it is that the Guides have a lot of
11 specificity in certain areas that I think have been dealt
12 with. How to represent the recycled content, is it just
13 for the package or is it within the products and those
14 types of things.

15 But I do not think there is enough relevance
16 for the issues they are really grappling with now, which
17 get more into, as I say, either the -- how do I describe
18 the fact that I am a little bit better, I am not a green
19 product? And I think that is where the Guides do not
20 give them enough guidance in terms of some of the
21 terminology that they are trying to figure out to use to
22 differentiate.

23 MR. KAYE: Is that terminology very package
24 specific, industry specific or are there general areas
25 that everybody seems to keep tripping over?

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1 greener or the product is greener than it is is where you
2 have the opportunity. I think it is going to be putting
3 some terms perhaps off-limits.

4 MR. KAYE: I'm sure we will take care of that
5 in the afternoon.

6 **(Laughter.)**

7 MR. KAYE: Amy, I have a question from the
8 audience for you. Simple step to saving green. Do you
9 have specific or quantitative criteria to qualify for
10 this labeling?

11 MS. ZETTLEMOYER-LAZAR: We did not want that
12 label to become a certification, so there are not
13 specific steps or specific guidelines that have to be
14 followed. What we do is communicate exactly what that
15 claim is on the package and on our website.

16 We have over 6,000 items in each of our clubs.
17 This logo is on maybe 20 items, maybe 25. So, we are
18 very selective on what we have put it on and it has to

1 company as well.

2 MR. KAYE: And I have a question here for you,
3 Michelle. If metal is virtually always recyclable and
4 recycled, is it permissible to say that, for instance, a
5 product is made with recycled steel? After all, it is
6 better than non-recycled alternative materials and
7 industry should be permitted to tout it in products.

8 MS. HARVEY: I think we get back to that
9 balancing act. If it is a standard practice, then, to
10 me, it stops being an announcable attribute, if it is
11 just simply the way that the product is done.

12 On the flip side -- let me say, this is just my
13 opinion. But I think the line you are trying to walk is,
14 is the product better than the alternatives. I think
15 that is what a customer is looking at, I know that is
16 what the buyers are looking at. So, I think in Scott's
17 list, it was sort of the question of irrelevance. You
18 could label every attribute of everything, but is it
19 really relevant to the consumer or is it simply the
20 nature of the product so that telling me this does not
21 tell me anything new, it does not change behaviors, it
22 does not drive innovation, it does not make a better
23 business practice because we have already got that one
24 nailed. Let's work at the area where it is not doing the
25 right thing or the best thing yet. I think that is

1 definition is needed beyond recyclable, beyond reusable,
2 beyond what is already in the Guides? You each have five
3 seconds.

4 **(Laughter.)**

5 MS. HARVEY: Yes.

6 MS. ZETTLEMOYER-LAZAR: Yes. This is Amy
7 Zettlemoyer-Lazar. I think the biggest concern we have
8 is there needs to be more definition on all of them, not
9 just recyclable or biodegradable, but the industry has
10 come a long way and standards have come pretty far. So,
11 we need to make sure that definition is around, even
12 additional definitions are around some of the claims that
13 are in the Guides now.

14 MR. KAYE: I would encourage everyone here who
15 has ideas about some of those terms that should be
16 defined to give us comments on the Guides.

17 I have another question for Michelle. Go
18 ahead, John, did you want to add something?

19 MR. KALKOWSKI: I was just going to add there
20 that I think the important thing is that, as I mentioned
21 before, most of the things that people are talking about
22 these days are the materials that are used. But I think
23 you need to look at the processes of how packaging is
24 made and what is being used to make it also beyond the
25 materials.

1 MR. KAYE: And you mentioned that in your
2 presentation, John, in terms of the future, and I heard
3 references to nanotechnology, which I know is something I
4 want to get in my next golf club even though I do not
5 know what it does.

6 **(Laughter.)**

7 MR. KAYE: Any other thoughts about in big
8 picture sort of looking ahead to the workshop that
9 someone may be holding five, seven years from now, if we
10 can get ahead of the curve at all of what some of the
11 trend are coming up in packaging that haven't yet hit the
12 shelves?

13 Amy, I know that Wal-Mart is looking at what is
14 going to come up in five years. Let me ask you this,
15 Amy. In terms of the claims that are out there now then,
16 have you gotten a sense as to which claims are most
17 influential upon consumers in the sense of -- obviously,
18 the green thing in general is having an impact, but of
19 green claims, is there any sense of which ones are really
20 making that extra step towards a consumer buying a
21 product?

22 MS. ZETTLEMOYER-LAZAR: Let me preface this by
23 saying I do not have any studies to back this statement
24 up, but what we have seen in some of the purchase
25 behaviors is where that claim is translated into a

1 recycle it. I mean, that is a real good place to start.
2 But it is hardly the whole picture.

3 I dread the thought of getting into a land of
4 disclaimers where you can use this term, but only if you
5 put something over there. But I think that is really the
6 issue is should it all reside with the consumer or do we
7 get more voluntary engagement by organizations like
8 Wal-Mart? I mean, from the EDF perspective, you work
9 with the voluntary programs, you work with the people
10 that are interested in this and you start trying to
11 change it up the value chain. So that by the time it
12 gets to the consumer, they are not having to figure out
13 where is the hidden question.

14 I think really that is our philosophy, it is
15 why we do what we do. But, as I say, you cannot regulate
16 your way out of it with some Green Guides and I think
17 come out with where we would like to see consumer safety
18 and health end up.

19 MR. KAYE: Well, I want to thank all of our
20 panelists for their presentations and for their answers
21 to these questions. We will now break until 10:40, at
22 which point we will promptly start the next panel. Thank
23 you.

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1 participate; it goes to the brand owner to develop the
2 package or the product that is recyclable and has that
3 recycling element designed into the front end; it is
4 local government making sure that there is infrastructure
5 to capture the materials. There are efficiencies that
6 can come from the shared responsibility model that we
7 feel are very important and very vital.

8 The consumer engagement side is what I am going
9 to speak quite a bit to based on some research that we
10 did last summer and, clearly, understanding what is
11 recyclable, how to recycle it, what is not recyclable is
12 key, that is why we believe that the Guides and the
13 claims associated with recycling is really important.

14 The other big guiding principle for us is that
15 most of the recycling decisions are made on the local
16 level and, so, while we encourage our members and
17 celebrate when they think big, make sure that you know
18 that those kinds of decisions, as far as infrastructure
19 and collection, is taking place on a local level.

20 There is, for us, a number of elements that
21 have changed since the Guides were first developed, and I
22 am going to go over each of those that have affected
23 recycling. The four of them are the globalization that
24 has taken place within the marketplace for commodities,
25 the engagement that has taken place especially over the

1 last five, six years on the corporate or brand owner
2 side. The business development that has taken place
3 within the collection infrastructure and some of the
4 efficiencies and some of the inefficiencies that are
5 still in place, and then what has taken place with
6 consumers, which is probably one of the most interesting
7 aspects of it, and I think Amy spoke quite a bit about it
8 with what Wal-Mart has been doing.

9 As far as globalization goes, the issue is no
10 longer is there a demand for recyclable materials, the
11 issue is where is the supply, where are the materials
12 that we can utilize to capture and put into our package
13 or our product. So, clearly, that is a significant shift
14 from when the Guides were first developed. And it needs
15 to be a primary focus as we look at what we do moving
16 forward.

17 In the United States today, we are generating
18 and throwing away much more waste than we did ten years
19 ago. That gets to the consumer engagement side, but it
20 also speaks to the importance and the value of the
21 collection infrastructure that we have in place and
22 making sure that we are getting as much as we can. I
23 think it is really a sad state to be able to say 00000 o say 00022

1 been talking about recycling for decades. So, I think
2 that the infrastructure and the pull of materials is huge
3 and the demand for materials overseas, those material
4 that we are collecting here in the United States has
5 changed the face of recycling.

6 The engagement that we are seeing, far and
7 wide, and I know a number of the speakers earlier
8 addressed the engagement and the real need for companies
9 to look at the environmental footprint that they have for
10 their package and their product and how they are
11 incorporating that into their business values is a
12 significant change that we have seen since the Guides
13 were developed.

14 LCAs were spoken of earlier. Clearly, they are
15 something that we heard about and saw 15, 20 years ago.
16 Really are now in the private sector. They are a guiding
17 force for brand owners. We celebrate that. We think
18 that taking that into consideration when you are
19 designing your package or your product is key. It does
20 bring up all kinds of trade-offs and issues as was
21 addressed earlier and, clearly, for us, from this narrow
22 recycling perspective, they are very important and they
23 are very important when you are trying to make a choice
24 of your package. The confusion that comes from what am I
25 really going to prioritize when looking at the LCA is an

1 aspect that comes up, I think, inside companies left and
2 right.

3 Really the most important aspect for us is to
4 make sure that there is a thoughtful process as
5 transparent as possible and making sure that we are
6 looking at not just the front end design, but what the
7 end market infrastructure is because that is another
8 aspect. We will see lots of folks focus in on designing
9 and making sure that the design aspects are there. If
10 the brand owner is also engaged in the end market and
11 making sure that the end market is healthy and keeping it
12 healthy really helps the recycling infrastructure take
13 place.

14 The business development that we have seen
15 since the Guides were first developed is phenomenal.
16 Significant R&D has taken place both in the front end and
17 design in the collection infrastructure in being able to
18 commingle materials from a recycling standpoint as
19 opposed to segregating them all in dozens of bins at your
20 home. The technology to be able to sort materials so
21 that what comes out of the recycling infrastructure
22 really is a commodity and has a demand is important, and
23 I think that investment that has taken place is huge.

24 What that will do and what we have seen happen
25 when the collection infrastructure is improved and

1 efficiencies are brought into both collection and
2 processing is increased consumer engagement because it
3 gets easier, and when we go through that decision making
4 r

1 consumers is really the biggest disappointment that we
2 can see. So, our job is to make sure that that
3 infrastructure is there and that the funding is there,
4 the adequate funding is there so that there is not a
5 claim on a package and then the consumer goes to put it
6 somewhere and they can't. So, that funding goes along
7 with the consumer engagement that is so critical.

8 So, last year, we did some great consumer
9 research. We really have taken to heart the stagnant
10 recycling rates and really wanted to understand what is
11 it that consumers do not know or do not believe that is
12 keeping them from recycling. What are the barriers?
13 What do we need to do to speak to them differently, to
14 communicate to them appropriately and how and who should
15 be doing that?

16 So, we first did a real comprehensive gathering
17 of all of the information available both from academia,
18 from our corporate partners, research that they had done,
19 and teased out what the high points were, what people
20 think about recycling, and then tested it through
21 ethnography and ethnography is when you actually move
22 into somebody's house. It is much deeper information
23 than a focus group and it really gave us information that
24 we felt was vital.

25 What we did is we had, from our initial

1 research, bucketed people into two groups. Actually,
2 there is three. There are never recyclers, but we were

1 communicate to people that are the sometimes recyclers to
2 engage them in recycling is critical and really making
3 sure that the benefits are there so that they understand
4 it. I think Amy underlined that in some of the things
5 that she has seen on the website at Sam's Club.

6 So, the things that we heard that were barriers
7 to recycling behavior, convenience comes up and, yet, I
8 see trucks running up and down streets looking for full
9 bins and they are not there. So, convenience was clearly
10 something that we hear, but we can test that and show
11 that that is not actually true.

12 Knowledge about what is recyclable came up and,
13 in fact, in one study 51 percent of the respondents said
14 that they rely on the symbol on the package to know
15 whether it is recyclable or not. So, I think that is
16 great feedback that the recyclable claim has had an
17 effect.

18 What we also found is that the belief in the
19 person's ability to really do something and have it
20 matter was very important and, so, understanding the
21 benefits of recycling and what it does, what your action
22 does, is very, very important and however we communicate
23 that, whether it is on a local level or on a global level
24 is very, very key.

25 And really having those sometimes recyclers

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1 MS. FRANKLE: Thank you very much, Kate. Sara.

2 MS. HARTWELL: Hi, I am Sara Hartwell. I am
3 with the Environmental Protection Agency in the Office of
4 Solid Waste.

5 So, I need to start by apologizing to those of
6 you who are watching the webcast. I was dreadfully tardy
7 with my slides, so you have the draft version. Those in
8 the room will be seeing the complete version, so I will
9 try to be more articulate about some of the additional
10 data that I added.

11 I want to talk to you about for starters why
12 packaging is such a real issue here in terms of these
13 Green Guides. It is the single largest component of our
14 municipal solid waste stream. It is about a third of it.
15 Our general municipal solid waste recovery is about 32
16 and a half percent. Our recovery of packaging materials
17 is about 40 percent. Slightly higher. But packaging
18 materials are, by and large, with a few exceptions like
19 newspapers, what we think about recovering curbside.

20 So, I have some data here because I always like
21 numbers. So, packaging waste as a percentage of a total
22 mass has increased municipal solid waste over the years.
23 I think we all would assume that that was true
24 intuitively. It has increased as a percentage fairly
25 substantially over the years. It seems to have leveled

1 off. So, we are recovering about 40 percent of it and
2 that seems to be the case over the last several years.

3 What I think is really interesting is to
4 consider how the composition of packaging and the
5 opportunity has changed over time. So, these are some
6 data from 1960, a long time ago. Some of you we 5,tncmyET6.00000 0.

1 suggest that over 48 years maybe it is going to continue
2 to be that way for the foreseeable future. Use of glass
3 in packaging has gone down. Aluminum has not changed
4 much in the last decade, though it has changed since
5 before that. The use of plastics has increased
6 dramatically. That is an important concept to hang on
7 to.

8 So, this is the actual numbers on the packaging
9 waste that we have generated in 2006. It is consistent
10 with the percentages we saw earlier. But that plastics
11 category could be a little bit misleading because
12 plastics, in fact, refers to many materials. There are
13 six primary plastics that we see in our packaging in the
14 United States. PET and HDPE being two that we see
15 primarily in bottles. Low density polyethylene is a lot
16 of bags and films. Polypropylene is used frequently in
17 caps and closures. It is also used frequently in dairy
18 containers, also for other things. There is that other
19 category at the bottom. So, again, we have a another
20 category of a lot of material that is covering lots of
21 individual materials. Polycarbonate, nylon, there are a
22 lot of materials in there.

23 So, these are our recycling rates for our
24 individual packing materials in 2006. So, steel is
25 recovered at a fairly high rate. I would suggest it is

1 probably because it is relatively easy because you can
2 just suck it out with a magnet. That is one of the cool
3 things about steel.

4 Paper, again, is at a relatively high rate. I
5 think there is probably some great consumer research on
6 why that is.

7 Plastics, that broad category, is recovered at
8 a relatively low rate. So, of those plastics that we
9 talked about earlier, this is the PET, so soft drink
10 bottles, soda bottles, those things are recovered at
11 about 26 percent of generation. High density
12 polyethylene is about 12 percent. Low density
13 polyethylene is about 8 percent. Polypropylene is 1
14 percent. Polypropylene, by the way, is an olefin very
15 much like high density polyethylene and low density
16 polyethylene. Polystyrene is about 3 percent. PVC and
17 those others are not collected at a rate that we can
18 calculate.

19 Now, the diversity in these plastics poses some
20 challenges for recycling. Because while regardless of
21 how the materials are collected, they need to be
22 processed separately, particularly to retain their value
23 for further applications. To be able to process them,
24 you have to have a critical mass of material in the
25 stream to make it worth somebody's while to process it.

1 You have to have enough material there for the
2 infrastructure to grow up. This is going to become
3 particularly important in the coming years as we see the
4 advent of biopolymers, a lot of talk around PLA, there
5 are a bunch of materials coming on stream. We are going
6 to want to recover them for a lot of reasons. Recover
7 the economic value, recover the energy investment, avoid
8 greenhouse gas emissions. But you have to have enough
9 material available, enough material that has been
10 collected to be able to process it economically, make it
11 worth someone's while.

12 I would suggest that limiting collection is
13 going to limit that critical mass. So, it is kind of a
14

1 recycle this, there is no market for it, some paper
2 category. I go, oh, I am sure that there are markets for
3 it. People tell me that they can't recycle glass because
4 there is no market for it. There are really strong
5 markets for it.

6 I saw Owens-Illinois sitting over here. They
7 are rail freighting it across the country. There are
8 very significant markets for this material and a lot of
9 those markets are based on the energy benefits of
10 recovering the material.

11 So, what does all this mean in terms of the
12 Green Guides? Well, we know how much packaging is
13 generated and we know how much we are recovering. There
14 is some data, not our data, on the number of curbside
15 recycling programs. There is some data, not our data, on
16 the number of drop-off programs. I do not know of any
17 data, certainly not a significant amount of data, on how
18 many programs collect which materials.

19 So, when you come down to the part of the Green
20 Guides that says you need to be collecting in a
21 significant number of communities or available to a
22 significant number of people, I find it difficult to
23 envision how people are going to be able to substantiate
24 that they meet that claim because there is no single body
25 of data. Maybe big companies can go out and commission

1 organizations in the world. They have made a lot of
2 progress in terms of developing specifications for
3 compostable plastics and compostable paper or compostable
4 plastics used as coatings on paper. You can get these
5 specifications and they are very complete and I will talk
6 a little bit about them.

7 Additionally, ASTM has come away with a test
8 method, 6866, that will definitively tell you the percent
9 of renewable carbon in a material. So, if you are making
10 a biobased claim, you can use this test method to
11 determine whether it is 10 percent, 20 percent, 100
12 percent. And I will talk about why that is important
13 given these two terms.

14 Maybe most important for this audience and this
15 meeting is the work done by the American Chemistry
16 Council. I would like to thank Jim Kohm for actually
17 asking the question, what do consumers think of these
18 terms in a meeting that we had about three years ago.

19 Before I get started in that, I would like to
20 thank David Mallen for bringing up the degradable garbage
21 bag from the early nineties. I am here to tell you that
22 it is deja vu all over again.

23 I picked this off the web earlier this year.
24 Here is a 100 percent biodegradable plate or cutlery that
25 when buried and discarded in a landfill is going to

1 eventually biodegrade.

2 If you are concerned about what happens to your
3 dry cleaning bags, you can now have ones that break down
4 all by themselves after they are thrown away.

5 Here is a retailer that is talking about a
6 shopping bag that when disposed of in landfill will
7 degrade and, ultimately, biodegrade in the presence of
8 oxygen microorganisms and heat. I didn't know there was
9 any oxygen left in a landfill.

10 And my new favorite is, this product will
11 completely break down in a landfill environment in 12 to
12 24 months, leaving no residue or harmful toxins. Yet, it
13 will still last on the shelf for two years.

14 **(Laughter.)**

15 MR. MOJO: And I think the point is that I do
16 not know whether these claims are supported by science or
17 not, but I do know that there is a myriad of more claims
18 or a whole lot more claims in the past 12 to 18 months
19 than we have seen back in the late nineties, early 2000s.

20 So, as Jim asked, well, what do these claims
21 mean to the consumers? The ACC actually did a study in
22 2006 of over a thousand adults, a statistically correct
23 sample, and the point was they asked them about the terms
24 biodegradable and compostable. When you put the term
25 biodegradable on your package, it tells consumers -- they

1 take away that it will completely break down on its own,
2 it will do so in a year or less, it leaves nothing
3 behind, and as a result they say the material is not
4 harmful for the environment. And, actually, to some it
5 may even be a license to litter because they figure that
6 if I can throw it out my car window and it is
7 biodegradable, it is going to disappear on its own.

8 Frankly, I think consumers see biodegradability
9 as the panacea of solid waste. If you can send a
10 biodegradable product to a landfill and it somehow or
11 another is going to disappear in your mind, isn't that a
12 terrific thing? We do not have to worry about the waste.
13 It just goes away. But, actually, I believe that the
14 consumer perceptions are fairly in line with what the FTC
15 promulgated back in the early nineties.

16 Consumers believe that biodegradation takes
17 place everywhere. Almost nine out of ten said it will
18 take place in a natural environment such as litter, eight
19 out of ten in a landfill, and 80 percent in the backyard.
20 Yet, when you look at where we throw away our trash, as
21 Sara pointed out, we are recycling roughly 30 percent of
22 our materials which means that the bulk is still either
23 going to landfills or to incinerators. And here are the
24 numbers, really the converse of the numbers that Sara
25 showed.

1 the opposite of what most people think. Well-designed
2 and managed landfills seem to be far more apt to preserve
3 their contents for posterity than transform them into
4 humus or mulch. They are not composters, they are really
5 mummifiers. I think that really is at odds with what
6 consumers believe is happening.

7 I would like to move on briefly to compostable
8 materials and consumer perceptions. What is composting?
9 I do not know how many of you have actually been to a
10 large-scale composting facility. Actually, it is
11 biodegradation, aerobically, under optimized conditions.
12 It requires complete, not partial, biodegradation. There
13 is a disintegration requirement in it. There is also
14 safety and plant growth tests. I think, importantly,
15 large-scale facilities are manufacturing operations.
16 They are not just sort of throw the stuff there and hope
17 that it turns into something called humus.

18 I do not know how many of you understand what
19 the biodegradation really is, but it is the process that
20 keeps us all alive. The fact if you had a snack out
21 there at the break, that piece of cake is actually
22 sitting there in your stomach and slowly but surely
23 biodegrading and you are not sleeping. You are turning
24 out carbon dioxide and you are staying energized. I
25 think that is the simplest form of what it is. It is

1 successful composting programs throughout North America,
2 Europe and Asia.

3 I want to touch on renewable feed stocks. As
4 part of this, there was a lot of questions about
5 plant-based packaging and is plant-based packaging also
6 biodegradable? Eighty percent of consumers said that it
7 was. I think that my message as part of this is that I
8 believe the FTC needs to deal with the terms "renewable
9 content," "biobased material," "natural content," because
10 not everything that is natural is going to be
11 biodegradable.

12 Our friends at Dow, for example, are working on
13 polyethylene that is going to come from ethanol not
14 petroleum. So, in five years from now, you may have a
15 naturally based PE.

16 So, where should the Guides go? First of all,
17 I believe that biodegradable, as a term, should be split
18 out from degradable and photo-degradable because
19 biodegradable takes the material out of the environment.
20 I believe that the terms "converted to carbon dioxide,"
21 "methane water" and "biomass" should be added because
22 that is really what it is, using the appropriate ASTM
23 test methods, often landfilling, and there are test
24 methods for every disposal avenue that we have. I think
25 there should be a 12 to 18-month time horizon to get us

1 out of the game of ultimately biodegradable, because
2 ultimately we all will biodegrade.

3 **(Laughter.)**

4 MR. MOJO: I think, importantly, that the FTC
5 should once more reiterate that biodegradability in
6 landfills is not a meaningful claim. I think this would
7 take a lot of the confusion out and, frankly, it would
8 force consumers or encourage consumers to look to recycle
9 and divert materials from landfills rather than to store
10 them there.

11 I believe the compostable claim is on the mark.
12 The only thing I would urge is that they add the
13 requirements of ASTM 6400 and 6868 so that folks who are
14 in the business can feel comfortable that, in fact, if
15 they meet these specifications, they have a material that
16 will, in fact, perform satisfactorily from the FTC's
17 perspective.

18 I think also we need, as an industry, to keep
19 informing consumers that programs are not always
20 available. If you live in San Francisco, they are; if
21 you live in New York, they are not. It does not mean
22 that they are not going to be, but they need to look for
23 those things.

24 I think in the case of biobased, renewable and
25 natural content claims we are in much the same place we

1 were maybe 20 years ago with recycled content. I think
2 there needs to be direction that speaks to if you make a
3 renewable claim, are my materials renewable materials,
4 what is the minimum acceptable level? Is it 100? Is it
5 95 or higher? I do not have an answer for that one, but
6 I have the test method that can tell you specially what
7 the number is in the material and I will tell you that
8 based on the work the USDA has done, that they have
9 looked at a variety of "biobased" or "renewably-based"
10 materials and the number ranges from 2 percent to 100
11 percent.

12 So, if consumers are buying based on renewable
13 content and they are not being told what it is, it is
14 easy to see how it could be confused. And, importantly,
15 the notion of renewability and renewable content should
16 be distinct from the notion of compostability and
17 biodegradability. Renewable content is a feed stock
18 discussion. What is the product made out of?
19 Biodegradable and compostable are, in fact, end-of-life
20 scenarios.

21 Lunch. All right. Thank you very much.

22 **(Laughter.) (Applause.)**

23 MS. FRANKLE: Sorry, it is not lunchtime yet.
24 We have about 20 minutes of questions and answers. So,
25 thank you all for your very informative presentations.

1 Now, I would like to start off a question for all three
2 of you and get your feedback. Based on the changing
3 green landscape that we are all experiencing, if you
4 could make one revision or an update to the Green Guides,
5 what would it be and why? You want to start it off,
6 Kate?

7 MS. KREBS: Sure. I think for my answer it
8 will be on the recycling claim. I think the part that
9 Sara brought up and that we talk with folks about an
10 awful lot is the actual standardizing the substantial
11 majority aspect of making the claim. And there should
12 be, I think, some sort of a national survey that is done,
13 EPA can do it, someone should do it, that will survey
14 what recycling programs are in place and what they accept
15 and if your material fits that, within that survey, then
16 you are done. If you do not, then you have to do the
17 work yourself to try to make the claim.

18 But it seems like that is something that really
19 needs to be focused in on and it is what we hear the most
20 about.

21 MS. FRANKLE: Thank you. Sara.

22 MS. HARTWELL: I think it is probably obvious
23 from my presentation. I would really like to see some
24 broadening in that claim of recyclability. It still
25 obviously need to be really clear to the consumer because

1 we do not want people to think it is recyclable and it
2 ends up in the trash. That takes us back 20 years ago
3 and that would be bad. But, as an example, there is
4 something like a billion pounds, roughly, of
5 polypropylene that goes into dairy containers, margarine
6 tubs, yogurt cups, all those things. It's a great
7 material, single component. The structures do not have
8 lots of pieces to take off. It is, by and large, not
9 recovered in the United States. It makes me crazy.

10 What we need to do is be able to foster that,
11 to give municipalities both the information and
12 encouragement and I think being able to claim
13 recyclability on that package might be part of that.
14 I do not have the easy answer on what that broadened
15 claim should look like, but I think we need to take it
16 into consideration.

17 The world of packaging, of recycling and
18 recovery has changed over the last several decades.
19 Changed a lot. We are now capable of doing a lot more
20 than we used to be. We need to take advantage of that.

21 MS. FRANKLE: Steve.

22 MR. MOJO: I would like to see the definition
23 for biodegradable materials tightened up to the point
24 where it is scientifically accurate, as I showed on my
25 recommendations, it is in line with consumer thought,

1 and, frankly, it does not leave consumers with the idea
2 that if something is biodegradable it is going to somehow
3 or another magically disappear in the landfill, because I
4 think that sends a very wrong message and it does not fit
5 with what we, as an organization at the BPI or even other
6 parts -- like the EPA who are working to divert materials
7 from landfills and recycle them or compost them.

8 MS. FRANKLE: Thank you, Steve.

9 Steve, this is a question for you, and anyone
10 else, too. If consumers buy compostable bags and put
11 them out with their trash because they do not understand
12 the proper disposal, isn't that misleading?

13 MR. MOJO: I do not know whether it is
14 misleading or whether it is a lack of education. I think
15 if the manufacturer is labeling it as compostable and
16 they are giving an accurate description of looking for a
17 facility near them and the consumer does not either
18 understand it or does not act upon it, I do not know at
19 what point where you draw the line being misleading. I
20 think the manufacturer has done everything that they
21 possibly can to tell the consumer to make sure this goes
22 to the appropriate facility.

23 I think it is almost the same, I would say
24 analogous to if somebody labeled something recyclable and
25 they put it into the trash.

1 MS. FRANKLE: Okay. Any other comments?

2 Steve, I have got another question for you.

3 You have recommended that the FTC require that all
4 biodegradability and compostability claims meet ASTM
5 standards. At this point, of course, the Guides do not
6 mention these standards. In your opinion, would a safe
7 harbor for biodegradability and compostability claims
8 meeting the ASTM standards provide effective guidance?

9 MR. MOJO: Understand that ASTM publishes many

10

1 flexible enough to address the dramatic changes in the
2 composition of packaging? If not, what suggestions do
3 you have for modifying the guides to deal with this?

4 MS. HARTWELL: The first answer is, no, I do
5 not think so. And one of them is clearly on recovery.
6 The diversity of materials that we see in packaging, as
7 well as the proportion of packaging in the municipal
8 solid waste stream, has increased dramatically. And I
9 think we need to be more flexible to allow the
10 marketplace to be able to take advantage of the economic
11 value of these materials.

12 Still cautioning that, I think the consumer, at
13 this point in time, has such a wealth of well-intentioned
14 but misleading information, I would not want to suggest
15 that we mislead them any more. I think that the biggest
16 benefit we could do to address the diversity of materials
17 is to allow more room, perhaps in terms of the language
18 that goes on the package, about the ultimate
19 recoverability of that package.

20 MS. FRANKLE: Okay, thank you. Kate, this is a
21 question for you from the audience. It is about the
22 chasing arrows. I know you pointed out how important
23 they are and how consumers look for them. The chasing
24 arrows seem to be confusing to consumers as to whether
25 they mean recycled or recyclable and the Guides say if

1 MS. KREBS: Well, I think Sara has talked a bit
2 about all of the new materials that are coming into the
3 marketplace and we see it, too. We see the Guides though
4 as an incentive to businesses, especially when they are
5 clear to do good. I do not think that making them fuzzy
6 is the right message that we need to do. I think that
7 being clear on what the claim is and what it is for has
8 got to be a part of the FTC's guidance that they give,
9 that clearly the Guides have been an incentive to
10 businesses to create a package that is recyclable.

11 The private sector understands the brand value
12 of the chasing arrows. So, they have worked quite hard
13 to meet those standards and hit the right mark. I think
14 if we make them fuzzy at all, we are disincentivizing
15 those companies that have tried to be good and do good.
16 So, I think that clarity is needed.

17 The flexibility as new packages come into the
18 marketplace, there needs to be a real transparent process
19 that you go through to evaluate that package or product
20 to see what does this new thing mean and where should we
21 go with it? And, transparency, I think, is very
22 important in that process.

23 MS. FRANKLE: Thank you. Sara, I wanted to ask
24 about disclosure that is currently in our Guides. I will
25 quote it. "This product or package may not be recyclable

1 in your area." Is this disclosure helpful or a hindrance
2 to marketers trying to qualify their recyclable claims,
3 and if it is a hindrance, what suggestions do you have
4 for improving that?

5

1 incentivize people to do that as well.

2 One thing I would say is the Guide currently
3 says in a significant number of -- is it significant
4 number of communities? I have heard more interpretations
5 of the word "significant." It amuses me to no end. A
6 lot of companies that I talk to think that means 51
7 percent, just over more than half. But in conversations
8 with you, I heard 65 percent. No matter what you do, I
9 would --

10 MS. FRANKLE: So, that is a substantial
11 majority. I think you are talking about substantial
12 majority.

1 San Francisco, Seattle and Portland, Oregon and collect
2 food scraps both in institutions as well as households.

3 I think the critical piece is the follow-on
4 message which is check to see if it is collected in your
5 community.

6 MS. FRANKLE: So, in other words you are saying
7 you need more of a message than just meets ASTM
8 standards.

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1 confused consumers.

2 We have tried, on the local level, to use the
3 SPI guide to inform consumers, look for this on the
4 package and if it is this number or that number, it can
5 go into the system. And, so, I think that that has been
6 a positive. But for many of the resin types, there is
7 not collection infrastructure across the country and
8 people are confused. So, I think that they have promoted
9 a lot of confusion amongst consumers.

10 MS. HARTWELL: I would agree that many people
11 find them confusing. I frequently find them confusing
12 and frustrating. I understand what the number in the
13 middle means, but how we collect materials is most often,
14 at least with plastics, is in the shape of the converted
15 package as much as it is the resin. So, I have a PET
16 bottle, resin identification code of one and I can
17 recycle that in my bin. I have a PET clam shell that my
18 raspberries came in and I cannot recycle that. It is
19 PET. A lot is going to the same end use, it is going to
20 fiber. It has the same value. But that resin
21 identification code on the clam shell makes me want to
22 put it in my bin, and I confess I might sometimes.

23 And then I think a lot of people do not
24 understand that the number is, in fact, related to the
25 resin itself. I have had people call me up and tell me

1 that PET was resin identification code one, one in the
2 chasing symbols because it was the best one. I think
3 that they are confusing on a wide variety of aspects.

4 MS. FRANKLE: Thank you. Kate, one of your
5 recommendations is that the Green Guides should ensure
6 flexibility for future claims. What are some ways that
7 the FTC can ensure that the Guides do remain flexible for
8 future claims?

9 MS. KREBS: I think the flexibility that I was
10 referring to is a new product or package coming into the
11 marketplace and making sure that there is a good
12 transparent process to address a package that is going to
13 come into the marketplace anyway and developing the steps
14 that they need to take to try to reach the claim.

15 So, the flexibility really is I think if we
16 look at what has taking place in the last 20 years within
17 the marketplace and packaging marketplace -- and Sara's
18 slide showed that, my flexibility comment was to
19 understand that there will be even more packages coming
20 into the marketplace and making sure there is
21 transparency and flexibility in addressing them and
22 trying to see how they can or can't fit within the claims
23 framework.

24 Ten years is a long time within the
25 marketplace, so I think new materials are going to come

1 in faster than ten years. So, that is really the
2 flexibility aspect.

3 MS. FRANKLE: Any thoughts how we can just be
4 on top of things? How the FTC can be on top of this in
5 the Guides?

6 MS. KREBS: Well, I think within the guides it
7 would be good to have it very clearly stated if there is
8 a new package that comes in the marketplace, here is the
9 steps that we are going to take. We want to work with
10 you to see what this package is, to evaluate end markets,
11 just make it as clear as possible to whoever it is that
12 is innovating the package, that they know what the road
13 map is to move forward with you.

14 MS. FRANKLE: So, it sounds like the Commission
15 should do more consumer and business education. Do you
16 all see that as an area that would be useful?

17 MS. KREBS: I think from the business side,
18 yes. I think that that is very important.

19 MS. HARTWELL: And I think from the consumer
20 side it might be more challenging.

21 MR. MOJO: But I do think that you might want
22 to consider relooking the guides every five years rather
23 than every ten. And you might want to, as part of that,
24 consider outreach efforts to the business community to
25 educate them as to ways to make claims on a consistent

1 and appropriate basis.

2 MS. HARTWELL: Not only educate, but also to
3 their perspective on challenges that they are presented
4 with from the Guides because that might be where some
5 opportunities lie as well.

6 MS. FRANKLE: Excellent comments. Thank you
7 all so very much.

8 **(Applause.)**

9 MS. FRANKLE: And now it is lunchtime. We will
10 meet back here at 1:00 and have a wonderful lunch. Thank
11 you.

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1 **SESSION 3: UNPACKING THE NEW GREEN CLAIMS - SHOULD**
2 **THEY BE COVERED?**

3 MS. KOSS: Welcome back, everyone. I hope
4 everybody enjoyed their lunches. I am Laura Koss from
5 the FTC. This is Session 3, Unpacking the New Green
6 Claims - Should They Be Covered? During this session, we
7 are going to be focusing on new green claims that are not
8 currently covered by the Green Guides. We have four very
9 knowledgeable individuals to discuss this who each have
10 their own unique perspective.

11 To begin with, we have Kelly Tullier, a Vice
12 President and General Counsel for Frito Lay, Inc. who is
13 here on behalf of the Grocery Manufacturers Association.

14 Next, we will hear from Kathy Abusow, the
15 President and Chief Executive Officer of the Sustainable
16 Forestry Initiative.

17 After that, we will have Anne Johnson, the
18 Director of the Sustainable Packaging Coalition.

19 Finally, we will wrap up with Brenda Platt, who
20 is the Co-Director for the Institute for Local
21 Self-Reliance.

22 So, Kelly, if you could please come up and
23 begin.

24 MS. TULLIER: Good afternoon. I am Kelly
25 Tullier and I am the Chief Counsel for Frito Lay, but I

1 am not here today in my capacity on behalf of Frito Lay.
2 I am speaking on behalf of GMA, as well as the American
3 Bakers Association, the International Bottled Water
4 Association and the International Dairy Food Association.
5 These associations were indeed some of the original
6 supporters of the Guides as they were issued in the early
7 1990s. And the members of these organizations have found
8 the Guides to be extremely useful over the last 15 years
9 when they are working through communication and how to
10 talk to consumers about their environmental processes and
11 the benefits of their products.

12 However, in the past 15 years, we have seen a
13 lot of change. We have talked about a lot of it here
14 this morning. We have seen advances in technology and in
15 science. We have seen renewed consumer interest in this
16 area. We have seen a lot of new terms, terms like
17 sustainability. We are seeing carbon footprint offsets,
18 renewable energy certificates. I do not know about you
19 all, but working for a company who is one of the largest
20 purchasers of renewable energy certificate, I had no idea
21 what they were a year and a half ago.

22 So, with all of these developments from science
23 to terminology in our vocabulary, it presents an
24 opportunity to the FTC, an opportunity for us to improve
25 the guides to address the nuances in this area.

1 Companies are making improvements in the area
2 of environmental sustainability. They are talking about
3 those changes that they are making. For example, with
4 respect to manufacturing, Sun Chips is one of Frito Lay's
5 products. In case you have not noticed, we have some
6 right outside the door. So, when you take a break,
7 please enjoy some of the Sun Chips. We have recently
8 been talking about Sun Chips because of developments that
9 we have had at one of our plants in California. In fact,
10 Governor Schwarzenegger was with us last week to announce
11 our implementation of our new solar panel process and
12 field.

13 We turned those on last week with the help of
14 Governor Schwarzenegger and the thermal energy that is
15 coming from that field of solar collectors will provide
16 the energy that is needed to actually produce, to cook
17 Sun Chips. The energy for that product, prior to last
18 week, came from natural gas. It is those types of
19 developments that companies are talking about.

20 In addition, I mentioned RECs, renewable energy
21 certificates. Last year PepsiCo, the parent company of
22 Frito Lay, was the largest purchaser of renewable energy
23 certificates. At the last workshop, you heard a lot
24 about those. But we are talking about that as well.

25 Other companies are talking about the other

1 parts of the life cycle of products in terms of the
2 improvements that they are making. For example, Nestle's
3 Pure Life Water makes the claim on its packaging about 30
4 percent less plastic being used in that product today.
5

1 numbers in the last month, the hits at TreeHugger,
2 623,000 hits to that site. These blogs are providing a
3 lot of information. There are discussions going on about
4 a wide range of topics, from global warming to products
5 and companies and the claims that they are making. They
6 are also providing information about -- we were looking
7 at one of the sites last night. It was giving a lot of
8 information about how I can go green in my personal life,
9 in every aspect of my personal life, from gardening to
10 cleaning my house, et cetera. A lot of information
11 available to consumers on the web at this time.

12 But there is also, beyond the blogging sites,
13 the sites like the EPA Green Power Partnership site.
14 That site lists the largest purchasers of green power in
15 the United States.

16 On the internet, you are seeing a lot of
17 references to the term "sustainability." In fact, since
18 the end of 2006, the use of that term on the internet in
19 blogs specifically is up 100 percent. But the question
20 you have to ask is, what is sustainability? Well, we all
21 know this particular definition from the Brundland
22 Report, that it is meeting the needs of the present
23 without compromising the ability of future generations to
24 meet their own needs. That is a very broad definition.
25 Sustainability goes beyond environmental sustainability

1 to social issues and others.

2 This chart shows a survey of 22,000 consumers
3 and asked them which factors influence their purchasing
4 decisions. This shows that 50 percent of consumers are
5 indeed influenced, to some degree, by a factor of
6 sustainability. You will notice that the factors listed
7 here as a product's organic attributes, the packaging is
8 better for the environment, the product itself is better
9 for the environment, you also notice the manufacturer
10 treats employees and suppliers fairly all coming under
11 the umbrella of sustainability. Again, a very broad
12 concept.

13 With respect to environmental sustainability
14 and claims about that, we feel that it is appropriate for
15 companies to be able to talk about sustainability with
16 respect to particular attributes of their products so
17 long as that information is qualified.

18 Here is a good example. This is a Proctor and
19 Gamble claim on its website. It says, during the past
20 decade, we have made significant progress in the area of
21 sustainability. We are helping save energy and reduce
22 greenhouse gas emissions through products such as Tide
23 Cold Water and Ariel Cool Clean, which reduce energy
24 through cold water washing. The internet provides
25 information about the fact that you when you use Tide

1 Cold Water and you use a cold water cycle versus warm you
2 save 80 percent of the energy that you would have used
3 versus warm water washing.

4 Those types of claims about particular products
5 and their attributes are to be distinguished, though,
6 from discussions about general company philosophy on the
7 internet and on websites. Companies are talking about
8 their sustainability initiatives and their philosophy in
9 a variety of places, on the internet, in their annual
10 reports, in their corporate responsibility reports.
11 Statements such as Kellogg's is helping to minimize
12 environmental impact of our business while also being
13 socially and economically responsible. A very broad
14 term, a very broad statement about their philosophy that
15 does not need to be addressed by the Guides.

16 Another example, General Mills. The General
17 Mills Sustainability Initiative is companywide effort to
18 responsibly manage the natural resource base our business
19 it depends on. As a leading consumer packaged food
20 company, we are committed to balancing our current and
21 future resource needs with the natural resource
22 requirements of future generations.

23 Another example from Unilever. So, you can see
24 that these are very broad statements about the company
25 philosophy versus an actual product or service that they

1 are providing.

2 In summary on behalf of GMA, ABA, IBWA and
3 IDSA, we want to thank you for the opportunity to provide
4 input to the Guides. We feel like they are a very
5 important tool, a road map for our members to be able to
6 speak about the initiatives that we are engaged in.
7 Thank you.

8 **(Applause.)**

9 MS. KOSS: Thank you, Kelly. Kathy, please.

10 MS. ABUSOW: Thank you very much for having me
11 here today. I am a little bit of a labels and claims
12 junky, I must admit. I joined SFI in August of last year
13 and the Sustainable Forestry Initiative is a North
14 American standard, and you can probably tell from my
15 accent, I come from northern places. And when I was in
16 Canada quite a bit, I did sit on a CSA Environmental
17 Labeling and Claims Committee and worked a lot as a
18 consultant with the Consumers Association of Canada,
19 monitoring environmental and social claims in the
20 marketplace.

21 I am pleased to have come to SFI where they
22 already paid quite a good amount of attention to their
23 labels and claims, having consulted with FTC Guides and,
24 in Canada, Competition Bureau Guidelines. And I still
25 think that we can go further, although it is a strong,

1 is governed by fully independent, non-profit, charitable
2 501(C)(3) and the governance structure is based on equal
3 seats for environmental, social and economic interests.
4 That governing body takes the input from the public input
5 on the development of a standard on labels and claims, et
6 cetera, and will make decisions based on that input.

7 We have a definition. So, we talked about
8 sustainable and how that word can be vague and misleading
9 when it is not linked to something. We believe
10 sustainable forestry is unique. This is something that
11 governments around the world have dealt with. Coming out
12 of the Brundland Report, whole suites of criteria and
13 indicators to define sustainable forestry have been
14 developed by governments around the world and governments
15 around the world are looking at the sustainable and legal
16 procurement of certified forest products. Increasingly,
17 governments in the UK and Germany and Japan, throughout,
18

1 And it is not enough. These claims are not
2 self-declared. People do not implement the standard and
3 say, I think we did a good job, so let's make a claim.
4 There has a third party audit that is by an accredited
5 certification body that has to conduct these audits, and
6 that accreditation comes from an organization that is
7 separate from us. It is the members of the International
8 Accreditation Forum. So, in the United States, it is
9 ABAN, ANSI, and in Canada, it is the Standards Council of
10 Canada. So, those are bodies that develop the
11 accreditation programs to ensure that our certification
12 bodies conducting the audits are competent, qualified,
13 know how to do sampling, et cetera to ensure conformance
14 to our standard.

15 We have several certification bodies, I have
16 just included a few here. The full list is on our
17 website.

18 So, you have forest certification, but then how
19 do you bring it to the market? There has a separate
20 certification for that and it is known as chain of
21 custody certification. And this is where I do believe
22 there is some confusion in the marketplace and I think
23 that clarity is required. Chain of custody certification
24 is a wood flow tracking system. That is what it is. It
25 allows you to track your flows of certified content, of

1 uncertified content and also of recycled content. The
2 fact that you have a chain of custody certificate does
3 not mean you have certified content in your product.

4 This is why buyers -- I think the customers of
5 the world know this; consumers, I would dare say they do
6 not understand that. So, that is why a chain of
7 certificate is an important step. It is a link to be
8 able to track your certified content, but it is really
9 the labels that is where the rules come into play and it
10 is the label that communicates that information. So, you
11 have to look to the label to know whether you have
12 certified content or not. And, certainly, we have a
13 suite of labels for certified content and then others for
14 what is known as fiber sourcing, which I will speak to in
15 one minute.

16 So, the certified content labels use the chain
17 of custody tracking system that has been third party
18 audited and they will make a claim much like a recycled
19 content claim that X percent of the product and this
20 product line comes from a certified forest. You can see
21 the word "certified forest" out there and the SFI program

1 very, very clear icon bar right at the top is called
2 Labels and Claims to really facilitate it. And all our
3 advertising and our labels you will find on our website
4 there with a clear link to labels and claims for people
5 to seek more information.

6 The reality is, however, that only 10 percent
7 of the world's forests are certified, and we are pretty
8 much at that ratio here in the United States as well.
9 So, having a certified content label is much like a
10 recycled content label. It is an achievement for sure,
11 but what about the other 90 percent that is not
12 certified? That is where we believe SFI makes the
13 biggest difference on the ground. This is when we force
14 continual improvement and change.

15 We recognize that 60 percent of supply in the
16 United States comes from small family forest owners, and
17 many of them cannot deal with the cost or complexity of a
18 certification that I have just spoken to. Many of them
19 are managing a few acres or a few hundred acres. So, we
20 put the burden, the onus on the manufacturing facilities
21 to look at not just the certified content, but their
22 uncertified content in that supply, and we have a
23 standard on procurement objectives to say, all right, we
24 want to see logger training, we want promotion of best
25 management practices, we want land owner outreach, and

1 all of this gets audited.

2 And we have spent about 885 million in research
3 since 1995 through this. We have spent 45 million on
4 logger training. This is the grass roots of our program.
5 We have 37 implementation committees across North America
6 doing this work to reach out. This is where the real
7 effort comes into play and we have a label on that called
8 fiber sourcing. You will see in the claim, in the
9 previous labels I showed you, the last line is certified
10 forest. Here, we talk about the sourcing requirements of
11 the SFI program. And this is the procurement objective.
12 So, we are looking at the whole fiber supply and that the

1 the Canadian Standards Association, has just produced a
2 plus 14021 that is likely to be published next month. I
3 am sure there is someone in the crowd from here that can
4 give more specifics on that. But what they say is, yes,
5 sustainability is vague alone, but when it can be done by
6 certified program, it is definitely possible. And the
7 one example they give for preferred is the one that you
8 see up there, where they are recognizing forestry
9 specifically and these standards specifically as a way of
10 demonstrating the use of this term.

11 Renewable, I was asked to speak on that. I
12 will say that certainly forest resources are renewable.
13 They can be replanted, they can be regenerated naturally,
14 and our standard ensures the prompt regeneration of it.
15 All wood products are renewable and to not that allow
16 that on a work product other, I do not even understand,
17 to be honest, why I am being asked to speak about that.
18 I think that is a really important asset that needs to be
19 communicated.

20 Quickly, we have already had the recycling
21 forum. I do just want to say that our chain of custody
22 audits track the recycled content claims and, yes, from a
23 resource management perspective, recycling is important
24 and we care about it. We also think that there is
25 another aspect to resource management and that is the

1 management of the resource and the forest and that is
2 where certify comes into play.

3 Yes, this is a single aspect issue. I am a big
4 believer in life cycle assessment, but this single aspect
5 verification feeds in nicely to life cycle assessments
6 which often say wood is a preferable building material or
7 a product provided that comes from a well-managed source,
8 and we demonstrate that.

9 I will just say quickly on the consumer
10 research that Smead has just done a national survey and
11 said 77 percent of office workers said buying paper
12 office products made from trees grown and harvested in a
13 sustainable manner was important to them. There has some
14 research done by Harris that I just found out yesterday,
15 a 5,000 sample that looks at environmental behavior of
16 consumers. In the bottom right quadrant, you will see
17 less action now, more to come. And out of 20 odd choices
18 looking for certified sustainable paper and certified
19 sustainable wood was something that consumers said they
20 were going to look to do more of in the future.

21 What else did they say? That they thought
22 governments could definitely do or probably do more of.
23 Number four on the survey, but showing number two here,
24 was 85 percent thought promoting certified, sustainable
25 wood and paper was a reasonable thing to request of the

1 government. So, certainly, FTC guidelines that
2 facilitate that is something that we encourage.

3 And thank you very much. I know that I have
4 just run out of time. So, I talk quickly which serves me
5 well in this audience. Thank you.

6 **(Applause.)**

7 MS. KOSS: Thank you, Kathy. Anne.

8 MS. JOHNSON: Well, good afternoon. And I
9 think that was a great segue into what I am going to talk
10 about. My name is Anne Johnson. I am the Director of
11 the Sustainable Packaging Coalition. I am also a Program
12 Manager at a non-profit called GreenBlue.

13 I have been asked to speak today on the issue
14 of sustainability and specifically the context of
15 sustainability with packaging. So, I am going to talk
16 about our definition of sustainable packaging. As you
17 can see, in the subhead for many presentation I have
18 something that says, a systems concept in a marketplace
19 of singular claims. I think this touches on many of the
20 conflicts that we are discussing today. And I am going
21 to focus on this idea of a systems concept which is
22 really the idea that to understand a problem or to
23 understand a solution, we need to think of the parts in
24 the context of a whole.

25 When I talk about our definition, I would like

1 you to keep that in mind because that is very much what
2 our definition is, to try to encompass a very complex
3 system idea that is the package and the packaging system
4 that it flows in.

5 So, who is the Sustainable Packaging Coalition?
6 We are an industry working group with membership from
7 across the packaging supply chain. So, our members range
8 from commodity raw material producers through large
9 packaging converters, we have some printing and labeling
10 types of people, but we also have a lot of consumer
11 products goods companies, retailers, and we even have
12 recyclers. So, the membership represents very much the
13 production value chain. As I said, we also have some
14 recyclers.

15 That is really important when we talk about
16 this definition because what sustainability means is
17 quite different depending on where you are in that supply
18 chain, where your opportunities are and what challenges
19 are associated with it.

20 GreenBlue is a non-profit that focuses on
21 sustainability and sustainable product design, material
22 design, chemistry design. As a non-profit, we are
23 somewhat unusual in that we actively engage with
24 industry. Our projects tend to be collaborative efforts
25 with industry. The project that I manage is the

1 Sustainable Packaging Coalition. It is very important to
2 understand that it is a project. The coalition is not a
3 legal entity in and of itself. It is a project of a
4 non-profit.

5 So, we were founded in 2004 with nine founding
6 members. We now have grown to more than 160 member
7 companies. So, we have a very significant representation
8 within the packaging supply chain.

9 What we do as a coalition is we focus on
10 education around sustainability issues as they pertain to
11 packaging. So, that could deal with issues of how you
12 source materials, how you manufacture materials, how you
13 design packaging, manufacturer packaging, recover
14 packaging. So, beyond education, we also develop tools
15 and information resources to support efforts to improve
16 the environmental characteristics of packaging.

17 So, why do we create a definition of
18 sustainable packaging? It has really been a foundational
19 piece to the coalition and it is the first project that
20 the coalition did as a group. We did this work in 2005,
21 and I think it is really important to understand kind of
22 in contrast to the definition that Kathy was talking
23 about for sustainable forestry, this is a definition that
24 we developed as a coalition, not as standard. We did it
25 in a committee of 17. GreenBlue did a lot of drafting of

1 the original language, and then through a very exhaustive
2 committee process, we went through a comment period and
3 review period where we finalized the language of this
4 definition.

5 So, it very much represents a consensus point
6 of view of coalition members. We put it forward very
7 much as a vision, as an aspirational vision of what it
8 would mean to succeed in achieving sustainable packaging.
9 It was not ever intended to be a standard or to be
10 interpreted that way.

11 However, we are a business group. Our members
12 pay membership dues to belong to the coalition. They are
13 very much oriented around the business realities of
14 selling products out into the world, selling packaging.
15 So, what does that mean? It means that how those
16 realities 3t01.0,ater00 rgBT57.6000 370.28 0004draAorto tal 9000 370

1 understand, relative to this definition, what do their
2 current activities look like, what opportunities do they
3 have, what challenges do they have. So, that is a tool
4 for identifying priorities. Now, these areas could
5 include materials, energy, packaging or packaging
6 systems.

7 So, let's get to the definition. The first
8 criteria --es0000 0.00000 1.00000 0.0000 0.0000 cm0as4dT00 r- 1.0000

1 central to the idea of what a sustainable package would
2 be. Having some sort of emission-free type of energy
3 source. And, again, we add the concept of the full life
4 cycle here.

5 It is made from renewable or recycled source
6 materials. So, now we are down to many areas where
7 people are making marketing claims which is on the
8 materials in their package. So, we make a statement and
9 we use a term called renewable. There has been
10 discussion in this room about what does renewable mean.
11 Kathy was talking about the need to be able to use the
12 term "renewable." When we use the term "renewable," we
13 imply two issues there. One is it touches on the
14 biobased content that Steve Mojo was talking about. It
15 also has to deal with the productivity of the ecosystem
16 where that material comes from. It is not renewable in
17 the long term if that ecosystem is degraded over time and
18 cannot actually regenerate that resource. So, both those
19 concepts are implicit in our use of renewable.

20 Recycled source materials. We have heard a lot
21 of discussion on that.

22 Is manufactured using clean production
23 technologies and best practices. So, it is not just
24 where you get the materials, how you get it or what the
25 materials are, but it is how you actually manufacture

1 those materials, manufacture the package that has also an
2 impact when we talk about sustainability.

3 Is made from materials healthy in all probable
4 end-of-life scenarios. This really has to do with the
5 chemistry of your chemicals, your materials, your final
6 package. And are they appropriate and are they
7 compatible in all end-of-life scenarios.

8 Is physically designed to optimize materials
9 and energy. This is an area where there is a
10 proliferation of green marketing claims having to do with
11 either energy, carbon, energy efficiency, resource
12 efficiency. Often, especially if there are efficiency
13 claims, you are talking about being efficient compared to
14 what? In benchmarking what that comparative assertion is
15 is incredibly important. Is this a more energy efficient
16 package? Well, if it is, what is it being compared to
17 and how do you substantiate that?

18 Is effectively collected and recovered
19 biological or industrial cycles. This is the end-of-
20 life concept that we have brought into here.

21 So, we have touched on a number of parts of the
22 sort of production value chain. Here we deal with the
23 sort of waste management aspect or the end-of-life
24 scenarios.

25 So, a couple of take-aways for this, as you can

1 see, we are dealing with issues of materials,
2 manufacturing, energy, not just quantity of energy but
3 quality of energy, and we are dealing with recovery.
4 That is a very far-reaching, very comprehensive vision,
5 something that is very, very hard to capture in singular
6 claims.

7 So, again, this definition was put forward as a
8 vision, not a standard. It is very comprehensive in
9 scope and addresses the entire life cycle.

10 So, I have systems oriented. We cannot reach
11 sustainable outcomes without supply chain collaboration.
12 So, this is a really important aspect of this in
13 understanding that it does take the sum of the whole to
14 understand the relevance and the benefit of a part. No
15 one criteria in our definition is more important than
16 another. Currently, to my best knowledge, no current
17 packaging meets any or all of these criteria at this
18 time. We did not intend this definition to be used as a
19 marketing claim. So, claims of sustainable packaging, I
20 think, are quite problematic.

21 As I have alluded to, sustainable packaging is
22 composed of many criteria. So, the use of a single
23 attribute or characteristic or even multiple attributes
24 to make a claim of sustainable packaging is very
25 problematic. There are currently no accepted set of

1 environmentally-friendly car. It is somewhat of an
2 oxymoron.

3 And you just put up no package or product on
4 the market meets criteria or definition. In the work I
5 have done for sustainable plastics, we have kind of come
6 to the same conclusion. Not yet, although I am very
7 hopeful that we will have sustainable plastics on the
8 market.

9 This is just kind of a brief outline of what I
10 am going to touch on. So, I think this is a good segue
11 back from sustainable packaging back to sustainable
12 biomaterials and then back to biobased materials,
13 bioplastics which is what I am working on. I am going to
14 touch on a little bit of what the sustainable plastic
15 initiative is. As part of that, I am co-chairing a new
16 collaborative called the Sustainable Biomaterials
17 Collaborative, which is looking at sustainability issues,
18 but particular to biomaterials. And the first products
19 that we are look at are bioplastics.

20 I am going to revisit a little bit of what
21 Steve Mojo, the Biodegradable Products Institute, touched
22 on on biodegradable versus degradable, biobased versus
23 biodegradable. I think these terms are so confusing that
24 it is worth revisiting and I have just a few thoughts to
25 add to what he has already said, and I agree with most of

1 what he said by the way, which is important for you to
2 know because I represent an NGO and no corporations, but
3 he represents an industry corporation.

4 So, sustainability challenges for bioplastics,
5 there is quite a few in that list. I am going to touch
6 on those. And then labeling which, of course, is the
7 heart of what I kind of want to go through based on the
8 topic today. And then some recommendations specific to
9 the FTC Green Claims and Guidelines.

10 So, the Sustainable Plastics Initiative, I am
11 doing a variety of things as part of this project. But
12 one of them is coordinating the Sustainable Biomaterials
13 Collaborative. When we define sustainability, similar to
14 what the Sustainable Packaging Coalition is looking at,
15 we are looking at each step of the life cycle for
16 products. So, when we look at paper, paper is a
17 biomaterial, but not all paper products are created equal
18 and we know that there has some that are more
19 environmentally sound and others that perhaps aren't.
20 Some have higher recycled content, some have higher post-
21 consumer recycled content.

22 So, how do we help consumers and buyers kind of
23 navigate this maze of new and emerging bioproducts coming
24 on the market? We are looking at -- some of the groups
25 that I am coordinating with -- I put the website on here

1 because I encourage you all to go to the website. Since
2 I have limited time, I cannot go through the
3 Collaborative itself and who the members are. But we
4 have 16 organizational members and they range from
5 leading green businesses to other non-profit
6 organizations, sustainable agriculture groups. We have
7 social venture networks.

8 One of the things that we have developed is a
9 15-page guidelines for sustainable bioplastics. What
10 this covers is what do we mean. If we want a sustainable
11 bioplastic, we want bioplastics that are going from
12 sustainably harvested resources. We want them to be
13 clean and non-toxic during production and we want them to
14 be recycled or composted at the end of their life. So,
15 go to the website and download those 15-page guidelines
16 and please contact me for more information on that.

17 So, one of the things in looking at bioplastics
18 over the last two years is they are not created equal.
19 When you look at the websites, you will hear all kinds of
20 environmental claims, green, sustainable, one of my
21 favorites, returns to nature without a trace,
22 sustainable. But just because they are compostable or
23 they are made from biobased content does not mean that
24 they are "sustainable."

25 One of the things we are finding is that the

1 environment. So that should not even be an environmental
2 claim at all.

3 This is the USDA's definition of a biobased
4 product. One of the things I find interesting about this
5 is that it has to be made from renewable domestic
6 agricultural materials, which turned out to be
7 controversial because what is domestic, and as it turned
8 out, domestic is anybody that the U.S. has trading
9 relationship with.

10 **(Laughter.)**

11 MS. JOHNSON: The other thing that is
12 interesting about biobased products, this definition is
13 the ASTM standard to measure biobased content, renewable
14 content cannot distinguish whether it is domestic or not.

15 Steve Mojo mentioned that we have
16 non-biodegradable, biobased, plant-based plastics coming.
17 I know you cannot read this, but this is just articles on
18 not only what Dow is coming up with, the polyethylene
19 made from sugar cane, but also another Brazilian company,
20 Braskem. So, we will be seeing biobased plastics that
21 are not biodegradable.

22 So, biodegradability does not have anything to
23 do necessarily with biobased. In fact, some of the
24 plastics on the market that meet biodegradability
25 standards have no plant matter based content in them

1 whatsoever. They are made from fossil fuel based
2 plastics. So, that is really important to understand,
3 that biobased has nothing to do with biodegradability.

4 Now talk about confusion for the consumer. The
5 consumer hears biobased, they think biodegradability.

6 I am not going to go through the ASTM
7 standards, but here is a list of what they are. Steve
8 Mojo touched on those.

9 These are some of the sustainability challenges
10 with bioplastics that the Sustainable Biomaterials
11 Collaborative is looking at, and some of the issues is if
12 you have a corn-based PLA bottle made and it is made from
13 genetically modified corn is it sustainable?

14 So, we are developing some baseline criteria
15 for purchasing specs, and one of the baseline criteria is
16 that at least the product test have GMO offsets.

17 We want to see more composting programs
18 developed. I think Sara Hartwell from EPA mentioned
19 that, too.

20 Nanotech materials was mentioned earlier
21 somewhat in a positive light. But on the negative side,
22 there is quite a number of question marks about the
23 public health impacts of nanoparticles due to their small
24 size. And one of the things that I found is that
25 bioplastics do not have the same performance

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1 Since I am out of time, I am going to wrap up.
2 But the SBI resin identification code, which I think most
3 of us are familiar with, although you cannot see it on
4 most of the products that we have, is something that I
5 believe the FTC should revisit. It has probably
6 outserved its useful purpose now, and I know that is
7 probably a controversial position to take, but with the
8 new biopolymers coming on the market besides PLA, we have
9 PHA coming on.

10 The one through seven is just too limited and
11 the chasing arrows, even though the labels should be
12 inconspicuous so as not to influence the consumer buying
13 decision, the chasing arrow tells people when they see it
14 that it should be recyclable. So, a lot of people in the
15 recycling movement would like that replaced with a
16 circle, anything, a triangle, just not chasing arrows.

17 These are just some better things. But one
18 thing I will just mention is this is a PLA bottle. And
19 on one side of the label it has very clearly that it is a
20 corn container, it is made out of corn, Better Earth,
21 Better Juice, Better Bottle and explains it. I think
22 that is a pretty decent label. But if you look on the
23 other side, you will see the chasing arrows symbol and
24 that indicates to somebody who buys it, this looks like a
25 recyclable plastic bottle, I am going to put it in my

1 MS. TULLIER: I think our members would like to
2 see some specific examples that talk about the
3 appropriate use of the term "sustainability." So, a
4 claim, for example, could be as part of our
5 sustainability efforts we purchase Product A from local
6 farmers and transport it on energy efficient hybrid
7 vehicles, for example. It is something that would show
8 companies how to actually qualify claims with respect to
9 sustainability to put it in the proper context.

10 MS. KOSS: Thank you. Kathy.

11 MS. ABUSOW: Likewise, I think recognizing in
12 the Guide that claims generically to sustainability are
13 potentially vague and misleading, but when they are
14 defined and they have substance to them through input,
15 relevant stakeholders, et cetera, certainly they are
16 appropriate. You could use -- by way of example here is
17 some self-interest coming out, you could use an example
18 of, of course, forest certification and some of the
19 labels that are out there and what they communicate.

20 For example, a definition, a standard, a third
21 party audit to demonstrate conformance to the standard
22 much like the Competition Bureau has used for their
23 example.

24 MS. KOSS: Anne.

25 MS. JOHNSON: Not to sound repetitive. I guess

1 my recommendation would be guidance on the term
2 "sustainable" versus a sustainable product or package. I
3 think there needs to be clarity under both of those
4 terms. Obviously, both are not the same. I think part
5 of that discussion is around the concept of whether we
6 move out of a mode of singular claims or the sort of
7 voluntary, self-declared environmental claims to
8 something where some standard is developed for if we are
9 going to make a "sustainable packaging claim" or a
10 "sustainable product claim" that there is a standard and
11 methodology underneath that.

12 I think not only is it standards but it is
13 really understanding what data is appropriate, what are
14 the boundaries of that data and what are the
15 methodologies for calculating that data in support of
16 those claims.

17 MS. KOSS: Okay, thank you. Brenda.

18 MS. PLATT: I concur that the FTC guidelines
19 should add clarity on sustainability claims, but not
20 necessarily that we should be encouraging sustainability
21 claims, but exactly the opposite. We do not want
22 manufacturers to be making sustainability claims when, in
23 fact, we do not have any standards to support any
24 scientific basis to support those. At this time.

25 MS. KOSS: Okay, this is a question for both

1 Anne Johnson and for Kathy Abusow. Could you comment on
2 the use of the phrase "cradle to cradle" in conjunction
3 with claims and certification? Is this too broad to be
4 substantiated?

5 MS. JOHNSON: Well, I will start. I think
6 cradle to cradle has become part of the vernacular and is
7 used as both an adjective and as a proprietary sort of
8 concept. It is very much associated with Bill McDonald
9 and Michael Brownguard in their book, but I think the use
10 of that term is also very much in the vernacular as an
11 adjective, specifically an adjective associated with the
12 flows of materials.

13 And the idea that as opposed to using a cradle
14 to grave metaphor for landfilling something, we use a
15 cradle to cradle metaphor for the recycling of materials.

16 MS. KOSS: Go ahead, Kathy.

17 MS. ABUSOW: Certainly, we do not ourselves get
18 into cradle to cradle claims. As I mentioned earlier,
19 forest certification is unique in that it is a single
20 aspect claim that often, in the world of consumer rights
21 and knowledge, people are uncomfortable with single
22 aspect claims. We make the case that forestry is unique,
23 as I mentioned earlier recognized by governments around
24 the world.

25 Even when you came up with the ISO 14001

1 but most backyard composters do not. So, I think the
2

1 I mean, it touches on this issue of complexity,
2 of making a marketing claim on a very complex concept,
3 and I am going to sort of go a little bit on a tangent
4 here, but I think part of the conversation is we are
5 talking about translating very complex topics into
6 something that consumers can digest. It sort of begs the
7 issue of audience for the Green Guides to me as to there
8 is an audience, an industry audience for the guidance.

9 We are dealing with very complex material
10 issues, production issues, sourcing issues that industry
11 has become educated on, understands and works with every
12 day. Consumers do not deal with those issues, are not as
13 aware of those issues, and it is almost like there ought
14 to be a parallel Green Guide for consumers that explains
15 some of those terms. So, when they see a claim of
16 sustainable packaging or renewable, they can go to one
17 resource and say this is what it should mean when you see
18 it on a product.

19 MS. KOSS: Okay, this is a question for Kelly.
20 Kelly, in your presentation, you highlighted that
21 companies are using the internet and other means to
22 communicate their environmental philosophies to
23 consumers. In your opinion, do you think that companies
24 are concerned about running afoul of Green Guides when
25 they are doing that?

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1 attributes? For example, recycled content that are
2 substantiated. So, if anybody wants to jump in, this
3 will probably be our last question.

4 MS. JOHNSON: I would say the problem comes
5 when the next guy down the road defines it slightly
6 differently with a different set of attributes underneath
7 it. So, for instance, you find commonly sustainable
8 material claims that this is a sustainable package
9 because it is made from a renewable material. There is
10 an equivalency between renewable and sustainable. From
11 our perspective you are not dealing with sourcing issues.
12 Just by virtue of the fact it is biobased does not make
13 it sustainable. Or you might see a sustainability claim
14 that this is sustainable because it is energy efficient,
15 it uses recycled content. Well, that is a slightly
16 different claim. And from the point of view of
17 consumers, it is just a mixed bag. What is it?

18 So, I just think clarity under what you mean or
19 what qualifies and clarity on what sort of information
20 therefore supports it is what is needed.

21 MS. KOSS: Does anybody else want to add
22 something to that?

23 MS. PLATT: I completely agree with you, Anne.

24 MS. KOSS: Okay.

25 MS. ABUSOW: And I would just say that recycled

1 content is something as well that consumers care about,
2 they know about and, so, obviously a claim like that and
3 the ability to continue those claims are important.

4 Yes, there is more education on the realm on
5 the scope and these issues.

6 I just wanted to mention one thing as well.
7 You have been asking us what we would recommend for FTC
8 to look at. I would also put the onus on programs that
9 have labels and claims in the marketplace and make some
10 recommendations to them. Certainly, in our SFI program,
11 we have a section on public claims where we direct our
12 program participants to the Federal Trade Commission's
13 guidelines on environmental claims and product labeling
14 and also to the Competition Bureau and Canada's claims
15 and ensuring you are consistent with that. So, we have
16 our own labels, but we are still reinforcing that through
17 our own program. I think people that have programs in
18 the marketplace should ensure that.

19 MS. KOSS: Okay.

20 MS. TULLIER: One more quick comment. The
21 research shows that consumers themselves are using the
22 term "sustainable." So, the perspective is it should not
23 be an off-limit term; it should be a term that we should
24 use. Consumers are using it, but the important part is
25 that companies need to make sure that they are clearly

1 qualifying what that means in the context of the
2 advertising or the communication.

3 MS. JOHNSON: Laura, if I could just extend
4 that a bit. There is an advertisement in the packaging
5 world, and just to give you an example sort of as a
6 follow-up to that question about how sustainable is used.
7 Environmental sustainable packaging, sustainable
8 packaging for a brighter future, new environmentally-
9 friendly packaging system and environmentally sustainable
10 packaging alternative blister packs and clam shells.
11 And these are the bullets, uses minimal plastic, easier
12 to separate plastic from corrugated for recycling,
13 minimizes impact in landfills, recycled paper board
14 requires less energy to produce than recycled plastic.
15 See the light, sustainable packaging. That is all in one
16 piece.

17 MS. ABUSOW: I like the caution better, though.
18 This packaging will impact your sales even more than the
19 planet.

20 **(Laughter.)**

21 MS. JOHNSON: So, I mean, that thing is all
22 over the place on there and I think that is the root of
23 the confusion.

24 MS. KOSS: Well, thank you. I want to thank
25 all our panelists. I think we are out of time. We

1 are going to take a break and be back by 2:15. Thank
2 you.

3 (Applause.)
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1 **SESSION 4: SUBSTANTIATING GREEN PACKAGING CLAIMS -**
2 **LIFE CYCLE ANALYSIS, THIRD-PARTY CERTIFICATION,**

1 decisions.

2 I borrowed this picture from detergent
3 manufacturing, so you can ignore the detergent-specific
4 part of this. But what I wanted to show was that there
5 are actually three different types of approaches that are
6 used for LCA. The blue arrow is the cradle to gate. You
7 will find LCA analyses that are cradle to gate. The gate
8 is defined at the point where really it passes out of the
9 domain of what you are looking at.

10 So, if a retailer, for example, were looking at
11 making the best environmental decisions for the products
12 it was buying, it might or might not be concerned about
13 what happened after the consumer bought it. So, it might
14 decide that a cradle to gate type of analysis was the
15 most appropriate.

16 You hear a lot about cradle to grave which says
17 no, you really should not stop there, that you should
18 consider what happens to the rest including disposal.
19 And then when we started moving along really in
20 environmental consciousness and thinking about, well,
21 maybe we should not be sending all these things to
22 landfills, maybe we should be thinking of material
23 management was the term that came up again earlier today.

24 Then we get into a cradle to cradle analysis
25 where we are looking at the impact over really a cycle of

1 life so that this material is ready to go back to some
2 new use. So, those are all kinds of terminology that you
3 will hear.

4 The reasons for using LCA, again I think I
5 already said this, it is a systems approach. And there
6 was, again, discussion in earlier panels about both the
7 desirability of systems approaches, but also the
8 difficulty in then conveying these very complex sets of
9 information to consumers who want to know should I buy A
10 or B? So, that is one of the challenges.

11 Even before environment kind of made a comeback
12 in packaging, one of the things that we have always
13 focused on with our students is that you need to think
14 about whole systems. We aren't thinking about it, again,
15 just for the environment, we were thinking about, well,
16 if you take the toothpaste out of the carton, then you
17 have to think about do you need to change the
18 distribution package that is going to get it to the
19 retailer without it being squashed and squirting
20 toothpaste all over and ruining the whole box full of
21 toothpaste tubes? How is it going the stack on the
22 shelf? All those things.

23 So, the message here is that if you change one
24 aspect, you may have unintended consequences down the
25 road. So, if you are going to make decisions, especially

1 are surrounded by freshwater. If product A uses more
2 water than product B but emits less greenhouse gases,
3 that probably means A is better in Michigan. But if I
4 were in Atlanta last summer during the drought, that
5 might not be the choice that I should make. Not even
6 saying that I would make, but that I should make. So,
7 some of the things that make it complicated.

8 Of course the results you get depend on the
9 boundaries you draw, the assumptions, the data you use,
10 the impact categories. If you combine things into a few
11 scores instead of massive amounts of scores, you have to
12 weight things, you have to assign values. All of these
13 things affect results.

14 This is an area that we can really benefit from
15 standards to help ensure quality, to help ensure that
16 data is accurate and, most importantly, I think to
17 continue the methodology because LCA really is still an
18 emerging science, it is not all the way there.

19 I just want to give you a couple of standards
20 that exist. There is a set of ISO standards, there is a
21 set of Canadian standards. There are others. I do not
22 have all day to talk about this, so I will move along.

23 There are tools for doing LCA to try to make it
24 more feasible for companies to do. Reduce cost and
25 complexity. Also, very important, I want to stress that

1 if you are going to be relying on LCA information in a
2 public manner, you need to make this transparent. People
3 need to be able to look at what you did, what assumptions
4 you made, what data you used. They should be able to
5 replicate what you did. They might not agree with the
6 assumptions, but if you are up front about what you did
7 then you have accomplished quite a lot.

8 There are software and databases available. I
9 just mention a couple there. The main message here is if
10 you want to know about this, EPA has a wonderful listing
11 of LCA resources. So, here is the website. You can go
12 here, you can get publications, you can get other
13 websites, you can get case studies, you can get all kinds
14 of information from EPA, and I strongly recommend that
15 you do that.

16 What this means for the consumer, I firmly
17 believe that LCA is the right philosophical approach for
18 making these decisions, but you have to interpret an LCA
19 in context for it to be meaningful, and I would never
20 advocate trying to summarize LCA results on a package.
21 It is simply impossible to do in a meaningful way.

22 What can we do with it? Certifying
23 organizations can use LCA to verify claims. We can use
24 kind of generic LCAs to guide choices. But my final
25 message, when we are talking about packaging, we have to

1 promote a more sustainable economy. We do that through a
2 couple of different initiatives which I have highlighted
3 just on the slide for your information.

4 We do develop environmental leadership
5 standards, which I will describe quite a bit for you
6 today so you understand what that means, and we also do
7 auditing and certification to environmental leadership
8 standards. We also do some assistance in terms of
9 procurement and other kind of greening initiatives for
10 governments and institutions, and we also try to help
11 with education so that people understand a little more
12 about what environmentally preferable products and
13 services may be.

14 So, first of all, what is certification? We
15 have kind of assumed a bit today, I think, so I will just
16 provide a general description of what certification is.
17 Certification, from our point of view, is that there is a
18 standard that is available and it has set criteria, and
19 that means then that a product or service could then be
20 verified to meet those criteria and the standard. And
21 that is an important component that not only is there a
22 standard, but it is verifiable so that if someone then
23 were to say they are certified, it is understandable
24 what, in fact, that means.

25 The term "third party certification" was

1 brought up. So, I will just briefly go over some of the
2 main highlights about third party certification. It is
3 an independent evaluation and I had mentioned before that
4 there is a standard so there is a verification aspect
5 involved in that. So, the third party is independent and
6 takes the verification step to substantiate information
7 that is being communicated. And it is consistent because
8 there is a transparent standard, it is not a standard
9 that is unknown to others, it is a standard that is
10 available and widely accepted either through a
11 consensus-based process or through developmental,
12 like Apco0.0000sistent because

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1 just would like to say here that not only are we looking
2 at the product, but we are also looking at the package
3 when we are looking at how the life cycle is impacted for
4 that particular product.

5 So, what comes out of this is a standard and it
6 is usually specific to a product or service. An example
7 just on this slide is a cleaning product. So, we will
8 have criteria, having looked at this whole life cycle
9 for the product and package, everything about the
10 product, what is the standard? The standard will include
11 health -- actually, it begins with performance
12 requirements. The product has to function the way the
13 consumer or user is wanting it to function. So,
14 performance is a key component of these types of
15 standards.

16 Then there is health and environmental
17 requirements. So, things from what health impacts
18 ultimately could be a result of looking at this life
19 cycle, is there a lot of exposure to potentially volatile
20 components and how can we set a criteria to minimize that
21 kind of impact?

22 We are looking at environmental attributes as
23 well. So, aquatic issues, biodegradability, aquatic
24 toxicity. And we also include packaging specific
25 requirements because, oftentimes, they are a little

1 broad environmental claim about the product. So, it will
2 say specifically that it has reduced human environmental
3 toxicity and reduced volatile organic compound contact.
4 Or if it is a different product, different standard, it
5 would have different language. But it explains the
6 scientific basis for the broad claim that is being made
7 because it is looking at the whole life cycle of that
8 product and package.

9 I mentioned that our program also includes some
10 marketing evaluation. Where we have our logo, we need to
11 make the statement of basis for certification is there to
12 substantiate that broad claim, but we also look at the
13 other claims that are being made as well because we want
14 to make sure those are in compliance because it is part
15 of our program to ensure that all the messages that are
16 being conveyed about a product that is certified through
17 our program is credible. So, we do a marketing
18 evaluation as well.

19 So, some examples that would be allowed on a
20 product because they have met the standard and there is
21 specific criteria with methodology to verify that, in
22 fact, they have met those things is that we could allow
23 something like an environmentally preferable claim or a
24 specific recycled content or post consumer material
25 content claim because we go through the whole process of

1 verification, and like I had said before, there is
2 criteria that are specific to confirm that that
3 information is, in fact, the case.

4 Now, life cycle was brought up. These points
5 are similar to those that others have brought up today.
6 But I will just reiterate them briefly because when we
7 are looking at standards, we are looking at the product
8 as a whole. Some of this is because when you are looking
9 at packaged product and the package component of that
10 product, the overall life cycle impact of that package
11 itself can vary widely. It could be a significant
12 component of the impacts of the life cycle or it could be
13 barely noticeable when you are doing the life cycle.

14 But just to mention some of the sources of
15 impacts just so you are aware, it usually ends up being
16 around resource waste, looking at distribution efficiency
17 like fuels, moving like heavier containers or lighter
18 containers around and, ultimately, waste, which was
19 already highlighted this morning.

20 So, when 85600 75.3600 TD0.6000 ToeooifdeeoT w9h000 0.0000

1 single attribute claim might make most sense and be most
2 relevant and not misleading, ultimately, to a consumer.

3 So, as we said before it is important the keep
4 the system in mind. This is just an example of how a
5 leading manufacturer of consumer products has taken life
6 cycle into consideration and that they do not ever look
7 at the single component of a package in their consumer
8 packaged products, and they have taken the statement
9 that they look at the whole product. In some cases,
10 they make those hard decisions where the package itself
11 had a greater environmental impact when they made a
12 development change, but, ultimately, the product itself
13 had a much smaller footprint and total environmental
14 impact. So, these are some of the reasons to think about
15 the whole system or the life cycle aspect of a product
16 and package.

17 So, what are the roles that a package claim can
18 make? I kind of oversimplified this, but for the point
19 of discussion, there are instructive types of claims
20 where you are informing somebody that they have the
21 ability to do something with the package now, so they can
22 recycle it, they can compost it given the right
23 instruction or they can refill it themselves or send it
24 back to a facility to get it refilled. These things are
25 important to consumers because now they know what they

1 can do with the package.

2 Then there is also claims that are more about
3 market differentiation which get to be a little more gray
4 and that is some of the discussion that has been had
5 already this morning with recycled content, source
6 reduction. And, like I said, with life cycle, are these
7 things the most important things? Even for that package
8 itself and certainly that product, it is not necessarily
9 clear if that is the priority from a life cycle
10 perspective. That is where multiple attribute claims,
11 like I was talking about like through our program where
12 we have the holistic or life cycle approach may be more
13 important or more appropriate. I am not saying in all
14 cases, but, certainly, it helps because it adds some
15 relevance to that type of claim.

16 So, we have looked at the whole life cycle. We
17 understand the key impact areas of that product, but also
18 we have post consumer content. That has been verified as
19 well. So, those claims marry each other quite well,
20 ultimately.

21 I just want to bring one other point of
22 distinction here especially when you are looking at
23 market differentiation, and that is, when you are looking
24 at a packaged product, so where there is something inside
25 the package versus the fact that the product itself is a

1 package, like coffee filters or something like that,
2 those things have different considerations especially
3 when looking at market differentiation types of claims
4 where it seems more relevant when you are looking at the
5 product being the package rather than a packaged product.

6 So, relevance, ultimately, I think, is another
7 very important consideration to keep in mind from that

1 consumer level.

2 MR. DELFAUSSE: Green guidelines, okay. Good
3 afternoon. The last speaker, it is always great. Ten,
4 15 more minutes and we will be all through with this.

5 Anyway, if anybody knows me, sometimes I speak
6 for Aveda, sometimes for Origins, sometimes for Clinique
7 or Estee Lauder, a lot of times for the Sustainable
8 Packaging Coalition. I am very passionate about what I
9 do. Sometimes I just speak for myself. But one way or
10 the other, I am always speaking for the environment.

11 Innovation in thinking. I think this is
12 something maybe everybody ought to think about, maybe FTC
13 as you look at how you put your Guides forward. We got
14 the old concept of reduce, reuse, recycle. I am in the
15 cosmetic business -- and with cradle to cradle concepts
16 and zero waste concepts, we are talking more and more
17 about design, design for the environment, worry about
18 what do you put into your packaging, what are the
19 materials, how do you design it for reclaiming and end of
20 life. So, design your package properly, use it, reuse it
21 and then certainly recover it at end of life. We will
22 talk about recovery later on a little bit.

23 The Estee Lauder Companies, Inc. realized that
24 after a product is used, their packaging still remains.
25 Our environmental packaging goal is to find ways to

1 minimize the environmental impact of our packaging and
2 make it available to be reused as a resource after our
3 product has been consumed. Very much a cradle to cradle
4 concept and it is a goal we are setting for ourselves.
5 In the cosmetic industry, it is very challenging.

6 I was asked to talk today about life cycle
7 analysis, and when we first discussed this on the phone,
8 I said, I do not know if we really do life cycle
9 analysis. If you think about life cycle analysis, as
10 Susan said, it is very complex and difficult. It is also
11 very expensive. If you do a full life cycle analysis, it
12 can cost from 30 to \$60,000. At Estee Lauder, we have
13 thousands of different products, tens of thousands of
14 different component parts, hundreds of different
15 materials we use. So, how could we do that on a day-to-
16 day basis? Yet, we still want to make sure we minimize
17 our impact on the environment in what we do.

18 I thought about it a little bit. When I
19 started with Aveda, we started using a material use kit,
20 material guidelines and kits. And what we did was we put
21 together hierarchies on plastics from known information
22 about impact on the environment and we have polyethylene
23 at the top and PVC as a you do not use it kind of thing.
24 But there was a hierarchy that could give us some
25 guidelines on what we did.

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1 meaning whether there were carcinogens or toxins involved
2 and greenhouse gases. This was really built as a system
3 to look at these materials and processes through their
4 whole life from the cradle to the end of disposal.

5 These metrics are changing as SPC looks at this
6 and will be much stronger as they are supported by up-to-
7 date data and benchmarks and data and metrics.

8 But what we learned by using metrics was that
9 you could, as a company, pick any one of those as being
10 more important than the other. You got ratings over the
11 different categories or metrics and you might decide that
12 greenhouse gas is really important to you as a company
13 and you can take that rating and use that as driving your
14 decisions.

15 The other thing that is really kind of becomes
16 almost intuitive is making decisions because the weight
17 of the package you use really drives so many of those
18 metrics. If you did a comparison between a plastic bag
19 and a paper bag, the plastic way, way wins over the paper
20 bag just because of weight. You think about weight has
21 to do with resource consumption, end of life disposal
22 considerations, energy use, therefore greenhouse gases.
23 So, all those kind of things come into play.

24 But you may, as a company, decide, well, we
25 want to use renewable resources, so we do not like

1 plastic bags or we just do not like seeing plastic bags
2 all over the place, in the oceans and the rivers. So,
3 that could be your decision. So, those are the kinds of
4 things that we have been doing.

5 Claims substantiation is the other thing I was
6 asked to talk about. I did not realize it, but I guess
7 there are third party certifications and there is

1 what is the process to actually mold this and capture the
2 material and what is your process to make sure that we
3 are using that material?

4 So, in a lot of ways, we are sending
5 specifications up through our suppliers through knowledge
6 we have gained by actually going out to the industry and
7 making sure what they are doing, and we really have to do
8 that to self-certify.

9 Know the process, as I said. We specify, is it
10 post consumer content, is it pre consumer or industrial
11 scrap? And, again, verify. We always try to follow the
12 FTC guidelines.

13 Typical claims, 80 percent post consumer high-
14 density polyethylene or a minimum 95 percent post
15 consumer high-density polyethylene. By the way we could
16 not get the other 5 percent of something because the
17 color carrier was virgin material. We try to be right
18 aboveboard and tell people what we are doing.

19 Sustainable forestry, SFC, SFI, very impl, SFnry, SFC, SFI

1 specifications and make sure your suppliers are
2 certified. We use SFC materials in our pencils. We have
3 a policy at Estee Lauder on wood fiber.

4 Now, I want to talk about recovery at end of
5 life, because I think this is a very important point. We
6 are a global company, we do not just do business in the
7 United States, we are all over the world. In the EU, we
8 have a recovery standard we have to meet. That means at
9 end of life all of our packaging has to be recovered by
10 recycling, by composting or through energy. This is ways
11 to positive energy.

12 One of the things that we always talk about
13 when we talk about guidelines is is it recyclable, is it
14 compostable. Well, how about we start talking about is
15 it recoverable and how is it recoverable. And we need
16 to think about how we talk to our consumers, how we talk
17 to our manufacturers about recovery.

18 Recyclability. Again, you got the guidelines.
19 Knowledge of recycling percent. The guidelines right now
20 -- and Sara talked to this this morning I guess it was.
21 We have pretty good information from year to year about
22 how much gets recycled in corrugated, on aluminum,
23 whatever. But the guideline says that you cannot make a
24 claim of recyclability unless the majority of consumers
25 have access to the recyclability of that product.

1 Today, we talk about recycling is limited.
2 Please contact your local recycling program. Or we can
3 say please recycle if we know it is something like PET or
4 aluminum cans. But I would like to suggest -- and the
5 SPC is also working on a labeling concept about what do
6 we tell our consumers. I would like to tell you it is
7 high-density polyethylene plastic resin recovered through
8 recycling and energy because those are the ways it can be
9 recycled. I am talking global now, okay?. Recycle is a
10 number two, and if not available in your community, ask
11 why or why not.

12 **(Laughter.)**

13 MR. DELFAUSSE: So, those are the kind of
14 things that I would like to open up the thinking about.

15 Compostability, I only talk about
16 compostability. Again, we talk about end of life
17 scenarios. How you are going to recover your materials
18 that are compostable? There are ways of certifying.
19 ASTM standards, BPI can get out there and do their
20 measurements. But, in the end, people are talking about
21 biodegradable, degradable. I think we should get away
22 from all of those terms on degradable and biodegradable.

23 Compostability is the only standard to which we
24 are able to reclaim those materials at end of life and
25 have a useful nutrition go back to earth. So, that is

1 what I will say on that one.

2 Manufacturing using renewable energy. I do not

3

1 one and throw it open to the entire panel. Should the
2 Guides be revised to include guidance regarding life
3 cycle or cradle to cradle claims? If so, what guidance
4 should be included? Is anyone ready for that?

5 MR. DELFAUSSE: Didn't the last panel answer
6 that? No, I am sorry.

7 **(Laughter.)**

1 have you seen anyone trying to come up with a label that
2 actually models the life cycle analysis?

3 PROFESSOR SELKE: I think we saw some examples
4 even earlier today. Yes, they are companies that are
5 trying to claim attributes they really should not, they
6 really have no business trying to claim.

7 MS. McCORMICK: This is probably self-evident
8 by now, but in your view, do consumers of goods that are
9 packaged for household or personal use understand the
10 notion of life cycle analysis? And just to string it out
11 a little further, do you foresee a time when they will?

12 PROFESSOR SELKE: No, they do not understand
13 it. I think most of the industry does not understand it
14 yet. I do not think academics understand it yet either.
15 Will we get there? I always like to be optimistic about
16 progress, but it is going to be a while.

17 MS. McCORMICK: Thanks. Let me give this one
18 from the audience. This is a question for the panel.
19 Given the complexity of making multi-attribute claims
20 when there is no certification or standard, is there a
21 role for a standardized label, like a nutrition label, to
22 convey basic environmental information about a product or
23 package, e.g., energy, water, GHG, waste?

24 MS. BALDWIN: I think the concept itself still
25 requires an accepted definition, which kind of leads to a

1 standard itself. Having been from the food industry and
2 dealt with nutrition fact panels, there is a standard and
3 there is a clear definition. We had this discussion a
4 couple of weeks ago. There is a comparison to a
5 standard, so that it ultimately becomes relevant to DV,
6 daily value, as a percentage of a standard that is well-
7 accepted. So, it adds relevance to people. Three
8 percent of your DV, that is important to you. Less than
9 1 percent of your DV is not.

10 Ultimately, I think those types of labels still
11 require a definition in standard, so there is work, I
12 think, to make those relevant. I think that is a place
13 that we are moving, though, ultimately.

14 MR. DELFAUSSE: If I could answer that real
15 quickly. As I said, at SPC, we are working on a label
16 concept. I think it is important to have to the industry
17 some type of nutritional label that will be globally
18 acceptable so you can talk about recovery standards,
19 you can talk -- maybe it is an icon because you do not
20 want -- one our issues is language. We have enough
21 written information already on our packaging. I would be
22 the last one to want to say that I want a law that says
23 you have to have a nutritional label, but I would like to
24 offer something to those people who would like to use it
25 and recommend it. But I think absolutely it is something

1 we ought to do.

2 PROFESSOR SELKE: I guess I am going to be the
3 devil's advocate. I think consumers are already
4 overwhelmed with the amount of information on packages.
5 From a sheer practical standpoint, we minimize
6 environmental impact, among other ways, by minimizing the
7 size of the packages including the labels. The more we
8 try to put on the package, the less we can do that
9 minimization. So, I could see this becoming
10 self-defeating. We have to say so much, we got to make
11 the package so big, or otherwise people cannot read it,
12 that we have actually hurt more than we have helped.

13 MS. McCORMICK: John, you brought up the global
14 aspects of your operations. So, just turning to that
15 issue for a moment, from your experience and in your
16 opinion, is there anything in the Green Guides that might
17 be impeding or hindering companies with respect to their
18 international operations and calls for an update or a
19 revision?

20 MR. DELFAUSSE: I do not really think so. I am
21 thinking that from a global standpoint our biggest issue,
22 again, is languages and multiple languages. But we have
23 different requirements all around the world. The
24 opportunity is really to globalize some of those
25 requirements, if at all possible. I mean, it is hard

1 MS. BALDWIN: I would just add something that
2 was said earlier, and that was that there is not a lot of
3 knowledge of the FTC Green Guides and I think that would
4 be a step in the right direction. There were suggestions
5 that there are ways that all of us could help in that
6 process. Certainly, we would like to assist in that
7 fashion because that creates more commonality,
8 ultimately, in how those types of things are communicated
9 ultimately.

10 MS. McCORMICK: Cheryl, do you think that the
11 Guide's current approach to third party certification is
12 working?

13 MS. BALDWIN: I will just make the
14 characterization first that it depends on the
15 organization because, ultimately, the third party rests
16 on its reputation. Our organization is a non-profit,
17 independent organization, so we rely heavily on
18 practicing in the most responsible manner. So, we do
19 look at Green Guides carefully and follow those and
20 ensure that anybody who we evaluate also follows this
21 carefully. So, we feel that we have found them to be a
22 useful tool in checking on marketing claims and also
23 being clear about how a logo like ours is communicated
24 clearly as well.

25 There are other programs that maybe do not take

1 cycle assessment to include the impact phase according to
2 ISO 14040/14044 with requirements for comparison?

3 PROFESSOR SELKE: There is a tendency to use
4 life cycle analysis, life cycle assessment
5 interchangeably. That is certainly what I do because I
6 can't remember who likes which word.

7 MS. McCORMICK: John, you mentioned that in the
8 course of substantiating claims, you use third party
9 certification and also some self-certification. I just
10 wonder if you could talk a little about some of the
11 pitfalls to be avoided either when you are going for the
12

1 for them than what they are already doing. I think you
2 have to make sure when you go with third party that you
3 understand what their process is, what their science is
4 and what they are representing really and try to get an
5 idea because it is really going to impact your consumer
6 and your consumer's impression and industry impression on
7 your company and product.

8 MS. McCORMICK: And, again, John, for you.
9 From your experience on a day-to-day basis attempting to
10 apply the Green Guides, is there any place where you have
11 a recurring difficulty, for example, when you are dealing
12 with your suppliers in the area of a new claim or a place
13 where an additional example in the Guides might be
14 helpful?

15 MR. DELFAUSSE: I think we try not to make
16 claims if we do not have to. I think we try to do the
17 right thing and, hopefully, that will be appreciated.
18 But when we do make claims, I think the Guides are fairly
19 flexible. I mean, I think there are new things that are
20 needed. We need to have some kind of guides on how we
21 talk about renewable energy. I think I said that before.
22 And composting, I think we ought to relook at the way we
23 talk about that as well. I cannot think of anything else
24 right now.

25 MS. McCORMICK: This question goes to seals and

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1 educate consumers to what is important, what is a
2 credible program. Urvashi is not here, but Consumers
3 Union has helped define what a credible program is in
4 helping educate consumers what those types of attributes
5 are about a credible program. More and more you see
6 media covering these types of things.

7 So, what are the credible programs? They are
8 really consistently the same ones that they talk about.
9 So, I think some of that messaging is becoming more clear
10 ultimately to the consumer.

11 MS. MCCORMICK: This one I think is for John
12 and Cheryl. Should recyclable and compostable claims be
13 pulled out from under the umbrella of environmental
14 marketing claims and looked at solely as instruction for
15 consumers and how to participate in a system?

16 MR. DELFAUSSE: Yay. I totally agree.

17 **(Laughter.)**

18 MR. DELFAUSSE: I did not write that question.
19 No, sir, I did not. I really believe, it is not about --
20 and I actually put this in there someplace. I look at
21 the Green Guidelines right now, it is about the paranoia
22 we all have about marketers and salespeople trying to
23 make claims and maybe that is where we came from. I
24 think the whole concept of sustainability in the
25 environment has caught legs with everybody and I think

1 what we need to do is concentrate more on educating the
2 consumer and talking about what end of life scenarios
3 they have available to them, maybe enable them to become
4 active in their local communities to build an
5 infrastructure, get industry to build an infrastructure.

6 But I think we need to look at it as educating
7 consumers and as information and knowledge more than
8 claims.

9 PROFESSOR SELKE: Can I weigh in on that?

10 MS. McCORMICK: Please, please do.

11 PROFESSOR SELKE: I see the attractiveness and
12 the advantage of educating consumers to push for more
13 composting operations, more opportunities for recycling.
14 But the other side of that is that we know that consumers
15 do, very often, interpret these claims as meaning that
16 these things already exist.

17 So, I will give you an example. A couple of
18 weeks ago I was talking to a representative from a
19 company that wanted to take a film-based structure that
20 was a multi-layer plastic containing very different types
21 of resin and label it, market it as number seven
22 recyclable. Now, there are no opportunities hardly
23 anywhere to recycle those. I do not think that is
24 educating consumers. I think that is deceiving
25 consumers. It is a fine line, but there is a line.

1 standard and you kind of have to go to the website and
2 figure out that is not the case.

3 So, yes, I mean, those things are out there. I
4 think they have a tendency to be more of the
5 self-certification end, which is why the third party
6 discussion is brought up oftentimes like here because it
7 adds more of that credibility factor to it.

8 How it could fit into the Green Guides, I am
9 not certain. I think, if needed, there could be some
10 element of third party requirement and not necessarily a
11 definition of what that means. I mean, some level of
12 definition, but certainly that some level of
13 self-certification to these broad level extremes could
14 be limited or more clearly defined like we had stated
15 earlier.

16 MR. DELFAUSSE: I was just thinking about that
17 kind of claim. I mean, it sounds like some of these
18 claims that are fictitious or whatever labels, they are
19 not -- and I am coming back to education versus marketing
20 kind of concept. It is obviously out there just as a
21 green kind of marketing concept that is going to show.
22 If somebody is required to actually educate somebody by
23 what they mean by that, it would be really great. I
24 bought some eg0000 1.00000 0.030.000 0.4000.0000 -u 00000 0.0000 0.0

1 **(Laughter.)**

2 MS. McCORMICK: I think, with that, that is the
3 end of our time and we will be back at 3:25 p.m. for the
4 round table. Thank you very much to the panelists.

5 **(Applause.)**

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1 **SESSION 5: ROUNDTABLE ON CONSUMER PROTECTION CHALLENGES**
2 **AND THE NEED FOR FTC GUIDANCE**

3 MR. KOHM: We promised when we started the day
4 that we would end each panel on time and we would end
5 each panel on time and that we would have plenty of time
6 for questions and that the last panelist would have just
7 as much time as the first and, so far, we have been able
8 to keep our promise. So, we will begin the last panel of
9 the day.

10 This panel will operate a little differently.
11 It is an opportunity to change things up a little bit.
12 Rather than have speakers, we have a distinguished panel
13 that is going to answer questions for us. There is more
14 opportunity in this panel to ask questions and the same
15 process will apply for sending the cards forward.
16 Hopefully, you will have plenty of good questions for our
17 panelists.

18 The panel is comprised of Victor Bell from the
19 Environmental Packaging International; Scot Case, who you
20 heard about earlier, from TerraChoice; Joseph Cattaneo
21 from Glass Packaging Institute; Keith Christman from
22 American Chemistry Council; Snehal Desai from
23 NatureWorks; David Duncan from Unilever; Jim Hanna from
24 Starbucks; and Cassie Phillips from Weyerhaeuser.

25 So, I would like to begin today with the

1 question that we have addressed to almost all our
2 panelists. And also this panel will operate a little
3 differently. So, if you would like to answer the
4 question, and hopefully you will, please just turn your
5 tent card with your name in front of you up sideways and
6 keep it in front and we will try and take responses in
7 the order in which people have raised their tent cards.

8 So, to begin, a question that we have had for
9 almost everybody. If you jump the gun, you go to the
10 back of the line.

11 **(Laughter.)**

12 MR. KOHM: But if you had jumped the gun
13 earlier, we would have taken away snacks, but it is a
14 little late for that.

15 So, the first question is if you could suggest
16 one revision to the Green Guides to address green
17 packaging claims either adding new guidance, taking away
18 guidance that is there or revising something that we
19 have, what would that be? And you will get a chance to
20 do a second if you want, but if we can stick to one to
21 begin with.

22 Victor?

23 MR. BELL: There is a lot of issues that could
24 be corrected, but one of the ones that I was concerned
25 with, and I am not sure it really is one thing to change

1 the guides, it is one way to implement the guides. And
2 that is I really think there has been a failure to
3 enforce the Guides. And that failure to enforce the
4 Guides has led to a huge amount of markings,
5 inappropriate labeling, all over for the last ten years.
6 And, therefore, we have gone so far out of the gate with
7 recycling symbols and recyclable symbols, that it is so
8 prevalent that even companies, very high end Fortune 100
9 companies who we deal with every day, come up to us and
10 their marketing people, my competition uses this guy, why
11 are you telling me I cannot use this label?

12 And we have gone so far in the other direction
13 that we sort of let this out of the box. I think that
14 there has to be some form of putting this genie back in
15 the box, and maybe that is not how to change the Guides
16 but maybe enforcing the Guides.

17 MR. KOHM: Thank you. Joe?

18 MR. CATTANEO: Basically, from our point of
19 view, it is the updating to clarify the recycling logos
20 and the meaning of them, the messaging on the packaging.

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1 provide the substantiation to consumers, only to have it.
2 Given that fact, how would you resolve that problem?

3 MR. CASE: I think for me the issue is with
4 consumers being unable to gain access to that proof, they
5 are less likely to believe the information. So, if the
6 intent of the law is to actually facilitate marketplace
7 environmentalism, allowing the power of consumers to
8 actually drive environmental innovation. Consumers need
9 information to verify the accuracy of the claims being
10 made.

11 MR. KOHM: Is there any way to verify that
12 accuracy outside of requiring companies to put
13 substantiation on their websites?

14 MR. CASE: Independent third party
15 certification is an option. There could be other sorts
16 of audit and certification programs, which exist
17 worldwide that does it, and as a third option is posting
18 the information on their websites.

19 MR. KOHM: Remind me, we are going to come back
20 to consumer education in the end and that might be a good
21 topic for consumer ed. David?

22 MR. DUNCAN: My points are going to be very
23 much -- I was really shocked about the lack or the
24 claimed lack of awareness about the guidelines. I think
25 we need to think very much about raising awareness. I

1 support the enforcement point and about how you really
2 make this stick and make sure people follow it.

3 But, finally, I think the other way I think the
4 most attention is needed is to get away from the general
5 environmental claims and make them more specific and
6 maybe have some points about things, you cannot use these
7 claims rather than -- but make the general ones much more
8 specific.

9 MR. KOHM: Thank you. Let's talk for a second
10 about general environmental claims. That has come up
11 quite a few times today. Can they be substantiated?
12 Should marketers be making general environmental claims?
13 Are there situations in which it is appropriate to do so?

14 And then I want to follow up with a question
15 about making specific claims that might be interpreted
16 more broadly.

17 But, first, does anyone have further opinions
18 about the making general claims generally and whether
19 marketers should be doing that at all? Victor?

20 MR. BELL: Presently, your Guides have a
21 section for general attributes, like environmentally
22 friendly, this is environmentally preferable. And you
23 have general interpretive guides in the claims. I think
24 people do not understand that sustainable, cradle to
25 cradle or any of those things are the same thing as those

1 general claims that are in the Guides already. I think
2 it has not specified and brought that those things are
3 actually the same exact, putting the picture of the earth
4 on the cover and all that, which you do address already
5 in the Guides. But I think you need to broaden and give
6 more examples of ways that sustainable, cradle to cradle
7 are actually words that would also be in that, that have
8 to be substantiated.

9 MR. KOHM: Let me ask both you and other
10 panelists, what are the new general environmental claims
11

1 metric that we are going to be measured by eventually and
2 translating recyclability and translating compostability
3 and translating all these other factors into carbon, I
4 think will help us have a common language in the future
5 and it is the direction we are going anyway.

6 That was a comment I was going to make on a
7 previous question was I would like to see that as a
8 factor within the Guide as addressing carbon. I know we
9 talked about that the last session really, but carbon
10 will help you get ahead of the game and not have to be
11 reactionary like I think we are with the current
12 standards where we are reacting to certain words. This
13 will really help us get ahead of that game and create
14 some standards and some guidelines out there around
15 carbon and around the footprinting of carbon and around
16 carbon claims.

17 MR. KOHM: Well, we did do a whole workshop on
18 carbon offsets that, as law professors are fond of
19 saying, this whole process is a bit of a seamless web.
20 So, let's continue on the strand for a little further.
21 What kind of guidance on carbon would you suggest that we
22 give?

23 MR. HANNA: It is difficult right now in the
24 U.S. I mean, it is the wild west in the United States
25 right now as far as carbon goes. As far as defining

1 boundaries around words, I think that the concept of
2 carbon neutrality and zero carbon are already living and
3 dying in the U.S. I think some of those concepts have
4 already run their course in the U.S. because of the
5 cynicism associated with them due to the lack of
6 regulation and due to the lack of any guidelines around
7 them.

8 So, whatever the next term is going to be and
9 whatever the next concept is going to be is where FTC
10 should really focus and help develop some concepts and
11 guides as opposed to looking at neutrality as one of
12 those factors.

13 Honestly, I mean, you know we as marketers and
14 we as consumer companies, we are the ones creating these
15 words and defining them. For FTC to continue to really
16 try to put boundaries and guidelines around words is
17 really a reactionary way of doing things. I would rather
18 you put some stakes in the ground and develop some
19 general concepts that we can look at and deal with
20 because Starbucks, we are great at inventing brand new
21 words and if you put some guidelines around frappuccino,
22 venti, all those fun things.

23 But if you put these guidelines around existing
24 words, we are just going to create a new set of words and
25 a new lexicon out there you have to react to again in

1 five or ten years.

2 MR. KOHM: That is what I was wondering whether
3 there was venti carbon scrap from the atmosphere.

4 MR. HANNA: Great concept.

5 **(Laughter.)**

6 MR. KOHM: This is an important concept for
7 those of you who are not familiar with FTC law and
8 important for those who are commenting on our guidelines
9 is that we always start with a claim and then what we
10 look at, we do not define what claims mean. Sometimes
11 industry is very happy with that and sometimes they are
12 not very happy with it. But what we look to is the net
13 impression to a reasonable consumer. That can change
14 over time and that is not necessarily what the ASTM
15 standard is or any other particular definition.

16 So, we are looking at what you actually
17 communicate and that is what we will be looking at over
18 time, and that is why some of the research that people
19 have done is particularly useful to us.

20 I heard this morning Michelle Harvey talking
21 about trade-offs and I know this came from Scot's six
22 sins of green washing. Does anyone want to comment on
23 what if I say that my package has 25 percent or any
24 percentage post consumer recycled material, but I used a
25 lot of chemicals or have done something environmentally

1 unfriendly in creating the package. Is that something
2 that you think the Guides ought to address? And if so,
3 how?

4 MR. BELL: A standalone claim like
5 recyclability or recycled content, even though you might
6 put 25 percent recycled content in, but raise the weight
7 by 50 percent and, therefore, actually have more virgin
8 material than you had before. The problem is the
9 recycled content claim is one of the better recognized
10 claims out there and it actually does a factual amount.
11 So, I actually can understand why you do it.

12 People are going to have to be educated and
13 understand that that is the only thing we are looking at,
14 we are looking at size, we are looking at issues. I
15 would think that your recycled content claim is one of
16 the better and most consistent claims you have out there.

17 MR. KOHM: What I am really trying to get at,
18 and then I will call on Scot whether he wants to or not,
19 is this idea of hidden trade-offs. If I make a claim
20 that is factually accurate, but there is a hidden
21 trade-off, is that something that the Guides ought to say
22 is permissible? Is that something that the Guides should
23 be silent on? Is it something the Guides should say that
24 marketers should not do? Scot? Then, David, we will go
25 to you.

1 MR. CASE: Very good. So, obviously, I think
2 the sin of the hidden trade-off is a pretty significant
3 factor, but it is not quite as simple as saying are they
4 only making a single attribute claim? It would be nice
5 if it were that easy because then there would be perfect
6 clarity for all of us. I think when you are faced with a
7 single attribute claim, such as recycled content, you
8 really have to look at the context in which that piece of
9 information is being conveyed to the consumer.

10 What we found and what we considered sinful
11 were people that were making a single attribute claim
12 like 10 percent recycled content and presenting the
13 product as if it was God's gift to the green world, that
14 this was the greenest product that would ever be
15 possible. And, so, in that context, it is almost
16 laughable.

17 And then the other thing that we are finding is
18 that a lot of folks are kind of doing kind of a bait and
19 switch type thing, taking advantage of consumer
20 misinformation. So, we have actually encountered on
21 trade shows, I love going to trade shows, where you will
22 ask a sales rep, hey, I am looking for an environmentally
23 preferable product and they will say, oh, well, what does
24 that mean? You give a couple of examples, well, maybe
25 recycled content and processed chlorine-free. Oh, well,

1 ours is recyclable as if that is somehow wonderful.

2 So, I think the sin of the hidden trade-off is
3 very real, but it would be very challenging to quantify
4 in the Guides other than raising general awareness that
5 any environmental claim needs to be examined in a broader
6 context. And I think just making people aware of it is a
7 step in the right direction.

8 MR. KOHM: David.

9 MR. DUNCAN: I think there will be two kinds of
10 trade-offs. There will be those which like you mentioned
11 the example where the trade-off will be within packaging
12 and you might have traded one thing and traded off
13 something else. But I think the tensions are even
14 greater on other issues that the world is currently
15 facing. So, I think this point Jim made about carbon,
16 now, you could increase your recycling and actually
17 reduce your carbon or you could increase it. And I
18 think, again, you might increase the amount of water you
19 use, again, people are increasing concern across the
20 globe about water.

21 So, I think the other tensions will actually in
22 the future become more of an issue than just a specific
23 one, the trade-offs within packaging material.

24 MR. BELL: Can I add one thing to that?

25 MR. KOHM: In one second you can, but I believe

1 I missed Snehal. Your tent was up before.

2 MR. DESAI: Yeah, and it is back actually on

1 way. It just says, these are the ways that you would do
2 it and how you would go down that path. That is an idea.

3 MR. KOHM: And anybody who would like to
4 comment on that, that would be very welcome. Victor?

5 MR. BELL: I am going to go back to your
6 question on single attributes and recycled content. What
7 your Guides presently do now is if you make a claim
8 environmental packaging and then you put underneath it
9 because it is 25 percent recycled content, that is
10 acceptable in the guide because you have qualified why
11 you consider it environmental packaging. You may want to
12 now decouple in the Guides right now, that you cannot
13 claim something just because it meets one criteria, that
14 it be environment or like this is environmental
15 sustainable packaging, packaging made with recyclable
16 plastic. Yeah, right, okay. PET.

17 You are linking those guides to it, so I think
18 you have to de-link. Before you said you can make a
19 claim if you substantiate why it is and people would
20 substantiate one element to that. That would legally fit
21 under your present guides. So, that de-linking may be a
22 way of handling that.

23 MR. KOHM: Cassie.

24 MS. PHILLIPS: I want to segue from the carbon
25 question back to what I wanted to say in response to the

1 first question which is what change would I make in the
2 standards for the Guides. The carbon issue is one where,
3 obviously, things are evolving fast. But I think it is
4 an area in which people are more and more likely to be
5 referencing third party labels. There already are a lot
6 and there will be even more people out there who will
7 say, we will certify you to be carbon neutral or
8 whatever.

9 And I think the one area that really needs work
10 on the Guides is to add a section about the role of third
11 party labels. I am embarrassed to think it is needed,
12 but it ought to just say that third party labels,
13 certifications are subject to the Green Guides and that
14 they are have to be substantiated or be able to be
15 substantiated.

16 Then someone had said, in the written comments,
17 pulling in the rules about endorsements and how
18 endorsements are made and things about disclosures about
19 financial interests and things like that. It should not
20 be necessary because it is already the law, but this area
21 is seeing so much growth and I do not think people mean
22 to do things wrong, but there is just so many people in
23 it that are not experienced in retail sales in this area.
24 And it includes environmental groups because there are
25 environmental groups that are making endorsements and

1 linking their brands, their labels to private labels
2 that I think are not done in ways that comply with
3 guidelines.

4 So, there are just a few things that could be
5 added to help to give people almost more of a checklist
6 of things you have to think about if you are going to go

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1 is useful information to the consumer because if they
2 understand that this is really only addressing the raw
3 material aspect, they will then recognize it is leaving
4 out all of these other aspects. So, that seems to me a
5 fairly straightforward, easy way of explaining it to the
6 consumer and, again, you can do that in a standardized
7 format on various company websites.

8 MR. KOHM: Okay. I would like to turn for a
9 second to advice to consumers, but before I do that, just
10 because this makes this both more informative and
11 considerably more interesting, does anyone disagree
12 strongly with any of their fellow panelists? And if you
13 want to pick somebody who is farther down the line, feel
14 free.

15 One of the things that we are looking for today
16 and, obviously, we focused quite a bit on, and we will
17 focus some more, is what specific guidance should the
18 Guides give. But there is information that we can obtain
19 through processes like this that is equally important,
20 that does not go directly to the Guides. The Guides
21 largely are a body of work that helps helps marketers
22 and, as Chairman Kovacic said this morning, the Guides
23 are not for those people who are out there trying to
24 deceive consumers. That is what law enforcement needs to
25 do. We do not think we are going to magically issue

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1 So, for today, looking at today and the next
2 couple of years, perhaps FTC's role is not necessarily in
3 that concept and your role should really be to verify the
4 verifiers or your role should be to establish -- I know
5 we are coming back to the word "standard" over and over
6 and over again. But perhaps that should be your role is
7 to establish that standard for those third parties and
8 establish that standard for marketers and not necessarily
9 be the education arm yourself.

10 MR. KOHM: Well, there are different kinds of
11 education. We see ourselves very much as educators. We
12 have a whole division that does nothing but. But the
13 kind of education I am talking about is what are the
14 things that we tell consumers to look out for, what kind
15 of substantiation do we say that they might do on their
16 own to protect themselves? What do we inform them about
17 what claims generally mean or what kinds of claims to
18 look out for? David or Cassie?

19 MS. PHILLIPS: Just one comment, which is it
20 needs to be relative, of course, to the potential harm to
21 consumers. And as much as I love packaging and think it
22 is an incredibly important thing, a consumer who is
23 disappointed at the recycled content of their cereal
24 boxes is not really devastated for life, one hopes.

25 **(Laughter.)**

1 MS. PHILLIPS: Where if they buy a car
2 expecting to get a certain mile per gallon gas mileage
3 and they do not get that, then there is an ongoing and
4 big pocketbook hit.

5 So, I guess my one comment would be that in
6 your efforts, you need to put set priorities about what
7 is most important to consumers.

8 MR. KOHM: That is absolutely true. Some of
9 these questions -- we are talking about packaging today
10 and there is some issues that are unique to packaging,
11 but there are quite a few issues that bleed over into the
12 products as well. And recycled content, for example, or
13 biodegradability, those could be ws(1s0cT.00000 0.00000 0.00000 1.00

1 multi-lingual labels and then you have nutrition labels
2 and column labels. So, the more we can simplify and
3 clarify, the better.

4 The other point I wanted to make was about
5 several people have mentioned consumer research and
6 interviews with consumers. I think the other thing is I
7 think that it is far more difficult than just asking
8 people what they think about this topic because what
9 people do and what they say they do are actually two very
10 different things. We are getting more and more evidence
11 in our business about the fact of how difficult it is
12 actually to see what -- to actually get a handle on what
13 people really do think and what they actually do.

14 But I would be interested to see, a quick
15 question to the floor, because let's make it a bit more
16 interactive, how many people here compost their food
17 waste at home?

18 How many people recycle all their paper and
19 board?

20 And how many people recycle their plastic?

21 That is pretty good. So, we are actually
22 talking to the informed. I think the big challenge for
23 all of us is to communicate to those who -- the vast
24 majority of people who would not have put their hands up
25 to that. So, I think there is a whole education program

1 to be done. But I am with Jim, I think that is more our
2 role and the collection of industries to get the
3 communication right on this space.

4 I would agree with Cassie. People do not
5 actually get really upset if there was not quite the
6 recycle content that it said on the pack whereas they
7 might get really upset at some of the aspects of the
8 product or other types of product. Because, again, I
9 think the other thing you need to remember about the
10 consumer and what we put on the pack, at what point do
11 you want them to look at that? Because at the point of
12 sale, when there are consumers in Wal-Mart choosing the
13 product, they might spend ten seconds to make that
14 choice. Just remember that. Ten seconds is the average
15 time the consumer of our product will take to make that
16 choice. So, there is no way they can take in all of that
17 information which is on front side or back of pack, often
18 very small.

19 Now, it is important that they have it so they
20 know how to reuse it or what to do with it at the end of
21 its life. So, again, we need to think about at what
22 point in the product use cycle do the people need the
23 information and then how do you best get it to them at
24 that point in time.

25 MR. KOHM: If David could take over as the

1 with a lot of products anyway. Labels and labels and
2 stickers.

3 I think we have to think about where technology
4 is going to allow the consumer to learn more because the
5 fact of the matter is is that there is more penetration
6 of the internet whether it is on your phone or at your
7 home than recycling in this country. So, from the
8 standpoint that we expect that we are going to
9 communicate all of this complex information and say, oh,
10 by the way, and put it on your pack, is not realistic.

11 So, the question then becomes where is the
12 Green Guides' role in trying to help with the process of
13 being able to make that movement a reality? Because if
14 someone felt, as they read the Guides right now, that
15 everything they have to communicate has to be on the
16 pack, which, by the way, is the way some people look at
17 this, it is either all there or you can put it anywhere
18 else you want, but it has to be showing up on the pack,
19 is not taking advantage of where everything is going.

20 So, again, this is about more frequent review,
21 but understanding that the world is shifting. That would
22 be a question, again, about -- now you are going to
23 probably ask how do we do that.

24 **(Laughter.)**

25 MR. DESAI: So how would you think we should do

1 this?

2 MR. KOHM: I am a one-trick pony, but it is a
3 good trick.

4 MR. KOHM: I would like to ask the question.

5 MR. DESAI: So let me answer the question.

6 **(Laughter.)**

7 MR. DESAI: So, the point there is is that to
8 be able to state with purpose and with clarity that it is
9 acceptable to provide further levels of information on a
10 website through an instant text, however you think -- I
11 think these are things that have to be seen as very
12 clearly acceptable. Because to expect that we are going
13 to be able to take one word and embody it with all this
14 meaning when we sit here in this room and realize that we
15 cannot agree amongst ourselves that all these one word
16 have meaning, we have to allow that to be in the Guides.
17 It says these are acceptable methodologies by which you
18 can communicate the attributes of your product, because
19 it could go very simple, to the point I think was
20 mentioned by Scot, putting a website on there is not out
21 of the realm of possibility today, at least I do not
22 think so.

23 MR. KOHM: Scot, do you want to comment?

24 MR. CASE: I want to just kind of build on that
25 naturally. What we are seeing in the marketplace now is

1 when you look at green consumers, various studies, they
2 all kind of say there is about 20 percent of people that
3 are kind of quasi green. There is a very small slice, 3
4 to 5 percent of hard core greens. I throw myself in that
5 eco freak category. I will stand there in the aisle
6 literally at the store, call up the toll-free number and
7 ask questions, and they cannot answer them. I will go
8 online with my phone and they cannot answer them.

9 There are services now that are supposed to
10 kind of send me a list of products. I want to go to the
11 grocery store, I want to buy laundry detergent, I want to
12 buy toothpaste, I want to buy a couple of cleaning
13 products, and it will send a list, here are the products
14 you should look for.

15 The challenge is with everyone using different
16 claims and different definitions of what this means and
17 even different definitions of what the term "recycled"
18 means, it is almost impossible to quantify that
19 information in a way that allows me to access it via a
20 database of some sort. So, providing some additional
21 consistency and clear definitions of what these things
22 mean allow it to be put into a database so that my wife
23 will go shopping with me again.

24 MR. KOHM: There may be other barriers.

25 **(Laughter.)**

1 MR. CASE: I think she would agree.

2 MR. KOHM: Victor?

3 MR. BELL: One thing we do have to remember
4 here, and that is, you do not have to use any of these
5 claims in the first place. Therefore, if you do not have
6 territory to put a claim on and you do not want to put a
7 claim on, you do not have to put a claim on. But if you
8 do put a claim on, it better mean what you think it is
9 going to mean.

10 People are complaining about how much space we
11 need and all that. Well, a single attribute claim, you
12 do not have to say it is environmentally friendly because
13 it is recycled content. You can just say the recycled
14 content. It is clear. I do not think we have to. I
15 think, yes, if we want to give a website, if you want to
16 make a claim and you want to give a website, you can do
17 that. I think we have that ability. But I really feel
18 that people yelling about how much space we need for
19 these claims is sort of irrelevant because they do not
20 have to make any claims in the first place.

21 The other area you were talking about, which I
22 want to talk about, was education. I think the people
23 who really need the education is some of your packaging
24 suppliers and packaging converters and all that.

25 Amy, I am sorry, but I was in your trade show

1 in your expo and I went through the store and I found
2 half of the -- not half, 20 percent of your people giving
3 samples out were giving misleading, under the guidelines,
4 inappropriate guidance. These are the people selling
5 products to -- name brand products, oh, this is really
6 good, this is environmentally sensible packaging. This
7 package is made with recyclable material, it is plastic,
8 no one is going to recycle it. It is reusable,
9 renewable. They used every one of your words, Amy, and
10 it goes against it.

11 But these people need to be educated to these
12 Guides out there. I went to each one of them and asked
13 them, well, how did you justify this? They never heard
14 of the Guides. They never heard of the Green Guides.
15 And they are selling the packaging to the companies.

16 MR. KOHM: Well, what would you suggest the
17 FTC's role be in that process?

18 MR. BELL: Oh, I would think that even a letter
19 to them from the FTC would be sufficient.

20 **(Laughter.)**

21 MR. BELL: Just asking can you please qualify
22 how you call this recyclable? Enforcement does not have
23 to be bringing them to court. Enforcement can be
24 qualified letters, questions, asking them to substantiate
25 their claims.

1 MR. KOHM: Thank you. I will not call on
2 Snehal for this unless I have to.

3 (Laughter.)

4 MR. KOHM: This idea of putting things on a
5 website runs counter to some of the ways that we look at
6 things. And in this particular way, we do not know that
7 consumers who shop for any particular good or service are
8 then going to go to the website to get that information
9 or that they will have the information at the point of
10 decision. Does anybody have research or anecdotally have
11 any idea where other than the package might somebody put
12 this information? Because I understand that having a
13 larger label is counter to the whole idea of green
14 packaging. That consumers would have the information at
15 the point of decision. I think for right now we will try
16 and keep it on the panel. Cassie?

17 MS. PHILLIPS: Well, RFID chips are -- the next
18 evolution is smart labels where you will wave your little
19 wand in front of them and they will talk to you. So, I
20 think that technology is not very far at all away.

21 MR. CASE: A lot of the consumer surveys that
22 have been done of the hard core eco geeks will say that
23 they frequently are making their purchasing decisions
24 prior to entering the store. So, they are actually doing
25 research on their own, publications, websites, newspaper

1 articles, et cetera, and deciding before they enter the
2 store what they are going to buy.

3 MR. KOHM: Well, that may mean that there are
4 some products for which a website is appropriate. I am
5 just thinking that I recently bought a television, and
6 when I went into the store, there is quite a bit of
7 information on a card on the shelf that is underneath the
8 television. So, that may be a fairly large card, but it
9 is one for all the TVs in the store.

10 MR. CASE: You didn't read Consumer Reports?

11 MR. KOHM: I did quite a bit of research online
12 beforehand as well, but that is because I am cheap.

13 **(Laughter.)**

14 MR. KOHM: And I was trying to negotiate with
15 my spouse about how large a TV I could get.

16 **(Laughter.)**

17 MR. KOHM: We will not discuss how that came
18 out.

19 So, does anybody think there are opportunities
20 like that in a store where some thing is not necessarily
21 on the package, but could the vendor assure that that
22 kind of information was being conveyed in the store?

23 MR. HANNA: I think what we have seen is a
24 categorization. Whether Home Depot or Wal-Mart, a lot of
25 the retailers, they are starting to use their own

1 categorization of labels and say, as you walk in the
2 store, look for these particular labels and then you do
3 not have to ask that question and you do not have to --
4 like, Scot, I love you, but we do not have to call the
5 800 number as we are standing in front of the shelf
6 waiting for that information.

7 But David is right. Most decisions are made in
8 ten seconds at the point of purchase and I think the way
9 a lot of retailers have chosen to fill this vacuum is to
10 provide this categorization of these are our green
11 products, look for these labels on the shelves and
12 whatever assurance it is, whether it is empty or whether
13 it is legitimate, that is the way that a lot of consumers
14 are making their decisions, whether it is in retailers or
15 Home Depot stores or even in Starbucks.

16 MR. KOHM: What does everybody see as the worst
17 claims that are out there right now? And you could speak
18 to particular products or companies, but this also can be
19 generic.

20 MR. BELL: I think recyclability is the worst
21 claim out there. One, it is very poorly monitored.
22 People do not understand that it is not just a material
23 claim, it is a material -- people just think it is PET.
24 Therefore, since PET is one and a lot of people recycle
25 soda bottles, they can recycle their clam shells. The

1 recyclability is related to the form, whether it is a
2 clam shell, whether it is a blister pack, whether it is a
3 folding carton, it is also related to what kind of bling
4 is on it, like in your folding cartons, if it has a hot
5 stamp or it has coatings and all this, and recyclability
6 is related to all these different factors.

7 So, it is extremely difficult to understand how
8 that claim works. Plus the recycling symbol is on
9 everything. The Mobius loop. It is on everything. Yes,
10 during Earth Day, the Red Sox has it on their sleeve.
11 They had a green Mobius loop on their sleeves with two
12 red socks in the center of it.

13 MR. KOHM: Well, that is offensive regardless
14 of what they have on their sleeves.

15 **(Laughter.)**

16 MR. BELL: But I do think there needs to be --
17 I know right now we have, if it is not a substantial
18

1 We go and we send 100 packages to 40 different
2 recycling communities for our clients to determine which
3 one is -- it is folding cartons, one has a little extra
4 sign on it or one is a colored toothpaste tube or one has
5 a hot stamp, one has a metalization, just to see if we
6 can come up with that magic 60 percent so they can stamp
7 on it recyclable. If they could have this middle ground,
8 it would alleviate some of that.

9 MR. KOHM: Jim?

10 MR. HANNA: I know this is outside of your
11 purview, but carbon neutral is one of the most offensive
12 claims for me personally and you are really seeing a lot
13 of companies just writing big checks to call themselves
14 carbon neutral and that is defeating the purpose. That
15 is feeding the cynicism in the United States and
16 elsewhere. So, not necessary a solution, but just
17 something I find offensive.

18 MR. KOHM: Whom do they write the checks to?
19 For what purchase?

20 MR. HANNA: There are so many vendors out there
21

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1 The other thing that is really a problem is
2

1 MR. KOHM: Thank you. Anybody else?

2 Let's take a couple of questions from the
3 audience. We may be getting question fatigue here at the
4 end of the day, but there is no reason we have to go all
5 the way until 5:00.

6 What is the best way to communicate that the
7 FTC Green Guides apply business to business and not just
8 business to consumers? Anyone?

9 MR. CASE: I will jump in here. I think in the
10 packaging realm, the business to business communication
11 is the most critically important. I do not know any
12 consumers, and I am sorry to say this in this crowd, but
13 I do not know any consumers that base their entire
14 purchasing decision on the packaging, what it is made of
15 and whether it is recyclable or not. Most consumers are
16 actually more interested in the environmental
17 preferability of the product inside. So, I think in the
18 packaging sphere that it is really important to emphasize
19 kind of the business to business communication. But that
20 is going to be less true with consumers on the kind of
21 broader product itself.

22 MR. BELL: Here is a great example. Here is a
23 company that is sending out to all its people a whole
24 bunch of sort of glossy colorers and they are saying,
25 well, these first ten are recyclable and the other ones

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1 clarification from the FTC.

2 MR. KOHM: Are you suggesting that the Guides
3 are an appropriate place to make the clarification?

4 MR. DESAI: I think the Guides do not speak for
5 themselves. I think the FTC can speak for and clarify
6 that. But in the Guide then, make sure it comes through
7 as well.

8 MR. KOHM: Cassie?

9 MS. PHILLIPS: The most effective thing you can
10 do is to create the demand pull for the business to
11 business communication. If you go to the retail
12 customer, consumer facing companies and emphasize and
13 educate them about the Green Guides and then make sure
14 they understand that they are accountable for the claims,
15 the claims they are passing through from their suppliers,
16 and they get it, then they will turn around to their
17 suppliers and demand that we make accurate claims for
18 them.

19 Right now, I find myself educating my customers
20 about the Green Guides to tell them why our claims are
21 relatively conservative and then I have them turn around
22 and make claims that I cannot support because they do not
23 understand the law. But we will respond to a demand
24 pull.

25 MR. KOHM: David?

1 MR. DUNCAN: I just want to build on those
2 points. I think the important thing is the Green Guides
3 need to reflect, because if what you are talking about is
4 the communication between ourselves and the consumer in
5 all the different communications we have with the
6 consumer about the particular product they are going to
7 buy, really that is just one point in time that is
8 reflecting all the way -- you are trying to make guidance
9 on claims which reflect all the way back up the supply
10 chain in terms of how all the materials got to the pack
11 in the first place. But then, also, what is going to
12 happen to it when it gets to the waste streams and
13 recycling and the like.

14 So, you need to make sure that it is consistent
15 across the full value chain that the communication is
16 consistent and is actually driving the behaviors they
17 want people to take. Because a lot of what we are
18 talking about, again, I was surprised to see how low the
19 amount of recycle is, that it is sort of stuck at 40
20 percent. I mean, again, one of the real objectives has
21 to be that we are going to get more consumer use and
22 recycling. That has got to be one of the objectives. It
23 is not just about communication, it is about changing
24 behavior and taking more of this material out of landfill
25 and getting it into recycle.

1 morning, it was talked about steel is totally recyclable,
2 so you do not have to talk about it in the FTC
3 guidelines. Bull, baloney. Glass is totally recyclable.
4 We are a mature packing substrate that have been around
5 for centuries and we are totally recyclable, totally
6 renewable to a degree or reusable, but we are not out
7 there touting that. It is there. But our society now

1 America and no place else, it is a global economy and we
2

1 have talked a lot about -- this does not affect me. I am
2 not selling it to a consumer, so I do not have to do
3 this. In your guidance where you have example questions
4 and examples of this, if you had a few examples of X
5 company selling a product to another company for a

1 which has done a lot of outreach to the purchasing
2 community, the Institute for Supply Management the
3 National Association of State Purchasing Officials, there
4 is a bunch of these. But teaching the purchasing
5 officials how to see through some of these potentially
6 misleading environmental claims. Because if you are
7 getting pull from the purchasing community, that is a
8 great way of getting feedback into the marketing side of
9 the equation.

10 MR. KOHM: I have a couple of longer questions.
11 Scot and others seem to be suggesting that a single
12 attribute claim, such as recyclable or 25 percent
13 recycled material, convey a general environmentally
14 superior claim such that marketers should not be able to
15 make it unless they can demonstrate, through life cycle
16 analysis, that it is. Do consumers interpret such claims
17 in this manner, are there any surveys or studies that
18 show this?

19 Scot, you seem to be on the hook.

20 MR. CASE: That is fine. I think there is
21 quite a bit of anecdotal evidence at this point. I have
22 not actually seen any what I would consider really solid
23 scientific surveys that kind of, beyond a reasonable
24 doubt, prove it. But we are in the process of initiating
25 such a survey. So, it will be interesting to see the

1 results.

2 MR. KOHM: Do you have any sense of when that
3 survey may be completed and whether you would share it
4 with us?

5 MR. CASE: We are still looking for the
6 funding, so it would be really nice if the FTC had some.

7 **(Laughter.)**

8 MR. CASE: We are hoping actually to have that
9 by the fall.

10 MR. KOHM: Anybody else want to comment? Jim?
11 And, hopefully, just tell Scot he does not know what he
12 is talking about.

13 MR. HANNA: Scot always know what is he is
14 talking about. I would not dismiss single attribute
15 claims wholeheartedly. I think that single attribute
16 claims allow us to make valued judgments about what is
17 important to our companies and what is important to the
18 consumers we serve. For coffee, for instance, the
19 attribute of how fairly that coffee is traded is a very
20 important factor for our consumers. So, that is an
21 attribute we choose to discuss at length with our
22 consumers.

23 It does not address all the other attributes of
24 sourcing coffee, the transportation energy and all those
25 issues which also have environmental impact and also have

1 social impact. But the importance of single factors to
2 the value of specific companies and what they choose to
3 focus on is also key.

4 MR. CASE: I want to support what Starbucks has
5 done because I think Starbucks and Wal-Mart and others
6 are beginning to position these kind of single attribute
7 claims in a very important context, which is along the
8 lines of this is one important consideration or this is
9 an important consideration. And you have been very, very
10 careful to distance yourself from the notion that all you
11 need to know is it is recyclable, do not even worry about
12 anything else. I think that is the point when it kind of
13 crosses into a potential sin of the hidden trade-off.

14 So, I think you guys should be commended for
15 actually kind of educating the consumer and saying this
16 is one of the important aspects.

17 MR. HANNA: Coffee is on me.

18 **(Laughter.)**

19 MR. HANNA: Wednesday. Free coffee Wednesday.

20 **(Laughter.)**

21 MR. KOHM: David.

22 MR. DUNCAN: I certainly would not want to say
23 that Scot does not know what he is talking about, but I
24 would really urge him to think very carefully about how
25 he does the testing in terms of looking at those areas

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1 have a self-registration program, that those programs out
2 there exist and they are doing well. But there are also
3 kind of varying degrees of certification from a
4 self-verification all the way to independent third party
5 certification on site which is what say Eco Logo, Green
6 Seal and a couple of others are doing.

7 MR. KOHM: Jim?

8 MR. HANNA: I am sure after this conference,
9 FTC will go back and figure out whether or not to develop
10 standards. But in the interim take advantage and pull
11 the triggers that you have within your framework. What I
12 would like to see is rather than saying company X is your
13 case studies, name names. That would really help drive
14 behavior change among those corporations.

15 I mean, as a retail company, I hate to see my
16 company's name on the CPSE website, but that helps drive
17 change, and the way we supply our materials that helps
18 create a lot more due diligence, and the way we source
19 materials and I think you have that ability currently to
20 do that. So, pull the triggers you have.

21 MR. KOHM: I think that goes along with -- it
22 may have been Victor who commented that warning letters
23 or something of that type that are public may be
24 effective in this area.

25 MR. BELL: Exactly.

1 MR. KOHM: Well, that is the end of our
2 audience questions and I have come to the end of my
3 questions. I just want to give all our panelists one
4 more shot. If there is something that they would like to
5 put on the record, tell us or tell each other, this is
6 the last chance.

7 MR. CATTANEO: I thought we had until May 19th.

8 **(Laughter.)**

9 MR. KOHM: If you are on the panel, it is
10 just --

11 MR. CATTANEO: Oh, excuse me.

12 MR. CASE: Some of us can talk until then.

13 **(Laughter.)**

14 MR. KOHM: Is there anything that you heard
15 sitting here all day that you would like to comment on,
16 that you were itching to as you sat in the audience
17 listening to other people? David?

18 MR. DUNCAN: There was just one small point,
19 which I could not resist, James, which is we have to be
20 really careful about the language in terms of how you
21 define things. I think it is very easy to misunderstand.
22 Because I came here, I was invited to a green roundtable
23 discussion. Now, the table certainly is green, but it is
24 not round. So, the language is important.

25 **(Laughter.)**

1 MR. KOHM: Well, that is not the only deception
2 today because we said that we would start everything on
3 time and end everything on time. We are going to give
4 you a little time at the end because we are not going to
5 end exactly on time.

6 I am just want to conclude with some very brief
7 remarks. The Chairman this morning spoke about how we go
8 about our work. And there is two broad models of
9 creating guidance and rule making.

10 The first, this is not technical nomenclature.
11 The first is three smart guys in a room. What the FTC
12 did some time ago is you would put three smart lawyers in
13 a room, or some number that we could afford, they would
14 come up with guidance and then that guidance would be
15 chiseled by the Commission on tablets and set forth.
16 That is not a particularly good model of rule making.

17 As you can tell from this day, we are not the
18 experts, there are many experts who grapple with these
19 issues every single day. And I think the much better
20 model is the model that we have done today, where there
21 is interaction, where we learn from the people who really
22 know what is going on, and I really want to thank all our
23 panelists for all their preparation today, for all their
24 contribution.

25 I also want to remind everybody once again that

1 the record is still open. We are very interested in
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MATTER NUMBER: P954501
CASE TITLE: ENVIRONMENTAL MARKETING GUIDES REVIEW
DATE: APRIL 30, 2008

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: MAY 16, 2008

ROBIN BOGGESS

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

ELIZABETH M. FARRELL