

PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION

on

“IT’S TOO EASY BEING GREEN:
DEFINING FAIR GREEN MARKETING PRINCIPLES”

Before the

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION
UNITED STATES HOUSE OF REPRESENTATIVES

Washington, DC
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I. Introduction

Chairman Rush, Ranking Member Radanovich, and Members of the Committee, I am James A. Kohm, Associate Director of the Enforcement Division in the Bureau of Consumer Protection at the Federal Trade Commission (“FTC” or “Commission”).¹ I appreciate the opportunity to appear before you today to discuss the Commission’s role with respect to environmental advertising claims.

In the past few years, there has been a virtual tsunami of environmental marketing. Businesses in a diverse array of industry sectors are touting the “green” attributes of their products and services, and several major retailers have launched their own green product lines. The FTC plays an important role in helping to ensure that these environmental advertisements are truthful, substantiated, and not confusing to consumers. In fulfilling this role, the Commission employs a multi-tiered approach. First, the agency promulgates rules and guides (the “Green Guides”) to make the “rules of the road” clear for businesses. Second, the FTC challenges fraudulent and deceptive advertisements through enforcement actions. In fact, today the FTC announced three complaints alleging that Kmart Corporation, Tender Corporation, and Dyna-E International made false and unsubstantiated claims that their products were biodegradable. Finally, the FTC publishes materials to help consumers make informed purchasing decisions. This testimony describes the FTC’s work in each of these three areas.

¹ This written statement represents the views of the Commission. My oral presentation and responses to questions are my own, however, and do not necessarily reflect the views of the Commission or any individual Commissioner.

⁷ 72 Fed. Reg. 66091 (Nov. 27, 2007).

⁸ Information about the review, including the workshop transcripts and written comments, is available online at www.ftc.gov/green.

⁹ 72 Fed. Reg. 66094 (Nov. 27, 2007); 73 Fed. Reg. 11371 (Mar. 3, 2008); 73 Fed. Reg. 32662 (June 3, 2008).

¹⁰ The comments are available online at <http://www.ftc.gov/os/comments/greengudesregreview/index.shtm>, <http://www.ftc.gov/os/comments/carbonworkshop/index.shtm>, <http://www.ftc.gov/os/comments/greenpkgworkshop/index.shtm>, and <http://www.ftc.gov/os/comments/buildingandomments> g

The Fuel Rating Rule, 16 C.F.R. Part 306, provides consumers with information about the fuel they use in their automobiles. Among other things, it requires retailers to post the fuel's rating on a label at the pump.¹⁹ Last year, the Commission amended the Rule to incorporate specific labeling requirements for biodiesel, biomass-based diesel, and blends of those fuels, as required by the Energy Independence and Security Act of 2007, Pub. L. No. 110-140.²⁰ In addition, the agency currently is reviewing the Rule to ensure that it continues to benefit consumers and to determine if other changes are needed to account for the development of new alternative fuels.²¹

III. Law Enforcement Efforts

It is critical to complement business guidance and rules with a solid law enforcement presence. The Commission, therefore, actively enforces its requirements through civil prosecutions. The agency's recent efforts in this area target misleading green claims, false energy savings claims, and bogus gas-saving devices.

The Commission's latest enforcement actions alleged that three companies made false and unsubstantiated claims that their products were biodegradable.²² The FTC's complaints

¹⁹ For gasoline, the fuel rating is the octane rating. For alternative fuels, the fuel rating is the minimum percentage by volume of the principal component of the fuel.

²⁰ 73 Fed. Reg. 12916 (Mar. 11, 2008). The biodiesel fuel rating is the percentage by volume of biodiesel or biomass-based diesel in the fuel.

²¹ 74 Fed. Reg. 9054 (Mar. 2, 2009).

²² K-mart Corp, File No. 082-3186 (June 9, 2009) (accepted for public comment); Tender Corp., File No. 082-3188 (June 9, 2009) (accepted for public comment); Dyna-E Int'l, et al., Docket No. 9336 (June 9, 2009). Past FTC cases have targeted a range of other allegedly false or unsubstantiated green advertising claims, such as claims that a product or its packaging is recyclable, non-toxic, or ozone safe. See e.g., *FTC v. OneSource Worldwide Network, Inc.*, et al., No. 3:99-CV-1494-L (N.D. Tex. July 1, 1999) (challenging claims that liquid-filled discs

effectively clean laundry without polluting the earth's waterways and are 100% recyclable); **RBR Productions, Inc.** 122 F.T.C. 471 (Dec. 10, 1996) (cited in Lexis as 122 F.T.C. 444) (challenging claims that a disinfectant is biodegradable, non-toxic, and environmentally safe, and that an aluminum aerosol can is recyclable); **Texwipe Co.** 116 F.T.C. 1169 (Oct. 8, 1993) (challenging ozone safe claims for an aerosol cleaning product).

²³ Therefore, the companies' actions allegedly contravene the Green Guides' advice concerning the term "biodegradable." See 16 C.F.R. § 260.7(b).

²⁴ **K-mart Corp**, File No. 082-3186 (June 9, 2009) (accepted for public comment); **Tender Corp.**, File No. 082-3188 (June 9, 2009) (accepte

settled the Commission's allegations, and in the third, the Department of Justice filed a complaint at the agency's request.²⁷

In addition, the Commission is litigating two federal court actions against marketers of "miracle" devices advertised to dramatically increase gas mileage in ordinary cars. In the first case, the promoters of the Hydro-Assist Fuel Cell placed advertisements in major magazines claiming that the device can boost automobile gas mileage by at least 50% and "turn any vehicle into a hybrid."²⁸ In the second matter, the defendant advertised that the NanoDetonator would allow ordinary passenger cars to harness the power of nuclear fusion, thereby eliminating the need for gasoline.²⁹ In both cases, the Commission alleged that the claims for the devices violate basic scientific principles. Through litigation, the Commission is seeking a permanent halt to the claims and reimbursement to consumers who purchased the devices.

IV. Consumer Education

In addition to business guidance, rules, and law enforcement, the Commission creates and distributes materials to help consumers make informed, green purchasing decisions and avoid energy savings scams. The Commission's vast array of award-winning, consumer education campaigns include creative online sites, as well as written materials that the agency and its partners distribute to consumers throughout the country.

The agency's interactive website, Saving Starts @ Home (www.ftc.gov/energysavings), offers tips to help consumers conserve energy and save money in almost every room of their

²⁷ *United States v. Enviromate, LLC, et al.*, No. 09-CV-00386 (N.D. Ala. Mar. 2, 2009); *United States v. Edward Sumpster, et al.*, No. 6:09-CV-379-ORL-35 (M.D. Fla. Feb. 26, 2009).

²⁸ *FTC v. Dutchman Enterprises, LLC, et al.*, No. 09-141-FSH (D.N.J. Jan. 12, 2009).

²⁹ *FTC v. Five Star Auto Club, Inc., et al.*, No. 99-CIV-1693 (S.D.N.Y. Dec. 15, 2008).

homes. For example, in “the kitchen,” consumers can learn about using the EnergyGuide label to select energy-efficient appliances; in “the attic,” consumers can find tips on choosing insulation; and in “the trash room,” they encounter explanations of terms like recyclable and biodegradable and the meanings of common environmental symbols. Another interactive webpage, **Saving Money at the Pump** (www.ftc.gov/savegas), gives consumers advice on how to avoid bogus gas-saving devices and suggests legitimate gas-saving tips to help consumers save money at the pump. Since 2006, consumers have accessed these two sites and their Spanish language counterparts over 450,000 times.

V. Conclusion

Consumer interest in conserving energy and protecting the environment will likely result in continued environmental marketing. Competition based on green claims drives businesses to greater innovation, which ultimately benefits consumers by increasing the availability of the types of green products and services they desire. For the marketplace to thrive, however, companies must compete on the basis of legitimate advertising claims and consumers must be able to rely on those claims. The Commission, therefore, will continue its efforts to ensure the truthfulness and accuracy of environmental marketing.

Thank you for providing the Commission an opportunity to appear before the Committee to describe these efforts.