

FTC Care Labeling Rule Roundtable
March 28, 2014
Segment 5
Transcript

FRANK GORMAN: OK.

ROBERT FRISBY: Do you want me to switch the chairs?

FRANK GORMAN: Thank you all. We're--

NORA NEALIS: I can sit here. I'll be anybody. I don't care.

FRANK GORMAN: We're going to start now on our third and final panel. We're going to talk about the reasonable basis and some other assorted issues. And if there's time left at the end, this panel runs until 3:40. If there's time at the end, we'll open up the floor to questions on any issues, including ones we've already covered.

I'd like to welcome our panelists. We have Mr. Augustine Chang for Nature's Best Cleaners, Marie D'Avignon from American Apparel and Footwear Association, Richard Fitzpatrick from Kreussler Inc., Adam Mansell from Wulff Consultancy, Seemanta Mitra from Intertek, Nora

MARIE D'AVIGNON: Excuse me. I think clarification is always a good thing. Certainly, couldn't hurt to have a little clearer idea of what we're looking for. But I think the current rules where it says, testing isn't necessarily always required, if you have experience in this product or industry expertise you don't necessarily need to test. So to that point, I think that the rules that we have now for reasonable basis are reasonable. And it's a good name. But clarification can never hurt.

FRANK GORMAN: Right. And the clarification are those situations where you really can't just rely on your experience, where you really do need to test the garment. I guess would be one way to characterize that. Do you think that's appropriate?

MARIE D'AVIGNON: So I'm not sure exactly what--

FRANK GORMAN: That's all right.

MARIE D'AVIGNON: --says, but if, I mean, there's specific cases where you absolutely need to-- I don't know what exactly it says for the examples-- but I usually don't ever push for more testing than is necessary. And if it's something that is a testing requirement just to have a testing requirement, I don't agree with that.

RICHARD FITZPATRICK: So I think it's fairly obvious that we're getting a lot of garments coming into the service providers that have not been tested adequately. And that the first time they're being tested is when that dry cleaner or processing organization gets the garment. So I think additional-- some additional clarification and instructions on reasonable basis and improving that testing would probably be a good thing for the industry. And certainly, the examples you gave-- garments that are mixed colors, applique that's added after the fact by jobbers-- those are examples of when a garment should probably be reexamined and some additional testing be done.

ADAM MANSELL: I'm going to agree with the two previous speakers. I think giving examples is a very useful thing to do.

SEEMANTA MITRA: I definitely agree to that. Basically, the purpose of all this regulations is how the consumer-- the consumer is the ultimate receiver of the product and how the consumer is going to view things from the perspective of the product. So

| in essence, I would agree with the speakers here that there should be a reasonable basis, and the reasonable basis can be based on either experience, research, records or testing.

FRANK GORMAN: I think everybody whose addressed the question so far would have hit on this already, but just for the rest of the panel, if there are any examples given, either in our proposal or in the sort of additional proposals by GreenEarth that you think are objectionable, please flag those. Or if there are additional examples you think that we should consider throwing as well-- but thank you.

NORA NEALIS: I think we need a reasonable basis and I think examples are a good way since people don't necessarily comprehend the same message when they read the same instruction. So an example is always a fine way to highlight to them what they may not have thought applied to the situation. It's a good way to try and solve a final problem for the consumer.

FRANK GORMAN: And these are, of course-- this is a reasonable basis for the labeling. Mr. Poach?

DART POACH: I represent the Professional Leather Cleaners Association. The PLCA recommends that the whole garment be taken into consideration for care label instructions. We recommend that any item containing suede, leather, fur, be considered to have a professional leather cleaned only label on it.

MIR QUDDUS: What I have heard about-- I haven't read it myself-- about the examples that is given for a full garment, I would think that's really appropriate for us to have that to avoid

FRANK GORMAN: You would?

AUDIENCE: [INAUDIBLE]

FRANK GORMAN: Well, the proposal is that-- let me see-- reliable evidence for each component part of the product in conjunction with reliable evidence for the garment as a whole-- that you can rely on that-- provided the test results showing that a whole garment can be cleaned as recommended may be required where, for example, the color of one part often bleeds on to another when the finished garment is washed, a dye that is known to bleed, or beads, buttons or sequins-- and the GreenEarth proposal added some additional things that-- that are known to be damaged often in dry cleaning are used or a garment contains several fibers, fabrics or components not previously used together.

And then GreenEarth added-- its proposal-- added that a garment containing water soluble dyes, wool, natural fiber, or skins when wet cleaning is the recommended cleaning method. So if you're proposing wet cleaning for those things, then you would need to test the whole garment. In that context, you see that that imposes-- I don't know that everybody actually had looked at this for this panel so--

AUDIENCE: I didn't get to-- I'm just hearing the wording now. So just basing my knowledge on what my company does, we typically test fabrics, not finished garments. Unless it's children's garments because we have to test it for CPSC. So it could add an unnecessary burden in-- for our cost side because to test a whole garment is going to cost more money. And I know our testing people down there could probably fill you in on that part versus testing the fabrics.

But when we do have a garment that is, like you said, mixed colors, it is tested together. So the exceptions that you're giving, we will make an exception to our normal testing protocols for those type of garments. As for the trim, to test a whole garment with a trim on it, no. We'll find out from the trim supplier how it reacts to certain chemicals, and we'll use that in our care labeling.

FRANK GORMAN: I guess what I would suggest is that if people haven't focused on this particular proposal-- the record is open until--

ROBERT FRISBY: April 11.

FRANK GORMAN: April 11. So if you want to get-- if you want to go back and talk with your testing people, anybody out there, and put in some additional evidence, we would appreciate that. But I think right now we'll move on to the next issue on our mop-up panel. And was there something else on that?

Water temperature and home washing-- we did not have a proposal on changing our rule in any way regarding water temperature. But it was brought to our attention that our temperature ranges are different than the recent AATCC ranges proposals. And there's also a big difference between European washing machines, which have water heaters built into them and really control the temperature, and the washing machine I have at home where the hot water barely comes in at all

and-- it just depends on what the temperature of your hot water is, what the relative flows of your hot and cold feeds are. And there's really very little control.

And my broad question for the panel, to the extent that you have something to say on this-- you don't have to respond to something if it's not relevant to your particular industry-- is, does this create real problems for consumers, for industry or for cleaners? This discrepancy between the ranges that we have in our rule and the ranges that kind of exist out there? And there's some overlap. Right? So-- Augustine.

AUGUSTINE CHANG: OK. Water temperature. I think it has a lot to do with what you do with it. You can launder dark colors in certain hotter temperatures it ruins the dye. And like you said earlier, how long does it take for water to fill up and how cold does it get? Does it really get warmed up and what kind of soap does it also use? These things makes a lot of differences when you're doing actual home laundry.

Like I said, I've been doing this for 20 some odd years as a chemical and then five years as wet cleaners. When you go a wet cleaning any kind of garments, temperature is very sensitive. So we usually work plus minus a few degrees. So if that threshold is not there then garment doesn't clean as well. So earlier on, I think the professor said, you would have to assert the right temperature, otherwise it won't clean. And I believe that's true. And putting some sort of a range of temperatures important to get the maximum cleaning on this that you need for your garments.

FRANK GORMAN: Right. And what we're talking about here is for home washing where, again, the home washing machines for our hot, warm and cold instruction, and people's home washing machines, in the United States at least, have really broad ranges. And our rule ranges-- and I guess the question is, is a fix needed for that and what would that fix be?

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colors maybe, or in terms of colors that are considered color block items-- like you have a dark thing with a white body-- it might be a significant that difference in temperature. So, in general, what we have always done, whether it's a CPS regulation or an FTC regulation, if there are no government test standards, we automatically deployed to the ASTM or the AATCC standards for testing.

NORA NEALIS: I'm a wash and fold girl.

FRANK GORMAN: OK.

MIR QUDDUS: OK. Basically this was kind of like highlighted by us because AATCC has been working on the test standard for testing the color fastness and multiple other testings where we rely on a monograph to define what the washing condition, the washing parameter should be. And we look at the washing machine that can be a consistent tool for looking at the performance. And this is a performance that would be insured of not only just North America, but also globally because this test standard that we formulate is used globally to test the garments that are coming in or the government's that'll be produced for export to US.

So AATCC came up with temperatures that are in line with the temperatures, or within the range that FTC guideline provides, FTC 16 CFR provides, which is the cold-- we have a temperature for cold. We have a temperature that falls within that range of the warm, and we have a temperature that falls within the range of hot. So that's-- the labs, without having to look for which temperature to wash their garments-- and I kind of piggy back on the statement that Mr. Chang made-- is that you need to find the temperature within a given small range. So AATCC range, you know-- just one example would be that cold that FTC defines has the range of 54 degree Fahrenheit, whereas AATCC has a 15 degree Fahrenheit. Basically, you can now test something with some consistency and reasonable basis that we're talking about that with repeat performance that can be compared globally and it can be something that Seemanta was talking about, that you can put a grade of 3.5 or 4 and can be reliable about it.

So what we assisting now, FTC, is a rout to implement this protocol where there is no(ook f)3(or)nIor --

cycle that we call extra hot-- but the nomenclature is not a big deal. The FTC hot is 112 to 145, and our hot is 122.5 to 137.5. Now, this cannot be done just by going to the machine and say, cold, hot and warm. There's no such thing. So this is programmed and the cycle is consistent from machine to machine, year to year. So basically, the performance is now consistent on a wash cycle but the temperatures changing. So that gives the consumer touch and feel and everything, but with the control of temperature. So that's-- we can provide that.

CHARLES RIGGS: There are temperatures specified on both the ASTM care symbols and the ISO. And I think they're the same. And the ranges are a little different, but I think you've got a match. Either your symbols range, test condition range-- I don't think FTC should try to redefine these things that are so vague anyway, and work from the testing requirements. Because we could always have an explanation back to the consumer that your water is too cold to be cold wash. Which is probably the case in Minnesota in the winter time.

FRANK GORMAN: Mary, do you have--

MARY SCALCO: I have nothing to add.

FRANK GORMAN: Stacy?

STACY SOPCICH: It only makes sense to defer to the technical experts who are providing this missing link to the testing believed to be universal. That makes sense to us.

FRANK GORMAN: The one thing that strikes me as being problematic from a consumer viewpoint, we're talking about the language on the label. There's not an extra hot. People don't have an extra hot setting on their machine, so an extra hot care label wouldn't be particularly valuable. If we were to match specifically, if you were to line up perfectly with your--

MIR QUDDUS: No. Actually, the way-- I would not worry about this part. This extra hot. It's a terminology. Because we also have one, two and three-- like, one, two, three, four. Those are the test symbols that we also--

had an extra hot, you can do that at a consumer level by cranking up the hot water heater, but I don't think that's a recommendation that we would want to pursue. And probably would be of little benefit to the types of laundry that the average American consumer does at home. European situation is somewhat different.

FRANK GORMAN: Does anybody have anything further on water temperature? No? OK. Also, and I think we'll start with you, Dart, on leather care issues. As you stated earlier, that your organization favors labelling leather goods with an instruction for leather clean and refinish by professional leather cleaner only. And that would include garments with trim, leather trim. I guess-- can you flesh that out what you envision, and then we'll get comments from the panel.

DART POACH: Sure. We'd love to have the proper care label on all leather garments. But in this case, it would be under appendix eight, number eight. As you stated, right now it says, have cleaned only by a professional cleaner who uses special leather or suede care methods. And that's-- I think most of the manufacturers are putting the professional clean by a leather expert already. So it may not be an issue.

But the big thing that's missing is the refinishing part. It's one thing to clean it, ()-. cle

So those are the little issues that most of the dry cleaners will face on a regular basis. And we are actually a front line between the manufacturer and the consumers. In many cases, doesn't actually go through to the manufacturer because, one, we're just too busy working, number two, sometimes it's not worth it because we can't find a manufacturer to send these garments back to. See?

So usually, wet cleaner or the day cleaners, issue what are called store credits or end up giving refunds or reject the item. So the consumer would go to another local cleaners for this garment to be servi

And that's a professional judgment call. It probably deserves some exploration but by and large, as was said earlier, because so many of the solvents are less aggressive now, because wet cleaning offers a lot of opportunities on the leather side, the amount of reliance that cleaners put on sending stuff off to a professional leather cleaner has shifted in recent years.

FRANK GORMAN: All right. Let me-- I'll end with you, but anymore comments down this way? I know Stacy--

MARY SCALCO: Well, I think, as we've said, and I think what Don alluded to, is that the people that are making 100% leather garments--

FRANK GORMAN: They're out.

MARY SCALCO: Well, because they-- they're not covered under the care label, they have come up with our own label that says, take to a professional leather care. So those garments are covered by the professional leather care cleaner. It's the ones with the minimal-- if there's trim, if it's 100% leather trim-- which I would agree, and the majority of instances that you see with a cloth garment, it's not 100% except in very expensive items. Normally it would be the imitations. And as Rich said, with the newer solvents, they can be handled. The imitations can be done in regular dry cleaning.

FRANK GORMAN: Stacy?

STACY SOPCICH: All natural skins have a basis of natural oil and so a degreasing solvent like perc is going to strip that oil. That's understandable. But as has been said, there are alternatives. Hydrocarbon isn't a huge problem with leather, and silicone certainly isn't at all.

The real issue, as Dart said, which is when it's a grained leather that's been surface dyed or painted, then you have a problem and it needs to be addressed by a professional leather cleaner. But that doesn't mean that anything with leather on it needs to be addressed by a professional

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To expect the consumer to pay for the remanufacturing of that garment by taking the leather trim off, they might as well go buy four more of those items for the cost that would take, if you could find anybody that wouldn't even do it.

FRANK GORMAN: Thank you. We're going to move on. There's one more issue then I'm going to throw it out for general comments. And that is that we're proposing to update the definition of dry cleaning to remove the reference to organic solvents and to drop the reference to fluorocarbons which are no longer used. And we're also adding additional examples of solvents. And, I guess, just one question about this, one compound question about this, and this time we're going to go this way just to mix things up. Do you support the change to the definition and why or why not? And what would you do differently?

STACY SOPCICH: Well, certainly, we do definitely support the definition. GreenEarth silicone has been available since 1999 so we heartily endorse the change in the definition to non-organic solvents. We think it's terrific and certainly in the right direction.

FRANK GORMAN: Mary?

MARY SCALCO: Support.

CHARLES RIGGS: I would strongly endorse the idea or the verdant working of non-aqueous for the solvents. And then the water process is an aqueous. So you have two extremes, aqueous and non-aqueous. You get into organic and that gets--

STACY SOPCICH: Yep. That's too much science.

CHARLES RIGGS: --confusing in terms of the molecules.

FRANK GORMAN: Let me go back to start over, add a element to the question which is, do you support Dr. Riggs proposal of having aqueous and non-aqueous as-- it's not the definition we proposed, it's a little bit different. So--

STACY SOPCICH: Well--

FRANK GORMAN: I think it solves a sort of problem.

STACY SOPCICH: Is there a distinction in the meaning between solvents other than water and non-aqueous?

FRANK GORMAN: I mean-- does our definition take care of it for you?

CHARLES RIGGS: I thought yours had-- still had the word-- what is the word that you have in there?

SEEMANTA MITRA: Organic.

FRANK GORMAN: A commercial process by which soil is removed from products or specimens in a machine which uses any solvent excluding water. And then we have examples. The process may also involve adding moisture to solvents.

CHARLES RIGGS: I think you can eliminate the examples and just say non-aqueous solvents. That excludes water itself and you don't need the examples. The examples of which we are seeing are changing. You don't have every-- the examples become open-ended.

FRANK GORMAN: Do you see a benefit to the examples?

As I heard everyone talking today, everyone has some sort of a sense as to imputing water cleans things very well. And there another saying that, in order to get rid of a lot of the grease stains that

There is a problem, as I understand-- and this is based on my work in areas other than this rule-- there is a problem with us referencing future standards. It's a delegation problem that our general counsel's office has suggested to us that we can't refer to-- we can't just sort of peg it to something that doesn't exist yet. We can't peg our regulation to something that doesn't exist. Is that your understanding as well?

So it makes a lot of sense on a lot of levels to just say, we will peg our rule to the standards as they are updated as the ASTM standard or whatever standard as its updated over time. This is a nice reliable body and we're sure they'll get it right and this is probably what we'll end up doing anyways if we thought about it. But we can't do that. It's just not allowed. Yes?

SEEMANTA MITRA: It's a different question not related to what he has asked is, will the FTC consider in the new-- as you're revising the care labeling rule-- to provide more specifics on what is considered as the useful life of the product for a permanent care instruction?

FRANK GORMAN: Robert, can you answer that?

ROBERT FRISBY: I don't recall much in the record about that issue. But the record is open until the 11th and if you think we need to address it, please let us know.

SEEMANTA MITRA: Yeah. And these are general questions that we as a testing laboratory face and some specifics on what type of products really need ironing. Like, we wouldn't put an ironing instruction on underwear as opposed to a dress shirt, for example. But these are more specific instructions. But there are so many different garments. And I know you're representing the UK Fashion and Textile Association. Fashion is changing every season so we get some areas where we are really confused whether should we put a ironing instruction is needed or not. Because the FTC rule says, for the ordinary use and enjoyment of the product, can be interpreted in multiple ways. Or at least in two different ways.

FRANK GORMAN: I think this is another topic in which we really haven't received comment. We can't stress enough how important it is that, if you have areas of concern, that you submit comments then, and the more evidence you can submit that addresses the costs and benefits-- not just identifies an issue but also that proposes a solution and addresses the cost and benefits of the solution and of not adopting the solution, if you will. We need a record to be able to make any change.

MIR QUDDUS: What happens next? So, what we discussed, what happens next?

FRANK GORMAN: Well, at this point there's two branches we could take in the road. We could issue a staff report where we make the staff makes a final recommendation, essentially, to the Commission. It's not published by the Commission, it's published by the Bureau of Consumer Protection. And then there'd be another opportunity for comment on that staff report. And then it would go back-- a recommendation would be made to the Commission on a final rule.

The other possibility is, if there are things that come out of this roundtable and in the last round of comments that would require us to-- would lead us to propose-- staff to propose-- something

that wasn't encompassed by our previous proposal, I believe we would have to go out with another notice of proposed rulemaking to allow comment on that. And then somebody could ask for another hearing, then the staff report.

It's a long process. This is-- we have two types of rulemaking at the FTC. We have APA rule making which is a little more streamlined, where Congress specifically passes a law like they did with the Textile Act and gives us authority to promulgate a-- unless Textile's a bad example. It's not? OK. Or Congress gives

FRANK GORMAN: Does anyone know when those revised standards are due to come out? Or is that also difficult to predict.

STACY SOPCICH: Well, I mean, it'll depend on vote. I mean, Jen, you could speak to that.

AUDIENCE: [INAUDIBLE] 30 days or 60 days, or if it takes longer than that if we have to re-ballot it. But it's out to ballot right now.

NORA NEALIS: It could be six months or a year.

To come up with a test method, you have to inter-laboratory correlations using some standard fabrics, standard garments. We were fortunate in terms of ISO 3175 Part 4, the wet cleaning, that there were some funding in Europe for a AquaCarb project. We had some funding from EPA in a design for the environment project that allowed us to get involved in doing that.

But it's a very expensive process to look at a test method and determine if we add this solvent or what other material we might add, what are the testing parameters to generate inter-laboratory correlations that are reproducible. We need to have reproducible test results so we know what we're talking about in terms of how you test it.

Now, the anecdotal test of having a wet cleaner clean it is not really going to meet the test of inter-laboratory correlations. You have to get the same results in every wet cleaner throughout the country. So you need to test according to a standard test method, 3175, and those are expensive to finance. I think, and unfortunately, it'd have to come down to the solvent vendor to do a lot of the financing to get the test methods modified.

FRANK GORMAN: Going to the first thing you said about an FTC staff person attending these meetings, I think if we were the care labeling, textiles, wool, leather, fur is a small part of what the Commission does. What the Bureau of Consumer, which is only half of the mission of the Commission-- we also have an antitrust half-- does, we have about 1,000 employees and we have general jurisdiction over basically all commerce. We do a lot of anti-fraud work, we do a lot of financial sector work, we do advertising stuff. And we do these rules and we take them very seriously.

Realistically, I think we've broadened certain parts of our portfolio. We did used to have a division of privacy and information protection, which is obviously a very important issue right now which wasn't an issue 20 years ago. But we simply, probably don't have the resources to dedicates something to that.

CHARLES RIGGS: Same token. If you're going to promulgate a rule on care labels, you ought to have staff involvement in the process where AATCC, ASTM, ISO review those care label seekers.

FRANK GORMAN: We rely on the notice and comment for that. And your wise counsel. Thank you. Other?

AUGUSTINE CHANG: If I make a comment on Dr. Riggs' comment about standard and doing a testing. Like I said earlier, the dry cleaners and professional wet cleaners are actually on the front line to clean this garments on a regular basis. In a lab, everything is perfect for the testing. But in real world, things are not the same. For example, Arizona, summertime, 120 degrees. Your machine really heats up. So does your solvent.

Of course, there's a refrigeration system to cool it down. But solvent is still too hot to clean. So these are little simple examples. So in test lab, it's great. But in real world, it's not. So a lot has to do with the operator, how well they are trained, do they really understand the system. So with that in mind, thank you.

FRANK GORMAN: Yes?

NORA NEALIS: Just one other point with regard to how often it should be looked at. I think, for many years, not looking at it was a non-issue because the industry was relatively static, the technology was static. But in recent years there has been a lot of change and I would anticipate that in the comin