

April 24, 2023

Submitted Electronically via Regulations.gov

Division of Enforcement, Bureau of Consumer Protection
United States Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Proposed Rule, Federal Trade Commission; Guides for the Use of Environmental Marketing Claims (87 Fed. Reg. 77,766-77,770, December 20, 2022)

The undersigned organizations appreciate the opportunity to provide feedback in response to the Federal Trade Commission's ("FTC" or "Commission") request for public comments on the Guides for the Use of Environmental Marketing Claims; Docket No. FTC-2022-0077 ("the Guides"). Our organizations (the "Coalition") collectively represent a diverse array of businesses that provide goods and services to virtually every American and employ millions of Americans nationwide, in every sector and throughout all levels of the supply chain. While many of the Coalition members will be providing individual comments addressing claims-specific feedback in response to the FTC's request, we wish to convey input shared across the Coalition on certain key issues.

Since their inception, the Guides have served as a valuable tool for industry to understand the FTC's views on environmental marketing of individual products. The latest update of the Guides comes at a pivotal inflection point where consumers, investors, regulators, and other public stakeholders are increasingly conscious of the environmental impacts of products, services, and manufacturing processes. While Coalition members have long been engaged in efforts to enhance the sustainability and environmental characteristics of their products, supply chains, and operations, there is growing motivation to meet such rising public interest with increased transparency regarding the use of sustainability and environmental practices, improvements, and innovations.

Because environmental marketing claims are an evolving area based on rapid technological innovation, varied consumer understanding, and complex environmental regulatory regimes, the FTC should be careful in updating or expanding the Guides. As the FTC proceeds, it is important that the Guides and this critical update not be developed and enforced as legal or regulatory requirements. The FTC should also not utilize the Guides as a mechanism to make environmental and sustainability policy, which is outside its jurisdiction, as are general corporate and brand advertising and forward-looking statements. Accordingly, to best meet the rapidly evolving needs of the consumer and provide certainty to the business community, we believe the following actions should be prioritized:

- Develop a strong evidentiary record on the public understanding of environmental marketing claims by conducting robust consumer perception research and hosting public workshops focused on specific claims.
- Evaluate and identify the unique distinctions between environmental benefit claims and consumer calls to action, such as recycling instructions.

Additional details on some of the priority actions are included hereafter.

I. Ensure the FTC Accounts for Marketplace Dynamics and Technical Aspects of Environmental Benefit Claims

The Coalition acknowledges and appreciates the Commission's consumer protection mission and submits that to ensure even stronger execution of its mission, the FTC should track what the EPA and other relevant

federal agencies are doing as it relates to the development of claims definitions and substantiations as well as related explanatory provisions. Given the ever-increasing interplay of environmental marketing claims and the technically nuanced subject matter that underpins environmental substantiation, it is essential the FTC be aware of what other agencies, particularly the EPA, are doing to avoid conflicts. For instance, EPA's Resource Conservation and Sustainability Division has been engaged in the development and implementation of the National Recycling Strategy, which identifies critical actions to address myriad challenges facing the U.S. municipal solid waste recycling system. The Strategy includes planned work the Agency will be engaged in alongside stakeholders to develop standardized definitions, measurement methodologies, baselines and performance metrics to improve public understanding of how recycling systems are performing domestically. It is critical that the Commission recognize this expertise as it seeks to update the Guides, as well as for generating staff advisory guidance that accounts for these environmental policy developments. A recently conducted consumer survey underscored the importance of coordination where nearly two thirds of respondents said a clear set of rules would make them more likely to recycle.

II. Expand Explanatory Provisions with More Examples

We encourage the Commission to include additional explanatory text in the Guides to offer marketers a clearer, more actionable framework to help mitigate the risk of consumer deception. Providing specific examples will reduce potential deceptive behavior in the market, assist brands in their efforts to qualify claims, and aid marketers in providing transparent, accurate, and comprehensible information to consumers. In particular, we encourage the Commission to update the guidance to better address how marketers' interface and share information with consumers online including through the use of on-pack digital information like QR codes and on e-commerce platforms. These interfaces allow brands and retailers to facilitate consumer access to credible and robust sustainability information and enhance the ability of consumers to make informed purchasing decisions. It would be beneficial for the FTC to articulate how and when marketers should qualify claims when using these technologies. In addition, the inclusion of more examples and expanded guidance on the best practices for communicating specific claims to consumers would provide marketers with valuable insight on the Commission's enforcement posture as well as much-needed context on what the FTC considers to be compliant, non-deceptive ways of conveying environmental benefits without running afoul of the law.

III. Distinguish Between Marketing Claims Versus Instructions for Recyclability, End-of-Life Management, and Overall Sustainability Commitments

The Guides strongly influence how Coalition members communicate with consumers regarding how to recycle their products and reduce waste. We encourage the FTC to differentiate between recycling instructions and recyclability marketing claims. Recyclable claims are demonstrative of the potentiality for end-of-life management. Recycling instructions, however, speak to the appropriate handling process that consumers should follow for effective end-of-life management. In fact, in a recently conducted consumer poll, respondents stated they would either start recycling or recycle more if there are:

- clear and/or standardized set of recycling rules
- clear and/or standardized meaning of recycling terminology
- clear and/or standardized information on the packaging

Differentiating between claims and instructions will enable Coalition members to serve consumers, communities, and the environment in a more effective manner through enhanced ways to communicate proper end-of-life management actions for products and packaging. Making this differentiation will not unduly mislead consumers, as six out of ten consumers in a recent poll affirmed they do not make purchasing decisions based on a package being labeled as recyclable. We encourage the Commission to

address this topic in detail, including at its upcoming May 23 workshop on recyclable claims, as well as through future consumer perception research.

IV. Utilize Technology to Provide Consumers Desired Information

Coalition members also emphasize the importance of the ability to leverage technology to communicate additional or contextual information desired by consumers through on-pack digital information such as QR codes. These technology solutions enhance the quality of information available to consumers by providing a level of detail typically unavailable due to packaging size constraints; for example, the recycling instructions specific to the jurisdiction in which a product was purchased, or the percentage of the packaging made from recycled content. Industry led initiatives, such as How2Recycle and SmartLabel, are already implementing this type of information into QR code functionality. This will enable brands to communicate with consumers more comprehensively and articulate environmental claims that require a complex degree of substantiation.

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The Coalition is appreciative of the opportunity to provide our recommendations regarding the update of the Guides. We welcome further opportunities to assist and partner with the Commission throughout this process to ensure that consumers receive truthful and accurate information regarding environmental benefit claims. Thank you for your time and attention to our comments; please contact Joseph Aquilina (jaquilina@consumerbrandsassociation.org or (571) 378-6722) or Chuck Chaitovitz (cchaitovitz@uschamber.com) regarding any follow-up questions.

Sincerely,

Consumer Brands Association

U.S. Chamber of Commerce

American Chemistry Council

AMERIPEN

Can Manufacturers Institute

Consumer Healthcare Products Association

Consumer Technology Association

Council For Responsible Nutrition

Healthcare Nutrition Council

International Bottled Water Association

National Retail Federation

Pet Food Institute

Plastics Industry Association

Plumbing Manufacturers International

Printing United Alliance