

Submitted Electronically via Regulations.gov

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, DC 20580

In Re. Public Workshop Examining Guides for the Use of Environmental Marketing Claims

The undersigned organizations appreciate the opportunity to provide feedback in response to the Federal Trade Commission's ("FTC" or "Commission") request for supplemental comments following the Public Workshop Examining Guides for the Use of Environmental Marketing Claims and specifically "recyclable" advertising claims ("Workshop"). 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.

Importance of Recyclable Claims

The Coalition wholeheartedly supports the FTC review of the Guides for Use of Environmental Marketing Claims ("Green Guides" or "Guides") and greatly appreciates the Commission's use of public workshops to source perspectives from stakeholders and develop a robust, evidenced-based record for the Green Guides updates. Environmental marketing claims are an evolving area based on rapid technological innovation, varied consumer demand and understanding, as well as increasingly complex environmental regulations. Consistent and clear guidance on the nondeceptive use of environmental marketing claims will protect consumers and foster innovation. Recyclable and its analogs such as "recycled content" are among the most crucial terms for providing specific, clear guidance to the regulated community and consumers. The Coalition requests that amidst the changing sustainability landscape, the Guides remain consistent in their focus in providing advisory guidance regarding consumer interpretation of marketing claims and the qualification of these claims. The Coalition advises against the extension of the Green Guides beyond this purpose, which may generate unnecessary consumer confusion, veer into environmental policy recommendations, and constrain innovation.

Given this stance, the Coalition opposes requests presented by some Workshop participants to expand the definition of "substantial majority" to a measurement based on the percentage of material that is ultimately recycled, rather than capable of being recycled. The expressed justification for this change by proponents was comprised of factors beyond the purview of the Guides. Moreover, the Coalition is not aware of any consumer perception evidence supporting a change in the 60% threshold for a "substantial majority" of consumers or communities where recyclable products are sold. The Coalition recommends that the Commission retain the "substantial majority" standard at the 60% threshold. The FTC should maintain consistency with this recyclability standard in the Green Guides, as consumers and the regulated community have relied upon it for decades and has made significant investments in complying with this standard. The Coalition is unaware of evidence regarding supposed consumer misconception of "recyclable" claims, reflected by the advocacy of proponents for the definition predominantly citing environmental policy concerns at the Workshop. The goals expressed by some Workshop participants for adjustment to the "substantial majority" standard were beyond the scope of the Guides with policy positions based on inadequate recycling infrastructure, rather than consumer perception. Our organizations share their overarching goals of increased sustainability of production and the development of a circular economy; however, we contend environmental policy solutions are better addressed in other

regulatory as well as legislative channels which are beyond the scope of FTC’s mission. Nonetheless, we acknowledge the important role the FTC plays and accordingly recommend the Green Guides prioritize the Commission’s central purpose of providing guidance on environmental marketing claims rather than morph into an environmental policy.

Recognition of New Technology to Provide Timely, Accurate Disclosure of Recyclable

The Coalition believes the Commission can improve consumer transparency around recyclable claims by providing guidance upon the accessibility of information using technology like QR codes. We encourage the FTC to augment the Green Guides with explanatory provisions that account for the availability of claims information through technological mediums, including QR codes. QR codes have become mainstream and widely accessible tools for communication with consumers. For instance, consumers and some regulatory programs rely on digital mediums to obtain information regarding ingredients, allergens, or even product sourcing. Technological mediums in the sustainability area (such as QR codes) can both meet increasing consumer demand and improve recycling rates through localized information, including aspects that relate to “recyclable” and product detail beyond what will fit on a product package. We recommend the FTC explore existing consumer transparency QR code programs, such as SmartLabel® and its partnership with RecycleCheck, and provide guidance for expanding the availability of environmental marketing claims information to consumers using these tools.

The Coalition advises the FTC to prioritize updating the Guides to account for guidance on new technologies and systems as well. Alterations to the Guides beyond those that specifically address the interpretation and qualification of environmental marketing claims may fall outside the FTC’s mission, and involuntarily hinder innovation and technological development.

One element of technological innovation within the recycling space, which was misrepresented by some Workshop participants, was advanced recycling. Accordingly, the Coalition seeks to provide clarification on the use of advanced recycling methodology, in response to misconceptions presented by some Workshop participants. Advanced recycling is a material-to-material process encompassed within the existing definition of recycling utilized by the Environmental Protection Agency, as the process converts material that would otherwise be thrown away as trash into new products, such as plastic polymers.¹ Given that mechanical recycling currently only mitigates 9% of plastic waste,² advanced recycling is a valuable tool to build recycling rates when used in combination with mechanical recycling processes.

We encourage the Commission to include explanatory provisions around advanced recycling methods. The Green Guides should recognize molecular recycling as a legitimate form of recycling technology and that marketers may nondeceptively refer to advanced recycling technologies (including molecular) as recycling. Advanced recycling represents a crucial mechanism in meeting recycling targets and improving the circularity of plastic materials; as such the updates to the Green Guides should provide guidance and explanatory provisions on qualifying these claims.

¹ “Frequent Questions on Recycling,” EPA, May 29, 2023, <https://www.epa.gov/recycle/frequent-questions-recycling#:~:text=What%20is%20recycling%3F,the%20economy%20and%20the%20environment>.

² “Plastic Pollution Is Growing Relentlessly as Waste Management and Recycling Fall Short, Says OECD,” OECD, February 22, 2022, <https://www.oecd.org/newsroom/plastic-pollution-is-growing-relentlessly-as-waste-management-and-recycling-fall-short.htm>.

Reuse and Refillable Claims

As with advanced recycling and other technologies that have emerged or increased since 2012, we encourage the Commission to issue guidance reflective of business models for reusability that have developed since the last updates to the Green Guides. These dynamics support the ability of brands to innovate and deploy new products that are capable of reuse, refill, or return by consumers, which while distinct from recyclable, are highly intertwined. Manufacturers and retailers have made extensive commitments to improving upon the sustainability of their products; for instance, all of the 25 largest consumer packaged goods companies have made commitments to increasing recyclable content, minimizing packaging or reusing material.³ Companies are progressively targeting reuse systems to improve product circularity, as are state legislatures; the number of container deposit laws have increased substantially since the last iteration of the Guides. We believe the Guides should include clarity and actionable insights of reuse systems or reuse as an operation that allows for the sale of product to drive alignment with new and emerging reuse targets.

Conclusion

We reiterate our support of the Commission's legacy and efforts on environmental marketing claims. Since the Guides have long served as a standard for environmental marketing across industries, the FTC is uniquely positioned to serve not just consumers but the economy and the environment alike by continuing to offer an administrative interpretation of the law that is clear and responsive to changes in the marketplace. The Coalition is appreciative of the opportunity to provide our recommendations regarding the update of the Guides in light of the May 23 Workshop on recyclable. 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.

³ "Creating a Sustainable Future, through Increasing Recyclability and Reimagining the Recycling System.," Consumer Brands Association, November 11, 2021, <https://consumerbrandsassociation.org/sustainability/>.