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December 10, 2010

Federal Trade Commission  
Office of the Secretary, Room H-135 (Annex J)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: Guides for the Use of Environmental Marketing Claims  
Document number: 2010-25000**

Dear Federal Trade Commission:

The Retail Industry Leaders Association (“RILA”) and its membership are pleased to submit comments on the above-noted Guides for the Use of Environmental Marketing Claims (“the Guides”) put forth by the Federal Trade Commission (“FTC”). RILA members recognize that green product claims have rapidly proliferated in recent years, illustrating the trend for increasing consumer interest in, and demand for, “greener” products, but also increasing public confusion. Therefore, RILA members welcome the FTC’s revision of the Guides.

RILA is an alliance of the world’s most successful and innovative retailer and supplier companies – the leaders of the retail industry. RILA members represent more than \$1.5 trillion in sales annually and operate more than 100,000 stores, manufacturing facilities and distribution centers nationwide. Its member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of workers domestically and worldwide.

RILA members applaud the FTC’s effort to develop practical guidelines that will reduce consumer confusion and support the growth of green product sales in years to come. In particular, we generally agree with the FTC’s guidance on “Ozone-Safe/Ozone-Friendly,” “Made with Renewable Materials,” and “Made with Renewable Energy” product claims.

We have also identified several aspects of the Guides that could be further developed to help retailers begin to successfully apply this guidance:

- *Conflict with state laws.* The FTC’s guidance may be in conflict with some state laws. For example, Wisconsin requires “free-of BPA” labels for certain products, which seems to be incompatible with FTC’s guidance on “free-of” language. We therefore request guidance on how to navigate the guidelines in situations where the Guides may potentially conflict with state regulations.
- *Guidance for brand names of product lines.* Both retailers and product manufacturers are developing entire product lines that boast a range of environmental benefits. These

product lines often have brand names that contain the terms “eco,” “green,” “environmental,” “sustainable,” “natural,” etc. to alert the consumer that the products in that line have environmental attributes or benefits. The current proposed Guides advise that general environmental benefit claims on individual products should be substantiated or qualified to avoid deception. We request that the Guides clarify: (1) that a brand name may contain a general environmental benefit claim (the second sentence of Section 260.4, Example 1, could be understood to prohibit such use) as long as qualifying and substantiating information is provided on individual products; and (2) that when a brand name containing general environmental language is used solely to reference the overall brand, it must be used without substantiation or qualification, since each product under the brand has unique environmental benefits that substantiate/qualify the brand and are provided on the individual products.

- *Guidance for use of general environmental benefit claims made in headers and banners.* Within brochures, fliers, catalogs, inserts, store displays, the internet, social media, and more, retailers often use headers or banners to identify groups of products and may state general environmental benefit claims within those headers and banners. Please clarify that use of unqualified general environmental benefit claims in headers and banners is acceptable as long as any claims related to any individual products are appropriately qualified.
- *Guidance for individual product claims made off of the product label.* Retailers often market individual products through brochures, fliers, catalogs, inserts, store displays, the internet, social media, and more. RILA members request that the Guides explicitly state that they are applicable to these other forms of product marketing.
- *Clarity on the use of certifications and seals.*
  - Retailers often use certifications and seals as a source of verification that their vendors’ claims are accurate. The Guides should state the acceptable level of research an entity should perform on certification schemes to use those certifications as substantiation.
  - Where established and vetted standards exist (for example ISO, ASTM, AATCC, etc.), we suggest that these standards may be used as substantiation of a claim related to the subject matter of the standard, considering that these standards are promulgated by entities with a deep knowledge of the industry and the ability to provide consistent guidelines.
  - We request guidelines on the necessity of qualifications or disclosures for certifications that require payment and/or membership, and if those guidelines vary depending on the entity that pays.
- *Clarity on “free-of/non-toxic” claims.* RILA members recognize that “free-of” product claims can be deceptive if alternate substances with the same or similar environmental risks are used as replacements. To ensure compliance, the Guides should clarify the definition and applicability of the terms “similar environmental risk” and “under certain circumstances,” and list sources that the FTC and other entities can use to determine whether their qualifications comply.

- *Qualifications to “compostable” claims.* Generally, members agreed that a one year time frame for an item to break down in order to be labeled “compostable” may be too long; however, we also agreed that any shorter prescribed time frame would be arbitrary. Any time frame defined should agree with accepted ASTM and/or ISO standards, and/or the best available science. Understanding the science and practice of composting, we would prefer that compostable products be qualified in a way that clarifies the compost environment and timeframe. Specifically, we would prefer to separately define products as either “compostable at home or in commercial facilities” or “compostable in commercial facilities.” That level of clarity will help consumers identify the proper disposal technique for their products.
  
- *Clarity on “recyclable” claims.*
  - As with other commenters, RILA members would like a precise definition of the percentage necessary to reach a “substantial majority,” “significant percentage,” and “less than a significant percentage” of communities. Without more specific guidance, it is difficult for companies to determine whether they are compliant.
  - In addition, we believe the Commission should be flexible in its tiered approach to encourage more diversion and recycling of common materials prevalent in packaging and many products like paper, plastic, metals, and glass.
  - Finally, we would like for the Guides to suggest what data sources are acceptable to substantiate a recyclable claim, particularly for widely available commodities. To do this, the FTC should work with US EPA and industry to define the two thresholds and acceptable data sets. The FTC should also consider for some items the availability of private sector recycling offerings that are not captured by community recycling programs. Such private programs exist for paper, electronics, and rechargeable batteries, for example.
  
- *Clarity on the FTC’s enforcement strategy.* RILA members recommend that the FTC explicitly state its enforcement strategy, especially as it relates to the accountability of product manufacturers versus that of retailers. Retailers, and those who also sell to consumer and business channels, often carry more than 200,000 discrete products across hundreds of varying product categories, making it impossible for the retailer to assess the validity of every claim on every product and across every marketing and promotional vehicle. Therefore, we suggest that the party(ies) originating or propagating the claim should be held accountable for the claims made on their products.
  
- *Notice of design and manufacture tradeoffs with environmental impacts.* It is important to note that there are often design and manufacture tradeoffs with environmental impacts. For example, incorporating materials that reduce lifecycle carbon emissions might increase overall water use, reduce the ability to recycle a product, or have other positive and/or negative influences on other environmental impact categories. As another example, one product from a manufacturer incorporating recycled content may actually have significantly higher environmental impacts compared to a similar, competing product without recycled content if the majority of impacts occur in the manufacturing phase and the producer of the recycled product has a less efficient manufacturing

process/facility. In this case, a substantiated claim about recycled content would infer to a consumer that the product is better for the environment compared to a competing product without a claim, when in fact the opposite is true. The FTC should note that until there are holistic independent standards with certifications that appropriately measure impacts and reward product environmental design based on what matters most, some products with perfectly acceptable claims under FTC guidelines may not necessarily be environmental preferable.

RILA's members hold their product claims with the utmost importance and appreciate the FTC's effort to revise their Guides. We want to continue to ensure that our marketing claims are as accurate as possible and hope the FTC can answer the above questions to provide a final layer of clarity to help guarantee compliance. Feel free to contact us at any point.

Sincerely,

A handwritten signature in cursive script that reads "Adam Siegel". The signature is written in black ink and is positioned above the typed name and contact information.

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