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### FTC Proposes to Amend "Green Guides" to Cover Association Environmental Certifications and Seals of Approval

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The Federal Trade Commission ("FTC") recently proposed a number of revisions to its *Guides for the Use of Environmental Marketing Claims* ("Green Guides"). The deadline to file comments on the proposed changes is December 10, 2010.

One of the most significant changes in the proposed new "Green Guides" is a new section on the use of environmental certifications and seals of approval in advertising. Marketers across industry sectors increasingly use certifications and seals of approval to communicate environmental claims.

Many industry trade associations now have certification programs. For example, the National Association of Home Builders and the U.S. Green Building Council have created environmental certification programs for homes.

The FTC recognizes that environmental certifications from associations or others can benefit consumers by providing a consistent definition of the "green" attributes of products or services, as well as verification that technical claims are true. But the agency also believes that seals of approval can confuse or even mislead the public, and the new proposed section of the "Green Guides" gives detailed guidance on how to avoid deceptive claims relating to environmental certifications.

#### A Closer Look at This New "Green Guides" Provision on Environmental Certifications and Seals of Approval

The new section on certifications and seals of approval (proposed 16 C.F.R. Part 260.6) has five parts. First, part (a) of the proposed new section states what should be obvious – that it is deceptive to claim that a product, package or service has been endorsed or certified by an independent, third-party organization when it has not.

Next, part (b) of proposed 16 C.F.R. Part 260.6 says that a marketer's use of the name, logo or seal of approval of a third-party certifier will be considered an endorsement – and, therefore, must meet the criteria for endorsements set forth in the FTC's Endorsement Guides (16 C.F.R. Part 255).

Part (c) of the proposed new section points out that third-party certification does not necessarily provide the necessary substantiation for all the claims that may be communicated by the mention of the certification in an advertisement. It remains the advertiser's responsibility to determine what claims are communicated by reference to an environmental certification or seal of approval in its advertising, and to ensure that the certification adequately substantiates its claims with tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

Part (d) warns against the use of broad and unqualified certifications or seals of approval because they likely convey a general environmental benefit claim, and the FTC believes that it is "highly unlikely" that advertisers can back such claims up.

Part (e) of the proposed new section states that any language qualifying a certification or seal of approval should be "clear and prominent" and should clearly convey that the certification or seal of approval refers only to specific and limited benefits. This qualifying language may be part of the certification or seal itself.

#### How Do the Examples Provided in the New Proposed Section Help Illuminate the FTC's Thinking?

The FTC has offered six hypothetical scenarios to help explain what the proposed new “Green Guides” section on the use of environmental certifications and seals of approval mean.

*Example 1: An advertisement for paint features a “GreenLogo” seal and the statement “GreenLogo for Environmental Excellence.”*

This advertisement likely conveys that the GreenLogo seal was awarded by an independent, third-party certifier with expertise in evaluating the environmental attributes of paint. If that is not the case, the advertiser should accompany the seal with clear and prominent language indicating that the marketer itself created the GreenLogo seal. The advertiser also should limit the broad and unqualified “green” claim communicated by the seal to the specific environmental benefits for which the marketer has substantiation.

*Example 2: A product advertisement includes a seal with the text “Certified by the Renewable Energy Association.” The advertiser is a member of the Association.*

The use of the seal is deceptive because it likely implies that the association is wholly independent from the advertiser. The advertiser should accompany the seal with clear and prominent language disclosing the connection to the association.

*Example 3: A manufacturer advertises its product as “certified by the American Institute of Degradable Materials.” The advertisement does not mention that the American Institute of Degradable Materials is an industry trade association.*

Regardless of whether the manufacturer is a member, this advertisement is deceptive because it likely conveys that the product is certified by an independent certifying organization, not an industry trade group. The advertisement would not be deceptive if the advertiser added clear and prominent language indicating that the Institute is an industry trade association.

*Example 4: A marketer’s industry sales brochure for overhead lighting features a seal with the text “U.S. EcoFriendly Building Association” to show that the marketer is a member of that organization. Although the lighting manufacturer is, in fact, a member, this association has not evaluated the environmental attributes of the company’s product.*

The use of the seal would not be deceptive if the advertiser disclosed that the seal referred to the company’s membership only and that the association did not evaluate the product’s environmental attributes, and limited the general environmental benefit representation to the particular product attributes for which the marketer has substantiation. For example, the marketer could state, “Although we are a member of the U.S. EcoFriendly Building Association, it has not evaluated this product. Our lighting is made from 100 percent recycled metal and uses energy-efficient LED technology.”

*Example 5: A product label contains an environmental seal, either in the form of a globe icon or a globe icon, with the text “EarthSmart.” EarthSmart is an independent, third-party certifier that evaluates products’ chemical emissions. While the marketer meets EarthSmart’s standards for reduced chemical emissions during product usage, the product has no other specific environmental benefits.*

The seal would not be deceptive if the marketer accompanied it with clear and prominent language limiting the general environmental benefit claim to the particular product attributes for which the manufacturer has substantiation. For example, the marketer could state next to the globe icon: “EarthSmart certifies that this product meets EarthSmart standards for reduced chemical emissions during product usage.” Alternatively, the claim would not be deceptive if the EarthSmart environmental seal itself stated: “EarthSmart Certified for reduced chemical emissions during product usage.”

*Example 6: Great Paper Company sells photocopy paper with packaging that has a seal of approval from the No Chlorine Products Association, a nonprofit, third-party association. There are no material connections between Great Paper Company and the No Chlorine Products Association. Using standards widely recognized by industry experts, the No Chlorine Products Association certifies that products are chlorine-free.*

In this example, the name of the certifier (“No Chlorine Products Association”) conveys that the certification applies only to one environmental attribute, rather than to the overall environmental benefits of the product.

## **Conclusion**

The proposed FTC "Green Guides" are aimed primarily at advertisers. The FTC probably wouldn't take action against a trade association if its environmental certification or seal of approval program is *bona fide* and properly administered. But if the association allowed its members to misuse its certification or seal of approval to deceive the public, or if the association promoted its program in a deceptive manner, the FTC might take action against the association as well.

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