

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

NATIONAL FOOD PROCESSORS  
ASSOCIATION,

Petitioner,

and

American Association of Advertising  
Agencies

American Frozen Food Institute

Association of National Advertisers

Can Manufacturers Institute

Chemical Specialties Manufacturers  
Association

Food Marketing Institute

Grocery Industry Committee on Solid  
Waste

Grocery Manufacturers of America

International Dairy Foods Association\*

Steel Can Recycling Institute

Co-Petitioners

PETITION FOR FEDERAL  
TRADE COMMISSION  
GUIDES

PETITION FOR INDUSTRY GUIDES FOR ENVIRONMENTAL  
CLAIMS UNDER SECTION 5 OF THE  
FEDERAL TRADE COMMISSION ACT

February 14, 1991

\*Includes: Milk Industry Foundation  
National Cheese Institute  
International Ice Cream Association  
American Butter Institute

2073266136

## GUIDELINES FOR ENVIRONMENTAL CLAIMS

### Section 1. Preamble

The purpose of these Guides is to provide assistance to businesses seeking to make claims about the environmental attributes of consumer products or packaging in compliance with Section 5 of the Federal Trade Commission Act (the "Act"). The Guides focus on consumer perceptions that are likely to arise from various environmental claims, and seek to identify the types of claims that raise concerns about consumer deception. Under Section 5 of the Act, a representation or omission is deceptive if it is likely to mislead consumers, acting reasonably under the circumstances, to their detriment.

The Guides reflect the Commission's longstanding commitment to the principle that, when provided with accurate information, consumers themselves are the best instigators of improvements in the market. Thus, ensuring that claims about environmental attributes are truthful does more than protect consumers from deception. When firms are free to make truthful claims, competition over environmental attributes should lead to more product and packaging innovation by industry. Such competition also should stimulate the development of related markets, such as the market for recycled goods. In short, truthful advertising of environmental features ultimately will benefit both consumers and the environment generally.

The Guides are contextually based. The Commission's particular expertise lies in its ability to evaluate the impressions that advertisements or labels are likely to leave with consumers. Long experience with the evaluation of claims has taught the Commission that the meaning of a communication cannot be separated from its context. Thus, the Guides do not attempt to establish inflexible definitions of environmental terms and apply them rigidly in all contexts. Rather, through a series of examples, the Guides reveal the different meanings that a marketer might convey based on the use of particular language -- or the omission of important qualifying language -- about environmental features.

The Guides also do not attempt to provide definitive answers to scientific questions. Particularly in a field in which science and technology are rapidly changing, such conclusive answers may not be possible and are, in any event, beyond the Commission's expertise. Rather, the Guides rely on the well-established rule that advertisers must have a reasonable basis for claims before making them. As in any area of scientific uncertainty, the reasonable

2073266137

basis requirement does not demand scientific consensus. Instead, Section 5 requires that an advertiser possess reliable evidence indicating the likely truth of its claim at the time the claim is made.

## Section 2. General Provisions

### (a) Scope

These Guides apply to environmental claims included in labeling, advertising, or other marketing materials (e.g., in-store displays). Such claims may be made directly or by implication. They may also arise as a result of consumer interpretations of a product's brand name or trade name. The Guides apply to any person who makes an environmental claim in connection with the sale, offering for sale, or marketing of any product for personal, family or household use, or for commercial, institutional or industrial use.

### (b) Reasonable Basis

As is true for all claims made to consumers, claims subject to the Guides must be supported by a reasonable basis. In this context, a reasonable basis will most often consist of scientific or professional tests, analyses, research, studies, or any other evidence based upon expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures accepted in the profession or science to yield accurate and reliable results. For further guidance on the reasonable basis requirement, advertisers should consult the Commission's 1983 Policy Statement on the Advertising Substantiation Doctrine.

### (c) Structure of the Guides

Each section of the Guides addresses claims in a particular area. Of necessity, the Guides are general in nature. However, each statement of general principles is followed by examples that suggest "safe harbors" for those seeking to ensure their compliance with the law. A given claim may, of course, raise issues that are addressed under more than one section of the Guides. Advertisers are cautioned to assure that their claims comply with all of the provisions of the Guides, not simply the provision that seems most directly applicable.

### (d) Enforcement of the Guides

The Guides are what their name implies -- guidelines for compliance with the law. As in all areas, the Commission will follow its normal practice of weighing the

likely harm to consumers and the probable benefit to the public before determining whether or not to initiate a law enforcement proceeding to address conduct that may be inconsistent with the Guides.

### Section 3. Claims of Recycled Content

#### (a) Scope of Claims

It is deceptive to misrepresent, directly or by implication, that a product or package, or a portion thereof, is made of recycled materials.

Example 1: A packaged product bears the word "recycled," without elaboration, on its label. Unless the type of product, surrounding language, or other elements of the context indicate otherwise, the term is likely to convey to consumers that substantially all components of the product and its packaging are made from recycled materials. Unless each such message is substantiated, the claim should be qualified.

Example 2: A soft drink bottle is labeled "recycled." The claim is deceptive unless the bottle is made from recycled materials. The bottle cap is an incidental component not addressed by the claim. Similarly, it would not be deceptive to label a shopping bag "recycled" where the bag is made of recycled material but the handle, an incidental component, is not.

Example 3: A product in a multi-component package, such as a paperboard sleeve in a shrink-wrapped plastic box, indicates that it has recycled packaging. The paperboard sleeve is made of recycled material, but the plastic box and shrink-wrapped plastic are not. The claim is deceptive. A claim limited to the paperboard sleeve would not be deceptive.

Example 4: A package is made from layers of foil, plastic, and paper laminated together, although the layers are indistinguishable to consumers. The label claims that the package contains "a layer of recycled paper." The claim is not deceptive, as long as the paper layer is more than an incidental component of the package.

#### (b) Quantity of Recycled Content

It is deceptive to misrepresent, directly or by implication, the amount of recycled material contained in a product or package.

2073266139

Example 1: A company's soda bottles bear the word "recycled," without elaboration, on its label. The claim is deceptive unless, on average, substantially all of the material from which the bottles are made is recycled material.

Example 2: A product is labeled as containing "20% recycled material." The claim is deceptive unless the advertiser has a reasonable basis for concluding that at least 20%, by weight or volume, of the material in the product is recycled material.

Example 3: A package comprised of a cardboard sleeve over a plastic box bears the legend "package is 30% recycled material." Each packaging component amounts to one-half the weight of the total package. The sleeve is 20% recycled, while the plastic is 40% recycled. The claim is not deceptive, since the average amount of recycled material is 30%..

Example 4: An advertiser claims that "no other diaper contains more recycled content." The advertised diaper does have more recycled content than any other on the market, but the recycled content is well under 100%. The claim is not deceptive, because there is no representation of the amount of recycled material in the product, and the specific comparison is substantiated.

Example 5: A package label bears the claim that the packaging material contains "50% recycled material." The seller purchases packaging material from several sources, and the amount of recycled material provided by each source varies. The 50% figure is based on the weighted average of recycled material purchased from the sources. The claim is not deceptive.

#### (c) Source of Recycled Material

It is deceptive to represent, directly or by implication, that a product or package contains recycled material unless there is a reasonable basis to believe that all material being claimed as part of the "recycled" content otherwise would have entered the solid waste stream.

Example 1: A manufacturer routinely collects spilled material and scraps from cutting finished products. The material is combined with virgin raw material for use in further production of the same product. A claim that the additional products contain "recycled" material would be deceptive, because the material would not normally have entered the solid waste stream.

Example 2: A manufacturer purchases material from a firm that collects wastes of various sorts from manufacturers and resells them. The manufacturer includes the weight of this material in its calculations of the recycled content of its products. A claim of recycled content based on this calculation is not deceptive because, absent the purchase and reuse of this material by others, it would have entered the solid waste stream.

Example 3: A package is labeled as containing "20% recycled paper." Some of the recycled content was composed of material collected from consumers after use of the original product; the rest was composed of industrial scrap that otherwise would have entered the solid waste stream. The claim is not deceptive.

Example 4: A manufacturer produces a product made of flexible plastic. Scraps from the production line are diverted to a separate line in the plant, where they are incorporated into the production of a rigid plastic container with equal amounts of virgin material. A claim that the rigid plastic container contains "at least 50% recycled plastic" is not deceptive if, without the diversion, the waste material from the first process would have entered the solid waste stream.

#### Section 4. Claims of Recyclability

##### (a) Scope of Claims

It is deceptive to misrepresent, directly or by implication, that any product or packaging material can be recycled.

Example 1: A packaged product is labeled with a claim of recyclability. Unless the type of product, surrounding language, or other elements of the context indicate otherwise, the label is likely to convey to consumers that substantially all portions of the product and its packaging that remain after normal use of the product can be recycled. Unless each such message is substantiated, the claim should be qualified.

Example 2: A soft drink bottle with a metal cap is labeled as recyclable. As long as the bottle is recyclable, the claim is not deceptive. The cap is an incidental portion of the product.

2073266141

Example 3: A product is packaged in a plastic tray in a paperboard sleeve, and wrapped in plastic. The label states "plastic tray recyclable where facilities exist." The claim is not deceptive as long as the plastic tray can be recycled. No claim is made for the recyclability of other components of the package.

Example 4: A plastic package is labeled with the Society of the Plastics Industry (SPI) code, consisting of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin. Without more, the mere use of the SPI symbol (or the similar European code) does not constitute a claim of recyclability.

#### (b) Feasibility of Recycling

It is deceptive to misrepresent, directly or by implication, the feasibility of recycling a product or packaging material.

Example 1: A bottle bears the unqualified statement that it is "recyclable." The material in question is recycled in some parts of the country. The claim might nevertheless be deceptive if consumers understand the reference to mean that recycling facilities for the material are more widely available than is actually the case. Marketers should exercise caution before using such unqualified claims for a material.

Example 2: A soda bottle made of plastic is labeled with the claim "Recyclable where facilities exist." Recycling facilities for this material are available in some parts of the country, but not universally. The claim is not deceptive, because only a limited claim of recycling availability is being made.

Example 3: A package made of a certain plastic is labeled with the claim "Recyclable where facilities exist." This particular type of plastic is being recycled in only two facilities in the country, both of which are demonstration projects whose economic viability has not yet been demonstrated. Although the claim of recyclability is a limited one, facilities are virtually nonexistent and, given their status as demonstration projects, the continued viability is uncertain. As a result, the claim is deceptive. However, if the likely long-term viability of the demonstration projects could be demonstrated, the claim may be substantiated.

Example 4: A product is packaged in a plastic bottle that is labeled "recyclable through Company X facilities." The bottle's manufacturer has developed a

technology to recycle the material, and has established numerous collection points around the country for transfer of used bottles back to the manufacturer's recycling facility. The claim is not deceptive because a reasonable amount of recycling is occurring consistent with the limited claim made.

Example 5: A label claims that the package "includes recyclable plastic." The package is composed of four layers of different materials, bonded together. One of the layers is a recyclable plastic, but the others are not. Even if it is technologically possible to separate the layers, the claim is deceptive unless the manufacturer has a reasonable basis for concluding that a reasonable amount of the material will actually be separated and recycled at some facilities around the country.

## Section 5. Claims of Compostability

### (a) Scope of Claims

It is deceptive to misrepresent, directly or by implication, that any product or packaging material can be composted.

Example 1: A manufacturer indicates that its package or product is made of compostable materials. The claim is deceptive unless the manufacturer has reliable evidence that, through a process of physical, chemical, thermal and/or biological degradation in a solid waste composting facility, the product or package will be converted to soil-like material.

Example 2: A package is labeled with the phrase "can be composted," without elaboration. Unless the type of product, surrounding language, or other elements of the context indicate otherwise, the claim is deceptive unless both the product and the packaging can be processed in solid waste composting facilities.

Example 3: A manufacturer sells a disposable diaper that bears the legend "this diaper can be composted where municipal solid waste composting facilities exist." The claim is deceptive unless the manufacturer has reliable evidence that the diaper can be processed in municipal solid waste facilities and that all materials in the product either are compatible with compost intended for soil application or can be screened from the final compost.

2073266143



Example 4: A manufacturer sells paper yard waste bags with metal closure ties. The package indicates that the bags can be composted. If the bags can be composted, the claim is not deceptive. The closure ties are incidental components of the product.

#### (b) Feasibility of Composting

It is deceptive to misrepresent, directly or by implication, the feasibility of composting a product or packaging material.

Example 1: A manufacturer indicates that its package "can be composted where facilities exist." The package or its materials are being composted at facilities in some parts of the country. The claim is not deceptive because only a limited claim of composting facility availability is being made.

Example 2: A paper bag for yard waste is labeled "compostable." The bags are in fact composted at many locations around the country, at solid waste composting facilities accepting yard waste. Nevertheless, the unqualified claim may be deceptive if consumers understand it to mean that composting facilities for the material are more widely available than is actually the case. Marketers should exercise caution before making such unqualified claims.

Example 3: A manufacturer indicates that its package "can be composted where facilities exist." There is general agreement among experts on a technology for composting the material in question, but no facilities are yet in operation which accept the material. The claim is deceptive because it implies that at least some composting facilities are actually processing the material.

### Section 6. Claims of Source Reductions

#### (a) Scope of Claims

It is deceptive to misrepresent, directly or by implication, that the manufacture of a product or package represents a source reduction as compared with another product or package.

Example 1: An ad claims that solid waste created by the advertiser's packaging is "now 10% less." The claim is deceptive unless the advertiser has substantiation that shows that the current package contributes, by weight or volume, 10% less waste to the

solid waste stream as compared with the immediately preceding version of the package.

Example 2: A packaged product bears the claim "source reduced 20% to help the environment." Unless the type of product, surrounding language, or other elements of the context indicate otherwise, the claim is likely to convey to consumers that both the product and the packaging produce 20% less solid waste as compared with their immediately preceding counterparts. Each such claim must be substantiated.

Example 3: An advertiser notes that disposal of its product generates "10% less waste." The claim is ambiguous. Depending on contextual factors, it could be a comparison either to the immediately preceding product or to competitive products. The seller should clarify the claim, or be prepared for the possibility that both claims will need to be substantiated.

Example 4: A product's label states that it has "non-toxic packaging." The claim is deceptive unless the manufacturer has reliable evidence which shows that, under any reasonably foreseeable means of use or disposal, no part of the package will produce or leave behind toxic residues that pose more than a de minimus risk to human health or the environment.

Example 5: A product is labeled "source reduced." Consumers would expect that waste from the product has been reduced by a reasonable amount, and advertisers must have substantiation consistent with these expectations. Advertisers can minimize the risk of consumer misimpressions by providing additional information concerning the source reduction in connection with such claims.

Example 6: A package indicates that toxic byproducts have been source reduced. The manufacturer has reliable evidence that the package will produce significantly fewer toxic byproducts than the package it used in test marketing for the preceding three months. Although the claim is substantiated, it is deceptive because the comparison is not to a product that was regularly offered to the public at large for a reasonably substantial period of time.

#### (b) Timeliness of Claims

It is deceptive to misrepresent, directly or by implication, when a source reduction was implemented.

Example 1: An ad claims that solid waste created by the advertiser's packaging is "now 10% less." The

claim is deceptive unless the source reduction was implemented recently -- at least within the past 12 months. If the comparison is to a much earlier package, then the advertiser should indicate the time frame covered by the comparison, such as "the package we used 5 years ago."

Example 2: An ad claims that the advertiser's packaging creates "less waste than the leading national brand." The advertiser's source reduction was implemented four years ago, and is supported by a detailed mass balance calculation comparing the relative solid waste contributions of the two packages. The claim is not deceptive, because it does not misrepresent when the source reduction was implemented and the comparison appears still to be true. If the advertiser had reason to believe that either it or its competitor had changed its packaging in the interim in a manner that rendered the claim unsubstantiated, the claim would be deceptive.

Example 3: An ad for a cleaning fluid in a plastic container states that it creates "20% less waste than our comparable glass bottle." The product is still available in a glass bottle. The plastic container was introduced to the market three years ago, and there is a reasonable basis for the comparison. The claim is not deceptive. However, if the ad stated or implied that the source reduction was a recent one, the claim would be deceptive.

## Section 7. Claims of Refillability/Reusability

### (a) Scope of Claims

It is deceptive to represent, directly or by implication, that a package is refillable or reusable unless there is in existence a program for: (1) the collection and return of such packages to the manufacturer for reuse in a manufacturing process or for reuse and refill without remanufacture; or (2) the later use of the package by consumers to mix, cook, use or store product subsequently sold in another package.

Example 1: A package is labeled "refillable 5 times." The manufacturer has the capability to reuse returned packages, and can show that the package will withstand at least 5 manufacturing cycles. The claim is nevertheless deceptive unless there is a program for the collection and return of the packages to the manufacturer.

Example 2: A bottle of fabric softener states that it is in a "handy refillable container." The manufacturer also sells a large-sized container which indicates that the consumer is expected to use it to refill the smaller container. The claim is not deceptive because there is a program for the subsequent use of the container by consumers to store the same product sold in a different container.

Example 3: A small food jar bears the legend "reusable." The manufacturer has evidence that a significant number of consumers use the jars to store screws and nails. The claim is nevertheless deceptive because storing such articles is not a "reuse" of the food jar, and there is no program for such reuse.

#### (b) Quantification of Claims

It is deceptive to misrepresent, directly or by implication, the number of times a package may be refilled or reused without a material adverse impact.

Example 1: A cleaning solution bottle bears the word "refillable," without elaboration. The manufacturer has a collection and reuse program, under which the bottle can be refilled no more than four times without material adverse impact. Consumers are likely to believe that the bottle can be refilled a reasonable number of times without material adverse impact. What constitutes a reasonable number of times will depend on circumstances, such as the nature of the product and consumer awareness of refilling practices. Advertisers can minimize the potential for deception by specifying the number of times a product may reasonably be refilled or reused.

Example 2: A cake manufacturer sells a product kit containing cake mix and a baking tray. It also sells a product containing only the cake mix. The tray is sized specifically for the mixing instructions on the cake mix package and can be reused to make more cakes. After 5 baking and washing cycles, the tray loses its material functionality. A claim of "reusable 5 times" for the tray is not deceptive.

#### Section 8. General Claims

It is deceptive to make generalized statements of environmental benefit unless there is a reasonable basis for each claim consumers will take from such statements.

Note: Generalized claims of environmental benefit, such as "environmentally friendly," "green," "earth friendly," "environmentally safe," and the like, are very difficult to interpret. In some contexts, such statements may be regarded by consumers as mere puffery, thus requiring no substantiation. In many cases, however, these statements may imply environmental benefits that are both specific and far-reaching. Thus, advertisers should exercise great caution before deciding to use terms of this type. The examples below suggest the types of interpretations which could arise from such generalized statements.

Example 1: A manufacturer states that its packaging is "now environmentally friendlier." The packaging is, in fact, source reduced 15% compared to previous packaging, but it is not recyclable. The claim is deceptive if consumers interpret "environmentally friendlier" in this context to mean that all significant environmental aspects of the packaging are improved over previous packaging. A source reduction claim that focuses on solid waste and is substantiated would not be deceptive.

Example 2: The seller of an aerosol product claims that the product is "ozone friendly." In fact, chlorofluorocarbons ("CFCs") have been removed from the product. The claim is deceptive unless the manufacturer can establish that none of the product's emissions will have adverse effects on the upper atmosphere. A specific claim regarding the absence of CFCs would not be deceptive.

Example 3: A brand name like "Eco-Safe" would be deceptive if, in the context of the product in question, it leads consumers to believe that the product has environmental benefits that cannot be substantiated by the manufacturer. The claim would not be deceptive if "Eco-Safe" were followed by qualifying language limiting the safety representation to a particular product attribute for which it could be substantiated.

2073266148