

IT'S TOO EASY BEING GREEN: DEFINING FAIR GREEN MARKETING PRACTICES

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS

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IT'S TOO EASY BEING GREEN: DEFINING FAIR GREEN MARKETING PRACTICES

TUESDAY, JUNE 9, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 11:01 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Bobby L. Rush [chairman of the subcommittee] presiding.

Members present: Representatives Rush, Sarbanes, Stupak, Barrow, Castor, Radanovich, and Gingrey.

Staff present: Michelle Ash, Chief Counsel; Anna Laitin, Counsel; Angelle Kwemo, Counsel; Tim Robinson, Counsel; Valerie Baron, Special Assistant; William Cusey, Special Assistant; Jennifer Berenholz, Deputy Clerk; Chad Grant, Minority Policy Analyst; Brian McCollough, Minority Senior Professional Staff; and Gerald Couri, Minority Professional Staff.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Good morning. The subcommittee on Commerce, Trade, and Consumer Protection will come to order. The chair will thank all those who are here and particularly all witnesses. The chair now recognizes himself for the purposes of an opening statement.

Today the subcommittee is holding a hearing titled "It's Too Easy Being Green: Defining Fair Green Marketing Practice."

Let me start—the mikes are on. They are all working now, right? OK, let me—the chair recognizes himself for five minutes for the purposes of opening statement.

The subcommittee on Commerce, Trade, and Consumer Protection is holding a hearing titled "It's Too Easy Being Green: Defining Fair Green Marketing Practices." During this hearing, we will be taking up the truthfulness of green advertising claims, consumer protection of green claims, and the role of the Federal Trade Commission in regulating these proliferating claims.

More than ever before, the shelves of our supermarkets, hardware, minimarts, home improvement, and pet stores are being lined with good bearing labels calling themselves as natural, biodegradable, ecofriendly, sustainable, recyclable, and nontoxic just to name a few. With the increased demand by these stores for more green products, we are seeing an increase in certifying companies

certifying these green claims. While some responsible companies have created certifications and labels backed by testing, other companies have spied an opportunity in demand for information.

For a fee, these companies will certify anything as green, affording false comfort to purchasers that their products meet environmental and safety standards.

Just to cite a few relevant statistics, in 2008, consumers purchased \$290 million in natural household cleaners and supplies. In addition, "The Wall Street Journal" reported in April 2009 that there are more than 300 such environmental labels putting a green stamp on everything from cosmetics and seafood to coffee. Because there are no common agreement on jury accepted definitions relating to the meaning of many of these words. And since consumers are being bombarded by so many of these claims and certifications, and there is legitimate concern that some consumers are basing their purchasing decisions on misleading and in some cases even deceptive labels.

And I am especially concerned that Americans who have less disposable income to spend on "green" goods are not getting the benefits that they expect when they spend their hard-earned dollars on these goods, which promise more and also cost more at our check-out lines.

At the conclusion of today's hearing, I would like for this body to have more insight into FTC's update of its green guides and how extensively consumers, manufacturers, and advertisers are consulting and relying on these guides.

Second, I want for us to discuss whether the FTC should be more aggressive in monitoring and/or regulating the placement of claims on products and how, in the flow of commerce, can the Commission ensure that green labels are more useful and informative than is currently the case.

Thirdly, I would like for us to explore the role of the private sector. We will ask how truly environmentally responsible and safe products can differentiate themselves from the products that may unsubstantiated claims. And we will examine the role of the private run certification at labeling products.

I would also just add another note that there might be another role for the Congress to play in these matters, and we will be keeping a keen eye and a hearing ear to the role that the Congress should be playing in this particular matter.

I look forward to hearing the testimony and to participating in the exchange that follows. I want to thank you all very much for agreeing to help us examine this problem and come up with constructive proposals to address issues that we have identified. I yield back the balance of my—I don't have any more time. So now it is my pleasure to recognize the ranking member of the subcommittee for five minutes for the purposes of an opening statement, my friend, the gentleman from California, Mr. Radanovich, is recognized.

OPENING STATEMENT OF HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. RADANOVICH. Thank you so much, Mr. Chairman. I want to thank you also for calling this hearing to examine green marketing practices. We all agree that consumers should not be deceived through false marketing when making a decision to buy a product. Such dubious practices would fall squarely within the Federal Trade Commission's jurisdiction when a company violates existing labeling rules or when a company clearly makes a false statement about its product with the intent to deceive.

I understand the Commission has taken several enforcement actions against companies for such practices, and they should be commended. And I look forward to hearing more about these when Mr. Kohm testifies shortly.

I agree with the premise that a business that markets its products as green should be held accountable for accuracy and truthfulness. The problem arises from a larger debate about what is green and who will define it and how will it be defined. Consumer confusion does not help anybody, but a simple solution does not readily exist that all stakeholders can agree upon, which is why we are having this debate.

I imagine we could ask 10 different people to define green, and we would not be surprised if we received 10 different answers. Many consumers seek out recyclable or biodegradable products, and these products may be labeled accurately and be attractive to consumers for their environmental sensitivity. However, depending on how we define green, a recyclable product could be considered greener than a biodegradable one or vice versa, and that is a relatively simple example of similar products.

When multiple variables are considered in the determination, the comparison of the products becomes more complicated. Regardless, some of the discussions and suggestions that we will hear today will focus on the Environmental Protection Agency.

For purposes of this hearing, we would be better served confining our discussion to the area of our jurisdiction over the marketing practices and what would be defined as an unfair or deceptive practice under the FTC Act. I would also suggest the subcommittee should hear the views of businesses that are manufacturing products that may fall subject to FTC enforcement.

Ideally, mutually agreeable definitions for the purposes of marketing will emerge through a process of all stakeholders working together. This may not result in a one-size-fits-all approach, but it will have the benefit of an open and transparent process where everybody has a voice and all viewpoints are considered.

The marketplace implicated by this discussion is extremely broad with many diverse products. If the goal is to enforce manufacturing practices and leave a smaller footprint on the earth through consumer marketing appeal, the definition of green must be inclusive. Labeling and marketing are intended to be tools that educate the public, not points of litigation. And more importantly, they should not be the goal of the given product.

Further, we have seen many unforeseen consequences of technological advances that were supposed to help reduce environmental

footprint but had the opposite effect due to unwitting consumers. Energy efficiency and the Energy Star label may be useful, but not only to the extent that they alter the overall consumption of home energy use.

Saving more energy on one product may be beneficial, but if the savings is used to keep the television and stereo on longer, the environmental picture hasn't really changed. Ultimately, the consumer's use of the information is what really matters.

I only point this out because consumers are hard to predict. We continue to battle obesity in this country despite extensive labeling requirements for decades. Labels can be a useful tool for information if the consumer uses it wisely and is not inundated with information overload. Foods may be accurately labeled as low sugar, low carbohydrate, or low fat, but that does not change the overall trend of increase in the average calories Americans consume.

One final point I will make which is I am certain experts have discussed is that any green standard should take into account the diverse geography of resources of this country. For example, if new green standards delve into the life cycle carbon footprint of a product, manufacturers should not be disadvantaged based on the limitations of available energy resources to which they may be captive. To do so based on today's desires will cause more harm than good.

Mr. Chairman, I want to thank you and also our witnesses today for appearing. I look forward to your testimony, and I yield back. Thank you, Mr. Chairman.

Mr. RUSH. The chair thanks the gentleman. The chair now recognizes the gentleman from Maryland for five minutes for the purposes of an opening statement. Mr. Sarbanes of Maryland is recognized.

OPENING STATEMENT OF HON. JOHN P. SARBANES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. SARBANES. Thank you, Mr. Chairman. I won't take five minutes. I appreciate your convening this hearing. This is definitely something we need to look at. This is kind of the next big thing when it comes to labeling, I think. And the role of this committee and the FTC and others to put in place a regime that makes sense with respect to green labeling is a very, very important one.

There is no question when you go to the store—I fall prey to this myself—and you see this green labeling or these green claims that are made that you are either thinking green is healthy or you are thinking green is environmentally friendly. You are basically in the mindset that green is good, and so it does have a very powerful effect on people's purchasing patterns and their expectation of what they are getting for themselves and their family.

So the notion that that claim is being made in many instances when it can't really be justified if when I think it is offensive to many and certainly to the consumer that is looking for that seal of good housekeeping when it comes to what is environmentally friendly and what is healthy.

I don't worry too much about the question of what is greener than the next thing as long as the things that are claiming to be green have met a certain baseline standard and definition. And I

certainly recognize it is going to come up with those definitions that can have some sort of uniform application. But I think we can find our way to it, and our panelists today will help us think that through.

The other point you made is just as important, and that is it is not fair to those businesses and manufacturers and others who really are trying to do the right thing and make products that are green in all their different aspects to have a system that is allowing others to make false claims with respect to whether they are delivering green products.

And the more sinister view to take on that is it actually discourages companies from doing the right thing because they say well, what difference does it make? If I can just slap a green label on something and get the benefit of that in terms of marketing, why not cut corners?

So there are many reasons to pursue this on behalf of the consumer and on behalf of businesses that are trying to lead the way with good practices, and thank you for convening the hearing today to look at those practices. And I yield back my time.

Mr. RUSH. The chair thanks the gentleman. The chair now recognizes for the purposes of opening statements Dr. Gingrey from Georgia. Dr. Gingrey, you are recognized for five minutes.

OPENING STATEMENT OF HON. PHIL GINGREY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. GINGREY. Mr. Chairman, thank you. I am sitting here drinking this soft drink out of a green can. This is by the great Coca-Cola Company, and they don't imply anything in here about being environmentally friendly. They just tell you how much caffeine and what great soft drink this is, and it is a good soft drink. But certainly you get the impression you could package something in a green—even politicians—I notice in the last campaign cycle in our state more and more politicians actually wearing a green shirt and having a green logo and, you know, just that subliminal message.

Mr. Chairman, I want to thank you, of course, for calling the hearing today on green marketing techniques that are clearly being used now more than ever by all types of companies and individuals. Unfortunately despite the increased efforts by corporate citizens attempting to be more environmentally friendly, there is still a great deal of confusion that exists particularly for the consumer with the way that these marketing practices currently function.

The FTC issued its own set of environmental guides back in 1992 called "The Green Guides" and this working document allows the FTC to better understand what constitutes false or deceptive green claims within marketing. However although these guides provide a base of understanding for the FTC, "The Green Guides" have not been fully updated since when, 1998, and so that leaves a wide gap between the increase in green marketing and the way by which we understand these techniques today.

Mr. Chairman, there are some fundamental questions that we must answer at the outset of any discussion of green marketing. First and foremost, how is this marketing defined? As this panel of witnesses will describe, there are varied interpretations of how a company uses these marketing tools. Is green marketing an envi-

ronmental matter or is it a health matter? It could be argued that individual consumers may have different ideas of what green means for them, so this needs to be factored into any discussion that is had by the FTC as it updates these green guides.

The last question, and arguably the most important for this subcommittee, is what role the FTC should play in the structure or enforcement of green marketing. The FTC already has the authority to conduct investigations on false and deceptive marketing practices, and this should be taken into consideration as regulations continue to be updated.

Mr. Chairman, with the increase in green marketing that has occurred, there are still a number of question marks that exist both for companies and for consumers. And I think in this realm, Jim Henson's lovable character Kermit the Frog may have said it best when he said "it's not easy being green."

I look forward to hearing from our panel on these increasingly omnipresent issues, and I yield back the balance of my time.

Mr. RUSH. The chair thanks the gentleman. The chair now recognizes the gentlelady from Florida, Ms. Castor, for five minutes for the purposes of opening statement.

OPENING STATEMENT OF HON. KATHY CASTOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Ms. CASTOR. Thank you, Mr. Chairman. Thank you very much for calling this hearing. Good morning. In recent years, we have had a substantial increase in products that promote environmental consciousness and tout how their products minimize environmental impacts. There is an increasing public awareness of the dangers of climate change and environmental degradation, and Americans want to help naturally.

And one of the places folks look to reduce their environmental impact is at the store. The last few years have seen a proliferation of new products marketed as being green or environmentally friendly. And frankly this can be confusing for consumers. Consumers have a hard time telling the difference between companies that do the hard work to develop products and manufacturing processes that are more sustainable and environmentally friendly and those companies that simply start printing their labels in green with sustainable written on the label and then charge a green premium for the same old dirty products.

It seems sometimes that some retailers and product suppliers are engaged in a race to poorly define and use meaningless terms like sustainable and ecofriendly. And with that, there is a real risk that consumers will lose confidence in the entire concept of being—having a sustainable product or a green friendly product and that consumers will simply tune out the environmental message. A study by the Shelton Group found that consumers surveyed in 2007 were between 22 and 55 percent less likely to buy a wide range of green products than in 2006, and a major factor in that decline was message overload.

Consumer groups have done an admirable job of stepping up to try to provide clarity by operating independent claims verification and marketing standards groups, and I look forward to hearing from some of those groups who are with us today. However, they

still must compete with unreliable and unscrupulous certifications programs that are all too often concerned more with collecting the fee than in reliably labeling the product.

I am very interested in what more we can do to help consumers cut through the noise and find the truly sustainable products that they would like to purchase. I yield back my time.

Mr. RUSH. The chair thanks the gentlelady, and now it is my honor and privilege to welcome the witnesses who are gathered here, and I do want to recognize each one of them. I want to announce that Dr. Rangan is on her way. She had a late flight from New York, and now she is between the airport and the Capitol in a cab trying to make it here. So we will swear her in once she arrives.

And we will proceed now, recognizing our first witness. He is Mr. James Kohm. He is the director of the enforcement division of the Federal Trade Commission. Next to Mr. Kohm is Mr. M. Scot Case. He is the vice president of a company called TerraChoice, and he is also the executive director of the EcoLogo Program which is the Canadian government's green seal. And next to Mr. Case would be Mr. Dara O'Rourke. Dr. O'Rourke rather is an associate professor who comes from California, the University of California in Berkeley. And he is a cofounder of GoodGuide. And next to Mr. O'Rourke, we have Mr. Scott P. Cooper who is the vice president of government relations of the American National Standards Institute.

I again want to welcome each and every one of you witnesses. You don't know how it makes our heart glad that you are taking the time out from your busy schedules to come and participate with us today, and it is the practice of this subcommittee—we are operating under some new practices—that we swear you in. So I would ask if each one of you would stand and raise your right hand.

[Witnesses sworn]

Mr. RUSH. Let the record reflect that all witnesses have responded in the affirmative.

Now, our first witness we will recognize for five minutes for the purpose of opening statement is Dr. James Kohm. Dr. Kohm, would you please again restrict your comments your four minutes—five minutes rather or thereabouts.

TESTIMONY OF JAMES KOHM, DIRECTOR, ENFORCEMENT DIVISION, FEDERAL TRADE COMMISSION; M. SCOT CASE, VICE PRESIDENT, TERRACHOICE, AND EXECUTIVE DIRECTOR, ECOLOGO PROGRAM; DARA O'ROURKE, ASSOCIATE PROFESSOR, UNIVERSITY OF CALIFORNIA, BERKELEY, AND CO-FOUNDER, GOODGUIDE; SCOTT P. COOPER, VICE PRESIDENT, GOVERNMENT RELATIONS, AMERICAN NATIONAL STANDARDS INSTITUTE; AND URVASHI RANGAN, PH.D., DIRECTOR, TECHNICAL POLICY, CONSUMERS UNION

TESTIMONY OF JAMES KOHM

Mr. KOHM. Thank you very much, Mr. Chairman. Mr. Chairman, Ranking Member Radanovich, and members of the committee, my name is James Kohm. I am the associate director of the division

of enforcement in the Federal Trade Commission's Bureau of Consumer Protection.

Let me begin by noting that the views expressed in the written testimony represent those of the commission, while those in my oral testimony and answers to your questions reflect only my own views and not necessarily those of the commission or any particular commissioner.

I appreciate the opportunity today to discuss the FTC's role in the environmental marketing arena. The commission, as you know, does not set environmental policy or standards. That, however, is not to say that the commission does not have a significant role to play in the marketing of environmentally friendly and energy efficient products.

Specifically the FTC polices the marketplace to help ensure that consumers are not harmed by deceptive claims and that honest marketers' advertising is not drowned out by the false claims of their competitors. To achieve this goal, the commission employs a three-pronged strategy. First, we help businesses comply with the law. To accomplish this goal, the commission has developed its green guides that explain how consumers understand commonly used environmental claims such as recyclable and biodegradable and describe the basic elements needed to substantiate those claims.

The commission is currently reviewing its green guides to ensure that they remain responsive in today's marketplace. This is especially important given the explosion of green marketing in recent years and the prevalence of claims that were not common when the commission last reviewed the guides more than a decade ago.

To help develop a robust record upon which to base its guidance, the commission solicited public comment and held a series of public workshops on emerging green marketing issues. While we received a lot of useful information in response, unfortunately we obtained little evidence of how consumers understand certain claims.

The commission therefore is in the process of developing its own research to help it provide accurate, informed advice. Second, it is critical to complement rules and business guidance with a solid law enforcement presence. The commission's recent cases in this area have challenged, for example, home insulation sellers who vastly overstated the insulating properties of their products, businesses that falsely claim that their devices would dramatically improve your car's gas mileage, and companies making false claims about the green attributes of their products.

Of particular note, the commission today announced the reinforcement actions against companies that advertise their products as biodegradable. The green guides advised marketers that consumers understand unqualified biodegradable claims to mean that a product will break down into the elements found in nature within a reasonably short time after customary disposal. All three defendants could not substantiate this fact.

Consumers typically throw products like those challenged in these cases into the trash, which is in turn disposed of in places like landfills that do not present conditions under which products can biodegrade quickly even if they could do so under ideal conditions.

Finally the FTC employs a wide array of innovative consumer education materials to help consumers make informed green purchasing decisions and avoid energy saving scams. For example, our interactive Web site, Saving Starts at Home, offers tips to help consumers conserve energy and save money in almost every room of their homes.

In the virtual kitchen, for example, consumers can learn about how to use our energy guide label to select energy efficient appliances. In the attic, they can find tips on choosing insulation, and in the trash room, they can encounter explanations of terms like recyclable and biodegradable and the meaning of common environmental symbols.

Continued consumer interest in conserving energy and protecting the environment will no doubt result in continued environmental marketing. The FTC therefore will continue its efforts to ensure the truthfulness and accuracy of these green claims.

Thank you for providing the commission an opportunity today to appear before the committee and describe our work. I will be happy to answer any of our questions. Thank you.

[The prepared statement of Mr. Kohm follows:]

PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION

on

"IT'S TOO EASY BEING GREEN:
DEFINING FAIR GREEN MARKETING PRINCIPLES"

Before the

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION
UNITED STATES HOUSE OF REPRESENTATIVES

Washington, DC
June 9, 2009

I. Introduction

Chairman Rush, Ranking Member Radanovich, and Members of the Committee, I am James A. Kohm, Associate Director of the Enforcement Division in the Bureau of Consumer Protection at the Federal Trade Commission ("FTC" or "Commission").¹ I appreciate the opportunity to appear before you today to discuss the Commission's role with respect to environmental advertising claims.

In the past few years, there has been a virtual tsunami of environmental marketing. Businesses in a diverse array of industry sectors are touting the "green" attributes of their products and services, and several major retailers have launched their own green product lines. The FTC plays an important role in helping to ensure that these environmental advertisements are truthful, substantiated, and not confusing to consumers. In fulfilling this role, the Commission employs a multi-tiered approach. First, the agency promulgates rules and guides (the "Green Guides") to make the "rules of the road" clear for businesses. Second, the FTC challenges fraudulent and deceptive advertisements through enforcement actions. In fact, today the FTC announced three complaints alleging that Kmart Corporation, Tender Corporation, and Dyna-E International made false and unsubstantiated claims that their products were biodegradable. Finally, the FTC publishes materials to help consumers make informed purchasing decisions. This testimony describes the FTC's work in each of these three areas.

¹ This written statement represents the views of the Commission. My oral presentation and responses to questions are my own, however, and do not necessarily reflect the views of the Commission or any individual Commissioner.

II. Business Guidance and Rulemaking

The FTC does not establish environmental standards or encourage particular claims or consumer behavior based on environmental policy concerns. Rather, the agency's role in the environmental arena involves its traditional consumer protection authority: ensuring that consumers do not become the victims of unfair or deceptive practices. The Commission's authority stems from the Federal Trade Commission Act ("FTC Act") as well as several other statutes.² Pursuant to these statutes, the Commission has developed a variety of rules and guides related to energy and environmental marketing practices, including (1) guidance to help marketers ensure their environmental claims are truthful and substantiated, (2) requirements for energy use disclosures on most major home appliances and lighting products, and (3) rules mandating disclosures for automotive fuels.³

A. The Commission's Green Guides

The Commission's Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides"), 16 C.F.R. Part 260, are the centerpiece of the agency's environmental marketing program. The Guides help marketers avoid making green claims that are "unfair or

² FTC Act, 15 U.S.C. §§ 41-58. Other statutes include the Energy Policy and Conservation Act, 42 U.S.C. §§ 6201-6422, and the Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801-2841.

³ Under the FTC Act, the Commission can issue rules that define with specificity unfair or deceptive acts or practices in particular industries. 15 U.S.C. § 57a. The Commission may seek civil penalties for knowing violations of these rules. 15 U.S.C. § 45(m)(1)(A). The Commission also issues rules that have the force and effect of law pursuant to specific Congressional mandates. *See, e.g.*, Energy Policy and Conservation Act, 42 U.S.C. § 6294; Petroleum Marketing Practices Act, 15 U.S.C. § 2823. In contrast, FTC guides "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements." 16 C.F.R. § 1.5. Conduct that is inconsistent with the guides may result in enforcement action by the Commission, if, after investigation, the Commission has reason to believe that the conduct is unfair or deceptive in violation of the FTC Act.

deceptive” in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The Commission issued the Guides in 1992 to address confusion surrounding the meaning and proper use of proliferating green claims.⁴ The Guides explain how consumers understand commonly used environmental claims,⁵ such as “recyclable” and “biodegradable,” and describe the basic elements needed to substantiate those claims.⁶ They also provide examples that demonstrate how to qualify specific claims to avoid deception. This guidance assists marketers in making truthful and substantiated statements about the environmental attributes of their products and services.

The Commission currently is reviewing its Guides to ensure that they are responsive to today’s marketplace. The Commission periodically reviews the efficacy, costs, and benefits of each of its rules and guides. The agency initiated review of its Green Guides a year earlier than planned in response to the explosion of green marketing. In November 2007, the FTC sought public comment on several issues, including the continuing need for the Guides, their efficacy,

⁴ 57 Fed. Reg. 36363 (Aug. 13, 1992). The Commission revised the Guides in 1996 and in 1998. 61 Fed. Reg. 53311 (Oct. 11, 1996); 63 Fed. Reg. 24240 (May 1, 1998).

⁵ Under FTC law, it is illegal to make advertising claims that are likely to mislead reasonable consumers. See *FTC Policy Statement on Deception*, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984). To determine if a claim is likely to mislead, marketers must determine how consumers interpret the claim. The Commission’s guidance on consumer interpretation can be useful if consumer perception is not self-evident.

⁶ Marketers must possess a reasonable basis substantiating the objective claims they make about their products and services. See *FTC Policy Statement on Advertising Substantiation*, appended to *Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984). In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. 16 C.F.R. § 260.5.

and whether they should address certain green claims, such as “carbon neutral” and “sustainable,” that were not common when the Commission completed its last review.⁷

To develop a robust record upon which to base its guidance, the Commission also held a series of public workshops on emerging green marketing issues. The workshops brought together representatives from industry, government, consumer groups, environmental organizations, and the academic community to explore the marketing of carbon offsets and renewable energy, green packaging claims, and claims for green building and textiles.⁸ The Commission also sought additional public comment in connection with each workshop.⁹ To date, the FTC has received nearly 200 written comments from various individuals and organizations.¹⁰

In its requests for public comment and at the workshops, the Commission specifically solicited consumer perception data. This information would help the Commission provide accurate, informed advice on consumer understanding of green claims. Unfortunately, few commenters submitted such information. Without this data, the Commission would face the difficult choice of either providing guidance that might inadvertently chill otherwise useful green claims or forgoing valuable guidance altogether. The Commission, therefore, plans to conduct

⁷ 72 Fed. Reg. 66091 (Nov. 27, 2007).

⁸ Information about the review, including the workshop transcripts and written comments, is available online at www.ftc.gov/green.

⁹ 72 Fed. Reg. 66094 (Nov. 27, 2007); 73 Fed. Reg. 11371 (Mar. 3, 2008); 73 Fed. Reg. 32662 (June 3, 2008).

¹⁰ The comments are available online at <http://www.ftc.gov/os/comments/greenguidesreview/index.shtml>, <http://www.ftc.gov/os/comments/carbonworkshop/index.shtml>, <http://www.ftc.gov/os/comments/greenpkgworkshop/index.shtml>, and <http://www.ftc.gov/os/comments/buildingandtextilesworkshop/index.shtml>

its own research.¹¹ This study will focus on consumer understanding of particular green marketing claims, such as “eco-friendly,” “sustainable,” and “carbon neutral.”¹² The Commission expects that the survey and its analysis will be completed later this year, and that it will help us provide sound guidance in this important and growing area.

B. The Appliance Labeling Rule

The FTC’s Appliance Labeling Rule, 16 C.F.R. Part 305, helps consumers comparison shop for energy-efficient appliances, lighting, and plumbing products. The Rule requires manufacturers of most major home appliances to attach labels to their products that estimate the product’s annual operating cost and energy use, as well as the highest and lowest operating costs of similar models. The Rule also requires energy disclosures for certain lighting products and water use disclosures for certain plumbing products. The Commission recently completed one rulemaking to improve the Rule’s utility and has two others underway.¹³

Specifically, in 2007, the Commission improved the content and design of the familiar yellow and black EnergyGuide label for major home appliances.¹⁴ The streamlined label, which

¹¹ See 74 Fed. Reg. 22396 (May 12, 2009) (requesting comment on the FTC’s consumer perception study, as required by the Paperwork Reduction Act).

¹² Because many currently used green claims such as “sustainable” and “carbon neutral” were not common when the Commission last revised the Guides, FTC staff also is reviewing the state of green marketing claims by conducting an Internet surf to analyze the nature and incidence of particular claims. FTC staff plans to issue its findings in the near future.

¹³ Information about these rulemakings is available online at www.ftc.gov/energy.

¹⁴ 72 Fed. Reg. 49948 (Aug. 29, 2007). FTC-commissioned research found that more than 85% of recent appliance purchasers who visited a retail showroom recalled seeing a label with energy characteristics. Of those respondents, 58% correctly recalled that the label was yellow with black letters. Fifty-nine percent (59%) of respondents who recalled seeing a label scored the usefulness of the label at a seven or higher on a scale of zero to ten. *Id.* at 49951.

now prominently displays yearly operating costs for most appliances, resulted from a rulemaking that included significant public comment and consumer research into the efficacy of various label designs.

The Commission currently is reviewing its required energy disclosures for lighting.¹⁵ The lighting market is changing, and Congressional standards will eliminate low-efficiency light bulbs over the next several years.¹⁶ Given these changes, Congress asked the FTC to consider the effectiveness of lighting disclosures to help consumers understand newer, high-efficiency products, such as compact fluorescent lamps and light-emitting diodes. To aid in this endeavor, the Commission solicited public comment and commissioned consumer research on alternative labeling approaches.¹⁷

In addition, the Commission initiated a rulemaking in March to explore energy labeling for televisions and other consumer electronics.¹⁸ Some of today's large televisions use as much energy as refrigerators. However, consumers can choose among a variety of technologies that differ significantly in their energy usage. Energy labels that disclose the product's operating costs or energy use, therefore, could assist consumers seeking to make more energy-efficient choices.

C. Fuel Rating Rule

¹⁵ The Rule now requires disclosure of energy use (in watts), light output (in lumens), and life (in hours) on the packaging of most light bulbs.

¹⁶ Energy Independence and Security Act of 2007, Pub. L. No. 110-140, § 321.

¹⁷ 73 Fed. Reg. 40988 (July 17, 2008); 74 Fed. Reg. 7894 (Feb 20, 2009). Although the Commission requested consumer perception studies related to labeling disclosures, no commenters submitted any recent, comprehensive consumer research.

¹⁸ 74 Fed. Reg. 11045 (Mar. 16, 2009).

The Fuel Rating Rule, 16 C.F.R. Part 306, provides consumers with information about the fuel they use in their automobiles. Among other things, it requires retailers to post the fuel's rating on a label at the pump.¹⁹ Last year, the Commission amended the Rule to incorporate specific labeling requirements for biodiesel, biomass-based diesel, and blends of those fuels, as required by the Energy Independence and Security Act of 2007, Pub. L. No. 110-140.²⁰ In addition, the agency currently is reviewing the Rule to ensure that it continues to benefit consumers and to determine if other changes are needed to account for the development of new alternative fuels.²¹

III. Law Enforcement Efforts

It is critical to complement business guidance and rules with a solid law enforcement presence. The Commission, therefore, actively enforces its requirements through civil prosecutions. The agency's recent efforts in this area target misleading green claims, false energy savings claims, and bogus gas-saving devices.

The Commission's latest enforcement actions alleged that three companies made false and unsubstantiated claims that their products were biodegradable.²² The FTC's complaints

¹⁹ For gasoline, the fuel rating is the octane rating. For alternative fuels, the fuel rating is the minimum percentage by volume of the principal component of the fuel.

²⁰ 73 Fed. Reg. 12916 (Mar. 11, 2008). The biodiesel fuel rating is the percentage by volume of biodiesel or biomass-based diesel in the fuel.

²¹ 74 Fed. Reg. 9054 (Mar. 2, 2009).

²² *K-mart Corp.*, File No. 082-3186 (June 9, 2009) (accepted for public comment); *Tender Corp.*, File No. 082-3188 (June 9, 2009) (accepted for public comment); *Dyna-E Int'l, et al.*, Docket No. 9336 (June 9, 2009). Past FTC cases have targeted a range of other allegedly false or unsubstantiated green advertising claims, such as claims that a product or its packaging is recyclable, non-toxic, or ozone safe. See, e.g., *FTC v. OneSource Worldwide Network, Inc., et al.*, No. 3:99-CV-1494-L (N.D. Tex. July 1, 1999) (challenging claims that liquid-filled discs

alleged that the companies could not substantiate that their products would decompose into elements found in nature within a reasonably short period of time after customary disposal.²³ According to the complaints, the substantial majority of solid waste is disposed in landfills, incinerators, and recycling facilities, and these disposal methods do not present conditions that would allow the products to completely break down and return to nature within a reasonably short period of time. Two companies settled the Commission's charges,²⁴ and the third is in administrative litigation.²⁵

The Commission also recently targeted marketers of home insulation for overstating the insulating properties of their products. In one case, the agency alleged that the insulation's R-value (the measure of its resistance to heat flow) was only about one quarter of what the defendants claimed in their advertising.²⁶ The court order settling the Commission's charges requires the defendants to pay a \$155,000 civil penalty, revise the challenged claims, and substantiate any future energy-related efficacy claims. The defendants in a second case also

effectively clean laundry without polluting the earth's waterways and are 100% recyclable); *RBR Productions, Inc.*, 122 F.T.C. 471 (Dec. 10, 1996) (cited in Lexis as 122 F.T.C. 444) (challenging claims that a disinfectant is biodegradable, non-toxic, and environmentally safe, and that an aluminum aerosol can is recyclable); *Texwipe Co.*, 116 F.T.C. 1169 (Oct. 8, 1993) (challenging ozone safe claims for an aerosol cleaning product).

²³ Therefore, the companies' actions allegedly contravene the Green Guides' advice concerning the term "biodegradable." See 16 C.F.R. § 260.7(b).

²⁴ *K-mart Corp.*, File No. 082-3186 (June 9, 2009) (accepted for public comment); *Tender Corp.*, File No. 082-3188 (June 9, 2009) (accepted for public comment).

²⁵ *Dyna-E Int'l, et al.*, Docket No. 9336 (June 9, 2009).

²⁶ *United States v. Meyer Enterprises, LLC, et al.*, No. 09-1074 (C.D. Ill. Mar. 2, 2009). The defendants claimed that their product's R-value was 7.54, but the Commission alleged that it could be no more than 2.

settled the Commission's allegations, and in the third, the Department of Justice filed a complaint at the agency's request.²⁷

In addition, the Commission is litigating two federal court actions against marketers of "miracle" devices advertised to dramatically increase gas mileage in ordinary cars. In the first case, the promoters of the Hydro-Assist Fuel Cell placed advertisements in major magazines claiming that the device can boost automobile gas mileage by at least 50% and "turn any vehicle into a hybrid."²⁸ In the second matter, the defendant advertised that the NanoDetonator would allow ordinary passenger cars to harness the power of nuclear fusion, thereby eliminating the need for gasoline.²⁹ In both cases, the Commission alleged that the claims for the devices violate basic scientific principles. Through litigation, the Commission is seeking a permanent halt to the claims and reimbursement to consumers who purchased the devices.

IV. Consumer Education

In addition to business guidance, rules, and law enforcement, the Commission creates and distributes materials to help consumers make informed, green purchasing decisions and avoid energy savings scams. The Commission's vast array of award-winning, consumer education campaigns include creative online sites, as well as written materials that the agency and its partners distribute to consumers throughout the country.

The agency's interactive website, *Saving Starts @ Home* (www.ftc.gov/energysavings), offers tips to help consumers conserve energy and save money in almost every room of their

²⁷ *United States v. Enviromate, LLC, et al.*, No. 09-CV-00386 (N.D. Ala. Mar. 2, 2009); *United States v. Edward Sumpolec*, No. 6:09-CV-379-ORL-35 (M.D. Fla. Feb. 26, 2009).

²⁸ *FTC v. Dutchman Enterprises, LLC, et al.*, No. 09-141-FSH (D.N.J. Jan. 12, 2009).

²⁹ *FTC v. Five Star Auto Club, Inc., et al.*, No. 99-CIV-1693 (S.D.N.Y. Dec. 15, 2008).

homes. For example, in “the kitchen,” consumers can learn about using the EnergyGuide label to select energy-efficient appliances; in “the attic,” consumers can find tips on choosing insulation; and in “the trash room,” they encounter explanations of terms like recyclable and biodegradable and the meanings of common environmental symbols. Another interactive webpage, *Saving Money at the Pump* (www.ftc.gov/savegas), gives consumers advice on how to avoid bogus gas-saving devices and suggests legitimate gas-saving tips to help consumers save money at the pump. Since 2006, consumers have accessed these two sites and their Spanish language counterparts over 450,000 times.

V. Conclusion

Consumer interest in conserving energy and protecting the environment will likely result in continued environmental marketing. Competition based on green claims drives businesses to greater innovation, which ultimately benefits consumers by increasing the availability of the types of green products and services they desire. For the marketplace to thrive, however, companies must compete on the basis of legitimate advertising claims and consumers must be able to rely on those claims. The Commission, therefore, will continue its efforts to ensure the truthfulness and accuracy of environmental marketing.

Thank you for providing the Commission an opportunity to appear before the Committee to describe these efforts.

Mr. RUSH. Mr. Kohm. And now the chair recognizes Mr. M. Scot Case for the purposes of opening statement. Mr. Case, would you please restrict your comments to five minutes or thereabouts?

TESTIMONY OF M. SCOT CASE

Mr. CASE. Chairman Rush and members of the subcommittee, thank you for inviting me to share my perspective. My name is Scot Case. I am a vice president of TerraChoice and executive director of the EcoLogo Program, a 21-year-old environmental standards setting and certification program.

For 16 years, I have been working in various capacities to make it easier for consumers, retailers, and professional purchasers to buy more environmentally preferable or green products. Despite lengthy experience in the field, I am also a recent victim of green consumer fraud.

In 2007, I bought a \$2,500 LG Electronics manufactured refrigerator because it claimed to be Energy Star compliant. After consumer reports published a September 2008 story, I learned my refrigerator actually uses twice as much electricity as advertised. It does not even come close to meeting the Energy Star criteria.

LG Electronics' misuse of the Energy Star label highlights well-known weaknesses in DOE's management of the Energy Star program. More importantly, the fraudulent use of the Energy Star label provides an example of a broader issue with the ways in which green products sold in this country are routinely marketed with partial truths, misleading and irrelevant information and the occasional blatant lie. FTC has been unable to adequately protect U.S. consumers from this misinformation.

U.S. consumers are one of the most powerful forces on the planet. Their spending power can drive environmental innovation, create green jobs, and expand the green economy. This market-based environmentalism, however, is dependent on consumers having accurate, reliable, and relevant information about the products they buy. U.S. consumers want to buy greener products, but they are confused by competing environmental claims, unsure when a claim is accurate, and increasingly skeptical of all environmental claims.

The current system is not working. Green washing is rampant. FTC is not equipped to find green, and United States lacks a single unifying label to make buying green easy.

LG Electronics' misuse of the Energy Star label is an extreme example of green washing. Green washing ranges from blatant misrepresentation to telling only partial truths about a product's environmental impacts. According to the sins of green washing, more than 98 percent of products making environmental claims make at least one questionable claim.

Manufacturers are making misleading claims because they lack clear guidance about what claims are legitimate and what kind of evidence they need to support their claims. As a result, U.S. consumers are spending their money to buy environmental benefits that might not exist.

FTC recognizes the problem. It has been working diligently to improve its environmental marketing guide, which was last revised in late 1998 or '99. I was able to provide my insights into their process. I remain very hopeful that FTC's revised guide combined

with the necessary funding to support enforcements will help reduce green washing.

While incredibly beneficial, I think FTC's actions are only part of the solution. FTC lacks the relevant environmental expertise to address the most fundamental question: how does one identify an environmentally preferable product. This question is being addressed by a variety of EPA departments with narrowly focused attention on single environmental issues.

One part of EPA focuses on energy efficient products. Another focuses on less hazardous products. Another looks at water efficient products. EPA's silo-based approach is understandable, given the agency's organization. With the exception of the environmentally preferable purchasing program that focuses narrowly on federal government purchasing, no one at EPA is looking holistically at the issue. As a result, it appears almost every manufacturer is finding an excuse to claim their product is green.

Environmental labels like Energy Star, EcoLogo and Green Seal are supposed to make it easier to identify more environmentally preferable products, but there are now hundreds of labels and claims being made.

According to the seven sins of green washing, 22 percent of products making environmental claims include a certification-like label that has no apparent meaning. As the title of this hearing suggests, it is too easy being green. Some enterprising companies sell a green certification for a fee. They proudly advertise that they can certify a green product or business without reviewing the product, without visiting the business, and without requiring any testing. All one has to do is pay as little as \$150, credit cards accepted.

How is my mom in Charlotte, North Carolina supposed to keep track of hundreds of environmental labels to know which ones are meaningful? I have 16 years of experience with this issue, and I regularly run into claims that I have never seen before.

To address these challenges, I recommend the following three items: direct FTC to require every environmental claim to be supported by publicly available proof, provide research money for EPA and the national academies to conduct the basic research, and establish an EPA office to launch a voluntary, non-regulatory environmental leadership label.

Launching a single label would provide benefits similar to the way the USDA organic label united multiple organic standards. Having a single label will make it significantly easier for my mom to identify greener products, the same way Energy Star made it easier to identify more energy efficient products.

In conclusion, market-based environmentalism only works if manufacturers and consumers have the tools to make intelligent decisions. I encourage the subcommittee to direct or endorse the developments of the necessary tools. Thank you.

[The prepared statement of Mr. Case follows:]

Testimony of

M. Scot Case

Vice President, TerraChoice Group, Inc.
Executive Director, EcoLogo Program

Before the Subcommittee on Commerce, Trade and Consumer Protection
U.S. House of Representatives Committee on Energy and Commerce

“It’s Too Easy Being Green: Defining Fair Green Marketing Practices”

Room 2123—Rayburn Office Building
June 9, 2009

The following testimony reflects my personal opinions. It does not represent the official position of TerraChoice Group, Inc. or the EcoLogo Program.

Chairman Rush and members of the Subcommittee, thank you for inviting me to share my perspective.

My name is Scot Case. I am currently Vice President of TerraChoice and Executive Director of the EcoLogo program, a 21-year old environmental standard setting and certification program.

For 16 years, I have been working in various capacities to make it easier for consumers, retailers, and government purchasing officials to identify and buy more environmentally preferable or “green” products.

Despite lengthy experience in the field, I am also a recent victim of green consumer fraud.

In May 2007, I bought a \$2500 LG Electronics-manufactured refrigerator from my local Sears in Reading, PA, because it claimed it was Energy Star compliant. After *Consumer Reports* published a story in September 2008, I learned my refrigerator actually uses twice as much electricity as advertised.¹ It does not even come close to meeting the Energy Star criteria.

LG Electronics’ misuse of the Energy Star label highlights weaknesses in the U.S. Department of Energy’s (DOE) management of the Federal Government’s Energy Star program.² Unlike other countries’ environmental labeling programs, the U.S. Environmental Protection Agency (EPA) and DOE allow manufacturers to put the Energy Star label on products without verifying the products actually meet the Energy Star criteria.

More importantly, the fraudulent use of the Energy Star label also provides an example of a broader issue with the ways in which “green” products sold in the United States are routinely marketed with partial truths, misleading and irrelevant information, and the occasional blatant lie.

OUTLINING THE CHALLENGE

U.S. consumers are one of the most powerful forces on the face of the planet. Their spending power has the power to drive environmental innovation, create green jobs, and expand the green economy.

¹ See <http://www.consumerreports.org/cro/home-garden/resource-center/energy-star-has-lost-some-luster/overview/energy-star-ov.htm?view=Print> (accessed 6/4/2009).

² At least two government reports have identified weaknesses in the Energy Star program, including the program’s failure to ensure products displaying the Energy Star label actually meet the Energy Star criteria. See the U.S. Environmental Protection Agency’s Office of Inspector General Report “Energy Star Program Can Strengthen Controls Protecting the Integrity of the Label,” Report No. 2007-P-00028 (August 1, 2007) available at <http://www.epa.gov/oigearth/reports/2007/20070801-2007-P-00028.pdf> (accessed 6/4/2009). See also the United States Government Accountability Office, Report to the Chairman, Committee on Energy and Natural Resources, U.S. Senate, “Energy Efficiency: Opportunities Exist for Federal Agencies to Better Inform Household Consumers,” GAO-07-1162 (September 2007) available at <http://www.gao.gov/new.items/d071162.pdf> (accessed 6/4/2009).

Consumers are increasingly recognizing that every single purchase has hidden human health and environmental impacts. U.S. consumers are realizing that some household cleaning products contain cancer causing ingredients and that other cleaning product work just as well without the cancer causing ingredients.³ Schools in some states now require the use of green cleaning products certified by EcoLogo or Green Seal, two highly respected environmental standard setting and certification programs.⁴ Consumers are learning some high performance computers are more energy efficient than others and are available without heavy metals like lead, cadmium, and mercury.⁵ They are learning that recycled content products work as well as traditional products while significantly reducing the natural resources and energy needed to make them.⁶

Market-based environmentalism – a process that includes “green consumers” spending their hard earned money buying products with less adverse human health and environmental impacts from companies that are continually improving their own environmental performance – is dependent on consumers being provided accurate, reliable, and relevant environmental information about the products they buy.

U.S. consumers want to buy greener products, but they are confused by competing environmental claims, unsure when a claim is accurate, and increasingly skeptical of all environmental claims.⁷ As a result, the recent focus on green jobs, green manufacturing processes, and a green economy could collapse because of inadequate, competing, and even contradictory definitions of green.

The current system is not working:

- Greenwashing is rampant.
- FTC is not equipped to define green.
- The United States lacks a single, unifying environmental label to make “buying green” easy for U.S. consumers.

Greenwashing is Rampant

LG Electronics’ misuse of the Energy Star label is an extreme example of greenwashing, the act of misleading consumers regarding the environmental practices of a company or the environmental benefits of a product or service.

³ Both EcoLogo www.ecologo.org and Green Seal www.greenseal.org identify greener cleaning products that are certified to standards that prohibit the use of known carcinogens.

⁴ See <http://www.healthyschoolscampaign.org/programs/gcs/> (accessed 6/4/2009).

⁵ The Electronic Products Environmental Assessment Tool (EPEAT) standard includes energy efficiency requirements based on Energy Star criteria and requires products to meet the European Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations (RoHS) directive. More than 1,200 computer products are now listed on the EPEAT registry. See www.epeat.net (accessed 6/4/2009).

⁶ See, for example, “Recycling for the Future: Consider the Benefits,” written by the White House Task Force on Recycling and published by the White House Office of the Federal Environmental Executive (November 1998), available at <http://www.ofee.gov/wpr/future.pdf> (accessed 6/4/2009).

⁷ There are numerous recent surveys and reports supporting this contention. See, for example, “Study: For Consumers Green is Greenwashed” from 4/30/2009 at <http://greeninc.blogs.nytimes.com/2009/04/30/study-for-consumers-green-is-greenwashed/> (accessed 6/4/2009) and “Consumers Recall Green Ads, But Often Skeptical of Them” from 4/24/2008 at <http://www.marketingcharts.com/interactive/consumers-recall-green-ads-but-often-skeptical-of-them-4343/> (accessed 6/4/2009).

Greenwashing ranges from blatant misrepresentation of environmental claims to telling only partial truths about a product's environmental impacts.

Manufacturers are making potentially misleading environmental claims about their products because they lack clear guidance about what claims are legitimate and what kind of evidence they need to support their claims. As a result, U.S. consumers are spending their money to buy environmental benefits that might not exist.

In November 2007, I co-authored *The Six Sins of Greenwashing*, a report outlining the various ways consumers are being misinformed. I was also a strategic advisor for an April 2009 follow-up study, *The Seven Sins of Greenwashing*. Both studies found that more than 98 percent of the thousands of products making the environmental claims reviewed by TerraChoice researchers commit at least one of the sins of greenwashing.

The Seven Sins of Greenwashing are described in Table 1 (page 7). A copy of both reports is available online at <www.sinsofgreenwashing.org>.

Until there are clear rules defining how to make accurate, meaningful, and verified environmental claims, greenwashing will continue eroding consumer trust and greatly diminish U.S. abilities to create greener jobs, greener companies, and a greener economy.

FTC is Not Equipped to Define Green

FTC recognizes greenwashing is an issue that needs addressing. It has been working diligently to improve its *Environmental Marketing Guides*, which were last revised in 1999. I had an opportunity to provide my insights into their process. I remain very hopeful that FTC's revised guide, combined with a necessary increase in funding to support enforcement of the guides, will help reduce greenwashing. While incredibly beneficial, I think FTC's actions are only part of the solution.

FTC lacks the relevant environmental expertise to address the most fundamental question – how does one identify an environmentally preferable product?

This question is instead being addressed by a variety of departments within EPA, sometimes with inconsistent approaches that are too narrowly focused on single environmental issues. One part of EPA focuses on energy efficient products. Another focuses on less hazardous products. Another looks at water efficient products.

EPA's silo-based approach to green products is understandable given the Agency's current organization. With the exception of the Environmentally Preferable Purchasing (EPP) Program, an underfunded program within EPA's Office of Pollution Prevention and Toxics that only focuses on federal government green purchasing issues, no one at EPA is looking holistically at what it takes to define greener products for the U.S. consumer.⁸

⁸ EPA's focus on green federal purchasing is in response to a requirement in the 1990 Pollution Prevention Act, which directs EPA to "identify opportunities to use Federal procurement to encourage source reduction." A series of Presidential Executive Orders 12873 (rescinded), 13101 (rescinded), and 13423 require EPA to focus on green purchasing. EO 13423 requires to "assist Federal agencies to purchase environmentally preferable products and services by developing environmental performance criteria for products and services, providing technical assistance, and reviewing and updating the guidance periodically."

The United States does not have a consistent way of identifying more environmentally preferable products. As a result, it appears almost every manufacturer is finding an excuse to claim their product is green.

The United States Lacks a Single, Unifying Environmental Label to Make “Buying Green” Easy for U.S. Consumers

Environmental labels, like Energy Star, EcoLogo, and Green Seal, are supposed to make it easier to identify more environmentally preferable products. According to one authoritative resource, there are more than 300 environmental labels used worldwide to identify more sustainable products, including 82 used throughout North America.⁹ Unfortunately, this count significantly underestimates the number of actual labels because it fails to include the hundreds of labels manufacturers are creating for exclusive use on their products.

Consumers are inundated with various environmental labels and environmental claims without any easy, reliable way to determine which labels or claims are meaningful.

How is my mom in Charlotte, NC, supposed to keep track of all of the environmental labels to know which ones are meaningful and when? I have 16-years of experience with this issue and I regularly run into labels or claims that I have never seen before.

Further complicating matters, there are multiple green labels within the same product category relying on different approaches to make environmental preferability claims. In the cleaning products aisle of a local Reading, PA, retailer, for example, I found products with Green Seal, EcoLogo, DFE, and three company-specific environmental labels or claims. It is nearly impossible to compare products to determine which ones provide the most significant environmental benefits.

Without the ability to compare products with a standardized, transparent process, the market-based environmentalism approach that relies on consumers to buy greener products from greener companies, does not work.

The Green Labeling Continuum from Fake to Legitimate

As the title of this hearing suggests, it *is* too easy being green. One can get anything “green certified” by simply searching for the phrase “green certification” online and reviewing any of the 9.9 million pages devoted to the topic.¹⁰

According to *The Seven Sins of Greenwashing*, 22 percent of products making environmental claims include a certification-like label that has no apparent meaning.¹¹

Some enterprising companies sell a green certification for a flat fee. They proudly advertise that they can certify a green product or business without reviewing the product, without visiting the business, and without requiring any testing. All one has to do is submit a payment of as little as \$150 (credit cards accepted).¹²

⁹ See <http://www.ecolabelling.org/> (accessed 6/4/2009).

¹⁰ Page count based on a Google search conducted on 6/4/2009.

¹¹ See *The Seven Sins of Greenwashing*, April 2009, available at <www.sinsofgreenwashing.org>.

¹² See, for example, www.societyofgreenbusiness.com (accessed 6/4/2009).

Other programs like EcoLogo and Green Seal develop environmental leadership standards in an open, public, transparent process consistent with international standard setting protocols. The standards are publicly available and manufacturers must pass an independent third-party audit in order to demonstrate that a product meets the standard before earning the right to use the label.

Between those extremes – fake labels based only on an ability to pay and more legitimate approaches like EcoLogo and Green Seal – are a variety of U.S. Federal government labels. Most of the government labels and standards focus on a single environmental issue like energy efficiency, water efficiency, recycled content, or low toxicity. Most of the federal labels also do not require an independent review of the environmental claims before manufacturers can begin using the labels.

Energy Star, for example, does not require all manufacturers to submit proof that a product meets the Energy Star criteria before the manufacturer begins using the label. This contributed to LG Electronics' ability to mislabel its refrigerators as Energy Star compliant.

When a different office within EPA designed the WaterSense water-efficiency program, it improved upon the perceived weakness of the Energy Star program. WaterSense requires an independent auditor to confirm compliance with the publicly available water efficiency standard before a product is allowed to use the label.

Despite the apparent limitations of the current U.S. Federal government labels, they have proven valuable to consumers and manufacturers seeking to buy greener products. Energy Star is one of the most globally recognized green brands. Consumers wishing to consider multiple environmental considerations, however, must rely on certifications like EcoLogo and Green Seal that incorporate U.S. federal standards along with additional environmental considerations or do a lot of research on their own.

A selected sample of federal environmental labels is provided in Table 2 (page 9).

RECOMMENDATIONS:

The current state of environmental marketing in the United States is completely inadequate if the country is to embrace the transition to a greener economy with green jobs, green manufacturing, and green consumers. Such an economy requires an ability to identify truly legitimate green products.

To rise above the current challenges, I recommend the following:

- (1) Direct FTC to require that every environmental claim be supported by an independent third-party certification or other evidence verifying the accuracy of the claim. Any certification claim should be posted on the company's website and clearly indicate who certified it and against what publicly available standard. Any additional or alternative evidence supporting an environmental claim should be publicly available to consumers on the company's website. In addition, FTC should have the ability to impose substantial penalties for making misleading environmental claims and sufficient resources to enforce the requirement.
- (2) Establish an office within EPA to launch a single, national, voluntary (non-regulatory) environmental leadership label. The office would combine several existing environmental labels under a single brand to make it easier for consumers to identify more environmentally

preferable goods and services. The brand should also be made available to existing non-governmental labels meeting accepted standard-setting protocols.

Having a single label will make it significantly easier for consumers to identify greener products much the same way the Energy Star program made it easier for consumers to identify more energy efficient products. It would combine multiple existing standards and labels under a single unified brand and governing body similar to the way the U.S. Department of Agriculture (USDA) Organic label united multiple standards and labels under a single program.¹³

This would also eliminate the need for multiple education campaigns designed to teach U.S. consumers what the various labels mean. Rather than spending U.S. taxpayer money to promote Energy Star, DfE, WaterSense, EPEAT, Energy Guide, and others separately, U.S. Federal agencies and other environmental standard setting organizations could focus consumer's attention on a single label as the authoritative indicator of environmental leadership. Designed properly, a single national label can meet the needs of the average U.S. consumer and the most sophisticated, environmentally savvy professional purchaser. It can also support the Federal government's voluntary environmental standards and the voluntary environmental standards developed by non-governmental entities as long as those standards are developed using an approved standard-setting protocol.

Additional recommendations about how a national labeling program can be structured are included in Appendix A. While these are my recommendations, they are based on the combined thoughts from a number of independent organizations that are discussing how to address the challenges this Subcommittee is now tackling.¹⁴

- (3) Provide research money for the U.S. Environmental Protection Agency and the National Academies to conduct the basic background research needed to compile and update a national lifecycle inventory database. This research is needed to provide the solid scientific data needed to make environmental performance assessments.

CONCLUSION

Market based environmentalism only works if manufacturers and consumers have the tools to make intelligent decisions. U.S. consumers and U.S. manufacturers do not currently have the tools they need. This Subcommittee could direct or endorse the development of the necessary tools. There are many of us who have been working many years on these issues. Please let us know how we can help during this next critical phase in the implementation of these ideas. Thank you.

¹³ Prior to the launch of the USDA label in 2002, there were dozens of competing organic labels and standards. The multiple approaches made it challenging for consumers, retailers, and farmers to know which approach to support. Growth in the organic food market was anemic until USDA's unified organic standard and single label made it easier to define and market organic foods. The organic food market expanded rapidly with the introduction of the USDA label.

¹⁴ There are numerous groups discussing these issues. The Appendix includes input provided by participants with the Keystone Group Green Marketing and Sustainable Products Roundtable, ANSI's Toward Product Standards for Sustainability workshop, the Sustainability Consortium originally initiated by Walmart, and bilateral conversations with other environmental labeling programs.

Table 1. The Seven Sins of Greenwashing¹⁵

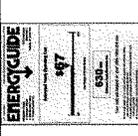
| Name of Sin | Definition | Examples | % of Products Committing Sin (USA) |
|---------------------------------|---|---|------------------------------------|
| Sin of Hidden Trade Off | Suggesting a product is "green" based on a single environmental attribute or an unreasonably narrow set of attributes without attention to other important, or perhaps more important, environmental issues. | Paper products promoting recycled content percentages without also acknowledging forestry practices associated with the non-recycled content portion of the paper or the impacts of the manufacturing process; Cleaning products promoting phosphate free without also addressing the potentially hazardous ingredients in the product. | 73% |
| Sin of No Proof | Any environmental claim that cannot be substantiated by easily accessible supporting information (information provided at the point of purchase, on a product or company website, or verified by a reliable third-party certification). | Products making energy- or water-efficiency claims, recycled content or bio-based percentages, biodegradability, or other claims without offering any proof. | 59% |
| Sin of Vagueness | Any claim that is so poorly defined or broad that its real meaning is likely to be misunderstood by the intended consumer. | Claims such as green, all natural, chemical-free, recycled content (without providing percentages), Mother Earth approved, planet friendly, natural, or leaves no trace behind. | 56% |
| Sin of Worshipping False Labels | A product that, through either words or images, gives the impression of a third-party endorsement where no such endorsement actually exists. | Companies creating their own certification-like images for which they provide only vague explanation. | 22% |

¹⁵ The TerraChoice reports from which the information in this table is composed, the *Six Sins of Greenwashing* (November 2007) and the *Seven Sins of Greenwashing* (April 2009) are available at www.sinsofgreenwashing.org.

Testimony of M. Scot Case (June 9, 2009)

| Name of Sin | Definition | Examples | % of Products Committing Sin (USA) |
|----------------------------|--|--|------------------------------------|
| Sin of Irrelevance | An environmental claim that might be truthful but is unimportant and unhelpful for consumers seeking more environmentally preferable products. | Products claiming they are green because they are CFC-free (chlorofluorocarbon-free). CFCs have been illegal since 1978. | 8% |
| Sin of Lesser of Two Evils | Claims that are true within the product category, but that risk distracting consumers from the greater environmental impacts of the category as a whole. | Organic cigarettes. | 4% |
| Sin of Fibbing | Any claim that is demonstrably false. | Products claiming to be Energy Star certified (Energy Star does not certify products); a caulking product claiming to meet an Energy Star criteria that does not exist; shampoos claiming to be "certified organic," but for which no certification exists; others are possible because TerraChoice did not actually test product performance and there are a large number of products that did not offer proof of their environmental claims. | <1% |

Table 2. Representative U.S. Federal Government Environmental Labels and Standards

| Program Name | Label | Managing Agency | Year Founded | Publicly Available Standard | Multi-Attribute, Lifecycle based | Transparent Standard Development Process | Certification Program |
|---|---|-----------------|--------------|-----------------------------|----------------------------------|--|-----------------------|
| Comprehensive Procurement Guidelines (Buy Recycled) | CPG (various images used) | EPA | 1995 | Yes | --- | Yes | --- |
| Energy Guide |  | FTC/DOE | 1979 | Yes | --- | Yes | --- |
| Energy Star |  | EPA/DOE | 1992 | Yes | --- | Yes | --- |
| EPEAT* |  | -- | 2005 | Yes | Yes | Yes | --- |
| USDA Organic |  | USDA | 2002 | Yes | --- | Yes | Yes |
| U.S. EPA Design for the Environment (DfE) |  | EPA | 1994 | --- | Yes | --- | --- |
| U.S. EPA WaterSense |  | EPA | 2006 | Yes | --- | Yes | Yes |

*EPEAT is not a government label although its development was funded by the U.S. Environmental Protection Agency and a Presidential Executive Order requires federal agencies to buy EPEAT-registered products.

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Appendix A

Testimony of

M. Scot Case

Vice President, TerraChoice Group, Inc.
Executive Director, EcoLogo Program

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Before the Subcommittee on Commerce, Trade and Consumer Protection
U.S. House of Representatives Committee on Energy and Commerce

“It’s Too Easy Being Green: Defining Fair Green Marketing Practices”
Room 2123—Rayburn Office Building

June 9, 2009

EcoLabelling Recommendations

34

Information compiled by Scot Case,
scase@terrachoice.com

Last Updated: June 3, 2009

Key Challenges

- **Label proliferation** – lots of labels operating in the same spaces with varying degrees of sophistication and lots of competing rules for operating them.
- **Orphan products** – there are lots of products for which standards have not been created.
- **Consumer Education** – consumers are understandably confused & need to be fed simple messages they can act upon

Goals

Create a system that:

- Unifies the disparate labeling and standards world voluntarily behind a single governance structure and a single brand (or label).
- Meets the needs of average consumers and more sophisticated purchasing professionals by ensuring the credibility of program standards and certifications.
- Defines the rules of the game for the environmental standard setting and labeling world.
- Legitimizes existing environmental standards and/or labels meeting the agreed upon rules of the game.
- Encourages the rapid (relatively speaking) development of new lifecycle information and standards for all of the orphan product categories -- SCALABILITY
- Promotes continual improvement.

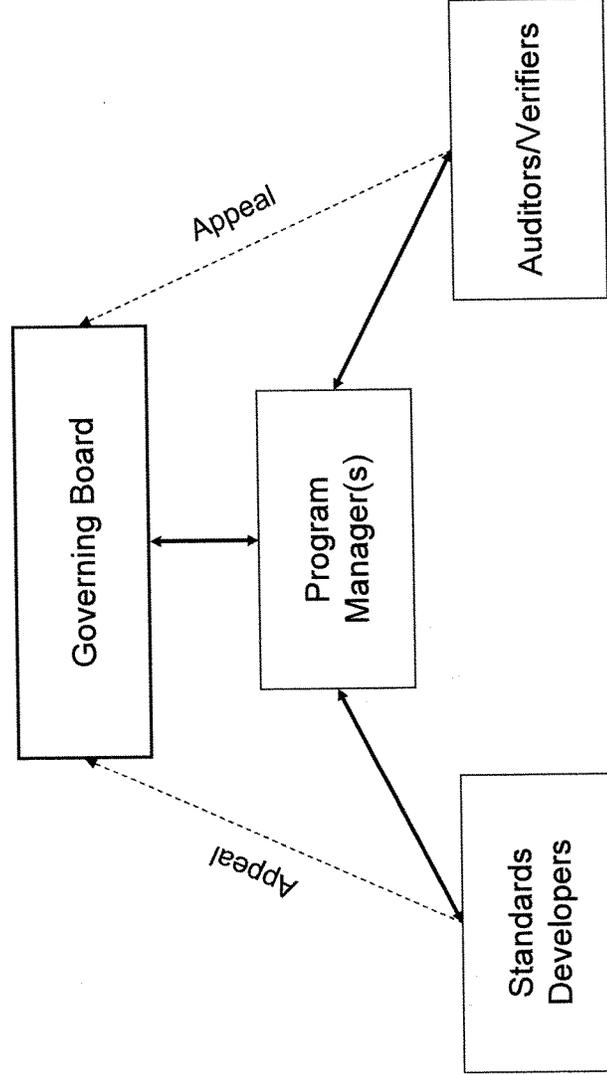
Definitions

- **Attribute** – a characteristic of a product such as “recycled content” or “energy efficient”
- **Auditor** – an individual or organization approved to conduct certification and verification activities.
- **Certification** – a process by which an authorized body independently verifies that a product, service, or company meets a specified standard
- **Criterion** – a definition of how a specific attribute will be measured
- **Ecolabel** – a visual communication tool to share environmental information about a product or a service.
- **Environmental Product Declaration (EPD)** – a product-specific listing of environmental attributes that can be used to compare the environmental impacts of two or more comparable products.
- **Lifecycle** – a concept to describe the culmination of each phase of product’s manufacture and eventual disposal. It includes raw material acquisition, transport, manufacturer, packaging, use, reuse, recycling, energy recovery, and ultimate disposal.

Definitions

- **Lifecycle Assessment (LCA)** – an evaluation of the inputs and outputs of a product or service at all stages of its lifecycle.
- **Stakeholders** – any individual or organization materially affected by a decision. In the standard setting world, stakeholders typically include government officials, manufacturers, trade associations, environmental non-profits, academics, unions, professional purchasers, retailers, and consumers, among others.
- **Standard** – a set of criteria that defines minimum requirements for a product to be considered environmentally preferable. A single attribute standard focuses on a single environmental issue such as recycled content, energy efficiency, or indoor air quality even though there might be multiple criteria defining the relevant attribute. A multi-attribute standard examines more than one attribute.
- **Verification** – A process for determining whether a product or service meets a criterion or standard. **Self-verification** means a company uses in-house staff to make the determination. **Independent verification** means an outside, independent, neutral body makes the determination.

Potential Structure



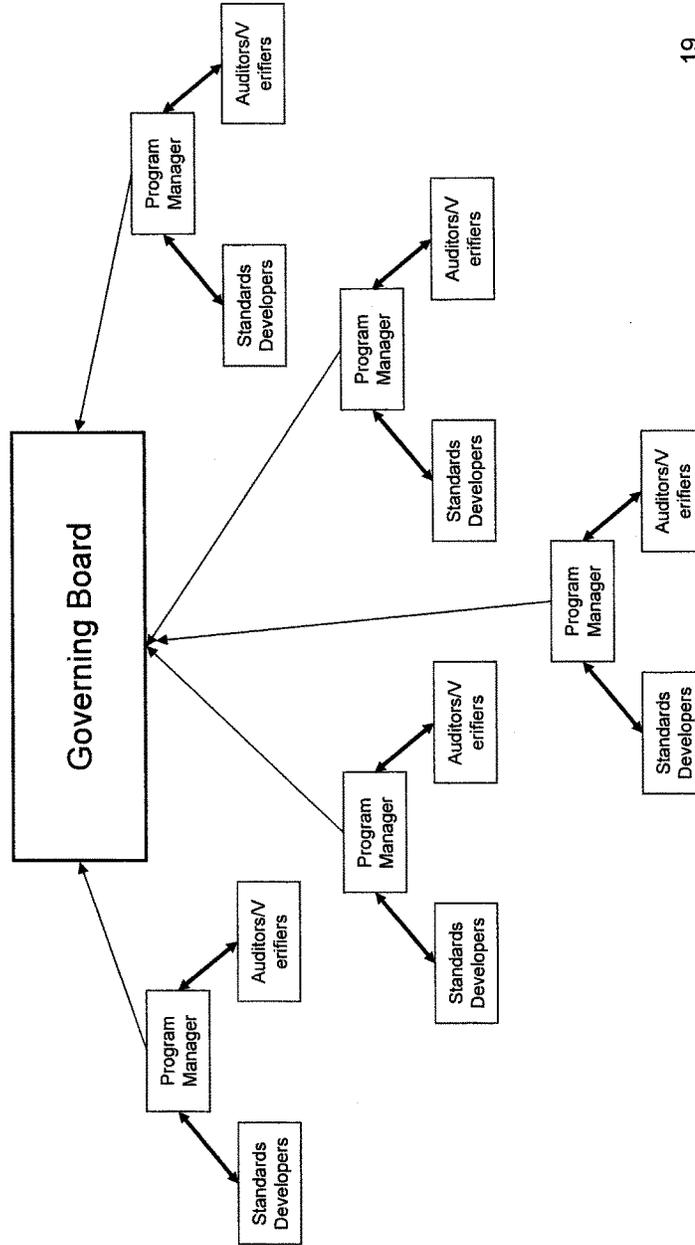
Roles & Responsibilities

- **Governing Board**
 - Defines rules of the game
 - Establishes accepted standard setting procedures & auditor/verifier qualifications
 - Ensures standards are regularly reviewed and improved
 - Settles disputes
- **Standards Setter**
 - Develops standards and audit protocols and identifies relevant attributes in accordance with procedures established by Government Board
 - Recommends standards to be accepted by Program Manager
- **Auditor/Verifier**
 - Ensures products meet standards as defined by audit protocols
 - Recommends products for certification by Program Manager
- **Program Manager**
 - Accepts standards developed in accordance with procedures established by Governing Board
 - Approves auditors/verifiers based on qualifications established by Governing Board
 - Awards certification based on review of auditor recommendation
 - Promotes the standards and certification to the public, retailers, and suppliers.

Clarification

- The governing board does ***not*** create standards. It simply defines the process standard setting bodies must use to develop a standard that is eligible to use the common green brand.
- As indicated in the diagram and description earlier in the presentation, the standards would be created by standard setting bodies following the approved process.
- Existing standard setting organizations following commonly accepted best practices would likely already meet the standard setting process requirements.

Scalability



Potential Rules of the Game

- **Standards Must:**
 - Clearly define environmental leadership based on specific environmental requirement(s)
 - Be lifecycle based (based on LCAs)
 - Be publicly available
 - Be developed in an open, public, transparent process approved by Governing Board
 - Note: It is possible for multiple standards to cover the same category if approved by Government Board
- **Auditors Must:**
 - Be independent, third-parties
 - Be ISO certified (or equivalent)

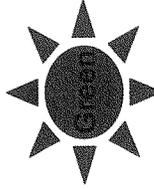
The Labelling & Standards EcoSystem

All approaches are helpful and useful independently, but their true strength derives from their interdependent relation to other approaches in the ecosystem.



Verifiers & Certifiers

Ensure the accuracy of the reported information.



Labels can make it easy for consumers to identify greener products.

Attributes
 Attribute A - xx%
 Attribute B - xx
 Attribute C - xx
 Attribute D - xx
 Attribute E - xx

Environmental profile data sheets (EPDS) make it easier for consumers to compare information.

Verified Environmental and Lifecycle Assessment Data
 •Data point 1 - xxxxxxxx
 •Data point 2 - xxxxxxxx
 •Data point 3 - xxxxxxxx
 •Data point 4 - xxxxxxxx
 •Data point 5 - xxxxxxxx
 •Data point 6 - xxxxxxxx
 •Data point 7 - xxxxxxxx
 •Data point 8 - xxxxxxxx
 •Data point 9 - xxxxxxxx
 •Data point 10 - xxxxxxxx
 •Data point 11 - xxxxxxxx
 •Data point 12 - xxxxxxxx
 •Data point 13 - xxxxxxxx
 •Data point 14 - xxxxxxxx
 •Etc.

LCA data allows for more sophisticated understandings of supply chains and detailed product comparisons.

Criteria Statement

Individual criteria (e.g., recycled content % or passed XYZ test) make specific, single attribute claims.



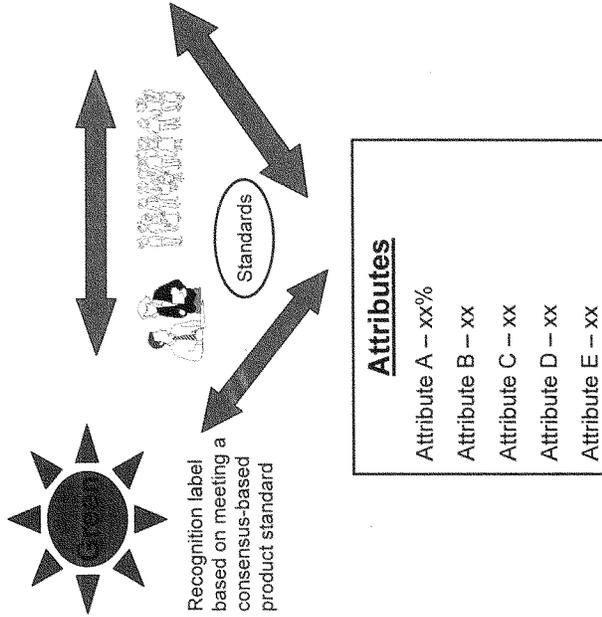
Stakeholders

Consumers, manufacturers, trade associations, government officials, and others help identify issues of concern.

Standards
 Criteria 1 - xxxxx
 Criteria 2 - xxxxx
 Criteria 3 - xxxxx
 Criteria 4 - xxxxx
 Criteria 5 - xxxxx
 Criteria 6 - xxxxx

Standards define environmental leadership.²¹

Can Begin from Any Point on the Spectrum – Each is Interrelated

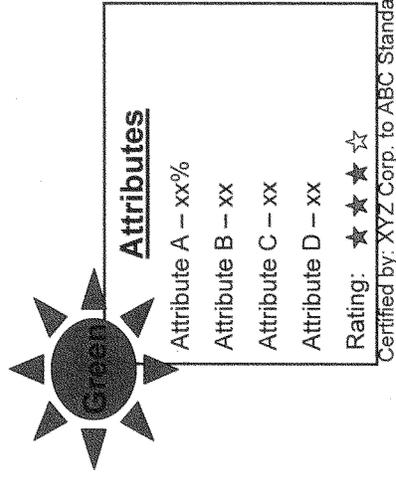


Raw data points about the product and manufacturer

Specific environmental attribute information (EPDS)

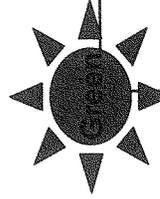
Potential Label Type

- Certification is awarded to products, not companies
- Certifier is identified
- Combination of label types – (1) clearly defined attribute[s] to define environmental leadership and (2) Lifecycle assessment data
- Consumers can look for the “green spot”
- Sophisticated consumers can compare attribute-level details

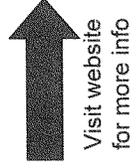


Additional Info Available

- Single website provides additional, verified environmental details for the most sophisticated consumers/purchasers.



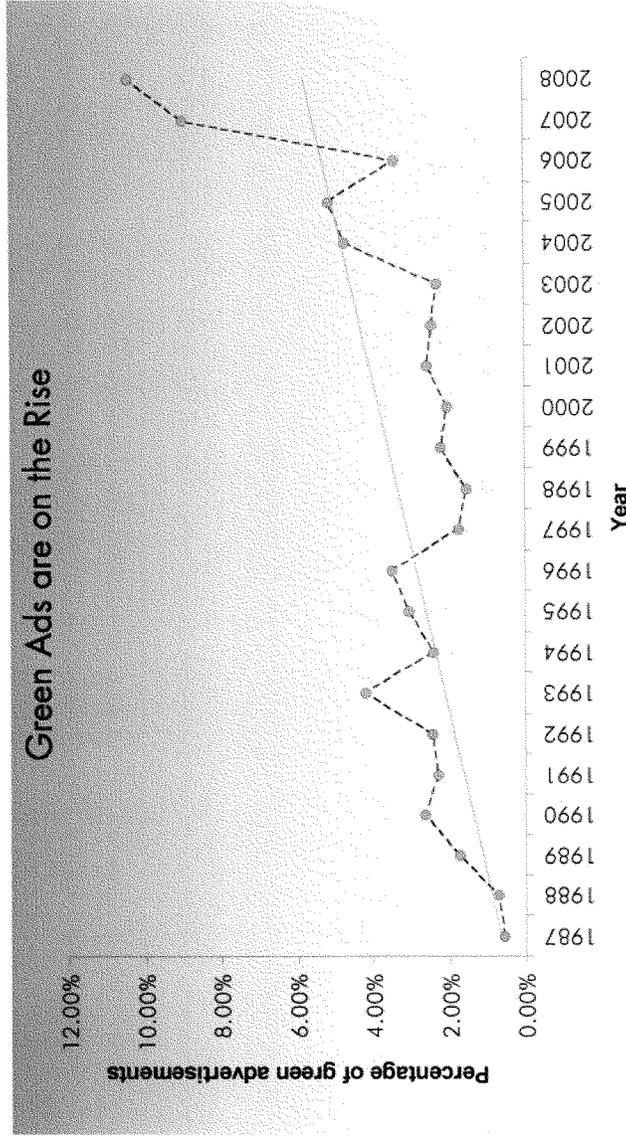
Attributes
Attribute A – xx%
Attribute B – xx
Attribute C – xx
Attribute D – xx
Rating: ★★☆☆☆



Verified Environmental and Lifecycle Assessment Data

- Data point 1 - xxxxxxxx
- Data point 2 - xxxxxxxx
- Data point 3 - xxxxxxxx
- Data point 4 - xxxxxxxx
- Data point 5 - xxxxxxxx
- Data point 6 - xxxxxxxx
- Data point 7 - xxxxxxxx
- Data point 8 - xxxxxxxx
- Data point 9 - xxxxxxxx
- Data point 10 - xxxxxxxx
- Data point 11 - xxxxxxxx
- Data point 12 - xxxxxxxx
- Data point 13 - xxxxxxxx
- Data point 14 - xxxxxxxx
- Etc.

Addendum to the Testimony of M. Scot Case
 Before the Subcommittee on Commerce, Trade and Consumer Protection, U.S. House of Representatives Committee on Energy and Commerce
 "It's Too Easy Being Green: Defining Fair Green Marketing Practices"
 Room 2123—Rayburn Office Building (June 9, 2009)



TerraChoice researchers surveyed more than 18,000 advertisements in the back issues of Time, Fortune, National Geographic, Forbes, Sports Illustrated, and Vanity Fair. Advertisements that made environmental claims were counted and described as a percentage of the total number of advertisements. Additional details about the methodology and findings are available by contacting <scase@terrachoice.com>.

Mr. RUSH. The chair thanks the gentleman. Now it is my pleasure to recognize Dr. Dara O'Rourke for five minutes for the purposes of opening statement.

TESTIMONY OF DARA O'ROURKE

Mr. O'ROURKE. Chairman Rush, members of the committee, thank you very much for the opportunity to testify this morning on green marketing claims and the very important underlying issues of public access to accurate information on the health and environmental impacts of consumers products.

My name is Dara O'Rourke. I am a professor at the University of California, Berkeley, and also the cofounder of a for-benefit company call Good Guide, which I am here today representing.

My research focuses on global supply chains and better ways to monitor and measure the impacts of those supply chains to deliver information to consumers here in the U.S. on the full environmental, social, and health impacts on the products we consume. We have founded our research, and the reason I am here today is that our current system of information available to the public is incomplete at best and actually confusing or deceptive at worst.

The public either has little information on critical aspects of product choices such as ingredients within household chemicals, fragrances, electronics, or they have questionable information such as green claims about a product being natural or ecofriendly as the chairman mentioned.

For markets to function efficiently, we need good information and low transaction costs of accessing that information. Today we have the exact opposite. We have very poor information and very high costs for the public to access that information. I want to make three very simple points today. First is the public wants to know this information. They are seeking this out. They want to know it.

The second is there is a huge gap between what the public wants to know and what they can currently access. That leads to, I think, a number of problems which other people have spoken about, which I will talk about one case. And the third is I think there is a current opportunity right now for this committee and the FTC to make a significant step forward in improving transparency and consumer markets and improving market functioning through a couple simple steps.

From our research, we have found out first that consumers do want to know this information. Very rapid growth in concern among the public about what they are putting in, on, and around their families and themselves. This is driven partly by a stream on continuous scandals, quite frankly. Lead in toys, melamine in baby formula, salmonella in peanuts, almost one a week that we are seeing now and the press showing up, leading consumers to ask where are our products made, how are they made, under what conditions, and what are the impacts for our health and the environment.

A number of national surveys, which are in my written testimony, discussed even in this economic climate, we are seeing increased demand among the public to buy greener, healthier products even among a very broad spectrum of consumer population. Wal-Mart released a study of their consumers showing 57 percent of Wal-Mart customers concerned about the environment, wanting

to make environmentally friendly purchases. This is not a left/right, Democrat/Republican, high-income/low-income issue. This is across the board. Parents in the U.S. want to find safe, healthy products.

At the same time as Mr. Case has mentions, there is a very fast growth in production claims, which I think are quite questionable and consumer marketing, which is quite questionably going up against these demands for the public to know.

The public wants to know if products are safe and healthy. They want simple advice on choosing products to bring into their homes. They also want to know detailed information as their education level grows about ingredients of concern, carbon, other issues that they are increasingly concerned about.

In our research, we found health impacts to Congresswoman Castor's point. Health is the number one issue of concern among our users and our research. That relates to potential cancer risks, other long-term health hazards, and nutritional impacts of food products. They also are concerned about environmental impacts again related primarily to their health and their family's health. Toxics, releases, hazardous waste, and even climate change often comes back for consumers to a personal or the health of their grandchildren and their family.

Despite these demands for this kind of information, more and more consumers wanting this information, almost impossible for consumers to get this information, even with dozens of hours of research online and completely impossible in stores as they look at products and look at the product claims.

Let me just talk about one example which Chairman Rush mentioned: the growth in green cleaners and the demand for green cleaning products in the U.S. These are quite harsh chemicals that we bring into our house every day that are on our floor, that are on our plates, that are in the air around our families. Consumers want to know whether these products are safe and healthy. With the rapid growth in these products, there has also been a rapid growth in claims around these products, that they are safe for kids, pets, the environment, they are nontoxic, they are natural, they are biodegradable.

And at the same time, almost none of these companies disclose the ingredients in these products. They make claims without disclosing what is actually in them. So a claim like plant-based or natural is meaningless unless we know the actual ingredients, the actual chemicals derived from plants or other natural sources or petroleum to know what is in them

Over and over, we see in our research personal care products, again words like fragrance from essential oils sound environmental, sounds natural, but we don't know the actual chemicals which may include chemicals like phthalates. They are endocrine receptors, chemicals of concern, but that are masked underneath these product labels.

Toys also. We are seeing more and more claims about green toys, healthy, safe toys, and again we don't know what is in them. We don't know what the plastic is made out of. We don't know if there is phthalates again or other problematic chemicals.

There is an opportunity, I think, now from these gaps for this commission and for the FTC, I think, to move forward on disclosure. The first is that information should be disclosed on key life cycle impacts. We need to know the key material pieces of information about the product, not vague, irrelevant claims but what actually matters.

The second is that companies should publicly disclose the ingredients in their products before they make any environmental or health claim about those ingredients. The information should be scientifically precise and verifiable and available on the manufacturer's Web site at a minimum, on the packaging ideally. And this information over time should be verified by third parties.

To sum up, I think, Chairman Rush and the committee, there is a huge opportunity right now to remedy a failure in the marketplace of information, to move and motivate increased transparency among industry and ultimately support innovation in our markets that will lead to development of cleaner, safer, healthier products that are better for our health and better for the environment of the United States. Thank you.

[The prepared statement of Mr. O'Rourke follows:]

GoodGuide

Statement Of

Dara O'Rourke, Ph.D.
Co-Founder, GoodGuide, Inc.
Associate Professor, University of California, Berkeley

Before
The U.S House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection

At a Hearing On:

It's Too Easy Being Green: Defining Fair Green Marketing Practices

June 9th, 2009

Chairman Rush, and members of the Committee, thank you very much for the opportunity to testify this morning on Green Marketing Practices, and the important underlying issues of public access to accurate information on the environmental and health impacts of consumer products.

My name is Dara O'Rourke and I am an Associate Professor in the Department of Environmental Science, Policy, and Management, at the University of California, Berkeley. I have been conducting research on global supply chains for the last 15 years, first with a team at MIT, where I previously taught, and more recently at UC Berkeley. My research focuses on developing improved ways to monitor and measure the environmental and social impacts of the global production systems that produce the goods we consume in the US. My research applies a "life cycle" framework to understanding the full impacts of a product from raw material extraction, to manufacturing, to product use, to end-of-life disposal.

This research led me recently to co-found a "for benefit" company, GoodGuide, which I am here representing today. GoodGuide is a project dedicated to disseminating information to the public on the health, environmental, and social impacts of products and companies. We are early in this experiment, and are currently evaluating approximately 75,000 products across four categories – Personal Care, Household Chemicals, Toys, and Food products – based on information from over 200 data sources. We make this information available for free at GoodGuide.com and via a free iPhone application.

The reason we developed GoodGuide, and the reason I am here testifying today, is because I believe the current information available to the public on important issues affecting our health and the environment, is incomplete at best, and often confusing or even deceptive at worst. The public either has little information on critical aspects of a product (such as the ingredients contained in household chemicals, fragrances, electronics, etc.) or questionable information (such as green claims about a product being “natural” or “eco-friendly”) on which to base their purchasing decisions. For markets to function efficiently, consumers need high quality information and low transactions costs in acquiring this information. Currently, we have the opposite: poor information and very high costs for consumers to access this information.

This gap between what consumers want to know, and what companies communicate about their products, continues to grow, and has led to frustrated and confused consumers who literally cannot differentiate between green products and “greenwashing” companies. And as demand for fuller information on products is skyrocketing, so are questionable marketing claims. Incomplete or misleading information leads to consumers purchasing products and supporting manufacturing practices that they might actually oppose if they had better information. This confusion also undercuts the market for truly greener products.

This committee and the Federal Trade Commission have a critical role to play in improving the public information available on products, particularly as they relate to green claims. Congress also has an opportunity, I believe, to strengthen and expand disclosure rules that undergird product claims.

Information Demands

From our research over the last four years, it is clear that consumers want to know about the impacts of the products they are putting in, on, and around their families.

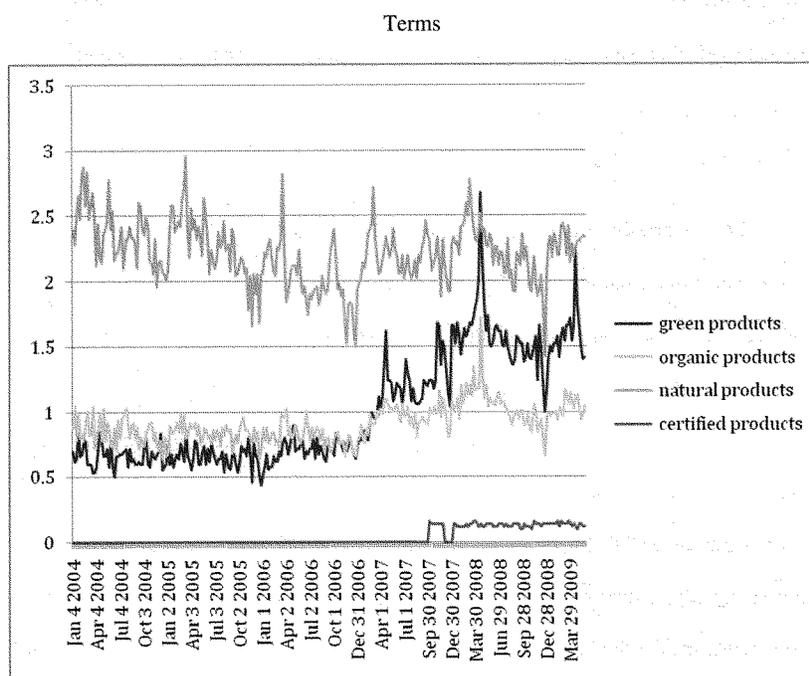
Driven partly out of a continuous stream of high-profile product scandals – lead in toys, melamine in baby formula, salmonella in peanuts, etc. – consumers are increasingly asking: Where are our products made? How are they made? What is in them? And, are they safe for our health and the environment?

Out of these questions, consumers are seeking out and demanding products that are healthier and greener. A number of recent national surveys show that even in our current economic climate a majority of consumers want to buy green and want better information on product impacts. For instance, the 2009 BBMG Conscious Consumer Reportⁱ asserts that 67% of US consumers continue to believe “it is important to purchase products with social and environmental benefits,” and 51% say they are “willing to pay more.” In another national survey, Mintel reported that the number of Americans who say they almost always or regularly buy green products tripled from 12% in 2007 to 36% in 2008, and has held steady in 2009.ⁱⁱ

These trends are not just for high-income consumers. WalMart has conducted national surveys of their customers over the last several years, and found that 57% were “concerned about the environment and its impact on you personally,” 53% “want to make more environmentally friendly purchases,” and 78% said they “need more information to think about how to help solve environmental problems.”ⁱⁱⁱ

In one of the broadest measures of public information seeking, we recently analyzed search terms entered into Google (the world's largest search engine.) As Figure 1 shows, over the last three years, searches for "green products" have almost tripled, while searches for "natural products" remain very popular.

Figure 1 – Google Trends Analysis of Product Search

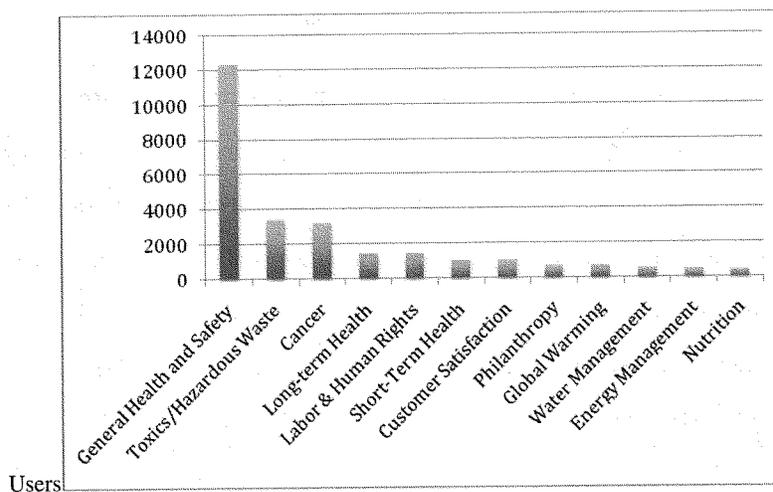


From our analysis, and from WalMart's national surveys^{iv}, this does not appear to be a left/right or Democrat/Republican issue. Consumers, and parents in particular, want to know what goes in, on, and around their families. And ultimately, they want to know that the products they are bringing into their homes are safe.

At GoodGuide, we have also been studying consumer information demands via web and mobile phone analytics. Through an analysis of the search patterns of over 1 million users, and the detailed information they click down into, we have learned that consumers want information that helps them make better purchasing decisions. They want to both avoid “bad” or “unhealthy” products, and to find “green,” “healthy,” and “socially responsible” products. Consumers want high level, simple advice on whether a product meets their values and concerns, and they want to be able to drill down to detailed information when they have specific concerns (such as chemical ingredients they want to avoid.)

To very briefly summarize our user research, health impacts are the number one issue of concern for our users. As Figure 2 shows, our users most frequently click down into detailed information on the health and safety performance of products, potential cancer risks, other long-term health hazards, and nutritional impacts. Environmental impacts are also of high concern, particularly as they relate to environmental health issues such as toxic releases and hazardous waste. Broader environmental concerns such as global warming, water, and air pollution are also of concern as people evaluate product choices. Finally, a diverse set of social issues are also emerging within “sustainability” discussions, such as the labor and human rights issues, community impacts, and animal testing.

Figure 2 – Top Issues of Concern for GoodGuide.com



We are currently conducting research to refine the data we provide our users to better understand what information, in what form, and at what moment in a purchasing decisions will actually support better decision-making. As I mentioned, we have aggregated over 200 data sources from around the world – including government, industry, academic, non-profit, and media sources – to develop our product rating algorithms. However, we are currently working hard to simplify the presentation of this information, and to hone in on the most important information for consumers.

Information Gaps

Despite growing demands for better information on products, it is currently virtually impossible for an average consumer to access the information they need to evaluate if a product is truly green or healthy. Consumers simply cannot find adequate

information in stores (or on the internet) about where their products were made, how they were made, and what impacts they might have on their health and the environment.

Furthermore, there has been a rapid proliferation of green claims in the marketplace that may actually confuse consumers. New products with green claims are being released at an accelerating pace in the US. A recent study from Mintel showed a 200% increase in new product introductions between 2006 and 2007 that claimed to be “environmentally friendly.”^v Package claims related to a product being “natural” appeared on 33 percent of new food products launched in 2008.^{vi} Ethical and environmental claims rose to 7 percent of food products launched in 2008.^{vii}

Other experts on the panel today – Mr. Case and Dr. Rangan – will go into greater detail on label claims and the problems of “greenwashing.” But let me briefly discuss three product categories we have been studying that represent a problematic gap between consumer questions and marketing claims.

There has been rapid growth in demand for “green cleaners” in the US over the last several years, with increased sales by both small natural products companies and the entry of mainstream manufacturers launching “green” product lines. But how can consumers know which cleaners are really non-toxic and healthy? In many cases we analyzed, manufacturers would state that their products were “Safe for kids, pets, and the environment” and “non-toxic,”^{viii} but then would not disclose the actual ingredients in the product. Or they would describe their product as “plant-based,” or “made from corn and coconut oil,” or “naturally derived”^{ix} and again fail to disclose what specific compounds were being derived from these sources. Many consumers believe that “natural” and

“plant-based” products are inherently safer than petroleum-based compounds, and may not know that hazardous compounds can be extracted from natural sources.

Unfortunately, existing disclosure requirements in the US allow manufacturers to not disclose many of their ingredients, while continuing to make environmental and health claims about these ingredients. This makes it virtually impossible for consumers to know if products are truly green.

There has also been growing demand for natural, green, and healthy personal care products in the US. Again, for these products, consumers want to know if the product contains chemicals that have environmental or health hazards. And increasingly, informed consumers want to know if products are free from specific chemicals of concern, such as phthalates, parabens, sodium lauryl sulfate, etc.? Again, unfortunately, consumers are frustrated with package claims and ingredient disclosure that actually mask the specific ingredients in these products. We regularly assess products that list the word “fragrance” or “fragrance from essential oils” on a label, masking the sometimes 50-60 chemicals that might be within the fragrance (including phthalates sometimes). We also see sunscreens marketed that describe themselves as “chemical-free,” which is hard to understand no matter how you define “chemical.” Many products are also showing up on store shelves touting “micronized” ingredients, rather than explaining that these are actually nano-scale compounds, most of which have not received comprehensive health or environmental testing. Consumers simply have no way to know the environmental or health implications of these products and their underlying ingredients.

Finally, toys, as you all know, have become an angst-inducing issue among consumers over the last two years. Controversies around lead, cadmium, arsenic,

mercury, and phthalates in the toys in the US have led to increased numbers of consumers seeking out safe, non-toxic toys. This has led a number of manufacturers and retailers to create “eco-friendly” or “green” toy lines, and to make claims about “safe” and “non-toxic” products. Some of these are made out of wood, implying a naturalness, but still may be coated in paints that contain traces of lead. Some “green toys” are made out of plastics that may contain PVC and phthalates. And even in cases where manufacturers are complying with ASTM standards on “non-toxic paints,” consumers remain confused over which standard mentioned on the bottom of a product implies what specific level of safety.

Towards Improved Information Systems

Despite all of this confusion in the marketplace, recent advances in scientific measurement processes and information systems make it possible for firms and government agencies to monitor, measure, and communicate more precise information on the environmental, health, and social impacts of products and their supply chains. Put simply, there is no excuse now for not providing much higher quality information to the public on the impacts and performance of products and companies.

There is an urgent need now for an improved system of public disclosure of the critical information relevant to the impacts of a product and its supply chain. This information, and all green marketing claims, should meet the following basic standards:

- Information should be presented on the key life-cycle impacts of a product. Disclosure should focus on the most important impact areas, so consumers are not confused or deceived by green claims about irrelevant issues.

- Companies should publicly disclose the “ingredients” in their products before they make any environmental or health claim about that product. For products like toys and electronics, this should include the materials contained in the product.
- This information should be scientifically precise and verifiable.
- This information should be made available on the manufacturer’s website at a minimum, and when possible also on the package label (such as ingredient information for household chemical products).
- Over time, this information should be verified by independent third-party certifiers.

The Federal Trade Commission has an opportunity to establish a much improved framework for commercial communication of product information. And I personally believe both the FTC and Congress have an even more important opportunity to build and motivate deeper disclosure of product information that supports public product claims. With public demand at an all time high, I believe Congress should move towards evaluating fuller product disclosure laws that might include: full ingredient information, country and factory of origin information, supply chain traceability information, and product life-cycle impact information.

The potential benefits of these enhancements to current disclosure and marketing regulations include:

- Manufacturers will know better what they need to measure and disclose.
- The public will have access to much better information relevant to their purchasing decisions.

- The government will level the playing field between firms that really are improving their products and those that are simply attempting to greenwash their customers.
- Retailers will know what consumers really care about and desire in products.
- The government will help to motivate product innovation for environmentally preferable products and services.
- This will hopefully lead to more environmentally-sound and healthy products produced and sold in the US.

In conclusion, I want to thank Chairman Rush and the Committee for calling a hearing on this very timely and important issue. I believe Congress and the FTC have an opportunity today to remedy current failures in the marketplace of information, to motivate increased transparency among industry, and ultimately to support innovation that leads to the development of products that are better for the health and environment of the United States.

Thank you.

ⁱ <http://www.bbmj.com/>

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http://www.businesswire.com/portal/site/home/permalink/?ndmViewId=news_view&newsId=20090220005581&newsLang=en

ⁱⁱⁱ <http://www.livebetterindex.com/sustainability.html>

^{iv} <http://walmartstores.com/FactsNews/NewsRoom/6503.aspx>

^v Mintel Global New Products Database, <http://www.gnpd.com/>. See also media reports on this data, such as: <http://www.foodproductiondaily.com/Packaging/Consumers-go-for-green-products-Mintel>

^{vi} http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=98562

^{vii} Ibid.

^{viii} <http://www.spotshot.com/green-cleaning/>

^{ix} <http://methodhome.com/product.aspx?page=621>

Mr. RUSH. The chair thanks the gentleman. The chair now recognizes for five minutes Mr. Cooper. Mr. Cooper, please limit your remarks to five minutes or thereabouts.

TESTIMONY OF SCOTT P. COOPER

Mr. COOPER. Thank you, Mr. Chairman and members of the subcommittee. My name is Scott Cooper, and I am vice president of Government Relations and Policy for the American National Standards Institute. More than 90 years, ANSI has served as the coordinator of this nation's private-sector lead and public-sector supported voluntary consensus standards on conforming assessment system, comprised of government agencies, many of them including EPA, Commerce, DOE, DOD, USDA, CSPC, DHS, as well as companies, trade associations, professional societies, and consumer groups including Consumers Union I am happy to say.

ANSI represents the interests of more than 125,000 organizations and 3.5 million professionals worldwide. Today's consumers are shopping with sustainability in mind, placing ever-increasing value on the environmental and societal aspects of part design, manufacture, distribution, use of disposal. Where consumers see value in going green, there is a competitive advantage to those companies who can supply environmentally sustainable products.

Where an advantage can be perceived, there will be those who will want to gain the system. We need to ensure the credibility and consistency of environmental claims and so I commend you, Mr. Chairman and members of the subcommittee, for holding this hearing.

By collaborating across industry sectors and bringing in environmental groups and others, we can build upon some of the excellent standards and compliance programs that are already in the marketplace, identify gaps where new solutions will help, and start building consensus through a partnership between the public and private sectors.

In April, ANSI took a first step in organizing the workshop toward product standards for sustainability. Convened at the request of one of our members, the U.S. EPA, the workshop was attended by over 240 in-person participants and over 100 via a live webinar. Representatives of multiple U.S. government agencies, companies, retailers, trade associations, and environmental groups were on hand to join the discussion, and one of the, I think, the great take-aways from that discussion was I think people are ready—all groups of people involved in this are ready to take a step inward and try to find ways of working together.

In the coming weeks, we expect to release the final workshop report, which will detail the discussions, recommendations that came out of the meeting. In the meantime, I would like to share a few of those messages that we heard from attendees.

First, consistent and globally accepted terminology tops the list of needs, and I think that has also been described by other witnesses. There is a consensus that terms like attribute and certification are now interpreted differently by consumers and standards of developers in government industry. We need to bring consensus to that process.

Second, standards need to be clearly written so they can be effectively used for reliable certification. The marketplace needs claims can be substantiated so consumers can reward good performance with their purchasing power. And finally, participants saw a clear need for an overarching body that will coordinate and guide the process going forward with input from both the public and the private sectors.

As part of our mission, ANSI is proud to facilitate problem solving through a number of public/private partnerships. The workshop is just the latest example of ANSI's many issue-driven coordination activities which include partnerships with other agencies such as HHS on health care information technology. We work with the CPSC and this committee on toy safety, with EPA on water conservation, with DOE and NYST on developing maybe the next generation of nuclear civilian power plants. A number of other issues that we think are sort of front and center to the public policy formulators in this committee and other places.

As the voice of the U.S. standards in conforming a consistent system, ANSI is actively engaged in accrediting programs that assess conformance to standards for a number of different industries. There are many conforming assessment activities applied in today's marketplace including accreditation, certification, inspection, registration, suppliers declaration and testing, all of which are important in this holistic approach toward issues like green claims.

As an independent third-part process, ANSI accreditation helps to promote practices while reducing the need for government agencies to individually monitor conforming assessment organizations.

ANSI is currently offering accreditation services in a variety of conforming assessment areas that are directly related to sustainable products and practices including greenhouse gas emissions, sustainable forestry, environmental management system, as well as in food and agriculture.

Third party accreditation demonstrates conformance, verifies confidence and strengthen consumer confidence in product, people and services. We feel strongly that it has an important role to play in the success and credibility of environmental labeling efforts.

Mr. Chairman and members of this subcommittee, I think we all can agree that labels and communications to consumers about the degree to which products, people, and services address this inability need to be uniform, transparent, and comprehensible. In order to make this vision a reality, we need to have more efficient use of standards and conformance resources, some of which are already in place, and we need to identify gap that does exist.

We also need to bring to bear new human and financial resources that can strengthen existing systems while satisfying future needs, and I think that we see by the work of the FTC that the idea that first do no harm. And I think we also need to look at sort of what can we do to advance the cause for good environmental claims. I think both need to be done at the same time.

Government and industry need to work at a single purpose if we are to define fair green claims marketing practices. ANSI stands ready to coordinate the public/private partnership and help in make the next step for a meaningful solution with challenges associated with standards and compliance programs that address envi-

ronmental and societal impacts. Thank you, and I welcome questions.

[The prepared statement of Mr. Cooper follows:]

Written Testimony of the American National Standards Institute
before the
U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
Hearing: "It's Too Easy Being Green: Defining Fair Green Marketing Practices"
Testimony on Standards and Conformity Assessment-Based Solutions for Sustainability
June 9, 2009

Statement of

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Introduction

Today's consumer is shopping with sustainability in mind, placing ever-increasing value on the environmental and societal aspects of product design, manufacture, distribution, use, and disposal.

Where consumers see value in "going green," there is a competitive advantage to those companies that can supply environmentally sustainable products. But where an advantage can be perceived, there will be those who want to "game" the system. We need to ensure the credibility and consistency of environmental claims, and so the American National Standards Institute (ANSI) commends the U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Commerce, Trade and Consumer Protection for holding this hearing.

By collaborating across industry sectors, we can build upon some of the excellent standards and compliance programs that are already in use in the marketplace, identify gaps where new solutions will help, and start building consensus through a partnership between the public and private sectors.

Overview: Standards and Conformity Assessment

Standards have become such an integral part of our existence that most people give them little or no thought. But standards and the related compliance programs are more essential today than at any time in history. Voluntary consensus standards are at the foundation of the U.S. economy and are fundamental to the success of robust, fair and free trade.

They offer benefits to all segments of business and industry, government and consumers. They help to advance scientific discovery, and keep people safe by minimizing injuries and protecting key environmental resources.

When we talk about standardization, we're actually discussing a broad range of activities and ideas – from the actual development of a standard to its promulgation, acceptance and implementation.

Standardization also includes the methods of evaluating whether products, processes, systems, services and personnel comply with a standard – this evaluation is known as conformity assessment. Standards development and assessing conformity to standards go hand-in-hand.

More information on the U.S. standards and conformity assessment systems can be found in Annexes B and C of this document, respectively.

What is ANSI?

The American National Standards Institute (ANSI) is a private non-profit organization whose mission is to enhance U.S. global competitiveness and the American quality of life by promoting, facilitating, and safeguarding the integrity of the voluntary standardization and conformity assessment system. ANSI's membership is comprised of businesses, professional societies and trade associations, standards developers, government agencies, and consumer and labor organizations. Through this network of members, the Institute represents the diverse interests of more than 125,000 companies and organizations and 3.5 million professionals worldwide.

ANSI is the official U.S. representative to the International Organization for Standardization (ISO) and, via the U.S. National Committee, the International Electrotechnical Commission (IEC), and is a U.S. representative to the International Accreditation Forum (IAF). A memorandum of agreement between ANSI and the Commerce Department's National Institute of Standards and Technology outlines a mutual understanding of the roles of each organization. This includes ANSI's recognition as the official U.S. member of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).

For more information about ANSI, please reference Annex A of this document.

Enabling Standards and Conformance-Based Solutions

ANSI was founded over 90 years ago by five professional societies and three federal agencies. These groups came together because they saw the need for an organization that could take on the difficult issues that fell in the gray area between regulatory mandates and private sector initiatives.

From its very inception, the Institute has coordinated a public-private partnership to address and help resolve the critical issues that face the nation . . . and the planet. Today, ANSI works to enhance U.S. global competitiveness and the American quality of life by promoting, facilitating, and safeguarding the integrity of the voluntary standardization and conformity assessment system.

Over the past nine decades, we have seen that the most effective solutions come about through a thoughtful, open, and consensus-based process. As the voice of the U.S. standards and conformity assessment system, ANSI leads and facilitates this process, providing the neutral forum where all affected stakeholders work together to:

- * identify existing and emerging regulations, requirements and supporting standards and compliance programs,
- * define where gaps exist, and
- * recommend where additional work is needed.

**Standards and Criteria for Sustainable Products:
ANSI Workshop Held April 8-9, 2009**

With the concepts of “green” and “socially responsible” subject to varied interpretations in the marketplace, government, consumers, industry, and others are looking to product standards and criteria to help establish uniform technical requirements, methods, processes, and practices that address sustainability.

A workshop organized by the ANSI with the support of the U.S. Environmental Protection Agency (EPA – an ANSI member), *Toward Product Standards for Sustainability* brought together a broad range of experts and advocates to share insights and develop recommendations on product standards for sustainability. The workshop, which took place April 8-9, 2009, in Arlington, VA, was attended by over 240 in-person participants and over 100 more via a live webinar, representing government, industry, standards developing organizations (SDOs), consortia, and consumers.

The workshop centered on three focused panels, a keynote address, and breakout sessions for more in-depth discussion among attendees.

The first panel, a facilitated discussion with standards/criteria developing organizations, addressed the challenges involved in the development of successful sustainable performance criteria. Panelists agreed that while there are various approaches to standards development, the single most important component of a successful standard is participation by an inclusive set of stakeholders.

The industry perspective took center stage during the second panel, as representatives from four different companies explained how they rely on standards and criteria to help them respond to consumer demand for environmentally responsible products. Panelists agreed that – at a minimum – product standards for sustainability must be scientifically based and relevant. They should not be so narrowly focused as to stifle innovation, but they should also avoid emotional criteria and remain mindful of economic viability.

Finally, retailers gave their perspectives on product standards for sustainability during the workshop's third panel. Speakers described how their companies are working to market greener products to consumers, and how sustainability standards are being used in conjunction with vendor scorecards or rating systems to compare products.

During the keynote address, participants learned that a “good” standard probably hurts. When improvement remains the chief goal of a standards development process, it can be painful to question long-held perceptions and build consensus, but the quality of the final product justifies the effort.

Attendees divided into breakout groups at the end of the first day to discuss a set of questions on standards for product sustainability. On day two, a summary breakout report was presented to offer some common conclusions and take-away messages:

- There are pros and cons to each kind of standards development – proprietary, consensus-based, and government regulation. A consensus-based development process offers many advantages, but there may be a need for a multi-pronged approach, with government regulations to set the floor and voluntary standards to raise the ceiling.
- There is a need for an overarching body that will coordinate and guide the process going forward. Both the public and private sectors should have active roles in establishing next steps and examining the current standards landscape on both the U.S. and international levels.
- Consistent and globally-accepted nomenclature and terminology – the fundamental building blocks for any burgeoning industry – top the list of stakeholder needs. Until there is consensus, terms like “attribute” and “label” are at risk of being interpreted differently by consumers, standards developers, government, and industry.

- Standards should be clearly written so they can be effectively used for reliable certification. The marketplace needs claims that can be substantiated so consumers can reward good performance with their purchasing power and raise the baseline floor.
- Some participants noted that single-attribute standards reduce complexity and confusion in messaging, while other participants noted that multi-attribute standards may address environmental risk-shifting or lead to increased consumer confidence.
- Labels and communications to consumers about the degree to which a product addresses sustainability concerns need to be uniform and transparent.

These discussions and next steps will be highlighted in a workshop report to be released by ANSI in the coming weeks. In the meantime, presentations given during the event are available at ansiposts.ansi.org. To view the workshop agenda and further details, including speakers, visit www.ansi.org/events and follow the link for “Past ANSI Events and Proceedings.”

Issue-Driven Standards and Conformance Coordination Activities

ANSI provides a neutral forum for all stakeholders – private and public sector alike – to come together to address key issues and priorities and to develop standards and conformance-based solutions. The workshop mentioned above is just the latest example of ANSI’s issue-driven coordination activities:

Import Safety

In the wake of national concerns about the safety of imported products, many government agencies and regulators have turned to ANSI and the standards and conformity assessment community for help in developing practicable solutions.

The Toy Safety Certification Program (TSCP) – a collaboration between ANSI and the U.S. Toy Industry Association – is a strong example of a private-sector led program that is strengthening conformity assessment systems for the nation’s consumer products. A rigorous third-party (i.e., independent) testing, inspection, and auditing program, TSCP targets toy production throughout the global supply chain, whether the manufacturing process occurs in the U.S., China, or other markets. Congress agreed with the strength of this approach in the *Consumer Product Safety Improvement Act of 2008*, which mandates third-party accreditation for laboratories working to test children’s toys and other products like cribs and pacifiers.

ANSI is currently working with the food industry and the U.S. Food and Drug Administration (FDA) on issues surrounding the health and safety of the food products that our nation imports. Third-party obligations for testing, inspection, and auditing of food imports can be an essential addition to regulation and enforcement activities by the FDA and the U.S. Department of Agriculture (USDA).

Water Conservation

The Institute has teamed with the U.S. EPA on WaterSense, a public-private partnership that encourages the production and use of water-efficient products. EPA requires all WaterSense products to meet strict water conservation standards and ANSI accredits programs to certify that such products conform to the applicable specifications.

Healthcare Information Technology

A cooperative partnership between the public and private sectors, the Healthcare Information Technology Standards Panel (HITSP) is a national, volunteer-driven, consensus-based organization that works to ensure the interoperability of electronic health records in the United States.

Administered by ANSI under contract to the U.S. Department of Health and Human Services, HITSP develops guidance documents known as Interoperability Specifications (IS) that recommend the standards that will meet the defined clinical and business needs for sharing information across organizations and systems.

In response to the *American Recovery and Reinvestment Act of 2009*, HITSP's work products to date — 13 interoperability specifications and 60 related constructs — are being leveraged to create new streamlined electronic standards implementation guides reorganized around the milestones and priorities defined in the legislation. The final goal is to deliver compact, easy-to-implement, and flexible guidance that supports the meaningful use of EHRs and protection of privacy.

Homeland Security

The Homeland Security Standards Panel (ANSI-HSSP) works in partnership with the U.S. Department of Homeland Security (DHS) to catalog, promote, accelerate, and coordinate the development of voluntary consensus standards and conformance programs that are responsive to DHS priorities.

Efforts are ongoing to examine standardization needs in the areas of cyber security, credentialing and access control, transit security, and emergency preparedness for persons with disabilities and special needs.

Telecommunications and Radio Equipment

The U.S. federal government relies on ANSI to accredit telecommunication certification bodies under a Federal Communications Commission program that enforces rules for the manufacturers of telecommunications and radio communication equipment used in the U.S. and abroad. These programs include:

- Unlicensed Radio Frequency Devices
- Licensed Radio Frequency Devices
- Telephone Terminal Equipment

ANSI's accreditation of telecommunication certification bodies is also recognized by several other nations.

Nuclear Energy

In partnership with the National Institute of Standards and Technology (NIST), ANSI has launched the Nuclear Energy Standards Coordination Collaborative (NESCC). A cross-stakeholder forum open to any and all interested parties, NESCC participants work to facilitate and coordinate the timely identification, development, and revision of standards for the design, operation, development, licensing, and deployment of nuclear power plants.

The Value of Conformity Assessment

Conformity assessment is defined as a "demonstration that specified requirements relating to a product, process, system, person or body are fulfilled." There are many of these conformity assessment activities applied in today's marketplace including accreditation, certification, inspection, registration, supplier's declaration, and testing. The one dimension that ANSI is directly engaged with is accreditation.

By way of brief background, accreditation assesses the competence of bodies to determine compliance with standards. As an independent, third-party process, it helps to promote best industry practices while reducing the need for government agencies to individually monitor conformity assessment organizations, and strengthening consumer confidence in products, personnel, and services.

Ultimately, the marketplace and customers of conformity assessment services measure the beneficial value of accreditation. For most suppliers, the primary benefit of accredited third-party certification is to meet a purchaser's or regulator's requirement for this independent evaluation of compliance. Increasingly, suppliers' procurement organizations are specifying and government agencies are recognizing accredited, third-party certification as an optional dimension of their systems for risk management.

ANSI Accreditation Services

In the area of conformity assessment, ANSI provides accreditation services in the areas of product and personnel certification as well as greenhouse gas verification and validation. This means the Institute recognizes the competence of bodies to carry out these activities in accordance with requirements defined in International Standards. ANSI's accreditation programs operate in accordance with international guidelines and have been verified by government and peer review assessments.

In partnership with the American Society for Quality (ASQ), ANSI also serves the marketplace in the provision of an accreditation program for quality and environmental management systems registrars, laboratories, reference material producers and inspection bodies via the ANSI-ASQ National Accreditation Board (ANAB and ACLASS Brands). ANSI's (and ANAB/ACLASS) accreditation of the conformity assessment bodies (CABs):

- signals a clear indication that an organization desires to have a competitive advantage by undergoing a voluntary evaluation
- encourages marketplace confidence in CABs by their undergoing regular impartial and independent audits by an internationally respected body
- positively influences customer satisfaction with CABs and their clients via greater quality awareness and enhanced communication
- reduces liability insurance by the accountability and transparent aspects of the process
- sustains continual improvement for the CABs and their clients through the assessment of system effectiveness, efficiency and competence
- promotes consistency and demonstrates equivalence of assessments via mutual recognition based on peer review
- reduces multiple audits and removes barriers to trade in working towards the goal of "certified once – accepted everywhere."

Buyers in the global market demand that sellers and service providers fulfill their needs. Competing suppliers are motivated to convey assurance to their customers in the most efficient manner. Confidence that these needs can and will be met is built through a variety of means, including the assessment of conformity to standards.

Continuing pressures in the global marketplace to preclude redundant and costly barriers to trade drive the need for acknowledgement of equivalency across boundaries. Accordingly, ANSI is involved in several international and regional arrangements for multi-lateral recognition. These include the International Accreditation Forum (IAF), the

International Laboratory Accreditation Cooperation (ILAC), the Inter-American Accreditation Cooperation (IAAC) and the Pacific Accreditation Cooperation (PAC). ANSI is also recognized by the U.S. Department of Commerce via the National Institute for Standards and Technology (NIST) and their National Voluntary Conformity Assessment System Evaluation (NVCASE) program.

The Institute currently offers accreditation services for a variety of conformity assessments that are directly related to sustainable products and practices, including:

Greenhouse Gas Emissions

With a growing global awareness of the need for environmental protection and sustainability, organizations are eager to demonstrate their efforts to inventory, report, and reduce greenhouse gas (GHG) emissions. In order to assure the credibility of their claims, many of these organizations are turning to third-party bodies to validate and verify emission assertions.

Often confused, the terms “validate” and “verify” represent two separate and distinct processes. Validation comes at the beginning of a project and lays out the framework by which emission reductions will occur. Verification assesses how an organization or project has performed its GHG inventory and reported its results against an established protocol, demonstrating the relevance, completeness, consistency, transparency, and accuracy of the emission claim.

ANSI accreditation enhances the credibility and value of the process by attesting to the competence and qualification of VVBs to perform these duties, offering them a significant distinction from their competitors in the marketplace.

Sustainable Forestry

At the request of the Sustainable Forestry Initiative Board of Directors, ANSI administers an accreditation service for certification bodies operating under the Sustainable Forestry Initiative Chain of Custody (SFI CoC) and/or the PEFC Chain of Custody (PEFC CoC) programs. These initiatives positively impact a range of forest-based products and their movement from the forest to the end user.

Environmental Management Systems

The ANSI-ASQ National Accreditation Board (ANAB) is the U.S. accreditation body for management systems and accredits certification bodies for ISO 14001, an international management system standard that provides guidance and requirements to establish, implement and maintain the policy and objectives of an environmental management system. Guidance provided on the principles of auditing an organization's environmental management system enables the monitoring and verification of an effective environmental policy.

Food and Agriculture

Consumer confidence in safe quality food and the integrity of the food supply chain is enhanced by the partnership between ANSI and the Food Marketing Institute. ANSI provides an accreditation service for FMI's Safe Quality Food Initiative certification program.

ANSI is also recognized as the accreditor of the GlobalGAP program, a standard is primarily designed to reassure consumers about how food is produced on the farm by minimizing detrimental environmental impacts of farming operations, reducing the use of chemical toxicants, and ensuring a responsible approach to animal welfare.

Third-party accreditation demonstrates conformance, verifies competence, and strengthens consumer confidence in products, people, and services. As such, it has an important role to play in the success and credibility of environmental labeling efforts.

Conclusion

Labels and communications to consumers about the degree to which products, people, and services address sustainability concerns need to be uniform, transparent, and comprehensible.

In order to make this vision a reality, we need to make more efficient use of the standards and conformance resources that are already in place . . . and we need to identify every gap that exists. We also need to bring to bear new human and financial resources that can strengthen existing systems while satisfying future needs.

Government and industry need to work at a single purpose if we are to define fair green marketing practices.

ANSI stands ready to coordinate the public-private partnership and take the next step toward a meaningful solution to the challenges associated with standards and compliance programs that address the environmental and social impacts of products.

Annex A**Background on the U.S. Standardization and Conformity Assessment System and the Role of the American National Standards Institute (ANSI)**

The U.S. private sector-led, voluntary standardization and conformity assessment system has been in existence for more than 100 years. Highly decentralized, the system is naturally partitioned into industrial sectors that are supported by numerous independent, private sector standards developing organizations (SDOs). Marketplace demand drives the system's activities, with standards and conformity assessment programs typically developed in response to specific concerns and needs expressed by industry, government, and consumers.

Since 1918, this system has been administered and coordinated by the American National Standards Institute (ANSI) with the cooperation of the private sector and the federal, state and local governments. ANSI does not develop standards or conformity assessment programs. Rather, it functions as a central clearinghouse and coordinating body for its member organizations. The Institute is a unique partnership of industry, professional, technical, trade, labor, academic and consumer organizations, as well as government agencies. These members of the ANSI federation actually develop standards and conformity assessment programs, contributing their time and expertise in order to make the system work.

ANSI ensures the integrity of the U.S. standards and conformity assessment system by:

1. establishing a set of due process-based "essential requirements" that SDOs may follow in order to manage the development of consensus standards and conformity assessment programs in a fair and open manner,
2. accrediting SDOs and Certification Bodies (CBs) who adhere to these requirements,
3. approving candidate standards from ANSI-accredited SDOs as American National Standards (ANS), and
4. conducting regular audits of the ANS activities of ANSI-accredited SDOs to ensure ongoing compliance with ANSI's essential requirements.

ANSI has accredited hundreds of SDOs across a range of industry sectors. These industries include (but certainly are not limited to) telecommunications, medical devices, heavy equipment, fire protection, information technology, petroleum, banking, and household appliances. There are now approximately 10,000 ANSI-approved ANS that address topics as diverse as dimensions, ratings, terminology and symbols, test methods, interoperability criteria, product specifications, and performance and safety requirements. These standards development efforts serve the public interest and are being applied to

new critical areas such as the environment, healthcare, homeland security, and nanotechnology.

The Institute's approval of a candidate standard or conformity assessment program as an ANS verifies that the principles of openness and due process have been followed and that a consensus of all interested parties has been reached. Due process requires that all proposed ANS be circulated to the public at large for comment, that an attempt be made to resolve all comments, and that there is a right of appeal. In addition, ANSI considers any evidence that a proposed ANS is contrary to the public interest, contains unfair provisions or is unsuitable for national use. This basic formula has been the hallmark of the ANS process for decades, and it has garnered worldwide respect and acceptance.

One of the best indicators of confidence in the U.S. voluntary consensus standardization and conformity assessment system (as exemplified by the ANS process) is Congress's 1996 passage of the *National Technology Transfer and Advancement Act* (NTTAA). This law (P.L. 104-113) requires federal agencies to use voluntary consensus standards and conformity assessment programs for regulatory purposes wherever feasible and to procure equipment and services in accordance with such standards. It also requires agencies to increase their participation in the development process and directs the Commerce Department's National Institute of Standards and Technology (NIST) to coordinate federal, state and local voluntary standards and related conformity assessment activities.

ANSI also promotes the international use of U.S. standards and conformity assessment programs. The Institute serves as the U.S. national body representative in two major, non-treaty international standards organizations: the International Organization for Standardization (ISO) and, through the United States National Committee (USNC), the International Electrotechnical Commission (IEC). ANSI and the USNC play a leadership role in ISO and IEC, respectively, on both policy and technical matters.

Part of ANSI's role as the U.S. member of ISO includes accrediting U.S. Technical Advisory Groups (U.S. TAGs) which develop and transmit, via ANSI, U.S. consensus positions on the activities and ballots of technical committees and subcommittees. Similarly, the USNC approves TAGs for IEC activities. In many instances, voluntary standards and conformity assessment programs developed by U.S. SDOs are taken forward, through ANSI or the USNC, where they are approved in whole or in part by the ISO and/or IEC as International Standards. ANSI also encourages the adoption of international standards as national standards where they meet the needs of the user community.

In addition, ANSI advocates U.S. positions in various regional standards organizations and regularly meets with representatives from standards bodies in other nations. Thus, ANSI plays an important role in facilitating the development of global standards and related conformity assessment programs that support global commerce and which prevent regions from using local standards that favor local industries as trade barriers.

Conformity assessment is the term used to describe steps taken by both manufacturers and independent third-parties to determine fulfillment of standards requirements. ANSI's role in the conformity assessment arena includes accreditation programs for product certification bodies, personnel certification bodies, greenhouse gas validation and verification bodies, and standards developers. The ANSI-ASQ National Accreditation Board accredits management systems certification bodies under the ANAB brand and accredits testing and calibration laboratories, reference material producers, and inspection bodies under the ACLASS brand.

ANSI also is involved in several international and regional organizations to promote multilateral recognition of conformity assessments across borders to preclude redundant and costly barriers to trade.

In summary, through its various roles and responsibilities, ANSI advances its mission to "enhance both the global competitiveness of U.S. business and the U.S. quality of life by promoting and facilitating voluntary consensus standards and conformity assessment systems and safeguarding their integrity."

Annex B**Excerpt from the *United States Standards Strategy*****PRINCIPLES**

It is well established in the community of nations that standards should meet societal and market needs and should not be developed to act as barriers to trade. In approving the World Trade Organization Technical Barriers to Trade Agreement, WTO members recognized that goal and established globally accepted principles as a framework to promote cooperation and discourage the use of standards as trade barriers. The U.S. standards and conformity assessment system is based on the following set of globally accepted principles for standards development.

- **Transparency**
Essential information regarding standardization and conformity assessment activities is accessible to all interested parties.
- **Openness**
Participation is open to all affected interests.
- **Impartiality**
No one interest dominates the process or is favored over another.
- **Effectiveness and relevance**
Standards and related conformity assessment programs are relevant and effectively respond to regulatory and market needs, as well as scientific and technological developments.
- **Consensus**
Decisions are reached through consensus among those affected.
- **Performance-based**
Standards are performance-based, specifying essential characteristics rather than detailed designs where possible.
- **Coherence**
The process encourages coherence to avoid overlapping and conflicting standards and conformity assessment programs.
- **Due Process**
Standards development accords with due process so that all views are considered and appeals are possible.
- **Technical Assistance**
Assistance is offered to developing countries in the formulation and application of standards and related conformity assessment programs.

In addition, U.S. interests strongly agree that the process should be:

- **Flexible**, allowing the use of different methodologies to meet the needs of different technology and product sectors;
- **Timely**, so that purely administrative matters do not slow down the work, but meet market expectations; and
- **Balanced** among competing interests.

Annex C**Excerpt from the *National Conformity Assessment Principles of the United States***

The *National Conformity Assessment Principles for the United States* document articulates the principles for U.S. conformity assessment activities that will allow consumers, buyers, sellers, regulators and other interested parties to have confidence in the processes of providing conformity assessment, while avoiding the creation of unnecessary barriers to trade.

Conformity assessment includes sampling and testing, inspection, supplier's declaration of conformity, certification, and management system assessment and registration. It also includes accreditation of the competence of those activities by a third party and recognition (usually by a government agency) of an accreditation program's capability.

While each of these activities is a distinct operation, they are closely interrelated. The choice of the most appropriate assessment processes, as well as the quality with which any one of them is performed, can have a significant effect on the confidence in and reliance that can be placed on the results of the entire conformity assessment.

The definitions included in the *National Conformity Assessment Principles* document are based on ISO/IEC 17000:2004, *Conformity assessment — Vocabulary and general principles*. Some variances, noted in italics, occur where the term is not in ISO/IEC 17000 or has another specific meaning in the United States. Definitions are included in this document to preclude confusion and to make it more understandable. In different contexts, the same term can signify different types of activities.

- **Accreditation**
Third party attestation related to a conformity assessment body conveying a formal demonstration of its competence to carry out specific conformity assessment tasks. *(These tasks include sampling and testing, inspection, certification and registration.)*
- **Certification**
Third party attestation related to products, processes, or persons *that conveys assurance that specified requirements have been demonstrated.*
- **Conformity Assessment**
Demonstration that specified requirements relating to a product, process, system, person or body are fulfilled. *(This may include any activity concerned with determining directly or indirectly that relevant requirements are fulfilled.)*
- **First, Second and Third Party**
The first party is generally the person or organization that provides the object, such as the supplier. The second party is usually a person or

organization that has a user interest in the product, such as the customer. The third party is a person or body that is recognized as being independent of the person or organization that provides the object, as well as the user or customer of the object.

- **Inspection**
Examination of a product design, product, process or installation and determination of its conformity with specific requirements or, on the basis of professional judgment, with general requirements.
- **Recognition**
Procedure used to provide formal notice that an accreditation body is competent to carry out specific tasks. These tasks include accreditation of testing laboratories and inspection, certification and registration bodies. A governmental recognition system is a set of one or more procedures used by a Federal agency to provide recognition.
- **Registration**
Third party attestation related to systems that convey assurance that specified requirements have been demonstrated. Such systems include those established for the management of product, process or service quality and environmental performance.
- **Sampling**
Provision of a sample of the object of conformity assessment according to a procedure.
- **Supplier's Declaration**
Procedure by which a first party or supplier conveys assurance that the object of conformity fulfills specified requirements.
- **Test**
Technical operation that consists of the determination of one or more characteristics of a given product, material, equipment, organism, person's qualification, physical phenomenon, process or service according to a specified technical procedure (test method).
- **Testing**
Determination of one or more characteristics of an object of conformity according to a specified technical procedure (test method). Action of carrying out one or more tests.
- **Test Method**
Specified technical procedure for performing a test.

Mr. RUSH. The chair thanks the gentleman. Now it is my pleasure to welcome a witness who we announced was en route. We have with us now and witness statement of Dr. Dara O'Rourke who is an associate professor of the University of California at Berkeley—no I am sorry. Let me start all over again.

Dr. Urvashi Rangan is a director of the technical policy at the Consumer Union. Dr. Rangan, it is certainly a pleasure to have you here before us, and as I have done with the other witnesses, I would ask that you stand and be sworn in before you begin your testimony.

[Witness sworn]

Mr. RUSH. Let the record reflect that Dr. Rangan is responding affirmatively. We will recognize you now, all in one fell swoop here. We will recognize you for five minutes for the purposes of opening statement.

TESTIMONY OF URVASHI RANGAN

Ms. RANGAN. Thank you so much, Chairman Rush and members of the subcommittee. It was wheels off, and we did take off from New York, so I am really pleased to be here. My name is Urvashi Rangan. I am director of technical policy at Consumers Union, the nonprofit publisher of Consumer Reports magazine. I have been with the company for just about 10 years now.

I am an environmental health scientist, and I provide technical support to our research and testing and helping develop our advice and policy recommendations as well as advocacy initiatives on a wide array of environmental and public health issues.

I also have been directing our free green public service Web site, greenerchoices.org, which disseminates a wide range of reports on the green marketplace including an ecolabel's database that gives consumers our evaluation and ratings of more than 150 environmental claims including those found on food, personal care products, and cleaners. We also advocate for strong labeling standards across a wide array of products.

There are broad and specific challenges in defining a fair green marketing place, and we believe that the government does have a very important role in guiding and protecting this marketplace. Consumers are faced with a dizzying array of labels—I think you have probably heard that from every panelist—some of which are very specific like no phthalates to those that are vague and not well defined like natural and green.

This marketplace is incredibly confusing for consumers, and it is often filled with a lot of noise that can be misleading and at times deceptive. Often consumers are presented with claims that sound better than they are, carbon negative, which has minimal standards or none, natural, nontoxic, while there are also meaningful, certified, credible labels to choose from.

Of the certified label programs, there are several viable business models including public, private, nonprofit and for-profit that may or may not be of interest to a particular consumer.

Some claims have comprehensive standards behind them—robust verification like certified labels, while many do not like general claims that can voluntarily be made by a manufacturer. But it is virtually difficult to impossible for a consumer to make an accurate

assessment of what type of green claim they are being faced with in the marketplace.

The Federal Trade Commission's role in reducing deceptive marketing practices is necessary and should be broadened. At the same time, the baseline for good marketing practices and minimum standards for common claims should be established.

Consumers are currently faced with this huge learning task that better guidance and regulation could reduce. Requirements for transparency in standards product information, as Professor O'Rourke mentioned about ingredient lists and full disclosure, should be standard for all products sold with green claims.

Government regulation and guidance again would be helpful in maintaining these universal requirements for credible green marketing practices.

We have been rating the meaning of green claims for consumers for the last 10 years. We measure the value of green claims over the conventional baseline. I have this in more detail in my written testimony, but quickly we assess how meaningful the labels are.

We look at standards. Are they credible? Have they moved over time? Do they evolve with time? Verification, consistency, and meaning from product to product, transparency not only of the standards but of information about the certifying organization. Stakeholder input, that is the opportunity for all stakeholders to have input into the standard setting process but also independence, which is that once all the input has been sought, we believe the best labels are those that are defined by an independent body and judged upon by an independent body.

In evaluating these claims, we provide consumers with comparative rating snapshots, and I also presented at the American National Standards Institute a presentation and can also submit that in for the record as well.

Based on our experience of rating and monitoring claims, we have identified a few trends. Comprehension and accessibility are challenges for all green claims. Whether they are specific or broad, the maintenance and evolution of standards must be addressed over time, and consistency across different product categories can also be a challenge. The ability to respond and incorporate emerging marketplace issues, whether it is phthalates, Bisphenol A, whatever the flavor of the day is, it is another hurdle for labor standards and programs. All of these standards can be addressed with the increasing complexity of the label.

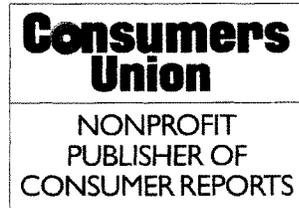
A few recommendations from us. One we feel that the government can play a role in eliminating or better defining meaningless claims in the marketplace. So voluntary claims like natural or carbon negative or nontoxic or even free range, if you can believe it, don't have standardized meaning. They don't mean much for consumers. We just prefer to see those labels gone from the marketplace altogether in order to increase the opportunity for credible labels to actually succeed.

We think that there should be baseline practices set for all green marketing claims, that there should be a floor for transparency, there should be full disclosure, and we think that government labeling programs—so this is where the government decides to take on a labeling program—really ought to meet the highest standards

out there for credibility in order to give the highest level of assurance to consumers.

There are several government-based labeling programs that could use a boost at this point, whether they are the myriad of programs at EPA, which have varying transparency and verification requirements. And also whether it is the FTC overseeing some of those labeling programs that are going on in the other agencies, things like no antibiotics, natural, fragrance-free, these don't have properly defined meaning, and yet they are overseen by our government agencies. We think that the FTC has a broader role to play in the oversight of those labeling programs as well. Thank you.

[The prepared statement of Ms. Rangan follows:]



June 5, 2009

Testimony to House Sub-committee on Commerce Trade, and Consumer Protection hearing -- "It's Too Easy Being Green: Defining Fair Green Marketing Practices"

Consumers Union, the non-profit publisher of Consumer Reports, appreciates the invitation by the House Sub-committee on Commerce Trade, and Consumer Protection hearing, "It's Too Easy Being Green: Defining Fair Green Marketing Practices" to share our perspective.

I am Urvashi Rangan, Ph.D. and Director of Technical Policy for Consumers Union, non-profit publisher of Consumer Reports. I am an Environmental Health Scientist and provide technical support to our research and testing and help develop advice, policy recommendations and advocacy initiatives on a wide array of environmental and public health issues. I also direct Consumer Reports' Greenerchoices.org, a free, public-service website, which disseminates wide ranging reports on the green marketplace, including an eco-labels database, that gives consumers our evaluation and ratings of more than 150 environmental claims including those found on food, personal care products and cleaners. We also advocate for stronger labeling standards across a wide range of products.

There are broad and specific challenges in defining fair green marketing practices and we believe that the government has a very important role in guiding and protecting this marketplace. Consumers are faced with a dizzying array of labels—some which are very specific and discreet, like "no phthalates" to those that are vague and not well defined, like "natural" and "green." This marketplace is incredibly confusing for consumers and filled with a lot of noise that can be misleading and at times, deceptive. Often, consumers are presented with claims that sound better than they are ("carbon negative"), have minimal standards ("natural") or no standards ("non-toxic") while there are also meaningful, certified labels to choose. Of the certified label programs, there are several viable business models including public, private, non-profit, for-profit—that may or may not be of interest to a particular consumer. Some claims have comprehensive standards behind them with robust verification (certified labels) while many do not (general claims). But it is difficult to impossible for consumers to make accurate assessments of green claims in the marketplace on their own. The Federal Trade Commission's role in reducing deceptive marketing practices is necessary and should be broadened. At the same time, the baseline for good marketing practices and minimum standards for common claims should and could be established.

Consumers are currently faced with a huge learning task that better guidance and regulation could reduce. Requirements for transparency in standards and product information, such as ingredient lists, should be standard for all products being sold with green claims. Government regulation and guidance would be helpful in maintaining universal requirements for credible green marketing practices.

Consumers Union has been rating the meaning of green labels for consumers for the last ten years. We measure the value of green claims over conventional production practices in order to help consumers make the most informed purchasing decisions, especially where there may be an associated premium. The following is list of criteria and typical questions or issues we consider, with the first two about meaning and verification being the most important:

Meaning: How meaningful is the label (with ratings of highly, somewhat, or not)

-are the standards credible?

-have the standards progressed over time?

-does the claim accurately represent the standards behind it?

1. **Verification:** Is the label verified (rating: yes / no)

-many general claims are on the market which are not verified but impossible for consumers to know

-types of verification can range from none to onsite inspection

2. **Consistency:** in meaning across products (rating: yes / no)

-does the claim mean the same thing across products that it is found?

3. **Transparency:** Are the standards and labeling organization information publicly available? (rating: yes / no)

-is enough product information disclosed so claims can be analyzed effectively?

4. **Stakeholder input** -Were the standards developed with broad public and industry input? (rating: yes / no)

5. **Independence**—Were the decision making bodies within both the standard-setting and verification arms free from conflict of interest? (rating: yes / no)

In evaluating claims, we provide consumers with comparative rating snapshots. Examples of these comparisons can be seen in a recent presentation made to the American National Standards Institute on sustainable product standard setting¹.

Based on our experience of rating and monitoring label claims in the green marketplace, we have identified a few trends. Comprehension and accessibility are challenges for all green claims. Whether specific or broad, the maintenance and evolution of standards over time must be addressed. Consistency in the meaning of standards across different

¹ Rangan, Urvashi. A purchaser's / consumer's perspective on setting product standards for sustainability. American National Standards Institute meeting, April 8, 2009.

product categories can also be a challenge. And the ability to respond and incorporate emerging marketplace issues, especially around health / safety (bpa, phthalates, mad cow) is another hurdle for label standards and programs. All of these challenges increase with the complexity of a label.

And yet the green-ness or sustainability of a product is a complex subject. There are often many attributes to a product's sustainability like the social, environmental, and health aspects from production through to disposal. Green marketing claims can be very specific or very broad with the latter being much more difficult and challenging, that can require more consumer education to launch and more maintenance (standards development and evolution) to keep current over time—which then requires additional consumer education. For these reasons, consumers tend to better understand labels that are discreet and can better decipher the meaning of a group of discreet labels compared to a single large multi-attribute label. When a set of sustainability practices has become defined and well understood, then combining labels or standards can be accomplished more coherently. For example, there are labels that address well-understood and defined practices, like energy or water usage, and newer, innovative labels that may need to compete in the marketplace until well understood or defined practices evolve, like the elimination of toxic materials within a given production system or manufacturing that allows for the easiest recycling.

Consumers Union believes that that government could help provide guidance for green marketing in three main areas including:

1. Eliminating or better defining meaningless label claims in the marketplace

Voluntary, general claims like “natural,” “carbon negative,” “non-toxic,” “free range” have little to no meaning and no verification. There should be minimum meaningful requirements that these claims should have to mean (and perhaps disclosures about what they don't have to mean). The type of verification (or lack thereof) should also be disclosed on the product. In some cases, like “natural,” the term is so vague and difficult to establish standard meaning that prohibiting the use of certain label claims may also be necessary toward reducing green noise in the marketplace.

2. Setting baseline practices for all green marketing claims

We believe that the best labels meet all of our criteria for good labeling. However, there should be a floor established that ensures full transparency of label programs and products that are labeled with green claims. For example, ingredient lists, where relevant, should be fully disclosed. There currently is no requirement for cleaning labels to disclose all ingredients and yet, the green cleaning marketplace is filled with claims. Other considerations for baseline practices could include verification requirements, accreditations (oversight of programs), and meeting minimum claim definitions.

3. Hold government labeling programs to the high standards with regard to practice and standard setting and ensure independence of standards and verification

Government-based green labeling programs should be independent, represent the interest and input from a broad range of stakeholders. They should also have rigorous standards that evolve over time. Where a premium is associated, for example with Energy Star or Design for the Environment, standards required should have to go beyond legal requirements and only a certain small percentage of a product market should be awarded premium labels. As more of a production market can meet a particular claim, it should signal an indication that standards need to improve. Marketing claim programs should have appropriate accreditations, oversight and adequate verification. There should be full transparency of information including how individual products are certified, whether all product ingredients are disclosed to allow consumers to make the most informed purchasing decisions, especially where they are paying a premium. This is not currently the case for EPA's Design for the Environment label. The label should have consistency in meaning across product types, which may require multiple agency coordinated efforts when label claims straddle many product areas that fall under multiple agency jurisdictions.

One final note, where policies are established in one product area, like the removal of certain phthalates from children's products, should all children's products (e.g. personal care products) also be required to meet that standard? Imparting consistency to policy recommendations will also help level the playing field for the use of green claims.

We appreciate the attention of the sub-committee to address problems and challenges in green marketing. Consumers Union believes that the government has an important role establishing fairness to this marketplace and that decisions made in one sector could benefit claims made in another.

Mr. RUSH. The chair thanks Dr. Rangan. The chair thanks all the witnesses now. The chair recognizes himself for five minutes for the purposes of asking questions of today's witnesses.

In today's testimony, we heard about the growing number of "green" claims made about household products. Dr. Kohm told us about a "virtual tsunami" of these claims, and Dr. Rangan used the term "green noise" to talk about the conflicting, confusing and over-abundant information in the marketplace.

And I want to start with a question for the entire panel regarding the types of information that green labels should provide to consumers. There appear to be so many expectations for what these labels cover. Environmental impacts of the packaging or the products itself, the possible health impacts of the products on individuals, among others.

The question for each one of the panelists is this. What is reasonable for consumers to expect from these labels? And what is beyond the scope of green labeling? More simply, what should it mean for a product to be green? I would like to begin with Dr. Kohm. What is reasonable for consumers to expect for these labels to cover?

Mr. KOHM. Chairman, we look at this in a way that would turn your question around. We look first at what a reasonable consumer expects, and then we require marketers to meet that expectation. So the question for us is what does the label convey to a reasonable consumer? And then the marketer has to meet whatever that reasonable interpretation is.

Obviously that is a problem, as you indicated, given the breadth of these kinds of claims and the fact that they cut across virtually every market sector. It is very challenging to have one label that meets all those expectations.

Mr. CASE. Thank you, Mr. Chairman. I think the challenge here is that it is almost impossible to determine what a reasonable expectation is. I think what we can do, however, is require that any manufacturer making an environmental claim, publicly provides proof of the accuracy of that claim and that any label on a product that suggests green in some sort of broader sense clearly define what tests were required to meet the eligibility requirements for that label.

So basically it boils down to greater transparency so that consumers have the information they need to evaluate products.

Mr. O'ROURKE. I agree completely with Mr. Case. I think the first question is what is the key material impact of the product, what matters most. And we use a tool called life cycle assessment to determine what really matters in evaluating a product's environmental or social health impact. And the second is is there full transparency on those impact categories.

So the ideal product label would tell you information on what actually matters in that product. So we see products including in the foyer to this committee hearing that are claiming they are environmentally sensitive products, but they are not disclosing what really matters in this product to the environment, to whether those chemicals that are biocumulative or toxic to human health or the environment. That is the information for each product.

If we are looking at electronics, we want to know does the company have a good take-back program to reduce the end-of-life im-

fact of the product. If it is apparel, it is a different set of issues. Right now, our big problem is that companies can claim anything, whether it is irrelevant to the main impact category or not, and not disclose the underlying information, the ingredients or the performance, which makes up the real impact to the environment and human health.

Mr. COOPER. I think it is a very good question. I think the FTC already has some tools available to it. One is called the Pfizer doctrine, which says that if you make a claim, you had better be able to substantiate it. There is also what is called material information, that consumers have the right to certain material information for them to be able to make an informed choice. And that actually was developed with a series of letters between then Chairman Dingell and the FTC back in the early '80s.

I think what you have, a lot of members here talked about, is sort of the baseline that you need, that you should not be able to go below that if you are going to be able to make a claim. Now, how you define that is something that I think we could all work on, but I think that is not a bad starting point.

I think you also have to recognize that the FTC really is sort of in the position of saying first do no harm, making sure that whatever claim you do make, that is it credible, that it is accurate.

I think also though there is a need to look at proactive efforts. In other words, we want to get the marketplace to expand beyond just the baseline. We want to make this a competitive advantage, a true competitive advantage where people are constantly looking for new ways of improving their score on environmental issues. That should be a positive incentive that we want to create.

So I think there is a lot of balances that have to be in the mix here, but I think they all can be of it if we have sort of a consensus process that we try to develop.

Ms. RANGAN. Thank you. I agree with most of what this panel has said and would just add that consumers are often faced with a premium when they are choosing among these labels. And so it takes more than just being truthful. It actually has to have some meaning.

And so when you see the no CFC label, for example, on an aerosol typical personal care product or cleaning aerosol product, that is the law. You can't have CFCs, and yet manufacturers use that claim without any other disclosure that, in fact, that is what all products in that category have to meet.

So to disclaim a lack of value over the baseline or products, like products, would be very important in terms of being truthful and not deceptive to consumers. And then in terms of just to capture something that was just said about marketplace capture, these premium labels shouldn't be able to be met by most of the marketplace. They should be reserved for a top tier, and that in and of itself should drive innovation within a product sector to meet those standards.

In Japan, there is a program called the Roadrunner Standard, which in the energy efficiency standards, I can't remember the number, but it is a certain small percentage of the market that can meet it. That is expected to be the bottom a few years later, and

again you slice it off at 10 percent who can meet the high premium label standards.

So creating incentives and innovation like that in the green marketplace will also drive the industry to create the innovation to meet higher standards.

Mr. RUSH. The chair's time is concluded. The chair now recognizes the ranking member Mr. Radanovich for five minutes.

Mr. RADANOVICH. Thank you, Mr. Chairman, and welcome. I have enjoyed the testimony of all the members. Glad you made it, Dr. Rangan, and I would like to start off with a couple questions, one for Mr. Case. Appreciated your testimony. In trying to define what is green and what is not, do you believe a regulated product with a chemical in it could be defined green?

Mr. CASE. Most products have chemicals in them, so absolutely yes.

Mr. RADANOVICH. OK.

Mr. CASE. So there are, in fact, greener chemical-based products.

Mr. RADANOVICH. OK, question for the whole panel then as we are trying to define what green is. If you were to define it, would you limit its definition to biodegradability and life cycle carbon footprint alone, or would you add other things to that definition? And let us just go down the line and say you got those two things, biodegradability and life cycle footprint. Would you add—what would you add to that if that wasn't sufficient to you?

Mr. KOHM. Well, what the commission has said, Congressman, is that general environmental claims like green or ecofriendly aren't very useful and can be deceptive. Because they mean—

Mr. RADANOVICH. Well, what would you add to those—if you had two things, what would you add?

Mr. KOHM. What we would do is look at how consumers interpret a claim in context and not add—

Mr. RADANOVICH. Could you just—because I got to go down the line, and I don't mean to be rude. Don't take it the wrong way, but if you just had those two things, biodegradability and life cycle carbon footprint is the definition of what you would label green, if you think that is not sufficient, what short responses would you add to it?

Mr. KOHM. I think you would have to add many, many claims depending on how a consumer would interpret something in context.

Mr. RADANOVICH. OK, thank you. Mr. Case.

Mr. CASE. So obviously you would need to take a look at all of the environmental impacts throughout the products entire life cycle, from the raw materials that are used all the way through. So you didn't mention, for example, energy efficiency.

Mr. RADANOVICH. OK.

Mr. CASE. You didn't mention water efficiency. You didn't mention low toxicity. You didn't mention how one defines biodegradability. I see the smile. I will stop there, but we could go on all afternoon listing the various environmental attributes depending on the product category, as Dr. O'Rourke mentioned.

Mr. RADANOVICH. OK.

Mr. CASE. The standards would be different for computer products than cleaning.

Mr. RADANOVICH. I am working down the list here. Dr. O'Rourke?

Mr. O'ROURKE. Right, I also agree that we should be using life cycle approaches to understand the real impact across from raw material extraction to manufacturing to use to disposal. For consumer products, the things I would add to your short list are persistence, is it biocumulative, and is it toxic to human health or the environment? I would add those on top of yours.

Mr. RADANOVICH. OK, Dr. Cooper. Mr. Cooper, excuse me.

Mr. COOPER. Don't have that other degree. When I worked for this subcommittee back in the early '90s, the jurisdiction was not only consumer affairs, it was also rec run and superfund. And so the issues—

Mr. RADANOVICH. I am sorry. I need to get you on the question though. Because if you had biodegradability and life cycle carbon footprint defining what was green, what else—

Mr. COOPER. The issues that would be front and center of this subcommittee then were recyclability, post-consumer waste, a lot of issues around the whole recycling mandate. Those are the ones I would add to it at this point.

Mr. RADANOVICH. Thank you, Mr. Cooper. And Dr. Rangan.

Ms. RANGAN. I agree with again most of what was said. I would stress the health aspect of it, whether it is persistence or toxicity, and I would also add social responsibility. Fair trade is the common term that people talk about, and there are plenty of Venn diagrams about sustainability. But you would be amazed and almost shocked and awed as to the multiple attributes that you could consider in any kind of green marketing claim.

Mr. RADANOVICH. All right, question for everybody too. Should government dictate the process of a manufacturing of a product or the makeup of a product in order to be able to get some kind of a green designation?

Mr. KOHM. That would certainly not be within the FTC's purview.

Mr. RADANOVICH. OK.

Mr. CASE. And absolutely not. These are not prescriptive. What we are doing instead is identifying what environmental leadership looks like and some people will make an awful lot of money meeting those high standards.

Mr. RADANOVICH. OK.

Mr. O'ROURKE. I think the key here is transparency, that Congress requires public disclosure of what is actually in these products. And just through making that public alone, not mandating what is in it, how it is made, just mandating the disclosure and the transparency, will create incentives for leading firms to innovate and other firms to change their products.

Mr. COOPER. We like the public/private model. The Underwriters Laboratory is a member of ANSI. The UL label is seen everywhere. In fact, it is in the energy bill. So I think that model could work in this area as well.

Ms. RANGAN. My answer is little different. I think where there are common terms that baseline definitions should be provided. If we are going to continue to allow natural to be used and widely, we ought to have some baselines as to what that ought to mean.

And in food, there is a plethora of examples where we have really common even discrete terms like no antibiotics, and yet that doesn't have to mean the same thing from product to product. So, yes, we think there is a role for the government to play in providing some baseline definitions to some of the claims out there.

Mr. RADANOVICH. All right, thank you. Thank you, Mr. Chairman.

Mr. RUSH. The chair now recognizes the gentleman from Maryland, Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman. I was curious. As you look at the challenge of this kind of labeling, the sort of transparency in labeling regime that we are trying to bring to bear with respect to green products, is there any analogous labeling challenge you would point to over and above some of the others to kind of be a frame of reference for this? Or is this kind of—does this have some unique dimensions to it that we ought to be aware of? So I would just ask anybody to jump into that.

Ms. RANGAN. Even within the government, there is a number of labeling programs at sort of varying levels of maturity, and even—you have Energy Star, which is one of the oldest ones. You have organic, which is now pretty mature, and there is a lot of learning lessons to be had from both the way the model is set up in terms of how the labeling programs are run, how they are overseen, and how the standards evolve or don't evolve over time. And so there are a lot of lessons to be learned.

And there is a lot of variation in quality among even the government-based labeling programs.

Mr. SARBANES. Anybody else want to—

Mr. CASE. Sure, I will say that there are a number of excellent standard-setting protocols that are out there. ANSI runs a wonderful program. There are ISO programs that define how environmental leadership should be established. So those are very, very useful. And what I really like is the USDA organic model because what they did is they took a confusing space with dozens of different standards for organic and grouped them under one label. And that is what allowed the organic farmers in this country to really make a lot of money because that provided clarity in a single brand for consumers to look for.

Mr. SARBANES. Well, it occurred to me the organic example would be a good one to consult, or the organic experience with that kind of labeling would be a good one to consult. But I wanted to get your thoughts on that.

Mr. O'ROURKE. I might add a quite different experience, which is in financial disclosure and the role of the Securities and Exchange Commission in requiring disclosure of key material information from companies. I think that we are moving towards, I think, a system that would require disclosure of non-financial metrics from companies in standard formats through XPRL or other formats that would allow people, either analysts or consumers, to evaluate products and the companies more accurately.

So just as we had this problem with toxic assets over the last few years, we are realizing we are having problems with toxic products where people would not buy them if they knew what was really in them.

Mr. SARBANES. Well, let me ask this question. I think, Dr. O'Rourke, you are the one that founded Good Guide. Is that right?

Mr. O'ROURKE. Correct.

Mr. SARBANES. Yes, which is an online resource for people to kind of check on the claims.

Mr. O'ROURKE. That is right.

Mr. SARBANES. And what I was curious about is how you see the service you provide relating to the level of kind of government regulation that needs to be in this area. In other words, do you view what you are doing largely now as just being a compensator for the absence of some good other oversight and transparency mechanisms? Or do you see the potential whatever we achieve in that regard to be a kind of partner in the effort and achieve a higher level of accountability across the board?

Mr. O'ROURKE. Yes, thank you for that question. We basically begun Good Guide out of this huge gap in the information available to consumers, and it really was an attempt just to fill this hole and get people information that they were desiring about health, environmental, and social impacts of products.

We are now working closely with the state of California, and hopefully we would be very excited about working with the federal government about getting better information out, required disclosure of this information that would allow the public to get this information in a standard format.

I think over the long term, there is a huge and vital role for government in facilitating better communication of information out to the public. And this small project, Good Guide, is really an attempt to learn what information does the public want, and in what form is it most effective in helping them make better decisions in the marketplace.

Mr. SARBANES. This is an off-the-wall question, but is there any—have there been any ideas about technology that would allow consumers as they move through a store, for example, on their phone or some other device to scan right there and go straight to a consumer guide? Did you already talk about that?

Mr. O'ROURKE. No, but we have actually built that software at Good Guide, and we have the ability to scan barcodes. We are looking at RFID tagging of products. And over time, what we want to do is allow people in stores to get the best available information in the world on products and companies so that they can make better decisions for themselves and not have to depend on marketing or package claims. But they can get scientific information on these products.

Mr. SARBANES. OK, thank you.

Mr. CASE. And Good Guide is actually not the only company that is doing it. There are dozens of companies that have approached this saying hey, we got the technology. We just need the information. And what is lacking is, you know, how do you define this is a green product? Because we have the technology. It is the definition we need.

Mr. SARBANES. Thank you. I yield my time back.

Mr. RUSH. The chair now recognizes the gentleman from Michigan, Mr. Stupak, for five minutes for the purposes of questioning the witnesses.

Mr. STUPAK. Thank you, Mr. Chairman. Sorry I couldn't be here for all the hearing. I have been in and out with other hearings and other matters. Mr. Cooper, let me ask this question because I want to know more about these standards because I support the scientific rigor and the transparent process that the American National Standards Institute requires of any organization seeking accreditation as an ANSI standards development organization.

My understanding is that there are three primary green building certification systems in the marketplace. Green Globes, Leed, and the National Association of Homebuilders National Green Building Standard. Can you discuss for us whether the organizations that developed these standards are ANSI standards development organizations, and whether they use your approved procedures to develop these standards? Because what I hear everybody saying, they are all talking about different standards, but who is regulating the standards in a way?

Mr. COOPER. There are multiple paths, which makes it a bit more complicated, but every one of those codes you mentioned does fall under the ANSI rubric. Some of those will have their own approaches, say like the ICC in the National Food Council.

Mr. STUPAK. Right.

Mr. COOPER. Works very closely with local units of government. So it is not quite the consensus process that we have for most of our standards because it is only with the local units of government that they interact with. Usually we insist that it is a much more ecumenical group, including consumer groups or government agencies as well at the federal or local level.

So each one of those can approach differently, but every one of them has to meet basic ANSI standards of transparency, of involving the interested parties. They have to be able to respond to questions of inclusion. And if they want to become an ANSI standard, then there is a whole other level of involvement with ANSI. If they then want to become an international standard, there is a whole other level with ISO.

Mr. STUPAK. Right.

Mr. COOPER. So they serve bolts and suspenders in each one of these, and against the standard, you also have all the obligations with the conformants, you know, the testing, inspection, the measuring, measurement, which is not only the certification, which we don't do, but say like a UL would do. But then we would accredit the UL so that we are looking at the testers. You know so there are levels of these things. And partly because we are not a government agency, we have to overcompensate for these things.

Our job in most any other country would be done by government agency.

Mr. STUPAK. Does anyone care to comment on that any further? Let me ask this one then, Mr. Kohm. The FTC announcing today three complaints alleging false and misleading claims regarding environmental claims. Despite today's discussion on a vast array of misleading green claims on products, there is a very small number of enforcement actions. So describe the FTC's approach to enforcement in this area and under what circumstances do you turn to enforcement of some standards?

Mr. KOHM. Well, we turn to enforcement when it is necessary, and we use enforcement not only to get people under order and to have an effect on the people who are violating the law, but also to lay out a marker for those people who might otherwise violate the law. And the hope is that in bringing cases in certain areas, that we will have an effect well beyond the cases that we bring.

Mr. STUPAK. Do you work with state governments to do enforcement at the more local level?

Mr. KOHM. Well, we bring national enforcement action.

Mr. STUPAK. Right.

Mr. KOHM. We regularly work with state partners and with other federal agencies. For example, in at least one of the cases, the EPA is helping with expert testimony.

Mr. STUPAK. What is your tipping point? When do you actually bring enforcement standards? I mean do you work with these industries and companies? What is the point where you turn to enforcement?

Mr. KOHM. Well, it is different in each circumstance. We regularly work with companies. We work with various associations to try and get the word out. When that isn't working or when people step way over the line, then enforcement is necessary.

There is kind of two folks we deal with: the folks that step over the line and the people who live over the line. And for the people who are committing fraud and living over the line, like the cases I mentioned for car devices, one of them is called a nano detonator that runs on nuclear fusion that would be about 100 million degrees. That, if it actually worked, those people need to be sued, and the commission has been quite active bringing eight cases over the last year, and I would expect more in the future.

Mr. STUPAK. OK, does anyone else care to comment on that, what you see FTC's roles and enforcement while at the same time trying to set standards? Mr. Case?

Mr. CASE. My challenge is that when the enforcement action occurs after consumers have been defrauded, that, you know, I am stuck at this point with a \$2,500 refrigerator that doesn't even come close to meeting the Energy Star standard. So, you know, allowing companies to make claims without requiring them to provide proof so that, as a consumer, I know the claim is accurate before the purchase is sinful.

Mr. STUPAK. OK, but how do you do it until they advertise we have some victims, right?

Mr. CASE. Well, one of the things that you can do is actually require that if you are going to be making an environmental claim that you have to post information providing evidence that the claim is accurate, so that as a consumer, I could stand there in the store with my phone and go online and see yes, this claim is accurate.

Mr. STUPAK. So until we get Mr. Sarbanes' idea on their cell phone, we have to have something else, a posting prior to the time of sale. That is what you are saying?

Ms. RANGAN. And the example that Mr. Case used about the refrigerator is actually Consumer Reports' test of Energy Star and the energy standards that showed that the standards don't capture what the problems are out there. If you can turn off the icemaker and you can turn off all the bells and whistles of the refrigerator

and test it for energy consumption. But when you turn them all on, it is doubled, that is not good enough. And it just highlights again how standards and in this case, a government labeling program standard needs to evolve over time.

And where we would like to see more FTC involvement in making sure that those claims are truthful and meaningful over time for consumers.

Mr. STUPAK. Thank you, Mr. Chairman.

Mr. RUSH. The chair thanks the gentleman. The chair would like to inform the witnesses and the members of the subcommittee that he intends to allow for a second round of questioning. And so if the witnesses could please let us use a little bit more of your time for a second round of questions. And we will have a second round of questioning. The chair recognizes himself for two minutes for the purposes of asking additional questions.

Mr. Kohm and all the witnesses, this has been some very interesting testimony, some quite provocative I might add. One of the questions that I wanted to ask Mr. Kohm, you talked about your enforcement actions, but—and you did not reference at all the Green Guide when you said that the—or allege that the companies stepped over the line.

Can you—let us get back to the place of the Green Guides. I think this is very important. What place should the Green Guides place—or have rather in the future enforcement cases? And should that be a beginning, or how should that Green Guide inform future enforcement actions?

Mr. KOHM. Well, Chairman, I think the Green Guides are incredibly important. That one of the things the Green Guides are intended to do is demarcate that line so that the people who are trying to stay on the right side more easily can do so. That there are some people that step over it because they don't know where the line is, and we can make that line clearer. There are some people who step over because the whole marketplace starts to go over the line, and that is where we need to take enforcement action to make clear where that line is. And that is one of the things we did today.

Mr. RUSH. Do any of the other witnesses want to respond about the importance or a lack thereof of the Green Guides?

Mr. CASE. Yes, I will support Mr. Kohm. I think that absolutely when the original Green Guides came out in '92, we saw lots of additional clarity in the marketplace about what was acceptable and what wasn't, again with the revisions in '98 and '99. And what we are hopeful is that the next version of the guides actually provides a much more comprehensive assessments and really kind of requires people to provide proof, requires people to provide some clarity on these issues, and makes sure that as consumers, we know whether the information is accurate, relevant, and verifiable.

Ms. RANGAN. We also support the green marketing guides by the FTC, and we also look forward to the update because they could be expanded to be much more broad in terms of the scope of claims that they are covering and much more detailed in terms of what is acceptable and what isn't.

Mr. RUSH. Thank you. The chair now recognizes the ranking member, and the chair wants to clarify, before the ranking member begins his questioning, it has been requested by the ranking mem-

ber and by the Republican side that we have five minutes of additional questions. The chair said it will be two minutes. So the chair will recognize the ranking member for five minutes, recognize Mr. Stupak for an additional five minutes. And then the chair will come back for his other three minutes. So with that, the chair recognizes the ranking member for five minutes for additional questions.

Mr. RADANOVICH. Thank you, Mr. Chairman. Appreciate the openness to try to answer as many questions as we can and get a benefit from this panel of speakers.

Mr. O'Rourke, you had mentioned something in your testimony that consumers have little information on critical aspects of a product. And it reminds me of getting up in the middle of the night and needing an aspirin or something and trying to go through what is on the back of an aspirin label and you search for the dosage because you want to take the correct amount and my gosh, it is not on the first page. You have to peel back to get to the second page, and there is so much garbage on that label that really all that you are looking for is the dosage.

And I guess my question is how much information can you expect to give a consumer on a label, and how much of this is subject to buyer beware?

Mr. O'ROURKE. Yes, so we are seeing, I think, more and more consumers are looking for some key pieces of information when they look at products. So in your case, it was the dosage or the directions on how many you should take. When I look at a green cleaner, I want to know are there specific chemicals of concern that I don't want in my house, in the air, on the dishes, wherever. Personal care products that I don't want certain chemicals. And what I think the first step is deciding what are the key pieces of information that need to go on that label that are most pertinent to protecting people's health and the environment.

If there is too much information, what we are proposing that it needs to be disclosed on the manufacturer's Web site. So we are seeing right now in the house cleaners area that there is not a federal mandate to disclose all the ingredients in your floor cleaner, your toilet bowl cleaner. Some of the harshest chemicals in your house, they are not disclosed on the package.

What we would like is that they would be disclosed somewhere, either on the manufacturer's Web site or ultimately on the package. So I think that for things like that, you are putting a harsh chemical in your house. I don't think you can put it on the consumer to just be buyer beware. I think that they need certain pieces of information to know how to protect themselves from chemicals.

Mr. RADANOVICH. Could you clarify to me? It is my understanding that the Federal Hazardous Substance Act requires all that to be on there?

Mr. O'ROURKE. No, so on household chemicals products in the U.S., there is a requirement of disclosure of certain active ingredients over certain percentages. So if you go back home tonight and look in your bathroom or underneath your sink, most of the harshest chemicals that you will find in your house will have either one ingredient listed or zero ingredients listed. Whereas if you look

at your personal care products, your liquid hand soap, the requirement is all ingredients in order of concentration. So your liquid hand soap will have 30 ingredients listed, and your tub and tile cleaner will have zero, one, or maybe two at the most.

And what they will do is say either call it inactive ingredients or they will dilute them enough that they don't have to disclose. So you will literally have no ingredients listed, and sometimes it will have phrases like fragrance, as I mentioned, which just masks ingredients.

Mr. RADANOVICH. Right, OK.

Mr. O'ROURKE. So unfortunately we don't have accurate disclosure on chemicals in our houses.

Mr. RADANOVICH. All right, thank you very much. Mr. Case, I want to ask a second question. You mentioned that the labeling program at the USDA dealing with organic foods, and as you know, the USDA Web site states that it is not a health or environmental program, but it is really a marketing program. And yet many people think that buying products with organic labels on them are somehow getting a health or environmental benefit.

If transparency about the products and their manufacturer are what you seek, why do you hold up a program that relies on implied but not guaranteed benefits as your model?

Mr. CASE. What the USDA organic program does is actually bring clarity to the market. So for those consumers that are concerned with the pesticides that are used on fields with the farming technologies and techniques, worries about pesticides on food, what the USDA organic label does is provide a consistent platform for consumers to make educated comparisons between an organic product and a nonorganic product.

So what it does is provide a common definition, a litmus test, if you will.

Mr. RADANOVICH. All right, thank you very much. Dr. Rangan, you suggested other factors such as fair trade should be included in green labeling. But many of the environmental practices in fair trade countries is not up to U.S. standards. Is that useful to the consumer?

Ms. RANGAN. The International Labor Organization, ILO, is a good start. That is where Trans Fair bases their fair trade labeling program and their standards from, and it is a good international labeling start for fair practices.

Do you mind if I just expand on your organic question for one minute?

Mr. RADANOVICH. If you like.

Ms. RANGAN. Which is that there are cases where consumers rightfully infer that organic may offer them a healthier alternative, and I will just give you an example. When mad cow came out, organic was one of the few programs that actually required no animal byproducts in the feed. So is it a healthier alternative? Well, when it comes to mad cow, yes, it was an alternative if you still wanted to eat beef that minimized your potential exposure.

And then that is the inadvertent side of health and benefit from organic, but on the advertent side, all the materials used in organic production have to be reviewed by the National Organic Standards

Boards. And health and safety are components that have to be addressed in that review process.

It happens to be based in agricultural marketing service, and after 10 years of watchdogging that program, we hear that mantra, we are not anything else but marketing. But I think that has more to do with where it lives than what it actually is.

Mr. RADANOVICH. All right. Thank you very much, and I yield back, Mr. Chairman.

Mr. RUSH. The chair thanks the gentleman. The chair now recognizes Mr. Stupak for five minutes.

Mr. STUPAK. Thank you, Mr. Chairman. I think what I have seen from this hearing so far is that what constitutes green can be sort of a tricky business. But as we see a global supply chain get farther and farther removed from the everyday consumer, we are using more and more fossil fuels. So let me give you an example because I think we mentioned cleaners and that today. We have green cleaners or cleaners made basically from the same chemicals as always, but they are purchased from a closer distance. So the companies are saying well, we are a greener chemical because we are not using as much fossil fuel to transport.

Now, does this fact alone, I use less fuel to transport the product, qualify a product to be a green product? Anyone want to answer that, Dr. O'Rourke?

Mr. O'ROURKE. I would say the short answer is no. What we need to do is evaluate the full life cycle of that product and determine whether transport or manufacturing process is highly energy inefficient and that it is a major impact category.

For a few products, energy use and transport matter a lot, and for other products, they don't matter that much. So you really need to know does it matter to the product category. What we are seeing now in many cleaners is the claim that they are plant based rather than petroleum based. Again that may actually be a confusing concept because what they are doing is deriving a chemical from a plant, like sodium laurel sulfate, that can also be derived from petroleum. So the same chemical ends up in your product. It is just derived from a different source. So the key is finding out what really matters to environmental or health effects on these things, and is that claim—can you verify or can you back up that claim with transparent information?

Mr. STUPAK. Well, give me an example where transportation of cost alone would qualify it to be green, to use less transportation costs.

Mr. O'ROURKE. There are a few product categories in which transport of the product—really long distances, heavy products. So for instance, air shipping products a long way has a very high energy impact. So if you see something that was either grown in a greenhouse or flown to you, that is probably going to have a very high energy impact, and it is going to matter.

So we see now more and more people in the U.S. looking for locally produced food for that reason, that they want local which reduces the big transportation change and the big energy. But there are many products in which the transport is a minor impact category.

Mr. STUPAK. Well, couldn't you make that claim then on any water-borne product basically, you know, from buying ore pellets in northern Michigan down to the steel mills? That is the only way you can transport it. It is the most efficient way and less fuel. Or even cars coming across the ocean because of the size and the weight and the bulk. I think there would have to be more to it than just transportation.

Mr. O'ROURKE. That is right. Air travel is the highest carbon intensity. Shipping is actually quite efficient carbon wise. Train transport quite efficient carbon wise. Local production, the most efficient. So there is a range of impacts, and you need to understand those things to be able to either evaluate it or make the claim.

Another thing we are seeing a lot of bottled water. For instance, one bottled water company shipped from the South Pacific and claiming it is a green bottled water company. Huge transport and energy impacts of the manufacture and transport of that product. And then it has a beautiful green label and an ecobottle in which it is sold. We view that as confusing at best, deceptive at worst.

Mr. STUPAK. Dr. Rangan, you wanted to say something on that?

Ms. RANGAN. You know, I think that in talking about this sphere of green, there is a top and a bottom and sides. And if we are establishing a floor or talking about that floor, at the very least disclosure and truthfulness to the meaning should be there. So that if a company is making a carbon claim that either they use recyclable energy, wind energy to generate a product, those aren't void of value. They have some value, but the claim should reflect what they are doing.

Should a carbon claim be interpreted as a health claim? It shouldn't be. And our advice to consumers is always read these claims quite literally, and it is also why we continue to say that discrete labels right now in the marketplace offer consumers the quickest way to understand what a product is. So if you need to group discrete claims together in order to explain the many attributes of green a product may have, then so be it.

We prefer that method at least right now versus an overarching label where it is very difficult to tell the variations in the components.

Mr. STUPAK. Mr. Cooper. You got to turn your mike on.

Mr. COOPER. You have aggressions law in effect here that bad labels are going to drive the good labels out of the marketplace. I think you first do no harm. I think one of the points that Dr. Rangan made about in Japan where you have an effort to sort of up the ante where you are looking for constantly improving the product is something that I think we also should consider as part of this mix. That you want to have companies who actually have a role to play in sort of being the pathfinders where you are constantly improving, you know, the products.

Getting that sort of seal or label recognized is not going to be easy. What it is, like a Good Housekeeping or Better Business Bureau or Underwriters Laboratory, then it is a very powerful tool. So I think that that should be part of the mix as well.

Mr. STUPAK. Thank you, Mr. Chairman. It looks like my time has expired. Thank you for the second round.

Mr. RUSH. Thank you. The chair recognizes himself for his three minutes. You mentioned water. I mean somebody tell me about the false labeling that is involved in the water. I have a bottle of water here. It says "smaller labels equal more trees," and it also under that says "we could write more on a bigger label, but saving trees is important" which we understand and agree with. "By keeping it short, we saved almost 10 million pounds of paper per year in the U.S. That is about 30,000 trees." And then it says "be green."

And I just want to know, first of all, this is a label. But also some of this stuff is nothing but tap water in a bottle, all right. And but yet consumers are buying their water because it is a part of being green and being healthy.

Can you all respond to that and help us to help deliver the American consumer from the trap that they find themselves in?

Ms. RANGAN. Chairman Rush, you have just highlighted in that bottle what the problems are. Because there aren't baselines for what should be disclosed or not disclosed, it is up to a company to decide what they feel like disclosing and what they don't feel like disclosing. They can weave that into a green claim and say we are using less paper and less disclosure is less paper.

And in terms of the water inside the bottle, absolutely. Our tests have shown year after year, if you filter your water, you are going to get as good of quality with regard to health as anything that is in one of those bottles.

I think this is a great example of where the baseline has a lot of holes, and in filling those holes and getting rid of these generic claims that are vague and meaningless, we can do a lot toward reducing the confusion that comes from that bottle and a consumer trying to buy it.

Mr. CASE. Well, I think you are absolutely right. It is, in some circumstances, a legitimate claim. Under the seven sins taxonomy though, we would refer to it as the sin of the hidden tradeoff. What manufacturers are able to do with almost any product that you make is find some little nugget that allows them to say this makes it green. And so the question is well, how many nuggets are acceptable? At what point does it become green?

And so what one needs is some sort of voluntary environmental label so that there are actual standards that say this is what green is, and if you have products that meet a standard developed in an open, public, transparent process, you will be able to resolve those kinds of issues. And so to be open to these kind of standard setting committees whether those kinds of claims are worthy of some sort of national label.

Mr. KOHM. Chairman, those are fairly specific claims, and those are claims that, if true, a consumer can understand and make choices based on. A lot of the discussion today has been about these general green claims that, you know, I am green, I am ecofriendly, that are very difficult to substantiate. But if assuming all those claims are true and a consumer wanted to contribute to using less paper and assuming they didn't take any implied claim from that about the water, that those are useful.

Mr. O'ROURKE. The problem with those claims is that they are completely irrelevant to the actual environmental impact or health impact of that product. So it may be an accurate claim, but it is

in a sense a kind of magician's bait and switch where you are looking at one hand and the real action is in the other hand. For that product, it is around the manufacturing of the water, the manufacturing of the plastic bottle and the disposal of the plastic bottle are the real environmental impacts, not the little tiny piece of paper around the sleeve of the plastic.

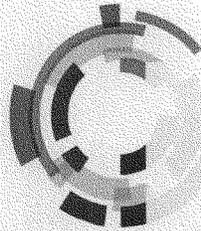
So their claim may be accurate, but it is largely irrelevant to the actual environmental and health impact of the product.

Mr. RUSH. That concludes our hearing today, and I want to really relay to our witnesses I have not had a greater panel of witnesses to help us on any issue that I can think of since I have been chair, since I have been chairman of this subcommittee. You have been outstanding, and your testimony has been very, very informative and provocative and very interesting. And I really want to thank each and every one of you for participating, and I think that you made this subcommittee much more prepared to deal with this particular issue. And I hope that this will translate—and I know that it will—translate into us being much more sensitive and much more vigilant and helpful and in partnership with the FTC as we move forward.

We have to help solve this problem for the American consumer, and you have really been pivotal in bringing us to a solution. Thank you so very much, and Godspeed to each and every one of you. Thank you. The subcommittee stands adjourned.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



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July 28, 2009

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
2109 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Representative Barton,

Thank you for your questions of July 14 following my June 9 testimony before the Subcommittee on Commerce, Trade, and Consumer Protection at the "It's Too Easy Being Green: Defining Fair Green Marketing Practices" hearing.

As requested, I have repeated your questions below (in boldface) and provided my response following each question.

1. I am concerned about the selectivity of some folks who decide when and where something is "green." Many environmental groups promote the use of compact fluorescent light (CFL) bulbs as a "green" product because it [sic] uses less electricity. Yet these bulbs contain mercury and Dr Lyn Goldman from Johns Hopkins testified before this subcommittee that for public health reasons, an LED bulb is much preferred to a CFL. So which is it – is a CFL green because of global environmental issues or bad because of localized public health concerns? Could you please provide an explanation?

Like auto safety, "green" is a concept that is continually evolving. Early automobiles lacked even basic equipment like seatbelts, yet they were considered "safe" at the time. As new inventions like seatbelts were introduced, automobiles became "safer." With each generation of safety improvements – crumple zones, airbags, collapsible steering columns, intelligent airbags, etc. – automobiles became even "safer."

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Discussions about "greener" products, like discussions of auto "safety," are relative terms based on current understandings and current practices.

Durable, long-life incandescent light bulbs are "greener" than other incandescent light bulbs because they do not need to be replaced as frequently, thereby avoiding the potentially adverse environmental impacts of manufacturing the light bulbs.

Compact fluorescent light bulbs (CFLs) are "greener" than incandescent light bulbs because they significantly reduce the amount of electricity needed to generate light, thereby avoiding the potentially adverse impacts of electricity generation. While CFLs contain a small amount of mercury, the total volume of mercury to which humans are exposed is actually decreased by their use because of lower mercury emissions at the site of coal-powered electricity generation facilities.

LED light bulbs are "greener" than incandescent or CFL bulbs because they are significantly more energy efficient and further reduce potential exposure to mercury.

At some point in the future, it is possible that another generation of lighting technology will emerge that further improve environmental performance. At such time, it will be considered "greener" than LED light bulbs.

2. You mentioned the labeling program at the USDA dealing with organic foods. As you know, and USDA's website states, this is not a health or environmental program, but a marketing program. Yet, many people think that by buying products with "organic" labels that they somehow are getting health or environmental benefits. If transparency about products and their manufacturer are what you seek, why do you hold up a program that relies on implied, but not guaranteed, benefits as your model?

I referenced the USDA's organic label as an example of a government program that brought clarity to a marketplace filled with competing definitions of "green." When the USDA organic label was originally proposed, there were a dozen or more different definitions of organic. As a result of the competing definitions, farmers, manufacturers, retailers, and consumers interested in growing, producing, selling, or buying organic food were confused about how to define organic properly. The market for organic products struggled because of the competing definitions and growing consumer confusion.

Once USDA defined 'organic,' the additional clarity allowed the market to rapidly expand and businesses to thrive. It provided consumers with an easy to understand tool for identifying organic products. It also brought much-needed clarity for the farmers, manufacturers, and retailers.

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A similar approach would benefit the broader market for "greener" products. There are currently more than 300 environmental labels, dozens of approaches for defining "green," and growing consumer confusion and even skepticism. Consumers, manufacturers, and retailers are confused about how to define a "greener" product. As a result, the market for "greener" products could stagnate.

Adopting a single system with clearly defined rules would benefit everyone – consumers, manufacturers, and retailers – by producing marketplace benefits comparable to the benefits created when a single definition for 'organic' was adopted.

Appendix A of my original testimony outlines one possible path forward.

Thank you again for the opportunity to respond to your additional questions. Please let me know if you want any additional clarification.

Sincerely,



M. Scot Case
Vice President, TerraChoice Group, Inc.
Executive Director, EcoLogo Program

cc: Early Green, Chief Clerk
Jennifer Berenholz

Response to Representative Joe Barton

Committee on Energy and Commerce

Follow up to my testimony on June 9, 2009, for the hearing:
“It’s Too Easy Being Green: Defining Fair Green Marketing Practices”

Dara O’Rourke, Ph.D.

Founder and CEO, GoodGuide.com, and Associate Professor, UC-Berkeley

Question #1. Consumers purchase items for many different reasons, including efficiency and efficacy of the product in addressing the intended use. Are you suggesting, through your testimony, that people should forego buying effective products they need and instead buy ineffective products for socially conscious reasons?

Answer #1: No. I am not suggesting that at all. People want products that work. However, consumers also want to know that these products are safe and healthy for their families. For example, the fastest growing household cleaning products are “green” cleaners from trusted brands that both work and are less toxic. My point is that a free market should provide sufficient information for people to be able to choose the products that match their demands for efficacy and safety.

Question #2. You state that the “gap between what consumers want to know and what companies communicate about their products continues to grow.” Under regulations issued pursuant to the Federal Hazardous Substances Act, (specifically 16 CFR 1500.121), hazardous substances sold to households, must include: (1) hazard signal word, (2) an affirmative statement of hazards, (3) the name of the ingredient/chemical that contributes to the hazard must be on the label, and (4) precautionary measures to avoid risk. In addition, the Emergency Planning and Community Right to Know Act requires businesses to publish Material Safety Data Sheets (MSDS) about the chemicals in their products and potential health effects from ingestion or mishandling them. Finally, many companies have websites and telephone hotlines printed on their product packaging so consumers can call to obtain information about the health or environmental safety of their products. What exactly do you consider is the critical piece of information about a product that consumers are missing beyond what the Federal government requires?

Answer #2: The critical information missing are the actual ingredients contained in household chemical products sold to the public in the US. Ingredient lists are required for personal care products in the US, but not for household chemicals (which are often stronger chemical formulations.) And MSDS sheets are only required for employees who use chemical products, not the public. If you review current statutory requirements, or even simply look on a bottle of floor cleaner or oven cleaner in your own home, you will see that while these products have very general precautionary recommendations (e.g., “Caution: keep out of reach of children.”), they rarely provide enough information to allow a consumer to choose between two products. My point is that a free market should have enough information for consumers to choose the products they want to purchase. The laws you cite, fail to provide this information to the public in a form they can use for purchasing decisions. Instead, they leave shoppers to depend on marketing claims from manufacturers.

Question #3. Do you believe government should be deciding what products to make and how to make them? Should similar control be applied to the types of television shows and movies produced to limit damaging psychological effects to children?

Answer #3: No. I do not imply in any way in my testimony that the government should be involved in “what products to make and how to make them.” The purpose of the Congressional Hearing I was asked to testify before was to consider “green” claims on packaging in the US. My testimony was focused on what is currently asserted by manufacturers about their products, how that is largely unregulated, and what the government might do to increase the transparency and accuracy of these claims in order to improve market functioning in the US.

Question #4. In showing that people of all incomes want to and will purchase higher priced items that are “green”, you cite the BBMG Conscious Consumer Report which states that 51 percent of consumers are willing to pay more for certain products. Yet, in citing Wal-Mart’s national surveys, you show only that their shoppers are interested in purchasing these higher priced items, not that these Wal-Mart shoppers will actually buy them. Since options are not viable options when you cannot afford them, what statistics can you give us that prove a direct relationship between lower income shoppers wanting to buy higher priced eco-items and actually doing so?

Answer #4: On July 16, 2009, Walmart announced a major initiative to evaluate the sustainability of every product they sell, and to provide this information to their customers in the future. (See <http://walmartstores.com/Sustainability/9292.aspx>). I would recommend you contact Walmart directly for statistics on their sales. But clearly, if Walmart believes that their customers want this information and will make purchasing decisions because of it, then a very large cross-section of the US wants this information.

Question #5. You call for complete and total disclosure of product substances on a consumer product label. As long as the product or a specific ingredient does not pose a threat of injury to public health or the environment, do you believe companies have the right to protect their confidential business information from competitors who might reverse engineer their products? If not, why?

Answer #5: If you speak with any major consumer package goods company in the US, you will find that any company with a decent lab (and common tools like a GCMS) can analyze the ingredients in their competitor’s products. P&G knows all of the ingredients in Clorox’s products, and vice versa. It is simply disingenuous to assert a fear that competitors might “reverse engineer their products.” Companies in the US are already required to disclose the ingredients in their personal care products, which as far as I know has caused no competitive hardship to these companies. I am simply proposing that the US extend this basic level of disclosure to household chemicals and other products which currently lack transparency, and for which consumers face confusing or deceptive marketing claims.

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July 14, 2009

Dr. Urvashi Rangan
 Director of Technical Policy
 Consumers Union
 101 Truman Avenue
 Yonkers, NY 10703-1057

Dear Dr. Rangan:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on June 9, 2009, at the hearing entitled "It's Too Easy Being Green: Defining Fair Green Marketing Practices".

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions and include the text of the question with your response, using separate pages for responses to each Member.

Please provide your responses by July 28, 2009, to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building and via e-mail to Earley.Green@mail.house.gov. Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,



Henry A. Waxman
 Chairman

Attachment

The Honorable Joe Barton

1. During the hearing, you stated that organic beef was a good example of a product that, because it was organic, was not affected by Mad Cow disease and therefore safer. While there are standards to certify what qualifies as organic, such labeling criteria do not imply the product is 100% free of pathogens. Do you agree?
2. At the end of your written testimony, you suggest that where policies are established for a segment of a product area, like the removal of phthalates in children's items, you suggest that all children's items meet that removal standard to make labeling easier. Isn't that throwing the baby out with the bath water because it ignores that there are many different phthalates used in many different ways with different exposure and hazards present to children? This would be like people banning consumption of all forms of oil, including corn and vegetable oil, simply because they are the same class of substance. Don't you think the better way to go would be to educate people about risks rather than allow their ignorance to be masked in unilateral bans for the sake of simplistic markings? Do you fear that we would lose potentially safe products by making class-wide decisions without distinctions?

