



AmericanCoatings

ASSOCIATIONSM

April 24, 2023

Chair Lina M. Khan
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Green Guides Review, Matter No. P954501
FTC-2022-0077-0001
Comment submitted via regulations.gov

Dear Chair Khan:

The American Coatings Association (“ACA”)¹ appreciates the opportunity to submit comment regarding revisions to the FTC’s Guide for the Use of Environmental Marketing Claims (“Green Guides”). ACA is committed to working with FTC to help ensure a uniform approach to the evaluation of environmental marketing claims. The Association’s membership represents 90% of the paint and coatings industry, including end-use product manufacturers as well as manufacturers of raw materials. ACA appreciates FTC’s willingness to interact with stakeholders during this process.

ACA and its members respectfully submit the following comments:

The Green Guides provide manufacturers a valuable resource for the evaluation and validation of environmental marketing claims. Companies regularly refer to the Green Guides as a benchmark for understanding consumer perceptions when considering such claims. In this respect, the Guides are an invaluable resource, and ACA commends FTC for considering the possibility of an update to the Guides, which have remained unchanged since 2012.

Since 2012, both consumers and product manufacturers have gained a greater awareness of the environmental attributes of a variety of products, resulting in an increased focus on marketing statements related to sustainability, carbon footprint, and general environmental impacts over a

¹ ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA’s membership represents over 90 percent of the total domestic production of paints and coatings in the country.

product's lifespan. The Guides can be updated in several areas to reflect an improved understanding of sustainability attributes such as product lifespan and durability and the relationship to environmental impacts as determined through life cycle assessments. Clear guidance benefits both consumers, with accurate information, and product manufacturers by preventing companies from gaining an unfair market advantage through inadequately substantiated marketing claims.

ACA supports FTC's existing approach of offering general parameters about novel issues without being overly prescriptive. ACA supports FTC's prior establishment of the Green Guides as non-binding administrative guidance, not rising to the level of a regulatory obligation, as described in 16 CFR 260.1. ACA strongly recommends that FTC maintain the Guides as a reference used to interpret Section 5 of the FTC Act without expanding FTC's enforcement authority through policies or revisions to the Green Guides. ACA similarly encourages FTC to pursue voluntary approaches when addressing a claim that may violate Section 5 of the Act. This approach is most suited to establishing FTC's authority over environmental claims due to the broad and frequently changing set of considerations to make such claims. Companies require flexibility to respond to changes in consumer understanding and technology advancements without static criteria set in regulation or established by aggressive enforcement.

I. FTC should provide updated guidance on product sustainability claims.

Although evaluating sustainability claims can encompass a broad set of considerations, updated guidance on this matter from FTC could assist towards developing a common recognition of existing approaches. The United Nations (U.N.) defines "sustainable development" as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Furthermore, the U.N. currently has 17 Sustainable Development Goals (SDG) where action should be taken. Within the U.S., the Chamber of Commerce defines sustainability as a system's ability to be maintained at a certain level without a negative impact on the environment or society. EPA has also offered helpful guidance with references to sustainability indicators.²

ACA recommends FTC provide additional guidance on sustainability claims while recognizing that "durability" and product lifespan are critical elements of "sustainability," as understood by consumers and by standard evaluative criteria. In the 2012 Green Guides, FTC chose not to address product sustainability claims. FTC explained at the time that it lacked a specific basis to provide advice about using "sustainable" in marketing claims:

Specifically, the Commission cited consumer perception evidence indicating that the claim has no single meaning to a significant number of consumers, and to some it conveys non-environmental characteristics (e.g., durable or long-lasting).

FTC correctly recognized that consumers associate product durability with sustainability, and while the FTC characterized durability at that time as a "non-environmental characteristic,"³ ACA submits that the

² See EPA's sustainability webpage at: <https://www.epa.gov/sustainability/learn-about-sustainability#what>.

³ FTC, *Statement of Basis and Purpose to the 2012 Green Guides*, Part 5-A, p. 256, see also footnote 895 therein, "noting that 35 percent of respondents attributed 895 a "strong/durable" or "long-lasting" claim to the term "sustainable"; also citing TerraChoice's 2009 Environmental Marketing survey of "professional purchasers" as evidence that when "sustainable" is used in the context of environmental cues, consumers understand this term to

concepts of durability and product lifespan may in fact serve as critical components of sustainability as an “environmental” claim. Simply put, a durable, longer-lived product will require less repair or replacement over an alternative product with a shorter lifespan. All else equal, the reduced amount of waste and energy and raw material consumption associated with the use of longer lifespan products is a clear environmental benefit which may be quantified through life cycle assessments or other reliable measures of environmental impact.

II. Sustainability and Paints and Coatings

In the paint and coatings industry, sustainability often encompasses a variety of considerations that include lifecycle analysis and contribution to extended life and use of the substrate to which a paint is applied. Substantiating a sustainability claim may include consideration of impact at every lifecycle stage of a coating product, starting with the sourcing of raw materials, continuing through the manufacturing and use, and even into the end-of life considerations and disposal of paint and paint waste.

By protecting, preserving, and beautifying a substrate onto which it is applied, coatings serve to extend the useful life of a substrate. This function of protective coatings is integral to concepts of sustainability because they can help to keep machinery and other products out of landfills, which thereby reduces the consumption of raw materials used in repairing or creating replacement products.

A product’s ability to enhance energy efficiency is also a consideration when substantiating “sustainable” claims. Paints and coatings are used extensively for energy efficiency applications which further amplify sustainability concepts, such as reducing the negative impact on the environment. Specialty cool roof coatings keep buildings cooler, thereby reducing CO₂ emissions by requiring less energy to cool those buildings. Certain types of reflective rooftop coatings lower the indoor temperatures by up to 30%.⁴ Common architectural coatings, applied to buildings either on the interior or exterior, can also provide environmental benefits and energy efficiency savings. For example, certain architectural coatings reflect heat and can significantly enhance energy savings.

Coatings are also essential in renewable energy applications because anti-reflective coatings are used in solar panels to increase the generation of solar power. Coatings are also used on wind turbine blades to provide protection against the damaging effects of the weather and UV rays, thereby keeping the blades operating in challenging conditions.

Increased awareness in sustainable products has led to more bio-based and eco-friendly paint products. These products utilize renewable raw materials to produce bio-based resins and pigments. This aspect of sourcing raw materials from alternative and more sustainable sources further promotes sustainability

mean a “positive environmental impact.” In this study, 80 percent of respondents stated that a factor that motivated their organization to implement “green” purchasing guides was their organization’s “commitment to sustainability.”

⁴ American Coatings Association, “ACA Sustainability Report 2022,” <https://www.paperturn-view.com/?pid=MjQ246392&v=1.1>; NYC Coolroofs, NYC Business (last visited on Apr. 19, 2023), <https://www.nyc.gov/nycbusiness/article/nyc-coolroofs>.

within the paint and coatings industry and can be a valid consideration when substantiating “sustainable” claims.

Several U.N. Sustainable Development Goals (hereinafter “SDGs”) incorporate a concept of durability. For example, U.N. SDG No. 12 is to “ensure sustainable consumption and production patterns.” By enhancing the durability of products, coatings facilitate less wasted raw materials used in production of goods and less frequent end-of-life disposal considerations. U.N. SDG No. 9 encourages a commitment to, “build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.” The durability of critical infrastructure is critical to meeting U.N. SDG No. 9. Several other SDGs incorporate a concept of durability as well:

- SDG No. 11 – Sustainable Cities and Communities (durable and energy efficient infrastructure are critical to sustainable infrastructure).
- SDG No. 13 – Climate action (durable goods results in less energy and emissions associated with manufacturing and end-of-life processing or disposal of goods).

Finally, durability is critical in the functionality of paints and coatings. Durability can be defined as a relative term indicating degree of permanency. This term may be applied to individual protective, decorative, or functional properties. When the term “durability” is applied in a general way, the term implies the ability of a described coating to retain, to the indicated degree, all the properties required for the continued service of a coating.⁵ Durability may also be defined as the degree to which coatings can withstand the destructive effect of the conditions to which they are subjected and how long they retain an acceptable appearance and continue to protect the substrate.⁶ Again, the concepts of durability and product lifespan are highly relevant to the product sustainability calculation.

III. FTC should offer guidance recognizing variety in science assessing lifecycle, consumer understanding and related comparative claims.

Ideally, a life cycle assessment (LCA) can evaluate a product’s environmental impact from the product’s creation, manufacturing, use, and disposal (also referred to as cradle to grave). Claims relying on comparative product lifecycle assessments can also lead to potential confusion with consumers and wide variances in substantiation of related marketing statements. As a point of reference, international standards exist to guide companies performing an LCA.

ACA developed an industry wide study to assess the environmental performance of 10 scenarios with varying chemical components in architectural coatings using a cradle to grave LCA.⁷ This study demonstrated the environmental impacts of different methods of paint preservation by varying chemical composition and/or adopting alternative methods of preservation. The study demonstrated how reducing, eliminating, or replacing certain preservatives affect a coating’s overall sustainability

⁵ ASTM D16-19, “Standard Terminology for Paint, Related Coatings, Materials, and Applications.”

⁶ Stanley LeSota (editor), *Coatings Encyclopedic Dictionary*, Federation of Societies for Coatings Technology (1995), p.98.

⁷ American Coatings Association, “Life-Cycle Assessment of Architectural Coatings, A World Without Preservatives,” CoatingsTech, May 2021.

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profile. The study relied on ISO standards that served as a consistent basis to conduct these tests and provided effective comparable data to determine environmental impacts. Similar types of industry-specific LCAs could potentially provide an equivalent way to effectively compare marketing claims between similar types of products and serve as reliable and competent scientific evidence sufficient to substantiate claims of environmental performance.

LCA claims that are not based on industry wide studies should follow relevant international standards and provide information on the supporting reference standards, data and boundaries of the LCA study to enable transparency.

IV. Conclusion

Since the 2012 update, consumer and product manufacturer perception related to environmental marketing claims has changed significantly and become more widely understood. Scientific methods that affect substantiation of claims related to environmental characteristics have changed significantly over the past 10 years, including claim substantiation related to carbon footprint and the predicted impact of various product characteristics, including lifespan. Product manufacturers would benefit from additional guidance and/or examples applying principles for comparative claims to these evolving environmental characteristics. Product manufacturers would also benefit from additional guidance recognizing approaches to substantiating these types of claims, noting that such guidance would be non-binding. Further, ACA strongly recommends that FTC incorporate an understanding of “durability” into the sustainability concept described in a revised Green Guides.

ACA appreciates the opportunity to provide FTC with preliminary comment regarding an update to the FTC Green Guides. Please feel free to contact us if we can provide any additional information.

Respectfully submitted,

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