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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

Courtney Taylor, *Democratic Staff Director*  
Adam Tomlinson, *Republican Staff Director*

May 23, 2023

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

Dear Chair Khan:

As Senators who are deeply committed to the transition to a circular economy and who have worked tirelessly to address sustainability issues through legislation, we submit the following comments to the docket for the Green Guides Review, Matter No. P954501. The Federal Trade Commission's (FTC) Guide for Use of Environmental Marketing Claims ("Green Guides") update presents a critical opportunity to provide clarity on which consumer packaging reduces environmental impacts and mitigates waste. Updates to the Green Guides will also provide consumers guidance on the extent to which packaging is accepted by a defined majority of local recycling programs, is true to its recycling-related claims, and is environmentally sustainable. As such, we commend the FTC for beginning the Green Guides update process, and encourage the agency to take the following comments into consideration.

Sustainability-minded consumers often depend on package labeling information when determining which products to purchase. The FTC's Green Guides were developed in 1992 to help marketers avoid making claims that could mislead consumers about the environmental characteristics of their products. The FTC, through the revised Green Guides, can help improve transparency for consumers and ensure that brands making claims about the recyclability of their products or the recycled content the packaging contains are accurate. We encourage the FTC to provide guidance on specific marketing terms to avoid and that are particularly hard to substantiate. This would generate helpful guidance for brands that wish to comply with the Green Guides and provide consumers with reliable, easy to understand information.

Specifically, we urge you to ensure the Green Guides address claims made by companies that packaging is made from recycled materials. The current Green Guides require items claiming to contain recycled content to be "composed of materials that have been recovered or otherwise diverted from the waste stream, either during the manufacturing process, or after consumer use." Consistent with this guidance, but also accounting for the fact that much has changed since the Green Guides were last updated in 2012, we encourage the FTC to reevaluate what constitutes "recycled content" for clarity to both packagers and consumers. Consumers deserve to understand the actual percentage of recycled material in the packaging of the product purchased

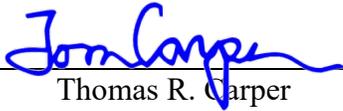
as more and more consumers use their purchasing power to support products and companies that embrace using recycled content.

Additionally, we ask that you provide clear guidance on the standards that must be met for a product to be labeled as “recyclable.” Consumers want to purchase products that are recyclable and typically assume that a product labeled as recyclable can be put directly into a curbside or otherwise designated recycling bin and will not contaminate the recycling stream. One way to help consumers and companies understand if their products are recyclable is to provide standard and agreed upon definitions of terms used in the recycling and reuse lexicon. The FTC is asked to coordinate with the U.S. Environmental Protection Agency (EPA) and the recycling stakeholder community to develop new definitions and terms or refine existing ones. It is also important to note that broad determinations of what is accepted by recycling facilities are not always truly reflective of a package’s recyclability, as budget cuts, outdated technology, changing market forces, and aging infrastructure can impact a state or municipality’s ability to manage and process recycled materials that would otherwise have a viable end market. After all, any shift to a more sustainable and circular economy will start with everyday choices by Americans in grocery stores, gas and EV charging stations, and shopping centers. We hope that the FTC will ensure that those choices are based on accessible and reliable information.

Finally, we feel that more timely updates of the Green Guides are critical in order to reconcile the FTC’s guidance with the realities of a constantly evolving market. The current update schedule of revising the Green Guides every ten years is inadequate and may create greater opportunity for consumer deception. The Green Guides were originally put out in 1992, and updated again in 1996 and 1998, setting a precedent that the agency has the ability to set a more frequent agenda for review. However, the Green Guides have currently not been updated since 2012. With more frequent guidance, the FTC could help ensure that companies have the information they need to ensure transparency in marketing, while simultaneously bolstering consumer confidence. This could also help brands better navigate increased activities, including legislation, from state or foreign authorities that impact labeling requirements.

We appreciate the work the FTC has already done to help marketers avoid making environmental claims that mislead consumers, as well as support consumers in their efforts to incorporate environmental considerations into their purchasing choices. The environmental sustainability of a product is more important to a consumer in making purchasing decisions now than it was a decade ago when the Green Guides were last updated. By strengthening the Green Guides and modernizing labeling requirements for packaging made from recycled materials, the FTC can provide greater clarity to consumers and ensure that brands are not able to make unsubstantiated claims.

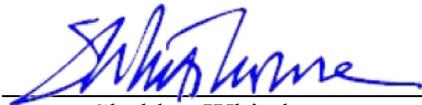
Sincerely,



Thomas R. Carper  
United States Senator



Jeffrey A. Merkley  
United States Senator



Sheldon Whitehouse  
United States Senator



Ron Wyden  
United States Senator

CC: Commissioner Noah Joshua Phillips  
Commissioner Rebecca Kelly Slaughter  
Commissioner Christine S. Wilson  
Samuel Levine, Director of the Bureau of Consumer Protection