

June 15, 2007

Diane Audet
Competition Bureau
50 Victoria Street
Gatineau, Quebec
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VIA email: audet.diane@cb-bc.gc.ca

Dear Ms. Audet:

Re: Plus 14021 Environmental Claims: A guide for industry and advertisers

On behalf of Food & Consumer Products of Canada (FCPC) we are pleased to provide comments to the Competition Bureau on the draft consultation document entitled, "**Plus 14021 Environmental claims: A guide for industry and advertisers**" (hereafter referred to as "the Guide").

FCPC appreciates the opportunity to participate in the stakeholder consultation process and endorses the consultative approach adopted by the Competition Bureau. Many of our member companies use self-declared environmental claims to provide consumers with important information about the environmental benefits of particular products and packaging. FCPC therefore supports the development of a consistent set of guidelines designed to provide industry with clear guidance when using environmental claims. The Guide's development is timely in light of heightened consumer awareness of environmental issues and the increasing use of self-declared environmental claims.

To begin with, FCPC understands that the user-based objectives of the Guide are to:

- Provide users of the ISO¹ Standard 14021, Environmental labels and declarations – Self declared environmental claims (Type II environmental labelling) with a practical guide to the application of the Standard; and
- Provide assistance to industry and advertisers in complying with the appropriate provisions of the *Competition Act*, the *Consumer Packaging and Labelling Act*, and the *Textile Labelling Act*, which are administered by the Competition Bureau and that prohibit false or misleading representations.

**Food & Consumer Products of
Canada**

FCPC is the largest industry association in Canada representing the food and consumer products industry.

- **FCPC member companies make and market retailer and national brands sold through grocery, drug, convenience, mass merchandise and foodservice distribution channels.**
- **The industry is governed by 442 federal and provincial pieces of legislation, over 4,000 regulations as well as many self-imposed standards.**
- **The industry employs 291,000 Canadians across the country, making it one of the largest employers in the Canadian manufacturing sector.**
- **The industry generates \$24 billion annually in GDP representing 13% of the manufacturing gross domestic product.**

¹ International Organization for Standardization

FCPC member companies recognize that environmental claims need to be truthful and credible in order to provide consumers with informed choices. To that end we are pleased to provide commentary and recommendations on particular sections of the Guide, many of which, as written, would prove impractical to implement in Canada and therefore could result in unintended and adverse consequences.

Section 1.3 History of environmental labelling guidance documents in Canada

There is some confusion about the status of the Principles and Guidelines for Environmental Labelling and Advertising (PGELA). Many of our member companies currently use the PGELA as guidance in complying with the *Competition Act* and the *Consumer Packaging and Labelling Act*. Section 1.3, although not clear, suggests that the new Guide will replace the PGELA and that the Bureau has already or intends to withdraw the PGELA from use. If that is the case, we suggest that the Competition Bureau take steps to formally withdraw the PGELA from use and designate a reasonable transition timeline of 24 months to allow industry the necessary time to budget for and execute the requisite changes to product labels and promotional material that will ensure compliance with the new Guide.

Recommendation #1

If the new Guide is intended to replace the PGELA, then the Competition Bureau should consider formally withdrawing the PGELA from use and designate a reasonable transition time of at least 24 months for industry to comply.

Section 4.5 Claims of “...free” (comments also apply to 5.16 and 5.17)

Claims of “...free” must not be made based on the absence of ingredients that were never in a product or which were only ever present at a background level. (p. 14 of the Guide)

While we understand that the intention behind sections 4.5 is to avoid the indiscriminate use of “...free” claims, we are concerned that the guidance provided here requires clarification in order to achieve that objective. There are complex issues associated with the use of “...free” claims that are not addressed by the Guide and that require further consideration and consultation with stakeholders.

“...Free” claims should only be used when there is a clear environmental benefit to indicating the absence of a particular material or ingredient. Standards for determining what constitutes an environmental benefit need to be very clearly articulated in order for a “free” claim to be meaningful. Allowing “...free” claims only on products that originally contained a particular ingredient, is not sufficient to make that claim true in a meaningful way that signifies a demonstrable benefit to the environment. All products legally for sale in Canada must meet health, safety and environmental requirements. The federal government’s Chemical Management Plan is designed to ensure that ingredients used in food and consumer products are safe for human health and the environment. However, “...free” claims on a product can imply that one product is more environmentally safe than another. In order for the “free” claim to be true, verifiable, and relevant to that product, it needs to be supported by a clear standard for determining the environmental benefit of the absence of that particular material or ingredient. In addition, if we would appreciate the Bureau’s point of view on the appropriateness of free claims for material prohibited from use in Canada.

Finally, section 4.5 as written, may create a competitive disadvantage for companies that never used an ingredient over companies that once used it, but discontinued its use, although in both cases its absence signifies an environmental benefit. Not allowing a “...free” claim in this

context could also potentially deprive consumers of information they require to make informed choices.

Given the complex issues associated with the use of "...free" claims, FCPC suggests that the Competition Bureau conduct additional consultation work with stakeholders to clearly define the conditions under which "free" claims can be used to successfully ensure that:

1. consumers are provided with meaningful information
2. environmental claims are not misleading
3. environmental claims promote a level playing field for industry

Recommendation #2

FCPC recommends that the Bureau conduct further work in consultation with industry stakeholders to develop clear direction on the use of "...free" claims in Canada to ensure that the claims are meaningful, not misleading and that they promote a level playing field for industry.

Section 5.3 Claims shall be substantiated and verified

Verification material must be available to both the purchaser and a potential purchaser as such material may be required to effect purchasing decisions.

FCPC agrees that all claims should be fully supported with verifiable test results and data but if the references here to "purchaser" and "potential purchasers" mean the consumer then we are concerned that manufacturers' proprietary information could be at risk. Making this data available to everyone is well beyond current advertising claim requirements, even in sensitive areas such as healthcare. If there is a risk of confidential information being released to competitors and consumers, manufacturers will be less likely to use environmental claims thereby depriving consumers of the ability to make informed choices.

Recommendation #3

Information that substantiates and verifies self-declared environmental claims should be available only to government upon request or through a self-regulatory proceeding. The federal government can then verify claims to the public upon request, but confidentiality should be maintained. Confidential business information must also be protected from Freedom of Information requests.

Section 5.14 Claims and explanatory statements

It is unacceptable, when using ISO 14021, to make a claim and put the explanatory statement in a different location on the product or package. Both the claim and explanation must be of a reasonable size to be easily readable.

Many food and consumer products come in small sizes and packages where labelling space is extremely limited. In Canada all mandatory labelling information must be in both official languages. Processed food and cosmetics products are also required by law to provide ingredient lists. In addition, processed and prepackaged food products carry the popular Nutrition Facts Panel – also required by law in Canada. Section 5.14 does not take into account that label space is at a premium, especially on small products, and we suggest that allowances be made for small packages such that claims and their explanatory statements do not necessarily have to be found together. Requiring otherwise, could have the unintended consequence of manufacturers omitting environmental claims and explanatory statements due to lack of space, thereby potentially depriving consumers of important information.

Recommendation #4

Competition Bureau make allowances for small products and packaging when requiring that a claim and its explanatory statement be found together.

Section 8.3 Access to information

A self-declared environmental claim shall only be considered verifiable if such verification can be made without access to confidential business information. Claims shall not be used if they can only be verified by confidential business information.

Most environmental claims are likely to have a component of confidential business information and thus this requirement would have the unintended consequence of seriously limiting the types of claims made by manufacturers and advertisers because many claims would rely on product formulation details.

Recommendation #5

Information that substantiates and verifies self-declared environmental claims should be available only to government upon request or through a self-regulatory proceeding. The federal government can then verify claims to the public upon request, but confidentiality should be maintained. Confidential business information must also be protected from Freedom of Information requests.

Section 10.1.2 Claims of “Where facilities exist”

It is not considered adequate to state “recyclable where facilities exist” which is dependent on the existence of such facilities. (p. 31 of the Guide)

Claims of recyclability must be qualified with information about where they are recyclable such as the statement: “This container is recyclable through the Blue Box program in Southern Ontario and recycling depots in Winnipeg and Edmonton. (p. 41 of the Guide)

It is not practically feasible for food and consumer products manufacturers to develop packaging labels that are specific to individual and local recycling programs across the country. In Canada, waste management and recycling policies and legislation fall within provincial jurisdictions and decisions about what materials are collected, as well as the type of recycling services provided, are the responsibility of each of the more than 1,000 local municipal recycling programs across Canada. Manufacturers make and label products for sale across multiple jurisdictions in Canada and it would be logistically impractical and cost-prohibitive to label in accordance with constantly evolving local recycling programs. In addition, there would not be enough room on the label to provide the kind of regionally specific information deemed appropriate by the Guide.

Requiring manufacturers to provide regionally specific information would likely result in the decision to exclude this kind of labeling entirely, thus depriving the consumer of important recycling information and the ability to make environmentally informed decisions – surely an unintended consequence of this Guide.

It is important that consumers understand it is their own municipalities who ultimately determine what materials are recyclable in their area and that they check back regularly as new packaging and materials are added to municipalities’ recyclable lists.

FCPC suggests that the statement, “Recyclable where facilities exist” be allowed because municipalities regularly provide residents with updated recycling information either through direct mail, information hotlines or municipal websites. These tools combined with appropriate recycling claims on packaging and products will provide the consumer with the clear and accurate information they require to make informed choices.

Recommendation #6

The Competition Bureau allow the use of the claim, “Recyclable where facilities exist”.

Section 7 and Section 10.8.2: Use of the Mobius Loop

Recyclability and recycled content

The Guide states that the Mobius Loop can only be used to communicate recyclability or recycled content. Yet each statement claim is substantially different. Using the same symbol to communicate both concepts can leave the consumer confused and result in non-recyclable materials ending up in the recycling waste stream. We therefore suggest that in order to avoid consumer confusion and contamination of recycling waste streams, use of the Mobius Loop must be accompanied by appropriate explanatory support. For example:

- a. When communicating recyclability, the Mobius Loop should be used in conjunction with the word “Recyclable” or with the statement, “Recyclable where facilities exist.”
- b. When communicating recycled content, the Mobius Loop should be used in conjunction with a percentage number designating the amount of post consumer content.

Plastic resin codes

Most plastic containers carry the Mobius Loop in conjunction with a number that designates the type of plastic resin used in the container. This system of identifying plastic containers has been widely used in North America for many years and is referenced by municipalities to advise consumers about the types of plastics accepted in their individual recycling programs. It is not clear if this practice will be allowed to continue because the use of plastic resin codes is not discussed in the Guide. FCPC encourages the Competition Bureau to continue to allow use of the existing plastic resin coding system and to include an appropriate provision in the Guide for its use. Discontinuing its use could unintentionally result in recyclable plastics not being recycled and alternatively, non-recyclable plastics contaminating the recyclable waste stream – both cases demonstrating consumer confusion.

Recommendation #7

Use of the Mobius Loop to designate recyclability and recycled content must be accompanied by appropriate explanatory support.

Recommendation #8

Continue to allow use of the existing plastic resin coding system in conjunction with the Mobius Loop, and include an appropriate provision in the Guide for this use.

Section 10.12.1.2 Refillable

Section 10.12.1.2 provides an example that reads as follows:

Lidded hard plastic containers marked “refillable” for baby wipes can be replenished with baby wipes sold in foil packages provided both the rigid boxes and the foil refills are available **in all locations where the original bottle is sold.** (*emphasis mine*)

A call to the Competition Bureau for clarification confirmed that “locations” used in this context refers to actual retail outlets. FCPC is concerned about this interpretation of “locations” because manufacturers have no control over which products their individual retail customers choose to sell. There may be situations where a retail outlet chooses only to sell the product in a refill package, i.e., the foil packages, to use the above example. However, another nearby retail outlet may choose to sell the product in refillable format. Since manufacturers cannot force retailers to sell both the refillable and the refill format of a product, it would be more practical to replace “locations” with “regions” in this instance, thereby providing consumers with reasonable access to both container formats.

Recommendation #9

In the examples to Section 10.12.1.2 replace “locations” with “regions” to ensure that consumers have reasonable access to both refillable and refill containers.

Conclusion

FCPC appreciates the opportunity to provide the Competition Bureau with commentary and recommendations that we hope will assist in achieving your goals of making the Guide helpful to industry, advertisers and consumers. Further to those goals, the Bureau might consider publishing a user-friendly consumer guide designed to educate consumers on how to interpret environmental claims used on the products they purchase. The Guide itself is very technical and not designed for consumer use. A consumer guide would help consumers differentiate between products in the market place and make informed purchasing decisions to the ultimate benefit of the environment.

Finally, the Guide does not provide information about the Competition Bureau’s plan to transition from the PGELA to this new standard. What is the proposed timing for finalizing the Guide and requiring that users transition to the new standard? The Guide is not a stand-alone document and refers often to the ISO 14021 Standard. Will the Bureau consider organizing workshops or training sessions to ensure industry and advertisers understand how and when to comply? If enforcement is to be carried out by the Competition Bureau, will there be dedicated resources for enforcement to ensure consistent and widespread use of its provisions?

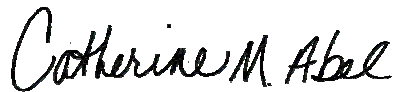
Summary of Recommendations

1. If the new Guide is intended to replace the Principles and Guidelines for Environmental Labelling and Advertising (PGELA), then the Competition Bureau should consider formally withdrawing the PGELA from use and designate a reasonable transition time of at least 24 months for industry to comply with the provisions of the new Guide.
2. Conduct further work in consultation with industry stakeholders to develop clear direction on the use of “free” claims to ensure that the claims are meaningful, not misleading and that they promote a level playing field for industry.
3. Information that substantiates and verifies self-declared environmental claims should be available only to government upon request or through a self-regulatory proceeding. The federal government can then verify claims to the public upon request, but confidentiality should be maintained. Confidential business information must also be protected from Freedom of Information requests.
4. Competition Bureau make allowances for small products and packaging when requiring that a claim and its explanatory statement be found together.

5. Please see Recommendation #3.
6. Allow use of the claim, "Recyclable where facilities exist".
7. Use of the Mobius Loop to designate recyclability and recycled content must be accompanied by appropriate explanatory support.
8. Continue to allow use of the existing plastic resin coding system in conjunction with the Mobius Loop, and include an appropriate provision in the Guide for this use.
9. In the examples to Section 10.12.1.2 replace "locations" with "regions" to ensure that consumers have reasonable access to both refillable and refill containers.

Thank you for this opportunity to comment on the new Guide. If you have any questions on the foregoing, or require elaboration on any of these recommendations, please do not hesitate to contact the undersigned at your convenience.

Yours very truly,

A handwritten signature in black ink that reads "Catherine M. Abel". The signature is written in a cursive, flowing style.

Catherine Abel
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