



April 24, 2023

April J. Tabor
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex J)
Washington, DC 20580

**RE: Guides for the Use of Environmental Marketing Claims – Green Guides Review,
Matter No. P954501 (Docket FTC-2022-0077)**

Dear Secretary Tabor:

Thank you for the opportunity to provide comments on the Federal Trade Commission’s (“FTC” or the “Commission”) solicitation of public comments on the Guides for the Use of Environmental Marketing Claims (hereinafter referred to as “Green Guides”). These comments are submitted on behalf of Just Zero, The Last Beach Clean Up, All Our Energy, Beyond Plastics Center for Biological Diversity, Clean Ocean Action, Conservation Law Foundation, Container Recycling Institute, Don’t Waste Durham, Dr. Bonner’s, Global Alliance for Incinerator Alternatives, the National Aquarium, Oceana, Plastic Free Future, Plastic Pollution Coalition, ReLoop, Save Forest Lake, Surfrider Foundation, The Last Plastic Straw, Turtle Island Restoration Network, and Zero Waste Ithaca.¹

Our organizations are extremely concerned about the growing environmental and public health impacts associated with plastic production and pollution. Despite rising public backlash about the prevalence of unrecyclable and single-use plastic products, companies are continuing to rely on these materials when designing their products and packaging. Worse, many companies are engaged in robust and deceptive greenwashing campaigns designed to mislead consumers into believing that unrecyclable materials such as flexible plastic packaging are recyclable.

The Commission has a critical role in protecting the public from misleading, deceptive, and false marketing claims regarding the recyclability of products and packaging. The Green Guides play a vital role in curbing misinformation from companies. However, it is clear that the Green Guides have not been successful in prohibiting or limiting companies from making false or misleading claims regarding recyclability.

We strongly urge the Commission to initiate a formal rulemaking process to establish independently enforceable requirements related to unfair and deceptive environmental claims. Specifically, to establish binding requirements that control claims about whether products or

¹ These respective groups will hereinafter be referred to as “we” or “our groups.”



packaging is recyclable or not. The Commission should develop regulations that reflect the requirements established in California’s Truth in Labeling Law (SB 343). The development of these regulations is necessary to limit the widespread practice of companies making false and deceptive claims about recyclability and the harm that comes from widespread belief that unrecyclable products and packaging are recyclable.

I. The Commission Has the Legal Authority to Develop Regulations Controlling Environmental Marketing Claims.

The Commission has ample legal authority to promulgate rules regarding environmental marketing claims. Federal law empowers the Commission to prevent the use of unfair or deceptive marketing practices.² To accomplish this, the Commission is authorized to promulgate rules with respect to specific or general unfair or deceptive marketing practices.³ The Commission may establish rules which define, with specificity, acts or practices which are categorically unfair or deceptive.⁴ Prior to commencing a rulemaking process, the Commission must have reason to believe that the unfair or deceptive marketing practices to be addressed by the rulemaking, are “prevalent.”⁵ An unfair or deceptive marketing practice is considered “prevalent” if the Commission has issued cease and desist orders regarding such acts or practices or has other information which indicates a widespread pattern of unfair or deceptive practices.⁶

II. There is Sufficient Evidence to Indicate that Unfair or Deceptive Environmental Marketing Practices are Prevalent.

Recent research and litigation clearly establish that the use of unfair or deceptive recyclable labels and claims is prevalent. Therefore, the Commission should initiate a formal rulemaking process to develop rules which control marketing claims regarding recyclability of products and packaging.

A. Recent Litigation Against Companies for False and Deceptive Claims Regarding Recyclability.

Despite the lack of action by the Commission, there have been several lawsuits filed in recent years that illustrate both the prevalence of unfair and deceptive claims about recyclability, as well as the ineffectiveness of the Green Guides as a tool to prohibit this behavior.

² 15 U.S.C.A. § 45(a)(2).

³ 15 U.S.C.A. § 57a(a)(1)(A).

⁴ 15 U.S.C.A. § 57a(a)(1)(B).

⁵ 15 U.S.C.A. § 57a(B)(3).

⁶ *Id.*



In 2021 and 2022, lawsuits were filed in California⁷, Illinois⁸, and New York⁹ by consumers who argued that companies had used unfair and deceptive trade practices and engaged in false advertising when labeling their products and packaging as recyclable. While these claims were brought under state law, in each case the plaintiffs relied on nationwide recycling rates to allege that the products did not meet the definition of recyclable in the federal Green Guides, and therefore the labels were misleading. More importantly, the federal judge in each case examined whether the labels on the defendants' products complied with the Green Guides' definition of recyclable.

In addition to these lawsuits there have been several other high-profile lawsuits over claims regarding recyclability. False recyclable labels on plastic products have spurred deceptive advertising lawsuits won against major brands including Keurig¹⁰ and eight major product companies.¹¹ The New York University School of Law has compiled a Plastic Litigation Tracker that documents cases addressing plastics across federal and state court. In addition to the cases mentioned in these comments there are at least eight other lawsuits regarding false advertising and deceptive marketing arising from claims about recyclability.¹²

These lawsuits show that despite the Commission's lack of enforcement action, the use of false, deceptive, and unfair claims regarding recyclability are prevalent. Therefore, the Commission should initiate a formal rulemaking process to better limit this prevalent practice.

B. Companies Are Continuing to Label Plastic Products and Packaging as Recyclable Despite Abysmal Recycling Rates in the U.S.

Recent reports indicate that plastic recycling in the United States is extremely ineffective. According to a report from Greenpeace USA, plastic recycling is estimated to have declined to roughly 5-6% in 2021, down from a high of 9.5% in 2014.¹³ At that time, the U.S. was exporting most of its plastic waste to China which heavily and artificially inflated the recycling rate.¹⁴ Even the two most common forms of plastic in the United States – PET #1 and HDPE #2 – have extremely low recycling rates.¹⁵ In 2021 PET only achieved a reprocessing rate of 20.9%, while HDPE was only reprocessed at a rate of 10.3%.¹⁶

⁷ Swartz v. Coca-Cola, No. 3:21-cv-04643, 2022 WL 17881771 (N.D. Cal. Nov. 18, 2022).

⁸ Curtis v. 7-Eleven, Inc., No. 1:21-cv-06079, 2022 WL 4182384 (N.D. Ill. Sept. 13, 2022)

⁹ Duchimaza v. Niagara Bottling, LLC, No. 1:21-cv-06434, 2022 WL 3139898 (S.D.N.Y. Aug. 5, 2022)

¹⁰ Top Class Actions, "[Keurig Class Action Settled For \\$10M, Ending Recyclability Claims](#)," March 3, 2022.

¹¹ Wall Street Journal, "[TerraCycle Partners Including Coca-Cola, P&G to Change Recycling Labels After Settling Lawsuit](#)," November 15, 2021.

¹² See, [State Energy and Environmental Impact Center, Plastic Litigation Tracker](#).

¹³ Greenpeace, [Circular Claims Fall Flat Again – 2022 Update](#), pg. 3. (Oct. 24, 2022).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*



Greenpeace USA, also surveyed 367 Material Recovery Facilities (“MRFs”) in the United States.¹⁷ The results found that, according to the requirements of the Green Guides, only PET #1 and HDPE #2 plastic bottles and jugs may legitimately be labeled as recyclable by consumer goods companies and retailers.¹⁸ However, these products could only be labeled recyclable if they were free of body shrink sleeves which render them non-recyclable.¹⁹ All other plastic products, including plastic tubs, cups, lids, plates, trays, clamshells, and flexible plastic packaging therefore, cannot be labeled as recyclable pursuant to the Green Guides.²⁰ Despite these products being unrecyclable, companies are falsely labeling the products as recyclable.

Additionally, a report from both Beyond Plastics and The Last Beach Clean Up also found that in 2021, the U.S. plastic recycling rate was only 5%.²¹ According to the report, high recycling rates of post-consumer paper, cardboard, and metals prove that recycling can be an effective way to reclaim valuable natural material resources.²² The problem lies not with the concept or process of recycling but with the material itself – it is plastic recycling that has always failed. Even when millions of tons of waste plastic were still being exported to China each year, plastics recycling never managed to reach 10%.²³

The findings from the environmental community are also supported by recent research by the federal government. A report from the Department of Interior found of the estimated 44 Mt of plastic waste managed in 2019 domestically, approximately 86% was landfilled, 9% was combusted, and 5% was recycled.²⁴

Given the lack of actual plastic recycling in the U.S., a majority of the claims made by companies labeling their plastic products and packaging as recyclable are misleading, and deceptive, if not outrightly false. Therefore, the Commission should initiate a formal rulemaking to curb the prevalence of this practice.

III. Unfair and Deceptive Claims About Recyclability Are Causing Significant and Widespread Harm.

The prevalence of companies using unfair, deceptive, and false recyclable labels and claims is causing significant economic and environmental harm. This includes direct harm to consumers who are relying on these claims when deciding about which products to purchase. As well as

¹⁷ Greenpeace, [Circular Claims Fall Flat](#), (Feb. 18, 2020)

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Beyond Plastics and The Last Beach Clean Up, [The Real Truth About the U.S. Plastics Recycling Rate](#), (May 2022)

²² *Id.*

²³ *Id.*

²⁴ Anelia Milbrandt, et. al, [Quantification and Evaluation of Plastic Waste in the United States](#), Resources, Conservation and Recycling, Vol. 183 (Aug. 2022).



indirect environmental and economic harm associated with widespread contamination in recycling systems.

A. Consumers Increasingly Care About the Environmental Impact of Products and Packaging.

While it may be difficult to prove that false labels affect a consumer’s decision to purchase a specific product, there is strong evidence that consumers care about recycling and want to purchase products that are actually recyclable. Several recent surveys show that consumers increasingly care about the environmental impacts of the products they buy, and more specifically, whether the product and its packaging are recyclable.

- Amcor’s global survey, including the U.S., showed 76% of consumers want to recycle more and find recyclability is the most important sustainability attribute for packaging – above other aspects including reusability and the materials used.²⁵
- A 2020 Survey performed by the Shelton Group found that:
 - 80% of U.S. consumers agree that recycling is the bare minimum we can do for the environment;
 - 76% of U.S. consumers agree that recycling makes us feel better about purchases; and
 - 67% of U.S. consumers look at the recycling label before making a decision on how to manage an item after use.²⁶
- A recent survey from PDI Technologies found that:
 - 75% of Americans are concerned about the environmental impact of the products they buy;
 - 69% of Americans view a product’s environmental friendliness as an important factor when making purchasing decisions;
 - 68% of Americans use labels or third-party certification on product packaging to determine if a product is environmentally friendly, with that number jumping to 79% for younger Americans; and,
 - 66% of Americans say they will be willing to pay more for a product that is environmentally friendly.²⁷

Despite U.S. consumer’s clear preference for recyclable products and packaging, many companies are still manufacturing and marketing products that are not, and likely never will be, recyclable. Worse, as explained above, many of these companies are falsely and deceptively marketing their products as recyclable despite no indication that those claims are true.

²⁵ Amcor, “[Amcor research shows consumers worldwide want to recycle more](#),” November 18, 2021

²⁶ Shelton Group, “[Engaging Middle America in Recycling Solutions](#),” August 27, 2020

²⁷ PDI Technologies, Business of Sustainability Index. (June 2022). Available at <https://pditechnologies.com/resources/report/business-sustainability-index/>



B. Deceptive and Unfair Claims About Recyclability Result in Significant Harm

According to the National Waste and Recycling Association, roughly 25% of materials placed into recycling systems are too contaminated to go anywhere other than a landfill or incinerator.²⁸ A significant source of contamination is when unrecyclable items are placed into the recycling stream. Contamination can prevent large batches of material from being recycled.²⁹ There is ample evidence indicating that false recycling labels are causing consumer confusion about what is and is not recyclable, which is creating increased contamination.

- NBC Video: “How Misleading Labels Are Overwhelming Recycling Facilities.”³⁰ The video shows an Amazon plastic mailing pouch with a large recycle symbol creating contamination in a material recovery facility (MRF). As the MRF operator states, consumers see the recycle symbol and mistakenly put the plastic pouch in their curbside recycling bin.
- CBS Morning Video: The video shows flexible plastic packaging, including Amazon plastic pouches, that were mistakenly put in curbside recycling bins by consumers. The MRF worker explains the harm caused by the plastic pouches. Contaminated store drop off bins are shown.³¹

When consumers rely on false labels when making decisions about whether a product is recyclable or not, this has significant economic, environmental, and public health impacts. The Commission must consider these impacts when evaluating recyclability claims.

(1) Harm – Impacts to Recycling Worker Safety

One of the most serious impacts associated with this increased contamination is the threat to worker safety in the recycling sector. According to an investigation by Waste Dive, “With fluctuating injury rates, and ongoing fatalities, Material Recovery Facilities (“MRFs”) remain a key safety challenge.”³² In fact “MRFs have been singled out by the Bureau of Labor and Standards for having some of the highest rates of days away, restricted or transferred among all occupations in the U.S.”³³ This unfortunately isn’t surprising. “Any time someone puts an item in the recycling stream that’s not accepted, it’s usually someone else’s job to take it out. Any time you touch material you have an opportunity to have an injury. And so, the number of opportunities in these facilities is great.”³⁴

²⁸ Maggie Koerth, *The Era of Easy Recycling May Be Coming to An End*, FiveThirtyEight. (Jan. 10, 2019).

²⁹ Taylor Uekert, et al, [Technical, Economic, and Environmental Comparison of Closed-Loop Recycling Technologies for Common Plastics](#), ACS Sustainable Chemistry & Engineering, 2023, 11, 3, 965–978.

³⁰ NBC News Video: “[How Misleading Labels Are Overwhelming Recycling Facilities](#),” 2022

³¹ CBS Morning News, “[Program aims to help consumers recycle plastic film correctly.](#)” July 19, 2022

³² Waste Dive, “[High risk, hidden workforce.](#)” December 11, 2019.

³³ *Id.*

³⁴ *Id.*



(2) Harm – Increased Recycling Costs

Incorrect recyclable labels cause consumers to mistakenly place an item in a recycle bin and cause contamination in MRFs. The contamination harms the ability of the MRFs to cost-effectively collect and sort other materials such as cardboard and paper that are easily ruined by contact with food-soiled packaging.³⁵ Energy, carbon emissions, labor, and costs are wasted from collecting and sorting unwanted, worthless items through municipal sortation systems.³⁶

Given the impact this has on local communities, municipal budgets, and the viability of some recycling services, there is ample evidence that increased contamination has directly impacted the cost and availability of recycling services.³⁷ Additionally, plastic waste is often identified as a top form of contamination in recycling bins.

(3) Harm – Environmental and Social Harms from Plastic Pollution

Due to the widespread use of large recycling symbols on flexible plastic packaging, the majority of U.S. consumers are being deceived into believing that these materials are recyclable. In reliance on these symbols many consumers are then placing flexible plastic packaging into their curbside recycling bins. This results in two related forms of harm. First, the flexible plastic packaging has now been collected, transported, and sorted through the recycling system. Which, as explained above, is costly and creates increased risk of worker injury. Once removed from the system this material will need to be collected again and transported for disposal in either a landfill or incinerator – both of which result in widespread environmental harm. Second, if the unrecyclable flexible plastic packaging is not removed, then it is often exported in paper bales which causes significant health and environmental harm in the communities where the material was sent. These communities are often in foreign countries.³⁸

A 2022 Bloomberg investigation illustrates the horrific environmental and public health impacts in India caused by plastic film contamination in paper bales exported from the United States.³⁹ Flexible plastic packaging that starts off in Americans' recycling bins ends up at illegal dumpsites and in industrial furnaces in regions of India.⁴⁰ The report notes that more than 500,000 tons of plastic waste hidden within recycled paper shipments has entered India in the last two years alone.⁴¹ The manufacturers that imported this waste with the intention of using the recycled paper to manufacture new products now are stuck paying to find disposal options for all

³⁵ Recycling Today, "[The heavy toll of contamination](#)," April 19, 2017.

³⁶ Rubicon, "[What is Recycling Contamination, And Why Does it Matter?](#)," December 4, 2017.

³⁷ Michael "[Corkery, As Costs Skyrocket, More U.S. Cities Stop Recycling](#)", New York Times. (Mar. 16, 2019).

³⁸ Tear Fund Learn, [The Burning Question – Will Companies Reduce Their Plastic Use?](#) (2022)

³⁹ Bloomberg, "[Amazon Packages Burn in India. Final Stop in Broken Recycling System.](#)" December 27, 2022

⁴⁰ *Id.*

⁴¹ *Id.*



this flexible plastic.⁴² As a result, much of it is illegally dumped.⁴³ What isn't buried is burned, creating toxic ash and air pollution.⁴⁴ Importantly, the investigation includes remarks from a retired environmental scientist that was fooled into thinking the plastic film could be recycled because of the symbol on the packaging.⁴⁵

IV. The Commission Should Adopt the Requirements of California's Truth-in-Labeling Law When Promulgating These Rules

Given both the prevalence of the use of unfair and deceptive claims about recyclability, as well as the significant and widespread harm it is causing, the Commission must initiate a formal rulemaking process to develop regulations that control when companies can claim their products or packaging is recyclable. Specifically, the Commission should adopt the requirements established in California's Truth in Labeling Law.

A. California's Truth in Labeling Law

In 2021, California passed a sweeping labeling reform law.⁴⁶ The law was a direct response to the prevalence of false and misleading claims about the recyclability of products.⁴⁷ Similar legislation is being considered in several other states, including New York and New Jersey.

Under California's Truth in Labeling Law, a product or its packaging can only be labeled as recyclable, which includes using the chasing arrows symbol, if:

- (1) It is designed to be recyclable and therefore does not include any components, inks, adhesives, or labels that prevent recyclability;
- (2) It does not contain perfluoroalkyl or polyfluoroalkyl substances ("PFAS");
- (3) It is collected through curbside recycling programs that collectively encompass at least 60% of the population of the state; and
- (4) It is sorted into defined streams for purchase by reprocessing facilities consistent with the requirements of the Basel Convention.⁴⁸

Alternatively, a product or its packaging can be labeled as recyclable through a store drop off program if the company can demonstrate that the program has a demonstrated recycling rate of at least 75%, meaning not less than 75% of the product or packaging sorted and aggregated in the state is reprocessed into new products or packaging.⁴⁹

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ [See, California Senate Bill 343 \(2021\).](#)

⁴⁷ *Id.*

⁴⁸ *Id.* at § 42355.51(d)(3)

⁴⁹ *Id.* at § 42355.51(d)(5)



B. California’s Truth in Labeling Law Provides an Ideal Template for Federal Regulation.

California’s Truth in Labeling Law includes several components of the existing Green Guides while adding necessary additional components to ensure that products are accurately labeled to reflect existing conditions impacting the recyclability of products and packaging. California’s law adds to the existing requirements of the Green Guides by further mandating that products must be eligible for sorting into defined streams for purchase by reprocessing facilities in a manner that is consistent with the requirements of the Basel Convention.⁵⁰

Codifying the central components of California’s Truth in Labeling law will ensure that only products that are truly recyclable are labeled as such. It will also give the Commission the necessary authority to hold companies that falsely label products and packaging accountable for the wide array of harms associated with greenwashing. Additionally, Since California has the largest state population, with 13% of the U.S. population, and products are typically labeled for nationwide sales, it is likely that most product companies will design their product labels to comply with California’s law. Therefore, it is unlikely that these new regulations would unduly burden businesses.

V. Conclusion

The misconception that plastic is easily and widely recyclable is not accidental. This false narrative was developed over decades through the use of carefully calculated messaging designed to trick consumers into thinking these products and packaging are environmentally friendly. This narrative is continuing to be fueled by companies through unfair and deceptive labels and claims about recyclability. Consumers are increasingly concerned about the widespread public health and environmental impacts associated with plastic waste. The Commission must crack down on the prevalent practice of false recycling claims and labels by initiating a formal rulemaking to incorporate the key components of California’s Truth in Labeling Law.

Respectfully submitted,

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⁵⁰ Cal.Pub.Res.Code § 42355.51(d)(3).



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