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-greenwash/ (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 bi-lateral conversations with other environmental labeling programs.

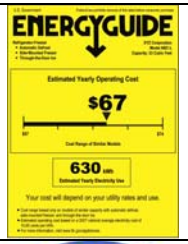
Table 1. The Seven Sins of Greenwashing[15]

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.

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.