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1 {York Stenographic Services, Inc.}

2 HIF160.170

3 HEARING ON IT'S TOO EASY BEING GREEN: DEFINING FAIR GREEN

4 MARKETING PRACTICES

5 TUESDAY, JUNE 9, 2009

6 House of Representatives,

7 Subcommittee on Commerce, Trade, and Consumer Protection

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 11:01 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Bobby
12 L. Rush (chairman of the subcommittee) presiding.

13 Members present: Representatives Rush, Sarbanes, Stupak,
14 Barrow, Castor, Radanovich, and Gingrey.

15 Staff present: Michelle Ash, Chief Counsel; Anna Laitin,
16 Counsel; Angelle Kwemo, Counsel; Tim Robinson, Counsel;
17 Valerie Baron, Special Assistant; William Cusey, Special
18 Assistant; Jennifer Berenholz, Deputy Clerk; Chad Grant,

19 Minority Policy Analyst; Brian McCollough, Minority Senior
20 Professional Staff; and Gerald Couri, Minority Professional
21 Staff.

|
22 Mr. {Rush.} Good morning. The subcommittee on
23 Commerce, Trade, and Consumer Protection will come to order.
24 The chair will thank all those who are here and particularly
25 all witnesses. The chair now recognizes himself for the
26 purposes of an opening statement.

27 Today the subcommittee is holding a hearing titled
28 ``It's Too Easy Being Green: Defining Fair Green Marketing
29 Practice.''

30 Let me start--the mikes are on. They are all working
31 now, right? Okay, let me--the chair recognizes himself for
32 five minutes for the purposes of opening statement.

33 The subcommittee on Commerce, Trade, and Consumer
34 Protection is holding a hearing titled ``It's Too Easy Being
35 Green: Defining Fair Green Marketing Practices.''. During
36 this hearing, we will be taking up the truthfulness of green
37 advertising claims, consumer protection of green claims, and
38 the role of the Federal Trade Commission in regulating these
39 proliferating claims.

40 More than ever before, the shelves of our supermarkets,
41 hardware, minimarts, home improvement, and pet stores are
42 being lined with good bearing labels calling themselves as
43 natural, biodegradable, ecofriendly, sustainable, recyclable,
44 and nontoxic just to name a few. With the increased demand

45 by these stores for more green products, we are seeing an
46 increase in certifying companies certifying these green
47 claims. While some responsible companies have created
48 certifications and labels backed by testing, other companies
49 have spied an opportunity in demand for information.

50 For a fee, these companies will certify anything as
51 green, affording false comfort to purchasers that their
52 products meet environmental and safety standards.

53 Just to cite a few relevant statistics, in 2008,
54 consumers purchased \$290 million in natural household
55 cleaners and supplies. In addition, ``The Wall Street
56 Journal'' reported in April 2009 that there are more than 300
57 such environmental labels putting a green stamp on everything
58 from cosmetics and seafood to coffee. Because there are no
59 common agreement on jury accepted definitions relating to the
60 meaning of many of these words. And since consumers are
61 being bombarded by so many of these claims and
62 certifications, and there is legitimate concern that some
63 consumers are basing their purchasing decisions on misleading
64 and in some cases even deceptive labels.

65 And I am especially concerned that Americans who have
66 less disposable income to spend on ``green'' goods are not
67 getting the benefits that they expect when they spend their
68 hard-earned dollars on these goods, which promise more and

69 also cost more at our checkout lines.

70 At the conclusion of today's hearing, I would like for
71 this body to have more insight into FTC's update of its green
72 guides and how extensively consumers, manufacturers, and
73 advertisers are consulting and relying on these guides.

74 Second, I want for us to discuss whether the FTC should
75 be more aggressive in monitoring and/or regulating the
76 placement of claims on products and how, in the flow of
77 commerce, can the Commission ensure that green labels are
78 more useful and informative than is currently the case.

79 Thirdly, I would like for us to explore the role of the
80 private sector. We will ask how truly environmentally
81 responsible and safe products can differentiate themselves
82 from the products that may unsubstantiated claims. And we
83 will examine the role of the private run certification at
84 labeling products.

85 I would also just add another note that there might be
86 another role for the Congress to play in these matters, and
87 we will keeping a keen eye and a hearing ear to the role that
88 the Congress should be playing in this particular matter.

89 I look forward to hearing the testimony and to
90 participating in the exchange that follows. I want to thank
91 you all very much for agreeing to help us examine this
92 problem and come up with constructive proposals to address

93 issues that we have identified. I yield back the balance of
94 my--I don't have any more time. So now it is my pleasure to
95 recognize the ranking member of the subcommittee for five
96 minutes for the purposes of an opening statement, my friend,
97 the gentleman from California, Mr. Radanovich, is recognized.

98 [The prepared statement of Mr. Rush follows:]

99 ***** COMMITTEE INSERT *****

|

100 Mr. {Radanovich.} Thank you so much, Mr. Chairman. I
101 want to thank you also for calling this hearing to examine
102 green marketing practices. We all agree that consumers
103 should not be deceived through false marketing when making a
104 decision to buy a product. Such dubious practices would fall
105 squarely within the Federal Trade Commission's jurisdiction
106 when a company violates existing labeling rules or when a
107 company clearly makes a false statement about its product
108 with the intent to deceive.

109 I understand the Commission has taken several
110 enforcement actions against companies for such practices, and
111 they should be commended. And I look forward to hearing more
112 about these when Mr. Kohm testifies shortly.

113 I agree with the premise that a business that markets
114 its products as green should be held accountable for accuracy
115 and truthfulness. The problem arises from a larger debate
116 about what is green and who will define it and how will it be
117 defined. Consumer confusion does not help anybody, but a
118 simple solution does not readily exist that all stakeholders
119 can agree upon, which is why we are having this debate.

120 I imagine we could ask 10 different people to define
121 green, and we would not be surprised if we received 10
122 different answers. Many consumers seek out recyclable or

123 biodegradable products, and these products may be labeled
124 accurately and be attractive to consumers for their
125 environmental sensitivity. However, depending on how we
126 define green, a recyclable product could be considered
127 greener than a biodegradable one or vice versa, and that is a
128 relatively simple example of similar products.

129 When multiple variables are considered in the
130 determination, the comparison of the products becomes more
131 complicated. Regardless, some of the discussions and
132 suggestions that we will hear today will focus on the
133 Environmental Protection Agency.

134 For purposes of this hearing, we would be better served
135 confining our discussion to the area of our jurisdiction over
136 the marketing practices and what would be defined as an
137 unfair or deceptive practice under the FTC Act. I would also
138 suggest the subcommittee should hear the views of businesses
139 that are manufacturing products that may fall subject to FTC
140 enforcement.

141 Ideally, mutually agreeable definitions for the purposes
142 of marketing will emerge through a process of all
143 stakeholders working together. This may not result in a one-
144 size-fits-all approach, but it will have the benefit of an
145 open and transparent process where everybody has a voice and
146 all viewpoints are considered.

147 The marketplace implicated by this discussion is
148 extremely broad with many diverse products. If the goal is
149 to enforce manufacturing practices and leave a smaller
150 footprint on the earth through consumer marketing appeal, the
151 definition of green must be inclusive. Labeling and
152 marketing are intended to be tools that educate the public,
153 not points of litigation. And more importantly, they should
154 not be the goal of the given product.

155 Further we have seen many unforeseen consequences of
156 technological advances that were supposed to help reduce
157 environmental footprint but had the opposite effect due to
158 unwitting consumers. Energy efficiency and the Energy Star
159 label may be useful, but not only to the extent that they
160 alter the overall consumption of home energy use.

161 Saving more energy on one product may be beneficial, but
162 if the savings is used to keep the television and stereo on
163 longer, the environmental picture hasn't really changed.
164 Ultimately the consumer's use of the information is what
165 really matters.

166 I only point this out because consumers are hard to
167 predict. We continue to battle obesity in this country
168 despite extensive labeling requirements for decades. Labels
169 can be a useful tool for information if the consumer uses it
170 wisely and is not inundated with information overload. Foods

171 may be accurately labeled as low sugar, low carbohydrate, or
172 low fat, but that does not change the overall trend of
173 increase in the average calories Americans consume.

174 One final point I will make which is I am certain
175 experts have discussed is that any green standard should take
176 into account the diverse geography of resources of this
177 country. For example, if new green standards delve into the
178 life cycle carbon footprint of a product, manufacturers
179 should not be disadvantaged based on the limitations of
180 available energy resources to which they may be captive. To
181 do so based on today's desires will cause more harm than
182 good.

183 Mr. Chairman, I want to thank you and also our witnesses
184 today for appearing. I look forward to your testimony, and I
185 yield back. Thank you, Mr. Chairman.

186 [The prepared statement of Mr. Radanovich follows:]

187 ***** COMMITTEE INSERT *****

|
188 Mr. {Rush.} The chair thanks the gentleman. The chair
189 now recognizes the gentleman from Maryland for five minutes
190 for the purposes of an opening statement. Mr. Sarbanes of
191 Maryland is recognized.

192 Mr. {Sarbanes.} Thank you, Mr. Chairman. I won't take
193 five minutes. I appreciate your convening this hearing.
194 This is definitely something we need to look at. This is
195 kind of the next big thing when it comes to labeling, I
196 think. And the role of this committee and the FTC and others
197 to put in place a regime that makes sense with respect to
198 green labeling is a very, very important one.

199 There is no question when you go to the store--I fall
200 prey to this myself--and you see this green labeling or these
201 green claims that are made that you are either thinking green
202 is healthy or you are thinking green is environmentally
203 friendly. You are basically in the mindset that green is
204 good, and so it does have a very powerful effect on people's
205 purchasing patterns and their expectation of what they are
206 getting for themselves and their family.

207 So the notion that that claim is being made in many
208 instances when it can't really be justified if when I think
209 it is offensive to many and certainly to the consumer that is
210 looking for that seal of good housekeeping when it comes to

211 what is environmentally friendly and what is healthy.

212 I don't worry too much about the question of what is
213 greener than the next thing as long as the things that are
214 claiming to be green have met a certain baseline standard and
215 definition. And I certainly recognize it is going to come up
216 with those definitions that can have some sort of uniform
217 application. But I think we can find our way to it, and our
218 panelists today will help us think that through.

219 The other point you made is just as important, and that
220 is it is not fair to those businesses and manufacturers and
221 others who really are trying to do the right thing and make
222 products that are green in all their different aspects to
223 have a system that is allowing others to make false claims
224 with respect to whether they are delivering green products.

225 And the more sinister view to take on that is it
226 actually discourages companies from doing the right thing
227 because they say well, what difference does it make? If I
228 can just slap a green label on something and get the benefit
229 of that in terms of marketing, why not cut corners?

230 So there is many reasons to pursue this on behalf of the
231 consumer and on behalf of businesses that are trying to lead
232 the way with good practices, and thank you for convening the
233 hearing today to look at those practices. And I yield back
234 my time.

235 [The prepared statement of Mr. Sarbanes follows:]

236 ***** COMMITTEE INSERT *****

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237 Mr. {Rush.} The chair thanks the gentleman. The chair
238 now recognizes for the purposes of opening statements Dr.
239 Gingrey from Georgia. Dr. Gingrey, you are recognized for
240 five minutes.

241 Mr. {Gingrey.} Mr. Chairman, thank you. I am sitting
242 here drinking this soft drink out of a green can. This is by
243 the great Coca-Cola Company, and they don't imply anything in
244 here about being environmentally friendly. They just tell
245 you how much caffeine and what great soft drink this is, and
246 it is a good soft drink. But certainly you get the
247 impression you could package something in a green--even
248 politicians--I notice in the last campaign cycle in our state
249 more and more politicians actually wearing a green shirt and
250 having a green logo and, you know, just that subliminal
251 message.

252 Mr. Chairman, I want to thank you, of course, for
253 calling the hearing today on green marketing techniques that
254 are clearly being used now more than ever by all types of
255 companies and individuals. Unfortunately despite the
256 increased efforts by corporate citizens attempting to be more
257 environmentally friendly, there is still a great deal of
258 confusion that exists particularly for the consumer with the
259 way that these marketing practices currently function.

260 The FTC issued its own set of environmental guides back
261 in 1992 called ``The Green Guides'' and this working document
262 allows the FTC to better understand what constitutes false or
263 deceptive green claims within marketing. However although
264 these guides provide a base of understanding for the FTC,
265 ``The Green Guides'' have not been fully updated since when,
266 1998, and so that leaves a wide gap between the increase in
267 green marketing and the way by which we understand these
268 techniques today.

269 Mr. Chairman, there are some fundamental questions that
270 we must answer at the outset of any discussion of green
271 marketing. First and foremost, how is this marketing
272 defined? As this panel of witnesses will describe, there are
273 varied interpretations of how a company use this marketing
274 tools. Is green marketing an environmental matter or is it a
275 health matter? It could be argued that individual consumers
276 may have different ideas of what green means for them, so
277 this needs to be factored into any discussion that is had by
278 the FTC as it updates these green guides.

279 The last question, and arguably the most important for
280 this subcommittee, is what role the FTC should play in the
281 structure or enforcement of green marketing. The FTC already
282 has the authority to conduct investigations on false and
283 deceptive marketing practices, and this should be taken into

284 consideration as regulations continue to be updated.

285 Mr. Chairman, with the increase in green marketing that
286 have occurred, there are still a number of question marks
287 that exist both for companies and for consumers. And I think
288 in this realm, Jim Henson's lovable character Kermit the Frog
289 may have said it best when he said ``it's not easy being
290 green.''

291 I look forward to hearing from our panel on these
292 increasingly omnipresent issues, and I yield back the balance
293 of my time.

294 [The prepared statement of Mr. Gingrey follows:]

295 ***** COMMITTEE INSERT *****

|
296 Mr. {Rush.} The chair thanks the gentleman. The chair
297 now recognizes the gentlelady from Florida, Ms. Castor, for
298 five minutes for the purposes of opening statement.

299 Ms. {Castor.} Thank you, Mr. Chairman. Thank you very
300 much for calling this hearing. Good morning. In recent
301 years, we have had a substantial increase in products that
302 promote environmental consciousness and tout how their
303 products minimize environmental impacts. There is an
304 increasing public awareness of the dangers of climate change
305 and environmental degradation, and Americans want to help
306 naturally.

307 And one of the places folks look to reduce their
308 environmental impact is at the store. The last few years
309 have seen a proliferation of new products marketed as being
310 green or environmentally friendly. And frankly this can be
311 confusing for consumers. Consumers have a hard time telling
312 the difference between companies that do the hard work to
313 develop products and manufacturing processes that are more
314 sustainable and environmentally friendly and those companies
315 that simply start printing their labels in green with
316 sustainable written on the label and then charge a green
317 premium for the same old dirty products.

318 It seems sometimes that some retailers and product

319 suppliers are engaged in a race to poorly define and use
320 meaningless terms like sustainable and ecofriendly. And with
321 that, there is a real risk that consumers will lose
322 confidence in the entire concept of being--having a
323 sustainable product or a green friendly product and that
324 consumers will simply tune out the environmental message. A
325 study by the Shelton Group found that consumers surveyed in
326 2007 were between 22 and 55 percent less likely to buy a wide
327 range of green products than in 2006, and a major factor in
328 that decline was message overload.

329 Consumer groups have done an admirable job of stepping
330 up to try to provide clarity by operating independent claims
331 verification and marketing standards groups, and I look
332 forward to hearing from some of those groups who are with us
333 today. However, they still must compete with unreliable and
334 unscrupulous certifications programs that are all too often
335 concerned more with collecting the fee than in reliably
336 labeling the product.

337 I am very interested in what more we can do to help
338 consumers cut through the noise and find the truly
339 sustainable products that they would like to purchase. I
340 yield back my time.

341 [The prepared statement of Ms. Castor follows:]

342 ***** COMMITTEE INSERT *****

|
343 Mr. {Rush.} The chair thanks the gentlelady, and now it
344 is my honor and privilege to welcome the witnesses who are
345 gathered here, and I do want to recognize each one of them.
346 I want to announce that Dr. Rangan is on her way. She had a
347 late flight from New York, and now she is between the airport
348 and the Capitol in a cab trying to make it here. So we will
349 swear her in once she arrives.

350 And we will proceed now, recognizing our first witness.
351 He is Mr. James Kohm. He is the director of the enforcement
352 division of the Federal Trade Commission. Next to Mr. Kohm
353 is Mr. M. Scot Case. He is the vice president of a company
354 called TerraChoice, and he is also the executive director of
355 the EcoLogo Program which is the Canadian government's green
356 seal. And next to Mr. Case would be Mr. Dara O'Rourke. Dr.
357 O'Rourke rather is an associate professor who comes from
358 California, the University of California in Berkeley. And he
359 is a cofounder of GoodGuide. And next to Mr. O'Rourke, we
360 have Mr. Scott P. Cooper who is the vice president of
361 government relations of the American National Standards
362 Institute.

363 I again want to welcome each and every one of you
364 witnesses. You don't know how it makes our heart glad that
365 you are taking the time out from your busy schedules to come

366 and participate with us today, and it is the practice of this
367 subcommittee--we are operating under some new practices--that
368 we swear you in. So I would ask if each one of you would
369 stand and raise your right hand.

370 [Witnesses sworn]

371 Mr. {Rush.} Let the record reflect that all witnesses
372 have responded in the affirmative.

373 Now, our first witness we will recognize for five
374 minutes for the purpose of opening statement is Dr. James
375 Kohm. Dr. Kohm, would you please again restrict your
376 comments your four minutes--five minutes rather or
377 thereabouts.

|
378 ^TESTIMONY OF JAMES KOHM, DIRECTOR, ENFORCEMENT DIVISION,
379 FEDERAL TRADE COMMISSION; M. SCOT CASE, VICE PRESIDENT,
380 TERRACHOICE, AND EXECUTIVE DIRECTOR, ECOLOGO PROGRAM; DARA
381 O'ROURKE, ASSOCIATE PROFESSOR, UNIVERSITY OF CALIFORNIA,
382 BERKELEY, AND COFOUNDER, GOODGUIDE; SCOTT P. COOPER, VICE
383 PRESIDENT, GOVERNMENT RELATIONS, AMERICAN NATIONAL STANDARDS
384 INSTITUTE; AND URVASHI RANGAN, PH.D., DIRECTOR, TECHNICAL
385 POLICY, CONSUMERS UNIOIN

|
386 ^TESTIMONY OF JAMES KOHM

387 } Mr. {Kohm.} Thank you very much, Mr. Chairman. Mr.
388 Chairman, Ranking Member Radanovich, and members of the
389 committee, my name is James Kohm. I am the associate
390 director of the division of enforcement in the Federal Trade
391 Commission's Bureau of Consumer Protection.

392 Let me begin by noting that the views expressed in the
393 written testimony represent those of the commission, while
394 those in my oral testimony and answers to your questions
395 reflect only my own views and not necessarily those of the
396 commission or any particular commissioner.

397 I appreciate the opportunity today to discuss the FTC's
398 role in the environmental marketing arena. The commission,

399 as you know, does not set environmental policy or standards.
400 That, however, is not to say that the commission does not
401 have a significant role to play in the marketing of
402 environmentally friendly and energy efficient products.

403 Specifically the FTC policies the marketplace to help
404 ensure that consumers are not harmed by deceptive claims and
405 that honest marketers' advertising is not drown out by the
406 false claims of their competitors. To achieve this goal, the
407 commission employs a three-pronged strategy. First, we help
408 businesses comply with the law. To accomplish this goal, the
409 commission has developed its green guides that explain how
410 consumers understand commonly used environmental claims such
411 as recyclable and biodegradable and describe the basic
412 elements needed to substantiate those claims.

413 The commission is currently reviewing its green guides
414 to ensure that they remain responsive in today's marketplace.
415 This is especially important given the explosion of green
416 marketing in recent years and the prevalence of claims that
417 were not common when the commission last reviewed the guides
418 more than a decade ago.

419 To help develop a robust record upon which to base its
420 guidance, the commission solicited public comment and held a
421 series of public workshops on emerging green marketing
422 issues. While we received a lot of useful information in

423 response, unfortunately we obtained little evidence of how
424 consumers understand certain claims.

425 The commission therefore is in the process of developing
426 its own research to help it provide accurate, informed
427 advice. Second, it is critical to complement rules and
428 business guidance with a solid law enforcement presence. The
429 commission's recent cases in this area have challenged, for
430 example, home insulation sellers who vastly overstated the
431 insulating properties of their products, businesses that
432 falsely claim that their devices would dramatically improve
433 your car's gas mileage, and companies making false claims
434 about the green attributes of their products.

435 Of particular note, the commission today announced the
436 reinforcement actions against companies that advertise their
437 products as biodegradable. The green guides advised
438 marketers that consumers understand unqualified biodegradable
439 claims to mean that a product will break down into the
440 elements found in nature within a reasonably short time after
441 customary disposal. All three defendants could not
442 substantiate this fact.

443 Consumers typically throw products like those challenged
444 in these cases into the trash, which is in turn disposed of
445 in places like landfills that do not present conditions under
446 which products can biodegrade quickly even if they could do

447 so under ideal conditions.

448 Finally the FTC employs a wide array of innovative
449 consumer education materials to help consumers make informed
450 green purchasing decisions and avoid energy saving scams.
451 For example, our interactive website, Saving Starts at Home,
452 offers tips to help consumers conserve energy and save money
453 in almost every room of their homes.

454 In the virtual kitchen, for example, consumers can learn
455 about how to use our energy guide label to select energy
456 efficient appliances. In the attic, they can find tips on
457 choosing insulation, and in the trash room, they can
458 encounter explanations of terms like recyclable and
459 biodegradable and the meaning of common environmental
460 symbols.

461 Continued consumer interest in conserving energy and
462 protecting the environment will no doubt result in continued
463 environmental marketing. The FTC therefore will continue its
464 efforts to ensure the truthfulness and accuracy of these
465 green claims.

466 Thank you for providing the commission an opportunity
467 today to appear before the committee and describe our work.
468 I will be happy to answer any of our questions. Thank you.

469 [The prepared statement of Mr. Kohm follows:]

470 ***** INSERT 1 *****

|
471 Mr. {Rush.} Mr. Kohm. And now the chair recognizes Mr.
472 M. Scot Case for the purposes of opening statement. Mr.
473 Case, would you please restrict your comments to five minutes
474 or thereabouts?

|
475 ^TESTIMONY OF M. SCOT CASE

476 } Mr. {Case.} Chairman Rush and members of the
477 subcommittee, thank you for inviting me to share my
478 perspective. My name is Scot Case. I am a vice president of
479 TerraChoice and executive director of the EcoLogo Program, a
480 21-year-old environmental standards setting and certification
481 program.

482 For 16 years, I have been working in various capacities
483 to make it easier for consumers, retailers, and professional
484 purchasers to buy more environmentally preferable or green
485 products. Despite lengthy experience in the field, I am also
486 a recent victim of green consumer fraud.

487 In 2007, I bought a \$2,500 LG Electronics manufactured
488 refrigerator because it claimed to be Energy Star compliant.
489 After consumer reports published a September 2008 story, I
490 learned my refrigerator actually uses twice as much
491 electricity as advertised. It does not even come close to
492 meeting the Energy Star criteria.

493 LG Electronics' misuse of the Energy Star label
494 highlights well-known weaknesses in DOE's management of the
495 Energy Star program. More importantly, the fraudulent use of
496 the Energy Star label provides an example of a broader issue

497 with the ways in which green products sold in this country
498 are routinely marketed with partial truths, misleading and
499 irrelevant information and the occasional blatant lie. FTC
500 has been unable to adequately protect U.S. consumers from this
501 misinformation.

502 U.S. consumers are one of the most powerful forces on
503 the planet. Their spending power can drive environmental
504 innovation, create green jobs, and expand the green economy.
505 This market-based environmentalism, however, is dependent on
506 consumers having accurate, reliable, and relevant information
507 about the products they buy. U.S. consumers want to buy
508 greener products, but they are confused by competing
509 environmental claims, unsure when a claim is accurate, and
510 increasingly skeptical of all environmental claims.

511 The current system is not working. Green washing is
512 rampant. FTC is not equipped to find green, and United
513 States lacks a single unifying label to make buying green
514 easy.

515 LG Electronics' misuse of the Energy Star label is an
516 extreme example of green washing. Green washing ranges from
517 blatant misrepresentation to telling only partial truths
518 about a product's environmental impacts. According to the
519 sins of green washing, more than 98 percent of products
520 making environmental claims make at least one questionable

521 claim.

522 Manufacturers are making misleading claims because they
523 lack clear guidance about what claims are legitimate and what
524 kind of evidence they need to support their claims. As a
525 result, U.S. consumers are spending their money to buy
526 environmental benefits that might not exist.

527 FTC recognizes the problem. It has been working
528 diligently to improve its environmental marketing guide,
529 which was last revised in late 1998 or '99. I was able to
530 provide my insights into their process. I remain very
531 hopeful that FTC's revised guide combined with the necessary
532 funding to support enforcements will help reduce green
533 washing.

534 While incredibly beneficial, I think FTC's actions are
535 only part of the solution. FTC lacks the relevant
536 environmental expertise to address the most fundamental
537 question: how does one identify an environmentally preferable
538 product. This question is being addressed by a variety of
539 EPA departments with narrowly focused attention on single
540 environmental issues.

541 One part of EPA focuses on energy efficient products.
542 Another focuses on less hazardous products. Another looks at
543 water efficient products. EPA's silo-based approach is
544 understandable, given the agency's organization. With the

545 exception of the environmentally preferable purchasing
546 program that focuses narrowly on federal government
547 purchasing, no one at EPA is looking holistically at the
548 issue. As a result, it appears almost every manufacturer is
549 finding an excuse to claim their product is green.

550 Environmental labels like Energy Star, EcoLogo and Green
551 Seal are supposed to make it easier to identify more
552 environmentally preferable products, but there are now
553 hundreds of labels and claims being made.

554 According to the seven sins of green washing, 22 percent
555 of products making environmental claims include a
556 certification-like label that has no apparent meaning. As
557 the title of this hearing suggests, it is too easy being
558 green. Some enterprising companies sell a green
559 certification for a fee. They proudly advertise that they
560 can certify a green product or business without reviewing the
561 product, without visiting the business, and without requiring
562 any testing. All one has to do is pay as little as \$150,
563 credit cards accepted.

564 How is my mom in Charlotte, North Carolina supposed to
565 keep track of hundreds of environmental labels to know which
566 ones are meaningful? I have 16 years of experience with this
567 issue, and I regularly run into claims that I have never seen
568 before.

569 To address these challenges, I recommend the following
570 three items: direct FTC to require every environmental claim
571 to be supported by publicly available proof, provide research
572 money for EPA and the national academies to conduct the basic
573 research, and establish an EPA office to launch a voluntary,
574 non-regulatory environmental leadership label.

575 Launching a single label would provide benefits similar
576 to the way the USDA organic label united multiple organic
577 standards. Having a single label will make it significantly
578 easier for my mom to identify greener products, the same way
579 Energy Star made it easier to identify more energy efficient
580 products.

581 In conclusion, market-based environmentalism only works
582 if manufacturers and consumers have the tools to make
583 intelligent decisions. I encourage the subcommittee to
584 direct or endorse the developments of the necessary tools.
585 Thank you.

586 [The prepared statement of Mr. Case follows:]

587 ***** INSERT 2 *****

|
588 Mr. {Rush.} The chair thanks the gentleman. Now it is
589 my pleasure to recognize Dr. Dara O'Rourke for five minutes
590 for the purposes of opening statement.

|
591 ^TESTIMONY OF DARA O'ROURKE

592 } Mr. {O'Rourke.} Chairman Rush, members of the
593 committee, thank you very much for the opportunity to testify
594 this morning on green marketing claims and the very important
595 underlying issues of public access to accurate information on
596 the health and environmental impacts of consumers products.

597 My name is Dara O'Rourke. I am a professor at the
598 University of California, Berkeley, and also the cofounder of
599 a for-benefit company call Good Guide, which I am here today
600 representing.

601 My research focuses on global supply chains and better
602 ways to monitor and measure the impacts of those supply
603 chains to deliver information to consumers here in the U.S.
604 on the full environmental, social, and health impacts on the
605 products we consume. We have founded our research, and the
606 reason I am here today is that our current system of
607 information available to the public is incomplete at best and
608 actually confusing or deceptive at worst.

609 The public either has little information on critical
610 aspects of product choices such as ingredients within
611 household chemicals, fragrances, electronics, or they have
612 questionable information such as green claims about a product

613 being natural or ecofriendly as the chairman mentioned.

614 For markets to function efficiently, we need good
615 information and low transaction costs of accessing that
616 information. Today we have the exact opposite. We have very
617 poor information and very high costs for the public to access
618 that information. I want to make three very simple points
619 today. First is the public wants to know this information.
620 They are seeking this out. They want to know it.

621 The second is there is a huge gap between what the
622 public wants to know and what they can currently access.
623 That leads to, I think, a number of problems which other
624 people have spoken about, which I will talk about one case.
625 And the third is I think there is a current opportunity right
626 now for this committee and the FTC to make a significant step
627 forward in improving transparency and consumer markets and
628 improving market functioning through a couple simple steps.

629 From our research, we have found out first that
630 consumers do want to know this information. Very rapid
631 growth in concern among the public about what they are
632 putting in, on, and around their families and themselves.
633 This is driven partly by a stream on continuous scandals,
634 quite frankly. Lead in toys, melamine in baby formula,
635 salmonella in peanuts, almost one a week that we are seeing
636 now and the press showing up, leading consumers to ask where

637 are our products made, how are they made, under what
638 conditions, and what are the impacts for our health and the
639 environment.

640 A number of national surveys, which are in my written
641 testimony, discussed even in this economic climate, we are
642 seeing increased demand among the public to buy greener,
643 healthier products even among a very broad spectrum of
644 consumer population. Wal-Mart released a study of their
645 consumers showing 57 percent of Wal-Mart customers concerned
646 about the environment, wanting to make environmentally
647 friendly purchases. This is not a left/right,
648 Democrat/Republican, high-income/low-income issue. This is
649 across the board. Parents in the U.S. want to find safe,
650 healthy products.

651 At the same time as Mr. Case has mentions, there is a
652 very fast growth in production claims, which I think are
653 quite questionable and consumer marketing, which is quite
654 questionably going up against these demands for the public to
655 know.

656 The public wants to know if products are safe and
657 healthy. They want simple advice on choosing products to
658 bring into their homes. They also want to know detailed
659 information as their education level grows about ingredients
660 of concern, carbon, other issues that they are increasingly

661 concerned about.

662 In our research, we found health impacts to
663 Congresswoman Castor's point. Health is the number one issue
664 of concern among our users and our research. That relates to
665 potential cancer risks, other long-term health hazards, and
666 nutritional impacts of food products. They also are
667 concerned about environmental impacts again related primarily
668 to their health and their family's health. Toxics, releases,
669 hazardous waste, and even climate change often comes back for
670 consumers to a personal or the health of their grandchildren
671 and their family.

672 Despite these demands for this kind of information, more
673 and more consumers wanting this information, almost
674 impossible for consumers to get this information, even with
675 dozens of hours of research online and completely impossible
676 in stores as they look at products and look at the product
677 claims.

678 Let me just talk about one example which Chairman Rush
679 mentioned: the growth in green cleaners and the demand for
680 green cleaning products in the U.S. These are quite harsh
681 chemicals that we bring into our house every day that are on
682 our floor, that are on our plates, that are in the air around
683 our families. Consumers want to know whether these products
684 are safe and healthy. With the rapid growth in these

685 products, there has also been a rapid growth in claims around
686 these products, that they are safe for kids, pets, the
687 environment, they are nontoxic, they are natural, they are
688 biodegradable.

689 And at the same time, almost none of these companies
690 disclose the ingredients in these products. They make claims
691 without disclosing what is actually in them. So a claim like
692 plant-based or natural is meaningless unless we know the
693 actual ingredients, the actual chemicals derived from plants
694 or other natural sources or petroleum to know what is in them

695 Over and over, we see in our research personal care
696 products, again words like fragrance from essential oils
697 sound environmental, sounds natural, but we don't know the
698 actual chemicals which may include chemicals like phthalates.
699 They are endocrine receptors, chemicals of concern, but that
700 are masked underneath these product labels.

701 Toys also. We are seeing more and more claims about
702 green toys, healthy, safe toys, and again we don't know what
703 is in them. We don't know what the plastic is made out of.
704 We don't know if there is phthalates again or other
705 problematic chemicals.

706 There is an opportunity, I think, now from these gaps
707 for this commission and for the FTC, I think, to move forward
708 on disclosure. The first is that information should be

709 disclosed on key life cycle impacts. We need to know the key
710 material pieces of information about the product, not vague,
711 irrelevant claims but what actually matters.

712 The second is that companies should publicly disclose
713 the ingredients in their products before they make any
714 environmental or health claim about those ingredients. The
715 information should be scientifically precise and verifiable
716 and available on the manufacturer's website at a minimum, on
717 the packaging ideally. And this information over time should
718 be verified by third parties.

719 To sum up, I think, Chairman Rush and the committee,
720 there is a huge opportunity right now to remedy a failure in
721 the marketplace of information, to move and motivate
722 increased transparency among industry and ultimately support
723 innovation in our markets that will lead to development of
724 cleaner, safer, healthier products that are better for our
725 health and better for the environment of the United States.
726 Thank you.

727 [The prepared statement of Mr. O'Rourke follows:]

728 ***** INSERT 3 *****

|
729 Mr. {Rush.} The chair thanks the gentleman. The chair
730 now recognizes for five minutes Mr. Cooper. Mr. Cooper,
731 please limit your remarks to five minutes or thereabouts.

|
732 ^TESTIMONY OF SCOTT P. COOPER

733 } Mr. {Cooper.} Thank you, Mr. Chairman and members of
734 the subcommittee. My name is Scott Cooper, and I am vice
735 president of Government Relations and Policy for the American
736 National Standards Institute. More than 90 years, ANSI has
737 served as the coordinator of this nation's private-sector
738 lead and public-sector supported voluntary consensus
739 standards on conforming assessment system, comprised of
740 government agencies, many of them including EPA, Commerce,
741 DOE, DOD, USDA, CSPC, DHS, as well as companies, trade
742 associations, professional societies, and consumer groups
743 including Consumers Union I am happy to say.

744 ANSI represents the interests of more than 125,000
745 organizations and 3.5 million professionals worldwide.
746 Today's consumers are shopping with sustainability in mind,
747 placing ever-increasing value on the environmental and
748 societal aspects of part design, manufacture, distribution,
749 use of disposal. Where consumers see value in going green,
750 there is a competitive advantage to those companies who can
751 supply environmentally sustainable products.

752 Where an advantage can be perceived, there will be those
753 who will want to gain the system. We need to ensure the

754 credibility and consistency of environmental claims and so I
755 commend you, Mr. Chairman and members of the subcommittee,
756 for holding this hearing.

757 By collaborating across industry sectors and bringing in
758 environmental groups and others, we can build upon some of
759 the excellent standards and compliance programs that are
760 already in the marketplace, identify gaps where new solutions
761 will help, and start building consensus through a partnership
762 between the public and private sectors.

763 In April, ANSI took a first step in organizing the
764 workshop toward product standards for sustainability.
765 Convened at the request of one of our members, the U.S. EPA,
766 the workshop was attended by over 240 in-person participants
767 and over 100 via a live webinar. Representatives of multiple
768 U.S. government agencies, companies, retailers, trade
769 associations, and environmental groups were on hand to join
770 the discussion, and one of the, I think, the great take-aways
771 from that discussion was I think people are ready--all groups
772 of people involved in this are ready to take a step inward
773 and try to find ways of working together.

774 In the coming weeks, we expect to release the final
775 workshop report, which will detail the discussions,
776 recommendations that came out of the meeting. In the
777 meantime, I would like to share a few of those messages that

778 we heard from attendees.

779 First, consistent and globally accepted terminology tops
780 the list of needs, and I think that has also been described
781 by other witnesses. There is a consensus that terms like
782 attribute and certification are now interpreted differently
783 by consumers and standards of developers in government
784 industry. We need to bring consensus to that process.

785 Second, standards need to be clearly written so they can
786 be effectively used for reliable certification. The
787 marketplace needs claims can be substantiated so consumers
788 can reward good performance with their purchasing power. And
789 finally, participants saw a clear need for an overarching
790 body that will coordinate and guide the process going forward
791 with input from both the public and the private sectors.

792 As part of our mission, ANSI is proud to facilitate
793 problem solving through a number of public/private
794 partnerships. The workshop is just the latest example of
795 ANSI's many issue-driven coordination activities which
796 include partnerships with other agencies such as HHS on
797 health care information technology. We work with the CPSC
798 and this committee on toy safety, with EPA on water
799 conservation, with DOE and NYST on developing maybe the next
800 generation of nuclear civilian power plants. A number of
801 other issues that we think are sort of front and center to

802 the public policy formulators in this committee and other
803 places.

804 As the voice of the U.S. standards in conforming a
805 consistent system, ANSI is actively engaged in accrediting
806 programs that assess conformance to standards for a number of
807 different industries. There are many conforming assessment
808 activities applied in today's marketplace including
809 accreditation, certification, inspection, registration,
810 suppliers declaration and testing, all of which are important
811 in this holistic approach toward issues like green claims.

812 As an independent third-part process, ANSI accreditation
813 helps to promote practices while reducing the need for
814 government agencies to individually monitor conforming
815 assessment organizations.

816 ANSI is currently offering accreditation services in a
817 variety of conforming assessment areas that are directly
818 related to sustainable products and practices including
819 greenhouse gas emissions, sustainable forestry, environmental
820 management system, as well as in food and agriculture.

821 Third party accreditation demonstrates conformance,
822 verifies confidence and strengthen consumer confidence in
823 product, people and services. We feel strongly that it has
824 an important role to play in the success and credibility of
825 environmental labeling efforts.

826 Mr. Chairman and members of this subcommittee, I think
827 we all can agree that labels and communications to consumers
828 about the degree to which products, people, and services
829 address this inability need to be uniform, transparent, and
830 comprehensible. In order to make this vision a reality, we
831 need to have more efficient use of standards and conformance
832 resources, some of which are already in place, and we need to
833 identify gap that does exist.

834 We also need to bring to bear new human and financial
835 resources that can strengthen existing systems while
836 satisfying future needs, and I think that we see by the work
837 of the FTC that the idea that first do no harm. And I think
838 we also need to look at sort of what can we do to advance the
839 cause for good environmental claims. I think both need to be
840 done at the same time.

841 Government and industry need to work at a single purpose
842 if we are to define fair green claims marketing practices.
843 ANSI stands ready to coordinate the public/private
844 partnership and help in make the next step for a meaningful
845 solution with challenges associated with standards and
846 compliance programs that address environmental and societal
847 impacts. Thank you, and I welcome questions.

848 [The prepared statement of Mr. Cooper follows:]

849 ***** INSERT 4 *****

|
850 Mr. {Rush.} The chair thanks the gentleman. Now it is
851 my pleasure to welcome a witness who we announced was en
852 route. We have with us now and witness statement of Dr. Dara
853 O'Rourke who is an associate professor of the University of
854 California at Berkeley--no I am sorry. Let me start all over
855 again.

856 Dr. Urvashi Rangan is a director of the technical policy
857 at the Consumer Union. Dr. Rangan, it is certainly a
858 pleasure to have you here before us, and as I have done with
859 the other witnesses, I would ask that you stand and be sworn
860 in before you begin your testimony.

861 [Witness sworn]

862 Mr. {Rush.} Let the record reflect that Dr. Rangan is
863 responding affirmatively. We will recognize you now, all in
864 one fell swoop here. We will recognize you for five minutes
865 for the purposes of opening statement.

|
866 ^TESTIMONY OF URVASHI RANGAN

867 } Ms. {Rangan.} Thank you so much, Chairman Rush and
868 members of the subcommittee. It was wheels off, and we did
869 take off from New York, so I am really pleased to be here.
870 My name is Urvashi Rangan. I am director of technical policy
871 at Consumers Union, the nonprofit publisher of Consumer
872 Reports magazine. I have been with the company for just
873 about 10 years now.

874 I am an environmental health scientist, and I provide
875 technical support to our research and testing and helping
876 develop our advice and policy recommendations as well as
877 advocacy initiatives on a wide array of environmental and
878 public health issues.

879 I also have been directing our free green public service
880 website, greenerchoices.org, which disseminates a wide range
881 of reports on the green marketplace including an ecolabel's
882 database that gives consumers our evaluation and ratings of
883 more than 150 environmental claims including those found on
884 food, personal care products, and cleaners. We also advocate
885 for strong labeling standards across a wide array of
886 products.

887 There are broad and specific challenges in defining a

888 fair green marketing place, and we believe that the
889 government does have a very important role in guiding and
890 protecting this marketplace. Consumers are faced with a
891 dizzying array of labels--I think you have probably heard
892 that from every panelist--some of which are very specific
893 like no phthalates to those that are vague and not well
894 defined like natural and green.

895 This marketplace is incredibly confusing for consumers,
896 and it is often filled with a lot of noise that can be
897 misleading and at times deceptive. Often consumers are
898 presented with claims that sound better than they are, carbon
899 negative, which has minimal standards or none, natural,
900 nontoxic, while there are also meaningful, certified,
901 credible labels to choose from.

902 Of the certified label programs, there are several
903 viable business models including public, private, nonprofit
904 and for-profit that may or may not be of interest to a
905 particular consumer.

906 Some claims have comprehensive standards behind them
907 robust verification like certified labels, while many do not
908 like general claims that can voluntarily be made by a
909 manufacturer. But it is virtually difficult to impossible
910 for a consumer to make an accurate assessment of what type of
911 green claim they are being faced with in the marketplace.

912 The Federal Trade Commission's role in reducing
913 deceptive marketing practices is necessary and should be
914 broadened. At the same time, the baseline for good marketing
915 practices and minimum standards for common claims should be
916 established.

917 Consumers are currently faced with this huge learning
918 task that better guidance and regulation could reduce.
919 Requirements for transparency in standards product
920 information, as Professor O'Rourke mentioned about ingredient
921 lists and full disclosure, should be standard for all
922 products sold with green claims.

923 Government regulation and guidance again would be
924 helpful in maintaining these universal requirements for
925 credible green marketing practices.

926 We have been rating the meaning of green claims for
927 consumers for the last 10 years. We measure the value of
928 green claims over the conventional baseline. I have this in
929 more detail in my written testimony, but quickly we assess
930 how meaningful the labels are.

931 We look at standards. Are they credible? Have they
932 moved over time? Do they evolve with time? Verification,
933 consistency, and meaning from product to product,
934 transparency not only of the standards but of information
935 about the certifying organization. Stakeholder input, that

936 is the opportunity for all stakeholders to have input into
937 the standard setting process but also independence, which is
938 that once all the input has been sought, we believe the best
939 labels are those that are defined by an independent body and
940 judged upon by an independent body.

941 In evaluating these claims, we provide consumers with
942 comparative rating snapshots, and I also presented at the
943 American National Standards Institute a presentation and can
944 also submit that in for the record as well.

945 Based on our experience of rating and monitoring claims,
946 we have identified a few trends. Comprehension and
947 accessibility are challenges for all green claims. Whether
948 they are specific or broad, the maintenance and evolution of
949 standards must be addressed over time, and consistency across
950 different product categories can also be a challenge. The
951 ability to respond and incorporate emerging marketplace
952 issues, whether it is phthalates, spispenal A, whatever the
953 flavor of the day is, it is another hurdle for labor
954 standards and programs. All of these standards can be
955 addressed with the increasing complexity of the label.

956 A few recommendations from us. One we feel that the
957 government can play a role in eliminating or better defining
958 meaningless claims in the marketplace. So voluntary claims
959 like natural or carbon negative or nontoxic or even free

960 range, if you can believe it, don't have standardized
961 meaning. They don't mean much for consumers. We just prefer
962 to see those labels gone from the marketplace all together in
963 order to increase the opportunity for credible labels to
964 actually succeed.

965 We think that there should be baseline practices set for
966 all green marketing claims, that there should be a floor for
967 transparency, there should be full disclosure, and we think
968 that government labeling programs--so this is where the
969 government decides to take on a labeling program--really
970 ought to meet the highest standards out there for credibility
971 in order to give the highest level of assurance to consumers.

972 There are several government-based labeling programs
973 that could use a boost at this point, whether they are the
974 myriad of programs at EPA, which have varying transparency
975 and verification requirements. And also whether it is the
976 FTC overseeing some of those labeling programs that are going
977 on in the other agencies, things like no antibiotics,
978 natural, fragrance-free, these don't have properly defined
979 meaning, and yet they are overseen by our government
980 agencies. We think that the FTC has a broader role to play
981 in the oversight of those labeling programs as well. Thank
982 you.

983 [The prepared statement of Ms. Rangan follows:]

984 ***** INSERT 5 *****

|
985 Mr. {Rush.} The chair thanks Dr. Rangan. The chair
986 thanks all the witnesses now. The chair recognizes himself
987 for five minutes for the purposes of asking questions of
988 today's witnesses.

989 In today's testimony, we heard about the growing number
990 of ``green'' claims made about household products. Dr. Kohm
991 told us about a ``virtual tsunami'' of these claims, and Dr.
992 Rangan used the term ``green noise'' to talk about the
993 conflicting, confusing and overabundant information in the
994 marketplace.

995 And I want to start with a question for the entire panel
996 regarding the types of information that green labels should
997 provide to consumers. There appear to be so many
998 expectations for what these labels cover. Environmental
999 impacts of the packaging or the products itself, the possible
1000 health impacts of the products on individuals, among others.

1001 The question for each one of the panelists is this.
1002 What is reasonable for consumers to expect from these labels?
1003 And what is beyond the scope of green labeling? More simply,
1004 what should it mean for a product to be green? I would like
1005 to begin with Dr. Kohm. What is reasonable for consumers to
1006 expect for these labels to cover?

1007 Mr. {Kohm.} Chairman, we look at this in a way that

1008 would turn your question around. We look first at what a
1009 reasonable consumer expects, and then we require marketers to
1010 meet that expectation. So the question for us is what does
1011 the label convey to a reasonable consumer? And then the
1012 marketer has to meet whatever that reasonable interpretation
1013 is.

1014 Obviously that is a problem, as you indicated, given the
1015 breadth of these kinds of claims and the fact that they cut
1016 across virtually every market sector. It is very challenging
1017 to have one label that meets all those expectations.

1018 Mr. {Case.} Thank you, Mr. Chairman. I think the
1019 challenge here is that it is almost impossible to determine
1020 what a reasonable expectation is. I think what we can do,
1021 however, is require that any manufacturer making an
1022 environmental claim, publicly provides proof of the accuracy
1023 of that claim and that any label on a product that suggests
1024 green in some sort of broader sense clearly define what tests
1025 were required to meet the eligibility requirements for that
1026 label.

1027 So basically it boils down to greater transparency so
1028 that consumers have the information they need to evaluate
1029 products.

1030 Mr. {O'Rourke.} I agree completely with Mr. Case. I
1031 think the first question is what is the key material impact

1032 of the product, what matters most. And we use a tool called
1033 life cycle assessment to determine what really matters in
1034 evaluating a product's environmental or social health impact.
1035 And the second is is there full transparency on those impact
1036 categories.

1037 So the ideal product label would tell you information on
1038 what actually matters in that product. So we see products
1039 including in the foyer to this committee hearing that are
1040 claiming they are environmentally sensitive products, but
1041 they are not disclosing what really matters in this product
1042 to the environment, to whether those chemicals that are
1043 biocumulative or toxic to human health or the environment.
1044 That is the information for each product.

1045 If we are looking at electronics, we want to know does
1046 the company have a good take-back program to reduce the end-
1047 of-life impact of the product. If it is apparel, it is a
1048 different set of issues. Right now, our big problem is that
1049 companies can claim anything, whether it is irrelevant to the
1050 main impact category or not, and not disclose the underlying
1051 information, the ingredients or the performance, which makes
1052 up the real impact to the environment and human health.

1053 Mr. {Cooper.} I think it is a very question. I think
1054 the FTC already has some tools available to it. One is
1055 called the Pfizer doctrine, which says that if you make a

1056 claim, you had better be able to substantiate it. There is
1057 also what is called material information, that consumers have
1058 the right to certain material information for them to be able
1059 to make an informed choice. And that actually was developed
1060 with a series of letters between then Chairman Dingell and
1061 the FTC back in the early '80s.

1062 I think what you have, a lot of members here talked
1063 about, is sort of the baseline that you need, that you should
1064 not be able to go below that if you are going to be able to
1065 make a claim. Now, how you define that is something that I
1066 think we could all work on, but I think that is not a bad
1067 starting point.

1068 I think you also have to recognize that the FTC really
1069 is sort of in the position of saying first do no harm, making
1070 sure that whatever claim you do make, that is it credible,
1071 that it is accurate.

1072 I think also though there is a need to look at proactive
1073 efforts. In other words, we want to get the marketplace to
1074 expand beyond just the baseline. We want to make this a
1075 competitive advantage, a true competitive advantage where
1076 people are constantly looking for new ways of improving their
1077 score on environmental issues. That should be a positive
1078 incentive that we want to create.

1079 So I think there is a lot of balances that have to be in

1080 the mix here, but I think they all can be of it if we have
1081 sort of a consensus process that we try to develop.

1082 Ms. {Rangan.} Thank you. I agree with most of what
1083 this panel has said and would just add that consumers are
1084 often faced with a premium when they are choosing among these
1085 labels. And so it takes more than just being truthful. It
1086 actually has to have some meaning.

1087 And so when you see the no CFC label, for example, on an
1088 aerosol typical personal care product or cleaning aerosol
1089 product, that is the law. You can't have CFCs, and yet
1090 manufacturers use that claim without any other disclosure
1091 that, in fact, that is what all products in that category
1092 have to meet.

1093 So to disclaim a lack of value over the baseline or
1094 products, like products, would be very important in terms of
1095 being truthful and not deceptive to consumers. And then in
1096 terms of just to capture something that was just said about
1097 marketplace capture, these premium labels shouldn't be able
1098 to be met by most of the marketplace. They should be
1099 reserved for a top tier, and that in and of itself should
1100 drive innovation within a product sector to meet those
1101 standards.

1102 In Japan, there is a program called the Roadrunner
1103 Standard, which in the energy efficiency standards, I can't

1104 remember the number, but it is a certain small percentage of
1105 the market that can meet it. That is expected to be the
1106 bottom a few years later, and again you slice it off at 10
1107 percent who can meet the high premium label standards.

1108 So creating incentives and innovation like that in the
1109 green marketplace will also drive the industry to create the
1110 innovation to meet higher standards.

1111 Mr. {Rush.} The chair's time is concluded. The chair
1112 now recognizes the ranking member Mr. Radanovich for five
1113 minutes.

1114 Mr. {Radanovich.} Thank you, Mr. Chairman, and welcome.
1115 I have enjoyed the testimony of all the members. Glad you
1116 made it, Dr. Rangan, and I would like to start off with a
1117 couple questions, one for Mr. Case. Appreciated your
1118 testimony. In trying to define what is green and what is
1119 not, do you believe a regulated product with a chemical in it
1120 could be defined green?

1121 Mr. {Case.} Most products have chemicals in them, so
1122 absolutely yes.

1123 Mr. {Radanovich.} Okay.

1124 Mr. {Case.} So there are, in fact, greener chemical-
1125 based products.

1126 Mr. {Radanovich.} Okay, question for the whole panel
1127 then as we are trying to define what green is. If you were

1128 to define it, would you limit its definition to
1129 biodegradability and life cycle carbon footprint alone, or
1130 would you add other things to that definition? And let us
1131 just go down the line and say you got those two things,
1132 biodegradability and life cycle footprint. Would you add--
1133 what would you add to that if that wasn't sufficient to you?

1134 Mr. {Kohm.} Well, what the commission has said,
1135 Congressman, is that general environmental claims like green
1136 or ecofriendly aren't very useful and can be deceptive.
1137 Because they mean--

1138 Mr. {Radanovich.} Well, what would you add to those--if
1139 you had two things, what would you add?

1140 Mr. {Kohm.} What we would do is look at how consumers
1141 interpret a claim in context and not add--

1142 Mr. {Radanovich.} Could you just--because I got to go
1143 down the line, and I don't mean to be rude. Don't take it
1144 the wrong way, but if you just had those two things,
1145 biodegradability and life cycle carbon footprint is the
1146 definition of what you would label green, if you think that
1147 is not sufficient, what short responses would you add to it?

1148 Mr. {Kohm.} I think you would have to add many, many
1149 claims depending on how a consumer would interpret something
1150 in context.

1151 Mr. {Radanovich.} Okay, thank you. Mr. Case.

1152 Mr. {Case.} So obviously you would need to take a look
1153 at all of the environmental impacts throughout the products
1154 entire life cycle, from the raw materials that are used all
1155 the way through. So you didn't mention, for example, energy
1156 efficiency.

1157 Mr. {Radanovich.} Okay.

1158 Mr. {Case.} You didn't mention water efficiency. You
1159 didn't mention low toxicity. You didn't mention how one
1160 defines biodegradability. I see the smile. I will stop
1161 there, but we could go on all afternoon listing the various
1162 environmental attributes depending on the product category,
1163 as Dr. O'Rourke mentioned.

1164 Mr. {Radanovich.} Okay.

1165 Mr. {Case.} The standards would be different for
1166 computer products than cleaning.

1167 Mr. {Radanovich.} I am working down the list here. Dr.
1168 O'Rourke?

1169 Mr. {O'Rourke.} Right, I also agree that we should be
1170 using life cycle approaches to understand the real impact
1171 across from raw material extraction to manufacturing to use
1172 to disposal. For consumer products, the things I would add
1173 to your short list are persistence, is it biocumulative, and
1174 is it toxic to human health or the environment? I would add
1175 those on top of yours.

1176 Mr. {Radanovich.} Okay, Dr. Cooper. Mr. Cooper, excuse
1177 me.

1178 Mr. {Cooper.} Don't have that other degree. When I
1179 worked for this subcommittee back in the early '90s, the
1180 jurisdiction was not only consumer affairs, it was also rec
1181 run and superfund. And so the issues--

1182 Mr. {Radanovich.} I am sorry. I need to get you on the
1183 question though. Because if you had biodegradability and
1184 life cycle carbon footprint defining what was green, what
1185 else--

1186 Mr. {Cooper.} The issues that would be front and center
1187 of this subcommittee then were recyclability, post-consumer
1188 waste, a lot of issues around the whole recycling mandate.
1189 Those are the ones I would add to it at this point.

1190 Mr. {Radanovich.} Thank you, Mr. Cooper. And Dr.
1191 Rangan.

1192 Ms. {Rangan.} I agree with again most of what was said.
1193 I would stress the health aspect of it, whether it is
1194 persistence or toxicity, and I would also add social
1195 responsibility. Fair trade is the common term that people
1196 talk about, and there are plenty of Venn diagrams about
1197 sustainability. But you would be amazed and almost shocked
1198 and awed as to the multiple attributes that you could
1199 consider in any kind of green marketing claim.

1200 Mr. {Radanovich.} All right, question for everybody
1201 too. Should government dictate the process of a
1202 manufacturing of a product or the makeup of a product in
1203 order to be able to get some kind of a green designation?

1204 Mr. {Kohm.} That would certainly not be within the
1205 FTC's purview.

1206 Mr. {Radanovich.} Okay.

1207 Mr. {Case.} And absolutely not. These are not
1208 prescriptive. What we are doing instead is identifying what
1209 environmental leadership looks like and some people will make
1210 an awful lot of money meeting those high standards.

1211 Mr. {Radanovich.} Okay.

1212 Mr. {O'Rourke.} I think the key here is transparency,
1213 that Congress requires public disclosure of what is actually
1214 in these products. And just through making that public
1215 alone, not mandating what is in it, how it is made, just
1216 mandating the disclosure and the transparency, will create
1217 incentives for leading firms to innovate and other firms to
1218 change their products.

1219 Mr. {Cooper.} We like the public/private model. The
1220 Underwriters Laboratory is a member of ANSI. The UL label is
1221 seen everywhere. In fact, it is in the energy bill. So I
1222 think that model could work in this area as well.

1223 Ms. {Rangan.} My answer is little different. I think

1224 where there are common terms that baseline definitions should
1225 be provided. If we are going to continue to allow natural to
1226 be used and widely, we ought to have some baselines as to
1227 what that ought to mean. And in food, there is a plethora of
1228 examples where we have really common even discrete terms like
1229 no antibiotics, and yet that doesn't have to mean the same
1230 thing from product to product. So, yes, we think there is a
1231 role for the government to play in providing some baseline
1232 definitions to some of the claims out there.

1233 Mr. {Radanovich.} All right, thank you. Thank you, Mr.
1234 Chairman.

1235 Mr. {Rush.} The chair now recognizes the gentleman from
1236 Maryland, Mr. Sarbanes.

1237 Mr. {Sarbanes.} Thank you, Mr. Chairman. I was
1238 curious. As you look at the challenge of this kind of
1239 labeling, the sort of transparency in labeling regime that we
1240 are trying to bring to bear with respect to green products,
1241 is there any analogous labeling challenge you would point to
1242 over and above some of the others to kind of be a frame of
1243 reference for this? Or is this kind of--does this have some
1244 unique dimensions to it that we ought to be aware of? So I
1245 would just ask anybody to jump into that.

1246 Ms. {Rangan.} Even within the government, there is a
1247 number of labeling programs at sort of varying levels of

1248 maturity, and even--you have Energy Star, which is one of the
1249 oldest ones. You have organic, which is now pretty mature,
1250 and there is a lot of learning lessons to be had from both
1251 the way the model is set up in terms of how the labeling
1252 programs are run, how they are overseen, and how the
1253 standards evolve or don't evolve over time. And so there are
1254 a lot of lessons to be learned.

1255 And there is a lot of variation in quality among even
1256 the government-based labeling programs.

1257 Mr. {Sarbanes.} Anybody else want to--

1258 Mr. {Case.} Sure, I will say that there are a number of
1259 excellent standard-setting protocols that are out there.
1260 ANSI runs a wonderful program. There are ISO programs that
1261 define how environmental leadership should be established.
1262 So those are very, very useful. And what I really like is the
1263 USDA organic model because what they did is they took a
1264 confusing space with dozens of different standards for
1265 organic and grouped them under one label. And that is what
1266 allowed the organic farmers in this country to really make a
1267 lot of money because that provided clarity in a single brand
1268 for consumers to look for.

1269 Mr. {Sarbanes.} Well, it occurred to me the organic
1270 example would be a good one to consult, or the organic
1271 experience with that kind of labeling would be a good one to

1272 consult. But I wanted to get your thoughts on that.

1273 Mr. {O'Rourke.} I might add a quite different
1274 experience, which is in financial disclosure and the role of
1275 the Securities and Exchange Commission in requiring
1276 disclosure of key material information from companies. I
1277 think that we are moving towards, I think, a system that
1278 would require disclosure of non-financial metrics from
1279 companies in standard formats through XPRL or other formats
1280 that would allow people, either analysts or consumers, to
1281 evaluate products and the companies more accurately.

1282 So just as we had this problem with toxic assets over
1283 the last few years, we are realizing we are having problems
1284 with toxic products where people would not buy them if they
1285 knew what was really in them.

1286 Mr. {Sarbanes.} Well, let me ask this question. I
1287 think, Dr. O'Rourke, you are the one that founded Good Guide.
1288 Is that right?

1289 Mr. {O'Rourke.} Correct.

1290 Mr. {Sarbanes.} Yeah, which is an online resource for
1291 people to kind of check on the claims.

1292 Mr. {O'Rourke.} That is right.

1293 Mr. {Sarbanes.} And what I was curious about is how you
1294 see the service you provide relating to the level of kind of
1295 government regulation that needs to be in this area. In

1296 other words, do you view what you are doing largely now as
1297 just being a compensator for the absence of some good other
1298 oversight and transparency mechanisms? Or do you see the
1299 potential whatever we achieve in that regard to be a kind of
1300 partner in the effort and achieve a higher level of
1301 accountability across the board?

1302 Mr. {O'Rourke.} Yeah, thank you for that question. We
1303 basically begun Good Guide out of this huge gap in the
1304 information available to consumers, and it really was an
1305 attempt just to fill this hole and get people information
1306 that they were desiring about health, environmental, and
1307 social impacts of products.

1308 We are now working closely with the state of California,
1309 and hopefully we would be very excited about working with the
1310 federal government about getting better information out,
1311 required disclosure of this information that would allow the
1312 public to get this information in a standard format.

1313 I think over the long term, there is a huge and vital
1314 role for government in facilitating better communication of
1315 information out to the public. And this small project, Good
1316 Guide, is really an attempt to learn what information does
1317 the public want, and in what form is it most effective in
1318 helping them make better decisions in the marketplace.

1319 Mr. {Sarbanes.} This is an off-the-wall question, but

1320 is there any--have there been any ideas about technology that
1321 would allow consumers as they move through a store, for
1322 example, on their phone or some other device to scan right
1323 there and go straight to a consumer guide? Did you already
1324 talk about that?

1325 Mr. {O'Rourke.} No, but we have actually built that
1326 software at Good Guide, and we have the ability to scan
1327 barcodes. We are looking at RFID tagging of products. And
1328 over time, what we want to do is allow people in stores to
1329 get the best available information in the world on products
1330 and companies so that they can make better decisions for
1331 themselves and not have to depend on marketing or package
1332 claims. But they can get scientific information on these
1333 products.

1334 Mr. {Sarbanes.} Okay, thank you.

1335 Mr. {Case.} And Good Guide is actually not the only
1336 company that is doing it. There are dozens of companies that
1337 have approached this saying hey, we got the technology. We
1338 just need the information. And what is lacking is, you know,
1339 how do you define this is a green product? Because we have
1340 the technology. It is the definition we need.

1341 Mr. {Sarbanes.} Thank you. I yield my time back.

1342 Mr. {Rush.} The chair now recognizes the gentleman from
1343 Michigan, Mr. Stupak, for five minutes for the purposes of

1344 questioning the witnesses.

1345 Mr. {Stupak.} Thank you, Mr. Chairman. Sorry I
1346 couldn't be here for all the hearing. I have been in and out
1347 with other hearings and other matters. Mr. Cooper, let me
1348 ask this question because I want to know more about these
1349 standards because I support the scientific rigor and the
1350 transparent process that the American National Standards
1351 Institute requires of any organization seeking accreditation
1352 as an ANSI standards development organization.

1353 My understanding is that there are three primary green
1354 building certification systems in the marketplace. Green
1355 Globes, Lead, and the National Association of Homebuilders
1356 National Green Building Standard. Can you discuss for us
1357 whether the organizations that developed these standards are
1358 ANSI standards development organizations, and whether they
1359 use your approved procedures to develop these standards?
1360 Because what I hear everybody saying, they are all talking
1361 about different standards, but who is regulating the
1362 standards in a way?

1363 Mr. {Cooper.} There are multiple paths, which makes it
1364 a bit more complicated, but every one of those codes you
1365 mentioned does fall under the ANSI rubric. Some of those
1366 will have their own approaches, say like the ICC in the
1367 National Food Council.

1368 Mr. {Stupak.} Right.

1369 Mr. {Cooper.} Works very closely with local units of
1370 government. So it is not quite the consensus process that we
1371 have for most of our standards because it is only with the
1372 local units of government that they interact with. Usually
1373 we insist that it is a much more ecumenical group, including
1374 consumer groups or government agencies as well at the federal
1375 or local level.

1376 So each one of those can approach differently, but every
1377 one of them has to meet basic ANSI standards of transparency,
1378 of involving the interested parties. They have to be able to
1379 respond to questions of inclusion. And if they want to
1380 become an ANS standard, then there is a whole other level of
1381 involvement with ANSI. If they then want to become an
1382 international standard, there is a whole other level with
1383 ISO.

1384 Mr. {Stupak.} Right.

1385 Mr. {Cooper.} So they serve bolts and suspenders in
1386 each one of these, and against the standard, you also have
1387 all the obligations with the conformants, you know, the
1388 testing, inspection, the measuring, measurement, which is not
1389 only the certification, which we don't do, but say like a UL
1390 would do. But then we would accredit the UL so that we are
1391 looking at the testers. You know so there are levels of

1392 these things. And partly because we are not a government
1393 agency, we have to overcompensate for these things.

1394 Our job in most any other country would be done by
1395 government agency.

1396 Mr. {Stupak.} Does anyone care to comment on that any
1397 further? Let me ask this one then, Mr. Kohm. The FTC
1398 announcing today three complaints alleging false and
1399 misleading claims regarding environmental claims. Despite
1400 today's discussion on a vast array of misleading green claims
1401 on products, there is a very small number of enforcement
1402 actions. So describe the FTC's approach to enforcement in
1403 this area and under what circumstances do you turn to
1404 enforcement of some standards?

1405 Mr. {Kohm.} Well, we turn to enforcement when it is
1406 necessary, and we use enforcement not only to get people
1407 under order and to have an effect on the people who are
1408 violating the law, but also to lay out a marker for those
1409 people who might otherwise violate the law. And the hope is
1410 that in bringing cases in certain areas, that we will have an
1411 effect well beyond the cases that we bring.

1412 Mr. {Stupak.} Do you work with state governments to do
1413 enforcement at the more local level?

1414 Mr. {Kohm.} Well, we bring national enforcement action.

1415 Mr. {Stupak.} Right.

1416 Mr. {Kohm.} We regularly work with state partners and
1417 with other federal agencies. For example, in at least one of
1418 the cases, the EPA is helping with expert testimony.

1419 Mr. {Stupak.} What is your tipping point? When do you
1420 actually bring enforcement standards? I mean do you work
1421 with these industries and companies? What is the point where
1422 you turn to enforcement?

1423 Mr. {Kohm.} Well, it is different in each circumstance.
1424 We regularly work with companies. We work with various
1425 associations to try and get the word out. When that isn't
1426 working or when people step way over the line, then
1427 enforcement is necessary.

1428 There is kind of two folks we deal with: the folks that
1429 step over the line and the people who live over the line. And
1430 for the people who are committing fraud and living over the
1431 line, like the cases I mentioned for car devices, one of them
1432 is called a nano detonator that runs on nuclear fusion that
1433 would be about 100 million degrees. That, if it actually
1434 worked, those people need to be sued, and the commission has
1435 been quite active bringing eight cases over the last year,
1436 and I would expect more in the future.

1437 Mr. {Stupak.} Okay, does anyone else care to comment on
1438 that, what you see FTC's roles and enforcement while at the
1439 same time trying to set standards? Mr. Case?

1440 Mr. {Case.} My challenge is that when the enforcement
1441 action occurs after consumers have been defrauded, that, you
1442 know, I am stuck at this point with a \$2,500 refrigerator
1443 that doesn't even come close to meeting the Energy Star
1444 standard. So, you know, allowing companies to make claims
1445 without requiring them to provide proof so that, as a
1446 consumer, I know the claim is accurate before the purchase is
1447 sinful.

1448 Mr. {Stupak.} Okay, but how do you do it until they
1449 advertise we have some victims, right?

1450 Mr. {Case.} Well, one of the things that you can do is
1451 actually require that if you are going to be making an
1452 environmental claim that you have to post information
1453 providing evidence that the claim is accurate, so that as a
1454 consumer, I could stand there in the store with my phone and
1455 go online and see yes, this claim is accurate.

1456 Mr. {Stupak.} So until we get Mr. Sarbanes' idea on
1457 their cell phone, we have to have something else, a posting
1458 prior to the time of sale. That is what you are saying?

1459 Ms. {Rangan.} And the example that Mr. Case used about
1460 the refrigerator is actually Consumer Reports' test of Energy
1461 Star and the energy standards that showed that the standards
1462 don't capture what the problems are out there. If you can
1463 turn off the icemaker and you can turn off all the bells and

1464 whistles of the refrigerator and test it for energy
1465 consumption. But when you turn them all on, it is doubled,
1466 that is not good enough. And it just highlights again how
1467 standards and in this case, a government labeling program
1468 standard needs to evolve over time.

1469 And where we would like to see more FTC involvement in
1470 making sure that those claims are truthful and meaningful
1471 over time for consumers.

1472 Mr. {Stupak.} Thank you, Mr. Chairman.

1473 Mr. {Rush.} The chair thanks the gentleman. The chair
1474 would like to inform the witnesses and the members of the
1475 subcommittee that he intends to allow for a second round of
1476 questioning. And so if the witnesses could please let us use
1477 a little bit more of your time for a second round of
1478 questions. And we will have a second round of questioning.
1479 The chair recognizes himself for two minutes for the purposes
1480 of asking additional questions.

1481 Mr. Kohm and all the witnesses, this has been some very
1482 interesting testimony, some quite provocative I might add.
1483 One of the questions that I wanted to ask Mr. Kohm, you
1484 talked about your enforcement actions, but--and you did not
1485 reference at all the Green Guide when you said that the--or
1486 allege that the companies stepped over the line.

1487 Can you--let us get back to the place of the Green

1488 Guides. I think this is very important. What place should
1489 the Green Guides place--or have rather in the future
1490 enforcement cases? And should that be a beginning, or how
1491 should that Green Guide inform future enforcement actions?

1492 Mr. {Kohm.} Well, Chairman, I think the Green Guides
1493 are incredibly important. That one of the things the Green
1494 Guides are intended to do is demarcate that line so that the
1495 people who are trying to stay on the right side more easily
1496 can do so. That there are some people that step over it
1497 because they don't know where the line is, and we can make
1498 that line clearer. There are some people who step over
1499 because the whole marketplace starts to go over the line, and
1500 that is where we need to take enforcement action to make
1501 clear where that line. And that is one of the things we did
1502 today.

1503 Mr. {Rush.} Do any of the other witnesses want to
1504 respond about the importance or a lack thereof of the Green
1505 Guides?

1506 Mr. {Case.} Yeah, I will support Mr. Kohm. I think
1507 that absolutely when the original Green Guides came out in
1508 '92, we saw lots of additional clarity in the marketplace
1509 about what was acceptable and what wasn't, again with the
1510 revisions in '98 and '99. And what we are hopeful is that
1511 the next version of the guides actually provides a much more

1512 comprehensive assessments and really kind of requires people
1513 to provide proof, requires people to provide some clarity on
1514 these issues, and makes sure that as consumers, we know
1515 whether the information is accurate, relevant, and
1516 verifiable.

1517 Ms. {Rangan.} We also support the green marketing
1518 guides by the FTC, and we also look forward to the update
1519 because they could be expanded to be much more broad in terms
1520 of the scope of claims that they are covering and much more
1521 detailed in terms of what is acceptable and what isn't.

1522 Mr. {Rush.} Thank you. The chair now recognizes the
1523 ranking member, and the chair wants to clarify, before the
1524 ranking member begins his questioning, it has been requested
1525 by the ranking member and by the Republican side that we have
1526 five minutes of additional questions. The chair said it will
1527 be two minutes. So the chair will recognize the ranking
1528 member for five minutes, recognize Mr. Stupak for an
1529 additional five minutes. And then the chair will come back
1530 for his other three minutes. So with that, the chair
1531 recognizes the ranking member for five minutes for additional
1532 questions.

1533 Mr. {Radanovich.} Thank you, Mr. Chairman. Appreciate
1534 the openness to try to answer as many questions as we can and
1535 get a benefit from this panel of speakers.

1536 Mr. O'Rourke, you had mentioned something in your
1537 testimony that consumers have little information on critical
1538 aspects of a product. And it reminds me of getting up in the
1539 middle of the night and needing an aspirin or something and
1540 trying to go through what is on the back of an aspirin label
1541 and you search for the dosage because you want to take the
1542 correct amount and my gosh, it is not on the first page. You
1543 have to peel back to get to the second page, and there is so
1544 much garbage on that label that really all that you are
1545 looking for is the dosage.

1546 And I guess my question is how much information can you
1547 expect to give a consumer on a label, and how much of this is
1548 subject to buyer beware?

1549 Mr. {O'Rourke.} Yes, so we are seeing, I think, more
1550 and more consumers are looking for some key pieces of
1551 information when they look at products. So in your case, it
1552 was the dosage or the directions on how man you should take.
1553 When I look at a green cleaner, I want to know are there
1554 specific chemicals of concern that I don't want in my house,
1555 in the air, on the dishes, wherever. Personal care products
1556 that I don't want certain chemicals. And what I think the
1557 first step is deciding what are the key pieces of information
1558 that need to go on that label that are most pertinent to
1559 protecting people's health and the environment.

1560 If there is too much information, what we are proposing
1561 that it needs to be disclosed on the manufacturer's website.
1562 So we are seeing right now in the house of cleaners area that
1563 there is not a federal mandate to disclose all the
1564 ingredients in your floor cleaner, your toilet bowl cleaner.
1565 Some of the harshest chemicals in your house, they are not
1566 disclosed on the package.

1567 What we would like is that they would be disclosed
1568 somewhere, either on the manufacturer's website or ultimately
1569 on the package. So I think that for things like that, you
1570 are putting a harsh chemical in your house. I don't think
1571 you can put it on the consumer to just be buyer beware. I
1572 think that they need certain pieces of information to know
1573 how to protect themselves from chemicals.

1574 Mr. {Radanovich.} Could you clarify to me? It is my
1575 understanding that the Federal Hazardous Substance Act
1576 requires all that to be on there?

1577 Mr. {O'Rourke.} No, so on household chemicals products
1578 in the U.S., there is a requirement of disclosure of certain
1579 active ingredients over certain percentages. So if you go
1580 back home tonight and look in your bathroom or underneath
1581 your sink, most of the harshest chemicals that you will find
1582 in your house will have either one ingredient listed or zero
1583 ingredients listed. Whereas if you look at your personal

1584 care products, your liquid hand soap, the requirement is all
1585 ingredients in order of concentration. So your liquid hand
1586 soap will have 30 ingredients listed, and your tub and tile
1587 cleaner will have zero, one, or maybe two at the most.

1588 And what they will do is say either call it inactive
1589 ingredients or they will dilute them enough that they don't
1590 have to disclose. So you will literally have no ingredients
1591 listed, and sometimes it will have phrases like fragrance, as
1592 I mentioned, which just masks ingredients.

1593 Mr. {Radanovich.} Right, okay.

1594 Mr. {O'Rourke.} So unfortunately we don't have accurate
1595 disclosure on chemicals in our houses.

1596 Mr. {Radanovich.} All right, thank you very much. Mr.
1597 Case, I want to ask a second question. You mentioned that
1598 the labeling program at the USDA dealing with organic foods,
1599 and as you know, the USDA website states that it is not a
1600 health or environmental program, but it is really a marketing
1601 program. And yet many people think that buying products with
1602 organic labels on them are somehow getting a health or
1603 environmental benefit.

1604 If transparency about the products and their
1605 manufacturer are what you seek, why do you hold up a program
1606 that relies on implied but not guaranteed benefits as your
1607 model?

1608 Mr. {Case.} What the USDA organic program does is
1609 actually bring clarity to the market. So for those consumers
1610 that are concerned with the pesticides that are used on
1611 fields with the farming technologies and techniques, worries
1612 about pesticides on food, what the USDA organic label does is
1613 provide a consistent platform for consumers to make educated
1614 comparisons between an organic product and a nonorganic
1615 product.

1616 So what it does is provide a common definition, a litmus
1617 test, if you will.

1618 Mr. {Radanovich.} All right, thank you very much. Dr.
1619 Rangan, you suggested other factors such as fair trade should
1620 be included in green labeling. But many of the environmental
1621 practices in fair trade countries is not up to U.S.
1622 standards. Is that useful to the consumer?

1623 Ms. {Rangan.} The International Labor Organization,
1624 ILO, is a good start. That is where Trans Fair bases their
1625 fair trade labeling program and their standards from, and it
1626 is a good international labeling start for fair practices.

1627 Do you mind if I just expand on your organic question
1628 for one minute?

1629 Mr. {Radanovich.} If you like.

1630 Ms. {Rangan.} Which is that there are cases where
1631 consumers rightfully infer that organic may offer them a

1632 healthier alternative, and I will just give you an example.
1633 When mad cow came out, organic was one of the few programs
1634 that actually required no animal byproducts in the feed. So
1635 is it a healthier alternative? Well, when it comes to mad
1636 cow, yes, it was an alternative if you still wanted to eat
1637 beef that minimized your potential exposure.

1638 And then that is the inadvertent side of health and
1639 benefit from organic, but on the advertent side, all the
1640 materials used in organic production have to be reviewed by
1641 the National Organic Standards Boards. And health and safety
1642 are components that have to be addressed in that review
1643 process.

1644 It happens to be based in agricultural marketing
1645 service, and after 10 years of watchdogging that program, we
1646 hear that mantra, we are not anything else but marketing.
1647 But I think that has more to do with where it lives than what
1648 it actually is.

1649 Mr. {Radanovich.} All right. Thank you very much, and
1650 I yield back, Mr. Chairman.

1651 Mr. {Rush.} The chair thanks the gentleman. The chair
1652 now recognizes Mr. Stupak for five minutes.

1653 Mr. {Stupak.} Thank you, Mr. Chairman. I think what I
1654 have seen from this hearing so far is that what constitutes
1655 green can be sort of a tricky business. But as we see a

1656 global supply chain get farther and farther removed from the
1657 everyday consumer, we are using more and more fossil fuels.
1658 So let me give you an example because I think we mentioned
1659 cleaners and that today. We have green cleaners or cleaners
1660 made basically from the same chemicals as always, but they
1661 are purchased from a closer distance. So the companies are
1662 saying well, we are a greener chemical because we are not
1663 using as much fossil fuel to transport.

1664 Now, does this fact alone, I use less fuel to transport
1665 the product, qualify a product to be a green product? Anyone
1666 want to answer that, Dr. O'Rourke?

1667 Mr. {O'Rourke.} I would say the short answer is no.
1668 What we need to do is evaluate the full life cycle of that
1669 product and determine whether transport or manufacturing
1670 process is highly energy inefficient and that it is a major
1671 impact category.

1672 For a few products, energy use and transport matter a
1673 lot, and for other products, they don't matter that much. So
1674 you really need to know does it matter to the product
1675 category. What we are seeing now in many cleaners is the
1676 claim that they are plant based rather than petroleum based.
1677 Again that may actually be a confusing concept because what
1678 they are doing is deriving a chemical from a plant, like
1679 sodium laurel sulfate, that can also be derived from

1680 petroleum. So the same chemical ends up in your product. It
1681 is just derived from a different source. So the key is
1682 finding out what really matters to environmental or health
1683 effects on these things, and is that claim--can you verify or
1684 can you back up that claim with transparent information?

1685 Mr. {Stupak.} Well, give me an example where
1686 transportation of cost alone would qualify it to be green, to
1687 use less transportation costs.

1688 Mr. {O'Rourke.} There are a few product categories in
1689 which transport of the product--really long distances, heavy
1690 products. So for instance, air shipping products a long way
1691 has a very high energy impact. So if you see something that
1692 was either grown in a greenhouse or flown to you, that is
1693 probably going to have a very high energy impact, and it is
1694 going to matter.

1695 So we see now more and more people in the U.S. looking
1696 for locally produced food for that reason, that they want
1697 local which reduces the big transportation change and the big
1698 energy. But there are many products in which the transport
1699 is a minor impact category.

1700 Mr. {Stupak.} Well, couldn't you make that claim then
1701 on any water-borne product basically, you know, from buying
1702 ore pellets in northern Michigan down to the steel mills?
1703 That is the only way you can transport it. It is the most

1704 efficient way and less fuel. Or even cars coming across the
1705 ocean because of the size and the weight and the bulk. I
1706 think there would have to be more to it than just
1707 transportation.

1708 Mr. {O'Rourke.} That is right. Air travel is the
1709 highest carbon intensity. Shipping is actually quite
1710 efficient carbon wise. Train transport quite efficient
1711 carbon wise. Local production, the most efficient. So there
1712 is a range of impacts, and you need to understand those
1713 things to be able to either evaluate it or make the claim.

1714 Another thing we are seeing a lot of bottled water. For
1715 instance, one bottled water company shipped from the South
1716 Pacific and claiming it is a green bottled water company.
1717 Huge transport and energy impacts of the manufacture and
1718 transport of that product. And then it has a beautiful green
1719 label and an ecobottle in which it is sold. We view that as
1720 confusing at best, deceptive at worst.

1721 Mr. {Stupak.} Dr. Rangan, you wanted to say something
1722 on that?

1723 Ms. {Rangan.} You know, I think that in talking about
1724 this sphere of green, there is a top and a bottom and sides.
1725 And if we are establishing a floor or talking about that
1726 floor, at the very least disclosure and truthfulness to the
1727 meaning should be there. So that if a company is making a

1728 carbon claim that either they use recyclable energy, wind
1729 energy to generate a product, those aren't void of value.
1730 They have some value, but the claim should reflect what they
1731 are doing.

1732 Should a carbon claim be interpreted as a health claim?
1733 It shouldn't be. And our advice to consumers is always read
1734 these claims quite literally, and it is also why we continue
1735 to say that discrete labels right now in the marketplace
1736 offer consumers the quickest way to understand what a product
1737 is. So if you need to group discrete claims together in
1738 order to explain the many attributes of green a product may
1739 have, then so be it.

1740 We prefer that method at least right now versus an
1741 overarching label where it is very difficult to tell the
1742 variations in the components.

1743 Mr. {Stupak.} Mr. Cooper. You got to turn your mike
1744 on.

1745 Mr. {Cooper.} You have aggressions law in effect here
1746 that bad labels are going to drive the good labels out of the
1747 marketplace. I think you first do no harm. I think one of
1748 the points that Dr. Rangan made about in Japan where you have
1749 an effort to sort of up the ante where you are looking for
1750 constantly improving the product is something that I think we
1751 also should consider as part of this mix. That you want to

1752 have companies who actually have a role to play in sort of
1753 being the pathfinders where you are constantly improving, you
1754 know, the products.

1755 Getting that sort of seal or label recognized is not
1756 going to be easy. What it is, like a Good Housekeeping or
1757 Better Business Bureau or Underwriters Laboratory, then it is
1758 a very powerful tool. So I think that that should be part of
1759 the mix as well.

1760 Mr. {Stupak.} Thank you, Mr. Chairman. It looks like
1761 my time has expired. Thank you for the second round.

1762 Mr. {Rush.} Thank you. The chair recognizes himself
1763 for his three minutes. You mentioned water. I mean somebody
1764 tell me about the false labeling that is involved in the
1765 water. I have a bottle of water here. It says ``smaller
1766 labels equal more trees,' ' and it also under that says ``we
1767 could write more on a bigger label, but saving trees is
1768 important' ' which we understand and agree with. ``By keeping
1769 it short, we saved almost 10 million pounds of paper per year
1770 in the U.S. That is about 30,000 trees.' ' And then it says
1771 ``be green.' '

1772 And I just want to know, first of all, this is a label.
1773 But also some of this stuff is nothing but tap water in a
1774 bottle, all right. And but yet consumers are buying their
1775 water because it is a part of being green and being healthy.

1776 Can you all respond to that and help us to help deliver
1777 the American consumer from the trap that they find themselves
1778 in?

1779 Ms. {Rangan.} Chairman Rush, you have just highlighted
1780 in that bottle what the problems are. Because there aren't
1781 baselines for what should be disclosed or not disclosed, it
1782 is up to a company to decide what they feel like disclosing
1783 and what they don't feel like disclosing. They can weave
1784 that into a green claim and say we are using less paper and
1785 less disclosure is less paper.

1786 And in terms of the water inside the bottle, absolutely.
1787 Our tests have shown year after year, if you filter your
1788 water, you are going to get as good of quality with regard to
1789 health as anything that is in one of those bottles.

1790 I think this is a great example of where the baseline
1791 has a lot of holes, and in filling those holes and getting
1792 rid of these generic claims that are vague and meaningless,
1793 we can do a lot toward reducing the confusion that comes from
1794 that bottle and a consumer trying to buy it.

1795 Mr. {Case.} Well, I think you are absolutely right. It
1796 is, in some circumstances, a legitimate claim. Under the
1797 seven sins taxonomy though, we would refer to it as the sin
1798 of the hidden tradeoff. What manufacturers are able to do
1799 with almost any product that you make is find some little

1800 nugget that allows them to say this makes it green. And so
1801 the question is well, how many nuggets are acceptable? At
1802 what point does it become green?

1803 And so what one needs is some sort of voluntary
1804 environmental label so that there are actual standards that
1805 say this is what green is, and if you have products that meet
1806 a standard developed in an open, public, transparent process,
1807 you will be able to resolve those kinds of issues. And so to
1808 be open to these kind of standard setting committees whether
1809 those kinds of claims are worthy of some sort of national
1810 label.

1811 Mr. {Kohm.} Chairman, those are fairly specific claims,
1812 and those are claims that, if true, a consumer can understand
1813 and make choices based on. A lot of the discussion today has
1814 been about these general green claims that, you know, I am
1815 green, I am ecofriendly, that are very difficult to
1816 substantiate. But if assuming all those claims are true and
1817 a consumer wanted to contribute to using less paper and
1818 assuming they didn't take any implied claim from that about
1819 the water, that those are useful.

1820 Mr. {O'Rourke.} The problem with those claims is that
1821 they are completely irrelevant to the actual environmental
1822 impact or health impact of that product. So it may be an
1823 accurate claim, but it is in a sense a kind of magician's

1824 bait and switch where you are looking at one hand and the
1825 real action is in the other hand. For that product, it is
1826 around the manufacturing of the water, the manufacturing of
1827 the plastic bottle and the disposal of the plastic bottle are
1828 the real environmental impacts, not the little tiny piece of
1829 paper around the sleeve of the plastic.

1830 So their claim may be accurate, but it is largely
1831 irrelevant to the actual environmental and health impact of
1832 the product.

1833 Mr. {Rush.} That concludes our hearing today, and I
1834 want to really relay to our witnesses I have not had a
1835 greater panel of witnesses to help us on any issue that I can
1836 think of since I have been chair, since I have been chairman
1837 of this subcommittee. You have been outstanding, and your
1838 testimony has been very, very informative and provocative and
1839 very interesting. And I really want to thank each and every
1840 one of you for participating, and I think that you made this
1841 subcommittee much more prepared to deal with this particular
1842 issue. And I hope that this will translate--and I know that
1843 it will--translate into us being much more sensitive and much
1844 more vigilant and helpful and in partnership with the FTC as
1845 we move forward.

1846 We have to help solve this problem for the American
1847 consumer, and you have really been pivotal in bringing us to

1848 a solution. Thank you so very much, and God speed to each
1849 and every one of you. Thank you. The subcommittee stands
1850 adjourned.

1851 [Whereupon, at 12:50 p.m., the subcommittee was
1852 adjourned.]