ASSOCIATION OF CORPORATE COUNSEL

TITLE: **Environmental Marketing Claims: The FTC's "Green Guides" and Emerging Issues Relating to Carbon Offsets**

DATE: **April 28th, 2008**

PRESENTED BY: **ACC's Environmental, Health & Safety Committee**

SPONSORED BY: **Holland & Knight LLP**

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Operator: Welcome to this ACC webcast. Lee, please go ahead.

Lee Braem: Thank you. My name is Lee Braem. I'm the Chair of ACC Environmental Health and Safety Committee. And I'm pleased that we could present this first webcast of the committee. It's a good topic. You'll see during the discussion, that there are a lot of issues and a lot of, I guess meaning behind the type of claims we'll be discussing.

As a reminder, we will leave time at the end for a Q&A session. Participants can also submit questions. If you look at the lower left part of your screen, there's a questions box. You can type in your question and hit "send" and the questions will come in, and we'll try to reserve time at the end for responding to those. If we're not able to respond to those questions during the webcast, there will be a follow up and you'll be able to go to the ACC Web site, go to the webcast portion, and look for the responses that will be available there.

Our panel today is made up of the following individuals. Myself. I already gave my background. I'm an attorney with the Evonic Tragusa Corporation. We have Lauren Alterman and Alex Plache with Sangoban. And we also have Amy Edwards with the law firm of Holland & Knight. They are the law firm that sponsors our committee and participates regularly in our committee activities.

We're now at the overview slide and this is what we're going to be covering today. What do we mean or what do we want the public or consumers to think when we say a product is recyclable, earth friendly, or green? Or that our companies' operations are carbon neutral? Or that we have a reduced carbon footprint?

More importantly, what do consumers think? And to underscore, I think some of you or all of you who are on the call today, might realize the importance of these terms in the questions that we just phrased. But when you look through – I did an exercise and went through "Business Week," "Time," "The New York Times," the local New Jersey paper, and looked at all of these terms. It's pretty amazing the different interpretations and the way that the writers use terms like green, earth friendly, carbon neutral, carbon footprint, and hopefully, some of the discussions we'll have today can hone in a little bit more on the issues that go behind those terms.

I'm now on slide six, the objectives of today's webcast is to understand what exactly an environmental claim is. If we say something is green, that's a claim. Or the context of it is the claim. But we'll discuss that.

Understand the regulatory framework. There'll be a focus on the Federal Trade Commission's work. But there are a lot of other regulations that apply.

And then, learn what constitutes a deceptive claim, understand the substantiation and certification, and understand emerging issues related to claims regarding carbon offsets in climate change. I believe if anyone's been familiar with the green claims and recyclable claims, those have been around for probably, you know, two decades. But now, we've got a whole lot of issues coming up with carbon offset and climate change.

And at this point, I'll turn the discussion over to Lauren who will take over the next set of slides.

Lauren Alterman: Thank you, Lee.

As you might expect, there has to be folks or companies that are driving the emphasis for marketing products as being green. Some of those include customers, which are like us. You might have corporations who want to market themselves as being socially responsible. And then there's also the carbon disclosure project on like a lot of projects that are out there and a lot of programs you may have read or hear that there is a substantial amount of money that is being put into products and marketing products as being green.

The questionnaires have been sent to companies and are also being sent to their suppliers to determine what companies are doing in order to market their products as being green.

I'm on slide number eight now. What is an environmental claim? And environmental claim doesn't have to be a word. It can actually be a symbol. It can be graphic. So I'm sure most of you are familiar with the little, what they call, the Lupus loop. It's the arrows, the three circular arrows on plastic bottles, something that means that it's recyclable.

So when you talk about something having an environmental aspect, it doesn't have to be the actual something statement. It can actually be the product or it can be a component of the product.

Next slide?

The environmental attributes and environmental preferability claims as well as sustainability claims can take many forms. With respect to attribute claims, you can get recycled content, something can be energy efficient, and preferability, there's a lot of focus on the attributes of the product itself, life cycle analysis, and the performance rating of the product.

With respect to sustainability, it's sustainable. You look at carpets and they talk about vending sustainable, certified forest products, and the paper you might buy and use in your company.

The next slide gives you any number of – and I'm sure there are many more – but these are labels that are either generated by governments like energy star, a program that's approved by the government, U.S. EPA, or some of these other labels demonstrate that the particular product that contains these labels have actually met the qualifications for the label. And the intent of these labels is to get the consumer to think that the product is green or is somehow beneficial to the environment and it's intended to try to get you to purchase that product.

Next slide?

So in addition to these labels, what are people saying about their product and how they describing them? There are – these are just a list of some of the words that companies are using to market their product as being green. And of course, green is this over-reaching, very vague word, and it can mean almost anything as you can see from this list. Naturally derived. Eco safe. Green. Ozone friendly. Non-polluting.

What's really interesting about these words is that they really don't have definitions and it's intentional that they don't. They're intended to be vague so that the consumer will think that the product is environmentally friendly.

So now we turn to the Federal Trade Commission's effort to try to promote competition and protect the consumers. To take a look at section five of the FTC Act, it prohibits unfair, deceptive trade practices. And this has to do with marketing, environmental products and environmental marketing claims rather. And what the intent is to try to protect the consumer against marketing products being environmentally friendly.

But what's interesting is that the FTC first published these Green Guides in 1992. And as you can imagine, 1992 to 2208, what has happened in the last year-and-a-half or two years, I have to tell you, I was surprised that the FTC even had these Green Guides. And I've been practicing environmental law for 20 years.

It became very apparent that the FTC needed to update their Green Guides and they were scheduled to be updated in 2008-2009 time period. They were last updated in 1998. So late last year, they announced that they were going to update their Green Guide and in November, they had one meeting. They also – the focus on renewable and sustainable claims. This past April, they had another meeting and there is a third meeting scheduled to be held on June 11th.

In addition, in February, they had a common period that closed where they asked everybody to comment on the Federal Trade Commission's Green Guides, whether you thought that they were beneficial, how would you update them, would you keep them? And you can go to the FTC Web site and you can see all of the comments that were filed. I think I counted that there were 69 or so comments that had been filed.

The general consensus is that the FTC should keep their Green Guides and if they should be upgraded substantially to try to take away some of the vagueness that is intentionally being touted in the market for products because consumers are not aware of whether these products are really environmentally beneficial or not.

We're on slide 15 now.

So here are some of the other traditional green marketing claims. And I'm sure you've seen this on some of the products that you've purchased and you may purchase because of some of these words. The product's recyclable. It's got recycled content. It's compostable. And some other green words, such as "eco-friendly" and "ozone safe."

A little bit more now about the Federal Trade Commission's guides for the use of environmental marketing claims. They're not enforceable regulations, so they're general principles and I think that might be why maybe people haven't heard so much about them because, obviously, if there's been a number o violations of them, then maybe there will be some more enforcement actions.

And some of the comments that have been submitted to the FTC has suggested just that that somebody has to be in charge of administering and enforcement for these types of claims. And why not it be the FTC since they have these Green Guides out there.

The focus of the FTC guides is on regulating the misuse of these claims, such as the product is recyclable, or that the product is actually manufactured from recycled materials.

Next slide? Slide 17.

With respect to just focusing now on whether a claim regarding a product is recyclable is adequate and where it should stay, in order to say properly that a product is recyclable, the claim should identify whether they're recyclable attribute applies to the product, the entire product, its packaging, or only a part or component of the product or the package. If the claim applies to all but an incidental component of the product, then you don't have to qualify the claim, unless that incidental component significantly limits the ability to recycle the product.

And here are a couple of examples.

If you have a symbol on a box of aluminum foil and you are, as a consumer, are led to believe that the box of aluminum soil – soil – foil is recyclable, no explanation other than just the fact that the box is recyclable, then that claim would be deceptive, it's either the box or the foil is not recyclable.

Conversely, if you have a soft drink bottle – so you have a plastic bottle. We all drink water out of bottles and the bottle says that it's recyclable, but the cap is not recyclable, you don't have to have any information to suggest or to state that the cap is not recyclable because it's just an incidental component of the bottle and it does not prevent the consumer from understanding that they're talking about the larger piece of the product, that being the plastic bottle as the part that's being recyclable or is recyclable.

The other thing about making recyclable comments is that the product cannot overstate the environmental benefit or attribute. For instance, you may have heard that there was litigation involving the trash bag. Everybody had the label – not everybody – but some folks had labels saying that the trash bag was recyclable. Well, that was deceptive because it was only recyclable if it was left out and the sun could hit it so that the plastic bag could break down. But everybody knew that those plastic bags went into the landfill and so they were covered and so if the sun didn't hit it, the bag couldn't break down. So it was deceptive to say the trash bag was recyclable.

Another example is to say, that a product is 50 percent more recycled content than before. Well, before what? If you have a content that was two percent and you increased it to three percent that may be technically true in terms of the math, but it certainly is deceptive to the public because they believe that you are talking about a much larger percentage of the product being recyclable.

(Stating) that the recyclable content, there's also comparable statements. For instance, if you were to say that the product contains more recycled content than any other shingle, for instance, you have to be able to substantiate that comment. It could be true, and you can absolutely say it, but you have to be able to substantiate it.

And that substantiation must have some competent and reliable evidence. For instance, you can have scientific tests, or you could have some research or analysis in order to substantiate your claim.

With respect to the symbols, you must make clear what it is that's recyclable. Is it the product? Is it the packaging? Or is it both? Again, all of this is designed with one goal in mind and that is not to deceive the public, just so you can sell your product.

Slide 20?

Again, with recyclable claims may only be used when the product or the package can be collected, separated, or otherwise recovered from the solid waste stream. So for instance, and going back on down here to the example. If you have a recycled – you have to have a recycling program in your community and you have to be a substantial majority of communities that have recycling programs. So if you have a product that can be recycled, but it can only be recycled in, let's say, four different locations in the United States, and you have to transport or the consumer, we have to find somebody who could transport that product to one of those four regions where it can be recycled. You can't say it's recyclable because it must meet this test that it must be generally available in a substantial majority of communities, or to a substantial majority of consumers.

Finally, recyclable content. And recycled content is slightly different than the product being recyclable. The recycled material implies the product contains materials that are recycled. So although the word "contains" does not appear in the description, it implies that it's actually within the product itself.

Any use of the phrase implying that a product contains recycled content, has to be qualified if your entire product is not made from recycled materials. I'm sure you've seen products either advertised on television or that you've seen at the store, maybe Home Depot, that says, "contains 100 percent recycled materials." Well, they're very proud to go out there and market that. But if it's something less than 100, you actually have to put the percentage of the recycled content on your labeling and you then must make sure that the literature that you have for the product has the same percentage of recycled content.

And one other thing that you can do to try to promote the greenness of the your product if you're less than 100 percent, and most products are less than 100 percent containing recycled material, is to say, for instance, the bottom of slide 21, "eco-friendly." Due to the presence of 25 percent recycled materials.

With that, I am going to turn the conversation over to Alex Plache.

Alex Plache: Thank you, Lauren.

Well, one reason you want to abide by some of these FTC guidelines is to prevent your company from ending up in litigation. And one of the causes of action that formed the basis of sued on this type of potentially misrepresentation either with respect to sustainability claim or using recyclable words or green-type words when they are either false or misleading is you could end up getting sued in federal court.

Section 43(a) of the Trademark Act of 1946; also know as the Lanham Act, provides the cause of action that can end you in federal court. One takeaway from this program if you don't take anything else away, the Lanham Act is the Trademark Act of 1946 and it's named after a lawyer from Fort Worth, Texas, who is also a Democrat in the House of Representatives from 1919 to 1947. And the year before he left the Hose, he was very fundamentally instrumental in getting the Trademark Act of 1946 through, and probably his claim to fame. So now you know where the Lanham Act comes from.

But Section 43(a) provides a federal civil cause of action fro false and misleading representations of fact made in connection with either the advertising or promotion of goods and services. The action can be filed in United States District Court by any person who believes that he or she is likely to be damaged by such act.

Now, it's important to really define any person and there has been a lot of litigation on this and any person, although it seems to be quite broad, if you look at it from an ordinary perspective. The courts have held, well, any person doesn't really include any person. It doesn't include ultimate consumers, the consuming public. So if a car dealership, for instance, is falsely advertising a sale price and you go in and say, well, this is totally misleading, you don't have a cause of action in federal court against that car dealership under the Lanham Act.

So any person doesn't mean any person. What it means essentially are competitors, or rather, maybe a supplier, or a customer on from a commercial standpoint. So it's really a cause of action between corporations. But any person clearly does include competitors.

If you get sued under the Lanham Act, not only are you potentially liable for money damages, but you also are subject to injunctive relief. The legal standard for an injunction, preliminary injunctive relief under federal law, is number one, that the movant must establish a substantial likelihood of success on the merits of the underlying case, that the movant will suffer irreparable harm in the absence of the injunction, that the harm suffered by the movant in the absence of an injunction would exceed the harm suffered by the opposing party if the injunction issued, and for an injunction would not disserve the public interest.

You have to meet all those standards and quite frequently, likelihood of success on the merits is a reason why a court may not grant an injunction and even if there is substantial likelihood of success on the merits, if one of these other requirements is not met, the injunction, preliminary injunction, can be denied.

Likelihood of success on the merits in the context of the Lanham Act false advertising claim under Section 43(a) specifically what must be shown are that the ads of the promotions of the opposing party were false and misleading, that they deceived or at least had the capacity to deceive consumers, that the deception had material affect on purchasing decisions, that the misrepresented product or service affects interstate commerce and that the movement has been or is likely to be injured as a result of the false advertising.

Once a court deems an advertisement to be literally false as opposed to – this is opposed to misleading, the movement need not present an evidence of actual consumer deception, if the court deems that the ad is likely to deceive. If the ad is false, that hurdle is met and you don't have to prove the likelihood of deception. If the court deems the ad to be true but misleading, the movant, even at the preliminary injunction stage, must present evidence of deception, again, either actual deception or that deception is capable or likely.

While full-blown consumer surveys or market research are not an absolute prerequisite, the moving party must establish, or must provide expert testimony or other evidence. And that's critical, that's something to take into account when these cases are brought. They're generally not inexpensive cases. The good thing about a Lanham Act preliminary injunction case is that they take place generally under over a relatively short period of time. And the bad news is during that relatively short period of time, the legal spend is going on very, very, at a very high rate so that if you're going to have a lot of discovery going on and in 60 days before your preliminary injunction motion, for instance, can be heard, there will be a lot of discovery done during that short period of time. So many hundreds of thousands of dollars can be spent at a rate that's probably faster than in most other cases unless you're actually in trial.

Therefore, companies advertising and otherwise promoting their products or businesses green in any way or eco-friendly must be careful not to violate Section 43(a) of the Lanham Act. And again, some common sense is involved here. I think these types of ads that most companies I think should be passed by the law department and at least for a review to make sure that from a preliminary standpoint, there isn't something in there that either is literally false or is something that could end up being allegedly misleading in some way.

And with that, I'm going to turn the presentation over to Amy Edwards.

Amy Edwards: Thank you, Alex.

We're going to talk about some of the emerging green marketing claim issues. As we all know, climate change and greenhouse gas emissions has been in the news a lot lately and everything that we've been talking about in this presentation to date relates very much to that topic because we know that lots of folks are making green marketing claims with regard to their ability to reduce carbon emissions and that sort of thing, and all the things that we have been talking about to date in this call will lend themselves readily to some of the issues that are occurring in the greenhouse gas emissions market.

One of things to keep in mind is that this is a market. It's a global market. At the present time, it's part regulated and it's part voluntary, which makes this whole issue a lot of complicated in terms of some of the issues we will be talking about for the next few minutes.

And I think this has brought to home with an article, a couple of articles that were in "The Wall Street Journal" just a couple of weeks ago. There was a lot of questioning whether the multi-billion-dollar carbon offset market that's occurring largely in Europe and other parts of the world right now, whether we're really getting any green benefit from those carbon offset claims that are being traded or whether the only people who are truly benefiting are those whose bank accounts are being benefited with the selling of these offsets.

S there will be more and more discussion about this issue in the coming days and weeks. For example, in light of that article in "The Wall Street Journal," Congressman Barton sent a letter to Congressman Dingell asking for an oversight investigation of the whole offsets trading market, knowing that we may be moving in the direction of cap and trade legislation in the United States. So that's why this is also important.

This comes up in the context of their trading renewable energy certificates and whether those should be used to – should count as offsets. And there is a lot of confusion because of this rather influx market right now where we have certain efforts that are ongoing that are voluntary and other ones that are heavily regulated. And renewal energy certificates, in particular, were originally designed to help encourage investment in renewable energy projects. And there have been a lot of questions about whether those renewable energy certificates should count for carbon offset purposes or not. A lot of the commentary that took place, both at the January 8th FTC hearing and then the comments filed after that time related to that particular issue.

We also know that lots of folks are making comments, advertising that they are reducing their carbon footprints or becoming more carbon neutral. And the question is, is there evidence to substantiate those claims or not. Again, there's been a lot of concern that some of the projects that are being touted as reducing one's carbon footprint either would have happened anyway or aren't having any true reduction on the amount of global greenhouse gas emissions. And for those reasons, there has been a lot of concern whether the claims are verifiable or not. Again, this was a topic that was discussed quite a bit during the January 8th FTC hearing. So we'll be hearing more about this particular as we move towards a probably more regulated economy in the United States with regard to cap and trade, and regulation of carbon offsets.

As I mentioned, moving on to slide 29, we're right now in a dual market where a good part of the world has a regulated compliance type market. We see, obviously, a number of companies that are subject to the Kyoto Protocols around the world. We see mandatory cap and trade programs in Europe. We have some states in the United States, which are also experimenting with more regulated type systems. And all of that is something that you need to keep in mind that's being maybe treated from an offset perspective a little differently than the voluntary markets, which at this time are still a very robust market.

In 2006, commentary suggests that those carbon-offset perspective a little differently than the voluntary market, which, at this time, are still a very robust market. In 2006, the commentary suggests that the carbon offsets and just the voluntary market were about $91 million worth of offsets being traded. With regard to the regulated Kyoto type system, we're being told that that's in the multi-billion-dollars of credits that are being traded. So this is obviously a very lucrative market and so that, I think, has enhanced the concern about whether there's anything misleading about the claims of what, in fact, is being traded.

Moving on to slide 30, there is a consensus, I believe, that there are certain things that must be established for voluntary carbon offsets to be considered to be true credits. They must be real. They must be surplus. In other words, they have to be something beyond business as usual. They must be permanent. In other words, once you take credit for that offset, you can't count it again later on. They must be verifiable. That's obviously an issue that is subject to a lot of discussion. And there are lots of organizations that are trying to develop guidance on how to verify whether these offsets are really happening or not. And they must be enforceable. I think there's going to be far more discussion in terms of who should have the right to enforce the trading of these offset credits.

To accomplish all of this – moving on to our next slide, number 31 – several things are needed. First of all, it is the need for accounting standards. You must know what the baseline of emissions for a particular facility is. You must meet the addtionality test, which is that this would not have happened but for the affirmative effort to try to reduce the offset – the greenhouse gas emissions that were occurring. There needs to be monitoring and verification standards. There has been a lot of effort to do in particular, to develop standards through a number of different organizations so that there will be verification of the actual performance of the projects and certification that reduction, in fact, are happening.

And in addition, there needs to be some kind of tracking system and contractual standards so that you actually will be able to know that a particular offset has essentially been taken out of the marketplace. The way that folks are trying to do this at the present time is by creating registries. There are also contractual documents being developed to try to track the property interests in the carbon reduction all for the purpose of trying to avoid double counting of these offsets.

Moving on, there are a number of issues that have come up in terms of how best to be sure that we are tracking these credits properly, and not doing things, such as double counting these offsets. There is a lot of emphasis (and this is true) in the comments that were made at the FTC's hearing in January that there needs to be a focus on whether the reductions the parties are claiming really go beyond business as usual.

And I just wanted to give you a couple of examples of typical offset projects. These include anything from reforestation projects to the reuse of methane from land fills. Wind power is obviously one very common type of renewable energy that's frequently claimed as credit for offsets, or using (digesters) on farms to basically get them reductions and emissions from manure piles. So there is a whole bunch of thing that has been used in this emerging market.

Some of the critical issues that we have seen in the press in just the last few months are, you know, lots of questions about whether folks who are taking claims for carbon reductions are, in fact, getting anything for the money that they're spending. For example, there was an article in our "Washington Post" in late 2007 talking about Congress' green capital initiative, in which the U.S. House of Representatives spent almost $90,000 on carbon offsets to reduce its own greenhouse gas emissions. And those offsets were used to encourage no till farming in North Dakota, to pay for a pilot project at a power plant that was using switch gas grass as fuel, and that was used to pay to plant trees on tribal land in Idaho.

And the questions that were raised in the press about the use of this $90,000 were whether each of these projects might have happened anyway. In other words, not needing the additionality test and really whether this would have occurred anyway.

I just wanted to give you a sense on slide 34 of just some of the leading standards and organizations that are out there at the present time. There are many, many more that we have summarized in the appendix to these slides, just to help show that there has been a lot of thought to developing the kinds of standards that I mentioned a couple slides ago, but I think it also contributing to the confusion in the marketplace about what standards to follow, and you know, which ones may be more legitimate than other ones.

But we have everything from the voluntary carbon standard developed by the international Emissions Trading Association to a standard that was first published by the World Resources Institute and the World Business Council for Sustainable Development in 2001, and has been regularly updated since then, dealing with greenhouse gas protocols. And newer standards referred to as Green-e Energy, Green-e Climate, being managed by the Center for Resource Solutions, which also are in the business of certifying offsets that claim that they're in the business to be sure that the offsets that are being claimed are real, are verifiable, are permanent, and are enforceable.

And yet another organization that is out there creating greenhouse gas emission registries and certification business is the group called Environmental Resource Trust, which is a non-profit that validates greenhouse gas profiles.

So you can see, there are a number of organizations trying to provide the kind of verifiable standards that are necessary to put a company in a position to say that they are not making false and misleading claims about carbon reductions and that sort of thing, and the offsets that they are purchasing are legitimate.

With that, we've just going to conclude in terms of where we are. As Lauren mentioned earlier, this is a part of an ongoing effort by the FTC to examine where it is with its Green Guides and what kinds of updates may be appropriate and necessary, and whether their Green Guides have continuing validity. But it's really important for anyone who is in the business of claiming that their products or their company is doing any of the types of things that we've been talking about today, whether it's making claims regarding the recyclability of your product, or the fact that you are being more carbon neutral or reducing your carbon footprint, it's going to be very important to be sure that those clients can be supported by competent and reliable evidence.

And, as I also mentioned, there are a number of organizations out there, both corporate-sponsored organizations, and non-profit organizations, and international organizations, all in the business of developing various standards, including the accounting standards, and standards for determining what your baseline emissions may be who are trying to offer some independent credibility to the types of plans are being made.

There are a number of skeptics that feel that none of the standards that are out there at the present time meet all the criteria that are necessary for the claims to truly not be misleading or deceptive.

And I think the last thing to keep in mind is that we're in a transitional period because at the present time, at least in the United States, most of the carbon-offset claims that companies may be making are part of a voluntary market. But we all fully expect that may be moving to a more mandatory cap and trade type system like much of the rest of the world, and the issues are a little different in terms of what you can take credit for if you're working under a mandatory cap and trade system versus a voluntary cap and trade system.

So I think we probably should help shed some light on the fact this is a rather confusing but quickly evolving issue area that we will all need to take stock of and to try to keep on top of these changing developments as quickly as we can.

And with that, Lee, I'll turn it back to you to open it up for questions.

Lee Braem: Sure.

Thanks, Amy, and Lauren, and Alex. It was a very good presentation.

Since we do have some time – and actually, before I even do that – for all of the people listening, if you could look at the links part on the left side of your screen, you'll see an evaluation. If you could please fill that out so we get some feedback of how to improve our webcasts, and continue to provide services like this to the membership, we'd appreciate it.

Since we do have some time, what I'd like to do is just go briefly through the appendices so people are aware of what's there. And at least in my phone, I'm getting some feedback. Hopefully, the people listening do not have that, or it's not too distracting. But I will go through some of the appendices so that people know what's on the slides. And if they need to, they can refer to what's here. We will not talk about them, but just so you're aware of them.

And while I'm doing that, I (get to go back) to the start. For all of the panelists. We talked about the FTC, and then we also talked about some of these standards and organizations that are starting to develop, I guess, procedures or criteria for the energy or the carbon sector. But I assume besides enforcement or setting of standards at the federal level that (states' attorneys general) could become active when it comes to actions that may deceive consumers. I mean, we've got some but (states' attorneys general) that have been fairly active in that, but would anyone guess or want to (pine) about how active states may be?

Alex Plache: Well, this is Alex.

I think New York is probably going to be a little less active than they've been over the last few years for a while, I think. But in a serious way, yes, I think there will be continued scrutiny as people bring up complaints.

Now, generally, the attorneys general can get involved now on a Lanham Act context in that respect generally. It's more of consumer protection perspective. And so it wouldn't literally fall under the Lanham Act. But I do think the attorneys general in many states will become more active in this regard, as these ads proliferate more. And I think we all see them now and I think – and I know I'm seeing them with more and more frequency than in the past.

Lee Braem: OK.

Amy Edwards: I think the one place we can really look is to California. We know that Jerry Brown is the Attorney General and has basically interjected himself into many, many decisions in the state relating to greenhouse gas emission issues.

We know that they have a very aggressive greenhouse gas emissions bill, AB 32, and so I certainly think that whatever happens in California, then does tend to follow to other parts of the country. And I expect we will see much more from California in terms of looking up at claims in particular.

Lee Braem: OK, great.

We're now going to turn to the questions that were submitted in the interactive part of the screen. And if people do have questions, I failed to mention this at the beginning, or maybe I did. I just forgot that I did. There is a question part in the lower left corner of the screen where you can submit questions. Hit the send button. And if we can't answer those today, we will follow up in a written format that will be available at the webcast part of the ACC Web site.

The first question is, of the 70 or so comments to the Green Guides that Lauren had mentioned, how many came from industry, non-profits, and individuals? Lauren, do you have a sense of how that's split?

Lauren Alterman: I'll tell you that, although I didn't characterize or categorize them in that way, when I did look at them, I thought they were really kind of cross the board. I do know that our company submitted individual comments that Alex and I put together. But we also submitted comments as part of an industry group and I am aware that a number of industry groups, such as ((inaudible)), SPI, American Chemical – ACC, I think it is ((inaudible)). And I do know a number of other companies, individual companies, and submitted comments.

I cannot tell you for sure about non-profit organizations, but I do believe they have some there. In addition the variety of who submitted comments, the comments themselves are across the board, some saying the FTC should stay out, some saying the FTC needs to get involved and really take control of this because somebody needs to take control of it. So it's very interesting to see what's happening.

My sense is that this group, the FTC, which really wasn't that active with Green Guides. They just happened to have them. Now that the door's been open, I think they almost kind of said, they would say to themselves, at least I would if I was in charge, boy, this is a great opportunity for my organization to be a little bit more visible. I'm going to seize the day and we already have these Green Guides. Let's try to make them more robust and let's really capitalize on this opportunity for our group.

That's my sense.

Lee Braem: OK, and Amy or Lauren, do you have a sense of when FTC may publish their final, revised Green Guide?

Lauren Alterman: I had heard that something would come out in the fall of this year.

Lee Braem: OK.

Lauren Alterman: But it's the government and it's an election year so I think, really, all that stuff is up in the air.

Lee Braem: OK.

Amy Edwards: And I would think it also depends a little on whether Congress weighs in more on this. There definitely is concern as seen by the recent letter from Congressman Barton to Congressman Dingell that this is a bit of the Wild, Wild West right now in terms of what people are claiming as offsets and whether there is enough commonality in terms of the claims that are being made, and enforceability and reliability behind those claims.

So I think that's part of the reason why the FTC moved up its effort to look at the Green Guides. It was supposed to happen, I thought originally, next year, but they understand that there's a lot going on here, and that, perhaps they need to be weighing in much more substantively than they have in the last 10 years as the whole green market has evolved so quickly.

Lee Braem: OK.

And that's a good segue to our next online question.

Do you see any trends toward consolidating the different standards in having just one standard setting body for carbon reduction claims? I know from what Amy had covered and all the different groups in the standard organizations, there are a whole lot out there. And as the Wild, Wild West quote is pretty, I think, relevant. But I guess, Amy, do you have any sense of how this may consolidate over time?

Amy Edwards: That's a really good questions and a hard one to answer. There were actually one or two sets of comments that specifically said to the FTC, we think there's way too much going on here and we think that you, the FTC, should take over this whole effort because there's too much going on out there. However, the United States is well behind the rest of the world on this issue. So I think it would be very difficult to take a number of the international standards off the table at this point. So it's really hard to say where this may go next.

Lauren Alterman: I agree with Amy. This is not just a North America, United States issue because of the Kyoto Protocol and really, what we foresee as being at some point inevitable that the United States gets into this game of trying to reduce the greenhouse gas emissions. And so I don't know that we can try to consolidate our own regulations without impacting how we're going to play on a worldwide playing field.

In addition, we have our own problems. We have states implementing their own regulations. We have regions of the country implementing programs, or at least suggesting that they are going to have programs. And then we have the federal government saying that they understand that CO2 is a pollutant. They don't know how they're going to regulate it. And they don't know, even if they do regulate it, whether or not those regulations are going to pre-empt the state laws and these other programs that have been adopted and will have been up and running by the time the federal government does put something into place.

So it's really, unfortunately, it's going to be one of those situations for some period of time, where you're going to have to ask somebody to look and go Shepardize or go on Lexus and find out just what else out there. Have I covered everything? Do I have the right definition of what these words mean?

Lee Braem: OK, well, thanks.

And for those who plan to attend or may to attend the annual, the ACC's annual conference in Seattle in October, I know that the Energy Committee and the ESH Committee are co-sponsoring a panel on climate change and will be trying to cover any updates there. And like this material, that annual conference material is on line and will be for a certain period of time after the sessions.

The next question is how does LEED fit into this discussion?

Amy Edwards: Well, it doesn't fit in directly because that really deals more with the way buildings are constructed. But it goes back to the point that Lauren just made, which is, are we going to have regulation of carbon dioxide emissions because buildings are known to emit about 40 percent of the CO emissions in the United States or perhaps in the world. And again, there have been efforts in other parts of the world to basically ramp up the efficiency of buildings and to actually put ratings on buildings in terms of their energy efficiency and the amount of CO emissions they may have.

LEED does not go that far yet. But there is some concern that, there has actually been some talk in the press that one of the reasons why the administration is taking its time to figure out how to respond to the Massachusetts versus EPA decision about how it's going to regulate CO2 emissions is concern over issues of does this apply to buildings as well?

And obviously, no one wants that outcome, but there is concern about how all these issues tie together ultimately.

Lee Braem: And, Amy, just to – I cannot recall offhand what L-E-E-D LEED stands for so if you or someone else knows what the acronym means just for our audience …

Amy Edwards: Right.

Lee Braem: … could spell that out.

Amy Edwards: Leadership in Energy and Environmental Design, I believe it what it stands for.

Lee Braem: OK, thank you.

The next and last question we have, but well, the next question, if a company based in the U.S. invests $1 million to reduce carbon emissions in China, can the carbon offsets created be used for projects in the U.S.? And I guess it's the internationality of carbon offsets?

Amy Edwards: Yes. And they definitely can be used on an international basis. This is an international market. And the question really goes back into whether those are legitimate reductions in China that then should be counted elsewhere. But as long as you have a system that will verify that those are real reductions, the credits could be taken on projects anywhere in the globe.

Lee Braem: OK. And we have another question. What kind of roadblocks do you see in developing a global carbon cap and trade program? Do regional air agencies see this or may see this as an attempt to usurp their authority? I know when I've had – the company I work for, its facility is in Southern California, and many other areas of the country, if you want to expand operations, you've got to find some or buy some credits somewhere. And I know that as part of those state (SIP) programs or clean air acts, compliance programs, you've got to deal with local air agencies, but I guess, going back to the questions, would those local efforts be some roadblock to developing a national carbon cap and trade program?

Lauren Alterman: This is Lauren. I think it's a tough question. I don't think that they're going to be a roadblock but they're certainly going to be bumps in the road. There are going to be speed bumps because all these things are going to have to be considered.

Right now, you know, the Kyoto Protocol has a cap and trade of such or of sorts and if we were to have signed onto the protocol then, you know, we wouldn't have some of the things that we're having now, I would imagine coming up. But it's inevitable that there's going to be some national or actually global program and we're going to be a part of it.

I just think it's going to be very interesting, very complicated to see how we have our designed program, how they're going to react with a global program because the other countries didn't have their own programs. They signed onto Kyoto and they built their own programs whereas we didn't sign on and now we're going to have our own programs. And then, somehow, we're going to get tied into a global program.

I think really, as I've kind of just been talking off the top of my head, if the United States is given a number by which they have to reduce their greenhouse gas emissions, then we'll be able to do a cap and trade in our own country or worldwide as long as a country we can demonstrate that we have met our goal, of let's say, you know, our 10 percent reduction.

Lee Braem: OK.

I would also think, too, Amy, given some of the content of the slides you were talking about, that if you've got these regulatory programs for cap and trade, if anyone want to do something voluntary, they'd have to discount or not consider what has to be done under the required offsets or cap and trades to make sure they can claim proper offset under a voluntary program.

Amy Edwards: That's precisely the point. You can't claim offsets in more than one program. Plus, I mean, there has been a lot of commentary on this. If you have to do certain things. For example, part of one of these 21 state programs to invest in a certain amount of renewable energy credits or sources of renewable energy, that because there is a mandate to purchase a certain amount of renewable energy, just as one example, that you then can't count that as a voluntary offset or deduction.

So that's why as we're going through this transitional period, I think it's going to be very confusing, and particularly then, you have some regulated mechanisms I don't necessarily match up with other regulated mechanisms elsewhere in the world. There's just going to be a lot of uncertainty for a while.

Lee Braem: Great.

Well, we're a few minutes from our 2:00 deadline. So again, I want to thank the speakers, Amy, Alex, and Lauren. Great program.

I'll remind the audience that there's an evaluation from that you can find at the left side of your Web site along with the bios. And I think Amy is not there but it will be. Other printed material with slides included, so please fill out those forms and send it in according to the instructions to ACC. And I thank you for listening to this program.

Female: Thank you.

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