



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Enforcement

March 27, 2012

VIA Federal Express and Electronic Mail

Donald S. Simon
Wendel, Rosen, Black & Dean, LLP
1111 Broadway, 24th Floor
Oakland, CA 94607

RE: *Temple-Inland Inc. and Scientific Certification Systems, Inc.*
FTC File No. 112 3058

Dear Mr. Simon:

As you are aware, staff of the Federal Trade Commission's Division of Enforcement has conducted an investigation into whether your client, Scientific Certification Systems, Inc., violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in connection with the advertising and promotion of wallboard products manufactured by Temple-Inland in Fletcher, Oklahoma. Specifically, the investigation focused on your client's environmental claims and whether the gypsum in the wallboard, which was purchased from a local mine, was recycled content.

This investigation was informed by the Commission's Guides for the Use of Environmental Marketing Claims, 16 C.F.R. Part 260 ("Green Guides"). Through the Green Guides, the Commission provides guidance to marketers for complying with Section 5 of the FTC Act. The Green Guides advise that a recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer) or after consumer use (post-consumer). 16 C.F.R. § 260.7(e). The Commission is in the process of reviewing the Green Guides, has sought public comment on proposed revisions, and may decide to issue revised guidance.

Upon careful review of this matter, including non-public information submitted to staff, we have determined not to recommend an enforcement action at this time. Among the other factors we considered was your client's decision to promptly take steps to address the concerns expressed by FTC staff. Notably, your client voluntarily ceased making the recycled content claims at issue and removed those claims from its advertising and promotional materials. You also assert that your client relied on Example 2 of the recycled content section of the Green Guides, which states:

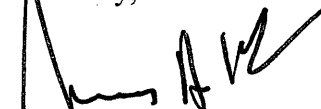
A manufacturer purchases material from a firm that collects discarded material from other manufacturers and resells it. All of the material was diverted from the solid waste stream and is not normally reused by industry within the original manufacturing process. The manufacturer includes the weight of this material in its calculations of the recycled content of its products. A claim of recycled content based on this calculation is not deceptive because, absent the purchase and reuse of this material, it would have entered the waste stream.

16 C.F.R. § 260.7(e), Example 2.

We interpret Example 2 to mean that one subset of material that may be considered recycled content is material that has been discarded by a company then collected and resold by another company for use in a different product. As is always the case with recycled content, the discarded material must be diverted or otherwise recovered from the waste stream to be considered recycled. Of course, not all material that is construed as discarded and resold is necessarily diverted from the waste stream. You contend that your client reasonably interpreted Example 2 to support its claims because the gypsum at issue was "discarded" by the mine into a waste stream before it was purchased from the mine for use in wallboard; therefore, it was recovered from the waste stream and is recycled content. However, the gypsum at issue does not fit Example 2 because it was never diverted from the waste stream. During the relevant period, gypsum was mined for purchase by concrete and wall board manufacturers and was not discarded. Nevertheless, Example 2 contains ambiguities. Therefore, staff is currently considering proposing that the Commission amend or remove it. In the meantime, your interpretation, albeit incorrect, appears to have been made in good faith. Given this fact and your willingness to immediately remove the claim, staff has determined not to recommend an enforcement action at this time.

FTC staff expects that your client will carefully review its claims to ensure that all future advertising complies with the FTC Act. The closing of this investigation is not to be construed as a determination that a violation of law did not occur, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Sincerely,

A handwritten signature in black ink, appearing to read 'James A. Kohm', with a stylized flourish at the end.

James A. Kohm
Associate Director