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Environmental claims — A guide for industry and advertisers

NATIONAL COMPETITION LAW SECTION
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PREFACE

The Canadian Bar Association is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Competition Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Competition Law Section of the Canadian Bar Association.

Environmental claims — A guide for industry and advertisers

I. INTRODUCTION

The National Competition Law Section of the Canadian Bar Association (the CBA Section) is pleased to have the opportunity to comment on the draft publication *Environmental claims: A guide for industry and advertisers,* released for public comment by the Competition Bureau in March 2007. The CBA Section strongly supports the Bureau's public education program, including guidelines, bulletins and other interpretive aids made widely available to the business community in Canada.

A. Context of the *Draft Guide* and These Comments

Clause 1.3 of the *Draft Guide* indicates that it represents the combined efforts of the Canadian Standards Association (the CSA) and the Bureau to revise the CSA guidance document *ISO 14021 Essentials. ISO 14021 Essentials*, published in 2000, provides CSA guidance on compliance with *CAN/CSA ISO 14021-00 Environmental labels and declarations — Self declared environmental claims (CAN/CSA ISO 14021-00)*, an internationally harmonized ISO standard adopted by the CSA in 2000. The stated goal of the *Draft Guide* is to update *ISO 14021 Essentials* to serve both as an aid to interpreting the ISO 14021 standard and guidance on compliance with the *Competition Act, Consumer Packaging and Labelling Act* and *Textile Labelling Act* prohibitions on false and misleading representations.

Clause 1.3 also indicates that the Bureau's participation in the development of the *Draft Guide* is in response to the 2001 public consultation on a proposal to adopt *CAN/CSA ISO 14021-00* itself as a Bureau guidance document for evaluating environmental claims under the *Competition Act* and the *Consumer Packaging and Labelling Act* (the 2001 proposal).

The CBA Section responded to that consultation in a written submission dated November 2001 (the CBA 2001 submission).

While the *Draft Guide* is a change from the Bureau's 2001 proposal, a number of comments in the CBA 2001 submission are germane to the present consultation. The general comments in the CBA 2001 submission were brief, and for ease of reference are set out here.[1]

> The Guidelines are a National Standard of Canada. Accordingly, we do not comment on their substance, as this is not the appropriate forum to do so. Our primary concern is whether they are appropriate as the primary source of direction to Canadian marketers and advertisers concerning environmental labelling and advertising.
>
> We are concerned that the Guidelines are not readily available and, even more significantly, that they are written in technical language with cross references to other technical documents. This makes them difficult for a non-specialist to use and comprehend, unlike other guidelines issued by the Commissioner. As a result, the Guidelines are unlikely to have the desired effect of promoting accurate and informative advertising and labelling. The Bureau should develop its own set of guidelines or an interpretive guide, which reflects the Guidelines but which is specifically targeted to advertisers. Most of our comments address this suggestion.
>
> Further, the Guidelines may be too rigid. The Commissioner should explicitly acknowledge that technical deviations from the Guidelines, in some circumstances, will not render a claim "materially false or misleading" such as to offend the *Competition Act*. The Commissioner made a similar acknowledgement in the context of price advertising.

B. Overriding Comment

While the *Draft Guide* is an improvement over the 2001 proposal to use *CAN/CSA ISO 14021-00* itself as a Bureau guideline, it falls short of the Bureau's stated objective of explaining, in the context of environmental claims, how to comply with the laws on false and misleading representations administered by the Bureau.[2] Some of the commentary and examples in the *Draft Guide* better explain the content of *CAN/CSA ISO 14021-00*. However, it falls short because it generally does not relate the ISO 14021 requirements (and extensions thereof) described in the document to the legal standards that apply to the laws on false and misleading representations that the Bureau administers.

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1 In this excerpt, "Guidelines" refers to *CAN/CSA ISO 14021-00* itself, not to the *Draft Guide*.

2 See March 8, 2007 Bureau Information Notice seeking public comments on the *Draft Guide*, at para. 2.

We recommend as the preferred course that the Bureau prepare a standalone Bureau guidance document for environmental claims. Alternatively, we recommend that the *Draft Guide* be revised to include extensive discussion, including examples, of the connection the Bureau sees between the requirements of ISO 14021 and the false and misleading representations provisions the Bureau must apply.

II. GENERAL COMMENTS

The CBA Section appreciates that certain aspects of the general comments from the Bureau's 2001 Proposal are addressed by the *Draft Guide*.[3] In particular:

- It is no longer proposed that the primary source of direction to Canadian marketers and advertisers for environmental labelling and advertising be *CAN/CSA ISO 14021-00* itself, and the Bureau has proposed use of a separate guidance document.
- The *Draft Guide* will be available free of charge to the public.
- Through Annex A, Clause 4.2 and Annex B, the *Draft Guide* provides useful summaries of other standards in the ISO labelling series and of the principles of ISO 14020.
- The *Draft Guide* indicates, albeit not as prominently as we believe is necessary, that while the Bureau will treat it as a reference when addressing environmental claims, ultimately the Bureau will continue to apply to environmental claims the false and misleading representations provisions of the statutes that it administers.

However, other important issues raised previously by the CBA Section are not addressed by the *Draft Guide*. In particular:

1. The *Draft Guide* does not, in its essence, provide interpretive guidance from the Bureau on the features and principles of the misleading advertising provisions it administers. Rather, it is essentially a statement of "best practices". If the Bureau is intent on adopting a document of this type, it should be identified as a "best practices" document, not as a "guide" or "guidelines". It should also discuss (with examples) the connection the Bureau sees between the requirements of ISO 14021 (and any extensions thereof in the *Draft Guide* provided by CSA) and the standards the Bureau must apply when

[3] A number of the detailed comments in the CBA 2001 Submission are also addressed by the *Draft Guide*.

enforcing the false and misleading representations provisions of the laws the Bureau administers.

2. The *Draft Guide* is too rigid for the purposes of guidance from the Bureau. In our view, particularly if the current CSA/Bureau format is maintained, the Commissioner should explicitly acknowledge that deviations from the *Draft Guide* are not presumed to render a claim "materially false or misleading" so as to offend the *Competition Act* (or other Act), and provide illustrative examples.

In our view, the preferred approach for guidance from the Bureau is a standalone document describing the application to environmental claims of the false and misleading representations statutes the Bureau administers, along with well-crafted examples.

In addition:

- The *Draft Guide* includes examples of "discouraged" and "preferred" claims. It is not evident how these examples should be interpreted in connection with the prohibitions on false and misleading representations for which the Bureau has responsibility. Does "preferred" indicate a safe harbour? Does "preferred" indicate that the Commissioner is likely to find that a less specific (or less detailed, or less qualified, as the case may be) claim to not comply with the law? Does use of a claim that is "discouraged" indicate a certainty or high risk that the Commissioner would find the claim misleading? We believe these examples may be interpreted as standards the Bureau will apply as a substitute for assessing the effects of a particular environmental claim on consumers. Unless the Bureau clarifies the relationship of "discouraged" and "preferred" claims in the *Draft Guide* with the role of the Bureau in the statutes it administers, these examples will serve, at best, to confuse, rather than elucidate.

- In a number of places the *Draft Guide* refers to the Bibliography of ISO 14021 in connection with evaluation methods. This document should be included as an appendix to the *Draft Guide*. In addition, the Bureau should distil and present the key information in the sources referenced in the Bibliography, such as the standards that

may inform and guide the collection of reliable data and the applicable tests for degradability or recyclability. The Bureau should also address alternative standards, tests and methodologies as appropriate.

III. CLAUSE 1: INTRODUCTION

Clause 1.1 is titled "How to Use this Guide". However, Clause 1.1 does not explain how to use the guide. The second introductory paragraph of Clause 2 says that the *Draft Guide* will be "used as a reference for evaluating environmental claims in the application of the *Competition Act*, *Consumer Packaging and Labelling Act* and the *Textiles Labelling Act*." This needs to be explained. Does "used as a reference" mean that the Commissioner will expect adherence to the *Draft Guide*? Is the *Draft Guide* a general guide as to what may be false or misleading? Whatever the answer, it should be explained at Clause 1.1. If "how to use this guide" is difficult to draft, it is likely a sign that a different approach to an environmental claims guidance document is needed.

IV. CLAUSE 2: APPLICABLE ACTS

Clause 2 of the *Draft Guide* says it will be used "as a reference for evaluating environmental claims under the *Competition Act*…" How the Bureau may use the *Draft Guide* should be explained further. Examples should be provided of how the Bureau will treat a proposed claim, including the contexts in which a claim is thought to be more or less likely to mislead.

Clause 2.1 fourth paragraph refers to the *Competition Act* section 74.02. The description of section 74.02 should be more precise. We suggest that the first sentence of the paragraph read: "This provision prohibits making a representation to the public that a test has been made as to the performance, efficacy or length of life of a product, or publishing a testimonial with respect to a product, unless the representation or testimonial has been previously made or published by, or approved and permitted in advance in writing by, the person by whom the test was made or testimonial was given."

V. CLAUSE 3: OVERALL CONSIDERATIONS

Clause 3.1 of the *Draft Guide* addresses claim verification. This is an appropriate place for the Bureau to comment on any burden on advertisers under the statutes it administers for claims to be substantiated, verified or verifiable prior to the claims being made.

Clause 3.2 says that ISO 14021 does not alter other applicable legal requirements. The *Draft Guide* should address how, if at all, ISO 14021 or the *Draft Guide* may affect the way the Bureau will assess an environmental claim.

VI. CLAUSE 4: GENERAL REQUIREMENTS FOR ALL CLAIMS

Clause 4.4 of the *Draft Guide* addresses vague and non-specific claims. While the "preferred" and "discouraged" examples show greater and lesser specificity in claims, it is not clear that the "discouraged" example either (1) fails to meet the ISO 14021 clause 5.3 specificity principle, or (2) is likely to mislead consumers within the meaning of the statutes the Bureau administers. As for (1), the reference to "ozone-friendly" is arguably not a "vague or non-specific claim", given that it is specific to ozone. As for (2), to the extent consumers may be uncertain as to whether the product could harm the ozone, "ozone-friendly" may be a very informative claim and could be an important competitive claim available to a supplier. If uncertainty as to whether the ozone may be harmed by the product exists, but does not relate to the presence of CFCs in a previous version of the product, the "preferred" example (which refers to CFCs in a previous product) would not be appropriate. The uncertainty may arise instead, for example, in connection with previous or existing versions of other manufacturers' products in the same group (see example below).

Clause 4.5 addresses "… free" claims. This relates to ISO 14021 Clause 5.4, which specifies that a claim of "… free" should be made only if very low levels of the specified substance are present. However, Clause 4.5 of the *Draft Guide* adds to this, stating "Claims of "… free" must not be made based on the absence of ingredients that were never in a product or which were only present at a background level."

For both consumer and supplier, this additional requirement is unduly restrictive from the perspective of maintaining fair and open competition. First, it can be informative and not at all misleading to consumers for a product that has never featured a specified ingredient to claim to be "free" of that ingredient. The fact, for example, that other products in the same class may not be "… free", or may not have been "… free" in the past may make this claim highly informative to consumers. It would be a perverse result if the manufacturer of an innovative "… free" product were not permitted to make that claim, while manufacturers of products in the same category that have historically not been "… free" were permitted to make the claim, once they altered their ingredients to exclude the specific ingredient. In this light, the "discouraged" examples in Clause 4.5 are problematic. For example, if consumers link CFCs with the type of product (e.g., oven cleaner) as much as with the type of dispenser (e.g., aerosol containers), then it may be appropriate to inform consumers that a pump spray bottle of oven cleaner is "CFC free". Similarly, a claim of "chemical free" may be appropriate because of historical use of chemicals in other products in the same category, even if the products in question have not historically contained chemicals.

The problems with Clause 4.5 point up the general difficulty with the preferred/discouraged approach to guidance, especially with little or no factual context or qualifications.

The meanings of "acknowledged trace contaminants" and "background levels" in Clause 4.5 should be explained, or the reader should be referred to resources related to the terms.

Clause 4.7 addresses the use of explanatory statements. This is an appropriate place for the Bureau to comment on what, in its view, constitutes an acceptable use of disclaimers (*i.e.* disclaimers may explain the claim, but not contradict the claim).

VII. CLAUSE 5: SPECIFIC REQUIREMENTS

Clause 5.3 of the *Draft Guide* addresses the ISO 14021 requirement that environmental claims, including any explanatory statements, must be substantiated and verified. In our view, the commentary following the recital of this principle adds an unnecessary and impractical burden on advertisers in stating, "Verification material must be available to both the purchaser and a potential purchaser as such material may be required to effect

purchasing decisions." Verification material is often confidential and competitively sensitive business information. While it may be necessary at times to make such information available to a third party to assess, it is not reasonable or desirable for it always to be available to customers or potential customers. In addition, as a general matter, a lack of availability to a customer of verification material in respect of a claim does not in itself render a claim misleading. The *Draft Guide* should not suggest otherwise.

Clause 5.6 requires that claims be sufficiently specific, and the "discouraged" claim example is: "By incorporating recycled material into our product we have reduced waste." Assuming the statement is true and the amount of recycled product and reduced waste are not misleadingly trivial, why would the Bureau find this claim to be likely to mislead? The Bureau's answer should be explained here.

Clause 5.7 addresses the restatement of a claim using different terminology to misleadingly imply multiple benefits. It should be made clear that if there are multiple benefits from a single change, it is acceptable to describe them, as long as the description is not misleading.

Clause 5.9 addresses claims related to final products where other aspects of the product life cycle are also relevant to environmental impacts. The example indicates that for a claim about the use of a non-ozone-depleting refrigerant gas which may incidentally have a negative impact on the energy efficiency of the refrigerator, either the "net benefit" (presumably to the environment) from these effects must be verified, or the reduction in energy efficiency must also be disclosed. In our view, this standard goes beyond the requirement under the *Competition Act*. For example, the simple claim "uses non-ozone-depleting gas" may not be misleading in this context. Does the Bureau agree? The Bureau's answer should be provided here, as advertisers will have this question.

Clause 5.14 addresses the proximity of an explanatory statement to an environmental claim on packaging. In our view, jurisprudence indicates that it may be adequate to have an explanatory statement elsewhere than on the same display panel as the claim. It would be inappropriate to imply that an advertiser's conduct is misleading only because an explanatory statement is not on the same display panel as the claim. In our view, the size of

packaging and display surface is a reasonable factor to consider when assessing whether a purchaser would be misled if an explanatory statement were located elsewhere than on the package. The Bureau should specifically address the issue of limited display surfaces, including practical options other than on-package disclosures.

Clause 5.15 addresses the principle of clarity, specificity and currency for environmental claims of superiority or improvement. As regards currency, the commentary seems to imply that a time limit necessarily applies in respect of any legitimate environmental benefit comparative claims. In particular, it refers to Clause 9, which in turn refers to calculating a comparative benefit over a reasonable period of time ("typically twelve months") for a product life cycle claim. It is not clear whether this is meant to apply to all improvement claims. If so, the Bureau should clarify the basis for such a requirement.

Clause 5.16 addresses claims that could misleadingly indicate a recent change to a product. The example holds that a "phosphate-free" claim on a dish soap where dish soaps have not previously contained phosphates is inappropriate unless it is made clear that the product has never contained phosphates. Our points in connection with Clause 4.5 apply here as well. If consumers may be under the impression that dish soaps contain or have contained phosphates, it should not be presumed to be misleading to simply inform them that the dish soap in question does not have phosphates. There is a legal obligation to not mislead; there is no legal obligation to answer in advance each question that may cross the consumer's mind.

Clause 5.17 addresses claims related to ingredients that have never been associated with the product category. Our comments on Clauses 4.5 and 5.16 are applicable here. It may be important to tell consumers about the absence of an ingredient or feature in any case where consumers may believe that the product does or may include that ingredient or feature.

Clause 5.18 addresses the need to reassess claims in the context of changes in technology, competitive products or other circumstance that could alter the accuracy of the claim. We agree that advertisers can no longer make claims they know are no longer true. However, the

Bureau should clarify here the extent to which, in its view, advertisers have an implied obligation to conduct confirmatory testing absent any knowledge of relevant changes.

VIII. CLAUSE 8: EVALUATIONS AND CLAIM VERIFICATION

Clause 8 of the *Draft Guide* addresses evaluations and claims verification. The Bureau should specifically address here an advertiser's legal obligation in Canada to conduct "adequate and proper" testing and the relationship between this obligation and the responsibilities of a claimant outlined in Clause 8, including appropriate examples.

Clause 8.3 states that a claim shall only be considered verifiable if the verification can be made without access to confidential business information. Commentary at Clause 8.3 indicates that where a claim depends on confidential information for its verification, third party audits will be required. This clause should be clarified. We assume that once a test method exists the claim is verifiable, but this is not clear. In our view, the advertiser should be permitted to verify testing by a controlled release of data to a complainant's experts under protection by a confidentiality order. The Bureau should confirm here that it is of the same view, or indicate any contrary view so this important matter may be addressed further.

IX. CLAUSE 9: COMPARATIVE CLAIMS

The first sentence of Clause 9 reads, "Comparative claims have the greatest potential to mislead purchasers and therefore they need to be approached with special care." It is not obvious that comparative claims have the greatest potential to mislead. What is the basis for this claim? The second sentence of Clause 9 states "Comparative claims require the most rigorous evaluation and the most explicit description of the evaluation in the explanatory statement." In our view, this communicates, without legal basis, that a different legal standard applies to comparative claims than to other claims. If this is not what is intended, then what is meant here requires further explanation. If this is what is intended, then it requires legal justification.

X. CLAUSE 10: DETAILS OF SELECTED CLAIMS DEFINED IN ISO 14021

Clause 10 addresses the 12 commonly used environmental claims outlined in ISO 14021 Clause 7, as well as use of the "where facilities exist" qualifier. We comment briefly on issues related to these selected claims.

Clause 10.1.2 addresses the (in)adequacy of the qualifier "where facilities exist". The Bureau should indicate the circumstances under which the "where facilities exist" qualifier may actually be false or misleading and include examples. This arises again under clause 10.2.2 (see the "discouraged" example).

Clause 10.2.1 provides that a compostable claim may not be made on any material that "negatively affects" the overall value of the compost as a soil amendment or "significantly reduces" the rate of composting. The Bureau should provide guidance on how "negatively affects" and "significant reduction" will be determined.

Clause 10.2.2 requires certain qualifications to compostable claims. These qualifications and additional requirements would significantly lengthen any claim and may therefore be problematic used on the packaging or in the advertising of products. In our view, the Bureau should indicate the acceptability of alternative means of disclosure, such as printed material available at point of sale or on Internet websites.

Clause 10.4 addresses disassembly claims. Reference is made to ISO Guide 37 at www.iso.com and CSA Special Publication PLUS 9901 at www.csa.com. Summaries of these publications should be available without cost or appended to the *Draft Guide*.

Clause 10.5 addresses extended life product claims. Clause 10.5.2 includes examples of extended life claims and corresponding explanatory statements, and indicates that information may be provided at "point-of-sale" or in "bulletins". The Bureau should confirm that this applies to further information about how an extended life component may be obtained and to the explanatory statements that accompany the claim. In our view, it is impractical for long explanatory statements to be included on product itself or on all product

advertising materials, provided ready access to the information is available, such as at point-of-sale or via the Internet.

Clause 10.6 addresses claims that a product has been manufactured using recovered energy. The claimant must ensure that adverse effects on the environment resulting from this activity are "managed and controlled". The Bureau should clarify what these "adverse effects" are and state how and to what extent a claimant must manage and control these effects.

Clause 10.7 addresses claims that a product is recyclable. In connection with the requirement to support a recyclable claim, Clause 10.7 indicates that the recycling in question must be available to a reasonable proportion of purchasers. In our view, this "available to a reasonable proportion of purchasers" test suggests a specific legal standard that applies to these claims other than the prohibition on false or misleading claims. To our knowledge there is no such applicable legal standard, and the *Draft Guide* should take care to avoid implying that a standard exists. In our view, the fact that even most consumers in an area do not have access to a particular recycling infrastructure does not by itself render a "recyclable" claim misleading. In addition, many of those making claims may need, as a matter of pro-competitive efficiency, to make uniform labelling and advertising claims across a wide variety of regions and countries, often in respect of many different products. The Bureau should bear in mind the extent to which reasonable consumers take this into account when confronted with "recyclable" claims. Furthermore, to the extent that innovative recyclable products may be able to lead, rather than follow, corresponding recycling infrastructure, it would be unreasonable to discourage the recycling innovation on the basis that its value has yet to be fully realized. At the very least, the Bureau should clarify what a "reasonable proportion" of purchasers may be, by providing examples, a range of proportions depending on the type of material being considered, or a safe harbour.

Clause 10.8 addresses recycled content claims. Clause 10.8.1 refers to ISO 14021 Clause 7.8.1.2 c), which provides that material recycling is just one of a number of waste prevention strategies, and that "the recycled content claim, in particular, should be used with discretion". The *Draft Guide* should explain what this clause intends to achieve. For example, a list of possible strategies would be useful.

Clause 10.9, 10.10 and 10.11 address “reduced energy consumption”, “reduced resource use” and “reduced water consumption”. Clause 10.9 states that “reduced energy consumption” must refer only to the “use” phase, not the “production” phase of a product, and a reduction at the production phase of the lifecycle requires a “reduced resource use” claim. In our view, the *Draft Guide* should recognize that the distinction between the words “consumption” and “use” may not correspond to any distinction made by Canadian consumers generally. Indeed, “consumption” and “use” may be commonly understood as interchangeable in this context. This should be taken into account in any assessment of whether purchasers are likely to be misled by a claim not aligned with the distinction between “consumption” and “use”. It also raises the issue of whether adherence to such a distinction may unnecessarily fetter the freedom of advertisers to communicate with consumers.

The Bureau should indicate that the synonyms for “reduced energy” listed in Clause 10.9 (energy efficient, energy-conserving and energy-saving) are not meant to be exhaustive.

Clause 10.10 addresses reduced resource use claims. While reference is made to Clause 9 as regards comparative claims, a concrete example of a comparative resource use claim would be of assistance.

Clause 10.10 provides an example of a reduction in the use of steel by X% at the same time as an increase in energy used in production of Y%. In our view, it should not be assumed that a claim restricted to information about the X% reduction in steel used or about the reduction in steel used and the net environmental benefit would result in any material risk of consumers being misled. The Bureau should address this issue explicitly in Clause 10.10.

Clause 10.11 addresses claims of reduced water consumption. Again, the Bureau should indicate that the list of synonyms for “reduced water consumption” (water-efficient, water-conserving and water-saving) is not meant to be exhaustive.

Clause 10.12 addresses reusable and refillable claims. In our view, some of the examples represent unduly restrictive interpretations of the ISO 14021 Clause 12 definitions of

reusable and refillable, and the associated qualifications for such claims. The first example states that rigid plastic food containers that consumers will reuse for their own purposes cannot support the claim "reusable" or "refillable" because they "are not designed to be reused for their original purpose." In our view, if the purpose of the plastic containers is, say, reuse in food storage, it cannot be reasonably maintained that when they are used for food storage they are not being reused for their original purpose. More importantly, from the Bureau's point of view, it is difficult to reasonably expect that consumers are likely to be misled by claims of "reusable" on these products.

The last two examples under Clause 10.12 address the extent to which refillable claims should be qualified because of limits to in-store availability of refilling facilities. In our view, these examples also represent an unnecessarily restrictive approach. For example, the claim "refillable at your local grocery store" can only reasonably be expected to mislead some consumers if refills are generally not available at the place of original purchase. If refills are available at the original place of purchase, a claim such as "refillable where purchased" should be sufficient. However, a claim as detailed as "Refillable at all Penners Grocery Stores in Manitoba, Saskatchewan and Alberta" serves little or no purpose. Most of the detail in such a claim adds nothing material to consumer understanding, and the long claim is impractical for multi-market suppliers seeking to achieve synergies in packaging. In our view, under a "false or misleading standard", the claim "refillable" alone may suffice in the final Clause 10.12 example (refillable cosmetics bottles), and in many other cases.

Clause 10.12 features some inconsistency in language likely to create confusion. Clause 10.12.1.2 states that a claim of "refillable" alone could be made if refills are available in "all locations" where the original bottle is made. Commentary under Clause 10.12.2 then states that a reusable or refillable claim "can only be valid if the systems (*i.e.*, programs for collection) or products (*i.e.* refillable) are in place to allow for reuse or refilling to occur." A later example in 10.12.2 (beer bottles) then indicates that unqualified use of "reusable" or "refillable" may be made, as the "system is almost universally available in Canada". Later Clause 10.12.2 states that facilities for refilling "must be conveniently available to a reasonable portion of purchasers or potential purchasers in the area in which the product is sold." What is the standard, if any, the Bureau wishes to offer as guidance? Is it availability

in "all locations" or "universal availability"? If so, how is this standard linked to false or misleading? Is it instead "conveniently available to a reasonable proportion of purchasers in the area in which the product is sold," or "if the systems (*i.e.*, programs for collection) or products (*i.e.* refillable) are in place to allow for reuse or refilling to occur"? If either of the latter levels of availability is adequate, why do the earlier examples require a burdensome reference to store names? How is it decided what is a "reasonable proportion of purchasers"?

Clause 10.13 addresses waste reduction claims. If there are any standard tests or methods for evaluating waste reduction, these should be referenced here.

XI. CONCLUSION

The *Draft Guide* represents an improvement over the 2001 proposal to use ISO 14021 itself as a Bureau guideline. However, it falls short of giving effective guidance in the context of environmental claims on how to comply with the provisions of the laws administered by the Bureau that address false and misleading representations. A preferred approach would be a standalone guidance document based on the principles of the Bureau's approach to false and misleading representations, with specific application to environmental claims.

If the current approach is maintained, and even if all of our recommended changes to the document are made, the Bureau should refer to the document as a "best practices" document, rather than a "guide" or "guideline".