

THE GREEN MARKETING LANDSCAPE: RATINGS, LABELS, AND CERTIFICATIONS

GreenBiz.com's October 15, 2009 webinar on "The Green Marketing Landscape: Ratings, Labels, and Certifications" yielded far more questions than we had time to answer during the allotted 60 minutes. We've selected questions from among the hundreds asked and submitted them to our three speakers, who graciously provided answers.

Sincere thanks to our panelists: **Suzanne Shelton**, president and CEO of the Shelton Group; **Brooks Beard**, a partner at the law firm Morrison Foerster; and **Stephen Wenc**, president of UL Environment.

— Joel Makower, Executive Editor, GreenBiz.com

Q. Is it inherently a government function to establish the standards and promulgate labels, as compared to industry associations whose stakeholders are the vendors of products and services?

Brooks Beard: From my perspective, I do not view establishing standards and promulgating labels to be an inherently governmental function for the Federal Trade Commission (FTC). (I have a different view when it comes to some other governmental agencies.) Focusing on FTC and green marketing, I think it is appropriate for FTC to provide industry with guidance regarding which established standards and labels provide something like a safe harbor (depending, of course, on all of the facts and circumstances for a given product and ad), where such standards or labels are set by non-governmental entities.

For example, I would not expect FTC to set a laboratory standard for establishing whether a product is biodegradable, but I believe it would be helpful for FTC to provide guidance by saying, if you use a certain ASTM standard, it will likely provide an appropriate basis for making a biodegradable claim (again, subject to looking at all other facts and circumstances).

But at the end of the day, even if FTC does not provide guidance as to which standards or labels will

help avoid a false or deceptive advertising assertion, a person or entity making a green-type claim can still come forward with evidence to support and substantiate such a claim where such claim is based on reliance on a standard or use of a certification or other label.

Suzanne Shelton: It would certainly be more believable to consumers if it came from a government entity or a trusted, third-party source "without a dog in that hunt." Only 4% of the population thinks associations are the best source for certification, while 18% think the government is and another 18% think a third party source like Consumer Reports or Underwriter's Lab is.

Stephen Wenc: It is important for a credible third party to establish standards and labels for a particular product or industry. It's ideal for government, manufacturers, industry associations, end users, retailers, consumers, sustainability experts and other groups to work together to develop standards. UL Environment is taking a leadership role in bringing these various stakeholders together to develop sustainability standards in industries where they are lacking. We believe that each group has an important role and perspective. This ultimately makes the system developed more credible to both businesses and consumers.

Q. Outside of standards or certifications for specific products or services, how valu-

able would you consider a local or regionally branded “green business” certification across local business sectors? We are considering implementing a program like this in our city. Do you know of any success stories to recommend?

Stephen Wenc: At UL Environment, we believe that local and regional groups play a critical role in helping to promote and create more environmentally-friendly products and businesses. One classic example is the U.S. Green Building Council’s LEED protocols and programs. Local organizations played a key role in the early acceptance and growth of LEED. We are currently looking at ways that UL Environment could help local and regional groups who are seeking to implement some sort of environmental requirements for companies. One concern to keep in mind is the possibility of increased confusion if very different local and regional definitions of “green businesses” emerge. Different requirements and definitions may confuse consumers and make it harder for businesses to work in different regions. We believe that it would be important to look at developing more commonly accepted programs for products and companies that consumers and business anywhere can recognize, understand and support.

UL Environment’s service offerings are intended to harmonize industry definitions and requirements around sustainable products, and we work with various stakeholders around the world to develop standards and labels that recognize and reward sustainable innovation regardless of geography.

Suzanne Shelton: I don’t know of any success stories and worry, unless there’s something REALLY different about this certification and unless you intend

to heavily promote it, that it will get lost in the sea of green labels and certifications. There are over 400 of them in existence now. I think it’s time for us to begin consolidating and get behind a handful of green labels with rigor behind them and begin building consumer awareness for them.

Brooks Beard: I expect this could be quite valuable, provided there is real substance behind the certification. If someone is using that certification, either on its own or in conjunction with a green claim, the vetting process for obtaining the certification needs to be sufficient to avoid misleading consumers. Transparency can also be quite helpful. There is a program like this in Santa Barbara, I believe, where the certifying entity’s website provides specific details about why a certain product, service, or entity received the certification (see <http://www.greenbizbc.org/>).

Q. Have you seen any judicial decisions regarding greenwashing or false labeling? If so, what legal theories are the courts applying? I’m not aware of any “green statutes,” and assume the courts will have to be somewhat innovative.

Brooks Beard: Green claims and greenwashing are not all that new. They used to be termed “environmental” claims. There are quite a few judicial decisions -- dating back to the late 1980s and early 1990s -- that focus on false or misleading environmental claims. (For example, see *Creative Aerosol Corp.*, 119 F.T.C. 13 (1995) (challenging “Environmentally Safe Contains No Fluorocarbons” claims for aerosol soaps containing VOCs and other ozone-depleting chemicals); *Mattel Corp.*, 1995 WL 150733 (1995) (challenging claim that foam soap “contains no fluorocarbons” where the soap contained other ozone-depleting substances); *FTC v. TradeNet Marketing, Inc.* (M.D. Fla., April 21, 1999) (challenging claims for a laundry detergent substitute advertised to clean clothes without causing water pollution); *OneSource Worldwide Network, Inc.* (N.D. Tex.,

July 1, 1999) (challenging claims that liquid-filled discs are an effective substitute for laundry detergents that not only clean laundry but does so without polluting the waterways); Orkin Exterminating Co., 117 F.T.C. 747 (1994) (challenging claims that a company's lawn pesticides are "practically non-toxic" and pose no significant risk to human health or environment.) More broadly, however, courts will not need to apply new legal standards when evaluating "green" claims.

The applicable laws themselves—whether looking at the FTC Act, the Lanham Act, or state unfair competition and false advertising statutes—have relatively uniform legal standards that apply to all types of advertising claims. The unique aspect of greenwashing cases may include evaluating whether a green claim is substantiated based on the unique evidence presented in each case, which will likely include some scientific, engineering, or other technical evidence. Over time, we may see trends in how courts evaluate and apply the law in greenwashing cases, particularly as it relates to what technical evidence is sufficient to meet the legal standard.

Q. How will President Obama's executive order on green procurement affect anything? Would FTC regulation tie into this, and shouldn't it, so taxpayers don't end up paying for greenwashing?

Stephen Wenc: There are many ways a government can positively impact the market for more sustainable goods and services, both by increasing the demand for sustainable products and regulating what is marketed a "sustainable product." FTC regulation is currently applicable to any company advertising environmental attributes, which affects any product qualifying for federal green procurement, and any

green procurement standards, for that matter. We at ULE are excited to see that the federal government is taking action to recognize manufacturers who create products with accurate and verifiable environmental claims. We are watching these developments closely and studying the policy landscape so that we are better able to advocate for appropriate government action when we have the opportunity to do so.

Q. It seems to be more important that companies have a long-term vision, so that consumers see they are working towards a goal. Is that perhaps more important than certifications? This way you can talk about how you are achieving those goals.

Suzanne Shelton: I think the vision, doing the right things to fulfill the vision AND the certification will all be important. In time, a green label will become table stakes – the cost of entry for a product category that, if absent, will tell a consumer which products aren't green. Then, given that many like products will be carrying the same labels, it will be up to the manufacturers to develop competitive, defensible, inspiring sustainability platforms and tell their story in a truthful, compelling way. He with the most compelling (and authentic) story wins.

Stephen Wenc: We believe that companies should have both a long-term vision as well as concrete, specific actions, like product certifications. We view the two as working well together with product certifications as an important element of progress towards a long-term vision. It is one of the things that consumers can look to as an achievement.

Brooks Beard: There are certainly business reasons for following either approach, and these are not mutually exclusive approaches. A certification, for example, may allow a

company to more effectively compete in the marketplace for a key product line when a competitor is not able to obtain a similar certification. This would allow the company with the certification to distinguish itself based on whatever “green” attribute allowed it to obtain the certification. Having a long-term vision can help a company’s profile beyond just a specific product. One quick example is Patagonia, with its “footprint chronicles” program, which evaluates the impact its products have on the global environment (see <http://www.thefootprintchronicles.com>).

Q. How much in the emerging standards and definitions is common across different industries or market segments and how much is specific to a particular segment? For example, how much green forestry standards can be applied to clothing?

Stephen Wenc: Many groups are working to harmonize definitions across sectors, though an official study has not been commissioned to determine how many overlap. Though each industry is different, elements of a successful sustainability standard are often transferable. For example, life cycle assessment, which ULE is building into the standards we are developing for doors, wallboard and suspended ceiling systems, takes into account the environmental impact of a product from the harvesting of raw materials through disposal. Interestingly, a product’s life cycle touches many industries. Sustainable forestry may, for instance, come in to play when evaluating the sustainability of an unrelated product’s paper packaging or the wood used to make part of a product in another industry. In the example of clothing, sustainable forestry may be evoked in production of the clothing’s tag or in more inventive cases, to produce the fiber for the clothing itself, and many variations in between.

To date, we have announced we are developing sustainability standards in a few select building-related industries, and will look to harmonize definitions there as well. This list is quickly expanding and we will be announcing additional industries in the near future. As we delve further into the standards development process, we will be exploring how industry-specific standards relate to each other and developing standards that leverage commonalities and share the best sustainability practices.

Q. Does the federal government ever adopt the standards of third-party certifications? For instance, there are a number of Green Seal and EcoLogo certified janitorial chemicals. It’s clear that it’s possible to create products with reduced toxicity. At what point does the success of these products push government to incorporate these standards into regulations?

Stephen Wenc: At ULE, we believe that the most effective sustainability standards are those developed through public and private sector collaboration and accepted by businesses, regulators and consumers alike. From our vantage point, the success of certifications doesn’t push government to regulate sustainability in an industry, but rather the market recognition of the certifications encourages more companies to abide by a sustainability standard. There are in fact some standards that have been adopted by government as part of their own requirements. For example, OSHA requires compliance with certain UL safety standards for products used in the workplace.

Q. The broad definition of green or sustainability encompasses not just environmental sustainability, but also economic and social sustainability. Other than Free Trade Certified, are there other social and economic certification bodies?

Stephen Wenc: There are many standards development bodies who consider economic and social sustainability in their review, although not all are accredited bodies. They vary by industry and subject area. For example, there are carbon market standards which consider social and economic sustainability in their project design as well as green building standards which do so as well. We can not name them all here, but we encourage you to review the standards bodies as you come across them to learn more.

The question of needing to include economic and social sustainability in standards development and certification against those standards is a good one, and one that ULE is exploring in the course of developing our product sustainability standards. For now, our sustainable product standards will focus on environmental sustainability. In the long-term, we will work with other stakeholders to determine how a broader definition of sustainability might be applied to companies and/or products.

Q. One of the big problems with eco-labels are the cost for small manufacturers. Providing rigorous, consistent and repeatable testing and standards costs money, and Sherwin Williams can afford it for its new line of low-VOC paints, but Yolo Colorhouse, a small paint manufacturer, may not be able to. Is there a way to level the playing field for smaller manufacturers and truly green small startups?

Suzanne Shelton: I think this is why having a government-sponsored label make sense. In my vision of it, companies wouldn't have to pay to have the government certify that the product meets the criteria... they would simply have to meet the standards and

then put the man-hours into the paperwork and defense of their claim with some sort of review board.

Stephen Wenc: The design of a third-party validation program is key to encouraging businesses of all sizes to participate, as is awareness on the part of the small business of the various government tax incentives and grants that exist to help companies tap in to the market for sustainable goods and services.

The cost to the certifying body to run tests on a product is generally the same regardless of the size of the company. Changing the level of thoroughness of a test is not an option, in our view, because it compromises the process and the credibility of the validation. At UL Environment, we validate individual environmental claims separately—a particular company can choose to have one green aspect of a product tested or multiple. However, only a single validated claim is required in order to earn the right to use our logo on the product packaging, and we hope that this model allows companies with smaller budgets to reap the rewards of claims validation as well.

Q. In general, is it safer to rely on products from “green companies” such as Seventh Generation, than a product put out say by a corporation like Proctor and Gamble who make claims that may or may not be true?

Stephen Wenc: The role of third-party certification programs and sustainability standards is to help eliminate the need for consumers to make these types of evaluations. When a company produces a product to an industry-accepted sustainability standard, consumers can be confident that the company developing the product has adequately considered the entire life cycle of the product's development, including the applicable green practices of the company making the product. For

individual products with “green” claims, verification of the claim by a credible third party eliminates the suspicion that the claim may not be true.

Q. Suzanne noted that “green” means different things to different people. Is this leading us towards marketing of sustainability versus green? Or is that even more complicated for consumers to understand?

Suzanne Shelton: Consumers generally have very fuzzy definitions of both “green” and “sustainable.” A little over 60% of the population feels positively about both terms, with the bulk of the remainder feeling undecided. I think consumers probably couldn’t give you a good definition of what the difference is between the two terms, but I’m not sure that matters. They both mean “good” in most consumers’ minds.

Q. Can greenwashing be good? This shows that there is a growing interest and adoption of sustainable initiatives. Please comment.

Stephen Wenc: The increasing number of green claims is good in that it shows that there is more demand from consumers and desire by manufacturers to produce green products. However, it’s a stretch to call greenwashing a good thing. Allowing “greenwashed” products to enter and succeed in the marketplace undermines consumer confidence when greenwashing is eventually revealed. It also may reduce incentives for firms making valid green claims to invest in truly sustainable innovation. Ultimately, everyone loses from greenwashing: consumers lose confidence in green claims, manufacturers lose credibility, and the environment doesn’t benefit

from greener products. UL Environment was created in response to the increase demand for environmentally sustainable products and its services help industries and the public make sense of “green” claims while supporting manufacturer transparency and credibility. We operate on the premise that truly sustainable products are best for consumers, businesses and the environment.

Q. How much more (in percent) is a consumer willing to pay for a green product versus a non-green product? Do you see that trending up or down in the future?

Suzanne Shelton: It’s totally dependent on the product category. In some categories we see almost no willingness to pay more and in some categories we see a reasonable percentage of people who are willing to spend as much as 80% more. As green becomes less of a differentiator (in other words, when many products in the same category have a viable green claim), it will be difficult to charge a price premium for it.

Q. I’ve always associated UL with the little tag on the bottom of my lamps. Will UL “approve” various third-party claims? Will you continue to be a behind-the-scenes player?

Stephen Wenc: Yes, we do validate and certify against existing third party claims and standards that we have vetted and found to be credible industry leaders. For instance, in August we announced that our validations and certifications will help manufacturers achieve the NAHB Research Center “Green Approved” product seal, qualifying products to earn points toward National Green Building Certification under the ICC-700 National Green Building Standard™. We also became an official certification body for the Business and Institutional Furniture Manufacturers Association’s (BIFMA) level™ program, a

multi-attribute sustainability standard and third-party certification program for the furniture industry.

It's a little hard for us to think of UL as a "behind-the-scenes" player since our Marks appear on more than 20 billion individual products every year. In fact, UL has one of the most visible marks in the world. We want to build upon consumer confidence in the UL name and mark to help make UL Environment one of the first things consumers look for when looking for green products.

Q. Suzanne, at the end of your preso you alluded that Energy Star is not a green rating. If I interpreted this correctly, how is Energy Star not a green rating? Thanks

Suzanne Shelton: Hmm...I'm not sure what I said that came across that way. I mentioned that ENERGY STAR is the only label we test that consumers consistently recognize (as compared to FSC-certified, USDA Organic, UL Environment, Green Guard, etc.). Now, ENERGY STAR currently languages their value proposition in terms of "fighting global warming" and we do find that, when asked "how much do you agree with the statement: when I buy an ENERGY STAR appliance I'm doing my part to fight global warming" 64% of the population agrees. However, in focus groups, when ES comes up in conversation, consumers talk about it in terms of energy efficiency and energy savings/cost savings. And consumers typically have energy efficiency and green in different buckets in their minds.

Q. You have spoken a great deal about the testing and certification of products. What role do business processes have in this discussion? Would this be a way of engaging more businesses that want to be green

but have limited ability to change the product themselves? Is UL interested in establishing this type of standard (similar to ISO 14000)?

Stephen Wenc: Just last month, we announced that we are leading a collaborative effort to develop sustainability standards for the green marketplace based on an analysis of environmental impacts over a product's entire life cycle. The program will initially develop standards for doors, wallboard and ceiling systems, but we are actively pursuing standards development opportunities in many other industries to be announced shortly. These standards represent a new "green" leadership role for UL Environment, and we intend the standards we develop to serve as the authoritative sustainability guidelines for industries. Businesses processes can also play an important part in manufacturing green products and we will look at business processes when we assess on-going compliance with product standards.

Q. On Suzanne's slide about why consumers think companies who provide environmental-friendly product do so, almost every reason given showed a drop from 2008 to 2009. Why?

Suzanne Shelton: Thanks for asking this, and I'm sorry I didn't clarify. In 2008 we allowed participants to choose more than one answer. In 2009 we only let them choose one. The things to look at for comparison's sake is that the order of the answers and general weight of the answers year over year is the same.

Q. I understand that ASTM is working on standards related to sustainability, developing standards for product declarations. Is Stephen aware of this work and what are his thoughts on how this will impact the "green label" protocols already in existence and going forward?

Stephen Wenc: We are aware of other standards development efforts and we participate on standards development panels of other organizations. We believe that it is important to collaborate to develop the most effective and comprehensive standards. ULE's new sustainability standards will be designed for the ANSI process and draw on input from UL Environment Standard Technical Panels, comprised of stakeholders such as manufacturers, government entities, consumer interest groups, product installers, users, distributors and testing organizations. These groups set minimum environmental requirements and create a progressive and tiered approach allowing sustainability leaders to highlight their achievements.

Q. Creating standards is one thing, having widespread consumer understanding is another. What are UL's plans to educate consumers?

Stephen Wenc: All our programs are developed with the consumer in mind. Credible, recognizable labels and properly-developed sustainability standards establish the basis for differentiating environmentally superior products and services, allowing consumers to make environmentally-preferable choices more easily. It will be important to provide information about products which is important, relevant and easier to understand. UL Environment will be investing in new and innovative ways to use different media and types of communication to provide the right types of information to consumers and users in the right ways.

We're lucky that modern technology and marketing

provide more ways to reach more people more easily and effectively than ever. Our participation in the recent Greener World Media webcast is one way we are reaching out to consumers, and through our media outreach, speaking engagements and by taking part in the many consumer educational campaigns our parent company UL undertakes every year, we are building our visibility so consumers will recognize and understand the importance of our programs and what ULE means in terms of consumer and environmental protection.

Q. Although there is no current standard definitions for "green" terms, where would you suggest us at this point to refer to in terms of definitions — i.e., biodegradable, recyclable?

Brooks Beard: I think the most accessible source for "green" term definitions is the FTC's Green Guides. You can find those Guides at the following site: <http://www.ftc.gov/bcp/grnrule/guides980427.htm>.

Q. What sort of messages seem to get through to consumers when promoting a green product. For example, can testimonial or documentary style content (on TV or the web) make any impact?

Suzanne Shelton: We think humor works really well, and that's the tack we take in most of our work for clients. Consumers are REALLY tired of being guilted into being green and they're a little tired of serious imagery and chest thumping from companies about how great they are for being green. A testimonial could work if it's light, fun and coming from someone people can easily relate to.

For daily coverage of green business, including green marketing, labeling, certification, and labeling, visit www.GreenBiz.com, and subscribe to Greenbuzz, the free weekly e-newsletter.