

Can Companies Use “Mass Balance Accounting” to Substantiate Green Claims?

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The International Bottled Water Association (or “IBWA”) challenged over 50 express and implied claims by *Boxed Water is Better* (or “BWIB”), suggesting that boxed water is better for the environment. NAD’s decision covers a lot of ground and is worth reading for anyone who makes green claims, but in this post, we’ll just focus on one issue NAD hasn’t addressed in detail before – mass balance accounting.

IBWA challenged claims that BWIB’s cartons are “92% plant-based” and “made from 92% renewable materials” on the basis that the liner and cap of the cartons, which comprise 36% of the overall carton, are unlikely made of renewable plastic. To support those claims, BWIB explained that the liner film and the cap in its cartons are 100% plant-based plastic as determined through a mass balance accounting approach. Here are some details from the decision about how that works:

- BWIB pays its supplier to source plant-based plastic for its caps and liners. However, because it would be costly to segregate production lines for plant-based and non-plant-based plastic, the supplier blends both types of plastic when producing caps and liners for multiple customers, ensuring that it uses as much plant-based plastic as its customers have purchased.
- Although the total amount of renewable plastic purchased by the BWIB accounts for 100% of its caps and liners, a given cap or liner in a BWIB carton will contain an indeterminate amount of plant-based plastic. As a practical matter, this means that any given carton may contain anywhere between 66% to 96% renewable material.

BWIB purchased an amount of renewable materials equivalent to physically using 92% renewable materials in each carton. But is that enough to support the claim? NAD found that although the FTC’s Green Guides are silent on mass balance accounting, they do suggest that “in some circumstances, it may be permissible to claim that a product has a certain amount of material even if any particular product does not physically contain that much.” The Green Guides example presents a scenario where a paper greeting card claims to have “50% recycled fiber” which is based on the annual weighted average of recycled material purchased from a variety of fiber sources after accounting for fiber loss during the papermaking production process. The FTC suggests this may be permissible and not deceptive.

NAD acknowledged that comments have been submitted urging the FTC to address mass balance in the updated Green Guides. One of those comments was submitted by the Environmental Protection Agency (or “EPA”) recommending that the Green Guides should not “promote the mass balance approach as it is not widely implemented or accepted worldwide.” The EPA suggests that allowing manufacturers to substantiate recycled content claims based on the weighted average calculation

“allows a producer to buy a certain amount of recycled material, but there is no requirement to use the recycled material.” EPA’s Safer Choice program requires that recycled content must be determined by weight of a given packaging product, eliminating the possibility of using a mass balance approach.

Although mass balance accounting may not be prohibited by NAD, NAD noted that “some consumers may not understand or have even heard of mass balance” and that “they may reasonably expect the claim to mean that each individual carton physically contains 92% renewable materials.” Because of that, NAD recommended that BWIB modify its claims to explain how they’re calculated.

IBWA promised to appeal the decision, so we’ll have to see what NARB says about this issue. For now, though, this decision suggests that advertisers may prevail at NAD using mass balance accounting to support green claims as long as they explain their calculations. That’s good news, but providing a consumer-friendly explanation is likely to be a challenge, particularly when disclosure space is limited. It will be important to follow updates to the Green Guides review to see how the FTC will address this issue.