



BUILDING BRIDGES IN THE APPAREL CHAIN

IAF LEGAL NEWSLETTER

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IAF LEGAL SECTION BY

SIDLEY AUSTIN LLP SIDLEY

Introduction

“Bridges were built, and the IAF is more professional now. But there are new goals to reach. We want to bring more value added to our members”, says the new IAF President Mr. Harry van Dalssen. These were some words during his speech at the 26th IAF World Apparel Convention in Hong Kong.

One of the actions that follow from this idea is a new information flow. All of you receive the monthly newsletter already. However we would like to introduce an addition namely the *IAF Legal Newsletter*. This is a separate newsletter that you receive from us regularly and it has been established in association with Sidley Austin LLP.

This special legal issue of the IAF newsletter seeks to bring our members information on legal developments in the European Union (EU), in the United States of

America (US) and at the international level. Sidley Austin reports on several recent legal developments, many of which touch upon ground-breaking issues.

For questions related to any of the items covered in each issue you can contact:

Arnoud Willems in Brussels
E: awillems@sidley.com

Or

Brenda Jacobs in Washington
E: bjacobs@sidley.com

Please note that this newsletter does not constitute legal advice and does not necessarily represent the views of the IAF, nor of Sidley Austin LLP.

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INTERNATIONAL APPAREL
FEDERATION

Any observations, comments, additions, questions?

Please send an e-mail to:
nep@iafnet.com

I. FTC Proposes Updates To Its Guidelines For Environmental Marketing Claims

The United States Federal Trade Commission (“FTC”) has proposed a significant revision of its Guides For The Use Of Environmental Marketing Claims (“Green Guides”). This proposal (i) revises key provisions of the Green Guides, (ii) expands the Green Guides to include new types of environmental marketing claims, and (iii) foreshadows likely further revisions.

Textile products receive much attention in the FTC’s proposal, with the FTC noting concerns about claims of 1) environmentally friendly products, 2) recycled content, and 3) organic or natural fibers.

1.1. Revised Requirements

The proposal revises the requirements for marketing claims already covered by the existing Green Guides. Many of these revisions simply require marketers to qualify the limits of their environmental claims to a greater extent than before, as the Guides are seen as already providing sufficient guidance on when unqualified environmental claims (e.g., “eco-friendly”) are deceptive. In fact, the FTC has already charged four sellers of clothing and other textile products with deceptive labeling and advertising, and it is clear that it is prepared to continue to take more such enforcement actions.

Other requirements are significantly revised by the proposed Guides. For example, marketer-created certifications or seals of approval will be treated as deceptive because they imply third-party approval, and claims that products contain degradable or compostable content also are subject to tougher guidelines. In addition, the proposal clarifies in significant ways the requirements associated with “free-of” and “non-toxic” claims.

For now, the FTC does not propose to revise existing guidelines for pre-consumer recycled content in textiles, but the FTC does suggest that possibility in the future. Indeed, the current Guide on when a finished product may claim that it includes recycled material may not make sense in light of innovations in this sector. The FTC is therefore seeking comments on whether it should eliminate or revise the factors it currently uses to determine if material is diverted from the solid waste stream. The FTC also seeks evidence of consumer perceptions of pre-consumer recycled content claims.

1.2. Additional Requirements

The revisions will regulate new categories of marketing claims not currently covered by the existing Green Guides. In particular, the FTC focuses on adding guidance about carbon offsets and renewable energy.

The FTC considered, but rejected, providing guidance on other types of claims not covered by the existing Guides, including “organic” and “natural” claims. At this point, the FTC believes it lacks sufficient consumer perception evidence upon which to base general guidance. This suggests that these claims may be ripe for inclusion in the guidelines in the future, after the FTC has elicited sufficient evidence to inform its advice.

1.3. Opportunities For Comment

The FTC raises a number of issues and questions that sellers of textile products may want to consider as they review or plan their labeling going forward, and there may be points worth formally commenting on. The FTC is inviting parties to submit comments about these proposed revisions on or before 10 December 2010.

If you have any questions about the proposed revisions to the Green Guides, how to comply with them, how to submit comments, or more generally about the laws and regulations governing consumer advertising, please do not hesitate to contact us.

II. European Union (“EU”) adopts measures to help flood-hit Pakistan

The European Commission recently tabled a proposal to suspend EU import duties on 75 products from Pakistan, a majority of which are textile products. This proposal was put forward in consideration of the current situation in Pakistan, as resulting from the devastating floods.

In light of Pakistan’s industrial base, the EU has identified a large number of textile products (and a few non-textile products) for unilateral tariff liberalization. Indeed, the proposed Regulation covers not only raw materials such as single cotton yarn, cabled cotton yarn, leather and polyester staple fibers, but also finished products such as gloves, trousers, anoraks and jackets, toilet and kitchen linen, curtains, and footwear.

If the regulation is adopted, over 70 Pakistani products essential to the apparel industry can be imported into the EU duty-free. In certain cases, this represents a reduction equivalent to 12% of the value of the product.

Before being adopted, the proposal must be approved by the Member States and the European Parliament. Moreover, as countries are not entitled to grant preferential trade concessions to individual countries under the discipline of the World Trade Organization, the European Union must also obtain a waiver from some of its obligations.

The Regulation is designed as a temporary short-term measure, to be applied from 1 January 2011 to 31 December 2013. Indeed, this unilateral and product-targeted suspension of duties is seen as a transitional arrangement until Pakistan is granted full preferential trade access to the EU market under the Generalized System of Preferences Plus ("GSP+") in 2014. This requires revising the criteria for countries to qualify under GSP+, as Pakistan is currently not eligible under this system due to insufficient implementation of human rights conventions, and due to the fact that its industrial base is too important.

Companies in the textile and apparel industry should conduct an impact assessment to determine how their operations will be affected by the unilateral suspension of duties on imports from Pakistan, and by the future revision of the GSP+ criteria. We would be happy to assist you in identifying measures to best address these changes.

III. European Commission seeks public input on definition of 'nanomaterial'

The European Commission recently launched a public consultation inviting comments from stakeholders on the definition of 'nanomaterial'.

Nanomaterials are increasingly present in the textile and apparel industry, either to upgrade existing functions and performances of textile materials, or to develop smart and intelligent textiles with unprecedented functions. For example, nanomaterials may confer stain repellent properties, or healthcare and wound-healing functions on fabrics and textiles.

The consultation on the definition of nanomaterials is of vital importance for companies engaged in nanotechnology for two main reasons:

1. Nanomaterials are already covered by an extensive regulatory regime relating to chemicals, workers' protection, product safety and environmental protection. However, nanomaterials are not explicitly named in these measures, and are therefore not currently subject to more specific or stringent regulatory requirements. Once a definition for nanomaterials has been adopted, however, the European Union will be in a position to introduce nanotechnology-specific amendments in existing regulations. As a result, nanomaterials might be more strictly regulated than other materials under e.g., REACH, workers' protection legislation, product safety, etc.
2. The European Commission has received a mandate to promote the adoption of a harmonized definition of nanomaterial at international level. Thus, once the EU has agreed on a definition of nanomaterial, it will actively promote this in international fora. This may have consequences beyond EU legislation in the fields of health, safety and environmental protection.

Interested parties are invited to comment on a draft Recommendation from the European Commission, which suggests the following definition for nanomaterials:

"Nanomaterials: means a material that meets at least one of the following criteria:

- consists of particles, with one or more external dimensions in the size range 1 nm – 100 nm for more than 1 % of their number size distribution;
- has internal or surface structures in one or more dimensions in the size range 1 nm – 100 nm;
- has a specific surface area by volume greater than 60 m²/cm³, excluding materials consisting of particles with a size lower than 1 nm."

Stakeholders wishing to provide their view on the correct and appropriate definition of 'nanomaterial' should do so before 19 November 2010.

If you have any questions about the Consultation, how to submit comments, or more generally about the laws and regulations governing nanotechnologies, please do not hesitate to contact us.

INTERNATIONAL APPAREL FEDERATION

P.O.Box 428 Utrechtseweg 95
 3700 AK Zeist 3702 AA Zeist
 The Netherlands The Netherlands

T: +31 30 2320908
 F: +31 30 2320999
 E: info@iafnet.com
 W: www.iafnet.com

The newsletter editorial team welcomes input, news and press releases from all IAF members. Send it one week before the end of each month to: nep@iafnet.com

IAF Team:

Han Bekke, Secretary General
bekke@iafnet.com


Ilse Wiegman, Senior PR & Communication
wiegman@iafnet.com

Erik Nep, PR & Communications
nep@iafnet.com

Mariet Solle, Secretary
solle@iafnet.com

Josien Feenstra, Information Specialist
feenstra@iafnet.com



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