

Appendix A

Item 231-2: Handbook 130, Packaging and Labeling Regulation

Sections 6.12. Supplementary Quantity Declaration and
6.14 Qualification of Declaration Prohibited

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20580

Division of Enforcement
Bureau of Consumer Protection

November 4, 2010

Michael K. Tomenga,
Esq. Neville Peterson
LLP
1400 16th Street, Suite 350
Washington, DC 20036-2227

Dear Mr. Tomenga:

This is in response to your correspondence seeking staff's opinion regarding whether Clorox's charcoal labeling meets the Fair Packaging and Labeling Act (FPLA) requirements. Specifically, you ask whether the claim on the Kingsford charcoal packaging that a 13.9 lb. bag "lasts the same as a 15 lb. bag" constitutes an exaggerated quantity statement in violation of the FPLA. According to the materials submitted, this claim appears on the principal display panel of the product to the left of the net quantity declaration.

Charcoal briquettes are subject to the labeling requirements of the FPLA and the Commission's Rules and Regulations Promulgated Thereunder. Section 500.6(b) of the Commission's Regulations under the FPLA states that:

The declaration of net quantity shall appear as a distinct item on the principal display panel, shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and, shall not include any term qualifying a unit of weight or mass, measure, or count, such as "jumbo quart," "giant liter," "full gallon," "when packed," "minimum," or words of similar import. The declaration of net quantity shall be separated (by at least a space equal to twice the width of the letter "N" of the style of type used in the net quantity statement) from other printed label information appearing to the left or right of the declaration . . .

Commission staff believes that the "lasts the same as" statement on the Kingsford charcoal packaging does not qualify the package's unit of weight. Consumers would likely reasonably interpret that statement as a performance claim about the product. The claim appears as a distinct item on the display panel and is separated from the net quantity declaration in accordance with the requirements of the FPLA regulations. Therefore, we would not recommend that the Commission bring a law enforcement action for violations of the FPLA based on the facts presented in your letter. Nevertheless, under Section 5 of the Federal Trade Commission Act, the company must possess and rely upon reasonable substantiation for the claim and the claim should not be deceptive. *See* FTC Policy Statements on Deception and Substantiation: <http://www.ftc.gov/bcp/policyshnt/ad-decept.htm>; <http://www.ftc.gov/bcp/guides/ad3subst.htm>. We have not evaluated Clorox's substantiation to

determine whether law violations exist.

This letter has not been reviewed or approved by the Commission or by any individual Commissioner and is given without prejudice to the right of the Commission to later rescind the advice and, where appropriate, to commence a law enforcement action. If you have any questions, you may contact me at (202) 326-3740, rspector@ftc.gov or Steve Ecklund at (202) 326-2841, seeklund@ftc.gov.

Sincerely yours,

Robin Rosen
Spector Attorney

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July 8, 2011

BY EMAIL and U.S. MAIL

Jonelle Brent
Weights and Measures Bureau Manager
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P.O. Box 19281
Springfield, IL 62794-9281

RE: Kingsford charcoal packaging

Dear Ms. Brent,

I am writing with respect to an item that I understand is on the agenda for The National Conference of Weights and Measures (“NCWM”)’s national conference in July regarding the “lasts the same as” claim on Kingsford charcoal packaging.

Kingsford disagrees with NCWM’s position that the “lasts the same as” claim on its charcoal packaging is misleading in any way. As you are aware, the Federal Trade Commission has agreed that this claim “does not qualify the package’s unit of weight” and that “[c]onsumers would likely reasonably interpret that statement as a performance claim about the product.” That said, we have removed this language from all Kingsford packaging printed as of mid-May 2011.

We would very much appreciate your sharing this information with your colleagues at the national conference in July.

Please don’t hesitate to contact me should you have any questions.

Sincerely,



Ellen K. Brown
Corporate Counsel

cc: R. Timothy Columbus, Esq.