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May 29, 2013

Federal Trade Commission
Attn: Consumer Response Center
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580

James A. Kohm
Associate Director, Enforcement Division
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580

Re: Sustainable Forestry Initiative, Inc.

Dear Consumer Response Center Staff and Mr. Kohm:

On behalf of ForestEthics and Greenpeace, the Washington Forest Law Center (“WFLC”) submits this Complaint because consumers are being deceived by the Sustainable Forestry Initiative (“SFI”), a timber industry-funded forest certification system developed for the deceptive “green” marketing of lumber and paper products. ForestEthics and Greenpeace are dedicated to conservation and the promotion of credible forest certification programs through consumer education and the marketplace.

This Complaint provides detailed evidence that SFI¹ is materially not in compliance with the Federal Trade Commission’s (“FTC”) revised “Green Guides,” which were formally re-promulgated on October 11, 2012. As set forth below, ForestEthics, Greenpeace, and allies believe that SFI engages in several unfair and deceptive acts and practices, which detrimentally mislead corporate and individual lumber and paper consumers who rely on certification in making purchasing decisions. Hundreds of millions of dollars in “green” spending are at issue.

¹ SFI’s President and CEO is as follows:

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We ask the FTC to investigate this Complaint and to take enforcement action requiring SFI to either cease its deceptive marketing practices or to make the necessary disclosures so as to comply with the revised Green Guides.

Background

On September 9, 2009, ForestEthics filed an extensively documented complaint against SFI in the FTC alleging that SFI was engaging in deceptive and unfair trade practices. Specifically, ForestEthics alleged that SFI was using a deceptive lumber and paper “certification” label, was falsely and deceptively marketing itself as an “independent non-profit public charity,” and was maintaining vague and misleading timber industry-set “certification” standards.

On October 15, 2010, the FTC announced it was undertaking a revision of its Green Guides, 75 Fed. Reg. 63,552. ForestEthics, the Sierra Club, and others submitted extensive comments on the proposed revision relative to “certification” entities on or about December 10, 2010.

On February 3, 2011, WFLC director Peter Goldman gave a PowerPoint slideshow presentation on SFI’s deceptive marketing practices to FTC staff at the FTC’s offices in Washington, D.C. WFLC is not aware of any action, enforcement or otherwise, the FTC has taken relative to SFI.

On October 11, 2012, the FTC released its final revised Green Guides. 77 Fed. Reg. 62,122. The revised Green Guides contain multiple new provisions and clarifications pertinent to claims that a product is “certified” by an allegedly independent entity. The revised Green Guides pertaining to “certification” may be summarized as follows:

- It is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third party. 16 C.F.R. § 260.6(a).
- “Certification” seals may not misrepresent that the certification entity is an “independent” entity as opposed to an industry trade association or industry certifier. 16 C.F.R. § 260.6 (Examples 1-8).
- A certification entity’s claim of “independence” will be judged by how the consumer would likely perceive the certification entity’s name. 16 C.F.R. § 260.6 (Example 3).
- A certification seal may be an “endorsement” and, consequently, must disclose “material connections” between the endorser and the seller of the advertised product that “might materially affect the weight or credibility of the endorsement.” 16 C.F.R. § 260.6; 16 C.F.R. § 255.5.
- To legally claim a certification entity as “independent,” the certification entity must be a “voluntary consensus standard body.” 16 C.F.R. § 260.6 (Example 2) (emphasis added).

- A certification entity cannot claim “independence” if an industry member of the entity can veto any proposed changes to its certification standards, even if those standards are promulgated by a “voluntary consensus standard body.” 16 C.F.R. § 260.6 (Example 4).
- In order to legally claim third-party certification for standards, an independent auditor must be able to apply these standards objectively. 16 C.F.R. § 260.6 (Example 2).
- Reasonable certification fees need not be disclosed. 16 C.F.R. § 260.6 (Example 8).

In light of the additional guidance provided in the 2012 revised Green Guides, we believe that the SFI forest certification system competes unfairly and deceptively because SFI explicitly and implicitly maintains that the standards were developed and implemented by an independent non-profit organization. In reality, SFI is materially connected to the forest products industries that it certifies. SFI’s claim of independence is thus misleading and appears to be having a material effect on the market choices of reasonable consumers, who are making product-choice decisions, and often paying more, based on SFI’s deceptive certification that the products were produced in a sustainable manner.

Complaint Outline

- A. Independent forest certification is important in the growing market for “green” forest products.
- B. SFI’s claim that it is an “independent non-profit public charitable organization” is deceptive, is likely to mislead the public, and therefore violates the Green Guides provisions.
- C. SFI’s forest management standards were not developed by a “voluntary consensus standard body” and therefore violate the Green Guides provisions.
- D. Because SFI’s forest management standards are so vague that an auditor cannot apply them objectively, SFI’s claims of third-party certification are deceptive.
- E. Consumers of timber and forest products would reasonably rely on SFI’s claims of independence and certification.
- F. SFI’s deceptive claims have a material effect on consumer choices.

Submitted along with this Complaint is a notebook containing the referenced Attachments. If you have any questions, please do not hesitate to contact us at the letterhead phone and address.

A. Independent forest certification is important in the growing market for “green” forest products.

Alarmed by worldwide deforestation and its widespread effects, such as global climate change and forest habitat fragmentation, consumers are increasingly interested in purchasing forest products that are environmentally sustainable or “green.” Consequently, the marketplace for “green” forest products is hot—the U.S. green building market alone is expected to top \$170 billion by 2015. Environmental Leader, *Green Building Market to Hit \$173.5 Billion by 2015*, July 10, 2010 (Attachment 1). Eager to profit from this demand, many forest products are labeled as having been sustainably grown and harvested in an environmentally and socially sound manner. “In theory, consumers, armed with the information necessary to understand the environmental consequences of their choices, will choose to buy products certified with eco-labels, creating a market incentive for producers to supply such products.” Misty L. Archambault, *Notes, Making the Brand: Using Brand Management to Encourage Market Acceptance of Forestry Certification*, 81 N.Y.U.L. Rev. 1400, 1405–1406 (2006) (Attachment 2). Unfortunately, not all of these labels are accurate, leaving many consumers either confused or deceived.

The media has noted the confusion created by diverse “eco-labels.” As written in the Seattle Times, “[m]erely slapping an eye-catching green logo on a product does not ensure its environmental worthiness.” Kate Beem, *Sorting through confusing “green” product claims*, Seattle Times, July 20, 2010 (Attachment 10). The problem of confusing “green” labels exists in the forests product industry and across the broader consumer marketplace. Jennifer Alsever, *Want a green house? Prepare to be confused*, NBC News, May 7, 2007 (Attachment 11); Blaine Harden, *Two Timber Firms Pretending To Be “Green,” Groups Allege*, Washington Post, December 24, 2006 (Attachment 12); Nikki MacDonald, *How genuine are “natural” products?*, The Southland Times, February 18, 2013 (Attachment 9).

Even manufacturers are confused by the proliferation and meaning of eco-labels. See Michael McCoy, *Spread of Ecolabels Vexes Cleaning Product Makers*, Chemical and Engineering News, January 28, 2013 (Attachment 13). Paul DeLeo, of the trade group American Cleaning Institute, acknowledged the importance of auditable standards: “Everything is heading in the direction where sustainability is quantitative rather than just narratives about the wonderful things we are doing... In the future, I hope we will be able to cut through the BS and find out who is really making a difference.” *Id.*; see also Environmental Leader, *Too May Eco-Labels “Overwhelming,” Companies Say*, August 9, 2012 (Attachment 14) (“[C]ompanies listed brand strengthening, addressing consumers’ sustainability demands and protecting against pressure-group attacks as key benefits of adopting eco-labels. But they also expressed what the study called ‘substantial skepticism’ over eco-labels’ enduring credibility and the rigor of the criteria and certification procedures.”).

Consumer confusion regarding “green” certification not only injures the consumer, it injures businesses that pay a premium to meet more stringent certification standards, yet are unable to benefit in the marketplace. Where businesses are able to advertise eco-labels, yet not adhere to strict standards, it renders it impossible for honest, well-informed businesses to compete. Federal Trade Commission, *FTC Issues Revised “Green Guides”* (October 1, 2012) (Attachment 55)

(quoting FTC Chairman Jon Leibowitz saying “But this win-win can only occur if marketers’ claims are truthful and substantiated. The FTC’s changes to the Green Guides will level the playing field for honest business people and it is one reason why we had such broad support.”).

In the face of this confusion, non-profits such as the World Wildlife Federation (“WWF”) have attempted to provide guidelines for meaningful certification. According to WWF, certification should ensure socially and environmentally responsible commercial forestry through an independent, open, multi-stakeholder standards-setting process verified by a transparent technical performance auditing process subject to stakeholder appeal. Third party certification ideally recognizes the rights of indigenous peoples, includes objective and measurable performance standards, and requires identification and protection of important or critical conservation areas. Standards should be based on consensus multi-stakeholder decisions; no major interest group can dominate or be dominated in the standards setting decision. *See WWF/World Bank Global Forest Alliance, Forest Certification Assessment Guide (2006) (Attachment 3)*. The revised Green Guides largely accord with this guidance.

The market has proven forest certification to be commercially valuable. Many landowners and land managers seek third-party certification in an effort to increase the sale value of the materials from their forests. Studies indicate that forest certification financially benefits the landowner. One study out of Duke University found that FSC certification, on average, yielded \$771,000 of additional annual revenue for the management of 3.3 million acres of commercial forestland. Certification premiums for finished wood increase the return on products by 10.5% and increases in stumpage range from 1.6 to 4.3%. Jenna Schreiber, *A Cost Benefit Analysis of Forest Certification at The Forestland Group* (December 7, 2012) (unpublished Masters dissertation, Duke University) (Attachment 4). A study of FSC certified Pennsylvania state forest land determined that certification resulted in ~10% higher prices. Terrence Bense et al., *Are There Economic Benefits from Forest Stewardship Council (FSC) Certification? An Analysis of Pennsylvania State Forest Timber Sales* (April 8, 2008) (working paper) (Attachment 5).

Corporations that manufacture wood-based products have also recognized the market demand for “green” goods and are seeking certified forest materials. The paper products industry, for instance, has realized the growth potential in using certified forest material. International Paper, an SFI-certified company, states, “When it comes to sourcing wood fiber used to make paper and packaging products, certification of forestry-related operations represents the highest standard of stewardship and traceability that a company can provide to its customers.” International Paper company webpage, *Certifying the Supply Chain* (Attachment 6). A recent study notes that one in four consumers ranks “environmental friendliness” as the most important trait in purchasing computer paper. Additionally, a majority of Americans believe that it is important that the products they purchase be environmentally friendly. This market demand means acceptance of higher prices—four in ten purchasers would pay 15% more for “green” computer paper. GfK Roper Public Affairs and Yale University, *The GfK Roper Yale Survey on Environmental Issues* (2008) (Attachment 7).

Proof of sustainable production also makes wood eligible for “green building” certification, such as the Leadership in Energy and Environmental Design (“LEED”) system, which was developed and is maintained by the U.S. Green Building Council. The green building market is expected to

expand in the future. The “Green Building Market Barometer” (Attachment 8), a biennial measurement of architects, real estate owners, developers and corporate owner-occupants compiled by Turner Construction, notes that the green building market is bullish:

Seventy-five percent of executives said their companies consider the level of sustainable practices when choosing a supplier of goods or materials, with 48% calling it an extremely or very important consideration. . . . Among executives at companies where sustainable practices are at least somewhat important when selecting vendors and service providers, the use of Green materials was the factor cited most often as a consideration (87%)

In short, the proliferation of eco-labels makes informed decision-making difficult for consumers seeking environmentally friendly products. Ideally, certification is beneficial to the forestland owner, the forest products producer, the average consumer and the government. For forest owners, certification of the forest generates price premiums. For forest products producers, certification means a market that is willing to pay more for their product, and that others cannot cheat to gain the same price premium. For consumers, certification brings confidence that their market choices support a healthy environment. But for these impacts of forest certifications—the real on-the-ground improvements in forestry that consumers, corporations and the government expect—to come to fruition, it is essential that certification is *meaningful*. Sustainable forest management, protection of watersheds and wildlife habitat, and recognition of the rights of indigenous people must be represented by the certification label. The FTC must protect the integrity and value of certification by investigating and acting decisively when claims of sustainable and environmentally-sound forest management are based on deception, confusion, vagueness, or ambiguity, instead of on audits by an independent entity using clear standards developed by a voluntary consensus standard body.

B. SFI’s claim that it is an “independent non-profit public charitable organization” is deceptive, is likely to mislead the public, and therefore violates the Green Guides provisions.

1. The Green Guides prohibit misrepresentation of independence that is likely to mislead consumers.

The Green Guides are clear: “It is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third party.” 16 C.F.R. § 260.6(a). “When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed.” 16 C.F.R. § 255.5. Thus, if there is a material connection between the certifier and the certified, that relationship must be “fully disclosed” or else the certification is unlawfully deceptive. *See*, 16 C.F.R. § 260.6 (Examples 2 & 3).

Federal law prohibits “unfair or deceptive acts or practices in or affecting commerce.” Federal Trade Act, 15 U.S.C. § 45(a)(1). “Deceptive” is defined broadly by the FTC as “a representation, omission or practice that is likely to mislead the consumer.” *Matter of Cliffdale*

Associates, Inc., 103 F.T.C. 110 (1984). The types and kinds of acts which may mislead include, but are not limited to, “false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations.” *Id.* (citation omitted).

As set forth above, certification seals cannot, under the FTC’s revised Green Guides, misrepresent that the certification entity is an “independent” entity as opposed to an industry trade association or industry certifier. 16 C.F.R. § 260.6 (Examples 1-8). A certification entity’s claim of “independence” will be judged by how the consumer would likely perceive the certification entity’s name (16 C.F.R. § 260.6 (Example 3)) and the entity’s description of itself.

2. SFI’s labeling and program materials deceptively imply independence.

The Green Guides make clear that the name of an organization can act as an implied claim of independence. The Guides illustrate this through two hypothetical certifiers, the “Forest Products Industry Association” and the “American Institute of Degradable Material.” *See* 16 C.F.R. § 260.6 (Examples 2 & 3). According to the Guides, a seal of approval from the Forest Products Industry Association would not be deceptive “[b]ecause it is clear from the certifier’s name that the product has been certified by an industry certifier, the certification likely does not convey that it was awarded by an independent certifier.” *Id.* at Example 3. In contrast, a product “certified by the American Institute of Degradable Materials . . . likely conveys that it was awarded by an independent certifier,” when in reality the group is “an industry trade association.” SFI’s name—the Sustainable Forestry Initiative—violates the Green Guides because it would reasonably lead a consumer to believe that it is an independent entity and because it lacks a disclosure of SFI’s material connections to the forest products industry. We first explain how SFI’s name, labeling, and program materials create an impression of independence, and in the following sections explain why that impression is deceptive.

The term “initiative” suggests the development of an enterprise that is new, bold, and daring, from outside the normal source.² For example, in government, an initiative is a law developed by the people by direct ballot, rather than by the legislature. The primary definition is “an introductory step,” and synonyms include “action,” “aggressiveness,” and “hustle.” As a result, the name “Sustainable Forestry Initiative” deceptively implies that SFI is a new regulatory mechanism arising independently from a source other than the forest products industry. In addition to the SFI name, the various labels all advertise their website URL, which describes SFI as a “program” and uses an “.org” domain name suggesting non-profit status and independence. The terms “initiative” and “program” are very similar to the FTC example in which an industry violates the Green Guides by referring to its certification body as an “institute.” 16 C.F.R. § 260.6 (Example 2). Finally, every label also makes the claim that the content and/or chain of custody are “certified,” further suggesting independence. SFI webpage, *Labels & Claims* (Attachment 56). The name and labeling are deceptive because they suggest an independent

² *See* <http://www.merriam-webster.com/dictionary/initiative>.

entity that regulates the forest products industry from outside, when in reality SFI was started by and is largely controlled and funded by the forest products industry.

The SFI name and label are also deceptive in what they omit. The label does not contain any disclosure of its dependence on the timber industry for funding, governance, or control. That lack of disclosure reasonably implies that SFI is an independent body, a fact that a reasonable consumer would find important when weighing the credibility of the certification. On the contrary, SFI explicitly and implicitly maintains that it is an independent certification entity and aggressively markets itself as an “independent, non-profit organization responsible for maintaining, overseeing and improving a sustainable forestry certification program that is internationally recognized and is the largest single forest standard in the world.” SFI webpage, *Basics of SFI* (Attachment 15). SFI claims that its board of directors is “fully independent” and “accountable,” and that it “represents environmental, social, and economic interests equally.” SFI webpage, *Setting the record straight* (Attachment 16). This claim of “independence” is repeated in virtually every publication from SFI, including in advertisements to prospective consumers of timber and forest products:

- In material promoting its use in green building: “The non-profit SFI program is overseen by an independent Board of Directors that equally represents social, environmental and economic interests.” *Building green through forest certification* (Attachment 17).
- In a pamphlet explaining how SFI’s standard discourages illegal logging: “SFI Inc. is an independent non-profit charitable organization, and is solely responsible for maintaining, overseeing and improving the internationally recognized SFI program.” *SFI: Taking Action Against Illegal Logging* (Attachment 18).
- In promotional material directed at fiber procurement executives: “Through its fiber sourcing requirements, the SFI program stands apart from other independent forest certification programs” *SFI: Promoting Responsible Forest Management and Sourcing* (Attachment 19).

SFI has a strong interest in maintaining its image as “independent”— SFI admits that it is a “message[] that resonate[s] among consumers” and establishes itself as a “trustworthy sponsor.” SFI marketing workshop presentation, *Promoting the Standard & Sharing Ideas* (2007) (Attachment 20); SFI publication, *Consumer and Customer Research Reinforces the Power of SFI as a Sign* (2010) (Attachment 21). While this claim is central to the public perception and market acceptance of SFI certified products, it is also patently unfair and deceptive under the Federal Trade Act and the revised Green Guides.

3. Material connections to industry—SFI’s origins and funding.

Whenever “there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully

disclosed.” 16 C.F.R. § 255.5. The Statement of Basis and Purpose accompanying the new Guides points out that there “may be a material connection when a certification conveys that the certifier is independent but there are ties between the certifier and marketer, such as when the certifier is a trade association of which the marketer is a member or when a marketer’s officer sits on the certifier’s board. Green Guides Statement of Basis and Purpose, 103 (2012) (emphasis added).

Despite its name and contrary to its promotional materials, SFI is not independent of the forest products companies it certifies. SFI was created by the forest industry—the same forest product companies it now claims to independently certify. The American Forest and Paper Association (“AFPA”), the largest forest industry trade association in the United States, developed SFI in response to public concern about the U.S. forest product industry’s environmental performance. SFI was spun off from AFPA in 2007 and has since represented itself as an “independent not-for-profit public charity.” However, its budget—approximately \$5 million in 2007 and approximately \$6 million today—was and is almost entirely funded by the timber industry. *See* Correspondence from SFI to WFLC (April 23, 2009) (Attachment 23); SFI Annual Report 2012 (Attachment 24); SFI 2011 IRS Form 990 (Attachment 25). AFPA’s public relations consultant, Harris Interactive, admits that SFI was created in large part to remedy the timber industry’s severe public relations problem: “And so, SFI became the ‘brand’ through which industry could unite to collectively tell its story, through advertising and communications.” *See* Harris Interactive, *Saving an American Industry* (2006) (Attachment 53). SFI has never strayed far from its roots: leadership of the organization has been largely dominated by the companies whose forestry it certifies. This historic and continuing relationship is most certainly a material connection which, if known by consumers, would affect the credibility of an SFI certification.

4. Material connections to industry: SFI’s leadership, governance and control.

SFI’s leadership is embedded in the timber industry. SFI’s initial board of directors consisted of thirteen individuals. Of these thirteen, nine were affiliated with major industrial timber companies or forestry consultant organizations: the board’s president was Rick Holley, the CEO of Plum Creek Timber Company. In 2004, SFI’s board expanded to fifteen; seven of these fifteen board members were affiliated with major timber or paper companies, including its vice-chair John A. Luke, the chairman and CEO of MeadWestvaco. All of the new board members were selected and approved by the then existing board members. In 2005, SFI’s fifteen-member board again included seven members affiliated with industry, including its co-chair Colin Moseley of Simpson Timber Company. In 2006, SFI’s fifteen-member board changed in composition but included seven industry members, including co-chair John A. Luke of MeadWestvaco; this board configuration continued through 2007. In 2008, Rick Holley, President and CEO of Plum Creek Timber Company, again took the chair, which he previously held in 2002. It was during Holley’s 2009 term that the board of directors passed the current SFI standard. In 2010, Bob Luoto, of the American Loggers Council, served as vice-chair of the board, ascending to the chair in 2011 and continuing in that role in 2012. In sum, a representative of the timber industry has always had a critical role to play in the governance of the board. In fact, throughout its existence, a member of what SFI calls the “economic” sector, an industry leader with a profound financial interest in maintaining but disguising lax environmental standards, has *always* been chair or vice-chair of SFI’s board.

In 2008, SFI changed the composition of its board of directors by increasing the number of board positions to eighteen and segmenting the board into three “sectors.” The “economic sector” is composed of six directors “from the forest, paper and wood products industry or other for-profit forest ownership or management entities.” The “social sector” is composed of six directors representing “community or social interest groups such as universities, labor, independent professional loggers, family forest owners or government agencies.” The “environmental sector” calls for six directors from “non-profit environmental or conservation organizations.” SFI publication, *SFI Inc. – Balanced and Independent* (2008) (Attachment 22) (emphasis added).

While SFI’s board may appear not to be industry-controlled from a numerical standpoint, three factors give undue weight to SFI’s “economic sector.” First, the two sectors that are supposed to balance the influence of the “economic sector” are in fact themselves closely connected to the forest products industry. The “social sector” often includes individuals with strong ties to the timber industry and an interest in limited regulation of forestry. For instance, in 2008, Bob Luoto of the American Loggers Council, which represents independent contract loggers, was initially placed in the “social” sector (and moved to the “economic” sector in 2010). The social sector often includes small tree farm owners, such as current board member Dr. “Skeet” Burris, owner of Cypress Bay Plantation. It also includes groups with a strong interest in the availability of inexpensive wood products, such as Habitat for Humanity and a manufacturing union.

Members of the “environmental sector” are not isolated from industry connections either. Take, for example, Roger Sedjo of Resources for the Future. Resources for the Future lists numerous SFI-certified companies as donors, including Weyerhaeuser (\$50,000–100,000 level), the American Forest and Paper Association (<\$25,000 level), Plum Creek Timber Company (<\$25,000 level), and MeadWestvaco (<\$25,000 level). Resources for the Future, *2011 Annual Report* (Attachment 27). The leadership of Resources for the Future also has ties to SFI-certified companies. Rick Holley of Plum Creek Timber Company, former chair of the SFI board, also serves on the board of Resources for the Future. Resources for the Future, *Board of Directors* (Attachment 28).

While we do not, in any way, impugn the integrity of these individuals or question their commitment to conservation causes, we do point out that these individuals have financial ties to SFI-certified timber companies and that this undermines SFI’s representation that the organization is independent of the forests products industry. It is further worth noting that many nationally respected non-profits that specialize in environmental protection have actively opposed SFI, including Greenpeace, the Sierra Club, Friends of the Earth, Natural Resources Defense Council, Rainforest Action Network, the Center for Biological Diversity, and many others. ForestEthics, *RE: Greenwashing* (2011) (Attachment 54).

Second, as public tax documents make clear—and SFI even admits—“the vast majority of [SFI’s] financial support is provided by SFI Program Participants who use our forest management and fiber sourcing standards.” Correspondence from SFI to WFLC (April 23, 2009) (Attachment 23). For instance, “In 2011, SFI program participants provided 93 percent of the funding for SFI Inc., and the remaining seven percent came from annual conference revenue, various services agreements, investment income and other miscellaneous sources.” SFI, *2012*

Annual Report (Attachment 24) (emphasis added). According to the publically available tax information for 2011, “membership dues” brought in \$4,346,920 and other “donations” from “program participants” totaled \$1,230,570. SFI 2011 IRS Form 990 (Attachment 25). Reliance on membership dues (more accurately, program fees) alone might not cause a reasonable consumer to question the impartiality of a certification program. 16 C.F.R. § 260.6 (Example 8).³ However, given that the dues paying members are timber and forest product companies, and that over 90% of SFI is funded, either through dues or donations, from the industry that it certifies, it is clear that SFI’s funding structure more resembles an industry-funded trade association than an “independent non-profit charitable organization.”

Third, an “independent” non-profit certification organization implies transparency of governance structure. But SFI has no true membership—in fact, Article II of the SFI bylaws states that “The Corporation shall not have members.” SFI Bylaws (October 15, 2012) (Attachment 26). In other words, SFI has no meaningful mechanism for organizations or individuals to join, vote, or elect the board of directors. Instead, the new board members are nominated by the current board members and then approved by the board chairperson. Instead of a board that is accountable to a membership, SFI’s board is only required to serve its “program participants,” virtually all of whom are forest products companies. As the board selects its own members, it is not surprising that members of the “social” and “environmental” sectors also have ties to SFI-certified companies.

In conclusion, there are material ties between SFI and the companies that it certifies. SFI is an offshoot of an industry association, its board of directors has been and continues to be dominated by industry interests and it is almost wholly supported by the industry that it certifies. Those undisclosed connections render SFI’s repeated claims of independence false and deceptive. Because SFI’s name implies independence, and SFI fails to disclose material connections to industry, SFI deceives consumers and violates the Green Guides provisions.

C. SFI’s forest management standards were not developed by a “voluntary consensus standard body” and therefore violate the Green Guides provisions.

Material connections which would otherwise cause a claim, certification or seal to be unfair or deceptive (such as those between SFI and the forest products industry, as described in Section B) can be cured if the standard is “developed and maintained by a voluntary consensus standard body” and “applied objectively” by an “independent auditor.” 16 C.F.R. § 260.6 (Example 2). The Green Guides adopted a 1998 White House Office of Management and Budget definition of a “voluntary consensus body”: a “domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures.”

Voluntary consensus bodies are defined as having all of the following attributes: (1) openness; (2) balance of interest; (3) due process; (4) an appeals process; and (5) consensus decision making. Office of Management and Budget, Circular No. A-119 Revised (February 10, 1998)

³ In the accompanying statement to the revised Green Guides, FTC elaborates, “marketers featuring certifications from third-party certifiers need not disclose their payment of a reasonable certification fee if that is their only connection to the certifier.” Green Guides Statement of Basis and Purpose, 102 (2012).

(emphasis added). The Guides also contain an exception to this exception—even if non-industry members compose a majority of a standard setting board, if the industry members can still override or “veto” unfavorable changes to the standard, the standard setting body cannot be considered “independent.” 16 C.F.R. 260.6 (Example 4).

There are at least three elements that preclude SFI from being considered a “voluntary consensus standard body”: (1) the standard development process is dominated by SFI certified companies; (2) industry members maintain a constructive “veto” over unfavorable changes; (3) the ineffectiveness of other procedures, which SFI promotes as proof of “openness” and a “balance of interest.”

1. SFI’s standard development process is operated and dominated by SFI-certified companies.

SFI claims that “[t]he SFI Standard development process is open, transparent and consensus based.” SFI Standard, *Section 8: SFI Standards Development and Interpretations Process* (Attachment 29). However, despite SFI’s maintenance of a public “comment period” on its periodically-revised forest management standards, a close examination reveals that SFI’s standard-setting process is closed, with no meaningful way for interested parties to impact the ultimate promulgation of a standard. The interests represented in the final standard are only those of the board, which “reflects the variety of interests in the forestry community,” not the diverse balance of interests required for a voluntary consensus board. SFI Standard, *Section 1: Introduction* (Attachment 30) (emphasis in original).

SFI’s forest management standards are developed in part by SFI’s “Resources Committee,” which is composed of either SFI board members or persons from their same organization. *See* SFI Standard, *Section 8* (Attachment 29). Thus, the Resources Committee represents the same industry-centric view as the board of directors. Development and review of the new standard is done through committee, and industry presence and interests dominate the writing and drafting process.

For instance, in drafting the 2010-2014 standards, persons from organizations that are certified by SFI headed virtually all of the writing and reviewing committees. SFI Board of Directors 2008 Winter Meeting, *Briefing Note: Update on the 2005-2009 SFI Standard Review* (Attachment 31). For example:

- Bob Emory of Weyerhaeuser, an international forest products company that is certified by SFI, led the subcommittee tasked with reviewing and writing the standards dealing with forest management practices. Half of the members of the forest management practices subcommittee were employed by SFI certified companies.⁴

⁴ Land Management Review & Writing Team: Bob Emory, Chair (Weyerhaeuser Company); Stephen J. Vinnedge (West Fraser Mills Ltd.); Dan Dessecker (Ruffed Grouse Society); Scott Williamson (Wildlife Management Institute). Attachment 31 at 22.

- Mike Branch of Smurfit-Stone, a paper-packaging company (now defunct) that was certified by SFI, led the subcommittee tasked with reviewing and writing the standards regarding auditing and the certification procedure. The only other member on the auditing and certification subcommittee was Kit Hart, an employee of Plum Creek Timber Company.⁵
- Joe Lawson of MeadWestvaco, a paper-packaging company certified by SFI, led the committee tasked with reviewing and writing a collection of different “objectives,” including forestry research, education, public outreach and legal compliance. Three of the four members of the subcommittee were from the economic sector, and half were from companies certified by SFI.⁶
- Brian Kernohan (formerly of Forest Capital Partners, a timberland investment company with lands certified by SFI, and now with Hancock Timber Resource Group), led the subcommittee tasked with developing new standards regarding bioenergy and carbon. Two of three members of the bioenergy subcommittee were from SFI certified companies.⁷
- Christopher Davidson of International Paper, a paper-products company certified by SFI, led the subcommittee tasked with developing new standards regarding biotechnology. The biotechnology subcommittee consisted solely of persons employed by SFI certified companies.⁸

The only review and writing subcommittee of the standards process led by a person without an apparent financial interest in lax forestry standards was Lena Tucker of the Oregon Department of Forestry, who led the committee tasked with procurement of timber products from non-certified forests. Her presence, however, was dwarfed by others with strong industry ties. Three of the four members of the procurement subcommittee were from SFI certified companies.⁹

In total, only five out of twenty-one positions on the subcommittees tasked with creating the 2010-2014 standard were from outside the “economic sector.” Because there is no genuine balance of interests, SFI lacks the voluntary consensus standard body necessary to cure SFI’s material connections to the forest products industry. 16 C.F.R. § 260.6.

⁵ Auditing Review & Writing Team: Mike Branch, Chair (Smurfit-Stone Container Corporation); Kit Hart (Plum Creek Timber Company, Inc.). Attachment 31 at 23.

⁶ Objectives 9-13 Review & Writing Team: Joe Lawson, Chair (MeadWestvaco); Danny Dructor (American Loggers Council); Bill Street (International Association of Machinists & Aerospace Workers); Kevin Hoyt (Huber Engineered Wood Products). Attachment 31 at 22.

⁷ Carbon & Bioenergy Review & Writing Team: Brian Kernohan, Chair (Forest Capital Partners, LLC); Juha Siikamäki (Resources for the Future); Edie Sonne-Hall (Weyerhaeuser Company). Attachment 31 at 22.

⁸ Biotechnology Review & Writing Team: Chris Davidson, Chair (International Paper Company); Marshall Jacobson (Plum Creek Timber Company, Inc.); David Gerhardt (MeadWestvaco); Bob Emory (Weyerhaeuser Company). Attachment 31 at 23.

⁹ Procurement Review & Writing Team: Lena Tucker, Chair (Oregon Department of Forestry); Chris Davidson (International Paper Company); Mike Branch (Smurfit-Stone Container Corporation); Rik Aikman (Buchanan Forest Products Ltd.). Attachment 31 at 22.

2. Members with an economic interest in limited regulation have the ability to veto unfavorable changes to the standard.

Even if the standard was made by a “voluntary consensus standard body,” a claim of independence is still deceptive if “an industry veto could override any proposed changes to the standards.” 16 C.F.R. § 260.6 (Example 2).

In the case of SFI, the “economic sector” of SFI’s board holds *de facto* veto power. The board holds the ultimate power to accept proposed changes to the standards. *See* SFI Standard, *Section 8* (Attachment 29 at 1.2 “Procedures”). SFI’s bylaws maintain that “it shall take a minimum of sixty-six percent (66%) of those present to approve any action of the Board.” SFI Bylaws (Attachment 26). Thus, it would take all of the members of both the “social” and “environmental sectors” of the SFI board (which together compose 66% of the Board) to team up and attempt to pass a more strict set of forest standards than the timber industry dominated economic sector considers appropriate. Such unanimity is unlikely give SFI’s board composition and the presence, as noted above in Section B.4, of board members in the social and environmental sectors whose ties to industry constitute an apparent interest in continued limits on regulation. Thus, the economic sector has a constructive “veto” over decisions that change forest standards that make forestry more environmentally-sound and less economically profitable in the short term.

3. SFI’s secret meetings and procedures lack openness and accountability.

“Openness” and a “balance of interests” are fundamental elements of a voluntary consensus standard body. But instead of an open and transparent process, the deliberations of the Resource Committee are purposefully kept secret. SFI’s bylaws mandate that:

Each member of the Resources Committee shall also maintain the confidentiality of all discussions and deliberations they may participate in as well, including agendas, minutes and materials presented at or distributed for meetings of the Board that they may receive. Such information may be disclosed only as authorized by the Board, or by the President.

SFI Bylaws (Attachment 26). The workings of the board of directors, like those of the Resource Committee, are also shrouded in secrecy. The bylaws dictate that “[e]ach Director shall maintain the confidentiality of all discussions and deliberations of the SFI Board of Directors, including agendas, minutes and materials presented at or distributed for meetings of the Board.” *Id.*

SFI has in place two procedures that superficially appear to provide openness, transparency and a balance of interests. First, SFI engages in public comment periods through soliciting written comments and by holding “regional workshops” to discuss proposed changes to the standards. Second, SFI claims that their use of an “External Review Panel” (“ERP”) demonstrates openness and a balancing of interests. In reality, these processes afford no opportunity to meaningfully contribute to the development of new standards.

In developing the 2010 standards, SFI had two “public comment” periods in which they sought the opinion of SFI-selected “stakeholders.” The first public comment period, open for sixty days, requested comments on the outgoing set of standards and not on the forthcoming standards. The second public comment period lasted thirty days and was placed after the first draft of proposed changes to the standards was released. There were no public comment periods after the second draft was released—the draft which was ultimately voted on by SFI’s board. In developing the 2010-2014 standards, SFI hosted seven regional forums in the United States and Canada to solicit comments on the proposed new standards. SFI Standard, *Section 8* (Attachment 29).

These public comment mechanisms do not ensure that competing interests are heard. The comment period has no teeth—SFI is under no obligation to even review submitted comments. Additionally, it is unlikely that a variety of viewpoints are represented by the comment period. SFI reportedly reached out to 2,000 “stakeholders” to solicit comments. However ForestEthics, which has a public, inherent, and documented history of interest, and frankly disappointment, in SFI’s lax standards, did not receive notification about the “public” comment period. If SFI is selectively soliciting comments largely from supporters, it is doubtful that the comments would reflect a “balance of interests.”

Additionally, SFI claims that their use of an “External Review Panel” (“ERP”) demonstrates openness and a balancing of interests. There are at least three reasons to question this assertion. First, while members are not paid for their service, SFI has given substantial donations to the organizations of Panel members. For instance, Bryan Burnham, the President and CEO of the American Chestnut Foundation, sits on the ERP. In 2010 and 2011, tax records reflect that SFI donated \$30,000 each year to the American Chestnut Foundation. 2010 SFI IRS Form 990 (Attachment 33); 2011 SFI IRS Form 990 (Attachment 25). Dan Dessecker, of the Ruffed Grouse Society, sat on the ERP from 1995-2004 and was on the land management standard writing and review subcommittee, perhaps the most important committee as it helps develop the standards by which forests are certified. SFI donated \$10,000 to his organization in 2010 and 2011. *Id.* It is not clear whether his organization received funding while he sat on the ERP given that 990 forms before 2010 did not require disclosure of this information. While we do not, in any way, impugn the integrity of these individuals or question their commitment to conservation causes, we do observe that these individuals’ organizations have financial ties to SFI which undermines SFI’s representation that these individuals constitute a “balance of interests.”

Second, despite its name, the ERP is not truly open to parties external to SFI. Candidates for the ERP are screened by the “Membership Committee,” which is composed of “three (3) panelists appointed by the Panel Chair, plus a representative from SFI Inc. and the Executive Secretary [of the ERP].” SFI External Review Panel Operating Charter (Attachment 34) (emphasis added). The candidate then has to be approved by the ERP.

Lastly, the ERP lacks any real power over the development or adoption of standards. The ERP is made up of 15 external volunteers and is charged with monitoring the standard development process, however this is largely *pro forma*. The ERP has no independent authority—it has no power to promulgate new standards, alter existing standards or approve new standards. Instead, the ERP is to “monitor” and “review.” This limited role is presented as enough “to represent the public interest as an outside observer of the SFI program.” SFI Standard, *Section 8* (Attachment

29). Final approval of the standard is left to the board of directors. Thus, even if the ERP were open and constituted a balance of interest, it has little influence in the creation and adoption of the standards.

D. Because SFI's forest management standards are so vague that an auditor cannot apply them objectively, SFI's claims of third-party certification are deceptive.

The revised Green Guides reflect skepticism regarding general claims of environmental benefit that do not reflect real, measurable requirements. As a result, the Guides require that, where an ecolabel claims third party certification, “[a]n independent auditor” must be able to apply the developed standards objectively. *See* 16 C.F.R. § 260 (Example 2). In order for an audit to be “objective,” the standard itself has to be able to be applied in a consistent manner across the entire industry. That is, two independent auditors following the same standard must be able to arrive at the same conclusion. Without this uniformity, the standard lacks reliability, predictability, and enforceability. Because a reasonable consumer is not be able to trust that the product they are considering purchasing is more sustainable or “green” than a similar product, a certification based on subjective standards lacks meaning and is not a certification at all.

SFI repeatedly claims to be “third-party certified,” and specifically claims that SFI-labeled products contain “certified forest content.” SFI webpage, *Labels & Claims* (Attachment 56). According to SFI, “[c]ertified forest content is defined as: Raw material from lands third-party certified to acceptable forest management standards.” *Id.* SFI broadly claims that its standards include “measures to protect water quality, biodiversity, wildlife habitat, species at risk and Forests with Exceptional Conservation Value.” SFI webpage, *Introduction to the SFI Standard* (Attachment 35). While it is true that auditors visit SFI sites, those auditors cannot provide meaningful certification because SFI's standards are almost entirely vague, discretionary, and subjective. We have found no examples of an auditor ever finding and reporting a violation of SFI standards. It appears that the standards function at the discretion of each landowners' assessment of what is feasible on their property. As a result, claims of third-party certification are deceptive and violate the Green Guides.

In order to demonstrate the lack of objectivity inherent in SFI certification, we must briefly explain the structure of SFI standards. The SFI standards consist of layers of largely aspirational provisions. The SFI standard consists of 20 “objectives,” 38 “performance measures” and 114 “indicators.” The objectives provide no guidance for implementation; rather they are broad statements of purpose. 2010–2014 SFI Standard (Attachment 36). Objectives are to be reached through the Performance Measures—broadly stated guidelines. These Performance Measures are in turn broken out into “Indicators.” But these indicators often use qualifiers which render the standard vague and allow for considerable subjective discretion. For example, Indicator 6 of Performance Measure 2.1 highlights this subjectivity: “Planting programs that consider potential ecological impacts of a different species or species mix from that which was harvested.” *Id.* (emphasis added). Thus, a forest management plan need only consider potential ecological effects. What appropriate consideration looks like—a hard look versus a casual glance—is not clear from the language and no actual action is required. A true indicator in this instance would require assessment in measurable, concrete terms and specific actions required based on the outcome of that assessment.

Vague and subjective indicators are prevalent throughout the standard:

- Program to incorporate the role of prescribed or natural fire where appropriate. (Performance Measure 4.1, Indicator 8) (emphasis added).
- Use of integrated pest management where feasible. (Performance Measure 2.2, Indicator 4) (emphasis added).
- Staff education and training sufficient to their roles and responsibilities. (Performance Measure 16.1, Indicator 3) (emphasis added).

Given the challenges presented by the vague and subjective language of the standards, SFI maintains another level of documentation: an “Interpretations” guide. *Interpretations for the SFI 2010-2014 Program Requirements: Standards, Rules for Label Use, Procedures and Guidance* (Attachment 37). However, the interpretations only underscore the subjective nature of the standard. For example, Performance Measure 5.1, Indicator 2, requires, “Incorporation of aesthetic considerations in harvesting, road, landing design and management, and other management activities where visual impacts are a concern.” *Id.* (emphasis added). The interpretation guide even notes, “This is a somewhat subjective requirement and processes that would fall into these concerns will often differ from one area to another.” *Id.*

The various levels of standards created by SFI never provide a detailed, enforceable, objective standard that can be uniformly applied. They are so vague that they cannot be objectively implemented by an independent auditor. As a result, SFI’s claims of “third-party” certification are deceptive and violate the Green Guides.

E. Consumers of timber and forest products would reasonably rely on SFI’s claims of independence and certification.

A claim is unlawfully deceptive if a reasonable consumer would be misled by it. In its Policy Statement on Deception, the FTC explains:

The Commission believes that to be deceptive the representation, omission or practice must be likely to mislead reasonable consumers under the circumstances. The test is whether the consumer's interpretation or reaction is reasonable. *When representations or sales practices are targeted to a specific audience, the Commission determines the effect of the practice on a reasonable member of that group.* In evaluating a particular practice, the Commission considers the totality of the practice in determining how reasonable consumers are likely to respond.

FTC Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984). Neither “proof of consumer reliance nor consumer injury is necessary to establish a § 5 violation Otherwise, the law would preclude the FTC from taking preemptive action against those responsible for deceptive acts or practices, contrary to § 5’s prophylactic purpose.” *FTC v. Freecom Communications, Inc.*, 401 F.3d 1192, 1203 (10th Cir. 2005).

In short, to determine whether a reasonable person would be deceived, we must analyze what specific audiences SFI targets and how SFI's marketing would lead a reasonable member of those audiences to be deceived. SFI actively targets at least four separate audiences through significant investments in advertising. SFI, *2009 Annual Report* (Attachment 47). Between 2007 and 2009, SFI spent over \$7 million dollars on public relations to promote its brand. SFI's 2007 Illinois Charitable Organization Report and IRS 990 Form (Attachment 48); SFI's 2008 Illinois Charitable Organization Report and IRS 990 Form (Attachment 49); SFI's 2009 Illinois Charitable Organization Report and IRS Form 990 (Attachment 50). The four audiences SFI targets are (1) corporate procurement executives; (2) building industry professionals; (3) government procurement officers; and (4) the general public. We discuss each audience in greater detail below.

1. Corporate procurement executives.

In the paper products industry, procurement officers at major corporations are a prime target for SFI's marketing. See these SFI publications: *What Others are Saying* (Attachment 40); *SFI: Taking action against illegal logging* (Attachment 18); *Promoting Responsible Forestry* (Attachment 41); *Consumer and Customer Research Reinforces the Power of SFI as a Sign of Responsible Forestry* (Attachment 38). This marketing is deceptive because SFI falsely promotes itself as independent and certified:

Customers and end users of wood and paper products want to know that products are produced in line with their environmental expectations and come from responsibly managed forests. The Sustainable Forestry Initiative® (SFI®) program, backed by third-party certification and strict labeling requirements, achieves this, as a variety of research studies demonstrate.

SFI publication, *Consumer and Customer Research Reinforces the Power of SFI as a Sign of Responsible Forestry* (Attachment 38). Use of "independent" certification, SFI notes, has great benefits for companies:

[M]ore than nine in ten [consumers] agree that buying wood and paper products from certified sustainable forests helps them feel like they are contributing to protecting the environment (91% agree). Such consumer interest and empowerment provides today's companies with tremendous opportunity. For example, demonstrating the power of product labeling, about four in five also say that if they saw a product was certified as coming from responsibly managed sustainable forests they would be more likely to buy it. A majority is still likely to buy it even if it costs up to 10% more.

Id. (emphasis added). By using the metrics of consumer interest and price point, SFI would deceive a reasonable procurement executive. The aggressive marketing has worked—Time Inc., National Geographic and Macmillan recently decided to use SFI-certified fiber. Evidence demonstrates that these decisions were made in reliance on SFI's deceptive advertising. Macmillan describes sustainability as a "core mission" and explains that by relying on SFI

certification, “we are ensuring responsible, environmentally-friendly forestry while also supporting the most efficient global use of recycled fiber. Third-party certification instills confidence that we are making informed choices that keep domestic forests healthy, rural communities strong, and preserves fragile forests in other areas of our world.” Joint press release, *Leading Publishers Partner with SFI in Responsible Forestry* (Attachment 39) (emphasis added).

2. Building industry professionals.

Architects, designers, developers, contractors and home builders are targeted by SFI with tailor-made promotional material. SFI has also engaged in an aggressive campaign to convince building industry professionals to use SFI certified wood products. Building industry professionals will reasonably rely on SFI’s claim that it is an “independent” certifier in making purchasing decisions because the claims of independence and objectivity are incorporated in professional education and literature.

SFI has employed particularly deceptive marketing tactics to reach this group, including writing an “educational advertisement” in GreenSource Magazine. By filling out a short questionnaire after the article, architects could earn an hour of “continuing education,” as mandated by the American Institute of Architects. In the advertisement, SFI notes that it is “an independent, non-profit organization operating under the direction of a multidisciplinary eighteen-member board equally represented by environmental, social and economic sectors.” It further claimed that its standard is “based on principles and measures that promote sustainable forest management and consider all forest values, and includes unique fiber sourcing requirements to promote responsible forest management on all forest lands in North America.” SFI educational advertisement, *Certified Wood Branches Out* (Attachment 42); SFI advertisement, *Two Ways to Show Your Commitment to Green Building* (Attachment 45).

In other, more traditional advertisements, SFI proclaims that “[t]hird-party forest certification standards, like SFI, are a proof point that wood comes from responsibly managed forests.” Attached are SFI advertisements specifically directed at building industry professionals. *SFI and Green Building* (Attachment 43); *Building Green Through Certification* (Attachment 17); *Two Ways to Show Your Commitment to Green Building* (Attachment 45). These advertisements are deceptive because they claim independence and fail to disclose close connections to the forest products industry.

3. Government procurement officers.

SFI is targeting government procurement officers to encourage them to purchase SFI certified products. SFI has developed advertisements which are specifically directed toward government procurement officers. In these advertisements, SFI highlights that:

By specifying Sustainable Forestry Initiative® (SFI®) labeled wood and paper products, government agencies can meet sustainability goals while promoting responsible forest management. When your procurement policies consider all

credible forest certification standards, including SFI, you're helping to ensure a steady supply of wood and paper products — and jobs — in North America.

SFI publication, *Government and SFI: Partnering to help responsible forestry gain more ground* (Attachment 44). Attached are advertisements directed at government procurement officers. *See Id.*; SFI publication, *What Others are Saying* (Attachment 40); SFI publication, *A Quick Guide to the SFI Chain-of-Custody Standard* (Attachment 46).

4. The general public.

SFI specifically designed its marketing and labeling to convince the general public that SFI is an independent entity with environmental protection as its foremost goal. SFI engaged the nationally-recognized advertising firm Harris Interactive to convince consumers that forestry as already practiced was in fact environmentally protective. That firm helped develop the idea to repackage the forest industry as environmental stewards under the SFI label: “And so, SFI became the ‘brand’ through which industry could unite to collectively tell its story, through advertising and communications.” Harris Interactive, *Saving an American Industry* (2006) (Attachment 53). Reflecting on the success of this repackaging, Harris candidly admitted that accomplishment of SFI objectives included increased logging on public lands and decreased environmental regulation. *Id.* Over time, the focus on conveying a message of independence has sharpened, as SFI has realized the public’s skepticism toward certification affiliated with industry. In a 2008 press release, SFI wrote: “As the marketplace fills with ‘green’ claims on a wide range of products,” SFI developed its new label to show consumers that “[a]ll SFI labels mean that the company is third-party certified to the SFI standards.” SFI Press Release, *SFI® Inc. Launches New On-Product Labels* (Attachment 52). As SFI’s President highlights, “there is growing skepticism about green claims” and independence by the certifier would be an important factor to the reasonable consumer in evaluating environmental claims. *Id.*; *see also* SFI’s *2008 Annual Report* (Attachment 51).

Consumers, believing that certification is independent and meaningful, are very likely to rely on and be deceived by the SFI brand. As evidenced by the recent promulgation of its “Green Guides,” FTC recognizes “environmentally friendly” messages resonate with consumers, that each year there are thousands of new products that are marketed as “green” to help boost sales, and that consumers must be protected from such deceptive certification practices.

F. SFI’s deceptive claims have a material effect on consumer choices.

Materiality is summarized as follows in the FTC Policy Statement on Deception:

The third element of deception is materiality. That is, a representation, omission or practice must be a material one for deception to occur. A “material” misrepresentation or practice is one which is likely to affect a consumer’s choice of or conduct regarding a product. In other words, it is information that is important to consumers. If inaccurate or omitted information is material, injury is likely.

Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984). It is clear that SFI's label is not only likely to impact consumer choices, but that it has already done so. The deceptive labeling and marketing therefore fits the criteria for materiality. SFI itself advertises its powerful influence on consumers, trumpeting that it is "well-positioned as such a trustworthy sponsor." SFI publication, *Consumer and Customer Research Reinforces the Power of SFI as a Sign of Responsible Forestry* (Attachment 38). SFI explained its decision to develop new labels by noting that "[b]ased on market testing . . . nearly 70 percent of consumers would choose a product that is made using responsible sources of wood fiber if there were an identifying label or claim on the product." SFI Press Release, *SFI® Inc. Launches New On-Product Labels* (Attachment 52). In a promotional publication, SFI notes:

In a series of focus groups conducted among women across the U.S., participants consistently indicated that the concept of forest certification was important to them. It demonstrates clear and tangible standards—with reforestation and replenishment of the resource—as well as supporting the fundamental idea of accountability. Perhaps more importantly, [consumers] felt it helps establish better and easier ways for them to make product choices, and were eager to learn more—including which labels they should look for when making product choices.

Consumer and Customer Research Reinforces the Power of SFI as a Sign of Responsible Forestry (Attachment 38). SFI notes that consumers are 83% more likely to purchase a paper product and 81% more likely to purchase a timber product that was certified with an endorsement that the product was "certified." A majority of consumers indicated that they would be willing to spend 10% more on a product that was certified. *Id.*

Consumers aren't the only ones susceptible to SFI's labeling. SFI writes that "most companies (83%) are expecting to increase their green purchasing over the next two years." Companies are also looking to eco-labels and third-party certification to verify that their purchasing decisions are prudent. SFI notes that "most companies (87%) believe that third-party forest certification is important to demonstrate the environmental credentials of their company and its products." According to SFI, its label is particularly impactful. According to "a recent TerraChoice Environmental Marketing Inc. study," the "SFI label was included among the top ten eco-labels purchasers most used and/or recognize to help them make purchasing decisions." *Id.* SFI's own research demonstrates that their labeling is effective in impacting consumer choice. In previous sections, we have demonstrated that the SFI label deceptively suggests independence and stringent forestry standards. Because that deception is impactful, it is material, and therefore SFI has violated the revised Green Guides.

Thank you for considering the information and arguments set forth in this Complaint and the enclosed notebook of Attachments. We ask the FTC to investigate SFI's claims of independence and to take appropriate steps to correct and prevent the deceptive marketing practices described in this Complaint. In order for a fair "green" marketplace to operate, consumers must be made aware when certification does not live up to its appearance.

If you have any questions or if we can share additional information with you, please do not hesitate to contact me at the letterhead phone and address.

Sincerely,

WASHINGTON FOREST LAW CENTER

A handwritten signature in black ink, appearing to read "Peter Goldman". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Goldman".

Peter Goldman
Director and Staff Attorney

On behalf of:
ForestEthics
Greenpeace