

>>JAMES KOHM

I'll get everybody a couple of seconds to take your seats, please. Good morning and welcome to the Federal Trade Commission's carbon offset and renewable energy certificate workshop. Before we begin today I have a couple of announcements. The first is somebody lost a smart trip card this morning and it's at the guard's desk out front. So if anybody can't get home today that's where you need to go. Before I begin, a few announcements for panelists in the audience. For those people who are going to be panelists today, please lean into these microphones. They don't pick up sound when you lean back and we have a pretty full house today. And we want to make sure the people in the back are able to hear you.

Please we're going to endeavor to stay on time today. We have a lot of things to do and a very full agenda. So if the panelists can please stick strictly to the time limits provided. We want to make sure everybody hears what you say but we want to make sure also we have time for questions and that we don't crunch the people at the end of the day. There will be time for questions at the end of each panel. In order to ask questions, please fill out the cards that have been provided. The question cards provided this morning. If you need additional question cards they will be in the back of the room. Simply fill out the card and hold it up, somebody will come by and get the card and bring it to the moderator.

We aren't always able to ask everybody's question but we like to make all the questions part of the official record of this event. So if you can please write legibly. And we -- while we'll take anonymous questions we would appreciate it if you will write your name and affiliation on the card and we'll scan the card and make that part of the record. If you would like to know what restrictions we place in the use of that information, namely being your name and affiliation, you could visit our website and look at our privacy policy.

That the record of this event will remain open until January 25th so if people want to answer those questions, if you want to supplement your comments, if you hear anything today that you would like to comment on, we'd encourage everybody to file those comments. In order to do so you can send paper to the FTC's main address but we prefer if you comment on the website. Simply go to the FTC website, click on the carbon offset button and follow the instructions, very easy to do. Today's event is also simultaneously webcast and transcribed so you'll be able to go to the site and see copies of both the transcription and the webcast that could help you with any further comments. In making comments I just remind everybody that today's event is part of a rule making record which is something a little different for the Federal Trade Commission. So please keep in mind what we're looking at is what claims are being made, how those claims are understood by consumers, whether the claims are truthful and substantiated, what advice the FTC can give to help people avoid making deceptive claims.

Turning to a few housekeeping matters. First regarding safety and security. You need everybody received a name tag when they came in this morning. You need to wear that name tag at all times when you're in the building. If you see anything suspicious while you're here, see somebody walking around the conference without a name tag you can tell the guards at the front desk in the lobby.

That when you leave the building today you'll have to come back in through the same security procedures you came in this morning. So particularly when you go to lunch today make sure you leave enough time because we will be starting on time to come back through those procedures. In case of a fire emergency there are two exits, the main exit is out the main entrance on to New Jersey avenue. If you go straight back through the pantry there's also an exit to the left out to G Street. If we have such an emergency please leave in an orderly fashion and cross diagonally across New Jersey avenue. So you stay far away from the building.

For everyone's enjoyment today please either turn off your cell phones, your blackberries or put them on vibrate. We realize it's a long day and everybody can't necessarily be out of touch all day. If you do get a call or you want to make a call, however, please don't do that in this room. Aside from interfering with everybody else's enjoyment, it also interferes with our equipment. So if you want to make a call or you receive a call, please go all the way through the first set of glass doors out into lobby.

We also have recycling bins. Paper,plast I and aluminum right outside in the gallery. There's also a box for unused -- for unused question cards. We'd encourage everybody to use those. Finally, for those of you who are going to be here all day and who haven't been listening to these announcements just waiting for the first speaker, the next ten seconds is what you want to really listen to. The bathrooms are across the lobby, if you go to the left of the guard desk and follow the corridor around to the left you'll find the bathrooms. That concludes today's announcements.

Turning to our first speaker. Four years ago one of chairman Majoras's first duties when she joined the FTC was to open another workshop put on by the enforcement division. At that time my predecessor introduced her as an anti-trust consumer with an inner consumer protection lawyer waiting to get out. Today I'm proud to introduce the preeminent anti-trust and consumer protection attorney, the chairman of the Federal Trade Commission, Deborah Platt Majoras.

[Applause]

>>DEBORAH MAJORAS

Thank you so very much, Jim. It's terrific to be here. I want to welcome everyone to Washington and particularly our participants in this workshop. I also want to give a special welcome to those joining us by webcast. Today we have -- I must say this is one of our best attended workshops we have had in a while. And so together with our webcast participants I think we're going to have just a tremendous dialogue so thank you for being here.

Why are we here? From the sun belt to the rust belt to the belt way, consumers are showing increasing interest in environmental issues. An important part of this interest may be influencing their purchasing decisions. In a recent USA Today Gallup poll more than 8 in 10 Americans said company's environmental record should be an important factor in deciding whether to buy its products. Businesses have taken notice. And in the past year there's been a virtual explosion of green marketing. NBC devoted an entire week to green programming. The current issue of Good Housekeeping includes a piece of how to buy green and not get fooled. Other magazines like Vanity Fair released greenish shoes and retailers like Wal-Mart and Home Depot have launched green product lines.

In response to this rise in green marketing we have accelerated our review of the FTC's green guides first issued in 1992 and then updated in 1998. We do a regular review on a schedule of our guides and rules but this one we have decided we need to do at an accelerated pace. Now, for some of you here today, this may be your first exposure to the FTC so let me tell you about who we are and what we do. Our two fundamental missions are to promote and safeguard competition and protect consumers. We're a relatively small agency. With about just under 1100 employees. But we tackle a wide range of prominent competition and consumer protection issues which we'll focus on today. From Spam to spyware to mortgage fraud, media violence to mobile marketing. Data security to debt collection. And of course we run the national do-not-call registry.

In the advertising realm our fundamental tool is the FTC act which prohibits unfair or deceptive trade practices. So for marketers the basic rule to remember is any material misrepresentation, omission or practice is deceptive. It's likely to mislead consumers who are acting reasonably. In short, marketers have to have a reasonable basis to support their advertising claims. Now, our job is not to substitute our judgment for that of consumers or to save them from making bad choices which unfortunately we do sometimes. Rather, it's to ensure they obtain the truthful information that they need to make their own choices. And when markets function in this way, consumers win. They secure a broader selection of innovative products at lower prices. Fulfilling our mission at the FTC we employ a variety of tools including law enforcement, market research, Business Education, Consumer education. And encouragement of sound, self-regulation in the industrial realm. Over the years I work in the energy environmental fields underscored this approach. We challenged deceptive practices in court. Published information to help consumers make informed

green purchasing decisions and promulgated rules and guides to make the rules of road in this area clear for business. We've also encouraged well constructed industry self-regulatory programs as a way to compliment our own government efforts.

The FTC's green guide apply the FTC act to environmental advertising and marketing practices and also marketers general principles how to avoid making misleading claims. The guides also provide guidance to marketers on specific claims such as what is meant by environmentally friendly. Recyclable, compostable. Since the guides were revised in 1998 the market has experienced the increased use of these terms to promote the green attributes of products, their packaging, manufacturing processes, but we've also had the introduction of new terms like sustainable. Biobased. Cradle to cradle and carbon neutral. Given the dynamic nature of this marketplace it's important that the guides are responding to today's challenges and to consumer perceptions currently of these environmental claims. Afterall, consumers today have the option to purchase products and use them in ways unforeseen 15 years ago when we first developed our guides and consumer perceptions of old green claims may have evolved significantly over time. Our robust review of these guides will allow us to explore emerging consumer protection issues and provide better direction to green marketers.

As is usual in reviewing a rule or guide the FTC is seeking public comment on the continuing need for guides, their economic impact, the affect of the guides on the accuracy of various environmental claims, and the interaction of the guides with other environmental marketing regulations. Given the explosion in the role of green marketing we also decided to hold a series of public workshops. On emerging green marketing issues. What we have found is that holding these types of workshops and we do it on a whole variety of issues within our jurisdiction, provide us with an effective and very open way to take in and test the perspective of various experts and stakeholders in these areas. Today's event first in the series focuses on carbon offsets and renewable energy certificates or RECs which are among the new products not addressed specifically today by the green guides. Carbon offsets and RECs are separate yet closely related products in this marketplace and as many of you know, I'm quite certain, carbon tests which are available for purchase frequently serve as a basis for claims that greenhouse gas emissions are reduced. The offsets are memorialized in certificates that represent measurable reductions in greenhouse emissions accomplished through activities such as methane capturing or tree planting. RECs serve as a means to market renewable energy. RECs represent renewable assets of electricity from wind, solar and other renewable energy resources sold separately from electricity produced. As is the case with carbon offsets companies can purchase RECs associated with their own activities in an effort to become carbon neutral many purchasers seek to obtain enough offsets to match their own emission.

The term carbon neutral received a lot of attention. Indeed early last year the new Oxford American dictionary added the work carbon neutral having named it the 2006 word of the year. I didn't know such a thing existed. Last year consumers watched a carbon neutral Superbowl. Academy awards telecast and NASCAR race. Interesting carbon offsets and REC has not been limited to football fans, Oscar winners and racing enthusiasts. According to a recent business week article, the market for carbon offsets in the U.S. could be as high as \$100 million. The New York Times reported the number of offsets sold by online Realtors grew by more than 42% from 2005 to 2006 and continue to grow at a steep rate during 2007. The sale of carbon offsets and RECs if marketed truthfully can provide interested consumers the opportunity to participate in this market for products and services that may reduce emissions.

To explore the consumer protection issues raised by these emerging market, throughout the day experts from environmental organizations, industry, government and academia will address the technical and marketing issues posed by carbon off sets and RECs. These effort will discuss a wide range of issues by these products including efforts by organizations U.S. and internationally to develop methods to substantiate these claims as well as discussing new and ongoing self-regulatory and certification efforts. We hope that these activities our discussion today can play an important role in furthering our collective understanding of the challenges that are presented here. Let me throw out a couple that we see. For example unlike tangible goods like cards or breakfast cereal, carbon offsets and RECs don't offer consumers a way to verify they receive the product for which they're paid. In of the products funded by the sale of RECs or carbon offsets occur in place remote from consumers whether the activity is planting trees in another country or subsidizing wind powered energy across the US. Moreover if consumers could see the project in action most of us would have great difficulty in confirming that our offset actually -- our asset purchase particular project. Or that the project would not have happened without our purchase. For that matter the project reduces atmospheric carbon in the amount claimed. With this much uncertainty there's a heightened potential for deception. In addition these new products raise consumer interpretation. So when consumers buy offsets do they know what they're purchasing? How do they interpret expressed claims about the general environmental benefits of the products? And what implied claims are consumers taking away from this marketing? And of course substantiating claims may pose challenges for marketers. Express and implied claims are based on competent reliable evidence. If you say your product offsets a certain amount of atmospheric carbon it should do just that. When the science is sound, other substantiation issues may arise. For example, sales of offsets and RECs may involve multiple transactions in a variety of different entities. Inadequate tracking and verification system could lead even those sellers acting in good faith to inadvertently sale the same product more than once: Unfortunately, these realities could also create opportunities for bad actors to deceive consumers. So today we're going to explore that's and other issues to determine the best way for the FTC to protect

consumers in these burgeoning markets. A deeper understanding not only would help us combat fraud in the future but will help provide better guidance to marketers seeking to make truthful claims and provide guidance to consumers in making purchasing decisions. Consistent with our past efforts on green matters I want to make sure we don't plan to develop environmental performance standards. We don't have the authority or the technical expertise to address issues of environmental or energy regulation per se. Nor are we in the business of mandating environmentally preferential practices. Instead, our efforts will focus on traditional consumer protection roll addressing deceptive and unfair practices under the FTC act. As part of this effort we seek to determine whether additional FTC guidance is warranted and if so, what that guidance should be.

We have an impressive group assembled here today so I'm confident we're all going to leave better informed than when we arrived. So thank you for your interest and participation in these issues and my special thanks to the panelists for taking time to lend us your expertise. Have a good day. Thank you.

[Applause]

>>JAMES KOHM

We'd like to invite the first panel up. For those of you in the back of the room I think there's seats over here if you want to come grab those now. There's also some seats in the front row over to the left.

>>LESLIE FAIR

Good morning. I'm Leslie Fair, an attorney in the Division of Consumer protection working in consumer and Business Education. I have the relatively simple job today of explaining the 93-year history of FTC law enforcement in now 14 minutes and 30 seconds so hold on for those of you who are FTC regulars this will be a review but I hope we can give basic information. Let me also mention on a sticky note that I can assure you it's made from 100% recycled materials. That the opinions I am going to be expressing today as well as FTC staff at this event, mine alone don't necessarily reflect the official position of the Federal Trade Commission.

For those who are used to dealing with the regulatory frameworks of other agencies the FTC offers a different -- FTC offers a streamlined approach. We have in our relatively thin volume in the code of federal regulations a few regulations that will apply across the board regardless of the nature of the product or service you're selling. For example, the mail order rule would require if you're selling products let's say a catalog online, anywhere through the mail, that you deliver your products in the requisite length of time regardless of what the nature of the product is. Anyone who uses email marketing as part of their campaign will need to follow the requirements of the can Spam act to offer consumers an easy way to opt out of receiving future email. So those kinds of

rules apply across the board regardless of the nature of the product or service you may be selling. The FTC also has a limited number of specific rules and guides related to certain industries. Certainly things like the used car rule or the appliance labeling rule, the green guides as the chairman mentioned redirect examination the ones probably of most interest to the folks we're going to be talking about today. However, the real basic of where the Federal Trade Commission's law enforcement approach begins is section 5 of the FTC act which I think is 23 words long, last I counted it, has really not changed in the 93 year history of the agency and here is what it says. Unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices are hereby declared unlawful. The vast majority of what the FTC does in the law enforcement arena is based on enforcing this 23 word statute. So if you are looking in our law for specific case law dealing with carbon offsets or specific case law dealing with RECs, you're not likely going to find them. What you'll find instead is the FTC's approach under section 5 of the FTC act. Let me call your attention to two important words, as the chairman mentioned deceptive acts or practices and unfair acts or practices. These were to have very specific meanings under our law. So when is an act or practice deceptive under the FTC act? To find out more about this, you'll want to look at the FTC's deception policy statement which applies across the board to all products and services and is readily available at FTC.gov but here is the summary. An act or practice is deceptive under the FTC act if it contains a representation or an omission of information that would be material to consumers, important to their decision to buy or use a product. And that would mislead consumers acting reasonably under the circumstances. That's about 95% of the legal theory that the FTC uses when we challenge a false or deceptive advertising in the marketplace.

What is an unfair act or practice under the first quarter act? If it's likely to cause substantial consumer injury, physical or economic, not reasonably avoidable by consumers themselves, and not outweighed by consumers or competition, this has been -- you'll find more about this in the FTC's unfairness policy statement, portions of this have actually been incorporated into the FTC act itself. That makes up about 5% but an important 5% of what the FTC does in law enforcement actions to protect consumers. These same standards apply across the board to all products and services. These same standards also apply across the board regardless of the advertising media -- medium that a company may use to disseminate its claims. Bearing in mind from the FTC's point of view too, things that a company says on its website about its products or services are ads in the same way that a million dollar buy for 15 seconds of a carbon neutral Superbowl ad so it's important to bear in mind your slogans, trade names, as well as what you might say in a newspaper or radio ad or online are all ads subject to the Federal Trade Commission act. Here just four basic principles that I think guide the FTC's view of how to enforce those 23 words to protect consumers the best. First that the FTC looks at advertising claims from the point of view of reasonable consumers. Now, I'm not asking for a show of hands but remember reasonable consumers don't have your expertise in the technical areas that

maybe involved here. Some of us -- I mean, some of them may have actually flunked chemistry at some point in their life. What you're looking for is a reasonable member of your target market and that may well be an average Joe or Josephine American on the street, how they interpret the claims. So it's not how the advertiser or scientist or technical experts interpret the claims, it's how reasonable consumers do it. The basic principle companies need to remember is before running an ad the advertiser must have substantiation for all claims, express and implied claims that those reasonable consumers would take away from the ad. Again, the claim is not under the issue is not what claims did the advertiser intend to convey. That's not how the FTC looks at it. It's what claims reasonable consumers take from the ad. So it's important to bear in mind not just what an advertiser may intend to communicate but how real-life consumers are actually interpreting these claims.

Obviously the level of substantiation is going to depend on the nature of the claim I'll show in an example in just a minute. Third, if a claim is truthful only under certain limited circumstances, advertisers must take care to qualify that claim and to do that carefully. General environmental claims that may actually need careful qualification, it's another topic I think that advertisers are going to want to pay particular attention to. I'll show a hypothetical example. Finally, if a disclosure is necessary to prevent an ad from being deceptive, it must be clear and conspicuous. Simply put, what the headline dideth, the footnote cannot taketh away. That applies across the board regardless of the nature of the product. To show how these principles work, the two questions that the advertisers must ask themselves before running an ad. Yes, the substantiation requirements requires that the company possess this reasonable basis before disseminating the claims. First, what claims express and implied does my ad convey to reasonable consumers? And second, do I have competent and reliable evidence which depending on the claim may require scientific evidence to support each of those claims. Let me walk through this using a hypothetical I came up with. I call this product LumaGreen Energy frugal light bulbs. At least as of ten days ago I spent quite an amount of time in the patent website trying even cognate of echo, earth, green and enviro. This is the only thing not taken yet. It's up for grabs if anybody wants to but LumaGreen Energy frugal light bulbs. As I said, this is strictly a hypothetical not based on an actual product. Let's take a look at the kinds of claims you're likely to see in an ad like this. First, replace your current 100 light bulbs with LumaGreen green lights and bathe your home in the natural glow of the sun. The concern here, let's say I told you that the LumaGreen bulbs only provide 65-watts of light. From the FTC's point of view, we would be very concerned that consumers would be left with the impression that they would be getting 100-watts of light from the LumaGreen Energy frugal lights. So there would be a concern about what kind of express or implied claim consumers are taking from the ad. The fact that the company did not literally say, you'll get 100 Watts of light does not mean that that claim doesn't have to be substantiated. Here is an example where we're going try to find out how consumers interpret that claim. Do consumers understand that claim that they're going to be getting

the equivalent of 100-watt bulbs? That explains that we look at these claims from the point of view of reasonable consumers.

The second basic proposition to substantiate all claims express and implied that reasonable consumers take from the ad. For each 100-watt bulb you replace with a LumaGreen Energy frugal light you'll save \$28 a year on your electric bill. Not an unusual claim, the kind of thing we see a lot. Those kinds of claims generally speaking claims must be substantiated with competent -- substantiated with competent reliable evidence. Claims about the benefit, efficacy, health, safety, or similar objective product representations, they're going to need competent and reliable scientific evidence. How does the FTC define that? We look at competent reliable scientific evidence as methodologically sound tests, study, scientific research, based on the expertise of professionals in the field, objectively conducted by qualified people, using procedures accepted as accurate, yielding statistically significant results. So we're talking solid science here. Maybe it's helpful to talk about what competent and reliable scientific evidence is not. It's not anecdotal evidence from consumers. The fact that consumers like the product is lovely and we hope that happens, but that is not the same as competent and reliable evidence. Popular press articles, you know, Vogue magazine is not the New England Journal of Medicine in a different context. If you're making scientific claims, popular press articles or newspaper reports aren't going to stand up. Sales materials from the person who sold you the active ingredients or the underlying products are not going to be substantiated because they too have the motivation to sell you something. The fact there's a low return rate, again, a nice thing but does not prove, does not substitute for competent reliable evidence, neither does the fact a company will offer a money back guarantee. Certainly a money back guarantee gives rise to the need to honor that guarantee but again, it does not substitute for competent and reliable scientific evidence. So in looking at a claim like this, the FTC is going to try to figure out, you know, that \$28 claim is going to depend on a lot of different things. What's the cost of electricity in different parts of the country? How is the product used? Is this on a 24-hour-a-day light bulb or a lamp flicked on just a few minutes a day? All those variables companies need to bear in mind when trying to come up with an adequate level of substantiation for making these claims but what companies definitely need for objective product claims is competent and reliable scientific evidence that they're truthful. Here is another claim. At only \$2.99 LumaGreen Energy lights are a bright idea. I only say if the deal I would like to make is in marketers and lawyers stop using asterisks, I will do what I can to get the government to stop using asterisks. But here just hypothetically speaking you'll notice the asterisk after the \$2.99. At the bottom of the ad in full point type is this phrase. Special introductory unit price with online purchase of 144 light cases, for more information go to the website. The FTC would likely say, you know, it certainly would be from a staff perspective that would be an ineffective disclosure because it was not -- it did not clearly and conspicuously disclose what the true price is. So those kinds of considerations that the FTC is going to look at, again, what the headline gives, the footnote

cannot taketh away. I have gone back 58 years in FTC jurisprudence, to my knowledge the commission has never lost a case when the company's defense was but we disclosed it in a footnote or television superscript. So just to let you know how that works. Finally the kind of claim a lot of times we all see in these save the earth, earth-friendly, general claims, bear in mind that if one of the important how consumers interpret those representations. It's probably I would suggest unwise to try to get around the substantiation requirement simply by using what I would call the green buzz word de jour. Remember slogans like this may well convey information and convey claims to consumers. Let's say hypothetically speaking that's a filament of my magnificent LumaGreen light bulb unlike other products contains -- is made from the dreaded element Washingtonium I'm calling it certainly companies have to be careful about making these general unqualified save the earth kinds of claims when there are mitigating factors or factors outweighing it that raise other concerns about the safety or benefits of the product. So again, I think these are things, advertisers are needing to watch out for in using these general slogan-type statements in their ads.

Now where can companies go for more information how the FTC looks at advertising claims? Certainly in the back of the room today you have the business guidance piece complying with the environmental marketing guides, I think the very useful sort -- source of information. You'll also find little copies of our FTC business briefcase which include 68 of the most popular plain language business guidance documents including complying with the environmental marketing guides to give you a little bit more information about how the FTC looks at these kinds of advertising claims.

I'm 15 seconds over but there you have it. Thank you very much.

[Applause]

>> Thank you for informative and as always dynamic presentation. Good morning, everyone. And welcome to session one.

>>CAROLYN HANN

Market over view, current practices for carbon offsets and renewable energy certificates. My name is Carolyn Hann, I'm an attorney in the enforcement division of the bureau of consumer protection. And I will serve as moderator for this session. I would like to introduce our distinguished panel. First we have Kate Hamilton, the carbon project manager at Ecosystem Marketplace. Next is Lori Bird, a senior analyst -- I'm sorry, senior energy analyst with the national renewable energy laboratory or NREL. Our third panelist is Rebecca Tushnet, professor of law at the Georgetown university law center and finally Alan Levi, scientist at the Food and Drug Administration. This session will provide an overview of four discreet areas, all of which will lay the ground work for today's workshop. First Kate Hamilton will present an introduction to the carbon offsets

market. Followed by Lori Bird who will provide an overview of the renewable energy certificates market. Next we will turn to Rebecca Tushnet who will cover first amendment and commercial speech issues. Alan will discuss consumer perception in new markets such as these. And now, Kate will start us off.

>>KATHERINE HAMILTON

Thank you. I know carbon offsets and coffee is good to start my day right. Before we delve into some issues around these markets I was asked to introduce the carbon markets in general. Particularly the voluntary carbon market. I come from an organization called Ecosystem Marketplace. We're a non-profit but we are created to be sort of a Bloomberg for these emerging payment for environmental service markets so we look not only at carbon markets but also other environmental markets such as wet lands or water quality markets. I focus on the carbon markets. So a few principles enable these markets to happen. One is the fact that greenhouse gases circulate evenly around the earth so the person doesn't care whether I emit my gases in New Jersey or China. This enables us to find the biggest emission reduction bang for our buck when we look around the earth and how to reduce the emissions so from an environmental position this can enable us to reduce as many as we can afford or from an economic perspective this could allow us to reduce the same amount of emissions at a cheaper cost.

So that, then the idea with offsets is that an entity decides they want to balance out their emissions by paying someone else to reduce or sequester or discontinue their own emission. And in theory the second entity would be doing this at a lesser cost than the first entity. Otherwise the first entity wouldn't need to offset. Our second principal about this market is then it puts a price on reduced. Put a price on greenhouse gas emissions and releasing greenhouse gas emissions and once companies realize there's additional cost to releasing these emissions they're more likely to try to reduce these emissions. So even if you're voluntarily offsetting you're then still paying for the emissions that you are offsetting and may want to think about ways to reduce them. Another big issue is this idea that reducing emissions can have other social or environmental co-benefits. There's also a lot of discussions in that if you're only focused on reducing or sequestering greenhouse gas emissions you maybe sacrificing other environmental or social concerns. They aren't the only carbon markets so these blue bubbles and the green bubble in fact are regulated markets. We're particularly focused on the two yellow bubbles. I have broken them into two parts. One is the Chicago plant exchange and the other is over the counter voluntary carbon market. The Chicago plant exchange is an organized bubble emits the chaos of the over the counter voluntary carbon market and the Chicago exchange is a cap and trade system, members commit voluntarily to reduce emissions at 6% by 2010. And then they can trade emissions or they can also purchase offsets in order to reach their goals. But those entities define offsets who are not members of the Chicago climate exchange such as individuals and a range of institutions purchasing carbon dioxides are given the more Kay chaotic

over the counter carbon markets. These markets don't have a formal exchange and they exist in a scattered range of transactions and because there's not a cap and trade system they're offset credit. A lot of people called this market the wild west, or considered it a buyer beware market. And so a lot of negative plans we're talking about today is in this context. On the flip side there's some exciting aspect of this market as well. It represents the consumer demand for carbon offsets, consumers looking so how can they maximize their emissions reduction. It also is an arena where new projects can get financed that might not be able to jump through the hurdles of the regulatory markets or the bureaucratic hurdles. Then it's also a place where maybe smaller projects that can't afford to jump through bureaucratic hurdles can be financed. No one knew how basic this was, the over the counter market or what were the range of market types. Last year the marketplace started tracking this market, we did this by trying to survey as many suppliers as we could find and who would help us by sharing information in the marketplace. And what we found is not surprisingly it's the market grew rapidly between 2005 and 2006. So the green and the blue are in fact the OTC markets and the bronze is the CCX market. Another interesting part of the market, a huge percentage of the OTC market historically was conservation organization using carbon finance for land conservation. And as you can see as the markets matured in the past several years it's become more diversified. Also if you look at the pre-2002 column, another point is this market has been robust for far longer than 2002 to 2006. We also just had a column we asked how many credits have you sold since 2002, that's why this is so large because it represents 2002 and before that. The earliest transaction we found was in 1989. Another interesting point, not surprisingly, the suppliers in this market have continued to grow. The more and more suppliers are coming into this marketplace each year. And I can guarantee you we don't have the numbers for 2007 yet but in 2007 there's going to be continual growth of new suppliers. I find new suppliers every week that are selling credits in this marketplace. These suppliers include not only the retailers that you see selling credits on line but also a host of other different organizations in the supply chain so there are project developers who may sell to the retailer, brokers who may facilitate that transaction and then there are organizations like wholesalers that may work with project developers that only sale involved so they won't sell to individuals only to companies or other retailers.

So we also ask these suppliers how big do you think the market is going to be? Of course there's the selection bias year because these are the answers of the supplies and marketplace but all the suppliers, most of them predicted continued growth. So on average in the next five years they thought that it could continue to multiply to about four times this size.

But with this continued growth and excitement around the marketplace I want to point out how tiny this carbon offset market is, this voluntary carbon offset is compared to the regulated market. So with this Chicago climate exchange and OTC together we value at around \$91 million, pretty conservative, but all the

regulated markets together were valued in 2006 at over \$30 billion together. So again, still a small market in context of the other markets.

Another interesting point is that a carbon credit is a commodity that's been created from a wide range of different projects. This can include a force industry project to something like destroying industrial gas, to trapping methane to renewable energy credits to emissions reductions by energy efficiency, to tracking methane, et cetera. So there's a range of different products out there that are converting themselves to carbon credits. And in this marketplace in the OTC market we found that forestry was 37% of credits sold and that industrial gas which is actually cheap was another major part of the credits sold. And Lori will get into more renewable energy credits but only 17% of this market actually renewable energy credits advertise and sold as carbon offset credit. On other side of the Chicago client exchange, they're credited registered. I can get the credits sold from them. But carbon is the huge type of credits registered in them which means it's been something like no -- they said that the carbon has sequestered in the soil. And it will be interesting to see how this evolves how this sort of balance of different project types change. So who is buying these credits? There's talk about voluntary market but in the end you need a final buyer to make the market happen. Not surprisingly the suppliers said 80% of their -- 88% of their customers were businesses. And most of these businesses were located in the U.S. 68% of the consumers we were able to track were in the US. So the U.S. is very important to this voluntary carbon market.

We also asked suppliers what they thought their customers cared about when purchasing credits. And a few interesting points came out. One, the biggest thing was this concept of additionality and the idea that the project would have not happened without the carbon market. Another big issue was they thought their customers wanted additional environmental and social co-benefits. They didn't want a project that just reduced greenhouse gases. They also wanted it to have other co-benefits. So we called this a demand for cars ma tick carbon. It's a little more exciting, a little more sexy. The fourth point is they thought their customers really wanted certified credit. I think that this interest on additionality and this interest on certification has become especially large in the past two years as there's been quite a few exposes on this market, quite a few main stream articles and different organizations focused on some of the problems in this marketplace. Some of the big problems are one, are these credits additional? Two, could these credits be double counted? How do I know if I haven't sold my credit to one person I'm not selling again to another person, how do I know that I actually sold one credit and retired it? And then also how do I know that if I sold credit from a project the project is actually produce those credits. And there's been no project failure. Another issue has been this idea of are there environmental or social sacrifices due to my emissions reduction project? Some of these articles have focused on these various issues.

Then as suppliers and buyers are seeking to prove the legitimacy of this market, certification has been a big issue in the past two years. And a range of certifications have popped out in the marketplace. These are a few of them. It's interesting because certification are not only for carbon credit bus some are actually for retailers themselves or for products that are making carbon credit claims. The gold standard in CCB some that look at not only the fact that a carbon credit is reduced by also social environmental co-benefits. Other standards such as a voluntary carbon standard just want to say that this is a carbon credit and emissions reduction has been reduced. And last year in 2006 we found that most retailers actually their own standards and then the next biggest was the big voluntary carbon standard. I think these will change as standards mature and people accept them into the market. I think standards have placed a way whether one area of legitimacy in the marketplace. The next area coming up now is the concept of registries. Again, this is really important for double counting. When you have a credit, can your credit be put in a bank with a serial number writ's organized and we can watch this transaction happening. Several registries popped up this year as well. I won't go through these registries for the sake of time but another important aspect of the marketplace.

So what is going to happen in the next step? I think one of the big parts is there's been continued growth in 2007, I haven't collected the numbers for the OTC market yet for 2007 but I can assure you the numbers will be at least twice the size as in 2006. And also the Chicago climate exchange reported that their volumes doubled between 2006 and 2007. And because the U.S. is such a big source of demand for this marketplace, a big question in the market is if U.S. regulation comes into place how will this influence the voluntary carbon markets? Will it be necessary to have a voluntary carbon market? I think in response to that question there's still a huge number of entities making long-term commitments to purchasing offsets emissions reductions that probably wouldn't be regulated if regulation came into play, the Yahoo, Google, PATAGONIA, et cetera, are all using offsets. If you have any questions here is my information.

[Applause]

>>CAROLYN HANN

I want to make a quick announcement. The flashlight in the back of the room -- flashing light in the back of the room is not an alarm, it's just a bad bulb. So we are working on getting it fixed. Just want to let you know. Thank you.

>>LORI BIRD

Carolyn, can I get a little help finding where this is? Great. I want to try to give a sort of complimentary over view of renewable energy certificate markets. As Kate gave us on carbon offset markets. I would say that REC markets are -- you can consider them a subset of carbon offset markets but some RECs are also purchased for the other environmental and other benefits of renewables so they

may not be sold as offsets and there are other emissions benefits of renewables and other social benefits as well. What is a REC? We talked earlier one of the speakers mentioned that a REC represents the attributes of renewable energy generation that can have values separate from commodity electricity. So basically you can generate electricity from renewable energy sources and that can be sold separately, you can sell the commodity electricity in one place and sell renewable energy attributes somewhere else. There's been some debate about the definition of a REC because some argue that a REC simply represents proof that renewable energy has been generated.

RECs are also known by a number of other names including green tags, renewable energy credits. Tradeable renewable energy certificates and so forth. A brief history how RECs evolved and where they started. Primarily RECs emerged out of discussions about how to implement renewable energy policies. The first mention of this concept was in the mid 1990s when California was talking about developing a renewable portfolio standard which was the policy that requires electricity suppliers or utilities to obtain renewable energy for a certain percentage of electricity they have been providing to their customers.

So and then after that it was also marketed when competitive retail electric markets opened up in the late 1990s. There was a product called reGEN marketed in Massachusetts that was an upgrade service to electricity service. And then in the California market as well this concept emerged. And it also emerged in Europe at about the same time. Why RECs, why did this emerge, what are the advantages? This is a mechanism for monetizing the value of the attributes of renewable energy separate from the commodity electricity. It can help eliminate the problems of intermittency, some renewable energy sources like wind or solar don't operate all the time, the wind has to blow to create electricity. And RECs eliminate that issue that they can be sold separate from the electricity. You don't have to match the consumer's load exactly, so forth. So it's easier for -- on the renewable energy side to sell that attribute separately. Same thing for transmission constraints. Sometimes to actually get the electricity to the end use consumer you may have to cross several different transmission lines so forth instead of paying the cost to wheel that where RECs can avoid that issue as well. I guess another benefit is that consumers can support renewable energy even if their supplier or utility or electricity supplier doesn't offer a renewable energy option. This is something that any consumer anywhere in the U.S. could purchase online.

So I guess as I have alluded to, REC markets have emerged, there's basically two types of REC markets that we're -- two categories that we've come up with. One is the compliance markets, renewable portfolio standards, these states that have policies that say a certain amount of renewables have to be in the resource portfolio of the utilities or the electricity load serving entities and voluntary markets are consumers either businesses or residential consumers that are voluntarily purchasing renewable energies equivalent their own electricity

consumption. That's what we're talking about here and I'll focus on but I will give you a brief overview of compliance work as well. This map shows the states are 25 states now and Washington D.C. have these renewable portfolio standard policies in place. Requiring the utilities to obtain 20% of their electricity from renewable sources by 2020 or so forth. All the amounts differ as you can see. But there's been real increase in interested states in adopting these policies. A lot of state versus increased the amount of renewables that have to be obtained in recent years and quite a few states have adopted policies. It's been growing very, very rapidly. And on the voluntary market side which is what I'm going to focus on and talk about for the rest of the presentation, that market has also been growing rapidly. Today about 25% of U.S. utilities offer a Green Power program so that can be in regulated markets, your utility might be offering it in the northeast and some other areas of the country, there's retail competition in electric markets and so some of those states you can either switch providers to purchase Green Power or when I use the term Green Power I'm referring to consumers that are purchasing renewable energy that maybe in the form of RECs or maybe in the form of actual electricity bundled with the REC or renewable energy electricity.

So in competitive retail electric markets, consumers in many cases have the option to switch to a provider that will offer a Green Power option or sometimes the default supplier, this is the case in New England, maybe teaming with third party marketer to offer the option so the consumer can have the electricity service and not switch but they can basically green it up and buy Green Power. All told more than 50% of consumer consist purchase Green Power directly from a utility or electricity provider. As I mentioned earlier, renewable energy certificate options can be purchased anywhere by all consumers in the U.S. because they can go online and purchase them from some of the marketers.

Green Power markets provide support for nearly 30% of new renewable energy capacity additions. New renewables that have been added since 1997. And this market has been growing rapidly at a rate of about 50% annually in recent years. And non-residential purchases are increasingly driving the market. In 2006 almost three quarters of all sales were to the non-residential sector. So businesses, universities, government agencies, so forth. And we estimate the size of the market to be 65 to 85 million in 2006 based on the Green Power sales.

This slide gives you some perspective on how the voluntary -- the voluntary market size is the red wedge and compliance markets or how much -- the blue wedge is how much renewable energy has been used or is going to be needed to meet current policies that are in place, the current RPS policies that I talked about. This slide just shows you that most -- in most states there are some utilities or power suppliers offering Green Power options to consumers. You can see in the upper Midwest there are some states with big large numbers like

Minnesota and Iowa. In some cases states actually require the utilities to offer Green Power option to the consumers.

We've collected data from marketers and utility force a number of years, about the size of this market. This is -- this slide is in millions of kilowatt hours annually so the sales in 2006 were about 12 billion-kilowatt hours. And as I said earlier, the markets is growing at the rate of about 50% annually. I guess I'll just mention too this data we do collect this -- the utilities and marketers report this voluntarily to us. There's no requirement they do that. And I actually do think that particularly in '06 this is really an underestimate because not all suppliers provide was this information and we can only fill in with the information that we have. But I think we are actually missing some here.

And this is the U.S. Environmental Protection Agency has a program, the Green Power Partnership. You're going hear from some folks from there later today but this gives you a flavor. They work with a lot of big companies that are purchasing Green Power and this is just the list of top 20. They do issue these lists. There's a new one that just came out -- did it come out yet? The next will come out in a few weeks. They have been issuing these quarterly so it gives you some kind of flavor of the types of companies and I think over the last couple of years we have really seen, this is a bit more main stream than some companies purchasing, not the traditional ones that are always doing the environmentally friendly so it's interesting to watch that. It's spurred competition in that the companies trying to outdo themselves to move up on the list.

Some of the companies that are purchasing Green Power or renewable energy actually advertise that -- great. Either on their products, you can see the soy milk, they have a picture of a wind turbine on here, some show the Green-e logo. The Green-e was a certification program in the U.S. and they're showing their product was made or distributed with Green-e certified renewable energy. Other companies or utilities are working with companies to help co-market their programs so we have been seeing a lot of that. This is municipal utility district worked with Starbucks to promote their Green Power options, so forth. Some of these other things. We have seen more of that kind of activity in recent years. Real briefly, I provided information on REC prices here. These are compliance market REC prices so RPS markets which are different from voluntary markets because each state has their own rules about what renewable energy types are eligible for -- to meet their RPS, where they have to be generated, what geographic region they have to come from. And states have very strict and restrictive policies in place, the price can be a lot higher if there are supply shortages or trouble meeting the requirements so we have seen it in New England in particular, some high prices. These are in dollars per megawatt hour so \$50 a megawatt hour, 5 cents a kilowatt hour in Connecticut for instance or Massachusetts. And then in other states like Texas has had much lower prices over time so there's a lot of variability there, depending on the supply of the renewables in the region and the requirements of the RPS.

This is some information on wholesale voluntary market REC prices so this is not the price to the end use consumer per se, this will give you an indication closer to maybe what a very large business purchase would be. Or what the utilities purchasing it from. End use consumer like a residential consumer, those prices are typically 1 to 2 and a half cents per kilowatt hour. You can see the prices are in dollars per megawatt hour so they're much less. So .1 to 1 cent a kilowatt hour here. I guess I would just say that this data came from evolution markets which is a broker. It's actually pretty small subset of the actual transactions out there. But I think it gives some indication of what the market prices are like.

I kind of talked about what some of the factors that affect market prices, I think I'll skip over this but you can read it for folks that have copies of this or it's online. I just want to say a couple of things about verification and certification of RECs. This market is -- it's a young market but has grown over time and there's been some improvement in the verification and certification programs during that time. Now this map shows you where tracking systems are in place to track RECs. Most of these have been driven by state renewable portfolio standards because a lot of the state policies use RECs to track compliance with the policy. So the REC tracking systems track the ownership of the REC over time and once it's used for compliance with the policy, the RPS policy, it will be retired or it's sold into the voluntary market it will be retired so it helps with double counting. You can see most of the U.S. is covered by the REC tracking systems. A couple of them came online within the last six months. The New York tracking system in blue is supposed to come online maybe next year. And then in the southeast all those white states down there, there is no tracking system available at this time for those states, although there maybe in the near future. I have just one minute left. I'm almost done here. I'd also say there are certification programs out there that have been active for a number of years. And they conduct audits and ensure that the RECs sold to consumers match those -- in terms of the quantity that consumers purchasing they do audits to make sure that matches up. Green-e released some numbers about how much the volume they have been certifying and it was about 10 billion-kilowatt hours in 2006 so it was about 80% of our estimate of the entire market size. Just a couple of issues. This is my last slide. What are the issues. As I mentioned, REC tracking systems are not operational in all regions of the country. Yet there's debate over additionality of RECs, we'll probably get into this in panels coming forward. Renewable projects, there's been discussion of that in the last year or two. The definition of a REC are all attributes included. Can renewable projects sell both a REC and greenhouse offset? Is there double counting there or how do we make sure there's no double counting? And then will RECs or renewable energy be able to convey the greenhouse gas benefits of the renewable energy facility, the fact that doesn't emit -- it doesn't have any greenhouse gas emissions under cap and trade regulation. There's details about carbon policy design and it depends on the policy design whether they'll be able to do that. I guess lastly difficulty in communicating the concept of a REC in simple advertising language to retail customers. Though

there has been -- I think the industry has evolved with that over time. So that's it. Thank you very much.

[Applause]

>>CAROLYN HANN

If you have questions for the panel complete the cards and someone will come around to collect them. We will try our best to ask these questions at the end of the panel. Thank you.

>>REBECCA TUSHNET

Now for something completely different. I was asked here to talk about the first amendment and the relationship of commercial speech to carbon off sets and RECs. So I'd like to address two questions, one what is commercial speech and what about that speech may government permissibility regulate under the first amendment? For our purposes speech about the use of these things, carbon offsets and RECs and related environmentally friendly I don't know I want to call them advertising gimmicks for my purposes or actual practices. We call them practice, that's fine. It's commercial speech. That means the government can regulate it into falseness or misleadingness. The key question is not necessarily misleadingness though there are compliance issues but confusingness. And that is a harder question, to what extent government can regulate to prevent people from being confused. And maybe there's not even a difference between being confused and being misled. If we're just concentrating on consumer outcome, consumers who are confused may end up making decisions just as if they were misled.

But start with what commercial speech isn't. Alism -- if Al Gore is speaking with no commercial relationship to an organization's sake, saying Terrapass is great, you should use it, that's fully protected speech. If he's wrong it's very hard to get him to shut up.

[Laughter]

>>REBECCA TUSHNET

If Terrapass, however, say it is same thing, that's commercial speech. So a product whose labeling says your purchase fights global warming, that's subject to challenge for untruth by competitors. By consumers. And by government regulators. And I don't want to limit my remarks here to what the FTC has done or is in any way likely to do because as a business matter if you're thinking about adopting these techniques or advertising your use of them, you do want to consider all the potential sources of challenge. So in fact, the most important case for these purposes is the case involving a consumer. In California who sued Nike for making a bunch of statements about his labor practices under California's false advertising law. Basically Nike came under sustained and

coordinated challenge for its labor practices involving subcontractors in developing countries. It responded with a comprehensive PR campaign including letters to the editor, as in major papers, letters to college presidents and athletic departments, PR people gave interviews to newspaper reporters and so on. And none of this or very little of this was conventional advertising. I want to pause here to show you parts of Nike's campaign. So this is the full text of the full page ad. So there's a huge amount of white space. Don't try to read it. The point is not what it said, the point is that this was a very emotional and sort of affect laden campaign designed to say that Nike cares. That Nike takes these issues seriously and is attempting to address them, so on, so forth. And that Nike also sent a letter to college presidents and athletic directors saying pretty much the same thing. The consumer sued saying these statements which basically had to do with labor conditions saying you know, people mostly get paid at our factories and there aren't that many rapes and often they're fed, the consumers said this wasn't true, that Nike was distorting the conditions which were must worse than Nike admitted. And Nike's defense was that this was fully protected speech under the first amendment because among the things Nike was saying was that although it wasn't doing a perfect job, it was doing a lot better than the other employers, the other alternatives that the workers had. And its position was that in a time of globalization it was better to be involved in these things, to be trying than to not be there at all. And that that is actually a political and economic message offer great importance that should be fully protected speech just as much and in truth is fully protected speech. And furthermore, you can't make that kind of argument without saying specific things about what your labor practices are. And I think the analogy here to things like carbon off sets is quite strong. So someone -- we just saw the kinds of things that are now on the sides of say soy milk. That is an argument about how one ought to produce goods and that actually has strong political and economic implications though it's on the side of a milk carton. The argument goes that is fully protected speech under the first amendment. The California supreme court disagreed and said this is commercial speech. We can evacuate whether it's true or false. At least the factual parts of it. The consumer can't challenge the statements that globalization is good or that it's important to be involved with labor practices rather than staying away. But if Nike says specific things about its labor practices like on average we pay people a certain amount per hour, that's a factual claim that's regulated though it fits into the larger context. The California supreme court said what we look at is what speech comes from a commercial speaker, whether it's directed to a commercial audience, and that university presidents and athletic directors are an audience because they decide whether to have contracts with Nike, likewise, if you advertise in the paper, you're trying to reach a commercial audience. The people who might buy Nike's products. There are representations of fact about Nike's own business operations. And I want to also make the point here that what Nike was talking about was the operations of its subcontractors. So traditionally people say that commercial speech is regular -- easy to regulate than commercial speech because commercial speech is verifiable by the speaker. That's not always true in the

sense that you maybe buying input from someone else. Here Nike was talking about the inputs that got -- it was somewhat able to monitor its sub CAT clinical trials but they were independent entities. Nike didn't have control but nonetheless California supreme court said you're responsible for what you say about what those subcontractors do and that is important here, given the structure of the markets we're looking at where post of the people who are going to be making ultimate claims to the consumer are probably buying these inputs from someone else. It's still commercial speech even if you don't produce the input yourself as long as you have a commercial motive for talking about what you have purchased.

Likewise its commercial speech because Nike made the speech for the purpose of selling products. This is important insofar as not all the speech we're talking about here will appear on the side of the milk carton where it's obvious that's an advertising message. F. you put general image advertising in the paper or wherever you think it's likely to reach consumers that's still likely to be commercial speech. In fact it's almost certain to be under the standard because you are trying to convince people ultimately to buy your product.

In fact, why else would Nike say these things? Under the California supreme court standard, almost everything a corporation says is going to be commercial speech. The U.S. supreme court took the case but ultimately didn't decide it unless the California decision passed, it's not clear that the supreme court would have agreed that all this stuff including these letters was commercial speech, but it's very hard to see where the California supreme court went wrong in my opinion. That if this -- if these are factual representations they clearly are made by Nike to sell products and if we want to have regulation of commercial speech at all we have to include speech like this. Now, some people will say we shouldn't have extra regulation of commercial speech but the FTC is set up in part on the assumption that the supreme court's doctrine allowing extra regulation of commercial speech is true. It's correct and is the right way to go.

So quickly, assuming that most of the speech we talk about is commercial, what counts under the first amendment as a representation effect that could be false and mislead something this is important because commercial speech doctrine isn't -- doesn't say commercial speech can be regulated across the board. In past years the U.S. supreme court has been more aggressive about saying it's very hard to regulate truthful commercial speech. 's very easy to regulate false and misleading commercial speech but it's harder if the speech -- if you're trying to regulate it because you don't like it. Say signature get tax. This obviously create as huge premium deciding the difference between true and misleading. What about the phrase good for the environment? Can it be false, obviously in some ways if the supplier is committing fraud, if the product is made of lead or toxic materials then yes, it can be false. But the -- that's actually not particularly interesting question. The troubling questions are can calculations or assumptions about environmental friendliness are wrong? Even if you made

them in good faith, what if the FTC sets the standard for something and you want to use another methodology to calculate your environmental impact because you think that standard is better in complete good faith? If the FTC standard is widely used, your standard could still be misleading under current law and a good example of that is miles per gallon. Where consumers really use the single number, the two numbers they get in order to make comparisons. What consumers really care about is they don't know what the methodology S they believe there is a methodology, and there is a single one that allows them to make decisions as between products in the marketplace. (Lost audio)

(Please standby, this program will be starting momentarily)

>>REBECCA TUSHNET

This is an open field in first amendment laws because to date the supreme court has not done very much in the field of consumer protection on this issue of understanding specific messages. Thank you. Be happy to talk further if up questions.

[Applause]
Alan.

>>ALAN LEVY

I must begin by confessing that I know very little about energy saving techniques or about how marketing carbon offsets is likely to work. What I do know a little about is product labeling and how information disclosures are understood and used by consumers. My task today is to introduce some basic axioms of product marketing effects on consumers, gleaned mostly from my experience with food labeling in the hope that you can see how these principles apply to your circumstances and they might design and implement better programs.

The most striking characteristic of these kinds of claims we're talking about today as mentioned initially by commissioner is they are pretty strange product claims. Traditional product claims are about product use characteristics from the perspective of an individual user. Food, for example are marketed on attributes like taste, cost, convenience and health benefits. Such attributes follow from the experience of using the product and are more or less verifiable from the user's own experience or from the collective experience of the population of users, the latter being a matter of scientific study.

Carbon footprint claims are not about product usage characteristics at all. They can't be verified with the consumer's experience with the product. They're related in a form of what we call credence claims where consumer versus little or no ability to verify the claim based on their own experience and they May only have to rely on trust. A commodity in short supply among American consumers.

Carbon footprint claims are even stranger than the environmental claims covered by the FTC green guide like biodegradability or percent recycle content. These are typically about use characteristics of the product with public policy implications for a larger community. These claims seem to be objectively verifiable based on science and product testing. Claims about offsetting one's carbon footprint or being carbon neutral by contrast are claims about the behavior of the product maker or service provider and can't be evaluated by product testing. At the most concrete they seem to be about the manufacturing processes used to produce the product. But mostly they are about someone's participation in something called a carbon offset market. Participation in a carbon offset market is itself being sold as a strange hybrid kind of product or service. Besides extreme form of credence claim that can't be verified, claims about -- okay. Besides being an extreme form of credence claim that can't be verified by experience, claims about carbon footprint have another distinctive characteristic. Few people know very much about what they are and what they're for. The existence of this workshop testifies to there being some awareness of carbon emission markets among the general public. But I think it is quite likely that many people are like myself and they have open only the vaguest notion of what a carbon footprint is, they might agree driving a hummer is bad but they have no clue about how to think about the many issues that arise and how to interpret and substantiate marketing claimed made about carbon neutrality or offset. More important than this widespread lack of knowledge is the fact consumers are likely to agree they know very little about the background for any marketing claims they might see about these topics. These two characteristics not being verifiable and little prior knowledge are confidence about how to interpret applied specific marketing claims present difficult practical challenge force carbon footprint marketing. It's hard to avoid the conclusion that buying a carbon neutral product is more like a symbolic act than act of consumption. There's a definite public policy context but a carbon neutral product is really nothing but the claim it is carbon neutral and the credibility of the claim is essentially a matter of things. We see examples in every day life. (inaudible) comes to mind as a symbolic act. There's lessons to be learned from political campaigning and advocacy how to market carbon emission offsets. But I am not an expert about political campaigning and saying I want to consider marketing challenges and talking about carbon emission offsets in the context of selling products. Let me turn now to marketing 101. First of all it's important to understand that from the consumer point of view the primary utility of label information in most product advertising intended to be informative rather than entertaining is that it is a convenient short cut to conducting arduous information about product characteristics. People read labels in advertising because they're interested in buying some kind of product and they want to make a good decision. However, serious information search to inform these decisions is costly. Information search takes time and effort, appropriate information is not always available, and when it exists, it maybe difficult to find. Even when consumers can find relevant information it is often hard to understand and use. Product labeling and advertising are fundamentally devices to reduce all these

burdensome information costs on consumers. Effective marketing has to serve and be seen by consumers as serving this purpose above all else.

There are several important implications of this basic truth. First because the media application is to purchase decisions, advertising and labeling are usually seen by consumers to be about a specific product and not about a product category or about generic product characteristics. Labels are not bill boards where useful information can be displayed outside of a practical purchase context. Advertising is more flexible and sometimes advertising can try to frame itself as being broadly informative, unattached from any purchase context. We see this in certain kinds of advocacy advertising to tap the benefits of certain kind of products like organic foods. But it is generally true that consumers do not easily assume that what is said in product advertising or on a product label is intrinsically educational. Consumers are not wanting to understand general principles or experts want to know details of scoring algorithms for the strength of scientific evidence. Labeling and tiding is not seen as a place -- advertising is not seen as a place to learn general truths that can be applied elsewhere. Consumers for example do not think of food labels as good places to learn about nutrition. They are quite sensitive about the space and time limitations inherent in reading food labels and find it insulting to imply that such a constraint information source should be considered a learning opportunity for them. Less about being well educated by advertisers. Second to reduce the burr Don search is new relevant information. The best way to endear yourself to consumers trying to make purchase decisions and most effective marketing is to tell them something relevant about a product they don't already know. Products specific information is an important category of new information. Because information about unfamiliar products is by definition new information. What is considered relevant information usually depends on your personal values and needs. The point to be stressed here is that what seems to be new relevant information depends most of all on consumer prior knowledge and product experience. Third and perhaps most important consequence of the information search saving nature of product labeling and informative advertising is that consumers do not necessarily assume that information and labeling and advertising is reliable. But they have to think it is reliable in order for it to be useful to them. They are exquisitely aware of the commercial purpose of labeling and advertising which is to influence them to make a purchase over and above any information value labeling and advertising may have. They are often savvy about the myriad ways they can be misled. As a consequence effective labeling and information advertising has to pass a tacit legitimacy test. It has to be seen as plausible, consistent with what they already know intended to be helpful and not manipulative before consumers will accept the help it promises in meeting their information search needs. It is not as if consumers make a careful calculated assessment of the true value and good intent of every statement on a product label or an ad. The point after all is to save time and effort. They do not think of themselves as scientist or regulators but they are critical, sensitive discrepancies from what they already know and believe. They don't want to be fooled by their

own desire to save themselves time and effort. This goes a long way to explain why product manufacturers go to such effort to cultivate a brand identity. For consumers a positive brand identity is a widely used short cut that enables products to pass the reflects of legitimacy tests consumers apply to marketing claims without triggering too much thinking about the details on their part.

A key point to emphasize here today is the essential role played by prior knowledge in determining how consumers respond to marketing claims. Effective marketing has to be based on a understanding of consumer knowledge about the issues supposed to be informed by product information. All marketing claims are implied claims in the sense they start from and rely on what consumers already know. Since I do not presume to have a deep understanding of consumer priors in this area I hesitate to make specific recommendations but I feel comfortable in saying that identifying the stated consumer knowledge whether through surveys or qualitative research and testing with various possible marketing approaches are more or less congenial with the current state of consumer knowledge is the key to developing an effective approach for marketing products in this area.

Because few consumers are likely to know about how carbon emissions satisfy markets work yet consumers have to feel comfortable about the legitimacy of marketing claims marketers of carbon neutral and carbon footprint claims are likely to have to initially target their those population segments more inform and interested in the issues. Consumers have to feel they know what you're talking about before they are likely to accept credence claims. Marketers will primarily have to use informative advertising and labeling to reach consumers because low knowledge levels and high consumer skepticism of credence claims tend to reduce the effectiveness of advertising seen as frivolous or entertaining. There is little hope in developing a mass market for carbon neutral or carbon footprint products until knowledge levels in the population are much higher than they are today. Markets based on credence claims the dietary supplement market comes to mind often specialized in providing detailed information to consumers. Often in venues like prevention magazine directly associated with -- that are not directly associated with product marketing. Both a raised population knowledge levels facilitating acceptance of their marketing claims and widen the potential customer base. Marketers of carbon neutral and car Boon footprint claims face the same challenge. Yet marketing is quite handicapped in trying to raise population levels. Consumers prefer to learn about matters of science, technology and public policy from sources seen as objective and without commercial interest. News coverage and what consumers hear from OPRAH are principal sources of information for the general public. For marketers a large category of news is about what is happening in the marketplace. Marketers of carbon footprint products need to promote stories that will make moves probably more than they need to do any other kind of traditional marketing. The last thing I want to make about the nature of effective marketing that applies to your enterprise is the consumers make use of several rules of thumb to separate helpful marketing that

solved their information search problem from promotional fluff that serves commercial purposes. The first is that they are keen observers of the marketplace. When claims are ubiquitous in the marketplace, consumers tend to be confident that they have been vetted efficiently to be trusted without engaging in further vending on their own. There's nothing more reassuring about the legitimacy of a claim than the fact that everyone else takes it seriously.

Another important queue is when marketing uses the same terms in a similar system of presentation or format to convey information, it signals a consensus or maybe a sub vising entity involved that can reign in the professional excesses, promotional excesses of individual consumers. The consistent style of format in a nutrition task panel is one of its greatest strengths. The importance of their appearing to be an underlying consensus or supervising entity behind marketing claims, explains why the demand for the FTC green guides arose as much from industry as it did from consumer advocate. Consumers are greatly reassured by the appearance of consensus in the marketplace. Though they are not likely to care that much about whether it's due to regulation scientific consensus or voluntary self-regulation by markers. -- marketers. The reverse is also true. Lack of inconsistent marketing claims in terms of substance format and presentation signals there maybe ulterior motives at work and heightens scrutiny that all marketing is likely to get. Not unlike the phenomena observed by economists where bad money drives out good money. Consumers are likely to discount all marketing if there are inconsistent and confusing claims being made in the market. It is hard to avoid the critique of being self-serving when marketing for one product contradicts the marketing for another.

In a world where marketing claims are likely to be subjected to critics from expert competitors and consumer advocates it's hard to see how effective marketing can be done without giving the impression that it is based on common assumptions and common definitions. I'll end there. I'm over.

[Applause]

>>CAROLYN HANN

We have time for questions from the panel lists. The first is for Lori Bird. One of the issues with RECs is they are not tested for additionality. A way to address this would be to buy RECs out of a scarce RPS or renewable portfolio standard market. This questioner has two questions for you. First, is this currently possible? And if yes, to what extent are compliance RECs sold in the voluntary market?

>>ALAN LEVY

In addition to that question if you could give a brief -- you mentioned -- if you could give us a brief overview what that means.

>>LORI BIRD

The concept is if you're buying RECs are you supporting the development of new renewable energy sources or is it coming from facilities that have come online anyway or are already operating. That maybe -- might be cost effective. So there's been quite a bit of debate about this in the last couple of years. I say first of all there is some standard at least the Green-e standard does require an additionality test in the sense that they don't allow voluntary -- they don't certify any renewable energy that would be used for an RPS policy. If it's used for compliance with an RPS it cannot be again sold to consumers to get Green-e certification. So there is that additionality test. The EPA Green Power Partnership also had that also. There's little double counting in that sense that occurs currently. The new Green-e climate I think we're going to hear more about that later. That new standard that's just emerging does include additional additions, pardon my use of those words. But there are some performance-based additionality tests that are in there as well for RECs that would be used as offsets. So that actually is emerging, there's discussion about how to do that for RECs used for offset purposes. But as I said, there has been this additionality between RECs used for policy and those that are used to supply voluntary markets for quite some time and the market pretty much operates that way. What was the other part of the question? Whether you can purchase a REC from an RPS market. Basically tie that up. Yes. That certainly can occur. I think the issue there is they're probably going to be higher-priced. The issue is, well, can you buy a REC that's eligible for RPS compliance? There's a lot of RECs that come out of Texas but they have basically a surplus of RECs available and those are pretty low-cost. So a lot of the -- there's a lot of renewable energy generation in Texas because there's pretty cost effective -- there's good wind resource there. And a lot of that is used in the voluntary market. I guess the question is well, can you buy RECs from a market more constrained because there had been in the northeast in particular some of the RPS policies in place there are stringent T states haven't been necessarily able to meet their RPS and if you buy a REC from that region it would certainly be driving new renewables. It's just going to cost more. But that's certainly available, already happening, and consumers can do that, you have to find a market actually selling that.

>>CAROLYN HANN

Great. Thank you. Our next question is for Kate. Here is the question. Can you please tell us a bit about the companies selling these products? I assume they mean carbon offset products in terms of profit versus non-profit? Are individuals making heat with money off of these products? What's the best source of this type of information for a consumer?

>>KATHERINE HAMILTON

So there are non-profits both non-profits and for profits selling credits into the marketplace. Don't think it necessarily means that a for profit is making more money or buying a cheaper or giving a non-profit is giving you a better deal than

a for profit. I think that in general the non-profit sometimes focus on more specific project types, that's the cars ma tick carbon, a lot of non-profits are doing forestry but that's not completely true. The non-profits and for profits are selling another interesting aspect of those is sometimes it's a non-profit you can get a tax deduction whereas if you buy it, whereas with a for profit you can't. So right now that's for consumers, that's something interesting to look at. I think as the market develop there is will be something interesting coming out since that influence it is final price. (off mic) I don't know if they're making heaps of money. I think that we were able to track market prices up the value chain. So the average price for product developer was significantly lower than I think around \$3, off the top of my head was significantly lower than the average selling price from a broker versus the average selling price of a wholesaler versus the average selling price of a retailer which was about \$8. Then the average in total was around \$4. So if you go up the supply chain you are looking at higher prices, you're also looking at the credits have been screened in each of these steps so there are potentially benefit force the final consumers. But I have seen very few open books from retailers saying this is how much we spent to do the project. This is how much money we profited and this is what we're selling it to you at.

>> Great. Thank you, Kate. And I have a question for Rebecca. You noted that the courts are moving towards a quote qualify if you can, end quote, standard rather than suppressing commercial speech. Can you give an example of this approach?

>>KATHERINE HAMILTON

The supreme court has done this most with lawyer advertising because I think because it feels fairly confident in assessing lawyer marketing messages since they're all lawyers. I actually think this is a mistake since they're lawyers, not consumer lawyers but this is their belief anyway.

>>REBECCA TUSHNET

The cases are about whether lawyers can advertise themselves as specialists or not. And the ruling is that saying you're certified say in some particular specialty, it is not inherently misleading so if you can clarify what exactly that means, you can say it, even if the bar would prefer not to allow you to advertise that specialty at all.

>>CAROLYN HANN

Thank you, Rebecca. I have a question for Alan. Alan, you mentioned there's an information disconnect or just lack of information for consumers. Could you give a sense of what kind of information in general consumers would need to obtain a better product in order to pass the legitimacy screen and, therefore, feel the product is actually credible.

>>ALAN LEVY

This is why I think -- this is why I think you have to do consumer research and you have to identify what the current state of understanding and knowledge is because I'm pretty positive that as consumers learn more about these markets, one of the important effects is that new issues are going to be raised in their minds about the legitimacy of the claims. And the more they know the more they will know what kinds of questions need to be asked and answered. So it's going to depend a lot on what the current state of understanding is in the population and how much they know about these things. And I assume that what constitutes legitimate claims is going to change as people become more knowledgeable.

>>HAMPTON NEWSOME

I'm Hampton Newsome from the FTC. Could you give us in a nutshell description of the type of consumer research that's generally done, just kind of the nuts and bolts of how these types of projects are accomplished, how are they set up? And how you go about it?

>>ALAN LEVY

Usually there's several phases. You typically talk to consumers and focus groups and qualitative settings and get some idea about what their general level of understanding is, what they think is important and relevant. And what they consider to be new information. Then you would go to the general population and do some kind of surveying and get sort of quantitative estimates how much people know about specific issues and what their attitudes are. And what their practices are. How they -- what kinds of things they're doing. Finally, the most important thing is that when you actually come up with an approach of how you want to talk about your product or market your product, you test it. And you test it by in quasi experimental settings where you give it to people and have them critique it and see how it works so you do that in sort of several phases to get an understanding of where -- what the consumer knows and what's going to work.

>>CAROLYN HANN

Thank you, Alan. We have another question for Lori. Regarding RECs. In a voluntary market what happens to the money paid by a household to buy these RECs? Who gets it and what do they do with it?

>>LORI BIRD

I guess there's variability. Similar to the question that Kate answered. We don't exactly get the information wholesale about what the actual project is getting but I think I did give some numbers about prices and so forth and I do hear some of the renewable energy -- the folks that own renewable energy projects what they're getting for their RECs. And they're pretty close, there's wholesale prices that I provided. It's pretty much in that range, close. So I think that gives you some indication of the prices we're talking about. What they do with the money, there's variabilities there. There's a couple of non-profit organizations that and some utilities promise that they'll take a certain amount of the money and invest it

in new renewable energy facilities. Others make no promises to that effect so there's a lot of variability I think in the marketplace and there is -- some are just making profit off that.

>>CAROLYN HANN

Finally, we're running out of time actually. I have one final question for all panelists. Here it is. Is there any on going look at the types of claims being made about these products? And also consumer interpretation of them?

>>ALAN LEVY

I'm not familiar with anything.

>>REBECCA TUSHNET

I don't know of anything -- I did want to give an example of something where -- so lex mark advertises that it recycles cartridges returned to it. Actually it firmly recycles them. What that means is it turns them into ash and they did a bunch of focus groups on what people thought it meant. And people generally did not think that it meant incinerating them. They thought there was going to be something to do with trees.

[Laughter]

>>REBECCA TUSHNET

So this is an example of a company doing market research that really didn't help it any because now it's subject to a false advertising claim by a competitor. So right now the take away is this is sporadic and likely to be embedded in other marketing initiatives as companies try and test what works for them most specifically and a lot is going to be proprietary so if this research is going to happen, it is going to have to be led by public interest groups by the government.

>>LORI BIRD

I'm not aware of any specific research in that. Our research is really focused on the growth in the market and so forth.

>>KATHERINE HAMILTON

I think the main area connected with looking at claims versus carbon offset projects is coming up with standards and each standard is again different areas of supply chain, one for project developers saying are you doing what you're saying? And then to the very end of a carbon neutral product and is this product actually carbon neutral, has it actually measured its emission, have they tried to reduce emissions first? And are they getting appropriate offsets that maybe have been -- have faced the standard from the project development side? So I think that's a big thing. And in particular the UK is look at that from a government viewpoint as well. Interesting note.

>>CAROLYN HANN

Thank you very much. This ends our first session. It's 10:55. We're taking a break until 11:10. Thank you.