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September 9, 2009

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

RE: Sustainable Forestry Initiative, Inc. (SFI)

Dear Consumer Response Center Staff:

The Washington Forest Law Center represents **ForestEthics**, a non-profit conservation organization based in Bellingham, WA, and San Francisco, CA, dedicated in part to promoting credible forest certification programs through consumer awareness and the marketplace. This complaint reports the “Sustainable Forestry Initiative, Inc.” (SFI),¹ a forest “certification” system which we believe engages in several unfair and deceptive acts and practices on which corporate and individual lumber and paper consumers are relying. Hundreds of millions of dollars in “green” spending may be at issue. We ask the FTC to investigate this complaint and to seek appropriate declaratory and injunctive relief in the courts to require SFI to comply with federal trade law.

Executive Summary

Alarmed by global warming and worldwide deforestation, wood and paper consumers today are increasingly demanding more environmentally-friendly forest products. Consequently, the marketplace for “green” forest products, which could soon reach \$80 billion in four years, is cluttered with claims and labels that a forest product has been “certified” or was “sustainably” grown and harvested in an environmentally and socially

¹ SFI’s address and director are as follows:

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sound manner. But if these claims are going to compete fairly in the marketplace, and if they are going to produce real on-the-ground improvement in forestry, it is essential that the FTC investigate and respond when claims of “sustainable” and “environmental” forest management rely on deception, confusion, vagueness, or ambiguity.

The SFI forest certification program was started in 1994 by the American Forest and Paper Association (AFPA), a Washington D.C.-based timber and paper trade association. Since 2007, SFI has represented itself as an “independent not-for-profit public charity.” SFI’s budget was over \$5 million in 2007. The companies it certifies own 90% of private forestland in the U.S. and produce about 50% and 85% of wood and panel products, respectively, in the U.S.

We believe the SFI forest product certification system competes unfairly and deceptively for several reasons.

Deceptive Label

SFI maintains at least one label on its products that is deceptive and misleading. SFI’s “Certified Fiber Sourcing” label implies that wood or paper bearing the label comes from SFI-certified forests. Yet, in fact, the SFI “Certified Fiber Sourcing” label provides no guarantee that any of the material was harvested from an SFI-certified forest.

Independent, Non-Profit Public Charity

In aggressive and well-funded national advertising, SFI and SFI-certified companies represent to lumber and paper purchasers and the general public that SFI is an “independent, not-for-profit public charity” directed and operated by a diverse and “independent” board of directors. These attributes are key to SFI’s campaign for environmental credibility and marketing. This claim is deceptive because SFI is funded almost entirely by the large timber and paper companies whose forests are certified by SFI and SFI receives virtually no general public financial support. Moreover, true to its origin as a program of the AFPA, SFI’s governance, administration, and standards-setting process is dominated by SFI-certified companies and individuals. While SFI has non-industry board members, many of these individuals are affiliated with organizations that receive substantial financial support from SFI-certified companies. In the final analysis, SFI is not a standards-setting entity in which industry members participate; it is a heavily-marketed industry-developed and funded “green” label that represents itself as an independent charitable organization.

Deceptive and Unverifiable Environmental Standards

SFI’s forest certification standards are deceptive and misleading. SFI’s standards deploy lofty ecological terms but, in fact, they are vague, ambiguous, filled with qualifiers and loopholes.” On balance, they give forest managers discretion to manage their forest lands in ways that are inconsistent with SFI’s lofty environmental standards. To make matters worse, SFI certification lacks transparency: a member of the public or a competitor

cannot find out what a landowner is doing (or not doing) in its forests and has access only to uselessly general audit summaries. Furthermore, SFI's standards are enforced only by auditors which are landowner-paid consulting entities.

Outline of Complaint

- A. Importance of certified wood and fiber in today's marketplace.
- B. Competition between certification systems.
- C. The public is confused by forest certification
- D. SFI's claims are deceptive and likely to mislead the public.
- E. Reliance on SFI by reasonable consumers, the purchasing divisions of leading corporations, and the "green building" industry.
- F. SFI's deceptive claims are material.

Submitted along with this complaint is a notebook containing the referenced Attachments. If you have any questions, please do not hesitate to contact us.

A. Importance of certified wood and fiber in today's marketplace.

What is forest certification?

Forest certification

"involves the green labeling of companies and forest products that meet standards of 'sustainable' and 'responsible' forestry. The primary purpose of forest certification is to provide market recognition for forest producers who meet a set of agreed upon environmental and social standards."²

Ideally, certification assures socially and environmentally responsible commercial forestry through an open multi-stakeholder standards-setting process verified by a transparent technical performance auditing process subject to stakeholder appeal. Third party certification ideally recognizes the rights of indigenous peoples, includes objective and measurable performance standards, and requires identification and protection of important or critical conservation areas. Standards should be based on consensus multi-stakeholder decisions; no major interest group can dominate or be dominated in the standards setting decision.³

² Yale Univ. Prog. on Forest Policy and Governance (Feb. 25, 2008), at 15 (Attachment 1).

³ See "Forest Certification Assessment Guide" (World Wildlife Fund, July 2006). Attachment 2; Operational Policy on Forests (World Bank Operational Manual, Operational Policies OP 4.36 ¶ 10 Forests, Aug. 2004).

Forest certification originated in 1993, when an international assemblage of forest companies, environmental groups, and human rights organization created the Forest Stewardship Council (FSC), which promulgated environmental and social forestry standards. Today, FSC-certifies over 281 million acres of forests in 82 countries, including 31 million acres in the U.S. and 69 million acres in Canada.

SFI-certified forests cover 60 million acres in the U.S. and 101 million acres in Canada. Certified lumber and panel products are expected to be the fastest growing segment of the “green building” materials market, which is expected to reach \$80 billion by 2013. Green Building Materials, U.S. Industry Study with Forecasts for 2013 & 2018, The Freedonia Group, 2009 (Attachment 3). Certified fiber is also rapidly gaining market share in the U.S.’s \$150 billion paper and print industry.

Wood and paper certification’s importance in the marketplace today.

A number of landowners and land managers have adopted third-party certification in an effort to increase the value of the materials from their forests. While a leading journal states that there is not pervasive evidence that price premiums are being awarded in the short-term, the journal concedes that some landowners are today receiving price premiums and that fetching higher prices in the market is an area of future growth for forest certification. Dovetail Partners, Inc., *A Land Manager’s Guide to FSC and SFI* (Sept. 15, 2004), at 6 (Attachment 4).

Growers and consumers of lumber and paper use certification to demonstrate their environmental corporate responsibility.⁴ Consumers and purchasing divisions of major U.S. corporations are increasingly relying on green claims and labels for forest products—and such claims mean big money today. For example, in a July 2008 GfK Roper Yale University study of consumer attitudes towards environmental issues (n=3000) (Attachment 5), researchers concluded that “[m]ost Americans are willing to purchase environmentally-friendly products but other considerations such as price and quality often take priority.” The Yale study also found that:

- Americans are not familiar with “eco-labels” and are confused by them
- Americans want additional information about “eco-labels”
- Americans show a clear preference for “eco-labels” sponsored by independent environmental organizations, as opposed to government or industry labels.

Even SFI recognizes that consumers and corporate purchasers expect and demand “green certified” products. In the recent SFI webinar on labels and claims (May 14, 2009, Attachment 6), SFI cited the recent GfK Roper Yale survey of consumer attitudes for this proposition:

⁴ See, e.g., <http://www.sfiprogram.org/miscPDFs/SFI%20key%20facts1.pdf> (SFI-produced document listing nine representative large American companies that have adopted the SFI certification label)

Consumers believe it is important or essential to have eco-labels that describe the environmental impacts caused by the manufacture, use and disposal of products. (emphasis added).

Certification also makes wood eligible for “green building” certification by the leading green building system in the U.S., Leadership in Energy and Environmental Design (LEED), which was developed and is maintained by the U.S. Green Building Council (www.usgbc.org). Today, LEED recognizes only FSC for awarding green building LEED “points” although various committees of the USGBC are evaluating this decision at the present time. SFI readily admits the importance of the pending LEED decision and its need to appear to be an independent non-profit organization in an April 2009 “briefing note.” (Attachment 7). The debate over materials for green building was well summarized by *Architecture Week* on August 12, 2009 (Attachment 8):

Green building, which represented just 2 percent of the construction market in 2005, could grow to as much as a quarter of all commercial and institutional building starts and 20 percent of the value of residential starts by 2013, according to McGraw Hill Construction’s Green Outlook 2009 market intelligence report, which noted that green building is one market segment seemingly insulated from the current construction industry malaise. By 2013, the green building sector could grow to \$93 billion to \$140 billion.

Finally, certification reduces the perceived need for regulatory measures, *i.e.*, certification can fill gaps where governmental regulations are inadequate. This forest management oversight is especially critical in countries where natural resource governance is corrupt and lacking. Illegal logging and unsustainable forest management lead directly to deforestation and forest degradation, and have far-reaching consequences. These practices:

- **Destroy ecosystems and ecosystem functions that support us all:** Deforestation and degradation devastate vital wildlife habitat, foul water supplies on which people and fisheries rely, and contribute approximately 20% of all global carbon emissions causing climate change.
- **Damage communities:** More than 1 billion people living in extreme poverty around the world depend on forests for some part of their livelihood and daily needs for living. Illegal logging deprives these people of their access to forest resources, enriching a very few at the expense of many.
- **Distort trade:** The trade in illegal timber depresses global wood prices by 7 - 16% a year. The lost revenue for U.S. wood exports is estimated at \$460 million a year, and compromises the economic viability of the U.S. timber industry. That, in turn, leads to conversion of U.S. forestlands for other economic purposes,

negatively affecting forestry-based jobs and conservation objectives in these locations.

- **Deprive governments of revenue:** Developing countries lose in excess of \$10 billion annually in the value of their public assets, plus an additional \$5 billion in taxes and royalties – funds that could be spent on health, education and social development.

B. Competition between certification systems.

Today, there are two primary forest certification systems competing with one-another in the U.S.: SFI and Forest Stewardship Council (FSC) certification.

SFI was launched in 1994 by the American Forest and Paper Association (AFPA). AFPA is the largest forest-industry trade association in the U.S., representing 90% of U.S. industrial timberlands. AFPA developed SFI in response to public concern about the U.S. forest product industry's environmental performance. SFI's 2005-2009 standards use 6 principles, 11 objectives, 35 performance measures, and 123 core indicators to provide a framework for assessing forest management. Virtually all SFI-certified companies cite their SFI certification as evidence of their commitment to sustainable and environmentally-protective forestry.⁵ In 2007, SFI raised \$5 million from its timber industry supporters, and SFI has used that money in a massive public relations campaign.

FSC is an international, non-profit organization whose goal is to support the environmentally appropriate, socially-beneficial, and economically viable management of the world's remaining forests. FSC was created in 1993 by an international assemblage of forest companies, environmental groups, and human rights organization to design a global framework of performance standards for responsible forest management. In general, FSC-certified logging standards are metrically-based and attempt to accomplish the following objectives: protect endangered species habitat, protect riparian forests, limit use of chemicals, protect endangered forests, maintain and restore natural forest conditions, and protect the rights of indigenous peoples and forest dependent communities. FSC is administered in the U.S. by FSC-US, based in Minneapolis, MN.

A recent Yale University report characterized SFI as the forest industry's rejection of FSC's open and inclusive process. The Yale report explains that SFI arose out of the principle that "general principles of 'sustainable forest management' applied by

⁵ See, e.g., Weyerhaeuser (<http://www.weyerhaeuser.com/Sustainability/Footprint/Certification>); Plum Creek (<http://www.plumcreek.com/Environment/tabid/68/Default.aspx>); Green Diamond (<http://www.greendiamond.com/environment/environment.asp>); Georgia-Pacific (<http://www.p.com/aboutus/sustainability/forestry/keypractices.html>); Boise Cascade (<http://www.bc.com/sustainability/policies/SFI-policy.html>).

competent forest managers, as opposed to less flexible and more narrowly defined forest management prescriptions, should be proof enough that industrial forest practices were sustainable.”⁶

The SFI certification system competes with FSC in the marketplace for certified forest products and SFI aggressively markets itself as if it were a co-equal legitimate alternative to FSC, analogous to Coke-versus-Pepsi competition. However, there is a large body of objective literature reflecting that FSC is a more rigorous form of certification than SFI. *Key Controversies Matrix*, (Yale Program on Forest Policy and Governance, 2008); *Public Procurement and Forest Certification: Assessment of the Implications for Policy, Law, and International Trade; Comparison of Major Certification Schemes: FSC, PEFC, CSA, MTCC, and SFI*, (Ecologic, 2006); *Parallel Field Testing of Forest Certification Standards*, (UPM, 2005); *Chain of Custody and Eco-Labeling of Forest Products: A Review of the Requirements of the Major Forest Certification Schemes*, (International Forestry Review, 2005); *Certification on Public and University Lands: Evaluations of FSC and SFI by the Forest Managers*, (Journal of Forestry, 2003); and *A Land Manager’s Guide to FSC & SFI*, (Dovetail Partners Inc., 2004). For the convenience of the FTC, we have included these studies on CD (Attachment 9).

The competition between SFI and FSC was described in recent articles in the Vancouver, B.C. on-line newspaper *The Tyee*, entitled “The War over Eco-Certified Wood,” June 3, 2009 (Attachment 10) (<http://thetyee.ca/News/2009/06/03/EcoWood>) and in *Architecture Week*, entitled “FSC Versus SFI,” August 12, 2009 (see Attachment 8) (http://www.architectureweek.com/2009/0812/environment_1-1.html).

C. The Public Is Confused by Forest Certification.

The growing demand for and supply of “certified” forest products makes it imperative that the FTC take steps to protect the public from deceptive “green” wood and paper labels. See “What Do Labels Really Tell You?” (*Wall Street Journal*, April 2, 2009) (Attachment 11); “Green or Greenwashed?” (*Architecture Week*, April 22, 2009) (Attachment 12); “Two Timber Firms Pretending to be ‘Green,’ Groups Allege” (*Washington Post*, December 24, 2006) (Attachment 13); “The Fight Over What ‘Green’ Means” (*The Seattle Times*, March 12, 2008) (Attachment 14). Even SFI concedes that there is limited awareness and understanding of forest certification, as evidenced by SFI’s citation of the 2008 GfK Roper Yale study in one of its promotional slide shows (see Attachment 5). See also Attachment 35 (“understanding remains limited for many”)

D. SFI’s claims are deceptive and likely to mislead the public.

Federal law prohibits “unfair or deceptive acts or practices in or affecting commerce.” Federal Trade Act, 15 U.S.C. § 45(a)(1). The Supreme Court has stated that these standards of illegality are general and “flexible, ‘to be defined with particularity by the myriad of cases from the field of business.’” *FTC v. Colgate-Palmolive*, 380 U.S. 374,

⁶ Yale Univ. Prog. on Forest Policy and Governance (Feb. 25, 2008), at 16 (see Attachment 1).

385 (1965), quoting *FTC v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394 (1953). The FTC has defined the term “deceptive” in its policy statements. The FTC Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984), summarized as follows:

Certain elements undergird all deception cases. First, there must be a representation, omission or practice that is likely to mislead the consumer. Practices that have been found misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations. [footnotes omitted.]

In the following sections, we identify representations, omissions and practices of SFI that are likely to mislead or deceive commercial and retail consumers of forest products.

(1) SFI’s “Certified Fiber Sourcing” label is deceptive because it implies that SFI-certified fiber originated in SFI-certified forests. Yet, it may not have.

The SFI “Certified Fiber Sourcing” standard, label and claims are deceptive. While it appears very similar to SFI’s regular label, SFI’s “Certified Fiber Sourcing” label makes the implied claim that the source of the fiber is known, has been tracked, and is being certified by SFI, but that is not true. In fact, the source of the fiber in products bearing SFI’s “Certified Fiber Sourcing” label may be unknown.

SFI’s Fiber Sourcing label is shown on the SFI website:
<http://www.sfiprogram.org/labels-and-claims.php>



SFI’s “Certified Fiber Sourcing” label is described on SFI’s public website (as of September 9, 2009) as follows:
<http://www.sfiprogram.org/labels-and-claims.php>

SFI Labels and Claims

The SFI program has developed two different lines of product labels to help consumers identify exactly what they are buying:

- SFI “certified content” labels show that some or all of the product’s fiber content comes from forests that are certified to the SFI, Canadian Standards Association (CSA), and/or the American Tree Farm System forest management standards.
- SFI fiber sourcing labels do not make claims about certified forest content. They do show that the manufacturer meets objectives 8-13 in the SFI 2005-2009 Standard, and/or Annex 1 in the SFI Requirements for Fiber Sourcing, Chain of Custody and Product Labels document. [Emphasis in original.]

The second bullet addresses SFI “Certified Fiber Sourcing” label. It states that “the manufacturer meets objectives” in the SFI “Standard,” and it refers to “SFI Requirements for Fiber Sourcing, Chain of Custody...,” thereby implying that something is “required,” and that there is a “*chain of custody*” tracking the fiber to its source. Similarly, the term used on the label itself (“Certified Fiber Sourcing”) implies that the source of the fiber is known, has been tracked, and is being certified. ***None of these implied representations are true – they are all false.***

This label is therefore deceptive. In fact, up to 100% of the content of a product that bears the SFI “Certified Fiber Sourcing” label can come from forests that are not annually audited and certified, even to SFI’s low standards. Instead, up to 100% of the content is deemed acceptable by SFI if it flows through a “certified procurement system.” This means that the only thing that actually gets audited is a “system” for sourcing raw materials. ***There is no guarantee that products marketed as SFI “Certified Fiber Sourcing” have any connection to SFI forests. As much as 100% of the content of products bearing the SFI “fiber sourcing” label can come from virtually any forest, regardless of how controversial or poorly managed it is.***

The second bullet quoted above also asserts that the Certified Fiber Sourcing labels “do not make claims about certified forest content,” but this is not true, because the term “Certified Fiber Sourcing” is itself a claim stated on the label, and this label also makes the implied claim that the source of the fiber is known, has been tracked, and is being certified. Furthermore, on the same webpage SFI contradicts itself by acknowledging that “Certified Fiber Sourcing” is indeed a “claim”:

<http://www.sfiprogram.org/labels-and-claims.php>

Other Items on the SFI Label – Below is a list of other items that are either mandatory or optional on the SFI label

1. The SFI website is always mandatory.
2. Either the words “Sustainable Forestry Initiative” or “SFI” are mandatory
3. The claim (i.e. “Certified Fiber Sourcing,” “Promoting Sustainable Forest Management” or the x% taglines) is mandatory. [Emphasis added.]

Yale University’s *Key Controversies Matrix* (Attachment 15) reflects the inherent unreliability of the SFI “Certified Fiber Sourcing” label. In the section on “Chain of Custody,” Yale’s matrix compares different forest certification systems for “Minimum % of certified material required to use % based claim” and states that *for SFI this minimum is “0%” (zero)*. The Yale Matrix also compares the systems for “Basis of % based claims,” and states that *for SFI, “Fiber sourcing label need not contain certified material.”* In other words, the SFI label’s term “Certified Fiber Sourcing” does not accurately describe the content, and the label needs to be rewritten to eliminate the deception.

In fact, the SFI “Certified Fiber Sourcing” label can be used for the purpose of promoting products that contain **no** SFI-certified content, but come purely from sources that are not independently audited to any standard, using a systems- or risk-assessment based approach to “ensure” that they do not represent the “worst of the worst.” The SFI “Certified Fiber Sourcing” label bears a very close visual resemblance to other SFI labels, and its true meaning is opaque to all but forest certification insiders.

Under SFI’s “Certified Fiber Sourcing” standard, the only thing that actually gets audited is a “system” for sourcing raw materials that may be sourced globally through complex supply chains—the supply chains themselves do not have to be audited, which in turn means that the ultimate forest sources for the raw material are unmonitored. Absent an audited chain of custody, and given the complexity of global supply chains, coupled with the fact that materials from multiple sources are typically mixed in manufacturing and distribution prior to import into the U.S., there is an extremely high likelihood that the actual forest source for uncertified raw materials sourced from overseas will be unknown and unknowable.

The SFI product labelling requirements have weaknesses and loopholes that in some cases make it impossible to connect an SFI-labelled product to a specific forest-of-origin. For processing or manufacturing operations that buy un-certified wood from U.S. and Canadian sources and wish to be SFI-certified, there are no SFI requirements regarding how the forests-of-origin of the wood should be managed, and no prohibitions of objectionable management practices. Operations that purchase wood from outside the U.S. and Canada are required only to assess and vaguely “address” any risks that their purchase may be from “illegal logging” or from “countries without effective laws” dealing with worker rights and safety and indigenous peoples’ rights. Under the SFI “Certified Fiber Sourcing” label, some SFI-labelled forest products can come from uncertified forests where virtually no controls or management standards apply.

For a closer look at what an SFI-certified procurement system actually requires, the SFI Responsible Fiber Sourcing Standard (Annex 1, section 6) states that the organization that will use the SFI Fiber Sourcing label shall:

*“Require a signed **self-declaration** that the supplied raw material does not originate from controversial sources....*

*“Evaluate the **potential risk** of procuring raw material from controversial sources and **establish a program** to check a **sample of self-declarations** by suppliers, using **second- or third-party verification**...” (Emphasis added).*

In short, to ensure “responsible sourcing” from the 90% of the world’s forests that are not certified to any standard—and which may well be located in developing countries where corruption is endemic, environmentally-destructive logging is typically legal, and illegal logging widespread—SFI relies on a system of mere self-declarations and risk assessments performed by SFI-certified companies themselves and their immediate trading partners. Considering how easily illegal and controversial wood can be laundered through global trade, such a system is utterly inadequate—particularly as the basis for a so-called “environmental label.” SFI’s “Certified Fiber Sourcing” label and all advertising and promotion in support thereof needs to clearly disclose this fact, but fails to do so.

SFI’s failure to provide this information on the label violates FTC’s environmental marketing regulations, which state:

It is deceptive to misrepresent, directly or by implication, that a product, package or service offers a general environmental benefit. ...every express and material implied claim that the general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product or service **must be substantiated**. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.

Example 5: A product label contains an environmental seal, either in the form of a globe icon, or a globe icon with only the text “Earth Smart” around it. **Either label is likely to convey to consumers that the product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive.** The claims would not be deceptive if they were accompanied by clear and prominent qualifying language limiting the environmental superiority representation to the particular product attribute or attributes for which they could be substantiated, provided that no other deceptive implications were created by the context.

16 CFR § 260.7 (a) [Emphasis added].

The SFI “Certified Fiber Sourcing” label violates 16 CFR § 260.7 (a) because the SFI label conveys to reasonable consumers—and even corporate purchasing personnel—several implied claims of a general environmental benefit (that the source of the fiber is known, has been tracked, and is being certified) that SFI cannot substantiate.

In connection with its “Certified Fiber Sourcing” label, SFI’s qualification for avoiding illegal logging is deceptive. To understand this, one needs to examine how narrowly SFI defines “illegal logging,” a subset of “controversial sources.” As noted above, SFI requires “a *self-declaration that the supplied raw material does not originate from controversial sources.*” SFI defines “*controversial sources*” in Annex 4 (December 2008) as follows:

Controversial sources include illegal logging and fiber sourced from areas without effective social laws.

SFI’s Annex 4 also defines “illegal logging”:

3.1 Illegal Logging: the theft of timber or logs and cutting in parks, reserves, or other similar areas where otherwise precluded by law. *See* Annex 1 (Appendix 2) and Annex 2 (Appendix 4) for SFI Inc.’s policy on illegal logging.

The cross-referenced Annex 1 (Appendix 2) and Annex 2 (Appendix 4) provide an alternate definition of “illegal logging”:

*“Illegal Logging” means logging on land where the entity conducting the logging has no legal right to harvest.*⁴

This broadly worded definition has benign implications that it covers environmental law violations, but it does not – instead, it has a footnote that negates the positive implications:

4. This definition does not cover most environmental law violations. It is intended to be limited to timber theft.

In other words, SFI’s “Certified Fiber Sourcing” label not only fails to track the fiber to its source, and not only allows suppliers to “self-declare” there was no illegal logging, but it also defines “illegal logging” so narrowly that it allows fiber that was harvested in violation of laws protecting soil and water quality, wildlife and habitat, or laws on harvesting rules and practices, or laws requiring payment of fees, royalties or taxes.

Consumers probably will not track the types of distinctions that one would need to understand to avoid being misled by SFI’s “Certified Fiber Sourcing” label. In other words, while the label does not explicitly represent that it contains fiber from “an SFI-certified forest,” consumers will probably assume that “sustainable” means the product

comes from a sustainably managed forest. See the reference above to a study showing consumers are confused by ecolabels.

In summary, as much as 100% of the content of products bearing the SFI “Certified Fiber Sourcing” label can come from virtually any forest, regardless of how controversial or poorly managed it is. SFI’s chain of custody rules do not clearly verify the geographic origins of wood and fiber, do not verify the accuracy of suppliers’ documentation, and are not even required for the “Certified Fiber Sourcing” label. SFI’s system does not verify the actual geographic origins of wood and fiber, nor does it verify the accuracy of suppliers’ documentation, and SFI’s “Certified Fiber Sourcing” label is not backed by an audited chain of custody. The SFI “Certified Fiber Sourcing” label is therefore likely to mislead consumers.

(2) SFI’s claims that it is a “fully independent, charitable organization” are misleading and deceptive because SFI is funded almost exclusively by the companies it certifies, and because SFI’s governance structure and environmental standards setting process is dominated by employees of these companies.

Financial independence from the industry whose practices it certifies is key to the environmental credibility of any certification system. World Trade Org., Committee on Trade and Environment (CTE), at 8 (7-11-03); *Footprints in the Forest, Current practice and future challenges in forest certification*, at p. 5 (FERN, 2004) (Attachment 16). FERN (at p. 23) states that “SFI is, in essence, a certification scheme by the forestry industry for the forestry industry.” FERN (at p. 10) cites the following as key attributes of a forest certification system.

- Does the standard define the level of forest management?
- Who is involved in the standard-setting process?
- What does the certification process entail?
- Is the scheme sufficiently transparent?
- Does the scheme provide a consumer label that is honest and trustworthy?

SFI’s proclaimed independence from the AFPA and timber companies appears critically important to SFI, as evidenced by the fact that SFI vigorously advertises itself as an “independent public charity.” In a Powerpoint slide show dated September 25, 2007 (Attachment 35), SFI admits that among the “messages that resonate among customers” are its “independent, three-chamber board” and its “marketing and acceptance by NGO’s [non-governmental organizations.]” For example:

- SFI. Live By the Standard. Larry Selzer, President & CEO, The Conservation Fund. “The Sustainable Forestry Initiative program is a **fully independent** leader in forest certification.” (SFI advertisement, Attachment 17) [Emphasis added.]

- SFI Inc. is an **independent**, 501c(3) non-profit charitable organization. (SFI Progress Report 2008 (issued June 2009), p. 3, Attachment 18) [Emphasis added.]
- The SFI Program. A Single North American Assurance. 1 Standard for all of North America. **Fully Independent** Non-Profit Charitable 501c3. 3 Chamber Board: Social – Environmental – Economic. (SFI webinar, April 24, 2009, Attachment 19) [Emphasis added.]
- America’s Largest Forest Certification program. **Now Fully Independent**. The Sustainable Forestry Initiative Program. ... A **fully independent** Board of Directors, including environmentalists and conservation organizations, governs and operates the SFI forest certification standard. (SFI advertisement, Attachment 20) [Emphasis added.]
- 2007 was quite a year. It began with the creation of SFI Inc., a **fully independent** non-profit 501c(3) charitable organization. Its Board of Directors has had authority over the SFI Standard, certification procedures and complaints since 2002, and **now** is the sole governing body of all aspects of the program with equal representation from its environmental, social and economic chambers. (SFI Progress Report 2007, p. 2, Attachment 21) [Emphasis added.]

Yet SFI’s claim that it is “independent” from the timber and paper industry or the companies it certifies is misleading and deceptive for the following reasons.

First, SFI is not, in fact, financially independent of the timber and paper industry; on the contrary, by its own admission, SFI is virtually **totally** dependent on the timber and paper companies who use SFI certification, which SFI calls its “program participants.” In a letter dated April 23, 2009, SFI specifically informed us that “the vast majority of [SFI’s] financial support is provided by SFI Program Participants who use our forest management and fiber sourcing standards.” Attachment 22.⁷ This is consistent with SFI’s history because SFI was founded and historically funded by the AFPA.

Second, SFI’s governance structure cannot fairly or reasonably be characterized as independent or balanced. Almost all of SFI’s funding comes from the “economic” sector of its Board of Directors. SFI holds no open elections for its Board members and its board is self-selecting. The representation of environmental and social interests in SFI, *e.g.* on the SFI Inc. Board of Directors, is very limited.

⁷ We believe that SFI’s structure and operation potentially violates two provisions of the Internal Revenue Code (IRC): the requirement that 501(c)(3) “public charities” not serve “private interests” and that they demonstrate “substantial public support.” Accordingly, we have filed a complaint with the Internal Revenue Service requesting the IRS to investigate this matter. For the convenience of the FTC, we include a copy of the IRS complaint as Attachment 23. (Note: We will forward the attachments to the IRS complaint if requested by the FTC.)

A history of SFI's board of directors illustrates that SFI is dominated by the companies whose forestry it certifies. SFI's initial board of directors in 2002 consisted of 13 individuals. Of these 13, 9 were affiliated with major industrial timber companies or forestry consultant organizations⁸ and SFI's president was Rick Holley, the CEO of Plum Creek Timber Co. In 2004, SFI's board expanded to 15; 7 of these 15 board members were affiliated with major timber or paper companies, including its vice-chair John A. Luke, the chairman and CEO of MeadWestvaco⁹ but all of the new board members were selected and approved by the then existing board members. In 2005, SFI's 15 member board included 7 members affiliated with industry, including its co-chair Colin Moseley.¹⁰ In 2006, SFI's 15 member board changed in composition but included 7 industry members, including its co-chair John A. Luke of MeadWestvaco.¹¹ In 2007, SFI's 15 board members remained the same, including its co-chair John A. Luke. Today, SFI's board consists of 18 persons and its board chair is (again) Rick Holley of Plum Creek Timber Co. While SFI's board may appear not to be industry-controlled from a numerical standpoint, SFI's admission that "virtually all" of its donated funds come from SFI-certified timber and paper companies creates the appearance that SFI's economic sector directors may bear disproportionate influence over the rigor of SFI's standards and its strategic direction. In fact, throughout its existence, a major timber or paper industry executive has **always** been chair or vice-chair of SFI.¹²

SFI cites that its board includes individuals who are not directly employed by timber or paper companies as evidence that it is not dominated by its industry members. But research reflects that many of these individuals have a financial relationship with SFI-certified timber and paper companies, a relationship we think calls into question whether SFI's claim of "independence" from the timber industry is deceptive.

One example is Larry Selzer, CEO of the Conservation Fund. The Conservation Fund's 2008 annual report lists numerous SFI-certified companies as donors, including Weyerhaeuser (\$10-49,999 level), AFPA (\$1,000-4,999 level), and Georgia-Pacific, International Paper (\$10,000-49,999 level).¹³ Similarly, John Faraci, CEO of International Paper (also an SFI board member) and John A. Luke, CEO of MeadWestvaco (also an SFI board member) are members of the Conservation Fund's

⁸ Specifically, William Banzhaf (Society of American Foresters, Banzhaf Consulting); Allen Bedell (Circle B Logging, Arkansas); Dr. "Skeet" Burris (Cypress Bay Plantation); John H. Cashwell (Pacific Lumber); John Dillion (International Paper); Rick Holley (Plum Creek Timber Co.); Duane McDougall (Willamette Industries); Colin Moseley (Simpson Timber Co.).

⁹ Specifically, John A. Luke, Jr. (MeadWestvaco); Dr. "Skeet" Burris; John H. Cashwell (Seven Islands Land Co.); John Faraci (International Paper); Colin Moseley; Steven R. Rogel (Weyerhaeuser Co.); Joe Young (Low Country Forest Products).

¹⁰ Specifically, Moseley, Luke, Burris, Faraci, Rogel, and Young.

¹¹ Specifically, Luke, Young, Faraci, Patrick Moore (Smurfit-Stone Container Corp., Mary Motlow (Cumberland Springs Land. Co.), Marvin Brown (Oregon Dept. of Forestry), and Rogel.

¹² Banzhaf; Holley (2002); Luke (Vice-chair, 2003); Luke (Vice-chair, 2004, 2005, 2006, 2007); Holley (2008, 2009).

¹³ Attachment 24

Corporate Council, as is W. Henson Moore, retired CEO of the AFPA.¹⁴ Another example is Tom Franklin, who joined SFI's board in 2008. Mr. Franklin is senior vice president of the Theodore Roosevelt Conservation Partnership, which listed the Plum Creek Timber Co. Foundation as a major contributor in its 2005 and 2007 annual reports.¹⁵

While we do **not**, in any way, impugn the integrity of these individuals or question their commitment to conservation causes, we do point out that these individuals have financial ties to SFI-certified timber companies and that this undermines SFI's representation that one of its three chambers of board governance consists of members of the environmental community.

Other facts make SFI's claim that its board is "independent" and "diverse" deceptive. For example:

- An "independent" non-profit certification organization implies arms-length separation and transparency of governance structure. Yet, SFI has no membership—in fact, Article II of the SFI bylaws states that "The Corporation shall not have members." In other words, SFI has no mechanism for organizations or individuals to join, vote, or elect the board of directors. Instead, SFI has program participants that are all forest products companies and committees that are dominated by companies. Far from equally representing environmental, social, and economic stakeholders, from a participation standpoint, SFI is heavily weighted to only one leg of the 3-legged sustainability stool.
- On its website, SFI's definition of social interests is "[b]oard members representing the social sector, which includes community or social interest groups such as universities, labor, professional loggers, family forest owners or government agencies" (emphasis added). Current SFI "social sector" board members include its current board chair, Marvin Brown, the state forester for the Oregon Department of Forestry and a representative of the American Logger Council. The latter would be considered an Economic Chamber member in the FSC, whose Social Chamber comprises representatives of indigenous peoples associations, family forest associations, labor unions, and other genuine social interests.
- SFI's claim of "independence" is contradicted by its tax returns disclosing that SFI has had a "continuing" administrative relationship with AFPA, the timber industry trade association that created SFI in 1994 and spun it off in 2002 (as an industry-based, industry-controlled response to FSC). SFI's most recent publically-available tax return identifies AFPA as an affiliated or related entity, performing "contracted services" (2007 amended IRS Form 990, Schedule A, line

¹⁴ Attachment 25

¹⁵ Attachment 26

52a, Attachment 27), and the prior year’s tax return describes the SFI-AFPA relationship as an “historic and continuing relationship” (2006 IRS Form 990, Schedule A, line 52a, Attachment 28). The 2006 Form 990 also states that SFI’s corporate books are in care of AFPA (line 91a); that “SFI reimburses AF&PA for salary, payroll taxes and benefit expenses of their employees” (line 51 b (iv)); and that AFPA performed “accounting services and membership solicitations” for SFI (line 51 b (vi)). In 2002, SFB’s Application for Recognition of Exemption (IRS Form 1023, Attachment 29) stated that “SFB was initially developed by the AFPA” and that the SFB “may use facilities, such as office space donated by the AFPA.”

In summary, SFI’s claim that it is an “independent non-profit public charity” is integral to its “green” marketing and public image, but that claim is deceptive. In its funding, governance structure, and standards-setting, SFI operates more like an industry-funded trade association and trade label than the “independent public charity” it claims to be.

(3) SFI’s claims of “transparency” are deceptive because it is very difficult for members of the public to find out what an SFI-certified landowner is doing (or not doing) on its lands to comply with SFI’s environmental “standards.”

SFI claims to be “transparent,” but this is deceptive because SFI lacks transparency in several key areas of its operations: (a) landowner management plans and audits; (b) stakeholder consultations; and (c) sources of financial support. SFI recently adopted a “Transparency Policy” (*see* Attachment 30) which does not even purport to address landowner management plans, audits, or stakeholder consultations.

(a) Landowner management plans and audits are not “transparent.” SFI certification, in brief, works as follows:

- Landowner applies for SFI certification, and works with certifier to achieve certification.
- Landowner hires auditor.
- Landowner and auditor develop confidential and proprietary landowner management plan.
- Auditor conducts periodic “surveillance” audits.
- Selected summary information from the audit is published online.

But there is a deceptive lack of transparency in SFI’s Landowner Plans. The SFI standard does not require a certified private landowner to make available to the public its management plans for its certified forests, or even summaries of them. Instead, landowner audit report summaries are posted on the SFI website.¹⁶ But these audit reports are too general to inform the public of the forest practices that are taking place or

¹⁶ <http://www.sfiprogram.org/auditreports.cfm>

not taking place on the ground. The summaries also vary widely in length, substance and detail, with most being only a few pages in length and containing information insufficient to determine with any confidence the adherence of the certified forest management operation to the SFI standard. Significantly, SFI not only permits but requires that the audit summaries be written by the forest owner/manager who is being audited.

(b) Stakeholder consultations do not occur. Landowner consultation with stakeholders – tribes, governments, anyone else who may be affected by the landowner’s forest operations – is important not only for the development of forest management plans, but also for the evaluation of social impacts, and identification and management of high conservation value forests. However, the SFI standard does not require such consultation for private landowners. Performance Measure (PM) 12.3, Indicators 1 and 2 require managers of *public* lands, but not private lands, to have contact with local stakeholders and the public regarding management planning. The strongest language in the SFI Standard related to consultation concerns only the relationship between indigenous peoples and government-owned *public* lands, stating that the public land manager “shall confer with affected indigenous peoples” (PM 12.4). PM 12.5 is not limited to public lands, but it requires only that the landowner “shall establish... procedures to address concerns raised by... the public...,” *i.e.*, for a *private* landowner there is no requirement to confer, only a process to respond if others complain. Furthermore, SFI requires no additional consultation specifically regarding forests of high conservation value.

(c) Sources of financial support are not “transparent.” Contrary to SFI’s claims that it is “open and transparent” about its “operations as a public charity” (SFI Transparency Policy, *see* Attachment 30), SFI has refused to disclose the *amounts* donated by its donors, so one cannot determine whether SFI receives any general “public support.” We asked SFI to provide financial information but SFI has not reasonably complied with our requests.

In fact, our inquiry evidently prompted a change to SFI policy. Until recently, SFI’s bylaws provided that SFI “shall provide to the public all information related to the Corporation’s funding, budget, and expenses.” SFI’s 2003-2004 Annual Report (Attachment 31) stated that its “independently audited financial statement and IRS Form 990 are available upon request.” Despite several letters from us (most recently May 6, 2009), SFI refused to provide us with any of its audited financial statements, and has refused to provide us a list of all donors with the specific amount each donor contributed. Instead, SFI has provided us some general annual reports documents and disclaimed the transparency commitment in its 2003-2004 Annual Report. SFI even amended its bylaws to remove the obligation to provide all financial information to the public (June 12, 2009 SFI letter, Attachment 32). The June 5, 2009 amended bylaws (Attachment 33, at Art. V, § 3) now more narrowly provide that SFI “shall disclose to the public all information that the Internal Revenue Code requires the Corporation to disclose.”

(4) SFI’s forestry standards are deceptive because they consist of predominantly vague, heavily qualified, and ambiguous commitments and because these standards provide forest managers with discretion to conduct environmentally-harmful forestry.

We attach a copy of SFI’s current standards spanning 2005-2009 (as amended September, 2008). Attachment 34 (*available at* <http://www.sfiprogram.org/files/pdf/sfi-standard-2005-2009-sept%2008%20update.pdf>).¹⁷

SFI broadly claims that its standards include “measures to protect water quality, biodiversity, wildlife habitat, species at risk and forests with exceptional conservation value.” But most, if not all, of SFI’s environmental and social measures in the SFI standard are vaguely worded, suggesting a central purpose to defend and legitimize *status quo* industrial forestry as environmentally and socially responsible, without requiring SFI participants to do more that they did before. The SFI standards contain an abundance of un-measurable or unverifiable terms, weak or vague verbs, and numerous qualifiers (e.g., “where practical”) that permit a much greater degree of flexibility and discretion in their interpretation and implementation by forest managers, certifiers and auditors. Thus, the results on the ground are likely to be highly variable and unpredictable and not achieve the environmental outcomes implied by the SFI standards.

For example, most SFI Indicators measure only whether some form of “system... program... plan [or] documentation” is present, rather than whether a specific, verifiable condition or result is being achieved *in the forest*. And rather than require forest managers to actually *do* something specific, the SFI standard often simply requires landowners to vaguely “address... support... promote... encourage... [or] contribute to” something. If the language of the standard itself fails to explicitly require tangible and measurable results *in the forest*, then specific forest management outcomes can never be assured.

SFI’s commitment to protect biodiversity is a good example of the vagueness and ambiguity of its standards. SFI requires only that certified landowners “manage” wildlife habitats and “contribute to” or “promote” (rather than ‘protect’ or ‘maintain’) the conservation of biodiversity. Moreover, most of SFI’s “indicators” require only the adoption of programs, plans, methodologies, or information collection rather than measurable results in the forest. Apart from requirements for “measures” and “plans” to protect riparian zones, water bodies, and undefined “special sites”, the SFI standard does not actually require the establishment or set-aside of protected areas. Nor does it preclude management activities that put specified high conservation values or features at risk, or require the protection of such values or features throughout certified forest units.

¹⁷ SFI’s initial set of standards were developed in 1994 by a “Forest Resource Task Group” convened by the American Forest and Paper Assn. The Task Force held regional workshops and was not open to general public participation. K. Heaton, *Behind the Logo*, at p. 10 (Nat Res. Def. Council, 2001).

SFI also interprets the meaning of some of its standards quite loosely, with numerous opportunities for a landowner to adopt alternative approaches. For example, a key SFI “Interpretations” document contains huge loophole:

In the rare case where the protection of an individual species or community carries exceptionally high costs or disproportionate impact and where the [certified landowner] is unable to implement any of the conservation strategies in a reasonable period of time (perhaps 3-5 years), and where laws or regulations do not apply, the [landowner] is free to implement other management or operational alternatives.

SFI standards are neither strong nor quantifiable because they generally lack clear, enforceable criteria, and discretion is allowed in their interpretation. The vast majority of SFI performance measures (PMs) and indicators require only the development of a “plan” or “policy” without specific environmental, social, or economic outcomes to make Program Participants accountable for their practices. Loopholes and considerable subjective discretion in the “appropriateness” of adherence to standards can be found throughout the SFI standards, for example:

- “Protection of Special Sites and Biological Diversity: To manage forests and lands of special significance (biologically, geologically, historically or culturally important) in a manner that **takes into account** [as opposed to protects] their unique qualities and to promote a diversity of wildlife habitats, forest types, and ecological or natural community types” (Principle 7).
- “Artificial reforestation programs that **consider** [as opposed to minimize] potential ecological impacts of a different species or species mix from that which was harvested” (PM 2.1, Indicator 5).
- “Program **addressing** [as opposed to requiring] management and protection of streams, lakes, and other water bodies and riparian zones” (PM 3.2, Indicator 1).
- “Support of and participation in plans or programs for the conservation of old-growth forests in the **region** of ownership” [as opposed to their own lands](PM 4.1, Indicator 6).
- “Trees in clearcut harvest areas are at least 3 years old or 5 feet high at the desired level of stocking before adjacent areas are clearcut, **or as appropriate to address operational and economic considerations**, alternative methods to reach the performance measure are utilized by the Program Participant”(PM 5.3, Indicator 3).

The vagueness of these terms (and the qualifiers attached to them) make it very difficult for an average member of the public or even a sophisticated corporate purchaser to know what an SFI-certified landowner is doing (or not doing) on its ground, and gives SFI

managers leeway to manage their way around the standard. The vagueness also contributes to the relatively low number of Corrective Action Requests that SFI landowners receive in their SFI audits. The ultimate result is that SFI is not leading to forestry practices that genuinely reflect ecologically exemplary or “sustainable” forestry.

(5) SFI makes implied claims that SFI is environmentally superior to non-certified U.S. products, but it is not.

FTC has created Guides for the Use of Environmental Marketing Claims. 16 CFR § 260 (2009). The Guides provide that any party making an implied or express claim that presents an objective assertion about the environmental attribute of a product must, at the time the claim is made, “possess and rely upon a reasonable basis substantiating the claim.” 16 CFR § 260.5. FTC provides an example of a product label containing an environmental seal that is likely to convey to consumers that the product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive. 16 CFR § 260.7(a), Example 5.

The FTC’s online “Facts for Business - Complying with the Environmental Marketing Guides” states in part as follows:

Eco-Seals, Seals-of-Approval and Certifications

Environmental seals-of-approval, eco-seals and certifications from third-party organizations imply that a product is environmentally superior to other products. Because such broad claims are difficult to substantiate, seals-of-approval should be accompanied by information that explains the basis for the award. If the seal-of-approval implies that a third party has certified the product, the certifying party must be truly independent from the advertiser and must have professional expertise in the area that is being certified.

The FTC analyzes third-party certification claims to ensure that they are substantiated and not deceptive. Third-party certification does not insulate an advertiser from Commission scrutiny or eliminate an advertiser's obligation to ensure for itself that the claims communicated by the certification are substantiated.

Great Paper Company sells photocopy paper whose packaging has a seal-of-approval from the No Chlorine Products Association that states “totally chlorine-free paper.” An explanation under the seal-of-approval says the paper production process did not use pulp produced with chlorine or compounds containing chlorine as bleaching agents. Using the highest industry standards, the No Chlorine Products Association certifies that products are chlorine-free only after industry experts have conducted comprehensive mill audits. The claim is unlikely to be deceptive.

SFI represents that its standards are formulated around the principle of “sustainable forestry” and that all of its products come from “well managed forests.” SFI requires all participants to have written policies which implement and achieve the principle of sustainable forestry by requiring participants “[t]o practice *sustainable forestry* to meet the needs of the present without compromising the ability of future generations to meet their own needs by practicing a land stewardship ethic that integrates *reforestation* and the managing, growing, nurturing, and harvesting of trees for useful products with the *conservation* of soil, air and water quality, *biological diversity*, *wildlife* and *aquatic habitat*, recreation, and aesthetics.”

However, the requirements to achieve SFI certification in the U.S. are often only marginally different and more protective than state and federal forest practice laws imposed on harvesting operations. The problem is complicated by the fact that SFI’s standards cannot be measured, quantified, or qualitatively compared to non-certified forests or forests certified by other systems. This is because SFI standards lack metrics and because landowner plans are confidential. Because an SFI certification does not represent anything significantly beyond meeting basic legal requirements, it is misleading for SFI certification to lead consumers to believe they are purchasing a product that is environmentally superior to non-certified U.S. products. When SFI-certified organizations actually violate federal or state forest practice laws, then the deception is even stronger.

E. Reliance by reasonable consumers.

One of the issues the FTC will consider is whether corporate or individual consumers are relying on SFI’s representations.

Courts interpreting the Federal Trade Act have recognized that a potential issue in a consumer deception case is the likely effect the promoter’s handiwork will have on the mind of the ordinary consumer. *Federal Trade Comm’n v. Sterling Drug*, 317 F.2d 669, 674 (2nd Cir. 1963). On the other hand,

“Neither proof of consumer reliance nor consumer injury is necessary to establish a § 5 violation. . . . Otherwise, the law would preclude the FTC from taking preemptive action against those responsible for deceptive acts or practices, contrary to § 5’s prophylactic purpose.”

FTC v. Freecom Communications, Inc., 401 F.3d 1192, 1203 (10th Cir. 2005).

SFI’s April 2, 2009 insider “Briefing Note” (*see* Attachment 7) is excellent evidence that SFI is succeeding in distinguishing itself in the “green building” community and that SFI perceives a market disadvantage by its exclusion from the LEED green building certification system.

Attached to this letter is a notebook containing materials that SFI—and SFI-certified companies—promulgate to promote SFI. The notebook contains SFI advertisements, SFI newsletters, SFI “webinars,” and articles about SFI. We believe these materials reflect that SFI is boldly and aggressively luring the paper and wood purchasing public into believing that SFI is a credible independent not-for-profit charitable forest certification system. This illustrates the ways SFI seeks to get different audiences in the market to rely on the SFI brand. SFI concedes its advertising is paying off: SFI boasts in its April 2, 2009 “Briefing Note” (at p. 2, last ¶) that SFI’s 2007 “independence” has driven its “rapid growth.” (*See* Attachment 7).

SFI’s “Labels & Claims Webinar” dated May 14, 2009 (*see* Attachment 6) also illustrates that consumers are relying on SFI’s representations. For example, SFI cites positively the Roper & Yale survey (p. 19) reflecting that consumers care and are relying on green labels. SFI also lists many companies which have adopted SFI (p. 22).

The FTC should also consider the September 25, 2007 slideshow of SFI’s CEO, Kathy Abusow (Attachment 35). In it, SFI admits the importance of environmental claims; cites the importance of a three-chamber Board; cites the “key differentiator” of acceptance by NGO’s; and demonstrates the aggressiveness of SFI’s marketing.

Another SFI-produced document reflecting SFI’s aggressive marketing of itself as an “independent non-profit organization” is a letter dated July 13, 2009 that SFI sent to a Berkeley, California green building company called “Build It Green.” Attachment 36. This letter, which was NOT forwarded to us by Build It Green but was obtained from a source who independently obtained it, constitutes an admission by SFI that it is successfully convincing States, companies, and others to rely on SFI.

Within the forest products industry, different sectors are structured in very different ways. For example, the wood products sector is very different than the pulp and paper products sector. There are at least three “audiences” that likely look to or rely on the SFI brand and who may be confused or deceived by SFI’s deceptive advertising:

(1) Building industry professionals: Architects, designers, developers, contractors and home builders. In particular, contractors and builders are closely tied to the building materials/wood products vendors who are in the SFI “camp,” are selling SFI products day in and day out, and are most likely to be fully equipped with SFI promotional materials. The “green building” industry is large and growing. The U.S. Green Building Council is expected to determine in late 2009 whether its rigorous Leadership for Energy and Environmental Design (LEED) green building standards should recognize SFI (and rely on SFI). To date, the rigorous FSC program is the only forest certification system that is recognized in the LEED system.

(2) Corporate procurement executives: On the paper side, decision-makers with the major corporations procure large amounts of paper and packaging that are most likely to be targeted by SFI - as evidenced by the recent actions of Tropicana, 3M, J.Crew, etc. SFI’s 2008 Progress Report noted that “SFI Inc. sent information to 8,000 customers

across North America advising them of the benefits of developing a **procurement policy** that provides an inclusive approach that recognizes **all** credible forest certification programs.” [Emphasis added.] In response to complaints about its adoption of SFI, the 3M Company (maker of Post-It Notes) explained its reliance on SFI as follows (May 29, 2009 letter, Attachment 37):

“As part of our broader commitment to sustainability, one of the key environmental goals for the Post-It® brand and the Consumer & Office business is to provide our customers with certified paper, **sourced from suppliers who use responsible forest management practices.**” [Emphasis added.]

When it adopted the SFI Certified Fiber Sourcing label for the cartons of its fruit juice products, Tropicana Products Inc. issued a press release (April 8, 2009, Attachment 38) explaining its reliance on SFI (as well as *consumers*’ reliance on the SFI label):

“Tropicana is committed to using natural resources in a responsible manner and has made sustainability part of its mission ... Using the **SFI fiber sourcing label** on our products plays a critical role in our environmental policy, and empowers **our customers to make an educated environmental choice about the Tropicana products they buy.**” [Emphasis added.]

(3) The general public: Ordinary consumers are increasingly likely to see the SFI label on printed material (*e.g.* J.Crew catalogues) and on wood building materials they might find at their local Home Depot or Lowe’s hardware stores. Not knowing better, they are very likely to rely on and be deceived by the SFI brand. In addition, individual home buyers may rely on “green” home certification or rating by entities that endorse SFI-certified products, as SFI states on its website:

<http://www.sfiprogram.org/greenbuilding/index.php>

“More and more buyers – including governments, businesses and individuals – are asking for wood products from well-managed forests. SFI-certified products are recognized by many leading green building rating programs in the United States, Canada and overseas. These include residential programs such as the National Green Building Standard and National Association of Home Builders, and commercial programs such as Green Globes.”

As evidenced by FTC’s effort to update its “Green Guides,” FTC recognizes that “environmentally friendly” messages resonate with consumers, and each year there are thousands of new products that rely on those attributes in marketing to help boost sales.

The FTC Policy Statement on Deception summarized consumer reasonableness as follows:

Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances. If the representation or practice affects or is directed primarily to a particular group, the Commission examines reasonableness from the perspective of that group.

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

... the Commission explained that “[i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts.” *Standard Oil of Calif*, 84 F.T.C. 1401, 1471 (1974), *aff'd as modified*, 577 F.2d 653 (9th Cir. 1978), *reissued*, 96 F.T.C. 380 (1980). [footnotes omitted.]

This can be applied to the three “audiences” described above who rely on the SFI brand and SFI claims – building industry professionals, corporate procurement executives, and the general public. In each case, a reasonable member of the group will likely respond by relying on the SFI brand and will be deceived by it. For example, a corporate procurement executive who sees the “Certified Fiber Sourcing” label will be likely to reasonably interpret that “eco-label” as a certification of the source of the fiber, that the fiber had been tracked from the specific forest in which it was grown – but as explained above, this implied claim of the “Certified Fiber Sourcing” label is not true.

F. SFI’s claims are material.

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

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

The Commission considers certain categories of information presumptively material. First, the Commission presumes that express claims are material. As the Supreme Court stated recently, “[i]n the absence of factors that would distort the decision to advertise, we may assume that the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising.” Where the seller knew, or should have known, that an ordinary consumer would need omitted information to evaluate the product or service, or that the claim was false, materiality will be presumed because the manufacturer intended the information or omission to have an effect. Similarly, when evidence exists that a seller intended to make an implied claim, the Commission will infer materiality. [footnotes omitted.]

SFI claims, which we contend are deceptive to both reasonable lay and sophisticated consumers, are material. As the Supreme Court stated, “*we may assume that the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising.*” In 2007 alone, SFI spent several million dollars on its advertising and public awareness campaign that continues to this day (*see* recent SFI advertisements, Attachment 39). SFI’s 2007 amended IRS Form 990, Schedule A (Attachment 40) reported that SFI paid \$1,838,711 to the Porter Novelli public relations firm in 2007. The recent SFI webinar “SFI 101” (April 24, 2009, *see* Attachment 19) referred to this campaign as a “market outreach program that began in 2007.” SFI’s 2007 Progress Report (*see* Attachment 21) described the campaign as follows:

An SFI communications working group looked at ways to increase awareness of the SFI program and brand. SFI Inc. and program participants collaborated to promote the importance of certification and build support for the SFI program in the marketplace. Activities included ads in major publications, on billboards and in telephone kiosks in 23 markets across the U.S. Increased efforts in market outreach in the fourth quarter, supported by this marketing campaign, led to numerous meetings with customers on the solid wood and print, paper, packaging side and with conservation groups.

In a recent email (June 15, 2009, Attachment 41), SFI further described its campaign:

The SFI program represents a collective effort to institute a forest certification standard that’s good ... for business. To promote this program, SFI Inc. has developed a national public awareness campaign targeting consumers and key decision makers. This email highlights our most recent efforts, and they’re working. Today, more companies are looking into SFI-certified products as a sound environmental choice, while more consumers are looking for the SFI label in stores. [Emphasis added.]

In the recent SFI webinar on labels and claims (May 14, 2009, *see* Attachment 6), SFI acknowledged the growing importance of “eco” labels:

Consumer Attitudes

Recent survey by GfK Roper & Yale of 2000 US consumers found that:

- Consumers believe it is important or essential to have eco-labels that describe the environmental impacts caused by the manufacture, use and disposal of products. [Emphasis added.]

SFI's own statements about the purposes of SFI's public awareness campaign to promote the SFI "eco-label," and SFI's expenditure of several million dollars on that advertising campaign, demonstrate that SFI's deceptive claims are integral to its success in marketing its brand.

Conclusion

Thank you for considering the information and arguments set forth in this complaint and the enclosed notebook of Attachments. We ask the FTC to investigate and take appropriate steps to correct and prevent the claims of deception we have outlined in this complaint.

If you have any questions or if we can share additional information, please do not hesitate to contact us.

Sincerely,

WASHINGTON FOREST LAW CENTER



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Attorneys for ForestEthics

Enclosures (notebook)

cc: ForestEthics
Ms. Kathy Abusow, CEO of SFI, Inc.