

# The Green Marketing Machine: Tackling Green Advertising in the Automobile Industry

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## I. INTRODUCTION

Envision the confusion as you, a newly discovered “green” consumer, start your search for the latest environmentally friendly car only to discover that every car advertised claims to be “clean” and “green” for the environment. While this clearly is not the case today, car manufacturers are claiming more and more that their products are environmentally friendly. In reality, cars in 2007 averaged slightly over twenty miles per gallon, almost two miles worse than in 1987.<sup>1</sup> In addition, with the price of gasoline,<sup>2</sup> the miles driven by Americans,<sup>3</sup> and the taboo of relying on foreign oil<sup>4</sup> all skyrocketing in the twenty-first century, manufacturers’ supplies of environmentally friendly cars are failing to meet consumer demands. However, these conclusions go against today’s environmentally friendly and aware world where the demand for green products has dramatically increased in the last two

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<sup>2</sup> ALISON CASSADY, U.S. PIRG EDUCATION FUND, U.S. PUBLIC RESEARCH INTEREST GROUP, AMERICA IDLES: HOW PRESIDENT BUSH’S INACTION WILL COST AMERICANS BILLIONS AT THE PUMP IN 2006 5 (2005), [http://www.environmentamerica.org/uploads/OG/CV/OGCV9\\_x5yb7cvq9xmyPiHQ/americanidles2005.pdf](http://www.environmentamerica.org/uploads/OG/CV/OGCV9_x5yb7cvq9xmyPiHQ/americanidles2005.pdf).

<sup>3</sup> Paul Overberg & Larry Copeland, *Drivers Cut Back – a 1st in 26 Years*, USA TODAY, July 14, 2007, available at [http://www.usatoday.com/news/nation/2007-05-17-gas-prices\\_N.htm](http://www.usatoday.com/news/nation/2007-05-17-gas-prices_N.htm) (determining that 2007 was the first time in the last twenty-six years where Americans drove fewer miles than the year before).

<sup>4</sup> See U.S. Dep’t of Energy & U.S. Envtl. Prot. Agency, *Why is Fuel Economy Important?*, <http://www.fueleconomy.gov/feg/why.shtml> (last visited Dec. 20, 2008) (showing that the US now spends over 250 billion dollars annually on oil imports, up from around 100 billion dollars in 2000).

decades.<sup>5</sup> Modern consumers seek out products advertised as “green” and almost blindly pay more for these apparent solutions to global warming.<sup>6</sup> The car industry, for example, is targeted not only by the government, but also by environmental groups and consumers to produce cars that burn lesser amounts of cleaner fuel and use innovative technology to prevent global warming.<sup>7</sup>

Inevitably, market forces will convince certain companies and industries to adjust their marketing plans to promote their own products as “environmentally friendly.”<sup>8</sup> Companies realize that the mere image of being “green” increases revenue, and as a consequence we see the market flooded with these “environmentally friendly” companies and products.<sup>9</sup> Some industries and companies have honestly worked to promote products that do less damage to the environment than others.<sup>10</sup> Other companies, however, put out the false appearance of such efforts in order to manipulate the average consumer into buying its “normal” product.<sup>11</sup>

The automobile industry is one such industry where “green advertising” is prevalent. Because the transportation of people and goods consumes about two-thirds of all oil used by Americans,<sup>12</sup> environmental enthusiasts believe the car industry must be reformed to lessen the impact of global warming.<sup>13</sup> As a result, we have seen a dramatic increase in the sales of hybrid and low emission vehicles.<sup>14</sup> Americans are now eager to buy energy efficient cars to both save money at the pump, where prices for gasoline have risen on average from \$1.56 per gallon in 2003 to over \$4.00 per gallon in 2008, and to reduce our dependence on foreign oil.<sup>15</sup> Car companies, however, can either use the latest or best available technology in these vehicles or choose to do the bare minimum, which could mean low-cost alternatives or nothing at all. For example, the U.S. Environmental Protection Agency (“EPA”)

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<sup>5</sup> See Paul H. Luehr, *Guiding the Green Revolution: The Role of the Federal Trade Commission in Regulating Environmental Advertising*, 10 UCLA J. ENVTL. L. & POL’Y 311, 312-13 (1992) (suggesting that consumers are seeking “products that are safer for the environment”).

<sup>6</sup> *Id.*

<sup>7</sup> See CLEAN CAR CAMPAIGN, 5 DRIVING FORWARD (2003), <http://www.cleancarcampaign.org/pdfs/drivingforward5.pdf> (stating that, out of nearly 7,000 people who took Clean Car Pledge and were buying a new car, eighty-five percent sought out information on “green” cars); see also Nathalie Kilby, *Getting the Green Gift Right*, MARKETING WEEK, May 31, 2007, at 37 (stating that the majority of people believe global warming exists and, as a result, now question the products they buy).

<sup>8</sup> ATT’YS GEN. OF CAL., FLA., MASS., MINN., MO., N.Y., TEX., UTAH, WASH. AND WIS., THE GREEN REPORT II: RECOMMENDATIONS FOR RESPONSIBLE ENVIRONMENTAL ADVERTISING, at v (1991) [hereinafter THE GREEN REPORT II].

<sup>9</sup> Glenn Israel, *Taming the Green Marketing Monster: National Standards for Environmental Marketing Claims*, 20 B.C. ENVTL. AFF. L. REV. 303, 303-04 (1993) (stating that the increase in green marketing is a reaction to the “green consumer” who prefers to buy environmentally friendly products).

<sup>10</sup> Luehr, *supra* note 5, at 313 (concluding that the “potential revenue for manufacturers” has led to an increase in “environmental advertising strategy”).

<sup>11</sup> See *id.* at 313-14 (stating that competition has led to advertisers making “exaggerated or irrelevant claims”).

<sup>12</sup> CASSADY, *supra* note 2, at 5.

<sup>13</sup> See *Id.* at 5-7 (suggesting reliance on oil contributes to global warming and proposing a solution to “make cars and SUVs more fuel efficient”).

<sup>14</sup> See *Toyota Worldwide Hybrid Sales Top 1 Million*, MSNBC, June 7, 2007, <http://www.msnbc.msn.com/id/19088667> (reporting that Toyota’s international sales of hybrid vehicles increased from 18,000 in 1998 to 312,500 in 2006).

<sup>15</sup> See CASSADY, *supra* note 2, at 5.

estimates that the Toyota Prius can achieve sixty miles per gallon (“mpg”),<sup>16</sup> but a car manufactured in 2007 only averages 20.2 mpg.<sup>17</sup> Overall, some car companies today are advertised and marketed as being “green” even if they fall short of what other companies have achieved or what is technologically possible.

As a response to the influx of “green advertising,” the U.S. Federal Trade Commission (“FTC”) offered non-enforceable guidelines to govern environmental claims in advertising.<sup>18</sup> These voluntary guidelines provide requirements for vague and undefined words like “recycle,” “ozone safe,” and “biodegradable” to guide companies on how to use them on labels and advertisements.<sup>19</sup> States that have considered the federal law too lenient have enacted their own laws to address the matter. California, a well-known pro-environment state, enacted a stronger statute that provides for criminal penalties for violations of its green advertising statutes.<sup>20</sup>

Internationally, the United States trails parts of the world in adopting strong environmental enforcement laws, such as those relating to the reduction in greenhouse gases and car emission standards, where currently U.S. cars achieve 24.8 mpg; China about 35 mpg, and in Europe about 37 mpg.<sup>21</sup> In comparison, the United States also trails European countries, including Norway<sup>22</sup> and Germany,<sup>23</sup> in green advertising regulations and enforcement. Norway bans the use of certain words like “green” and “environmentally friendly” in car advertisements,<sup>24</sup> and Germany developed an eco-labeling program that consumers can rely on when choosing environmental products.<sup>25</sup>

The question still remains as to which is the better stance. The United States leaves it for the consumer to decipher which companies are best for the environment and assumes the true environmental leaders will stand out.<sup>26</sup> Other countries take a proactive approach to prevent the misrepresentation of “green” claims and to assist

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<sup>16</sup> FUEL ECONOMY TRENDS, *supra* note 1, at 64.

<sup>17</sup> *Id.* at ii.

<sup>18</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,364 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260).

<sup>19</sup> *Id.* at 36,364-68.

<sup>20</sup> See CAL. BUS. & PROF. CODE §§ 17580-17581 (West 2008) (establishing standards for environmental representations and imposing a potential six-month prison sentence and/or a fine of \$2,500 for violators). *But see* Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. at 36,364 (stating that the purposes of the guidelines are not enforceable compliance).

<sup>21</sup> FENG AN & AMANDA SAUER, COMPARISON OF PASSENGER VEHICLE FUEL ECONOMY 1, 27 (2004), [http://www.pewclimate.org/docUploads/Fuel%20Economy%20and%20GHG%20Standards\\_010605\\_110719.pdf](http://www.pewclimate.org/docUploads/Fuel%20Economy%20and%20GHG%20Standards_010605_110719.pdf) (showing that 2002 fuel economy for new vehicles in the United States was 24.1 mpg, behind China at 29.3 mpg and Europe at 37.2 mpg).

<sup>22</sup> See Alister Doyle, *Norway Says Cars Neither “Green” nor “Clean,”* REUTERS, Sep. 6, 2007, available at <http://www.reuters.com/article/environmentNews/idUSL0671323420070906?feedType=RSS&feedName=environmentNews&pageNumber=2&sp=true> (describing Norway’s regulation on green advertising).

<sup>23</sup> U.S. ENVTL. PROT. AGENCY, EPA DOC. NO. 742-R-98-009, ENVIRONMENTAL LABELING ISSUES, POLICIES, AND PRACTICES WORLDWIDE app. B-47 to B-48 (1998), <http://www.epa.gov/epp/pubs/wwlabel3.pdf> [hereinafter ENVIRONMENTAL LABELING ISSUES].

<sup>24</sup> Doyle, *supra* note 22.

<sup>25</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47.

<sup>26</sup> See generally Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,364 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260) (stating that the guidelines are not legislative rules and do not have “the effect or force of law”).

consumers.<sup>27</sup> The difference seems to be whether fuel-burning cars that inevitably produce harmful effects for the environment can be “green” or “environmentally friendly” and how much regulation the government needs to employ.

Section II of this article lays out the laws and regulations of Norway, the United States, California, and Germany in regards to green marketing. Specifically, Section II discusses the actual law, its enforcement potential and penalties, and the acting legislative agency that created the law. Section III compares the advantages and disadvantages of each current approach. Lastly, Section IV examines three potential alternatives to the current system in the United States.

## II. OVERVIEW

The United States, Germany, and Norway approach regulating green advertising differently. First, Norway recently determined that cars are unable to be “environmentally friendly” and request that companies not counter that determination in their advertisements.<sup>28</sup> Second, in the 1990s, as green advertising became more prominent, the United States decided to regulate potentially deceiving advertisements through voluntary regulations.<sup>29</sup> Third, before both the United States and Norway addressed green advertising, Germany in the 1970s created the Blue Angel program that uses market forces to regulate green advertising.<sup>30</sup> The governments of the United States and Norway created regulations that are similar in style, but vary in the level they are enforced.<sup>31</sup> Germany, on the other hand, created eco-labels that both the United States and Norway, as well as other organizations, have attempted to replicate.<sup>32</sup>

### A. Norway’s Regulation

As of October 15, 2007, Norwegian car manufacturers that continue to use forbidden environmental terms like “environmentally friendly” and “green” in their advertising are subject to fines unless they can prove that such claims of cleanliness are true through documentation, an apparently impossible task.<sup>33</sup> In September of 2007, Norway, one of the world’s greenest countries,<sup>34</sup> implemented advertising requirements that may be the strictest in history.<sup>35</sup> Car manufacturers in Norway are forbidden to use the phrases “environmentally friendly,” “green,” “clean,” “environmental car,” “natural,” or descriptions similar to those in their advertising

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<sup>27</sup> See, e.g., Doyle, *supra* note 22 (detailing Norway’s guidelines for “green” advertising); ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at A1-3 (providing an overview of all environmental labeling programs covered in the report, including Germany’s Blue Angel program).

<sup>28</sup> See Doyle, *supra* note 22 (explaining Norway’s decision that no fuel burning car is “environmentally friendly”).

<sup>29</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. at 36,364.

<sup>30</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47 to -48.

<sup>31</sup> See Doyle, *supra* note 22. See generally Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363 (creating list of voluntary guidelines).

<sup>32</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47 to B-48.

<sup>33</sup> See Doyle, *supra* note 22 (implying that to successfully prove such claims, a carmaker has to “document it[s] [efforts] in every aspect from production, to emissions, to energy use, to recycling”).

<sup>34</sup> Matthew E. Kahn & Fran Lostys, *Living Green: Ranking the Best (and Worst) Countries*, READER’S DIGEST, Oct. 2007, at 128-33, available at <http://www.rd.com/content/greenest-locations-on-the-globe/>.

<sup>35</sup> Doyle, *supra* note 22.

campaigns.<sup>36</sup> The Norwegian Consumer Ombudsman, the agency that implemented the requirements, determined that cars are unable to ever be “green” or “environmentally friendly.”<sup>37</sup> According to Bente Oveverlie, a senior official in the Ombudsman, cars only have the ability to do less damage than other cars, and therefore, have no positive impact on the environment.<sup>38</sup> As a result, Oveverlie stated that it is nearly impossible to avoid potential fines by trying to prove through proper documentation the validity of claims that cars are “environmentally friendly.”<sup>39</sup>

Norway enforces its green advertising regulations through the Norwegian Consumer Ombudsman, an independent administrative agency that oversees the Marketing Control Act and tries to influence the market to observe its regulations.<sup>40</sup> The Ombudsman negotiates with companies to create voluntary solutions to cases submitted either by consumers, traders, or by its own accord.<sup>41</sup> In regards to green advertising, the Ombudsman could potentially work with car manufacturers who have long-term advertising campaigns using the newly forbidden environmental terms. If negotiations fail, the case can be submitted to the Market Council and, together, they can issue decisions to ban types of marketing when they feel it is necessary.<sup>42</sup>

#### B. United States Regulation

In 1992, the U.S. Federal Trade Commission (“FTC”) adopted voluntary, unenforceable regulations for willing businesses and industries that made environmental claims in their advertising campaigns.<sup>43</sup> Serious consideration of green advertising regulation began when the state attorney generals of California, Massachusetts, Minnesota, Missouri, New York, Texas, Washington, and Wisconsin issued “The Green Report.”<sup>44</sup> The report summarized the potential problems of green advertising, its public forum results and controversies, and recommendations for action by the federal government and business community.<sup>45</sup> Following these initial advertising recommendations, the same eight attorney generals, joined by those of Florida and Utah, issued “The Green Report II,” which revised the first report in regard to suggested definitions, testing protocols, and the demand of government regulation.<sup>46</sup>

On August 13, 1992, the FTC adopted *Guides for the Use of Environmental*

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Econsumer.com, *How Norway Will Handle Your Complaint*, <http://www.econsumer.gov/english/contentfiles/country/norway/handle.html> (last visited Oct. 21, 2007).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Guides for the Use of Environmental Marketing Claims*, 57 Fed. Reg. 36,363, 36,364 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260).

<sup>44</sup> See generally GREEN REPORT II, *supra* note 8, at v, vi, 3. See also Luehr, *supra* note 5, at 314-16 (analyzing the *Green Report II* in substantially more detail).

<sup>45</sup> Luehr, *supra* note 5, at 314-15.

<sup>46</sup> *Id.* at 315; see Veronica R. Sellers, Comment, *Government Regulation of Environmental Marketing Claims*, 41 U. KAN. L. REV. 431, 439-40 (1992) (stating that the *Green Report II* supports federal involvement that supplements state action).

*Marketing Claims* (the “Guide”) for businesses that make environmental claims in marketing and advertising campaigns.<sup>47</sup> The Guide includes regulations that address all forms of marketing, including labels, advertising, and promotional materials, and disregard the difference between directly asserted claims and those implied “through words, symbols, emblems, logos, depictions, product brand names, or through any other means.”<sup>48</sup>

The regulations recommend to businesses that any environmental claim distinguish whether the environmental attribute or benefit refers to the product or packaging, does not overstate the environmental attribute or benefit, and that all comparative claims are sufficiently clear.<sup>49</sup> The Guide authoritatively states that “[i]t is deceptive to misrepresent, directly or by implication, that a product or package offers a general environmental benefit” because misrepresenting a product or package deceives consumers about the environmental benefit and provides a wide range of meaning to the environmental claims.<sup>50</sup> To illustrate this point, the Guide mentions various brands using slogans like “Eco-safe” or a wrapper claiming to be “environmentally friendly.”<sup>51</sup> Further, the regulations define what may be labeled as degradable, compostable, recyclable, ozone friendly, and a source reducer, and also provide examples of what might constitute deceptive practices.<sup>52</sup> Section 260.7(h) offers an example of the regulations potential applicability to the car industry, stating that “[i]t is deceptive to misrepresent, directly or by implication, that a product is safe for or friendly to the ozone layer,” and such a claim is nullified if a product contains any ozone-depleting substance.<sup>53</sup>

While the Guide uses a strong and commanding tone, the provisions contained therein are not enforceable and have no lawful force or effect.<sup>54</sup> The primary purpose of the Guide is to provide assistance to companies that wish to voluntarily comply with the law.<sup>55</sup> The writers of the Guide admit that it “will not have a significant impact on the environment” and is not made to influence environmental policy decisions.<sup>56</sup>

### C. California’s Regulation

Because of weaker than desired federal regulations, California enacted its own state laws to combat green advertising. In September 1990, California enacted section 17580 of the California Business & Professions Code to aggressively attack businesses that use misleading environmental claims.<sup>57</sup> The law explains that any manufacturer who represents through advertising, labels, or containers that its

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<sup>47</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. at 36,363-64.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 36,364-65.

<sup>50</sup> *Id.* at 36,365.

<sup>51</sup> *Id.* at 36,365-68.

<sup>52</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. at 36,365-68.

<sup>53</sup> *Id.* at 36,368.

<sup>54</sup> *Id.* at 36,364.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 36,368.

<sup>57</sup> CAL. BUS. & PROF. CODE § 17580.5 (West 2008); see Sellers, *supra* note 46, at 440 (explaining that a federal lawsuit challenged the constitutionality of the California statute and the court held it did not violate the First Amendment, but was constitutionally vague).

products are not harmful to, or are beneficial to, the environment must support such claims with information and documentation.<sup>58</sup> The statute emphasizes certain advertising phrases used by manufacturers or distributors including “earth friendly” or “environmentally friendly,” “ecologically sound” or “environmentally sound,” “environmentally safe” or “ecologically safe,” and “green product.”<sup>59</sup> The information and documentation is also to be made available to the public upon request.<sup>60</sup>

In October 1995, California amended its Business & Professions Code to include section 17580.5, which states that “[i]t is unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied.”<sup>61</sup> According to the amended statute, an environmental marketing claim is any claim found in the FTC’s “Guides for the Use of Environmental Marketing Claims.”<sup>62</sup> The California legislature enacted the statute in accordance with public policy: environmental marketing must be backed up with “competent and reliable evidence to prevent deceiving or misleading consumers.”<sup>63</sup> Information about the environmental impact can only be available to the public if the states adopt set standards. Lastly, section 17581 of the code establishes criminal penalties for violators, including imprisonment for a maximum of six months and/or a fine of up to \$2500.<sup>64</sup>

#### D. Germany’s Program

In the 1970s, Germany enacted the first major regulation of green advertising by relying on the voluntary commitment and motivation of manufacturers and consumers. Germany’s regulation is now a model replicated by other similar regulatory systems around the world.<sup>65</sup> Germany does not have a particular statute prohibiting green advertising, but does have a government-sponsored national eco-labeling program called the Blue Angel program.<sup>66</sup> The program develops eco-labels for a variety of products and then awards the eco-labels to manufacturers who comply with certain pre-determined criteria.<sup>67</sup> Participation in the Blue Angel program is completely voluntary and, as a result, the established requirements are not binding.<sup>68</sup> Instead, the program relies on “information, motivation, and a commitment to the environment from both manufacturers and consumers.”<sup>69</sup>

Under the Blue Angel program, the process to create and award eco-labels is completed in three steps. First, product categories are proposed to the Federal

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<sup>58</sup> CAL. BUS. & PROF. CODE § 17580(a)(1)-(5) (itemizing the types of information that must be provided to validate a claim).

<sup>59</sup> *Id.* § 17580(a).

<sup>60</sup> *Id.* § 17580(b).

<sup>61</sup> *Id.* § 17580.5(a).

<sup>62</sup> *Id.* See generally *supra* Part II.B.

<sup>63</sup> S.B. 426, 1995-1996 Leg., Reg. Sess. (Cal. 1995).

<sup>64</sup> CAL. BUS. & PROF. § 17581 (West 2008).

<sup>65</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47 to B-49.

<sup>66</sup> *Id.* at B-47.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

Environmental Agency<sup>70</sup> and the Jury Umweltzeich,<sup>71</sup> which reviews and chooses categories for the Blue Angel program.<sup>72</sup> Second, the Federal Environmental Agency drafts criteria for each of the product groups and forwards the criteria to the German Institute for Quality Assurance and Labeling,<sup>73</sup> which organizes “expert hearings” where industry representatives, consumer and environmental organizations, scientists, and testing institutes ask questions and make comments.<sup>74</sup> Finally, a manufacturer applies for certification to use the eco-label on its products.<sup>75</sup> The manufacturer’s criteria are verified by evaluating “statements from the manufacturer, testing by independent facilities, and data and product information sheets.”<sup>76</sup> Upon meeting the product criteria, the manufacturer signs a four-year contract for use of the eco-label, pays an initial application fee, pays an annual fee based on estimated annual sales of the products, and contributes to the advertising fund for the program.<sup>77</sup>

The Blue Angel program is designed to assist consumers who want to purchase quality products with fewer adverse environmental impacts and to encourage manufacturers to make and develop pro-environmental products.<sup>78</sup> Overall, the Blue Angel program produces reliable eco-labels and serves as a model for other agencies, such as the United Nations, that want to implement label programs.<sup>79</sup>

### III. ANALYSIS

#### A. United States

The hands-off approach taken by the United States towards green advertising directly affects potential consumers looking to make major investments, as well as manufacturers striving to influence the decisions of such consumers.<sup>80</sup> Despite criticism for its relaxed rules regarding green advertising, the U.S. government continues to allow car manufacturers virtually free rein on which words, symbols,

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<sup>70</sup> *The Blue Angel: Federal Environmental Agency*, [http://www.blauer-engel.de/en/blauer\\_engel/who\\_is\\_behind\\_it/federal\\_environmental\\_agency.php](http://www.blauer-engel.de/en/blauer_engel/who_is_behind_it/federal_environmental_agency.php) (last visited Sept. 10, 2008) (stating that the Federal Environmental Agency is part of the German government that receives and pre-examines the proposals for new eco-labels).

<sup>71</sup> *The Blue Angel: Who Is Behind It?*, [http://www.blauer-engel.de/en/blauer\\_engel/who\\_is\\_behind\\_it/index.php](http://www.blauer-engel.de/en/blauer_engel/who_is_behind_it/index.php) (last visited Sept. 10, 2008) (describing the jury as an “independent decision-making body” that is made up of experts representing various groups).

<sup>72</sup> See ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-48 (stating that on average, 150 categories are proposed and usually only six are selected); see also Roger D. Wynne, *The Emperor’s New Eco-Logos?: A Critical Review of the Scientific Certification Systems Environmental Report Card and the Green Seal Certification Mark Programs*, 14 VA. ENVTL. L.J. 51, 60 (1994) (explaining that the seal program is a cooperative effort between several independent organizations, the participating governmental body, and the public).

<sup>73</sup> See ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-48.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at B-49.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at B-48.

<sup>78</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-50.

<sup>79</sup> *Id.*; see Israel, *supra* note 9, at 304-05 (explaining that all of the governmental seal programs use basically the same procedure).

<sup>80</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,363 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260).

and phrases they employ to lure potential customers.<sup>81</sup> Many companies benefit and profit from this “hands off” approach, but at the same time, this approach is detrimental to environmentally-friendly companies.<sup>82</sup> Additionally, the U.S. government’s decision to make the regulations voluntary<sup>83</sup> directly impacts the consumer’s need and desire for “green” information.<sup>84</sup>

For car manufacturers, the main concern of a lack of regulation lies with companies that develop more advanced environmental technology. Without regulations, some companies make advertisements that are “trivial, confusing, and misleading,”<sup>85</sup> and negatively affect the consumer’s ability to accurately judge the veracity of environmental advertisements.<sup>86</sup> With such lax regulation on environmental advertising, consumers who may lack the requisite expertise to critically analyze environmental advertisements and are prone to be misled, may be unable to distinguish between the various environmental claims.<sup>87</sup> Environmentally advanced companies should oppose such an approach because companies that are not really “green” can benefit from the growing popularity of “green” consumerism.

A requirement that companies must fulfill certain regulations before they can use environmentally “friendly” terms decreases the number of companies with the capacity to use those terms, leaving only those with the best environmental claims to utilize green advertising in the marketplace. Environmentally weaker car manufacturers prefer the relaxed system currently in place because it allows them to participate in the increasingly popular green market where they would otherwise be excluded. In the United States it appears any company can use false or misleading words like “environmentally friendly,” “green,” or “clean” without repercussions.<sup>88</sup> This approach allows substandard “environmentally friendly” companies to attract green consumers, which directly diminishes the amount of “green” cars sold and the potential positive impact that more environmentally friendly manufacturers could have on the environment.

Moreover, vague “green” phrases with multiple meanings and definitions can potentially deceive consumers. First, words like “green,” “clean,” and “environmentally friendly” are inherently vague and lack a well-known definition, which forces consumers to decipher such terms on their own.<sup>89</sup> Second, generalized phrases can have more than one accepted interpretation or meaning. For example, one individual may interpret a word like “clean” to signify a numerical achievement in terms of miles per gallon. Another, however, may interpret the term broadly and believe that any car can be “clean” if it is in any way more efficient than another car.

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<sup>81</sup> See June Camille Bush Raines, *Environmental Law: The Green Giant: Environmental Marketing Claims*, 45 Okla. L. Rev. 689, 694 (1992) (concluding that allowing companies to use unsubstantiated claims without recourse increases misleading claims).

<sup>82</sup> *Id.*

<sup>83</sup> See CLEAN CAR CAMPAIGN, *supra* note 7 (stating that eighty-five percent of clean car survey respondents that purchased a new car after signing the clean car pledge requested green vehicle information).

<sup>84</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. at 36,363.

<sup>85</sup> GREEN REPORT II, *supra* note 8, at v.

<sup>86</sup> Luehr, *supra* note 5, at 313-14 (stating that advertisers make “exaggerated or irrelevant claims”).

<sup>87</sup> Raines, *supra* note 81, at 690.

<sup>88</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. at 36,363.

<sup>89</sup> GREEN REPORT II, *supra* note 8, at 4.

Combined with the complexity of current environmental issues, “green” words can cause manufacturers to make inaccurate or misleading statements.<sup>90</sup> Without strong standards, companies that exaggerate or falsify their products as “green” can confuse car-buying consumers.<sup>91</sup> As a result, consumers may purchase a particular car they thought to be “green,” purchase a car with substandard “green” qualities compared to others, or purchase from a company they thought to be “environmentally friendly,” when in actuality, their green expectations are not met.

Ford Motor Company, for example, claims on its website that it is “leading the way with ethanol-capable vehicles.”<sup>92</sup> It devotes a considerable amount of its website and advertising space to describe its methods and developments in green technology. If consumers rely solely on these advertisements, they may be misled or ignore other pertinent factors, such as the amount of ethanol cars available and sold by Ford. In actuality, Ford sells a relatively low number of ethanol cars and many are available only in certain parts of the country.<sup>93</sup> Ford has complied completely with the current green advertising regulations in the United States,<sup>94</sup> even though it can be argued that Ford projects itself as “green” without the sales record or the energy efficient cars to support such a claim. Furthermore, even though Ford produces some ethanol cars, consumers who rely on unspecific terms may incorrectly “attach a broader significance” to the product’s environmental friendliness,<sup>95</sup> resulting in the purchase of a car mistakenly thought to be “environmentally friendly.” This problem expands when companies, similar to Ford, spend millions of dollars on advertisements highlighting their “green” accomplishments that disproportionately represent the amount of cars sold or money invested in green technology and products.<sup>96</sup>

In addition, the lack of regulations in the United States system presumes that the truly “environmentally friendly” cars and manufacturers will prevail in the open market.<sup>97</sup> The U.S. regulations rely on educated consumers to use data and research

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<sup>90</sup> *Id.*

<sup>91</sup> *See id.* at viii-ix (concluding that if companies conform to its recommendations, consumer confusion would be reduced).

<sup>92</sup> Ford Motor Company, *Leading the Way with Ethanol*, <http://www.ford.com/vehicles/commercial-vehicles/environmental-vehicles/leading-ethanol-capable-vehicles/flexible-fuel-vehicles-331p> (last visited Jan. 2, 2009).

<sup>93</sup> Furthermore, even if these cars are available, a consumer must also have access to an Alternative Fuel Station to make use of any ethanol-capable car. In Philadelphia, Pennsylvania for example, only one of these stations exists in a twenty-five mile radius. U.S. Department of Energy, *Alternative Fuels and Advanced Vehicles Data Center: Alternative Fueling Station Locator*, [http://www.afdc.energy.gov/afdc/stations/find\\_station.php](http://www.afdc.energy.gov/afdc/stations/find_station.php) (last visited Jan. 2, 2009).

<sup>94</sup> *See* Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,363 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260) (rejecting legally enforceable penalties for exaggerating “green” achievements).

<sup>95</sup> GREEN REPORT II, *supra* note 8, at 5, 13-15.

<sup>96</sup> Green Car Congress, *US Hybrid Sales Hit All-Time Monthly High in August* (Sept. 1, 2005), [http://www.greencarcongress.com/2005/09/us\\_hybrid\\_sales.html](http://www.greencarcongress.com/2005/09/us_hybrid_sales.html) (demonstrating that even though hybrid sales are increasing, Ford sold 1,363 in the month of August compared to Toyota’s 15,382); *see also* Geoffrey Johnson, *‘Greenwashing’ Leaves a Stain of Distortion*, L.A. TIMES, Aug. 22, 2004, at M.2, available at <http://www.commondreams.org/views04/0823-11.htm> (last visited Jan. 18, 2008) (concluding that Ford made its Escape Hybrid the center of a multimillion-dollar environmental ad campaign).

<sup>97</sup> Luehr, *supra* note 5, at 311.

rather than blindly accept environmental claims presented by car companies. From there, consumers are expected to decipher the accurate advertisements from the exaggerated claims to ultimately select the proper “environmentally friendly” car. Consumers, however, may rely too heavily on a “green” advertisement, fail to secure outside research, or misapply the information given. Also potentially problematic is that some consumers may choose the manufacturer, like Toyota or Honda, before choosing the type of car, like Prius or Accord. As a consequence, consumers who choose a particular manufacturer based on a green advertisement may limit themselves by presupposing that the company offers a wide variety of “green” cars.

Moreover, words such as “green,” “environmentally friendly,” or “clean” become diluted when any company can use them without regulation.<sup>98</sup> These terms would become meaningless to consumers and lose their marketable value if almost every company advertised itself as “green” or if every car was described as “clean.”<sup>99</sup> Mismanagement of green advertising slogans, mainly through misleading or false advertising, may also lead consumers to feel taken advantage of and to distrust companies that use such terms.<sup>100</sup> Already vague and undefined, green phrases would eventually become inconsequential or dismissed altogether in a consumer’s car buying decision.<sup>101</sup> As a result, consumers, environmentally superior companies, and purportedly the environment, would all be deprived of the true benefits green advertising provides.

Furthermore, consumers can not distinguish between different levels of green technology solely from vague advertisements, and therefore, can not make proper comparisons.<sup>102</sup> To begin with, different companies support different types of environmental innovations to improve the efficiency of cars.<sup>103</sup> Some companies have experimented with ethanol powered cars, while others have produced hybrid or electric cars.<sup>104</sup> Each approach has a varying degree of success and a different impact on the environment that may influence consumers’ decisions. Also problematic is the current trend of companies self-labeling themselves as being “green” even if their approach fails to embrace the best available technology or numerical achievements.<sup>105</sup> Differences do exist in a car’s efficiency in both competing models of the same type of environmental car, and competing methods to achieve efficiency.<sup>106</sup> Under the current system of regulation in the United States, manufacturers are free to label themselves as “green” even if their products are less efficient than similar models. The dispute arises as a direct result of the failure to

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<sup>98</sup> GREEN REPORT II, *supra* note 8, at 14.

<sup>99</sup> *Id.*

<sup>100</sup> See Israel, *supra* note 9, at 309 (stating that green advertisements will lose their effect if consumers cannot trust them).

<sup>101</sup> *Id.*

<sup>102</sup> See GREEN REPORT II, *supra* note 8, at 4 (stating that vague terms do not allow consumers to make meaningful decisions).

<sup>103</sup> U.S. DEP’T OF ENERGY ET AL., 2008 FUEL ECONOMY GUIDE 3 (2008), available at <http://www.fueleconomy.gov/feg/FEG2008.pdf>.

<sup>104</sup> *Id.* at 23-24.

<sup>105</sup> Israel, *supra* note 9, at 303-04.

<sup>106</sup> See 2008 FUEL ECONOMY GUIDE, *supra* note 103, at 5-21 (charting the miles per gallon, type of fuel, and annual fuel costs for 2008 car models).

generate a value or definition for the word “green.”<sup>107</sup> As seen in Norway, some organizations believe a complete failure to put forth the best available technology is not being “green.”<sup>108</sup> On the opposite end, manufacturers suggest that taking any action to improve the energy efficiency of a car demonstrates the company’s attempt to go “green” and that the label should appropriately attach. The U.S. government adopts neither of these views and instead allows all companies to advertise claims regarding the environmental friendliness of its products.<sup>109</sup> As a result, there may be a decline in consumer confidence in green advertising as well as in the use of green advertising as a market tool to improve the environment.<sup>110</sup>

However, the market force effect from U.S. regulations provides potential benefits to consumers. The “cleanest” or “greenest” car with the smallest environmental effect is not the sole factor consumers consider when attempting to be “environmentally friendly.” “Green” advertising allows a consumer to consider all environmental claims and other factors that potential buyers deem important.<sup>111</sup> By allowing all companies to describe their environmental record, consumers at least have something to compare with other factors like style and safety.<sup>112</sup> Regulations that completely block out green advertisements provide little guidance to consumers who must rely solely on outside research.<sup>113</sup> If a government’s goal is to encourage people to buy “green” cars, it must make a policy decision on whether advertisements that present consumers with more information, or those that block out “environmentally friendly” words altogether, will have that effect. The U.S. government has adopted the former.

#### B. Norway

The Norwegian government’s decision establishing that automobiles are not “green” or “clean” impacts the way manufacturers must advertise and the way consumers shop.<sup>114</sup> Actual enforceable penalties force manufacturers to develop new advertising schemes to inform the public of its green technology.<sup>115</sup> Overall, however, the law in Norway is unique and new, and its long-term impact remains uncertain.<sup>116</sup>

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<sup>107</sup> See GREEN REPORT II, *supra* note 8, at 1 (concluding that specific definitions ensure consumers get accurate information).

<sup>108</sup> See Doyle, *supra* note 22 (reporting that cars can not do anything good for the environment).

<sup>109</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,363 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260).

<sup>110</sup> Luehr, *supra* note 5, at 325.

<sup>111</sup> See generally Cars.com, Lifestyle New-Car Buying Guides, <http://www.cars.com/go/criteriaSearch/lifestyles.jsp?aff=national> (last visited Jan. 19, 2008) (providing guides to help consumers purchase a car to go with their lifestyle).

<sup>112</sup> See CLEAN CAR CAMPAIGN, *supra* note 7 (explaining that consumers, who all have different needs, want and need environmental information before purchasing a car).

<sup>113</sup> See generally *id.* (describing how consumers are requesting that more information be available because dealers and manufacturers do not provide it).

<sup>114</sup> See Doyle, *supra* note 22 (stating that the enforcing agency determined that carmakers like Toyota, General Motor’s Opel, Mitsubishi, Peugeot Citroen, Saab and Suzuki all used green advertising now deemed unlawful).

<sup>115</sup> See generally Israel, *supra* note 9, at 314 (discussing how companies are forced to alter marketing campaigns to settle with state prosecution in the United States).

<sup>116</sup> See Doyle, *supra* note 22 (stating that the law takes affect on October 15, 2007).

Norway made a policy decision to eliminate vague and potentially misleading words like “green” and “environmentally friendly.”<sup>117</sup> The regulations work to avoid many of the problems that plague the U.S. version. For example, prohibiting the use of “green” phrases eliminates the varied definitions that consumers may attach to such phrases to inevitably cause confusion.<sup>118</sup> The illegality of environmental terms in advertising also prevents manufacturers from exaggerating claims of environmental production and eliminates the uncertainty of undefined, vague terms with no established meaning.<sup>119</sup>

Furthermore, when phrases and words similar to “environmentally friendly” are used, consumers may believe that a particular car has an actual positive impact for the environment in every respect.<sup>120</sup> However, Norwegian officials concluded that the mere use of an automobile automatically creates negative environmental consequences because of the pollution it generates.<sup>121</sup> Overall, consumers are forced to look elsewhere for information to evaluate environmental attributes themselves and form their own conclusions.<sup>122</sup> Whether it is more detailed commercials, consumer buying guides, or other published material, any negative aspect of green advertising caused by using words like “green” and “clean” is expected to be extinguished.

Realistically and contrary to Norway’s belief, the lack of green advertising may make it difficult for consumers to decide on an environmental car or company. It is acknowledged that numerous cars developed today achieve better fuel efficiency and are healthier overall for the environment than others.<sup>123</sup> The Norwegian government’s belief that cars can not be completely clean is correct, but it is indisputable that environmentalists prefer consumers to purchase certain cars and models over others. The Toyota Prius and Honda Civic Hybrid, for example, are featured at over forty miles per gallon in the city,<sup>124</sup> while the Ford Focus achieves twenty-four miles per gallon in the city.<sup>125</sup> While these three cars are all similar sizes and models, the variation in fuel efficiency demonstrates the environmental superiority of some cars over others. Even though Toyota’s Prius was ranked as the lowest fuel economy car in 2008,<sup>126</sup> the manufacturer still is prohibited from utilizing the words “green” or “clean” in its advertisements with Norway’s new green advertising regulation.<sup>127</sup> This potential failure to inform the public of important environmental information can cause consumers that rely solely on commercials and advertisements when purchasing a car to make uninformed decisions with regard to the environment.

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<sup>117</sup> *Id.*

<sup>118</sup> See GREEN REPORT II, *supra* note 8, at 4 (stating that vague terms are misleading and do not allow for meaningful decisions by consumers).

<sup>119</sup> Luehr, *supra* note 5, at 313-14.

<sup>120</sup> GREEN REPORT II, *supra* note 8, at 5.

<sup>121</sup> See Doyle, *supra* note 22 (stating that products have adverse environmental consequences just from production and use).

<sup>122</sup> GREEN REPORT II, *supra* note 8, at 4.

<sup>123</sup> OFFICE OF TRANSP. AND AIR QUALITY, ENVTL. PROT. AGENCY, MODEL YEAR 2008 GREEN VEHICLE GUIDE(2008), [http://www.epa.gov/greenvehicles/download/all\\_alpha\\_08.pdf](http://www.epa.gov/greenvehicles/download/all_alpha_08.pdf).

<sup>124</sup> *Id.* at 63.

<sup>125</sup> *Id.* at 33.

<sup>126</sup> FUEL ECONOMY TRENDS, *supra* note 1.

<sup>127</sup> Doyle, *supra* note 22.

Consequently, if car manufacturers discontinue promoting “green” technology and advancements through “green” advertising, then consumers may lose interest in or fail to consider “environmentally friendly” cars. Of course, people with an interest in or knowledge of “green” cars will still consider information on the cleanest vehicle options. However, the less informed or less interested individual may altogether dismiss the new technology. Originally, the influx of “green” advertising stemmed from consumer interest in “green” products indicating a growing concern for the environment, which has expedited the increase of green products.<sup>128</sup> As a consequence of the end of “green” advertisements in Norway, some consumers will not consider environmental information or will be excluded from obtaining such information altogether, and therefore, the number of green vehicles sold will decline.

The policy behind Norway’s legislation, that cars can not be completely “clean” or “green,” is a more direct and aggressive approach to “green” advertising than the United States adopted.<sup>129</sup> Manufacturers will likely avoid using the terms enumerated in Norway’s regulation to avoid fines and will be forced to adopt new advertising strategies. Rather than using the enumerated terms in the regulations, companies can still provide environmental statistics and information about their “green” capabilities that are helpful to consumers.<sup>130</sup> Instead of advertisements based on vague words and the possibility of deception, companies are forced to support the advertisements on their environmental record and numerical data.<sup>131</sup> Using statistics on air pollution, green house gases, and miles per gallon, consumers can be educated on facts and comparable data directly, rather than by the use of vague “green” words used to sell the consumer on “green” appearance only.<sup>132</sup>

Norway’s regulation impacts the advancement of environmental technology. As stated above, the basic premise of “green” advertising is that consumers are more willing than ever to purchase “green friendly” products.<sup>133</sup> Without the use of conclusive words like “green,” “environmentally friendly,” and “clean,” companies will be forced to use data to demonstrate their product’s environmental impact. Once on the open market, consumers can then decide which cars are the best suited for their individual needs. For consumers wishing to buy “environmentally friendly” cars, the advertisements can provide the necessary data to find those vehicles.<sup>134</sup> However, consumers who want to rely on more than just environmental impact and consider other features like design, style, safety, and color are provided with at least some environmental information, without the sometimes misguided and vague green advertising terms.<sup>135</sup> As a result, Norway’s regulations allow the most efficient and

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<sup>128</sup> Israel, *supra* note 9, at 303-04.

<sup>129</sup> Doyle, *supra* note 22.

<sup>130</sup> See GREEN REPORT II, *supra* note 8, at 1 (stating companies should avoid vague terms and should use claims that are more useful to consumers and truthful).

<sup>131</sup> See *id.* (concluding that narrowly tailored claims help avoid the potentially deceptive nature of green advertising).

<sup>132</sup> See MODEL YEAR 2008 GREEN VEHICLE GUIDE, *supra* note 123 (charting every car model’s green statistics).

<sup>133</sup> Israel, *supra* note 9, at 303-04.

<sup>134</sup> See generally CLEAN CAR CAMPAIGN, *supra* note 7 (stating that consumers are seeking trustworthy information on green vehicles).

<sup>135</sup> *Id.*

pro-environmental cars to have an advantage in the open marketplace by forcing consumers to compare real information and statistics with lesser qualified cars, rather than rely on the most effective “green” advertisement.

Overall, the Norwegian government’s stance against green advertising may produce little or no long-term positive impact on the environment. To begin with, manufacturers who do not embrace the move towards energy efficiency have little incentive to adopt environmental innovations.<sup>136</sup> Originally, green advertising forced companies to develop and produce “green” products because of consumers’ positive reactions to successful green campaigns and companies.<sup>137</sup> In Norway, however, companies that dramatically improve themselves environmentally remain banned from green advertising, removing a major incentive to improve energy efficiency.<sup>138</sup> Additionally, companies can counteract the environmental statistics of car companies by emphasizing those luxury features that are also important to consumers.<sup>139</sup> The description and appearance of different designs, styles and extra features may be more attractive than just dry statistics.<sup>140</sup> Rather than being the only companies not using green advertisements, environmentally inferior car companies can join the rest of the industry and emphasize a plethora of other features for consumers to consider.<sup>141</sup> Therefore, Norway, with its intentions to prohibit misleading advertisements, may fail to extract the full benefit it expected from its new law and may need to reconsider its proactive approach.<sup>142</sup>

### C. Germany

Compared to the United States and Norway, Germany has taken a unique approach to advertise green products and indirectly regulate green advertising. Rather than institute regulations for green advertisements, the Blue Angel program is designed to guide consumers to green products through a nationally recognized symbol.<sup>143</sup>

Private organizations in the United States have attempted to replicate the Blue Angel program by creating their own environmental seals for certain products.<sup>144</sup> These private programs, however, are not nearly as strong or familiar as that in Germany.<sup>145</sup> To begin with, private certification programs deal with legitimacy and authority problems that government sponsored programs do not.<sup>146</sup> Consumers are

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<sup>136</sup> See generally Doyle, *supra* note 22 (describing Oeverli as saying that carmakers who are making “huge investments in cleaning up emissions” are happy to “get clearer rules about advertising”).

<sup>137</sup> Israel, *supra* note 9, at 303-04.

<sup>138</sup> Doyle, *supra* note 22.

<sup>139</sup> See generally Cars.com, *supra* note 111 (stating that future car buyers consider style, cost, and reviews).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> See Doyle, *supra* note 22 (describing how the government is trying to prevent the misleading of consumers).

<sup>143</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47.

<sup>144</sup> See GREEN REPORT II, *supra* note 8, at 13 (stating that in the United States, the private sector developed private certification programs like Green Cross and Green Seal to approve products for a fee).

<sup>145</sup> See Israel, *supra* note 9, at 323 (stating that labeling programs like Green Cross and Green Seal use methods that may not be accurate).

<sup>146</sup> See Luehr, *supra* note 5, at 323 (concluding that competing seal programs confuse consumers); see also K. Alexandra McClure, *Environmental Marketing: A Call for Legislative Action*, 35 SANTA CLARA

more likely to trust and rely on a national program simply because the program is backed by a government. Also, the lack of cooperation between the different seal programs reduces the potential effectiveness of a unified seal program and increases consumer confusion.<sup>147</sup> As different programs or states have alternative standards for their seals, consumers may struggle to comprehend the significance behind each particular seal and dismiss its implication.<sup>148</sup> Overall, as a result of the United States having competing private programs, a tendency for only high profile or wealthy manufacturers to have the ability to purchase these seals, and no national standards or government approval, the impact of private seal programs in the United States has been minimal.<sup>149</sup> On the opposite end of the spectrum, Norway and other European countries, along with the European Union, have all adopted programs that duplicate the German model.<sup>150</sup>

Theoretically, the Blue Angel program is an ideal way to direct consumers to products the government tests and considers “environmentally friendly.”<sup>151</sup> The program works to “educate consumers, to encourage manufacturers to develop more environmentally friendly products, and to improve the environment,” and therefore, helps prevent the negative aspects of green advertising.<sup>152</sup> Such a program is effective because of the rigorous standards, testing, and application process; thus, companies can not exaggerate or mislead the public about their products.<sup>153</sup> As a result, any potential product must actually have a positive environmental impact to be considered for a seal.<sup>154</sup> Furthermore, the products and companies supported by the government eventually gain credibility with the public.<sup>155</sup> After the general population becomes acclimated and gains trust in the program, consumers will easily be able to determine the source of the “greenest” products.<sup>156</sup> Therefore, while advertisements will still have the potential to persuade consumers through green advertising, the final decision can be based on what products have the official seal of approval.

In Germany and other countries with established seal programs, consumers can avoid shifting through various misleading advertisements and labels to determine

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L. REV. 1351, 1370-71 (1994-1995) (stating that nonprofit efforts are prevented from taking off due to lack of cooperation).

<sup>147</sup> Luehr, *supra* note 5, at 323.

<sup>148</sup> Israel, *supra* note 9, at 303-04; *see* Wynne, *supra* note 72, at 134-35 (concluding that when consumers are given the option of multiple eco-labels, they might be confused as to which environmental product to buy).

<sup>149</sup> Luehr, *supra* note 5, at 323-24 (finding that private organizations lack the enforceability that the government has).

<sup>150</sup> *See id.* at 323 (concluding that Canada, Germany, Japan, and Scandinavian countries have “tremendously successful” government sponsored seal programs); *see also* Wynne, *supra* note 72, at 60-61 (explaining that the European community adopted its own seal as a solution to the varying standards used by different countries in Europe).

<sup>151</sup> GREEN REPORT II, *supra* note 8, at 13-14.

<sup>152</sup> Israel, *supra* note 9, at 322.

<sup>153</sup> *See generally id.*

<sup>154</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47 (stating that the criteria to obtain a seal is becoming more complex and now requires multiple environmental attributes).

<sup>155</sup> *See* McClure, *supra* note 147, at 1370-71 (concluding that the success of the Blue Angel program is related to the amount of people who are familiar with the label).

<sup>156</sup> *Id.*

what products are best for the environment.<sup>157</sup> Instead, the probability of a consumer selecting an “environmentally friendly” product is increased by blindly trusting the seal program, rather than an unregulated green advertisement.<sup>158</sup> This occurs primarily because inherent in the seal process is the requirement of environmental achievements, unlike green advertising, which remains largely unregulated and is still subject to potentially misleading claims and vague terms.<sup>159</sup>

The program also provides incentives for companies to improve their products.<sup>160</sup> Companies that view an economic or societal benefit in receiving “green” labels will modify their products to fulfill the requirements for the seal.<sup>161</sup> As a result, the program fosters competition between manufacturers desiring to use the seal and market it to consumers.<sup>162</sup> The Blue Angel program also has the ability to increase the certification standards for a seal that can provide an incentive for, or even force, companies to develop new technology in order to reach higher levels of environmental cleanliness.<sup>163</sup>

An eco-labeling program does have some potential negative effects.<sup>164</sup> To begin, the program is completely voluntary and its impact is limited to companies who opt into the program.<sup>165</sup> Therefore, both nonparticipating and participating companies can continue to use other methods of green advertising. Also, companies will only improve or develop products to become seal certified if the benefits outweigh the costs (i.e., it is economically desirable, or the business morally determines to do so despite the cost).<sup>166</sup> Consequently, many industries may forgo participation simply because the costs outweigh the benefits or because competing products are also unable to achieve the established standards.

Furthermore, the actual criterion for the seal program is critical to make the program meaningful and to not confuse or mislead the public.<sup>167</sup> Consumers need to be aware of the criteria to intelligently choose between products and to trust their validity.<sup>168</sup> This limits the program’s impact in promoting environmental products because as more seals are awarded, consumers will lose the ability to differentiate their environmental impact.<sup>169</sup> Additionally, for any eco-labeling program to be successful and useful, consumers must trust the program, its process, and the

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<sup>157</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47.

<sup>158</sup> *See id.* at B-48 (describing the Blue Angel program as a way to “identify environmentally preferable products,” and that many public procurement guidelines suggest to consumers to rely on the program).

<sup>159</sup> ENVTL. PROT. AGENCY, “GREEN” ADVERTISING CLAIMS (1992), <http://www.epa.gov/epawaste/conserv/dnloads/greenads.pdf> (warning the public of vague advertisements because they provide little information to make decisions).

<sup>160</sup> *See Wynne, supra* note 72, at 129-30 (speculating that given time, seal programs may cause manufacturers to respond to market forces and seek a seal).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *See* ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-48 (stating that the program can adjust the requirements to obtain a seal).

<sup>164</sup> Israel, *supra* note 9, at 331 (explaining why federal regulations are more effective than seal programs).

<sup>165</sup> ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47.

<sup>166</sup> Wynne, *supra* note 72, at 130-31.

<sup>167</sup> GREEN REPORT II, *supra* note 8, at 14.

<sup>168</sup> *See* Israel, *supra* note 9, at 303-04 (concluding that consumers cannot choose between products unless they know the criteria required for the sale).

<sup>169</sup> *Id.* at 304.

organization that controls it.<sup>170</sup> For example, if the standards are considered lenient or corrupt, people may devalue the reputation of the seal and not consider it when they make their buying decisions.<sup>171</sup>

Another major defect in any potential seal program is the financial requirements that cause some companies to forego participation.<sup>172</sup> As a result, only companies that decide to pay the required participation fee for the seal will receive the positive benefits of the seal program, even though consumers may not understand the economic considerations involved.<sup>173</sup> Participating companies can easily imply their products are environmentally superior to those of their competitors (regardless of whether they are or are not) based primarily on the fact that other companies did not pay to participate in the seal program.<sup>174</sup> Additionally, the program may present a seal to a product based on a particular criterion or aspect of the product and deceive consumers into believing the entire product is “green.”<sup>175</sup> Lastly, after the seal is awarded, the company can freely advertise its award in any manner and potentially deceive or misled its consumers about the seal’s significance.<sup>176</sup>

#### IV. ALTERNATIVES

The determination of the most appropriate green advertising regulation starts with the designated body first establishing its priority. Noticeably, a more concerned or environmentally proactive legislative branch will employ stronger regulations.<sup>177</sup> Therefore, the governments that have implemented widespread progressive environmental legislation to prevent global warming are the same countries that will most likely implement the strongest green advertising regulations.<sup>178</sup>

Manufacturers and companies likely have different views on green advertising. Whether it is to honestly convey their environmental credentials to the public, or unconstructively mislead them, some manufacturers want to continue to use words like “green” and “clean.”<sup>179</sup> Conversely, companies with stellar environmental statistics benefit from stronger regulations as fewer companies could use effective green advertisements and environmental companies could corner the “green” market.<sup>180</sup> With an all out ban similar to that of Norway,<sup>181</sup> a mixed result would

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<sup>170</sup> *Id.*

<sup>171</sup> *See id.* (stating that the selection process itself may be misleading).

<sup>172</sup> *Id.* at 332.

<sup>173</sup> *See* Israel, *supra* note 9, at 332 (describing how small companies, or those in a limited market, may not be able to pay the expense and consumers may assume another product with a seal is better).

<sup>174</sup> GREEN REPORT II, *supra* note 8, at 14-15; *see* Wynne, *supra* note 72, at 130-31 (describing how some manufacturers will use the seal as an affirmative strategy while others will use it as a defensive strategy).

<sup>175</sup> GREEN REPORT II, *supra* note 8, at 15.

<sup>176</sup> *Id.*

<sup>177</sup> *See* Doyle, *supra* note 22 (stating that Norway bans the use of environmentally friendly phrases in advertisements).

<sup>178</sup> *See* AN & SAUER, *supra* note 21, at 1 (concluding that the United States has low fuel efficiently standards); *see also* Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,364 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260) (demonstrating the U.S.’s non-enforceable regulations on green advertising).

<sup>179</sup> *See* Wynne, *supra* note 72, at 131.

<sup>180</sup> Doyle, *supra* note 22 (stating that companies that invest in environmental technology are happy to get clear rules on advertising).

<sup>181</sup> *Id.*

likely ensue. While some companies would gladly take the opportunity to boast their statistics, others would rather just use environmental slogans freely.<sup>182</sup>

If the United States decides to implement stronger green advertising regulations, following the approach of either Germany or Norway is not the best option.<sup>183</sup> In the regulations' current form, the United States defines words like "recyclable" and "biodegradable."<sup>184</sup> However, words like "green," "environmentally friendly," and "clean" are vague, and it is rather difficult to assign definitions. Moreover, as discussed earlier, the U.S. regulation is completely voluntary.<sup>185</sup> For any significant change to take place in the area of green advertising, the United States must revamp its legislation.<sup>186</sup> For this, there are plenty of options.

First, the United States could establish new regulations that set certain numerical requirements or standards in order for companies to utilize "environmentally friendly" phrases. This regulation acknowledges that a complete ban, similar to the one used in Norway,<sup>187</sup> is unnecessary and words like "green" and "clean" should be allowed if the particular car achieves predetermined standards. This option puts attributable numbers to words that ensures sufficient data exists to support a company's environmental claims. For example, companies could use the phrase "environmentally friendly" in their advertising if their products achieve a predetermined miles per gallon requirement. An implementing agency, possibly the Environmental Protection Agency ("EPA") or another independent body, could set guidelines that push companies to reach higher required levels, and at the same time reward companies that have achieved certain guidelines. Therefore, "green" phrases would only benefit those who have achieved the predetermined levels and also stimulate other companies to reach those thresholds.<sup>188</sup> The predominate purpose of creating enforceable, rather than voluntary, standards is to eliminate the potential misleading nature of environmental phrases by companies that have not produced adequate products, yet still attempt to benefit from "green" consumerism.<sup>189</sup> As a result of implementing this type of regulation, consumers' trust in green advertising should increase upon the assurances that the government is regulating it.

Like any regulation, potential problems with such a program do exist. The controlling agency, whether the EPA or a separate organization, would be required to enforce and govern the program, increasing its work load and budget.<sup>190</sup> Additionally, similar to Germany's Blue Angel program, legitimacy issues and

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<sup>182</sup> *See id.*

<sup>183</sup> *E.g.*, ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-47 to B-50; Doyle, *supra* note 22.

<sup>184</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, at 36,365-66 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260).

<sup>185</sup> *Id.* at 36,364.

<sup>186</sup> GREEN REPORT II, *supra* note 8, at 4 (stating that vague terms are not enough guidance to educate consumers).

<sup>187</sup> Doyle, *supra* note 22.

<sup>188</sup> *See generally* Wynne, *supra* note 72, at 131 (describing how firms will strive for environmental recognition to either charge more or protect its market share).

<sup>189</sup> Israel, *supra* note 9, at 303-04.

<sup>190</sup> *See generally* Press Release, Env'tl. Prot. Agency, EPA's FY 2009 Budget Focuses on Next Phase of Environmental Progress (Feb. 4, 2008), <http://yosemite.epa.gov/opa/admpress.nsf/Press%20Releases%20-%20Emergency%20Response?OpenView> (follow "Earlier Releases" hyperlink to search date 02/4/2008; then follow "EPA FY2009 Budge Focuses on Next Phase of Environmental Progress" hyperlink).

public trust in the program are necessary components for the public to follow the recommendations.<sup>191</sup> The potential regulation is also limited in enforcement to only the words and phrases for which there are set standards and those that the legislature chooses to regulate.<sup>192</sup> As a result, clever advertisers can easily use different phrases or symbols to maneuver around the system.

Second, the United States could adopt an eco-labeling program.<sup>193</sup> Rather than use the private programs or suggestions in existence today, a nationwide government-sponsored program that tests and endorses every car's environmental impact could help guide consumers.<sup>194</sup> Like Germany, the government must create an agency or extend the power of the EPA to run the program.<sup>195</sup>

The potential success of such a program is high. Currently, the EPA ranks cars on a number of environmental statistics, like fuel efficiency standards.<sup>196</sup> However, understanding the meaning and impact of the statistics, as well as the different technology being used by companies, is incredibly complicated.<sup>197</sup> If the government, under a seal program, was to officially endorse products after they met certain criteria, the public could rely on that seal in their car buying decision. If the growth in sales of "green" cars and consumer reliance on the symbols were to continue, then more car manufacturers would strive to obtain the seal.<sup>198</sup> As this program progresses, it is possible to force further advancement of environmental technology and more efficient vehicles by making the requirements for the seal more stringent and requiring car companies to reapply for the seal each year.

Any such seal program would inevitably face the same problems that plague Germany's Blue Angel program.<sup>199</sup> The program lacks any mandatory involvement and the remaining ability to use green advertising lessens the impact that any seal program may have.<sup>200</sup> Additionally, the seal may not be specific enough for vehicles. When it comes to an uncomplicated box or package of paper, the criteria for a seal is rather easy to determine. However, a car is complex and companies have different innovations to improve their cars' environmental impacts. This makes it rather difficult to create standard criteria to apply to all types of cars in order to determine what types have fulfilled those requirements. Additionally, a simple seal for such a complicated machine will not provide consumers with the necessary information behind the decision to grant a seal or the guidance that a consumer needs in deciding between two cars, each with a seal.

If solving green advertising is the main concern, in addition to the seal program,

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<sup>191</sup> See GREEN REPORT II, *supra* note 8, at 13-14.

<sup>192</sup> See, e.g., Doyle, *supra* note 22 (describing how Norway enumerated only certain words that advertisers cannot use in its regulation).

<sup>193</sup> See ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at A1-3 (listing all eco-labeling programs worldwide).

<sup>194</sup> Israel, *supra* note 9, at 331-33.

<sup>195</sup> See, e.g., ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-48 (describing the Jury and Federal agency that regulate the Blue Angel Program).

<sup>196</sup> 2008 FUEL ECONOMY GUIDE, *supra* note 103.

<sup>197</sup> See generally MODEL YEAR 2008 GREEN VEHICLE GUIDE, *supra* note 123.

<sup>198</sup> See generally Wynne, *supra* note 72, at 131 (describing how firms will strive for environmental recognition to either charge more or to protect their market share).

<sup>199</sup> See, e.g., Israel, *supra* note 9, at 331-33 (illustrating insufficiencies of the Blue Angel program).

<sup>200</sup> See, e.g., ENVIRONMENTAL LABELING ISSUES, *supra* note 23, at B-48 (describing how joining the Blue Angel program is the company's choice and does not address marketing the products).

the government could also eliminate or limit the use of “environmentally friendly” terms.<sup>201</sup> Therefore, consumers could only rely on environmental statistics and data (including whether the car meets the government’s standards for the seal) before making their final decision. The government could also develop a ranking system for both the manufacturers and for particular cars to assist consumers when they are deciding between two or more cars.

Third, the government can make legally enforceable regulations to override the U.S.’s current voluntary regulations.<sup>202</sup> While the automobile industry is not specifically addressed in these current regulations, its terms like “ozone friendly” can be appropriately applied.<sup>203</sup> In addition, the regulations could add terms like “green,” “clean,” and “environmentally friendly” to its list and define their meanings.<sup>204</sup> As a result, before a manufacturer can use a specific term defined in the statute, it must prove that its products meet the requirements of that definition. This option, unlike the first one presented, does not necessarily attach numerical values to the phrases. Rather, it would take the laws already in existence and rely on definitions, examples, and guidelines before the use of “green” terms.<sup>205</sup>

In addition to making the regulations enforceable, the United States can also adopt part of California’s green advertising law.<sup>206</sup> The national government could demand information and documentation when a company represents that it is “environmentally friendly.”<sup>207</sup> Compliance with the program can either be enforced through an independent agency similar to Norway’s system<sup>208</sup> (like the EPA), or through citizen and civil suits brought by individuals. If the system is centered on civil suits, to encourage lawsuits, the agency could provide a percentage of the penalty to the organization or to the person who brought the suit. By creating penalties for violating the laws, manufacturers would be forced to alter their advertising claims and potentially adopt innovations in order to use common “green” phrases.

## V. CONCLUSION

Overall, green advertising is more prevalent in today’s economy as companies cater to consumer desires. With the advancement of new technology and a race to create the most fuel efficient cars, manufacturers will continue to compete with one another.<sup>209</sup> The race goes beyond simple production and technology and into the battle to persuade consumers to buy a specific company’s “environmentally friendly” products.<sup>210</sup> As a result, green advertising will continue to grow in

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<sup>201</sup> See, e.g., Doyle, *supra* note 22 (describing how Norway bans advertisements with green slogans).

<sup>202</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,364 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260).

<sup>203</sup> *Id.* at 36,368.

<sup>204</sup> See *id.* at 36,365-68 (defining such terms like biodegradable, recyclable, refillable, and ozone safe).

<sup>205</sup> *Id.*

<sup>206</sup> CAL. BUS. & PROF. CODE § 17580.5 (West 2008).

<sup>207</sup> See *id.* (stating that a company must produce documentation when it makes green advertising claims).

<sup>208</sup> See Doyle, *supra* note 22 (allowing the Norwegian Consumer Ombudsman to regulate green advertising).

<sup>209</sup> See Luehr, *supra* note 5, at 313 (concluding that the potential revenue for manufactures has led to an increased environmental advertising strategy).

<sup>210</sup> *Id.*

importance in both educating the public and persuading them to “go green.”

Three different countries have taken three different approaches to regulating green advertising. The United States, Norway, and Germany have each acknowledged the potential problems of green advertising and have addressed those problems differently. Mainly, policy decisions have guided what type of regulation each country prefers. The United States has merely produced guidelines with no enforceability, demonstrating the legislature’s desire to have lenient regulations.<sup>211</sup> However, if Congress decided to strengthen its policy on green advertising, following a German or Norwegian model will not solve the current problems, but only create new controversies. Instead, the United States should create new standards or revise its current regulations and protect consumers from misleading car advertisements.

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<sup>211</sup> Guides for the Use of Environmental Marketing Claims, 57 Fed. Reg. 36,363, 36,363 (Aug. 13, 1992) (to be codified at 16 C.F.R. pt. 260).