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March 9, 2021

Chair Stephenson
House Commerce Finance and Policy
Minnesota House of Representatives
407 State Office Building
St. Paul, MN 55155

Re: Opposition to HF 1165 Standards for Labeling Biodegradable or Compostable Products

Dear Chair Stephenson:

Thank you for the opportunity for WinCup, Inc. to explain the reasons for its opposition to HF 1165. WinCup is a manufacturer of disposable foodservice packaging, including compostable and marine biodegradable products. WinCup is opposed to HF 1165 because it is unnecessary, overly broad and duplicative of existing Federal and state legislation and guidelines.

I. Opposition – Adequate Federal and State Framework Already Exists

An adequate regulatory framework addressing the matters covered in HF 1165 already exists at the Federal level, which is Section 5 of the FTC Act, and specifically, the FTC’s “Green Guides.” The Green Guides provide very detailed and specific requirements for the substantiation required for compostable and biodegradable products. ASTM 6400 and BPI certification are already widely accepted as the standard and certification that must be met to market and sell a product as industrially compostable.

In addition, Minnesota has adopted a “truth in advertising” law which prohibits untrue, deceptive or misleading product claims, the Minnesota False Statements in Advertising Act (Minn. Stat. § 325F.67). The Federal Lanham Act also protects consumers from deceptive or misleading advertising. Thus, if a distributor is selling a product as compostable or biodegradable in Minnesota without adequate substantiation, there are already adequate remedies available to the Attorney General, consumers and competing businesses to address this. Minnesotans do not need more laws, just more active enforcement of existing laws.

The problems cited by supporters of the bill that the bill arguably “fixes” will not be solved by this law. This bill will not solve the problem of contamination of compost with non-compostable products. Consumers need more education about what types of products are compostable. For example, after this bill is passed, consumers will still put paper cups with poly liners in the compost bin because too many consumers think all paper products are automatically compostable.

We urge the Committee to review and consider the FTC’s Green Guides and existing state and Federal law before passing another law. HF 1165 adds an unnecessary layer of complexity for businesses inside and outside of Minnesota due to potentially differing state laws among the 50 states, and differences from the Federal regime that is already in place. Individual state laws with different requirements for how products such as food and beverage packaging can be labelled are bad for business. The added burden on businesses here does not justify the marginal benefit that may be provided by this bill.

II. Amendments to HF 1165 Needed

If, however, the Committee is inclined to approve this bill, WinCup strongly urges the Committee to address several matters, including the parameters for labelling products as home compostable and marine biodegradable, and the overly broad reach of the bill, which will cover “offers to sell” products.

A. Home Compostable

We suggest the Legislature utilize TUV Austria’s standards and certification for home compostable products for these purposes. TUV (formerly Vincotte) is a world renowned, European standards certification body, similar to ASTM. Neither ASTM nor BPI has adopted any home compostable standards yet.

B. Marine Biodegradable

The bill does not address marine biodegradable products that have just been introduced to the market. As currently drafted, HF 1165 provides that products may not be labeled as “biodegradable” unless “an applicable ASTM standard specification is adopted for the term claimed and the specification is approved by the legislature.” The bill ignores that ASTM has already adopted a standard for marine biodegradability – ASTM D6691. The Legislature should allow marine biodegradable claims on packaging of products that degrade within the FTC’s requirements of one year as shown by ASTM D6691.

C. Delete “Offer to Sell”

Last, HF 1165 should be limited to only actual sales of products in Minnesota that are not labelled appropriately, rather than “offers to sell” (as currently drafted). With the prevalence of ecommerce and online market places such as Amazon and Shopify, and even online sales from retailers who operate in more than just Minnesota, regulating “offers to sell” casts far too wide a net for prohibited conduct. We question how and why offering to sell (*ie*, marketing) a product as “biodegradable” or “compostable” on a business website should be a violation of HF 1165? Only the actual sale in Minnesota of the non-compliant labelled product should be prohibited. Otherwise, again, it is an added and unnecessary layer of complexity for businesses.

III. Reward Innovation and Better Products

WinCup and many other companies have invested significant time and resources to develop better packaging that will help solve the single use plastics problem. We should be permitted to market and label our products with truthful and substantiated claims, such as home compostable and marine biodegradable. We ask you to reward, not discourage, continued innovation by allowing manufacturers to make truthful, substantiated claims.

For the reasons set forth in this letter, we urge you to oppose HF 1165. Please let us know if you have any questions.

Sincerely,

Vicki W. O’Rourke
WinCup, Inc., Corporate Counsel