



Sent on: Friday, July 16, 2021 6:19:25 AM

To: misleadinggreenclaims@cma.gov.uk

Subject: Competition and Markets Authority Draft Guidance on Environmental Claims
- AVA Response

Please find below our comments on your proposal:

Competition and Markets Authority Draft Guidance on Environmental Claims

The Vending & Automated Retail Association (AVA) is the trade association of the UK vending industry. Representing machine and ingredient manufacturers and suppliers, cup manufacturers and vending machine operating companies. Vending operator companies in membership represent approximately 80% of the turnover of the vending industry in the UK*.

Vending operator companies, those who provide, fill and maintain vending machines, are, with one or two exceptions, small or medium sized companies. They tend to operate from small properties with limited warehouse space. The vast majority of vending machines are placed in closed sites, that is, business, hospitals, universities and leisure meaning that the items are purchased and consumed on site.

The UK vending and coffee services industry has an annual turnover of £2.2bn*, it is an industry employing 24,500 people directly, supplemented by those employed within wider Foodservice and vending channel supply chain.

AVA members operate nearly ½ million vending machines in the UK*, vending snacks, food, soft drinks, water, hot & cold beverages and a range of non-food items.

The industry has a strong record of involvement in reduction of its impact on the environment – machines are refurbished and kept in operation and when they finally reach the end of their working life, they are collected by approved WEEE collectors. Components have been replaced with those that use less energy and enormous efforts have gone into developing cup recycling and reuse. We appreciate the opportunity to comment on the draft guidance document on environmental claims to guide consumers and clients on the difference between genuine and fraudulent claims.

*(AVA 2020 Census)

3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims? If not, what else should this guidance include and why?

Yes, it does.

We believe the key consumer protection legislation is reflected in the guidance and that the scope of the guidance is likely to be consistent with most industry Codes of Practice that seek to ensure high standards of trading from their members and the Code of Advertising Practice.

We would also advocate that scope of the Guidelines be extended to include environmental claims made for packaging, whilst including materials that are not considered safe for food contact use and falling under the remit Food Standards Agency could be reviewed for inclusion.

Should more resource be made available to ensure imported goods are compliant with the guidance before they are placed on the market in the first place?

3.2 The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships. Is it helpful to cover both?

Since consumer demands often dictate the client's requirements for vending services it is necessary that the guidance includes both business- to-consumer and business-to-business relationships. Many retailers have genuine concerns about the environment and wish to do the right thing. Many also want to be seen to be doing 'the right thing' by their customers and some are responding to customer pressure.

The majority of members of the AVA are small companies who do not have the resources to verify claims for themselves, but who rely on the manufacturer's claims as being accurate. It is important that the guidance relates to businesses selling to other businesses. As it stands clause 2.19 might be seen as suggesting that the criteria for business-to-business marketing are less strict than those for business-to-consumer marketing. We would like it to be clear that manufacturers will always be liable for their claims.

The guidance should also cover the packaging used to contain empty packaging.

In addition, we would argue that environmental claims and the influence these claims have on consumers is not the sole domain of business. Environmental charity groups (NGO's), other consultative bodies and pressure groups are equally able to promote claims that have commercial impact and influence purchase choice. This guidance should be universally applicable.

3.3 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services. Are there any sectors which require special treatment either in the draft guidance or separately? If so, which sectors and why?

We agree that the guidance should apply across all sectors and all market channels, wherever environment claims are made to gain commercial advantage.

3.4 The guidance sets out six principles for business compliance with consumer protection law to avoid 'greenwashing'.

We agree with the six principles for compliance and would like there to be a note on the evidence that would be needed to substantiate a claim. While there is a note on the need for evidence in the appendix it might be helpful if it were included here as well. This level of detail would possibly only be settled in the courts, in which case it would be helpful for actions to be taken soon after the publication of the guidance so that the guidance can be seen to have teeth.

The guidance would be further enhanced with more examples of the use of certification symbols many of which are made up by suppliers to give the impression a claim is recognised by a certifying body or third party. There is little likelihood of the public and independent retailers knowing a symbol has been made up.

In recognition of the existing scope of the CMA remit, and to give appropriate emphasis to the enforcement of the Environmental Claims Guidelines we would advocate the establishment of a working group to police claims and to receive and manage challenges raised by other parties.

3.5 Are these principles the right principles under consumer protection law? If not, what other principles would help businesses comply with consumer protection law.

We think the principles are correct.

We would suggest that claims can only be made if endorsed by independent third parties, self-substantiated claims should not be possible.

3.6 To help businesses engage with the principles, guidance and consumer protection law compliance more generally, we have included a range of case studies. Would further case studies be helpful? If so, please suggest topics for these case studies and, if possible, provide examples of when these issues would arise.

We think the case studies are very helpful and illustrate the issues well. In the case of vending there are no aspects of the industry which are liable to environmental claims that are not covered by the examples.

We would like to see further examples quoted for products sold directly to businesses as well as those sold to the public purely to ensure retailers fully understand the guidance protects their interests, know what questions to ask of their suppliers and are aware they are equally able to lodge complaints for breaches of the guidance. An example should include the packaging used to contain empty packaging sold to retailers.

3.7 Which, if any, aspects of the draft guidance do you consider need further clarification or explanation, and why? In responding, please specify which

Chapter and section of the draft guidance (and, where appropriate, the issue) each of your comments relate to.

The legal framework is laid out in the appendix. However, it may be that it would have more impact if the summary at the beginning of the document, for example as point 1.7, included a note that the CMA would not hesitate to take action. The document generally says what the CMA could do, rather than what it would do.

Most vending operators do not have specialist procurement personnel and are essentially owner driven businesses where the owner does everything. A mini version of the guidance is therefore needed containing the guidance's key bullet points and should be published in electronic and print versions to enable the widest circulation and promotion.

3.8 Overall, is the draft guidance sufficiently clear and helpful for the intended audience?

Yes, we consider the guidance to be a great step forward in the management of environmental claims and a contribution to genuine environmental progress, we commend the CMA for producing the Guidelines. It is because of the inherent values in the Guidelines and effect application of the Guidelines that we strongly recommend their effective enforcement takes place from day 1.

Yours Sincerely,

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