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To: misleadinggreenclaims@cma.gov.uk

Subject: Misleading Green Claims

Please see below our response to the Misleading Environmental Claims Consultation.

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Company: Benders Paper Cups
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Background: Benders Paper Cups are a leading UK based manufacturer of paper hot supplying across the UK and continental

Europe for the workplace, on-the-go and retail market channels. The company is privately owned and employs circa 160 staff at its Wrexham facility in North Wales.

Benders is a little over 120 years old, incorporated in 1899, and has always been a manufacturing business converting paper supplied in a range of table-top products to the UK and European catering markets.

Benders was originally based in North London, and moved to North Wales in 1984.

Benders began manufacture of cups in 1985; and is now dedicated to the manufacture of paper hot cups.

Benders are the number three paper cup manufacture in Europe, and the number one paper vending cup manufacturer.

Benders exports 40% of annual production.

Benders Paper Cups are a founding member of the Paper Cup Recovery and Recycling Group. A leading contributor to the Food Service

Packaging Association Environment Programme, the Automatic Vending Association, and founding support of Simply Cups collection services.

Over the last few years we have witnessed a large increase in packaging producers and importers making unsupported and misleading claims and using made up certifications and self-certified claims mostly for packaging sold to coffee shops and vending markets. The packaging is sold at a premium price primarily to operators seeking to do the right thing environmentally. We therefore welcome the CMA's draft guidance.

We question why enforcement will not take place from day 1, we feel those that are currently offending are not doing so because of ignorance of the current laws or because their understanding of their claims is weak. They are knowingly exploiting the desire of business operators and consumers wish to do the right thing. We see this abuse as fraud. We therefore wish to ensure producers and distributors understand that a breach of the guidance will result in enforcement with punitive fines.

3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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.

The Defra Green Claims Guidance also needs to be recognised alongside these proposed Guidelines.

We would also advocate that scope of the Guidelines by 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? We suggest that it could be helpful if the Authority could offer a service where claims could be discussed before product is placed on the market.

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 as much as the consumer does for high street coffee shops 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. Retailers, especially smaller ones, are therefore vulnerable to claims made about the environmental benefits of the packaging and products they buy and many are being exploited into buying packaging which on the surface ticks environmental boxes but in reality will make no difference

The majority by numbers of business in high street coffee and vending operators 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. The major retailers employ specialist packaging technologists so are able to analyse packaging, so can see through claims and resist much of the packaging presented as environmentally superior because their research shows this not to be the case or that to achieve the environmental benefits claimed is simply not possible in practice.

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. If retailers accurately reflect the claims made by their suppliers they should not be seen to be in breach of the guidance and any action taken should be against the supplier who has misrepresented the product and mislead their customers.

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

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.

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.

Inevitably there will be exceptions to the general Guidelines, the proposed acceptance of compostable packaging I closed loop environments as laid out in Extended Producer Responsibility being an example. The Guidelines need to react to these.

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. Further we would suggest that claims based on standards awarded by certifying bodies should be stated as intended by the standard and always stated in the context applying to the standard. For example there is much confusion in the understanding of Compostable and Biodegradable packaging, with the standard EN13432 frequently being used to support both claims when in fact it is only the standard for compostable packaging.

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.

We would also suggest the inclusion of guidance on making claims should be for the finished product, not simply the primary materials used. For example, fibre based containers made from coated board which itself can be free of polymer inclusion, are then formed with adhesives including acrylic polymers and therefore the finished product is not plastic free.

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.

The responsibility of the way distributors market the products they buy from producers / importers / manufacturers and ensure they don't misrepresent products and packaging by moving away from the claims used by producers or by taking them out of context . We suggest producers are mandated to include a link to the guidance as part of their terms and conditions of sale.

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.

Most high street coffee shop operators and 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.

3.9 Are there any other comments that you wish to make on the draft guidance?

We greatly welcome this guidance which is overdue and commend the CMA for producing it, it will make significant contribution in ensuring real progress in delivery of environmentally beneficial products and services. For this reason alone we strongly recommend enforcement of the guidance takes place from day 1. If not then those businesses following the guidance will lose out to those businesses who don't. Businesses must be made to understand breaching the guidance will result in court action and severe financial penalties. The guidance must therefore have teeth.

The legal framework is laid out in the appendices however the guidance would have greater chance of being taken seriously and then complied with if there is a statement at the very beginning of the guidance that the CMA will take enforcement action in the event of a breach. Far better to state what the CMA will do rather than what you could do.

Kind Regards

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