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13th July 2021

Competition and Markets Authority,
The Cabot,
25 Cabot Square,
London,
E14 4QZ,
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misleadinggreenclaims@cma.gov.uk

Dear Sirs,

Draft guidance on environmental claims on goods and service – consultation.

Thank you for the opportunity to respond to this consultation. The Society of Chief Officers of Trading Standards in Scotland is a Scottish Charitable Incorporated Organisation (SC047951), and is the professional body representing the heads of service for trading standards services in Scottish local authorities. We very much value working with CMA on consumer protection issues and we look forward to engagement over environmental claims which is part of our forward work programme for 2021.

Please find our response below and please do not hesitate to contact us if you have any query.

Scope

3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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

The key piece of consumer protection legislation relevant to the CMA's guidance is the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and this is reflected in the six key principles on which the guidance is based. The CPRs is a broad, comprehensive, principles-based piece of legislation, designed to be able to be adaptable and so regulate all sorts of trading forms and practices including those not yet conceived of. In SCOTSS' view the guidance adequately covers all relevant consumer protection law issues.

3.2 The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships.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?

Yes, it is important that businesses and SMEs in particular, are not misled in terms of environmental claims made in relation to the components, goods, or services they consume in the course of their business. In Scotland, section 24(1)(b) of the Consumer Scotland Act 2020 confirms that 'consumer' includes a business that:

- (i) is no larger than a small business, and
- (ii) purchases, uses or receives, in Scotland, goods or services which are supplied in the course of a business carried on by the person supplying them.

3.3 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services.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?

No comment

Principles for compliance

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

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.

The principles are broad and comprehensive, reflecting both the CPRs and the principles of the long-established ASA codes which are well known to and, generally well understood by both businesses and the general public.

Case studies

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.

Each of the three case studies provides details of the different circumstances impacting on a particular situation and illustrate how each cannot be taken selectively or in isolation. In so doing, they provide very useful guidance to businesses who may adapt the principles being highlighted to their own situation.

One matter we would suggest that might be highlighted by way of another case study is the importance of clear use of language and terminology in order that consumers are not left unsure, or even possibly misled. For instance, many gardening products are described as 'organic', including some [chicken manure pellets](#). Currently UK organic laws mirror EU law and guidance explains that fertilisers cannot be [certified organic](#), but that does not necessarily stop the word organic being used. The word organic, has a

dual meaning; (1) 'relating to or derived from living matter' and (2) 'produced or involving production without the use of chemical fertilisers, pesticides, or other artificial chemicals'. Some consumers may take it that organic garden products are suitable for those wishing to grow their own produce in a eco-friendly manner, akin to the second meaning of the word organic. However it may be that certain 'organic' garden products contain materials derived from more industrialised forms of agriculture such as high density poultry units where the livestock are raised using chemical inputs that are inconsistent with certified organic products. Organic fertilisers or organic soil improvers should be marketed in a way that does not imply they are produced to certified organic status and the word organic needs to carefully applied.

As well as the case studies, the guidance also provides twelve "examples". These are relatively short and by their nature cannot have the depth or be as helpful as the case studies, however we do feel that some could be improved:

- Example 1 – this seems like a blatant attempt to mislead. In our view, examples are more useful if they illustrate something more nuanced or open to interpretation.
- Example 6 – again, the circumstances suggest the producer has disregarded their obligations and there seems limited value in illustrating this through an example. Also, the example talks only of "a product" – it would be more meaningful and provide some context if the type of product is described whether food, cosmetic, clothing or whatever.
- Example 8 – one would anticipate that any reputable business wanting to adhere to the principles would not need this example. But it also illustrates the importance of Principle f (claims should be substantiated) and it might be worth adding in both this and example 12 to underline that businesses should not only have the evidence but should cooperate with reasonable requests from enforcement authorities to share this (see also SCOTSS' comments at 3.7).

In general, with respect to the examples, SCOTSS' view is that some further and more meaningful examples could be introduced. The ones used tend to be clear but in the real world there will be a level of ambiguity about the veracity of claims, depending on the statements made, their prominence, how much information is provided, the basis of the comparison and whether additional text is used to put those claims into context. We would also suggest that consideration might be given to the approach used in the *Guidance For Traders On Pricing Practices* where examples are given and stated as "more likely to comply" and "less likely to comply" (see p.16 for an example); [Guidance for Traders on Pricing Practices](https://businesscompanion.info) (businesscompanion.info)

General and additional issues

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.

On p39 Section 13 of the draft guidance under the heading "What Do The Rules Apply To?" it states "The practices can occur before, during or after a transaction takes place (or would take place)". This may put too much emphasis on the "transaction" and imply it is necessary when it is not. Some claims (and potential offences as well as breaches of the guidance) will involve the use of banned practices or breaches of professional diligence, where no transactional decision test applies (in terms of the CPRs) and environmental organisations and pressure groups who monitor the market will likely seek to quote the Guidance in their complaints.

Principle f (that claims should be substantiated) reflects Regulation 27 of the CPRs (Unfair commercial practices: substantiation of claims) under which, where an application for an enforcement order or for an interim enforcement order has been made, a court may require a person or business to provide evidence as to the accuracy factual claim made. It is clear from the guidance that the nature of environmental claims are in general very difficult for regulators to monitor, examine and test (for instance, it is not possible to check if a loaf is "organic" through analysis, or that a product range is now "greener" without knowing the full circumstances which only the producer will know). General enforcement powers under the CPRs require that an officer must have "reasonable cause to suspect" that a breach of the Regulations has been committed before they can require any trader to produce any documents relating to their business and so, in order to effectively monitor environmental claims enforcement authorities may have to rely on firms being transparent and cooperative and we would request that the CMA throughout the guidance encourages businesses to do this and respond positively to reasonable requests from enforcement authorities for data which backs up claims made.

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

SCOTSS' view is that the guidance is well set out, easy to read and provides clear advice for businesses wishing to understand and follow its principles.

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

The guidance makes no mention of misleading green claims in relation to home improvements, scrappage schemes, government "grants", lead generation companies etc. but that may be intentional on the part of the CMA.

I hope our comments are helpful. If you have any queries, please do not hesitate to contact me, or our national coordinator [✂] [REDACTED]

Yours sincerely

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The Society of Chief Officers of Trading Standards in Scotland (SCOTSS), is a Scottish Charitable Incorporated Organisation (SC047951). Our members are professional trading standards managers representing every Scottish local authority trading standards service.