



INCPEN response to the Competition and Markets Authority Draft Guidance on Environmental Claims on Goods and Services

Closing date for responses: 5pm on Friday 16th July 2021

The consultation document can be found: [Here!](#)

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CMA Q1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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?

INCPEN's opening comments.

INCPEN welcomes the CMA's draft guidance on environmental claims on goods and services. Our members are packaging manufacturers, brands, retailers, recyclers and reprocessors, all of whom take extremely seriously the claims made about packaging and the products within. A 'level playing field' on environmental claims is much-needed across all goods and services sectors. The Guidance must apply equally to organisations based in the UK and abroad for all products/claims that are directed towards the UK marketplace. The Guidance should apply to all types of organisations in the private & public sectors, and within civil society because citizens need to have confidence in claims wherever they originate.

It may be that there are specific workstreams for the CMA that arise from the Guidance in terms of initial implementation and ongoing activities to ensure the Guidance always remains fit for purpose. INCPEN is willing to assist the CMA on activities as they progress.

In the meantime, INCPEN is pleased to have this opportunity to provide comments on the draft Guidance. In so doing, INCPEN works closely with a range of UK economic sectors to ensure we raise broader perspectives. For this specific consultation, we have consulted closely with the Cosmetics, Toiletry and Perfumery Association (CTPA), the Foodservice Packaging Association (FPA), the On Pack Recycling Label scheme (OPRL), and Recycling of Used Plastics (RECOUP). In our discussions they and INCPEN are in broad agreement on the issues that the CMA is recommended to take seriously into account when finalising the Guidance.

For further assistance, please contact [✂]

INCPEN recommends the CMA considers these comments from the Cosmetic, Toiletry and Perfumery Association Limited (CTPA)

The CMA draft guidance on environmental claims covers all main principles of consumer protection law, as it applies to environmental claims. We feel that the guidance clearly explains each principle, also demonstrating how they should be applied in practice. The examples, questions that companies should ask themselves and the case studies are really helpful in understanding the thought process behind assessing and making environmental claims.

CTPA would like to share the below additions to the guidance, as suggestion to further complement it.

- An Appendix highlighting the sectorial specific requirements for claims, which would apply to environmental claims in addition to consumer protection law. We believe it is vital, especially for SMEs to increase awareness of sectorial requirements for claims to ensure overall compliance. This does not have to be in high detail, but top level of what the requirements are and any other available resources. CTPA is happy to work with the CMA on the requirements and resources specifically for cosmetic claims.
- Whilst it is extremely important for consumers not to be misled, as companies must comply with the law, we feel that available guidance documents focus a lot on what should not/cannot be claimed. In order to help businesses make claims that comply with the requirements and do not mislead the consumer, we feel that guidance should also provide positive examples on how a claim can be worded to be compliant (with the disclaimer that it is an example and everything should be assessed on a case-by-case basis). Our suggestion is to enrich the given examples and considerations with its positive counterparts. Considering example 1 in the draft guidance, it could also suggest how the claim can be re-worded so it is compliant with the principle(s), whilst also promoting careful reflection on alternatives that may seem more sustainable at first, but in reality are not.
- The guidance is very detailed, which is indeed needed to explain the principles and the steps a company should take into account when making environmental claims. However, we find that a lot of text may at times be overwhelming for companies. We therefore suggest to also create a visual diagram, or decision tree, highlighting the key questions a company should ask itself when making environmental claims. This is to provide a quick and visual resource, in an easy-to-use format.
- As with all claims, but it seems even more important for environmental claims, the consumer understanding is a key element to take into account. We therefore suggest adding a one pager with the key findings of the CMA research into the consumer understanding of environmental claims, to remind companies of those key points.

INCPEN recommends the CMA considers these comments from the Foodservice Packaging Association (FPA)

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. Also needing to be recognised is the Defra Green Claims Guidance which also contains examples of good practice. The guidance widely recognised by packaging producers.

Some areas falling under the remit of the Food Standards Agency could be reviewed for inclusion. Some packaging companies claiming environmental benefits but often use material inputs not to be food contact approved. Examples exist of unfilled packaging using higher than recommended percentages of optical brighteners or falling short of food contact regulations to fake the appearance of packaging using recycled content. Some unfilled packaging claiming environmental benefits is imported with falsified certification but crosses our borders unchecked and importers should be responsible for the quality and claims about the packaging they import and not rely on statements made by their overseas suppliers. As an example bamboo presented by some as being 'more environmental' and used in case study example 1 not only do many falls short of environmental claims made (not recyclable and bamboo strands held together with plastic) but many contain PFAS and melamine, which means they fail to meet food standards regulations regarding materials.

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?

INCPEN recommends the CMA considers these comments from the On Pack Recycling Label Scheme (OPRL)

We believe that the draft guidance covers some of the important consumer protection law issues relating to making environmental claims; however, the Packaging Essential Requirements Regulations (currently under review) and the issues of third party verification, standards, labels and trust marks would benefit from greater consideration and reinforcement. For example, biodegradable and compostable materials are specifically mentioned in the draft guidance and there are a number of relevant standards and certifications that should be highlighted. The only standard which is currently able to certify the compostability of an item of packaging, its suitability for organic recycling and its compliance with end of waste status as a compost, is the BSEN13432:2000. For home composting there is no similar EU/UK standard but results from tests undertaken according to TÜV Austria's 'OK Compost Home' certification scheme criteria or TÜV Rheinland's (DIN CERTCO) home compostable certification schemes are widely used.

There are a number of more general standards that should be considered in this guidance, most relevantly the ISO 14020 series of labels in particular 'ISO 14020 Environmental labels and declarations — General principles', 'ISO14021:2016 Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling)' and 'BS EN ISO 14024:2018 Environmental labels and declarations. Type I environmental labelling - principles and procedures'. Alignment with these standards should be a minimum requirement and those making claims using those requirements should be willing to subject themselves to being audited against those requirements.

The guidance refers to sector or product specific laws. OPRL believes that this should be expanded to include national and sector best practice, guidance and standards to ensure that there is a level playing field for all businesses operating in the same area. Even where a business does not invest in accreditation to a standard or membership of a trade body with associated codes of conduct and standards, it is important that they can demonstrate the equivalent standards as those that do and this will reduce the opportunities for confusion and deliberate or accidental misinterpretation of claims by businesses.

Packaging Essential Requirements Regulations consider that the design for all recovery routes is increasingly important in marrying disposed packaging from domestic and commercial waste streams with the collection and sorting infrastructure. Well-designed packaging which is easily recoverable or reused, minimises environmental impacts and usually saves costs. A series of standards in relation to packaging were published by the European Committee for Standardisation (CEN). These provide framework methodologies for considering reduction, reuse, recyclability and recovery. Compliant packaging enjoys freedom of movement across the EU. The Standards provide a methodology that can also help inform decisions on packaging design, for example around material specification, maximising recyclability and recovery, minimising component parts, reducing wasted space and optimising pack size. [Guidance on the Packaging Essential Requirements](#) contains details on recommendations. To comply with the standards updated in 2015, users must work through a methodology to ensure that their decisions on the specification for a particular piece of packaging takes account of often conflicting social, environmental and economic factors, identifying a solution right for the product, distribution system and how it will eventually be stored/used. It is important to document the answers to provide evidence for compliance and this should be considered in the guidance.

The use of standards, approved labels, trust marks and accreditation should assist consumers in understanding the validity of a claim. Consumers use information on packaging to make rapid decisions regarding environmental claims – whether they are recyclable, ‘plastic free’ or something else, the majority are unlikely to read in detail or investigate further for example by using a website, and so the message needs to be clear and consistent. In addition, space on packaging is highly valued and limited and so detail is unlikely to be provided at the level required, so a standard, label or trust mark is the only way to quickly and effectively communicate to consumers.

INCPEN recommends the CMA considers these comments from Recycling of Used Plastics (RECOUP)

RECOUP agrees that adding value to provide more up-to-date and comprehensive guidance on complying with consumer protection law when making environmental claims. Providing a level playing field for those businesses making well founded and evidence based environmental claims and those that potentially fall short of this and thus gaining a competitive advantage by this is a fair approach. This information gap could either be through being unclear about their obligations or deliberately omitting or falsifying claims about the environmental impact of goods and services, both in business-to-consumer or business-to-business marketing.

This could be particularly true for imported packaging, where verifying environmental claims in sometimes a long supply chain or in overseas countries that use different approaches can be difficult to establish. An example is where RECOUP recommends there is now a significant need for the UK to establish an independent Recycled Content Verification System to help gather information that enables the Government, Parliament, industry and the public to have full confidence in the whole system.

CMA Q2 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?

INCPEN's comments.

INCPEN supports a well-thought-out approach whereby the Guidance applies to business-to-business as well as business-to-consumer messaging and relationships. This becomes especially relevant in light of the green claims on recycled content relating to the incoming Plastic Packaging Tax (PPT). That's because the PPT incorporates 'joint and several liability' for payment of the tax – and payment is based, of course, on the claims of recycled content. Thus, INCPEN strongly recommends the CMA takes specific account of PPT issues in the final version of the Guidance.

INCPEN recommends the CMA considers these comments from the Cosmetic, Toiletry and Perfumery Association Limited (CPTA)

The business-to-consumer relationship is indeed the most important for environmental claims. Consumer protection law and sectorial requirements primarily apply to B2C communication. However, a lot of companies, especially SMEs, often rely strongly on the information given by suppliers of raw materials/packaging/finished products to make their environmental claims. Under the Cosmetics Regulation, the responsibility for claims on the finished cosmetic product completely falls under the Responsible Person placing the product on the market; however, collaboration by the whole industry and supply chain would be extremely helpful on this matter.

In the draft guidance, the CMA could be more explicit in explaining how marketing used by raw materials/packaging suppliers can ultimately influence the claims made by the products' owners to the consumer; highlighting that the principles of consumer protection law can also be applied to B2B communication may contribute to reducing green washing in consumer communication.

INCPEN recommends the CMA considers these comments from the Foodservice Packaging Association (FPA)

It is essential the guidance applies to business to business trading and that the guidance is positioned as equally applicable to B2B as it is to Business to consumer.

Many retailers have genuine concerns about the environment and wish to contribute to environmental improvement. Many also want to be seen to be doing 'the right thing' by their customers and some are finding they are being forced to respond to customer pressure by using specific types of packaging. 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 especially since the majority of packaging is removed from their premises and disposed in litter bins or as litter. an example being claims made the packaging is 100% recyclable.

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.

Retailers may simply be promoting the claims made and are equally 'victims' as are their customers. They have not knowingly set out to exploit their customers.

The guidance should also cover the packaging used to contain empty packaging. This packaging often contains information not mentioned on the packaging itself.

2.18 states retailers have responsibility for claims made by brand owners. As explained above retailers purchase in good faith and many do not have the insight and technical skills to question their suppliers on each and every claim. 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.

Point 2.18 also works in reverse and their examples of distributors of empty packaging making claims for packaging which misuse and abuse those made by the producers of the packaging. We believe it should be mandatory for producers and importers of packaging to include a link to the guidance as part of their terms and conditions of sale.

INCPEN recommends the CMA considers these comments from the On Pack Recycling Label Scheme (OPRL)

Consumers are increasingly demanding products and services which minimise harm to, or have a positive effect on, the environment. As a result, there has been a proliferation of products, services and businesses which claim to meet that demand. Although the majority of these products and associated claims are on a B2C basis, they can be instigated on a B2B basis that is then passed down the supply chain to the consumer by businesses that have no internal expertise in sustainability so rely on supplier information. In addition, under the UK Government's Resources & Waste Strategy the ambition is that the same materials will be recycled from homes and businesses, so suppliers may use the same packaging for both markets and claims need to be accurate for both.

In order for environmental claims to be properly regulated they need to be subject to effective scrutiny and evidence from the first point of the claim, otherwise there is a risk that a claim made by a B2B supplier will pass on unchallenged to the consumer. Therefore it is important that claims made on a B2B basis are subject to the same amount of rigour as those made on a B2C basis. The Packaging (Essential Requirements) Regulations focus on business and any guidance should reinforce the requirements in the regulations.

INCPEN recommends the CMA considers these comments from Recycling of Used Plastics (RECOUP)

RECOUP feels that while it is important that the consumer is not misled by green claims it is also important to apply the guidance to business-to-business relationships. Communications between businesses are also open to misleading green 4 RECOUP Draft Submission – 6th July 2021 Consultation on Draft Guidance on Environmental Claims on Goods & Services claims when products, goods and services are promoted and exchanged. Therefore, the guidance should also apply to business-to-business relationships to protect from unfair competition and to ensure a level playing field in all aspects of the market for products, goods and services.

As the interface between business and the consumer is so important the whole supply chain has a challenging role in assessing the validity of environmental claims. Business-to-business and business-to-consumer communications about products, goods and services go hand-in-hand and a focus on both will strengthen the focus over total transparency of communications about goods and services throughout the supply chain. For example, a business-to-business communication may centre around a particular claim which will later become a business-to-consumer claim if the end user of the product is the consumer e.g. a retailer or brand buying from a packaging supplier because of certain marketed 'green' credentials and then communicating about this packaging to consumers about the 'green' credentials without having the evidence that the claim is factual.

Section 2.18 of the guidance outlines that retailers must assure themselves that any claims made by manufacturers are accurate and not misleading for any communications that are aimed ultimately at the consumer. This outlines the need for business-to-business guidance to ensure that approved environmental claims are used throughout the supply chain before they reach the consumer.

CMA Q3 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?

INCPEN's comments.

INCPEN recommends that the CMA uses a 'catch all' approach to ensure that no sectors are inadvertently left out from adherence to the Guidance. In our view, this 'catch all' needs to include private, public, and civil society organisations, including non-governmental organisations. We believe this because citizens receive information about products (and packaging) from a host of sources, including social media. Citizens often base their purchasing and consumption choices on what they hear and see. Alas, there are many occasions where information implied or inferred about products (and packaging) is not supported by the evidence.

Or, equally, citizens are often only given a snapshot of the evidence that does not take account of wider consideration. For example, in deciding whether a paper carrier bag from the supermarket is better than a plastic carrier bag, a wide range of 'green claims' information is needed on manufacture, greenhouse gases, longevity of the bag, science-based research on what happens to paper/plastic bags if used incorrectly and so on.

For these reasons, INCPEN recommends the CMA adopts a robust 'catch all' approach. In practice, this may mean a substantive role for someone (CMA? Trading Standards?) in monitoring green claims, receiving reports on green claims, and investigating appropriateness of green claims – much in the same way as the Advertising Standards Authority does across the UK. To that end, learning about the ASA's evolution since the 1960's would be worthwhile for CMA officials in deciding how to replicate a similar approach for green claims: we have placed this [here](#) for convenience.

INCPEN recommends the CMA considers these comments from the Cosmetic, Toiletry and Perfumery Association Limited (CTPA)

CTPA only provides the perspective of the cosmetics industry. As mentioned in question 1, we believe it is worth adding an Appendix summarising the specific sectorial requirements for claims and resources available. We do not believe there is yet the need to create any additional guidance for environmental claims in cosmetic products.

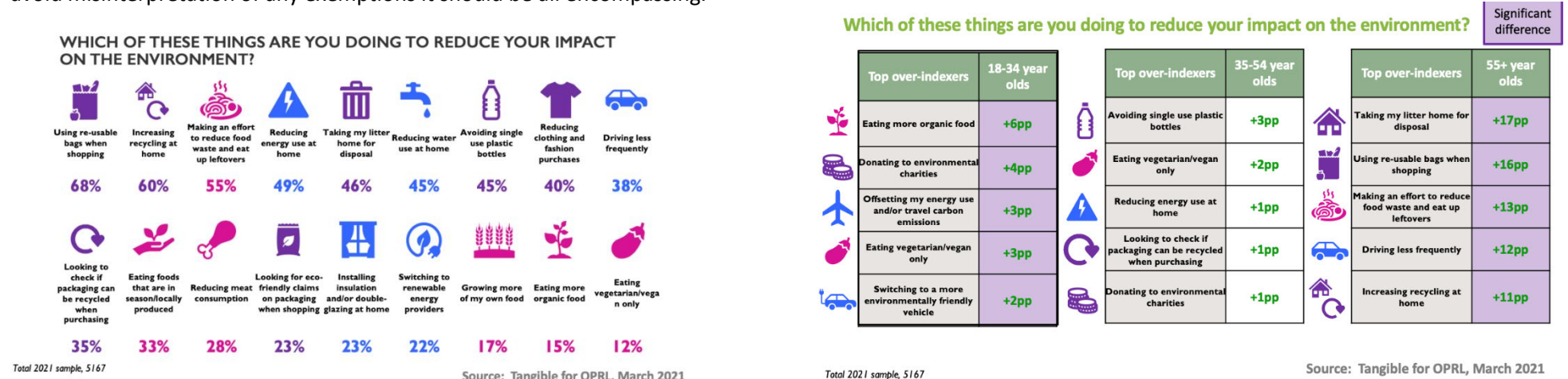
However, should the need arise in the future, CTPA would be more than happy to collaborate with the CMA on further advice, in particular on how the Common Criteria for Cosmetic Claims (Regulation 655/2013) directly apply to environmental claims. We would also be happy to work on a list, or decision tree of key environmental factors that have to be taken into considerations when making environmental claims (e.g. full life cycle of a product, its sourcing of ingredients, manufacturing plants and site, transportation, end of product life, etc.).

INCPEN recommends the CMA considers these comments from the Foodservice Packaging Association (FPA)

With such a large number of unsubstantiated and misleading claims about packaging some imported and some produced in the UK, we propose the setting up of a body by the CMA and reporting to it on a regular basis to identify breaches and monitor progress. Many claims are made verbally by sales personnel so the body would need to maintain dialogue with retailer procurement managers as well as with independent retailers. We suggest this body would mirror that of the ASA - The Packaging Standards Authority. Packaging is often the main platform used for claims and can be the communication the consumer sees first supporting the need for such a body. Many environmental claims for some packaging have been made by Non-Government Organisations, pressure and consumer groups. This can be in the form of promoting one type of packaging such as say compostables over another. Clearly in some situations such as closed environments or where local authorities accept compostables in food waste collections this will be the case. However this is not the case in all situations and such bodies exert significant influence on retailer buying decisions. The guidance should apply equally to all those in a position of influence including NGOs and the media.

INCPEN recommends the CMA considers these comments from the On Pack Recycling Label Scheme (OPRL)

All users of packaging across all sectors and areas of the supply chain should understand the environmental impact of the packaging, including the messaging they are sending to their customers and the end consumer. Many businesses attempting to appeal to environmentally conscious consumers have, through ignorance, erroneously moved into eg bio-based and/or compostable packaging believing it to be beneficial when it may, in fact, have a larger footprint than the materials it replaces, especially if it contaminates recycling streams leading to rejection or down-grading of the recycled product. Excluding some sectors could lead to packaging which fails to meet the required standards being channelled into the exempted sectors. In addition, consumers are adopting an ever-increasing range of pro-environmental behaviours, with marked differences between demographics (age, geography). It is not possible to predict how pro-environmental consumer trends will develop in future and even 'green services' may involve some packaging eg refill services. In order both to future-proof the guidance and avoid misinterpretation of any exemptions it should be all encompassing.



INCPEN recommends the CMA considers these comments from Recycling of Used Plastics (RECOUP)

Packaging is referred to a number of times throughout the guidance in examples especially related to recyclability and to the use of plastic. RECOUP believes that the packaging sector requires further guidance, or at minimum, a document that signposts to further guidance as this sector is prone to the misuse of environmental claims that can tarnish those which have transparent, honest and evidence backed environmental claims about their packaging.

There is an onus on the packaging industry to improve their environmental credentials as consumer awareness and consciousness has grown in recent years, particularly around plastic packaging. This can lead to the misuse of claims by both the plastics and alternative materials sectors to promote the 'best material choice' without consideration of the principles set out by the guidance.

While the guidance provides a good context with the six principles for the making of environmental claims, more detail is required particularly in light of claims centred around packaging.

Suggested areas for specific guidance for packaging includes claims related to:

- Recyclability
- Recycled content
- Carbon footprint and lifecycle analysis
- Labelling - Self labelling/use of logos
- Biobased/biodegradable/oxodegradables
- Communicating about product and package together
- Comparisons of different packaging formats

Any guidance for packaging should ideally use recognised standards or best practice.

Changes to products or packaging and their associated environmental claims should be done on the basis of technically and environmentally sound outcomes.

Depending on the information they're provided with can lead or mislead consumers or businesses into making an ill-informed decision. This includes material or product switching, with could result in unintended consequences by having a negative overall impact on the environment such as increases in GHG emissions or packaging material and format changes that do not arrive at optimal choices. Changes to packaging should be done on the basis of technically and environmentally sound decisions that do not lead to negative overall environmental outcomes and pass the 'environmental test' so that optimal solutions are used. Metrics could include greenhouse gas (GHG) reductions, ethical material sourcing, cost efficient manufacturing and logistics systems, and end-of-waste protocols.

CMA Q4/5 The guidance sets out six principles for business compliance with consumer protection law to avoid ‘greenwashing’. Are these principles the right principles under consumer protection law? If not, what other principles would help businesses comply with consumer protection law.

INCPEN’s comments.

INCPEN agrees the six principles are outlined should provide a solid basis to avoid ‘greenwashing’ under consumer protection law. As outlined above, INCPEN recommends that all sectors – including private, public and civil society organisations – are required to adhere to the Guidance. This should apply to all organisations whether based in the UK or abroad for any ‘green claims’ that are made within the UK marketplace. INCPEN supports a ‘level playing field’ so that all stakeholders are required to match the rigours of making, substantiating & certifying claims carried out by responsible organisations.

INCPEN recommends the CMA considers these comments from the Cosmetic, Toiletry and Perfumery Association Limited (CPTA)

We believe that the principles outlined in the draft guidance are the right ones identified under consumer protection law.

INCPEN recommends the CMA considers these comments from the Foodservice Packaging Association (FPA)

We agree the six principles will give business clarity and should deter businesses from making misleading claims if enforced and that businesses must take all 6 into account when communicating environmental information about their products and packaging.

We would suggest the ordering is changed with principle f *Claims should be substantiated* appearing second in the list. We appreciate the ordering is not meant to be significant but inevitably the businesses will view the ordering as an indication of relative importance. We view being substantiated as important as being truthful and accurate.

We propose two further principles which although overlaps with the other six needs to be spelt out and given prominence:

‘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’. This would ensure it is understood that it is a contravention of the law to take an individual element of what is certified and claiming this element is certified without explaining the element can only be achieved with the process required to fulfil another element covered by the certification. In the following

example the certification for biodegradability is claimed through the standard EN13432 whereas this standard is for compostability of which biodegradation is part of the process: <https://www.delipac.com/what-is-delipac>

There are many examples of misappropriation of standards such as <https://a1coffee.net/takeaway-cups-and-lids/cup-type/biodegradable-cups.html> In this example cups designed to be industrially composted of which biodegradation is part of the industrial composting process have been presented as biodegradable with the heading of the page being Biodegradable and Compostable Cups. The ordering is misleading and the producers of the cups sell their cups as compostable however the distributor has focussed on an attribute taken out of context. To what extent is a producer / manufacturer responsible for the way in which distributors market the products they sell to them?

‘Claims must reflect real life conditions and not those achieved in laboratories’

Such claims would include some claims about recyclability where packaging is not widely collected by local authorities and no voluntary or other collections systems are operating.

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.

The guidance literature review includes the statement ‘*A consumer notices the label but does not take the effort to understand what it means. This might mean that the consumer forms a positive attitude towards the label and uses it in decision-making without understanding it*’. The guidance would be further enhanced with more examples of the use of apparent 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 needs to be validated by an independent certification body for the claim to apply.

Again linked to the forming of a positive view of a product as result of the look of a label and although implicitly covered by the guidance, a further principle example could show the use of visual devices and colours to provide an albeit subliminal impression of an item being more environmentally sound than it actually is. References to plants, leaves, waterways, simply making the pack predominantly green in colour etc can add up to give a misleading impression. The principles also relate to printed words leaving the opportunity for sales personnel to mislead their customers.

Principle c *Claims should not omit or hide important information* could be clearer for example *Claims should not omit or hide information which as a result of the omission enhances the environmental benefit*

An example being <https://ecocoffeecompany.co.uk/the-green-cup/> By stating the board is water based the impression is given the board is plastic coating free also by stating no PET or PLA when it is in fact coated with acrylic, a polymer. This website also references a unique water based dispersion barrier implying the barrier is only available to the company when it is also used by others.

INCPEN recommends the CMA considers these comments from the On Pack Recycling Label Scheme (OPRL)

The principles are businesses must ensure that their environmental claims: (a) are truthful and accurate; (b) are clear and unambiguous; (c) do not omit or hide important information; (d) compare goods or services in a fair and meaningful way; (e) consider the full life cycle of the product; (f) are substantiated.

OPRL labels comply with the six principles and we agree that these should be complied with by all businesses making environmental claims. In addition, it is important that claims can be audited against agreed accreditations, labels and standards. Businesses should not be able to escape the obligations implied by the principles by making “half claims” such as ‘technically recyclable’, ‘recyclable where facilities exist’, ‘recycle ready’ as in practice these are misleading and could be interpreted by consumers as being the same as recyclable.

OPRL labels are supported by a publicly available evidence base to ensure that the basis of determination of recyclability is transparent and subject to stakeholder scrutiny. Where a claim is made, there should be clear indication to the consumer where the supporting evidence is held, or on what basis the claims were verified. For example, a consumer looking at an OPRL label can find and download the evidence base explaining the criteria from the OPRL website. OPRL ensures that it is aligned with best practice such as that produced by the Confederation of Paper Industries (CPI) and The UK Plastics Pact guidelines on recyclability. Members of OPRL who use the labels are subject to third party audit conducted in a manner consistent with ISO19011:2018 (verified by Lloyds Register) to ensure that they are using the labels in the correct manner. All of these factors help to create and build consumer and business trust in the OPRL label and could be used as exemplars for other systems to demonstrate compliance with the six principles.

INCPEN recommends the CMA considers these comments from Recycling of Used Plastics (RECOUP)

RECOUP agrees that claims should be: truthful and accurate; clear and unambiguous; must not omit or hide important relevant information; comparisons must be fair and meaningful; must consider the full life cycle of the product; must be substantiated.

RECOUP believes ‘whole system’ considerations are needed to deliver an overall environmentally sound outcome i.e. they need to reflect the full product life cycle, or with specific areas that are included in any claims covering the full part of that process. For example, for claims about recyclability, claims should be based on following the RECOUP Recyclability by Design Guidance or gaining certification through schemes such as Recyclass.

This is also important for claims around biodegradable & compostable products or packaging, which need to adhere to the relevant standards and reflect the actual disposal and waste management route these products should take, as opposed to presuming they would biodegrade if they were littered. RECOUP strongly recommends in all eventualities compostable & biodegradable materials should not enter plastic recycling streams, and environmental claims must reflect that.

As such, claims should not assume consumer knowledge in order for them to make an informed choice. Although this is covered in one of the principles that claims must be truthful and accurate (Section 3a), in particular about a claim having specific or widely assumed meanings (Section 3.8), having evidence around consumer assumptions is a necessary part of providing evidence around environmental claims.

There should be an evidence base to back up claims with appropriate data and ideally recognised standards or best practice.

Changes to products or packaging and their associated environmental claims should be done on the basis of technically and environmentally sound outcomes.

Depending on the information they're provided with can lead or mislead consumers or businesses into making an ill-informed decision. This includes material or product switching, which could result in unintended consequences by having a negative overall impact on the environment such as increases in GHG emissions or packaging material and format changes that do not arrive at optimal choices. Changes to packaging should be done on the basis of technically and environmentally sound decisions that do not lead to negative overall environmental outcomes and pass the 'environmental test' so that optimal solutions are used. Metrics could include greenhouse gas (GHG) reductions, ethical material sourcing, cost efficient manufacturing and logistics systems, and end-of-waste protocols.

CMA Q6 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.

INCPEN's comments.

INCPEN supports the CMA's inclusion of case studies. Those suggested are a solid basis for making progress. INCPEN suggest that a variety of originators of 'green claims' are covered within the case studies including private sector, public sector, civil society and NGOs. Green claims that influence citizens' purchasing and consumption choices can originate from many sources and not just from the manufacturers or suppliers of products/packaging – many claims are made by those whom are commentators on, or advocates of, certain products.

INCPEN recommends the CMA considers these comments from the Cosmetic, Toiletry and Perfumery Association Limited (CPTA)

We believe that the case studies given in the draft guidance are comprehensive.

INCPEN recommends the CMA considers these comments from the Foodservice Packaging Association (FPA)

As mentioned in the answer to Q.5 The case studies greatly help to explain the guidance but further case studies referencing misuse of visual devices and false impressions given in artwork are needed as are positive case studies reflecting good practice. The range of case studies needs to ensure that the most frequently used environmental / green claims are included as by not doing so it may be assumed by readers that the missing claims are acceptable. As new claims seem to arise monthly it is important claims are updated on as very regular basis.

The case studies referencing the use of recognised validated standards should quote those standards and relevant legislation.

An example of making up symbols to give the impression of environmental superiority can be seen here <https://www.cupkind.com/pages/fully-accredited> Many of the symbols are not from recognised or known standards organisations

Regarding (d) *Comparisons should be fair and meaningful* it is important to ensure the guidance covers top parity claims when clearly designed to mislead and when not substantiated. a good example being at the bottom of this web page <https://a1coffee.net/takeaway-cups-and-lids/cup-type/biodegradable-cups.html> ..*there is no paper cup on the market more environmentally friendly than these*,.. No third party research or analysis is shown.

Regarding (e) *In making the claim you should consider the full life cycle of the product* An additional case study to explain claims should not be based on the materials used but only on the finished item. There are examples of businesses making claims for products being plastic free because the material used may have evidence of being plastic free but the product itself may contain plastic such as in adhesives or additional components or to make it function requires a plastic element such as a lid on a cup or closure on a container.

A case study is needed to reflect the ability of a pack or a product to respond in a specific way under laboratory conditions but not in real world conditions is needed. Such claims would include some claims about recyclability where packaging is not widely collected by local authorities and no voluntary or other collections systems are operating.

Case study, example 1 in referencing the plastic element fails to mention bamboo is not recyclable and that in many instances bamboo strands such as those used in bamboo cups are bonded together with plastic.

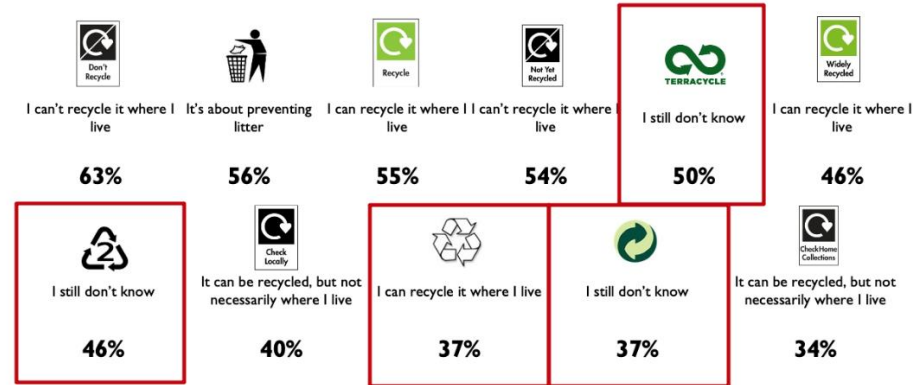
Case studies should also show examples of NGO's, pressure groups and consumer groups publishing blanket support of specific packaging they consider to environmentally superior to others when this is applicable only in specific conditions which are not widely available. The press frequently publishes articles on so called biodegradable packaging which isn't certified as such and has no evidence to prove biodegradability without an industrial process. Such articles can encourage littering.

Paper straws could be used as a case study to cover claims which are simply complying with legislation as there are producers promoting paper straws as plastic free.

INCPEN recommends the CMA considers these comments from the On Pack Recycling Label Scheme (OPRL)

OPRL would be happy to supply specific examples for case studies of packaging that is recyclable and also that which could be erroneously thought of as recyclable. In particular, a number of labels are often confused by consumers and businesses as indicating recyclability such as resin codes, the Mobius loop and the Green Dot as evidenced by our consumer insight research below. UNEP and Consumers International have undertaken a number of studies in this area and published international guidance with useful case studies included.

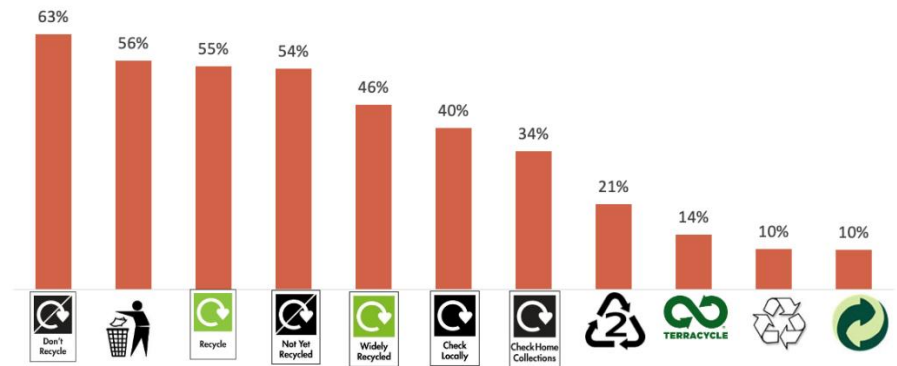
Most common answers to the question: Which of these [statements] describes what each label means?



Total 2021 sample, 5167

Source: Tangible for OPRL, March 2021

% giving correct answers to the question: Which of these [statements] describes what each label means?



Total 2021 sample, 5167

Source: Tangible for OPRL, March 2021

INCPEN recommends the CMA considers these comments from Recycling of Used Plastics (RECOUP)

RECOUP suggests a case study on packaging could be included. A focus on material substitution for example, where a packaging format has moved from plastic to a multimaterial design that makes a claim such as 'plastic free' as an environmental claim. This kind of claim could be misleading for the consumer as it suggests that plastic free is a positive environmental impact without considering other factors such as the possibility that the recyclability of the packaging is detrimentally affected by a mix of materials in the new design and the impacts on the rest of the life cycle such as raw material consumption, transportation, manufacturing, etc from the change in material.

CMA Q7 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.

INCPEN's comments.

INCPEN welcomes the CMA's Guidance. We suspect that the contents of the Guidance may be tested by real-life examples as they occur, which means the Guidance has to be a 'live document' and updated on an ongoing basis. Additionally, the Guidance will need to cater for innovations in the marketplace relating to products/packaging where claims are made based on 'testing thus far'. The veracity of those claims needs to be robust and INCPEN repeats our earlier response to Q3 on the need for a 'catch all' approach to scrutinise claims made by a variety of organisations, which may need a specific body akin to the Advertising Standards Agency to do that work.

It's also the case that claims involve the use of words that may not be easily understood by citizens (e.g. biodegradable, compostable, oxodegradable) or that the words are used in a specific context which is not easily apparent to citizens (e.g. compostable But only in an industrial facility at certain temperatures and where your local council provides a service for the collection of this item etc etc). In those circumstances, 'context' is incredibly important as to how the claims are intended to be implied by those making them, or inferred by those seeing the claim. We recommend the Guidance seeks to cover all of these eventualities as best as possible at the outset, and remains a 'live document' to be updated as required.

INCPEN recommends the CMA considers these comments from the Cosmetic, Toiletry and Perfumery Association Limited (CPTA)

In this question, we would like to provide further comments and clarification on some specific points within the guidance.

- Example 1 is indeed a good one, allowing companies to consider that the full product has to be taken into account. Making an outer packaging layer more sustainable doesn't mean that the full product is, and this should be communicated to the consumer. However, thinking about positive and alternative messages, could this example be explored further by suggesting a claim "we have reduced the amount of plastic used for this packaging, by substituting its outer layer with bamboo. The inner layer is still made of plastic, to ensure the product stays well preserved", or something similar, assuming it complies with the other principles. A similar approach can be considered for other examples.
- Something to add to the examples about organic claims, would be to consider whether organic is actually more sustainable than non-organic.
- In the example about the plastic microbeads claim, it is important to highlight that such materials are banned from rinse-off cosmetic products in the UK. There are currently no restrictions for leave-on products, but the same considerations should apply.

- Point 3.40 is about the use of third-party certifications. Whilst as a trade association we cannot endorse or recommend enrolling into third party schemes or certification, it is important to highlight that they are not legally required. Furthermore, a lot of these schemes have criteria that go against the regulatory requirements of a specific product type, compromising compliance with vertical legislation. We therefore suggest specifying that third party schemes are not legally required, and careful assessment should be carried out when considering taking part into such schemes.
- In example 11, there are other aspects that can be added. Indeed, the full products lifecycle must be considered. The ingredients could be relatively sustainable (e.g. RSPO) vs UK grown palm or animal derived stearate soap, etc. Therefore, thinking about transparency and positive messages, the company could claim about having a more sustainable source of ingredients and production, and assess how that is weighed vs domestic production without using sustainable ingredients.
- For principle (f), it is worth explaining another aspect of ambiguous and broad claims: they are very difficult to substantiate. For example, the claims 'environmentally friendly' may refer to a lot of environmental aspects (e.g. air, soil, water impacts, packaging, formulation, and more), making it extremely difficult to be substantiated.

INCPEN recommends the CMA considers these comments from the Foodservice Packaging Association (FPA)

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.

INCPEN recommends the CMA considers these comments from Recycling of Used Plastics (RECOUP)

More General or Absolute Claims.

Referring to Section 3.9, RECOUP agrees that the use of more general or absolute claims are more likely to be inaccurate and to mislead. Claims such as 'green' and 'eco-friendly' are ambiguous and have little defined meaning and not clear in the evidence required to make such claims. When making an environmental claim we believe that the focus should be clear on the specific environmental benefit. For example, a company wants to make a claim that their new packaging is 'eco-friendly' because it is made from 50% recycled content. Rather than using the claim that the pack is 'eco-friendly' they should use the clear claim (as long as it fulfils the principles set out in the guidance) that the pack contains 50% recycled content as their environmental claim. Being specific on the claim in question rather than using ambiguous terms makes the benefits of a product, good or service much clearer to both business and consumers.

Examples

The examples contained throughout the guidance, a number of which refer to packaging and plastic, outline the issues surrounding the environmental claims in relation to the principles. However, they do not propose solutions to how these claims should be evidenced or considered. RECOUP believes that it would be beneficial to outline in the examples how the environmental claims could be made in accordance with the requirements and examples of the types of evidence required.

We also believe that some of the examples given have an underlying anti-plastic tone and may mislead a reader of the guidance who has limited knowledge of the industry or of the overall environmental outcomes that should be considered. All materials should be approached equally in examples given.

This statement relates to:

3.18 Example 1

The way that this example reads is that the bamboo container is considered recyclable and the plastic element is not. While we agree that the packaging should be clearly labelled to represent both the recyclability of both the bamboo and plastic components, the recyclability should be based access to recyclability guidance such as the On-Pack Recycling Label (OPRL).

3.66 Example 7

This example mentions that the carton is silent about its composition and disposal and contains 'non-recyclable' plastic which has a negative environmental impact. Cartons or liquid fibreboard packaging board is normally comprised of a number of materials, namely metal, cardboard/paper and plastic elements. Separately these are all widely recyclable materials, but it is the combination of the materials that can make the packaging difficult to recycle and retrieve the value of materials within it. By labelling the plastic element as nonrecyclable this gives a negative perception of the plastic element only.

3.96 Example 8

This example assumes that a reduction in plastic content of the toothbrush can be made as an environmental claim. What this example does not consider is the lifecycle impact of the product as set out in the principles. A claim of 50% less plastic is not necessarily a better solution as you would need to also consider other lifecycle impacts such as: 1) if the reduction in plastic had been achieved through material substitution by a material which may or may not have a poorer environmental impact; and 2) whether the useful life of the product had been reduced in any way through the reduction of material.

CMA Q8 Overall, is the draft guidance sufficiently clear and helpful for the intended audience?

INCPEN's comments.

INCPEN welcomes the CMA's draft Guidance. It seems to be a solid basis on which to make progress on clarifying the circumstances and wording of environmental claims. We also welcome the CMA's consultation on the draft Guidance. Carefully considering how consultees' comments can help improve the draft Guidance still further is a welcome exercise. We highlight again that breadth of organisations making environmental claims, and the breadth of audiences receiving & acting upon those claims. Ensuring the Guidance properly captures all scenarios will help the CMA deliver its objectives in minimising erroneous claims.

INCPEN recommends the CMA considers these comments from the Cosmetic, Toiletry and Perfumery Association Limited (CPTA)

Yes, however please refer to the suggestions in question 1.

INCPEN recommends the CMA considers these comments from the Foodservice Packaging Association (FPA)

Most independent retailers 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 a number of languages. We recommend all product and packaging websites makes reference to the guidance with a link to it offering their customers the opportunity to check the products and packaging sold comply. While producers cannot be held responsible for the way in which their products are marketed they could be encouraged to make adherence to the guidance a part of their terms and conditions.

INCPEN recommends the CMA considers these comments from the On Pack Recycling Label Scheme (OPRL)

It would be useful to give indications and worked examples of the evidence requirements for certain types of claims. Examples of supporting standards, labels and accreditations would be beneficial as would reference to ISO14021. Alignment with other legal duties such as the Packaging (Essential Requirements) Regulations should be included to reinforce the existing legal responsibilities of business operating in this area.

CMA Q9 Are there any other comments that you wish to make on the draft guidance?

INCPEN's comments.

INCPEN welcome this draft Guidance and the opportunity to provide our views alongside colleagues across several sectors. Our final point is to highlight that what happens in the UK marketplace is heavily influenced by what happens in the EU marketplace in particular, and vice versa. The specific status of Northern Ireland as being in both the EU and UK single markets needs to be a major focus of attention to ensure the Guidance is appropriate to businesses/organisations that operate in both marketplaces.

INCPEN recommends the CMA considers these comments from the Cosmetic, Toiletry and Perfumery Association Limited (CPTA)

Not necessarily on the guidance. We would like to alert the CMA that there will be specific and prescriptive requirements coming from the EU Commission for products sold in the EU and NI markets. Such requirements involve specific environmental information being labelled on pack, as well as specific ways of making and substantiating environmental claims.

It is our understanding that more products sold in the EU/NI are clustered with the GB market, and the same product/pack being sold in both markets. Therefore, it may be worth considering how this topic will evolve, as we see products containing environmental information which is mandatory in another area. The UK Government is also working on specific horizontal environmental requirements for products, which will need to be taken into account in the future.

INCPEN recommends the CMA considers these comments from the Foodservice Packaging Association (FPA)

We greatly welcome this guidance which is overdue and commend the CMA for producing it and for the literature review accompanying it. Our initial discussions with producers of packaging we know will be in breach of the guidance suggests a lack of desire to take the guidance seriously. 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 their 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.

INCPEN recommends the CMA considers these comments from the On Pack Recycling Label Scheme (OPRL)

CMA should encourage the development and adoption of environmental trust marks and standards where these are currently lacking. Where existing regulations overlap with the guidance this should be made clear together with potential penalties and enforcement actions.

References:

<https://www.oneplanetnetwork.org/resource/what-consumers-want-7-key-research-insights-engaging-consumers-recycling>

<https://www.oneplanetnetwork.org/resource/guidelines-providing-product-sustainability-information>

<https://www.oneplanetnetwork.org/resource/can-i-recycle-global-mapping-and-assessment-standards-labels-and-claims-plastic-packaging>

<https://ee.ricardo.com/downloads/sustainable-business/auditing-the-on-pack-recycling-label-scheme>