

Consultation on CMA Guidance on Misleading Green Claims

July 2021

Comments from Marks and Spencer

About Marks and Spencer

Marks & Spencer (M&S) is one of the UK's leading retailers. Today we operate a family of businesses, selling high-quality, great value own-brand products in the UK and in 62 countries, from 1,519 stores and 44 websites globally. In the UK we employ over 70,000 people.

Our Response

3.9 Are there any other comments that you wish to make on the draft guidance?

General Comments

- M&S welcomes strengthened guidance on environmental claims to prevent greenwashing and unsubstantiated customer claims. Broadly speaking the principles are the right ones.
- The CMA principles are generally in line with the ASA CAP Code which M&S currently uses to create legal dossiers for marketing campaigns so no major change is required in this process, although extra attention would need to be given to the elements that extend beyond the ASA current guidance.
- It is important the UK position aligns to the EU position to prevent two sets of principles for brands trading across Europe.

Potential unintended consequences:

- Customers want to know about the environmental and sustainability work a business is doing. Indeed, the demand from customers is part of what encourages business to keep improving in this area. However, if it becomes too challenging for brands to make claims they may decide to reduce the amount of information they provide, at worst this could drive inaction and hinder progress on sustainability. Particularly smaller brands.
- Insight shows our customers prefer emotive storytelling and they don't engage so much in facts and stats. If we want to encourage a behaviour change in sustainability there needs to be a balance between engaging communications to inspire action, while signposting to evidence and further information. It is important to not insist that the language on pack needs to be scientific, and only facts and stats.

Specific Concerns

3.7 Which, if any, aspects of the draft guidance do you consider need further clarification or explanation, and why? In responding, please specify which Chapter and section of the draft guidance (and, where appropriate, the issue) each of your comments relate to.

A) Principle 3 - Claims must not omit or hide important relevant information

- *Claims made must not omit or hide information that consumers need to make informed choices.*

- *Omissions occur where claims focus on saying one thing but not another, or say nothing at all.*

Concerns

- All products have many impacts as is referenced in the product lifecycle in Principle 5, it would be a challenging task to list all the impacts so as not to omit anything. For example, when talking about a clothing garment to not omit or hide anything a brand would need to consider the list below (this identifies the main impacts and is by no means exhaustive):
 - **Raw Material Production:** Land use, water use, chemical pollution and energy consumption
 - **Material Preparation and Processing:** Water use, chemical pollution and energy consumption
 - **Production Manufacturing:** Waste production and energy consumption
 - **Transport and Distribution:** Waste production
 - **Retailing:** Energy consumption
 - **Product-use life:** Water use
 - **End use:** Waste production and energy consumption
- It would imply that a company would need to do life cycle analysis on all products in order to factually know what is relevant / not relevant. The resourcing of this would be costly and unrealistic.
- Over time issues or impacts will gain an increased level of scrutiny through the media, with consumers, and NGOs. This focus could lead to conversations around whether these impacts are relevant and shouldn't be omitted, even if not material in the overall impact analysis. We would ask the CMA to focus on these specific issues/impacts instead.

B) Principle 5 - Claims must consider the full life cycle of the product

Concerns

- As a retailer with thousands of products, it would require significant resourcing to do life cycle analysis on all of M&S' products. This isn't a realistic expectation. It is unclear what level of analysis is required and what evidence would need to be shared. If this is required to be able to communicate some benefits, it will have an adverse impact of companies not doing anything as it will be seen as too complicated and too costly. Therefore, making it more difficult to deliver sustainability objectives. For example, the claims currently made by most apparel brands relate to raw materials and certifications, without a lifecycle analysis of these products it would be useful to clarify if brands are still able to make these claims.
- A universally accepted methodology to calculate the lifecycle of a product does not yet exist beyond pilot phase for apparel. Owing to a lack of scientific research and data in certain areas there are differing opinions on certain impacts eg. microfibres. In the footwear and apparel sector The Sustainable Apparel Coalition (SAC) has put forward a suggested approach for the creation of a universal methodology on behalf of the industry and brands and is working closely with the European Commission. The SAC has carried out initial research and we would recommend the CMA approach the organisation to discuss further.

C) Labelling

- When introducing new labelling requirements, we would urge the CMA to consider the cumulative impact which changes in labelling will have on producers, and to work with other

agencies and departments to streamline any changes as far as possible. Producers already expect to have to make significant changes to labelling as a result of initiatives including the obesity strategy, Brexit and the planned introduction of a deposit return scheme. Changing labelling is time consuming (we estimate that for drinks containers it will require a 12 month lead in time) and costly. Repeated changes will build in further costs, particularly if existing stock has to be adapted or destroyed. It would be helpful if the CMA could ensure that producers are permitted sufficient time to make changes, and if it would work with the Government to align its proposed changes with the timelines for other labelling changes which we are expecting in the coming months.