

## **The Competition and Markets Authority**

### **Misleading Environmental Claims Draft consumer protection law guidance and consultation**

### **Chartered Trading Standards Institute Response**

**July 2021**

## **About The Chartered Trading Standards Institute**

The Chartered Trading Standards Institute (CTSI) is the professional membership association for trading standards in the UK. Founded in 1881, we represent the interests of trading standards officers and their colleagues working in the UK.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence based policy advice to support local and national stakeholders including central and devolved governments.

Following a Government reorganisation of the consumer landscape, CTSI are responsible for business advice and education in the area of trading standards and consumer protection legislation. To this end, we have developed the [Business Companion website](#) to deliver clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI are also responsible for the [Consumer Codes Approval Scheme](#) which facilitates high principles of assisted self regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

CTSI is also a key member of the [Consumer Protection Partnership](#), set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

-----  
***A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas vital to UK consumers, businesses and the economy. Since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period.***  
-----

Should you have any queries or wish to discuss the response please do not hesitate to contact [✂] [REDACTED]



CTSI welcomes the opportunity to comment on the draft consumer protection law guidance in relation to misleading environmental claims. CTSI has sought feedback from relevant Lead Officers and invited Heads of Service to comment via the Association of Chief Trading Standards Officers.

The guidance in this area has been welcomed with sustainability becoming more important to consumers. CTSI Lead Officers noted that so called 'green-washing' in advertisements was a definite area of consumer detriment and that CMA was best placed to lead on guidance in this area.

Examples<sup>1</sup> were provided by CTSI Lead Officer for food and nutrition on the level of profit that can be made from false organic claims and that as such, these sorts of false claims can attract organised crime groups. It was noted that in addition to the misleading claim, document fraud can also be involved.

Whilst it was agreed that the guidance will help businesses to clarify their consumer protection law obligations and promote compliance, it was noted that investigation of environmental claims can be prohibitively expensive and often requires expert witnesses, all of which may be beyond the means of even the most well-resourced trading standards services. CTSI does however support the publication of the guidance as a helpful tool for businesses and enforcers as the UK moves towards a low carbon economy. CTSI is keen to continue engagement with CMA in this area and happy to assist if any further information is required.

Some technical points in relation to each consultation question are set out below.

### **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 guidance suggests general claims about "the environment" or on specific environmental aspects such as the air, water or soil. Will the scope also include claims regarding species such as dolphin friendly, bee friendly etc? Will the guidance cover utilities such as gas and electricity suppliers?

The guidance talks in general terms and mentions sector specific- should there be more details about what other legislation may be applicable for example mentioning food is subject to specific regulations regarding the term organic - Food labelling regulations? Food contact materials are currently known to have some issues regarding the use of bamboo and environmental claims, covered by other food legislation.

It would be helpful to have a list of products and sectors which have specific guidance- if only for reference. Alternatively, could a link to a resource such as CTSI Business Companion be provided- given that this list will be dynamic. Similarly, when discussing the term organic in relation to foods, it would be helpful to have a link or refer to the Food Standards Agency/DEFRA website. The guidance could be misleading if it did not provide businesses with holistic information on this topic.

### **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 any business reading this guidance, knows it will also cover business to business contracts also via the Business Protection from Misleading Marketing Regulations. For example, claims have been seen made by an "eco-friendly" commercial waste company who would only deal with other businesses. This business may think they do not have to follow the guidance.

### **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**

---

<sup>1</sup> <https://www.europol.europa.eu/newsroom/news/%E2%82%AC6-million-in-illegal-profit-of-fraudulent-organic-pistachio-sales>  
<https://meatmanagement.com/nottinghamshire-bacon-sellers-sentenced-for-fraud/>  
<https://www.theguardian.com/uk/2009/sep/22/director-jailed-fake-organic-food#:~:text=A%20man%20was%20jailed%20for,directorship%20ban%20for%20the%20fraud>  
<https://www.asa.org.uk/rulings/marlow-foods-ltd-g20-1061634-marlow-foods-ltd.html>

**require special treatment either in the draft guidance or separately? If so, which sectors and why?**

There are four important sectors who may warrant “special treatment” in either this guidance or their own guidance.

1. Food - a lot of consumers look for organic food and increasingly look for other environmental claims such as air miles travelled by the food. Although the Food Standards Agency have guidance on general food labelling, this could be an area that needs further guidance.
2. Green energy companies are an important sector and more frequently in advertising, there are claims regarding how “green” the company practices are, which will be an emerging issue as we work towards the zero carbon targets.
3. Car manufacturers false emission claims had a lot of publicity and probably resonate with a lot of consumers. A car is a substantial purchase for most people financially. Would there need to be sector specific guidance for manufacturers /sellers of vehicles? Especially with impending rules regarding banning of diesel /petrol cars and switching over to electric vehicles.
4. Eco-tourism is also a large sector with emerging issues.

**Principles for compliance**

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

A definition of ‘greenwashing’ would be useful.

**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.**

Although it is mentioned further into the consultation should another principle be “not to deceive even if factually correct”?

Should there be a requirement that any claim is timely? For example, there is no point having an environmental claim if it was based on facts from twenty years ago.

There is some discussion about claims which need to be substantiated and what should be considered “puffery”. I wonder how is that defined in terms of where does puffery stop, and a claim begin? For example, an example from a clothing website which reads:

“Introducing our sustainable clothing collection - It’s part of our commitment to seeking an eco-friendly world, starting with fashion. This range is created using sustainable fabric alternatives, including responsibly sourced organic cotton and Lenzing Ecovero, a planet-friendly alternative to viscose. Discover denim with a reduced environmental impact in jackets and jeans, as well as trend-led midi dresses and tops in all-natural cotton.”

When does “planet friendly” stop being puffery and becomes a claim? I think anyone reading this would think that this a green alternative.

For the use of word organic for non-food items, should there be a standard for contents before it may be called organic? Should it be a comparable claim with food or should organic only be allowed to be used with food products?

For use of terms such as compostable, recyclable etc- should there be standard definitions used and stated in the guidance?

**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.**

The case studies in the draft document are helpful to some extent in giving an idea about what the considerations are. Examples against each point might be helpful rather than one case study at the end of each section. Visual representations would be of great value.

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.**

In paragraph 2.32 (page 8) it states “Businesses can also speak to their Trading Standards Service for advice, for example as part of a primary authority relationship”. Is this sufficiently clear that businesses can ask their local Trading Standards Department irrespective of whether they have a primary authority relationship or not?

Page 14 -first sentence it states: “While the sector-specific rules are limited to food products, this does not mean other products can be labelled as organic where they have a limited number of organic components.” Can this be clarified as it could be mis-read.

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

Overall, the guidance is comprehensive, easy to understand and helpful. Use of the phrase “may mislead” may cause some to ask what that means, and they will require more specific guidance, but it is accepted that this would not be within the scope of this guidance. Ultimately, only the courts can give an interpretation of the law with any authority.

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

Does this guidance need any reference to the Green Taxonomy Advisory Group that group and their input?

What is the advice about the use of business names/trading names which may infer green claims?