

## **Draft guidance on environmental claims on goods and services - helping businesses comply with their consumer protection law obligations:**

### **The Co-operative Group Response**

#### **Introduction**

1. The Co-op is the UK's largest consumer co-operative, with 4.6 million active members and a presence in every postal area in the country. We're a major food retailer with 2,600 stores of our own and a major food wholesaler servicing a further 5,300 stores made up of 1,300 shops owned by independent co-operative societies and 4,000 more independents including NISA and Costcutter shops. We are also the largest funeral provider in the UK and we provide life planning services and sell insurance products. Our businesses are all UK-based and our main support centre is in Manchester.

#### **Key Concerns**

##### *Consistency and ease of interpretation*

1. We believe it would be beneficial for businesses to have one source of guidance, and note the existing DEFRA Green Claims Guidance which is, in our view, more robust than the proposed guidance set out in this Consultation Document. We would request that CMA work with DEFRA to update their guidance, or consider how else they could be aligned.
2. Similarly, any new guidance needs links to the relevant legislation and high-level guidance such as the ISO 14000 series, WRAP's guidance on compostable packaging, WRAP's guidance on Polymer Choices, and the OPRL labelling guidance for recyclability. The WRAP Polymer Choices guidance includes the 5 tests for recyclability. Additional legislation needs to be included (eg Packaging Essential Requirements) along with an explanation of what it means.

##### *B2B Claims*

3. B2B claims need to be covered to protect small businesses who will, in effect, be consumers. For example, a local butcher who uses degradable carrier bags won't necessarily have the time, knowledge, or skills to understand that that is a false green claim. That creates problems for larger businesses because end-customers then believe the approach of this hypothetical local butcher represents a good 'green' approach, and challenge larger businesses on why they don't follow suit.

##### *Brand owners*

4. Paragraph 2.18 assigns responsibility to retailers for claims made by brand owners. While we appreciate the reasoning behind this approach, and understand that the customer has the contract with the retailer, it seems unnecessarily burdensome for the retailer to have responsibility for verify the claims of the brand. It would be preferable for the retailer to be responsible for engaging with the brand on behalf of the consumer if an issue arose, and for working with the brand on making changes relating to correcting any misleading claims, e.g. through stock exit management, or over-stickering stock.

## *Case Studies*

5. We have significant concerns about the drafting of many of the case studies (please see our more detailed answers below), particularly those which are missing obvious misleading green claims while expounding on the claim that is the focus of the case study. This leads to the impression that those misleading claims are acceptable. The way that case studies are dealt with in the DEFRA Green Claims Guidance published in 2011 is far superior – and we believe that CMA should consult further on any case studies ahead of publication with the relevant industry experts.
6. We also believe more case studies are needed to cover some of the thorny issues that keep arising, for example:
  - a. A case study on recyclability claims looking specifically at the difference between laboratory testing and actual local authority and waste reprocessor practice.
  - b. A case study in claims of biodegradability with detail of the information that is required for the claim to be accurate and relevant. This should include the ideal that only compostable materials should be used for packaging, not biodegradable, and that other disposal routes might be OK to claim biodegradable for, e.g. biodegradable mulch film.
  - c. A case study on good and bad claims on compostability.
  - d. A case study on plastic-free claims, with particular focus on biopolymers.
  - e. A case study on non-toxic claims for toiletries and household cleaners.
  - f. A case study on biodegradable claims for toiletries and household cleaners.
  - g. A case study on chemical-free claims.
  - h. A case study on palm oil-free.

## Consultation Document Questions

### Scope

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

Yes, but should include other legislation, including Packaging Essential Requirements which has some restrictions on packaging claims under Part 3, Article 4:

*4.—(1) A responsible person must not place any packaging on the EU market unless it complies with the essential requirements.*

*(2) Reused packaging is not considered to be placed on the market for the purposes of this regulation.*

*(3) Packaging complies with the essential requirements—*

*(a) if it satisfies national standards which implement the relevant harmonised standards;*

*or*

*(b) where there are no relevant harmonised standards, if it satisfies national standards which have been communicated to the Commission pursuant to Article 9(3) of the Directive and which are notified by the Commission to the member States as being deemed to comply with the essential requirements.*

*(4) In paragraph (3), “harmonised standard” means the standard the reference number of which is published in the Official Journal of the European Union in accordance with Article 9(2)(a) of the Directive.”*

*The three standards relative to packaging, EN13430, 13431 and 13432 that can be placed onto the market relate to recycling, waste to energy and composting.*

#### **If not, what else should this guidance include and why?**

It would be useful for the guidance to include links to all the relevant legislation.

#### **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. Misleading B2B claims are very likely to engender misleading B2C claims.

#### **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?**

Yes, particular guidance is needed on claims of recyclability. We regularly see B2B claims about recyclability that create confusion amongst our suppliers that are based on a laboratory test when the real tests are about whether items are collected, capable of being sorted, and

capable of being made into new product, i.e. end of waste. Some of these claims create confusion for customers, and some could actually damage the recycling industry.

WRAP has now added the 5 tests of recyclability to its Polymer Choices document. A reference to this would be valuable.

### **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. Case studies**

We believe the following additional principles would be beneficial:

- Relevant to product.
- Provides benefits additional to normal practice (this needs careful application because some of these claims are helpful to consumers, even if they are standard practice).
- In plain English as far as possible.
- Uses the most appropriate standard test method(s).
- Relevant to the conditions/systems that the consumer is likely to encounter.
- Plainly expresses limitations of claim.

**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.**

Yes – please see notes above.

### **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.**

Please see notes above.

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

No, we don't believe that it is. The DEFRA Green Claims Guidance published in 2011 is much clearer and more approachable, giving examples of good and poor practice side by side, and providing useful links to Other relevant documents.

It would have been much more helpful to have updated the DEFRA guidance from 2011 in the light of new and emerging green claims.

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

Many of the case studies are very poorly written, missing obvious misleading green claims while expounding on the claim that is the focus of the case study. This leads to the impression that those misleading claims are acceptable. The way that case studies are dealt with in the DEFRA Green Claims Guidance published in 2011 is far superior.

Example 1 refers to non-recyclability of the plastic liner in a bamboo bottle while missing the non-recyclability of bamboo.

Example 3 refers to compostability of a plastic cup while missing the fact that few if any of the local authorities that do have food waste collections will accept compostable plastic. The case study does rightly identify that not all local authorities have food waste collections.

Example 4 would have been much better of the good practice had been identified, i.e. is it actually OK to say 5% less plastic if the green leaf isn't used?

Example 6 doesn't make it clear whether the label being used is the OPRL label. That would be an example of good practice.

Example 12 refers to the need for robust substantiation that the product is better than anything else on the market, but fails to identify that all detergents are required to be biodegradable. It further fails to call out the non-toxic claim as being misleading. Any cleaning solutions on the market would be required to carry hazard warning labels, so by definition, anything that doesn't isn't known to be toxic.