

CMA CONSULTATION ON THE DRAFT GUIDANCE FOR ENVIRONMENTAL CLAIMS – CTPA RESPONSE

This document outlines the CTPA response to the consultation, which has been submitted to the CMA on 15 July 2021.

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 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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The CMA draft guidance on environmental claims covers all main principles of consumer protection law, as it applies to environmental claims.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 key 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 Considering example 1 in the draft guidance, it could also suggest how the claim can be re-worded to make it compliant with the principle(s), whilst also promoting careful reflection on alternatives that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 visual diagrams, or decision trees, explaining the principles and 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.

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?

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. Or, on the other side, retailers

rely on the environmental claims provided to them by the brand owner. It is really important for each actor within the supply chain to be aware of and meet its own responsibilities.

The UK Cosmetics Regulation clearly outlines that the Responsible Person (brand owner or manufacturer of the cosmetic product) placing the products on the market is solely responsible for the claims made, including their wording and their claim substantiation. Distributors (such as retailers) do not have any responsibility in checking whether claims made on the products they supply comply with the Common Criteria, or are properly substantiated. Retailers could ask brand owners if the product supplied has environmental claims, and any more details on which criteria or standards are followed. It is important to highlight that the request for this information by the retailer is not to check compliance of such claims, but to understand the position of the product as intended by the brand owner. The retailer can then outline the product position in the shop accordingly, to allow shoppers to make an informed choice. Furthermore, this shall also allow retailers to undertake their due diligence for their advertising of products on their own online channels, as retailers are considered responsible for the claims made on their own marketing channels by the Advertising Standards Authority (ASA).

The UK Cosmetics Regulation also clearly states that the claim substantiation shall refer to the finished product as sold to the consumer; therefore, careful consideration shall be given to information provided by suppliers of raw materials/packaging, as it may not be directly relevant to the finished product. 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.

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?

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.).

4. 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.

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

- 5. 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.**

We believe that the case studies given in the draft guidance are comprehensive. However, as environmental claims are an evolving topic, we suggest keeping the guidance updated with new case studies as they are encountered. Adding case studies will always be useful and can reduce the perceived rationale that, if a specific scenario is not explicitly mentioned, it may be out of scope.

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

- The definition of environmental claim outlined in paragraph 2.5 seems to be too specific only to claims that state that a product/service/brand/business is better for the environment. The definition may be more generic, covering all type of environmental information, which usually delivers the message that a product/service/brand/business has a positive or beneficial outcome for the environment (e.g. like the definition in ISO14016).
- Paragraph 2.18 places the responsibility of environmental claims onto retailers, which is impossible for them to take as they do not own and do not have access to the intellectual property of the product. Furthermore, placing such responsibility onto retailers may go against the sectorial regulatory requirements. Please refer to Question 2 for more details.
- We fully support the example of a ‘recycled’ claim in paragraph 3.7. However, it is important that the guidance is kept as a living document and updated according to the upcoming environmental laws that will be implemented in the UK (and in the EU). Recycling information is very likely going to become a mandatory information, rather than a voluntary claim; the CMA should be taking this into consideration when the time will come.
- It should be clearer in the guidance that the full product lifecycle has to be taken into account for broad and ambiguous claims. However, principle (e) should not prohibit companies to make an environmental claim only on one aspect of the product life cycle, as long as it is true, transparent and is properly substantiated. For example, a company may wish to communicate to the consumer about an improvement to the packaging with a very specific claim.
- Example 1 is indeed a good one, allowing companies to consider that the full product characteristics have 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. On the other side, it is important to also consider that a packaging fully made of bamboo can exist and is likely to be fully recyclable. 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, also in relation to sourcing the ingredient and not just the amount of water used.
- The example about the plastic microbeads claim should be corrected. It is important to highlight that such materials are banned from rinse-off cosmetic products in the UK; therefore, any claim in relation to this topic would not be accepted as the absence of plastic microbeads in rinse-off

cosmetics is already a legal requirement. 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 are in contrast with the regulatory requirements of a specific product type, compromising compliance with vertical legislation. For example, some schemes require the product to be free from certain ingredients, which are allowed and assessed as safe for use in cosmetics by the Cosmetics Regulation; or a product should have a specific biodegradability criterion, which cannot be properly substantiated. 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.
- Cleaning and detergent products are outside of our remit; however, we would like to address a few thoughts about Example 12. Cleaning products have specific biodegradability requirements under the Detergents Regulation; therefore, claiming that such products are broadly biodegradable may not only be misleading to the consumer, but may refer to something that is already required by law. Also, the claim 'non-toxic' is questionable and should be flagged as misleading in the guide.
- 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.

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

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

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

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.