

CMA draft guidance on environmental claims on goods and services consultation

Ecosurety response

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About Ecosurety

Ecosurety is the market leading producer compliance scheme investing in quality recycling. It works on behalf of its members to source quality evidence and ensures they comply with the UK's packaging, e-waste and batteries regulations.

Ecosurety supports efficient and transparent investment in UK recycling projects through improved infrastructure, innovation and consumer awareness campaigns.

As the only B Corp certified compliance scheme in the UK, Ecosurety is committed to deliver change for good for its staff and its community, as well as helping businesses minimise their impact on the environment and drive a tangible increase in UK recycling capacity.

For more information, please visit www.ecosurety.com.

Introduction

Ecosurety supports the rationale for the CMA publishing guidance on environmental claims for businesses. Leadership is urgently required to ensure that businesses understand their responsibility for ensuring that any claim is verifiable and backed up with a solid evidence-base.

Response

3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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

It is important that environmental claims are genuine, as ‘greenwashing’ stops consumers making more truly sustainable choices. The proliferation of disingenuous environmental claims has resulted in consumer mistrust of legitimate initiatives, and we believe development and enforcement of CMA guidance in tandem with consumer protection laws will help tackle this.

The ideal scenario is that consumer protection laws are reviewed in light of environmental claims. This aligns forthcoming guidance with legal obligation. In some cases, the legal framework does not require business to substantiate their claims with evidence, and there is no obligation to provide any specific information for comparability. Although the draft guidance will be undoubtedly helpful, there needs to be statutory requirements to strengthen this.

In terms of packaging waste, this would ideally be done with consideration to the Packaging Essential Requirements Regulations that are currently under review, and with greater focus on reinforcement of third-party verification, standards and trust marks. This is particularly important for bio-based or compostable materials, where producers not adhering to recognised standards may both mislead consumers and undercut those on the market who do, bringing sectoral reputational doubt and uncertainty.

In the case of compostable materials, which are cited in the consultation document as an example of potential false claims, the only standard which is currently able to certify the compostability of a packaging product, its suitability for organic recycling and its compliance with end of waste status as a compost, is the BSEN13432:2000. Similarly, for non-packaging compostable plastics as might be (for example) a product used in cosmetics, the standard is BSEN14995:2006. We would advocate that any EU standards for compostable material (on which work is currently being undertaken) is adopted by the UK, as should regulations and directives that were approved by the UK before the EU exit.

Generic biodegradability of materials that claim biodegradability in soil also have an EU standard adopted by BSI in the UK since 2018, the BS EN17033 which specifically gives the time frame and criteria for the biodegradation of films used in agriculture as soil mulch. Under this standard the use of such films meets the end of waste criteria of fertilisers recognised within the framework of the EU Fertiliser Regulation 2019/1009. Any other claims for such materials as “biodegradable” that do not meet the criteria of this standard should be scrutinised.

BBIA, in cooperation with the On-Pack Recycling Label and Renewable Energy Assurance Limited Schemes, is currently working on establishing a common branding for compostable packaging and a relevant messaging that will indicate to consumers how packaging should be handled at end of life. We believe this should help with creating a verifiable standard for these types of materials.

We also believe the guidance should consider existing general label standards, particularly 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). These standards could be seen as a minimum requirement for businesses in any sector making environmental claims and would be reinforced by auditing procedures.

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, due to supply chain complexities more transparency is needed so businesses trying to adequately identify the environmental impact of their product can gain the right information. This is especially true of, for instance, raw materials. If future producer responsibility and eco-requirements become more prevalent, transparent material reporting will be important. Therefore, environmental claims will have to be properly substantiated.

Furthermore, under the 2018 Resources and Waste Strategy, government expressed the desire to have waste material – packaging and other – to be consistently and increasingly recycled from both households and business premises. It will be important that supply chain transparency is aligned in both scenarios. For this to happen there will need to be a consistent and effective scrutiny process for both, and B2B claims especially are challenged appropriately. In terms of packaging, the Packaging (Essential Requirements) Regulations focus on business and any guidance should reinforce the requirements in the regulations.

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?

Research shows the most proliferate and misleading environmental claims are within the B2C sector. Consumers collectively have the most purchasing power, so a reduction in misleading labelling or advertising incidences could result in a large shift in brand practices.

We agree that it will also be important to make comparability of environmental standards clearer. This may become relevant to new eco-modulation and labelling requirements under, for instance, the forthcoming waste electricals consultation or new packaging requirements. For instance, there should be clear standards when items are described as ‘compostable’, ‘biodegradable’ and ‘recyclable’.

Clear and enforced standards will create fairer competition and ‘level the playing field’ for businesses who are creating environmentally sustainable goods and services. This will ensure genuine and accredited businesses – such as those under the B-Corp scheme – may become more visible.

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?

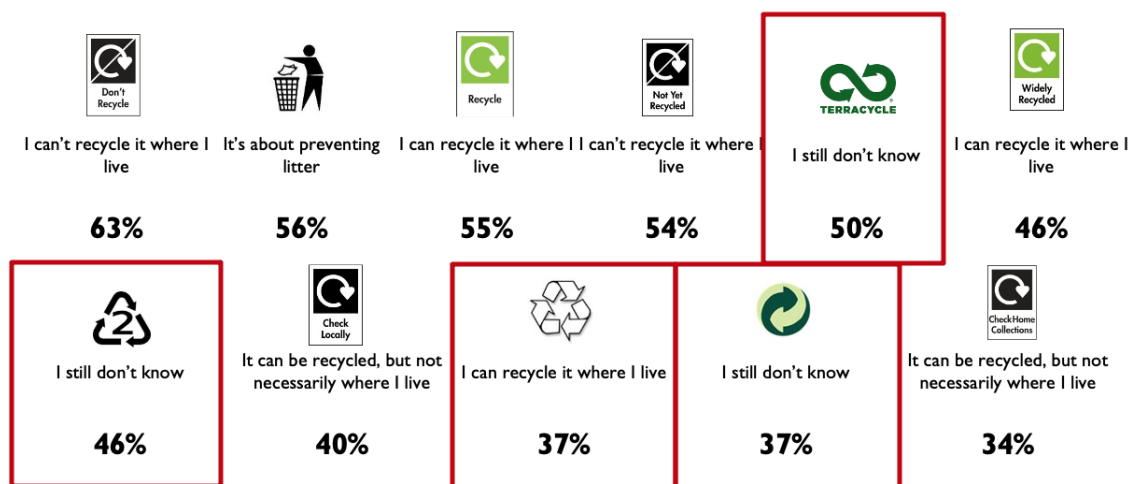
Whilst we have limited expertise in the subject to discuss the technicalities of consumer protection law, the principles outlined appear to be comprehensive. We would emphasize that businesses must ensure that their environmental claims: (a) are truthful and accurate; (b) are clear and unambiguous; (c) 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.

It is vital that claims are substantiated against both the above principles and agreed accreditation. Trust schemes such as the On-pack Recycling Label Scheme (OPRL) ensure that this is adhered to, but businesses should be discouraged from obligations by making “half claims” such as ‘technically recyclable’ and ‘recyclable where facilities exist’, which may clearly mislead consumers.

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.

Although we cannot provide any case studies, we would highlight the need for more clarity surrounding packaging labelling. Market research conducted by OPRL highlighted that public confusion remains high when consideration the proliferation of labels and their meaning (e.g resin codes, the Mobius loop and the Green Dot). Please see below.

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

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.

The draft guidance is clear and easily understood. It would be useful however to provide a list of evidence requirements for certain types of claims, alongside examples of supporting approved labels and accreditations, in reference to ISO14021 and referred to in above questions. Where these come into the remit of other legislation (such the Packaging Essential Requirements Regulations) the above many be used to strengthen legal duties.

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

The format of the guidance is clear and understandable, and broad enough to be applicable to the relevant audiences.

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

A priority should be the encouragement of environmental standards in industries were these are lacking. Where this legislation intersects with other regulatory frameworks, the guidance should highlight this alongside any potential enforcement and penalties that could be issued.