

Re: Consultation response - Misleading Environmental Claims Draft Guidance

For any questions please contact: [✂]

July 2021

The Fairtrade Foundation is a registered charity in England, part of a global Fairtrade system which supports 1.71 million Fairtrade workers in 73 countries around the world. Our vision is to make trade fair and secure a better deal for farmers and workers, contributing to the UK's wider climate crisis response, international development efforts and achievement of the Sustainable Development Goals (SDGs). We welcome this opportunity to contribute to this important consultation.

Questions for consideration

Scope

3.1 Does the draft guidance cover all the important consumer protection law issues relating to the making of environmental claims?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

As a UK charity we and other voluntary independent standards schemes are subject to various regulations including public reporting on the delivery of charitable objectives. Where businesses are “stepping in” to the space of charitable delivery (for example through environmental projects or in-house Foundations) it is appropriate for them to be held to similar standards.

3.2 The draft guidance applies to business-to-consumer relationships, and to a more limited extent, to business-to-business relationships.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?

It is very helpful to clarify guidance on B-C relationships in this area.

For example, we welcome the draft guidance on comparative advertising, which could help businesses that perform highly on environmental criteria differentiate more clearly.

Businesses scrutinise very closely (and increasingly closely) the sustainability claims of traders and suppliers with which they may engage. Our sense is that here there may be less need for the support of the regulator.

3.3 The draft guidance, and UK consumer protection law itself, applies across all sectors of the economy and to all businesses selling goods and services. Are there any sectors which require special treatment either in the draft guidance or separately?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?

No comment on this question

Principles for compliance

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.

The principles proposed look appropriate. We share some thoughts on the possible application of the principles below:

a) claims must be truthful and accurate

We support this principle.

b) claims should be clear and unambiguous

We support this principle.

Sometimes technically accurate language is less well understood by consumers, or will be too lengthy for packaging.

We therefore support the idea of “click through” links to accessible information to allow fuller explanations of commitments and claims, alongside good practice in the headline messages to consumers at point of sale.

c) claims should not omit or hide important information

We support this principle.

Similar to our response to (b), encouraging the use of click through links will be important, as there can be multiple factors involved behind the delivery of environmental commitments.

d) comparisons should be fair and meaningful

We support this principle.

It is important that products which reach higher environmental standards are able to differentiate themselves in the market, allow informed consumer choice, and drive sustainable sourcing. This is undermined when misleading comparisons are allowed to go unchecked.

e) In making the claim you should consider the full life cycle of the product.

We support this principle.

f) claims should be substantiated

We support this principle. We and other responsible voluntary schemes regularly commission and publish independent research to assess impact and report against commitments. Again a “click through” approach will be important to deliver substantiated claims in practice for the consumer.

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.

There may be a need for the CMA to consider its approach to claims made on products with multiple ingredients (please see 3.9).

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

Independent third parties

We welcome clause 3.40 in the draft guidance on the role of independent third parties, and the principle of third party assessment / verification which sits behind it.

As shared in our response to the CMA's call for information, credible, voluntary, and independent standards schemes and certifications, such as Fairtrade, operate against clearly stated public criteria, are required to report on their impact and effectiveness against objectives under charity law, and additionally comply with a strict voluntary code of practice administered by the ISEAL alliance (www.isealalliance.org). These offer a high level of confidence that voluntary standards schemes will not be making claims that cannot be independently scrutinised or verified. In the case of Fairtrade, we would expect the supply chain participants to also uphold our standard schemes but would not want to be impacted by their failure to do so.

Multiple ingredients

It is important for the CMA to consider against this principle how it will approach products with *multiple components/ingredients*, especially where environmental claims are not being made about all ingredients.

For example, a shampoo may be mainly water, but with a significant percentage of other ingredients (for example, plant extracts). In this example, it is important that environmental claims can be made about the plant extracts, to inform consumer choice in favour of responsible sourcing of such ingredients – but they will form a relatively low percentage of the product volume.

In another example, a garment may be made 50:50 from organic cotton and non-organic wool. The use of organic cotton is a significant environmental benefit delivered at additional cost and it would be appropriate for this to be communicated to the consumer, while being clear about the non-organic wool.

Continuous improvement

Sitting behind any environmental claim will be a large amount of detailed work, the dynamics of addressing environmental issues can be complex, and it may take time before environmental benefits accrue on the ground. Sometimes even well designed interventions can face unexpected challenges and set-backs.

It is important that companies which are investing in new approaches to securing environmental benefits are able to communicate them to the customer. It is important to avoid a chilling effect (i.e. cautions business against) on the introduction of innovative products which are well-designed to achieve environmental impact but where results have not yet been established.

Responsible schemes should be working on a continuous improvement basis, seeking to learn and strengthen environmental practice. The CMA's guidance should also encourage a continuous improvement approach to environmental commitments and claims, supporting open sharing of success and challenge.

END OF SUBMISSION