

## UK Green Claims Code

As consumers are increasingly gravitating towards products which are less detrimental to the environment, therefore leading to a rise in “green” products demand,. To respond to this demand, sustainable and environmentally-friendly products are being developed at an unprecedented rate, unfortunately, the occurrence of greenwashing has also gone through the roof recently. Earlier this year, the European Commission, along with several European national consumer authorities, released a report that showed that 42% of brands included in the survey made some sort of misleading green claims<sup>i</sup>. More specifically, in more than half of the cases, the claims were not accompanied by enough information which would allow the consumers to judge its accuracy. Furthermore, in 37% of the cases, claims included vague unverifiable statements which only served to convey that a product had no negative impact on the environment. Finally, in 59% of the cases, the claims were not accompanied by easily accessible supporting evidence. Not only does greenwashing mislead consumers, such counter-productive practices may result in even more damage to the environment, and work against consumers’ wishes.

The Competition and Markets Authority (CMA) is a branch of the UK government which is responsible for making sure that markets are safe and fair for consumers and businesses alike. At the end of September, the CMA released its new Green Claims Code, aiming to provide guidance to businesses that claim that some, or all, of their products have some environmental merit. The Guidance provides six key requirements for businesses to follow so they remain on the right side of the law, and so consumers are protected from falling for misleading or fraudulent claims. According to the guidance, businesses should ensure that:

- 1) **their claims are truthful and accurate:** the claims made must be true and business must live up to any commitments they make
- 2) **that they are clear and unambiguous:** the claims must be clearly explained and should be easily understood by any consumer, there should be no room for confusion
- 3) **that they do not omit or hide any information:** consumers must be given a full-picture view of a product or a claim
- 4) **that they make fair and meaningful comparisons:** if a claim compares products, these products must be truly comparable, either by meeting the same needs or by being intended for the same purpose
- 5) **that the claims are substantiated:** clear and verifiable evidence must be provided for any claim made
- 6) **that they consider the whole lifecycle of a product:** sustainability claims should take into account the entire lifecycle of a product, from its conception to its disposal

The CMA has warned businesses that they have until the start of 2022 to make sure that their green claims abide by the Green Claims Code. From the New Year, the CMA has said that it will carry out a full review of misleading environmental claims, both from businesses online and in-store. In cases where it deems it appropriate, the CMA reserves the right to take action against any business that does not follow the Code<sup>ii</sup>.

The details of the CMA’s enforcement strategy have not been released. “Priority sectors” will be targeted first, but the exact criteria that will be used to identify these priority targets are not yet fully established. Nevertheless, logistic limitations might render enforcement difficult considering the volume of businesses and the quantity of claims to process. Although rare, however, there have been instances where companies have been taken to court for misleading their consumers (and prospecting consumers) with green claims. Earlier this year, a German-based consumer protection association took action against a German fund company. The fund company offers a “sustainable investment” calculator which allows consumers to simulate the “possible environmental benefits” that specific investments would have. The fund company provided very specific figures but discretely disclosed that these were subject to considerable variation. The consumer association, which is now engaged in the legal battle with the fund company, argues that the latter is being “misleading by omission”, as details of the calculations and variations are only in very small print, and that there is not enough evidence to show that these green claims are accurate<sup>iii</sup>. There is no doubt that the new year will see a lot more of these legal battles in the UK, and internationally.

More details on the UK’s new Green Claims Code, along with an explanatory video, are available on the government’s website: [here](#). Additionally, further information on the CMA’s intended process after the New Year can be found [here](#).

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- <sup>i</sup> European Commission. *Screening of websites for 'greenwashing': half of green claims lack evidence*. 2021. Online. [[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_269](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269)]
- <sup>ii</sup> UK government. *Greenwashing: CMA puts businesses on notice*. 2021. Online. [<https://www.gov.uk/government/news/greenwashing-cma-puts-businesses-on-notice>]
- <sup>iii</sup> Linklaters. German fund company sued for "greenwashing". 2021. Online. [<https://sustainablefutures.linklaters.com/post/102h0mk/german-fund-company-sued-for-greenwashing>]