



# Be Careful Before You ‘Greenwash’

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# Agenda

## ◆ Green Claims

- ◆ What are “Green Claims”?
- ◆ What is “Green Washing”?
- ◆ How are Green Claims regulated in the EU?
- ◆ What legislation is in the pipeline?
- ◆ Points to keep in mind when making Green Claims



# Green Claims

- ◆ What is a “Green” or “Environmental” claim?

“any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader **has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time**” (*our emphasis*)

*From Empowering Consumers Initiative*

# Examples of Green Claims in Vinyl Industry

- ◆ “Sustainable”
- ◆ “Sustainably produced”
- ◆ “Fully circular”
- ◆ “Eco-friendly”
- ◆ “Great music that’s great for the Earth”
- ◆ “Contribute to a better environment”
- ◆ “Made of environmentally-friendly materials”
- ◆ “Bio-plastic records”
- ◆ “Ocean vinyl”
- ◆ “Non-toxic”
- ◆ “Recyclable”
- ◆ “CO<sub>2</sub> neutral”
- ◆ “Energy efficient”
- ◆ “Energy savings of 70%”

# What is Greenwashing?

- ◆ “Greenwashing” = the practice “*of suggesting or otherwise creating the impression (in a commercial communication, marketing or advertising) that a good or a service has a **positive or no impact on the environment** or is **less damaging to the environment than competing goods or services**” if it is untrue or cannot be verified.*
- ◆ *Guidance on Unfair Commercial Practices Directive*

**How are Green Claims  
regulated in the EU?**

**The Unfair Commercial  
Practices Directive**



# The UCPD

- ◆ [Unfair Commercial Practices Directive 2005/29/EC](#) ('the UCPD') addresses **B2C** practices
  - ◆ Legal basis to ensure that traders do not present environmental claims in ways that are unfair to *consumers*.
  - ◆ Directives must be implemented into national law by the EU Member States ('MS')
    - ◆ MS may impose more stringent conditions
    - ◆ Some MS also extend its scope to B2B transactions
      - ◆ E.g., Italy, Denmark and the UK (although no longer an EU MS)



# UCPD

- ◇ The UCPD more generally prohibits ‘**unfair**’ and ‘**misleading**’ commercial practices
  - ◇ A commercial practice is **unfair** if it is **contrary to the requirements of professional diligence** and it **materially distorts** or is likely to materially distort the **economic behaviour** of the **average consumer**
  - ◇ A commercial practice is **misleading** if “it contains false information and is therefore **untruthful or in any way**, including overall representation, **deceives or is likely to deceive** the average consumer...” in relation to a wide range of elements
- Must maintain evidence on file supporting claims and be ready to provide it to the competent authorities

# The UCPD

- ◆ The EC [Guidance on UCPD](#) further states that
  - ◇ **vague and general statements** of environmental benefits without appropriate substantiation of the benefit and the aspect of the product it refers to are likely to be **misleading**. Some examples provided:
    - “environmentally friendly” or “eco” or “green”
    - “biodegradable”
    - “reduced CO2 emissions” or “carbon neutral” or “carbon friendly”
- ◆ Need to qualify claims with clear and prominent language that limits the claims to a specific benefit or benefits

## ◆ Legislation in the Pipeline:

1. **Empowering Consumers Initiative**  
*(draft amendment to the UCPD)*



# Empowering Consumers Initiative

- ◆ Proposal for a Directive as regards empowering consumers for the green transition through better protection against unfair practices and better information (“*Empowering Consumers Initiative*”)
- ◆ European Commission (‘EC’) published legislative proposal on 30 March 2022
  - EP and Council have since adopted positions and provisional agreement was reached on the draft text at the last triologue meeting that took place between the EC, the EP and the Council on 19 September 2023
  - Needs to be officially approved by the EP (MEPs to vote in November 2023) and the Council

# Empowering Consumers Initiative

- ◆ The EC proposed that the Empowering Consumers Initiative would amend the UCPD to make the following commercial practices unfair **in all circumstances** and banned:
  - ◆ making an **environmental claim** related to future environmental performance **without clear, objective and verifiable commitments** and targets and without an independent monitoring system
  - ◆ the display of **sustainability labels** which are *not based* on a **certification scheme or not established by public authorities**

# Empowering Consumers Initiative

(cont'd)

- ◇ making **generic environmental claims** without recognized ***excellent environmental performance*** relevant to the claim in accordance with Regulation 66/2010 (EU Ecolabel), officially recognized eco-labelling schemes in MS or other EU laws applicable to the claim
- ◇ Making an environmental claim about an **entire product** when it actually concerns ***only part of the product***
- ◇ Presenting requirements **imposed by law on all products** in the relevant product category on the EU market as a **distinctive feature**

# Empowering Consumers Initiative

- ◆ The EP went further in its reading to notably make the following a misleading (banned) commercial practice:
  - ◆ “claiming, based on carbon offsetting, that a product has a **neutral, reduced, compensated or positive greenhouse gas emissions’ impact on the environment**”
  - ◆ “making an environmental claim related to **future environmental performance solely based on carbon offsetting schemes** or without clear, objective, quantified, science-based and verifiable commitments, without a detailed and realistic implementation plan with reference to budgetary and technological commitments, without feasible targets, and without an independent monitoring system that is based on relevant data;”
- ◆ EP press release dated 19 September 2023 on text for which provisional agreement was reached mentions that “claims based on emissions offsetting schemes that a product has neutral, reduced or positive impact on the environment” will be banned.

## ◆ Legislation in the Pipeline:

### 2. Proposal for a Directive on Green Claims





# Proposal for a Directive on Green Claims

- ◆ Proposal for a Directive on Green Claims published on **22 March 2023**
- ◆ Was open for public consultation on the [EC's website](#) until **21 July 2023**
- ◆ Now before EP and Council
- ◆ Aims to “provide a high level of consumer and environmental protection” – regulates B2C transactions
- ◆ Would establish **minimum** requirements for the **substantiation** and **communication** of *explicit* environmental claims
- ◆ Explicit environmental claim defined as “an environmental claim that is in **textual form** or contained in an **environmental label**”
- ◆ Cross-references proposed definition of environmental claim in Empowering Consumers Initiative

# Proposal for a Green Claims Directive

- ◆ Substantiation of explicit green claims must, *inter alia*,:
- ◆ Specify whether the claim refers to the whole product or only parts of it;
- ◆ Rely on “widely recognized scientific evidence”, use accurate information and take into account international standards;
- ◆ Demonstrate that the environmental impacts, aspects or performance that are subject to the claim are significant from a life-cycle perspective;
- ◆ Where a claim is made on environmental performance, take into account all environmental aspects or environmental impacts which are significant to assessing the environmental performance

# Proposal for a Green Claims Directive

- ◆ Substantiation (cont'd)
- ◆ Document any potential negative side-effects
- ◆ Provide information on whether the product has better environmental performances/impacts than what is common practice for products in the relevant product group
- ◆ Separate any greenhouse gas emissions offsets used from green gas emissions, specify whether offsets relate to emissions reductions or removals
- ◆ Sets requirements for Comparative Green Claims

# Proposal for a Green Claims Directive

- ◆ Environmental labelling schemes to be restricted – intended to address the proliferation of labels and create a more level playing field:
  - ◆ **No new national or regional environmental labelling schemes** may be established by the **public authorities of the MS**
  - ◆ Any new environmental labelling schemes established **by public authorities in *third countries*** awarding environmental claims to be used in the EU must be ***pre-approved by the EC*** and must present **“added value”** compared to EU or regional labels
  - ◆ Any **new environmental labelling schemes** established by **private operators in the EU or in third countries** shall be subject to the **approval of the MS**
  - ◆ Only environmental labels awarded under environmental labelling schemes **established under EU law** may present a **rating or score** of a **product or trader** based on an **aggregated indicator** (scoring system) of environmental impacts of a product or trader

# Proposal for a Green Claims Directive

- ◆ Explicit green claims/labels relied on must be verified by an **accredited conformity assessment body** or “**verifier**”, who must draw up a certificate of conformity **BEFORE the environmental claim is made public or the environmental label is displayed**
  - ◇ This also applies when green claims are updated
- ◆ MS would appoint verifiers
- ◆ While verifier must comply with certain minimum requirements the Proposal does not define a common assessment method for verification
  - ◇ Risk that a claim/label could be deemed acceptable by one verifier and rejected by another

## ◆ Points to Keep in Mind when Making Green Claims



# Climate-Related Claims

- ◆ Climate-related claims include “carbon footprint,” “carbon offset,” “carbon neutral,” “carbon negative,” “net zero,” “climate positive,” “zero emission”
  - ◆ These may be aspirational claims
  - ◆ Qualifiers should be used to clarify meaning of claim
  - ◆ Claims should clearly specify whether the claim involves actions to reduce CO<sub>2</sub> emissions only or all GHGs and, if the claim applies to only portions of a product’s life cycle, which portions, and if offsets are used
- ◆ Marketers must substantiate all claims using a reliable scientific method



# Sustainable Claims

- ◆ “Sustainable” claims convey a variety of benefits, including non-environmental ones such as:
  - ◇ Support for fair working conditions, diversity and inclusion, communities or charities, and the like
  
- ◆ To avoid confusion, should be linked to a specific, properly substantiated attribute that clearly limits the scope of the claim to such attribute
  - ◇ Example: “Our product is sustainable because it is produced with recycled content”



# Aspirational Claims

- ◆ Aspirational claims: Claims that involve actions today that will not result in environmental benefits until the future
- ◆ Advertiser must have a realistic scientific basis to believe that it can achieve aspirational commitments/goals *at the time it claims them*
  - ◇ Claims should be clear and qualified as needed regarding the method, basis and time frame relied upon for aspirational commitments/goals to be realized
  - ◇ If the scientific basis supporting the claim or important facts change, the claim should be modified or further qualified as required by new information

# Recyclable Claims

- ◆ UCPD Guidance notes that its principles are reflected in international standards for self-regulation such as **ISO standards**.
- ◆ CEN standard [EN ISO 14021](#) (Environmental Claims and declarations – Self-declared environmental claims)
- ◆ Defines recyclable as “[a] characteristic of a product, packaging or associated component that can be **diverted from the waste stream** through available processes and programmes and can be collected, processed and returned to use in the form of raw materials or products.”
  - ◆ Need to qualify if collection/drop off facilities not available to a **reasonable proportion** of customers
    - Generalized qualifications such as “recyclable where facilities exist” not adequate

# Recycled Content Claims

- ◆ CEN standard [EN ISO 14021](#) defines “recycled content” as “Proportion, by mass, of recycled material in a product or packaging. Only **pre-consumer and post-consumer materials** shall be considered as recycled content”
- ◆ Percentage of recycled content must be disclosed to avoid deception unless all but an insignificant amount of content was “recycled”
  - ◇ For both recyclable and recycled content claims a symbol may be used
    - **Möbius loop** (accompanied by the percentage value for recycled content claims)

## Recycled Content



# Enforcement

- ◆ Green claims coming more into focus
- ◆ National regulators investigating green claims. E.g., Dutch Authority for Consumers and Markets ('ACM') investigated Decathlon and H&M for making vague claims
  - ◇ E.g. 'ecodesign', 'conscious', 'conscious choice' without immediately explaining what the sustainability benefits were
  - ◇ ACM investigated Ryanair for making **CO2 compensation claims** involving wording such as "Fly greener to...." and using icons such as green leaves in conjunction with this
    - ACM noted that flying a highly polluting way of travelling
    - Claims regarding CO2 compensation must be correct, clear, and complete. It must be clear to consumers how CO2 is offset, how much CO2 is compensated, how this is calculated, and whether it has been independently certified.

# Conclusions

- ◆ Green Claims
  - ◆ must be truthful/not contain false information
  - ◆ be presented in a clear, specific, accurate, and unambiguous manner
  - ◆ be supported by data/evidence
  - ◆ should not distort the economic behavior of the average consumer
  
- ◆ Green claims are in focus in the EU: Need to pay attention to ongoing developments at EU level, and Member States may also have specific requirements!!

Thank You

Any questions?

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