

Environmental Advertising



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According to the UK's Climate Change Committee, consumer behaviour must change in order for the UK to achieve its net zero targets. The good news is that sustainability is a growing factor in consumers purchasing decisions.

The Advertising Standards Authority (ASA) recognises the role that advertising can play in influencing consumer behaviour and helping the UK meet its climate targets while protecting consumers from misleading claims.

The Competition & Markets Authority (CMA) is also waiting in the wings to enforce consumer laws and apply its own Green Claims Code.

How does the ASA regulate environmental claims?

The ASA applies the rules in the CAP and BCAP Codes. As well as a general obligation not to materially mislead consumers, and an obligation not to create advertising and marketing content that is 'socially irresponsible', there are specific rules relating to environmental claims:

- ▶ **The meaning of all terms must be clear to consumers.** There is currently debate over whether consumers understand commonly-used terms such as 'net zero' – see below.
 - ▶ **The basis of the claim must be clear.** Unqualified claims could mislead if they omit significant information necessary to understand the basis of the claim. If there are multiple possible interpretations to a claim, include additional information to make the meaning clear.
 - ▶ **The level of substantiation required will depend on the claim:** Absolute claims require a very high level of substantiation. Comparative claims such as "friendlier" can be justified if the advertised product provides an overall benefit compared to the marketer's previous product or a competitor product, and the basis of the comparison is clear.
- If the ASA considers a claim to be objective and capable of substantiation, they are likely to rule the claim misleading in the absence of adequate substantiation, even if the marketer's intention was to make a *subjective* claim.
- ▶ **General claims about the environmental credentials of products are likely to be interpreted as claims about the product's entire lifecycle, from manufacture to disposal:** such as "good for the planet", "environmentally friendly", "less plastic", "give back to the environment". If a general claim cannot be justified, a more limited claim about specific aspects of a product might be justifiable. For example, a claim that an electric car emits "zero emissions" while driving is likely to be acceptable.
 - ▶ **Claims should not be presented as universally accepted if scientific opinion is divided.**
 - ▶ **Products with no adverse effects on the environment must not falsely claim to be 'improved'.**
 - ▶ Marketers may claim that a product has always been designed in a way that omits an ingredient or process known to harm the environment.
 - ▶ **Claims must not mislead consumers about a product's environmental benefit:** such as by

highlighting an ingredient not usually found in competing products or a benefit that results from a legal obligation to which all competing products are subject.

- ▶ **Marketing must have a sense of responsibility to consumers and to society.** This is a general 'catch all' rule that gives the ASA broad discretion to decide a piece of content has breached the CAP or BCAP Code, even if it hasn't breached another specific rule.

Consequences for non-compliance with the CAP/BCAP Codes?

If the ASA upholds a complaint, not only will that damage your reputation credibility with customers, the materials containing the claim would need to be removed (or amended to ensure compliance).

Examples of relevant, recent ASA rulings

Pepsi Lipton Iced Tea (January 2022)

A poster for Lipton Iced Tea stated "DELICIOUSLY REFRESHING, 100%

RECYCLED*". The asterisk linked to small print at the bottom of the poster that stated, "Bottle made from recycled plastic, excludes cap and label". A recycling logo and the text "I'M 100% RECYCLED PLASTIC" was also visible on the poster.

One complaint was made challenging whether the claim "100% RECYCLED" misleadingly implied that all of the bottle was made from 100% recycled plastic.

ASA's decision: *upheld*

The ASA considered that consumers would understand the claim "100% RECYCLED" alongside images of the



bottle, label, and cap to mean that all components were made entirely from recycled materials. Although there was a disclaimer, it lacked prominence and ultimately contradicted the absolute claim. The ASA therefore held that the claim was misleading.

Innocent Drinks (February 2022)

An ad for Innocent appeared on TV, as a video-on-demand (VOD) ad, and as a paid ad on YouTube.

The ad featured the lyrics “we’re messing up the planet... And filling up our bodies with more beige food than we should...” accompanied by images of pollution and unappetising food. A greener environment then appeared with the lyrics “Let’s get fixing up the planet... Be kinder to our bodies with nature’s tasty food ...” and showed fruit being squeezed into an Innocent bottle. The song concluded, “Reduce. Re-use. Recycle. Because there is no planet B. If we’re looking after nature she’ll be looking after me”. A voice-over said, “Innocent. Little drinks with big dreams for a healthier planet.”

26 people complained (including Plastics Rebellion) that the ad exaggerated the total environmental benefit of Innocent’s products and was misleading.

ASA’s decision: upheld

The ad created a strong association between Innocent and a positive impact on the environment. Although the ad contained aspirational messaging, the overall message for many consumers would be that the purchasing of Innocent products had a positive environmental impact. This was reinforced by Innocent branding and products only being shown when the planet was being “fixed up”.

Innocent failed to provide evidence that demonstrated that buying Innocent products had a net positive environmental impact over their full lifecycles, as the ad implied. Innocent’s bottles also used non-recycled plastic and the ASA emphasised that the extraction and processing of those materials to produce the bottle would have a negative impact on the environment.

HSBC UK Bank plc (October 2022)

HSBC ran two digital outdoor ads in Bristol and London.

One ad in this campaign stated “Climate change doesn’t do borders. Neither do rising sea levels. That’s why HSBC is aiming to provide up to \$1 trillion in financing and investment globally to help our clients transition to net zero”. Another ad stated “Climate change doesn’t do borders. So, in the UK, we’re helping to plant 2 million trees which will lock in 1.25 million tonnes of carbon over their lifetime”.

The ASA received 45 complaints (including from Adfree Cities) challenging that the ads were misleading because they omitted significant information about HSBC’s contribution to carbon emissions.

ASA’s decision: upheld

Consumers would understand from the ads that HSBC was making and intended to make a positive overall environmental contribution - which would include HSBC’s business model supporting the transition to net zero. Consumers would also understand from ad (b) that HSBC was undertaking an environmentally beneficial activity by planting trees. The natural imagery contributed to this overall impression.

Although COP26 had heavy media coverage, this did not mean that

consumers would understand the intricacies of transitioning to net zero, nor would consumers expect HSBC to be simultaneously involved in the financing of businesses which made significant contributions to greenhouse gas emissions.

The ASA acknowledged that the financing of greenhouse gas-emitting industries was required in the transition to net zero. However, HSBC’s Annual Report indicated the extent to which HSBC was currently and would continue to finance investments in business and industries with notable carbon dioxide and greenhouse gas emissions. Although HSBC said that its policies for phasing down its financing were consistent with recommendations from reputable environmental bodies, the ASA ultimately still considered this to be material information likely to affect consumers’ understanding of the ads’ overall message. Therefore, in its absence the ads were misleading.

Key Takeaways:

- ▶ It is very risky to rely on disclaimers to qualify absolute claims such as “100% recycled”.
- ▶ Very broad environmental claims (such as “environmentally friendly” or “Eco”) are likely to be considered misleading.
- ▶ Specific claims are safer, but be careful not to be too ‘selective’ if that gives a misleading impression. The ASA is more likely to be sympathetic to advertisers who balance positive messages with honest admissions about their current impact during their transition.



Updated ASA Guidance on “carbon neutral” and “net zero” claims (February 2023)

Recent ASA research into consumer understanding of claims such as “net zero” and “carbon neutral” showed that consumers didn’t fully understand what terms like these meant. Some of the consumers interviewed as part of the research were surprised and ‘disappointed’ that many of these claims were based on carbon offsetting, more so than carbon reduction. So, in February 2023, the ASA published updated guidance. In summary, it stated that advertisers should:

- ▶ **Avoid using unqualified carbon neutral, net zero or similar claims.** Information that explains the basis for these claims should be included in the ad, as it helps consumers’ understanding.
- ▶ **Include accurate information about whether (and the degree to which) you are actively reducing carbon emissions or are basing claims on offsetting.** This is to ensure consumers do not wrongly assume that products or their manufactures generate no or few emissions.
- ▶ **Claims based on future goals relating to reaching net zero or achieving carbon neutrality must be based on a verifiable strategy to deliver them.**
- ▶ **Claims based on offsetting require objective substantiation.** Marketers should provide information about the offsetting scheme they are using, and be prepared to justify the use of that scheme to the ASA’s satisfaction.
- ▶ **Necessary qualifying information about a claim should be sufficiently close and prominent to the claim so consumers can**

take account of it before making a decision. The less prominent and further away any qualifying information is from the main claim being made, the more likely the claim will mislead consumers.

Next steps: The ASA will carry out monitoring for up to 6 months to assess the impact of this guidance and gather information about how these claims are being substantiated. If the evidence is questionable, it will invite CAP to launch a review to ultimately provide guidance about what evidence is likely to be acceptable to substantiate such claims. In the meantime, the ASA will be taking proactive action immediately against organisations making *unqualified* carbon neutral / net zero claims that do not explain the basis on which they are being achieved as these claims likely in breach of existing rules.

Update on the Competition and Markets Authority (“CMA”) involvement in environmental claims

The CMA has announced that it will continue to take action to accelerate the transition to a net zero economy and promote environmental sustainability. The CMA uses existing consumer protection laws (mainly the Consumer Protection from Unfair Trading Regulations 2008) to bring enforcement action against companies that mislead consumers in relation to environmental claims. The CMA created its own guidance called the **Green Claims Code**.

The CMA and ASA’s remit do overlap, but the CMA’s jurisdiction is wider – it includes point-of-sale, packaging and labelling, in addition to media covered by the ASA’s remit such as websites,

social media, advertising and marketing content, and so on.

Sectors in the CMA’s crosshairs

In 2022, the CMA focused on the fashion sector. The CMA revealed that the types of issues it is particularly concerned about (and is actively investigating) in that sector include:

- ▶ the statements and language used by the businesses, and whether these are too broad and suggest that clothing collections are more environmentally sustainable than they actually are
- ▶ the criteria used by some of these businesses to decide which products to include in these collections and whether this is lower than customers might reasonably expect from their descriptions and overall presentation
- ▶ whether there is a lack of information provided to customers about products included in any eco ranges, such as missing information about what the fabric is made from
- ▶ any statements made about fabric accreditation schemes and standards, which the CMA is concerned could be potentially misleading, such as a lack of clarity as to whether the accreditation applies to particular products or to the firm’s wider practices.

FMCG Sector

In January 2023, the CMA announced that it will review environmental claims in the fast-moving consumer goods sector (“FMCG”). These are essential items used by people on a daily basis and repurchased regularly, such as food and drink, cleaning products, toiletries, and personal care items. The CMA will review whether claims made both online and in-store, including on-pack,



are being made in line with its Green Claims Code.

The CMA has indicated that problematic claims in these sectors include:

- ▶ the use of vague and broad eco-statements such as describing a product or packaging as “sustainable” or “better” for the environment with no evidence,
- ▶ misleading claims about the use and extent of recycled or natural materials in a product,
- ▶ incorrectly branding entire ranges as ‘sustainable’.

The CMA has not reached a view as to whether there have been any breaches of consumer protection law in the FMCG sectors.

If the CMA uncovers evidence suggesting green claims are materially misleading, it will consider taking enforcement action using its formal powers – such as opening an investigation into specific companies. The CMA has much stronger powers than the ASA, being a statutory regulator, it can compel disclosure of confidential information and bring prosecutions under consumer protection laws.

Even while it scrutinises these specific sectors, the CMA has said it will continue its wider review of potentially misleading green claims in other sectors to consider whether to open further investigations.

FCA Sustainability Disclosure and Labelling Regime

The Financial Conduct Authority (FCA) Sustainability Disclosure and Labelling Regime is a package of new rules and guidance aimed to help consumers navigate the market for sustainable investment products. From 31 May 2024, all FCA-authorised firms will be

subject to a new anti-greenwashing rule when making claims about the sustainability of their products and services. This rule is designed to ensure claims are fair, clear, not-misleading and proportionate to the sustainability profile of the product and service.

From 2 December 2024, the FCA’s new naming and marketing rules with accompanying disclosures will also come into force. The new naming and marketing rules are designed to ensure accurate use of sustainability-related terms, whilst the accompanying disclosures aims to ensure that consumers are provided with better, more accessible information to help them understand the key sustainability features of a product. To prepare, firms should assess their products against the naming and marketing requirements and prepare the relevant consumer-facing disclosures, detailed product-level disclosures and other statements where relevant. Investment labels will also become available for products with sustainability objectives from 31 July 2024 although use of these is non-mandatory. Distributors of investment products to UK-based retail investors will also be subject to additional, targeted rules.

For more information please contact:



Geraint Lloyd-Taylor
Partner, Co-head of Advertising & Marketing Law

+44 (0)20 7074 8450
geraint.lloyd-taylor@lewissilkin.com



Brinsley Dresden
Partner, Co-head of Advertising & Marketing Law

+44 (0)20 7074 8069
brinsley.dresden@lewissilkin.com



Sarah Feneck
Trainee Solicitor

+44 (0)77 7834 1013
sarah.feneck@lewissilkin.com

