

Environmental advertising



► Inside

How environmental claims are regulated in the UK
The consequences for non-compliance
The key differences between the ASA and CMA
Useful real-world examples and decisions



According to the UK's Climate Change Committee, consumer behaviour must change if the UK is 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 assets containing the claim would need to be removed (or amended to ensure compliance).

Examples of relevant ASA rulings

Pepsi Lipton Ice Tea (January 2022)

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)

ASA's decision: *upheld*

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)

ASA's decision: *upheld*

Consumers would understand from the ads that HSBC was making and intended to make a positive overall environmental contribution and would not expect HSBC to be simultaneously involved in the financing of businesses which made significant contributions to 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.

Shell (June 2023)

ASA's decision: *upheld in part*

Ads (a), (b) and (c) gave the overall impression that a significant proportion of Shell's business comprised lower-carbon energy products. As the vast majority of the company's business model in 2022 was comprised of large-scale oil and gas investment and extraction, further information about the proportion of Shell's overall business model that comprised lower-carbon energy products was material information that should have been included. Because the ads omitted such information, the ads were misleading.

Petronas (June 2023)

ASA's decision: *upheld*

Consumers would not understand the extent of Petronas' continuing significant contribution to greenhouse gas emissions given the presentation and claims in the ad - that Petronas were already taking steps that had a positive impact on the environment, which went beyond aspirational claims.

Information about the balance of Petronas' current activities, its emissions, and the pathway to reducing them in line with the claims made in the ad was material information likely to affect consumers' understanding of the ad's overall message and should have been made clear. Therefore, the ad omitted material information and was misleading.

Repsol (June 2023)

ASA's decision: *upheld*

Information to contextualise how and when Repsol would achieve net zero emissions, and the role that the development of biofuels would play in that plan, was material to consumers' understanding of the ad's overall message and should have appeared in the ad itself. Therefore, the ad omitted material information and was misleading.

The claim "At Repsol, we are developing biofuels and synthetic fuels to achieve net zero emissions" was also held to be misleading in the absence of providing: 1) any contextual information explaining that the initiative was part of a wider plan and 2) the timeframe of 2050 to achieve the goal.

Anglian Water (June 2023)

ASA's decision: *upheld*

The ASA accepted that Anglian Water were carrying out a number of activities that *could* have a positive impact on the environment. However, Anglian's latest Environmental Performance Assessment indicated that it also carried out activities that caused harm to the environment, which contradicted the overall impression of the ad. This was material information and by omission, the ads were misleading.

Toyota (November 2023)

ASA's decision: *upheld*

The ads presented and condoned the use of vehicles in a manner that disregarded their impact on nature and the environment, particularly in off-road scenarios without a legitimate need for such use. As a result, the ads had not been prepared with a sense of responsibility to society.

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.
- Claims about environmentally beneficial initiatives should include information about the pace and



scale of any goals and be balanced with any negative aspects.

- ▶ If the overall messaging of an ad condones environmentally irresponsible behaviour, it will almost certainly breach the codes.

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 carried out monitoring to assess the impact of this guidance and gather information about how these claims are being substantiated. It has also been 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. It will also engage with the Department for Energy Security and Net Zero’s planned consultation on voluntary carbon and nature markets, which will include consideration of the role of policy and regulation the Government considers is needed to support the high-integrity growth of these markets.

Updated ASA Guidance on misleading environmental claims and social responsibility (June 2023)

In June 2023 the ASA issued an updated version of its guidance to account for more recent decisions. This included claims about initiatives designed to reduce environmental impact, an area brands are increasingly found to be misleading by only talking about their positive environmental impact and omitting to talk about their negative contributions. In summary, the ASA advised that advertisers should:

- ▶ **Avoid claims with a narrow application that are literally true but unrepresentative of the whole business**
- ▶ **Avoid unqualified claims about a specific product which could mislead consumers who are unlikely to distinguish between the product and the overall brand**
- ▶ **Avoid claims about specific environmentally beneficial initiatives which do not include balancing information about the advertiser’s ongoing contribution to environmental harm.**
- ▶ **Avoid aspirational claims that stray into claims of already reducing emissions in the absence of information about “the balance of current activities, current emissions and the pathway to reducing these.”**
- ▶ **Ensure that any offsetting is called out where it is relied upon to make claims of reducing carbon emissions, so consumers do not think that the product or service itself generates little or no emissions. Information about the offsetting scheme being used must also be provided.**

The ASA also indicated that the rule that advertising must be prepared with a sense of social responsibility would equally apply to the environment. Examples of issues that the ASA indicated would be scrutinised in future included:

- ▶ **Trivialising consumer behaviour likely to result in harmful pollution or excessive waste**
- ▶ **Encouraging or condoning non-recycling of recyclable packaging / littering**



- **Encouraging or condoning consumers to disregard the harmful environmental impact of their actions**

Green Disposal Claims (November 2023)

In November 2023, the ASA published independent research into consumer understanding of green disposal claims (e.g. “recyclable”/ “recycling”, “biodegradable”, “compostable”). In light of the findings from this review, the ASA has updated its guidance to advise:

- **Avoid absolute claims (e.g. “recycled bottle”) unless all components of the bottle including cap and label are recycled.**
- **Otherwise, ensure claims such as “recycled” or “recyclable” are clearly qualified to make clear the parts to which the claim refers.**
- **If the disposal process referred to in an ad is likely to differ from the average consumer’s expectations of what that process entails (namely to be thrown away in at-home recycling bins), the claim is likely to require a clear and prominent qualification.**
- **Avoid unqualified claims that a product produces less waste if it based only on part of the product’s lifecycle.**
- **Avoid claims that the disposal process of a product (e.g. “biodegradable”) does not have a negative impact on the environment if that is not the case.**

Next steps: Since January 2024, the ASA has been undertaking additional monitoring and enforcement in relation

to matters where it has an “established position”. Advertisers and agencies were granted a grace period until 31 March 2024 to become compliant with the new guidance. As of 1 April 2024, the ASA is proactively investigating potentially problematic claims.

Update on the Competition and Markets Authority (“CMA”) activities and investigations

The CMA says it will continue to take action to accelerate the transition to a net zero economy and promote environmental sustainability. However, the CMA uses existing consumer protection laws (mainly the Consumer Protection from Unfair Trading Regulations 2008 which are largely restated in the Digital Markets, Competition and Consumers Bill) 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

The CMA has been investigating green claims in the fashion sector, and in July 2022 announced it was investigating three companies: ASOS, Boohoo, and George at Asda.

In March 2024, the CMA finally settled those investigations, without a finding of guilt, by eliciting detailed undertakings from those companies. Further details are available [here](#). The CMA also stated that it will update the

Green Claims Code to include more specific guidance for companies in the fashion sector.

FMCG Sector

In January 2023, the CMA announced a review of 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 but is investigating Unilever, and may also investigate other companies.

Green heating and insulation sector

In October 2023, the CMA announced that it is investigating the green claims and marketing practices of Worcester Bosch in relation to its “hydrogen-blend boilers”. This comes off the back of the CMA’s wider efforts looking into consumer protection in the green heating and insulation sector. Twelve other businesses have also been warned by the CMA that they may be in breach



of consumer protection laws for their marketing practices.

The CMA has indicated that the investigation will look at several marketing practices including:

- Labels or text stating that may give the impression that running on a blend of 20% hydrogen and natural gas is a special feature despite all boilers being legally required to operate this way
- Messaging on the use of hydrogen for home heating – despite this not being available in the UK
- Descriptions of “hydrogen-blend ready” boilers which may falsely suggest that these boilers will reduce a household carbon footprint

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 investigation.

When the new Digital Markets, Competition and Consumers Act is passed, the CMA is expected to have strong powers to impose huge financial penalties directly onto companies it considers to be in breach of consumer laws (including companies making misleading green claims). It will be able to do so without going through the courts. These powers represent a significant shift in approach for the CMA when it comes to environmental claims and applying consumer laws – particularly as the penalties it will be able to impose could be up to 10 per cent of a business’s annual global turnover. Additionally, it will be able to impose hefty penalties for failure to cooperate with its requests/demands for information and breach of undertakings that have been provided to it.

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

sarah.feneck@lewissilkin.com