

Misleading claims?

An investigation into whether environmental claims on consumer products are misleading could result in guidance and legal action, say Dentons' senior associate **Laura Mackett and legal assistant **Miro Laitinen****

Products and services are increasingly marketed as environmentally friendly: carbon neutral, sustainable, clean, green, circular, recyclable, biodegradable, eco-friendly... the list goes on.

This is usually not because of any strict legal requirement, but rather in response to shifts in consumer demand and corporate conscience. People will pay for lower environmental impact and there is money to be made here. But do we really understand all the eco-related descriptions, symbols, logos, accreditations and certifications that influence our purchasing decisions? And do we know if they all stand up to scrutiny?

The Competition and Markets Authority (CMA) is concerned that the surging demand for green products and services could incentivise businesses to make misleading, vague or false claims, so it launched an investigation into this in November. It is examining how such claims are made, whether they are backed by evidence, and their influence on consumer behaviour.

The CMA is also considering whether a failure to provide all relevant information about the sustainability of a product or service could mislead consumers and breach consumer protection law. This includes key existing prohibitions against unfair commercial practices, misleading actions and misleading omissions. The authority intends to publish guidance on this in the summer and take 'appropriate action' where it finds evidence of misleading practices.

If the CMA guidance makes clear that an absence of key environmental information on consumer products and

packaging – such as whether they are made from recyclable and/or recycled materials – constitutes a breach of law, this could have a number of implications for the waste industry.

Forcing companies that use non-recyclable and non-recycled materials to explicitly disclose this to consumers will force reflection on brand values and make it easier for consumers to make more informed choices. Both are likely to drive an increase in demand for recyclable and recycled materials and, in turn, a change in the types and volumes of materials being disposed of. The waste industry will need to be ready to respond to this.

Many companies will want to better understand the journey of their waste streams, assess the full life-cycle of their consumer products, and make changes to ensure their sustainability claims are not vulnerable to legal challenge and/or a PR crisis. Information-sharing obligations in contracts could be tightened in response. Companies may also start moving their business to waste-service providers that offer enhanced transparency and collaboration on evidence-backed environmentally conscious marketing.

What will be the CMA's view on whether commonly used recycling labelling misleads consumers? Take the new on-pack recycling label (OPRL) scheme as an example – a 'recycle' label indicates that at least 75 per cent of UK local authorities collect and recycle that type of packaging, but it does not mean it can definitely be collected and recycled in your local area. A 'don't recycle' label indicates that fewer than 50 per cent of local authorities collect that type of packaging, and/or it is not recycled effectively, but it does not mean that it cannot be recycled. Is that misleading?

The upcoming CMA guidance may necessitate a faster shift towards arguably less misleading recycling labelling on UK consumer products and packaging; however, it is hard to imagine how this could be achieved quickly. With recycling infrastructure varying so much across the country, definitive standardised nationwide rules on what households can put in their general and recycling waste do not work easily. One solution could be requiring QR codes on all packaging to tell consumers how to dispose of the item (or its various parts) in their local area.

The outcome of the CMA investigation on misleading environmental claims, and any resulting guidance and legal action, could prompt progress in some of these challenging areas. It could also offer opportunities for forward-looking waste industry operators. ●

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