

UK Regulator Ramps Up Action Against Greenwashing

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Following the Competition and Markets Authority's ("CMA") publication of the [Green Claims Code](#) (as discussed in our earlier [blog](#)), the UK regulator is now moving forward with its greenwashing [investigation](#), currently focusing on the fashion industry, with additional industries expected to be reviewed in future.

Greenwashing is the use of disingenuous environmental or eco-friendly claims (for example, "natural", "recyclable", "organic") by businesses to market products to consumers. This may be done via "*statements, symbols, emblems, logos, graphics, colours and product brand names*" as noted on the Government's Green Claims Campaign [site](#). Greenwashing has become more prevalent as consumers increasingly prioritise the impact of their environmental footprint and consider the sustainability of their purchases.

In September 2021, the CMA [warned](#) businesses that they would be carrying out a "*full review*" of misleading green claims in 2022.

Subsequently, this January, the CMA announced it had commenced its investigation into the fashion retail sector. The investigation will scrutinise green claims in light of consumer protection law and in particular consider claims concerning the use of recycled materials as well as claimed "sustainable" branded clothing ranges. Action is expected against infringing businesses.

Whilst the fashion industry is the first under the spotlight, the CMA reported that any sector where they found "*significant concerns*" could be prioritised.

Advertising Regulator's Rulings on Green Claims

Notably, the UK's advertising regulator – the Advertising Standards Authority ("ASA") – has similarly been looking into misleading green claims, but in the food and beverage sector. They have recently sanctioned two alternative milk companies: Alpro and Oatly, in accordance with their [Advertising Codes](#).

In October 2021, ASA [ruled](#) that Alpro's slogan, "GOOD FOR THE PLANET", as seen in

advertisements hosted on the side of buses, was misleading and open to interpretation. It was not clear whether the claim meant that the featured products had a net positive environmental effect or if they were better for the planet in comparison to equivalent products.

Following this, last month ASA [considered](#) several of Oatly's adverts and upheld complaints in relation to four out of five environmental claims, including, for example: (i) "Oatly generates 73% less CO2e vs milk" and (ii) "The dairy and meat industries emit more CO2e than all the world's planes, trains, cars, boats etc., combined". Broadly, ASA found that claims were unsubstantiated as they lacked evidence to back up the claim as the consumer would understand it (our emphasis). Further, where a claim noted the support of "experts", however the evidence held supporting this was from one expert, the claim was held to not be sufficiently substantiated.

Both Alpro and Oatly were required to remove the adverts in the offending form and to ensure the basis of their environmental claims were clear. Oatly were additionally required to ensure they had "adequate evidence to substantiate environmental claims".

Enforcement Powers

The CMA's and Trading Standards' enforcement powers in relation to breaches of consumer law are tempered by an obligation to consider referring complaints to the ASA, it being the "established means" for the control of misleading advertising referred to under the Regulations. However, where appropriate (which in practice is not very often), the regulators can intervene by bringing civil or criminal court proceedings or accepting undertakings from the infringing business (see the [CMA's Consumer protection: enforcement guidance](#)). Contrastingly, the CMA's powers in relation to breach of competition law are more extensive and wide-ranging.

However, from July to October 2021, the Government ran a consultation on [Reforming competition and consumer policy](#). It proposes enhancing the CMA's consumer protection powers to bring them in line with their existing competition powers. This would increase the CMA's ability to tackle breaches of consumer law, including itself issuing fines without having to make an application to court. The CMA have [responded](#) endorsing the proposal.

In comparison, ASA's [enforcement powers](#) are more limited than the CMA's powers (current and proposed), and include, for example, requiring adverts to be amended or withdrawn, issuing an "ad alert" advising members to withhold services, and/or asking search sites for removal of paid-for search adverts from their sites. Where further action is required, ASA may refer the advertiser or broadcaster to the CMA or Trading Standards to use their teeth as noted.

Further Thoughts

With consumers' growing eco-conscience, green claims are likely to remain key components of businesses' marketing strategies. However, it is worth bearing in mind that these environmental claims are firmly within the radar of the UK regulators and it is likely that more action will be brought against those not complying with the CMA's Green Claims Code, ASA's Advertising Codes and applicable consumer protection legislation.

With the current movement in the area, and particularly in light of the CMA's potential increased enforcement ability, it is a good time for businesses to audit their green claims and ensure their regulatory compliance, ahead of any potential CMA investigatory focus.

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