

# Emma Sleep Hit Snooze on CMA's Guidance and Got a Rude Awakening—a Warning for Online Traders to Check Their Sales Tactics Are Compliant

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In the lead-up to Black Friday, online traders should take heed of the latest laws governing online pricing practices and displays to avoid being “marked down” by the regulators, who are flexing their muscles in this space.

[Last year](#) we highlighted how the Competition and Markets Authority (CMA), the UK regulator charged with overseeing enforcement of consumer protection laws, is taking a tough stand against so-called “dark patterns” deployed by e-commerce traders to coerce or rush customers into making purchases.

In March 2023, the CMA published [compliance advice for online businesses](#), identifying 16 examples of “do not” conduct that may be considered misleading or unfair under UK consumer law and urging businesses to review and adjust their websites and practices for compliance.

Following an investigation commenced in 2022, the CMA issued a consultation letter to Emma Sleep—one of the United Kingdom's best-selling mattress brands—requesting observance of its guidance. Specifically, the CMA took issue with Emma Sleep's use of:

- Countdown clocks, which it found created a false sense of urgency (one sale was quickly replaced with another, in some cases as soon as 24 hours after); and
- “Was X / now Y” discount price marketing, in circumstances where most of the products had never been sold at the full “was” price point (thus giving a deceptive impression of value of the item and the alleged saving).

However, in the CMA's view, Emma Group failed to take that request seriously enough and failed to implement the necessary steps to address the CMA's concerns. Thus, on 25 October 2024, the CMA issued court proceedings against Emma Group before the High Court to bring its practices to an end. Another company, Simba Sleep, which the CMA also investigated for similar online selling practices, avoided further enforcement by the CMA as they agreed to comply with the formal undertakings and committed to change their misleading practices.

The CMA explained: “Consumers deserve great deals and the action we are taking does not stop retailers offering them – where the promotion is genuine.”

“We are concerned that when sales tactics such as discounts and countdown clocks are used in a misleading way, they can pressure shoppers into making quick purchases and spending more than they would otherwise. That is the heart of our concerns and it’s why we are taking action now.”

This case, along with other recent statements by the CMA, shows that consumer protection will be a priority area for enforcement by the CMA in the coming years. As of April 2025, the CMA will also have in its arsenal strong new *direct* powers under the recently enacted [Digital Markets, Competition and Consumers Act 2024](#) (DMCCA), such as the ability to impose large fines on a business for misleading advertising claims without having to go to court.

### **Do Not Sleepwalk Through Your Promotional Planning!**

#### **Five Top Points From the CMA’s Guidance to Keep in Mind**

Close attention to the CMA’s guidelines linked above is recommended for all marketing teams to avoid a similar fate. The CMA suggest brands ask themselves the following questions when crafting their selling strategies:

1. Am I building my interface around the user’s interests and preferences?
2. Am I distorting consumer behaviour by influencing consumers to purchase unneeded or unsuitable products?
3. Am I creating a false sense of urgency around the sale and discounting of my products or services, leading to users purchasing high-cost products?

Here we distil five top points to ensure compliance with the CMA’s guidance and avoid crossing into unfair or illegal pressure-selling practices:

#### **1. Limit Use of Countdown Timers and Scarcity Messages**

If using countdown timers or messages like “only a few left” or “offer ends soon”, make sure they are accurate and verifiable. Ensure that any urgency claims reflect actual stock or legitimate time limits.

#### **2. Avoid Repeated or Aggressive Upselling Attempts**

The CMA considers that repeated pop-ups, emails or other prompts to buy more after an initial rejection can make customers feel overwhelmed and unfairly pressurise sales.

#### **3. Avoid Hidden Terms**

The guidance warns traders against surprising customers with unexpected stricter terms or higher fees at the end of the purchasing process. Display total costs, delivery fees and return policies transparently before customers commit.

#### **4. Respect a Customer’s Decision to Decline Offers**

If a customer decides not to proceed with a purchase or declines an upsell, traders are expected to

respect their choice without pushing numerous additional messages to force a change of mind. Aggressive re-engagement techniques, such as multiple emails after cart abandonment, could potentially be regarded as coercive.

#### **5. Provide Genuine Testimonials and Customer Reviews**

Traders should not create or promote fake testimonials. Besides violating consumers' trust, fake reviews can lead to serious legal repercussions under the new DMCCA.

The guidance aims to create a transparent, consumer-friendly environment that respects customer autonomy, and traders should ensure their marketing departments are appropriately trained to avoid falling foul of the new laws.

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