

GIVING THE GREEN LIGHT: NEW UK DIRECT ENFORCEMENT POWERS TO TACKLE GREEN CLAIMS

The sustainability credentials of businesses and their products and services are increasingly driving consumer purchasing preferences. This has led the UK Competition and Markets Authority to set its sights on curbing “green claims” – environmental claims made by businesses which could mislead consumers. To date, the CMA's powers to enforce against consumer law breaches have been relatively limited and enforcement action has focussed on voluntary undertakings and emphasising reputational damage caused by green claims. But the UK's new [Digital Markets, Competition and Consumers Act 2024](#) fulfils a long-held ambition of the CMA to have more direct powers – including to more effectively tackle green claims – on a par with its existing competition enforcement powers.

The DMCC received Royal Assent in May 2024 and the government expects to commence the new consumer enforcement regime in April 2025.

In the meantime, how should businesses prepare for the new DMCC environment and increased regulatory risks elsewhere?

A long-standing enforcement priority

As consumer preferences have evolved to include the eco-friendliness of products and services, the CMA has taken steps to tackle the perceived increase in false or misleading environmental claims, which it believes are becoming [entrenched in the UK market](#).

In 2021, following research that suggested that as many as [40% of online “green” or sustainability claims](#) could be misleading, the CMA released its [Green Claims Code](#). This outlines six principles related to the requirements for advertisements to be accurate and clear under existing UK consumer protection regulation.

In July 2022, the CMA launched an investigation into [ASDA, Boohoo and ASOS](#) for presenting certain clothing lines as “green”, despite allegedly providing little or no information proving to consumers why those products were better for the environment, and for a perceived

general lack of rigour in their environmental criteria. In March 2024, all three companies agreed [formal undertakings with the CMA](#) to ensure the accuracy and clarity of future environmental claims, including the provision of criteria by which consumers could judge for themselves the “green” credentials of their products. The CMA also issued [an open letter](#) to the fashion sector to highlight the need for fashion retailers to consider their obligations under consumer protection law regarding environmental claims about products. Following this, in September 2024, the CMA [published guidance](#) to help explain how fashion retail businesses can follow the Green Claims Code when making environmental claims.

Two more companies have since been in the spotlight – [Unilever](#) and [Worcester Bosch](#):

- The CMA's ongoing investigation into Unilever began in December 2023, focussing on its use of perceived unclear statements about recyclability, natural looking imagery (such as green leaves) and statements on environmental friendliness.

- Similarly, in June of this year, the CMA issued Worcester Bosch with a consultation letter, putting the heating business on notice that its adverts suggesting its hydrogen-blend boiler was better for the environment were misleading. Worcester Bosch **settled** in August 2024, accepting undertakings to be more accurate in their advertisements and remove previous green claims.

Meanwhile, the CMA has again reinforced its intentions to protect consumers against misleading green claims in its **most recent annual plan**. This comes at a time when other UK regulators (including the Advertising Standards Agency and the Financial Conduct Authority) are also focussing on greenwashing, going beyond energy and retail businesses. The Advertising Standards Agency has **issued guidance** on greenwashing and **taken action** - including rulings against banks, airlines and water companies, and **works together** with the CMA on consumer protection to ensure a consistent and coordinated approach is taken regarding advertising issues. In addition, the FCA **introduced measures**, in force since May 2024, to improve the trust and transparency of sustainable investment products and minimise greenwashing. This will be the focus of a future briefing.

New CMA powers with more bite

Prior to the DMCC, the CMA had been forced to initiate often lengthy and expensive court proceedings before it could bring enforcement action, or otherwise accept voluntary undertakings from the companies under investigation.

Conversely, under the DMCC the CMA will have the power to directly levy significant fines against actors it perceives to be engaged in greenwashing — up to 10% of group annual turnover. It is therefore unlikely that the timing of the recent settlements by ASDA, Boohoo and ASOS, and Worcester Bosch, is a coincidence. Even the soft power of the threat of direct enforcement action (and correspondingly heavy fines) is likely to bring companies to the negotiating table.

Not just the UK — the rest of world is out to challenge greenwashing too

The EU has been amongst the most **aggressive bodies** looking to identify and prevent greenwashing. In 2023, it introduced **rules** that outlawed the use of generic environmental phrases without proof of “excellent environmental performance”. Meanwhile

Dutch airline KLM was **held in 2024** to have breached Dutch consumer law on the basis that 15 of 19 of its environmental statements were misleading to consumers. Following this, the EU and its consumer authority **contacted 20 airlines** identifying potentially misleading green claims and inviting them to bring their practices in line with EU consumer law within 30 days, or face enforcement action.

Meanwhile, the U.S. has seen a notable rise in greenwashing litigation across a variety of plaintiffs and industries. Class actions have been brought by individual consumers, challenging companies' label statements as false or misleading – including those made by Danone describing its **Evian bottled water as “carbon neutral,”** by Walmart describing its **frozen seafood products as “sustainably sourced,”** and by Nike USA describing clothing products as part of its **“sustainability collection”** (Weil defeated these claims against Nike USA at the trial level, currently on appeal). Non-governmental organizations have also brought suits, challenging as misleading companies' statements about their corporate commitments to sustainability and their sustainability targets and future goals. A recent **decision** from the D.C. Court of Appeals, the highest court in the District of Columbia, allowed Earth Island Institute to proceed to discovery on claims against The Coca-Cola Company challenging whether the company's statements about its efforts to reduce plastic pollution are deceptive based on the company's continued production of products in single-use plastic packaging.

How to navigate a world of increased enforcement

Any business which purports to market products or services as having “green” or sustainability credentials is potentially in the crosshairs and liable to have their claims tested – not just for pure accuracy but also whether such statements are misleading to the average consumer. Companies selling fast-moving consumer goods (“FMCGs”), energy businesses and clothing retailers are likely to be at the forefront of scrutiny, in large part due to perceptions that they are among the biggest culprits for misleading consumers.

In light of heightened regulatory risks in the UK and elsewhere, businesses should consider conducting a full audit of their environmental claims including those of third parties within the supply chain, as well as the following additional steps:

- Ensure that key personnel, including marketing and procurement teams, are educated on the increased regulatory and litigation risk landscape around green claims.
- Create and maintain a clear framework for assessing environment credentials. This should be rigorous and quantifiable, and be publicly available so that consumers can make their own informed decisions. For example, if a retailer offers a range of products which it classifies as being eco-friendly, the consumer must know what criteria these products need to meet in order to qualify.
- Where green or eco-friendly phrases are used (such as “made from recyclable materials”) the product should specify the extent to which the product is recyclable, including a percentage figure.
- Ensure any qualifications to a product’s environmental credentials are clearly visible and in close proximity to the statement or claim, and not relegated to the small print. Their test is not whether something is strictly accurate or not, but whether it is misleading to the consumer — a very low threshold.
- Steer clear of “green” imagery. Whilst it may be tempting to include a leaf or tree on a product, the CMA has shown in previous cases its dislike of this type of marketing on the basis that it allegedly leads to inaccurate misrepresentations of a product’s green credentials.
- Where businesses are relying on a third party within the supply chain, test the veracity of the third party’s sustainability claims – including as part of procurement decisions. It is not enough to rely on the fact that you were told this information by the supplier (and there is an increasingly complex regulatory and litigious landscape governing supply chain due diligence). If you are selling a product, you must feel confident you can stand behind the supplier’s green claims.
- In the context of acquisitions, particularly of retail businesses, be sure to factor the potential for green claims into the due diligence process.

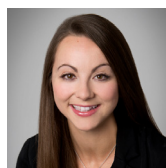
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