

Green claims – recent developments

Prof. Dr. Evelyne Terryn

Consumer Competition Market



Outline

- The problem
- The “empowering the consumer for the green transition” initiative
- The proposal for a green claims directive
- Brief evaluation

Initiatives for sustainable consumption at EU level

- Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products, 30.03.2022, COM(2022) 142 final
- **Proposal for a Directive empowering consumers for the green transition, 30.03.2022, COM(2022) 143 final**
- Proposal for a Directive on common rules promoting the repair of goods, 22.03.2023, COM(2023) 155 final
- **Proposal for a Directive on substantiation and communication of explicit environmental claims (“Green Claims Directive”), 22.03.2023, COM(2023) 156 final**

1. The problem

Greenwashing

- Green marketing is on the rise:
 - Terrachoice (US, 2009): x 10 in 10 years
 - European Commission (2014): 76 % of ads: green claims

- Green labels on the rise

Do you know the specificity of each of these logos?



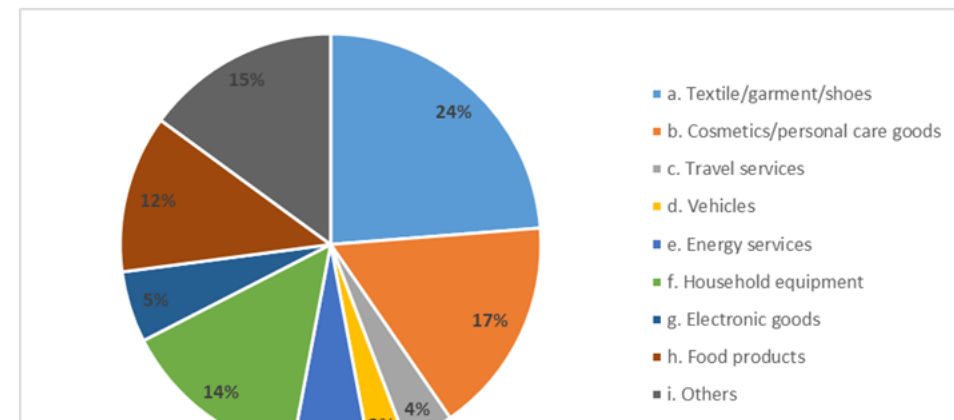
Greenwashing

- **TerraChoice 2009:** <1 % of green claims do not involve greenwashing
- **CPC Sweep 2020:** 57 % insufficient info to verify claim; 37% vague claims suggesting no negative impact

2020 – sweep on misleading sustainability claims

The number of environmental claims both in advertisements and on products is high and possibly increasing, at least in certain EU countries. It is essential that consumers feel safe that they can trust these claims. In line with the strategic priorities of the [Consumer Agenda](#), the Consumer Protection Cooperation (CPC) Network dedicated its annual sweep to investigate and assess green claims in various business sectors.

CPC authorities from 27 countries (24 EU Member States, 2 EEA countries and the United Kingdom) took part in the sweep during November 2020. They assessed 344 sustainability claims, primarily made by EU traders, aimed at consumers mainly on web stores, but also on traders' websites. The sweep looked at various business sectors (textiles/garments/shoes were the most common, followed by cosmetics/personal care goods and household equipment).



Greenwashing

- Labels:

- 457 ecological labels
- 2014 DG Just study: « Consumers appear generally unable to understand the meaning of environmental logos, and make no distinction between non-certified (self-declarations) and third party certified labels. ».



A logged area of a forest managed by the Forest Stewardship Council in Romania. ENVIRONMENTAL INVESTIGATION AGENCY

OPINION

Greenwashed Timber: How Sustainable Forest Certification Has Failed

The Forest Stewardship Council was established to create an international system for certifying sustainable wood. But critics say it has had minimal impact on tropical deforestation and at times has served only to provide a cover for trafficking in illegal timber.

Does it matter?

- 2015 DG Just:
 - 57 % of consumers are receptive for environmental claims when making purchase decisions
 - 61 % of consumers find it hard to recognize products that truly respect the environment
- French 2013 study:
 - Half of the consumers would be willing to spend at least 20 % more for a greener product

Does it matter?

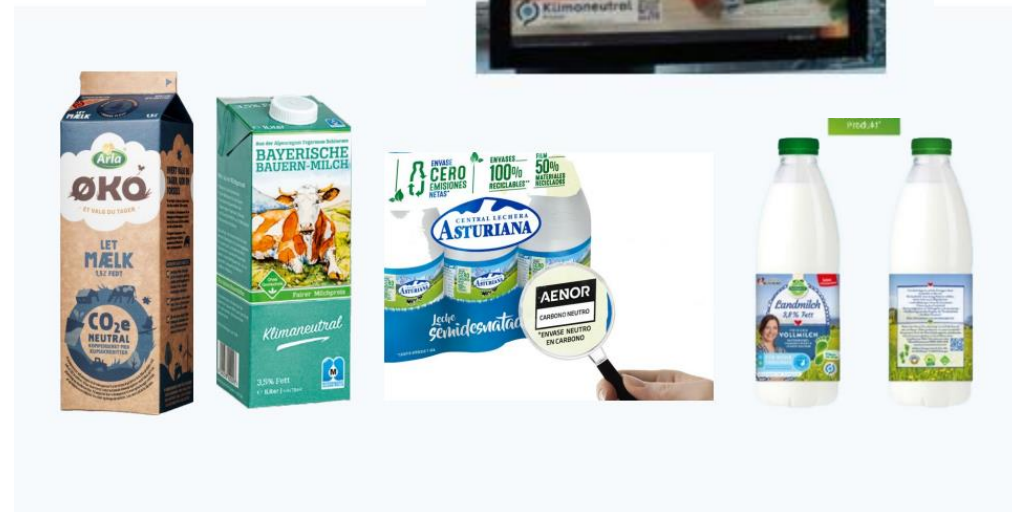
- **Mc Kinsey – NielsenIQ study February 2023**
 - Products with ESG related claims averaged 28 % cumulative growth over the past 5 y – vd 20 % for products with no such claims
 - Less common claims (e.g. ‘carbon zero’) have larger effects
- ASA qualitative research report on environmental claims in advertising 2022

Offsetting is currently the primary source of confusion and misunderstanding. Some people are unaware of the practice completely, and, when explained, many feel it is incompatible with the claims explored. The more engaged felt the terms Carbon Neutral and Net Zero could include offsetting, but most participants assumed otherwise, equating the terms with a direct reduction in emissions.

- German consumer organisation VZBV
 - Strong impact on perception of climate friendliness of a product
 - Only 8 percent of consumers understood climate neutral ≠ no GHG emissions

Carbon neutral claims

- Problem – proliferation
- BEUC – a climate neutral food basket



2. Green claims – the legal framework



Current legal framework

- Hard law
 - Directive 2005/29 - UCPD
 - **General clause**
 - Prohibition of actions contrary to 'professional diligence'
 - That can have an effect on the economic behavior of the average consumer
 - **Misleading actions and misleading omissions**
 - Prohibition of creating misleading
 - That can have an effect on the economic behavior of the average consumer
 - **Blacklist**
- Soft law
 - Commission guidance on the application of the UCPD
 - Multi-stakeholder advice to support the implementation/application of the Unfair Commercial Practices Directive 2005/29/EC
 - National guidance , BE NL ACM Leidraad duurzaamheidsclaims

Future EU legal framework

- Proposal for a Directive empowering consumers for the green transition, 30.03.2022, COM(2022) 143 final
 - Amendments to UCPD
 - Commission proposal
 - Compromise text Council
 - **EP 17 January 2024**
- Proposal for a Directive on substantiation and communication of explicit environmental claims (“Green Claims Directive”), 22.03.2023, COM(2023) 156 final

2.1 Revised UCPD – empowering the consumer for the green transition – EP first reading 17.1



Revised UCPD & sustainability claims

(1) **The list of product characteristics** about which a trader can deceive also to include ‘environmental or social characteristics, circularity aspects like durability and reparability or recyclability - Article 6(1)

(2) **The list of actions** that can mislead to include ‘**making an environmental claim related to future environmental performance**’ without

- clear, objective, publicly available and verifiable commitments
- set out in a detailed and realistic implementation plan with
 - measurable & time bound targets
 - regularly verified by a 3rd party expert

(3) **Four new practices** associated with greenwashing on blacklist (infra)

Revised UCPD & sustainability claims

Broader **list of product characteristics** about which a trader can deceive also to include **environmental or social characteristics, circularity aspects like durability and reparability or recyclability** - Article 6(1)

No revolution:

- BEUC alert '100 % recyclable' / '100 % recycled' claims
- Reclame Code Commissie NL – Colgate Palmolive
- ACM actions ...

Revised UCPD & sustainability claims

‘Claims related to future environmental performance’

=> ‘no GhG emissions by 2050’ / ‘100% circular in 2030’

=> stricter rules – no such claims without

- **clear, objective, publicly available and verifiable commitments**
- set out in a detailed and realistic **implementation plan** with
 - measurable & time bound targets
 - regularly verified by an independent 3rd party expert
 - findings of the third party should be available to consumers

Black listed practices

- Sustainability label which is not based on a certification scheme or not established by public authorities.
- Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.
- Making an environmental claim about the entire product when it concerns only a certain aspect of the product.
- Claiming that a product has a neutral / reduced / positive impact in GhG terms based on offsetting
- Presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader's offer.

Environmental claim: broad!

*“environmental claim” means any message or representation which is **not mandatory** under Union or national law, **in any form**, including text, pictorial, graphic or symbolic representation, such as **labels, brand names, company names or product names**, in the context of a commercial communication, and which states or implies that a product, product category, brand or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time*

Black listed practices

- Sustainability label which is not based on a **certification scheme** or not established by **public authorities**.
 - Broader than environmental label (also related to social characteristics)
 - Not based on a certification scheme that meets these conditions:
 - Third party scheme
 - Publicly available requirements
 - Requirements developed in consultation with experts and stakeholders
 - Sanctions: withdrawal / suspension
 - Compliance must be monitored objectively & by a competent and independent third part

Black listed practices

'eco' 'green' 'good for the planet' 'eco-friendly' 'biodegradable' 'carbon friendly' 'energy efficient'...

- **Generic environmental claim** for which the trader is not able to demonstrate **recognised excellent environmental performance** relevant to the claim
- **Recognised excellent performance:**
 - **Recognised EN ISO 14024 ISO ecolabelling schemes in the MS**
 - **Other EU laws**

Black listed practices

- Making an environmental claim about the **entire product** when it concerns **only a certain aspect** of the product **or a specific activity of the trader's business.**
- Eg 'made from recycled PET' if only the body of the bottle

Black listed practices

- Claiming that a product has a **neutral / reduced / positive impact in GhG terms** based of offsetting
 - Carbon neutral / climate net zero / CO2 neutral certified ...
 - NOT on the basis of offsetting
 - Only based on actual life cycle impact of the product
- Voluntary carbon credits => ok + advertising allowed – but no offsetting

Black listed practices

- Presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader's offer.

2.2 Proposal for a green claims directive



Proposal for a green claims directive in essence

- Substantiation and communication of voluntary environmental claims
- No one standard methodology for substantiating – PEF / OEF method
- Minimum requirements on substantiation and communication of EC – subject **to third party verification prior to use in commercial communications**
- Exclusion of micro enterprises

Proposal for a green claims directive in essence

- Environmental labels
 - Minimum criteria for all environmental labels
 - Halt to new public schemes
 - New private schemes only if added value (MS validation)
 - Only EU labels with rating / score based on aggregated indicator of environmental impacts

Art. 1 - Scope

- **B2C**
- **Explicit (voluntary) environmental claims**
 - Environmental claim – definition in (revised) dir 2005/29
 - Explicit environmental claim: environmental claim that is in textual form or contained in an environmental label
- Environmental label: sustainability label covering only or predominantly environmental aspects of a product / process / trader

Art. 1 - Scope – explicitly excluded

- Environmental Claims / Labellings schemes regulated i.a. in
 - EU Ecolabel Regulation
 - Regulation on organic production 1 labelling
 - Regulation on energy labelling
 - Ecodesign directive
 - Regulation on marketing of construction products
 - EMAS regulation
 - Directive on consumer information on fuel economy and CO2 emissions for new passenger cars
 - Batteries directives
 - Packaging waste directive
 - Future regulation on a certification framework of carbon removals
 - European sustainability reporting standards
 - National / EU or international rules on financial services / instruments
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Art. 3 Requirements on substantiation of environmental claims

- Need for substantiation of explicit environmental claims :
 - Assessment required by traders
 - Minimum criteria for an assessment
 - To be assured by MS

- Not for micro enterprises

Art. 3 Minimum requirements on substantiation of environmental claims

- Reliance on recognised scientific evidence + state of the art knowledge
- Demonstration of significance of impacts, aspects and performance from a life-cycle perspective
- All significant aspects and impacts must be taken into account to assess performance
- Demonstration whether accurate for the whole product / only part / certain stage
- Not equivalent to requirements imposed by law
- Provision of information on whether significantly better environmental performance than common practice
- Identification of significant worsening of another impact by the positive impact
- Transparent reporting on GhG offsetting
- Inclusion of accurate primary and - if not available - secondary information

Art. 4 Requirements for comparative claims

- Use of equivalent information for the assessment
- Use of data generated / sourced in equivalent manner
- Equivalent coverages of stages along the value chain + most significant stages taken into account for comparison
- Equivalent coverage of environmental impacts / aspects / performances + most significant taken into account
- Assumptions used set consistent
- Claims on improvement of impacts:
 - Info on impact improvement on other aspects / impacts
 - Baseline year

Art. 5 Requirements on communication of environmental claims

- Any communication of an environmental claim:
 - Shall only cover aspects that are assessed according to substantiation requirements + are significant for the product or trader
 - Shall – where relevant – include information on how consumer may use product to decrease environmental impact
 - Shall – where related to future environmental performance – include a time bound commitment for improvement inside own operations and value chains

Art. 5 - Requirements on communication of environmental claims

- Aggregated indicator / score = only on EU legislation based rules to determine such score
 - => End of Ecoscore / Planet Score... ?

Art. 5 - Requirements on communication of environmental claims

- Information on substantiation to be made available together with claim either physical / weblink / QR Code and at least:
 - Aspects and impacts covered
 - Relevant standards
 - Underlying studies
 - Explanation how improvements mentioned in claim are achieved
 - Certificate of conformity
 - Climate claims & offsets: percentage offsets & reductions or removals
 - Summary of the assessment
- Not for micro enterprises

Art. 7-8 Environmental labels and labelling schemes

- Complementary to proposal revised UCPD ...
- Ban on labels based on self-certification
 - Already in UCPD ...
- Requirements of substantiation and communication + verification also apply to labels
- No labels (non EU) with aggregate score

Art. 8 - Environmental labelling schemes - requirements

- Definition: certification scheme which certifies that a product, trader, process complies with the requirements of an environmental label
- Requirements:
 - Transparent info about ownership – decision making bodies
 - Transparent info about objectives, requirements and procedures for compliance
 - Proportionate conditions for size and turnover of company to join
 - Requirements of scheme developed by experts + submitted to stakeholders for relevance from a societal perspective
 - Complaint and dispute resolution system
 - Procedures to deal with non compliance + withdrawal + suspension from scheme as sanctions

Art. 8 - Environmental labelling schemes

- From date of transposition (+ 4 years ??)
 - No new national / regional labelling schemes by public authorities
 - **EP Cttee: no ban!**
 - Prior schemes can continue
 - Only new EU ones ...
- From date of transposition
 - New private schemes only possible after prior approval by MS and check for added value in terms of environmental ambition
- Implementing acts to follow

Art. 10 - Ex ante verification of claims & labelling schemes

- Third party verification before use in a commercial communication
 - Certificate of conformity – mutual recognition
 - Certainty that claim will not be challenged in other MS
- Accreditation of third party verifiers by MS
- Verification to be performed before the claims is made public or before the environmental label displayed by the trader
- ‘The certificate of conformity shall not prejudice the assessment of the claim by national authorities or courts on the basis of UCPD’
- => only compliance with this directive

3. Evaluation

- Amended UCPD
 - Far reaching!
- Draft Green claims directive
 - Coordination with UCPD necessary
 - Costs?
 - Enforcement?
 - National schemes?
 - Aggregate scores?

Questions? Comments?

Bert.Keirsbilck@kuleuven.be

Evelyne.Terryn@kuleuven.be

