



Section 5.1 Environmental claims

9 September 2015 – UCPD stakeholder meeting

Unit E2 - Consumer and Marketing Law
DG Justice and Consumers
European Commission

Starting point

- The UCPD does **not provide specific rules** on environmental claims.
- It provides a legal basis to ensure that traders do not present environmental claims (like any other claims) in ways that are unfair to consumers.
- It does not discourage the use of "green claims". On the contrary, for traders investing in the environmental performance of their products, the Directive can be helpful by enabling them to communicate these efforts to consumers and by preventing competitors from presenting unfair environmental claims.

Main principles

➤ **Two main principles stem from the UCPD:**

- I. Based on the Directive's general clauses, notably Articles 6 and 7, **traders must present their green claims in a specific, accurate and unambiguous manner.**
 - II. Based on Article 12 of the Directive, **traders must have scientific evidence to support their claims** and be ready to provide it in an understandable way in the case the claim is challenged.
- Several **national guidance documents** reflect them (e.g. the Danish Guidance on the use of environmental and other claims, the UK Green Claims Guidance, the French Practical Guide to Environmental Claims for traders and consumers) as well as the work of the **Multi-stakeholder Group on Environmental Claims.**

Article 6 and environmental claims (I)

- **Article 6 UCPD:** implies that consumers must be able to trust claims that products are environmentally friendly or less damaging to the environment than other products. Not to be misleading, **environmental claims should be presented in a specific and accurate manner.**

- **Two different situations may occur:**
 - I. An environmental claim "contains false information and is therefore **untruthful**", in relation to one of the items provided in subsections a) to g) of Article 6(1).
 - II. An environmental claim can also be misleading if it "deceives or is likely to deceive the average consumer, **even if the information is factually correct**" in relation to one of the items provided in subsections a) to g) of Article 6(1).

Article 6 and environmental claims (II)

➤ **For example:**

- ❖ **A claim which is not true:** Using the term "biodegradable" when that is not the case (e.g. on a product for which no tests have been carried out)
- ❖ **A claim which is misleading even if the information is factually correct:**

For example: Danish Consumer Ombudsman, 2009: in its "Fly green" campaign, an air carrier claimed that the CO₂ emissions from its propeller planes were less than the emission from a jet plane. Misleading, because in the comparison between different types of transport means, it was not mentioned that trains emit less CO₂ than planes. The wording of the ad, along with its layout, use of colours, etc., contributed to conveying the impression of an environmental advantage. Marketing message found not to be balanced in the description of fuel consumption versus environmental impact.

Article 6 and environmental claims (III)

➤ Key subsections in Article 6 UCPD:

❖ Article 6(1)(a): the **nature** of the product;

❖ Article 6(1)(b): the **main characteristics** of the product;

❖ Article 6(2)(b): non-compliance with **commitments contained in codes of conduct**.

➤ **Vague and general** statements of environmental benefits (Articles Article 6(1)(a) and 6(1)(b) UCPD) could be misleading

➤ **For example:** In 2010, the UK Advertising Standards Authority considered as misleading an ad stating that a product was made from bamboo and "100% eco-friendly". Insufficient evidence that the manufacture of the clothing had no/very little environmental impact and that the clothing was actually made from bamboo.

Article 6 and environmental claims (IV)

- **Highlighting just one of several impacts of the product on the environment** in own claim could be misleading on the basis of Article 6:
 - ❖ The **main environmental impacts** of the product should be considered when making an environmental claim.
 - ❖ The claim should relate to **aspects that are significant** in terms of the product's environmental impact.
 - ❖ Claims should be clear and unambiguous regarding **which aspect of the product or its life cycle** they refer to.
- **For example**: Claiming that a product is low in energy consumption when at the same time it contains more hazardous chemicals than a comparable product of the same category.

Article 7 and environmental claims

- **Article 7(4)(a) UCPD:** the **main characteristics of the product**.
- **Vague and general statements of environmental benefits** could be less likely be misleading if supplemented by prominent **specifications or explanatory statements** related to the environmental impact of the product. By providing such supplementary information, traders could ensure that they do not hide or prove "in an unclear, unintelligible, ambiguous or untimely manner" material information the average consumer needs to take an informed transactional decision.

Article 7 and environmental claims

Omissions of material information could also appear if the scope and boundaries of a claim is not made clear.

For example:

- It is not clear whether the claim covers **the whole product** or only one of its components.
- It is not clear whether the claim specifically addresses the **environmental performance of the product**, or rather the overall environmental performance of the company or certain company activities.

Article 12 and environmental claims

- National competent bodies are, upon request, **entitled to receive documentation** pertaining to the accuracy of factual claims in relation to a commercial practice.
- Clarifies that any claim (including environmental claims) **should be based on evidence which can be verified** by the relevant competent authorities.
- The **burden of proof rests on the trader**: Enforcement authorities shall have the power "to require the trader to furnish evidence as to the accuracy of factual claims in relation to a commercial practice".
- In order to ensure that environmental claims are substantiated, traders should have the evidence necessary to support their claims already **at the time the claims are put into use**.
- Traders should make sure that documentation for claims **is up to date** for as long as the claims remain in use in marketing.



Thank you!

In case of further questions, please
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