



**Baker
McKenzie.**

Supply Chain, Product and ESG Compliance and Liability

27 September - 1 October 2021

Annual Compliance Conference

Agenda

Tuesday 28 September,
3.00 - 4.00 pm BST
4.00 - 5.00 pm CEST
10.00 - 11.00 am EDT

Managing ESG Risks in the
Supply Chain

Wednesday 29 September,
3.00 - 4.00 pm BST
4.00 - 5.00 pm CEST
10.00 - 11.00 am EDT

Supply Chain Due Diligence for
ESG Risks Panel Discussion

Thursday 30 September,
2.00 - 3.00 pm BST
3.00 - 4.00 pm CEST
9.00 - 10.00 am EDT

Sustainability: The Claims You
Make

Thursday 30 September,
4.00 - 5.00 pm BST
5.00 - 6.00 pm CEST
11.00 am - 12.00 noon EDT

Product Liability & Regulation
Risk Management Horizon
Scanning Developments and
Challenges in the EU and UK



Sustainability: The Claims You Make

Thursday 30 September

2.00 - 3.00 pm BST / 3.00 - 4.00 pm CEST / 9.00 - 10.00 am EDT

Speakers



Graham Stuart
Partner,
London (Chair)



Julia Hemmings
Partner,
London



Rachel MacLeod
Senior Associate,
London



Aleesha Fowler
Associate,
New York



Sustainability Claims: Why Does This Matter?

Importance of Sustainability

Global consumption of **materials, metals and minerals** is expected to **double** in the next **forty years**

Half of total GHG emissions and more than **90%** of **biodiversity** loss and **water stress** come from resource extraction and processing

78% of **consumers** found the likely environmental impact of household appliances **very important** or **fairly important** when making their choice

1 in 3 consumers claim to **have stopped purchasing certain brands** due to **sustainability related concerns**

34% of consumers are knowingly **paying extra for greener products and services**

Greenwashing

- The 2021 annual screening sweep of websites to identify breaches of EU consumer law in online markets focused on "greenwashing":
 - In 42% of cases, the claims were **exaggerated, false or deceptive** and **could potentially qualify as unfair commercial practices under EU rules**
 - In 37% of cases, claims **included vague and general statements**, using words such as **"eco-friendly" or "sustainable"** with no substantiation

The background features a complex, abstract pattern of glowing, wavy lines. The lines are primarily in shades of cyan and blue, with some lines exhibiting a vibrant purple or magenta hue. The lines are thick and have a glossy, metallic appearance, reflecting light and creating a sense of depth and movement. They flow across the frame in various directions, some forming loops and others appearing as straight, slightly curved paths. The overall effect is dynamic and futuristic, suggesting a digital or technological theme.

Drivers Behind Sustainability Claims and Key Developments

Different Types of Sustainability Claims

Mandatory

Product regulatory

Energy labelling, ingredients, content, disposal information



Mandatory reporting

Annual energy, carbon and sustainability reports, non-financial reporting, modern slavery

Voluntary

ESG Certifications/ standards

Forestry Management Certification, Rainforest Alliance seal, EU Ecolabel, Fairtrade, Certified Sustainable Seafood



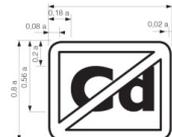
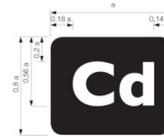
Attributes/ benefits

Carbon neutral, organic, "free from", "100% recycled", recyclable, "bio", "eco"



EU Sustainable Products Initiative

- Implements various aspects of the EU Green Deal and Circular Economy Action Plan
- Revision of existing EU Ecodesign Directive
 - Aims to capture the broadest possible range of products
- Legislative measures may also include:
 - Mandatory sustainability labelling
 - Digital Product Passport (DPP)



https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative_en

Mandatory Reporting and Corporate Disclosures

■ EU Non-Financial Reporting Directive

- To be replaced by Corporate Sustainability Reporting Directive
- Scope expanded to all "large" and/or "listed" companies
- Audit requirement
- Mandatory EU sustainability reporting standards

■ UK Modern Slavery Act – Government Response to Consultation

- Mandatory content requirements
- Publication in central registry
- Single reporting period and deadline (1 April – 31 March)
- Financial penalties for non-compliance

■ UK Streamlined Energy Carbon Reporting (SECR)

- GHG reporting in annual accounts for all "quoted" companies and "large" companies
- **Taskforce on Climate-related Financial Disclosures (TCFD)**
 - UK government Roadmap towards mandatory TCFD-aligned disclosures

Attributes / Benefits e.g., "recyclable"

- ASA Rules: follow substantiation requirements/must not mislead
- CMA guidance on environmental claims on goods and services: published 20 Sept 2021, six key principles
- CMA: "greenwashing" must end by 31 Dec 2021. Full review of misleading green claims in early 2022.
- EU Commission: Initiative on substantiating green claims. Proposal expected Q4



The Green Claims Code has been written for all businesses — from fashion giants and supermarket chains to local shops.

We're concerned that too many businesses are falsely taking credit for being green, while genuinely eco-friendly firms don't get the recognition they deserve.

Any business that fails to comply with the law risks damaging its reputation with customers and could face action from the CMA.

Andrea Coscelli, Head of the CMA, September 2021



Benefits and Risks: When Claims Go Bad

Risks and Consequences

Potential consequences of divergence of claims and reality

Fines
and other
regulatory
sanctions



Civil litigation
for losses
suffered



Reputational
damage



Supply chain
disruption



Adverse
impact
on share
price



Individual
liability



Further
reporting
obligations



Loss of
consumer
trust



US Litigation Trends

Increasing Litigation Brought by Consumers and Investors

- There has been an increase in litigation brought against companies for the ESG-related statements and claims made on their products, in their annual sustainability reports, on their websites, and in their marketing materials
 - "Our products are sourced free of forced labor"
 - "Our company is committed to environmental sustainability"
 - "All of our products are organic"
- These lawsuits are typically brought under state consumer protection laws or federal securities laws
- These lawsuits could increase as companies are faced with more ESG disclosure requirements (e.g., the SEC has made clear of its intent to make ESG a greater focus, and has proposed new ESG disclosure requirements for registered companies)

US Litigation Trends

Increasing Litigation Brought by Consumers and Investors

- While these lawsuits have been largely unsuccessful to date, a growing number of courts are allowing these cases to proceed past the **motion to dismiss phase**, prompting companies to settle and make corrections in their reporting to avoid discovery
 - "Dolphin Safe" cases – challenge to products labelled as "dolphin safe"
 - Lawsuit brought against international banana producer and distributor challenged statements made on company's website about its environmentally safe business practices
 - Lawsuit brought against global oil company challenged statements made in sustainability reports and on investor calls re: company's safety reform efforts and ability to respond to deepwater oil spills
- Lawsuits based on statements and claims that are **aspirational, nuanced and forward looking** tend to be dismissed, while those based statements and claims that are **specific and verifiable** have enjoyed greater and growing success

ASA Cases

Summary of ASA Rulings on 'Green Claims'

Carbon emissions

Ryanair Ltd (2020) - TV, radio, press

- "Europe's Lowest Fares, Lowest Emissions Airline": measurement not clear
- "Europe's low fare, low CO2 emissions airline": no information on metric used or basis for comparison

BMW (2017) - Paid Facebook post

- "Zero emissions" and "helps to give back to the environment"
- Should make clear this relates to the all-electric vehicles only

Fischer Future Heat UK Ltd (2019)

- "Zero Carbon Emissions" was unsubstantiated

Recycling, product life cycle

Carpet Recycling UK Ltd (2014 – Not Upheld)

- The claims made could be substantiated by robust evidence

Colourful Coffins Ltd

- "100% Recycled cardboard"
- Cannot make this claim if the outer layer was not recycled cardboard

Georgia-Pacific GB Ltd

- "Genuinely Green" did not apply to the vehicle's full life cycle

The background features a complex, abstract pattern of glowing, wavy lines. The lines are primarily blue and purple, with some yellow and orange highlights, creating a vibrant, multi-colored effect. The lines flow and curve across the frame, giving a sense of movement and depth. The overall aesthetic is futuristic and digital.

Best Practice

Assess, Manage, Investigate and Defend



Assess: Determine the **mandatory rules** that apply and develop **compliant product labels, markings and documentation**. Evaluate the **voluntary claims** you wish to make about your products. Conduct effective **risk assessment** and **due diligence** of your extended enterprise.



Manage: Conduct **audits** and align corporate policies and procedures with standards that support your claims. Ensure **claims align to evolving standards and expectations**



Investigate: Manage **whistle-blower reports** and undertake **targeted and effective investigations**. If a claim turns false or inaccurate, **understand the root cause**, determine and implement **effective remedial measures and corrective actions**



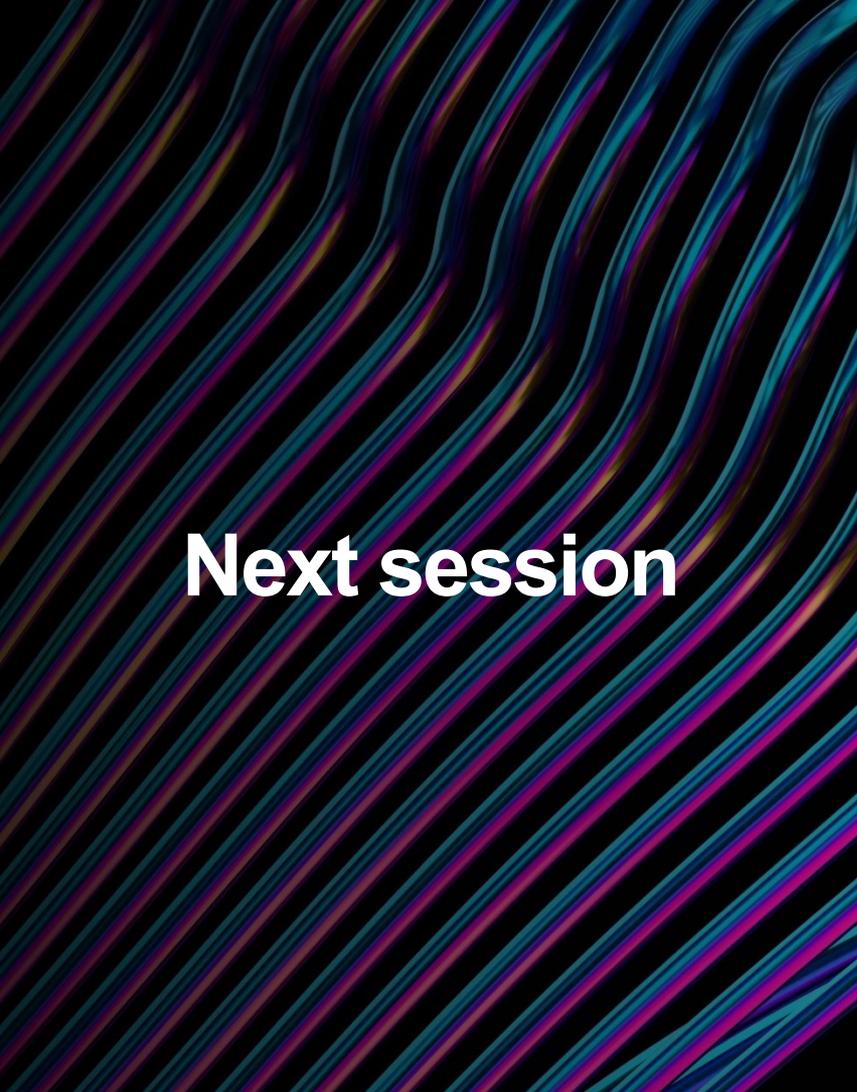
Defend: Assess **validity of challenges to your claims**. Determine the most **effective strategy**, using evidence to address challenges and engaging with regulators to defend your position

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Top Tips

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Questions



Next session

Thursday 30 September,

4.00 - 5.00 pm BST

5.00 - 6.00 pm CEST

11.00 am - 12.00 noon EDT

Product Liability & Regulation

Risk Management Horizon

Scanning Developments and

Challenges in the EU and UK

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