

Product and Supply Chain Compliance: The Claims You Make

You make claims about your products and supply chains in many different ways. Getting these claims right has great benefits for your business and reputation. Equally, every claim faces increased scrutiny from regulators, competitors and stakeholders. In-house legal and compliance teams have a critical role in ensuring that claims are accurate, made in the right way and stay true. You also need an effective response strategy should a claim go wrong.

**Baker
McKenzie.**

International Commercial & Trade



1. WHY MONITOR THE CLAIMS YOU MAKE NOW?

Your claims about your products and supply chains include:

- **product safety, conformity and compliance**
- **product attributes and benefits**
- **ESG: your performance on critical issues such as sustainability, environmental impact, climate change and human rights.**

You make these claims because the law requires you to, because they give you market advantage and/or because your stakeholders expect it. The requirements and expectations placed on you in these respects are getting more and more diverse. They also extend well beyond what you have under your direct control into the operations and practices of your extended enterprise.

The right claim delivers significant benefits to a business. But the repercussions of a false or inaccurate claim can be severe:

- **brand and reputational damage**
- **loss of market share**
- **product withdrawal**
- **investigations and litigation**
- **competitor challenges.**



2. WHERE ARE YOUR CLAIMS?

In-house legal and compliance teams need to be aware of product and supply chain claims made in a wide variety of forms, including:

- **Product labels, markings and documentation:**
 - mandatory claims of product conformity and compliance for the market in which it is sold, e.g. CE, energy label, emissions performance
 - mandatory or voluntary ESG-type claims about product and supply chain performance, e.g. recyclable, Fairtrade, conflict mineral free
 - claims about particular attributes of or benefits conferred by a product, e.g. health and wellness claims, 100% natural
 - product transit permits, e.g. CITES permit, export health certificate, waste transfer certificates.
- **Advertising and promotional materials across multi-media channels:**
 - mandatory or voluntary ESG-type claims, e.g. carbon neutral, organic, free from
 - claims about particular attributes of or benefits conferred by a product, e.g. its speed or efficiency, anti-virus, resistant to ...
- **Corporate reports, filings and communications, such as:**
 - policy statements
 - non-financial reporting disclosures e.g. annual and sustainability reports
 - human rights and modern slavery statements
 - energy audits
 - carbon reporting
 - reporting under extended producer responsibility schemes.

The risk of false or misleading claims exists across all of these different forms.

3. HOW DO YOU MANAGE YOUR CLAIMS?

In-house legal and compliance teams need to ensure that claims have their intended positive outcomes, that they are and remain connected with reality, and that the potentially severe consequences of false or inaccurate claims are avoided. The key steps to success in this regard are:

- **Assess:** before you make a claim, ensure that it is legally compliant, accurate and supportable
- **Manage:** once you have made a claim, ensure that it remains true - that the factors that support it have not changed over time
- **Investigate:** in response to allegations or suspicions that your claim has diverged from reality, you need to be able to initiate an effective investigation and take the necessary corrective measures
- **Defend:** if your claim is challenged by a regulator, competitor, NGO or other stakeholder, you need an effective and robust response strategy.



See next page to find out how we can help.



Get in touch

For more information on how we can help you monitor the claims you make, please contact ►



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How We Can Help

We have expertise across consumer and industrial goods, cosmetics, chemicals, food, technology, pharmaceuticals and medical devices. We can help you to:

Assess

Determine the mandatory product and supply chain rules that apply to your product in any given market and your steps to compliance

Develop compliant product labels, markings and documentation

Evaluate the voluntary claims that you wish to make about your products and supply chains across all media, whether they are supportable or open to challenge

Conduct effective risk assessment and due diligence to ensure that your extended enterprise supports ESG-related and other claims that you wish to make, identifying dependencies and areas of vulnerability

Ensure that your commercial arrangements with third party suppliers give your claims a reliable, secure foundation, whether you are sourcing raw materials, components or finished goods, or services that support your ESG objectives, such as carbon offsetting

Manage

Conduct audits of your supply chain and extended enterprise for product conformity and ESG risk - including group operating companies and overseas subsidiaries

Align corporate policies and procedures with applicable standards that support your claims

Maintain effective communication with and training for employees, management and suppliers, to ensure continued compliance and support for your claims

Prepare and verify corporate reports, filings and communications concerning your supply chain performance

Ensure that your claims stay aligned to evolving standards and expectations

Keep aware of policy and regulatory developments around the corner that may affect your claims and ESG messaging

Investigate

Undertake targeted and effective investigations, leveraging our subject matter and geographic expertise to establish core facts relevant to your claims and response strategy

Manage whistle-blower reports to obtain key information whilst minimising reputational and employment related risks

If a claim turns false or inaccurate, conduct internal or external investigations to understand the root cause

Determine and implement effective remedial measures and corrective actions

Develop and implement a crisis management strategy to mitigate any potential brand and reputational impacts

Defend

Assess the validity of challenges to your claims by regulators, competitors, other stakeholders or NGO's

Determine the most effective strategy for dealing with the challenge

Construct the evidence and arguments that support your claim

Engage with regulators and competitors to defend your position

Present your case if matters proceed to formal hearing

Devise litigation strategies that effectively defend your position, whilst being aware of the broader stakeholder and reputational context

Credentials


PRODUCT LIABILITY
TIER 1
UK Legal 500, 2020


REGULATORY
INVESTIGATIONS &
CORPORATE CRIME
TIER 1
UK Legal 500, 2020


BEST LAW FIRM
IN VOLUNTARY
CARBON MARKET
FOR 10 YEARS
RUNNING
Environmental Finance Market Rankings


CLIMATE CHANGE
BAND 1
Chambers & Partners


TRADE, WTO
ANTI-DUMPING
AND CUSTOMS
TIER 1
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