

**Baker
McKenzie.**

Product and Supply Chain Compliance: The Claims You Make

Tuesday 29 September, 2.00 - 3.00 pm BST



Agenda

Tuesday 29 September
2.00 - 3.00 pm BST

Product and Supply Chain Compliance: The Claims You Make

Chair: Graham Stuart, Partner, London | Jessica Mutton, Senior Associate, London | Aurella Smith-Anthony, Senior Associate, London | Adeel Haque, Associate, London

Wednesday 30 September
2.00 - 3.00 pm BST

The Claims You Make: Case Studies

Chair: Graham Stuart, Partner, London | Francesca Richmond, Partner, London | Aurella Smith-Anthony, Senior Associate, London | Adeel Haque, Associate, London

Thursday 1 October
2.00 - 3.30 pm BST

Trends in Environmental, Human Rights and Sustainability Claims and Supply Chain Due Diligence

Moderator: Jessica Mutton, Senior Associate, London | Moderator: Aurella Smith-Anthony, Senior Associate, London | Professor Robert McCorquodale of Brick Court Chambers | Susanne Stormer, Chief Sustainability Advisor, Vice President at Novo Nordisk | Graham Stuart, Partner, London

Friday 2 October
2.00 - 3.00 pm BST

New Frontiers in Product Liability and Regulation - AI, IoT and other emerging technologies

Chair: Kate Corby, Partner, London | Trevor Callaghan, Director, Milltown Partners | Raj Choudhary, Independent Legal Consultant seconded in-house with a Fortune 500 technology & product development company | Ben Allgrove, Partner, London | Erin Maus, Partner, Chicago | Joanne Redmond, Senior Associate, London

Speakers



Graham Stuart
Partner (Chair), London



Jessica Mutton
Senior Associate, London



Aurella Smith-Anthony
Senior Associate, London



Adeel Haque
Associate, London

01 | Our Series

The background is a dark, deep blue gradient. In the lower right quadrant, there is a curved, glowing trail of teal and light blue particles, resembling a comet's tail or a data stream. The particles are small, bright dots of varying sizes, creating a sense of motion and depth.



our focus

The claims, assertions and declarations that companies make about their products and their supply chains, as they face their customers, regulators and stakeholders



the trend

Companies are being compelled to make more and more such claims, whether by law, for reputational reasons or to respond to stakeholder pressures



our aim

To assess what this trend means for businesses and in-house legal teams and how they deal with it effectively

Our Series – The Claims You Make

3 linked webinars



Day 1 presents an overview of:

- The claims, assertions and declarations that companies make, what is driving those claims and what is their future direction.
- The issues that these claims can create for in-house legal teams, when claims become disconnected to actual reality.
- The measures and tools that legal teams can use to mitigate the risk of negative impacts and increase the likelihood of positive outcomes.



Day 2: a deeper dive into claims in practice, case studies, lessons learned and solutions.



Day 3: a panel discussion, with external guests, talking about trends in environmental, human rights and sustainability claims and supply chain due diligence.

02

The Claims You Make

Forms of Claims

Claims made on and accompanying products

Product markings

Conformity/ Compliance markings

CE marking, UKCA marking, Green Dot, authority/ conformity body ID



Product information

Conformity/ Compliance information

EU/ UK/ FCC Declaration of conformity, authorisation number, authority/ conformity body ID

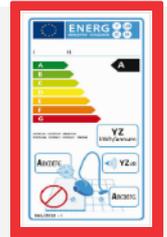
Attributes/ benefits

Health and wellness claims, "100% natural", organic, "free from"



Content and performance

Ingredients, concentrations, fibre content, active substances, animal origin, energy performance



ESG Certifications/ standards

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



Instructions/ safety/ transit

Risks to health or the environment, authorised uses, allergies, safe disposal, batteries removal, expiry date, CITES permit, waste transfer permits



Forms of Claims

Claims made elsewhere



Mandatory reporting/ filings



Corporate filings

Annual energy, carbon and sustainability reports

Statutory disclosures and information requirements

Actions to address modern slavery, HR DD plans, energy reports, reporting under EPR schemes, gender pay gap reporting

Registrations

Chemical substances, cosmetics, medical devices, medicines

Marketing

Product/ service attributes and benefits

Speed or efficiency, "anti-virus", "resistant to ..."

Green claims

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

Social and ethics claims

Fairtrade, local, free-range, cruelty-free, "considerate employer", values-driven, "do no harm"

Type of Claims

Drivers



Mandatory:

- Local, national, regional and international legal requirements
- Industry standards and codes
- Contractual requirements



Voluntary:

- National, international and sector standards and guiding principles
- Codes of practice
- Stakeholder expectations (customer, shareholder, investors, NGOs etc)



Increasing pressure to make ESG Claims

Pressure on Directors

Coronavirus forces investor rethink on social issues

Poor ESG performance increases likelihood of activist investor attention

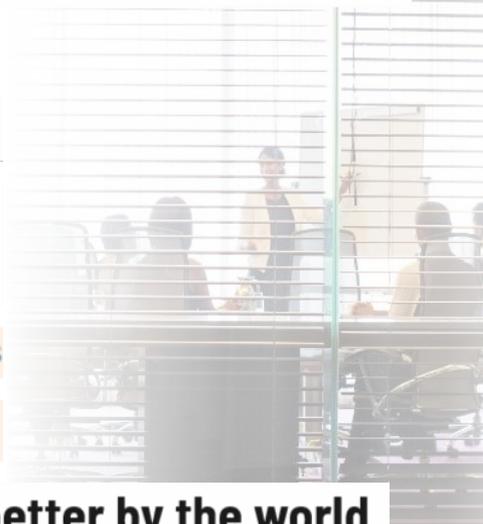
Why Boards Must Step Up To Deter Corporate Scandals

Punish directors who don't make climate disclosures, says hedge fund

Coronavirus is strengthening the hand of ESG investors

Companies under pressure to declare 'social purpose'

More CEOs are under pressure to do better by the world.



'Punish directors who don't make climate disclosures, says hedge fund' *The Guardian* (December 2019)

'Poor ESG performance increases likelihood of activist investor attention' Private Equity Wire (December 2019)

'Why Boards Must Step Up To Deter Corporate Scandals' *Forbes* (March 2017)

'Coronavirus forces investor rethink on social issues' *FT* (April 2020)

'More CEOs are under pressure to do better by the world' *CNN Business* (February 2020)

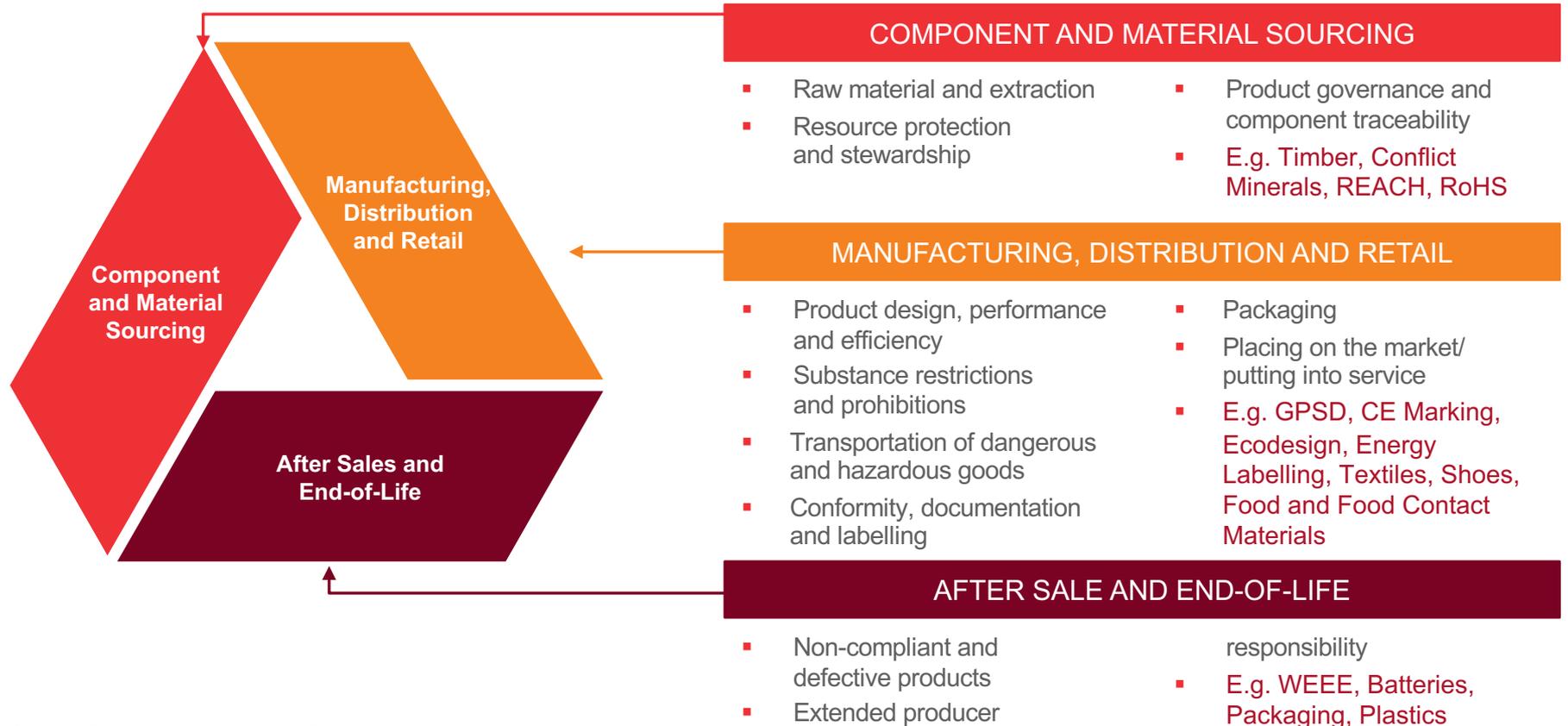
Coronavirus is strengthening the hand of ESG investors' *FT* (May 2020)

Companies under pressure to declare social purpose' *FT* (August 2019)

03

Regulatory Drivers

Current Product Regulations



Current ESG Regulations

Recent examples

2006 s.172 of the UK Companies Act

2010 s.1502 of the US Dodd-Frank Act

2010 California Transparency in Supply Chains Act

2014 EU Non-Financial Reporting Directive

2015 UK Modern Slavery Act

2015 US Trade Facilitation and Trade Enforcement Act

2017 French Duty of Vigilance Law

2017 Conflict Minerals Regulation

2018 Australian Modern Slavery Act

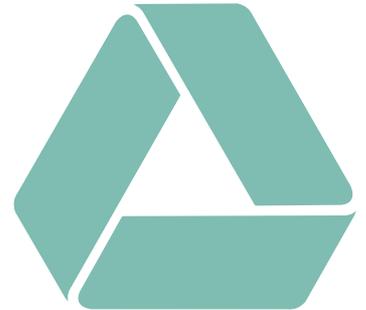
2019 Dutch Child Labour Due Diligence Law

Regulatory Trends and Updates

More Product Sustainability, Information and Labelling Requirements

➤ **Sustainable Products Initiative** - EC initiative to revise the existing **Ecodesign Directive** and propose additional legislative measures as appropriate in order to make products placed on the EU market more durable, reusable, repairable, recyclable, and energy-efficient.

- Addressed in **2020 Circular Economy Action Plan**
- New potential product groups including **textiles, furniture**, and high impact **intermediate products** like steel, cement and chemicals
- New **information requirements** being considered, including: product group specific minimum information requirements; mandatory sustainability labelling; digital product passports
- Information about the public consultation is available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative>



Regulatory Trends and Updates

Better Quality Information

➤ **Green Claims Substantiation** - EC initiative to require companies to **substantiate green** claims they make about the environmental footprint of their products/services by using standard methods for quantifying them.

- Aims to reduce 'greenwashing'
- Addressed in both **European Green Deal** & **2020 Circular Economy Action Plan**
- Public consultation closes 03/12/2020:
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12511-Environmental-claims-based-on-environmental-footprint-methods/public-consultation>



Regulatory Trends and Updates

Sustainable Corporate Governance

-  **Sustainable Corporate Governance** - EC initiative to introduce in 2021 EU legislation and guidance on:
- A mandatory sustainability (e.g. climate change, environmental, human rights) supply chain **due diligence duty** for companies; and
 - **Directors duty** to integrate into the corporate strategy:
 - All stakeholders' interests which are relevant for the long term sustainability of the business or which belong to those affected by it (employees, environment, other stakeholders affected by the business, etc.); and
 - Corporate sustainability risks, impacts and opportunities.
 - Addressed in **European Green Deal**, **2020 Circular Economy Action Plan**, the **Biodiversity** and **Farm to Fork** strategies and the renewed **Strategy on Financing Sustainable Growth**
 - Full public consultation expected Autumn 2020 - <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance>



04

Practices & Impacts

Practices – Managing ESG Responsibilities

Overview of the 2020 EC Study's findings

- Submissions from 631 stakeholders, including 334 business respondents - varying sizes, sectors and markets
- **Only 1/3 businesses** in the EU undertake due diligence on HR and environmental impacts
- **First tier due diligence only** - majority of businesses that undertake due diligence solely assess first tier suppliers
- **Standard mitigation tools:**
 - on boarding due diligence involving basic checks
 - use of contractual clauses and codes of conduct
 - infrequent audits
 - no ongoing checks and review of risk
- **Reactive** - only raised to board level where an issue arises

Benefits

Benefits of making accurate and verifiable claims

- Improves brand value & reputation
- Boosts consumer engagement
- Supports consistency in demand & price
- Builds trust with employees & future workforce
- Increases operational effectiveness & lowers costs
- Reduces supply chain risk
- Builds trust: investors, regulators & other stakeholders
- Creates business opportunities
- Promotes organisational growth

Risks

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



05 | Controls

The background is a dark, deep blue gradient. In the bottom right corner, there is a curved, glowing stream of teal-colored particles, resembling a comet tail or a data visualization. The particles are small, bright dots that become more densely packed as they move towards the bottom right.

Best practice for business

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

Best practice for business

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

Best practice for business

Investigate



- Undertake targeted and effective investigations 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

Best practice for business

Defend



- **Assess the validity of challenges** to your claims by regulators, competitors, other stakeholders or NGOs
- **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

The image features a white speech bubble on the left side, containing the word "Questions" in a bold, dark blue font. The background is a dark blue gradient with a glowing teal particle trail that curves across the bottom right. The overall aesthetic is clean and modern, suggesting a focus on inquiry or technology.

Questions

06

The Claims You Make

Our Series – The Claims You Make

3 linked webinars



Day 1: Product and Supply Chain Compliance: The Claims You Make



Day 2: The Claims You Make: Case Studies

- A deeper dive into claims in practice, case studies, lessons learned and solutions.
- Wednesday 30 September - 2.00 - 3.00 pm BST



Day 3: Trends in Environmental, Human Rights and Sustainability Claims and Supply Chain Due Diligence

- A panel discussion, with external guests talking about their practical experiences of managing the legal downsides of claims and enhancing their upside.
- Thursday 1 October – 2.00 – 3.30 pm BST

Baker McKenzie.

Baker & McKenzie LLP is a member firm of Baker & McKenzie International, a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2020 Baker & McKenzie LLP