



# Green Claims Outlook 2023

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# Introduction

**It's been an eventful year in the consumer protection arena since the CMA published its Green Claims Code (and associated guidance) on 20 September 2021.**

While the **CMA's guidance** did seek to provide some helpful practical examples, it was always going to be difficult to cater for the complex and often nuanced ways that businesses in all sectors communicate information to consumers regarding the sustainability of their products and services. In practice, this often leaves businesses to take their own view on how best to talk to consumers about these issues without breaching the principle-based Green Claims Code.

At the same time, the Advertising Standards Authority (ASA) Council has delivered a significant number of rulings on adverts for everything from electric scooters to artificial lawns, green finance and eco funerals. To an extent this has helped provide additional guidance, although some ASA Rulings have been criticised for holding businesses to an unfairly high standard and it remains to be seen if a court would reach the same decision when applying the statutory test under consumer protection laws.

This report is designed to give you an overview of what's changed, both in terms of policy development and regulatory enforcement. As a firm acting on the CMA's first investigation in this area, we also share our key takeaways from 2022 and advice for what comes next.

- **20 September 2021** – CMA launches Green Claims Code and guidance
- **14 March 2022** – CMA launches Sustainability Taskforce and proposes new legislation to help meet UK government's net zero target
- **22 March 2022** – CMA publishes annual plan for 2022/23 with a focus on developing healthy competitive markets in sustainable products and services
- **20 April 2022** – Department for Business, Energy & Industrial Strategy (BEIS) announces plans to hand CMA tougher consumer law enforcement powers
- **29 July 2022** – CMA launches investigation into green claims in fashion
- **27 September 2022** – CMA launches call for information (CFI) in green heating and insulation sector
- **20 October 2022** – ASA publishes research on consumer understanding of environmental claims



# Key lessons from 2022

While it is still early days in the CMA's enforcement of its Green Claims Code, ASA enforcement has revealed a number of trends:



## Great expectations

The vast majority of green claim cases heard by the ASA Council have resulted in complaints being upheld. It's clear that the ASA has taken on the mantle of holding brands to a very high standard in this area, often reaching interpretations that aren't necessarily natural readings of the advert in question, with a particular inclination to interpret claims as meaning the product has a net positive impact on the environment. This, unsurprisingly, has led to many brands falling short when it comes to substantiation.



## Full life cycle analysis (LCA)

Because the ASA has been quick to interpret green claims as implying that the product has a positive impact (or no impact) on the environment, brands have often been expected to conduct a full LCA to substantiate the claim. This has tripped up many brands as the costs associated with conducting full LCAs are significant and often impracticable. This approach by the ASA has proved controversial, with some brands arguing it could have a chilling effect on investment in more sustainable products.



## B2B complaints

It's important to note that as well as protecting consumers, the Green Claims Code (and associated CAP Code provisions) exist to protect brands that are investing in more sustainable products from competitors that try to cut corners by making misleading green claims. We have seen a trend of businesses taking direct action against competitors, many of which are resolved without requiring ASA intervention.

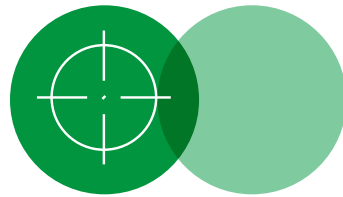
# Looking ahead to 2023

All signs suggest that 2023 will be just as eventful as 2022. Some of the main things for businesses to watch out for are:



## New legislation

Will the government table new legislation specifically dealing with environmental claims (in a B2B and B2C context) as **proposed by the CMA**? 2023 is also expected to see the first reading of the Digital Market, Consumer and Competition Bill implementing **tougher consumer protection enforcement powers** for the CMA.



## CMA enforcement

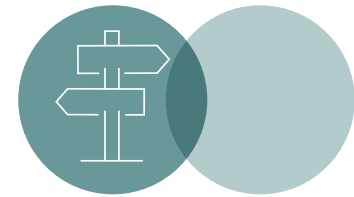
Will the CMA's ongoing investigation into environmental claims in the **fashion sector** lead to more practical guidance for retailers and FMCG brands? The CMA is due to publish a report following its **CFI in the heating and insulation sector** in Spring 2023 – will that lead to further enforcement action, or perhaps a fully-fledged market study?



## Market studies

The CMA's Sustainability Taskforce has committed to carrying out at least one market study in a "net zero-relevant market" in the current financial year, but it remains to be seen which market that will be. Market studies are often used as a platform from which to launch enforcement action and could focus on wider consumer or competition issues in the relevant sector.

It will be interesting to see whether the CMA chooses to focus on what it sees as high emissions markets that are being distorted by misleading environmental claims, or markets that it sees as key to unlocking low carbon growth (as we saw with the electric vehicle charging point market study).



## ASA enforcement/CAP guidance

While the ASA lacks the statutory powers of the CMA, it has the flexibility to act more quickly and has had a fairly prolific year handing down rulings that relate to misleading green claims. These practical examples can provide some helpful guidance, but the lack of judicial scrutiny has left some brands querying whether the same findings would apply if the CMA was conducting a more rigorous investigation under statutory consumer protections laws. This can make life difficult for brands as they have to interpret multiple guidelines from different regulators. It will be interesting to see if the ASA and CMA decide to issue consolidated guidance on some key issues, as they have done in other areas in the past.



Will the legislation giving the CMA tougher enforcement powers finally be implemented as proposed by BEIS?



# Critical timeline

## CMA ramps up focus on green claims

**On 14 March 2022 the CMA published its advice to the government on how the UK's consumer and competition regime could work better to help the government achieve its net zero target by 2050.**

The advice came at the request of the government, with the then Secretary of State for BEIS, Kwasi Kwarteng, writing to the CMA in July 2021 and asking a number of questions that touched upon how consumer and competition policy intersects with environmental and sustainability issues.

As part of its responses, the CMA announced its plans to establish a specialist Sustainability Taskforce within the CMA to oversee enforcement, technical knowhow and stakeholder engagement in this area. Much like the COVID-19 Taskforce, it is expected that the Sustainability Taskforce will guide enforcement action and assist with producing guidance to key sectors where necessary.

Other key points to note from the CMA's announcement are:

- The CMA has committed to launching at least one market study in a “net zero-relevant market” in the 2022/23 financial year. Market studies, which effectively involve the CMA looking “underneath the hood” of a particular market to see if it is working effectively for consumers, can often result in enforcement action if the CMA identifies unlawful practices (which may, in this case, involve widespread use of misleading or exaggerated green claims). It remains to be seen which market the CMA will focus on first, although the CMA has since taken the less invasive step of launching a voluntary CFI in the **green heating and insulation sector**.
- The CMA proposed a number of statutory amendments to the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) in order to clarify and strengthen the underlying legislation. This includes providing a statutory definition for commonly used environmental terms, such as biodegradable, compostable and carbon neutral, which it is hoped would provide some much-needed legal certainty in this area.
- Amongst other things, the CMA is also considering adding misleading and unsubstantiated green claims to the list of banned practices under the CPRs, thereby making it easier to demonstrate a breach of consumer law. Arguably, this is a double-edged sword: on the one hand it would bring the legal risks into stark focus, but on the other hand it may at least clarify the law for businesses that have been struggling to apply the principle based CPRs, which were developed 14 years ago at a time when misleading green claims were not on the regulatory agenda.
- The CMA remains focused on boosting transparency in the supply chain so that businesses are better placed to undertake a full LCA as to how green or sustainable their products really are. To this end the CMA is proposing amendments to the Business Protection from Misleading Advertising Regulations (BPRs) to introduce clearer regulatory offences for businesses that mislead their supply chain partners on ESG matters. This may be seen as a welcome development for businesses that rely on the accuracy and completeness of information provided by their suppliers to support their own consumer messaging on sustainability.

On 22 March 2022, the CMA published its annual plan for 2022/23, which now includes “developing fair competition in sustainable products and services” as one of the CMA’s key priorities. This is also evident through its competition enforcement, for example in relation to its market study (and subsequent CA98 investigation) in the electric vehicle charging sector. We are now starting to see this in respect of consumer protection (see page 6).

## BEIS proposes tougher penalties

On 20 April 2022, BEIS announced plans to give the CMA the power to impose administrative fines of up to 10% of global turnover on businesses that breach consumer protection laws.

Once implemented, this will significantly up the ante as businesses that fail to comply with the Green Claims Code could face “antitrust level” financial penalties without the CMA needing to go to court. It is anticipated that, as with competition law infringements, multi-million pound fines for consumer law breaches are likely to become the norm.

As things stand, the CMA lacks the statutory powers to impose fines, which means it tends to focus on compelling non-compliant businesses to change their behaviour, either via voluntary undertakings or by obtaining an enforcement order in the High Court. Businesses can also be prosecuted by Trading Standards for consumer law breaches, but this is rare given budgetary constraints at local authorities and, in any event, the fines tend to be relatively low (i.e. tens or hundreds of thousands rather than millions of pounds).

The government has confirmed that the draft Digital Markets, Competition and Consumer Bill will be brought forward in the next session of parliament and is likely to receive its first reading in Spring 2023.

## CMA investigation into the fashion sector

On 29 July 2022, the CMA announced that it was investigating three firms – Asda, ASOS and boohoo – in relation to potentially misleading environmental claims.

While the investigation is ongoing, it confirmed it is scrutinising the following areas:

- The criteria used to include products in collections that carry eco claims
- Whether items are correctly included in those collections
- The information provided to consumers regarding products that carry environmental claims
- Statements about fabric accreditation schemes and standards

While the CMA’s focus on sustainability is laudable, there are still questions over the extent to which technical information regarding product composition does in fact affect the purchasing decisions of consumers if the price and quality of the goods are unaffected.



The CMA’s first investigation is likely to put some of these broad legal principles to the test.

A number of retailers have also raised concerns that by setting an artificially high standard – for example in relation to whether a full LCA is required every time an environmental claim is made – the CMA’s intervention could paradoxically make investing in sustainability less appealing.

The CMA’s first investigation is likely to put some of these broad questions and principles to the test and will therefore be of significant interest to all sectors, not just fashion.

## EU investigations in the fashion sector

The CMA’s focus on the fashion sector mirrors the approach taken by consumer regulators in Europe, and is a good example of the fact that, post-Brexit, the CMA continues to work closely with its regulatory counterparts in Europe. For example:

- In the Netherlands, the Dutch Authority for Consumers and Markets (ACM) investigated a number of fashion retailers which in June 2022 led to enforcement action against H&M and Decathlon in relation to their “Conscious Choice” and “Ecodesign” collections. The ACM required the brands to enter into undertakings relating to future environmental claims, and the parties agreed to make donations of €400,000 (H&M) and €500,000 (Decathlon) to different sustainable causes.
- In Spring 2021, the Norwegian Consumer Authority (NCA) opened an investigation into sustainability claims made by outdoor clothing brand Nørrona. The NCA focused in particular on Nørrona’s use of Higg Material Sustainability Index (MSI) data in its marketing material, which the NCA asked Nørrona to remove. The NCA subsequently sent a warning to H&M in relation to its own use of Higg MSI data in its marketing material. On 5 October 2022, the ACM and NCA issued joint guidance to the fashion sector on the use of the Higg MSI tool in marketing claims.

If, as expected, the CMA continues to co-operate with consumer and competition regulators in the EU, UK businesses will need to keep a close eye on developments in this region.

The EU is due to introduce several amendments to the Unfair Commercial Practices Directive (UCPD), which are designed to put the ban on “greenwashing” on a statutory footing. Some of the changes proposed at EU level are similar to those proposed by the CMA, but the EU plans to go further – for example by tackling “planned obsolescence” by making a failure to inform consumers about features introduced to limit durability a “blacklisted” commercial practice.

## Civil litigation risk? TotalEnergies sued by NGOs in France over net zero 2050 claims

In May 2022, several environmental NGOs filed a lawsuit in France against the global oil company TotalEnergies. The civil action argues that (i) Total's claims to be targeting 'net zero' by 2050 and become a major player in the energy transition are false; and (ii) advertising claims promoting the environmental virtues and transition role of gas and biofuels are misleading.

It is understood that the NGOs are seeking an injunction to bring the claims to an end, as well as payment of "moral" damages.

While the claim is brought under the French Consumer Code, the relevant French legislation is similar to the CPRs in the UK, both of which implemented the EU Unfair Commercial Practices Directive. As in France, the CPRs enable private individuals to bring civil damages in some cases where individuals have suffered financial loss (or "alarm or distress") as a result of certain prohibited practices.

It remains to be seen whether UK-based pressure groups (or individuals) will bring similar cases in the UK as part of climate action campaigns.

## Call for information in the green heating and insulation sector

**On 29 September 2022, the CMA launched a CFI looking at consumer protection in the UK green heating and insulation sector, focusing on the domestic sale of heat pumps, home solar, insulation, biomass boilers and hydrogen-ready boilers.**

When it issues its report in Spring 2023, one of the areas the CMA has said it will focus on is how businesses promote their products and services to consumers; for example whether certain products are claimed to be better for the environment or help reduce carbon emissions.

Businesses that specialise in products designed to reduce energy consumption are clearly well-placed to make legitimate green claims. However, as the ASA Council's ruling on Magnatech Technology earlier this year demonstrates, there is always a risk that they may overreach by making claims that can't be substantiated. It will be interesting to see if the CMA identifies further concerns in this area or whether its focus will be limited to issues around installation and contractual relationships.

## ASA research on consumer understanding of environmental claims

**On 20 October 2022, the ASA published the findings of its research on Environmental Claims in Advertising. The research covered a number of areas including electric and hybrid motoring technology and consumers' understanding of terms such as "zero emissions" and "carbon neutral", but also the impact of environmental claims on consumers more generally.**

Perhaps unsurprisingly, the ASA found that the use of overlapping technology by businesses is causing confusion and a lack of clarity for consumers. Furthermore:

- The research found that the use of environmental claims in advertising was seen as potentially useful but in their current form they make little or no contribution to consumers' decision making. Consumers felt that green claims could play a constructive role in the future, enabling and encouraging environmentally responsible decisions.
- While claims had little direct impact on purchases – because most participants were not necessarily aware of or interested in them and they tend to prioritise other factors like cost and brand preference – they could have a favourable impact on brand reputation.

It remains to be seen how the research will impact the ASA's (or the CMA's) enforcement in this area. One of the key legal tests when determining whether a misleading green claim breaches the CPRs is whether or not the claim would be likely to cause a consumer to take a different transactional decision (e.g. to buy a product that they wouldn't have ordinarily purchased). The ASA research suggests environmental claims currently make "little or no contribution" to consumer decision making.

It's clear that trust remains an issue for many consumers, particularly those that are not well informed. One of the other findings of the report was that consumers felt there is a need for green claims to be officially defined and "policed" by an independent body. This is arguably supportive of the CMA's proposals for consumer protection legislation to be updated to provide for clear statutory **definitions of key terminology used in environmental claims.**



# ASA rulings

## Tesco and Sainsbury's "meat free" rulings

### What can we learn from the different outcomes in these cases?

In June 2022, the ASA published two contrasting rulings that related to the environmental benefits of plant-based products and diets.

Tesco	Sainsbury's
<p>Tesco's adverts, which featured on various platforms during October and November 2021, promoted its Plant Chef range and claimed, amongst other things, that "a little swap can make a difference to the planet". The issue was whether the claims were misleading and could be substantiated.</p> <p>The ASA acknowledged the scientific consensus that switching to a plant-based diet is one way in which an individual can reduce their overall environmental impact. However, it stressed that plant-based products, particularly processed products, may still contain ingredients or be produced and transported by methods that have a high carbon footprint. As such, it should not necessarily be assumed that specific plant-based products are guaranteed to have a lower carbon or environmental impact than specific meat-based products.</p> <p>The ASA noted that because the adverts implied that switching to the Plant Chef range would positively affect the environment, it would have expected to see evidence of this based on the full life cycle of the Plant Chef burger in comparison with a meat burger. In the absence of any such evidence, the ASA concluded that the claims had not been substantiated and were likely to mislead consumers.</p>	<p>The Sainsbury's adverts which, again, featured on radio and TV during October 2021, encouraged people to try their "half-est" by mixing half chickpeas, lentils and beans with half chicken, mince and beef as a way to help the planet.</p> <p>The complainants, who believed the chickpeas, lentils and beans featured were grown and imported from abroad, challenged whether the claims were misleading and could be substantiated.</p> <p>The ASA Council found that the adverts were not misleading and would be understood to mean that reducing meat consumption is better for the environment, based on the environmental impact associated with the meat industry compared with the production of plant proteins.</p> <p>It acknowledged that while the chickpeas, beans and lentils would likely have been imported into the UK, the adverts were not comparing domestically produced meat with imported legumes. Instead, they were making a general claim regarding the overall accepted premise that a plant-based diet is, in general terms, better for the environment.</p> <p>Additionally, and crucially in this case, the adverts did not promote any particular product range and only showed the ingredients, which could be purchased at many retailers.</p>
<p><b>Conclusion</b></p> <p>The first takeaway is how fine the margins can be when it comes to making environmental claims. Both brands made ostensibly similar claims that related to "helping" or "making a difference" to the planet by switching from meat to plant-based products. It does not seem the ASA disagreed with this concept in principle.</p> <p>However, in Tesco's case the ASA Council found that the claim was product-specific and implied that switching to Plant Chef would have a net positive impact on the environment.</p>	<p>While some may query whether this is what the average consumer would have thought, the ASA's position meant that Tesco had to meet a much higher standard of substantiation – i.e. that the Plant Chef burger would have an overall positive impact on the environment (having regard to its full life cycle) when compared to meat burgers. Given the costs associated with product-specific LCA, it is perhaps unsurprising that Tesco was unable to meet this evidential standard.</p>

# Persil – “kinder to our planet”

## What was the green claim?

Unilever’s TV advert for Persil washing liquid claimed: “Tough on stains, kinder to our planet. Dirt is good.” There were also a number of visual images, such as children collecting plastic litter from rivers and ocean waves on a beach, followed by muddy hands and a boy in a boat wiping his hands on his t-shirt. The voiceover stated: “For real change, we all need to roll up our sleeves and get dirty.”

A viewer complained that Persil’s claims of being “kinder” to the planet were misleading and could not be substantiated.

In response, Unilever argued that there were two features of its Persil liquid detergents that made them kinder for the environment. First, they were now proven to remove tough stains in a cold and quick wash (and Unilever argued it was well-established that washing at lower temperatures and in quicker cycles was less harmful for the environment). Second, its plastic bottles now contained at least 50% post-consumer recycled plastic (PCR), reducing its use of virgin plastic and carbon derived from fossil fuels in packaging. It said using recycled plastic ensured bottles were kept in a circular plastic economy and out of landfill.

## What was the ASA ruling?

The ASA upheld the complaint and banned the advert. It said that it featured too many “various strands” of its wider environmental messaging, which created confusion as to what the “kinder to our planet” claim actually meant. Was it a claim against other products on the market or an earlier version of a Persil product? Was it a recent innovation? Did it apply to all Persil products or just a specific type of detergent?

The ASA also found that Unilever had failed to provide evidence demonstrating that the full life cycle of the washing liquid had a lesser environmental impact compared to its previous formulation.

## Lessons learnt

The case raises an interesting point around “new and improved” comparisons that brands often make against earlier versions of the same products. Brands are accustomed to using light promotional language (“better”, “longer lasting” etc.) when promoting product innovations and are generally afforded a degree of latitude by the



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ASA for claims of this nature – but it seems the ASA will hold brands to a much higher standard when the product innovation is promoted using a green claim.

It remains to be seen how the ASA would have ruled had Persil been clearer with its messaging and visual imagery. However, once again we saw the ASA find against a brand for failing to provide adequate LCA data, despite Persil’s reasonable assertion that washing clothes at lower temperatures clearly requires less energy.



# Innocent Drinks – “get fixing up the planet” – is a call to action a “claim”?

## What was the green claim?

An animated TV advert for Innocent Drinks encouraged people to “get fixing up the planet”. It started with a depiction of a damaged planet and brown food. It then switched to imagery of the planet being “fixed up” while Innocent drinks were being consumed alongside images of Innocent products, depicting people and animals relaxing in a green environment.

A number of viewers, including Plastics Rebellion, complained that the adverts misled customers by exaggerating the total environmental benefits of the drinks, noting that Innocent’s drink bottles contained non-recycled plastics.

In response, Innocent argued that the “get fixing up the planet” message was a call to action, not an environmental claim. It said it was merely inviting consumers to join it on its journey of working towards a healthier planet. Innocent also argued that its corporate environmental targets and B Corp status gave it sufficient credibility to make the call to action.

## What was the ruling?

The ASA upheld the complaint. It found that the imagery used would be understood to mean that Innocent was environmentally friendly and that purchasing its products had environmental benefits. Although the ASA acknowledged that Innocent was undertaking various actions aimed at reducing the environmental impact of its products, it expected Innocent to provide evidence that its products had a net positive environmental impact over their full life cycles, which they were unable to do.

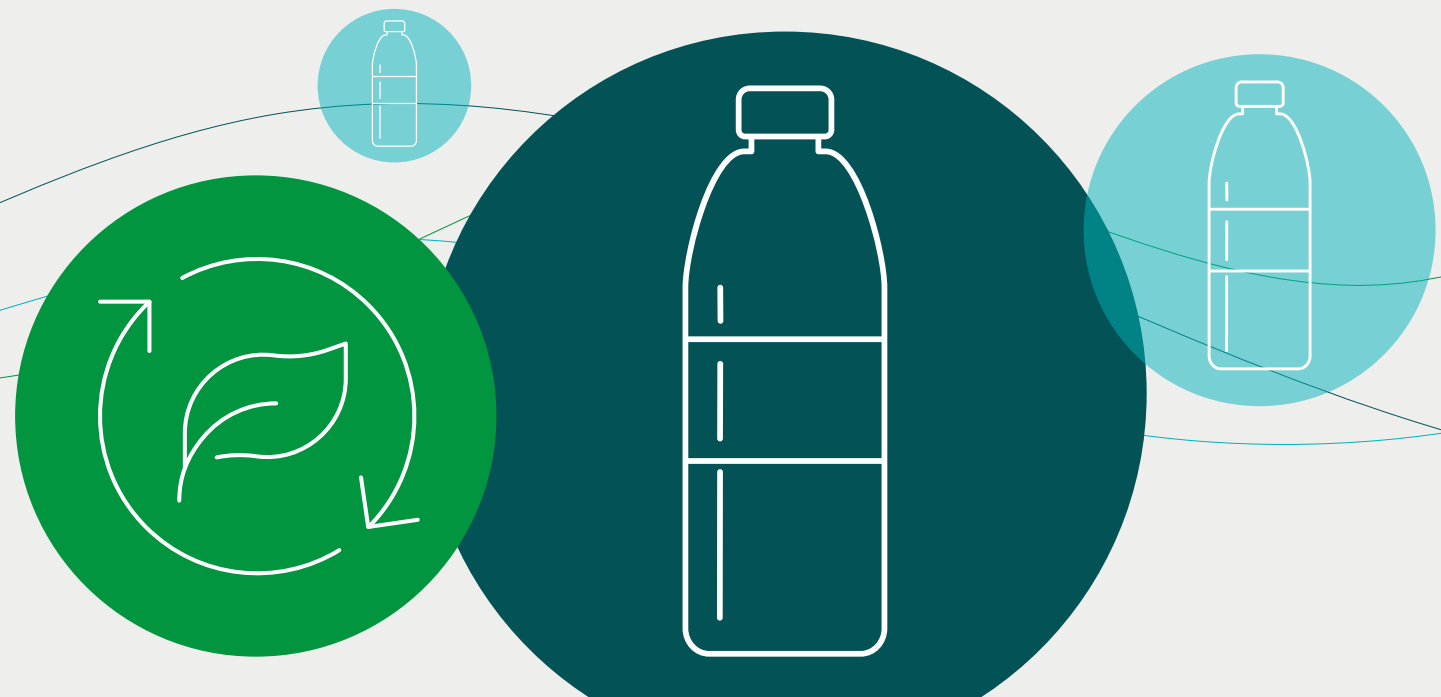


It’s clear from this ruling that the high standards demanded by the ASA don’t just apply to direct green claims...

## Lessons learnt

It’s clear from this ruling that the high standards demanded by the ASA don’t just apply to direct green claims, but also general calls to action that involve brands inviting consumers to join them in taking positive environmental action. This arguably resulted in a harsh outcome from Innocent’s perspective, given that its call to action appeared to be in step with its own corporate sustainability targets.

As with the Persil case, it seems the ASA’s decision was influenced by the imagery used in the advert which (in the ASA’s view) created the impression that Innocent’s product had a positive impact on the environment. Brands should be aware of this when deploying imagery in conjunction with green claims that may otherwise appear to be relatively uncontroversial.



# Oatly oat milk – CO2 emissions claims

## What was the green claim?

Oatly made a number of environmental claims that emphasised the lower CO2 emissions associated with oat milk. This included the following claims:

- i. “Oatly generates 73% less CO2e vs. milk”;
- ii. “The dairy and meat industries emit more CO2e than all the world’s planes, trains, cars, boats etc. combined”; and
- iii. “If everyone in the world adopted a vegan diet, it would reduce food’s annual greenhouse emissions by 6.6bn metric tons.”



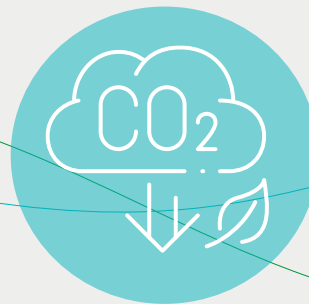
The ASA found that four of the five green claims made by Oatly were misleading as the underlying data used to make the claims was insufficient.

## What was the ASA ruling?

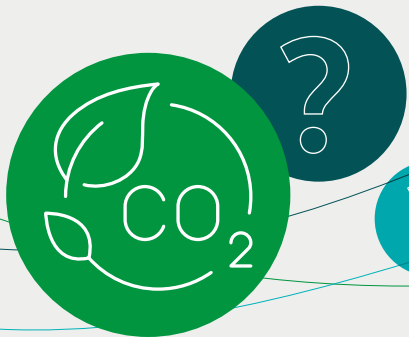
**Upheld in part.** The ASA found that four of the five green claims made by Oatly were misleading as the underlying data used to make the claims was insufficient. For instance, the ASA determined that the claim that Oatly generates less CO2e than cow’s milk should have been based on all Oatly drinks and all types of cow’s milk, whereas it was actually only based on one type of Oatly milk compared to whole cow’s milk. Similarly, the claim regarding the relative CO2e emissions for the dairy and meat industries was found to be misleading as this was based on the total life cycle analysis for dairy and meat industries, whereas the evidence for the transport industry only took into account part of the life cycle (in other words the industry CO2e data was not like-for-like).

The ASA found that if a total life cycle analysis had been conducted for the transport industry, the claim would most likely have been false given that the difference in emissions between the meat and dairy industry and the transport industry was in fact very small.

However, the ASA did not uphold the aspect of the complaint that related to the impact that everyone in the world switching to a vegan diet would have on greenhouse gases (a 49% reduction). The ASA was comfortable with this more narrow, non-comparative claim, which Oatly was able to substantiate by reference to meta-analysis conducted by a climate expert in a peer-reviewed academic journal.







## Magnatech: energy efficiency and carbon emission claims

### What was the green claim?

While promoting the use of magnet technology in its boiler systems, Magnatech made claims that its technology could result in “Fewer emissions for the same volume of fuel consumed and a reduced carbon footprint”.

### What was the ruling?

**Complaint upheld.** Magnatech provided a number of documents that it believed substantiated its energy efficiency and carbon footprint claims (including 18 case studies and some academic literature). However, the ASA Council found a lack of scientific consensus regarding the benefits of the technology and pointed to other issues with the evidence, for example an academic dissertation had not been peer reviewed.

This goes to show that the ASA will typically expect any academic literature or studies provided to substantiate environmental claims to be robust, particularly when used to support unequivocal claims, as here.



## Q River Ltd: biodegradable baby wipes

### What was the green claim?

A website and product listing on Amazon for baby wipes made claims that (1) the wipes break down quickly in landfill conditions after they are thrown away (in as little as 15 days) and (2) “Being biodegradable is important to us as it means today’s mess won’t be a problem for tomorrow’s generation”.

### What was the ruling?

**Complaint upheld.** Q River Ltd provided three scientific reports from a biodegradability testing company. On assessing the reports, the ASA found that the wipes did not completely biodegrade within 15 days and the tests did not replicate the conditions found at landfill. Furthermore, the ASA understood that when a wipe biodegraded in landfill it could emit methane – a potent greenhouse gas.

The ASA ruled that the scientific reports did not accurately substantiate the environmental claim, showing how important it is to commission robust scientific testing and to ensure any claims made correctly reflect their results. As wet wipes can have other negative impacts on the environment, the ASA ruled that the environmental claim was misleading to consumers.



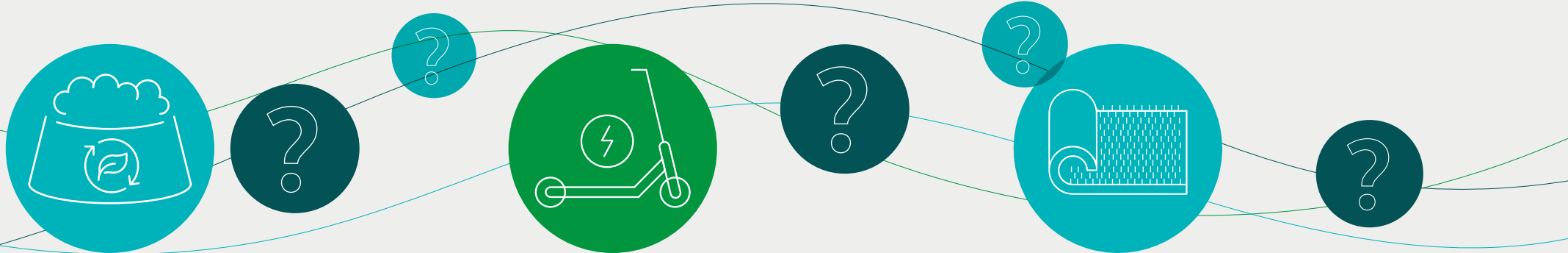
## Bamboori: plant-based electric toothbrushes

### What was the green claim?

A Facebook post on Bamboori’s account made claims that the brand’s electric toothbrushes contained “100% plant-based materials”, were “made from ... materials that are both recyclable & biodegradable” and contained “#NoPlastic”. Generalised statements such as “eco-friendly” and “sustainably sourced” were also used.

### What was the ruling?

**Complaint upheld.** Bamboori’s substantiation for the claims was found to be inadequate in a number of respects. In particular, Bamboori said it was unable to provide certification that backed-up the “plant-based” claim as it did not have permission from its supplier (although as the ASA noted, given the 100% claim, it would also have needed to show that the battery was plant-based). Amongst other things, the ASA also took issue with the “no plastics” claim given that the toothbrushes contained plastics derived from renewable biomass (often referred to as “bioplastics”) which are, nonetheless, a form of plastic.



## The PACK PET Limited: eco-friendly dog food

### What was the green claim?

A post on THE PACK's Facebook page featured a video with on-screen text claiming: "THE PACK. JOIN THE PACK FOR A HEALTHIER DOG & PLANET". A caption accompanying the video also stated, "Better for The Planet".

### What was the ruling?

**Complaint upheld.** The ASA acknowledged that THE PACK provided LCA showing that its plant-based dog food produced 7 to 18 times less CO<sub>2</sub>e than its meat-based alternatives. However, the ASA noted the report omitted the disposal of the products' packaging and therefore did not cover the entire life cycle.

## Electric scooters: an environmentally friendly way of traveling?

### What was the green claim?

TIER Operations Ltd used the following text in a poster advertising electric scooters for hire: "Be environmentally friendly. Take a TIER". Smaller text at the bottom of the poster stated "#changemobilityforgood".

### What was the ruling?

**Complaint upheld.** Although the ASA accepted this could have been an implicitly relative claim (i.e. that a scooter could be considered a less environmentally damaging option when compared with the London Underground, for example), TIER had not provided a clear comparison to another mode of transport. Therefore, it found the public would likely interpret the statement as an absolute claim that electric scooters caused no environmental damage.

While this conclusion is debatable (arguably it is clear that taking an e-scooter is, relatively speaking, a more environmentally friendly way of traveling than most other modes of transport), the ruling is a reminder of the need for precision when making environmental claims, even apparently obvious ones.

## Artificial grass: environmental impact unqualified

### What was the green claim?

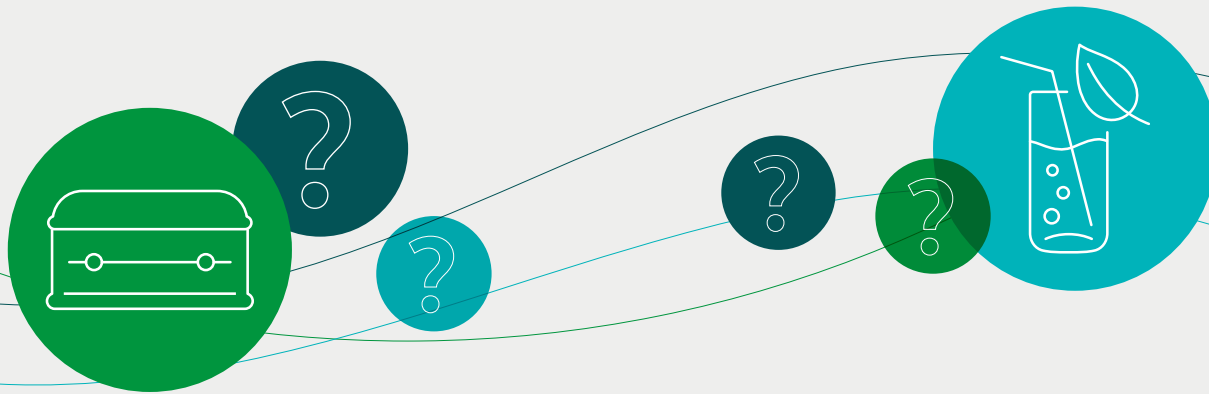
Three adverts for trading styles of Evergreens (UK) Ltd, which included a website and two YouTube videos, claimed that its artificial lawn products were "eco-friendly".

Another brand (Perfectly Green Ltd) labelled its Eco-grass product "recyclable".

### What was the ruling?

**Complaints upheld.** The ASA considered that, in the case of Evergreen, the claim was absolute, and in the absence of further clarification, it suggested that the grass was not harmful to the environment at any time during its life cycle. The ASA found this was misleading as, even though the product may be transported and recycled efficiently, manufacturing the artificial lawn involved the extraction of raw materials.

In the case of Perfectly Green, after consulting with DEFRA, the ASA found that, at the time of the complaint, the UK did not have the infrastructure to recycle used artificial lawns (Perfectly Green also acknowledged that consumers did not yet have widespread access to recycling plants suitable for the product in its response). Therefore, the ASA found the description of "recyclable" misleading.



## Eco-friendly funeral services

### What was the green claim?

Golden Leaves Ltd, a funeral provider, advertised “green” funerals. It also promoted the coffins of “the UK’s premier eco-friendly coffin manufacturer”, JC Atkinson & Son Ltd. JC Atkinson was also subject to an independent complaint in relation to its “eco-friendly” wooden and MDF coffins.

### What was the ruling?

In the case of Golden Leaves Ltd, the ASA was not sufficiently persuaded that the entire life cycle of a funeral could be deemed environmentally positive or neutral and there was insufficient proof of credibility in relation to the schemes the business was affiliated with in order to benefit the environment (i.e. conservation donation funds and tree planting companies).

Similarly, the ASA took the view that the claims made by JC Atkinson would be interpreted as meaning that the MDF coffins would have no or an overall beneficial impact on the environment over their full life cycle, including burial or cremation. This was despite the fact that JC Atkinson had commissioned a LCA, which found that its eco coffins would result in lower carbon and other emissions when cremated compared to cardboard or paperboard coffins.

## Lipton ice tea: 100% recycled?

### What was the green claim?

An ad for Lipton Ice Team featured headline text which stated “DELICIOUSLY REFRESHING, 100% RECYCLED\*”. The asterisk linked to small text at the bottom of the poster that stated “Bottle made from recycled plastic, excludes cap and label”.

### What was the ruling?

**Upheld.** Unsurprisingly, Pepsi Lipton argued that they had made it clear via the asterisk and small text that the 100% recycled claim only applied to the bottle, and not the cap and label. However, the ASA found that the qualification text was very small and situated in the bottom corner of the ad, which meant it failed to counteract the overall impression created by the headline claim that the whole product was made from 100% recycled plastic.

# CMA Green Claims Code

## Claims must be truthful and accurate

This means the claim should:

- Use language generally understood by consumers;
- Outline any conditions or caveats; and
- Not be deceiving to consumers.

## Claims must be clear and unambiguous

This means the claim should:

- Be transparent;
- Be capable of substantiation;
- Be proportional;
- Prevent confusion; and
- Reflect the environmental credentials and impacts of the product, service, process, brand or business.

## Claims must not omit or hide important information

This means the claim should:

- Not mislead or prevent customers from making informed decisions;
- Use the correct terminology; and
- Include accurate information that is kept under review.

## Comparisons must be fair and meaningful

This means the claim should:

- Compare like with like;
- Be fair and representative; and
- Not benefit one product or brand to the detriment of another if the comparison is inaccurate or false.

## Claims must be substantiated

This means the claim should:

- Be objective or factual; and
- Be capable of being tested against robust, credible, relevant and up to date evidence that is readily available.

## Claims must consider the full life cycle of the product or service

This means the claim should:

- Account for the product or service's overall impact from creation to disposal (or be clear that the claim relates to a specific part of the life cycle); and
- Be backed up by up to date and qualified LCA.





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