



Draft Guidelines

Sustainability claims



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Summary

Sustainable consumption plays a major role in the transition to a more sustainable society. Consumers and companies increasingly want to contribute towards a world that is livable in the long term, and they find it increasingly important to make sustainable choices.

ACM takes action against misleading practices of companies involving sustainability claims

Companies must be honest about sustainability, and are only allowed to use clear, correct, and relevant sustainability claims. In its 'guidelines regarding sustainability claims', the Netherlands Authority for Consumers and Markets (ACM) has formulated the following five rules of thumb for companies that wish to use sustainability claims:



Rule of thumb 1: *Make clear what sustainability benefit the product offers*

Sustainability claims are only of use to consumers if they are clearly phrased and easy-to-understand. When phrasing your claims, you will need to be specific about your product's sustainability benefit so that no confusion will arise among consumers. You cannot wrongfully give the impression that a product is more sustainable than it really is. The claim cannot mislead consumers about your product's sustainability aspects.



Rule of thumb 2: *Substantiate your sustainability claims with facts, and keep them up-to-date*

You will have to be able to prove that your sustainability claims are true. You need to check regularly whether your claims still hold up, and you will need to revise them if necessary, so that consumers can rely on the fact that the information is up-to-date.



Rule of thumb 3: *Comparisons with other products, services, or companies must be fair*

You need to make sure that comparisons with other products or companies will not lead to any misunderstandings among consumers about the sustainability aspects of your company or products.



Rule of thumb 4: Be honest and specific about your company's efforts with regard to sustainability

You will need to distinguish between general information about your company's efforts with regard to sustainability, and specific information about the benefits of an individual product. Information about concrete initiatives or concrete plans that your company has with regard to promoting sustainability are more useful to consumers than vague or unclear statements about your company's commitment and core values. Any claim about your company's sustainability ambitions must be in proportion to your actual sustainability efforts. You can only use a claim about future goals for marketing purposes if there is a clear, concrete, and verifiable strategy to realize those goals.



Rule of thumb 5: Make sure that visual claims and labels are useful to consumers, not confusing

You can only use clear symbols, pictograms or labels that do not give a false impression about sustainability, and that directly support the claim. Furthermore, you can only use logos or symbols that indicate the sustainability standards for which a product has been officially certified.

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1 Introduction

The Netherlands Authority for Consumers and Markets (hereafter: ACM) is an independent regulator. ACM's mission is to ensure that markets work well for people and businesses, now and in the future. For example, ACM enforces compliance with the rules and regulations with which companies must comply in their interactions with consumers.

ACM helps ensure consumers have sufficient information and confidence so that they are able to take well-informed decisions when purchasing products or services. At the same time, ACM protects companies against unfair competition from other companies that do not play by the rules.

In these 'Guidelines regarding sustainability claims' (hereafter: the guidelines), ACM explains to companies how it applies consumer protection rules to sustainability claims.¹ With rules of thumb, explanations, and real-world examples, ACM offers companies guidance on drafting and evaluating sustainability claims.

Companies are themselves responsible for complying with the rules. These guidelines can be of help in that process. The guidelines describe several rules of thumb when using sustainability claims. When assessing sustainability claims, ACM will also take into consideration any case law and statutory amendments that have come out since the publication of these guidelines.

Companies must be honest about sustainability

The transition to a sustainable society is one of the greatest challenges of our time. The government is committed to making the transition to a more sustainable economy, which is reflected by, among other actions, various climate agreements and by signing up to the UN Sustainable Development Goals.² Sustainable consumption plays a key role in the transition to a sustainable society.³

Consumers and companies increasingly wish to contribute towards a world that is livable in the long term, and they find it increasingly important to make sustainable choices.⁴ More and more often, consumers wish to know what the sustainability impact is of the products and services that they purchase, and they take that into consideration in their purchasing decisions. However, they consider claims about sustainability often to be unreliable.⁵ Companies must be honest about sustainability. They can only use clear, truthful, and relevant sustainability claims. That helps consumers make sustainable choices when purchasing products and services, which is in their own interest and in that of future generations. It also offers companies the opportunity to promote the sustainable aspects of their products and services, and, in this way, boosts competition on sustainability. And it also helps consumers know how they can use products in a responsible manner, and what they need to do when their product or service is at the end of its lifespan. Moreover, improved consumer information regarding the sustainability aspects of products and services can also, in general, contribute to more sustainable lifestyle choices.



Consumers should be able to rely on the veracity of sustainable claims. That is why ACM takes action against misleading commercial practices involving sustainability.⁶ Such misleading practices are sometimes also referred to as “greenwashing”. Greenwashing involves companies that mislead consumers by claiming that products are more sustainable than they actually are. For example, companies may inflate or misrepresent the sustainable qualities of a product, or they may use claims that cannot be verified, that are not relevant or that are simply not true. Greenwashing undermines the confidence in sustainability claims among consumers. As a result, consumers become less motivated to buy and use sustainable goods. In addition, greenwashing leads to distortion of competition. After all, companies that invest in the sustainability benefits of their products or services, and that inform consumers properly about those benefits will thus be put at a disadvantage. In the eyes of consumers, they are not able to distinguish themselves from companies that mislead consumers about the sustainability aspects of their products. The aim of these guidelines is to combat all forms of misleading practices regarding sustainability.

Scope of these guidelines: what are sustainability claims?

These guidelines concern sustainability claims that companies use in order to promote their products and services. In the rest of these guidelines, ACM means the following by the term “product”: “a good (including electricity), or a service”.⁷ By the term “claims”, it means all statements, claims, information, labels, slogans, brand names, symbols, pictograms, company strategies, certification labels, certificates, and such that companies use in connection with their products and activities in order to promote sales, either directly or indirectly.

“Sustainability” or “sustainable development” is a broad concept. UN resolution 66/288 from 2012 describes sustainable development as the development towards “an economically, socially and environmentally sustainable future for our planet and for present and future generations”.⁸ This may include the protection of the environment, biodiversity, climate, public health, animal welfare, human rights, general working conditions and fair trade. In these Guidelines, ACM follows this ‘broad’ description of sustainability.

In these guidelines, ACM uses the term “*sustainability claims*” as an umbrella term for “environmental claims” and “ethical claims”. ACM uses the following definitions for these terms:⁹

Sustainability claims: claims that give the impression that the production process of a product or the activity of a company has been done with a focus on the social and ethical conditions as well as on having as the least possible negative impact on the environment. For example, products can be made more sustainable

because of their composition, the way they are made, the way they can be disposed of or because they consume less energy or are less polluting.¹⁰

Environmental claims: claims that give the impression that a product or activity of a company has few or no impact on the environment or is less harmful for the environment than similar products. Environmental claims may concern the impact on the environment in general or on specific environmental aspects such as the air, the water or the soil, as a result of specific emissions.¹¹

Ethical claims: claims that give the impression that the production of a product or activity of a company has been done in accordance with certain ethical standards, for example with respect to general working conditions, animal welfare and/or corporate social responsibility (CSR).

Legal framework: sustainability claims in consumer law

ACM enforces compliance with consumer protection law among companies.¹² This also includes the rules about unfair commercial practices.¹³ ACM's enforces law at the national level and also at the European level through collaborations with regulators in other European member states on the basis of the 'CPC Regulation'.¹⁴ The rules about unfair commercial practices are based on the European Directive concerning unfair commercial practices (UCP Directive).¹⁵ The European Commission has drawn up Guidance on the implementation of this Directive (UCP Guidance).¹⁶ This Guidance also contains a chapter on environmental claims. In addition, the European Commission has drawn up Guidance for making and assessing environmental claims (Environmental Claims Guidance).¹⁷ These guidelines are based in part on the UCP Guidance and the Environmental Claims Guidance. In addition, these guidelines dovetail with the guidance on the application of consumer law to sustainability claims of other European Member States¹⁸ and other countries.¹⁹

There are two main categories of unfair commercial practices:

- Misleading commercial practices: companies give factually incorrect or misleading information or actually leave out essential information or do not offer information in a clear or easy-to-understand manner.²⁰
- Aggressive commercial practices: companies influence consumers unduly, for example through intimidation, coercion, or the use of force.²¹

Misleading and aggressive commercial practices are unlawful if the ability of the average consumer to take a well-informed decision has appreciably been restricted (or can be restricted), as a result of which the average consumer takes (or can take) a decision about an agreement, that the consumer otherwise would not have taken.

These guidelines primarily concern misleading commercial practices. "Traders"²² must present their sustainability claims in a clear, concrete, correct and unambiguous manner to ensure that consumers are not misled.²³ The term "commercial practices" is interpreted broadly.²⁴ These can, for example, also include initiatives or claims with regard to CSR.²⁵ Many companies indicate these on their sites. Such sustainability claims thus also need to be clear, easy-to-understand, concrete, and honest.

When making claims about certain products and services, companies must meet specific requirements, which have been laid down in special EU legislation.²⁶ These guidelines do not concern the interpretation of this specific EU legislation.²⁷ The rules about unfair commercial practices supplement that legislation, insofar necessary, and thus act as a "safety net", so that consumers are always sufficiently protected against unfair practices of companies.²⁸

Finally, when making claims, companies must also comply with the rules about responsible advertising. These rules have been drawn up by the Dutch Advertising Code Foundation (Stichting Reclame Code, or SRC), and have been laid down in various codes and in rulings of the Advertising Code Committee and the Board of Appeal.²⁹

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2 Rules of thumb for honest sustainability claims

When making and assessing sustainability claims, you will need to take into consideration the following rules of thumb.

Rule of thumb 1: Make clear what sustainability benefit the product offers

Sustainability claims will only help consumers in their choice if those claims are made clearly, and do not contain any misleading information. A misleading, meaningless or unclear claim hurts confidence of consumers in the claim itself and in sustainability in general.³⁰

Describe the sustainability benefit clearly and in terms that are easy-to-understand

When making a claim, do not use any unclear language, but rather simple and easy-to-understand terms. Also, do not use jargon, and be mindful of the language that is used by your target audience. You need to explain in a clear and easy-to-understand manner to what exactly your claim relates.³¹

You need to make clear whether your claim is about your products in general or only about specific product components or the product's packaging. When making a claim, you need to describe a specific, verifiable sustainability benefit.³² You can do so, for example by using specific units of measurements or standards such as ISO, CEN and BSI.



Example:

The claim "100% recycled materials" on a box containing sheets of white paper is ambiguous because it is unclear whether the claim relates to the box itself or the sheets of paper. In order to avoid any confusion, the claims should be phrased as follows: "This box is made out of 100% recycled materials".



Example:

A company praises its newest washing machine with the following claim: "This washing machine consumes 30% less energy; good for the environment, good for your wallet". However, the washing machine in question only consumes less energy if the special "eco" mode is activated. This claim can thus be misleading, and should be more specified. For example, it could be rephrased as follows: "If you activate the special 'eco' mode of this washing machine, it will consume 30% less energy than when used under normal circumstances; good for the environment, good for your wallet". In this way, consumers are correctly informed about the benefits of this washing machine, and they are encouraged to use it in a sustainable way.

You need to prevent that your claims can be interpreted incorrectly by consumers. Therefore, do not use any vague terms. It is important that you clarify a claim. You can do so, for example, by using specific words, giving extra information or by using accompanying symbols. In rule of thumb 5, it is explained what you need to take into consideration when using accompanying symbols.

When making claims, you need to avoid using subjective terms such as the greenest, the cleanest, etc. After all, the use of subjective terms can give an impression of the product or the company that is too positive. You need to phrase a claim in factual, objective and neutral terms.

Example



An airline claims that it is the “greenest airline” and that it has “the lowest CO2 emissions of all major airlines”. In its advertising, the airline compares its CO2 emissions per passenger-kilometer with those of four other “major” European airlines, and shows that it has the lowest CO2 emissions per passenger-kilometer. However, the airline’s total CO2 emissions are higher than that of other airlines. In fact, the airline’s CO2 emissions total has increased significantly over the past five years. Considering the airline’s total CO2 emissions, the claims that it is “the greenest” and has “the lowest CO2 emissions” can be misleading because they paint a more positive picture of the company than the facts warrant.

Describe what the actual sustainability benefit is

An inaccurate sustainability claim may result in consumers thinking that products have more or larger sustainability benefits than they actually have. You must be concrete when phrasing your claim.

When phrasing your claim, you need to avoid saying directly or implicitly that a product, package or brand offers a general and/or absolute benefit. A general or absolute claim quickly gives consumers the impression that the entire product offers large sustainability benefits or that it only has a limited negative impact on sustainability. General and absolute claims often lead to confusion about the specific sustainability benefits of the product.³³ It is unlikely that such claims can be substantiated (see also rule of thumb 2). Therefore, do not use general terms such as “eco”, “environmentally friendly”, “clean”, “green”, “good for the environment”, “non-pollutive”, “honest”, “fair”, “natural”, “responsible”, “organic”, “ethical”, “sustainable”, “ozone-friendly”, “environmentally safe” and so forth without further detailing the specific benefits of the product in question. Merely displaying a logo of a certification label for which the product is certified, is not enough to explain an absolute or general claim. You need to indicate exactly what specific sustainability benefits the product has (based on the certification label in question).

Example:



A supermarket chain delivers groceries to customers’ doorsteps by truck. Recently, the truck switched to biodiesel, and the chain therefore advertised “On our way to a greener future, together with X” on the truck. This claim is very vague because it can mean anything, and it is not clear to consumers as to why supermarket chain X is sustainable. Consumers may get the impression that the supermarket chain has many sustainability benefits, whereas the only sustainability benefit is that its trucks run on biodiesel. It is therefore better to use a concrete claim such as: “This truck runs on biodiesel.”

Example:



An online store offers consumers the option of filtering its clothing range by “sustainability”. Consumers using that filter get to see a selection where all displayed items get the term “sustainable choice” next to them. The online store does not explain what is sustainable about the displayed items. In this case, the use of the “sustainability” filter and the claim “sustainable choice” is unclear and can be misleading. After all, it is not explained what the sustainability benefits of the displayed items are, whereas sustainability with regard to clothes can indicate various benefits, for example, water consumption, organic production of cotton, use of “vegan” leather or the working conditions at suppliers. The online store thus needs to indicate the exact sustainability benefits for each piece of clothing that is displayed when using the sustainability filter.

Be honest about the sustainability benefits of the product

Sustainability claims can be misleading if they contain incorrect information or are not true. Therefore, you cannot claim that the product has certain sustainability benefits, if that is not true, and you cannot inflate the sustainability benefits of your product. The product must truly contribute to sustainability in some way when compared with other similar products. You must inform consumers about important improvements, and you cannot emphasize minor sustainability benefits if the product has a significant negative impact on human rights, animal rights, and the environment. The claim cannot suggest a larger benefit than the product in reality offers, and small improvements compared with another product or company must be presented as such.³⁴

Example:



A company sells “sustainable and fair” laptops to consumers. According to the company, the laptops consume less energy than other laptops, and the batteries contain less cobalt. Furthermore, the company claims that it pays the miners who mine the cobalt “fair wages”. In that context, it is important to note that cobalt mining is usually associated with different forms of negative impact on human rights and the environment. The claim turns out to be false. The batteries of the laptops are not more energy-efficient, and contain as much cobalt as other laptops do. Moreover, it is unclear what “fair wages” means and the company does not pay “fair” wages at all, because it buys the cobalt from an intermediary, and has no influence whatsoever over the wages of the miners. The claim therefore misleads consumers about the laptops’ sustainability aspects.



Example:

A company runs ads about hydrogen as an alternative fuel. The claim it uses is: “driving a car that runs on hydrogen reduces CO2 emissions”. This suggests that the hydrogen that is promoted does not produce any CO2 emissions or produces fewer emissions. At the moment, however, the company still produces hydrogen based on natural gas. The claim can be misleading, because it suggests to be about green hydrogen, even though it is not.

A claim cannot be a general feature of similar products. Only use a claim if the product is better than a significant number of similar products with regard to the claimed benefit. Furthermore, a claim cannot be about a feature that a product normally already has (as a default feature), or that it normally lacks.



Example:

A company cannot claim that a certain paper type is made of tropical hardwood, because tropical hardwood is not used for producing paper. Consumers could thus think that tropical hardwood is always used in paper production, and that the paper in question offers an important environmental benefit.

Certain products are subject to statutory requirements with regard to composition, production and so forth. If statutory requirements apply to a product, they cannot be used as a sustainability claim.³⁵ A claim must thus be a benefit that goes beyond what is required by law.



Example:

It is misleading to claim that a deodorant is “CFK free” when all deodorants must be CFK free. The claim must be clarified in order to present the product’s environmental benefit truthfully. For example: “Just like other similar products, this product, too, does not contain any CFKs” or “is CFK free as required by law”.

You must ensure that a claim concerns the product’s most prominent sustainability impacts, and that whatever you claim does not cause any other problem in terms of sustainability.



Example:

A manufacturer claims that its new and improved product now consumes little water. At the same time, however, the product consumes more energy than a similar product in the same category, thereby considerably increasing the product’s overall negative impact on the environment. The claim that the product consumes little water can, in this case, be misleading. After all, it suggests that the product’s environmental performance has been improved, whereas this has, in fact, decreased because of the reduced energy efficiency.

Be careful when using specific and statutorily protected terms

In their claims, companies can use specific terms such as “organic”, “carbon neutral”, “eco-friendly” and so forth. Some terms are statutorily protected, and can only be used when the product meets certain criteria. The criteria for using that type of terms can often be found in various sector-specific guidelines and

directives. You need to consult the specific regulations that apply to your products as well as the criteria that you need to meet when using those terms. You can only use those kinds of terms when the product meets the criteria.³⁶ We will discuss the use of several specific terms below.



Example

An energy supplier sells “Real Dutch Green Power”. Under a European Directive and under Dutch law, the supplier must substantiate this claim with so-called guarantees of origin of Dutch or European sustainable sources. More and more consumers find it important that power is really generated in the Netherlands. It is possible to verify this because a guarantee of origin specifies the exact location of generation. With this system of guarantees of origin, it is even possible to purchase electricity from a wind farm in your own municipality or from your neighbor. The energy supplier must write off the right guarantees of origin for each MWh of electricity that is supplied. ACM checks this procedure together with CertiQ, which is the organization in the Netherlands that certifies green power.

Claims such as “organic”, “organic product” or “organically produced” can often only be used when certain products meet criteria that special EU regulations³⁷ have set for organic products or organic production methods. This mostly applies to food products. However, claims such as “organic” are more and more used for products for which no specific rules apply with regard to the use of this term. That is predominantly the case with textiles and cosmetics. If no specific rules for the use of the term “organic” for a specific product exist, the basic principle is that organic production protects various interests such as the environment, biodiversity, natural resources, and animal welfare.³⁸ In that case, you can only use the “organic” if (i) more than 95% of materials or ingredients come from certified organic production and (ii) other (meaning non-organic) materials or ingredients that are used do not reduce or offset the benefits of the organic production.³⁹ If 95% or less of your product is made from organic materials or ingredients (for example 60%), you cannot claim that the product is “organic”. If you do want to let your customers know that your product is partially organic, you will have to indicate the percentage of organic materials or ingredients (for example “60% is made from organic material X or organic ingredient Y”).



Example

The label of a T-shirt says that this piece of clothing is “made from organic cotton”. This claim can only be made if more than 95% of the T-shirt is made from organic cotton. Otherwise, it may give the impression that the T-shirt is organic, while, in reality, it only contains a fraction of organic cotton. If less than 95% of the T-shirt is made from organic cotton, you will have to state the exact percentage of organic cotton on the label so that consumers are properly informed about the sustainability aspects of the T-shirt, and also not to mislead them. For example like this: “contains 50% organic cotton”.

The claim carbon neutral can only be used if a calculation has been made of the total emissions of greenhouse gases produced by the product of the company, and if total emissions are zero. This can also be achieved, for example, by investing in CO₂-compensation projects.⁴⁰ The aim is that companies make their production processes more sustainable in order to produce fewer emissions in a structural manner. CO₂-compensation as a supplementary instrument can help reduce the impact of emissions that remain,

and can serve as a temporary measure during the time it takes to make production processes truly sustainable. If CO₂-compensation plays an important role in the process of making your product carbon-neutral, you will have to indicate this clearly, and inform consumers about the exact form of CO₂-compensation. For example, it is relevant for consumers to know how much CO₂ is compensated, in what project(s) you invest, (for example, planting trees or providing the local population with efficient or more efficient ovens), where those projects take place, what organization organizes the project, and whether the project is certified in accordance with any specific standard.⁴¹ You cannot give the impression that the production process of your product does not generate any emissions of greenhouse gases at all.

If you offer consumers the option of compensating the CO₂ emissions of a product for a fee, it constitutes a separate product to which consumer protection rules apply. This means that you must inform consumers about the main features⁴² of the CO₂-compensation on offer as detailed above.

Example



A car rental company offers its customers the option of compensating the CO₂-emissions that they cause for a fee. The car rental company claims that, as a result, customers “drive CO₂ neutral”. The company invests the money that consumers pay in CO₂-compensation projects. The company must inform consumers about how much of the emissions is compensated, and how these emissions are compensated, for example by indicating that the rented car has a CO₂-emission level of X per kilometer, and that this is compensated by investing in forestry projects in South America that are organized by organization X and have been certified in accordance with standard Y. In addition, the company must regularly check whether these projects truly compensate the emissions of the kilometers driven, so that consumers are able to continue to have confidence in the claim.

Example



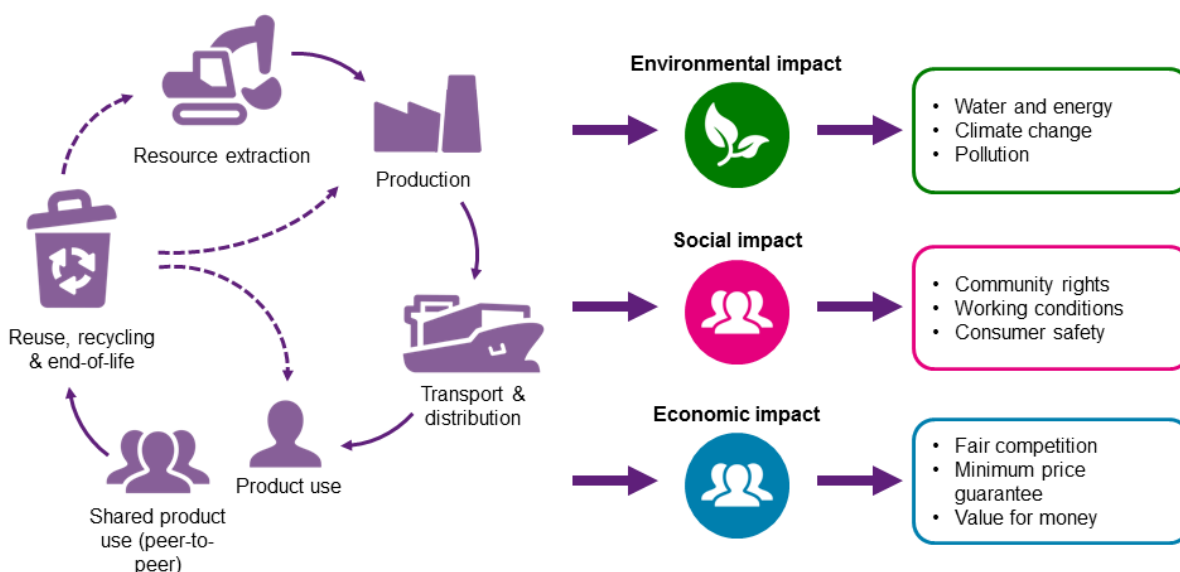
An energy supplier sells “super green gas”. Many consumers believe that they purchase biogas from this supplier. Biogas is renewable natural gas that is produced through the fermentation of organic materials. However, biogas is only produced on a small scale in the Netherlands, and is not yet sold to consumers. The supplier basically sells a fossil fuel, and compensates the CO₂ emissions by investing in projects abroad where trees are planted. If the supplier fails to mention this, consumers may be misled about the type of gas they purchase. The energy supplier should therefore indicate that they do not deliver renewable gas but CO₂-compensated gas. Since the CO₂-compensation is a key element of the gas’s sustainability benefit, the energy supplier must also inform consumers about the key aspects of the CO₂-compensation scheme.

Rule of thumb 2: Substantiate your sustainability claims with facts, and keep them up-to-date

You will have to be able to substantiate your sustainability claims with evidence that can be verified. Claims that you cannot substantiate with facts can be misleading. After all, the product or brand is presented in a much more positive light than in reality.⁴³

From the moment you make a claim, you will need to have proof that supports your claim.⁴⁴ This proof must be factual and correct. You will need to be clear about the procedure, scientific method, and criteria on the basis of which you make your claim. In that context, you can use, for example, the international standards that the International Organization for Standardization (ISO) has developed for various types of environmental claims.⁴⁵ Furthermore, your proof needs to be current, and must be revised in order to stay relevant. After all, new laws, standards, competing products, and technological progress may render a claim irrelevant or result in the claim misleading consumers. That is why you will need to assess your claim regularly, and adjust it if necessary.⁴⁶ Upon request, consumers that seek additional information must be informed about the claim's proof.⁴⁷

ACM uses as a rule of thumb that a product's sustainability benefits must be phrased in a concrete manner.⁴⁸ Would you still like to substantiate a general or absolute claim? Then you will have to be able to prove that the product, in general, has a significantly smaller (or positive) impact on human rights, animal rights, and the environment than similar products. The more general or absolute the claim is, the greater the burden of proof is. You can only use a general or absolute claim if your product involves a substantial reduction of the primary negative impacts on human rights, animal rights and the environment. For example, you can do so by using a product's 'footprint' or a "life cycle" approach. With 'footprints' or 'life cycles', a product's sustainability aspects are assessed for each phase of its lifespan, from the extraction of its raw materials to the product's disposal.



Another method of indicating a product's level of sustainability is by showing what the impact of a product is when expressed in 'its true price'. This is a method where all the product's negative impacts on human rights, animal rights, and the environment are identified. These negative impacts (damage) are expressed in monetary terms as costs. This offers insight into the real costs of producing a sustainable product. The fewer these negative impacts (and thus the lower these costs) are, the more sustainable the product is.⁴⁹ If you use this method, you will have to be able to substantiate how you calculated the true price.

Example:



A company claims that its sandwich spreads contain 'sustainable palm oil'. The company must be able to substantiate its claim with facts. In this context, it is important to note that palm oil in general is associated with different types of negative impacts on human rights, animal rights, and the environment, including the loss of primary forests, harm to the habitats of animals, and the deprivation of indigenous land rights. If the company only uses the absolute/general claim "sustainable" for its palm oil without informing consumers about its product's concrete sustainability benefits, it will thus have to be able to demonstrate that the palm oil it uses has a significantly smaller impact on human rights, animal rights, and the environment than "regular" palm oil. In this case, there is debate about whether sustainably palm oil can be produced at all, considering the nature of the production process. If there are doubts about the actual sustainability benefits, companies must be clear about that, and need to exercise caution when using such general or absolute claims.

Example:



A company claims that its packaging produces "less waste than that of the national market leader". The company introduced this packaging several years ago, and substantiated that claim at the time by calculating the relative waste contribution of the two types of packaging. The company must be able to prove that the comparison still holds.

Rule of thumb 3: Comparisons with other products, services, or companies must be fair

If you compare the sustainability aspects of different products, you will need to phrase a claim as clearly as possible in order to prevent any confusion among consumers. You will need to make sure that comparisons cannot lead to misunderstandings among consumers about the sustainability aspects of your product or company. You must explicitly state what you compare your product or company with. You can only compare the sustainability aspects of your product or production process with the previous product or production process of your company, or with the comparable product or production process of another company or with the generally accepted standard in the sector.⁵⁰

Example:



On an egg carton, it says that ‘the chickens get more space’. However, it turns out that, at the company where the eggs come from, there are 16 chickens per square meter. The claim does not specify what it is compared with. The claim can mean that the chickens of that company get more space than before or that the chickens get more space than those at other companies. It is therefore unclear to consumers what ‘more space’ actually means. The company must clarify the comparison, for example, like this: “we currently keep 16 chickens per square meter, thereby giving the chickens more space than previously.”

Attention! *If the standard in the sector is that companies only keep 12 chickens per square meter, this claim can still be misleading. In that case, the claim suggests that the company gives chickens a lot of space, whereas this is not the case (in comparison with other companies). If companies are less sustainable than comparable companies, they better not use any sustainability claims so as to prevent any misleading practices.*

You can only compare products with other products that satisfy similar needs or that are meant for similar purposes.⁵¹ For example, you cannot compare the sustainability aspects of sneakers (or trainers) with those of jeans. You can only use the sustainability aspects of other sneakers for the comparison.

You must base a comparative claim on percentages or absolute values in order to prevent a claim from being vague, and therefore misleading.⁵² When comparing with competitors, use standard units that consumers know and understand.

Example:



A company makes the following claim: “our sneakers contain 20% more recycled materials.” This claim could be a comparison with a previous version of those sneakers or with the sneakers of competitors. This is not clear to consumers. The company must clarify the comparison, for example by claiming: “our sneakers contain 20% more recycled materials than sneakers type X.”

Rule of thumb 4: Be honest and specific about your company’s efforts with regard to sustainability

Many companies have sustainability or CSR objectives. It is important that consumers are able to distinguish between the sustainability aspects of your *product*, and those of your *company* or *brand*. That is why you need to distinguish between information about the sustainability efforts of the company (or parts thereof) and the specific information about the benefits of a product. You cannot use any claims about the company to make a product seem sustainable or the other way around.

When making a claim about your company’s sustainability efforts, you must make a difference between, on the one hand, a claim about the impact of your company on human rights, animals rights, and the

environment, and, on the other hand, a claim about objectives or a vision that concern the image and reputation of your company or brand.

If you wish to make a claim about your sustainability efforts, you will have to make a specific claim instead of a general claim that your company values sustainability. To consumers, information about specific initiatives or plans in order to promote sustainability is of more use than vague or unclear statements about the commitment and values of your company. You need to make clear whether the claim concerns the entire company, the production process or a production phase.

A claim about the sustainability aspects of your company must be proportional to the actual sustainability efforts and impact on human rights, animal rights, and the environment. You need to be able to prove that you have reduced the negative impact on human rights, animal rights, and the environment, and you cannot inflate your company's sustainability efforts or benefits. If you emphasize specific initiatives or activities so much that the impression is given that your company is more sustainable than it actually is on the basis of an objective assessment, it may be misleading to consumers. If your products or production processes have a large negative impact on human rights, animal rights, and the environment, you should use claims with caution in order to prevent you from misleading consumers about the sustainability aspects of your company and your product.

Example:



A major oil company has developed a new technology that allows the production of fuel on the basis of biomass ("biofuel"). This new fuel produces 50% fewer CO2 emissions than existing fossil fuels. The oil company advertises a lot with the new technology, and, in its advertising, uses claims such as "towards carbon neutrality", "better for the environment" and "50% fewer CO2 emissions". The oil company aims to produce 25,000 tons of the new biofuel in 2025, which is expected to represent approximately 2% of the company's total fuel production (including fossil fuels). In these circumstances, the oil company's sustainability claims may be misleading to consumers, because they give the impression that the company is more sustainable than it actually is, considering the limited share of biofuel production compared with the total production of fossil fuels.

Example:



An energy supplier is about to supply heat over a new heat network. On its website and in its advertising, the supplier prominently displays claims, such as 'sustainable supply of heat', 'on our way to a sustainable society' and 'supplying everyone with clean energy'. However, the heat largely comes from a power plant that uses fossil fuels. Moreover, the supply of heat represents just a small share of the supplier's portfolio, which largely still consists of natural gas and grey power. The energy supplier's claims can be misleading because they suggest that the company is more sustainable than it truly is. The energy supplier presents itself as a sustainable company, whereas, in reality, only one of its services offers a sustainability benefit.

You can only make a claim about future goals for marketing purposes if you have a clear, concrete, and verifiable strategy for achieving those goals. It must be clear what elements of the production and distribution chain the claim is about. You must already have started implementing that strategy or you will start doing so very soon.⁵³ A claim about future goals must be phrased as specifically as possible, and must also contain information about the results that have been realized. The details of your goals and the achieved results must be accessible for consumers. A claim about goals where, at the time when they are set, it is unlikely that your company will be able to achieve them or vague claims about sustainability goals can be misleading to consumers. In addition, using sustainability visions for marketing purposes without any plans for concrete actions can be misleading. When sustainability initiatives are still in those very early stages, you need to avoid making these types of claims.

Example



On the labels of its clothes, a clothing company has printed the slogan “On our way to honest work and fair wages”. In addition, the company advertises extensively with its vision “Working in 2025: fair wages for honest work”. The company has a goal of wanting to pay more attention to safe working conditions and fair wages in the distribution chain, and that it wants to develop specific strategies for achieving those goals by 2025. In these circumstances, the slogan on the labels is misleading to consumers. The slogan is vague because it is unclear what “on our way to” means, and it does not say anything about the working conditions in which the clothes in question have been manufactured. In addition, the marketing of the vision can be misleading to consumers, because it suggests that the company will realize fair wages and good working conditions by 2025, while the company merely has the objective of developing strategies, and does not have any concrete objectives or plans to actually realize fair wages and good working conditions at its suppliers.

Rule of thumb 5: Make sure that visual claims and labels are useful to consumers, not confusing

Visual claims and certification labels can help consumers make sustainable choices. After all, they can offer information in an easy manner about certain sustainability features, and make it possible to compare different products. At the same time, however, visual claims and labels can also be unclear and confusing to consumers. That is why you can only use symbols, pictograms or labels that support your claim, and that do not give a false impression about your product’s features.⁵⁴ For example, research has shown that the use of the color green or of the pictograms of a tree or leaf quickly give consumers the impression that a product has certain environmental benefits or meets the requirements of a certification label.⁵⁵ That is why you can only use natural or other objects if there is a direct and verifiable relationship between the displayed object and the claimed sustainability benefit, and you cannot suggest anything more than that.⁵⁶ Pursuant to specific rules and regulations, special requirements apply to the use of certain logos and symbols. You can only use these logos and symbols if you meet these requirements. In addition, only logos and symbols can be used that indicate the sustainability standards for which your product has been officially certified.

There are official certification labels and private labels. Official labels have been approved or are managed by or on behalf of the Dutch government.⁵⁷ With regard to official labels, there are rules and regulations that contain clear requirements that apply to the use of logos and certificates. Private labels have been created by private organizations. In the Netherlands, there are no statutory requirements that private labels need to comply with. In order to ensure that consumers are able to trust the meaning of private sustainability labels, ACM recommends that operators of these labels:⁵⁸

- Inform consumers about the label's concrete sustainability benefits;
- Make clear what organization is responsible for the label;
- Involve relevant stakeholders and experts in the development of clear criteria for the label;
- Use criteria that are based on the life cycle of a product or activity⁵⁹, are relevant to the impact on sustainability, and are based on scientific methods; and
- Have the phrasing and assessment of the criteria as well as the awarding of the label checked by an independent organization.

In its 2020 edition of 'InSight'⁶⁰, ACM notes that, with regard to sustainability, many (perhaps too many) private labels have been developed, and that companies also use logos that look like labels. Companies must be conscious of the fact that having a "labyrinth" of different private labels and visual claims results, in many cases, in consumers not knowing what the exact status of any of those labels is, and what requirements these labels apply. In these cases labels do not help consumers in their decision-making processes. That is why ACM has called on companies to reduce the number of labels, and to make a greater effort in creating high-quality, uniform labels.

Do you still wish to develop your own label or use a visual claim for marketing purposes? Your product or company must have actual sustainability benefits compared with similar products or companies. Otherwise, the label in itself can be misleading. Furthermore, you should ensure that your labels and symbols cannot be confused with other, existing public or private labels.

Example:



On some of its products, a paint manufacturer makes the claim "Planet Proof" including a symbol of a green globe. The manufacturer does not make clear what the paint's concrete sustainability benefits are, and also does not use any criteria that the paint needs to meet in order to be deemed "Planet Proof". The claim and the logo are not labels but rather company symbols. Although the claim and the logo give the impression that the paint products sporting them have certain sustainability benefits and meet certain criteria, there is no guarantee at all that these products are more sustainable than similar products. The claim and the logo can therefore be misleading to consumers. The paint manufacturer would best be advised to find out whether there is a "real" label for which its paint products can be certified or make a concrete claim such as "this paint does not contain ingredient X".

If you claim that the product or company meets the requirements of a specific label, the claim must be specific, and you cannot inflate the label's requirements. The requirements for labels (public and private) must be transparent and verifiable, and you must be able to demonstrate that you meet those requirements.⁶¹ You must provide information about the meaning of the label on the packaging, in advertisements, or through other marketing messages, and you need to inform consumers about where they can find detailed or additional information about the label, for example on the company's website.

Example:



In its advertising, a company promotes sustainable coffee, and uses a pictogram of a green coffee bean. Sustainable is a general term that can concern different kinds of benefits with regard to coffee. For example, it can concern certain environmental benefits in the way the coffee is grown, improved labor conditions of the farmers or higher wages, and so forth. Such a general claim without any further specification is more likely to mislead consumers. The claim is not misleading if the company makes it clear as to why the coffee is sustainable. Showing the logo of a label, such as a green coffee bean, is not enough in that regard. One example of a concrete claim is: "The coffee is grown organically, and farmers work in accordance with the standards of the International Labor Organization (ILO)." Attention: the product thus needs to have been actually grown organically in accordance with those regulations.

Example:



The production of cotton has major impact on the environment and working conditions. Many clothing companies participate in the "Better Cotton Initiative" in order to reduce these negative effects. If you use this label for marketing purposes, it is important that you inform consumers clearly that, on the basis of this label, individual products do not automatically contain 'better cotton', but that buyers of these products support the production of 'better cotton' in the future.

3 Appendix: I Notes

¹ These guidelines are aimed at companies that use sustainability claims themselves as well as companies that help their companies to phrase sustainability claims, such as marketing agencies.

² The Netherlands has committed itself to implementing the sustainability goals in the 2015 Paris Climate Agreement as well as the UN Sustainable Development Goals (SDGs). By 2030, the Netherlands wishes to have a 49%-reduction of greenhouse gas emissions compared with 1990. And, at the EU level, the goals are equally ambitious: Europe must be carbon-neutral by 2050.

³ For example, SDG 12 concerns the realization of sustainable consumption and production patterns. One of the goals is to guarantee by 2030 that people everywhere have access to and are aware of relevant information about sustainable development and sustainable lifestyles that are in harmony with nature. In the UN Guidelines for consumer protection, too, sustainable production and consumption are featured prominently. See https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf. And at a European level, the New Circular Economy Action Plan seeks to promote sustainable consumption, and to enhance the consumer's position in the circular economy. The action plan is part of the [Green Deal](#), which is the plan of the European Commission to make the EU economy more sustainable. See also <https://ec.europa.eu/environment/circular-economy/>.

⁴ Study by Motivaction for the Dutch Ministry of Economic Affairs and Climate Policy (EZK) confirms that 61% of the Dutch believes they can help create a more sustainable society, and 39% says that sustainability plays a key role in their choices. Motivaction (2019), *Publieksmonitor Klimaat en Energie*, commissioned by EZK, December 2019.

⁵ For example, see the market study of Dossier Duurzaam (2019) into the views of Dutch consumers on sustainability <https://www.duurzaam-ondernemen.nl/consument-kritisch-over-duurzaamheid-bedrijven/> (in Dutch)

⁶ In its 2020 edition of InSight, ACM called on companies not to use misleading claims and logos. See <https://www.acm.nl/en/publications/insight-2020-better-certification-labels-are-necessary-making-sustainable-choices-easier>.

⁷ See Section 6:193a, sub c, of the Dutch Civil Code (BW): by “product”, the following is meant: a good (including electricity), or service.

⁸ UN General Assembly, Resolution A/Res/66/288 of 27 July 2012, RIO + 20. See also Dutch House of Representatives, 2018-2019 session, 35 247, No 3, Explanatory Memorandum to the Bill on Room for Sustainability Initiatives, p. 11.

⁹ With this classification and definitions, ACM follows the “*Guidance from the Consumer Ombudsman on the use of environmental and ethical claims*”, p. 7.

¹⁰ See UCP Guidance, p. 117.

¹¹ See UCP Guidance, p. 117.

¹² ACM enforces compliance with the provisions included in the Annex, part a, of the Dutch Act on Enforcement of Consumer Protection (Whc).

¹³ See Book 6, title 3, section 3A of the Dutch Civil Code (BW). The statutory provisions in section 3A are also referred to as the Dutch Act on Enforcement of Consumer Protection (Whc).

¹⁴ Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32017R2394>.

¹⁵ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005L0029>.

¹⁶ Working document guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices (2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016SC0163>

¹⁷ See https://ec.europa.eu/consumers/archive/cons_safe/news/green/guidelines_nl.pdf.

¹⁸ This concerns, among other things, the information of the United Kingdom (see: <https://www.gov.uk/government/publications/make-a-green-claim/make-an-environmental-claim-for-your-product-service-or-organisation>), Norway (see the “Informational notice – requirements when using sustainability claims in the marketing of garments and clothing collections”, <https://www.forbrukertilsynet.no/content/2020/09/Informational-notice-to-traders-requirements-when-using-sustainability-claims-in-the-marketing-of-clothing-collections.pdf>), Denmark (See the “Guidance from the Consumer Ombudsman on the use of environmental and ethical claims, etc., in marketing”, <https://www.consumerombudsman.dk/media/49009/vejledning-om-miljoemaessige-paastande-engelsk-udgave-2.pdf>) and France (see “A practical guide to environmental claims for traders and consumers”, https://www.economie.gouv.fr/files/files/directions_services/dgcrf/documentation/publications/brochures/2012/Guide_allegat_e_nviron_en_2012.pdf).

¹⁹ This concerns, among other things, the information of the United States (see the “FTC Guide Environmental Claims 2012”, https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf), New Zealand (See the “Environmental Claims Guidelines”, https://comcom.govt.nz/_data/assets/pdf_file/0017/220247/Environmental-claims-guidance-July-2020.pdf) and the information of the United Nations (see the “Guidelines for Providing Product Sustainability Information”, <https://www.oneplanetnetwork.org/resource/guidelines-providing-product-sustainability-information>).

²⁰ See Section 6:193d of the Dutch Civil Code (BW)

²¹ See Section 6:193h of the Dutch Civil Code (BW).

²² The rules regarding unfair commercial practices apply to “traders”. By this, Section 6:193a paragraph 1 sub b of the Dutch Civil Code (BW) means any natural person or legal person that acts in the context of exercising a profession or running a company or the one who acts on behalf of that person. In these guidelines, we use the term “companies”.

²³ See Section 6:193c, Section 6:193d and 6:193e of the Dutch Civil Code (BW). See also the UCP Guidance, p. 120.

²⁴ According to Section 6:193a paragraph 1 sub d of the Dutch Civil Code (BW), the term “commercial practices” includes “any act, omission, behavior, impression or commercial communication, including advertising and marketing, of a trader, which is directly linked to the sales promotion, sale or delivery of a product to consumers.”

²⁵ See UCP Guidance, p. 71. Undertakings use CSR and sustainability policies to show that they take into account humans, animals, and the environment. This may influence a consumer’s decision about a transaction, who has to choose between two competing products of similar quality and price, where one has a sustainability claim, and the other does not have one, or if there are different sustainability claims.

²⁶ For example, think of Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007, Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tires with respect to fuel efficiency and other essential parameters, or Regulation (EU) No 1169/2011 on the provision of food information to consumers.

²⁷ In addition, the International Organization for Standardization (ISO) has developed an international standard for environmental claims that have not been verified by an independent third party (ISO 14021:2016), see <https://www.iso.org/standard/66652.html>.

²⁸ See UCP Guidance, p. 119.

²⁹ See Articles 7 and 8 of the Dutch Advertising Code, the Environmental Advertising Code, and the Code for Passenger Cars, and the Advertising Code for Cosmetics.

³⁰ See UCP Guidance, p. 121. See also the Environmental Claims Guidance, p. 3.

³¹ See UCP Guidance, p. 126. See also the Environmental Claims Guidance, p. 8.

³² See UCP Guidance, p. 125-127. See also the Environmental Claims Guidance, p. 9.

³³ See UCP Guidance, p. 122. See also the Environmental Claims Guidance, p. 7.

³⁴ See UCP Guidance, p. 123-124.

³⁵ See UCP Guidance, p. 133.

³⁶ Much information about the use of specific environmental claims such as compostable, degradable and recyclable can be found in the Environmental Claims Guidance, 16-22.

³⁷ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91

³⁸ According to preamble 1 of Regulation (EC) No 834/2007, organic production is “Organic production is an overall system of farm management and food production that combines best environmental practices, a high level of biodiversity, the preservation of natural resources, the application of high animal welfare standards and a production method in line with the preference of certain consumers for products produced using natural substances and processes. The organic production method thus plays a dual societal role, where it on the one hand provides for a specific market responding to a consumer demand for organic products, and on the other hand delivers public goods contributing to the protection of the environment and animal welfare, as well as to rural development.”

³⁹ For this percentage of 95%, Article 23, paragraph 4, sub a, under ii of Regulation (EC) 834/2007 was followed. In this context, see also the Danish Competition and Consumer Authority, which has as its basic principle that fabrics and cosmetics can be designated as “Organic” if at least 95% of all components of the product in question come from a certified organic plant and/or production of livestock. Other components cannot substantially reduce or neutralize the organic cultivation. See the “*Guidance from the Consumer Ombudsman on the use of environmental and ethical claims*”, p. 14-16,

<https://www.consumerombudsman.dk/media/49009/vejledning-om-miljoemaessige-paastande-engelsk-udgave-2.pdf>.

⁴⁰ In this context, see also the Danish Guidance from the Consumer Ombudsman on the use of environmental and ethical claims, etc., in marketing, p. 19-20.

⁴¹ Well-known standards for CO2-compensation projects are, for example, Gold Standard and the Verified Carbon Standard.

⁴² Under Section 6:193c of the Dutch Civil Code (BW).

⁴³ See UCP Guidance, p. 128-131. See also the Environmental Claims Guidance, p. 10.

⁴⁴ See UCP Guidance, p. 129.

⁴⁵ The ISO has developed standards for environmental claims that have been verified by third parties (ISO: 14024:2018), environmental claims that have not been verified by an independent third party (ISO 14021:2016) and life cycle effects (ISO 14025:2006).

⁴⁶ See UCP Guidance, p. 130. See also the Environmental Claims Guidance, p. 11.

⁴⁷ See the Environmental Claims Guidance, p. 24.

⁴⁸ See rule of thumb 1: Only use clear, easy-to-understand, and accurate sustainability claims.

⁴⁹ One example where such a method has been used is the study “De verborgen kosten van een spijkerbroek, True Pricing in de jeans keten”, <https://insights.abnamro.nl/2019/05/spijkerbroek-bijna-33-euro-te-goedkoop/>.

⁵⁰ See UCP Guidance, p. 133.

⁵¹ See the Environmental Claims Guidance, p. 14.

⁵² See the Environmental Claims Guidance, p. 14-15.

⁵³ In this context, see also the Danish Guidance from the Consumer Ombudsman on the use of environmental and ethical claims, etc., in marketing, p. 24-25.

⁵⁴ See the Environmental Claims Guidance, p. 12.

⁵⁵ See for example E. van der Zee and A. Fischer, Green Pictograms on EU Foods: A Legal Study Informed by Behavioral Science, *Journal of European Consumer and Market Law*, no. 1/2018, p. 15-22.

⁵⁶ See the Environmental Claims Guidance, p. 12.

⁵⁷ One example is the Ecolabel. Ecolabel is the official European environmental label for non-food products and services. The label sets strict requirements for the use of raw materials, energy, water, pollutants, waste, and packaging. For more information, see https://ec.europa.eu/environment/ecolabel/index_en.htm.

⁵⁸ The European Commission has developed guidance for labels for agricultural products and foodstuffs. These include recommendations regarding access to a label, the oversight structure, the requirements of the label, and inspection and sanctioning regulations. See the Commission Communication — EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:341:0005:0011:en:PDF>

⁵⁹ For an explanation of the concept of a product’s life cycle, see Rule of thumb 5 of these guidelines.

⁶⁰ See <https://www.acm.nl/en/publications/insight-2020-better-certification-labels-are-necessary-making-sustainable-choices-easier>

⁶¹ According to Section 6:193g sub b of the Dutch Civil Code (BW), the inclusion of a confidence label, quality label or a similar label without having received the required permission to do so, is misleading under all circumstances.