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Chris. The Netherlands Authority for Consumers and Markets requests that you review your company's sustainability claims and modify them where necessary. In this letter, we explain this request in more detail.

The Netherlands Authority for Consumers & Markets (hereafter: ACM) is an independent regulator for, among other things, consumer protection legislation. ACM's mission is to ensure that markets function well for both people and businesses, now and in the future. ACM does this in part by overseeing compliance with the laws and rules that companies must observe in dealing with consumers. It also protects businesses against unfair competition from businesses that do not comply with the rules.

In 2020, ACM investigated the use of sustainability claims by companies. This research led to the publication of the Guidelines Sustainability claims<sup>1</sup>, in which ACM explains the rules that apply to the use of sustainability claims. ACM also explains what it expects of companies in this respect, so that companies can modify their sustainability claims if necessary. You can consult the Guidelines Sustainability claims (hereafter: the Guidelines) at:

<https://www.acm.nl/sites/default/files/documents/guidelines-sustainability-claims.pdf>

### Why does ACM monitor sustainability claims?

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<sup>1</sup>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: *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 or that has particular environmental benefits. Environmental claims may concern the impact on the environment in general or on specific environmental aspects such as the air, water, soil, ecosystems, biodiversity or climate. *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).

ACM has noticed that various companies, including those in the clothing industry, are increasingly emphasizing the sustainability benefits of their products when selling them. ACM believes that it is important to address sustainability. Clear sustainability claims help consumers make sustainable choices when purchasing products and services. Moreover, clear sustainability claims offer companies the opportunity to promote the sustainable aspects of their products, and, in this way, boost competition on sustainability. However, it is important that sustainability claims are not, or cannot be, misleading, for instance by overstating sustainability benefits. Companies that offer products or services that have a high impact on people and the environment should be extra careful when using sustainability claims, to prevent them from misleading consumers.

**Why are you receiving this letter?**

ACM requests that you review your company's commercial sustainability claims in all your communication channels and, where necessary, align these with unfair commercial practices legislation. This applies to products sold in stores as well as those sold online. You must present your sustainability claims in a clear, specific, accurate, and unambiguous manner to ensure that consumers are not misled about the sustainability of your products or services. If you use resellers, it is important that they also comply with this legislation. ACM intends to continue the investigation from 14 June 2021. From that date onwards, traders making sustainability claims that do not comply with the aforementioned legislation run the risk of enforcement by ACM. In the event of an established violation of consumer legislation, ACM is authorized to impose fines or order subject to periodic penalty payments, among other instruments.

In this letter, ACM once again briefly lists the rules of thumb from the Guidelines. It also provides a number of examples of potentially misleading sustainability claims that it has identified in the clothing industry and explains how such claims could be reformulated to be in line with consumer protection legislation. The legal framework can be found in the annex.

**Rules of thumb from Guidelines regarding sustainability claims**

Sustainability claims must be clear, truthful, and relevant to help consumers make sustainable or more sustainable choices. ACM realizes that it can be complicated to inform consumers about a complex concept such as sustainability in a transparent and clear manner, which is why ACM has formulated the following five rules of thumb in its Guidelines for companies that wish to use sustainability claims. After the section on rules of thumb you will find examples of common and possibly misleading sustainability claims with comments on how these claims can be modified.

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

Sustainability claims are only of use to consumers if these 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. Consumers are only able to make well-informed decisions if the requirements that labels set are sufficiently strict and transparent. It must be clear what a label stands for, and on the basis of what criteria the label has been awarded. It would be best if you checked in advance what labels already exist for your product group, and whether a suitable label exists that you can join, before considering developing your own label or visual claim. If your sustainability claim is based on a self-developed sustainability program, you will have to inform consumers about that.

**Examples of sustainability claims in the clothing industry**

Below, ACM gives a number of concrete examples of the correct and incorrect use of sustainability claims in the clothing industry. The examples given are based on claims ACM has encountered in practice at one or more clothing retailers and are not intended to give a complete overview of all sustainability claims. They serve as illustrations of sustainability claims that could be misleading. Whether a claim is actually misleading will depend on the circumstances of the case. Suggestions for improvements are given in the examples; there may also be other ways to bring the claim in line with the rules.

*a. Clearly state what the sustainability benefit of the garment is*

Vague, general, or absolute terms are sometimes used in the clothing industry to market garments. These include “Honest”, “Green”, “Ethical”, “Circular”, “Sustainable”, “Fair”, or “Fair wages”, “Good for the planet”, “Ozone-friendly”, “Environmentally safe”, “Good for the environment”, “Animal-friendly”, and “Responsible”. These terms can mislead consumers, as the specific sustainability benefit of the garment is unclear. The use of these sorts of terms by clothing retailers is likely to give consumers the impression that the entire garment offers great sustainability benefits or that it only has a limited negative impact on humans, animals, and the environment. Make it clear what specific sustainability benefit the garment has and phrase your claim factually, objectively, specifically, and neutrally.

A clothing retailer advertises a dress as “Sustainable: Fair wages for all.” Consumers are likely to derive certain expectations from such a claim about the level of wages of the employees involved in all stages of the production of the clothing.

But it is insufficiently clear to consumers what the actual sustainability benefit is. What are “Fair wages”? And what are the retailers efforts in contributing to “fair wages”? The use of vague terms such as “fair” can mislead consumers about the extent of a sustainability benefit.

It should immediately be clear to consumers what you mean by your claim. Therefore, avoid using vague terms such as “fair” without further elaboration. You could do this, for example, by making it

clear, in addition to the claim, that employees at all production stages earn a “living” wage in accordance with ILO standards.

*b. Make it clear how much organic cotton a garment contains*

More and more clothing manufacturers and clothing retailers use the term “organic cotton” when advertising their clothing. You may only claim that a garment is “organic” if (i) more than 95% of materials or ingredients originate from certified organic production and (ii) other (meaning non-organic) materials or ingredients that are used do not reduce or offset the benefits of organic production.<sup>2</sup> If 95% or less of the garment is made from organic materials or ingredients and you want to let your customers know that your product is partially organic, then you will have to indicate the percentage of organic materials or ingredients.

A clothing retailer claims that a T-shirt is an “Organic cotton T-shirt”, while, in reality, the T-shirt only contains 50% organic cotton. The claim raises consumer expectations that the product is made entirely or largely of organic cotton, even though this is not the case.

In this case, the claim “organic cotton” may not be used in this way as it may mislead consumers into thinking that the entire T-shirt is made of organic cotton. If you want to let consumers know what percentage of organic cotton a T-shirt contains, you can phrase the claim as follows: “This T-shirt contains 50% organic cotton” or “This T-shirt contains between 40% and 50% organic cotton.” The information on the percentage or range of organic cotton must be included in the claim. Moreover, an explanation on the sustainability benefits of organic cotton must be placed near the claim, e.g. on the garment’s label and/or the product description on the website.

*c. Use the “Better Cotton Initiative” logo correctly*

The “Better Cotton Initiative” is regularly used when advertising garments in the clothing industry. This initiative is committed to sustainable cotton production. Clothing retailers state that by purchasing a garment with the BCI logo, consumers are contributing to the production of more sustainable raw materials, for instance. However, there is often no guarantee that the garment itself contains more sustainable raw materials. It is therefore important to inform consumers about what this logo means. If you use a logo such as that of BCI, where the buyer “contributes” to the production of more sustainable raw materials, you must make it clear what this means and that there is no guarantee that the garment itself contains more sustainable raw materials.

<sup>2</sup>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*”, pp. 14-16, <https://www.consumerombudsman.dk/media/49009/vejledning-om-miljoemaessige-paastande-engelsk-udgave-2.pdf>. There are several quality marks in the textile and cosmetics sector that work with the standard of 95% for the use of the term “Organic”.

The product description for a cardigan includes the “Better Cotton Initiative” logo. The use of the logo in the product description of the cardigan could give the impression that the cardigan is made of “Better Cotton” even though this is actually not the case. This means that the garment appears to have greater sustainability benefits than is actually the case.

If you use this logo in your claims then it is important that you clearly inform consumers next to the logo that on the basis of this label, individual garments do not automatically contain “better cotton”, but it means that buyers of these products support the production of “better cotton” in the future. Moreover, you must explain what the sustainability benefits are of “better” cotton. This explanation must be included in the product description on the website. On the garment’s label you can refer to the website for additional information on the “Better Cotton Initiative”.

*d. Clearly state the criteria used for a sustainability filter or sustainable collection*

If you offer a sustainable collection or use a sustainability filter on your website that allows consumers to select sustainable garments, then it must be immediately clear to consumers when they click on the collection or the filter what the sustainability benefit is and what your minimum requirements are for products that fall within the collection or the filter. The availability of a sustainable collection or sustainability filter means that consumers may expect that the garments that belong to these must meet strict sustainability requirements. Many clothing stores use special terms to distinguish their sustainable clothing collection, such as “GreenWear” or “sustainable choice”. The name of a sustainable collection can also mislead consumers about the sustainability of the garments in that collection if the name is not specific.

A clothing retailer offers consumers the option of filtering the clothing range by “sustainability”. Consumers who use this filter are shown a selection of garments that all have a “sustainable choice” label. The online store does not explain what is sustainable about the displayed clothing. In this case, the use of the “sustainability” filter and the claim “sustainable choice” is unclear and can be misleading. After all, there is no explanation of what the sustainability benefits of the displayed garments are, whereas sustainability with regard to clothes can indicate various benefits.

You should therefore clearly indicate next to the filter or the collection what the minimum sustainability requirements are for the selected garments. Furthermore, for each garment, you must indicate in the online product description and on the garment label what the specific sustainability benefits are.

- e. *Distinguish between the sustainability of your garments and the sustainability of your company or brand*

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

A retailer of jeans claims in an advertisement and on the label of the jeans: “By 2050, we will only use 100% recycled or other sustainably produced materials.” Based on the claim, it is not clear to the consumer how much sustainable or recycled materials are in the jeans in question. And what efforts the retailer has already made to achieve this goal. In these circumstances, the sustainability claim of the retailer can be misleading for consumers as the claim gives the impression that the jeans are more sustainable than they actually are.

You must distinguish between the sustainability efforts of your company or brand (“By 2050, we will only use 100% recycled or other sustainably produced materials”) and the sustainability of your jeans (“These jeans are made from 20% recycled pants”). You must clearly indicate the sustainability benefit of the jeans in the product description on the website and/or the label. You must also clearly indicate when a claim is about a sustainability effort. You can include a separate link or box on the web page to sustainability goals and initiatives.

Specific rules apply to phrasing your sustainability goals. For more information, please see the following example and rule of thumb 5 of the Guidelines.

- f. *Be honest and transparent about your company’s efforts with regard to sustainability*

A claim about your company’s sustainability efforts or goals must be proportional to the actual sustainability efforts and the impact on humans, animals, and the environment. On your clothing website, you may only use a sustainability vision or future sustainability goals for marketing purposes if you have a clear, specific, and measurable approach to achieving it. This approach must have already been initiated or will be initiated in the near future. You must be able to prove that your company has reduced the negative impact and you must not overstate the sustainability of your company. You must avoid giving consumers a distorted view of your company's sustainability.

A clothing retailer uses claims on its website such as: “*climate neutral by 2040*”, “*all our products will be made of sustainable material by 2030*” or “*By 2025, we will only have 100% sustainable brands*”. These claims are vague and it is unclear for the consumer what the actual efforts of the retailer are. The claims can create expectations among consumers that the company or brand is more sustainable than it actually is.

Only state your sustainability vision or future sustainability goals if you have a clear, specific, and measurable approach to achieving them. Phrase your claim as specifically as possible and clearly indicate which parts of the production and distribution chain the claim relates to. The explanation of the substantiation of the claim must be no more than a mouse click away from the sustainability claim.

**Where should the information be placed?**

The information that you should provide to consumers about your sustainability claims consists of the claim itself, its qualification, the explanation of the qualification, and any supporting evidence.

If you use a sustainability claim, at least the qualification should be visible as close as possible to the claim. In other words, the qualification must be presented in the same place as the claim on the website and/or the clothing label. Only displaying a logo or quality mark is not enough to make general claims tangible.<sup>3</sup> Qualifying the claim means that it is immediately clear to consumers what the specific sustainability benefit of the product is. If, for example, the claim “Organic cotton” is used and the garment consists of less than 95% organic cotton, it should be immediately clear to consumers when reading the claim what percentage of organic cotton has been used in the garment. You can do this by stating the percentage.

In addition, the explanation of the qualification of the claim should be placed no more than one (mouse) click away from the sustainability claim. This means that a consumer has to be directed with a link to the page where an explanation is given about the substantiation of the claim. For physical products, the qualification of the claim must be on the clothing label. Due to the limited space on a clothing label, you can keep the explanation of the substantiation brief. For more information about the substantiation of the claim you can refer to your website on the clothing label.

For example: information on why the used cotton is organic is a minimal requirement for the substantiation of the term organic cotton. In addition, you should explain what the sustainability benefits of the organic cotton are.

The supporting evidence of a claim, such as a report, may be placed somewhere else. For example, the evidence can be displayed on a different part of the website, on another website or you can indicate that documentation will be provided on request. You need to inform consumers about where they can find supporting evidence.

<sup>3</sup>See the Guidelines regarding sustainability claims, p 11, <https://www.acm.nl/sites/default/files/documents/leidraad-duurzaamheidsclaims.pdf>.



**Questions or remarks?**

If you have any further questions or remarks, do not hesitate to contact [Confidential]; [Confidential].  
Please mention our case number ACM/21/050148.

Yours sincerely,

sgd.

The Netherlands Authority for Consumers and Markets,

Ms. R. Fikkers  
Team Manager  
Consumer Department

## Annex: Legal framework

ACM briefly outlines the legal framework below. See also the legal framework in the Guidelines regarding sustainability claims.<sup>4</sup>

The rules of thumb for sustainability claims are based on the European Directive concerning unfair commercial practices.<sup>5</sup> This directive has been implemented in Book 6 of the Dutch Civil Code (BW). Section 6:193b of the Dutch Civil Code (BW) prohibits a trader from engaging in unfair commercial practices. The term “commercial practices” is interpreted broadly<sup>6</sup> and includes more than just product advertising. Commercial practices can, for example, also include the CSR claims<sup>7</sup> and other sustainable aspirations of traders.

A commercial practice can be misleading if the trader provides factually incorrect or misleading information.<sup>8</sup> The starting point in determining whether a sustainability claim is misleading is the general impression the claim will make on the average consumer. A sustainability claim can be factually correct but nevertheless misleading due to the context in which it is presented. Furthermore, a commercial practice can also be misleading if the trader omits essential information or provides this in an unclear or incomprehensible manner.<sup>9</sup> Information or lack of information can only be misleading if it causes the average consumer to make or possibly make a transactional decision which he would not otherwise have made.

Traders must ensure that consumers get a correct and good overall impression of the product or service being offered. Consumers may not be misled into making purchases because information is lacking or has been provided incorrectly so that consumers can easily overlook it. This is why traders must present their sustainability claims in a clear, specific, accurate, and unambiguous manner to ensure that consumers are not misled.<sup>10</sup>

Finally, upon request of ACM, traders must be able to substantiate the entire sustainability claim with evidence.<sup>11</sup> If a trader cannot substantiate a claim, the claim will be considered misleading.

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<sup>4</sup> Guidelines regarding sustainability claims, <https://www.acm.nl/sites/default/files/documents/leidraad-duurzaamheidsclaims.pdf>, p. 7.

<sup>5</sup> 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, <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A32005L0029>.

<sup>6</sup> See the definition of “commercial practice” in Section 6:193a paragraph 1 sub d of the Dutch Civil Code (BW).

<sup>7</sup> Working document guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices (2016), <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:52016SC0163&from=NL>, p. 71.

<sup>8</sup> Section 6:193c of the Dutch Civil Code (BW).

<sup>9</sup> Section 6:193d of the Dutch Civil Code (BW).

<sup>10</sup> See Section 6:193c, Section 6:193d and 6:193e of the Dutch Civil Code (BW). See also Working document guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices (2016), <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:52016SC0163&from=NL>, p. 120.

<sup>11</sup> Section 6:193j of the Dutch Civil Code (BW).