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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 claims¹, 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>

¹In 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).

Why does ACM monitor sustainability claims?

ACM has noticed that various companies, including those in the dairy 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, parties 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 dairy 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 dairy industry

Below, ACM gives a number of concrete examples of the correct and incorrect use of sustainability claims in the dairy industry. The examples given are based on claims ACM has encountered in practice at one or more suppliers of dairy products 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. Substantiate your sustainability claims

Vague, general, or absolute terms are being used in the dairy industry to market products. These include “Sustainable”, “Carbon neutral”, “Climate neutral”, “Natural”, “Pure nature”, “Happy earth”, “Happy animals”, “Honest”, “Good for the environment”, and “Responsible”. These terms can mislead consumers as the specific sustainability benefit of the product is unclear. The use of these sorts of terms by suppliers of dairy products is likely to give consumers the (incorrect) impression that the entire product offers great sustainability benefits or that it only has a limited negative impact on humans, animals, and the environment. You must therefore make it clear what specific sustainability benefit the product has and phrase your claim factually, objectively, specifically, and neutrally. This means that it should be clear to a consumer at a glance what the specific sustainability benefit of the product is. If you do use general terms, you must specify next to the claim which part of your product/production process is sustainable and why it is sustainable. In doing so, only emphasize sustainability benefits that significantly improve the impact on the environment or animals. Do not use jargon, the consumer must be able to understand your explanation.

Dairy supplier Y states that its product is “sustainable” on the front of a carton of yoghurt. The information that the cows are frequently allowed to graze outside is provided on the back of the packaging. Based on this claim and the additional information, it is unclear to the consumer exactly

how sustainable the product is.

This claim could be modified to read: “this yoghurt is sustainable: the cows frequently graze outside, see the back for more information.” You could place the following on the back, for instance: “Our cows graze outside for at least X hours a day on X days of the year. This is X more/less than average in the (non-organic) dairy industry in the Netherlands.

b. Make fair and clear comparisons

A number of dairy products state comparisons like “better”, “greener”, “less CO2 emissions” and “better for nature/animals”. If you use the sustainability of your product, production process or your company for comparison purposes, you must clearly formulate the claim and ensure that your comparisons cannot lead to any misunderstandings among consumers. You must explicitly state what you are comparing your product, production process or company with. You can only compare the sustainability aspects of your product or production process with other products or production processes that meet the same needs or are intended for the same purpose. The substantiation of the comparison must be based on measurable values (such as percentages of standard units) and must be easy for consumer to find.

Dairy supplier X claims on the front of its milk carton: “30% less CO2 emissions.” In reality, the emissions caused by the production process of the packaging are 30% less than for the previous packaging. Without additional information, this claim suggests that a total of 30% less CO2 is emitted in the production of the packaging and the milk, while the CO2 savings only refer to the production of the packaging.

If you wish to make this comparison, your claim must mention the fact that it involves the emissions coming from the production of the packaging and that it is being compared to the previous packaging. You could phrase your claim as follows: “This packaging was manufactured with 30% less CO2 emissions than the previous packaging.”

c. Be cautious in using sustainability claims if the product or production process has a major negative impact on animal welfare or the environment

The dairy industry has a major impact on both the environment and animal welfare. You must therefore be honest and specific about the impact your product has on animals and the environment. The greater the negative impact of your company on the environment and animals, the more cautious you should be in making claims so that you do not mislead consumers about the sustainability of your company or your products.

Dairy supplier Z claims that its product contributes to a better environment on the front of a carton of custard. The information on the back of the packaging states: “Our meadows are a paradise for insects and birds.” In this way, the product suggests that if consumers purchase the product they

contribute to a better environment, which is not actually the case.

This claim could be modified to read: "We reduce the impact of this product on the environment by refraining from using artificial fertilizers and pesticides. Moreover, nesting areas in the fields are respected so that they can provide an attractive environment for meadow birds."

d. Ensure that visual claims are useful to consumers, not confusing

You should only use clear images and colors that do not give a false impression about the sustainability of your product. If you use visualizations, then their purpose must be clear to consumers.

Dairy supplier X displays a meadow full of grazing cows on the front of its buttermilk carton. This suggests that the cows frequently graze outside. This visual claim must be clarified.

The visualization of a meadow full of grazing cows may be displayed on the front of the packaging, but it should include the statement: "Our cows frequently graze outside." Additional information should be included on another side of the packaging: "Our cows graze outside for at least X hours a day on X days of the year." This claim can only be made if the cows graze outside more frequently than the industry standard.

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, the qualification of the claim should be visible as close as possible to the claim. In other words, the qualification must be presented next to the claim. 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 "carbon neutral product" is used, it should be immediately clear how the CO₂ emissions of the production are reduced: through reduction or compensation, including percentages. Only displaying a logo or quality mark is not enough to make general claims tangible.²

Moreover, the explanation of the qualification of the claim must be placed on the same product. For example: in the case of CO₂ compensation claims, this substantiation must include information about the main characteristics of the compensation, such as which certificates have been purchased, for which project(s) the compensation applies, by which organization and where these projects take place.

²See the Guidelines regarding sustainability claims, <https://www.acm.nl/sites/default/files/documents/leidraad-duurzaamheidsclaims.pdf>, p. 11.

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.³

The rules of thumb for sustainability claims are based on the European Directive concerning unfair commercial practices.⁴ 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 broadly⁵ and includes more than just product advertising. Commercial practices can, for example, also include the CSR claims⁶ and other sustainable aspirations of traders.

A commercial practice can be misleading if the trader provides factually incorrect or misleading information.⁷ 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.⁸ 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.⁹

Finally, upon request of ACM, traders must be able to substantiate the entire sustainability claim with evidence.¹⁰ If a trader cannot substantiate a claim, the claim will be considered misleading.

³ Guidelines regarding sustainability claims, <https://www.acm.nl/sites/default/files/documents/leidraad-duurzaamheidsclaims.pdf>, p. 7.

⁴ 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>.

⁵ See the definition of “commercial practice” in Section 6:193a paragraph 1 sub d of the Dutch Civil Code (BW).

⁶ 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.

⁷ Section 6:193c of the Dutch Civil Code (BW).

⁸ Section 6:193d of the Dutch Civil Code (BW).

⁹ 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.

¹⁰ Section 6:193j of the Dutch Civil Code (BW).