

## Questions from the live online training in Responsible Marketing Communication with IKEA 29 September 2022

Answers from the course leaders in blue below.

---

1. How severe or how misleading does a claim need to be to cause the 4% fine? What is the process to get to that point?  
In case of violation of the marketing law, companies risk being imposed with a fine of up to 4 percent of a company's annual turnover, through the new provisions introduced in the Marketing Act, the Price Information Act, the Act on Distance Contracts and Off-Premises Contracts and the Contracts Terms Act.  
  
When the fine shall be decided the court shall make an assessment based on:
  - The severity of the action, especially the art, duration and comprehensiveness,
  - Possible actions that the trader has taken to reduce the damage that a consumer or another trader has suffered,
  - Earlier breaches
  - Possible gain that the trader has made or possible loss that the trader has avoided,
  - Possible other sanctions in other member states that the trader has been ordered, and
  - Other circumstances...
2. i second the question above, would be great to have a bit more information about the 4% fine under the new deal for consumers - does that apply to misleading advertising? Or is it a much broader scope on general unfair consumer practices?  
Yes, the fine may be applicable to misleading advertising as well.
3. if you have the actual directive/regulation name, that would be helpful  
Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.  
<https://eur-lex.europa.eu/eli/dir/2019/2161/oj>
4. Would a foot note in a report on the same page as the claim be ok?  
Most likely not. Please note that qualifications should be clear, prominent and readily understandable; the qualification should appear in close proximity to the claim being qualified, to ensure that they are read together.
5. If we say a part of our range is "more sustainable" on e.g our website, and we describe what we mean by this on the same page - are we then staying on the right side?  
Sounds like you are on the right track. However, in order to give you our assessment we would need to see the material and make an overall assessment.

6. What about navigation on a website, or actual url's? Can they contain the word "sustainable" ? (it's impossible to have any type of substantiation in close proximity to e.g. url's or navigation...  
To our knowledge such a questions has not been tried before a court, hence, unclear whether that actually would constitute a claim. To be on the safe side we would recommend to use other URLs.
7. Can 'reliable scientific evidence' be internal or must it be third party  
Yes as long as it meets scientific standard.
8. Do you have good examples of green claims that meet the criteria?  
Unfortunately not. An exception is the Mercedes-Benz case where the brochures at the car dealers were not considered misleading since the green claim was qualified there.
9. Comparability - can it then be internal comparisons like between different materials - if possible to qualify of course?  
Yes as long as you are clear with the prerequisites of the comparison and – as you mention – you use qualifications as well.
10. Is there ANYTHING that can be deemed as being common sense? I.e. would you have to substantiate something like saying "using your leftovers for lunch the next day is an easy way to start living a little bit more sustainable"  
Unfortunately not, in our opinion. Even such a claim would need scientific evidence and qualification.
11. Thinking about how you can educate consumers on what you actually can do that has an impact. Do you have to substantiate even the most basic tips...?  
Please see answers above. Please note that one of the aims with the regulation is that possible actions in favor of the environment are not exaggerated.
12. What about when using 3rd party certifications: are we responsible for the claims made, or is that on the certifying organisation? E.g. communication in our stores or websites that talk about Rainforest Alliance certified cocoa. Do we have to verify that the substantiation is "enough", or is that for Rainforest Alliance to do..?  
You as the trader are responsible for your use of 3<sup>rd</sup> party certifications. As a general rule we recommend that you use qualifications in close proximity to any 3<sup>rd</sup> party logos/certifications.
13. What is considered an environmental sign or symbol - is the usage of e.g. green color already considered potentially misleading for consumers?  
Yes, even colors/symbols/other material can be a green claim that would need qualification. However, it is not so strict that the color green is always considered a green claim – but depending on the circumstances and what you are trying to communicate it may be a vague green claim.
14. These are all examples of marketing communication connected to specific products., so if a company advertises the ambitions and journey to get to a more sustainable future by changing and improving things on a range level, does that fall under the same assessment criteria from a legal perspective?  
Aspirational goals (e.g. carbon neutral in ten years) also needs qualifications. And you need to prove what steps you have taken to reach your goal and that such steps will likely lead to your goal.

15. Is a QR code on a piece of store communication considered the same as a "click away" (= not enough), or could that be seen as an extension of the store communication? In the same way as you could have a "read more" in digital communication.  
It would be considered as one click away in our opinion.
16. We currently need to have an approval of texts mentioning our certification partners by the partner, e.g. Aquaculture Stewardship Council or Rainforest Alliance. We heard that the responsibility lies with the "sender brand". Doesn't the need for the partner approval make them responsible for what is said as well?  
Correct. The partner is of course responsible for its own communication but when you are using such a partner in your communication you have the responsibility even for that use.
17. Is there any difference between saying something is "sustainable" and "more sustainable" when it comes to the perception of making claims...?  
"More sustainable" has a comparative meaning, hence you would need to qualify what you are comparing with. This is usually easier than making the claim "sustainable" which is very hard to prove.
18. There are certain words which can be considered as vague or greenwashing e.g. ethical / ethical supply chain. Example, to mitigate greenwashing, we avoid using ethical and changing it to "how we work with our partners" However, "ethical" are keywords (SEO) which customers searched for. By omitting these SEO words/phrases to mitigate greenwashing, it makes it challenging for customers/users to find the relevant info. How do we balance that or what is the way to go about that so that it's a win-win?  
Difficult but good question. You would need to use a qualification in the search result in our opinion. If you use a green claim as a SEO word we recommend that you use the green claim and a qualification in the search result.
19. We use "Renewable material" a lot, as in everything that grows - to phrase it very simply, and there are discussions on whether that is ok or not. To what extent would this need to be explained, is it even possible?  
Yes, we recommend that you explain/qualify what you mean by "renewable material". Please note our example with "renewable energy".
20. Do you have any advice how to compare the ICC guidelines with the WFA guidelines - assuming you are familiar with them.  
The ICC guidelines have been accepted as good practice in case law, hence, the high standard.