

Spring Greens in Fashion – From Runway to Regulation

April 4, 2023

From New York to London, Paris and Milan, a colour that tends to make a regular resurgence on spring and summer runways is a classic fresh green. Who could forget the amazing Christian Siriano voluminous bubble gown in lime green during New York Fashion Week Spring/Summer 2022, reminding us that green shoots were well and truly on the way!?

As we look forward to the lighter nights and the official start of a London spring, it's safe to say that green is also back in vogue here, not just in the fashion world, but in the legal and political world, too. With commitments to lower carbon emissions by 45 percent in 2023 and to reach net zero by 2050¹ in accordance with the United Nations' Climate Action², the UK government and European Commission (EC) are tackling climate change head on, with a particular focus on the fashion and retail industries.

Fashion brands from couture to mass market have answered this call to action by claiming they have reached "green targets," often using green labels to amplify this claim. As a result, brands are trying to entice shoppers with environmental, social and governance (ESG) crusades that give the appearance of implementing environmentally-friendly manufacturing lines, providing better working environments and pay for workers, and using sustainably-sourced materials. But in reality, this is not always the case.

While some consumers may have (literally) bought this, the UK Competition and Markets Authority (CMA) and EC have been skeptical for quite some time. Following the CMA's investigation into three large and high-profile UK retailers, the EC announced its "Directive on Green Claims" on March 22. Alongside the CMA and EC, consumers are becoming more environmentally conscious and savvy about such matters and are no longer naively "green."

CMA Investigation

Last year the CMA said it would focus its greenwashing investigations on the fashion sector, and it is cracking down on some well-known retailers, including Asda (part of the Walmart group), as a result. The investigations are still at a relatively early stage and the CMA has not arrived at a conclusion on whether these brands have breached their consumer protection legal obligations. If any of the brands is found to be in breach of its duties, it could face fines of up to 10 percent of its global annual turnover, amongst other penalties.

EU Green Claims Rules

The EC's Directive on Green Claims proposed a new set of rules calling for companies to demonstrate and prove their environmental claims. This new directive attempts to protect consumers from "greenwashing" – where companies inflate their sustainability statements by offering unclear, and often, deceptive information about their products.

¹ <https://commonslibrary.parliament.uk/global-net-zero-commitments/>

² <https://www.un.org/en/climatechange/net-zero-coalition#:~:text=To%20keep%20global%20warming%20to,reach%20net%20zero%20by%202050.>

Consumers are starting to lose faith in fast fashion giants that have released green collections, alleged to be misleading, and brands that make claims about their t-shirts being made from recycled plastic bottles, when in reality, only 1 percent (or less) of the fabric is made in this way. Deceiving customers can undermine trust, which can take a short time to destroy and a lifetime to recover.

To combat this, the proposed Green Claims Directive³ recommends penalties including fines, confiscation of revenue of up to 4 percent and temporary banning of up to a year from public procurement processes and public funding, enforced by national authorities. The draft proposal also recommends that, where companies want to promote their products as being “natural,” “climate neutral” or “having recycled content,” they must first carry out a science-based calculation that assesses all material environmental impacts to verify that their products match these labels, or have such labels verified under an environmental labelling scheme. An accredited verifier that is independent of the company would then need to verify the claim before the company can use it in the public domain.

However, environmental campaign groups have slated the proposal as weak, with the non-governmental organisation Environmental Coalition on Standards (ECOS) saying the proposal is still unclear on how it will be implemented and “too vague” to have a positive effect⁴. Margaux Le Gallou, the programme manager of ECOS, claims that the Commission “...got so much pushback that they removed everything that was concrete, left the principles and left a scene-setting for more to come...It’s too vague with too much left to later.”⁵ Carbon Market Watch⁶ and the European consumer organization, BEUC⁷, both stated that the only way to combat the problem of “carbon neutrality” claims is to ban companies making unsubstantiated claims and/or their products entirely.

However it is clear to see that more is being done to battle greenwashing, particularly in the fashion and retail sectors, and the CMA’s actions and EC’s Green Claims Directive are positive steps forward to regulating companies’ ESG obligations. We’ll be closely watching this space.

What Should Brands Think About When Making Green Claims?

Our top five tips for brands wanting to make green claims are:

1. Don’t base a green claim on one aspect of your product’s journey. Think it through from design to delivery. Your claim may be branded “misleading” if it doesn’t take into account the product’s lifecycle.
2. Have clarity in your claim and steer clear of any words that are too general and unqualified – such as “sustainable”, “eco”, “green” or “environmentally-friendly” – unless you provide details of what those words mean.
3. Where you want to caveat or qualify any of the claims, you must make this clear to consumers. The words need to be noticeable and in close proximity to the claim so that consumers effortlessly absorb any caveats or qualifications. Small print or tiny type won’t wash!
4. Where you make any comparisons as part of your claim, be sure to do so honestly, meaningfully and on a like-for-like basis.
5. Keep records of your claims, making certain that all claims are backed up by strong, reliable and current evidence that you can prove prior to making the claim.

All that’s left to say is, it appears that green isn’t just for spring, but for life!

³ https://environment.ec.europa.eu/publications/proposal-directive-green-claims_en

⁴ <https://www.ft.com/content/dbab5a78-7665-4034-bd1f-8eead585f580>

⁵ See article in footnote 4.

⁶ <https://carbonmarketwatch.org/category/greenwashing/>

⁷ <https://www.beuc.eu/press-releases/climate-neutral-claims-food-must-be-banned-shows-consumer-groups-report>

CONTACTS

For further information on the topic above, please contact your Katten lawyer or any of the following:



Sarah Simpson
+44 (0) 20 7770 5238
sarah.simpson@katten.co.uk



Tegan Miller-McCormack
+44 (0) 20 7770 5247
tegan.miller-mccormack@katten.co.uk



Christopher Cole
+1.202.625.3550
christopher.cole@katten.com

Hayley Rabet, a trainee in the Intellectual Property practice, contributed to this advisory.

Katten

katten.com

Paternoster House, 65 St Paul's Churchyard • London EC4M 8AB

+44 (0) 20 7776 7620 tel • +44 (0) 20 7776 7621 fax

Katten Muchin Rosenman UK LLP is a Limited Liability Partnership of Solicitors and Registered Foreign Lawyers registered in England & Wales, regulated by the Law Society.

A list of the members of Katten Muchin Rosenman UK LLP is available for inspection at the registered office. We use the word “partner” to refer to a member of the LLP. Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

Katten Muchin Rosenman UK LLP of England & Wales is associated with Katten Muchin Rosenman LLP, a US Limited Liability Partnership with offices in:

CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

4/4/23