



Business Forum Report, October 2023

From greenwash to greenhush?

When should and shouldn't food businesses make environmental and health claims?

Introduction: the problem of greenwash

Accusations of greenwash about food businesses are ramping up. There are a huge range of issues and topics covered under the concept of 'green claims'. Companies *should* be prepared to be held to account for claims they make about their brands and products. It is not just environmental claims that are important. There are big issues with nutritionwash, and with animal welfare and social claims too.

Anecdotally some in food businesses are saying that there is a risk that leaders are becoming risk averse and are not prepared to make green or health claims, thus potentially stifling the business cases for healthier, more sustainable food in future.

We are seeing brands starting to move away from using terms like 'carbon neutral', whilst others are using phrases such as 'from regenerative farming', without terms necessarily being clearly defined.

"Greenwash is still too prevalent in the UK and in other countries."

There is clearly a balance to be struck, but how can those in food and farming businesses get that right if we need legitimate and grounded, but bold, claims to create market demand for greener, healthier food? Where is the sweet spot between 'greenwashing' and 'greenhushing'?

Greenhush and why avoiding it matters

When an advert is factually correct, what is the issue? At one level, surely it is unrealistic to expect food companies and advertising agencies to reflect multiple issues in one advert or one claim. Indeed some feel there has been an overreaction from regulators, which risks more companies going quiet on green claims.

Lots of organisations are pulling campaigns and advocacy because they fear EU legislation or being called out for false claims in the UK. Being mindful of the growing risks of a backlash against vague or misleading claims, some food businesses may be tempted to just say nothing. The term 'greenhush' relates to deliberately underclaiming – or saying nothing - about a company's sustainable practices.

"Saying nothing is the worst thing that can happen right now. Greenhushing is really not the answer."

This is problematic, given systemic changes are needed to transition from a high carbon, fossil fuel-based

economy to one based on renewables that delivers net zero. Progressive brands can play important roles in the transition, including by helping accelerate much needed behaviour change amongst the public. If brands do not say anything at all about sustainability, then it will be harder for that behaviour change to happen within that vacuum. Secondly, any major systems transition requires a narrative shift. Brands can say something important to support, or even lead, those shifts in narrative. Thirdly, it was argued that policy change is more likely when businesses advocate for policies they want to see, rather than remain silent.

"We need businesses to make good, green claims... to deliver this transition in behaviour change."

A need for greater clarity

Many of the legal definitions needed, in order to make decisions and judgements around green claims, do not yet exist. This can lead to confusion and potential increased risk, which does not benefit individual businesses, society or the planet. It was argued that there are clear examples where brands are selling or talking 'nonsense' – and that it was those claims that should be prohibited.

In an arena where many businesses are trying to do the right thing and trying to find a way to engage customers, there is a need for greater clarity and better definitions. Without commonly agreed definitions, it is very difficult for anyone to have a level playing field and to be able to move things forward.

Regulating green claims

In the UK, the most relevant regulators are the Competition and Markets Authority ('CMA') and the Advertising Standards Authority ('ASA'). They both provide guidance on making claims and are increasingly active on the sustainability agenda. The ASA does not want ads to be misleading, offensive, harmful or socially irresponsible. It has had rules and guidance on green claims for many years – and administers and enforces those.

Why the regulatory focus on green claims? This is largely driven by net zero targets that countries, including the UK, have signed up to. The UK Climate Change Committee says that for us to have a chance of meeting net zero targets, then widescale public behaviour change needs to happen, in particular around energy & transport; waste & recycling; and food, particularly meat & dairy.

How the ASA monitors green claims

Most of the ASA's rulings are at the end point of formal investigations that have resulted from complaints from the public or campaign groups. Increasingly they result too from ads or campaigns the ASA has found through its Active Ad Monitoring System, a technology package technology that helps identify and swiftly act against irresponsible online claims, plus provide intelligence on what is going on. It catches ads online – organic, paid and influencer ads – feeds them through machine learning tools and then puts results in front of human experts to decide what, if anything, to do about it.

Regulating online is challenging. ASA is focusing on areas where there is 'consumer detriment' and it is being used for proactive monitoring and enforcement. ASA will be processing c. three million ads and potential ads this year, and that will grow exponentially. The overwhelming majority of those ads are fine.

Examples of rulings on food & drink claims

In the food sector, the ASA has published a number of rulings in efforts to be an active and proactive regulator, which food brands can learn lessons from. Advice includes steer clear of 'good for the planet' type claims, which can be hard to substantiate, and instead use safer comparatives (e.g. 'better for the planet' or 'greener'). Also, always make the basis of any claim clear and where necessary, cover the full life cycle.

“Don't go there with categorical claims.”

An example was cited of Oatly milk paid social media campaign, which received 109 complaints. It claimed that the dairy and meat industry emit more carbon dioxide equivalent than all of the world's planes, trains, cars and boats combined. This was found to be misleading because Oatly had taken into account the full life cycle emissions of dairy, but just the in-use emissions for transport.

A different case cited was Tesco Plant Chef range adverts, which had 171 complaints. The claim was 'even better for the planet' for this plant-based range. Whilst ASA accepted that switching to a more plant-based diet can reduce environmental impacts, it noted that when attaching the claim to specific products, it does not necessarily follow that a highly processed plant-based product will be better. Tesco did not provide product-specific evidence for the range. So, even if broader statements are widely accepted to be true, that does not mean it is always *specifically* true.

We know that the public either take things at face value or do not trust big, generic claims, so it is best to avoid sweeping statements. Most of the public are perhaps not as circumspect as they should be when it comes to scrutinising advertising claims. Research has shown that the public tend to assume there is more regulation than there really is, i.e. that someone is checking every advert, which is not the case.

A tsunami of legislation coming in Europe

At the moment, the EU proposes that green claims will require a pre-market approval in a way that is not required for other claims. Under EU (and UK – as it was pre-Brexit) law, pre-market approval is already required for nutrition and health claims. The question was asked as to why *green* claims (everything sustainability) require a totally different level of regulation to everything else?

Across Europe, it is becoming more common for penalties to be set out in legislation. While the EU do have some definitions, they are pushing ahead with a legislative agenda and are likely to be more prescriptive about claims. It was claimed this is circling around a litigation culture around ESG (environmental, social and governance). For example, in France, Danone's plastic policy is being challenged. Risks around this are only going to grow, so all companies should have much greater focus on this going forward.

In the EU, there are directives such as the Green Claims Directive. These will mean making generic environmental claims (e.g. eco-friendly, natural), where there isn't evidence of 'recognised excellent environmental performance' (not yet defined) relevant to the claim, is automatically bad practice. The EU is also making sustainable foods legislation, which as a minimum is likely to include key definitions, but that is still being developed.

Growing risks from making misleading claims

This is a topic that is going to get greater clarity in Europe, but domestically the underlying law is the same as it always has been. The UK Consumer Protection from Unfair Trading Regulations ('CPR') are going to be recast, but there are no plans to legislate on green claims. There are currently no *specific* legal duties in this particular area. However, the general misleading provisions of the CPR cover green claims. The duties still include a duty not to mislead by omission (see later).

Without tighter definitions in the UK, it was claimed it will be difficult for brands and regulators alike. When

the law changes in the UK – Digital Markets, Competition and Consumer Act is expected to become law at some point in 2024 - the CMA will have the power to fine a business 10% of its global turnover for misleading claims (any, but including green, claims). This will surely sharpen the minds of those decision-makers in business and change the landscape for making sustainability claims in the UK.

“I want... transparency without fear.”

Misleading by omission and the need for context

‘Misleading by omission’ – essentially omitting to provide material information - has long been prohibited by the EU’s Unfair Commercial Practices Directive (‘UCPD’) and the UK Consumer Protection from Unfair Trading Regulations (which implement the UCPD). In recent times, the ASA has applied that concept to high-carbon emitting businesses/ investors in high-carbon emitting businesses, in line with the CMA’s Green Claims Code.

There was a landmark ruling on misleading-by-omission ‘greenwashing’ in 2022. HSBC’s ‘Climate change doesn’t do borders’ campaign, ran in late 2021, in the run up to COP 2026. One advert featured an image of tree growth rings and focused on HSBC helping to plant two million trees and lock in 1.25 million tonnes of carbon over their lifetime.

In 2022, the ASA ruled that the ads gave a misleading impression that HSBC – which had channelled \$130 billion of financing to fossil fuel companies in the six years since the Paris agreement – was a sustainable bank. Because the adverts did not nod to the other issues about the rest of its business, the view was that the average member of the public was misled.

“Context is everything”

A poster child example of some of the issues?

Apple’s [Mother Earth](#) sustainability reporting video was cited as a good example of the tensions around green claims, albeit in a reporting context. On the one hand, it is a compelling film about sustainability, with strong storytelling, featuring the CEO, and with Mother Nature at the table, showing that nature is the foundation of anything to do with sustainability (including social sustainability).

On the other hand, there are some claims made that are hard to understand e.g. about recycling the

aluminium in Apple’s products, yet it does not make clear the proportion of products that are aluminium. Data is largely missing from the video, including the company’s scope 1,2 and 3 carbon footprints. And there is a big elephant in the room. The film ends with a carbon neutral watch as a gift for Mother Nature. The point was made that Apple’s products are designed for obsolescence and are fuelling a merry-go-round of hyper-consumption, yet this is not addressed in the video. The video went viral, along with positive and critical reactions to it.

“Partial transparency is murky territory.”

What is an advert anyway?

There is a difference between reporting context and advertising context, albeit the two are becoming increasingly blurred. When you start to advertise, it is a somewhat different environment. It was suggested that it is safer to be in the CSR sphere talking in governance terms, which may be outside of the scope of some regulatory regimes. What qualifies as an ad and what is not an ad? There are tests that the ASA would apply relating to supply or transfer of goods, but there are some exemptions to it e.g. in CSR reports or ‘talking to shareholders’ part of a company’s website.

Does brand positioning matter?

If you are positioning your brand as an ethical or green brand, does that change expectation levels around those claims? Should they be held to a higher standard? From a regulatory point of view, such brands are held to the same standard, however they are more likely to be making those claims and more likely to be picked up on it, because their customers will typically be more alert to greenwashing. More established competitors may call them out if ‘ethical brands’ start making comparative environmental claims, explicit or implicit. So, the risk is arguably greater for a challenger brand, but no brand is immune from scrutiny.

Problematic terms – regenerative agriculture?

How transparent are claims about regenerative agriculture in order that they do not end up looking like greenwashing? At its heart, regenerative agriculture is a way of restoring resilience into our food systems – incorporating a range of practices that combine biological, physical and chemical processes to enrich ecosystems. However, there is a lack of a commonly accepted definition. It was suggested that definitions of regenerative agriculture in the USA would not ‘cut

the mustard’ in Europe or the UK, in part due to the differing physical conditions that exist between the countries.

What about the impacts of both authentic and misleading claims about regen ag on smallholder farmers? Indigenous communities are amongst those that have been practising regenerative agriculture for decades or even centuries, without necessarily calling it that. So, at one level, regen ag is nothing new. It was claimed that the term ‘regenerative agriculture’ has been coopted by the Global North and some major brands. Who should be setting the terms? Different systems in different countries require different criteria.

“We need to understand what regenerative agriculture is, yet there are over 230 definitions of regen ag in the literature. It’s insanity.”

Data issues can get in the way of progress. Measurable goals are important, but companies can pretend they are acting on sustainability by gathering data. Doing the right thing should be the starting point, not the end point, including for regen ag. If the way you are farming is not building soil organic carbon, then you are not farming regeneratively. That is one pretty straightforward measure.

Navigating the greenwash-greenhush spectrum

Greenwash to greenhush is a spectrum, rather than a binary choice. There is space in the middle for ‘greendoing’, which is what it was suggested food brands should aim for. Several actions were suggested for what agri-food companies can and should be doing.

“How do you navigate tensions between saying nothing and saying things you shouldn’t say?”

1. **Focus on action on key material impact areas.** Rather than focus on the use of plastic carrier bags, which are not material for a retailer’s greenhouse gas emissions, focus instead on where and how you source your raw materials. Target in the US was cited as an example of a major retailer that had published its CSR report with bold targets and verified progress on key impact areas.
2. **Acknowledge what is in your direct control and what isn’t – and have a point of view** on what is not in your direct control, including difficult debates over consumption and consumerism.

3. **Be authentic.** For example, talk about what regenerative agriculture means to you, in the context you are in, and about your vision. Create a shared understanding of the transition that needs to happen, rather than being distracted by the lack of common definitions. Do not get stuck in the minutiae of certification, which can leave little room for manoeuvre. Be honest about what you know and what you don’t know.
4. **Don’t wait for the perfect answer.** Be clear that you will not have all the answers. For example, Diageo’s 2030 strategy was mentioned as calling out an innovation gap, saying it did not know how to deliver all these ambitions, but that they are being open about it and acting such as by setting up an innovation academy.

“We have to be careful not to stifle...”

5. **Be adaptive.** We should recognise that systemic change is not linear, it can be messy and complicated. In February 2023, IKEA’s CEO was quoted saying they are ditching long term financial forecasting and will instead do scenario based planning, because the world around us is increasingly disruptive and volatile, hence they want to strive to be much more adaptive.

“We need to focus on greendoing.”

The importance of collaboration

Critical in this debate is that no one brand can tackle this alone. There is a need to shift the narrative and to shift societal norms and that in turn means letting go – which is the first step to collaboration.

“Collaboration is often giving something up to create something bigger and better.”

Those in the agri-food sector will need to collaborate – with others in the private sector, with policymakers and with civil society - in shaping the shared sustainability narrative. How can trade associations and collaborative bodies divert their attention to shifting the dial on action on sustainability, rather than waiting for legislation to come, which it will do – and when it will get even messier?

Holding to account

There is a high level of citizen pressure and employee pressure, so there may be incentives for companies to greenwash, because there is a performance gap which is not commercial. However, it is not just businesses that need holding to account for claims. NGOs and campaign groups should also be held to account on the accuracy of their campaigns too, even if they do not formally fall within the regulatory framework of advertising. Who is holding who to account for claims that can not be substantiated or that are misleading (deliberately or not)? We need responsible claims and fair scrutiny.

While ‘greenhush’ might be something we associate with companies, it can relate to others too. Citizens that do not speak up and call bad claims out have a responsibility to substitute bad practice for good practice themselves.

Confronting consumerism

The focus should not just be only on whether or not a claim is misleading. Green claims are increasingly going to be about consumerism and excess consumption – and that is likely to become mainstream in the coming years. For some businesses, that is going to be very difficult, as increasingly everyone is going to be saying they are part of the problem, because they are encouraging unnecessary consumption. We need to change mindsets, away from consumer framing and towards [food citizenship](#) mindsets, where we stop using the word ‘consumer’ and instead treat people as people, or food citizens, who *do* have agency.

Concluding comments

Food companies are facing a torrent of legislation coming from Europe – some of which will be helpful, some of which will be game-changing. But there are not yet clear definitions domestically. That will create risk when those businesses trying to do the right thing want to communicate, in part to make the rest of the market move forward and drive behaviour change.

Greater clarity around definitions - if they are good definitions - would be helpful. However, definitions that straitjacket innovation or do not evolve over time will not. If definitions are bad, overly prescriptive and inflexible, we will wish we had not called for them. Food companies should not wait for ‘perfect’ definitions before acting. They should help shape the rules of the game for the better.

In general, the bigger your claim, the more likely the public is to think you are just greenwashing. The more

precise and specific your claim, the more likely people are going to engage with it. Telling them about where you are on your journey is good. If you are a high-emitting business or financing such businesses, add balance about the other side. This might, if you are good at it, lead to a more credible claim that will be trusted by people. Given the perilous state of society and the environment, it would be a very bad thing for brands to be silent on sustainability.

Let us reimagine a food and agriculture system that is regenerative and driving socially just outcomes. What are the levers we need to pull to get there? Food companies must avoid overclaiming, but not lose sight of the bigger picture. It is easier to be reductionist because it can feel more comfortable. However, we must not lose sight of where we need to head, i.e. food and agricultural systems that are fair for people, animals and planet.

What next?

Selected key questions:

- How can businesses have the confidence to make claims, but be modest, specific and transparent about the challenges?
- How can brands be precise and specific about claims without losing the narrative?
- How can food businesses do advocacy well and appropriately?
- How can we think citizen, rather than consumer? How can we engage citizens?
- How can we change the incentives around commerciality to deliver better outcomes for all?
- How can we have shared understanding of terms without having straitjacketed definitions?
- Would your customers still buy your product/ brand if they could see every stage in how it was made?

Further resources

Other relevant Business Forum reports:

- **Purpose-driven business** [see [here](#)]
- **Embracing ethics at a time of crisis** [see [here](#)]
- **Trust, technology & beyond certification** [see [here](#)]
- **Food choices, ethics and advertising** [see [here](#)]

This is a report of the Business Forum meeting on 10th October 2023. Speakers were **Guy Parker**, Chief Executive of the Advertising Standards Authority; **Sally Uren**, Chief Executive of Forum for the Future; and **Dominic Watkins**, Partner and Global Lead, Consumer Sector, at law firm DWF. **Dan Crossley**, Executive Director of the Food Ethics Council chaired the meeting. The views expressed in this report do not necessarily represent those of the Food Ethics Council, nor its members. For more information on the Business Forum, contact Dan Crossley dan@foodethicscouncil.org +44 (0) 333 012 4147.