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## UK's Advertising Regulator Publishes Rules on Making Carbon Neutral and Net-Zero Claims

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On February 10, the UK's advertising regulator, the Advertising Standards Authority (ASA), **announced** the publication of updated guidance for advertisers making environmental sustainability-related claims to consumers, including use of the terms "carbon neutral" and "net zero." The ASA explained that the amended guidance reflects the "key principles of the Competition and Markets Authority's guidance on environmental claims on goods and services" and that "in light of the low understanding and lack of consensus around the meaning of carbon neutral and net zero claims, [the Committees of Advertising Practice] and [the Broadcast Committee of Advertising Practice] advise advertisers to take into account the following guidance, which draws on key principles of the [Competition and Markets Authority] guidance, and, if followed, means that claims are less likely to mislead."

The updated guidance is as follows:

- Avoid using unqualified carbon neutral, net zero or similar claims. Information explaining the basis for these claims helps consumers' understanding, and such information should therefore not be omitted.
- Marketers should ensure that they include accurate information about whether (and the degree to which) they are actively reducing carbon emissions or are basing claims on offsetting, to ensure that consumers do not wrongly assume that products or their manufacture generate no or few emissions.
- Claims based on future goals relating to reaching net zero or achieving carbon neutrality should be based on a verifiable strategy to deliver them.
- Where claims are based on offsetting, they should comply with the usual standards of evidence for objective claims set out in this guidance, and marketers should provide information about the offsetting scheme they are using.

- Where it is necessary to include qualifying information about a claim, that information should be sufficiently close to the main aspects of the claim for consumers to be able to see it easily and take account of it before they make any decision. The less prominent any qualifying information is, and the further away it is from any main claim being made, the more likely the claim will mislead consumers.

These amendments follow a review carried out by the ASA's Climate Change and the Environment project, which identified the use of carbon neutral and net zero claims as a "priority area . . . given their increasing prevalence and the potential for consumers to be misled by them." Participants of the review asked for greater transparency regarding offsetting and that there was little consensus as to the meaning of "carbon neutral" and "net zero."

Last year, the ASA **ruled** that two UK retail banks had made "misleading" claims that "omitted material information" in their billboard advertisements. While ASA did not impose a financial penalty, the banks are not permitted to use the advertisements again and must ensure that future marketing communications making environmental claims were "adequately qualified and did not omit material information about its contribution to carbon dioxide and greenhouse gas emissions." The ASA also has made greenwashing-related rulings involving companies operating in other sectors including an **airline** and an **oil and gas company**. In both of these cases, the companies were not permitted to use the advertisement again.

**Taking the Temperature: The ASA states that it intends to "carry out monitoring" to assess the impact of the new guidance for up to six months following publication. Depending on the outcome of this review, there may be further developments to the rules governing advertisers. Additionally, the ASA states that they are aware of "entirely unqualified" claims being made, and that they will be taking "proactive action immediately to address such claims." Firms operating outside the guidance should expect regulatory intervention. As a non-governmental self-regulatory organization (SRO), the ASA's **enforcement powers** are somewhat limited. These include publishing the non-compliant companies' details on its website until they comply, placing advertisements to highlight the non-compliance, working with social media and search engines to remove content and asking other ASA members to "revoke, withdraw or temporarily withhold recognition and trading privileges." For persistent rule breakers, the ASA has the power to refer the companies to other consumer protection agencies such as **Trading Standards**. Notwithstanding the limits of its enforcement authority, the ASA's action highlights that regulators around the world, including SROs, remain focused on greenwashing, and as we have commented, **we expect** litigation and enforcement activity arising from allegations of false sustainability claims to continue to increase in the near and medium terms.**