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## Energy Companies' Advertisements Banned by UK Regulator Despite Being Factually Accurate

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The UK's advertising watchdog, the Advertising Standards Authority (ASA), has banned recent advertisements by three oil and gas majors. The advertisements, by **Shell**, **Repsol** and **Petronas** were banned on the basis of "greenwashing," with the ASA saying that the advertisements were misleading with respect to claims about the companies' climate and environmental profiles in the context of their overall operations.

The challenged advertisements for Shell appeared on billboards, television and YouTube.

- The billboard, seen in Bristol, featured large text that stated, "BRISTOL is READY for Cleaner Energy" superimposed over a cityscape shot of Bristol. Text at the bottom of the poster stated, "In the South West 78,000 homes use 100% renewable electricity from Shell Energy" above smaller text that stated, "Shell Energy's renewable electricity is supplied by the National Grid and certified by Renewable Energy Guarantees of Origin, matching electricity bought with the equivalent amount from 100% renewable sources."
- The TV ad, seen on 14 June 2022, opened with a man stating, "In the UK, 1.4 million households use 100% renewable electricity from Shell" as he helped a young child to cycle down the street. Throughout the ad, large individual letters appeared in the background of successive scenes to spell the word "READY." The video ended with large on-screen text "The UK is READY for Cleaner Energy" followed by the Shell logo and the hashtag "#PoweringProgress."
- The YouTube video, posted on Shell's YouTube channel on 9 June 2022, was titled "The UK is READY For Cleaner Energy" and included text in its caption that stated, "From electric

vehicle charging to renewable electricity for your home, Shell is giving customers more low-carbon choices and helping drive the UK's energy transition. The UK is ready for cleaner energy.

The advertisements were challenged by Adfree Cities (a UK-based network of groups focused on the impacts of corporate advertising on the environment). Adfree claimed that while the advertisements promoted these companies' "green" product offerings and plans, they were misleading because they omitted information about the environmental impact of Shell's overall business activities in 2022.

The ASA did not uphold the challenge to the statement "in the UK, 1.4 million households use 100% renewable electricity from Shell" because Shell substantiated that statement as factually accurate. However, the ASA concluded that because the advertisements "gave the overall impression that a significant proportion of Shell's business comprised lower-carbon energy products, further information about the proportion of Shell's overall business model that comprised lower-carbon energy products was material information that should have been included. Because the ads did not include such information, we concluded that they omitted material information and were likely to mislead." In reaching this conclusion, the ASA addressed a number of Shell's arguments. First, it acknowledged "that Shell said they were taking steps towards net zero and promoting sustainable energy." According to the ASA, however, Shell's 2021 Sustainability Report disclosed that Shell's operations "represented a large contribution to greenhouse gas emissions," especially considering deductions linked to carbon offsets, and therefore, the ad was misleading in conveying the overall impression that a significant proportion of Shell's business comprised lower-carbon energy products. Second, the ASA acknowledged Shell's comment that, rather than being an explicit claim about Shell, the claim "The UK is READY for cleaner energy" "was intended as a forward-looking statement about the UK-wide demand for less environmentally detrimental energy sources. However, in the context of the claim's appearance in an ad for Shell, a well-known provider of energy products, we considered that consumers were likely to interpret the claim as being, in part, a claim about Shell's own products and capacity to deliver low-carbon energy." Finally, the ASA "acknowledged that consumers were likely to understand that energy products derived from fossil fuels were environmentally detrimental. [It] further acknowledged that many consumers would closely associate Shell with petrol sales, and more broadly understand that the company was involved in oil and gas investment and extraction. However, they would also have an awareness that many companies in carbon-intensive industries, including the oil and gas sector, aimed to dramatically reduce their emissions in response to the climate crisis. [The ASA] considered that consumers were increasingly concerned about the environmental impact of activities related to higher-carbon products and services, and would be interested in seeking out businesses, including oil and gas companies, that were making meaningful progress towards transitioning away from higher-carbon products and services. However, they were unlikely to be aware of the details of this in relation to specific companies, and ads were therefore likely to mislead consumers if they misrepresented the contribution that lower-carbon initiatives played, or would play in the near future, as part of the overall balance of a company's activities."

The ASA upheld Adfree's challenge to Repsol's advertisement based on similar reasoning. The advertisement appeared on a newspaper website and "featured several images of leaves with text that stated, 'At Repsol, we are developing biofuels and synthetic fuels to achieve net zero

emissions.’ After which a car was shown parked in a wooded area, surrounded by leaves, with text that stated, ‘Renewable fuels for more sustainable mobility.’ In the top left-hand corner of the ad was a stylised outline of a petrol pump within which was a leaf.” According to the ASA, consumers were likely to interpret the advertisement as “meaning that Repsol’s development of biofuels and synthetic fuels formed a significant element of their current activities that were making meaningful progress towards achieving net zero emissions.” However, “notwithstanding current actions towards improving their environmental impact,” the ASA “understood that a number of Repsol’s new biofuel and synthetic fuel initiatives were not yet in operation” and “the production of biofuels and synthetic fuels to achieve net zero emissions was a fraction of their business activities when compared to their substantial, ongoing, and expanding fossil fuel production.” The ASA also acknowledged “Repsol’s comment that there is no single solution for sustainability, and that renewable fuels are one element in the company’s strategy to reach net zero by 2050. However, while [it] agreed that synthetic fuels and biofuels could contribute towards Repsol’s goal of achieving net zero emissions, they would not as a single measure ‘achieve’ net zero emissions.”

The challenge before the ASA to a Petronas television advertisement was upheld based on similar reasoning.

**Taking the Temperature: We have reported on the increasing frequency of greenwashing challenges. These most recent ASA findings follow a [ruling in October 2022](#), when UK retail banking advertisements, which made claims about a financial institution’s green credentials, were also found to have been “misleading” and to have “omitted material information.” The billboard advertisements, which stated how the bank was planting trees and transitioning to net zero, were posted on bus stops in Bristol and London in October 2021 just prior to the COP26 climate change summit. Australia’s securities regulator, the Australian Securities and Investments Commission, likewise has been active in [pursuing alleged greenwashing](#) by regulated entities. And, earlier this month, a [consumer class action](#) was commenced in federal court in California challenging an airline’s claim that it is the first “carbon-neutral airline.”**

**The ASA’s decisions call into question the ability of companies in carbon intensive industries to engage in green advertising. It upheld the challenges to the advertisements even though the statements were not factually incorrect. Rather, they were deemed misleading in context given that the companies’ overall operations were still heavily oriented toward fossil fuel production and in the absence of information clarifying that fact. The ASA also rejected arguments that consumers are well aware that these companies remain significantly invested in fossil fuel energy production and distribution, primarily on the basis that “they were unlikely to be aware of the details” of the companies’ business activities. That calls into question the ability of companies, at least in the UK, to truthfully promote legitimate renewable energy projects and commitments in advertisements because in that context it is not possible to provide the type of disclosure that ASA seems to be demanding. By and large, it still remains to be seen how regulators in other jurisdictions approach greenwashing challenges and whether they will take a similarly restrictive approach. Ultimately, the resolution of any allegation of greenwashing necessarily turns on the unique facts and circumstances of the statement in question, including the industry in which the company operates, the content of the statement and its target audience. However, companies should consider**

**that even vague, factually accurate “green” claims could raise greenwashing challenges, and given the unsettled state of regulation and enforcement precedent in this area, it is unclear how those claims will be resolved.**