



Hogan
Lovells

Consumed

Hogan Lovells Consumer Sector

The Holiday Guide

Contents

- 2 Introduction
- 3 Employees united this holiday season
- 4 Ho-ho-hold up: Vaccination requirements for in-person shopping
- 5 How to make sure your influencer delivers for the holiday season
- 6 Will Santa's presents get through this Christmas?
- 7 Can Augmented Reality help in the desperate search for the right gift?
- 8 Happy (green) holidays and a sustainable new year
- 9 China clamps down on illegal personal care and cosmetic products
- 10 Labelling requirements for influencer marketing in Germany this holiday season
- 11 How Hong Kong is adapting its seasonal retail offer in a post-COVID-19 world
- 12 10 minute deliveries – the deadly pitfalls of guaranteeing delivery times
- 13 Protecting your IP during the holiday season: Pay attention to online marketplaces
- 14 Marketing your “green” credentials this holiday? Make sure they're legally green
- 15 Contacts



Introduction

The holiday shopping season is upon us once again and this year, as last, continues to present challenges for consumer companies and retailers. Omnichannel is growing in prominence as consumers maintain their reliance on e-commerce, but tentatively return to in-store shopping. The rise and rise of influencers is evident as they gain share of voice at the expense of brand advertising. Supply chain issues persist causing concern and the need for careful mitigation plans.

But all is not lost, as the Hogan Lovells Retail and Fashion team is delighted to bring you our festive e-book, packed with articles from all corners of the world and on all of the topics that matter to you including:

- How to get the best out of your influencers – maximising impact whilst keeping within the rules
- Supply chain and logistics – will Santa deliver on time?
- Ten minute deliveries – key things to consider
- How Augmented Reality can help solve those gift conundrums
- Vaccination requirements for in-store shopping – what to be aware of
- Protecting your IP from counterfeit and look-alike goods
- COVID-19's impact on holiday shopping habits in Hong Kong
- Illegal personal care and cosmetics in the holiday season – how China is responding

We hope that you enjoy the guide and encourage you to get in touch should you need any advice on your preparations for the holiday season.



Kelly Tubman Hardy
Partner, Global Head, Consumer Sector
Washington, D.C., Baltimore
T: +1 202 637 5647 (Washington, D.C.)
+1 410 659 2782 (Baltimore)
kelly.hardy@hoganlovells.com



Meryl Bernstein
Partner, Co-Head Retail and Fashion
Sector, Washington, D.C., New York
T: +1 202 637 6429 (Washington, D.C.)
+1 212 918 3000 (New York)
meryl.bernstein@hoganlovells.com



Sahira Khwaja
Partner, Co-Head Retail and Fashion
Sector, London
T: +44 20 7296 2251
sahira.khwaja@hoganlovells.com

Employees united this holiday season

Jennifer Brechbill, Washington D.C. and Katie McMullan, London

As we enter the second holiday season of the pandemic, restaurants, stores, and hotels have had to rethink consumer health and safety, innovating to attract and retain customers. But they also have been forced to rethink employee safety and well-being – often with a not-so-subtle nudge from their workers. How will consumers shop and eat this holiday season? That depends, in part, on the measures employers are taking to protect their workers as well as supply chain and employee recruitment and retention issues.

In the United States, as workers leave their jobs in record numbers – and most heavily in industries like hospitality and retail – companies find themselves competing for talent. Among other factors like flexibility and childcare, companies are rethinking employee safety measures. As of January 2021, more than 230 McDonald's outlets were the subject of county, state, or federal coronavirus complaints. And executives were forced to listen. In August 2021, after having reopened indoor dining by 70%, McDonald's Corp leaned on its franchisees to protect workers, recommending that franchisees close indoor dining in counties with high-COVID spread. Now, the Department of Labor's Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require

any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. It is a measure that will impact over 80 million workers in private sector businesses with 100+ employees. And, polls suggest that more half of workers are in favor of such vaccine requirements at their workplaces.

In the United Kingdom, the impact of the pandemic has also been further exacerbated by Brexit, and British employers are facing the worst worker shortages since the late 1990s. Consumers are being told to expect supply shortages over the holiday season, in part due to shortages of lorry drivers and supply chain issues. Interestingly, in an purported attempt to prioritise employee wellbeing, many large retailers such as Morrisons, M&S, Sainsbury's and Aldi have made the unprecedented announcement that they will remain closed on Boxing Day this year in order to allow workers to spend more time with their loved ones. However, while this is an important recognition of the strains that both the COVID-19 pandemic and the impacts of Brexit have put upon workers over the past year, it is also undoubtably a move to help manage consumers' delivery expectations ahead of anticipated difficulties in maintaining staffing levels and stock over the holiday season.



Ho-ho-hold up: Vaccination requirements for in-person shopping

Carina Tenaglia, Washington D.C.

In the season of spreading holiday cheer and stocking up on gifts, some retailers find themselves stuck between a rock and a hard place when it comes to fighting to stop the spread of germs and deciding whether to require COVID-19 vaccinations for in-person shoppers.

In the United States, the federal government has mandated that federal employees must be vaccinated, which has led to the promulgation of other similar mandates throughout the country but has left businesses dealing with a patchwork of state and local requirements, or in many cases, no government requirements, until a federal mandate for all businesses with 100 employees or more comes into effect (in January pending litigation challenging such mandate delays or prevents implementation). Some employers, like Goldman Sachs, Google, and Disney, have rolled out variations of vaccine requirements for their personnel. But what about retailers?

Some retailers are holding steadfast to their requirement that all customers, whether vaccinated or not, wear masks while shopping in person. Others have taken a step back, perhaps only requiring masks for unvaccinated patrons. And others have abandoned these rules altogether.

This holiday season may be our second during the pandemic, but it is the first with widely available COVID-19 vaccines. Dining establishments ranging from Shake Shack to Jose Andres' renowned restaurants have begun requiring proof of vaccination for their customers. However, many retailers have expressed hesitancy about enforcing vaccine requirements for customers – in part due to their concern about the safety of their employees in the event disgruntled customers refuse to abide by such policies and threaten the safety of such employees. Many employers have also expressed their uncertainty with respect to potential legal liabilities, and the potential efficacy of such mandates.

At this time, it looks like retailers have resorted to encouraging vaccination and use of masks, but for the most part have not taken the position of requiring vaccination. But as flu season enters its peak and COVID-19 case numbers fluctuate, we may see a shift in these approaches this holiday season.



How to make sure your influencer delivers for the holiday season

Ewa Kacperek and Aleksandra Kuc-Makulska, Warsaw

If you want to make sure that your brand benefits from influencer marketing this holiday season, it is now time to start planning your campaigns. Influencer marketing can be tricky – although we have a great number of influencers, the legal frameworks of many countries do not yet clearly acknowledge the existence of influencer marketing. The situation is changing right now, with courts and regulatory authorities in a number of jurisdictions taking action or undertaking reviews or investigations, and this is expected to continue.

Here are some tips on what to include in your contract with influencers to make sure your advertising campaign for the holiday season is legal and that your influencer stays on track and delivers the right message.

1. The most important thing is to specify the subject of the cooperation correctly. The agreement should make it clear what kind of content you want the influencer to produce, including all details that are important to you, such as the nature and number of posts, stories, channels, tracked links, hashtags, etc. You should also explain what your brand is aiming for by clarifying your concept, products to highlight, deadlines and the acceptance process. Finally, your agreement should include clear provisions regarding remuneration for the influencer, both monetary or of a different nature, like free products or vouchers;
2. Ensure your contract is in plain language and is easily understood by the influencer. In this rapidly evolving area, many of the most powerful advertisers lack business and legal experience and advice. It behooves brands and their advisers to make sure covenants are clear and understandable.

3. Remember that all influencers' advertising posts need to be tagged as advertising in order to be legally compliant. Post that are marked only with #ad or #cooperation are likely not to be understood by internet users and are likely to be found to be illegal. It is therefore important to make sure that an influencer contract requires the influencer to tag their advertising posts correctly. Otherwise, as a sponsor, you may also be found liable for unfair market practice or an act of unfair competition;
4. If your products are not intended for minors, like alcohol, you need to make sure that advertising is directed to adults only by requiring your influencer to use age-gates for the branded content. Be careful to avoid social media that are designed mainly for minors or those that do not have age-gates. And speaking of alcohol – please be mindful that advertising of spirits directed to the general public is often limited.
5. Finally, remember to ensure that the agreement contains a copyright clause giving you the right to use the influencer's content in the future.

Most importantly of all, have a successful campaign and enjoy the Holiday Season!



Will Santa's presents get through this Christmas?

Peter Elkin, London

With the UK preparing for its first post-Brexit Christmas, COVID-19 flaring up in Central Europe, and demand for products dramatically changed around the world, supply chain issues threatened to spoil holiday plans. Last year, local, regional and nationwide lockdowns kept millions at home and avoiding travel to see their families. This year the picture looks brighter, and many families hope to resume their typical holiday routines. However, with constant reports of shipping delays and supply chain issues, global shortage of workers, many shoppers are inclined to plan ahead this holiday season, and the rest of us need all the help we can get! Both groups are likely to be receptive to marketing efforts during the early Christmas period and even the Grinches among us might be thankful for an early reminder that Christmas is coming this year.

Though late and problematic deliveries may cause consumer rights and breach of contract claims, the more acute risk to consumer businesses is a loss of consumer loyalty and sales. So what should companies do to prepare for the 2021 holidays season:

- increase the amount of stock held in the run-up to the holidays to hedge against supply chain delays causing stock shortages and lost sales;
- consider the availability of delivery options at times of concentrated consumer demand such as Black Friday (26 November 2021) and Cyber Monday (29 November 2021);
- offer incentives for consumers to shop early, including discounts on high-value baskets that can ship in one package;
- be transparent with consumers on delivery times and publicise “last days” for obtaining holiday delivery (with an extended amount of leeway to cater for the added risk of delivery problems);
- set a strategy for delivery delays and keep customers up to date with any changes in delivery times and expected setbacks;
- utilise third party “buy now, pay later” services or set up other financing options to help consumers spread the cost of purchases across the lead up to the holidays;
- consider click and collect services or manage localised delivery in-house to avoid reliance on standard haulage services; and
- ensure to build in leniency and flexibility in contracts with suppliers and delivery companies to allow for delays and problems with driver capacity.



Can Augmented Reality help in the desperate search for the right gift?

Maria Luigia Franceschelli and Elia Salardi, Milan

With the holiday season approaching, many consumers may be struggling to find the right present. They are bored of gifting the classic Santa sweater or festive tea cup and they may be stressed about finding the right size or shape of garments and accessories.

Augmented Reality (“AR”) could be the perfect solution. AR allows users to interact with their potential purchase and to overcome the biggest obstacle often faced when shopping online, namely determining whether a certain gift is the right product and the right fit.

Brands know this. This is the reason why more and more brands are using the AR technology for e-commerce and digital advertising.

Many e-commerce companies have been integrating “try-on” AR systems on their apps and websites in recent years, allowing consumers to obtain detailed product information which is very close to that which they would get if they were examining the product in a physical environment. AR “try-on” systems allow consumers to preview products digitally in their own homes, or on their own bodies, and then instantly buy the corresponding physical product.

Companies are increasingly keen to exploit the competitive advantage offered by AR to also differentiate themselves from their competitors and to engage their consumers.

A further benefit is a reduction in returns of products purchased online. AR allows consumers to make a detailed inspection of products in the virtual marketplace, reduces the possibility of mistakes in the purchasing process and, consequently, lowers the rate of returns, with corresponding economic advantages.

To ensure the success of an AR-related business, an effective legal strategy is key. Indeed, there are many legal implications of AR, especially in the IP field.

For example:

- Brands may consider filing a patent application covering the AR software.
- AR systems can facilitate counterfeiting, a scourge already widespread in the context of e-commerce. A good filing strategy should consider this.
- While using AR technologies, consumers may create content that includes not only the brands’ products and trademarks, but also those of competitors. Under certain circumstances, this activity can be qualified as comparative or misleading advertising.
- A company can develop an AR application (especially in video games) that might show, after framing a brand or sign of a competing shop, a pop-up inviting the user to check out promotions for its own products. This conduct may be challenged by competitors.

Consideration of the legal aspects of AR will help ensure success this holiday season.



Happy (green) holidays and a sustainable new year

Maria Luigia Franceschelli, Milan

Consumers want to buy sustainable gifts in increasing numbers this holiday season. And brands of course, want to sell to them. The result is that brands are increasingly going green, by adopting sustainable business models and policies, and by investing time and resources in developing sustainable products.

However, the development of sustainable products or the implementation of green processes are often not enough to guarantee sales. Marketing campaigns are frequently the real key to success, especially during the holiday season when advertising campaigns proliferate.

A smart and festive trademark recalling the sustainable feature of a product is vital to create the right vibe around it, especially when the trademark can be easily remembered by consumers. Brands should however be careful in not choosing trademarks that are generic, deceptive or misleading. Indeed, a trademark that evokes features that are missing or insignificant could be declared void.

The way in which innovations are presented and promoted to the public is important, not only to ensure the commercial success of a product. They are especially important to prevent legal claims and avoid the most dreaded “greenwashing” blames.

A word of caution: “green marketing” concerns not only the trademarks adopted to distinguish the sustainable product or process, but also the ad lines and graphics used in advertising campaigns,

and any other element used in connection with the product or process, including logos, designs and packaging. Choosing the wrong claim, advertising or communication strategy may trigger negative reactions from competitors, consumers, or even the authorities.

The tagline or claim used to promote a sustainable product or process should also be chosen very carefully to avoid misleading advertising or “greenwashing”. As a general rule, any claim should be fair, truthful and correct. If a brand is not able to provide scientific evidence that a product or service is sustainable, it should simply not state it. Similarly, brands should avoid using overly generic claims. Consumers do not easily forgive a false “green” claims and gaining again their trust could be a real challenge.

Authorities worldwide have not hesitated to take action and have repeatedly stated that the battle against greenwashing is a priority. With this in mind, brands should carefully consider any “green” marketing claims they make when promoting sustainable products this holiday season.



Focus on China:

China clamps down on illegal personal care and cosmetic products

Zhen (Katie) Feng and Yu-An Chang, Shanghai

China's National Medical Product Administration ("NMPA") – the administrative body responsible for regulating pharmaceuticals, medical devices and cosmetics – has recently launched a campaign to enforce the Regulation on the Supervision and Administration of Cosmetics. This campaign is the first of its kind and scale since the Regulation came into force on 1 January 2021. During the one-year period ending in October 2022, the NMPA's local offices across China will crack down on non-compliant cosmetic products, focusing on e-commerce sales.

Regulatory compliance will no doubt become even more important in this field. The campaign also means that brand owners facing challenges from non-compliant products, including parallel imports, will be better placed to seek regulatory intervention against such products during the course of the campaign.

The NPA's enforcement campaign focuses on three key areas.

Online sales of unregistered products

The NMPA's local offices will mainly crack down on online sales of unregistered products, products using falsified or third party product registrations, and blacklisted products.

Online sales of products with exaggerated or misleading statements

The NMPA's campaign also tackles misleading statements and efficacy claims, including products claimed to contain ingredients such as stem cells, peeling acid, 'cosmeceuticals' or elements implicating medical effects. All product and labelling information used must be complete, true and consistent with the product registration information.

Cosmetics sold online containing illegal substances that may endanger human health

The NMPA's campaign also targets products that contain prohibited or restricted ingredients, or ingredients of an excessive level, which may endanger human health. In particular, products intended for children and products for special-use purposes such as freckles and skin whitening will be the key area of focus for enforcement.

In conclusion, businesses will need to re-assess the compliance of their cosmetic products and determine whether their products may become the target of such enforcement initiatives. The NMPA also emphasizes responsibilities for e-commerce platform operators, including real-name registration of distributors, having dedicated personnel to mechanisms to ensure compliance.

Finally, it is not uncommon to see parallel imported personal care and cosmetic products being offered with no product registration information, or with the brand owner's product registration information, but without the brand owner's authorization, or with incomplete product and labelling information. With the enforcement campaign now in place, brand owners will now also have better chance to ensure that products offered under its marks by third parties remain compliant and cause no harm to its brand.



Focus on Germany:

Labelling requirements for influencer marketing in Germany this holiday season

Yvonne Draheim and Sabrina Mittelstaedt, Hamburg

'Tis the season for giving and receiving, so now's the best time to engage an Influencer to promote your products, or so the received wisdom goes. But online where your English language advertisements can be found by, and may even be targeted at, non-English speakers, how can you best comply with labelling requirements for influencer marketing in countries outside your home market?

The need to take care has just been helpfully illustrated by a UK case in which the Advertising Standards Authority (ASA) held that the use of **"#iworkwith[company]"** was insufficient to label a post as advertising. The ASA found both the company and the influencer jointly responsible for ensuring that the posts on the influencer's account complied with the rules.

Would the **"#iworkwith[company]"** label be considered sufficient in Germany?

The leading case for adequate labelling in Germany is a judgment by the Higher District Court of Celle from June 2017. The influencer had used **"#ad"** in a so-called "hashtag cloud" at the end of the post.

The Court found that that was insufficient labelling, and held that both the influencer and the company were liable. In Germany, the label must be clearly visible and recognizable at first glance. This means that the label should be used at the beginning of the post. Use in a section that only becomes visible after clicking on "read more" and/or as a hashtag in a hashtag cloud – irrespective of the position – will most likely be considered insufficient because the assumption is that the public would not notice of the labelling information if that is where it appears.

Hence, the use of **"#iworkwith[company]"** in the #-section would not work in Germany either.

But what does adequate labelling look like in Germany?

There is no definitive answer to this question. From the Higher District Court of Celle's judgment it follows that at least "ad", even if it is used at the beginning of a post, would not be considered sufficient labelling. The Court was doubtful that the German public, having a limited knowledge of the English language, would understand "ad" is an abbreviation of "advertising". It presumably follows that the German public would not understand the English term "advertising" either.

There is German case law indicating that the label **"sponsored by"** will not be considered as adequate labelling either, as it is less clear than the German words "Anzeige" or "Werbung" (both translating to advertisement). With this label, the public could not safely assume that a contribution qualifies as advertising. Against this background, it seems unlikely that **"I work with [company]"**, even if used in German at the beginning of the post, would be considered sufficient labelling in Germany. For this reason, we recommend that advertising posts aimed at German consumers should also use the label "Anzeige" or "Werbung" at the beginning of the post so that you do not run into problems regarding insufficient labelling.



Focus on Hong Kong:

How Hong Kong is adapting its seasonal retail offer in a post-COVID-19 world

Tommy Liu and Katherine Tsang, Hong Kong

Throughout the year, Hong Kong has maintained strict quarantine restrictions for travellers entering the territory and this has had a significant impact on both the tourism and retail sectors. Although the Hong Kong government has introduced the Consumption Voucher Scheme, distributing HK\$5,000 to eligible people, the retail market is still trying hard to recover from the damage inflicted by the reduction of tourists. The downturn has caused retailers to consolidate resources by merging and closing outlets. For instance, various well known fast moving consumer brands have closed many of their regional stores in Hong Kong and kept only the flagship boutiques open, with the intention of reducing costs. This has led to shops in prime locations being vacant.

Luxury brands are exploring creative ways to reach out to the new generation of customers by offering innovative e-commerce shopping experiences, many devised as a direct result of COVID-19 restrictions. For instance, several luxury and high-end brands are exploring the possibility of offering virtual watch, fragrance, jewellery and handbag viewing experiences

through video calls with fashion advisors, allowing VIP clients who are unable to shop in store, to enjoy an exclusive one to one consultation. Other brands have created their own online shopping platforms, with the intention of opening an online-to-offline sales channel.

As Hong Kong relaxes its COVID-19 restrictions, we are seeing an improvement in retail sales, with many retail employers encouraging or even requesting employees to get vaccinated in the hope that business can continue as usual. We have been assisting a number of clients in respect of COVID-19 vaccination policies for their employees. Employers should bear in mind that the lawfulness and reasonableness of mandatory vaccinations and COVID-19 testing has not been tested in Hong Kong courts so far. Our view is that employers should take into account various legal principles when formulating vaccination/testing policies, such as whether the order constitutes a lawful and reasonable order from the employer, whether the requirement is reasonably practicable to ensure the safety and health at work of employees, whether there are discrimination concerns (especially with pregnant employees or those with long term illnesses) and data privacy.



Focus on Hong Kong:

10 minute deliveries – the deadly pitfalls of guaranteeing delivery times

Eugene Low and Charmaine Kwong, Hong Kong

It's the time of the year when online shoppers go crazy! With the “Double 11” festival (a.k.a. Singles’ Day) in China, Black Friday and Thanksgiving sales on the horizon, online orders and their deliveries are expected to soar, especially with COVID-19 still keeping shoppers at home.

Businesses now often guarantee (instead of estimate) delivery times to attract customers – from “ships within 5-7 business days” to “delivers in 10 minutes” – these fast delivery claims are usually made by online businesses to win customers over their competitors.

All is well until a delivery falls behind schedule...

Consumers are increasingly aware of businesses’ trade claims, especially if they are used as slogans or form the main reason for shopping at that particular store. In Hong Kong, 59% (2020) and 71% (2019) of consumer complaints from consumers related to services. Complaints relating to storage, postal and courier services are on the rise from 331 cases in 2019 to 696 cases in 2020, and have reached 556 cases already in the first 10 months of 2021. While guaranteeing fast delivery times may entice customers, it could be “criminally” dangerous for businesses if they do not live up to their claims and could attract investigations from regulators.

There are many ways a delivery claim can be caught as a criminal offence under the Trade Descriptions Ordinance in Hong Kong:

1. False trade descriptions: falsely claiming (or guaranteeing) a delivery time.
2. Misleading omission: failing to mention caveats that affect delivery time.
3. Bait advertising: using the delivery time as bait and later telling customers that this delivery time does not apply to the goods purchased.
4. Wrongly accepting payment: receiving orders with no prospect of living up to deliveries.

As traders and business owners:

- Always make sure your trade descriptions are accurate and not misleading. If there are caveats, make sure to explain them in a clear manner before consumers make the purchase.
- Where delivery times are uncertain in their nature, avoid making any absolute claim or guarantee.
- Be transparent about delivery capabilities, limitations and inherent uncertainties, especially in peak seasons and where delivery and supply conditions can change quickly due to force majeure events.

In summary, businesses should put in place the appropriate protections to safeguard their reputations and in turn, maximise customer satisfaction and loyalty this holiday season.



Focus on Russia:

Protecting your IP during the holiday season: Pay attention to online marketplaces

Ekaterina Kiseleva and Alexandra Bakhtiozina, Moscow

When the holiday season is just around the corner, we all start preparing presents for loved ones and try to find the most convenient offers. Online marketplaces might have just what we want: a variety of products, delivery options, flexible discounts and different brands (from international giants to local indie brands).

Russia's eCommerce sector and, in particular, the role of online marketplaces, has increased significantly in recent years, especially, due to the COVID-19 pandemic, when people were deprived of the ability to shop in person. Russian eCommerce consists of different international platforms, such as eBay, AliExpress, Amazon and Etsy, and large Russian marketplaces which have shown rapid growth over the last 5 years, namely, Ozon, Wildberries and Yandex.Market.

Increases in the eCommerce sector and online marketplace development has also meant a growth of counterfeit products, including clear counterfeit and look alike goods. This holiday season we can expect a large number of infringements, especially, regarding children's toys and ready-made gift sets. It will be important for brands to keep a close look at online marketplaces and social networks (where sometimes goods are also offered for sale) to protect their brands' exclusive rights, revenues and, more importantly, reputation.

Below are some brief recommendations on how to be prepared:

1. Monitor the most popular marketplaces. Most marketplaces have an easy search system allowing right holders to find counterfeit products. Additionally, it might be effective to look into the social networks (such as VKontakte and Instagram).
2. Most of the Russian marketplaces and social networks will delete the infringing offers at the request of the right holder, thus, it is reasonable to approach them rather than to try to reach out to every infringer.
3. Most of the counterfeit goods are produced in foreign countries (such as China, Taiwan, etc.) In order to prevent import and further circulation of counterfeit goods, right holders can demonstrate their interest in protecting their IP to the authorities by participating in police seminars, registering trademarks in the Customs Register, etc. In this way, a brand can increase the chances that police, and customs will be pro-active and will quickly inform the brand infringements.



Focus on the UK:

Marketing your “green” credentials this holiday? Make sure they’re legally green

Helen McGowan, Micaela Bostrom, Georgia Hughes, London

The message from COP 2026 could not be clearer - act now or it will be too late for our planet. Perfect timing for retailers seeking to maximise on consumer appetite for environmentally responsible products as the holiday season approaches. But retailers be warned – “green claims” by businesses (usually in the form of marketing or promotional language that claims that a product, service or business practice minimises harm to, or even has a positive effect on, the environment) have recently caught the attention of UK regulators who are demanding greater transparency and proper substantiation of green claims.

UK consumer protection law already prohibits unfair commercial practices by retailers. This includes a ban on false or misleading statements or omissions, which might induce a consumer to make a transactional decision they would not have otherwise made. Such practices are illegal and could potentially amount to a criminal offence. Given the increasing weight and influence of green claims in particular, the Competition and Markets Authority (“CMA”) has recently published a Green Claims Code to help ensure retailers and other business understand and comply with their existing obligations under consumer protection law in the context of making green claims.

The CMA’s view is that the effect of existing law is that businesses must ensure that their green claims:

- are truthful and accurate;
- are clear and unambiguous;
- do not omit or hide important information;
- compare goods or services in a fair and meaningful way;
- consider the full life cycle of the product or service; and
- are substantiated.

One key point set out in the Green Claims Code is that consumer protection law does not prevent retailers from making environmental and sustainability claims about their products and services, providing they do not mislead consumers.

With the CMA signalling an intention to more closely scrutinise environmental claims going forward (including a full compliance review of green claims in early 2022), retailers should take care to ensure that their green claims are truthful and can be properly substantiated before seeking to capitalise on the current sustainability agenda. At the same time, retailers whose products are genuinely ‘green’ should see this as an opportunity. The Green Claims Code not only helps businesses stay on the right side of the law but it also protects them from unfair competition and helps create a level playing field. In the end, this should benefit environmentally-conscious consumers, as well as responsible retailers.



Contacts



Zhen (Katie) Feng
Office Managing Partner, Shanghai
T: +86 21 6122 3826
zhen.feng@hoganlovells.com



Yvonne Draheim
Partner, Hamburg
T: +49 40 419 93 218
yvonne.draheim@hoganlovells.com



Eugene Low
Partner, Hong Kong
T: +852 2840 5907
eugene.low@hoganlovells.com



Yu-An Chang
Counsel, Shanghai
T: +86 21 6122 3802
yu-an.chang@hoganlovells.com



Ewa Kacperek
Counsel, Warsaw
T: +48 22 529 29 00
ewa.kacperek@hoganlovells.com



Tommy Liu
Counsel, Hong Kong
T: +852 2840 5072
tommy.liu@hoganlovells.com



Jennifer Brechbill
Senior Associate, Washington D.C.
T: +1 202 637 3281
jennifer.brechbill@hoganlovells.com



Maria Luigia Franceschelli
Senior Associate, Milan
T: +39 02 720 2521
marialuigia.franceschelli@hoganlovells.com



Aleksandra Kuc-Makulska
Senior Associate, Warsaw
T: +48 22 529 86 04
aleksandra.kuc-makulska@hoganlovells.com



Helen McGowan
Senior Associate, London
T: +44 20 7296 2000
helen.mcgowan@hoganlovells.com



Katie McMullan
Senior Associate, London
T: +44 20 7296 5473
katie.mcmullan@hoganlovells.com



Sabrina Mittelstäedt
Senior Associate, Hamburg
T: +49 40 419 93 0
sabrina.mittelstaedt@hoganlovells.com



Katherine Tsang
Senior Associate, Hong Kong
T: +852 2840 5060
katherine.tsang@hoganlovells.com



Alexandra Bakhtiozina
Associate, Moscow
T: +7 495 933 3000
alexandra.bakhtiozina@hoganlovells.com



Micaela Bostrom
Associate, London
T: +44 20 7296 2593
micaela.bostrom@hoganlovells.com



Peter Elkin
Associate, London
T: +44 20 7296 7139
peter.elkin@hoganlovells.com



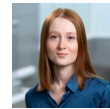
Charmaine Kwong
Associate, Hong Kong
T: +852 2219 0888
charmaine.kwong@hoganlovells.com



Carina Tenaglia
Associate, Washington, D.C.
T: +1 202 637 6595
carina.tenaglia@hoganlovells.com



Georgia Hughes
Trainee, London
T: +44 20 7296 2124
georgia.hughes@hoganlovells.com



Ekaterina Kiseleva
Intern, Moscow
T: +7 495 933 3000
ekaterina.kiseleva@hoganlovells.com



Elia Salardi
Intern, Milan
T: +39 02 7202 52369
elia.salardi@hoganlovells.com

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest*
Colorado Springs
Denver
Dubai
Dublin
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta*
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Riyadh*
Rome
San Francisco
São Paulo
Shanghai
Shanghai FTZ*
Silicon Valley
Singapore
Sydney
Tokyo
Ulaanbaatar*
Warsaw
Washington, D.C.

*Our associated offices
Legal Services Center: Berlin

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2021. All rights reserved. WG-REQ-354