

CRITERIA FOR COSMETIC PRODUCT CLAIM SUBSTANTIATION NEED TO BE BETTER REGULATED

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Summary

Based on Article 20 of the new Regulation for Cosmetic Products (EC No 1223/2009) the Commission is in the process of developing a list of common criteria for claims which may be used with regard to cosmetic products.

In this position paper, we are analyzing the situation for consumers with regard to claims on cosmetic products.

Moreover, we call on the European Commission to regulate claims on cosmetic products similar as in the area of food. EU Regulation EC No 1924/2006 on nutrition and health claims made on food products will contribute to protect consumers from misleading claims as the use of claims needs to undergo an authorisation procedure involving independent scientific risk assessment from EFSA, the European Food Safety Authority. Moreover, the use of a claim in the area of food has to be substantiated by generally accepted scientific data.

With regard to the Commission draft working document aiming to establish a list of common criteria which may be used to substantiate a claim on a cosmetic product, BEUC makes proposals for amending the draft criteria. In particular with regard to providing evidence for a claim, we call for ambitious binding criteria as the decision on the means, forms and methods to substantiate a claim should not be left to manufacturers alone.

Introduction

The Cosmetic Regulation (EC. No 1223/2009), which will replace Directive 76/768/EEC by July 2013, contains a new provision with regard to claims. The aim of Article 20 of the Cosmetics Regulation is to prevent claims that are misleading for consumers: "In the labeling, making available on the market and advertising of cosmetic products, text, names, trade marks, pictures and figurative or other signs shall not be used to imply that these products have characteristics or functions which they do not have".

The new Regulation requires the Commission to determine common criteria that would justify the use of a claim and to submit a report to the European Parliament regarding the use of claims by July 2016 based on the common criteria adopted. For this reason, a sub-working group of the Cosmetics Working group has been set up by the Commission. BEUC is a member of this working group on claims and has been consulted on a first working draft aiming to establish common criteria for cosmetic product claim substantiation.

In this position paper, BEUC analyses the current situation for consumers with regard to claims. In addition, we are calling for legal binding requirements that will regulate the use of claims. Moreover, we provide comments on the Commission draft working document which outlines possible common criteria for the use and substantiation of claims.

I. **What is the situation for consumers with regard to claims on cosmetic products?**

Claims are assertions made by manufacturers and retailers about the beneficial qualities and characteristics of their goods and services. In the area of cosmetic products, claims are primarily linked to statements on the performance of the products, such as for example anti-aging effects or reducing cellulites. Consumers are faced with claims on the product packaging, in advertising material, at the point of sale and through all modern channels of communication such as newspapers and magazines, radio, television and the internet and social media such as Facebook, LinkedIn, Twitter, blogs etc. Claims can take the form of written text, symbols, emblems, logos, graphics, colours and product brand names¹.

Today, consumers are hardly enabled to make informed choices when buying cosmetic products as they are confronted with plenty misleading claims in advertising and on the product packaging. In shops, consumers see shampoos that claim to give more volume, repair the structure, to make the hair shinier, softer and heat resistant. When looking for toothpaste, plenty of products claim to whiten the teeth, to repair small fractions through nanoparticles and to prevent caries and formation of tooth stone. Creams claim to nourish the skin, to reduce wrinkles, to reduce cellulites and to achieve "visible" effects immediately, after a couple of hours or "over night".

¹ OECD: Enhancing the Value and Effectiveness of Environmental Claims: Protecting and Empowering Consumers, Workshop Report,
[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2010\)18/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2010)18/FINAL&docLanguage=En)

In recent years the amount of “green” claims which refer to alleged organic or sustainable properties of products increased in all areas including cosmetic products. Often terms are used which do not have any meaning such as “natural colour” for hair dyes. A recent research from the German Consumer Centre of Hamburg (VZHH) investigated the German situation by looking at claims on cosmetic products². Several manufacturers are using the term “bio” as part of their brand name³ despite the fact that with this product line they are not offering organic cosmetic products to consumers. Many others advertise with organic ingredients just to reap the benefits of an increasing awareness of consumers to buy sustainable products. However, when looking at the list of ingredients of a “bio almond intensive care shampoo”, the amount of organic ingredients was minuscule and the rest of the contents were synthetic chemicals. Similar findings are available from consumer research and testing in Italy (Altroconsumo), Belgium (Test Achats), Spain (OCU) and Portugal (Deco)⁴.

Worryingly, an increasing number of consumer products including personal care products use “nanoclaims” to advertise their products⁵. However, consumers currently do not have the means to find out whether or not nanomaterials have been used. The new Cosmetic Regulation requires indicating the term “nano” in brackets in the list of ingredients, as of 2012. However, the situation with regard to nanomaterials used in cosmetic products is confusing for consumers and needs to be urgently addressed by regulators. Therefore the Commission guidelines for claim substantiation need to address specifically claims that are related to nanomaterials. Just indicating the term “nano” in the list of ingredients may not prevent manufacturers from using misleading claims in advertisement.

Most of these claims suggest that consumers will experience well-being and happiness when applying cosmetic products. When making such claims, they are partly pure advertising without any substantiation from the side of the manufacturer. Many other cosmetic products pretend to substantiate the claim with “scientific evidence” and testing on consumers. However, in many cases questionable methods are used for substantiating a claim. This may have a very negative effect on the credibility of science from a consumer point of view.

Consumer research shows that consumers want clear, credible and comparable information⁶ in order to make informed choices that correspond to their needs and expectations. Currently information that would take into account these needs is barely available for cosmetic products.

² For more information see: <http://www.vzhh.de/ernaehrung/30538/greenwashing-bei-kosmetik.aspx>

³ See list of products of VZHH:

<http://www.vzhh.de/ernaehrung/30524/greenwashing-bei-kosmetik-dateien912kosmetikpdf.aspx>

⁴ See for example Altroconsumo, *Cosmetici con la maschera verde*, September 2009, p. 22.

⁵ ANEC and BEUC published a joint inventory of consumer products which claim to contain nanomaterials in 2009. In 2010, we have updated the inventory and we found many more products with nanoclaims (in total 475 products) in all categories including cosmetic products compared to the previous year. As we have not tested these products, we were just able to look at the claims made by manufacturers and retailers. The inventory and a brochure can be found at our website www.beuc.eu.

⁶ For more information see Consumer Focus: Green expectations - Green Expectations – Consumers’ Understanding of Green claims in advertising, <http://www.consumerfocus.org.uk/assets/1/files/2009/06/Green-expectations-single-page.pdf>.

II. Legal binding requirements needed to regulate claims used on cosmetic products

As the current situation on the EU market with regard to the use of claims needs to be urgently improved in order to allow consumers to make better choices, BEUC is of the opinion that claims should be regulated in a similar manner to the EU Regulation on nutrition and health claims made on food. This Regulation⁷ aims at ensuring a high level of consumer protection and creating fair market conditions. As a result of the Regulation, nutrition and health claims must be based on and substantiated by generally accepted scientific data. Any company wishing to use a health or nutrition claim on a food must follow a specific procedure to apply for authorization to use such claims. This involves the submission of a complete dossier laying out the scientific basis behind the claim which is reviewed by EFSA the European Food Safety Authority, who, upon reviewing the data, give a positive or negative opinion on the said claim.

Based on Article 20 of the Cosmetic Regulation, the Commission is currently developing a list of common criteria which may be used with regard to cosmetic products. These criteria, according to the initial works, seem to be based on industry self-regulatory initiatives. We are of the opinion that self-regulation is not suitable to improve the current situation with regard to misleading claims and request that the Commission identifies the list of criteria on the basis of more objective sources of information. Also, as the guidelines are aiming to further detail the requirements of Article 20 of the Cosmetics Regulation, we call on the Commission to make these criteria binding for all economic operators offering cosmetic products to EU consumers.

III. Detailed comments regarding the Commission working document on common criteria for claims

1. Scope

Objectivity

- The draft guidance emphasises that the presentation of the product performance must not be excessive. It is unclear what this means in practice. How do we assess the excess? Thus, this has to be further specified.
- The working document mentions that claims should not be alarmist or likely to worry the consumers. The purpose of this specification is not clear to us and we would ask for concrete examples where consumers have been misled by an “alarmist” claim related to a product. As manufacturers try to sell their products by sounding as positive as possible, such claims are not very likely to occur on many products. Certain claims suggest to consumers that they are safer than others, e.g. by indicating that they are free of certain substances. Those types of claims may mislead consumers by implicitly stating that other products on the market are not safe. If this case is meant by the above mentioned criterion, we see a need to further specify this in the guidelines.

⁷ See Regulation (EC) No 1924/2006 on nutrition and health claims made on foods.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:404:0009:0025:EN:PDF>

Moreover, it should be explicitly clarified that warnings which may be necessary for the safe use of cosmetic products are not considered as being alarmist or likely to worry the consumer.

- Moreover, the draft working document says that claims that are linked to a context such as healthy life style or use in association with other products, the context should be clearly stated. While it may be good to underline that a certain lifestyle may have additional benefits to reach a specific aim, the claim related to the product must be substantiated on its own. Moreover, the consumer must be able to identify which effect is related to the cosmetic product and which effect is related to a possible change in lifestyle. For example, when it is recommended to consumers in advertisement on anti-wrinkle eye cream to apply the cream daily, to sleep every night eight hours, drink two litres of water per day, stop smoking and drinking alcohol and eat plenty of fresh vegetables to look more fresh, the beneficial effect could primarily be linked to a change in lifestyle or cannot be proven⁸.
- When a cosmetic product is presented in the media, their use is often recommended by a certain association or a single doctor /dentist. Such claims are not objective. Meaningful scientific methods/ tests are therefore needed to substantiate the claim.

Truthfulness

- The draft criteria point out that the presentation of the product should not imply that this product has characteristics or functions which it does not have. In this context, we would like to point out that consumers are sometimes misled as the pictures on the front of the package suggest an ingredient which may not be present in the composition of the cosmetic product. From a consumer perspective it is of importance that the product contains the ingredients that are shown on the package in particular when the ingredient is important for the performance of the product. For instance, sage has antibacterial properties. Thus, it would be misleading to show sage leaves on the package and to include only sage aroma into the product. Therefore the guidance document needs to regulate the use of claims that are linked to the absence or presence of certain ingredients.

⁸ Stiftung Warentest published for instance a test on eye cremes in 2007. Among the claims were promises to reduce wrinkles of 20% and more as well as "visible smoothing". However, the measurable effect was less than fractions of a millimetre and they have not been visible at the test persons. See test, 6/2007, Augencremes – Zaubern können sie nicht.

Evidence support

Providing evidence to substantiate a claim is of utmost importance from a consumer perspective. However, the provision of evidence needs to follow certain minimum requirements that will apply to all claims made on cosmetic products. Decisions on the means, forms and methods should not be taken by manufacturers alone. This guidance document should define such minimum criteria for the provision of evidence and should also outline best practice.

The methods which are currently used to provide evidence and to substantiate a claim are often questionable. With regard to the draft working document, we have the following concerns:

- The working document specifies that each claim should be supported by adequate and appropriate evidence. However, it is not sufficiently clear what kind of evidence is appropriate and this requirement needs to be further specified.
- The working document leaves the decision entirely to manufacturers which method to use although the mentioned examples would lead to a different trustworthiness of the claim. For instance mentioning a consumer evaluation of a product which is based on a number of readers of a women's magazine, is not as trustworthy as a clinical study with sound scientific test methods. Therefore we call on the Commission to define in these guidelines the minimum criteria to provide credible evidence. The Commission should define explicit minimum criteria for methods which can be used for different levels of claims. In the area of food, the use of nutrition and health claims is only allowed if they are based on and substantiated by generally accepted scientific data.
- The working document states that a set of evidence may consist of one or a combination of the categories as appropriate. We have strong concerns about this as it leaves the decision to manufacturers what methods to use. Therefore the guidance document should also specify which methods can be used as stand-alone evidence and which methods can be combined to provide evidence. Moreover, it should be clarified which methods cannot be used to provide evidence.
- We ask to delete the point which explains that statements of an abstract nature, hyperbole or "puffer" will not require substantiation. From a consumer point of view this is unacceptable as such claims could mislead consumers and will not allow them informed choices. Statements that largely exaggerate the qualities and benefits of the product should be banned as they are unfair.
- We are not in favour of allowing a variation in the degree of evidence support because of regional or national characteristics. The aim of this guidance document is to establish common criteria for claim substantiation in the entire internal market.
- We ask to delete the point which says that the assessment should not require a single all-defining study for each claim and shall not require repeat or new studies for each claim or each cosmetic formulation. In case the product or the claim changes, evidence should also be provided.

- In case a manufacturer introduces a product which is advertised as being better or more effective than the previous product, several criteria have to be met to substantiate this claim. First, the improvement between the two products has to be significant as only a minor change would be misleading for consumers. Second, the same method has to be used for both types of products to prove that there is a real improvement. In case two different methods would be used, the difference between the two products could be related to the different test method and/ or variance. This point needs to be further elaborated before finalising the guidelines.
- If a manufacturer wants to claim that a product is good for the environment, for the climate or has been produced socially responsible, manufacturers have to show that their product is better than similar products on the market. In order to prevent the further spread of unsubstantiated green claims and to provide consumers with credible information, the development of EU Ecolabel criteria for cosmetic products could be a way forward.
- If claims are made, the documentation substantiating a claim should be available at the time of marketing. As a minimum requirement consumers would need to have the right to access the documentation online.

END.