

[NL] New Advertising Code on “Sustainability” claims

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On 1 February 2023, the new *Code voor Duurzaamheidsreclame* (Code for Sustainability Advertising) came into effect, having been published by the *Stichting Reclame Code* (Dutch Advertising Code Foundation — SRC), the self-regulatory body for advertising, including broadcast advertising, in the Netherlands (see IRIS 2022-2/15). The new Code replaces the *Milieu Reclame Code* (Environmental Advertising Code) which related only to environmental claims, and now applies to both environmental claims and ethical claims, such as claims related to working conditions, animal welfare or corporate social responsibility. The SRC stated that it was important consumers should be able to trust what advertising says about sustainability, and said it had seen an increase in the number of complaints about unclear or incorrect claims. As such, the new Code aimed to provide an up-to-date framework for assessing sustainability claims.

The Code begins with crucial definitions. In this regard, Article 1 of the Code defines an environmental claim as a claim that suggests, or otherwise gives the impression, that a product or activity has a positive, minor or no impact on the environment; while an ethical claim is a claim that gives the impression that the production or activity of a company has taken place according to certain ethical standards, for example with regard to general working conditions, animal welfare and/or corporate social responsibility. The Code then contains a number of important rules relating to environmental and sustainability claims in advertising, including the following. First, sustainability claims must be presented in a “clear, specific, correct and unambiguous” manner. Sustainability advertising may not contain any statements, images, logos or other design or quality marks that could “mislead the average consumer”. Second, when an advertiser communicates about its sustainability ambition, it should be made sufficiently clear that it concerns an aim and not the current situation. Such a sustainability claim should not give an “overly positive picture” of the current and future results in the field of sustainability, while it is misleading to advertise an aspiration that “cannot reasonably be expected to be achieved”. Third, all sustainability claims must be “demonstrably correct”. Crucially, the burden of proof rests on the advertiser. The more absolute sustainability claims are formulated, the more “stringent” requirements are placed on the evidence. Fourth, sustainability indications and sustainability symbols may be used, provided that the origin of the indication or symbol is clear and confusion about the meaning of the indication or symbol is

excluded. Fifth, environmental claims relating to (separate) waste collection and/or waste processing are only permitted if the recommended method of collection or processing is available and can be applied in practice.

Finally, the SRC stated that because EU legislation is also being drafted for sustainability claims, the Code will be evaluated after one year and adjusted if necessary to keep the code up-to-date and relevant.

Niederländische Werbekodex-Stiftung, Werbekodex für Behauptungen zur Nachhaltigkeit, 1. Februar 2023

Dutch Advertising Code Foundation Code for Sustainability Advertising, 1 February 2023

<https://www.reclamecode.nl/english/>

