

Newsletter No.

26

Swiss IP News We provide you with updates on new decisions, the relevant legislative process and other trends in the fields of intellectual property and unfair competition law from a Swiss perspective.

walderwyss attorneys at law



By Sylvia Anthamatten
MLaw, Attorney at Law
Counsel
Telephone +41 58 658 55 90
sylvia.anthamatten@walderwyss.com

New Green Advertising Guideline from the Swiss Commission for Fairness

Following an increase in questionable green advertising practices in Switzerland (see our reports [here](#) and [here](#)), the Swiss Commission for Fairness has issued a new guideline on commercial communications with environmental references and arguments ("Guideline", see [here](#)).

Background

Following an increase in questionable green advertising practices in Switzerland (see our reports [here](#) and [here](#)), the Swiss Commission for Fairness ("Commission") has issued a new Guideline on commercial communications with environmental references and arguments. The Guideline aims to ensure that green advertising is clear, truthful and substantiated and to prevent misleading or false claims about environmental practices. According to the Guideline, commercial communications with environmental references or arguments are permitted if all environmental or climate-related representations, statements, and information are individually clear and true.

Clarity Requirements

The Guideline states that green claims are clear if (cumulatively):

- it is clear that the claims relate to a product, part of a product or certain aspects of a product, or to all or part of the advertiser's activities;
- the advertiser transparently justifies the actions leading to environmental claims, with all statements and data based on generally accepted scientific evidence. This justification must at least be integrated into the commercial com-

munication in the form of keywords; a link to more distant locations (including via QR code) is permitted for additional details and explanations;

- the justification includes information on how the advertiser's efforts go beyond legal or industry requirements or beyond what is common practice in the industry; and
- it is clear that the representations made reflect current circumstances or future efforts only.

Truthfulness

The Guideline requires advertisers to be able to substantiate the content of their environmental and climate-related claims, statements, and information. It sets out the average addressee's current understanding of certain terms such as:

- "sustainable" and "environmentally friendly" (referring to measures that clearly go beyond legal or industry requirements);
- "CO2 neutral", "CO2 friendly", "CO2 free", etc. (referring to measures that completely avoid emissions or completely offset carbon dioxide);
- "CO2 positive" (referring to measures that overcompensate carbon dioxide);
- "greenhouse gas neutral", "without

greenhouse gases" (referring to measures that completely avoid or completely compensate all greenhouse gases – going beyond carbon dioxide); and

- "climate neutral", "climate positive", "climate friendly", "environmentally safe", "green", etc. (referring to measures that not only completely avoid or completely compensate all greenhouse gases, but also to the neutralisation of any negative impact on climate change).

Advertisers must provide plausible and comprehensible calculations based on generally accepted methods and demonstrate the effectiveness of the offsetting measures. In all cases, advertisers may request that the evidence be kept confidential.

Comment

The Guideline is welcome as it provides further clarity on green advertising requirements and provides information on the presumed understanding of today's common buzzwords in relation to green advertising. While it does not add anything new to the legal landscape (see the detailed analysis of green advertising by Sylvia Anthamatten, published in [sicl 1/2024](#)), it consolidates the strict standard applied by the Commission to green claims in recent cases. These developments, however, will increase discussions about reliable, recognised measurement methods related to environmental and climate impacts and should prompt companies to scrutinise their green advertising strategy and claims more closely, including from a legal perspective.

By way of a concluding remark, reference is made to the Commission's most recent decision on green advertising ([no. 170/23 of 22 November 2023](#)). In the spirit of the new Guideline, the Commission disqualified a helicopter operator's (Elite Flights)

claim that its flights were 100% carbon neutral because the company only relied on calculations of fuel consumption that related to carbon neutrality, but not to the neutralisation of all negative impacts on climate change.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

© Walder Wyss Ltd., Zurich, 2024