Submission to the CMA and ASA on misleading hybrid vehicle advertising

How carmakers' advertising misleads consumers and delays the electric vehicle transition

Adfree Cities, April 2024

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Adfree Cities

1 Introduction

Motivated by environmental concerns and the UK's net zero targets, there is a widespread political and cultural shift away from petrol and diesel vehicles and towards electric and hybrid vehicles. The need to decarbonise road transport is acute: in 2023, domestic transport was responsible for 29.1% of the UK's greenhouse gas emissions and emissions from road transport have flatlined for many years due to rising demand negating efficiency savings from new technology.[1] [2]

As of January 2nd, 2024, UK carmakers are subject to the zero emission vehicle (ZEV) mandate[3] which stipulates minimum proportions of zero emission vehicles they must produce to enable the UK's trajectory to a full phase-out of petrol and diesel cars (including hybrids) by 2035. In the words of Professor Piers Forster, Chair of the Climate Change Committee, "The switch to EVs is the largest single driver of future emissions reduction in the UK's Net Zero pathway".[4]

The Advertising Standards Authority (ASA) has followed the development on electric and hybrid vehicles over the last decade and has conducted research on public attitudes towards such vehicles[5], and issued guidance to advertisers.[6] However, in the face of industry-wide misinformation on electric and hybrid vehicles, it is our belief that regulation has fallen short of what is required to ensure accurate and responsible advertising of electric and hybrid vehicles.

This submission raises concerns that advertising is misleading consumers about the environmental aspects of their car choice. This is to the detriment of consumers and in opposition to the politically mandated shift away from

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[1] https://assets.publishing.service.gov.uk/media/6604460f91a320001a82b0fd/uk-greenhouse-gas-emissions-provisional-figures-statistical-release-2023.pdf

[2] https://www.gov.uk/government/consultations/a-zero-emission-vehicle-zev-mandate-and-co2-emissions-regulation-for-new-cars-and-vans-in-the-uk/outcome/zero-emission-vehicle-zev-mandate-consultation-summary-of-responses-and-joint-government-response

[3] https://www.gov.uk/government/consultations/a-zero-emission-vehicle-zev-mandate-and-co2-emissions-regulation-for-new-cars-and-vans-in-the-uk/outcome/zero-emission-vehicle-zev-mandate-consultation-summary-of-responses-and-joint-government-response

[4] https://www.theccc.org.uk/publication/letter-zero-emission-vehicle-mandate/

[5] https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf

[6] https://www.asa.org.uk/advice-online/motoring-electric-vehicles.html

vehicles powered by fossil fuels. There is a noticeable trend in advertising for electric and hybrid vehicles to conflate different types of powertrain (such as plug-ins, hybrids and battery) and a failure to provide accurate and accessible information on relative costs and environmental benefits. Not only does this act as a major barrier to wider public trust in and uptake of electric vehicles, it may be leaving drivers worse off financially.

In this submission we raise concerns that misleading electric and hybrid vehicle advertising is systemic, sector-wide and persistent. We draw on a wide range of adverts from multiple carmakers over the last three to four years to emphasise that this is not simply a few bad actors or one off instances.

Advertising is adding to existing consumer confusion about electric and hybrid vehicles, which in turn risks acting as a brake on faster EV uptake in line with decarbonisation goals. A 2020 poll found that over half of motorists could not confidently distinguish between different electric and hybrid powertrains.[7]

Adfree Cities echoes the House of Lords and Behavioural Insight Team's[8] recommendations for curbs on car advertising in order to shift consumer behaviour and demand towards mass motility where possible. However, in the absence of such restrictions we argue that advertising regulation and enforcement by the CMA and ASA must require carmakers to advertise fairly, and prevent them from:

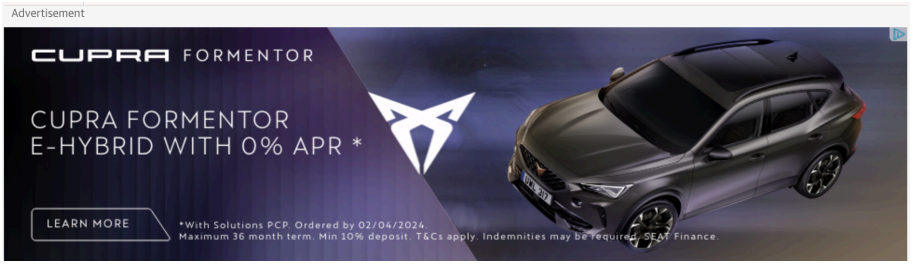
- unduly promoting hybrids and plug-in hybrids in a way that contributes to consumer confusion over the environmental benefits of these technologies.
- overpromoting their battery EV models whilst the majority of their sales and model availability remain in petrol and diesel models (including hybrids).

Overall, we find that ASA regulation via CAP and BCAP Codes has fallen behind in ensuring honest and truthful advertising of electric and hybrid vehicles. Consequently there is an urgent need for a review of existing regulation and the introduction of new regulatory requirements. There is opportunity within the Competition and Markets Authority's

[7] https://www.ford.co.uk/content/dam/guxeu/uk/documents/home/shop/research/hybrid-electric/Ford-electric-document.pdf
[8] https://publications.parliament.uk/pa/ld5803/ldselect/ldenvcl/64/6402.htm

(CMA's) Green Claims Code[9] to rectify the gaps in the CAP and BCAP Code and this submission concludes with recommendations to that end.

We also urge the CMA to enforce the Green Claims Code for car manufacturers deploying misleading green claims. To our knowledge, no action has been taken to date by the CMA to protect consumers from this unfair commercial practice.



Cupra Formentor "e-hybrid" advert in The Guardian online, January 2024.

2 Terminology

Throughout this document we use the term "electric vehicle" (EV) to refer to fully electric vehicles such as battery electric vehicles and fuel cell electric vehicles. Vehicles that require petrol or diesel for some or all of their propulsion such as full hybrids, plug-in hybrids and mild hybrids are on occasion referred to collectively as "hybrids".

Definitions	
BEV - battery electric vehicle, a vehicle with no internal combustion engine at all. The engine is powered solely by electricity. The battery is charged externally as with a PHEV. FCEV - fuel cell electric vehicle, a BEV in which power comes from a chemical reaction in a fuel cell (usually containing hydrogen, which is converted into water). ZEV - zero emission vehicle, a vehicle with no tailpipe emissions. In terms of this above, this means a BEV or a FCEV. ZEVs still produce lifecycle emissions from their manufacturing as well as environmental pollution such as from tyre and brake wear.	**Electric**

[9] https://assets.publishing.service.gov.uk/media/61482fd4e90e070433f6c3ea/Guidance_for_businesses_on_making_environmental_claims_.pdf

Hybrid (aka full hybrid) - a vehicle with both ICE and electric motors and the capacity for the electric motor to drive the wheels. The electric battery is charged by the internal dynamics of the car, either by the engine or via an alternator. **Note: for clarity, throughout this submission we use the term "full hybrid" when referring to such vehicles specifically, and the general "hybrid" when referring to all hybridised powertrains.** MHEV - mild hybrid electric vehicle, a vehicle with both ICE and electric motors but without the capacity for the electric motor to drive the wheels. The electric battery is charged by the internal dynamics of the car, either by the engine or via an alternator.	**Hybrid - fossil fueled**
PHEV - plug-in hybrid electric vehicle, a hybrid in which the electric battery is charged externally by means of a plug and cable. This vehicle can, when charged, be powered entirely by the battery without use of the internal combustion engine.	**Hybrid - fossil fueled / charge able**
ICE - internal combustion engine, a vehicle powered solely by petrol or diesel (or in limited cases biofuel).	**Fossil fueled**

3 Net Zero and the auto industry

The role the auto industry plays in worsening climate breakdown cannot be understated. In 2023, domestic transport was responsible for 29.1% of the UK's greenhouse gas emissions (GHG) with surface transport as a whole making up the largest share of UK emissions.[10] Despite the UK's total greenhouse gas (GHG) emissions falling by 32% from 1990 to 2017, GHG emissions from road transport increased by 6% over the same period due to rising demand negating efficiency savings from new technology.[11]

The Climate Change Act 2008 mandates that the UK's net carbon emissions must reach zero by 2050. Delivering this "will require reducing surface transport emission to near zero"

[10] https://assets.publishing.service.gov.uk/media/6604460f91a320001a82b0fd/uk-greenhouse-gas-emissions-provisional-figures-statistical-release-2023.pdf

[11] https://www.ons.gov.uk/economy/environmentalaccounts/articles/roadtransportandairemissions/2019-09-16

via the widespread deployment of zero-emission vehicles (ZEVs)[12].

The UK government's Net Zero Strategy[13] and Transport Decarbonisation Plan[14] commit the government to a full phase-out of fossil fuel powered cars and vans by 2030 (subsequently pushed back to 2035) through the introduction of a Zero Emission Vehicle (ZEV) Mandate, with the Net Zero Strategy noting that "Removing tailpipe emissions from road transport is a clear priority".

It is furthermore imperative to do so sooner rather than later. The average road-worthy lifetime of a vehicle in the UK is 14 years.[15] This means many ICE vehicles purchased in 2035 will likely still be on the road in 2050. Delaying the phase-out of ICE vehicles not only risks leaving drivers out of pocket (see section 5.2 below) but also puts the UK's net zero goals in jeopardy.

The ZEV mandate (which was signed into law on January 2rd, 2024[16]) is designed to meet this challenge by stipulating an annual minimum proportion of ZEV sales for carmakers, with that proportion rising steadily from 22% in 2024 to 100% in 2035. The ZEV mandate affords carmakers allowances to produce a certain number of non-ZEV vehicles each year. Carmakers whose production of ZEV vehicles falls below the annual target and who don't have the necessary allowances to cover the shortfall will be liable to pay a fine on each non-ZEV vehicle in excess of the minimum stipulated value.

As laudable as the ZEV mandate is, it is only one part of the puzzle. It addresses the supply side of road transport decarbonisation, but not the demand side. Without demand side measures, decarbonisation is left in the hands of the auto industry, who, under the ZEV mandate, can continue to sell fossil fueled vehicles up until 2035. Public demand for ZEVs is necessary to provide the proper incentive for

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12 https://www.theccc.org.uk/wp-content/uploads/2020/12/Sector-summary-Surface-transport.pdf

13 https://assets.publishing.service.gov.uk/media/6194dfa4d3bf7f0555071b1b/net-zero-strategy-beis.pdf

14 https://assets.publishing.service.gov.uk/media/610d63ffe90e0706d92fa282/decarbonising-transport-a-better-greener-britain.pdf

15 https://www.theccc.org.uk/wp-content/uploads/2020/12/Sector-summary-Surface-transport.pdf

16 https://www.gov.uk/government/news/pathway-for-zero-emission-vehicle-transition-by-2035-becomes-law

carmakers to make the rapid shift away from fossil fuels. Naturally, advertising plays a key role in shaping consumer demand and yet, as the following section explains, consumer understanding of the electric and hybrid vehicle market is far from where it needs to be.

4 Consumer confusion

Electric and hybrid vehicles have gained in popularity in recent years. Data from New Automotive shows an accelerating growth in new electric vehicle registrations.[17] However, confusion and anxieties about the new technology remain a constant theme amongst consumers and act as a barrier to faster electric vehicle uptake.

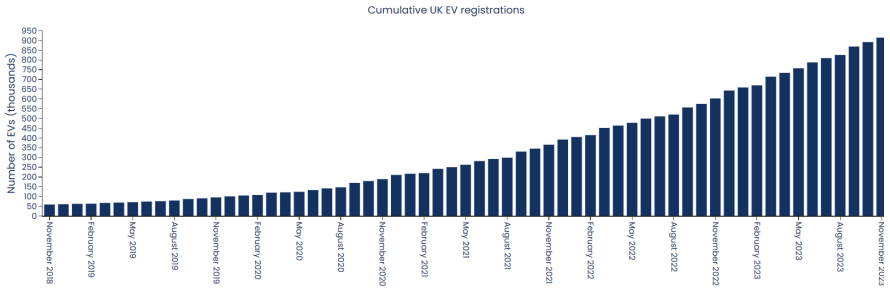

Chart 1: cumulative EV registrations in the UK, showing an exponential rise in registrations. Chart sourced from https://newautomotive.org/ecc

A survey of 2000 UK drivers conducted by carmaker Ford in 2020 found a widespread lack of confidence in buying electric and hybrid vehicles.[18] Over half (52%) could not accurately distinguish between different types of electric and hybrid vehicles and one quarter (25%) didn't know the difference between a plug-in hybrid vehicle and a battery EV.

Range and cost anxieties were also clear. Nearly four in 10 (38%) said they would purchase an EV if it was proven to be cheaper to run than petrol and diesel alternatives. Whilst only 6% of respondents thought a BEV could have a range of 250 miles or over.

[17] https://newautomotive.org/ecc
[18] https://www.ford.co.uk/content/dam/guxeu/uk/documents/home/shop/research/hybrid-electric/Ford-electric-document.pdf

More recently, the ASA's own research has corroborated these earlier results, with findings released in 2022 showing many of the same range and cost anxieties.[19] After viewing examples of electric and hybrid vehicle advertising, participants in the study reported a desire for clarity on lifetime costs of ownership, range, charging information and relative environmental benefits of electric/hybrid versus traditional petrol/diesel cars.

Noteworthy is research commissioned by the ASA on consumer understanding of 'green' claims in food and drink advertising.[20] The research found that "the use of certain terminology or visual imagery in advertising contexts could lead to a cascade of associations, creating a halo effect" with the consequence that consumers' assumptions about a product supersede what is explicitly claimed in the advert. We argue here that hybrid vehicle advertising similarly creates a 'halo effect' for such vehicles, associating them with a general sense of being 'green' or sustainable without necessarily claiming so explicitly - to the detriment of consumers and the planet.

What is clear from these surveys is that consumer confusion is widespread and is not going away. Consumers rely on advertising for honest and truthful information about the cars they are buying. It is therefore paramount that regulation is in place to ensure that this is possible.

The average consumer

Drawing on available evidence, we hold that the following characterises the beliefs and concerns of the average UK consumer looking to purchase an electric or hybrid vehicle today:

- Is motivated by a desire to reduce their carbon footprint and perceives electric and hybrid vehicles as a means of doing so without compromising convenience.
- Is concerned about the upfront costs of, in particular, BEVs, which remain higher than comparable ICE vehicles.
- Is also concerned about the performance of BEVs especially in regard to battery range. Hybrids and

[19] https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.f pd
[20] https://www.asa.org.uk/static/b92eb9ed-2ed6-4a69-8a9fd6ef156a3797/ASA-Food-Claims-Report.pdf

PHEVs, in this context, are seen as preferable as they do not rely solely on the battery.

- Is confused by the array of powertrains now available, with subtle differences between full electrics, full hybrids, mild hybrids and so on acting as a barrier to greater uptake of electric and hybrid vehicles. Consumers want to know in simple terms what the fuel source of the vehicle they are buying is. Would add this last point into the body of the text above and potentially lose the box.

5 Comparisons of electric and hybrid vehicles

5.1 Relative emissions

As noted, only battery and fuel cell EVs are zero emission vehicles. Hybrids (of all kinds) rely on fossil fuels as a power source and therefore still produce greenhouse gas emissions.

This reliance on fossil fuels means that full hybrids, mild hybrids and plug-in hybrid vehicles offer little emissions savings on traditional ICE vehicles. This is true of both real-world driving emissions and lifecycle emissions. Research by Transport & Environment has found that over the lifetime of the vehicle (including emissions from manufacturing and generating the fuel or electricity), a new PHEV bought in 2020 will emit 28 tonnes of CO2e and a new full hybrid 33 tonnes. A conventional petrol or diesel car emits 39 and 41 tonnes respectively.[21] A new BEV emits just 3.8 tonnes of CO2e over its lifetime.

Similarly, research by the International Council for Clean transportation (ICCT) found that across the EU and UK, lifecycle emissions for full hybrids are on average just 20% lower than comparable ICE vehicles and for PHEVs an average of 25-31% lower. In contrast, lifecycle emissions for BEVs are 63-69% less than comparable ICE vehicles, rising to 76-81% reduction when renewable energy is used to charge the battery.[22]

The ICCT report concludes that: “Only battery electric and hydrogen fuel cell electric vehicles have the potential to

[21] https://www.transportenvironment.org/wp-content/uploads/2021/07/2020_09_UK_briefing_The_plug-in_hybrid_con.pdf
[22] https://theicct.org/wp-content/uploads/2021/07/Global-Vehicle-LCA-White-Paper-A4-revised-v2.pdf

achieve the magnitude of life-cycle [greenhouse gas] emissions reductions needed to meet Paris Agreement goals."

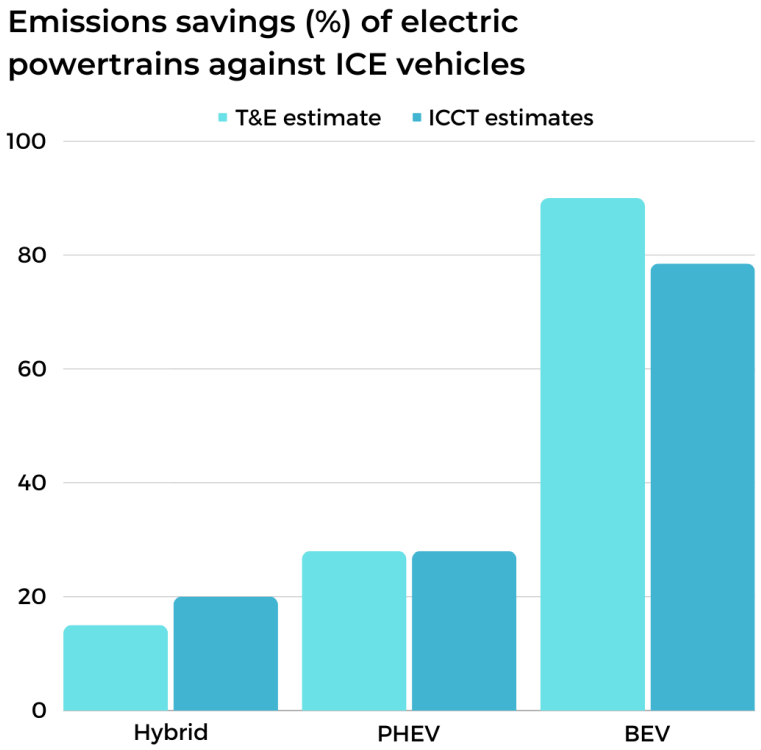

Chart 2: carbon emissions savings of different powertrains, using data from the ICCT and Transport & Environment.

5.2 Total cost of ownership

Full and accessible information on lifetime total costs of ownership (TCO[23]) for different types of electric and hybrid vehicles is invaluable to consumers. Unfortunately, many carmakers are centering full hybrids and PHEVs in their commercial strategies and advertising, often with a misleading emphasis on their environmental benefit, despite their average higher TCO, without providing clear and accessible information to assist consumers in calculating the TCO of a vehicle.

Some carmakers have presented hybrids as a half-way house between ICEs and fully electric BEVs. For example, Toyota has described hybrids as a "bridging" technology for motorists

[23] TCO = Depreciation + VAT + fuel/electricity + insurance and maintenance

not yet confident to switch to fully electric cars.[24] However, not only is this strategy misaligned with the ZEV mandate, it risks loading drivers with a financial burden long into the future.

Research into TCO commissioned by the European Consumer Organisation, BEUC[25], found that over a lifetime of ownership (the average lifetime of a car in the UK is 14 years), a medium sized PHEV bought new in 2020 could cost around €15,000 more over its lifetime than a BEV (and €7,500 more than a Petrol ICE).

Across all powertrains, a medium BEV has a lower TCO than any other vehicle, with savings accumulating into the 2030s as summarised in Table 1 below.

Table 1: TCO for various powertrain. All data sourced from https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-039_electric_cars_calculating_the_total_cost_of_ownership_for_consumers.pdf

	2025 TCO (€) if bought new	2030 (€) if bought new
BEV	33,200	31,400
Full hybrid	33,700	33,100
PHEV (high charging)	34,300	33,300
PHEV (low charging)	38,300	37,100
ICE	35,800	35,200

[24] See for instance here https://electrek.co/2023/10/30/why-is-toyota-anti-ev-it-lost-the-race-to-compete-ev-council/ and here https://archive.ph/G26yK

[25] Electric Cars: Calculating the Total Cost of Ownership for Consumers Final report for BEUC (The European Consumer Organisation), Element Energy, 2021. https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-039_electric_cars_calculating_the_total_cost_of_ownership_for_consumers.pdf

5.3 The UK electric and hybrid vehicle market

The following snapshot analysis[26] of the UK's five biggest carmakers by sales - VW, Ford, Audi, Kia and Toyota - demonstrates the continued commercial reliance carmakers have on ICEs and hybrids. This is in opposition to the demands of the ZEV mandate and wider Net Zero decarbonisation goals, and the BEUC findings that BEVs are more economical for drivers over vehicle lifetimes.

Worth singling out in this regard is Toyota. The world's largest carmaker, Toyota's leadership, especially chairman and former CEO Akio Toyoda, has repeatedly publicly spoken out against BEVs in favour of ICEs and hybrids.[27] This commercial strategy, which deprives consumers of the choice to buy a BEV, is then used to justify itself when BEV sales, inevitably, remain low.[28] [29]

Table 3 below shows how many models each carmaker offered in 2022. Each model may have been available with different powertrains. For instance, the Toyota Yaris was available either as an ICE or as a hybrid. What this table demonstrates is that ICEs and hybrids, powered solely by fossil fuels, are far more commonly available than BEVs and FCEVs and remain dominant in carmakers' commercial strategies.

Table 2: models available for sale by powertrain. Data from Marklines.

Manufacturer	Total models available	Powertrain					
		ICE	Hybrid	MHEV	PHEV	BEV	FCEV
Ford	15	14	3	5	1	1	0
VW	24	21	0	1	5	6	0
Toyota	23	16	10	0	2	1	1

[26] All data in this section sourced from Marklines (https://www.marklines.com/en/) accessed 15/12/23.
[27] https://www.dailymail.co.uk/news/article-12997057/Electric-cars-NEVER-dominate-market-Toyota-says.html
[28] https://archive.is/aVvaG (original article: https://www.ft.com/content/a6cb4926-d2fb-48b7-801a-d49fb0c2a015)
[29] https://www.reuters.com/business/autos-transportation/toyota-outshine-rivals-more-consumers-opt-hybrids-amid-ev-slowdown-2024-02-02/

Audi	17	14	0	10	8	3	0
Kia	15	12	3	4	6	3	0
Total	96	77	16	20	20	14	1

When considering 2022 sales across the five carmakers, sales of full hybrids and mild hybrids accounted for 36% of total sales, four times the proportion for EVs.

Chart 3 below shows how sales for each carmaker break down across different powertrains. All carmakers are highly reliant on ICEs and hybrids, whilst EVs remain a small percentage of total sales. Kia had the highest rate of BEV sales at 16.3% whilst Toyota had both the lowest rate of BEV sales (0.4%) and the highest proportion of full and mild hybrid sales (74.4%).

Comparison of carmakers' sales by powertrain

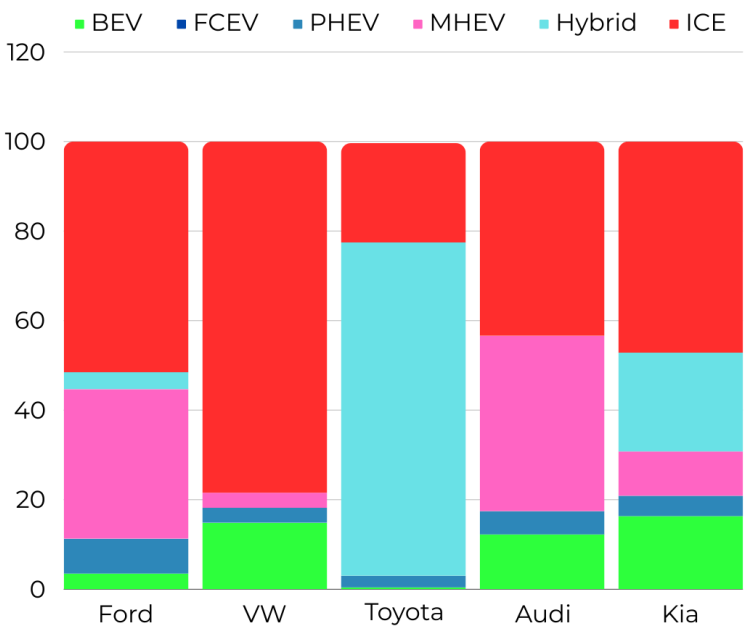

Chart 3: each bar represents a carmaker and each colour within the bar represents a powertrain.

In 2022, none of the five carmakers considered here came close to the 22% ZEV sales target for 2024 as stipulated by the ZEV mandate. Kia came closest with 16.3%. Toyota was furthest from the target with just 0.4% ZEV sales.

Across the whole UK car market, hybrid powertrains (including mild hybrids, full hybrids and plug-in hybrids) show strongest growth in both registrations and market share. BEVs have seen a drop in market share from 16.6% to 16.5%.[30]

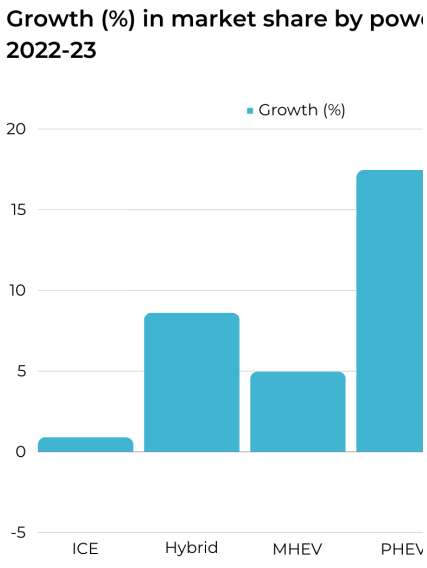

Chart 4: showing how different powertrains grew in popularity (by sales) from 2022 to 2023.

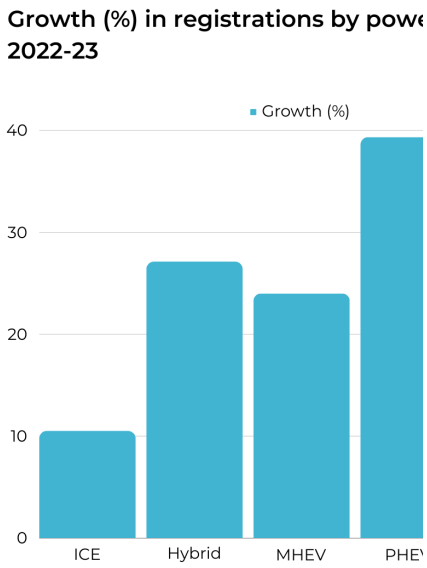

Chart 5: showing how carmakers prioritise production of different powertrains.

6 Misleading electric and hybrid advertising

As noted above, consumer confusion about electric and hybrid vehicles is rife and a barrier to greater uptake of zero emission vehicles[31] [32]. As the ASA has revealed through its consumer research, the language used in EV and hybrid advertising is contributing to consumer confusion and is therefore misleading. The EV market is now a veritable acronym soup of PHEVs, MHEVs, BEVs and others besides, and carmakers regularly relay this confusion in their advertising, or even invent new acronyms and slogans within their marketing materials to add to the uncertainty.

[30] Registration and market data from https://www.smmt.co.uk/vehicle-data/car-registrations/
[31] https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf
[32] https://insideevs.com/news/691472/ev-usa-study-yahoo-toyota/

Regulation in this area has fallen far behind the problem, leaving far too much space for carmakers to deploy misleading advertising.

6.1 Electric and hybrid vehicle advertising regulation to date

Regulation of electric and hybrid vehicle advertising has evolved slowly in comparison to advances in vehicle technology. In consequence, large gaps now exist in the regulation which leave room for misleading claims from carmakers and advertisers.

In 2014, the ASA issued advice to advertisers on the marketing of electric vehicles. Chief concerns at that time related to Miles Per Gallon claims and the role of the battery in extending range; possible confusion between powertrain variants; claims about emissions and the true lifecycle emissions savings of electric vehicles; and country-specific emissions claims.[33]

In 2021, the CMA published detailed guidelines on making environmental claims stressing that claims: must be truthful and accurate, must be clear and unambiguous, must not omit or hide important relevant information, must consider the full life cycle of the product or service, must be substantiated, and that comparisons in marketing must be fair and meaningful.[34]

In application, the parts of the CAP and BCAP Codes most relevant to electric and hybrid vehicle advertising are as listed in the appendices to this submission.

33 https://www.asa.org.uk/news/exhaustive-guidance-environmental-claims-and-electric-vehicles.html

34 https://assets.publishing.service.gov.uk/media/61482fd4e90e070433f6c3ea/Guidance_for_businesses_on_making_environmental_claims_.pdf

Table 3: Examples of regulation in practice

2019 "Self-charging hybrid" claims allowed	In 2019, the ASA declined to uphold a complaint against a series of adverts for the Toyota Lexus UX (a full hybrid).[35] Complainants argued that the term "self-charging hybrid" as used in the ads was misleading about the source of the car's power, which remained fossil fuels. The complaint centred on CAP Codes 3.1, 3.3, and 3.11 and BCAP Codes 3.1, 3.12, 3.2, 3.3 and 3.11. The ASA ruled that in the absence of any comparison to other powertrains or of any absolute claims about the advertised car's environmental benefits, the claim "self-charging" was to be interpreted objectively as informative of how the battery charges from the internal dynamics of the vehicle. It is of note that an analogous ad campaign that Toyota Lexus ran in Norway in 2020 was banned by the Norwegian Consumer Authority on the grounds that "it is misleading to give the impression that the power to the hybrid battery is free of charge, since the electricity produced by the car has consumption of gasoline as a necessary condition".[36]
2021 Absolute environmental claims banned	In 2021, the ASA upheld a complaint against Hyundai over ads for the NEXO, an FCEV, that claimed the car was "so beautifully clean, it purifies the air as it goes". The ASA ruled that the claim omitted information about, for instance, pollution from tyre wear and was therefore misleading as it failed to provide substantiation.[37] The ad was found to be in breach of CAP Codes 11.2, 11.3, 3.1, 3.7 and 11.1.
2023	In 2023, the ASA ruled against Nissan over adverts for the adverts for the Nissan Qashqai with e-power that used the slogan "fuelled by petrol driven by electric" to describe the car's powertrain. The ruling

[35] https://www.asa.org.uk/rulings/toyota-gb-plc--G19-1023004.html
[36] As quoted in https://electrek.co/2020/01/24/toyota-self-charging-hybrid-ad-banned-norway-lie/
[37] https://www.asa.org.uk/rulings/hyundai-motor-uk-ltd-a21-1096716-hyundai-motor-uk-ltd.html

Confusing powertrain information	noted that the ads were misleading as they "did not make the nature of the vehicle's power source sufficiently clear." In an encouraging development to previous rulings on electric vehicles, the Nissan ruling states: "whilst the ad did not include any explicit claims in relation to the car's environmental impact, we considered that *by focusing on the car's use of electricity, consumers were likely to understand that the car was a better choice for the environment than traditionally fuelled vehicles*. However, because the ads did not make sufficiently clear the nature of the vehicle's power source and because it required petrol to power the electric motor, which would produce tailpipe emissions, we considered that the ads were also misleading in this regard" (emphasis added).[38] The ad was found to be in breach of BCAP Codes 3.1, 9.2, 9.3.
2024 Zero Emission Vehicle	In February 2024, the ASA upheld a complaint brought by the ASA against BMW UK for ads using the term "zero emissions vehicle" in an ad for a BEV.[39] It was argued that this is a misleading claim since it fails to make clear that only the operation of the vehicle is zero emissions, not the full lifecycle (including manufacturing). The ad was found to be in breach of CAP Codes The ad breached CAP Code 3.1, 3.3, 3.9 and 11.1. In a similar case, another complaint brought by the ASA against MG Motor challenged the use of the term "zero emissions" in an ad which promoted the MG HS Plug-in Hybrid, MG ZS and MG5 EV Trophy Long Range models.[40] In this case, the argument was that only the MG5 EV Trophy Long Range was fully electric and one particular configuration of the MG ZS was fully battery electric, the other models are hybrids and therefore not even zero emissions during operation. The ad was found to be in breach of CAP Codes 3.1, 3.3, 3.9 and 11.1.

6.2 The case for updated regulation

Consumer law provides a framework for businesses to make environmental claims that help consumers make informed

38 https://www.asa.org.uk/rulings/nissan-motor--gb--ltd-g23-1206694-nissan-motor--gb--ltd.html

39 https://www.asa.org.uk/rulings/bmw--uk--ltd-a23-1209400-bmw--uk--ltd.html

40 https://www.asa.org.uk/rulings/mg-motor-uk-ltd-a23-1209401-mg-motor-uk-ltd.html

choices. The application of consumer law to environmental claims in advertising - such as via the Green Claims Code[41] - protects consumers from misleading green claims in recognition of the increase in demand for products and services which minimise harm to, or have a positive effect on, the environment.

In practice, we argue that electric and hybrid vehicle advertising is routinely misleading in three key ways:

1. In that it presents hybrid vehicles as preferable relating to their 'green' credentials when the emissions reductions of these vehicles compared to an ICE are minor.
2. Through the use of confusing terminology, acronyms and neologisms that make it unclear what the powertrain or fuel source the car is powered by.
3. In that carmakers present themselves as shifting to low carbon transport when their sales and commercial strategies remain largely dependent on ICE or hybrid vehicles.

In addition, we challenge existing regulation of the term "zero emission vehicle" in BEV advertising.[42] Whilst the ASA is correct to insist that any use of this claim must be qualified so as not to mislead consumers about lifecycle emissions versus driving emissions, it remains the case that "zero emission vehicle" is both the key differentiating factor between fully electric and hybridised vehicles and therefore the clearest indication of a vehicle's ultimate impact on the environment, and the defining term used in the ZEV mandate, an piece of UK legislation that will govern the trajectory of the UK car market for the next 11 years.

We therefore ask: would it not be prudent to encourage, within ASA guidance to advertisers, use of the term "zero emission vehicle" where appropriate and where properly caveated and qualified?

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[41] https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services#introduction

[42] See https://www.asa.org.uk/rulings/bmw--uk--ltd-a23-1209400-bmw--uk--ltd.html# and https://www.asa.org.uk/rulings/mg-motor-uk-ltd-a23-1209401-mg-motor-uk-ltd.html

6.2.1 Misleading promotion of hybrids

Given consumer motivations to purchase electric and hybrid vehicles for their environmental benefits over ICE vehicles, we argue that advertising for electric and hybrid vehicles is inherently a 'green' claim.[43] Hybrid advertising therefore risks misleading by obscuring the real world emission of the vehicle compared to a BEV.

Further, given the varying powertrains now on offer to car buyers and consumer understanding of electric and hybrid vehicles as lying on a spectrum - from hybrids as the least 'green' option to battery EVs as the most[44] (albeit with still a great deal of confusion) - and the 'halo effect' associated with hybrid or electric vehicle advertising (see Introduction) we argue that advertising for electric and hybrid vehicles is inherently comparative. For instance, an advert promoting a full hybrid is presenting not only that specific vehicle as preferable to other vehicles but that powertrain as preferable to other powertrains (such as BEV or PHEV).

That carmakers are prioritising hybrids is evident from their advertising. A survey of Facebook Ad Library for Toyota UK adverts, for instance, published between October and December 2023 found of a total of 85 ads published, 67 (78.8%) related to electric or hybrid vehicles. Of these 67, 51 (60%) related to full hybrids whilst only 14 (16.5%) related to BEVs.

An example of potentially misleading hybrid advertising in practice is seen in the ads for the Nissan Qashqai and the Citroen C5 below (Adverts 1 and 2), that compare themselves favourably to BEVs and PHEVs due to the fact that they don't require plugging in to charge their batteries. Whilst this is presented as a comparison on grounds of convenience, the 'halo effect' of terms like "electrified" and "recharge" is such that it is also a comparative green claim inasmuch as it may persuade a consumer to purchase a hybrid rather than a BEV when that consumer's motivation in buying the vehicle is to reduce their carbon emissions.

Relevant regulation includes Article 3.47 of the Green Claims Code which states that *"The meaning consumers are likely to*

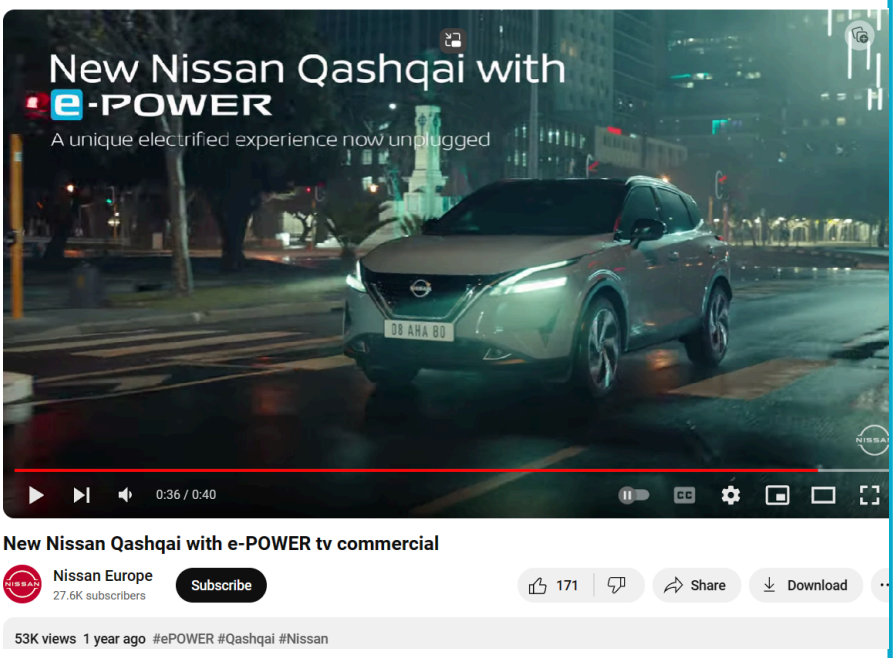
[43] https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf

[44] See in particular page 29 of https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf

take from a claim and the environmental credentials and impacts of the product, service, process, brand or business should match."

Further, guidance to CAP Code 3.3 ("Marketing communications must not mislead the consumer by omitting material information") "marketers should consider how knowledgeable the audience of marketing communications is likely to be, and should not assume a high level of understanding, particularly if ads are untargeted." In the context of widespread consumer confusion about various electric and hybrid powertrains, making discriminatory comparisons between powertrains is at best unhelpful and at worst actively misleading.

A YouTube ad for the Nissan Qashqai[45] promises the buyer an "unplugged" experience with "No need to charge". The 'halo effect' of terms like "electrified" is to associate this vehicle with environmental benefits like reduced carbon emissions, even though this is not explicitly claimed in the advert. As noted throughout this submission, the emissions savings of hybrids relative to traditional petrol and diesel cars are minor.



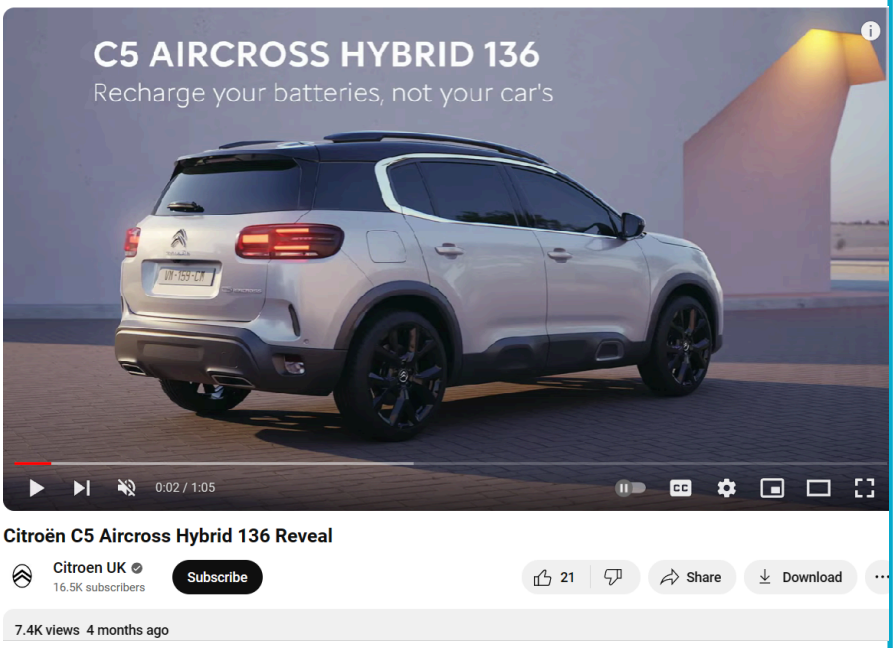
Advert 1: Nissan Qashqai. YouTube advert, accessed December 2023.

Similarly, a YouTube ad for the Nissan X-trail asks "who said

[45] https://www.youtube.com/watch?v=ryX3iYggdxk

adventure needs time to recharge?" and boasts that the X-trail is "now unplugged".[46]

A YouTube for the Citroen C5 Aircross full hybrid announces "no need to plug in" and uses the tagline "Recharge your batteries, not your car's" which suggests that charging one's car via a cable is an unwelcome drain on the driver's energy.[47]



Advert 2: Citroen C5 hybrid. YouTube advert, accessed December 2023.

6.2.2 Confusing terminology

For 100 years cars were all built using practically identical engines. This meant that consumers didn't need to know how the car actually worked, only that it did so reliably. Today, this is no longer the case as consumers have to wade into the waters of powertrains, drivetrains, fuel sources, range and more besides. It is unreasonable to assume that the average person will have the knowledge to distinguish between the specifics of different vehicles, and yet this is now to some extent required by virtue of the range of vehicles on the market.

[46] https://www.youtube.com/watch?v=jQPqALSNrjw
[47] https://www.youtube.com/watch?v=ZcZYNCkEFcg

The terminology used in electric and hybrid advertising has always been potentially confusing given the fast pace of evolution of these technologies relative to consumer understanding. Early confusion over the term "self-charging hybrid" (as noted above) and early decisions by the ASA to permit such terms has led to a proliferation of potentially confusing terms, slogans, acronyms and abbreviations, leaving the consumer caught in the middle.

Article 3.8 of the Green Claims Code states that *"If a claim uses terms which have specific or widely assumed meanings, the product, service, process, brand or business should justify their use."*

Additionally, CAP Code 11.2 states: *"The meaning of all terms used in marketing communications must be clear to consumers."*

"Self-charging"

Perhaps the most longstanding and controversial of hybrid vehicle terminology, "self-charging hybrid" is frequently used in car adverts today to refer to full hybrids, those that rely solely on a traditional ICE engine to charge a battery.

The underlying technology of a "self-charging" hybrid is in fact nothing new.[48] Hybrids have always been self-charging in the sense of drawing electrical power from a petrol or diesel engine. Indeed, all cars use "self-charging" to draw electricity from the engine: the electronic components of an ICE vehicle, such as the air conditioning, stereo, lights etc., are ultimately powered by the car's engine.

The term "self-charging" is confusing owing to low awareness of what it actually means and potentially misleading in as much as it obscures - from the perspective of the consumer - the source of the vehicle's power (i.e. fossil fuels).[49]

With hybrid vehicles of all types seen by consumers as a 'green' choice, or at least greener than conventional ICE vehicles[50], this amounts to a potential omission of material information and therefore a violation of CAP Code 3.3, which

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48 https://www.forbes.com/sites/jamesmorris/2020/10/24/dont-fall-for-the-self-charging-hybrid-con/

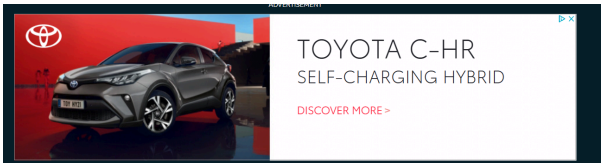
49 https://www.irishevs.com/the-myth-of-hybrids

50 https://www.asa.org.uk/static/6830187f-cc56-4433-b53a4ab0fa8770fc/CCE-Consumer-Understanding-Research-2022Final-090922.pdf

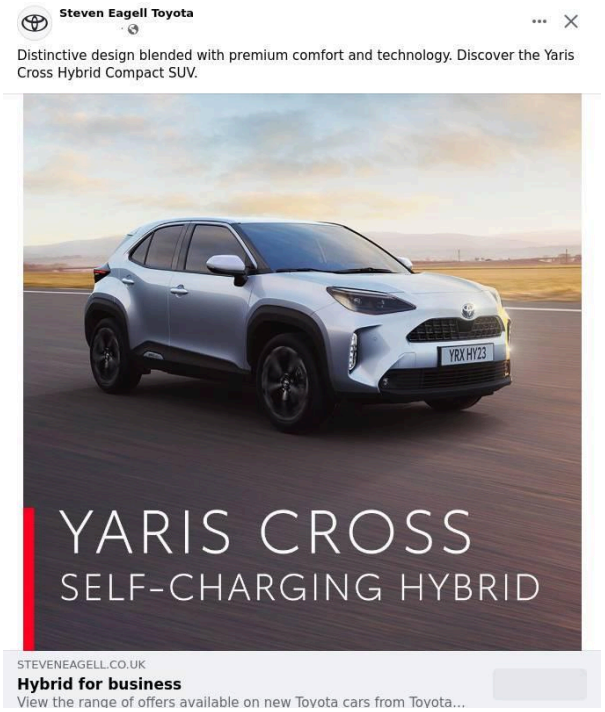
states: *"Marketing communications must not mislead the consumer by omitting material information. Material information is information that the consumer needs to make informed decisions in relation to a product."*

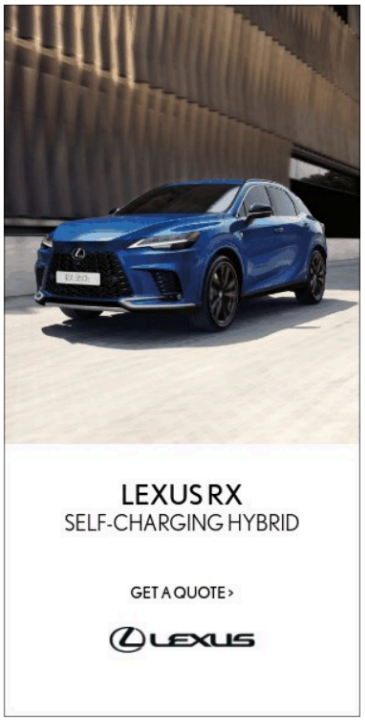
Further, "self-charging" is increasingly presented in marketing materials as preferable to plugging-in as a source of charging the battery (see Adverts 3, 4 and 5). This makes "self-charging" an inherently comparative claim and therefore subject to Green Claims Code article 3.97, which states "*It is important that consumers are not misled by the way comparative claims are made. This is linked to the principle that claims must be truthful and accurate. Comparisons should be based on clear, up to date and objective information. They should not benefit one product or brand to the detriment of another if the comparison is inaccurate or false.*"

Any favourable comparison between a "self-charging" hybrid and a plug-in BEV on the basis of efficiency, effectiveness, emissions reduction is neither accurate nor true (see sections 5.1 and 5.2).



Advert 3: Toyota C-HR self-charging hybrid. Seen online, July 2023.





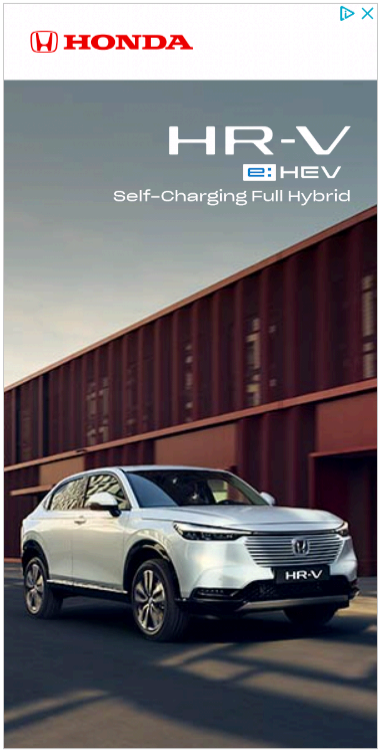
Advert 4: Toyota Yaris Cross self-charging hybrid. Seen online, January 2024.	*Advert 5:* Lexus self-charging hybrid. Seen online, January 2024.

"HEV"

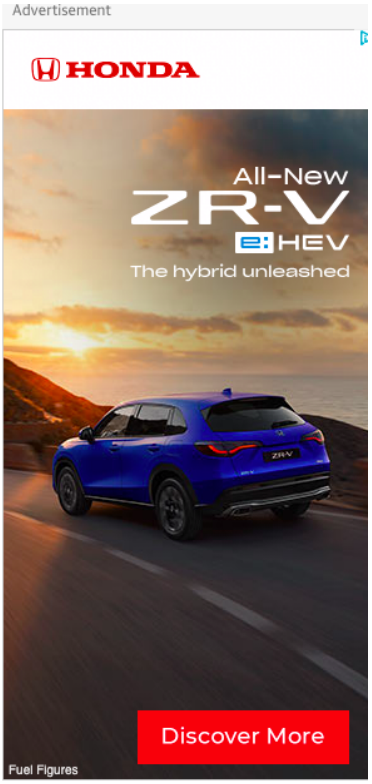
Use of the acronym "HEV" ("Hybrid Electric Vehicle") has become common for some carmakers, notably Toyota[51] and Honda[52]. This acronym is misleading in advertisements in as much as it conflates a full hybrid car that is powered predominantly by fossil fuels (the advertised vehicle cannot be plugged-in to charge and charges from the engine), with an electric vehicle by using "EV" in the acronym, which to the average consumers implies a zero emission vehicle. Therefore the term "HEV" materially misleads about the powertrain and the environmental benefit of a hybrid as opposed to a fully electric vehicle.

The advert for the Honda ZR-V leads to the Honda website[53] where marketing material for the vehicle reads "Powerful, efficient full hybrid. 621 miles** range with no recharging required". This is misleading as the ZR-V is a full hybrid and therefore powered solely by fossil fuels and not recharged via a plug. (In this specific example, the double asterisk after "621 miles" is not qualified anywhere on the webpage.)

[51] https://www.toyota.co.uk/new-cars/c-hr
[52] https://www.honda.co.uk/cars/new/hr-v-hybrid/overview.html
[53] https://www.honda.co.uk/cars/new/zr-v-hybrid-suv/overview.html



Advert 6: Ad for the Honda HR-V using the "HEV" acronym. Seen online July 2023.



Advert 7: Ad for the Honda ZR-V, seen online January 2024.

"e-"

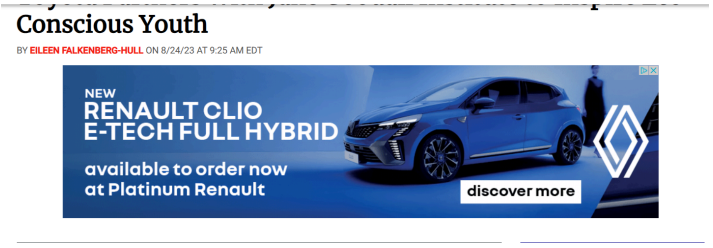
Article 3.8 of the Green Claims Code states that *"If a claim uses terms which have specific or widely assumed meanings, the product, service, process, brand or business should justify their use."*

Use of the prefix "e-" in car advertising associates vehicles with being electric and therefore strongly implies 'green' or lower emissions, when in fact it may not mean this at all. We argue that for the average consumer the prefix "e" is overwhelmingly interpreted as an electrical or digital product, as in "e-book" or "e-commerce".

Examples include the Honda e:HEV (Adverts 6 and 7 above), e-4orce (Advert 8), e-tech (Advert 9), e-tron (Advert 10) and e-hybrid (Advert 11). Of these, only Audi's e-tron relates to a fully electric line-up. Renault's e-tech refers to a range of EVs, some of which are hybrids whilst Nissan's e-4orce doesn't relate to electric power at all but is rather concerned with 4-wheel-drive technology.

According to marketing material published by Honda in 2021, the “e” in “e:HEV” is “a symbol of Honda’s desire to energize [sic] its fans and consumers by using electricity as its source of energy”.[54] This is false: the HR-V is a full hybrid (as the ad states) meaning its only source of energy is petrol.

Advert 8: Ad for the Nissan Ariya using the term “e-force”. Seen online July 2023.



Advert 9: for the Renault Clio using the term “e-tech”. Seen online August 2023.

Advert 10: Ad for the Audi Q8 e-tron. Seen online August 2023.

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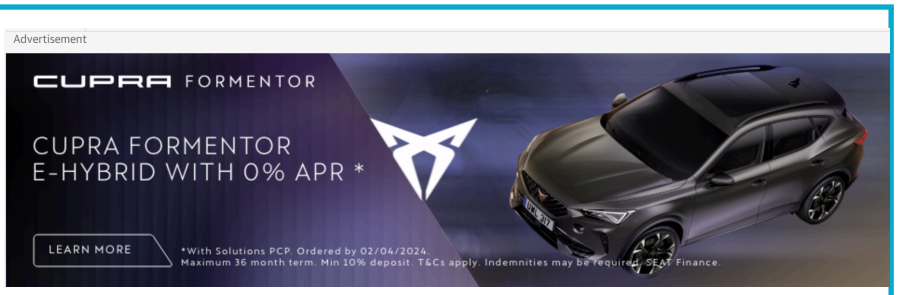
https://www.honda.com.my/withdreams/a-guide-to-the-future-of-automotive-technology-the-ehev/



Advert 11: Ad for the Cupra Formentor, seen online, January 2024.

6.2.3 Omitting material information about a company's total emissions

Article 3.11 of the Green Claims Code states that *"Claims can also be misleading if what they say is factually correct or true, but the impression they give consumers about the environmental impact, cost or benefit of a product, service, process, brand or business is deceptive. This can be a result of the overall presentation of the claim, including the wording, logos and imagery used, as well as anything that is missed out."*

And Article 3.70 of the Green Claims Code states that *"Claims should not just focus on the positive environmental aspects of a product, service, process, brand or business, where other aspects have a negative impact and consumers could be misled. This is especially so if the benefits claimed only relate to a relatively minor aspect of a product or service or part of a brand's or a business's products and activities. Cherry-picking information like this is likely to make consumers think a product, service, process, brand or business as a whole is greener than it really is."*

The Green Claims Code further cites a general principle of consumer law[55] that *"A misleading action or a misleading omission does not have to cause consumers to make decisions that they otherwise would not. It is enough if the action is likely to have that effect.*

[55] https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services#appendix---legal-framework

"Environmental and green claims are increasingly important to consumers. They are also an increasingly common feature of traders' commercial practices.

"Given those points, and the whole range of transactional decisions the law treats as relevant, the CMA's view is that any claims a trader (business) makes about [green credentials] should be treated as capable of influencing an average consumer's behaviour in relation to a product. If a business makes claims that are false or misleading, such claims are liable to be unlawful."

Additionally, ASA guidance to CAP Code 11.1 states: *"Ads which refer to a business's lower-carbon activities without including information about its overall harmful environmental impact may provide a misleading impression of the proportion of the business's overall activities that are lower in carbon."*

In a ruling of June 2023, the ASA upheld a complaint against Shell UK Ltd over a series of adverts prompting Shell's renewable energy activities that failed to mention how these comprise a miniscule proportion of Shell's total capital expenditure whilst the vast majority is spent on large-scale oil and gas investment and extraction.[56] The ads were ruled to be in breach of CAP Codes 3.1, 3.3 and 11.1 and BCAP Codes 3.1, 3.2 and 9.2.

The total emissions of many carmakers are comparable to those from entire G7 economies[57] and higher than many fossil fuel giants.[58] This fact may not be well known by consumers. For instance, in a survey of American drivers conducted in November 2023, 42% of respondents saw Toyota as a sustainable company[59], despite Toyota being the highest emitting carmaker on the planet with total emissions higher than oil giant BP.

For Toyota to market themselves as 'green' - even by suggestion, such as prioritising electric and hybrid vehicles (see section 6.2.1) - is therefore misleading by omission as it omits information regarding the company's decarbonisation journey, overall emissions or production line.

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[56] https://www.asa.org.uk/rulings/shell-uk-ltd-g22-1170842-shell-uk-ltd.html
[57] https://thedriven-io.cdn.ampproject.org/v/s/thedriven.io/2024/01/31/shock-report-finds-legacy-car-companies-are-bigger-polluters-than-big-oil/amp/
[58] https://www.businessgreen.com/news/4168805/oil-companies-disguise-car makers-accused-grossly-underreporting-emissions
[59] https://heatmap.news/electric-vehicles/toyota-prius-vw-audi-kia

Example: Toyota's "Beyond Zero"

By means of example, an advert was published by Toyota UK on their YouTube channel in October 2023 showing several Toyota vehicles: the PHEV C-HR, a hybrid racing car, and Toyota's BEV, the bZ4X. The overall effect is that of a brand advert for Toyota's low and zero carbon line-up.[60]

Whilst the advert in question never explicitly mentions sustainability, climate or carbon it is manifestly future focussed and employs much of the imagery typically associated with what consumers would most likely associate with "a brighter future". As an advert for hybrid vehicles it is inherently a 'green' claim and the general language used regarding 'smart solutions' and 'a better tomorrow' will play into consumer visions for a more sustainable future.

We argue that this advert for Toyota omits important material information relating to Toyota's total carbon emissions, which are vast and likely far greater than most consumers would expect[61], and its relatively small proportion of BEVs which undermines its claims to be working towards the 'better tomorrow' that consumers might envisage.

In 2022, Toyota had the fifth highest carbon emissions of any company in the world (when ranked by revenue), behind only Chevron, Shell, ExxonMobil and Rio Tinto.[62] Toyota's scope 3 carbon emissions (taking into account the emissions from Toyota vehicles across their active lifetime) in 2022 were 570.46 MtCO2 - the highest of any carmaker and higher than those from oil and gas giant BP.[63] This marks a 37.5% increase from 2019, with vehicle emission increasing 29.5%. These figures are based on Toyota's own reporting; investigation by Transport and Environment found that the true figure could be 68.5% higher again.[64]

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[60] https://www.youtube.com/watch?v=CODusX1ohuw

[61] https://thedriven.io/2023/11/20/toyota-carbon-emissions-soar-now-more-than-australia-as-it-seeks-to-slow-ev-uptake/

[62] https://carbongap.org/who-can-pay-for-carbon-removal

[63] For Toyota emissions see https://global.toyota/pages/global_toyota/sustainability/report/sdb/sdb23_en.pdf and for BP see https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-net-zero-progress-update-2023.pdf

[64] https://www.transportenvironment.org/wp-content/uploads/2022/09/Carbon-ESG-finance-Car-Study-V6.pdf

Furthermore, although the advert appears to make the case for Toyota as a forward-looking carmaker, thinking about the future and investing in hybrid vehicles, Toyota's performance on shifting away from petrol and diesel vehicles towards fully electric BEVs has earned it criticism as an EV "laggard".[65]

In 2022, just 0.42% of Toyota's total global sales were zero emission vehicles (BEVs or FCEVs) whilst 70.4% were ICEs. Of the company's electric and hybrid vehicle sales, 98.6% were hybrids. In 2023, Toyota was ranked at the bottom of a global scale of carmakers based on zero-emission vehicle action and preparedness.[66]

In the UK, Toyota falls far behind its leading competitors in the shift to EVs. Just 0.4% of Toyota's sales in 2022 were BEVs, compared to 3.5% for Ford, 14.9% for VW, 12.2% for Audi and 16.3% for Kia.[67]

To compound this, high ranking figures within Toyota - notably chairman and former CEO Akio Toyoda - regularly speak publicly against BEVs, such as remarking that BEVs will never make up more than 30% of the car market,[68] questioning their environmental benefits,[69] and committing Toyota to producing petrol and diesel cars into the 2030s.[70]

Taken together, we argue that this advert omits important material information about the company as a whole and the role it plays in driving climate change. This role runs entirely counter to efforts to reduce emissions and consumer desire to engage with such efforts.

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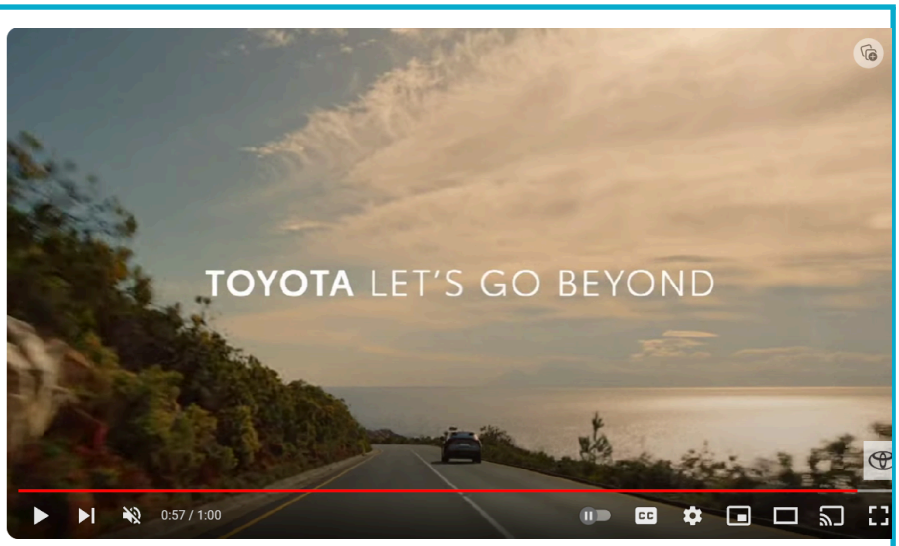
[65] https://www.ft.com/content/ffc78e5d-eb8d-442c-bc5e-d2f029951165 (available at https://archive.ph/B3Rpv).
[66] https://theicct.org/publication/the-global-automaker-rating-2022-may23/
[67] Sales figures based on own analysis using Marklines data.
[68] https://www.dailymail.co.uk/news/article-12997057/Electric-cars-NEVER-dominate-market-Toyota-says.html
[69] https://www.wsj.com/articles/toyotas-chief-says-electric-vehicles-are-overhyped-11608196665
[70] https://www.cnbc.com/2022/10/02/toyota-ceo-akio-toyoda-electric-vehicles-happy-dance.html



Advert 12: A YouTube ad for Toyota promotes the company as forward-looking and sustainability-focussed whilst failing to mention the carmakers' carbon emissions and failure to shift to electric vehicles. Seen online October 2023.

https://www.youtube.com/watch?v=CODusX1ohuw

7 Recommendations

Political and cultural opinion is changing in support of a rapid decarbonisation of road transport. In this context it is paramount that advertising regulation supports this shift and leaves no room for bad faith actors to mislead or confuse. This submission has evidenced a number of ways in which carmakers are at present doing exactly that whilst regulation fails to keep pace. From pushing hybrids over BEVs despite the clear material disbenefits to the environment and consumers, to using a confusing lexicon of neologisms and acronyms, carmakers' advertising is working against wider social and political efforts to achieve net zero targets.

Regulation of EV and hybrid vehicle advertising needs to help carmakers strike a balance between two things. Firstly, not unduly promoting full hybrids and PHEVs in a way that contributes to consumer confusion, and, secondly, Not over promoting themselves as 'green' based on having a small number of BEV models on the market whilst downplaying their total emissions.

To this end we make the following recommendations for consideration by the CMA and ASA as a possible basis for future regulatory updates.

Recommendation 1

Issue clear guidance on terminology and what kinds of technical terms are permissible in advertising without further qualifying detail. Electric and hybrid vehicle advertising contains many unfamiliar acronyms and terms, many of which have been discussed in this submission. The ASA should provide clarity to advertisers on what terms should and shouldn't be used and in what context, and when terms are used what clarification is needed.

Based on the above analysis, we suggest regulation against the use of confusing terms like "e-", "HEV" and "self-charging" without due explanation as to their fuel source or meaning.

Recommendation 2

Guidance to advertisers should be updated to stipulate that adverts for hybrids and PHEVs must carry clear information about the fact that they remain predominantly fuelled by fossil fuels and that their emissions savings are limited. This would align emissions claims with existing guidance around, for instance, electric range claims.[71]

Further, use of the term "zero emission vehicle" (or an equivalent) should be clarified in guidance to make clear that it is useful in differentiating between different powertrains and their respective environmental impacts so long as it is properly qualified as referring to the operation of the car and not its full lifecycle emissions. This would put an end to any ambiguity caused by confusing terms and the omission of material information regarding power source.

Recommendation 3

Car adverts featuring environmental claims (including implicit claims such as, for instance, the use of natural imagery) must ensure they do not mislead by exaggerating or omitting material information about the proportion of the carmakers' business activities that are comprised of lower carbon activities such as the sale of BEVs or other ZEVs. Forward looking claims

[71] https://www.asa.org.uk/advice-online/motoring-electric-vehicles.html

should be qualified by statements making clear, for instance, a carmakers' total emission and/or continued investment in fossil fuel powered vehicles.

Appendix 1 - legal basis for this submission

As per a 2017 Memorandum of Understanding between the CMA and the ASA, the ASA "is named as the 'established means' for the investigation and regulation of complaints about unfair business to consumer commercial practices in marketing contrary to the Consumer Protection from Unfair Trading Regulations (2008)".[72]

The MoU continues: "Where ASA identifies potential breaches of consumer protection legislation falling within the CMA's remit, which may lead to enforcement action, and which are likely to cause harm to the collective interests of consumers, it will contact the CMA. This is likely to be where:

- there are systemic failures in a market;
- changing the behaviour of one business would set a precedent or have other market-wide implications;
- there is an opportunity to set an important legal precedent; or
- there is a strong need for deterrence or to secure compensation for consumers."

Further, under the Consumer Protection from Unfair Trading Regulations

Part II, Section 3(3)(b):

A commercial practice is unfair if "it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product."

Part II, Section 5:

A commercial practice is a "misleading action" if

- if it contains false information and is therefore untruthful in relation to any of the following matters
    - the existence or nature of the product;
    - the motives for the commercial practice;
    - the consumer's rights or the risks he may face
    - the main characteristics of the product (as defined below)

[72] https://assets.publishing.service.gov.uk/media/5a824640e5274a2e87dc211d/cma-asa-mou-consumer-protection-issues.pdf

        - benefits of the product; risks of the product; execution of the product; composition of the product; accessories of the product; fitness for purpose of the product; usage of the product; results to be expected from use of the product.

- it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

Part II, Section 6(1):

A commercial practice is a misleading omission if

- the commercial practice omits material information,
- the commercial practice hides material information,
- the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or

and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

Part II, Section 8(1):

A trader is guilty of an offence if "the practice materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product under regulation 3(3)(b)."

Appendix 2 - relevant aspects of regulatory codes

CMA Green Claims Code

In September 2021, the CMA published its Green Claims Code, guidance on environmental claims on goods and services.[73]

Claims must be truthful and accurate

3.8 If a claim uses terms which have specific or widely assumed meanings, the product, service, process, brand or business should justify their use. Claiming a product is organic, for instance, is liable to fall short of consumers'

[73] https://assets.publishing.service.gov.uk/media/61482fd4e90e070433f6c3ea/Guidance_for_businesses_on_making_environmental_claims_.pdf

expectations unless it consists almost entirely of organic components

3.11 Claims can also be misleading if what they say is factually correct or true, but the impression they give consumers about the environmental impact, cost or benefit of a product, service, process, brand or business is deceptive. This can be a result of the overall presentation of the claim, including the wording, logos and imagery used, as well as anything that is missed out

3.18 Similarly, businesses should not focus claims on a minor part of what they do, if their main or core business produces significant negative effects.

Claims must be clear and unambiguous

3.47 The terms used in a claim, and the meaning they convey to consumers, should be clear. The meaning consumers are likely to take from a claim and the environmental credentials and impacts of the product, service, process, brand or business should match.

3.49 Businesses are increasingly recognising the importance of improving the environmental effects of their products, services and practices. However, claims about future goals should only be used for marketing purposes if the business has a clear and verifiable strategy to deliver them. Wider environmental goals of the business should also be clearly distinguished from product-specific claims.

Claims must not omit or hide important information

3.70 Claims should not just focus on the positive environmental aspects of a product, service, process, brand or business, where other aspects have a negative impact and consumers could be misled. This is especially so if the benefits claimed only relate to a relatively minor aspect of a product or service or part of a brand's or a business's products and activities. Cherry-picking information like this is likely to make consumers think a product, service, process, brand or business as a whole is greener than it really is.

Comparisons must be fair and meaningful

3.97 It is important that consumers are not misled by the way comparative claims are made. This is linked to the principle that claims must be truthful and accurate. Comparisons should be based on clear, up to date and objective information. They should not benefit one product or brand to

the detriment of another if the comparison is inaccurate or false.

Claims must be substantiated

3.122 Most environmental claims are likely to be objective or factual claims that can be tested against scientific or other evidence. Given the requirement that claims must be truthful and accurate, businesses should have evidence to support them.

CAP Codes

1.3 - Marketing communications must be prepared with a sense of responsibility to consumers and to society.

> "Encouraging or condoning consumers to disregard the harmful environmental impact of their actions.""[74]

3.1 - Marketing communications must not materially mislead or be likely to do so.

3.3 - Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

> From the guidance: "Marketers must consider consumers' likely interpretation of a claim. Where general claims could be interpreted as absolute claims, or have multiple possible interpretations, additional information is required to make the meaning of the claim clear. Marketers should consider how knowledgeable the audience of marketing communications is likely to be, and should not assume a high level of understanding, particularly if ads are untargeted. Qualifications may be necessary to explain the meaning of certain claims."[75]

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the

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[74] https://www.asa.org.uk/static/d819e399-3cf9-44ea-942b82d5ecd6dff3/4d3c736f-1e59-471f-bf77e10614544b3b/CAP-guidance-on-misleading-environmental-claims-and-social-responsibility.pdf

[75] Ibid.

measures that the marketer takes to make that information available to the consumer by other means.

3.7 - Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.

3.9 - Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.

3.11 - Marketing communications must not mislead consumers by exaggerating the capability or performance of a product.

3.13 - Marketing communications must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.

11.1 - The basis of environmental claims must be clear. Unqualified claims could mislead if they omit significant information.

> From the guidance: "Ads which refer to a business's lower-carbon activities without including information about its overall harmful environmental impact may provide a misleading impression of the proportion of the business's overall activities that are lower in carbon. The following are examples of the types of content that are likely to misleadingly exaggerate the significance of lower carbon activities:[76]
>
> > References to multiple activities relating to lower carbon energy and their contribution to the energy transition, alongside general brand logos and environmental claims, have significant potential to create a cumulative effect, reinforcing a misleading positive impression about the overall impact of the business on the environment"

11.2 - The meaning of all terms used in marketing communications must be clear to consumers.

[76] Ibid.

11.4 - Marketers must base environmental claims on the full life cycle of the advertised product, unless the marketing communication states otherwise, and must make clear the limits of the life cycle. If a general claim cannot be justified, a more limited claim about specific aspects of a product might be justifiable. Marketers must ensure claims that are based on only part of the advertised product's life cycle do not mislead consumers about the product's total environmental impact.

11.5 - Marketers must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.

BCAP Codes

3.1 - Advertisements must not materially mislead or be likely to do so.

3.2 - Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

3.11 - Qualifications must be presented clearly.

3.12 - Advertisements must not mislead by exaggerating the capability or performance of a product or service.

9.2 - The basis of environmental claims must be clear. Unqualified claims could mislead if they omit significant information.

9.3 - The meaning of all terms used in advertisements must be clear to consumers.

Adfree Cities is a network of groups across the UK who are concerned about the impacts of corporate advertising on our health, wellbeing, environment, climate, communities and the local economy. We campaign for happier, healthier cities free from the pressures of corporate outdoor advertising.

www.adfreecities.org.uk