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Sweden – Bil Sweden environmental claims guidance



Full title:	Bil Sweden (the Swedish Car Trade Association) Guidance on the use of environmental claims in the marketing of new passenger cars, trucks and buses. (May 2012)
Title of relevant section:	Section 1: Introduction Section 2: What does the legislation say Section 3: Trade and Industry's own measures Section 4: Summary of Swedish Case-Law (Legal Practice) Section 5: Guidance on environmental claims in marketing
Section 1	Introduction
§ 1.1	<p>1.1 The importance of relevant information</p> <p>The focus is on environmental issues and global warming and the various measures taken to reduce our impact on the climate.</p> <p>Developments in technology, combined with policy decisions and the introduction of various instruments are stimulating consumers increasingly to seek cars with better environmental properties. Good environment information is a precondition for consumers to make informed choices and for producers to be able to convey the environmental qualities of their products.</p> <p>Misleading, false or unclear information will lead to consumers losing confidence in environmental claims in marketing and ultimately to discouraging producers from highlighting the environmental aspects of products in their marketing. So, to avoid this, we have developed this guide.</p>
§ 1.2	<p>1.2 Who should read this guide?</p> <p>The guide is aimed at general agents and local dealers who import, sell and market passenger cars, and who</p> <ul style="list-style-type: none"> • Already use environmental claims in marketing of cars, • Are considering how to adequately illustrate a vehicle's environment properties in marketing, • Receive requests from customers or potential customers, and who want support on the best means of responding to such questions. <p>This guide is intended to serve as a support in procuring marketing activities and in reviewing proposals for ads and campaigns in various media.</p> <p>The guide may also serve as a support for advertising, publicity, communications and public relations agencies.</p>
§ 1.3	<p>The aim of the guide</p> <p>The purpose of this guide is to promote the use of understandable, truthful and relevant environmental claims about cars. It is meant to serve as a complement to other</p>

voluntary codes of conduct for marketing and not in any way to replace applicable laws, ordinances and regulations that regulate the marketing of automobiles in a different manner.

§ 1.4

What is an environmental claim?

By environmental claim we mean in this guide all forms of claims, symbols, graphic images and presentations designed to describe a car's environmental aspects. An environmental claim may occur in brochures, technical data sheets, advertising and other publicity in various media

Section 2

What does the legislation say?

§ 2.1

Marketing laws

2.1.1 Application

Marketing laws are intended to promote consumer and traders interests in relation to marketing products and to counter marketing that is unfair towards consumers and traders.

The monitoring and intervention agency is the Consumer Agency and Consumer Ombudsman (CO). Depending on the target type, the Market Court (MC) or the Stockholm District Court has jurisdiction.

One basis for legislation in the marketing area is that companies should personally take responsibility for marketing. The Consumer Agency and CO may be made aware of deficiencies in corporate marketing through reports, its own investigation operations or otherwise. The Agency will contact the company or trade organizations to bring about an improvement. The Consumer Agency thus primarily tries to tackle problems through voluntary agreements with industry. Comparatively few cases go to court.

In more serious cases or when there is a precedent interest, however, the authority may choose to act directly with the available sanctions options.

2.1.2 Good marketing

The basic principle of marketing laws states that all advertising should be consistent with good marketing. Good marketing means good business practice or other accepted standards designed to protect consumers and traders in the marketing of products (§ 5).

2.1.3 Misleading marketing

Marketing laws incorporate a ban on using false claims, or making other representations that are misleading in terms of industrial practises in one's own or someone else's business activity. Among other factors, It specifically includes the product's effects on health and the environment.

Nor must a trader omit essential information in marketing. Misleading omissions also refers to cases where the essential information is given in an unclear, unintelligible, ambiguous or otherwise inappropriate manner (§ 10).

2.1.4 Comparative advertising

Under marketing laws a trader may in their advertising only point directly or indirectly to another trader or his products if the comparison is not misleading. Comparison should be made for products meeting the same needs or which are intended for the same purpose. The comparison should also objectively cover essential, relevant, verifiable and distinctive properties of the products. Comparative advertising must not discredit or denigrate competitors (§ 18).

§ 2.2

Specific requirements for the marketing of new cars

According to EU legislation, anyone who markets new private cars must provide information on the fuel consumption at the sales location and in advertising. In addition, the sales location must provide easily accessible data and all individual new passenger cars must be labeled with information on fuel consumption, CO2 emissions and environmental class. This information must also be provided in advertisements, brochures, posters and manuals.

There are also requirements for information regarding the producer's responsibility for cars in relation to scrapping or recycling.

These rules, and any alterations or additions to these are not described in this guide.

Section 3

Trade and Industry's own measures

Advertising and marketing must be reliable, i.e. objective and credible. When advertising targeted directly towards the consumer contains technical information or other claims that may be difficult to check or understand, specific requirements may be imposed on the claims made in advertisements. These must be observed by industry through various voluntary initiatives. Here we will specially mention three that play a major role in the judicial assessment of environmental claims in advertising.

The International Chamber of Commerce, ICC, has adopted special rules for environmental advertising that are established as a separate chapter in the "ICC codes of advertising and marketing communications." They apply to all advertising where environmental claims are used, regardless of the advertising medium. ICC rules are built upon the guidance given in the international standard ISO 14021.

The International Organisation for Standardization, ISO, in a group with representatives from industry, government agencies and NGOs around the world, has developed the international standard "Environmental labels and declarations - self-declared environmental claims" (SS-EN ISO14021: 1999). The standard provides guidance on how to design environmental advertising based on verifiable facts. It is more detailed than the ICC rules for environmental advertising as it specifies the requirements for the use of several common terms and describes requirements on evaluation methods.

Advertising Ombudsman (formerly Market Ethics Council, MEC)

is the industry's own body, tasked to pronounce a rule in cases where a marketing trader questions what is regarded as good business practice. The AO's investigations are based mainly on the ICC rules while the CO and MC are based on marketing laws. Anyone who believes that a marketing measure violates these rules may make a complaint to the AO.

The Council has no financial sanction instrument. In contrast, AO's claims are public and sent to the attention of the media and so on.

Section 4

Summary of Swedish Case Law

§ 4.1

Appraisal grounds

The basis for assessing a marketing measure is what message is conveyed to a hypothetical average consumer at a cursory glance. Primarily, it is therefore the overall impression that such an effect has on the average consumer's purchasing decision. The

type of product is significant in that the consumer is likely to proceed more carefully operationally to obtain and evaluate information about, for example, more expensive and more complicated purchases than simple routinely traded products (MD 2010:8). Consumers are aware that cars always have an environmental impact. The average consumer is not expected to possess any deeper insights into environmental technology and environmental impact. The deciding factor is whether an environmental claim can be considered acceptable in the particular context involved.

When reliability in a declaration is being assessed, the so-called converse burden of proof is applied. This means that a trader should be able to demonstrate the validity of the claims or representations made in his marketing. If the trader cannot do so, the marketing is considered unreliable. The standard of proof is higher for products that are typically environmentally hazardous.

Section 4.2

Sweeping and imprecise formulations

Too unspecific claims about a particular environmental impact can have different meanings to consumers. There is, for example, the risk that the average consumer will perceive vague and imprecise claims as applying to a product's total environmental impact. The ambiguity of an imprecise assertion therefore risks misleading consumers about the product's environmental advantages. Vague or non-specific claims may only be used if they are unqualifiedly valid under all reasonably foreseeable conditions. Unless this is the case, such environmental assertions must either be qualified or not used at all. A qualification of an environmental assertion is a clarification that describes the limitations of an environmental assertion. This enables car manufacturers to use expressions such as "environmentally friendly" but only on condition that they indicate clearly and distinctly the environmental advantages associated with that particular marketed model of car. The specification shall be clearly prominent, easily understood and placed in immediate proximity with the expression to be qualified. Otherwise, the specification is to be placed so that it is read together with the expression. (MD 2011:12).

In the late 1980s Nordtend AB marketed the detergent Sulfo, alleging that it did not contain phosphate. The ad layout, text and image content gave the impression that the washing agent was good for the environment, among other things, by the headline: "Sulfo without phosphate. For the environment" and with the help of claims that those using the detergent "make a small but important contribution to our environment" and that the detergent provided "great benefit to us in keeping nature as we want it."

The advert was condemned in the Market Court. The claim that the detergent was phosphate-free was not called into question. But rather that the phosphate had been replaced with another substance with negative environmental impact. The Market Court considered that it was misleading of Nordtend in general terms to suggest that the phosphate-free detergent was good for the environment. Nordtend could show that it was not good with phosphate, but not however that the phosphate-free detergent imparted any detectable environmental advantages (MD 1990:22).

In 2009 Mercedes-Benz Sweden AB marketed cars with claims like "environmentally-friendly", "good for the environment" and "benefits the environment." The term "environmentally-friendly" had been used in an advertisement. It was clear from the ad that the marketed model B 170 NGT could run on gas fuel. The Market Court considered that it was not clear whether it was the fact of it just running on gas that made the car environmentally friendly or if there were other aspects that provided reasons to use the claim. This meant that there was a risk that a consumer would be capable of reading an additional meaning into the expression than Mercedes intended. Therefore the court pronounced that placing environmentally friendly into the current advertisement was too indefinite and did not meet the requirements of clarity and precision. The ad was therefore condemned in the MC.

Mercedes had also used the term "environmentally-friendly diesel engines" in a 73-page brochure concerning "The updated A-class." The brochure stipulated that the listed cars had a diesel particle filter DPF as standard equipment, and that the DPF reduces emissions of soot particles by up to 95%, and that the A 160 CDI had received an environmental certificate for being "one of the most environmentally-friendly vehicles with conventional drive" and that the cars had low fuel consumption and low carbon emissions. Also the expressions "benefits the environment" and "good for the environment" appeared in the brochure. A declaration associated with the expression stated that the car models A150 and A170 had an Eco-start/stop function, what this function meant and what environmental advantages the technology conferred.

The Market Court felt that the expressions "environmentally-friendly diesel engines", "help the environment" and "good for the environment" were intended to be read in conjunction with the remainder of the brochure as a whole.

The report that the company provided in connection with the expressions was intended to contain sufficient clarification in the context of the expressions. The average consumer would probably have the perception that the car models therefore exert a relatively reduced environmental impact and therefore have a lesser environmental impact than other vehicles of comparable size class. The environmental assertions were therefore perceived as having a relative meaning and gave an impartially complete picture of the vehicle models' environmental advantages ([MD 2011:12](#)). The brochure was therefore acquitted in the MC.

Section 4.3

Trustworthiness requirements

A generic claim that the product in question is environmentally friendly may lead the average consumer to perceive this as applying to the product's overall environmental impact. The claim may also lead to other interpretations, depending on the context. The use of claims such as environmentally-friendly therefore imply that the advertiser has the burden of proof that all immediate interpretations and impressions that the marketing generates are consistent with Marketing Act (*marknadsföringslagen* - MFL) ([MD 2004:12](#)) and should be able to demonstrate the validity of the message for all meanings which the average consumer may perceive the message has ([MD 2009:38](#)).

In its marketing of the Volvo S60, Volvo Cars used a commercial that showed the car in an urban environment. The film initially showed a one-way, multi-lane and busy street. In one of the cars on the street a woman is seated at the wheel. Suddenly, she sees in the rearview mirror a jogger who is running behind her car, followed shortly afterwards by another. The woman changes lanes, and some further joggers align themselves so that eventually there are five joggers running behind the car. Thereupon three different texts appear: "A car that cleans the air of harmful ozone", "Up to 75% of all ozone passing through the radiator turns into oxygen" and "The Volvo S60. IQ + HK." Finally we see a sixth jogger who is trying to catch up to the others. The newspaper advert alleged that the S60 "cleans the air" because the car had an "ozone-eating radiator". This was built onto the catalytic coating of the radiator (PremAir technology).

That the PremAir coating in itself reduced the ozone in the air passing through the radiator was clear. The question that the Court had to decide was if Volvo could demonstrate with requisite force that the message conveyed was truthful. Volvo relied on an evaluation by the Californian Air Pollution Control Authority. The Consumer Ombudsman relied on an opinion by Associate Professor Christer Johansson. Comparing the two submissions, the Market Court found that Volvo failed to prove the allegations with the high requirement for trustworthiness ([MC 2004:4](#)).

Section 4.4

Marketing vs. advocacy

Claims in campaigns that primarily seek to influence public opinion are examined

judicially according to the fundamental law governing freedom of speech and press regulation and not according to marketing laws. Freedom of speech and freedom of the press regulations provide much greater latitude for various claims and claims than marketing laws. This may for example be of importance when a professional association runs campaigns aimed at influencing political decisions.

Section 5

Guidance on Environmental claims in marketing

§ 5.1

Points to consider

In regard to today's cars, we know that the largest environmental load occurs during periods of use. That is, when the car owner drives his car. That is also why most environmental claims about cars are linked to fuel consumption and emissions.

Obviously, based on current experience it is relatively easy in a guidance document to describe what pitfalls you should be sure to avoid. However, it is more difficult to give specific advice on how marketing should be expressed to highlight instead a model in a positive way in environmental terms. The guidance given in this chapter is therefore primarily intended as a support in not making mistakes that can be easily avoided. With these simple rules in mind there is still room for creative marketing that will benefit both producer and consumer interests.

§ 5.2

General requirements for environmental claims

All environmental claims will:

- Be accurate, verifiable, relevant and not misleading;
 - Be based on scientific methods that are sufficiently thorough and comprehensive to support the claim
 - Be capable of validation using accessible information that on request shall be communicated to all interested parties.
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§ 5.3

Vague claims should be qualified¹

General claims concerning a car, such as "environmentally safe", "environmentally-friendly", "easy on the environment", "non-polluting", "green", "nature-friendly" are vague and should be qualified so as to clearly show which environmental advantages are associated with the particular marketed car model. The qualification shall be clearly prominent, easy to understand and positioned immediately adjacent to the expression requiring qualification. Otherwise, positioned so that it is read together with the expression.

The term "ecological" should be completely avoided. This is because claims such as "ecological," "ecological product" or "ecologically produced" must only be used on products that meet the requirements of the EU Community legislation on ecological products or ecological production.

§ 5.4

Green car

The words "Green car" can be used in marketing, as it is a commonly accepted definition of the term. In such cases, the marketed car model must be included in the definition.

§ 5.5

Claims on sustainable development

Concepts such as sustainable development or ecological sustainability are highly complex and are still at the research stage. Currently there are no established methods

¹ The ICC Code on Advertising and Marketing Communication Practice – defines the term “qualification” as an explanatory statement that accurately and truthfully describes the limits of the claim. (In Section E)

to measure environmental sustainability or to confirm if sustainable development is achieved. Therefore no such claims must be made.

§ 5.6

Only make true and clear claims

Do not use claims that are exaggerated, imprecise or which promise environmental improvements that do not exist.

Imprecise or vague assertions might lead consumers to believe that there are environmental advantages that are not actually relevant to the car in question. These include, for example, improper use of claims such as "free from ..." or "zero emissions ..." which is misleading if they refer to substances which have never appeared in or been associated with cars.

§ 5.7

All environmental claims shall be substantiated by data / supported by evidence

All environmental claims shall be made on the basis of evidence that can be checked (i.e. verifiable evidence). For example, this may involve referring to tests carried out and trials using the relevant test methods. Sufficient information for the average consumer to be able to consider the claim made should be placed immediately adjacent to the claim, for example by citation or reference to a website. The basic information that is necessary to substantiate the claim must be provided on request.

The trader is responsible for others' environmental assertions if these are used in his own marketing.

§ 5.8

Environmental claims must be kept up to date

Environmental information may be irrelevant or even misleading because new laws enter into force or due to technological developments and changes in competitors' products. All environmental claims must be regularly reviewed and where necessary amended to correctly reflect current circumstances.

§ 5.9

Nature symbols and objects from nature

Do not use nature symbols unless there is a reasonable link between the symbol and the claimed benefit. Nature symbols or objects from nature used in the promotion are considered to be an environmental claim because the product will then be associated with an environmental advantage. If they are nevertheless used it must be easy to distinguish them from other symbols or markings and have a relevant connection to the claims being made.

This does not therefore prevent a car from being depicted travelling in a beautiful natural landscape. However it should be noted that such a depiction which is permitted in and of itself might be inappropriate when taken in combination with certain expressions, etc.

However, a car must not be placed beyond the highroad out in nature, because it can be interpreted as encouraging the violation of the country driving law / Off-roading Act ([1975:1313](#)) that prohibits off-road driving with an engine-propelled /motorized vehicle for purposes other than agriculture or forestry.

§ 5.10

Claims about environmental management systems

A symbol that is used to express the manufacturer's implementation of an environmental management system, such as a certification body certification logo for ISO 14001, shall not be used in such a way that it can be mistaken for being a symbol that indicates a product's environmental properties.

§ 5.11**Comparative claims**

In order not to be regarded as misleading, comparative assertions must always be derived in a reasonable manner, such as percentages or comparative absolute values. All comparative claims about, for example, lower fuel consumption and reduced CO2 emissions should include information about how great the reduction is in terms of percentage or in absolute terms.

Make no comparisons between cars unless they refer to equivalent products. The comparison must involve neither a risk of confusion between the advertiser and a competitor nor between the advertiser's and a competitor's brands and products.
