



International Distribution Institute

# How to respond to green and social claims

## Workshop 2: ESG in the distribution and retail chain

## Introduction: Panel



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# Introduction: Topic

Unsere sind klimapositiv.  
Vom Anbau bis ins Lager der Händler.

HiPP denkt weiter – für unsere Zukunft

Das gesamte Unternehmen wird bis 2025 über alle Produktbereiche klimapositiv.

**Unsere Gläschen sind klimapositiv**

Vom Anbau bis ins Lager der Händler

Als weltweit erster Babykosthersteller bietet HiPP Beikost-Gläschen an, die vom Anbau bis ins Lager der Händler klimapositiv sind.

**Klimapositiv - was heißt das überhaupt?**

Schon seit 10 Jahren stellen wir unsere Gläschen klimaneutral her. Wir produzieren sie selbst und gewährleisten somit höchste Kontrolle und Sicherheit. Doch klimaneutral zu sein, reicht nicht, um den Klimawandel positiv zu beeinflussen.

Jetzt gehen wir einen großen Schritt weiter: Über die gesamte Wertschöpfungskette hinweg gleicht HiPP deutlich mehr CO<sub>2</sub> aus als durch Rohwaren, Verpackungen und Transporte vor, während und nach der Produktion bis hin zum Handelslager entstehen. Wir geben der Natur mehr zurück, als wir entnehmen. Wir sparen nicht nur Emissionen ein – wir helfen auch der Natur, CO<sub>2</sub> wieder aus der Luft zu holen. Zum Beispiel, indem wir mit unserem biologischen Anbau für gesunde Böden sorgen und die Artenvielfalt schützen.

Unsere klimapositiven Gläschen weisen wir ab sofort über unser Klimapositiv-Siegel aus. Die jährlich 108,527 Millionen für Deutschland, Österreich und die Schweiz produzierten HiPP Bio-Gläschen werden so zu Klima-Botschaftern für das ganze Unternehmen.

\*HiPP-Werk mit CO<sub>2</sub>-neutraler Energiebilanz seit 2011 durch erneuerbare Energie und Klimaprojekte.

«We are using degradable packaging materials for this product.»

**DEGRADABLE PLASTICS FOLLOW-UP INVESTIGATION 2023**

綠惜政策簡報  
GREEN POLICY REPORT

## Franchisor's Perspective: Challenges

**You just name the franchisor who wouldn't welcome her/his purveyor being *responsible!***

- 74 per cent endeavour to buy brands and products that they perceive as *responsible*
- consumers and clientele love to be with *the good guys*
- 73 per cent of investment professionals worldwide take ESG factors into consideration in the investment process

**Your defence against your competitor's false green and social claims is best served by seeing to it your business does not commit the same.**

**Accordingly, important challenges:**

- Identifying the themes of ESG, incl. individual elements, where you as franchisor may exhibit *responsibility*, and excel in acting accordingly
- The difficulty of measuring, in particular, social criteria; the difficult task of assessing the value of ESG initiatives
- Crafting your own ESG strategy

## Franchisor's Perspective: Challenges

- **Challenges at endeavouring to meet transparency requirements**
  - length of supply chains
  - to make suppliers commit themselves to franchisor's supply code of conduct, and to meet requirements, incl. on auditing
  - 68 per cent think it's difficult to identify the climate footprint
  - difficulties with changing environment, settings, or the like
- Advertising, by means of influencers, at showing corroborative evidence, and at meeting transparency requirements as to e.g. green claims
- Responding to product claims

# Franchisor's Perspective: Guidelines

## The legal framework

### Domestic

- Act on Unfair Business Practices
- Auditing Act
- Waste Act
- Certain *product safety statutes*, such as Product Safety Act and Product Liability Act
- In respect of cafés, restaurants, gastronomical, food, and nutritive substance industry, there are a host of general *public health* and *food safety statutes* to comply with.

### On the EU level; *lex lata & de lege ferenda*

- Empowering Consumers Directive or *ECD*
- Green Claims Directive (*GCD*)
- Sustainable Finance Disclosure Regulation 2019/2088 (*SFDR*)
- Corporate Sustainability Reporting Directive (EU) 2022/2464 (*CSRD*)
- Corporate Sustainability Due Diligence Directive (*CSDDD*)

## Franchisor's Perspective: Guidelines

### ➤ On whether applying biobased, biodegradable or compostable plastics:

N.B.: There is currently no EU law in place applying to biobased, biodegradable and compostable plastics in a comprehensive manner.

- There are two specific laws with partial objectives:
  - Directive on single-use plastics, i.e., Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment
  - Directive on plastic bags, i.e., Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags



## Franchisor's Perspective: Guidelines

### Guides

- The Consumer Ombudsman and the Consumer Authority, regularly, promulgates a number of guides on advertising and marketing
- Council of Ethics in Advertising relies on
  - Principles of its own on Fair Marketing Practices
  - ICC Advertising and Marketing Communications Code (“the ICC Marketing Code”)

Case Law emanates mainly from the Market Court; in addition, guidelines are established by virtue of the activities of:

- The Board on Responsibility within the realm of environment, emissions and carbon neutrality, human rights, and social responsibility;
- The Council of Ethics in Advertising;
- The Board of Business Practice;
- The Consumer Disputes Board; and
- The Consumer Ombudsman and the Consumer Authority.



## Franchisor's Perspective: Guidelines & Case law

- FIBS - Finnish Business & Society, partner of World Business Council for Sustainable Development, WBCSD
- UN Global Compact (UNGC), at <https://unglobalcompact.org/>

### Recent cases on greenwashing, pursued by authorities

- Enforcement performed by the Consumer Ombudsman
  - *Consumer Ombudsman vs. Marimekko Oyj*, Jan. 15<sup>th</sup>, 2024 (case KKV/427/14.08.01.05/2023)

Consumers did not receive precise and unambiguous information on product catalogue pages or product-specific pages about what the RESPONSIBLE identifier means or why the product is marked with it. The image of responsibility created to consumers was misleadingly broad.

## Franchisor's Perspective: Case law

- *Consumer Ombudsman vs. Finnair Oyj*, Dec. 28, 2023 (case KKV/650/14.08.01.08/2022)
- The environmental claim about greenhouse gas emissions from aviation fuel used by Finnair Plc in its marketing gave a misleading picture of the positive environmental impacts of the company's air travel. The Consumer Ombudsman drew attention to the environmental claim used by Finnair in its marketing: "*We procure sustainable aviation fuel that reduces greenhouse gas emissions by up to 80% – our goal is to be completely carbon neutral by 2045*". The advertisement was widely displayed in various marketing channels, including Twitter (currently X), Facebook, the main daily newspaper Helsingin Sanomat and Finnair's Instagram account. The advertising illustration used an environmentally friendly image of a globe and an airplane with a green stripe following its flight path.

*Obiter dictum.* Environmental claims must be clear and clearly defined.

## Franchisor's Perspective: Case law

- *Consumer Ombudsman vs. Stockmann Oyj Abp*, Dec. 1<sup>st</sup>, 2023 (case KKV/428/14.08.01.05/2023)

**Summary.** The Consumer Ombudsman drew attention to the marketing of Stockmann plc (hereinafter referred to as Stockmann) in the stockmann.com online store. In the online store, some of the products marketed were marked with a green leaf symbol. The leaf symbol was used on product catalog pages in conjunction with product names. In addition, the symbol was used on product-specific pages together with the texts "RESPONSIBLE CHOICE" and "This product represents Stockmann's responsible assortment". In the online store, it was also possible to filter the products displayed in the product catalogue using the Responsible assortment product category. The Consumer Ombudsman found that Stockmann's marketing, in which some of the products were marked with a general and vague newspaper symbol without specifying what was meant by the symbol, and Stockmann's marketing, in which the product category was designated as Responsible Assortment without immediately specifying what it meant in connection with the responsibility claim, was contrary to the Consumer Protection Act.

## Franchisor's Perspective: Case law

- *Consumer Ombudsman vs. Froneri Finland Oy*, Aug. 21, 2023 (case KKV/731/14.08.01.05/2022)
  - *Responsible* is often too vague a term in marketing – the packaging claims of *Aino ice cream* were blamed by the Consumer Ombudsman.

Marketing a product as *responsible* requires comprehensive justification and accurate information to support the claim. In the marketing of *Aino ice cream*, the term *responsible* was used too generously and various environmental impacts were presented in a misleading way.

- *Obiter dictum*. "You have to be very precise with sustainability and environmental claims. Good deeds can, of course, be highlighted in marketing, but everyone must follow the same rules so that greenwashing does not have a foothold."

"In addition to environmental aspects, responsibility can be, for example, social or economic. The areas of responsibility can also be assessed from many perspectives. The consumer cannot be expected to know whether the claim of responsibility refers specifically to environmental factors and, if so, to which aspect."

## Franchisor's Perspective: Case law

- *Consumer Ombudsman vs. Fortum Oyj*, July 29, 2022 (case KKV/78/14.08.01.05/2021)
- The Consumer Ombudsman has evaluated the energy company Fortum's *Mother Earth* television advert, which creates an image of the company's environmental friendliness. The overall impression created by the advertisement was misleading, as it gave an overly positive and one-sided picture of the company's environmental impact. Fortum's Mother Earth television advertisement uses phrases such as "towards a cleaner world" and "clean energy and recycling". The viewer gets the overall impression that Fortum's operations have a strongly positive environmental impact. The purpose of the advertisement is to influence Fortum's image and brand and, indirectly, also the sales of Fortum's products.
- Environmental marketing must be clear and justified. Marketing must not provide false or misleading information, and essential information must not be omitted. This also applies to environmental claims. Claims shall be clear, precise and understandable and shall not mislead consumers. The company must also have evidence to support its claims. The principles have been confirmed in the European Commission's guidelines and the Consumer Ombudsman's environmental marketing policy.
- *Obiter dictum*. "The claim in the advertisement is a vague promise of a better future that leaves a positive impression but does not provide consumers with real information to support environmentally friendly choices."

## Franchisor's Perspective: Case law

### Court cases on greenwashing

- Market Court, MAO:1994:12; docket # 562/10/M2 (*Konsultointi Silva Ky vs. Nunnalahden Uuni Oy*)

**Brief summary:** The expression “environment friendly” used by the defendant let you understand that the furnaces and fireplaces marketed and sold by the defendant were because of ensuing minor environmental harms particularly exemplary. Still the defendant had brought forth neither evidence to the effect that the furnaces and fireplaces marketed and sold by the latter were of environmental particularly positive nature nor evidence to the effect that the products were more environment friendly than other furnaces and fireplaces on the market. In this respect the marketing of the defendant was to be regarded as contravening fair business practice.

## Franchisor's Perspective: Case law

### Court cases on greenwashing

- Market Court, MAO:157/11; docket # 562/10/M2
- **Demand.** The Consumer Ombudsman has demanded that the Market Court prohibit Leaf Suomi Oy, under threat of a fine of EUR 100,000, from providing false or misleading information on the significance of the consumer's purchasing decision to how much the company financially supports activities that emphasise environmental or social aspects. There have been calls for the ban to enter into force immediately.
- **Summary of principal foundations for demand.** Based on the text included in the Malaco Truly confectionery bags marketed by Leaf Suomi Oy July 21 – Dec. 31, 2008 and the information about the campaign on the company's website, consumers have been told that only by purchasing three bags of sweets and sending the barcodes of these bags attached to a flyer printed from the website to Leaf Suomi Oy will the company plant one tree. In other words, planting a tree has required the consumer's purchase decision and that Leaf Suomi Oy verifies the consumer's purchase decision with the barcodes it receives.

» *To be continued* ./.

## Franchisor's Perspective: Case law

### Court cases on greenwashing

- Market Court, MAO:157/11; docket # 562/10/M2, *continues*
- However, Leaf Suomi Oy has committed in advance to planting a certain number of trees and has supported the campaign with 33,000 trees, although it has only received 40 flyers and a few postcards within the deadline. Thus, the number of trees to be planted was not tied to the purchase of Malaco Truly bags or to the barcodes sent to the company during the campaign period cut out of the confectionery bags, and therefore the consumers' purchase decision did not have the impact on the number of trees to be planted as stated by the company in the marketing of Malaco Truly sweets.
- **Judgement.** In marketing aimed at consumers, the Market Court prohibits Leaf Suomi Oy from renewing a practice that misleadingly implies that by purchasing a marketed product, the consumer can directly influence the financial support provided by the company for the environmental campaign referred to in the grounds for this decision or for another similar environmental campaign. The ban is ordered to be complied with immediately.



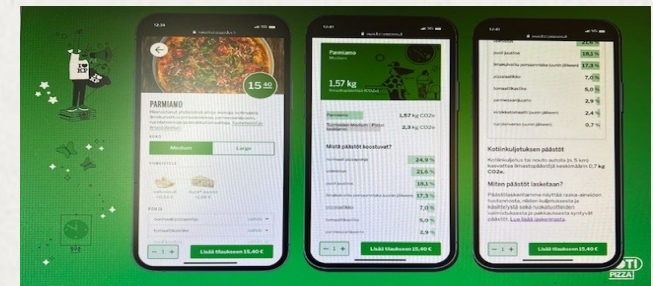
## Franchisor's Perspective: Risk reduction & tips

- How to reduce risks, including how to ensure the franchisees know what information to give and not to give
- How to respond to questions, investigations, and complaints in this context
  - 1) Stakeholder engagement (Franchisees; Customers; Suppliers; Investors & Shareholders; Franchisor & Franchisee employees; Community)
  - 2) The process of recruitment
  - 3) Initial training
  - 4) Weekly letter on the Intranet
  - 5) Monthly sales manager's Teams meetings
  - 6) Territorial meetings twice a year, in cooperation with, e.g., the Responsibility team, IT-team, PR-team, Marketing and advertisement teams, etc.
  - 7) Continuous updating & training

# Franchisor's Perspective: Risk reduction & tips

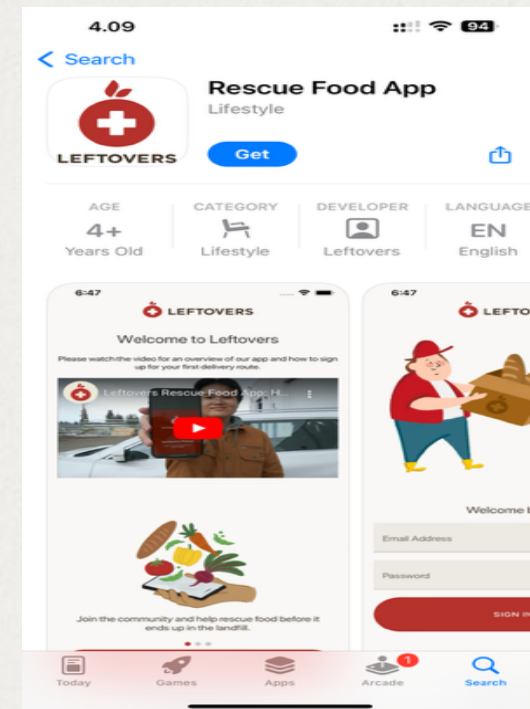
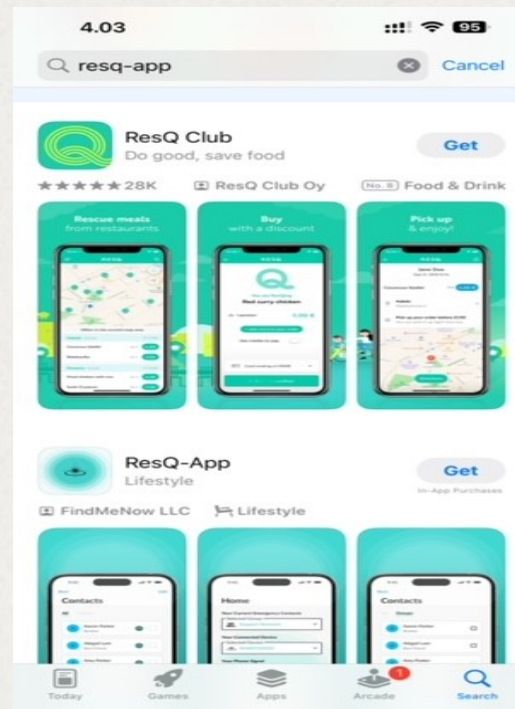
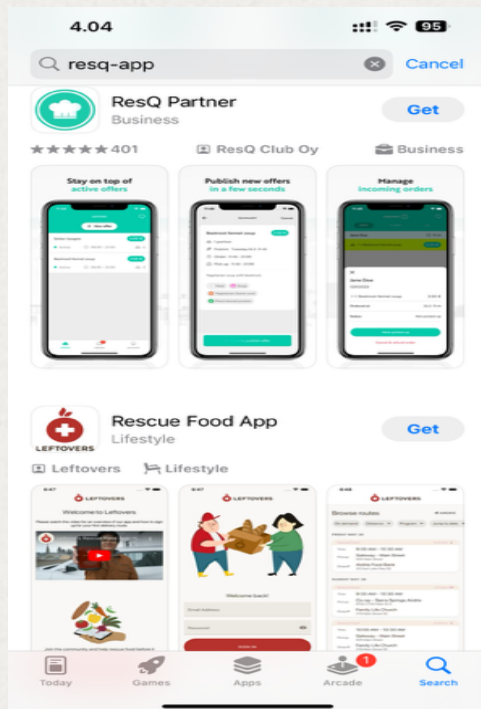
- **Tips on how a franchisor may, pro-actively, take advantage of the evolving transparency requirements**
  - **Feed back channel** (palautteenjättökanava), following up of feed-back
  - **Emission calculator** (in Finnish: ilmastolaskuri), incl. complete or at least specific transparency of how the carbon footprint calculator works

Example: The Orkla owned KotiPizza franchise network with 290 franchisees and 304 restaurants:



## Franchisor's Perspective: Risk reduction & tips

- **Tips on how a franchisor may, pro-actively, take advantage of the evolving transparency requirements**
  - For leftover, Waste Act prompts the use of **ResQue** or **Resque Food App**, one for business and another for doing good or for lifestyle



## Franchisor's Perspective: Risk reduction & tips

### ➤ **Tips on how a franchisor may, pro-actively, take advantage of the evolving transparency requirements**

- use of "**green images**", **signs**, **symbols** etc., however, only when conferred by a well-known, reputable quarter

Take, e.g., the Marine Stewardship Council's blue MSC label which is applied to wild fish and seafood from fisheries that have been certified to the MSC Fisheries Standard, a set of requirements for sustainable fishing.

- 10 reasons to choose the blue fish label
- For the cause of energy efficiency and/or conservation, utilizing **renewable electricity**, such as wind power, by means of investing in renewable energy, such as in a wind turbine, in partnership in a wind power park, or in a long-term electricity purchase agreement (PPA)

## Franchisor's Perspective: Risk reduction & tips

- **Tips on how a franchisor may, pro-actively, take advantage of the evolving transparency requirements**
- As part of your business culture & atmosphere, **honesty** and **transparency** in respect of all and any ESG general and specific goals adds to whether measurable or not

Take e.g., the Kotipizza business culture: by announcing that 70 per cent of the entrepreneurs recommend being recruited as a Kotipizza-franchisee, the franchisor openly admits that as many as 30 per cent of the franchisees do not recommend you to get recruited as Kotipizza franchisee.

– Can you tell me why?

# Applicable laws

- Mainland China
  - There are laws against excessive packaging, and laws on environmental friendly practices
  - Green labels/certifications – national standards
  - Advertising related laws, e.g.
    - *Advertising Law*
    - *Law on the Protection of Consumer Rights and Interests*
- Hong Kong SAR
  - *Trade Descriptions Ordinance*

# China

- What is degradable under Chinese GB national standards?
  - *GB/T 24021-2001* (ISO14021:1999) – degradable package/product with very broad definition, but need to mention the test method and maximum extent
  - *GB/T 20197-2006* – technical parameters of degradable plastic

# China

- *GB/T 41010-2021* – the specific standards of biodegradable plastics and the use of identity marks



- Are these GB national standards mandatory?



## **Manufacturer's / Supplier's Perspective: Challenges and Guidelines**

- Many manufacturers/suppliers nowadays have good understanding about the requirements in Europe
- However, if there are additional cost for complying with law of another jurisdiction, the manufacturers/suppliers may be reluctant to take further steps
- Another relevant issue is the background of transaction: manufacturer/supplier initiating the sale, or the customers initiating the purchase

## Takeaway

- Understand differences between standards
- Specify the applicable standards in the contract
- Laboratory reports
  - Major international laboratories all have operations in China and Hong Kong
  - Request tests to be done for certain particular standards
- Indemnity clause in the contract?

## **Distributors', Agents' and Franchisees' Perspective: Challenges and Guidelines**

A recent international analysis of websites found that 40% of green claims made online would be misleading – UK Competition and Markets Authority

- The Green Claims Code
- Irony

# Distributors', Agents' and Franchisees' Perspective: Challenges and Guidelines



**US Porsche, Bentley and Audi imports held up over banned Chinese part**

Thousands of cars impounded after supplier discovers subcomponent from 'western China'

© FT montage

**Dove and Marmite maker Unilever to be investigated in UK over 'greenwashing'**

Consumers may be misled by 'green' claims on some essential household products, says watchdog

**Competition watchdog looking into 'sustainability' claims made by Asos, Boohoo and Asda**

The CMA says some criteria used by retailers to define "sustainability" could be lower than customers might expect.

By Sharon Marris, news reporter

## **Distributors', Agents' and Franchisees' Perspective: Challenges and Guidelines**

- The UK Green Claims Code
  - 6 principles
    1. claims must be truthful and accurate
    2. claims must be clear and unambiguous
    3. claims must not omit or hide relevant information
    4. comparisons must be fair and meaningful
    5. claims must consider the full life cycle of the product or service
    6. claims must be substantiated
- The French Consumer Code
  - EU Directive on unfair commercial practices
  - labels, logos or certificates
  - biodegradable

## **Distributors', Agents' and Franchisees' Perspective: Challenges and Guidelines**

- The EU Green Claims Directive
  - 7 disclosures of information with the products or services
    1. environmental aspects, impact, and performance
    2. relevant EU or international standards used
    3. achievements related
    4. information on greenhouse gas offsetting
    5. underlying studies or calculations
    6. certificate of conformity
    7. comparative data for advertising

## **Distributors', Agents' and Franchisees' Perspective: Challenges and Guidelines**

- The distributors', agents' and franchisees' perspective: the challenges
  - breach of the distributorship, agency, or franchise agreement
    - obligation/duty of distributor, agency, or franchisee
    - the duty of good faith
    - indemnity?

## **Distributors', Agents' and Franchisees' Perspective: Challenges and Guidelines**

- The distributors', agents' and franchisees' perspective: tips and tricks
  - the use of paper trails
  - “have you double checked the evidence?”
  - “do you want me to make this claim?”
  - whistleblowing!
  - a get out of jail free card
    - minimum purchase requirements
    - minimum sales requirements
    - turning the table on performance management



## Discussion / Questions

