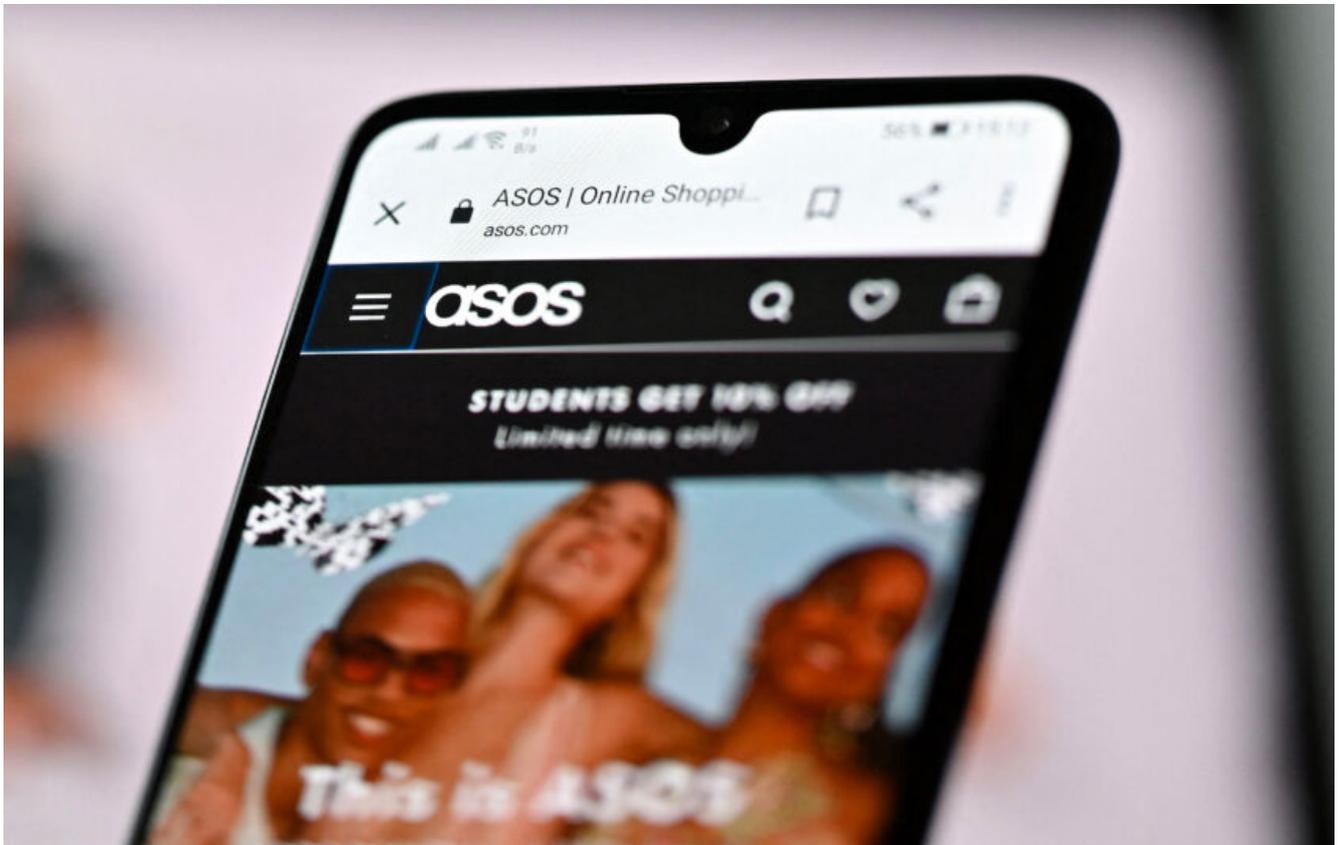


Sector Focus

Is CMA's fashion greenwashing probe start of a wider clampdown?

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The CMA's high-profile investigation into greenwashing in fashion, now targeting three well-known brands, has raised hopes of a more robust regulatory approach.

Last week, the UK's Competition and Markets Authority announced it will be scrutinising sustainability claims made by popular fashion brands ASOS, Boohoo and George at Asda. The move comes as part of its ongoing investigation into potential greenwashing, and follows concerns that firms could be making misleading claims about how eco-friendly their products really are.

The CMA will be investigating whether language and statements made by the three firms are “too broad and vague”, or could create the impression that clothing collections – such as the ‘Responsible edit’ from ASOS, Boohoo’s current ‘Ready for the Future’ range, and ‘George for Good’ – “are more environmentally sustainable than they actually are”.

It will also be scrutinising the criteria used by some of these businesses to decide which products to include in such collections, which “may be lower than customers might reasonably expect from their descriptions and overall presentation”. For example, it suggests, some products may contain as little as 20 per cent recycled fabric.

Sarah Cardell, interim chief executive of the CMA, says: “We’ll be scrutinising green claims from ASOS, Boohoo and George at Asda to see if they stack up. Should we find these companies are using misleading eco claims, we won’t hesitate to take enforcement action – through the courts if necessary. This is just the start of our work in this sector, and all fashion companies should take note: look at your own practices and make sure they are in line with the law.”

Positive action from CMA

Steve Sidkin, partner at law firm Fox Williams, is pleased that the CMA is taking companies’ greenwashing seriously. The CMA published its [green code](#) in September 2021, which was followed by an announcement in early 2022 that it was investigating the sustainability claims made by fashion businesses in the UK. In March, the CMA published its advice on environmental sustainability to the government following a public consultation.

If it is doing its job correctly, the CMA should follow through on what it has announced says Sidkin. Sidkin explains: “By extension, if law is made in accordance with the statutory procedure determined by Parliament, for the executive (that is, the government and its regulators) to disregard the law will, at best, lead to a disrespect for the law.”

At sustainability consultancy Eco-Age, Phillipa Grogan, sustainability consultant for policy, fashion and textiles, says: “It is promising to see regulators scrutinising fashion’s sustainability claims – it has been a long time coming. Greenwashing is so prolific among fashion brands; I imagine it was challenging to decide where to start.”

Grogan says though greenwashing, misinformation and misleading claims are by no means unique to fashion, the industry’s “brand-dominated” and “self-regulatory approach” to sustainability has resulted in “extremely high levels of greenwashing”. She believes “strong regulatory standards are key for combatting greenwashing’s destructive potential”.

Andrew Probert, managing director of the ESG team at management consultancy Kroll, is also glad to see the CMA take action. He says: “The point of the principle is to stop greenwashing. They made noise about this earlier this year. Companies were warned, and not heeding those warnings is bad. What [these fashion companies] are doing is a prime example of greenwashing: trying to drive consumer behaviour by making some big, bold, unsubstantiated claims.”

More from regulators?

Sidkin says he predicted in spring 2022 that the CMA was going to target large, high-profile brands and retailers, and this is exactly what it has done in order to set an example to other companies.

However, he contrasts its actions with that of another regulator, the Information Commissioner's Office. This appears to have taken a different approach to its regulatory obligations by pursuing businesses of

any size for infringement of data protection law. Sidkin says: “Going forwards, will the CMA follow suit in respect of greenwashing claims? Would it be better for the fashion industry if it did?”

Grogan encourages regulators to “keep going”. She says greenwashing regulations have been desperately needed for so long but have until now been largely underdeveloped. “It’s a long road ahead, but many regulators have developed tools to tackle greenwashing and they should now adopt a systematic approach to screen brands’ claims and hold culprits accountable.”

She suggests that if the planet’s “freefalling ecological health” is not incentive enough for fashion to produce more sustainably and communicate more honestly, then perhaps legal and financial incentives “will do the trick”. She also says it is important for regulators to maintain a certain level of pressure on brands to signal that propagating misleading claims will not be tolerated and there will be ramifications.

Probert says: “There feels like there is a heavy movement now towards a clampdown on greenwashing both [in the UK] and in the US.” He says singling out a few large brands to gain attention is the starting point, but regulators will really “drill down” on other companies later on.

He also says it will be interesting to see what enforcement will be placed upon these brands: it could be “just be a slap on the wrist and a warning for companies to no longer describe their products in such a way” but he would be “pleasantly surprised” if there are fines involved.

Better disclosure regulations

According to Grogan, fashion brands need to stop using generalised life cycle assessment (LCA) data to communicate sustainability to consumers. LCA data can be useful for guiding business decisions behind the scenes, but there is a risk of greenwashing if this data crosses the threshold to the consumer and is used in sustainability claims.

Grogan adds there is a need for regulatory intervention such as standardised rules and sanctions for non-compliance: “We can no longer afford to rely on the industry’s own initiative or wait for self-improvement. We need regulations to mitigate claims that mislead consumers and stand to derail much-needed progress in the industry’s sustainability efforts.”

Probert is also aware there are challenges around the taxonomy, saying: “How do you really define terms like sustainability? What percentage of renewable, reusable, recyclable does a product have to be in order to be classed as that?”

He adds that frameworks such as the Task Force on Climate-related Financial Disclosures reporting may be used in the future to help with these questions. The TCFD framework is currently focused on climate but in the future may be applied to a broader view of sustainability.

Probert hopes that once people start to understand TCFD as a framework, and how to use it, the International Sustainability Standards Board will push it into other industries. For example, it could be used to measure social impact.

While it is unclear exactly what disclosure frameworks will be used in the future, these experts all agree that industry specific benchmarks are needed.