

H & M Hennes & Mauritz AS

Your ref.

Our ref.
Case nr: 22/5262-1
Executive Officer: Marius Gauslaa
Dir.tlf: 457 29 418

Date:
14.06.2022

Potentially misleading environmental claims in marketing - using Higg MSI data in marketing of garments

1 BACKGROUND

The Norwegian Consumer Authority (**NCA**) supervises traders' commercial practices aimed at Norwegian consumers, ensuring that the traders' practices are not in conflict with the Marketing Control Act (*no.:* *markedsføringsloven*). See www.forbrukertilsynet.no for more information.

This letter is sent to both Hennes & Mauritz AS and H & M Hennes & Mauritz Gbc AB (collectively **H & M**), since it is unclear to us which of these companies are responsible for the marketing taking place at the website https://www2.hm.com/no_no/index.html.

The NCA understand that H & M currently uses and / or is planning to use Higg Materials Sustainability Index (**Higg MSI**) data in marketing of garments.

Appendix 1 Screenshots of information on H & M webpage 14 June 2022

With this letter, we would like to emphasize that using the Higg MSI and / or data from the Higg MSI data in marketing towards consumers easily will be considered misleading and constitute a breach of the Marketing Control Act.

The basis for this letter is that the NCA has concluded in a case against Norrøna Sport AS (**Norrøna**) regarding their use of the Higg MSI in marketing. The NCA have concluded that Norrøna's marketing of products with environmental claims, by using data from the Higg MSI, is misleading to consumers and thus prohibited. We have asked Norrøna to change or remove the relevant marketing.

Appendix 2 NCA letter to Norrøna 14 June 2022

The Sustainable Apparel Coalition (the **SAC**) is the owner of the Higg MSI and has contributed to the documentation and answers given by Norrøna in the case. We have thus also sent a letter to the SAC informing them about SAC's separate responsibility for the marketing taking place by traders that use the Higg MSI and / or Higg MSI data and results in marketing of their products.

Appendix 3 NCA letter to SAC 14 June 2022

2 **POTENTIALLY MISLEADING MARKETING BY H & M**

The NCA has concluded in the Norrøna case specifically. Whether marketing towards consumers is misleading and prohibited under the Marketing Control Act must always be based on a case-by-case assessment of the relevant marketing. We have yet not made such assessments of H & M marketing practices.

However, we consider that traders' use of the Higg MSI and results from Higg MSI data in marketing towards consumers, easily will constitute a breach of the prohibition of misleading marketing practices, cf. the Marketing Control Act § 6, cf. § 7. We would like to emphasize that it is the use of the Higg MSI in marketing towards consumers (B2C) that is likely to violate the Marketing Control Act, not the use of the index and data in traders' sourcing decisions.

We thus ask H & M to familiarize with the letter to Norrøna and the reasoning behind our conclusion in the Norrøna case and the regulations in the Marketing Control Act which our conclusion in the Norrøna case is founded on. We also recommend that you read our [guidance on sustainability claims used for marketing purposes](#).

For H & M to avoid misleading marketing, H & M should specifically assess / reassess the justification for using the Higg MSI as a communicative tool in marketing, and these assessments should be conducted considering our conclusion in the Norrøna case.

With this letter, we consider that H & M has been guided and informed on the legal framework governing the use of environmental claims in marketing.

We would like to remind you that we have the authority to impose economic sanctions towards traders that violate the Marketing Control Act, provided certain criteria are fulfilled. If we come across breaches of the Marketing Control Act from H & M in relation to environmental claims in marketing after 1 September 2022, we will consider if the criteria for imposing economic sanctions towards H & M are fulfilled.

If H & M uses and / or is planning to use Higg MSI data in marketing of garments in EU/EEA countries outside of Norway, we would strongly urge H & M to at the same time assess / reassess use of environmental claims in marketing towards consumers in other EU/EEA

countries. The NCA only has authority to ask for a stop of marketing in Norway. However, please be aware that the relevant regulations in the Norwegian Marketing Control Act is based on a harmonized EU directive, as explained in the Norrøna letter. What constitutes a breach of the Marketing Control Act, will thus presumably constitute a breach of the law in the other EU/EEA countries. For your information, the NCA has a close collaboration with the other countries' consumer authorities through EU regulation 2017/2394 on consumer protection cooperation.

We ask that this letter is forwarded to the correct person / persons within H & M as soon as possible. We also ask for a prompt confirmation that the letter has been received and forwarded to the right person / persons within H & M.

If H & M has any objections or comments regarding our assessments laid down in this letter, inquiries can be directed to mga@forbrukertilsynet.no.

Regards,

Tonje Drevland (by power of attorney)
Head of Section

Marius Gauslaa
Legal Advisor

This document is approved electronically and therefore has no handwritten signature