

Sustainable Apparel Coalition (SAC)

Your ref.

Our ref.
Case nr: 22/5122-1
Executive Officer: Marius Gauslaa
Dir.tlf: 457 29 418

Date:
14.06.2022

Misleading marketing of organic cotton garments using Higg MSI data - liability as an accessory

1 BACKGROUND

The Norwegian Consumer Authority (**NCA**) refers to the case against Norrøna Sport AS (**Norrøna**) regarding the use of the Higg Materials Sustainability Index (**Higg MSI**) in marketing.

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. On 5 May 2022, the NCA also had a meeting with the SAC and Norrøna regarding the Higg MSI and the documentation underlying the index.

Appendix 1 Minutes from meeting 5 May 2022

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

H & M also relies, or will rely, on Higg MSI data to communicate environmental impact of specific products to consumers. The NCA has therefore also sent a letter to H & M Hennes & Mauritz AS and H & M Hennes & Mauritz Gbc AB, regarding use of the Higg MSI in marketing towards consumers.

Appendix 3 NCA letter to H & M 14 June 2022

2 POSSIBLE LIABILITY AS AN ACCESSORY - WHAT WE ASK OF THE SAC

The NCA has concluded in the Norrøna case specifically. Whether marketing towards consumers is misleading and prohibited under the Marketing Control Act and the EU Unfair Commercial Practices Directive must always be based on a case-by-case assessment of the relevant marketing. 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 and the Unfair Commercial Practices Directive, not the use of the index and data in traders' sourcing decisions.

With this letter, we would therefore like to remind you that besides the traders actually marketing a product, SAC has a 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. The SAC should therefore take steps to ensure that the use of the Higg MSI by traders that SAC has entered into a partnership with, comply with the rules of the Marketing Control Act and the Unfair Commercial Practices Directive.

We thus ask the SAC to familiarize with the letters to Norrøna and H & M, the reasoning behind our conclusion in the Norrøna case, and the regulations in the Marketing Control Act and the Unfair Commercial Practices Directive 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 the SAC to, as far as possible, avoid responsibility for misleading marketing from traders that use the Higg MSI as a marketing tool, SAC should not allow its partners to use the Higg MSI for marketing purposes towards consumers. The SAC could for example inform all their members that the Higg MSI cannot be used in marketing towards consumers and make this clear in standard contract terms towards partners.

With this letter, we consider that the SAC 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 accessories to a breach of the Marketing Control Act, provided certain criteria are fulfilled. If we come across similar breaches of the Marketing Control Act as in the Norrøna case after 1 September 2022, we will consider if the criteria for imposing economic sanctions towards the SAC are fulfilled.

The Higg MSI being an international tool, there are probably traders also outside of Norway, but within the EU/EEA, who use the Higg MSI in marketing towards consumers. The NCA only has authority to ask for a stop of the relevant marketing in Norway. However, please be

aware that the relevant regulations in the Norwegian Marketing Control Act is based on an 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 thus recommend that the SAC assesses whether it is necessary to change its practices accordingly towards partners using Higg MSI-based environmental claims towards consumers in other EU/EEA countries.

We also ask for a prompt confirmation that this letter has been received by the SAC.

If the SAC 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