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## **List of Common Criteria for Claims which may be used with respect to cosmetic products**

### *1. Introduction*

Product claims are notably used by manufacturers and distributors of cosmetic products to inform consumers and professionals about the characteristics and qualities of their products. For product claims to meet their purposes adequately and serve the consumer's and professional's interests, the Cosmetic Product Regulation (Regulation (EC) N° 1223/2009 or the "CPR") provides for an efficient framework to be put in place that can ensure that product claims are fair and do not mislead consumers, taking into account the context in which such communications are used.

The CPR, which will fully replace Directive 76/768/EEC by July 2013, has as its main objectives to guarantee a high level of consumer protection and to ensure the good functioning of the internal market, including protecting the consumer and professional from misleading advertising of cosmetic products.

Article 20 of the CPR reiterates the general principle that product claims should not be used *to imply that cosmetic products have characteristics or functions which they do not have*. New provisions have also been added under Article 20 which entrust the European Commission with the task to adopt a list of common criteria for claims which may be used in respect of cosmetic products after consultation of the SCCS or other relevant authorities.

In accordance with Article 5 of the CPR, the responsible person must ensure compliance with Article 20 of the CPR and with the common criteria set out below. According to Article 6 (1) of the CPR, distributors also have the duty to act with due care, in the context of their activities. In particular, distributors are responsible for ensuring that consumers are not misled when distributors make a product available on the market using a claim that deviates from the claim provided by the responsible person.

In accordance with Article 22 of the CPR Member States the MCCA shall monitor compliance with the information set below via in-market controls of the cosmetic products made available on the market, including the appropriateness and relevance of the supporting evidence for justifying the use of claims.

## 2. Common Criteria for Cosmetic Product Claims

Claims on cosmetic products should conform to the following common criteria:

Common criteria	Notes
<i>Legal compliance</i>	<p>Claims should be compliant with all applicable legal requirements and must not be misleading to the consumer.</p> <p>Claims which convey that a product has a specific benefit when this benefit is mere compliance with minimum legal requirements shall not be allowed.</p> <p><i>EXAMPLE:</i> the claim "product does not contain lead" is not allowed, as lead is banned by EU cosmetics legislation and all cosmetic products placed on the EU market must comply.</p>
<i>Honesty</i>	<p>Presentations of the product performance must not go beyond the available supporting evidence.</p> <p><i>EXAMPLE:</i> the claim "one million consumers prefer this product" should not be allowed only based on the sale figure of one million units.</p> <p>Neither the general presentation of the cosmetic product nor individual claims made for the product shall imply, by action or by omission that the product has characteristics or functions which it does not have.</p> <p><i>EXAMPLE:</i> claims on efficacy should not be based on electronically manipulated "before"/ "after" images if the display is misleading as to the performance of the product.</p> <p>Claims should not attribute to the product concerned specific (i.e. unique) characteristics if similar products possess the same characteristics.</p> <p><i>EXAMPLE:</i> Fine fragrances usually contain such a high amount of alcohol that the additional use of preservatives is not necessary. In this case, it would be dishonest to highlight in advertising the fact that a certain fine fragrance does not contain any preservatives.</p>
<i>Decency</i>	<p>Cosmetic product claims should not contain statements or audio or visual treatments which offend standards of decency currently prevailing in the population, country and culture concerned.</p>
<i>Truthfulness</i>	<p>Neither the general presentation of the cosmetic product nor individual claims made for the product shall be based on false or irrelevant information.</p> <p><i>EXAMPLE:</i> the claim "silicone-free" should not be made if the product contains silicone.</p> <p><i>EXAMPLE:</i> the claim "48-hour hydration" is not allowed if the set of evidence only supports a shorter period of hydration.</p> <p>If a product claims that it contains a certain ingredient, the ingredient must be present.</p> <p><i>EXAMPLE:</i> Product claiming "contains honey" must actually contain honey, and not only honey flavour, in order to be truthful.</p> <p>Ingredient claims referring to the cosmetic properties of a specific ingredient should not imply that the finished product has the same properties when it does not.</p> <p><i>EXAMPLE:</i> the claim "contains moisturising aloe vera" should not be made if</p>

	the product itself has no moisturising effect.
<b>Fairness</b>	<p>Claims for cosmetic products shall be objective and shall not denigrate the competition, nor shall they denigrate ingredients legally used in cosmetic products.</p> <p><i>EXAMPLE:</i> a claim “contrary to product X, this product does not contain ingredient Y which is known to be irritating”.</p> <p>Claims for cosmetic products shall not create confusion with the product of a competitor.</p> <p>Claims for cosmetic products can be comparative in nature provided that they comply with Directive 2006/114/EC on misleading and comparative advertising and with national rules implementing it.</p> <p><i>EXAMPLE:</i> comparing the effectiveness of a deodorant with the effectiveness of an anti-perspirant is not fair, as the two are different products, with different functions.</p>
<b>Evidence support</b>	<p>Claims for cosmetic products, whether explicit or implicit, must be supported by adequate and appropriate evidence. This applies equally to subjective, objective, new or established claims;</p> <p>The level of evidence or substantiation should be consistent with the type of claim being made. A high level of evidence or substantiation is of special importance for claims where lack of efficacy may cause a safety problem, e.g. sun protection claims. On the other hand, statements of a clear exaggeration<sup>1</sup> which are not taken literally by the average consumer (hyperbole) or statements of an abstract nature will not usually require substantiation.</p> <p><i>EXAMPLE:</i> a claim “this perfume gives you wings” is hyperbolic, as no one would take it literally and expect to grow wings.</p>
<b>Allow informed decisions</b>	<p>Claims are an integral part of products and should contain information allowing consumers and professionals to make an informed choice.</p> <p>Marketing messages must take into account the capacity of the target audience (population of relevant Member States or segments of the population, e.g., women, men, teenagers or professionals) to comprehend the message<sup>2</sup>. Marketing messages should be clear, precise, relevant and understandable by the target audience.</p> <p><i>EXAMPLE:</i> if the product is targeting professionals, it might be appropriate to use technical language.</p> <p>Claims for consumers should be clear and understandable to the average, well-informed consumer.</p> <p>The presentation of the characteristics and the function of the product shall include the information needed by an average consumer to take an informed decision.</p>

The common criteria described above are of equal importance.

<sup>1</sup> Article 5 of Directive 2005/29/EC (“(...) the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally is not considered as an unfair practice”)

<sup>2</sup> Article 5 of Directive 2005/29/EC: commercial practices which are likely to distort the behaviour of a clearly identifiable group of consumers in a way which a trader could reasonably be expected to foresee shall be assessed from the perspective of the average member of that group.

*More information on cosmetics can be found on the MCCA web site:*

<http://www.msa.org.mt/rad/cosmetics/index.htm>

*The European Commission's website on cosmetics may be found at:*

[http://ec.europa.eu/enterprise/cosmetics/index\\_en.htm](http://ec.europa.eu/enterprise/cosmetics/index_en.htm)

*For any other information kindly contact the Regulatory Affairs Directorate within the Technical Regulations Division of the Malta Competition and Consumer Affairs Authority using the following contact details:*

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