Cosmetic products. Recast. "Cosmetics Regulation"

2008/0035(COD) - 19/09/2016 - Follow-up document

In accordance with Regulation (EC) No 1223/2009, the Commission presented a report on product claims made based on common criteria in the field of cosmetics.

Product claims and advertising are essential tools for informing consumers about characteristics and qualities and help them choose the products that best suit their needs and expectations. For cosmetic product claims to meet their purposes adequately, it is important to have an efficient framework in place which ensures that they are fair and do not mislead consumers.

The Commission adopted common criteria by Regulation (EU) 655/2013 (the Claims Regulation), for the justification of claims made in relation to cosmetic products.

This report **assesses the legal compliance of cosmetics-related claims with the common criteria adopted** and to specify the corrective measures that the Commission and Member States intend to take in cases of non-compliance.

Applicable European legislation: the report noted that the existing European regulatory framework for claims and advertising of cosmetic products is very comprehensive and ensures a high level of consumer protection. At the same time, it enables the European cosmetics industry to be competitive within the EU and in the world.

Based on Member States' contributions to this report, **90% of analysed cosmetic claims were found compliant with the common criteria** set out in Regulation (EU) 655/2013.

According to the contributions from 21 Member States, 38 995 cosmetic claims were analysed in total in 2014 and 2015. There were 3730 non-compliant claims out of 38 995 (10%).

The percentage of compliance and non-compliance **varies significantly according to the type of product distribution**. In some Member States, up to 70% of non-compliant claims were found online, only 17% were found on the actual product, and 13% were found in brochures.

Most samples used for the analysis represented products containing the following categories of claims:

- claims characterising ingredients (e.g. 'anti-ageing');
- claims related to the product's efficacy (e.g. a skin cream with a sun protection factor);
- claims highlighting the absence of substances (e.g. 'free from perfume');
- claims addressing skin compatibility of the product (e.g. 'hypoallergenic', 'for sensitive or atopic skin');
- claims addressing health or additional benefits other than the cosmetic purpose (e.g. sunscreens or intimate hygiene products).

The report noted that the common criteria should **only be applied to products which fall under the definition of a cosmetics product** under the Cosmetics Regulation, and for which any borderlines issues with medical devices or medicinal products have been resolved. It is for Member States to decide on a case-by-case basis whether a product is a cosmetic or not.

Medicinal properties, claims of treatment ability and therapeutic effects: most non-compliant claims were found to be misleading as regards the function and performance of the cosmetic product.

Most Member States identified claims with a medicinal effect as being the most dangerously misleading claims for consumers. Believing that a cosmetic product has therapeutic effects and medicinal properties could lead consumers to delay seeing their doctor and follow their own treatment. Such misleading claims included therapeutic effects on skin, blood circulation, deeper tissue, muscles, joints, veins or adipose tissue, anti-inflammatory function, and healing properties.

Free from authorised ingredients: 20% of the monitored cosmetic products had a **'free from' claim** and many of them were 'parabens free'. This claim is attractive for marketing purposes because of the media attention. However, Member States considered that it is against the 'fairness' criterion because it denigrates legally authorised ingredients.

Hypoallergenic claims: 7 Member States reported cases of 'hypoallergenic' claims without supporting documents or evidence. Some national authorities notified claims made about hair dyes, according to which the dyes contained ingredients that guaranteed or offered protection from skin problems (or reduced the risk of allergy) during the colouring process. These products nonetheless contained resorcinol and para-phenylenediamine, which are well known allergens. Claims that attempt to underestimate the risks of allergic reactions associated with the use of hair dyes pose a risk to human health and may prevent consumers from making an informed choice to use the product.

All Member States that contributed to this report concurred that there is a need to **clarify the 'free from' and 'hypoallergenic' claims**. This could be done through the existing sub-working group on claims and ad hoc technical documents on the two issues.

Corrective action in cases of non-compliance: according to the contributions received from Member States, a wide variety of corrective actions were carried out in reaction to non-compliance of claims with the common criteria. The most frequently reported corrective actions were: (i) written advice to the responsible person, importer or manufacturer, ordering and prohibiting sales until the product complies with the requirements; (ii) request to the responsible person to modify the claim in the advertisement not only on the product but also in the media and on the internet; (iii) instruction to the responsible person to conduct new studies to get enough evidence to retroactively support the claims; (iv) financial sanctions imposed in some Member States.