

CTPA Help Note on 'Free From' Claims

Understanding the EC Technical Document on Cosmetic Claims

Background on legislation covering cosmetic claims

In Europe, cosmetic claims are covered by Article 20 of the Cosmetic Products Regulation (EC) No. 1223/2009 and Regulation (EU) No. 655/2013 - Common Criteria for Justification of Claims. The six Common Criteria for claims are Legal Compliance, Truthfulness, Evidential Support, Honesty, Fairness, Informed Decision-Making.

The European Commission's Technical Document on Cosmetic Claims was agreed by the Commission's Sub-working Group on Claims (3 July 2017). The aim of the document, which is meant to be a collection of best practices, is to provide guidance for the case-by-case application of the Common Criteria.

The Technical Document is not legally-binding and does not reflect an official position of the European Commission. Only the European Court of Justice (ECJ) can give authoritative interpretation. However, it does reflect a common understanding of national competent authorities, several of which have already indicated their intention to apply the guidance given in this document. Annexes I and II (published in 2013) are already being applied; Annexes III and IV are bringing new elements which apply as of 1 July 2019.

'Free-from' claims

Annex III looks at how the six Common Criteria apply to 'free-from' claims (including claims with a similar meaning, e.g. 'made without', 'no' or '0%' claims).

❖ Legal Compliance:

- 'Free from *prohibited ingredients*' claims are not permitted, e.g. the claim 'free from corticosteroids' is not allowed as corticosteroids are banned from cosmetic products by the EU Cosmetic Products Regulation.

❖ Truthfulness:

- 'Free from *a functional group of ingredients*' (e.g. colorants, preservatives) is only allowed if there is no ingredient of that group present.
- If a specific ingredient is referred to, it must not be present or released, e.g. 'free from formaldehyde' is not allowed if the product contains a formaldehyde-releasing ingredient (for example diazolidinyl urea).



❖ **Evidential Support:**

- The absence of the specific ingredient or ingredients should be demonstrated by adequate and verifiable evidence. Annex II of this document covers best practices applying to experimental studies and should be consulted for advice. More information on Good Study Design can also be found in the [CTPA Guide on Advertising Claims](#).

❖ **Honesty:**

- ‘Free from’ claims should not be allowed when they refer to an ingredient which is typically not used in the particular kind of cosmetic products, e.g. fine fragrances usually contain such a high amount of alcohol that the additional use of preservatives is not necessary. It would be dishonest to highlight that a certain fine fragrance does not contain any preservative.
 - ‘Free from’ claims should not be allowed when they imply guaranteed properties of the product, based on the absence of an ingredient, which cannot be given, e.g. the claim ‘free from allergenic/sensitising substances’ is not allowed. A complete absence of the risk of an allergic reaction cannot be guaranteed and the product should not give the impression that it does.
- ‘Free from’ claims addressing functional groups of ingredients should not be allowed if the product contains ingredients with multiple functions and among these is the function that the product is claimed to be free from. Exceptions may be possible (e.g. based on challenge test results of the formula without the particular ingredient).
 - The claim ‘free from preservatives’ should not be made when the product contains an ingredient showing a protective effect against micro-organisms and which is not included in Annex V (List of Preservatives allowed in Cosmetic Products) of the Cosmetic Products Regulation 1223/2009. If the Responsible Person has evidence that the particular ingredient or combination of ingredients does not contribute to product protection, it might be appropriate to use the claim.
 - The claim ‘free from perfume’ should not be used when a product contains an ingredient which exerts a perfuming function in the product, regardless of its other possible functions in the product.

❖ **Fairness:**

- ‘Free from’ claims should not be allowed when they imply a denigrating message, notably when they are mainly based on a presumed negative perception on the safety of the ingredient or group of ingredients.
 - For example, certain parabens are safe when used in accordance with the Cosmetics Products Regulation. Considering the fact that all cosmetic products must be safe, the claim ‘free from parabens’ should not be accepted, because it is denigrating the entire group of parabens.

- For example, phenoxyethanol and triclosan are safe when used according to the Cosmetics Products Regulation. Hence the claim 'free from' these substances should not be accepted because it is denigrating authorised substances.

❖ **Informed Decision-making:**

- 'Free from' claims should be permitted when they allow an informed choice to a specific target group or groups of end users. We can expect therefore that the following claims should be permitted if they also comply with the other Common Criteria:
 - 'Free from alcohol' in a mouthwash intended as a family product;
 - 'Free from animal-derived ingredients' in products intended for vegetarians;
 - 'Free from acetone' in nail polish for users wishing to avoid its particular smell.

Summary:

- 'Free-from' includes claims with a similar meaning, whether in text or another format.
- 'Free-from' claims are not all prohibited – some may be acceptable.
- Individual Member States may take particular interest in these claims.
- Decisions will be taken nationally on a case-by-case basis (competent authority – national courts – ECJ).

Implementation

Cosmetics Europe, the European personal care association, has issued a communication strongly recommending that companies adhere to the guidance, and CTPA supports this.

As at end March 2019, CTPA is not aware of companies being prosecuted in the UK. However, we understand that currently in France and Spain if a product is inspected and is found non-compliant because of other issues (microbiological contamination/labelling/PIF...etc), the enforcement warning letters are also referring to the non-compliance of 'free-from' claims. We have also been alerted that other Member States have expressed an intention to enforce the Technical Document after July 2019; this may include penalties for products remaining on shelf.