



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Our ref: [REDACTED]
Contact officer: [REDACTED]
Contact phone: [REDACTED]

6 July 2023

Mr Chris Foley
Chief Executive Officer
Australian Packaging Covenant Organisation Ltd

By email: [REDACTED]

Dear Mr Foley

Re: APCO's proposed new ARL for soft plastics

I refer to previous communications between APCO and the ACCC regarding APCO's proposed new Australasian Recycling Label for soft plastics.

As you are aware, the ACCC is concerned to ensure that consumers are not confused or misled by any soft plastics disposal representations on packaging or labelling. The ACCC is also concerned to ensure that there is clarity and transparency for consumers about soft plastics disposal, particularly as changes may occur to the soft plastics processing and recycling market going forward.

Implementation of the proposed "Check Locally" Australian Recycling Label

The ACCC acknowledges that the planned removal of REDcycle references from labelling and packaging, and the addition of the proposed new "Check Locally" Australian Recycling Label for soft plastics to labelling and packaging addresses the issue of the existing REDcycle references and "Return to Store" Australian Recycling Label being misleading representations under the Australian Consumer Law (ACL).

We also acknowledge APCO's new Australian Recycling Label thresholds for soft plastics, which has tightened the requirements products will need to meet for soft plastics recyclability to better ensure the quality of soft plastics stocks for recycling in the future, thereby increasing the likelihood of recycling.

The key feature of the proposed "Check Locally" Australian Recycling Label to provide consumers with current soft plastics disposal information is the website search or check they will need to do through the 2D barcode or using the URL. This has the advantage that brand owners will not need to be regularly amending labelling and packaging as the soft plastics recycling market evolves and changes, reducing the risk of misleading consumers.

It also means that maintenance and updating of the website in a timely way is of critical importance. We note that APCO has committed to maintaining the website and keeping it updated. However, the ACCC would be concerned if this commitment ever waned, and insufficient resources are directed to this task now or in the future.

The ACCC also recommends that APCO continue consumer testing of the new “Check Locally” ARL and the website functionality, particularly following the planned education campaign in 2024, and also following any advancements in the roll out of a potential national soft plastics recycling scheme. Consumers will be moving from obtaining common disposal information directly on labelling and packaging to needing to take the additional step of interacting with the website to obtain tailored disposal information. In these circumstances, it is critical that the design and operation of the ARL and the website remain as consumer centric as possible, with a focus on accessibility and clarity.

Research has demonstrated that small frictions can have a significant impact on the likelihood of consumers taking action. In these circumstances we encourage APCO to collect data on historical and future return rates to measure the effectiveness of the website and to test adjustments.

The ACCC also considers there is a continuing critical role for brand owners and retailers to play in helping avoid any confusion or misleading impressions given by any existing, REDcycle, or soft plastics or return to store recycling representations on packaging or labelling in circulation.

APCO should pass on the following information to its members. The ACCC will also contact relevant stakeholders directly with this information.

Brand owners

As we have previously advised, the ACCC is unable to formally approve conduct that would otherwise raise concerns under the ACL, or make determinations that conduct does not breach the ACL. Consequently, we are not able to provide a “moratorium” or a “grace period” for the amount of time brand owners will take to transition to new labelling and packaging.

However as previously advised, we understand the significant financial and environmental impacts if brand owners were to dispose in landfill any existing packaging with incorrect representations. Pursuant to the [ACCC's Compliance and Enforcement Policy](#), we consider compliance and enforcement responses to potential ACL concerns that are proportionate to the conduct and the resulting or potential harm. Our priority is to achieve the best possible outcome for the community and to manage risk proportionately.

We note APCO's advice that this transition is estimated to take 3 years across all businesses and products. However individually, some businesses will update their packaging much sooner, and most Brand Owners expect they will have rolled out updated packaging within 2 years.

The ACCC expects that most brand owners to have transitioned the labelling or packaging of all or most of their products within 2 years, and those taking the full 3 year timeframe would be the minority of brand owners or products with particularly exceptional circumstances.

The ACCC requests 6 monthly updates from APCO during the transition period, on the progress of brand owners' transition to new labelling and packaging.

During their transition periods, the ACCC also expects brand owners to continue to take all reasonable alternative steps to ensure that soft plastics disposal information to consumers is accurate. For example, providing accurate and current information in their other advertising and marketing.

Retailers

At a minimum we expect retailers to have prominent and clear signage at the point of sale to help ameliorate any potentially misleading soft plastics or 'return to store' recycling

representations. This communication should be displayed in both online stores and physical stores, and should be continued for as long as it takes for all products supplied by the retailer to transition to the new labelling and packaging.

Retailers should also continue to take all reasonable alternative steps (for example, in other marketing materials) to ensure that soft plastics disposal information to consumers is accurate.

The ACCC will continue to monitor brand owners' transition to the new labelling and packaging, as well as retailers' point of sale communications during the transition period.

[REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

Deputy Chair