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# When is "Sustainable Aviation Fuel" not sustainable?

In a decision that will cause more concern than ever for airlines seeking to advertise their environmental credentials, the UK's regulator of advertising, the Advertising Standards Authority (the "**ASA**") has ruled that Virgin Atlantic's radio advert concerning "Flight100" was misleading and breached the UK Code of Broadcast Advertising ("**BCAP Code**") and UK Code of Non-broadcast Advertising and Direct & Promotional Marketing ("**CAP Code**").

This article scrutinises the ASA's decision in more detail and identifies the most important lessons for airlines concerned with allegations of greenwashing (for those in a hurry, go to section 4 to see these now). It also queries whether the approach taken by the ASA in this case is realistic or appropriate in the context of a modern aviation industry that is striving towards improving sustainability and achieving Jet Zero by 2050.

## 1. What was the advert and who complained?

In May 2022, the UK Department for Transport ("**DfT**") announced a competition for airlines to achieve the first net zero transatlantic flight, using 100% sustainable aviation fuel (or "**SAF**") by the end of 2023. Airlines interested in competing were invited to submit expressions of interest, and Virgin Atlantic was ultimately selected as the airline to attempt the flight with support from various partners in industry including Boeing, Rolls-Royce and Imperial College London.

Virgin Atlantic aired the following radio advert in the UK in advance of the attempt:

*"On the 28th of November, Virgin Atlantic's Flight100 will take to the skies on our unique flight mission from London Heathrow to JFK to become the world's first commercial airline to fly transatlantic on 100% sustainable aviation fuel. When they said it was too difficult, we said: challenge accepted. Virgin Atlantic Flight100. See the world differently."*

### WHAT IS SAF?

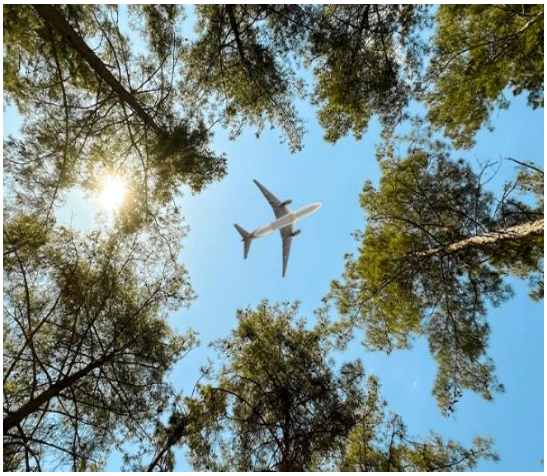
*SAF is a certified jet fuel that is produced from a blend of fossil fuels and synthetic components, including renewable feedstocks such as plant and cooking oils and agricultural, municipal and forestry waste.*

*SAF produces similar levels of $CO_2$ to conventional aviation fuels when it is burned, but the $CO_2$ generated is already part of the carbon cycle and is not taken out of the ground specifically for the purpose of creating aviation fuel. This leads to an overall reduction in the amount of $CO_2$ generated.*

The ASA received five complaints concerning the advert. These alleged that Virgin Atlantic's "claim" of using "*100% sustainable available fuel*" gave a misleading impression of the impact of the environmental impact of SAF, and they also challenged whether the "claim" was substantiated.

## 2. What was the ASA's ruling?

*Complaint upheld*



In a move that was as disappointing as it was predictable, the ASA upheld the five complaints. The ASA determined that Virgin Atlantic's "claim" of using "100% sustainable aviation fuel" was indeed misleading and that the advert had therefore breached Rules 3.1 and 3.2 of the CAP Code (*Misleading advertising*), which prohibit materially misleading and exaggerated claims in advertising, and Rules 9.2, 9.3 and 9.5 of the BCAP Code (*Environmental claims*), which require environmental claims to be qualified, clear and based on the full life cycle of the subject of the advert. In particular, the ASA took the view that the wording used by Virgin Atlantic would cause a consumer to believe that the fuel used by Virgin Atlantic was 100% sustainable, which it was not. The ASA therefore directed Virgin Atlantic to ensure that any future adverts relating to the use of SAF must include qualifying information to explain SAF's environmental impact.

*Virgin's defence*

The ASA reached this decision despite what appeared to be a very robust defence raised by Virgin Atlantic. The key points relied upon by Virgin Atlantic were as follows:

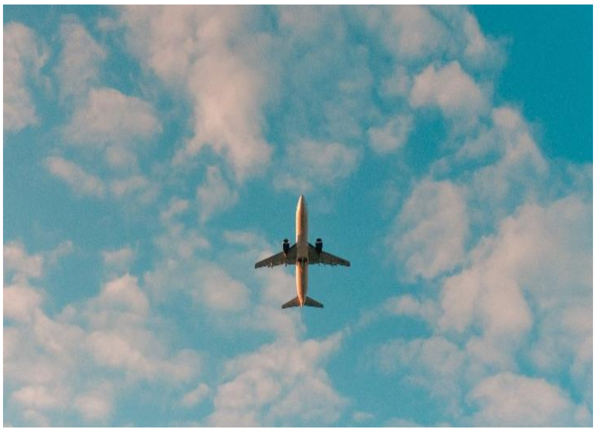
- The phrasing used by Virgin Atlantic in the advert was identical to the wording used by the DfT in respect of the competition.
- The term "sustainable aviation fuel" is widely used and understood in the industry, in academia and in government and regulatory bodies across the world: it is a recognised term and has been in common use for several years, including as part of the UN's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) as adopted by the International Civil Aviation Organization (ICAO).
- The majority of consumers hearing the advert would understand that the advert was referring to the *proportion* of SAF used to fuel the flight (i.e., 100%) and not to the *nature* of the fuel.
- In advance of Flight100, Virgin Atlantic had used an external consultancy firm to calculate the carbon impact of the flight. This demonstrated that the life cycle $CO_2$ emissions delivered by the flight were 64% lower than if conventional fuel had been used.
- As required by Rule 9.1 of the BCAP Code, Virgin had obtained pre-clearance from Radiocentre, who had itself taken advice from an independent consultant. Radiocentre concluded that SAF was a term in use by the UK Government, the World Economic Forum, the International Air Transport Association (IATA) and the DfT, and it was happy that the advert did not claim or imply that Virgin Atlantic's flights were generally "sustainable."
- To respond to the ASA's complaint, Virgin Atlantic commissioned a customer survey about the advert. The majority of respondents confirmed that they understood that the advert referred to the proportion of SAF used, and 68% of respondents confirmed that they understood from the advert that SAF was generally better for the environment but was not without negative impacts.

For these reasons, Virgin Atlantic's position was that it had not misled the audience and that it had not omitted any important information from the advert. Referring to the results of the survey in particular, Virgin Atlantic argued that it was clear that no-one who heard the advert was under the impression that SAF had no environmental impact. Further, Virgin Atlantic made the point that the advert did not relate to its regular, scheduled flights, but instead showcased a one-off research and development flight. Interestingly, Virgin Atlantic also argued that the advert would not affect transactional decision making by consumers because a further survey by Virgin Atlantic found that sustainability only influenced "*around 1.5% of consumer's overall choice*" when choosing between long-haul carriers.

*The ASA's view*

Despite their persuasive and comprehensive nature, the ASA rejected Virgin Atlantic's arguments. The ASA instead determined that "claim" contained in the advert was misleading and lacked the necessary qualification to make the meaning of the terms used in the advert clear to all consumers.

This was for the following reasons:



- While the ASA accepted that many listeners would have understood that the "claim" related to the proportion of SAF fuel used, a significant section of the audience would have understood the "claim" to mean that the fuel used by Virgin Atlantic was 100% sustainable.
- The ASA also accepted that SAF is a widely used term in industry and government. However, it took the view that most consumers would not understand the extent to which SAF still had negative environmental effects.
- In this respect, the ASA found that Virgin Atlantic's survey actually supported their concerns. This was because although 68% of survey respondents seemed to have a good grasp of what was meant by SAF, the remainder did not: some thought it had the same impact as conventional aviation fuel, some felt it had no environmental impact, and some even thought that SAF was significantly worse for the environment.
- The ASA accepted that, in this case, SAF did result in a significant saving of greenhouse gas emissions over the relevant life cycle. However, it determined that not enough information was provided regarding possible negative impacts that might arise from the long-term use of SAF, including the diversion of biofuels from other sectors (which may then require fossil fuels) and switches to land-use.
- Finally, while accepting that Flight100 was a one-off, non-commercial flight, the ASA also concluded that the advert would still have the effect of creating an "*overall impression*" that Virgin Atlantic was leading the way in "*reducing the environmental impact of aviation*."

Ultimately, the ASA determined that the "claim" in the advert was misleading. As the advert related to a specific, historic event, it was not necessary for the ASA to direct that the advert should not appear in the same form, but it did stipulate that all future adverts referring to the use of SAF must include qualifying information to explain its environmental impact.

## 3. What does this mean for airlines?

Those who are familiar with the ASA's ruling against Ryanair in February 2020 and the more recent rulings against Lufthansa, Air France-KLM and Etihad in December 2023 will recall that the ASA has previously applied a very low threshold for assessing whether or not environmental claims made in an aviation context are misleading. In the case of Ryanair, a claim that Ryanair was Europe's "lowest emissions" airline was found to be misleading despite being supported by data that substantiated the claim on a per capita basis. In the cases of Lufthansa, Air-France KLM and Etihad, which were identified by the ASA using its "Active Ad" AI monitoring system, claims that the airlines in question were committed to environmental advocacy and that passengers could travel "sustainably" with them, were also found to be misleading. Combined with the innovative strategies used by the ASA to identify potentially misleading aviation adverts, this most recent ruling against Virgin Atlantic illustrates that the ASA has not relaxed its stance and that, if anything, its position has hardened.

In this case ASA was not swayed by the fact that SAF is a commonly used term within the aviation industry and that its meaning is, in fact, widely understood even beyond aviation. It ignored, for example, the fact that the Government's new SAF initiatives featured prominently in the King's Speech delivered at the State Opening of Parliament on 17 July 2024. The ASA also placed little weight on the fact that the wording used by Virgin Atlantic was drawn from the underlying competition run by the DfT. In this respect, it is telling that the ASA characterised the wording used by Virgin Atlantic as a "claim", rather than what it really was: a simple statement of fact. If this approach is any indication of how the term "sustainable aviation fuel" is likely to be treated by consumer protection regulators in the future, it is likely to add fuel to the fire to the growing calls to change the terminology used to describe SAF from a greenwashing perspective.

***The Sustainable Aviation Fuel (Revenue Support Mechanism) Bill***

*This is a new piece of legislation announced in the King's Speech in July 2024. The Labour government intends to implement the Bill to foster the growth of SAF production in the UK by providing revenue certainty to encourage investment in the construction of SAF plants.*

In reaching the conclusion that Virgin Atlantic's advert was misleading, the ASA therefore appears to be relying heavily on a very low level of understanding on the part of the consumer. Given the small number of complainants in this case, and given that Virgin Atlantic's survey found that the vast majority of respondents did understand what was meant by SAF, this approach is questionable. It is arguable that it is also highly counter-productive. In this case, the effect of the ruling has been to penalise an airline that has actively sought to reduce its environmental impact and that is very open about its commitment to achieving Jet Zero by 2050. More broadly, taking such a strict approach is likely to have a chilling effect on the willingness of other carriers to publicise their own environmental efforts (including, for example, major investment in SAF production plants) lest they also be publicly named and shamed by the ASA or other regulators who may be interested, including the Civil Aviation Authority, the Competition and Markets Authority or, within the EU, the Consumer Protection Cooperation Network (the "**CPC Network**"). Readers may recall that the CPC Network has already commenced a "greenwashing" investigation into the practices of 20 airlines, which we covered in issue 78 of our Commodities in Focus Weekly in May 2024, and that remains ongoing at present.

## 4. Key takeaway points

Regardless of whether the ASA was correct to find that the advert breached the CAP and BCAP Codes, there are lessons to be learned for airlines intending to refer to SAF in their advertising material. These lessons are also applicable to anyone involved in aviation or the travel industry seeking to advertise their environmental credentials. They are as follows:

- It only takes a very small number of complainants to trigger an ASA investigation. In this case, it only took 5 complainants, and in the case of the ASA's ruling against Ryanair in 2020 (which related to a much more comprehensive advertising campaign) it took just over 150.
- In the ASA's view, consumers still do not understand SAF well enough to allow for airlines to refer to it without providing significant explanation. Any advert referring to SAF should therefore be sure to provide sufficient explanation as to how SAF works and what its environmental impact is, perhaps in the advert as a super or (more realistically) in dedicated page on the carrier's website that is linked to by the advert.
- This approach should also be taken in respect of any other advert featuring "new" technology (for example, new engine or aircraft types) to promote a carrier's environmental credentials. Carriers should err on the side of caution when estimating the average consumer's level of understanding in this respect.

To listen to some more of our "top tips" for avoiding the potential dangers posed by greenwashing, please click here. If you are interested in learning more about the latest greenwashing rules and regulations and how these apply to aviation then please click here, Alternatively, if you would like to speak to a member of the team, please free to contact Chloe Challinor or Patrick Bettle directly.

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