Textile labelling

A concern for the EU consumer?

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Chapter 5

The Textile & Clothing Industry and Textile Labelling
5.1 Introduction

Niemann stated that the function of clothing labels is to simplify the decision-making process of consumers, that is to say, to facilitate them in making informed purchase decisions\(^{761}\). In practice, consumers associate a textile label with a small piece of fabric supplied with information (primarily on fibre composition and washing instructions) that is, in general, permanently attached to the inside of the textile product\(^{762}\). Whereas such sewn-in tags may last the entire lifespan of the clothing product, hangtags do not as they are usually made of paper, cardboard, plastic or leather\(^{763}\) and are easily disposable. As Helberger\(^{764}\) pointed out, labels, in general, are not necessarily and are not always an optimal tool to furnish information about a product. From the perspective of consumers, there is a danger of misinformation; inaccurate labels can cause confusion and/or add to an information overload rather than reduce it\(^{765}\), as for example, the plethora of wash symbols or CSR schemes symbols shows. A necessary precondition for an effective label is that the information provided is clear, concise and informative\(^{766}\). In my view, this touches on the aspect of efficient information reduction in which (harmonised) standards of (textile) labelling might play an important role.

In Chapter 4, I have indicated that consumers sometimes regard certain types of labelling, such as size, care, CSR and COO labels, as confusing and unreliable. Therefore, data gathered by means of qualitative research (field research) might serve to validate this assumption. If labels could only be seen as compliant with labelling policies if they have contributed to achieve the objectives of policymakers, it would be necessary to establish these objectives. More generally, the legislator could be expected to have made clear what it perceives as the function of labelling, in particular, in case of mandatory labelling.

The previous chapters mainly illustrated the views expressed in the scholarship, alongside introducing relevant legislative provisions, and thus analysed both primary and secondary data to gain insights into EU consumer policy and regulations enforced by the EC related to textile labelling. In contrast, this chapter mainly focuses on the empirical data gathered from the T&C industry for this study. In general, T&C retailers assume that their labelling policy complies with

relevant legislation and voluntary labelling schemes in this field. Whether this view is correct will be discussed in this chapter on the basis of interviews with selected representatives from T&C retailers.

5.2 Objective

This chapter aims to explore in what way the T&C industry furnishes its consumers with information through a simple and unambiguous communication tool, to be more precise through textile labels. Moreover, it aims to assess the interactions between voluntary self-regulation, soft law and hard law that impact T&C labelling.

This chapter is divided into four parts. First, an explanation of the specific method used in this chapter and of the sampling a case studies is provided (see Section 5.3). Second (Section 5.4), a general outline of the characteristics of the interviewed T&C entities is made. Third, the information offered to consumers by the T&C retailers by means of labelling is addressed. To that end, Section 5.6 indicates the content of the interviews, whereas Section 5.7 discusses some of the limitations following from this approach. Finally, Sections 5.8 and 5.9 report the results from the interviews. The (sub-) conclusions on labelling requirements set out the significant differences, if any, among the companies surveyed and, in case there are indeed significant differences, indicates what factors may have caused these differences. Finally, in the third part (Section 5.10), the UCPD is extensively elaborated on in the context of the findings of the field research and whether any of the provided labels by the T&C retailers could be inaccurate or misleading to consumers.

This chapter concludes with an answer to the sub-question of this study: In what way does the textile and clothing industry provide information about the textile product by textile and clothing labelling?

5.3 Methodology

The main question of this research concerns the extent to which European consumer policy protects European consumers against inaccurate or misleading information on textile labels. In other words, it aims to investigate the company policies of EU T&C companies related to information disclosure by means of textile labels. Chapter 1 provides a general outline of the research methodology. The research method for this part of my doctoral dissertation can be characterised as qualitative research as data was accumulated through in-depth interviews.

In this context, Yin defines a case study as "an empirical study that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between the phenomenon and context are not clearly evident"\(^{768}\).

Due to the fact that the research topic selected has so far hardly been the subject of research, explorative field research was necessary, for which multiple case studies were considered the most appropriate form. Multiple case studies give the opportunity to look into the research question from various angles and to collect data from a variety of sources\(^ {769}\). The selection of case studies and sources is elaborated in the next subsection.

It should be emphasised that the qualitative nature of this research provides no clear answer as to the way in which the T&C industry overall performs in the labelling policy as only a small sample of T&C retailers could be interviewed and only a limited set of questions regarding the information that is provided could be asked. This research may, however, help to create an overview of the labelling policies of the interviewed T&C retailers.

**Data analysis**

Data analysis and the drawing of conclusions and findings from the data are the most critical aspects of qualitative research. There are three relatively widely used modes of analysis: discourse analysis, grounded theory method and classical content analysis. Discourse analysis evolved from linguistic studies, literary criticism and semiotics. It is concerned with language-in-use, i.e. how individuals accomplish personal, social and political projects through language\(^ {770}\). Grounded theory follows the natural pattern of human enquiry\(^ {771}\).

‘Content analysis’ has been widely recognised as a useful research tool for the objective, systematic and qualitative description of the content of communication\(^ {772}\). In this research, content analysis was chosen to analyse the interviews as it reduces text to codes by categorising items in the text and then counting occurrences of these items to allow inferences to be drawn from the document\(^ {773}\).


\(^{769}\) Ibidem. My research is mainly concerned with what Yin calls the ‘what’ and ‘how’ of policy. In their capacity to investigate processes case studies research involves data collection from various points of view.


\(^{772}\) Berg, B. L., & Lune, H. Qualitative research methods for the social sciences, Pearson Boston (2004).

5.4 Sampling & Case studies

In general, one needs to consider whom to interview, or what to observe or analyse, and how many participants or data sources are necessary to elicit findings in which one may have confidence. Qualitative research tends to focus on a smaller number of ‘observations’ or ‘data sources’ – whether that is people, events or documents – which are considered to be data rich and thus worthy of study, and to examine them in-depth.\(^{774}\)

As the aim of this chapter is to analyse to what extent the T&C industry furnishes consumers with accurate and reliable information by textile labels, a selection of T&C companies was made. The argument put forward can be summarised as follows.

1. The T&C retail sector constitutes the last segment of the so-called ‘textile and clothing supply chain’ and is, therefore, responsible for all T&C products which are sold to the final consumer, including for the labels placed on them. The manufacturing and distribution section of the T&C industry are not initially responsible for the information provision on textile labels. Therefore, these are excluded from the scope of this study.\(^{775}\)

2. Schematically, two main segments of textile and clothing companies can be identified within the retail sector. The first segment comprises companies that design and market clothing.\(^{776}\) The products of these companies are primarily distributed on a non-exclusive basis through department stores and other third-party retailers (multi-brand stores). These companies also operate their own retail stores (mono-brand stores), but sales through such stores are relatively small when compared to sales through department stores.

The second segment consists of vertically integrated businesses that design, market and sell their own textile products exclusively through their own distribution networks (mono-brand stores) and/or under the store-within-a-store arrangement. Retailers essentially rent out their retail space to manufacturers and give them complete autonomy over retail decisions like pricing and in-store service.\(^{777}\) A store-within-a-store operated by a manufacturer typically has the following characteristics: the inventory is owned by, and the retail prices are decided by the manufacturer, and the representatives providing in-store service are employed and trained by the manufacturers that own the brands.\(^{778}\)

Furthermore, findings from research reveal that among others things the expertise of store personnel of mono-brand stores have the greatest impact on increasing customer satisfaction in comparison with multi-brand stores.\(^{779}\) Therefore, it is interesting to determine whether the labelling policy differs between these two segments.


\(^{779}\) Ibidem.
3. Brun et al.\footnote{Brun, A., et al. ‘Logistics and supply chain management in luxury fashion retail: Empirical investigation of Italian firms’, \textit{International Journal of Production Economics} (2008-2), p. 554-570.} mentioned that with the growth of fashion markets, retailing has become a crucial strategic element for brands. In particular, many fashion companies have started establishing a network of mono-brand stores\footnote{Amatulli, C., & Gianluigi, G. ‘Externalised vs. internalised consumption of luxury goods: propositions and implications for luxury retail marketing’, \textit{The International Review of Retail, Distribution and Consumer Research} (2012-2), p. 189-207.} with the primary objective of increasing the visibility of the supply chain of the textile products and better communicating the values of the company to consumers, such as its CSR policies\footnote{Floor, K. \textit{Branding a store: How to build successful retail brands in a changing marketplace}, Kogan Page Publishers (2006), p. 35-46.}. Therefore, it is interesting to study whether visibility and company values are more apparent on the labels of the mono-brand stores.

The following multi-brand companies were included in the sampling:
\begin{itemize}
\item Tommy Hilfiger;
\item Dobotex (Puma);
\item G-Star Raw and
\item Just Brands.
\end{itemize}
This type of company is hereinafter referred to as ‘multi-brand retailers’.

The following mono-brand companies were included in the sampling:
\begin{itemize}
\item Calvin Klein;
\item HEMA;
\item Excellent Retail Brands and
\item Scotch & Soda.
\end{itemize}
This type of company is hereinafter referred to as ‘mono-brand retailers’\footnote{Gertner, R. H., & Stillman, R.S. ‘Vertical integration and internet strategies in the apparel industry’, \textit{The Journal of Industrial Economics} (2001-4), p. 417-440.}.

Amongst these two groups of retailers, some are rooted in high fashion, the top-end ready-to-wear clothing segment, which comprises highly specialised companies (designers, sustainable concept)\footnote{Smakman, F. ‘Local industry in global networks: changing competitiveness, corporate strategies and pathways of development in Singapore and Malaysia’s garment industry’, (2004), p. 6-8.}. Below, a description is given of each company.

The principal criterion for the choice of the aforementioned T&C companies is that production and/or sales are rooted in ready-to-wear clothing and the companies manufacture and/or sell their textile products in large volumes on the European consumer market\footnote{Textil Wirtschaft, Die Größten Europaschen Bekleidungslieferanten 2013, <http://www.textilwirtschaft.de/business/unternehmen/TW-Rangliste-Die-Groessten-werden-groesser-88350> last viewed on 12 February 2017.}.

The retailers G-Star Raw, Tommy Hilfiger, Calvin Klein and Puma (Dobotex) are listed among the top 100 largest fashion and clothing companies in Europe with an annual turnover of more than 1 billion euros (2014)\footnote{Ibidem.}. 


\footnote{Amatulli, C., & Gianluigi, G. ‘Externalised vs. internalised consumption of luxury goods: propositions and implications for luxury retail marketing’, \textit{The International Review of Retail, Distribution and Consumer Research} (2012-2), p. 189-207.}


\footnote{Smakman, F. ‘Local industry in global networks: changing competitiveness, corporate strategies and pathways of development in Singapore and Malaysia’s garment industry’, (2004), p. 6-8.}


\footnote{Ibidem.}
High-street mono-brand store retailer HEMA (annual turnover of more than 1 billion euro) has been voted the most popular Dutch brand for eight years in a row (2008-2015) according to the ranking from the European Institute for Brand Management\textsuperscript{787}. Dutch consumers also consider the brand to be a ‘cultural icon’ according to the same Institute. The retailer has outlets in the Netherlands, Belgium, Germany, France, Luxembourg and the UK\textsuperscript{788}.

Excellent Retail Brands operates the brands Coolcat, M&S, Wonder Woman and America Today\textsuperscript{789}. In total, more than 600 mono-brand stores are active in the Benelux, France, Germany and Spain. The annual turnover of the company in the financial year 2014 was approximately 1 billion euros. Finally, retailers Just Brands (with an annual turnover of 80 million euros in 2014)\textsuperscript{790} and Scotch & Soda (with an annual turnover of 380 million euros in 2014)\textsuperscript{791} were selected. The choice of Just Brands was made as the retailer assumes a prominent role in the market’s top three of the Benelux T&C companies with 1,500 sales outlets in the Benelux and Germany.

Scotch & Soda\textsuperscript{792} holds over 100 clothing mono-brand stores worldwide, with more than 7,000 additional sales points, mainly for additional products such as accessories, perfume and household products; worldwide it promotes its products as ‘Couture Amsterdam’ and ‘Amsterdam Blue’. Therefore, it is interesting to study whether the company labelling policy is in any way related to the ‘Couture Amsterdam’, especially if the voluntary labelling requirements are different from the abovementioned companies. Due to the fact that Scotch & Soda’s textile products are primarily sold in mono-brand stores, the company is categorised in this segment.

It is hoped that the sample consisting of the abovementioned retailers will give some insight into the labelling policy of at least the larger companies within the T&C industry. The hypothesis is that if these larger companies do not sufficiently comply with labelling requirements, it seems unlikely that smaller companies (for which the costs of compliance are relatively higher) will comply. On the other hand, if these larger companies comply with these requirements they may serve as an example for smaller companies in the T&C industry.

Depending on the division of functions, interviews were held with employees responsible for the textile labelling, primarily the Quality Manager/Quality Coordinator and/or Sourcing Manager of the retail companies.

\textsuperscript{788} Interview Hema, Appendix III. See also <www.hema.nl> <www.hema.be/fr/magasins/luxembourg>, last viewed on 15 June 2015.
\textsuperscript{790} Chamber of Commerce, (Utrecht) The Netherlands, registration number 33241012.
\textsuperscript{791} Chamber of Commerce, (Utrecht) The Netherlands, registration number 34278517.
5.5 Case studies

A more detailed description of the retailers for the case studies is set out below. First, an overview is given of the multi-brand retailers and then of the mono-brand retailers. The following data was gathered from annual company reports, the Chamber of Commerce’s trade register and Bloomberg Financial Services.793

5.5.1 Multi-brand retailers

The companies considered multi-brand retailers are given below.

**Tommy Hilfiger**

The Tommy Hilfiger and Hilfiger Denim brands comprise men’s, women’s and children’s sportswear, denim, accessories and footwear. The global retail sales of the Tommy Hilfiger Group were $6.7 billion in 2014.795 Tommy Hilfiger gets 41% of its sales from North America, 43% from Europe, 10% from Asia, and 6% from Latin America.796 Due to the targeting of different demographic consumer groups, the brand has been subdivided into Tommy Hilfiger and Hilfiger Denim.

Tommy Hilfiger’s demographic targets are 25 to 45 year old consumers with an annual household income of over $50,000. The Hilfiger Denim brand is demographically targeted at consumers aged 25 and 30 years old with a household income of $30,000–$50,000.797

Tommy Hilfiger has a distribution network in over 90 countries and the company has more than 1,400 retail stores throughout North America, Europe, Latin America and the Asia Pacific region. Franchise partners run one third of the stores.798 In its annual CSR report (2014)799, the company required its business partners to comply with legislation, rules and regulations relevant to the conduct of its business and, in particular, with laws of the countries in which workers manufacture its products. When local laws differ or conflict with the company’s policy, the company aims to apply the highest standards. The use of the code of conduct is a prerequisite for all the businesses and business partners in its supply chain.

The company states in its annual report that it has a strong commitment to integrity and accountability, and that it aims to promote and maintain sustainable business practices that take into account the stakeholders’ interests.800 Moreover, the company reports publicly on the CSR

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793 See <www.bloomberg.com> last viewed on 05 may 2016.
794 Tommy Hilfiger is part of the PVH Corp. PVH leverages a diversified portfolio of brands – including Calvin Klein, Tommy Hilfiger, Van Heusen, IZOD, ARROW, Speedo, Warner’s and Olga — and markets them globally. See<www.pvh.com> last viewed on 25 January 2017.
800 Ibidem.
accomplishments and promotes transparency and collaborative work in the supply chain toward better practices.

Dobotex BV (PUMA SE)

Dobotex is a 100% shareholder of the sport lifestyle Company PUMA that develops, produces and distributes PUMA products. The company offers body wear, sports and lifestyle socks and leg wears. The company is the market leader in the sports socks category in Europe with net sales amounting to around €3 billion in 2014. PUMA is a brand centred on sports and so has adjusted its consumer target groups to both younger and more sports-oriented consumers. In its annual report, the company indicated that it regularly requests feedback from its retail partners and consumers in order to improve production.

According to this annual report, the concept of sustainability and sustainable business practices has become a strategic priority and an important part of the company's DNA. Dobotex claims that their understanding of environmental sustainability is based on the 'precautionary principle'. This entails protecting consumers, workers and society from harm by manufacturing safe products in factories while upholding international health and safety standards. Furthermore, it argues that no substances are used or processed which are hazardous or have not yet been proved to be safe to use, taking into consideration the environmental impact from raw material production all the way to the recycling of their products. The company strives to operate transparently.

G-Star Raw

This clothing company produces fashionable and high-quality casual clothing and specializes in making clothing using raw denim (unwashed and untreated denim), with a design influenced by vintage military clothing, which mainly targets youth and students. The company's textiles and clothing are currently available in more than 80 countries worldwide, selling more than 22 million items annually and surpassing $1 billion in annual turnover. The company maintains 300 mono-brand stores worldwide, all of which are run by franchisees, and over 5,500 points of sale. G-Star attracts a wide variety of consumers from all kinds of social, professional and cultural backgrounds. It divides its customers into two different groups. On the one hand, a clientele younger than 30, and on the other hand, consumers between 30 and 50 years of age. The younger consumers are said to choose the firm's 'innovative basics', i.e. casual items. The older consumers are expected to demonstrate similar consumption preferences but to tend to include the more fashion-oriented products in their consumption profile.

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804 Ibidem.
807 See <www.g-star.com>, last viewed on 15 February 2017.
As G-Star does not own or operate any factories, the company collaborates with suppliers. Its code of conduct outlines the minimum social and environmental standard each factory is expected to meet and gives guidelines on this\(^{810}\). In order to verify to what extent its suppliers comply with their code of conduct, G-Star set up a compliance process using a combination of tools. As part of the process, direct suppliers are audited on a regular basis by certified, independent organisations.

G-Star claims to actively work to prevent the use of chemicals that can have a harmful effect on health or the environment\(^{811}\). The basis for monitoring the use of chemicals in G-Star products is the G-Star Restricted Substances List. The company further claims to follow international laws and regulations in this field. Furthermore, it claims to monitor compliance of products and processes taking into account the restrictions in the G-Star Restricted Substances List by making risk assessments, by auditing and by in-company testing of its textile products. G-Star is committed to implementing the Bluesign\(^{812}\) standard, which is a CSR label, in its supply chain\(^{813}\). The latter is an independent standard that guarantees that no hazardous chemicals are used in the entire textile production chain, from the raw materials to the textile manufacture.

**Just Brands**

Just Brands is the name of the design, logistics, marketing & sales organisation behind the brands PME Legend, Cast Iron and Vanguard\(^{814}\).

- **PME Legend** offers lifestyle clothing for men aged between 20 and 40. The company ranks in the Benelux market in the top three in the casual clothing and jeans segment.
- **Cast Iron** offers a casual and ‘dress-up’ denim concept for men aged between 18 and 35.
- **Vanguard** is a casual concept for men, targeting men aged between 25 and 45\(^{815}\).

In order to be able to serve all the segments of the consumer market, Just Brands has developed a range of fashion and lifestyle concepts (swim and sportswear) aimed at a variety of target groups. Just Brands has a ‘Product Manual’ for a supplier, which contains clear production guidelines and also a ‘Code of Conduct’ that all manufacturers must comply with\(^{816}\). The company claims to have based its code of conduct on the ILO’s standard, which would include information on working hours, working conditions and, e.g., the prohibition of sand blasting. Every procurement season (i.e. every two months), the Product Manual is updated and communicated to the manufacturers.

\(^{810}\) The Code is based on the UN Universal Declaration of Human Rights, the ILO Core Conventions, the Ethical Trading Initiative (ETI) Base Code, the SMETA Environmental Criteria and ISO 14000.

\(^{811}\) Interview G-Star Raw, see Appendix III.

\(^{812}\) The Blue sign\(^{8}\) standards set standards and controls an environmentally friendly and safe production and eliminates harmful substances from the start of the manufacturing process. The final textile product meets stringent consumer safety requirements worldwide. See <www.bluesign.com>, last viewed on 25 February 2017.

\(^{813}\) G-Star Raw, G-Star supplier code of conduct, see Appendix III. See also <https://www.g-star.com/nl_nl/about-us/responsibility> last viewed on 15 January 2017.

\(^{814}\) Chamber of Commerce, Utrecht, The Netherlands, registration number 33241012.

\(^{815}\) See <www.justbrands.eu> See company profile, last viewed on 18 December 2016.

\(^{816}\) Interview Just Brands, see Appendix III.
All manufacturers entrusted with production must agree to this Product Manual\footnote{See \url{www.justbrand.nl}, last viewed on 15 February 2017.}. The company representatives visit the factories of the various brands a few times a year in order to monitor compliance. The manufacturers with which Just Brands cooperates are required to sign the Product Manual. The manual contains the REACH regulations, including a list of chemicals that the textiles are not allowed to contain. Furthermore, the textile and clothing products of Just Brands are OekoTex 100 (a third party labelling scheme) certified\footnote{See \url{http://justbrands.eu/en/company/sustainability.html} last viewed on 18 December 2016; See also interview Just Brands, see Appendix III.}. The company monitors compliance with these regulations through random product checks\footnote{Interview Just Brands, see Appendix III.}.

5.5.2 Mono-brand retailers
The companies given below are considered mono-brand retailers.

**Calvin Klein**\footnote{Calvin Klein also is part of the PVH Corp.}

According to the company's profile, its products are manufactured and marketed through an extensive network of licensing agreements and other arrangements worldwide\footnote{See \url{www.calvinklein.com/my/about-us/about-us.html} last viewed on 30 december 2016.}. Product lines under various Calvin Klein brands include women's dresses and suits, men's dress furnishings and tailored clothing, men's and women's sportswear and bridge and collection apparel, golf apparel, jeans wear, underwear, fragrances, eyewear, women's performance apparel, hosiery, socks, footwear, swimwear, jewellery, watches, outerwear, handbags, small leather goods, and home furnishings (including furniture). Global retail sales of products sold under the Calvin Klein brands were approximately $7.8 billion in 2013, of which 20% was generated in Europe\footnote{Annual report Calvin Klein 2013, p. 1-3. \url{https://www.pvh.com/investor_relations_annual_reports.aspx} last viewed on 01 may 2016.}.

Calvin Klein states that it has initiated improvements within the jeans wear business in an effort to improve sourcing and enhance the quality and design of its products\footnote{Annual Report Calvin Klein 2013, p. 4.}. Just like Tommy Hilfiger, the company is part of the PVH Corporation. According to Calvin Klein's annual report of 2013, the PVH group is committed to CSR and promotes human rights and worker safety\footnote{Annual Report Calvin Klein 2013, p. 11.}. In addition, it claims to be committed to the Accord on Fire and Building Safety in Bangladesh's garment manufacturing industry and to abolishing hazardous chemicals from the supply chain by 2020\footnote{Ibidem.}.

**HEMA**

HEMA claims to distinguish itself from other retailers by only creating, manufacturing and selling its own products, ranging from towels to lamps and from underwear to bicycle lights\footnote{See \url{http://www.storebrands.info/impressive-quartet}, last viewed on 15 February 2017.}. The...
turnover of HEMA amounted to €1,077 billion over 2014 of which approximately 40% consisted of apparel827.

It is worth mentioning that the company has set up a consumer panel in which consumers are invited to participate in HEMA research into their products828. According to research conducted by the agency MWM2 data collection, consumers consider HEMA a company, which takes note of its consumers' wishes and develops products in response to them829.

Excellent Retail Brands BV
Excellent Retail Brands owns and operates the fashion formats Coolcat, M&S Mode, Wonder Woman and America Today and is primarily active in the Benelux, France, Germany and Spain. The company has a turnover of €1 billion (2014)830.

All formats have separate management teams and clearly defined target groups ranging from kids aged 6+, teens, students and large-sized women apparel. The Group operates more than 600 shops (mono-brand stores). The company's ambition is to grow independently to 1,000 stores in 5 years, as well as the acquisition of new fashion retail formats831.

Since 2014, America Today has been a member832 of the Business Social Compliance Initiative (BSCI)833, which aims to improve the working conditions in the supply chain. Furthermore, independent third party auditors carry out regular audits to monitor suppliers of their textile products.

One of the company’s formats, Coolcat, was involved in interim proceedings ('kort geding') with newspaper publishers ‘De Persgroep Nederland’ and ‘AD Nieuwsmedia’ concerning the publication of an article by them about, among other things, the involvement of Coolcat in the exploitation of workers, in child labour activities, and in hazardous working conditions in their textile production countries834. This case is extensively discussed further on in this Chapter.

Scotch & Soda
Scotch & Soda currently owns over 110 stores worldwide, and more than 7,000 other sales points. The company markets men's, women's and children's fashion. In 2013, Scotch & Soda turned-over €313 million835.

827 See <www.beurs.nl> last viewed on 05 June 2015.
833 See Glossary.
834 Rechtbank Amsterdam, 11.02.2014, Case number C/13/556826/KG ZA 13-1570 CB/MB. See www. uitspraken.rechtspraak.nl, viewed on 8 May 2015. Cool Cat successfully defended itself by stating that the companies involved adhere to its Code of Conduct and the BSCI regulations and there was no breach of relevant obligations.
The company strives to offer fair, socially fair, healthy and safe conditions for workers in the supply chain. The company’s CSR policy focuses on the working conditions in its Cut-Make-Trim (CMT) factories where the textile products are manufactured\textsuperscript{836}.

Scotch & Soda has been a member of the Business Social Compliance Initiative (BSCI) since 2013\textsuperscript{837}. Furthermore, independent third party auditors carry out regular audits to monitor suppliers of their textile products globally. In case of non-compliance with the BSCI Code of Conduct, an improvement program is started which includes more frequent audits. If the code of conduct is severely violated and the supplier is unwilling to execute improvements, then the contract is terminated\textsuperscript{838}.

5.6 Interview Methodology

Interviews are particularly effective when gathering data on individuals’ perceptions or views and on the reasoning underlying responses. Webley notes that qualitative interviews should be either very loosely structured (the researcher may make use of prompts to steer the discussion through a series of issues deemed important by the researcher) or be semi-structured (the researcher will have some set questions to ask but the majority of questions will be open-ended rather than closed)\textsuperscript{839}.

In order to gain an insight into the (internal) labelling policy of the T&C companies, semi-structured interviews were conducted. The combination of set questions (on the basis of theorems) and open-ended questions allowed me to obtain relevant information on labelling with which to assess the veracity of information disclosures on the textile label, for instance, with regard to the information pertaining to social conditions in production countries, the use of hazardous chemicals, under-labelling, and vanity sizing\textsuperscript{840}. The theorems dealt with hypothetical situations so that respondents did not feel exposed with regard to discussing the company’s labelling policy. Robson\textsuperscript{841} suggests audiotaping and/or videotaping the conducted interviews as it helps to counter accusations that an analysis might have been influenced by the researcher’s values or biases. Moreover, it helps to correct the natural limitations of memory and allows the data to be used in many ways, for example, it sheds light on new theoretical ideas or analytical strategies. Accordingly, the case study interviews were audiotaped.

\textsuperscript{836} See <www.scotch&soda.com> last viewed on 14 January 2017. See also Interview Scotch & Soda, see Appendix III.

\textsuperscript{837} See <http://www.bsci-intl.org> last viewed on 14 January 2017. It unites more than 1000 companies worldwide around one common Code of Conduct and supports them with a step-by-step development oriented system.

\textsuperscript{838} See <http://www.bsci-intl.org/> last viewed on 17 January 2017. See also Interview Scotch & Soda, see Appendix III.

\textsuperscript{839} If the respondent consents, interviews are generally taped where possible to allow the researcher to analyse the full transcript.

\textsuperscript{840} Kumar, J. C. ‘Research Methodology’, Balaji Offset, New Delhi (2008), Chapter 13 and 14.

With respect to theory-building and understanding, Robson outlines three main threats that can influence the results: reactivity, researcher bias and respondent bias\footnote{Ibidem.}.

*Reactivity* refers to a scenario in which the researcher’s presence influences or even interferes with the way respondents react\footnote{Ibidem.}. In order to minimise this risk, the interviews were conducted, whenever possible, in a familiar and comfortable setting, mostly during a lunch meeting. In addition, each of the interviews was preceded by a brief introduction in which the procedure was explained.

The theorems were, as much as possible, despatched prior to the interviews or were provided during the interviews so that the interviewees knew what to expect. The companies were able to prepare themselves and which meant that the interview time could be used efficiently. The interviews lasted between 60-160 minutes. The interviews were conducted in the Dutch language. In order to reduce the loss of meaning and to enhance the validity of this qualitative research, the interpretations have been re-checked by going back to the ‘Coding interview Responses’\footnote{See Appendix II.} and preliminary findings in the source language (i.e. Dutch)\footnote{Van Nes, F., et al. ‘Language differences in qualitative research: is meaning lost in translation?’ *European journal of ageing* 7.4 (2010), p. 313-316.}. Moreover, interview records have been kept in order to make the interpretations transparent, as well as for validating any translation of the recorded findings from Dutch to English\footnote{Professional translation services were provided by Nannan Panday R.. In addition, the help of I. Sueters, Lecturer in Fashion Business English, was solicited.}.

The term *researcher bias* describes the researcher’s own ideas and views that might have an impact on the way he behaves and acts during the actual interview\footnote{Robson, C. & McCartan, K. *Real world research*. John Wiley & Sons, (2016), p. 170-171}. It also involves the risk of asking probing questions and unintentionally steering the interview in a certain direction. The phenomenon of *researcher bias* is further explained below in the section ‘limitations’.

*Respondent bias*, by contrast, means that the respondent intentionally withholds or embellishes certain information to project a different image of a specific situation\footnote{Ibidem.}. A popular way of dealing with these problems and of detecting certain flaws is to use different forms of data triangulation\footnote{Stake, R. E, *The art of case study research*, Sage (1995), p. 35-49.}. Therefore, multiple sources were used to cross-validate the interview findings by including observations of the textile labels and hangtags on the company web store and in the retail store and, as mentioned earlier, by gathering information from annual company reports, the Chamber of Commerce’s trade register and Bloomberg Financial Services\footnote{Bloomberg is a professional information service system for financial professionals with real-time data and analytics on companies and markets. www.bloomberg.com.}. The majority of the retailers allowed access to their labelling manual but did not allow any copies, pictures etc. to be taken.
As mentioned earlier, labelling is considered to be a sensitive subject for the T&C industry as the retailers fear negative publicity. Therefore, theorems were prepared by means of the funnel method so that the least sensitive issues were discussed first. Semantic differentials are used to measure the opinions, attitudes and values of the respondent (T&C retailers) on a ten-point scale. This is a widely applied measurement technique in the information systems field. On the semantic differential, the respondents indicated to what extent there is agreement or disagreement (bipolar scale) on the theorems. In addition, the respondents were asked to give an (unstructured) explanation. Questions about the five labelling requirements and labelling in ‘general’ were all included in the interview. For each category of labelling, three theorems are presented, each with a different purpose.

Following this, the three ‘actions’ and/or ‘omissions’ that were tested in the interviews are:

- **‘Commercial interest’**: a high indication on the points scale might indicate that the respondent puts the commercial interests of the company first and for that reason may agree or may disagree to provide consumers with ‘misleading’ information based on the issues mentioned in the theorems.
- **‘Consumer information’**: a high indication on the points scale might indicate that, on the basis of the issues presented in the theorems, the respondent has customised the labelling information with the aim of providing the consumer with accurate information.
- **‘Knowledge’ (adequate)**: a high indication on the points score might indicate that the company applies the legislation in a correct way and/or the respondent has knowledge of legislation on labelling. A low score obviously indicates that the respondent might have inadequate knowledge of the legislation and/or the company applies the legislation incorrectly.

Per labelling requirement, the three types of theorems are mixed in ranking and general theorems about labelling topics are presented so that the respondents are not aware of the underlying conceptions of the research. The next box gives an overview of the theorems and questions presented and the dilemmas surrounding the labelling requirements:

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853 See Appendix I., theorems 16, 17, 18 and 19.
The semantic differential is intentionally presented directly under the hypothetical case to emphasise that respondents are asked to give ratings, taking into consideration all the aspects of the hypothetical situation hereof. Note that for the purposes of displaying the results in a chart, the ten-point scale is divided into the following:
0 points: No opinion and/or comment
1-2 points: Strongly disagree
3-4 points: Disagree
5-6 points: Uncertain
7-8 points: Agree
9-10 points: Strongly agree

5.7 Limitations

Before delving into the case studies and the findings of the in-depth interviews, the following should be emphasised. As mentioned earlier, researcher bias can result in the asking of probing questions and in unintentionally steering the interview in a certain direction. In order to limit this risk, I have made use of semi-structured interviews. Nevertheless, the interview method, which included asking detailed questions about the labelling requirements, may have influenced the

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interviewees’ response in giving a possibly ‘unprepared’ detailed answer regarding the retailer’s labelling policy. In order to prevent respondent bias, the respondents were assured that their answers would not be held against them as, in general, T&C retailers fear being caught up in negative publicity. By way of reassurance, the option of the respondents’ anonymity was given, but none of the respondents wished to remain anonymous.

5.8 In-depth interviews

The basis of this subsection is formed by in-depth interviews. Per labelling requirement, the opinion and/or labelling policy of the T&C retailers is elaborated on. The accompanying explanation was gathered from the in-depth interviews and labelling manuals. As mentioned earlier, on the semantic differential the respondents indicated to what extent there is agreement or disagreement (bipolar scale) on the theorems in a ten-point scale. Per labelling requirement, a chart is displayed with the outcome of the semantic scale scoring of the retailers. Appendix II shows the coding data of the in-depth interviews.

5.8.1 Care labelling

It should first be pointed out that almost all (7 of the 8 respondents) of the interviewed Dutch retailers assumed that care labelling is based on mandatory legislation. This misunderstanding is most likely caused by the fact that the national industry organisation, MODINT, supplies the GINETEX washing symbols to the retailers and advises them to adhere to the GINETEX washing symbols. Therefore, retailers seem to consider care labelling standards as ‘coming from above’, which may easily be incorrectly assigned to the legislator.

However, when the absence of mandatory legislation in this field is revealed, there is a general consensus among the interviewees that care labelling should not be mandatory. The added value of mandatory legislation is low as, pursuant to all interviewees, it is in the companies’ own interests to make washing instructions clear and understandable to consumers (in order to avoid liability claims of consumers). By contrast, according to one retailer, currently, a clear and understandable wash instruction for consumers is lacking. Moreover, the interviewees claimed that the voluntary care labelling scheme of the GINETEX (washing symbols) is familiar in the European T&C market.

Multi-Brand Retailers

Transparency about the fibre composition of the textile products and care instructions is a must, according to the interviewed retailers. A consistently (sewn-in) permanent label should include care information. In general, the retailers indicate that in case of missing washing symbols the

855 See interview Tommy Hilfiger, Dobotex (Puma), G-Star Raw, Just Brands, Calvin Klein, Excellent Retail Brands, Scotch & Soda, see Appendix III.
856 See interview Tommy Hilfiger, Just Brands, Calvin Klein, Excellent Retail Brands, Scotch & Soda, see Appendix III.
857 Interview Calvin Klein, see Appendix III.
care information should not be copied from a textile product with a similar fibre composition as products may differ in some respects such as design. Interestingly, one retailer was of the opinion that an employee with sufficient knowledge of fibre compositions should be able to indicate the applicable washing symbols and related washing instructions\textsuperscript{858}, whereas the three other retailers conducted their own wash test before placing the product on the consumer market\textsuperscript{859}. Therefore, in practice the retailers check with the manufacturer the applicable wash instructions for the textile product.

Regarding the hypothesis “a clothing importer assumes conveying washing instructions is obligated by law, he adds washing symbols himself. He copies those from two other factories, choosing the ones that best describe the clothing product’s fabric composition”, one of the retailers mentioned\textsuperscript{860}:

“The provision of washing symbols may not be a mandatory obligation. However, in my point of view it would be inexcusable not to provide such information. Customers should at least be informed on how to handle the product.

… An excellent approach, I would say. My initial response is that I would ensure that this information is included. However, in case it is not, this would be a fine solution.”

All in all, the retailers perceived that care information should be based on substantiated care methods as otherwise it would be deemed to be unreliable\textsuperscript{861}.

On the subject of under-labelling, the majority of the retailers consider it inappropriate to under-label the textile product in order to avoid claims of consumers. One of the retailers mentioned very specifically that the inclusion of stricter washing instructions could backfire as, for example, a consumer may consider the indication hand-wash instead of machine-wash on the textile product more time-consuming, thus exerting a negative influence on the consumer’s purchase decision\textsuperscript{862}. The majority also indicated that in the case of under-labelling, the reasons for the indication of a lower washing temperature might be motivated not by liability concerns but rather environmental concerns, e.g., a lower washing temperature benefits the environment. Liability concerns may, however, make retailers furnish the consumer with appropriate information in order to avoid being held liable for damages. An example was given of a T-shirt in their collection. The T-shirt had a vinyl print on the front. Basically, the entire T-shirt can be ironed with the exception of the vinyl print. In order not to be held liable for damages, the care label includes the notification that the entire T-shirt is non-ironable\textsuperscript{863}.

\textsuperscript{858} Interview Just Brands, see Appendix III.
\textsuperscript{859} See interview Tommy Hilfiger, Dobotex and G-Star Raw, see Appendix III.
\textsuperscript{860} Interview Just Brands: “Wassymbolen zijn misschien niet wettelijk verplicht, maar ik vind toch dat je het niet kan maken om deze er niet in te zetten. Je moet op zijn minst weten hoe je het product moet behandelen. “Prima aanpak, zou ik zeggen. Ik zou zelf in eerste instantie zorgen dat het er wel in staat. Maar als het er niet in staat dan is dit een prima oplossing”.
\textsuperscript{861} Interview G-Star, Tommy Hilfiger, Puma, see Appendix III.
\textsuperscript{862} Interview Calvin Klein, see Appendix III.
\textsuperscript{863} Interview G-Star, see Appendix III.
The retailers also indicated that when it comes to the fibre composition and the related care symbols, the fibre composition label must be accurate and substantiated, mainly due to the fact that the import duties are determined on the basis of the fibre composition864.

**Mono-Brand Retailers**

The interviewees were aware of the fact that consumers, in general, adhere to the washing instructions of the textile product, assuming that this information is reliable. With regard to under-labelling, two retailers specifically admitted to under-labelling their products in order not to be held liable for damages865. For example, one of the retailers mentioned adding a washing symbol of 30 degrees to clothing products instead of 40 degrees or even higher washing symbols, regardless of the fibre composition866.

One of the companies stated its desire to comply with legal requirements on care labelling that are applicable within some of the Member States. In the absence of local care labelling legislation, the company adheres to the internationally applicable care labelling system (e.g. ASTM washing symbols). In case of the absence of care instructions on textile products, the information is collected from the manufacturer in order to inform consumers accurately867.

On the subject of providing additional care information, the retailers indicated that the care label has to be leading and that, e.g., an additional care manual may not overrule the regular (set-in) label. One company regards it as important to provide additional information with the aim of educating the consumer about the special characteristics of the product868. Ultimately, consumers and companies benefit from accurate care instructions as they prevent feasible liability or irreversible damage to the product. Additional care information should thus be incorporated into a comprehensive framework according to the interviewees but should not become a substitute for a care label869. All of the interviewees remarked that additional information might be useful to increase sales, and/or to enhance consumer service, and/or to educate consumers870.

**Conclusion**

The graph below shows the total scores on care labelling according to the semantic differential display and the difference between the scores of multi-brand and mono-brand retailers. There is no significant difference between the overall scores of the retailers regarding ‘consumer information’ and ‘insufficient knowledge’. In general, the retailers regard supplying an additional

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864 To this extent, two interviewees argue, the customs authorities require product-testing documentation from the manufacturers; see Interview Just Brands, Scotch & Soda, Appendix III. Moreover, as another interviewee states, in case of a suspected misleading fibre composition, information might be gathered on the basis of the washing symbols; see Interview G-Star, Appendix III.
865 Interview Calvin Klein, Scotch & Soda, see Appendix III.
866 Interview Scotch & Soda, see Appendix III.
867 Interview Dobotex (Puma), see Appendix III.
868 Interview Scotch & Soda, see Appendix III.
869 Interview Calvin Klein, see Appendix III.
870 Interview Calvin Klein, HEMA, Excellent Retail Brands and Scotch & Soda, see Appendix III.
care manual with washing information for each clothing product as a useful action in order to interact more with the consumer and provide the consumer with more information. It is remarkable that the mono-brand retailers score relatively higher on ‘commercial interest’. The reason for this is that two of the three mono-brand retailers revealed that in order to increase the sales volume, they would consider inaccurate labelling to be justified, e.g., instructing machine-wash instead of hand-wash as generally the care instruction ‘hand-wash’ negatively influences the consumer purchasing decision. It should be noted that, regardless of the motivation of the retailers to act in this manner, such an incorrect care labelling practice is misleading consumers, as it is likely to lead the average consumer to make a different transactional decision than he would have made had he been properly informed.

5.8.2 Size labelling
Multi-brand retailers

The CEN (see Chapter 2) has introduced a series of standards related to size designation of clothes intended to replace the existing national standards of the Members States. This has, however, not yet led to a uniform sizing system being applied throughout the EU. Due to the fact that only voluntary size designation systems are applied in the Member States of the EU, and these tend to

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differ from one country to the next, clothing companies can in fact opt for any size system. The retailers mentioned the need for a harmonised size designation system within the EU. At the same time, they emphasised that implementing an EU-wide uniform size labelling system could be difficult as body measurements differ among Europeans, e.g., the Germans are sturdier whereas the Italians have a slender silhouette. According to the retailers, therefore, the size labelling system should be based on the outcome of a body scanning system.

In this regard, a retailer noted:

“In my view vanity sizing is rather odd. Also because I wonder how it actually works. We sell products in various countries and actually each country uses a different size. A European size 36 is not a Chinese size 36. A size 36 in the Netherlands is the same as in Germany. Throughout Europe we definitely use the same size. The various sizes, which are used globally, are actually deceptive. But of course it also depends on the average size in that particular country. A Dutch size 36 will always be different from an Italian size 36. It is difficult to prevent this from happening, because different standards are used for different sizes. The physique of human beings differs extremely from country to country.”

In the view of another retailer, vanity sizing should not be regarded as misleading as no mandatory legislation for sizing provides specific size designations. Furthermore, this retailer is of the opinion that consumers are in any case misled as to sizes on a daily basis in the media, by packaging etc. Therefore, according to the retailer, vanity sizing is of trivial consequence to the requirement to provide consumers with correct information. The same retailer noted that the size designation is based on the company’s target group and sales market. Therefore, size dimensions (in this case inflation of the sizing) differ within the T&C industry. Hence, the retailer indicated that the size designation of a size L of one specific clothing brand is smaller than the regular L size designation, as it is adjusted to the target group (18-35 years) in order to meet their consumer needs.

**Mono-brand retailers**

The majority of the mono-brand retailers were aware of the absence of legislation regarding size dimensions. In the worst case scenarios, companies may decide to designate a clothing product as ‘one size’ without this having any legal implications. As one retailer mentioned:

“It is possible to use one size, it is not deceptive. Consumers can use their common sense.”

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873 Interview Just Brands, see Appendix III.

874 Interview Just Brands, see Appendix III.

875 Interview Scotch & Soda: “One size hanteren kan, is niet misleidend. De consument kan zijn eigen gezond verstand gebruiken”. See Appendix III.
In the consumer market, the ad hoc size of ‘one size’ is applied to certain textile products such as shawls, hats and gloves\(^877\).

In general, the companies indicated that sizing is adapted to the targeted consumer market. The companies have adjusted the sizing of their clothing products to their target groups. The retailers indicated that they recognize the phenomenon of vanity sizing and respect their companies’ views on vanity sizing for commercial reasons\(^878\). The companies thus acknowledge that ‘vanity labelling’ does occur but in their opinion it is not regarded as ambiguous and confusing to the average consumer. In their opinion, ‘vanity sizing’ is harmless as the consumer is able to ascertain the fit by trying on the clothes.

**Conclusion**

In general, it may be concluded that the T&C industry can opt for a standard sizing designation system or create their own sizing system, as legislation in clothing sizing is lacking, which would allow them to determine the fitting themselves. The graph below gives an overview of the total results.

![Graph showing an unbalanced score on 'consumer information' and 'insufficient knowledge'. The unbalanced score on consumer information can be explained as multi-brand retailers, compared](image)

\(^877\) Interview Scotch & Soda, see Appendix III. 
\(^878\) Interview Calvin Klein, see Appendix III.
to mono-brand retailers, provide relatively more comprehensive size information to consumers through varied means, for example, they show a list of size translations on the label of the textile product and they enable access to size designation information by scanning the QR code on the textile label or by visiting the company’s website. The unbalanced score regarding ‘insufficient knowledge’ results from the assumptions of one (mono-brand) retailer that size labelling is based on mandatory legislation, while all other retailers were aware of the fact that size labelling is based on voluntary standards.

Finally, in practice, size designation is commercially being deployed to increase the turnover of the textile company by using vanity sizing. The retailers do not regard vanity sizing as misleading as mandatory legislation on what information should be provided and under what conditions is lacking. In the opinion of the mono-brand retailers, no harm is done if vanity sizing leads to an increase in self-esteem on the part of the consumer. It appears that retailers fail to take into account that vanity sizing might create confusion among consumers as regards the appropriate size. Whereas vanity sizing may thus be misleading, in particular, when consumers are purchasing goods online, this is much less so if the purchase is conducted in a shop as in such a case, unlike country of origin, CSR and chemical substances labels, consumers are (in most situations) able to verify the labelled size information by trying the clothes on. However, when in offline cases the size label matches consumer expectations, the quality of the size information is perceived by consumers to be of high quality. Subsequently, consumers can rely on this information also in case of contracts concluded online. Reliable size information will therefore lead to increasing consumer confidence in purchasing T&C products in situations where they cannot immediately identify the size (such as in the case of e-commerce). In turn, this could lead to a reduction in return shipments of clothing products with a benefit to consumers as well as retailers.

**5.8.3 Country of origin labelling**

**Multi-brand retailers**

The retailers indicated that stating the country of origin is not mandatory within the EU. The retailers operating in an international market furnish extra information regarding the US requirements of textile labelling, noting that the country of origin marking must be indicated conspicuously and be accessible on textile products in the US (e.g., neck label attached in the centre of the neck, in a skirt attached to the inside of the waistband).

The marking ‘Made in …’ on a clothing label does not by definition provide an indication of the country of origin, according to the retailers, as the country where the main assembly took place might be different from the country where the fibre originated from, or from the country where the product was finalised. Nevertheless, the retailers interviewed were of the opinion

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879 See Chapter 4.6.1.

that an obligatory ‘Made in’ marking on the label should be included as an enhancement to the transparency of the supply chain in the textile industry.  

In this regard, one of the retailers specifically mentioned:

“We find this a real problem; we would like to have one label for selling throughout Europe, Asia and America. I am also in favour of communicating the source of your fabric, because it makes things transparent. It is not that difficult to find that out, we know exactly where our cotton originates from”.

The majority of the companies were of the opinion that, seen from a CSR perspective, the country of origin indication might correspond to the standards of production and social conditions applied in the country of origin. Therefore, one of the retailers labels their products with “Made (with respect for people & planet) in … India/Turkey/Portugal/China etc.”.

**Mono-brand retailers**

Just like the abovementioned retailers, the mono-brand retailers noted that the indication of country of origin originates from US law. In their opinion, the country of origin marking should be mandatory – identical to US legislation requirements. The companies stated that they would be willing to start applying a country of origin label on all their textile products in order to provide the consumer with some transparency.

One retailer defined the country of origin as the country of production of the product. The majority of the companies indicated that the origin marking should be disclosed on a textile label as standard information. However, it is up to the companies to disclose additional information on a label, such as ‘developed/designed in Holland and produced in Vietnam’ or ‘washed in Tunisia’, as long as the product was initially conceptualised and designed there; in this particular case, in the Netherlands.

One of the retailers noted:

“Sometimes the requirement ‘country of origin’ goes wrong. That a clothing product is stitched in one country (country of origin) and washed in another country, and the latter becomes the country of origin. Often a supplier delivers the labels. But, sometimes the manufacturers...”

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881 Interview G-star, Tommy Hilfiger, see Appendix III.
882 Interview Dobotex, see Appendix III: “We lopen er nu gewoon heel erg tegen aan, we willen een etiket waarmee we in Europa, Azië en Amerika kunnen verkopen. Ik ben er ook voor dat je de oorsprong van je materialen communiceert, want het is allemaal inzichtelijk. Het is niet dat het heel moeilijk is om erachter te komen, wij weten precies waar onze katoen vandaan komt”.
883 Interview Tommy Hilfiger, Dobotex (Puma), Just Brands, see Appendix III.
884 Interview Just Brands, see Appendix III.
885 COP points out the country where the component parts are manufactured. See Ha-Brookshire et.al. (2012): p. 19-34.
886 Interview Scotch & Soda, Calvin Klein, see Appendix III.
887 Interview Tommy Hilfiger, see Appendix III: “Country of origin gaat soms mis. Dat een kledingstuk in het ene land in elkaar wordt gestikt (country of origin) en gewassen wordt in een ander land die dan de country of origin wordt. Vaak is er een supplier die de labels levert. Maar soms zijn de fabrieken ook zelfvoorzienend en kunnen ze de labels zelf maken. Ze printen dan die labels zelf op een nylon stofje. Dat moet natuurlijk weer gecheckt worden, maar daar kunnen fouten in gemaakt worden. Een spellingsfout bijvoorbeeld in een taal valt nog te overzien maar een spellingsfout in de wasvoorschriften, dan wordt het artikel na productie gecanceld”.

are self-sufficient and they can produce the labels themselves. They then print these labels on a nylon fabric. This has to be checked of course, but mistakes can be made. For example, a spelling error in a language would not be such a big deal, but a spelling error in the care instructions, that is a problem ...”

The production country should be visible on a country of origin label thus reflecting the company’s decision to produce in a specific country and consumers’ right to information. Moreover, the ‘Made in’ label could encourage consumers to make a purchase at a price that reflects the standards of production and style of the country of origin. One retailer explicitly admitted that it would not provide the country of origin information when the country of the manufacturer could have negative connotations, such as child labour and exploitation of employees.

The retailer noted in this regard that:

“[Our company] … never indicates ‘the country of origin’, simply speaking we are against this. And as long as it is not obligatory we shall not mention it. Because, in our view consumers clearly get a specific idea about a country, if you mention the origin. And we do not want that to happen, in our view it is the product that counts and not where it originates. And the other aspects, for example, that people think that something is made in India and, therefore, has been made by children, we have our systems to prevent that from happening. And that people receive a fair wage, for that we all have our CSR managers, that we take care of that ourselves. And we frequently visit these countries to check again whether it happens, whether they comply with the rules, as they apply. Therefore, we state that our product made in Turkey is equal to our product from India or Italy.”

In the view of this retailer, mentioning the country of origin labelling is therefore more misleading than not mentioning it.

Conclusion

In general, the interviewed retailers were in favour of transparency along the supply chain of textile products although such transparency depends on the strategy of the T&C companies. There was a general consensus among the retailers that more transparency and visibility in the supply chain of textile products is necessary, whereas they differed significantly on how to mark the country of origin on a textile label. This is illustrated in the following graph.

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888 Interview Calvin Klein, see Appendix III.
889 Interview Hema, Appendix III: "… vermeldt sowieso geen ‘Country of Origin’, wij zijn daar gewoon in het algemeen op tegen. En zolang het niet verplicht is, vermelden wij het niet. Omdat klanten toch inderdaad naar onze mening een duidelijk gevoel krijgen bij een bepaald land als je dat erin schrijft. En dat willen we niet, wij zeggen het gaat om het artikel en niet waar het vandaan komt. En de andere dingen, van dat mensen bijvoorbeeld denken van dat het uit India komt dan is het door kinderen gemaakt, daar hebben wij onze systemen voordat dat niet gebeurt. En dat mensen een eerlijk loon krijgen, daar hebben wij allemaal onze MVO managers voor, dat wij daar zelf voor zorgen. En zelf ook vaak naar die landen toe gaan om het ook nog eens te controleren, of er volgens de regels gewerkt wordt zoals ze gelden. Dus daarom zeggen wij dat ons product uit Turkije is gelijk aan ons product uit India of Italië."
In general, all of the retailers were of the opinion that the country where the textile product has undergone the last substantial processing or finish on the textile product (e.g. washing) should be indicated on the textile label.

At the same time, a slightly higher score was given by multi-brand retailers on ‘commercial interest’ as they have a strong belief that a clothing label or hangtag such as ‘designed in Italy’ might serve as a useful commercial approach increase sales volumes, even if the label does not indicate the production country. Although the retailers currently do not reveal information about the supply chain of the textile product to consumers, most retailers were of the opinion that consumers are entitled to transparency regarding the supply chain of the product, even if the production process involves several countries.

As such, in their view, reliable information regarding the country of origin of the clothing products should be provided. However, a minority among both mono and multi-brand retailers were of the view that country of origin labelling is not useful but rather misleading for consumers.
5.8.4 CSR labelling

Multi-brand retailers

The majority of the retailers were in favour of communicating environmentally friendly production, using such information tools as the Eco-label sign.

In general, the retailers regarded it as hypocritical, or even an unfair commercial practice, when a company communicates that a product is ecologically produced when in fact only 5% of all products are produced in this manner. The companies indicated that marketing and communication regarding CSR policies of textile companies should pertain to the entire product range of the company instead of a relatively small collection. In this way, stringent CSR policies could strengthen the credibility of CSR labels and facilitate accountability for using sustainable policies by a given company. One of the retailers noted explicitly\(^{890}\):

“And now we are very busy with deciding whether we shall participate in the Better Cotton or Organic Cotton initiative. Although there are still many dark sides to that as it is often produced in countries that are still very corrupt. Certificates can always be received, as long as you pay.”

In the opinion of the companies interviewed, social labels created by companies should be abolished as they confuse consumers, and the resulting plethora of CSR labels prevent consumers from assessing the value of a good CSR label. The content of a marketing campaign should be fair and consistent with what is actually viable within the product range of the retailers\(^ {891}\). One retailer stated that its company complies with CSR requirements for textile products and producers as much as possible. However, it emphasised that it might be difficult, if not impossible, to implement 100% environmentally and socially-friendly components across the entire supply chain of the T&C industry\(^{892}\). According to this retailer, the CSR requirement should be covered by mandatory legislation in this area\(^ {893}\).

On the theorem regarding the use of electronic labelling as an information tool for presenting CSR information, the majority of the retailers considered that the RFID chip is not currently an option due to the relatively high costs of the device\(^ {894}\). These companies emphasised that in the very near future the RFID chip may indeed serve as an information tool in order to enhance the provision of information to consumers. At present, the majority of the retailers involved in the in-depth interviews instead inform their consumers about the performance of the textile product by attaching an additional hangtag with a QR code\(^ {895}\).

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\(^{890}\) Interview Just Brands: “En we zijn nu heel erg druk in de voorbereiding om of we meegaan met een initiatief als Better Cotton of Organic Cotton. Alhoewel daar nog heel veel duistere kanten aan zitten, want het wordt vaak gemaakt in landen waar het nog heel corrupt is. Certificaten krijgen ze altijd wel, als je maar betaalt.”

\(^{891}\) Interview Just Brands, see Appendix III.

\(^{892}\) Interview G-Star, see Appendix III.

\(^{893}\) Ibidem Interview G-Star, see Appendix III.

\(^{894}\) Interview Just Brands, Dobotex, Tommy Hilfiger, see Appendix III.

\(^{895}\) Interview Just Brands, G-Star, Tommy Hilfiger, see Appendix III.
One of the retailers mentioned that by including the QR code on their hangtags consumers can easily scan the code, which would link them to a movie on the product’s manufacturing process and its characteristics on the company’s website\textsuperscript{896}.

**Mono-brand retailers**

In general, it is regarded as good commercial practice when a company communicates its ecological production, even if it concerns only a small percentage of the whole production (5%), as a competitive advantage can be gained. The communication towards the consumers should be honest and reliable as they are critical, because social media is watching, and in order to avoid liability claims. The retailers provide CSR information on their labels with (meaningless) keywords, symbols or buttons, such as a green tree, a green button or raindrops\textsuperscript{897}. A possible reason for this is that they feel compelled to introduce such various statements for fear of otherwise looking uninterested in the environment or other social aims whereas their competitors make use of similar various signs (such as keywords and symbols).

Therefore, just like the multi-brand retailers, the mono-brand retailers regarded mandatory legislation as necessary in order to create CSR labelling that consumers can trust.

Although consumers might be able to collect additional information through the company website, one retailer considered it important to keep it simple, communicating instead with hangtags and leaving out electronic labelling technology as the average consumer might not be familiar with it\textsuperscript{898}.

**Conclusion**

From all the interviews, it is clear that the retailers are fully aware of and acknowledge that unsustainable textile production causes damage to the environment. CSR labels created by the company have no added value as the consumer does not recognise their purpose. No comprehensive information is found alongside the CSR label nor is there a formal control system or audit for checking correct usage. Therefore, the retailers emphasised that in their opinion mandatory legislation in this field is necessary. The next graph gives an overview of the results of the interviews.

The graph shows that there is a difference in opinion among the multi-brand and mono-brand retailers regarding ‘commercial interest’, mainly in the marketing and communication of the fact that only a part (5%) of the textile production is eco-friendly. Mono-brand retailers are of the opinion that the marketing and communication of the 5% eco-production is not misleading and unfair towards consumers. Multi-brand retailers, on the other hand, are of the opinion that the marketing and communication of a partly CSR textile collection should be fair and reliable.

\textsuperscript{896} Interview G-Star Raw, see Appendix III.
\textsuperscript{897} Interview Calvin Klein, see Appendix III.
\textsuperscript{898} Interview Scotch & Soda, see Appendix III.
in order to maintain consumer trust, and that a claim of eco-friendly production where only a small proportion of the textile products is produced in such a manner does not meet these requirements. From a legal point of view, such practice indeed can be qualified as a misleading environmental claim as a 5% eco-production might give the false impression that the textile product is environmentally friendlier than the other T&C products\textsuperscript{899}.

In general, the interviewed retailers regarded the communication on the ecological processes in textile production as relevant on the condition that the CSR label scheme should be substantiated by a certified independent third certification party, including periodic checks and verification of compliance with the requirements set out.

5.8.5 Chemical substances labelling
Multi-brand retailers
The retailers noted that they adhere to the RSL as legislation obliges them to do so. Some of the companies publish the RSL on their website. The retailers remarked that all chemical substances must be removed from the textile product prior to its sale. It is not an option to have a consumer undertake action, such as washing the clothes before wearing them, in order to make sure that all chemical substances have been washed off. The retailers noted that if a consumer returns with a complaint about a product, both the retailer and the manufacturer have to take responsibility. Furthermore, according to the retailers, a consumer might be hypersensitive to the fibre composition and/or specific chemicals of the textile product. This might indemnify the company against responsibility unless it can be proven that the chemical substances in the product have been washed off. It is essential that every chain in the T&C supply chain possess sufficient knowledge of the textile production and of the risks of being exposed to the used chemical substances that may still be present in the (finished) textile product.

In case of uncertainty, the companies’ conduct (basic) tests themselves. The majority of the multi-brand companies interviewed is equipped with equipment to conduct such basic chemical testing on clothing. The companies indicated that prior to sale, textile products are tested due to mandatory legislation in this field (e.g. REACH). In this regard, one retailer mentioned the following:

“… we [company] have anti-bacterial underwear and socks, which also contain biocides. That is added to the finish of the product. We have developed an additional label for this. On this label you have to mention the active substance and you have to indicate where it originates from and what the effect is ....

When it comes to legislation we try to adhere to it, but it takes time. Concerning the anti-bacterial socks, we have had a specific lead-time. Once we have purchased a large stock, it takes a while before the labels have been adjusted. But, currently, it is adjusted for the new collection of socks. We have just started this. Sometimes there is the nuisance of an old collection where labelling does not comply with the new legislation. Then the question is; do you recall the products from the shop? Or do you run the risk of getting caught? We have to take that risk then. I think I can live with that.”

900 Section 8 of REACH regulation details the restriction on certain dangerous substances, and preparations or products, which are manufactured, used and placed on the EU market. Any substance could be restricted in EU, as long as the use of the substance poses an unacceptable risk to human health or the environment. The list sets concentration limits for substances used in chemical formulations during the production and finish of textile materials and trim parts. See <http://www.cirsreach.com/REACH/index.html> last viewed on 15 January 2017.

901 Interview Dobotex, see Appendix III: “.......we hebben antibacterieel ondergoed en sokken, daar zit ook biocidal in. Dat is een finish erover heen. We hebben daar een extra etiket voor ontwikkeld. Daar moet je het actieve bestandsdeel voor noemen en je moet benoemen waar het vandaan komt en wat de werking is. ....Wetgeving proberen we ons altijd zo snel mogelijk aan te houden maar soms vergt het gewoon tijd. Met die antibacteriële sokken dan hebben we een bepaalde doorlooptijd. Als we daar een heleboel van ingekocht hebben dan duurt het even voordat die etiketten aangepast zijn. Maar dat wordt op dit moment wel aangepast voor de nieuwe inkoop van sokken. We zijn er pas nog mee bezig geweest. Wij hebben ook wel eens last van een oude partij, waarvan de labels niet voldoen aan de nieuwe wetgeving. En dan is het gewoon, haal je het dan uit de winkel? Of neem je het risico dat je gesnapt wordt? Dat risico nemen we dan maar. Hier zou ik me wel in kunnen vinden.”
According to the retailers, an additional hangtag issuing a warning about chemical substances used in the special finish of the textile product, such as a coating, might be an option. Such a label could prevent the reputation of a company being damaged when, in spite of the company’s efforts in removing all chemical substances from the textile product, some residue remains. The occurrence of such remaining residue may raise questions among consumers as to whether other textile products may not also reveal the appearance of harmful substances.

**Mono-brand retailers**

The mono-brand retailers were of the opinion that for a product with a special treatment such as a coating or a special indigo dye finish, an additional (warning) hangtag is sufficient. Likewise, they noted that allergic reactions could occur without chemical substances being present in the material. Consumers might be allergic to certain raw materials, such as wool. An allergic reaction does not necessarily imply that the textile product has been poorly manufactured, dyed or chemically processed. However, the retailers emphasise that they adhere to legislation in this field, namely, the RSL list. Therefore, consumers’ complaints are taken seriously with the result that products can be withdrawn from the consumer market to be tested.

**Conclusion**

In general, there was consensus among the retailers that consumer complaints regarding allergic substances in the textile products should be taken seriously and products should be tested when allergic reactions occur. According to the retailers, textile products should comply with the applicable legislation in the field of chemical substances, although a warning label may be in place in case of a special treatment of the product (coating) or the use of indigo dyes, for example. The graph below shows an unbalanced outcome on ‘commercial interest’ and ‘insufficient knowledge’. Regarding whether to provide the consumer with information, there is a difference of opinion among the mono-brand and multi-brand retailers.
In general, the retailers agreed that all chemical substances must be removed from the textile product prior to its sale testing. The unbalanced score on commercial interest can be explained as, in contrast to the mono-brand retailers, the multi-brand retailers regard an additional label with the advice to the consumer to “wash the item before wearing” as not a bad idea. The mono-brand retailers consider it to be essential that consumers should not be exposed to chemical substances in products and so a warning label is unnecessary.

The score difference regarding insufficient knowledge can be explained by the fact that the multi-brand retailers indicated that a warning label is superfluous, as chemical testing must have been carried out prior to the sale of the products.

**5.9 Overall conclusion of field research**

In general, the retailers shared the common opinion that it is difficult to identify the national law applicable in each Member State. On top of this, they were aware that the Commission concluded that no harmonised system for labelling would be introduced at EU level. In order to resolve this issue and due to the lack of mandatory legislation on labelling, a number of companies created their own labelling system, which is actively maintained with various labels and hangtags. As a
result of this practice, I have noticed that a stack of labels and hangtags ends up being attached to
textile products in order to comply with various national legislations in different Member States
and to make sure that the consumer is provided with relevant, accurate and reliable information.\textsuperscript{902}
The retailers assume that they have sufficient knowledge about legislation and voluntary rules in
the field of textile labelling. In case of insufficient knowledge in this field, the interviewed retailers
rely on knowledge and advice of their national industry organisation, in this case MODINT. This
trade organisation also plays a key role in propagating the use of the GINETEX wash symbols (see
Chapter 2) and is active in organising workshops on the topic of labelling.

The fibre composition and care label are considered by the retailers to be the most important
labelling requirements. The retailers, in general, are aware of the mandatory legislation on the
labelling of fibre composition.

There is a common opinion that labelling requirements should remain set-in-labels, even if
technological devices for electronic labelling are adopted. As mentioned in subsection 5.6, in
the interviews three ‘actions’ and/or ‘omissions’ were tested, i.e. ‘commercial interest’, ‘consumer
information’ and ‘knowledge’. A high indication on the points scale on ‘commercial interest’ might
indicate that the interviewed companies scored relatively highly with regard to the commercial
interest they attach to the provision of a particular type of information.

Such a high score on this scale could encourage companies to provide consumers with misleading
information based on the issues mentioned in the theorems. A high indication on the points scale on ‘consumer information’ might indicate that on the basis of the issues presented in the
theorems, the labelling is customised with the aim of providing the consumer with comprehensive
information. A low score, by contrast, suggests that the companies do not aim to provide the
consumer with comprehensive information, which could result in companies not providing the
information consumers need in order to make informed purchasing decisions.

Finally, a high indication on the points scale on ‘knowledge’ might indicate that the interviewed
companies apply the legislation in a correct way and/or the respondent has knowledge of
legislation on T&C labelling. A low score obviously indicates that the interviewees might have
inadequate knowledge of the legislation and/or apply the legislation incorrectly, in which case
there is a substantive chance that consumers are insufficiently informed due to the companies’
ignorance.

In short, a high score on the points scale of ‘commercial interest’ and a low score on the points
scales of ‘consumer information’ and ‘knowledge’ may therefore be indications of potentially
unfair commercial labelling practices.

\textsuperscript{902} Interview Just Brands, Scotch & Soda and G-Star Raw, Appendix III.
The next graph gives an overview of the results.

Based on the above graph, the results indicate the following:

- **Care labelling:** in the opinion of the interviewees, overall, care instructions should be consistent with the material and type of textile product and should not deviate substantially based on the material and type of textile product (under-labelling). However, a relatively high score on ‘commercial practice’ indicates that the commercial interest is put first, so inaccurate wash-instructions, such as machine wash instead of dry cleaning, might be given to consumers in order to increase sales volumes.

- **Size labelling:** a high score on ‘insufficient knowledge’ indicates that the interviewees were not completely certain whether legislation in the field of size labelling is in place. In general, the interviewees were of the opinion that a size designation should be adjusted in accordance with the consumer market, brand identity etc.

- **Country of origin labelling:** this labelling requirement has the highest score of all the labelling types regarding providing consumers with country of origin information as the interviewees mentioned that their country of origin label is generally determined according to the principle of last substantial transformation. Therefore, in their opinion, the consumer is furnished with reliable and adequate information regarding the country of origin. Furthermore, there is a lack of clarity among them about whether other legal requirements on country of origin labelling exist and, if so, how they should be applied.
• **CSR labelling:** the majority of the interviewees were neutral regarding this label requirement, although in their opinion if a company created its own eco-label, this should be substantiated by a third, certified party or the companies should apply for a voluntary standardised labelling scheme.

• **Chemical substances:** the score on commercial interest is relatively high. This is due to the fact that (for marketing purposes) an additional label with advice to the consumer to ‘wash the product before wearing’ is considered to be not a bad idea. Furthermore, the other scores are on average around the centre as due to mandatory legislation on chemical substances the retailers adhere to legislation in this field.

As the overall score on ‘consumer information’ is relatively high, it can be concluded that there was general consensus among the interviewees that consumers are entitled to receive reliable information in order to maintain their trust and, moreover, to prevent negative publicity, especially as media critics are continually monitoring the leading fashion companies.

### 5.10 Assessment of field research findings in light of Unfair Commercial Practices Directive

As the aim of this chapter is to explore the extent to which the T&C industry furnishes consumers with accurate and reliable information by means of labels, the focus of this section is, inter alia, on the fairness of commercial practice. This section scrutinizes the findings of the in-depth interviews with the retailers, analysing the compliance of the revealed labelling practices with the requirements of the UCPD. That is to say, it examines whether the above-described results of the interviews suggest the existence of any unfair commercial practices with regard to labelling of T&C products.

In the first report regarding the application of the UCPD, the EC indicated that the purpose of the UCPD is to ensure that consumers are not misled or exposed to aggressive marketing and that any claim made by traders in the EU is clear, accurate and substantiated, thus enabling consumers to make informed and meaningful choices. As noted in Section 1.2.1, the EC considers that the T&C industry in the EU already offers accurate, relevant, comparable and correct information to consumers that enable them to make an informed purchasing decision.

In Section 5.2, I already indicated that this research cannot provide an answer to the question whether all information that should be provided in order for T&C retailers to comply with the requirements of the UCPD is in fact provided, let alone to determine the accuracy of the information actually provided. Instead, the objective of this research was merely to explore to

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what extent the EC’s assumption is correct by testing the labelling policies of a number of T&C retailers in a number of specific areas. Thus, in light of this field research, the focus of this section is on potentially misleading practices of the traders regarding labelling and the resulting material distortion of the consumer’s economic behaviour.\footnote{Article 5 UCP Directive serves as a stand alone ‘safety net’. See European Commission, ‘First Report on the Application of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 (‘Unfair Commercial Practices Directive’), COM (2013) 139 final, 14 March 2013 final, p.12.}

According to Willett, the UCPD administers a ‘cradle to grave’ regime,\footnote{Willett, C. ‘Fairness and consumer decision making under the unfair commercial practices directive.’ Journal of consumer policy 33.3 (2010), p. 247-273.} which includes the promotion, negotiation, conclusion, performance and enforcement of the contract. As such, it covers the commercial practices of the T&C trader, such as advertising and negotiation at the pre-contractual stage, the actual sale, as well as questions regarding the quality of textile products, delivery, payment and post-contractual aspects such as after sales services. The UCPD thus applies to both the pre-contractual stage and the contractual stage in which labelling of textile products plays a role – at the pre-contractual stage, labelling may concern advertising or similar activities, at the contractual stage, i.e. the conformity standard.\footnote{OJ L 149, 11.06.2005, p. 22–39.} The UCPD includes in its Article 7(4)\footnote{Commission Staff Working Document – Guidance on the Implementation/Application of Directive 2005/29/ EC on Unfair Commercial Practices (SEC (2009) 1666, p.47.} an obligation on the part of traders to disclose information at the marketing stage (promotion) and during the sales process. This obligation should be fulfilled whenever traders extend ‘an invitation to purchase’ to consumers.\footnote{Yan, R.N., Yurchisin, J. & Watchravesringkan, K. ‘Use of care labels: linking need for cognition with consumer confidence and perceived risk,’ Journal of Fashion Marketing and Management: An International Journal (2008-4), p. 532-544.} The Directive lists a number of items that traders need to disclose when ‘inviting’ consumers to enter into a commercial transaction, such as the main characteristics of the goods offered for sale and price.

Still, the question remains to what extent consumers use labels and hangtags as a source of information. As Yan et al. note, the effectiveness of textile labels may remain unknown to the manufacturer. The mere provision of clothing labels does not guarantee that consumers are aware of clothing labels or that they make effective use of them.\footnote{Interview Hema, Just Brands and Scotch and Soda. See Appendix III.} In this regard, it is interesting to note that some retailers indicate that their consumers are invited, on a regular basis, to participate in consumer panels and consumer surveys in which consumers can voice their opinions, among other things, about the information disclosure on labels and hangtags.\footnote{Interview Tommy Hilfiger, Hema, Scotch & Soda. See Appendix III.} Furthermore, the opinion and feedback of the sales departments, which interact with consumers, are included regarding this issue. Based on the outcome of the consumer panel, and consumer surveys and feedback of the sales force, the retailers frequently make substantive changes in the information disclosure on their labels.\footnote{This was noticeable as one of the retailers showed me their labelling handbook, which consisted of hundreds of different labels and hangtags. Frequently, and primarily based on feedback of consumers (and the sales force), labels and hangtags are (re-) designed in line with...}
their new fashion collections\textsuperscript{912}. In my view, as emphasis is being placed on the colour, design etc, i.e. on the marketing effects of the label and or hangtag, this practice shows that labels and hangtags are primarily used as a marketing tool\textsuperscript{913} and not as a tool for the provision of material information to their consumers.

In general, the T&C retailers assume that the provision of their informative textile labels is sufficient to encourage the usage thereof and that all consumers understand and perceive the clothing labels as intended\textsuperscript{914}. When conducting field research, it was evident that the interviewed retailers regarded labels and hangtags as key components of their marketing practices, and therefore as contributing to increasing their sales, rather than as an information tool for the consumer\textsuperscript{915}. In my view, this is hardly surprising due to the fact that the interviewed retailers cover a large consumer market. Moreover, due to the intensity of the competition between these retailers, there is a need to create a competitive advantage, among others, by means of labels and hangtags. For example, one of the retailers mentioned it attaches a gift for the consumer to the label or a hangtag, such as a bracelet or puzzle\textsuperscript{916}. This commercial practice is intended to influence the consumer's transactional decision, especially when the targeted consumers are vulnerable consumers such as children and teenagers. Although this practice may not constitute an unfair commercial practice, the consumer might be distracted from reading the label as attention might be drawn to the added gift on the textile product.

Also noticeable was the fact that the majority of the retailers involved in the in-depth interviews inform their consumers about the performance of the textile product by attaching an additional hangtag with a QR code. The QR code is being used to refer consumers to the company’s website in order for them to gather additional information of the textile product\textsuperscript{917}. Subsequently, consumers might be able to acquire further details about the textile product, such as more precise information about the materials used, the country of production, size indications, care advice, etc.\textsuperscript{918}. In view of the above, it may be concluded that the interviewed retailers strive to convey the necessary information to the consumer. Whether the information provided is accurate, however, cannot be ascertained on the basis of the interviews with the retailers.

Furthermore, in the UCPD an additional level of protection has been established for the benefit of vulnerable groups of consumers, since the test of unfairness then should be applied considering how the practice affects the economic behaviour of a member of that group (Article 5(3) UCPD).

\textsuperscript{912} Interview Scotch & Soda, see Appendix III.
\textsuperscript{913} Bettman, J. R., Payne, J. W., & Staelin, R. ‘Cognitive considerations in designing effective labels for presenting risk information.’ Journal of Public Policy & Marketing (1986), p. 1-28. Bettman, Payne, and Staelin noted in the academic literature that retailers identified a number of aspects that are as well relevant in the context of the marketing of the product by labels for informing consumers, such as the colour, size and format of the label or hangtag, the usage of symbols and the presentation in a comparative format
\textsuperscript{914} Hereby must be noted that only Calvin Klein mentioned the care instructions as confusing. See Appendix III.
\textsuperscript{915} Interview Scotch & Soda, G-Star Raw and Calvin Klein, see Appendix III.
\textsuperscript{916} Interview Scotch & Soda, see Appendix III.
\textsuperscript{917} RFID has not been mentioned as an option to acquire information, due to the currently relatively high cost involved in using this instrument.
\textsuperscript{918} See Appendix III.
Similarly, when a specific group of consumers is addressed or reached\textsuperscript{919} by the T&C retailers, Article 5(2)(b) indicates that national authorities and courts must assess the impact of such a practice from the perspective of the average member of the targeted group.

The average member of the vulnerable or of the targeted group may be more vulnerable to a specific commercial practice than the average consumer in general – as may be the case where elderly persons are targeted – in which case a more consumer-friendly benchmark would be applied than the average consumer test. Where with regard to a particular commercial practice the vulnerable consumer or the average member of the targeted group does not differ from the ‘ordinary’ average consumer, the average consumer benchmark in fact applies. This is, for instance, the case where motorcyclists are targeted with regard to the sale of clothing for motorcycling: motorcyclists are normally not more (or less, AJ) observant than average consumers when purchasing clothing\textsuperscript{920} so in principle the average consumer test applies.

The importance of some labelling requirements for consumers in their transactional decision-making process is obvious, such as fibre composition and information on used chemical substances. These labels are required to be provided by the Textile Regulation and the Biocidal Products Regulation due to the possible health and safety risks, e.g., in case the textile product is treated with biocidal properties\textsuperscript{921}. In relation to this, it should be noted that product safety risks already had to be disclosed under the Product Safety Directive and this obligation has been preserved by the UCPD\textsuperscript{922}. While providing this mandatory information on labels, retailers should ensure that it does not mislead consumers. The findings of my field research reveal that, in general, the interviewed retailers strive to convey the necessary information to the consumer, such as additional care instructions and warning information regarding the breakdown of the used dyes for the textile product in order to protect themselves against liability claims of consumers.

Moreover, the majority of the T&C industry provides the consumer with information regarding sizing and care instructions by labels. An express obligation to disclose this information does not exist but I have noticed that the majority of the interviewed retailers assume that mandatory legislation obligated them to offer care instructions on labels\textsuperscript{923}. Whether the information is accurate, however, cannot be ascertained on the basis of the interviews with the retailers.

As such, the retailers provide washing instructions in order to comply with, as they assume, mandatory legislation. In my view, this may indicate a likelihood of confusion regarding voluntary and mandatory labelling rules. This is a result of the fact that the T&C labelling is mostly part of voluntary (intergovernmental standards) schemes. For instance, care labelling (GINETEX) and size labelling (ISO/EN 13402) standards are voluntarily accepted rules. In setting the standards

\begin{thebibliography}{99}
  \bibitem{919} Article 5(2)(b) of the UCPD, OJ L 149, 11.06.2005, p. 22–39.
  \bibitem{920} Miles Handelsgesellschaft International mbH v. Office for Harmonisation in the Internal Market, judgment of the Court of First Instance (Fourth Chamber) of 7 July 2005, Case T-385/03.
  \bibitem{921} Article 5 GSPD, 2001/95/EC and Article 3 (3) UCPD, OJ L 149, 11.06.2005, p. 22–39.
  \bibitem{922} Article 3 (3) UCPD, OJ L 149, 11.06.2005, p. 22–39.
  \bibitem{923} See Appendix III.
\end{thebibliography}
within the T&C industry, viz. the EN13402 on size designation of clothes, governments have been involved. Some of these intergovernmental standards are soft laws, in other words non-binding declarations, codes of conducts, recommendations etc. This causes confusion among the T&C retailers.

However, in the opinion of the retailers, information pertaining to sizing and care instructions may indeed be ‘needed’ by consumers in their decision-making process, which could imply that this information might be assessed as having an impact on consumers’ transactional decision-making. It is remarkable that in contrast to their previous statements, the retailers still claim, a mandatory care labelling scheme to be unnecessary as in general the T&C industry already provides this information to consumers.

Furthermore, I have noticed that under-labelling does exist as the retailers admit to advising their consumers to wash the textile product on 30 degrees instead of 60 degrees or to undertake a more expensive form of fabric treatment than necessary (e.g. dry cleaning instead of hand-wash), arguably on the grounds of an environmental consideration (a lower washing temperature benefits the environment) or due to fear that the retailer could be held liable for damages. Such a label could then mislead the consumer but then the question remains as to whether the average consumer is likely to make a different transactional decision if the proper wash instruction is known.

The answer to this question could be in the affirmative. Although the average consumer test is not a statistical test, consumer surveys indicate that better consumer information regarding care symbols would impact consumers’ purchasing decisions. Thus, while the trader’s care label might be factually correct, it is likely to be misleading as the average consumer would have been misled as to what the proper care treatment of the product was in a way to cause him to make a different transactional decision.

Surprisingly, some T&C retailers admit also to ‘vanity’ sizing their clothing. However, the retailers interviewed do not regard it a misleading action as in their view no harm is done to the consumer (as it is a positive transactional decision). It is debatable whether this is indeed the case as both a decision to contract and a decision not to contract may be qualified as a transactional decision within the meaning of Articles 6 and 7 UCPD, i.e. regardless of whether such an assessment may lead to any commercial transaction between the consumer and the trader. According to the retailers in case of vanity sizing, an indication on the size labels is placed with reference terms such as ‘slim fit’ or ‘regular fit’. For e-commerce purposes, the interviewed retailers stated that they provide metric size charts on their website in order to guide the consumer on sizing. Finally, they argue that it should be noted that the consumer is able to verify the accurate size by trying on the

924 See Chapter 4.3.4
925 See interview Just Brands, Calvin Klein and Tommy Hilfiger.
clothing product and/or exercising their right to withdraw from the (online) purchase and thus to terminate the sales contract by returning the product in case of a default size. Whereas these objections may to some extent justify the retailers’ conduct, given the relevance of size information for a consumer’s decision whether or not to contract, the absence, ambiguity or inaccuracy of size information will be regarded as a misleading omission or a misleading practice of the trader, as was noted in Chapter 4. Therefore, it may be concluded that this practice of retailers constitutes an infringement of unfair commercial practices law. Currently, the procedure for returning goods is considered time-consuming and the consumer has to bear the costs of returning the incorrectly sized clothes to the trader. As a sanction for using vanity sizing and thus engaging in unfair commercial practices, it would therefore seem reasonable and fair that the retailers would be required to bear these return costs until they provide the proper used size and fit-related information to consumers.

In view of the above, in my opinion, information on size designation and care instructions can indeed be considered as the material information needed to make an informed decision offered for sale. Since mandatory information requirements currently do not exist regarding sizing and care instructions, the introduction of such mandatory information requirements should be considered.

In general, it is emphasised by retailers that the design of clothing and product price are regarded as the most important features (characteristics of the product) when consumers make a purchasing decision. Issues such as social responsibility and traceability are less important to consumers as they seem to rely on the overall fairness of the retailer. The interviewed retailers provide CSR information on their labels using their own, various keywords, symbols or buttons, such as a green tree, a green button or raindrops. However, if some consumers care more about the environment and attempt to purchase only sustainable textile products, then the retailers might be misleading them by creating the impression, in the context of a commercial communication (green leaf pictogram on a hangtag or adding a green button on the clothing product), that their products are environmentally-friendly (i.e. they have a positive impact on the environment) or are less damaging to the environment than competing goods even though this information is not or is only partially true.

Apart from this, in my view, CSR labels created by the company have no added value as the consumer does not recognise the purpose of the aforementioned labels and, as noted in Chapter 4, due to the plethora of CSR labels which are currently in the market. In addition, no comprehensive information along with the conditions for the use of the CSR label is present, nor a formal control.

927 Furthermore, the CJEU decision of 6 July 1995 CJEU 6 July 1995, C-470/93, EU:C:1995:224 (Mars), might be relevant as the CJEU noted that the design of the indication is not misleading as reasonably circumspect consumers can be deemed to know that there is not necessarily a link between the size of publicity markings relating to an increase in a product’s quantity and the size of that increase.

928 Interview Just Brands, Tommy Hilfiger, Calvin Klein and G-Star Raw, see Appendix III.

929 Interview Calvin Klein, see Appendix III.
system or audit for checking the correct usage thereof. In this regard, the UCPD is the main instrument of horizontal legislation for assessing the misleading character of environmental claims as consumers may be influenced by environmental considerations (green button, raindrop etc.) when purchasing the product.

Furthermore, the majority of the interviewed retailers noted that strictly speaking consumers should take more responsibility for their purchasing decisions.

In this regard, in my opinion, the average consumer nowadays can easily obtain information about the characteristics of the product from an online medium or simply by requesting the information from the salespersons in the shop. Standing case law as the ‘reasonably well-informed and reasonably observant and circumspect’ consumer is expected to make a serious effort at collecting all available information on essential aspects when making a transactional decision supports my view.

However, what does that actually mean in markets where products are difficult to comprehend, e.g., where there is a complete lack of insight into the supply chain of textile products? Specifically, in the field of traceability of textile products (i.e. COO labelling and CSR labelling), it has been pointed out by consumer organisations that consumers encounter difficulties in comprehending the origin information of the product as a consequence of the various stages in the international supply chain of textile products.

Therefore, in my view, traceability should become a key aspect at all stages of the supply chain in order to offer accurate information to consumers. Findings from in-depth interviews also reveal that T&C retailers have access to the latter information but do not provide this full and comprehensive information to consumers as they consider the information superfluous (or in my opinion questionable). Moreover, in my conducted field research some interviewed retailers admitted, albeit between the lines, that social injustice and questionable environmental practices might be part of their supply chain (obviously not communicating this information to consumers). At the same time, the retailers pointed out that they are working hard to move away from this state of affairs.

A critical note must be added here. Van Dam makes the point that companies’ responses are almost identical in this regard, which makes it look like they all bought the same ‘PR-do-it-yourself’ kit. In this way, in order for environmental claims to be comprehensive for consumers and most effective in marketing products with an environmental impact, it is imperative that they are clear,

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930 See also case law: C-373/90, EU:C:1992:17 (Nissan); C-220/98 EU:C:2000:8 (Lifting).
931 See also Chapter 3.
932 See also The study of labelling of textile products (2010).
933 See Appendix III.
truthful, accurate and not misleading\textsuperscript{935}. Therefore, the practice of communicating an ecological production, even though only 5\% of the whole production is ecological, might be qualified as an environmental claim. Therefore, any trade-offs or negative impacts of the product by the retailers on the environment must not be hidden, as this may constitute an unfair commercial practice. However, this issue will be raised if the COO information is regarded as ‘material’ information for the average consumer.

Finally, on the use of codes of conduct, the UCPD encourages such use to support the dissemination of fair commercial practices\textsuperscript{936}. It does so, for example, by designating the practice of falsely claiming as misleading to be a signatory to a code of conduct, as well as the practice of undertaking and publicly signalling to be bound by, while at the same time not complying with, firm commitments included in a code of conduct.

A good example to illustrate the relevance of the code of conduct concerns the Dutch case of \textit{Coolcat-AD Dagblad} (see Chapter 5.5.2). In this case, the court considered the following. No evidence substantiated the publication of a news article about the involvement of the textile company Coolcat in child labour and exploitation of children. According to the court, the company was acting in accordance with the retailer’s own code of conduct which ultimately prohibits child labour and exploitation\textsuperscript{937}.

In this regard, I endorse the view of Micklitz that traders can consider themselves secure as long as they adhere to self-made rules (e.g. code of conduct)\textsuperscript{938} and as long as the codes comply with the professional ‘due diligence’ standard by indicating what is right and wrong, fair and unfair etc. However, this does not imply that they automatically act lawfully as additionally it is essential to undertake assessment and to monitor the standards or undergo third-party certification. As long as the claim is substantiated, no infringement of the provisions of the UCPD is occurring. The interviewed retailers mentioned to adhere to their implemented code of conduct (as posted on the company’s website) and that employees are monitored as to whether they are acting in accordance with the code. Furthermore, as a result of the \textit{Coolcat-AD Dagblad} case, the industry organisation MODINT advises their members to abide by their code of conduct.

\textsuperscript{935} Environmental claims, report from the Multi-Stakeholder Dialogue (2013), p. 1-4
\textsuperscript{938} Micklitz, H-W., Stuyck, J. & Terryn, E. Cases, materials and text on consumer law. Hart (2010), p.115.
5.11 Conclusion

This chapter aimed to explore in what way the T&C industry furnishes consumers with information about textile products via textile and clothing labelling.

For traders, marketing serves the legitimate purpose of influencing consumers’ preferences. It may, however, be difficult to draw a strict boundary line between the traders’ legitimate influence over consumers and their illegal distortion of consumers’ economic behaviour. The role of commercial practices in consumer decision-making is recognised in the UCPD as it focuses on whether commercial practices distort or are likely to distort consumers’ economic behaviour, i.e. undermine the consumer’s ability to make an informed transactional decision.

My research reveals a noticeable difference between high-end and mass-market T&C products with regard to T&C labelling. T&C manufacturers of mass-market textiles (low-value textile products) currently do not label their products (with the exception of a size label and obviously the product’s fibre composition). At the same time, luxury products are likely to already have a multitude of labels with information about the textile product. This, however, does not preclude misleading practices of the trader as my field research reveals the presence of issues such as vanity sizing and under-labelling even in the high-end T&C market.

In general, it was noticeable that the interviewed retailers were very reluctant to disclose information, which might cast negative light on them, as the competition among the T&C retailers for consumers is intense. In other words, retailers may not wish to make the information appear less attractive by disclosing, for example, certain risks as to the quality of the product (fading of the colour) or poor social conditions in the supply chain. The interviewed retailers acknowledged this and admitted that questionable social and environmental issues might be part of their supply chain (obviously not communicating this to consumers).

In this respect the UCPD may provide an opportunity to prevent traders from committing misleading omissions by means of standardising labelling practices. Under the UCPD, there is not only a misleading omission when information is not provided but also when it is ‘hidden’, ‘untelligible’, ambiguous or ‘timely’ (Article 7 (2) UCPD). For instance, in order to have a real impact on consumers’ decision making some retailers offer information in a more eye-catching manner by using CSR symbols in the form of a green button or green leaf instead of in written form.

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940 See Article 2(1) (e) of Directive 2005/29/EC.
941 See also Chapter 4.
In some cases, it even is arguable that non-written information might be regarded as ‘unintelligible’ (confusing care symbols and the diversity of the labelling schemes) or perhaps even ‘hidden’ (requested information is only available on the company’s website by scanning the QR-code and/or submitting questions). In other cases, information may not be digested because it is ‘framed’ very much as a formality rather than something to be taken seriously, in case e.g. of the confusing washing symbols, which are not taken into account in the parameters provided by the UCPD.

Regarding the information provision of the interviewed retailers, the issue of an overflow of information on labels should be highlighted as this might confuse the ‘average consumer’. Some of the interviewed retailers provide the consumer with over-information by attaching a bundle of labels and hangtags on the textile products (and/or by providing the information in more than 20 languages on the label of the textile product), which is only legible with a magnifying glass. This overflow of information leads to the fact that the information the consumer actually needs in order to make an informed purchase decision is hidden away among much less relevant information, which may lead to the conclusion that the retailer is committing an unfair commercial practice by giving the consumer too much information that the consumer does not need.

At the same time, in my view, it is relevant to take into consideration that, in general, the consumer market in textile and clothing products is bombarded with promotional information of this type all the time and it may at least be assumed that the material information should be critically reviewed by consumers. Therefore, based on the requirements of professional diligence, retailers should provide material information in a clear and intelligible manner in order not to distort the economic behaviour of the average consumer.

The Court of Justice expressed this view in its case law in the application of the average consumer benchmark. The average consumer needs more than a ‘technical’ standard contract term to realise its meaning and consequences. In my view, for the T&C industry this may mean that the trader in general needs to provide clarity of meaning among the multitude of used care symbols, technical words, size designation schemes and, eventually in case of a CSR product, the features of CSR labelling schemes used on T&C labels and hangtags. The use of electronic labelling as well as the inclusion of an identification number on the textile product label to obtain additional on-demand information, especially via the internet, about the characteristics of the products might be considered. Even if this sort of approach is taken, it is uncertain how much impact accurate information disclosure on textile labels will have in terms of improving the informed decision-making of the average consumer.

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944 Interview and observation textile products Tommy Hilfiger, Calvin Klein, Scotch and Soda.
945 Case C-26/13, ECLI:EU:C:2014:282 (Kásler). The recent judgement in the Kásler case states in the application of the average consumer benchmark in the context if the Unfair Terms Directive (93/13/EC) that the average consumer needs more than ‘technical’ standard contract term to realise its meaning and consequences.
Hence, in my view, on the basis of the average consumer test of the UCPD, it might be argued that all textile and clothing products (including mass-market textile products and high-end textiles) should be mandatorily labelled with accurate information on sizing and/or care instructions as this information is deemed to be necessary for consumers to make an informed transactional decision. Although the consumer test of the UCPD is not a statistical test, it is relevant to note that there is empirical research substantiating my argument\textsuperscript{946}. Therefore, emphasis should be put on the relevance of better information on size and care instruction as this information has the most impact on the purchasing behaviour of the consumer. Based on the full harmonisation character of the UCPD, traders within the EU should comply with this requirement of providing this information to consumers.

\textsuperscript{946} See Chapter 3.3.2.