

Will Greenwashing Cost Your Company the Green?

Mitigating 'Greenwashing' Litigation: Defining the Issue and Identifying Strategies

Article

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Consumers are increasingly environmentally conscious. Companies, especially retailers, are subject to increased demands for transparency and accountability regarding the sustainability and eco-friendliness of their products. This heightened awareness has resulted in a new wave of litigation related to false advertising of sustainable products, services, and practices.

What Is Greenwashing and How Is it Regulated?

Greenwashing occurs when an inflated or outright false statement is made about the environmental benefits of a product, service, or business practice—for example, when companies charge a premium for goods or services that are represented as “sustainable.” This includes the use of buzzwords such as “non-toxic,” “plant-based,” and “sulfate-free.” Falsely claiming that products are environmentally friendly may be deceptive and lead to unwanted litigation.

Nationwide, there is a push of state and federal legislation being introduced to address greenwashing.

How Are Greenwashing Claims Being Framed?

Greenwashing litigation tends to take the form of a class action. Assuming all the requirements to certify the class are met, the underlying cause frequently includes fraud, deception, unjust enrichment, deceit, or breach of express warranty. Federal courts in California, Illinois, and New York have already tackled such cases.

In the Illinois case *Rawson v. Aldi*, a class action lawsuit alleged that a popular supermarket chain deceptively marketed its Atlantic salmon products. The lawsuit alleged that the phrase “Simple. Sustainable. Seafood.” on the product’s packaging was deceptive because it led consumers to incorrectly believe that the salmon was sustainably sourced. The court agreed with the plaintiff that it was

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plausible for a reasonable consumer to come to this conclusion, *even with* the presence of a Best Aquaculture Practices certification label on the product. Thus, the court permitted plaintiff's claims under the New York General Business Law statute, breach of express warranty, and consumer protection statutes to proceed. Although the suit was dropped after Aldi agreed to change the labeling on the product, the damage—and the expense to defend the suit—was done.

How to Mitigate Potential Greenwashing Liability?

To protect against potential liability—and build trust with consumers—companies need to be vigilant and adopt a series of strategies to mitigate potential liability.

- **Ensure all claims are accurate.** Make precise claims and avoid vague or ambiguous statements. Companies should only make “green” claims that are substantiated with relevant data and evidence. They should also be mindful of jurisdictions that outright prohibit certain environmental claims.
- **Foster transparency in communication.** Communicating detailed and clear information is critical when marketing “green” products, services, or practices. Companies should avoid blanket statements and instead explain the specific steps taken towards environmental initiatives. It is equally important to acknowledge environmental limitations where applicable.
- **Align with regulatory guidelines.** Navigating environmental regulations is not easy. Companies should keep abreast of regulatory changes and consult with legal counsel to interpret and comply with those regulations.
- **Conduct internal audits.** Proactively conducting internal audits can help identify potential risks before they escalate. Regularly reviewing communications, packaging, and advertisements for accuracy is essential for continued compliance.

There is a delicate balance to strike between the potential benefits of making “green” claims and potential liability for making false or overstated claims. However, the risks can be mitigated.

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