

*Collegio Italiano dei
Consulenti in Proprietà Industriale*

A transatlantic dialogue on IP

Tackling Greenwashing Across the Atlantic: Legal Frameworks in Europe vs. the USA

The Legal Framework in Europe

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FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FEDERATION
VON PATENTANWÄLTEN

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DEFINITION OF “GREENWASHING”

1983-1986, Jay Westerveld

He found himself considering the contrast between an “ecological” claim and the heavily impactful hotel activities on the environment in the Fiji Islands



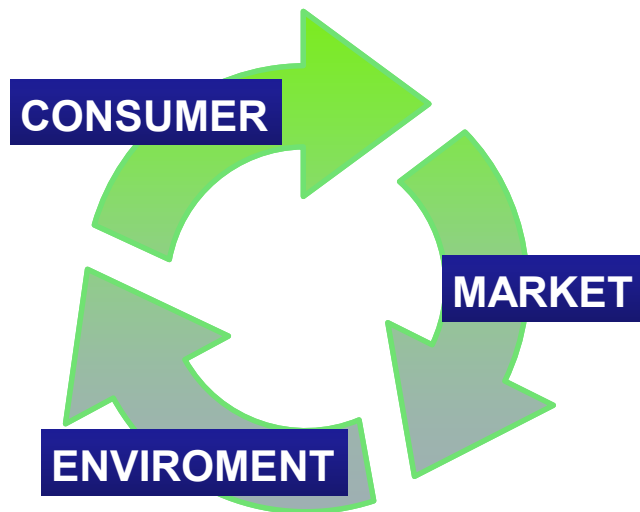
Appear “green” to gain an advantage

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DEFINITION OF “GREENWASHING”

in the EU legal perspective

Environmental statements, claims, omissions, product representations.. which are misleading for the consumer and his purchasing choice.



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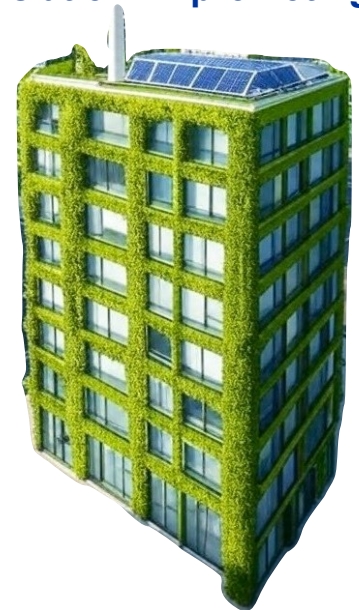


An **economic** and **industrial** plan that also involves **more precise and efficient legislation** for **promoting and protecting the green behaviour of the EU consumer**.
zero emissions by 2050.

Directive (EU) 2024/825 of 28 February 2024

Amended

Directive on Unfair Commercial Practices - Directive 2005/29
Consumer Rights Directive - Directive 2011/83



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EU LEGAL FRAMEWORK

Directive (EU) 2024/825

Empowering consumers for the green transition through better protection against unfair practices and through better information.

27 September 2026.



- * **Misleading actions:** false information and untruthful statements (including overall presentation) capable of deceiving the average consumer choices...
- * **Misleading omissions:** a commercial practice that omits material information that the average consumer needs to take an informed transactional decision.

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EU LEGAL FRAMEWORK

The **average consumer**: someone who is **reasonably well-informed**, reasonably **observant**, and **circumspect**, taking into account social, cultural and linguistic factors (Recital 18 of Directive 2005/29)

EUCJ - Case C-646/22 - Necessary to balance the need for consumer protection with the recognition of typical consumer behaviour. The average consumer (reasonably well-informed and observant) has to be considered as also potentially having cognitive biases that might influence his decision.

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EU LEGAL FRAMEWORK - Directive (EU) 2024/825 - “Empowering”

* Enhanced Consumer Information Requirements

Traders are now obligated to provide **clear**, **relevant**, and **reliable** information regarding the environmental and social characteristics of products. This includes details about product lifespan, reparability, and circularity aspects, enabling consumers to make more informed and sustainable purchasing decisions.

(Amendments to Directive 2011/83)



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EU LEGAL FRAMEWORK- Directive (EU) 2024/825 - “Empowering”

* Prohibition of Misleading Environmental Claims:

- **generic environmental assertions** that lack substantiation

“ECO-FRIENDLY” .."MADE WITH RECYCLED MATERIAL"

- **sustainability labels** not based on certified schemes or established by public authorities.

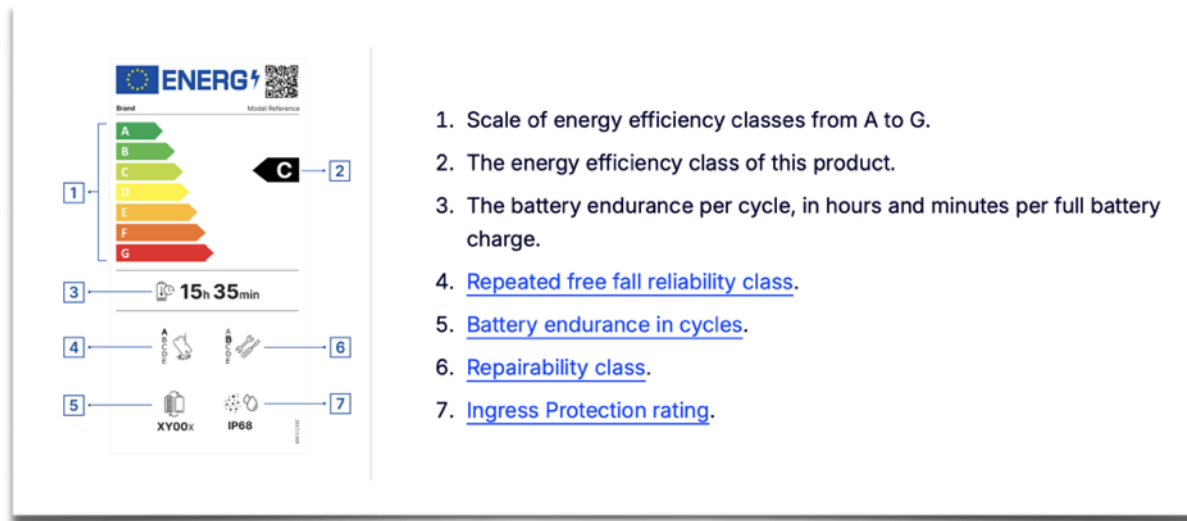


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EU LEGAL FRAMEWORK -

The **Ecodesign regulation** is an implementing measure of Directive 2009/125/EC. It amends Commission Regulation (EU) 2023/826

Smartphones and Tablets Energy labelling and ecodesign requirements will apply to these products from June 20, 2025.



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Enforcement - National Authorities

Member States are required to introduce effective, proportionate, and dissuasive sanctions.

Italy : **AGCOM / AGCM** - Relevant monetary sanctions and possible suspension of the business activity.

Basis : Article 21, Italian Consumer Code (still in line with the EU Consumer Directive) - **ENI case of 20 December 2019 n. 28060.**

5 million euros (i.e., the maximum fine) to the company Eni S.p.A. for the dissemination of misleading advertising messages aimed at promoting the fuel “**Eni Diesel+**,” which was **defined in advertising communications as a “Green Diesel”**

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Enforcement - National Authorities - Italy : **AGCM**

ENI case of 20 December 2019 n. 28060.

The Council of State (2024) has definitively established that **no unfair commercial practice** was implemented by Eni to the detriment of consumers and that the charges at the time made by AGCM are to be considered unfounded, **disavowing the principle that terms such as green and the like can never be associated with products considered, by their nature, to have zero impact on the environment.** Rejected the charge of deceptiveness regarding the use of the terms “green,” “green” and ‘renewable’ for the HVO (Hydrotreated Vegetable Oil) component of “Diesel+”



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Enforcement - National Authorities - Italy : AGCM

GLS case of 21 January 2025 n. PS12525 – (8 million EUR fine)

“Climate Protect” — an alleged pro climate and environment project. -

Misleading Environmental Claims: GLS used vague and unverifiable environmental claims in its marketing confusing “emission offsetting” with “emission reduction” and falsely implying comprehensive climate neutrality

Unfair Imposition of Climate Protect Fees: GLS imposed a mandatory "Climate Protect" surcharge on clients, without obtaining explicit consent, often using mechanisms like implied consent or non-transparent communication.

Lack of Transparency and Overcharging: The fees collected from customers were significant, GLS profited from the program rather than sharing the financial burden, contrary to its communications.

Inaccurate Certification and Claims: At the time of launching the initiative, GLS did not possess valid certifications proving CO₂ offsetting, despite suggesting otherwise.

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EU LEGAL FRAMEWORK - THE OTHER RULES - TRADEMARKS

The EUTMR (REGULATION (EU) 2017/1001)

Provides **protection against deceptive European Union trade marks** both as an absolute ground for refusing their registration [Article 7(1)(g) EUTMR] and after registration by allowing such marks to be revoked [Article 58(1)(c) EUTMR] or declared invalid [Article 59(1)(a) EUTMR] upon application of a third party at the Office.-

Article 7(1)(g) EUTMR provides that marks that are of such a nature as to deceive the public, for instance, as to the nature, quality or geographical origin of the goods or services, will not be registered.

On the other hand, for a mark being truthful and clear might led to descriptiveness.

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EU LEGAL FRAMEWORK - THE OTHER RULES - TRADEMARKS

“BIO-INSECT SHOCKER”

For biocidal preparations for use in manufacture in Class 1 and biocides in Class 5.

The prefix ‘Bio’ refers to the idea of environmental protection, the use of natural materials or even ecological manufacturing processes; it gives the impression that the products are natural, do not harm health and are environmentally friendly. This is a quality that biocidal products can not have by definition. This is supported by the specific Regulation regarding biocidal products (Regulation No 528/2012). Therefore the mark was considered to be deceptive for biocidal preparations for use in manufacture in Class 1 and biocides in Class 5.

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THIS PRESENTATION IS.... **ECO-FRIENDLY**...OR **NOT**

0,5 kg of CO₂e is equivalent to:



–3 km of driving



💡–140 hours of
a LED light bulb



↓ 60 full charges
of a smartphone



☕–10 cups of
coffee



✈–3-4 minutes
of flight



🧺–1 laundry load
at 60°C

THANK YOU

