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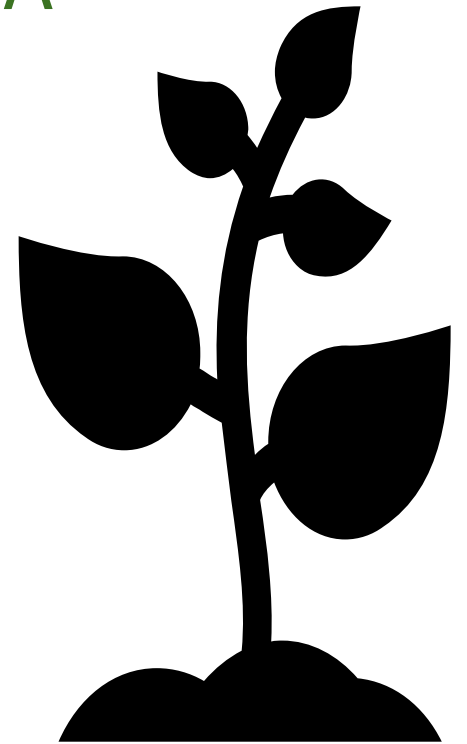
Tackling Greenwashing Across the Atlantic: Legal Frameworks in Europe vs. the USA

THE LEGAL FRAMEWORK IN THE UNITED STATES

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AGENDA

01. Introduction: What is Greenwashing?
02. The Seven "Sins" of Greenwashing
03. Greenwashing in the US: Examples and Trends



01.

What is Greenwashing?



Definition

"The deceptive marketing practice used by companies to portray their products, services, or overall operations as environmentally friendly, when they are not."

(UN Definition)

Why it Matters: Erodes trust, hinders genuine sustainability, impacts consumer choices

02.

The Seven "Sins" of Greenwashing

- **Hidden Trade-off:** Highlighting a small green attribute while ignoring significant environmental harm elsewhere (e.g., "recycled content" on a product made in a highly polluting factory).
- **No Proof:** Making environmental claims without verifiable evidence or third-party certification.
- **Vagueness:** Using broad, undefined terms like "eco-friendly," "natural," "sustainable" without specific details.
- **Irrelevance:** Boasting about something legally required or irrelevant to the product (e.g., "CFC-free" when CFCs are banned).
- **Lesser of Two Evils:** Highlighting a slightly "greener" option within an inherently unsustainable product category (e.g., "organic cigarettes").
- **Fibbing:** Outright false environmental claims.
- **Worshipping False Labels:** Creating fake certifications or labels that appear legitimate.



03. Greenwashing in the US

Federal Regulatory framework:

- Federal Trade Commission Green Guides
- Federal Trade Commission provisions on misleading advertising.
- Securities and Exchange Commission oversight

State-level Regulatory framework:

Some U.S. states have introduced their own rules to tackle greenwashing, that operate in parallel with the Federal regulatory framework.

- Growing body of case law from consumer class-action lawsuits.

Federal Trade Commission

What is the FTC? is an independent US government agency established to protect consumers and promote competition in the marketplace.

Purpose: The FTC's mission is protecting the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education.

Federal Trade Commission: Green Guides

The guidelines are not law, but set forth best practices.

The Green Guides were last updated in 2012, before **greenwashing** became a mainstream focus.

In response to changing market conditions, the FTC began revising them in 2023.

By 2025, the updated Green Guides set stricter requirements for companies making environmental claims, including:

- 1. Specific Language:** Broad claims like “green” or “eco-friendly” must now be backed by clear evidence and details.
- 2. Recyclability and Compostability:** Companies must accurately state if their products can be recycled or composted, and in what conditions.
- 3. Carbon Neutrality Claims:** Businesses must prove and disclose how they achieve carbon neutrality, including details about carbon offsets.





Federal Trade Commission: Prohibition on Misleading Advertising

Section 5 of the Federal Trade Commission Act (FTC Act) prohibits "*unfair or deceptive acts or practices in or affecting commerce*".

This broad prohibition encompasses a wide range of deceptive and unfair practices, including misrepresentations, omissions, and misleading practices.

Applies to all businesses, including banks and financial institutions, that engage in commerce.



Federal Trade Commission: Enforcement Authority (Section 5 FTC Act)

Section 5 also empowers the FTC to take action against misconduct.

The FTC has the authority to:

- investigate and prosecute businesses engaged in unfair or deceptive practices,
- issue cease and desist orders,
- seek civil penalties, and
- pursue other remedies.

Specifically, the FTC can impose monetary penalties for deceptive advertising practices.

FTC Enforcement Examples

Background: In 2022, the FTC filed a complaint against two U.S. retailers, **Kohl's** and **Walmart**, for false claims.



Issue: Both companies advertised certain products, such as clothing and bedding, as being made from eco-friendly bamboo fibers. Yet, the items were made of rayon -- a semi-synthetic fiber that requires toxic chemicals to produce.



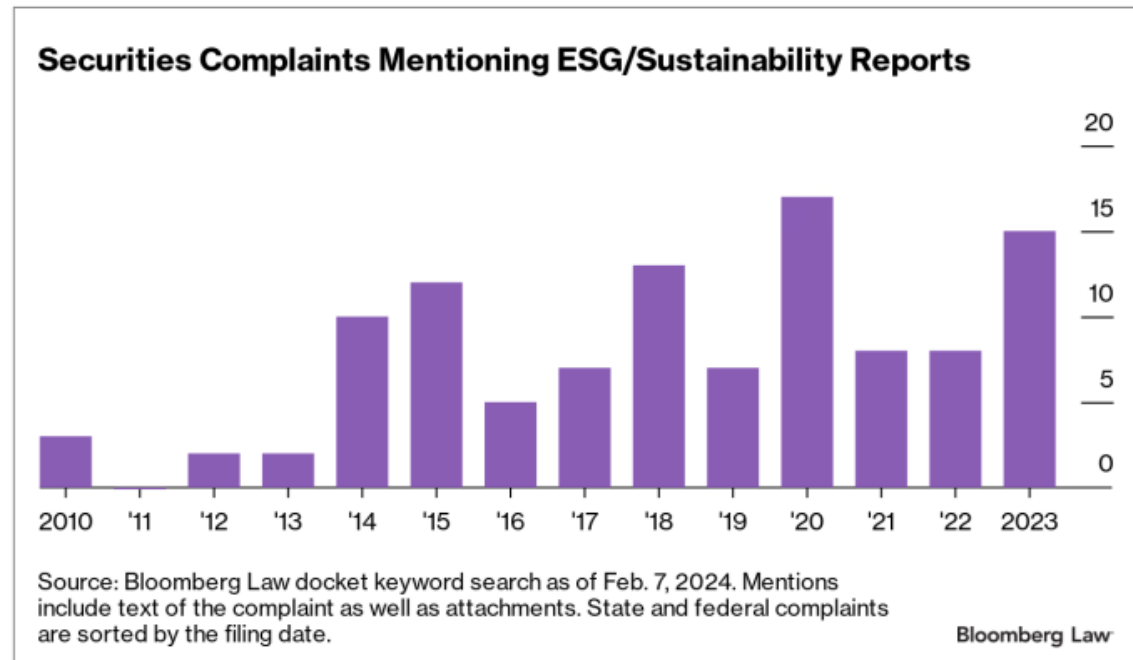
Procedure: The FTC's Penalty Offense Authority enables the agency to seek civil penalties provided that: 1) the company knew the conduct was unfair or deceptive in violation of the FTC Act; and 2) the FTC had already issued a written decision that such conduct is unfair or deceptive. The complaints and proposed orders were filed by the U.S. Department of Justice on the FTC's behalf. Consent orders have the force of law when approved and signed by the District Court judge.

Result: Kohl's and Walmart were ordered to stop making deceptive green claims or using other misleading advertising, and to pay penalties of \$2.5 million (**Kohl's**) and \$3 million (**Walmart**).

Securities and Exchange Commission

What is the SEC? an independent agency of the United States federal government, whose primary purpose is to enforce laws against market manipulation.

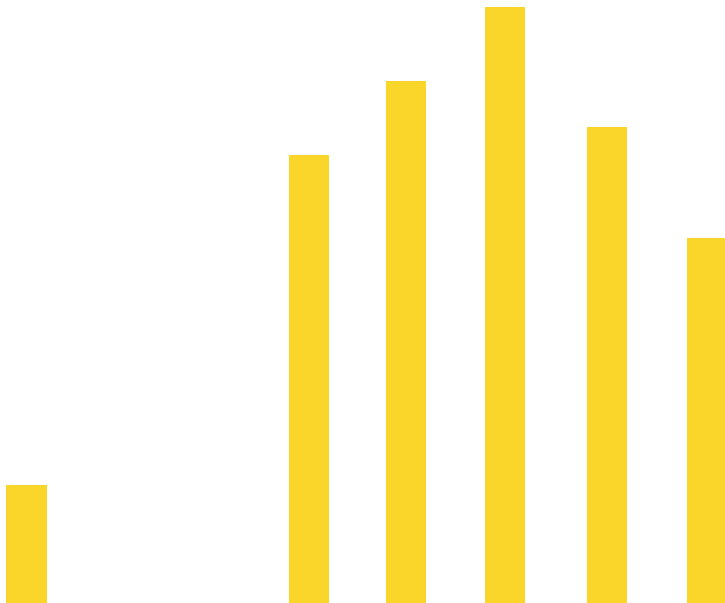
Purpose: The SEC's mandate is to protect investors and it achieves this by taking enforcement actions against a variety of corporate misdeeds, such as the filing of materially misleading or false statements with the agency or failure to enforce policies.



Securities and Exchange Commission:

Enforcement Authority

The SEC has taken at least three **greenwashing/ESG representation** enforcement actions in the last few years



1. *SEC vs. Goldman Sachs (2022)*: Goldman Sachs allegedly failed to adopt policies regarding ESG-related investments and, once they were adopted, failed to implement them properly.
Settlement Penalty: \$4 million.
2. *SEC vs. BNY Mellon Investment Adviser Inc. (2022)*: BNY Mellon allegedly represented that its Overlay Fund Investments underwent an ESG quality review for all investments but did not subject some investments to that review.
Settlement Penalty: \$1.5 million.
3. *SEC vs. DWS Investment Management Americas Inc. (2023)*: the DWS ESG policy stated that research analysts included material ESG factors in valuations and decision-making processes. DWS allegedly failed to adequately implement the policy through research or compliance, rendering the public disclosures of the policy misleading.
Settlement Penalty: \$19 million.



To the State Courts!

Class-action Lawsuits

Back to the Green Guides: aren't binding on the FTC or the public—meaning that enforcement actions can only lend limited insight into the types of greenwashing stakeholders are challenging

Consumers are leveraging state law to bolster their claims under the Green Guides. Three jurisdictions are leading the way:

- **Missouri + Massachusetts**: permit courts to consider the interpretations provided by the FTC Green Guides when deciding whether a trade practice is unfair
- **California**: state law expressly integrates the Green Guides

Consumers also base greenwashing litigation claims on other state-law regulations, e.g. fraud, false statements (**Maryland + Michigan**).

Source: Bloomberg Law, 2024 Report
ESG Litigation: Greenwashing and other Risks



FTC GREEN GUIDES IN ACTION

MISSOURI

Merchandising Practices Act (MPA) prohibits parties from advertising products through the use of unfair practices in Section 407.020. Then, 15 C.S.R. 60-8.020 defines “unfair practice” under the MPA as one that *“offends any public policy as it has been established by ... the FTC, or its interpretive decisions.”*

No decisions yet on Greenwashing.

Pending Cases:

Sally v. H&M

Docket No. 4:23-cv-01451

MASSACHUSETTS

Consumer Protection Act prohibits unfair practices (under G.L. c. 93A, § 2) and clarifies that courts should be guided by the FTC’s interpretations of Section 5 AND federal court interpretations of Section 5.

Decisions on Greenwashing:
- *Keurig Dr. Pepper* (2021)

Pending Cases:

Dorris v. Danone Waters

Docket No. 7:22-cv-08717

Woodiwiss v. Berkshire:

Docket No. 3:23-cv-30068.

CALIFORNIA

California Environmental Marketing Claims Act 2024 (BPC § 17580 -17580.5) makes it unlawful to make untruthful, deceptive, or misleading environmental marketing claims, whether explicit or implied (+ those consistent with the FTC Green Guides)

+ **Consumer Legal Remedies Act, False Advertising Law, Unfair competition law**

No specific decisions yet on Greenwashing from the EMCA.

Pending Cases:

Garvey v. S.C. Johnson & Son

Docket No. 4:23-cv-01518

Weingartner v. Colgate

Docket No. 3:23-cv-04086

FRAUD IN SUSTAINABILITY REPRESENTATIONS

MARYLAND

Consumer Protection Act provisions against fraud

Pending Case:

Filed Nov 2023

Zajac v. United Airlines: Docket No. 8:23-cv-03145.

Issue: consumer plaintiff alleges that United Airlines's representations that the airline is "100% green" and uses sustainable fuel are false, because – according to the plaintiff – fossil fuels account for most of the airline's fuel.

MICHIGAN

Consumer Protection Act provisions against fraud

Pending Case:

Filed Nov 2023

Simijanovic v. KLM:

Docket No. 5:23-cv-12882

Issue: The consumer plaintiff alleges that KLM's climate-related corporate targets, sustainability resolutions, biofuel usage, and "fly responsibility" representations are misleading because any environmental benefits from KLM's activities—such as its alleged 0.2% use of biofuel—are negligible.

Summary

The regulatory framework in the US is multi-tier

Federal level, mostly handled by Agencies:

- Fair Trade Commission
- Securities & Exchange Commission

State level, addressed by a wide variety of state laws, which are primarily enforced by consumer plaintiffs in courts, usually in the form of a class action lawsuit

Bottom line: companies should expect to be held accountable for representations or statements regarding their company or the company's products



Thank You! Questions?

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