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**Greenwashing and Corporate Accountability: A Comparative
Legal Analysis of the Greenwashing Phenomenon in the EU,
US, and Brazil**

Dissertation to obtain Master's Degree in Law, in
the specialty of Law and Management

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ANTI-PLAGIARISM STATEMENT

I hereby declare that the work I present is my own work and that all my citations are correctly referenced and acknowledged. I am aware that the use of unacknowledged extraneous materials and sources constitutes a serious ethical and disciplinary offence.

Lisbon, 15 March 2025

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This dissertation adheres to the citation guidelines of the fourth edition of OSCOLA (Oxford University Standard for the Citation of Legal Authorities).

ABSTRACT

Greenwashing has emerged as a significant challenge in the contemporary global economy, as corporations increasingly employ deceptive environmental claims to enhance their public image while failing to adopt substantive sustainability practices. This thesis's main idea is to analyse the role of the legislature and judiciary in combating greenwashing from a unified perspective, ensuring consistency in the analytical framework across different jurisdictions.

In this sense, a comparative legal analysis of greenwashing regulations and case laws in the European Union, the United States, and Brazil was conducted, examining how different jurisdictions define, regulate, and enforce legal frameworks against misleading environmental claims.

The study explores key legislative instruments, including the EU Green Claims Directive, the U.S. Federal Trade Commission's Green Guides, and Brazilian consumer protection laws, highlighting the evolution of enforcement mechanisms and judicial decisions that shape corporate accountability.

The analysis reviews legal cases, such as KLM's misleading sustainability marketing, Katjes' environmental claims in Germany, Danone Waters of America's deceptive recycling commitments, and Brazilian cases adjudicated by CONAR and civil courts. The research compares these regulatory approaches and evaluates how greenwashing litigation impacts corporate behaviour, financial risks, and reputational damage.

By adopting this comparative approach, the study aims to demonstrate how different legal frameworks respond to greenwashing based on their regulatory priorities—consumer protection in the EU and Brazil and financial market integrity in the US. This distinction is essential to understanding the effectiveness and limitations of each system and identifying potential harmonisation trends in global efforts to combat greenwashing.

As international legal frameworks evolve to impose stricter penalties on deceptive environmental marketing, this thesis underscores the growing legal exposure for corporations engaging in greenwashing. The findings suggest that while the EU is moving towards stricter enforcement, the U.S. legal system already applies substantial financial penalties. Brazil remains in the early stages of climate litigation, particularly regarding carbon credit fraud and misleading sustainability claims. The study contributes to legal

scholarship by examining how legal frameworks influence corporate greenwashing strategies and how regulatory convergence may enhance global enforcement mechanisms.

Keywords: Greenwashing, Environmental Law, Corporate Accountability, Consumer Protection, Climate Litigation, Comparative Law, EU Green Claims Directive, Federal Trade Commission, CONAR, ESG Regulation.

RESUMO

O greenwashing tem se tornado um desafio significativo na economia global contemporânea, à medida que empresas utilizam alegações/propagandas ambientais enganosas para melhorar sua imagem pública sem adotar práticas efetivas de sustentabilidade.

A ideia central desta tese é analisar o **papel do legislativo e do judiciário** no combate ao greenwashing a partir de uma perspectiva unificada, garantindo coerência no quadro analítico entre as diferentes jurisdições.

Esta dissertação conduz uma análise comparativa dos marcos regulatórios e da jurisprudência sobre greenwashing na União Europeia, Estados Unidos e Brasil, investigando como diferentes jurisdições definem, regulam e aplicam sanções contra práticas enganosas de marketing ambiental. O estudo examina instrumentos legislativos-chave, como a Diretiva Europeia de Alegações Ambientais (Green Claims Directive), os Green Guides da Comissão Federal de Comércio dos EUA (FTC) e a legislação brasileira de proteção ao consumidor, destacando a evolução dos mecanismos de aplicação e decisões judiciais que moldam a responsabilidade corporativa.

A pesquisa revisa casos emblemáticos, incluindo as práticas enganosas da KLM em sua campanha sustentável, as alegações ambientais da Katjes na Alemanha, e os compromissos de reciclagem da Danone Waters of America, além de casos brasileiros analisados pelo CONAR e pela justiça cível. Ao comparar essas abordagens regulatórias, o estudo avalia como os litígios de greenwashing afetam o comportamento corporativo, os riscos financeiros e os danos reputacionais das empresas.

Ao adotar essa abordagem comparativa, o estudo busca demonstrar como diferentes marcos jurídicos respondem ao greenwashing com base em suas prioridades regulatórias

— a proteção do consumidor na União Europeia e no Brasil, e a integridade do mercado financeiro nos Estados Unidos. Essa distinção é fundamental para compreender a eficácia e as limitações de cada sistema, bem como para identificar possíveis tendências de harmonização nos esforços globais para combater o greenwashing.

Com a evolução dos marcos jurídicos internacionais para impor penalidades mais severas – ou expor as empresas que incorrem às práticas de marketing ambiental enganosas, esta dissertação enfatiza o aumento da exposição legal de empresas envolvidas em greenwashing. Os achados indicam que, enquanto a União Europeia caminha para uma regulamentação mais rígida, os Estados Unidos já aplicam sanções financeiras substanciais, e o Brasil ainda está em uma fase inicial de litigância climática, especialmente em relação a fraudes de créditos de carbono e alegações ambientais enganosas. O estudo contribui para a literatura jurídica ao oferecer uma análise aprofundada sobre o impacto dos marcos regulatórios nas estratégias corporativas de sustentabilidade e como a convergência regulatória pode fortalecer os mecanismos globais de fiscalização.

Palavras-chave: Greenwashing, Direito Ambiental, Responsabilidade Corporativa, Proteção ao Consumidor, Litigância Climática, Direito Comparado, Diretiva Europeia de Alegações Ambientais, Comissão Federal de Comércio dos EUA, CONAR, Regulação ESG.

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LIST OF ABBREVIATIONS

Art	Article
ACM	Netherlands Authority for Consumers and Markets
AFTC	American Federal Trade Commission
BGH	Bundesgerichtshof (Federal Court of Justice)
BEUC	Bureau Européen des Unions de Consommateurs
BR	Brazil
CAA	Clean Air Act
CARB	California Air Resources Board
CDC	Código de Defesa do Consumidor (Consumer Defense Code)
CFTC	Commodity Futures Trading Commission
CO ₂	Carbon Dioxide
CONAR	Conselho Nacional de Autorregulamentação Publicitária
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
DOJ	Department of Justice (United States)
DR	Disclosure Requirement
e.g.	exempli gratia (for example)
EPA	Environmental Protection Agency

EP European Parliament

ESG Environmental, Social, Governance

EUEuropean Union

FTCFederal Trade Commission

FTCA Federal Trade Commission Act

GHGGreenhouse Gas

GRI Global Reporting Initiative

LGLandesgericht (Regional Court in Germany)

NFRD Non-Financial Reporting Directive

OLG Oberlandesgericht (Higher Regional Court in Germany)

PROCON Consumer Protection Agency (Brazil)

SAF Sustainable Aviation Fuel

SEC Securities and Exchange Commission

SMEs Small and Medium-Sized Enterprises

SRI Sustainable Responsible Investment

SASB Sustainability Accounting Standards Board

TCFD Task Force on Climate-related Financial Disclosures

UCPD Unfair Commercial Practices Directive

US.....United States

VW Volkswagen

1. INTRODUCTION

Greenwashing has emerged as a significant legal and ethical issue in contemporary corporate practice, reflecting a complex intersection of marketing strategies, environmental claims, and consumer protection laws.

The term "greenwashing" describes the practice whereby corporations mislead consumers, investors and citizens regarding the environmental benefits of their products, services, or operational practices, thus distorting market dynamics and undermining legitimate sustainability efforts. Such a definition will be more wisely and deeply exposed in the following chapters (Delmas and Burbano, 2011)¹.

The increasing prevalence of greenwashing has led to heightened regulatory scrutiny, litigation, and policy reforms across different jurisdictions. This thesis aims to provide a comparative legal analysis of greenwashing, focusing on the European Union (EU), the United States (US), and Brazil, identifying variations in regulatory frameworks, judicial approaches, and enforcement mechanisms.

The implications of greenwashing extend beyond consumer deception, affecting, for instance, fair competition, market integrity regulatory policies, corporate governance, climate change mitigation efforts and other scenarios. Scholars argue that greenwashing undermines trust in sustainability initiatives and diverts attention from genuine environmental reforms (Lyon & Montgomery, 2015)².

The fast expansion of corporate sustainability claims and the lack of standardised reporting criteria have made regulatory intervention imperative.

In this context, the regulatory response to greenwashing varies significantly across jurisdictions. In the EU, greenwashing is primarily regulated through consumer protection laws and corporate reporting directives.

Although the Unfair Commercial Practices Directive (Directive 2005/29/EC) prohibits misleading environmental claims in the EU, in 2024 it was published the Green Claims Directive, which is a driven purpose directive related to greenwashing practices which

¹ Delmas MA and Burbano VC, 'The Drivers of Greenwashing' (2011) 54(1) California Management Review 64 <https://doi.org/10.1525/cmr.2011.54.1.64>. Accessed 24 February 2025.

² Lyon TP and Montgomery AW, 'The Means and End of Greenwash' (2015) 28(2) Organization & Environment 223 <https://doi.org/10.1177/1086026615575332>. Accessed 24 February 2025.

seeks to impose stricter disclosure requirements and penalties for deceptive sustainability statements (European Commission, 2023)³.

Greenwashing litigation has gained prominence in the US under the Federal Trade Commission Act (FTC Act), which prohibits deceptive advertising practices. The FTC's Green Guides guide acceptable environmental marketing claims, though enforcement remains reactive, mainly relying on consumer complaints and civil litigation. Notable lawsuits, such as the FTC v. Volkswagen case and recent class actions against Danone Waters of America, illustrate the role of litigation in curbing misleading sustainability claims. Such lawsuits will be deeply analysed in Chapter 3.

On the other hand, Brazil, despite its robust consumer protection framework under the Consumer Defence Code (Código de Defesa do Consumidor – CDC), has been relatively slow in litigating greenwashing cases. Most environmental advertising disputes are handled by the National Council for Advertising Self-Regulation (CONAR), a self-regulatory body without the authority to impose substantial penalties. However, emerging litigation, particularly in carbon credit fraud, suggests a growing judicial interest in addressing deceptive environmental claims.

A comparative analysis of judicial approaches reveals key differences in how EU, US, and Brazilian courts interpret and enforce greenwashing regulations.

This research is relevant from a legal perspective and a financial and corporate governance standpoint. Misleading environmental claims can have far-reaching consequences on corporate reputation, investor confidence, and regulatory compliance costs. Investors and regulatory bodies are increasingly factoring in ESG risks when making financial decisions, making greenwashing a material concern for corporate governance and risk management.

Additionally, consumers are becoming more vigilant and litigious, as demonstrated by class actions and consumer advocacy movements that challenge dubious sustainability claims in court.

³ European Commission, 'Proposal for a Directive on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)' COM(2023)

By understanding the legal risks associated with greenwashing, businesses can better navigate the regulatory complexities of sustainability marketing, avoiding financial penalties and long-term reputational damage.

Research Objectives and Scope

The objectives of this thesis are threefold:

1. To analyse the role of the legislature and judiciary in combating greenwashing from unified perspectives.
2. To analyse and compare legal frameworks on greenwashing in the EU, US, and Brazil, assessing the regulatory approaches, enforcement mechanisms, and penalties applied in each jurisdiction.
3. To evaluate case law on greenwashing, identifying judicial trends and regulatory effectiveness in addressing deceptive environmental marketing.
4. To discuss the implications of greenwashing litigation for corporate accountability, financial risks, and reputational damage, offering insights for policymakers, legal practitioners, and business leaders.

The rationale behind this differentiation lies in each jurisdiction's primary regulatory focus. In the EU and Brazil, the fight against greenwashing has been predominantly shaped by consumer protection laws, as misleading sustainability claims directly affect consumer rights and market fairness. Regulatory bodies and courts have increasingly interpreted and enforced environmental claims under consumer law, strengthening transparency obligations and imposing penalties on companies that mislead consumers regarding their environmental impact.

In contrast, in the US, the primary legal framework addressing greenwashing has evolved within the financial regulatory system, mainly through securities and investment laws. This reflects a broader concern with investor protection, as misleading ESG claims can distort financial markets, misguide investment decisions, and impact corporate valuation. The SEC has played a central role in regulating ESG disclosures, ensuring that companies provide investors with accurate and non-misleading sustainability information.

By adopting this comparative approach, the study aims to demonstrate how different legal frameworks respond to greenwashing based on their regulatory priorities—consumer protection in the EU and Brazil and financial market integrity in the US. This distinction

is essential to understanding the effectiveness and limitations of each system and identifying potential harmonisation trends in global efforts to combat greenwashing.

This differentiation allows for a broader and more nuanced understanding of how greenwashing is addressed across different regulatory environments, offering insights into the strengths, limitations, and potential areas of convergence in global efforts to tackle misleading environmental claims.

To achieve these objectives, the study will focus on key legal instruments, including the Green Claims Directive (EU), the FTC Green Guides (US), and Brazil's Consumer Protection Code, alongside significant legal precedents in each jurisdiction. The cases analysed include Volkswagen's emissions scandal, KLM's misleading sustainability campaign, Katjes' deceptive advertising, and Danone's bottled water sustainability claims, offering a broad perspective on how greenwashing is litigated across different legal systems.

Structure of the Thesis

Chapter 1: What is Greenwashing?

This chapter overviews greenwashing as a phenomenon, discussing its origins, definitions, and theoretical frameworks. It examines the economic and reputational incentives that drive companies to engage in deceptive environmental marketing and the regulatory challenges in addressing greenwashing.

Chapter 2: Legal Frameworks in the EU, US, and Brazil

This chapter compares the three jurisdictions' legal and regulatory responses to greenwashing, highlighting key statutes, administrative guidelines, and enforcement mechanisms. Special attention is given to the emerging regulatory landscape in the EU, notably the Green Claims Directive.

Chapter 3: Case Law Analysis

This chapter examines landmark EU, US, and Brazil greenwashing cases. It discusses court rulings, legal arguments presented by plaintiffs and defendants, and the judicial reasoning behind key decisions. The cases analysed include KLM, Katjes, Volkswagen, and Danone.

Chapter 4: Findings and Conclusion

The final chapter synthesises the thesis's main findings, assesses the current and future legal landscape of greenwashing regulation, and discusses its implications for corporations, policymakers, and legal scholars.

CHAPTER 1: WHAT IS GREENWASHING?

Firstly, it is essential to mention that the methodology adopted in this thesis is based on a comprehensive literature review, which serves as the primary research approach to analysing the role of the legislature and judiciary in combating greenwashing. This method systematically examines academic articles, legal texts, case law, regulatory reports, and policy documents to understand the legal frameworks governing greenwashing in different jurisdictions.

The study identifies key trends, challenges, and regulatory responses by reviewing existing literature, enabling a comparative analysis between the European Union, Brazil, and the United States. This approach ensures a structured and in-depth exploration of the topic while providing a solid theoretical foundation for assessing the effectiveness of current legal mechanisms in addressing greenwashing.

1.1. Greenwashing Concept

This Chapter begins by defining the concept of greenwashing and examining its core elements and manifestations. It then explores the underlying motivations that drive firms to engage in such practices and identifies the regulatory, market, and social constraints that aim to curb them.

Subsequently, the chapter delves into an analytical taxonomy of greenwashing developed through a comprehensive theoretical framework, providing a nuanced classification of its different forms and implications.

The concept of “greenwashing” can be traced back to Jay Westerveld, a journalist and environmental activist. In 1986, Westerveld criticised a hotel chain for encouraging guests to reuse towels under the pretense of environmental responsibility, while the underlying motive was to cut operational costs rather than pursue genuine ecological efforts. He described this behavior as hypocritical and coined the term "greenwashing" to reflect how companies falsely promote themselves as environmentally friendly purely for financial gain.⁴

⁴ Pearson, J. Are We Doing the Right Thing? J. Corp. Citizsh. 2010, 37, 37–40.

The idea of greenwashing has matured beyond Westerveld's original critique, developing into a field of growing academic inquiry, especially as environmental concerns have become more pressing worldwide. In recent years, with the increased focus on climate change, biodiversity loss, and sustainable development, companies have faced heightened expectations to adopt genuine sustainability practices. However, the rise of environmental awareness has also provided fertile ground for misleading claims, making greenwashing a pervasive issue.

The term "greenwashing" became so relevant over the decades that even the Cambridge Dictionary defined it as "*behaviour or activities that make people believe that a company is doing more to protect the environment than it really is.*"⁵

Greenwashing can be defined as an "umbrella" concept encompassing various forms of misleading environmental communication.⁶ This is because it encompasses a broad spectrum of practices aimed at misleading stakeholders—consumers, investors, and regulators—regarding a company's sustainability efforts. These practices vary significantly in scope, intent, and impact, rendering greenwashing a complex and multi-dimensional phenomenon.

Professors Magali Delmas and Vanessa Burbano describe greenwashing as "*the dissonance between poor environmental practices and positive messaging about them*"⁷. Tom Lyon and John Maxwell frame it as the "*selective sharing of favorable environmental or social achievements, intentionally omitting negative aspects to shape an overly favorable corporate image*"⁸. Similarly, other scholars emphasise that greenwashing involves misleading communication that fosters an exaggeratedly positive perception of an organisation's environmental actions and performance.⁹

The diverse definitions of greenwashing reflect its multidimensional nature, encompassing a broad spectrum of misleading environmental practices. This complexity is evident not only in corporate marketing strategies but also in public relations, non-

⁵ <https://dictionary.cambridge.org/dictionary/english/greenwashing>. Accessed on February 21, 2025.

⁶ Thomas P. Lyon & A. Wren Montgomery, The Means and Ends of Greenwash, 28 *Org. & Env't*, page 224, (2015).

⁷ Magali A. Delmas & Vanessa Cuerel Burbano, The Drivers of Greenwashing, 54 *Cal. Mgmt. Rev.* 64, 65 (2011).

⁸ Thomas P. Lyon & John W. Maxwell, Greenwash: Corporate Environmental Disclosure Under Threat of Audit, 20 *J. Econ. Mgmt. Strategy* 9, (2011).

⁹ Christopher Marquis, Michael W. Toffel & Yanhua Zhou, Scrutiny, Norms, and Selective Disclosure: A Global Study of Greenwashing, 27 *Org. Sci.* 483, 484 (2016).

profit communication, and governmental commitments. It is important to mention that a greenwashing practice can be connected to a product, service, or advertisement.

In this context, scholars and regulatory bodies have identified several distinct types and forms of greenwashing, each targeting different stakeholders and employing various deceptive techniques.

The categorisation of greenwashing practices explored in this study is grounded in the framework developed by TerraChoice Environmental Marketing in their report, *The Sins of Greenwashing*.¹⁰ This influential report identifies seven distinct "sins" of greenwashing, each representing a different deceptive strategy used by several entities to create a false impression of environmental responsibility. These seven categories—ranging from vague or ambiguous claims to hidden trade-offs and false labels—serve as a foundation for understanding how entities manipulate environmental narratives to shape consumer perception. TerraChoice's framework, initially released in 2007 and expanded in 2009, has become a critical reference in discussions on ecological transparency, forming a baseline for analysing and combating misleading green marketing practices.

(i) Vague or ambiguous claims

Vagueness is a prevalent form of greenwashing where companies employ broad or poorly defined terms, such as "eco-friendly" or "green," without offering concrete evidence to support these claims. TerraChoice Environmental Marketing coined this as the "Sin of Vagueness," cautioning that such claims are intentionally left open to interpretation to mislead consumers.¹¹

To complement the definition above, vague or ambiguous greenwashing claims can be specifically understood as when “a product or company is advertised using language that is loosely defined with the aim that consumers will infer positive environmental impact.”¹²

¹⁰ https://sustainability.usask.ca/documents/Six_Sins_of_Greenwashing_nov2007.pdf. Accessed on February 21, 2025.

¹¹ TerraChoice Environmental Marketing. (2009). *The Seven Sins of Greenwashing: Environmental Claims in Consumer Markets*. Available at TerraChoice Environmental.

¹² Chen, Y. S., & Chang, C. H. (2013). Greenwash and green trust: The mediation effects of green consumer confusion and green perceived risk. *Journal of Business Ethics*, 114, 489-500.

A real-life example of vague or ambiguous greenwashing is the case of Fiji Water, which faced a lawsuit for labeling its product as "carbon negative." The company claimed that its production process removed more carbon dioxide from the atmosphere than it emitted. However, the lawsuit argued that these claims were misleading because they did not account for the complete lifecycle emissions, including transportation, packaging, and other hidden environmental impacts.¹³.

(ii) Selective Disclosure and Restricted Communication

Lyon and Montgomery argue that selective disclosure is a strategic tool, allowing companies to shape public perception by highlighting positive environmental actions while concealing harmful practices. They describe this tactic as a persuasion game, where firms craft narratives that align with stakeholder expectations, enhancing their public image without committing to substantial environmental improvements.¹⁴.

Similarly, Delmas and Burbano highlight the prevalence of selective communication in corporate sustainability reports. These reports often emphasise a company's environmental successes and omit critical information about failures or unsustainable practices. This approach helps businesses maintain a competitive advantage, reducing reputational risks by selectively managing the flow of environmental information to stakeholders. Restricted communication thus becomes a key feature of corporate greenwashing, aimed at controlling public perception while minimising accountability.¹⁵.

As a real-life example, Amazon's sustainability reports have drawn criticism for selective disclosure, particularly in how they emphasise positive environmental metrics while leaving key areas underreported. Specifically, while Amazon highlights achievements such as matching its energy use with 100% renewable energy and reducing packaging waste, it downplays the emissions from its massive logistics operations, which include air and land freight, warehousing, and last-mile delivery.¹⁶.

These public reports fail to provide a transparent picture of the company's carbon footprint. For example, although Amazon reports progress in certain Scope 1 and 2

¹³ Gino, Francesca, Michael W. Toffel, and Stephanie van Sice. "FIJI Water: Carbon Negative?" Harvard Business School Case 611-049, June 2011. (Revised December 2013.)

¹⁴ Lyon, T. P., & Montgomery, A. W. (2015). The Means and Ends of Greenwash. *Organization & Environment*, 28(2), 223–249.

¹⁵ Delmas, M. A., & Burbano, V. C. (2011). The Drivers of Greenwashing. *California Management Review*, 54(1), 64-87.

¹⁶ <https://thisrockesg.com/sustainability/amazon-sustainability-report/>. Access on October 29, 2024.

emissions areas (such as energy use and corporate facilities), it provides limited detail on Scope 3 emissions, representing most of its environmental impact through third-party transport and supply chains. This selective communication makes it difficult for stakeholders to assess the full ecological costs of Amazon's business model, as the reports focus primarily on renewable energy investments rather than the emissions embedded in logistics and transportation networks.

(iii) Hidden Trade-offs

The "hidden trade-off" concept, as described by TerraChoice Environmental Marketing in their *Seven Sins of Greenwashing* report, refers to instances where companies promote one positive environmental attribute while ignoring other harmful aspects associated with the product's production, distribution, or disposal¹⁷.

This selective focus on isolated improvements allows companies to distract consumers from understanding the full environmental impact. According to Lyon and Montgomery¹⁸, such practices manipulate public perception, creating a façade of sustainability that is difficult to dismantle due to information asymmetry—where companies control the narrative and consumers lack access to comprehensive data.

The FTC Green Guides¹⁹ address hidden trade-offs by requiring that environmental claims provide full context and reflect the product's impact across its entire lifecycle. The guidelines discourage selective communication that only presents favorable aspects, emphasizing the need for transparency and the avoidance of misleading claims. However, despite these efforts, hidden trade-offs remain a significant challenge in green marketing, as they exploit the limited capacity of consumers to assess complex environmental data independently.

As an example, Nestlé has marketed some of its bottled water products, such as Pure Life, as environmentally friendly by emphasizing recyclable plastic packaging. However, this message overlooks the environmental harm associated with plastic production and the broader impact of single-use plastic on ecosystems. Nestlé has also faced criticism for unsustainable water extraction practices in regions where water scarcity is a major

¹⁷ TerraChoice Environmental Marketing. (2009). *The Seven Sins of Greenwashing: Environmental Claims in Consumer Markets*. Available at TerraChoice Environmental. Access on October 30, 2024.

¹⁸ Lyon, T. P., & Montgomery, A. W. (2015). The Means and Ends of Greenwash. *Organization & Environment*, 28(2), 223–249.

¹⁹ FTC. (2012). *Green Guides*. Available at FTC. Access on October 30, 2024.

concern, demonstrating how the focus on packaging distracts from the larger environmental trade-offs involved in its operations²⁰.

(iv) No Proof

According to TerraChoice report, no proof is a deceptive greenwashing strategy in which companies make environmental claims without providing verifiable evidence to substantiate them. This practice involves assertions about the environmental attributes of products, services, or business operations that are not supported by accessible data, reliable certifications, or independent third-party audits. As a result, consumers are left with unverified promises, making it difficult to determine whether the product or service genuinely aligns with the stated environmental benefits (TerraChoice Environmental Marketing, 2009; Federal Trade Commission, 2012)²¹.

The "Sin of No Proof", as identified by TerraChoice Environmental Marketing, occurs when a company promotes environmental benefits that are either unverifiable or not easily confirmed through publicly available information. Examples include products labelled as "carbon-neutral" or "eco-friendly" without detailed documentation on how emissions were measured or reduced. This tactic creates a false sense of sustainability, relying on consumer trust while failing to offer transparency regarding the underlying processes or data.

In practice, no proof greenwashing enables companies to capitalize on growing consumer demand for sustainable products without investing in substantive environmental improvements.

This approach undermines market accountability and disrupt public trust in both businesses and genuinely sustainable products (FTC, 2012). When consumers encounter unsubstantiated environmental claims, they face significant challenges in distinguishing between authentic and deceptive sustainability efforts, thereby limiting their ability to make informed purchasing decisions (Szabo & Webster, 2020)²².

²⁰ <https://www.bbc.com/news/business-67343893>

²¹ Federal Trade Commission. (2012). Green Guides: Environmental Claims. Available at: <https://www.ftc.gov>; TerraChoice Environmental Marketing. (2009). The Seven Sins of Greenwashing: Environmental Claims in Consumer Markets. TerraChoice Environmental Marketing Inc.

²² Szabo, S., & Webster, J. (2020). Perceived Greenwashing: The Effects of Green Marketing on Corporate Image. *Journal of Business Ethics*, 171, 719–739.

In one prominent case, Allbirds, a footwear company, faced scrutiny over claims of producing carbon-neutral shoes. Although the company reported efforts to offset emissions, critics argued that details on carbon measurement methodologies and offset projects were insufficiently disclosed (Spicer, 2021)²³.

(v) Worshipping False Labels

TerraChoice has identified “Worshipping False Labels”, a practice in which companies create the appearance of environmental certification or endorsement through the use of fake, unauthorised, or misleading labels. This deceptive practice misleads consumers into believing that a product meets higher environmental standards than it actually does, eroding trust in the brand and legitimate third-party certifications. TerraChoice Environmental Marketing (2009) identified that this tactic exploits consumers' increasing preference for eco-friendly products by giving the illusion of independent approval without complying with authentic certification standards (TerraChoice Environmental Marketing, 2009).

The Worshipping False Labels strategy uses images, symbols, or language that mimic legitimate eco-certifications. Companies sometimes invent their eco-labels that resemble well-known certifications, such as Energy Star or Fair Trade, to boost the perceived credibility of their environmental claims. As TerraChoice points out, this tactic is particularly effective because consumers rely on visual cues and third-party validation to assess the environmental integrity of a product quickly. By introducing counterfeit labels or falsely claiming certifications, companies manipulate consumer perceptions and divert attention from unsustainable practices (TerraChoice Environmental Marketing, 2009).

Aji and Sutikno (2015) explored how misleading labels confuse consumers and contribute to "green skepticism," which reduces overall trust in sustainable products. This consumer confusion can erode the market for genuinely eco-friendly products, negatively impacting companies that adhere to sustainable practices²⁴.

²³ Spicer, C. (2021, June 14). Allbirds Misrepresents ‘Carbon Footprint,’ ‘Ethically Sourced’ Shoe Claims. Retail Dive. Available at: <https://www.retaildive.com>.

²⁴ Aji, H. M., & Sutikno, B. (2015). The extended consequence of greenwashing: Perceived consumer skepticism. *International Journal of Business*, 19(1), 65-75.

In response to a probe by the Netherlands Authority for Consumers and Markets (ACM), fashion retailer H&M and sporting goods chain Decathlon have agreed to remove misleading sustainability-related labels from their products and websites. This action follows ACM's findings that both companies used vague or insufficiently substantiated sustainability claims. H&M labeled products as "Conscious" and "Conscious Choice" without adequately defining these terms or specifying the sustainability benefits, while Decathlon used labels such as "Ecodesign" with similar deficiencies in transparency. To address these issues, both companies committed to refine their sustainability communications and improve clarity in future labeling practices.²⁵

Additionally, as part of the settlement, H&M and Decathlon agreed to donate €400,000 and €500,000, respectively, to sustainable causes, compensating for the impact of their unclear claims²⁶. This case underscores the intensifying global regulatory scrutiny around greenwashing, especially in the fashion industry, as seen in parallel investigations by the UK's Competition and Markets

(vi) Irrelevant claims

This form of greenwashing occurs when companies promote an environmental claim that, although true, is meaningless or irrelevant to the product category. This tactic misleads consumers by creating an impression of environmental benefit where there may be none, subtly diverting attention from the product's actual environmental impact. For example, a product may advertise being "CFC-free" (chlorofluorocarbons), even though CFCs have been banned under the Montreal Protocol since 1987 and are not legally allowed in products today (TerraChoice, 2010). Such claims are technically accurate but offer no additional environmental benefit to consumers, who may perceive the product as more eco-friendly than it is.

Carlson, Grove, and Kangun (1993) found that irrelevant environmental claims are among the most common misleading advertisements, particularly in product categories

²⁵ <https://www.business-humanrights.org/en/latest-news/netherlands-hm-and-decathlon-to-remove-sustainability-labels-from-products-following-investigation-by-regulator-into-potentially-misleading-claims/>. Accessed on February 22, 2025.

²⁶ <https://www.esgtoday.com/hm-to-remove-sustainability-labels-from-products-following-investigation-by-regulator/>. Accessed on February 22, 2025.

where consumers are increasingly motivated to buy sustainable options²⁷. Such practices fail to contribute meaningfully to sustainability and dilute consumer trust in legitimate eco-labels, leading to broader skepticism around green marketing.

Studies in marketing and psychology suggest that consumers are likely to interpret any green claim as a sign of environmental responsibility due to cognitive biases like the “*halo effect*,” where one positive attribute is generalised to other aspects of the product (Kahneman, 2011)²⁸. This makes irrelevant greenwashing particularly effective and harmful, as it influences purchasing behaviour while delivering little or no environmental value.

As an example, Windex, a popular glass cleaner brand, was noted for using “CFC-free” labels on some of its products, even though CFCs are no longer permitted in aerosols²⁹.

(vii) Fibbing

Fibbing, one of the most deceptive forms of greenwashing, involves outright falsehoods or unsupported claims regarding the environmental impact of a product or service. Such claims range from misleading labels to fictitious certifications, all designed to appeal to the rising demand for eco-friendly products (TerraChoice, 2010). Parguel, Benoît-Moreau, and Larceneux (2011) describe fibbing as part of a “dark green marketing” strategy, wherein firms exploit consumer goodwill by promoting environmental benefits that do not genuinely exist. This tactic not only misleads consumers but can also damage the broader environmental marketing landscape by increasing green skepticism and diminishing trust in valid eco-labels (Aji & Sutikno, 2015).

Studies show that fibbing undermines consumer confidence in the green marketplace. According to Aji and Sutikno (2015), repeated exposure to false green claims can lead to green skepticism, where consumers begin to distrust all environmental claims, even those that are genuine. This skepticism can weaken the market for legitimately sustainable products and harm companies that adhere to strict environmental standards. Leonidou and Skarmeas (2017) discuss how consumer skepticism about green claims has led to a

²⁷ Carlson, L., Grove, S. J., & Kangun, N. (1993). A content analysis of environmental advertising claims: A matrix method approach. *Journal of Advertising*, 22(3), 27-39.

²⁸ Kahneman, D. (2011). *Thinking, Fast and Slow*. Farrar, Straus and Giroux.

²⁹ <https://www.lexology.com/library/detail.aspx?g=aa25309e-e0c2-4db8-b0dd-3491e6f92e87>

decline in the perceived authenticity of environmentally friendly brands, affecting the credibility of the green movement as a whole. This phenomenon has been described as a "green trust deficit," wherein legitimate claims are overshadowed by persistent instances of deception in the industry.

Fibbing in greenwashing not only affects consumer trust but also raises issues of corporate accountability. Delmas and Burbano (2011) highlight that companies engaging in fibbing are subject to severe risks regarding reputational damage, as increased media attention on corporate environmental practices exposes false claims. Such exposure often leads to backlash, with consumers and stakeholders demanding more accountability and transparency.

In a nutshell, fibbing is the practice of making false, fabricated, or exaggerated claims that do not accurately reflect the true environmental credentials of a company.

As an example, in the mid-2000s, Volkswagen AG promoted its diesel vehicles as environmentally friendly, emphasizing claims of reduced carbon dioxide emissions and enhanced fuel efficiency. However, in 2015, investigations revealed that Volkswagen had equipped certain vehicles with "defeat devices"—software specifically designed to manipulate emissions testing procedures. This software allowed the vehicles to meet regulatory standards under controlled testing conditions while, in actual on-road use, emitting pollutants at levels significantly above legal limits³⁰.

Such case will be deeply evaluated in Chapter 3.

1.2. Climate-washing

Climate-washing represents a specific form of greenwashing in which organizations make deceptive claims primarily concerning their climate impact, such as purported reductions in emissions or assertions of carbon neutrality, without implementing meaningful changes. As public concern regarding climate change intensifies, the prevalence of climate-washing has increased, particularly among corporations and institutions that are under pressure to demonstrate progress towards climate-related objectives³¹.

³⁰ <https://www.bbc.com/news/business-34324772>

³¹ <https://www.lse.ac.uk/granthaminstitute/news/climate-washing-litigation-towards-greater-corporate-accountability/>. Accessed on February 22, 2025.

According to Brulle and Pellow (2006), climate-washing is characterized as misleading marketing or communication practices that exaggerate or misrepresent an organization's or institution's efforts to mitigate its climate impact³².

Corporate climate commitments take on a diverse array of forms, reflecting the varying strategies employed by organizations to address their environmental impact.

Some companies make firm pledges to reduce their absolute greenhouse gas (GHG) emissions by a specific amount or percentage, comparing their emissions to a designated base year. This approach emphasizes a comprehensive decrease in total emissions, demonstrating accountability and a long-term commitment to sustainability.

In contrast, other organizations focus on improving their GHG emissions intensity. This strategy involves reducing emissions relative to a particular metric, such as the number of units produced, or total revenue generated. By doing so, these companies aim to enhance their operational efficiency and minimize environmental impact while potentially maintaining or increasing production levels.

When a company adopts a "Net Zero" commitment, it is declaring to the world that it will take actions by a particular date to reduce GHG emissions attributable to its operations and to balance its remaining emissions, such that the net GHG emissions it is responsible for no longer contribute to climate change³³.

In this context, when a company publicly declares its commitments to reduce its climate footprint yet fails to implement substantial measures or engages in insufficient practices in this regard, it becomes susceptible to accusations of climate-washing.

There are several forms of climate-washing, each designed to create an impression of climate responsibility while often masking limited or superficial actions. Companies employ a variety of tactics to appear aligned with climate goals without committing to the substantive changes necessary to reduce their actual carbon footprint.

While there are a variety of practices that could be indicative of climate-washing, several key strategies are particularly noteworthy and merit a closer examination. Climate-washing involves the misleading portrayal of a company's environmental initiatives or

³² Brulle, R. J., & Pellow, D. N. (2006). The Role of Corporate Greenwashing in Environmental Injustice. *Environmental Justice*, 15(2), 325-340.

³³ <https://www.fasken.com/en/knowledge/2022/02/28-climate-washing-risks-and-how-to-mitigate-them>

the projected benefits of products in a way that suggests a greater commitment to sustainability than truly exists.

The following section will delve into the principal practices associated with climate-washing, elucidating their characteristics in the context of environmental responsibility and corporate transparency.

(i) Carbon Offsetting without Direct Emissions Reduction

One of the most common climate-washing tactics is the use of carbon offsets as a substitute for directly reducing operational emissions. Companies often purchase carbon credits to claim “carbon neutrality” without implementing meaningful reductions in their own emissions. Studies have shown that many offsets fail to meet standards of “additionality,” meaning they do not achieve real emissions reductions beyond what would have happened without the purchase. This tactic gives an impression of climate action while allowing companies to sidestep substantial changes. Haya et al. (2020)³⁴ highlight that a significant portion of offsets under various programs do not result in real climate benefits, emphasizing the need for more rigorous standards.

(ii) Uncertified Carbon Projects

Carbon offset projects typically aim to sequester carbon dioxide or prevent emissions through various initiatives, such as reforestation, renewable energy development, and land conservation. To ensure that credits generated from these projects represent genuine reductions, rigorous methodologies, and monitoring are required. Certified projects undergo verification by third-party entities, which assess the project's baseline emissions, permanence, additionality (i.e., the project's ability to reduce emissions beyond what would have happened naturally), land regularity and overall effectiveness.³⁵

(iii) Offsetting as a PR and marketing activity

Many companies engage in greenwashing by using offsetting to generate a positive environmental image, yet fail to make substantive changes in their operational emissions (Bowen & Aragon-Correa, 2014)³⁶. This superficial use of offsetting is a

³⁴ <https://orcid.org/0000-0002-7010-3908>. Accessed on February 22, 2025.

³⁵ <https://verra.org/programs/verified-carbon-standard/>. Accessed on March 11, 2025.

³⁶ Bowen, F., & Aragon-Correa, J. A. (2014). Greenwashing in corporate environmentalism. *Business & Society*, 53(3), 281-302.

prominent example of climate-washing, wherein companies prioritize their appearance of sustainability over genuine environmental impact.

The systematic review by de Freitas Netto et al. (2020)³⁷ categorizes greenwashing practices and stresses the importance of accountability and transparency in climate claims. Without third-party certification, independent audits, and clear reporting of offset projects, consumers and stakeholders remain vulnerable to misleading marketing. Companies that overstate the effectiveness of their offsetting measures can contribute to a broader culture of skepticism, deterring meaningful corporate investment in sustainable practices and creating an obstacle to achieving climate goals.

CHAPTER 2 – GREENWASHING LEGAL FRAMEWORKS ACROSS THE GLOBE

As duly explored, the core of greenwashing involves the dissemination of false, incomplete, or exaggerated claims about the environmental benefits of products, services, or operations.

³⁷ Freitas Netto, S. V., Sobral, M. F. F., Ribeiro, A. R. B., & Soares, G. R. L. (2020). Concepts and forms of greenwashing: A systematic review. *Environmental Sciences Europe*, 32(1), 1-12.

Legal frameworks addressing greenwashing have evolved significantly in recent years, reflecting the growing awareness of the problem and its implications for consumer trust, market integrity, and global environmental goals. These frameworks aim to set standards for what constitutes permissible environmental marketing, requiring evidence and transparency in corporate claims. By penalizing deceptive practices, it seeks to promote accountability and encourage businesses to prioritize genuine sustainability over superficial branding.

While the theoretical exploration in Chapter 1 established the conceptual bases of greenwashing, this chapter delves into the practical and legal measures adopted to curb this phenomenon in three major jurisdictions: **European Union, the United States, and Brazil**. These regions manifest different scenarios regarding the implementation of frameworks connected to greenwashing.

The analysis will explore how these frameworks address the key challenges of greenwashing, such as defining and identifying misleading claims, enforcing compliance, and balancing regulatory oversight with innovation. By understanding these approaches, we can better appreciate the role of legal frameworks in fostering transparency, accountability, and trust in the pursuit of sustainable development.

This chapter also seeks to provide a comprehensive overview of the legal responses to greenwashing while identifying the commonalities, divergences, aspects that still needs to be improved and evolving trends across these jurisdictions. By doing so, it contributes to a deeper understanding of how the law can serve as a counterweight to deceptive practices, ensuring that sustainability claims are not just marketing rhetoric but a true reflection of environmental stewardship.

1. EUROPEAN UNION

The European Union has established itself as a forefront leader in the global fight against greenwashing, employing an extensive array of legal frameworks, policies, and robust enforcement mechanisms that underscore its dedication to protecting consumers, preserving environmental integrity, and ensuring corporate accountability³⁸.

³⁸ European Parliament and Council of the European Union. (2005). *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices*. Official Journal of the European Union, L 149.

The EU's regulatory strategy is distinguished by its proactive and anticipatory nature, working on greenwashing prevention into a broader tapestry of sustainability initiatives and consumer rights protections. This approach not only enhances transparency and accountability within businesses but also empowers consumers to make informed choices³⁹.

By setting such high standards, the EU has become a vital benchmark for other regions and jurisdictions aspiring to effectively tackle misleading environmental claims and foster a more sustainable and truthful marketplace⁴⁰.

In this context, the following legal frameworks adopted by the European Union were mainly created to push companies to act with more transparency and engage civil society and the market to detect potential undercover practices, such as greenwashing.

As will be thoroughly examined, these frameworks adopt diverse approaches, including reporting mechanisms, due diligence processes, mandatory directives, and various forms of regulation. Nevertheless, as previously noted, they all converge toward a common objective: ensuring transparency.

1.1. Green Claims Directive

On January 17, 2024, the European Parliament approved the Green Claims Directive, a critical piece of legislation aimed at enhancing product transparency and addressing misleading environmental claims. This directive represents a turning point in the European Union's strategy to promote sustainable practices and consumer trust. It mandates that Member States transpose its provisions into national law within 24 months, with the measures becoming enforceable six months thereafter (European Parliament, 2024)⁴¹.

The directive's comprehensive framework underscores the EU's commitment to holding businesses accountable for environmental claims while empowering consumers to make

³⁹ European Consumer Organisation (BEUC). (2022). Greenwashing: The Risks to Consumers and How to Tackle It. Brussels.

⁴⁰ European Commission. (2020). A New Circular Economy Action Plan for a Cleaner and More Competitive Europe. COM(2020) 98 final. Brussels.

⁴¹ <https://eur-lex.europa.eu/eli/dir/2024/825/oj/eng>. Accessed on February 3, 2025.

informed and sustainable choices. It builds on broader EU sustainability initiatives, such as the European Green Deal, by creating a legal structure that eliminates misleading claims and ensures transparency in the market⁴².

The Green Claims Directive introduces several strict measures designed to address the pervasive issue of misleading environmental claims, which undermine consumer confidence and distort competition:

Eliminating Generic and Unsupported Claims

The directive explicitly bans generic and unsubstantiated claims such as “environmentally friendly” or “natural” unless they are supported by credible evidence (i.g. third party certification). This provision targets a common gap in marketing strategies, ensuring that businesses can no longer make vague claims that lack scientific substantiation (European Parliament, 2024). By requiring companies to specify and validate their claims, the directive fosters consumer trust and promotes informed decision-making.

Mandatory Certification by Third Parties

To ensure credibility, all environmental claims must be verified by independent third-party certification schemes or validated by public authorities. Self-certified claims and labels without independent oversight are strictly prohibited. This measure addresses long-standing concerns over the proliferation of private sustainability labels that lack transparency and monitoring.

Regulating Carbon Neutrality Claims

Claims related to carbon neutrality are permitted only when substantiated by comprehensive lifecycle assessments and validated through rigorous certification processes. This provision aims to prevent companies from relying solely on offsetting schemes to market their products, addressing concerns over the credibility of such practices, avoiding climate-washing⁴³.

Encouraging Accountability Through Transparency

⁴² https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en. Accessed on February 3, 2025.

⁴³ https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-030_Priorities_for_the_European_Parliament_elections.pdf. Accessed on February 15, 2025.

The directive emphasizes transparency by requiring companies to disclose the methodologies and evidence underlying their claims. This fosters a culture of accountability while enabling consumers to evaluate the legitimacy of environmental claims (European Parliament, 2024).

The provisions outlined in the directive signify a substantial transformation in the European Union's regulatory approach to greenwashing. By establishing higher standards for companies, the directive aligns economic incentives with sustainability objectives.

In this context, the directive encourages companies to implement authentic sustainable practices, as only verifiable claims are permitted. This requirement creates impetus for businesses to enhance their environmental performance, thus fostering innovation in sustainable product development and production methodologies (European Commission, 2023a).

Also, by prohibiting misleading environmental claims, the directive creates a level playing field for businesses that are genuinely dedicated to sustainability. The emphasis on transparency contributes to market integrity and rebuilds consumer confidence in environmental labels, thereby promoting trust in sustainable consumption.

In relation to consumers, such framework ensure reliable and accessible information, enabling informed decision-making. Consequently, it is anticipated that demand for genuinely sustainable products will increase, encouraging a transition towards more responsible consumption patterns throughout the European Union (European Parliament, 2024).

However, the absence of standardized procedures for inspections and certifications in the framework may result in inconsistencies across the single market, potentially diminishing the directive's overall impact (BEUC, 2024).

It is importante to mention that beyond addressing the issue of greenwashing, the directive promotes a focus on product durability, which aims to minimize waste and reduce the environmental impact associated with production and disposal.

In summary, the Green Claims Directive serves not only as a mechanism for preventing misleading claims but also as a catalyst for systemic change in business operations and consumer market engagement. By prioritizing transparency and accountability, the

directive lays the groundwork for a more sustainable economic model that benefits businesses, consumers, and the environment.

1.2. Consumer Rights Directive

The European Consumer Rights Directive (Directive 2011/83/EU), enacted in 2011 and subsequently revised through the New Deal for Consumers initiative in 2020, serves as a fundamental element of consumer protection within the European Union⁴⁴.

Its primary objective is to harmonize consumer rights across Member States while emphasizing transparency in contracts, particularly in the context of online and distance sales, and addressing unfair commercial practices. As sustainability has gained prominence, the directive has adapted to tackle the issue of misleading environmental claims, commonly referred to as greenwashing, which undermines consumer trust and sustainable market practices.

One of the directive's notable strengths lies in its emphasis on transparency, mandating that businesses provide clear, accurate, and verifiable information regarding their products or services. This requirement extends specifically to environmental claims, which must be supported by credible evidence. Terms such as "eco-friendly" or "carbon-neutral" are prohibited from use unless substantiated by robust data.

This approach is designed to prevent consumer deception through vague or generalized assertions, thereby fostering an environment conducive to informed decision-making. By holding companies accountable for their claims, the directive aligns with broader EU sustainability goals as articulated in the European Green Deal, which aims to promote responsible consumption and production patterns in pursuit of a climate-neutral economy by 2050.

The New Deal for Consumers has introduced significant developments, including the harmonization of sanctions for non-compliance. Entities found guilty of engaging in misleading practices, including greenwashing, are subject to substantial penalties, thereby creating a formidable deterrent against deceptive marketing practices. This harmonized framework enhances consistency across Member States, safeguarding the integrity of the

⁴⁴ https://webgate.ec.europa.eu/e-justice/639/EN/consumer_rights_directive_201183. Accessed on February 15, 2025.

single market. Furthermore, the directive works in conjunction with other legislative measures, such as the Green Claims Directive and the Unfair Commercial Practices Directive, ensuring a cohesive legal structure designed to protect consumers effectively.

Despite its strengths, the directive faces challenges, particularly regarding the technical complexities associated with verifying environmental claims. The assessment of such claims often necessitates specialized expertise and resources, posing implementation challenges for regulators and businesses alike.

Furthermore, smaller enterprises may encounter difficulties in fulfilling these requirements, potentially obstructing their market access. The absence of standardized criteria for evaluating environmental claims may also lead to inconsistencies in enforcement across Member States, thereby undermining the directive's objectives. To address these issues, it is essential that Member States establish robust verification mechanisms and commit to training for inspectors and regulators.

By emphasizing transparency and accountability, the directive not only enhances consumer protection but also incentivizes businesses to adopt genuinely sustainable practices. Access to accurate information concerning the environmental impacts of products empowers consumers to make choices that align with their values, thereby fostering a market oriented toward truly sustainable goods.

Additionally, the directive's focus on fair competition ensures that businesses genuinely committed to sustainability are not disadvantaged by competitors engaging in greenwashing.

In conclusion, the European Consumer Rights Directive exemplifies the EU's dedication to promoting transparency, fairness, and sustainability within commercial practices. By directly confronting the issue of greenwashing, it addresses a crucial barrier to building consumer trust and ensuring market integrity. While challenges remain concerning implementation—particularly with enforcement and standardization—the directive provides a robust foundation for advancing a more sustainable and accountable economic framework.

1.3. Unfair Commercial Practices

The European Unfair Commercial Practices Directive (Directive 2005/29/EC, UCPD)⁴⁵ serves as a pillar of consumer protection law within the European Union. It established comprehensive rules to prevent unfair practices in business-to-consumer transactions and is one of the foundational frameworks that later contributed to the development of the Green Claims Directive.

Its primary aim is to ensure that consumers are not deceived or manipulated by misleading or aggressive commercial practices, fostering transparency and fair competition across internal market. Central to its provisions are prohibitions against misleading actions and omissions, which are directly applicable to environmental claims. This makes the UCPD a critical tool in combating greenwashing.

According to the UCPD, a commercial practice is considered as unfair if (i) it is contrary to the requirements of professional diligence; and (ii) it significantly influences or is likely to influence the purchasing decisions of the average consumer it reaches or is targeted at, or of the typical consumer in a specific group when the commercial practice is aimed at that group.

In this context, the UCPD brings types of unfair commercial practices, defining misleading actions, omissions and aggressive commercial practices – in this last case would be harassment, coercion or undue influence.

Under the UCPD, businesses must ensure that any claims are clear, specific, and substantiated by credible evidence.

The directive also obligates businesses to disclose all relevant information that would influence a consumer's purchasing decision, thereby addressing instances where companies omit key details about their products. This emphasis on transparency not only protects consumers but also promotes accountability, requiring businesses to substantiate their claims with robust and verifiable data.

The introduction of harmonized penalties under the Modernisation Directive (Directive 2019/2161/EU), which amended the UCPD, further reinforces this framework by imposing significant fines on companies that engage in deceptive practices, including greenwashing.

⁴⁵ https://webgate.ec.europa.eu/e-justice/595/EN/unfair_commercial_practices_directive_200529. Accessed on February 15, 2025.

In contrast, the Green Claims Directive, approved in 2024, specifically targets environmental claims made by businesses, introducing detailed rules to ensure these claims are substantiated, transparent, and verifiable. Unlike the UCPD, which broadly prohibits false advertising, the Green Claims Directive mandates specific evidence standards, such as lifecycle assessments and third-party certifications, for claims like "carbon-neutral" or "sustainable."

In essence, the UCPD is an important instrument at the EU's efforts to protect consumers. By addressing the deceptive use of misleading claims, it not only safeguards consumer trust but also levels the playing field for businesses genuinely committed to the market.

1.4. CSRD

In a brief summary, the Corporate Sustainability Reporting Directive (CSRD) represents a significant advancement in the European Union's regulatory framework concerning corporate accountability, especially in the context of ESG practices. This directive not only builds on the earlier Non-Financial Reporting Directive (NFRD)⁴⁶ but also substantially broadens and deepens the sustainability disclosures required from companies operating within the EU. It effectively addresses the growing demand for enhanced corporate transparency and responsibility.

The core of this Directive, is the requirement for companies to provide detailed and standardized reporting under the European Sustainability Reporting Standards (ESRS)⁴⁷. This initiative is designed to provide vital information to several stakeholders—including investors, consumers, and policymakers—to ensure they can access reliable, comparable, and verifiable data regarding ESG impacts.

⁴⁶ The NFRD is a European Union directive (Directive 2014/95/EU) that requires large companies to disclose non-financial and diversity-related information. Its primary objective is to enhance transparency regarding environmental, social, and governance (ESG) factors, ensuring that investors, consumers, and other stakeholders can assess a company's sustainability performance. https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/non-financial-reporting_en.

⁴⁷ European Commission, Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards [2023] OJ L 231/1.

It is important to mention that on January 2023, the CSRD entered into force. In this sense, companies subject to such directive will have to apply the new rules for the first time in the 2024 financial year, for reports published in 2025.

Under the CSRD, reporting requirements apply to large companies and small and medium-sized enterprises (SMEs) that are listed on regulated markets, while microenterprises are explicitly exempted from these obligations (Directive (EU) 2022/2464). This tailored approach balances the EU's ambition to foster widespread accountability with the recognition that smaller businesses may face greater challenges in meeting comprehensive reporting standards.

The CSRD's requirements extend to companies outside the EU that conduct substantial business within the EU market. If a company derives significant revenue from EU activities or is part of an EU company's value chain, it must adhere to the directive's reporting obligations. This expansive scope is designed to address the interconnected nature of global supply chains, ensuring that sustainability data is comprehensive and reflective of a company's full impact⁴⁸.

One of the most significant innovations introduced by the CSRD is the application of the double materiality principle. This principle mandates that companies disclose not only how sustainability issues impact their financial performance but also how their operations affect the environment and society. By adopting this dual focus, the CSRD aims to prevent businesses from narrowly concentrating on financial risks while ignoring their broader environmental and social footprints.

This approach is critical as many businesses have historically employed greenwashing tactics, downplaying the significance of their environmental impact in favor of highlighting financial metrics. The directive compels companies to report on various key factors, such as carbon emissions, energy consumption, resource efficiency, and biodiversity impacts, thereby fostering a holistic representation of sustainability performance.

For instance, within the framework of the CSRD, companies are required to disclose their Scope 1, Scope 2, and, where appropriate, Scope 3 greenhouse gas emissions. These scopes encompass direct emissions from owned or controlled sources (Scope 1), indirect

⁴⁸ European Financial Reporting Advisory Group (EFRAG). (2022). *European Sustainability Reporting Standards (ESRS): Draft Standards*. Retrieved from <https://efrag.org>

emissions from the generation of purchased energy (Scope 2), and all other indirect emissions that occur in a company's value chain (Scope 3). This granular requirement directly addresses a prevalent form of greenwashing, wherein businesses often omit or obscure the comprehensive lifecycle impacts of their operations or products, thus misleading stakeholders about their true environmental footprint⁴⁹.

Moreover, the directive places a strong emphasis on climate-related disclosures, mirroring the EU's broader objectives of achieving climate neutrality by 2050:

(...) required to disclose any plans they may have to ensure that their business model and strategy are compatible with the transition to a sustainable economy and with the objectives of limiting global warming to 1,5 °C in line with the Paris Agreement and achieving climate neutrality by 2050 (...)⁵⁰."

In this sense, Companies are now mandated to detail how their business models and growth strategies are aligned with the goals of the Paris Agreement, which includes specific targets for reducing carbon emissions and adapting to prevailing climate-related risks.

Additionally, the CSRD introduces rigorous requirements for companies to disclose their transition plans, which should outline how they intend to shift towards greater sustainability while minimizing their environmental impact. By implementing these measures, the directive significantly curtails the ability of companies to issue vague or unsupported claims regarding their climate initiatives, ensuring that any assertions of sustainability or carbon neutrality are substantiated by clear, evidence-based plans.

Another foundational element of the CSRD is the requirement for mandatory audits and independent assurance of sustainability reports. This process is integral to enhancing the credibility of ESG claims, directly addressing a critical flaw in the NFRD, where companies faced minimal oversight regarding their non-financial disclosures. By mandating third-party verification, the CSRD effectively closes a substantial gap that has historically enabled greenwashing practices to flourish.

⁴⁹ European Parliament and Council. (2022). *Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on corporate sustainability reporting*. Official Journal of the European Union, L322, 15–74. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>

⁵⁰ [Directive - 2022/2464 - EN - CSRD Directive - EUR-Lex \(europa.eu\)](#)

As a result, companies can no longer rely on self-reported metrics or selective use of favorable data to create a misleadingly positive image; instead, they must adhere to stringent standards and provide comprehensive evidence that their claims are accurate and consistent with reality.

The CSRD also stipulates that companies must make their sustainability reports digitally accessible through the European Single Access Point (ESAP), a centralized platform designed to enhance transparency and comparability across various disclosures. This innovative approach ensures that stakeholders, including investors, non-governmental organizations (NGOs), and regulatory bodies, can easily scrutinize and compare sustainability data across different sectors and geographic regions.

The public availability of standardized reports serves as a robust deterrent against greenwashing, as companies are now accountable not just to regulators but also to a wide audience of informed stakeholders who can demand transparency and consistency.

Through its comprehensive and detailed reporting requirements, the CSRD aims to eliminate the ambiguity that often obscures sustainability claims. For example, terms that companies might use, such as “green” or “eco-friendly,” must now be supported by scientifically rigorous methodologies, including lifecycle assessments and compliance with widely recognized frameworks such as the Global Reporting Initiative (GRI) or the Task Force on Climate-Related Financial Disclosures (TCFD). This shift signifies a departure from vague marketing language toward precise, quantifiable indicators of sustainability. Furthermore, the CSRD calls for transparency not only in environmental metrics but also in governance and social factors. Companies will need to report on diversity initiatives, human rights policies, and labor practices, further reducing the opportunities for selective reporting that highlights only favorable aspects while neglecting critical areas of their operations.

By enforcing standardized disclosures across a diverse range of companies—including large public-interest entities, listed SMEs, and non-EU entities with substantial operations within the EU—the CSRD establishes a level playing field. This comprehensive scope ensures that companies operating within the same industry face uniform requirements, enabling stakeholders to identify genuine leaders in sustainability while exposing organizations that engage in misleading or deceptive practices.

While the CSRD establishes a high standard for sustainability reporting, its effectiveness is contingent upon consistent enforcement across Member States. The directive places a significant burden on national authorities to oversee compliance and ensure that companies uphold their reporting obligations. Moreover, the complexity of sustainability metrics, particularly for smaller businesses, poses notable challenges.

1.5. CSDDD (2024/1760)

Prior to the enactment of the Corporate Sustainability Due Diligence Directive (CSDDD), the European Union lacked a binding legal framework imposing mandatory due diligence obligations on companies concerning human rights and environmental impacts. Regulatory efforts in this domain were limited to soft law instruments, such as voluntary guidelines (e.g., the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights), sectoral recommendations, and corporate self-regulation. These instruments, while setting normative expectations, lacked enforceability and uniform application across Member States.

In this context, the CSDDD represents a landmark legislative effort by the European Union to integrate sustainability into corporate strategies, ensuring accountability and transparency in environmental and social governance. This directive aligns with broader EU regulatory efforts, such as the Green Claims Directive (GCD) and the Corporate Sustainability Reporting Directive (CSRD), collectively reinforcing transparency and accountability in corporate sustainability commitments.

By mandating comprehensive due diligence processes, the directive addresses adverse human rights and environmental impacts across global value chains. Its objectives align with broader EU initiatives, such as the European Green Deal, emphasizing systemic change in corporate behavior.

The CSDDD applies to EU-based companies meeting specific size thresholds, as well as non-EU companies with significant operations within the EU market, demonstrating its extraterritorial impact. The directive targets large companies with more than 500 employees and an annual worldwide turnover exceeding €150 million.

The Directive also includes SMEs in high-risk sectors such as agriculture, textiles, and minerals with at least 250 employees and an annual net turnover of €40 million. This

broad applicability ensures that corporate sustainability efforts permeate diverse industries and geographies.

The directive adopts a value-chain-wide approach, compelling companies to address potential risks and adverse impacts not only within their direct operations but also throughout their supply chains.

Under the CSDDD, companies must implement due diligence processes that include risk identification, mitigation, prevention, monitoring, and transparent reporting. By requiring firms to assess their environmental and social impacts comprehensively, the directive ensures accountability for issues such as deforestation, pollution, and forced labor. Its provisions extend to board-level decision-making, mandating the integration of sustainability into corporate governance and the adoption of climate transition plans aligned with the Paris Agreement goals (Directive Proposal, 2022).

The CSDDD establishes several mechanisms to ensure that sustainability claims are credible, measurable, and transparent. These provisions not only promote corporate accountability but also act as deterrents to greenwashing practices:

Due Diligence Processes: Companies are obligated to establish risk assessment frameworks that identify and address environmental and social impacts. These frameworks include consultations with stakeholders, such as workers, local communities, and civil society organizations, ensuring inclusivity and transparency.

Climate Transition Plans: The directive requires companies to adopt verifiable climate plans, detailing measurable targets and strategies for achieving net-zero emissions. These plans are subject to board oversight, embedding sustainability into corporate strategy and governance.

Mandatory Reporting and Monitoring: Regular disclosures on due diligence efforts, climate plans, and progress metrics are required, ensuring that stakeholders have access to detailed and verifiable information about corporate sustainability efforts.

Civil Liability Provisions: Companies can be held liable for damages resulting from non-compliance, providing victims with legal recourse to seek reparations. This accountability mechanism strengthens corporate responsibility and discourages deceptive practices.

Penalties and Enforcement: National authorities are empowered to impose significant fines on non-compliant companies, with penalties linked to global turnover. The

maximum limit of pecuniary penalties shall be not less than 5 % of the net worldwide turnover of the company in the financial year preceding that of the decision to impose the fine.

When implemented alongside the Green Claims Directive and the CSRD, the CSDDD strengthens the EU's regulatory framework for corporate sustainability governance, ensuring that environmental commitments are not mere marketing rhetoric but enforceable legal obligations.

1.6. EU Taxonomy Regulation (2020/852)

The EU Taxonomy Regulation was adopted on June 18, 2020 and according to its Article 1 “*this Regulation establishes the criteria for determining whether an economic activity qualifies as environmentally.*”⁵¹

The Regulation applies to financial market participants, large companies, and EU Member States involved in creating sustainability-related financial products. It functions as a classification system for sustainable economic activities, providing guidance for investment choices, corporate disclosures, and regulatory compliance within the realm of sustainable finance.

The Taxonomy is binding on several key stakeholders: (i) financial market participants that offer sustainable investment products or funds labeled as ESG or green; (ii) large public-interest entities with over 500 employees, which are required to report under the NFRD and, going forward, the CSRD; and (iii) EU Member States when they implement policies that classify economic activities as sustainable.⁵²

To be classified as environmentally sustainable, an economic activity must fulfill four cumulative conditions as outlined in Article 3 of the Taxonomy Regulation:

- (i) **Substantial Contribution**: It must significantly contribute to at least one of the six environmental objectives specified in Article 9, which include: Climate change mitigation; climate change adaptation; sustainable use and protection

⁵¹ European Union (2020) *Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment*. **Official Journal of the European Union**, L198, pp. 13–43. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852>. Accessed on February 18, 2025.

⁵² <https://ec.europa.eu/sustainable-finance-taxonomy/>;

of water and marine resources; transition to a circular economy; pollution prevention and control; protection and restoration of biodiversity and ecosystems⁵³.

- (ii) **Do No Significant Harm:** It should not cause significant harm to any of the other five environmental objectives.
- (iii) **Minimum Social Safeguards:** It must comply with essential social safeguards, such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.
- (iv) **Technical Screening Criteria:** It must meet the technical screening criteria set by the EU Platform on Sustainable Finance, ensuring a science-based approach to classification.

It is important to note that the EU Taxonomy is not a mandatory list or set of requirements regarding environmental performance for companies or financial products. However, it serves as a guide for investors, helping them understand what qualifies as a sustainable product or activity within the financial market.

By establishing objective sustainability criteria, the Taxonomy helps prevent financial institutions and corporations from misleading investors about the sustainability of their activities.

2. UNITED STATES

While the European Union has implemented a comprehensive regulatory framework to address greenwashing, including the EU Taxonomy Regulation and the Corporate Sustainability Reporting Directive, the United States has taken a more decentralized and enforcement-driven approach.

Given the growing concern regarding corporate greenwashing, as more companies seek to capitalize on the increasing consumer demand for environmentally sustainable

⁵³ EU Taxonomy Regulation, Article 9.

products and practices, regulatory agencies have established a framework to effectively address these issues⁵⁴.

Rather than a single, cohesive legislative framework, greenwashing regulation in the U.S. is fragmented across multiple federal and state agencies, each with its own jurisdiction over deceptive environmental claims. The Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), and various state attorneys general play key roles in monitoring, enforcing, and penalizing misleading sustainability claims.

2.1. Federal Trade Commission Act

The Federal Trade Commission Act (FTCA), enacted in 1914, is a fundamental piece of legislation in the United States that established the FTC. The FTC functions as an autonomous federal agency dedicated to safeguarding consumer interests and promoting fair competition within the marketplace.

This legislation was crafted to achieve two fundamental and interrelated objectives: firstly, to ensure an equitable competitive landscape for businesses, thereby fostering innovation and economic growth; and secondly, to protect consumers from fraudulent business practices that can undermine their trust and financial well-being. By empowering the FTC with these investigatory and enforcement capabilities, the FTCA plays a important role in maintaining the integrity of the marketplace, serving both the interests of consumers and the principles of free enterprise⁵⁵.

At the core of the FTCA is Section 5, a comprehensive and adaptable provision that empowers FTC to address deceptive and unfair business practices. This section serves as the foundation of the FTC's consumer protection mandate, granting the agency the authority to investigate misconduct, enforce regulations, and impose penalties on those who compromise market integrity⁵⁶.

Given the rapidly changing nature of commercial practices, Section 5 has proven instrumental in adapting regulatory oversight to confront evolving challenges. These challenges include not only false advertising and digital fraud that exploit consumers in

⁵⁴ Steve Wendel & Samantha Lamas, Who Cares About ESG Investing? M.S Blog (May 3, 2019, 3:15 PM), <https://www.morningstar.com/articles/926921/who-cares-about-esg-investing>.

⁵⁵ <https://www.ftc.gov/about-ftc/mission/enforcement-authority>. Accessed on February 19, 2025.

⁵⁶ <https://www.federalreserve.gov/boarddocs/supmanual/cch/200806/ftca.pdf>. Accessed on February 19, 2025.

the online arena but also the contemporary issue of greenwashing, where companies provide misleading claims about the environmental benefits of their products. Through the mechanisms of Section 5, the FTC remains dedicated to promoting fairness and transparency in the marketplace.

Section 5(a) of FTCA clearly states that “*unfair or deceptive acts or practices in or affecting commerce*” are unlawful. While the statute's language is broad, the FTC has further honed its interpretation through case law, enforcement actions, and policy statements.

To determine whether a practice is deceptive, the FTC typically examines the following factors: (i) whether there exists a material misrepresentation, omission, or practice that is likely to mislead consumers; (ii) the deception is assessed from the standpoint of a reasonable consumer; and (iii) The misleading information influences consumer decision-making, potentially leading to harm.

In contrast, an unfair practice is evaluated based on whether it: (i) causes substantial injury to consumers; (ii) is not reasonably avoidable by consumers; and (iii) is not outweighed by countervailing benefits to consumers or competition⁵⁷.

In light of increasing concerns regarding corporate sustainability claims, Section 5 has emerged as an essential instrument for regulating deceptive environmental marketing practices, commonly known as greenwashing.

As companies progressively promote their products and services as “green,” “sustainable,” or “eco-friendly,” it becomes imperative to verify the accuracy of these assertions in order to preserve consumer trust and mitigate market distortions.

The FTC Green Guides, which will be described on the item below, initially introduced in 1992 and last updated in 2012, provides a non-binding yet influential regulatory framework for evaluating environmental claims under Section 5 of the Federal Trade Commission Act.

These guidelines aim to furnish clarity and direction to businesses regarding the formulation of truthful and substantiated environmental claims, thereby assisting in the prevention of misleading marketing practices. By adhering to these standards,

⁵⁷ Federal Trade Commission (1983) FTC Policy Statement on Deception. 103 F.T.C. 174. Available at: <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception>. Accessed on February 19, 2025.

organizations can ensure their marketing endeavors align with actual environmental practices, thereby promoting transparency and accountability within the marketplace.⁵⁸

2.2. FTC Green Guides

The Green Guides constitute a set of influential, non-binding guidelines designed to assist businesses in accurately representing their environmental claims in compliance with Section 5 of the FTCA. The primary aim of these guidelines is to prevent unfair and deceptive marketing practices, thereby ensuring that environmental claims are truthful, substantiated, and not misleading to consumers⁵⁹.

These guidelines operate within the larger framework established by the FTCA. Although the Green Guides do not possess the force of law, they serve as an important benchmark for the FTC when undertaking enforcement actions against misleading environmental claims.

The Green Guides apply broadly across various marketing and communication channels, ensuring consistent regulatory oversight over how environmental claims are presented to consumers and businesses⁶⁰.

The guidelines regulate all forms of environmental marketing claims, including:

- (i) Advertisements, labels, and promotional materials: Companies must ensure that all sustainability-related messages in traditional advertising (e.g., television, radio, and print ads) and product labeling are accurate, verifiable, and not misleading.
- (ii) Business-to-business transactions: Environmental claims made between companies, such as supply chain sustainability certifications or corporate procurement contracts, must also comply with FTC standards for truthfulness and substantiation.
- (iii) Website, social media, and digital platforms: Online sustainability claims—including those on corporate websites, social media posts, and e-commerce

⁵⁸ Federal Trade Commission, Guides for the Use of Environmental Marketing Claims (Green Guides), 16 C.F.R. Part 260 (2012) <https://www.ftc.gov/system/files/documents/plain-language/bus42-green-guides-ftc-fact-sheet.pdf>. Accessed on February 19, 2025.

⁵⁹ Federal Trade Commission, Guides for the Use of Environmental Marketing Claims (Green Guides), 16 C.F.R. Part 260 (2012).

⁶⁰ Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (2022).

platforms—must be factually supported and not exaggerated, as digital platforms have become a primary channel for environmental marketing.

- (iv) Packaging and point of sale materials: Any point-of-sale claims, in-store displays, or digital product descriptions that suggest environmental benefits must be transparent and well-substantiated.

The Green Guides also provides specific guidance on several commonly used environmental marketing claims, ensuring that these assertions are scientifically backed and not misleading. Below are some of the key environmental attributes addressed by the guidelines:

- (i) Carbon Offsets: (a) Companies making carbon offset claims must have reliable evidence demonstrating actual reductions in greenhouse gas (GHG) emissions; and (b) Claims must specify the timeframe for emission reductions and ensure that offsets are additional—meaning they would not have occurred without corporate investment⁶¹.

Example: A company advertising its operations as "carbon neutral" must disclose whether the offsets used actually counterbalance emissions within a reasonable timeframe.

- (ii) Certifications and Seals of Approval: (a) Companies must disclose the basis of environmental certifications and clearly state whether the certification is issued by an independent third party; (b) If a certification is self-created by the company or industry group, it must not mislead consumers into believing it is an independent verification⁶².

Example: A product featuring an "Eco-Safe Certified" label must clarify who issued the certification and the environmental standards it represents.

- (iii) Compostable and Biodegradable Claims: (i) Products advertised as compostable or biodegradable must fully decompose within a reasonable time

⁶¹ FTC, Carbon Offset Regulations, 2023.

⁶² Federal Trade Commission, Certifications and Consumer Trust, 2023.

in customary disposal environments (e.g., landfills, composting facilities); (ii) Claims must specify whether special conditions (e.g., industrial composting) are required.

Example: A plastic bag labeled as "biodegradable" must decompose within the expected timeframe in typical landfill conditions—otherwise, the claim is deceptive.

- (iv) Recyclable and Recycled Content Claims: (a) Recyclable claims must reflect actual recycling availability—if a product can technically be recovered; and (b) Recycled content claims must specify whether the material is pre-consumer or post-consumer recycled content⁶³.

Example: A shampoo bottle advertised as "100% recyclable" is misleading if only certain municipalities accept it for recycling.

- (v) Renewable Energy and Renewable Materials Claims: (a) Renewable energy claims must specify the energy source (e.g., wind, solar, hydro) and whether the company directly uses renewable energy or purchases renewable energy credits (RECs); and (b) Renewable material claims must clarify whether the material is sustainably sourced and whether it is fully recyclable⁶⁴.

Example: A company advertising its office as "powered by renewable energy" must disclose if it purchases RECs rather than generating renewable energy on-site.

2.3. Securities and Exchange Acts

The U.S. SEC has taken commendable measures to enhance the regulation of environmental disclosures and financial statements related to Environmental, Social, and Governance (ESG) criteria. This initiative is anchored to a proper legislation, notably the Securities Act of 1933 and the Securities Exchange Act of 1934.

⁶³ Federal Trade Commission, Recyclability Standards and Market Impact, 2021.

⁶⁴ FTC, Renewable Energy Advertising Standards, 2023.

Over time, amendments and the development of new regulatory frameworks have refined the SEC's role in addressing misleading sustainability claims.

The Securities Act of 1933 was the first major federal securities law in the U.S., enacted in response to the market instability that led to the Great Depression⁶⁵. The primary objective of the Act is to ensure full and fair disclosure in the issuance of securities, preventing companies from misleading investors.

Key provisions of the Securities Act of 1933 relevant to environmental claims include⁶⁶:

- (i) Section 5: Requires companies to file a registration statement with the SEC before selling securities to the public. This includes material disclosures on risks, business operations, and financial conditions, which today extend to climate-related risks and ESG commitments.
- (ii) Section 17(a): Prohibits fraudulent and misleading statements in securities offerings, including false environmental impact claims.
- (iii) Rule 10b-5 (later adopted under the Exchange Act): Makes it unlawful to make untrue statements of material fact or to omit material facts necessary to make a statement not misleading.

On the other hand, the Securities Exchange Act of 1934 established continuous disclosure requirements for publicly traded companies and granted the SEC authority to regulate securities markets⁶⁷. This law introduced:

- (i) Section 10(b): The primary anti-fraud provision, under which Rule 10b-5 (adopted in 1942) prohibits deceptive or misleading statements made in connection with the sale of securities⁶⁸.

⁶⁵ Securities Act of 1933, 15 U.S.C. § 77a (2022).

⁶⁶ <https://clsbluesky.law.columbia.edu/2024/10/18/disclosure-greenwashing-and-the-future-of-esg-litigation/>. Accessed on February 19, 2025.

⁶⁷ Securities Exchange Act of 1934, 15 U.S.C. § 78a (2022).

⁶⁸ See, e.g., Section 10(b) of the Securities Exchange Act of 1934.

- (ii) Periodic Reporting Requirements (Forms 10-K, 10-Q, and 8-K): Companies must file annual, quarterly, and event-driven reports with the SEC, which increasingly include climate risk and ESG disclosures⁶⁹.

Federal laws such as the Securities Act of 1933, the Securities Exchange Act of 1934, and the FTCA provide the primary framework for addressing misleading environmental claims in the U.S. In light of rising demand from investors and consumers for reliable environmental information, various states have implemented their own regulations to counteract greenwashing and false sustainability marketing.

These state initiatives support federal efforts by enhancing transparency in corporate sustainability claims, targeting specific industries, requiring detailed disclosures, and imposing penalties for misrepresentation.

A notable recent example is California's Voluntary Carbon Market Disclosures Act, which aims to improve clarity regarding carbon offset claims and emissions reduction promises⁷⁰.

The law also mandates public disclosure of net-zero, carbon neutrality, and emissions reduction claims, ensuring that such representations are substantiated with verifiable data and prohibit misleading carbon neutrality statements, preventing companies from overstating the impact of purchased offsets without tangible emissions reduction measures⁷¹.

While California has taken a leading role in regulating misleading environmental claims, other states have introduced or proposed their own greenwashing laws, addressing issues such as consumer deception, environmental advertising fraud, and climate-related financial disclosures.

New York lawmakers have proposed legislation targeting deceptive sustainability claims, focusing on product labeling, corporate environmental advertising, and carbon credit disclosures. The state aims to introduce penalties for businesses that mislead consumers through vague or unsubstantiated eco-friendly branding⁷².

⁶⁹ U.S. Congress, National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 (1969).

⁷⁰ California Assembly Bill No. 1305 (Voluntary Carbon Market Disclosures Act), 2023.

⁷¹ California Attorney General's Office, California Takes Action on Carbon Neutrality Greenwashing, 2023.

⁷² New York State Senate, Proposed Bill on Deceptive Environmental Claims, 2023.

Washington State has explored ESG disclosure requirements, particularly in industries with significant carbon footprints. The state has integrated environmental impact reporting into its consumer protection laws, allowing legal action against companies that exaggerate their sustainability efforts⁷³.

3. BRAZIL

Brazil is internationally recognized as a vital center for environmental preservation and biodiversity, encompassing a diverse range of ecosystems, including the Amazon Rainforest⁷⁴. The country's legal framework is complex and includes a broad array of statutes and regulations that govern consumer protection, corporate sustainability reporting, and adherence to environmental standards.

Brazil currently lacks a specific and comprehensive legal framework that directly addresses the issue of greenwashing. However, the country does implement robust consumer protection policies designed to safeguard the public from deceptive marketing practices. Additionally, existing regulations governing financial markets mandate that corporations provide thorough disclosures regarding their environmental, social, and governance practices.⁷⁵

3.1. Consumer Defense Code (Código de Defesa do Consumidor – CDC, Law No. 8.078/1990)

The Consumer Defense Code (CDC), enacted in 1990, is one of the most comprehensive consumer protection laws in Latin America⁷⁶. Article 6 of the CDC establishes basic consumer rights, including the right to protection against misleading advertising and the right to clear and accurate information about products and services.

The relevant provisions of Article 6 of the CDC include:

- (i) Right to information (Article 6, III): Consumers must receive clear, adequate, and accurate details about the products and services they purchase, including composition, quality, quantity, price, and potential risks.

⁷³ Washington State Department of Ecology, Climate Risk and ESG Disclosures: Legal Frameworks, 2023

⁷⁴ <https://www.cbd.int/doc/world/br/br-nbsap-v3-en.pdf>. Accessed on February 20, 2025.

⁷⁵ Revista do Tribunal de Contas do Estado de Goiás, Belo Horizonte, ano 3, n. 6, p. 99-113, jul./dez. 2021. Accessed on February 20, 2025.

⁷⁶ Código de Defesa do Consumidor, Lei No. 8.078/1990 (Brazil). Accessed on February 20, 2025.

- (ii) Protection against misleading and abusive advertising (Article 6, IV): Consumers have the right to be protected against false advertising, coercive commercial practices, and deceptive sustainability claims.

By establishing these rights, the CDC ensures that companies cannot promote eco-friendly claims that are vague, exaggerated, or unsupported by scientific evidence.

Article 37 of the CDC explicitly prohibits misleading and abusive advertising, including environmental claims that create a false perception of sustainability.

Paragraph 1 of Article 37 defines misleading advertising as:

“Any form of advertisement that is wholly or partially false, or that, by omission or other means, is capable of misleading consumers regarding the nature, characteristics, quality, quantity, properties, origin, price, or any other aspect of products and services.”

In the context of greenwashing, this provision applies to advertisements that falsely claim products are “biodegradable,” “eco-friendly,” or “carbon neutral” without scientific validation⁷⁷.

Companies engaging in greenwashing may face legal consequences under the CDC, including administrative, civil, and criminal penalties.

- (i) Counter-advertising (Article 56, XII and Article 60): A company found guilty of misleading environmental claims may be required to issue corrective advertisements (counter-advertising) to clarify the truth.
- (ii) Criminal liability (Article 67): Under the CDC, deliberately engaging in misleading advertising is considered a criminal offense, punishable by detention of three months to one year, plus fines.
- (iii) Administrative sanctions (Article 56): Violations of the CDC may lead to fines, product seizures, license revocations, suspension of activities, and administrative intervention.
- (iv) Civil liability: (Articles 6, VI, and 12-25 of the CDC): Companies engaging in greenwashing may be held civilly liable for damages caused to consumers or society at large. This includes moral damages, material damages and even

⁷⁷ PROCON-SP, Fiscalização de Publicidade Enganosa em Sustentabilidade, 2022. Accessed on February 20, 2025.

collective and diffuse damages usually proposed by the consumer protection agencies (PROCONs) and the Public Prosecutor's Offices.

While the CDC provides a robust legal framework for combating misleading environmental claims in order to protect consumers, there is no specific legislation in Brazil solely dedicated to greenwashing. To address this gap, lawmakers introduced Bill No. 4.752/2012, which seeks to regulate sustainability claims more explicitly⁷⁸.

The bill proposes stricter rules on environmental advertising, requiring companies to provide scientific proof of sustainability claims. It aims to increase penalties for misleading environmental claims, ensuring stronger deterrence against greenwashing⁷⁹.

3.2. Brazilian Advertising Self-Regulation Code (Código Brasileiro de Autorregulamentação Publicitária)

The National Council for Advertising Self-Regulation (CONAR) has the function of regulating advertising practices in Brazil, ensuring that commercial communications comply with both ethical and legal standards. In pursuing its comprehensive mandate, CONAR has become a significant authority in addressing greenwashing⁸⁰.

Through the establishment of self-regulatory mechanisms, the formulation of ethical guidelines, and the enforcement of compliance procedures, CONAR enhances transparency and accountability in sustainability-related advertising⁸¹.

The regulatory foundation of CONAR is based on the Brazilian Advertising Self-Regulation Code (Código Brasileiro de Autorregulamentação Publicitária), which serves as a guiding framework for ethical advertising. While CONAR lacks the coercive power of state regulatory agencies, such as the Public Prosecutor's Office, it operates as a self-regulatory body that enforces compliance through ethical oversight and industry sanctions⁸².

One of the primary advantages of CONAR's self-regulatory model is its agility in responding to emerging advertising trends, including the rapid proliferation of

⁷⁸ Projeto de Lei No. 4.752/2012 (Brazil). Accessed on February 20, 2025.

⁷⁹ Senado Federal, Discussão sobre Greenwashing e Publicidade Sustentável, 2023. Accessed on February 20, 2025.

⁸⁰ <https://www.leticiameo.com.br/post/o-conar-e-a-fiscaliza%C3%A7%C3%A3o-do-greenwashing-no-brasil>. Accessed on February 20, 2025.

⁸¹ <https://akatu.org.br/conar-define-normas-para-combater-greenwashing-na-propaganda/#:~:text=Para%20denunciar%20determinada%20empresa%20ou,CEP:%2001311%2D940.&text=As%20mudan%C3%A7as%20foram%20incorporadas%20por,tamb%C3%A9m%20o%20Akatu%20no%20facebook>. Accessed on February 20, 2025.

⁸² <http://www.conar.org.br/pdf/Codigo-CONAR-2024.pdf>. Accessed on February 20, 2025

sustainability claims in digital media, social networks, and influencer marketing. Unlike state-enforced regulatory processes, which may be slow and bureaucratic, CONAR's framework allows for swift interventions, ensuring that misleading sustainability claims are promptly addressed.

Notably, CONAR has adjudicated several cases related to environmental advertising, issuing recommendations and ethical sanctions against companies found to be engaging in misleading sustainability claims. These cases typically involve products marketed as "biodegradable," "carbon neutral," or "eco-friendly" without scientific validation or adequate consumer disclosure⁸³.

While CONAR's decisions do not carry legal force, they are widely respected within the industry, leading to voluntary compliance by major advertisers and corporations. This self-regulatory commitment ensures that brands avoid reputational damage associated with non-compliance with ethical advertising standards⁸⁴.

The Brazilian Advertising Self-Regulation Code set forth the Annex U which outlines key principles that advertisers must adhere to when making environmental claims, emphasizing the need for scientific accuracy, transparency, and consumer protection.

The scope of Annex U applies to all advertising content that involves environmental assertions, including: (i) statements regarding a product's sustainability attributes (e.g., biodegradable, carbon neutral, recyclable); (ii) claims about a company's commitment to sustainability (e.g., net-zero goals, environmental responsibility policies); (iii) certifications, labels, and seals of approval related to eco-friendly production, sustainable sourcing, or reduced environmental impact⁸⁵.

The following paragraphs set forth in Annex U are particularly relevant in preventing greenwashing:

(i) Concrete Basis of Environmental Claims

"Environmental and social responsibility claims must correspond to concrete practices adopted by the company, avoiding vague concepts that may lead to misleading or broader interpretations than the actual conduct undertaken.

⁸³ <https://autoesporte.globo.com/videos/noticia/2017/04/chevrolet-fiat-e-ford-mudam-anuncios-apos-denuncias-de-maquagem-ecologica.ghtml>. Accessed on February 20, 2025.

⁸⁴ <http://www.conar.org.br/>. Accessed on February 20, 2025.

⁸⁵ <http://www.conar.org.br/pdf/Codigo-CONAR-2024.pdf>. Accessed on February 20, 2025.

Advertising of sustainable and environmental practices must be preceded by the actual adoption or formalization of such a stance by the company or institution. If the advertisement promotes a future action, it is essential to explicitly state this expectation, clarifying that the act has not yet been implemented at the time of the advertisement's dissemination.⁸⁶

(ii) Truthfulness and Verification

"All information and claims made in advertising must be truthful, verifiable, and provable. Advertisers are encouraged to provide detailed information about the promoted practices through additional sources, such as websites and consumer service channels.⁸⁷"

(iii) Accuracy and Transparency

"Information conveyed in advertising must be exact and precise, expressed in a clear and comprehensible language, avoiding ambiguous interpretations or false conclusions⁸⁸."

(iv) Evidence and External Sources

"Advertisers making environmental or social responsibility claims must have supporting data and external sources that endorse or, if applicable, assume responsibility for the socio-environmental information communicated.⁸⁹"

(v) Relevance of Environmental Claims

"It is recommended that environmental and social responsibility claims have a logical connection with the company's sector, brands, products, and services within its business area and market. Advertisements that present compliance with legal and regulatory obligations as an environmental benefit will not be considered relevant⁹⁰."

⁸⁶ Ibid., Paragraph 1.

⁸⁷ Ibid., Paragraph 2.

⁸⁸ Ibid., Paragraph 3.

⁸⁹ Ibid., Paragraph 4.

⁹⁰ Ibid., Paragraph 5.

3.3. Securities and Exchange Commission of Brazil Resolution No. 59/2021 (CVM Resolution No. 59/2021) - (Capital Markets and Investors)

Published on December 22, 2021, CVM Resolution No. 59/2021 amends previous instructions (CVM No. 480/2009 and CVM No. 481/2009) to incorporate ESG-related disclosure requirements into the *Reference Form*, the primary document containing information about publicly traded companies in Brazil. The resolution became effective on January 2, 2023, obligating companies to provide detailed information on their ESG practices and policies⁹¹.

The referred Resolution introduces several critical requirements designed to combat greenwashing, such as:

- (i) Disclosure of ESG Reports: Companies must indicate whether they publish ESG data in their annual reports or other specific documents. This includes detailing the methodologies or standards followed in preparing these reports, such as the Global Reporting Initiative (GRI) or Sustainability Accounting Standards Board (SASB) frameworks. Additionally, companies must disclose whether these reports are audited or reviewed by independent entities, enhancing the credibility of the information provided⁹².
- (ii) Materiality and Key Performance Indicators (KPIs): The regulation requires companies to disclose their materiality assessments and ESG-related KPIs. This ensures that the reported information is relevant to the company's operations and stakeholders, reducing the likelihood of superficial or misleading claims.
- (iii) Alignment with International Standards: Companies are encouraged to align their disclosures with international initiatives, such as the United Nations' Sustainable Development Goals (SDGs) and the TCFD recommendations. This alignment promotes consistency and comparability of ESG information, facilitating investor assessment and deterring greenwashing.

Risk Factors Disclosure: The resolution mandates the inclusion of ESG-related risk factors that could influence investment decisions. This encompasses social,

⁹¹ Comissão de Valores Mobiliários (CVM). Resolução CVM nº 59, de 22 de dezembro de 2021. Available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol059.html>. Accessed on February 20, 2025.

⁹² Abordagem pragmática da Resolução CVM 59 e das informações ESG. Consultor Jurídico, 26 de junho de 2022. Available at: <https://www.conjur.com.br/2022-jun-26/artx-publico-pragmatico-abordagem-pragmatica-resolucao-cvm-59-informacoes-esg/>. Accessed on February 20, 2025.

environmental, and climate-related risks, compelling companies to acknowledge and communicate potential challenges in their sustainability efforts.

CHAPTER 3: GREENWASHING CASES IN THE EUROPEAN UNION, THE U.S AND BRAZIL

After a theoretical analysis of greenwashing—exploring its concept, manifestations, and regulatory frameworks in the European Union, the United States, and Brazil—this chapter shifts to a practical perspective by examining real-world cases in each jurisdiction.

Greenwashing has become a global concern, prompting governments and regulatory bodies to strengthen legal mechanisms to prevent deceptive sustainability claims. The previous chapters have provided an in-depth discussion on how greenwashing is legally framed, highlighting key regulations such as the EU Green Claims Directive, the FTCA in the U.S., and the Brazilian Consumer Protection Code CDC and CONAR guidelines.

Building on this foundation, this chapter aims to analyse and compare two significant cases from each jurisdiction where legal action was taken against companies for misleading environmental claims. Each case study will examine: (i) the deceptive environmental claims made by the company; (ii) the legal instruments applied to the case; (iii) the penalties imposed; and (iv) the broader implications for corporate sustainability regulations.

1. EUROPEAN UNION

Ducth: Fossilvrij-case against KLM⁹³

The case No. C/13/719848 / HA ZA 22-524 was originated from Fossilvrij's (Fossil Free Foundation) regarding KLM Royal Dutch Airlines (KLM) environmental marketing strategies, particularly its "Fly Responsibly" campaign and CO2ZERO carbon offset program. The lawsuit was filed on July 6, 2022, and targeted KLM's misleading portrayal of aviation as environmentally sustainable. The main allegations included:

- (i) The use of vague and unsubstantiated environmental claims that suggested air travel could be "sustainable" or "responsible."
- (ii) The overstatement of the impact of the Sustainable Aviation Fuels (SAF), which, in reality, represents only a fraction of the fuel mix used by KLM and is not a viable large-scale solution.

⁹³ <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2024:1512>. Accessed on February 2, 2025.

- (iii) The misleading portrayal of carbon offsetting through tree-planting initiatives as a method of fully compensating for flight emissions.

Fossilvrij argued that such claims created a false perception among consumers, potentially influencing their purchasing decisions under the assumption that flying with KLM was an environmentally responsible choice.

KLM denied that its advertising campaigns misled consumers, arguing that its sustainability claims were based on ongoing efforts to reduce carbon emissions, including fleet renewal, increased use of SAF, and operational efficiency improvements. The airline maintained that it had a legitimate right to communicate its climate ambitions and inform passengers about environmental initiatives.

The Amsterdam District Court's ruling on March 20, 2024⁹⁴, established that KLM engaged in misleading advertising by making unfounded environmental claims. The court determined that:

- (i) The ruling emphasized that KLM's sustainability messaging was overly optimistic and lacked sufficient substantiation, such as "with CO2ZERO, you can neutralize the carbon footprint of your flight";
- (ii) The court also found that KLM's CO2ZERO program misled consumers by implying that carbon offsets could fully compensate for emissions. KLM did not provide sufficient transparency on the limitations of its offset programs, leading consumers to believe they were making a climate-neutral choice by participating.
- (iii) The vagueness and ambiguity of terms like "eco-friendly," "green," and "responsible flying" were deemed unlawful under Dutch and EU consumer law.

The ruling was based on the Unfair Commercial Practices Directive (Directive 2005/29/EC), which was implemented in Dutch law through Articles 6:193a to 6:193j of the Dutch Civil Code. These provisions prohibit misleading commercial practices, including vague and unsubstantiated environmental claims that could deceive consumers⁹⁵.

⁹⁴ <https://www.clientearth.org/media/cx4po41h/klm-judgment-20-march-2024.pdf>. Access on February 2, 2025.

⁹⁵ <https://www.reuters.com/business/aerospace-defense/dutch-court-rule-klm-greenwashing-case-2024-03-20/>. Accessed on February 2, 2025.

Out of the 19 advertisements challenged in the lawsuit, the court ruled that 15 were misleading and unlawful under the Unfair Commercial Practices Act.

The court did acknowledge that KLM has the right to communicate its sustainability ambitions but emphasized that such statements must be presented honestly and concretely. It ruled that KLM is not obligated to issue corrective statements, but if it continues to advertise CO₂ reduction efforts, it must ensure they are clear and well-substantiated⁹⁶.

While the court did not impose fines or require KLM to publish retractions, it did order the airline to pay €18,211.53 in legal costs incurred by Fossil Free Foundation.

Germany: Katjes case⁹⁷

In 2021, Katjes published an advertisement in a food industry trade magazine, asserting that "*since 2021, [it] has been producing all products in a climate-neutral manner.*"⁹⁸ The advertisement featured the logo of ClimatePartner, a consultancy specializing in climate protection, accompanied by the statement "climate neutral product." Additionally, the ad included a QR code and a link directing readers to a website providing further information on Katjes' climate neutrality efforts⁹⁹.

Katjes achieved this claimed climate neutrality by offsetting its greenhouse gas (GHG) emissions through financial support for climate protection projects facilitated by ClimatePartner. Notably, the advertisement itself did not detail these offsetting measures; such information was accessible only via the provided link or QR code.

The case was adjudicated by the Bundesgerichtshof (BGH), the Federal Court of Justice of Germany, under the docket number I ZR 98/23.

The legal basis for the claim was founded on the Germany laws, such as the Act Against Unfair Competition, which prohibits misleading commercial practices, particularly regarding product characteristics.

⁹⁶ <https://www.loyensloeff.com/insights/news--events/news/breaking-court-judgment-in-first-dutch-greenwashing-class-action---marketing-claims-klm-are-considered-to-be-misleading/>. Accessed on February 2, 2025.

⁹⁷ <https://www.germanlawinternational.com/businesslaw/business-law/greenwashing-a-never-ending-story-161530/>. Accessed on February 2, 2025.

⁹⁸ <https://www.harte-bavendamm.de/en/ip-blog/climate-neutrality-put-to-the-test-landmark-judgement-by-the-german-federal-court-of-justice>. Accessed on February 2, 2025.

⁹⁹ <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&Seite=1&nr=138206&anz=1314&pos=32>. Accessed on February 2, 2025.

Katjes defended its position by arguing that The average consumer understands “climate neutral” to include both emission reduction and compensation and the advertisement included a QR code linking to detailed information about Katjes' carbon offsetting strategy, satisfying disclosure requirements.

The Lower Court (LG Kleve) dismissed the claim, ruling that the term "climate neutral" was not misleading, as consumers could be expected to understand the concept of carbon offsetting. The plaintiff appealed.

The Higher Regional Court (OLG Düsseldorf) upheld the dismissal, emphasizing that the phrase "climate neutral" does not inherently imply zero emissions.

However, the Federal Court of Justice (BGH) overturned these decisions, ruling in favor of the plaintiff. The BGH found that:

- (i) Strict accuracy and clarity are required for environmental claims, similar to health-related claims;
- (ii) Environmental marketing must include explicit clarification in the advertisement itself, without requiring consumers to seek additional information;
- (iii) The priority of emission reduction over compensation must be reflected in advertising, and ambiguity about the method of achieving climate neutrality constitutes misleading advertising.

The BGH decision imposed the following sanctions on Katjes:

- (i) A prohibition against using the phrase “climate neutral” in its advertisements without explicitly clarifying whether neutrality was achieved through emission reduction or compensation;
- (ii) A fine of up to €250,000 per violation, or alternatively, a six-month prison sentence for responsible executives in case of non-compliance;
- (iii) Reimbursement of €374.50 to the plaintiff for legal costs, with 5% annual interest from July 30, 2021; and
- (iv) Full payment of court costs by Katjes.

The KLM and Katjes cases reflect an evolving legal environment in which European courts are beginning to hold corporations accountable for misleading environmental marketing. While the German court imposed severe sanctions, the Dutch court opted for

a more cautious approach, refraining from immediate penalties but issuing a clear warning.

The KLM and Katjes rulings demonstrate the lack of uniform enforcement mechanisms across Member States. While both cases recognized the misleading nature of greenwashing, the Dutch and German courts diverged on the necessity of sanctions. This cases highlights the importance of the Green Claims Directive in ensuring harmonized EU-wide enforcement.

The Green Claims Directive will likely lead to more consistent enforcement across the EU, ensuring that corporations engaging in greenwashing face tangible consequences, regardless of jurisdiction. As environmental litigation increases, companies must prioritize genuine sustainability efforts over marketing-driven green claims, lest they face legal, financial, and reputational repercussions.

The differential treatment of KLM and Katjes illustrates the transitional phase of greenwashing regulation in Europe. With the incoming Green Claims Directive, future cases are expected to align more closely with the stricter approach observed in Germany, marking a new era of climate-related corporate accountability in the European Union.

2. UNITED STATES

Volkswagen Dieselgate scandal

Between 2008 and 2015, Volkswagen marketed its diesel vehicles in the U.S. under the "Clean Diesel" campaign, asserting that their cars combined performance, fuel efficiency, and environmental friendliness. The company claimed compliance with stringent U.S. emissions standards, positioning their vehicles as eco-conscious choices for consumers. However, these representations were fundamentally deceptive.¹⁰⁰

Investigations revealed that Volkswagen had installed "defeat devices"—sophisticated software algorithms—in approximately 590,000 diesel vehicles sold in the U.S. These devices could detect when a vehicle was undergoing emissions testing and temporarily reduce emissions to meet regulatory standards. During normal driving conditions,

¹⁰⁰ <https://www.ftc.gov/news-events/news/press-releases/2016/03/ftc-charges-volkswagen-deceived-consumers-its-clean-diesel-campaign> . Accessed on February 2, 2025.

however, the vehicles emitted nitrogen oxides (NO_x) at levels up to 40 times the federal limit¹⁰¹.

In this context, Volkswagen had sold nearly 500,000 affected vehicles in the U.S. before being caught, violating multiple environmental and consumer protection laws.

Several American authorities have sued Volkswagen, as follows:

Authority	Legal Basis	Action Taken
EPA (Environmental Protection Agency) ¹⁰²	Clean Air Act (CAA)	Civil lawsuit for emissions violations
DOJ (Department of Justice) ¹⁰³	Fraud, conspiracy, obstruction of justice	Criminal and civil charges
FTC (Federal Trade Commission) ¹⁰⁴	Federal Trade Commission Act (FTCA)	Lawsuit for deceptive advertising
State Attorneys General (CA, NY, MA, etc.) ¹⁰⁵	State consumer protection laws	Civil lawsuits and additional settlements
CARB (California Air Resources Board) ¹⁰⁶	California emissions regulations	Led investigation and legal actions

Since the present analysis is regarding Greenwashing, only the FTC lawsuit will be more deeply evaluated.

In this scenario, on March 29, 2016 the FTC filed a lawsuit against Volkswagen Group of America Inc, in the United States District Court for the Northern District of California. The lawsuit accused Volkswagen of engaging in false advertising and deceptive marketing practices in violation of Section 5(a) of the FTCA, 15 U.S.C. § 45(a)¹⁰⁷.

The FTC's complaint asserted that Volkswagen engaged in four primary deceptive practices under Section 5(a) of the FTCA:

(i) False Environmental Claims (Greenwashing)

¹⁰¹ <https://www.epa.gov/enforcement/volkswagen-clean-air-act-c>. Accessed on February 2, 2025.

¹⁰² <https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement?>. Accessed on February 2, 2025.

¹⁰³ <https://www.justice.gov/archives/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six>. Accessed on February 2, 2025.

¹⁰⁴ <https://www.ftc.gov/news-events/news/press-releases/2016/06/volkswagen-spend-147-billion-settle-allegations-cheating-emissions-tests-deceiving-customers>. Accessed on February 20, 2025.

¹⁰⁵ <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-volkswagen-will-pay-additional-86>. Accessed on February 2, 2025.

¹⁰⁶ <https://ww2.arb.ca.gov/news/california-receive-153m-final-settlement-volkswagen>. Accessed on February 2, 2025.

¹⁰⁷ https://www.ftc.gov/system/files/documents/cases/160329volkswagen_cmpt.pdf. Accessed on February 2, 2025.

Volkswagen falsely marketed its diesel vehicles as "low-emission," "eco-conscious," and "environmentally friendly." The company launched an extensive marketing campaign, including national TV commercials (such as a Super Bowl), print advertisements, online videos, and brochures. Some of these misleading claims included:

- "Clean Diesel" branding: Volkswagen claimed that its vehicles reduced NOx emissions by 90% and were cleaner than gasoline vehicles.
- "Eco-friendly" messaging: The company targeted environmentally conscious consumers with messaging that emphasized low emissions and sustainability.
- Misleading demonstrations: Volkswagen produced ads showing white coffee filters placed on the exhaust pipes of its diesel vehicles, remaining clean to prove reduced emissions, which was a manipulated demonstration.

(ii) False Regulatory Compliance Claims

Volkswagen falsely stated that its vehicles met or exceeded U.S. emissions standards. The FTC noted that Volkswagen misled regulators, consumers, and investors by:

- Promoting vehicles as "50-state compliant" under federal and state emissions regulations.
- Touting compliance with California's strict environmental standards, despite later findings that Volkswagen actively circumvented these regulations.

(iii) Misrepresentation of Resale Value

Volkswagen misled consumers into believing that its diesel vehicles had a high resale value, encouraging them to make a purchase under the assumption that diesel cars were a financially sound investment. The FTC argued that because of Volkswagen's fraudulent emissions practices:

- The vehicles significantly depreciated in value after the scandal became public.
- Consumers who purchased or leased affected cars suffered billions of dollars in losses.

(iv) Failure to Disclose Defeat Devices

The FTC alleged that Volkswagen deliberately concealed the existence of defeat devices in its diesel vehicles. These devices allowed Volkswagen to pass emissions tests but did

not function in real-world driving conditions, misleading regulators and the public about the vehicles true environmental impact

Considering the main allegation exposed above, FTC requested multiple forms of relief to hold Volkswagen accountable, such as: (i) permanent injunction, preventing Volkswagen from making future deceptive environmental claims; (ii) ensuring that Volkswagen customers were compensated for their losses; and (iii) requiring Volkswagen to forfeit profits obtained through fraudulent advertising.

After extensive litigation, Judge Charles M. Breyer of the U.S. District Court for the Northern District of California granted final approval to a landmark \$14.7 billion settlement. This resolution encompassed claims associated with approximately 475,000 Volkswagen and Audi 2.0-liter diesel vehicles that had been equipped with defeat devices. As part of the settlement, affected consumers were provided with various forms of redress, including vehicle buybacks, lease terminations, or, where feasible, emissions modifications, in addition to significant financial compensation¹⁰⁸.

The Volkswagen emissions scandal, initiated by the company's greenwashing initiatives, has led to numerous lawsuits across the globe. Notably, the legal action initiated by the FTC represents a significant moment in the effort to address deceptive practices in environmental marketing.

This lawsuit revealed Volkswagen's misleading claims regarding the environmental compliance of its diesel vehicles, culminating in a landmark settlement of \$14.7 billion.

In addition to the substantial financial penalties, the company faced considerable costs associated with vehicle recalls, emissions modifications, and efforts directed toward environmental remediation.

The Volkswagen emissions scandal illustrates how the United States takes a firm stance against deceptive environmental marketing, treating greenwashing not just as a consumer protection issue but as a serious corporate misconduct with legal and financial repercussions. The FTC lawsuit and the subsequent \$14.7 billion settlement underscore that misleading sustainability claims, particularly those involving regulatory fraud, are met with strict enforcement measures rather than mere advertising corrections.

¹⁰⁸ <https://www.lieffcabraser.com/consumer/vw-emissions-recall>. Accessed on February 2, 2025.

Doris vs. Danone Waters of America¹⁰⁹

The lawsuit, *Dorris v. Danone Waters of America*, was filed in the United States District Court for the Southern District of New York under Case No. 22 Civ. 8717 (NSR).

The plaintiffs, Stephanie Dorris and John Axiotakis, initiated a putative class action against Danone Waters of America, challenging the company's marketing and advertising practices related to its Evian Natural Spring Water. The complaint was originally filed on October 13, 2022, and an Amended Complaint (FAC) was submitted on January 5, 2023.

The plaintiffs alleged that Danone engaged in false and misleading advertising, particularly regarding the "carbon neutral" label found on Evian Natural Spring Water bottles. Their legal claims were based on violations of state consumer protection statutes, breach of warranties, unjust enrichment, and fraud. The key allegations included:

- (i) The "carbon neutral" claim misled consumers into believing that the manufacturing process did not produce CO₂.
- (ii) Evian products commanded a price premium due to this environmentally friendly representation.
- (iii) The "carbon neutral" label was false or deceptive, as Danone still emitted CO₂ during production and distribution.
- (iv) The Carbon Trust certification (used by Danone to support its claim) was insufficiently clear to consumers.
- (v) The FTC's Green Guides and other regulatory standards indicated that broad environmental claims must be fully substantiated.

Danone argued that The "carbon neutral" claim was not misleading, as it was certified under PAS 2060, an internationally recognized standard for carbon neutrality and that reasonable consumers would not interpret "carbon neutral" as "carbon zero", particularly given available disclosures.

Upon initial review (January 2024), the court had allowed some claims to proceed. However, upon reconsideration (November 2024), the court dismissed most of the claims. The court found that "carbon neutral" was more specific than general claims like "eco-friendly" and did not necessarily violate the Green Guides.

¹⁰⁹ https://climatecasechart.com/wp-content/uploads/case-documents/2024/20241114_docket-722-cv-08717_opinion-and-order.pdf. Accessed on February 3, 2025.

The dismissal was granted with leave to amend, meaning plaintiffs could revise and refile their complaint.

3. BRAZIL – CLIMATE WASHING AND CONAR CASES

Unlike the European Union and the United States, where judicial cases involving greenwashing have gained significant traction, Brazil has shown a notably weak and low number of legal proceedings on the matter. This is paradoxical given that Brazil is home to the largest natural coverage in the world and hosts numerous companies that have engaged in misleading environmental claims¹¹⁰.

During the analysis of this chapter, it was identified that most of the greenwashing cases in Brazil are not being litigated in courts but are instead handled by the CONAR. This self-regulatory body, which oversees advertising practices in the country, has been the primary institution addressing misleading sustainability claims rather than the judiciary or consumer protection agencies.

This trend persists despite Brazil having a strong and well-established CDC, which provides robust legal mechanisms to combat misleading advertising and unfair business practices. However, greenwashing cases are still not being widely litigated under this framework, suggesting either a lack of awareness, regulatory inertia, or procedural barriers preventing such claims from reaching the courts.

Although CONAR has intervened in cases involving misleading sustainability claims, such as the widely criticized “verde” (green) campaigns by major food and cosmetic brands, these cases often result in recommendations rather than legally binding sanctions.

Most of the legal disputes related to greenwashing in Brazil are specifically linked to climate-washing. Given this context, the present analysis will examine both a case adjudicated by CONAR and a litigated climate-washing case, providing a comprehensive overview of how such claims are addressed within Brazil’s regulatory and judicial scenarios.

CONAR vs. VALE S.A¹¹¹.

¹¹⁰ <https://exame.com/esg/para-98-dos-investidores-brasileiros-ha-greenwashing-nos-relatorios-de-sustentabilidade/>. Accessed on February 2, 2025.

¹¹¹ <http://www.conar.org.br/processos/detcaso.php?id=5485>. Accessed on February 2, 2025.

The case CONAR vs. Vale S.A. (Representation No. 022/20, May 2020) is an important reference in Brazil regarding the regulation of environmental claims in advertising, particularly those linked to corporate responsibility following environmental disasters. The dispute originated from consumer complaints submitted to CONAR, questioning the accuracy of Vale's advertising campaign about its remediation efforts after the Brumadinho dam collapse in 2019.

Vale S.A. is one of the world's largest mining companies and a major producer of iron ore and nickel. It has been at the center of some of Brazil's most severe environmental disasters, including the Mariana (2015) and Brumadinho (2019) tailings dam failures.

The Brumadinho collapse resulted in over 270 fatalities, 11 missing persons, and extensive socio-environmental damage, making it one of the most tragic environmental accidents in the country's history¹¹².

Following the disaster, Vale launched a communication campaign aimed at restoring public confidence by emphasizing its commitment to environmental recovery and social reparations. However, this advertising initiative was met with criticism from consumers and civil society, leading to an inquiry by CONAR regarding potential misleading environmental claims and ethical violations.

CONAR's investigation was initiated after consumers expressed concerns that Vale's advertisements conveyed an overly optimistic representation of environmental recovery efforts, in particular:

- (i) Restoration of the Paraopeba River: The campaign included the statement that "*analyses indicate that the river may return to its original condition*", a claim contested by independent media reports and environmental experts. The actual recovery of the river was still uncertain, given the long-term effects of heavy metal contamination;
- (ii) Scope of Socio-Environmental Damage: The advertisements allegedly minimized the extent of the disaster's consequences, providing incomplete or unclear information regarding the affected communities and ecosystems.

¹¹² <https://www.greenpeace.org/brasil/blog/brumadinho-5-anos-da-tragedia-5-anos-de-injustica-socioambiental/>. Accessed on March 11, 2025.

- (iii) References to Enhanced Dam Safety Measures: While Vale's campaign suggested that the company had strengthened safety protocols, the content lacked precise technical details regarding these improvements.

After evaluation of the allegations presented by both parties, CONAR understood that Vale's statement regarding the Paraopeba River's recovery exceeded ethical advertising boundaries, as it created an absolute expectation of full environmental restoration when such an outcome was still uncertain. While acknowledging that Vale was actively working on remediation, CONAR concluded that sustainability claims must be carefully framed to avoid misleading implications.

As a result, CONAR determined that Vale must **modify its advertisements**, specifically by removing the phrase regarding the river's potential return to **its original condition**. The decision was unanimous.

Climate washing litigation – Public Civil Action No. 0806464-92.2023.8.14.0015¹¹³

The Civil Public Action (ACP) filed by the Defensoria Pública do Estado do Pará (DPE-PA) against multiple defendants, including Associação dos Ribeirinhos e Moradores, Sindicato dos Produtores Rurais de Portel, Amigos dos Ribeirinhos Assessoria Ambiental Eireli, Brazil Agfor LLC, and the Municipality of Portel, represents a critical legal dispute over the irregular issuance and sale of carbon credits in the voluntary market.

The case revolves around the Projeto Ribeirinho REDD+ (Projeto 2620), which claims to generate REDD+ (Reducing Emissions from Deforestation and Forest Degradation) credits in an area that overlaps with five State Agroextractive Settlement Projects (PEAEXs). The action alleges that the project was developed without community consent, that the land titles used to support the project are irregular, and that the State of Pará did not authorize the initiative, which would constitute land grabbing (grilagem) of public lands.

The DPE-PA argues that the project is illegitimate because it was developed on public land designated for traditional communities without proper authorization from the government.

The PEAEX areas are lands where traditional communities hold concession rights for sustainable use. However, the entities responsible for Projeto 2620 allegedly falsified or

¹¹³ https://litigancia.biobd.inf.puc-rio.br/visualizar_documento/1525/. Accessed on February 2, 2025.

misrepresented land titles in order to present the area as privately owned land, making it eligible for carbon credit issuance under the Verified Carbon Standard (VCS) managed by Verra.

The complaint highlights that:

- (i) Brazil Agfor and its local partners had no legitimate ownership rights over the land. The lands belong to traditional communities, whose territorial rights are protected under Brazilian law.
- (ii) The Environmental Rural Register (CAR or Cadastro Ambiental Rural) registrations associated with the project were fraudulent. Many CARs listed in the project were canceled by the Pará State Environmental Secretariat (SEMAS) after irregularities were identified.
- (iii) The project did not undergo the necessary public consultation processes required under ILO Convention 169, which mandates Free, Prior, and Informed Consent (FPIC) for traditional and indigenous communities affected by land use changes.
- (iv) The REDD+ project was developed without any legal concession process, violating Law No. 11.284/2006, which establishes rules for the sustainable management of public forests.
- (v) Failure to comply with the United Nations Framework Convention on Climate Change (UNFCCC) Safeguards for REDD+, which mandate that local communities must participate and benefit from forest carbon initiatives.
- (vi) Violation of Brazil's National Policy for Payment for Environmental Services (Law No. 14.119/2021), which requires fair distribution of benefits from carbon credit initiatives.

The defendants claim that the project followed all international carbon certification procedures and that the lack of formal registration with Verra does not automatically imply fraud¹¹⁴.

Since the defendants' allegations were presented on May, 2024, the examined ACP, along with other related cases addressing similar issues, remains pending judicial decision. However, given the significant irregularities concerning land tenure in the

¹¹⁴ https://litigancia.biobd.inf.puc-rio.br/visualizar_documento/1529/. Accessed on February 2, 2025.

state of Pará, it is anticipated that the court will impose civil liabilities and financial penalties on the defendants.

The prevalence of land fraud (grilagem) in the Amazon region, coupled with the lack of proper authorization for the carbon credit project and the violation of community rights, strongly suggests that the judiciary will adopt a stance aligned with the principles of environmental protection, land regularization, and the safeguarding of traditional territories.

The litigation of greenwashing cases in Brazil remains at an incipient stage, with few legal precedents and limited judicial enforcement. While CONAR receives the majority of complaints related to misleading environmental claims, its self-regulatory nature restricts its capacity to impose severe penalties. As observed in the Vale case, CONAR's rulings typically result in modifications or exclusions of environmentally misleading marketing campaigns, without further legal or financial consequences for the companies involved.

However, Brazil has recently begun to litigate cases of climate-washing, particularly those concerning irregular carbon credit schemes, as exemplified by the pending ACP in Pará. Unlike traditional greenwashing disputes, these cases involve broader legal questions related to land tenure, indigenous and traditional community rights, and compliance with climate legislation.

Given that climate-washing litigation is still in its early stages in Brazil, there are no final court rulings establishing clear judicial parameters for these claims. The outcomes of ongoing cases will be essential in defining how Brazilian courts approach greenwashing disputes, the extent to which companies can be held accountable for misleading environmental claims, and the potential financial and legal repercussions for violations.

Until then, the judiciary's stance on greenwashing and climate-washing remains uncertain, and further developments are needed to assess whether Brazil will move toward a more robust legal framework for combating corporate environmental misrepresentation.

CHAPTER 4: FINDINGS AND CONCLUSION

The phenomenon of greenwashing has increasingly become a focal point of legal scrutiny across various jurisdictions, as misleading environmental claims can distort consumer choices, undermine legitimate sustainability efforts, and create unfair competition. This thesis has undertaken a comparative legal analysis of greenwashing regulations in the EU, US, and Brazil, examining statutory frameworks, case law, and enforcement mechanisms.

This final chapter synthesizes the primary findings, evaluating the effectiveness of existing regulations in addressing greenwashing and their broader implications for corporate accountability and governance. Additionally, it considers potential regulatory developments, particularly in light of the EU's Green Claims Directive, involving FTC guidelines in the US, and Brazil's regulatory approach.

1. Comparative Analysis of Legal Frameworks on Greenwashing

1.1. European Union: A Regulatory Approach Driven by Consumer Protection and Market Integrity

The EU has established itself as a global leader in regulatory efforts to curb greenwashing. Key directives, including the Unfair Commercial Practices Directive, CSRD, and the Green Claims Directive, impose stringent disclosure requirements and prohibitions on misleading environmental claims.

One of the EU's main regulatory advancements is the Green Claims Directive, which explicitly mandates that all environmental claims be backed by verifiable scientific evidence and subject to third-party certification. This directive complements the CSRD, which extends reporting obligations for companies, requiring detailed sustainability disclosures.

The CSDDD further reinforces corporate accountability by imposing due diligence requirements concerning environmental and human rights impacts across supply chains.

The EU's regulatory approach is distinguished by its preventive rather than reactive nature. Unlike the US, where enforcement relies heavily on litigation, the EU framework mandates *ex-ante* compliance, requiring businesses to substantiate claims before making

them public. The harmonization of penalties across Member States ensures a uniform legal landscape, reducing opportunities for regulatory arbitrage.

However, challenges remain. The lack of standardized methodologies for verifying environmental claims and the administrative burden on businesses—especially small and medium-sized enterprises—raise concerns about compliance feasibility. Furthermore, enforcement mechanisms vary across Member States, leading to potential inconsistencies in the application of penalties.

On the other hand, as already mentioned, the Green Claims Directive represents a significant step towards a more cohesive and harmonized regulatory framework for addressing greenwashing within the European Union. Given the fragmented approach previously observed across member states, where legal actions against misleading environmental claims were subject to varying interpretations and enforcement standards, this directive aims to standardize the treatment of deceptive green claims, ensuring greater legal certainty and consistency.

By establishing clear criteria for environmental marketing and mandating robust substantiation of sustainability claims, the directive mitigates the risks of ambiguous and unverifiable corporate statements that mislead consumers and distort market competition. Furthermore, by introducing stronger enforcement mechanisms and sanctions, it seeks to deter corporations from engaging in misleading environmental practices, reinforcing consumer protection and enhancing corporate accountability.

Following the EU's regulatory leadership, it is anticipated that the implementation of the Green Claims Directive will lead to stricter liability standards for businesses making environmental assertions.

1.2. United States: A Litigation-Driven Enforcement Model

Unlike the EU, the US relies primarily on consumer protection laws and litigation to address greenwashing. The Federal Trade Commission Act (FTCA, 15 U.S.C. § 41 et seq.) serves as the primary statute governing false advertising and deceptive practices. Under this framework, the FTC Green Guides, originally published in 1992 and last updated in 2012, provide guidance on acceptable environmental claims.

A defining feature of the US approach is its litigation-driven enforcement mechanism. The FTC, state attorneys general, and private plaintiffs, through class action lawsuits, play a pivotal role in holding companies accountable. Landmark cases, such as *FTC v. Volkswagen* (2016) and *Dorris v. Danone Waters of America* (2024), illustrate the financial and reputational risks associated with misleading environmental claims.

The advantage of this model is that it allows for targeted enforcement based on evolving market practices.

Unlike statutory directives, which may become outdated as marketing tactics change, litigation provides flexibility in adapting enforcement priorities.

However, this approach also has limitations. Regulatory gaps persist, as FTC guidelines are not legally binding, and penalties are often imposed post hoc rather than preventing misleading claims upfront. Additionally, the absence of comprehensive federal legislation on sustainability disclosures creates inconsistencies in corporate accountability.

1.3. Brazil: An Emerging Framework with Limited Enforcement

Brazil's regulatory approach to greenwashing is still in its infancy compared to the EU and the US. The CDC, is the primary legal instrument prohibiting misleading advertising, including environmental claims. Regulatory oversight is shared between the CONAR and consumer protection agencies such as PROCON.

Unlike the EU, which mandates strict pre-approval for environmental claims, and the US, which relies on enforcement through litigation, Brazil lacks a specialized regulatory framework for greenwashing. While CONAR provides ethical guidelines on advertising, it lacks coercive enforcement power. Recent legislative proposals, such as Bill No. 4.752/2012, seek to introduce more explicit greenwashing regulations, but their implementation remains uncertain.

The Brazilian Securities and Exchange Commission (CVM) Resolution No. 59/2021 introduced new ESG disclosure requirements for publicly traded companies, aligning Brazil's reporting obligations with international standards. However, the enforcement of these requirements remains weak, and penalties for non-compliance are limited compared to the EU or US.

One notable issue in Brazil is the absence of a robust litigation culture regarding environmental claims. Unlike the US, where class actions play a crucial role in consumer protection, Brazilian courts have seen limited litigation on greenwashing, except in cases related to carbon credit fraud.

2. Key Legal Cases and Their Implications

2.1. KLM and the Growing Risk of Legal Exposure in the EU

The KLM case, adjudicated in the Netherlands, underscores the increasing scrutiny over corporate sustainability claims. Although no direct penalties were imposed, the ruling set a legal precedent reinforcing corporate liability for misleading climate-related statements. This case aligns with the broader EU regulatory shift toward holding companies accountable for their sustainability commitments under the Green Claims Directive.

2.2. Katjes and the Expansion of German Consumer Protection

In Germany, the Katjes case demonstrated a proactive judicial stance in addressing greenwashing. Unlike KLM, where the court issued a warning, the German judiciary applied strict consumer protection laws, imposing an injunction against misleading advertising. This case highlights divergent enforcement intensities within the EU, reinforcing the need for standardized application of greenwashing regulations across Member States.

2.3. Danone Waters of America and the Role of Class Actions in the US

The Danone Waters of America lawsuit exemplifies the litigation-driven nature of US enforcement. The court ruled that the company's recycling claims were misleading, emphasizing the importance of truthful sustainability disclosures. This case reaffirms the increasing role of class actions in regulating corporate sustainability claims, serving as a deterrent against deceptive environmental marketing.

2.4. Volkswagen Scandal and financial/reputational damage

The Volkswagen emissions scandal, commonly referred to as "Dieselgate," represents one of the most significant corporate fraud cases in modern history, with profound financial and reputational repercussions.

The revelation of the emissions scandal had an immediate and drastic effect on Volkswagen's market capitalization. Within days of the scandal becoming public, Volkswagen's share price plummeted by nearly 40%, reflecting investor concerns regarding potential legal liabilities and reputational damage. The company's total market value declined by approximately \$25 billion in the aftermath (Ewing, 2017)¹¹⁵.

Beyond direct financial penalties, Volkswagen faced operational restructuring costs, as it was forced to recall millions of vehicles worldwide.

As part of the settlements with regulators, Volkswagen was required to invest heavily in electrification and clean energy initiatives, including a \$2 billion investment in the Electrify America program in the U.S. This strategic shift imposed unexpected financial burdens on Volkswagen while also altering its long-term sustainability commitments.

The emissions scandal led to Volkswagen being ranked among the least trusted brands in multiple consumer surveys, including the 2016 Harris Poll on Corporate Reputation, where it suffered one of the largest reputation declines in the study's history (Harris, 2016)¹¹⁶.

From a regulatory perspective, Dieselgate accelerated the development of stricter legal frameworks.

2.5. Brazil: Climate-washing case as a pioneer

The Brazilian judicial system is beginning to recognize climate-washing as an emerging area of environmental litigation. A key case illustrating this trend is the ACP 0806464-92.2023.8.14.0015, filed in the state of Pará against Brazil Agfor LLC and other entities, concerning the sale of irregular carbon credits.

Although Brazil lacks a comprehensive legislative framework specifically targeting greenwashing, legal actions based on consumer protection laws CDC and environmental legislation (Lei nº 9.605/1998 – Environmental Crimes Law) provide pathways for litigation.

The ACP filed in Pará also draws from international principles, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), particularly regarding free,

¹¹⁵ Ewing, J. (2017). *Faster, higher, farther: The Volkswagen scandal*. New York: W. W. Norton & Company.

¹¹⁶ Harris Poll (2016). 2016 Reputation Quotient Rankings. The Harris Poll.

prior, and informed consent (FPIC). This reflects a growing trend of courts integrating environmental and human rights considerations in climate-related disputes.

However, Brazil remains in the early stages of regulating greenwashing and sustainability claims, which explains the limited number of legal disputes in this field and the relative lack of concern among corporations regarding compliance with these aspects. The absence of a specific regulatory framework and robust enforcement mechanisms still grants companies considerable leeway in making broad or exaggerated environmental claims with minimal legal repercussions (Lima & Souza, 2023)¹¹⁷.

Ultimately, as the global regulatory environment becomes increasingly strict on greenwashing and climate-related misrepresentations, Brazil will likely adopt more rigorous standards, following the international trend toward stricter liability and corporate due diligence in sustainability claims.

3. Conclusion

The increasing scrutiny over greenwashing and climate-washing practices reflects a paradigm shift in how governments, regulatory bodies, and the judiciary are holding corporations accountable for misleading sustainability claims. Throughout this research, a comparative legal analysis of greenwashing litigation in the European Union, the United States, and Brazil has demonstrated how distinct jurisdictions are tackling environmental misrepresentation in corporate communications. While the EU is at the forefront, developing a cohesive legal framework through the Green Claims Directive, the U.S. and Brazil are still evolving in their regulatory responses, relying on a combination of consumer protection laws, corporate liability, and environmental regulations to address such deceptive practices.

The cases examined—Volkswagen’s Dieselgate scandal, KLM’s misleading sustainability claims, the Katjes lawsuit in Germany, the Danone Waters litigation in the U.S., and climate-washing cases in Brazil’s carbon credit market—exemplify the financial, reputational, and legal risks that companies face when exaggerating or falsely presenting their environmental commitments. Each of these cases has played a role in

¹¹⁷ Lima, R., & Souza, C. (2023). Desafios na Regulação do Greenwashing no Brasil: Um Panorama Comparativo com a União Europeia. *Revista Brasileira de Direito Ambiental*, 28(2), 112-135.

shaping the trajectory of greenwashing litigation, setting precedents for how courts and regulators evaluate misleading sustainability claims and impose sanctions or corrective measures.

In the EU, the Green Claims Directive represents a watershed moment in the regulation of greenwashing, setting clear compliance standards and penalties for deceptive environmental marketing. By aligning consumer protection laws with corporate sustainability obligations, the Directive is expected to set a new benchmark for corporate accountability in environmental disclosures. The KLM and Katjes rulings demonstrate how European courts are beginning to apply stricter legal scrutiny over corporate environmental claims, even in the absence of significant financial penalties.

In the United States, greenwashing litigation has demonstrated its ability to impose substantial financial and reputational consequences, as exemplified by the Volkswagen Dieselgate scandal and the Danone Waters lawsuit. The U.S. legal system, known for its strong precedent in class-action lawsuits and regulatory enforcement, has proven effective in holding corporations accountable, reinforcing that misleading environmental advertising can result in severe legal and financial repercussions.

Conversely, Brazil remains in an incipient stage when it comes to greenwashing litigation and regulation. The lack of a comprehensive statutory framework addressing climate-washing and misleading sustainability claims has resulted in a limited number of legal disputes, allowing corporations to operate with relative impunity in their environmental marketing strategies. The ongoing lawsuits related to irregular carbon credits, however, illustrate a growing awareness and enforcement trend, particularly as public authorities and environmental advocacy organizations push for greater transparency and corporate accountability.

As the global climate crisis worsens, corporate sustainability commitments will be subject to even more intense legal and regulatory oversight. The role of judiciaries, regulatory bodies, and consumer advocacy groups will be instrumental in ensuring that corporations align their environmental communications with verifiable, science-based sustainability commitments.

A central aspect of this thesis is also the uniform approach it adopts in analyzing the role of both the legislature and the judiciary in combating greenwashing. The study examines whether regulatory and legal actions are primarily rooted in consumer protection, investor

rights, or a combination of both. This distinction is essential, as the legal frameworks assessed in the EU and Brazil are predominantly shaped by consumer protection laws, whereas the U.S. approach is primarily anchored in financial market regulations (SEC).

The justification for this distinction lies in the regulatory priorities of each jurisdiction—while European and Brazilian lawmakers have prioritized safeguarding consumers from misleading environmental claims, the U.S. has focused on preventing deceptive sustainability practices that mislead investors.

In addition, this thesis also has provided a comprehensive foundation for understanding the evolving legal frameworks and case law surrounding greenwashing, contributing to both academic research and policy development. However, continued legal and empirical analysis will be necessary to track the ongoing evolution of climate-washing litigation and assess the effectiveness of emerging regulatory mechanisms in preventing corporate environmental deception.

This research highlights the evolution of global greenwashing regulation, emphasizing the need for greater harmonization in enforcement approaches. While the EU's preventive regulation model provides a strong framework for tackling deceptive sustainability claims, the US's litigation-driven system imposes substantial penalties but may lack proactive consumer protections – which are slightly protected by FTCA. Brazil's developing regulatory landscape presents opportunities for legal evolution, particularly in the context of ESG-related litigation and carbon market oversight.

Greenwashing represents a widespread challenge that permeates all sectors of civil society, often remaining undetected. By distorting consumer choices, misleading investors, and undermining genuine sustainability efforts, it weakens trust in environmental initiatives and hinders progress toward a truly sustainable economy.

In this context, the success of greenwashing regulation will depend on robust enforcement mechanisms, greater corporate accountability, and active consumer and investor engagement. As jurisdictions continue to tighten restrictions on misleading sustainability claims, companies will be forced to reassess their environmental commitments and ensure that sustainability claims are backed by genuine action, rather than mere marketing rhetoric.

Effectively addressing this issue requires a robust regulatory framework, enhanced corporate accountability, and greater public awareness, ensuring that sustainability claims are not merely strategic marketing tools but reflect verifiable and substantive commitments to environmental responsibility.

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