

THE HIDDEN RISKS OF ENVIRONMENTAL MARKETING

A GUIDE TO AVOIDING AND DEFENDING
“GREENWASHING” CLAIMS



Experience ■ Results ■ Relationships

CHICAGO

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Welcome and Some Housekeeping Items

- Be sure to sign-in for MCLE Credit at the registration desk.
- Ask questions! Our panelists are happy to engage with you.
- If your attendance time meets the rules set by the Illinois MCLE Board, ACC Chicago will send your certificate by email next week.
- Watch for the survey/feedback link sent to your email after the program.

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 - E-Groups and Committees on Substantive Practice Areas



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What are “Greenwashing” Claims?

- Claims based on allegedly deceptive marketing and advertising
- Overstating environmental benefits
- Downplaying environmental impacts

What are “Greenwashing” Claims?

- Most commonly (but not always) consumer class actions
- Most common vehicles for greenwashing claims:
 - Consumer protection statutes
 - False advertising statutes
 - Unfair competition laws
 - Common law fraud/misrepresentation theories

Surge in Greenwashing Claims

- Increase in environmentally conscious consumers
- Companies respond by pursuing and marketing sustainability efforts
- FTC “Green Guides”
 - Updated in 2012
 - Requested comments for further revisions in 2022

Sources of Challenged Statements

- Product labels
- Website statements
- Commercials/advertising
- Social media posts
- Goal statements and corporate pledges

Industries Impacted

- Aviation
- Food and beverage
- Household products
- Retailers
- Clothing and fashion
- Technology
- Auto
- Fossil fuel
- And more...



Regulatory Framework: The Green Guides

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The Green Guides

- Issued by the FTC in 1992.
- Purpose: “To help marketers avoid making environmental claims that are unfair or deceptive.”
- Amended in 2012
- Solicited comments on proposed amendments in 2022
- Do not confer a private right of action

The Green Guides

- No “unqualified” environmental benefit claims
- Qualifying language must be clear and prominent
- Marketers should not imply that any specific benefit is significant if it is, in fact, negligible

The Green Guides: Examples

- “Eco-Friendly”
- “Greener than previous packaging”
- Picture of printer in a forest: “Buy our printer. Make a change.”
- “Improved fuel efficiency”

The Green Guides

- Carbon offsets
- Third party certifications and seals of approval
- Other common claims:
 - “Compostable” and “degradable” claims
 - “Free-of” and “non-toxic” claims
 - “Ozone-safe” and “ozone-friendly” claims
 - “Recyclable” and “recycled content” claims
 - “Refillable” claims
 - “Renewable energy” and “renewable materials” claims
 - “Source reduction” claims

International Regulations

- European Union Empowering Consumers Directive
- United Kingdom Advertising Standards Authority Guidance
- Canadian Competition Bureau Guidance
- Australian Competition & Consumer Commission Guidance



Illustrative Cases

Earth Island Institute v. Coca-Cola Co. **(D.C. Super. Ct.)**

- Plaintiff alleged:
 - Coca-Cola's statements painted an inaccurate picture of Coca-Cola as a company.
 - Coca-Cola falsely represented itself as sustainable, when it "is the world's leading plastic waste producer."
 - Coca Cola's stated goals were misleading:
 - "Make 100% of our packaging recyclable globally by 2025."
 - "Use at least 50% recycled material in our packaging by 2030."

Earth Island Institute v. Coca-Cola Co., (D.C. Super. Ct.)

- Trial Court Holding:
 - Statements were aspirational and pertained to future goals and a vague corporate ethos rather than a specific promise.
 - Rejected efforts to combine “statements taken from various documents at different times.”
 - Describing the goal statements:
 - “Would Earth Island Institute make the same allegation about a manufacturer who promised aircraft in 1900, a President in 1961 who promised to land a person on the moon and return that person safely to Earth by 1970, or an entrepreneur whose goal in 2000 was to have more than 95% of Americans owning a cellular phone in 2021”?

Earth Island Institute v. Coca-Cola Co., D.C. Ct. App.)

- Appellate Court Reversal:
 - Coca-Cola represents itself as a company that is focused on a more sustainable environment, but it also is mass producing single-use plastics.
 - Coca-Cola reliance on single-use plastics is so fundamentally unsustainable that it is misleading to tout marginal improvements.
 - Earth Island plausibly alleged that Coca-Cola had not taken any serious steps toward putting those goals within reach.

Earth Island Ramifications

- Following *Earth Island*, the District of Columbia state courts have become a hotbed for greenwashing claims
- *Environmental Working Group v. Tyson Foods, Inc.*
 - Pledge to be “net zero” by 2050
 - Court rejected attempts to distinguish *Earth Island*
- *Plastic Pollution Coal., A Project of Earth Island Inst. v. The Wonderful Co. et al.*
 - Court refused to dismiss claims based on of Fiji Water efforts to “transition to 100% recycled plastic” and to “reduc[e] [their] carbon footprint”

Salguero v. Mondelez International, Inc. **(N.D. III.)**

- Class action based on snack bars labeled as “climate neutral certified”
- Plaintiff alleged:
 - Statement was misleading because the product’s manufacturing produces GHG and causes pollution
 - Reasonable consumers believe “climate neutral” means no negative effect on climate
- Court dismissed:
 - “Climate neutral certified” is not “climate neutral”
 - No allegation that Mondelez violated the standards of the certification
 - Label did not violate Green Guides

Moldex-Metric, Inc. v. Protective Indus. Prods., Inc. (C.D. Cal.)

- Defendant is earplug manufacturer
- Allegedly marketed products as eco-friendly, made with 82% bio-based material.
- Plaintiff alleges earplugs are comprised only of 5% to 40% of bio-based material.
- Plaintiff is a competitor, alleging unfair economic advantage

New York v. JBS USA Food Co. et al., (N.Y. Sup. Ct.)

- New York Attorney General filed greenwashing suit world's largest producer of beef products
- Challenged Statements:
 - “Agriculture can be part of the climate solution. Bacon, chicken wings, and steak with net zero emissions. It’s possible.”
 - “We will cut our own emissions by 30% in 2030 and eliminate Amazon deforestation from our supply chain within five years.”
 - “JBS will achieve net zero greenhouse gas emissions, reducing its direct and indirect emissions and offsetting all residual emissions.”
- Settlement:
 - \$1.1 million to support climate-smart agriculture programs
 - Agreement to reform its environmental marketing



Mitigating Risks and Defending Claims

Practical Mitigation Steps

- No general environmental benefit claims.
- Substantiate claims with reliable data
- Disclaimers and qualifying statements:
 - Conspicuous
 - Same font size
 - Close proximity to the environmental statement
 - No “back of package” or “fine print”

Practical Mitigation Steps

- Seals, certifications, or awards
 - Make clear they are issued by third parties
 - Include an explanation of the certification, if practicable.
 - Link to the third party's website in close proximity to the seal.
 - Link to company's website may be insufficient

Practical Mitigation Steps

- Goal statements should be forward-looking and aspirational.
- Qualifying language should be conspicuous and in close proximity.
- Concrete, realistic, science-backed plan to achieve the goal.
- Be wary of relying on advances in technology.

Practical Mitigation Steps

- Reliance on carbon offsets provides fertile ground for plaintiffs.
- If used, conduct independent investigation of the efficacy and validity of carbon credit and carbon offset projects.

Practical Mitigation Steps

- Ensure stakeholders are educated and delivering consistent messaging




Defenses

- Analysis of statements in context
- Rule 9(b) particularity
- Standing/injury
- Class Certification Issues
 - Focus on individualized issues that will predominate
 - Materiality
 - Reliance



A Case Study: Shopping on Amazon

Shopping For Paper Towels

		
<p>Bounty Select-A-Size Paper Towels, White, 8 Triple Rolls = 24 Regular Rolls</p> <p>123 Sheet (Pack of 8)</p> <p>4.8 ★★★★★ (9.8K) 80K+ bought in past month</p> <p>\$22¹⁸ (\$2.25/100 Sheets) List: \$25.39</p> <p>✓prime Two-Day FREE delivery Fri, Nov 14</p> <p>Add to cart</p>	<p>Amazon Basics 2-Ply Flex-Sheets Paper Towels, 12 Basics Rolls = 32 Regular Rolls, Everyday Value with 150 Sheets per Roll</p> <p>1 Count (Pack of 12)</p> <p>4.2 ★★★★★ (62.6K) 100K+ bought in past month</p> <p>\$22⁸⁶ (\$1.27/100 Sheets)</p> <p>Extra 40% off when you subscribe</p> <p>✓prime Two-Day FREE delivery Fri, Nov 14</p> <p>🌱 Forestry practices ✓</p> <p>Add to cart</p>	<p>PAPER TOWEL Everyday Rolls – 6 Double Rolls = 12 Regular Durable & Soft Like Cloth Choose-A-Sheet ...</p> <p>\$26⁹⁹ (\$31.38/100 Sheets)</p> <p>FREE delivery Nov 17 - 19</p> <p>Add to cart</p>

Shopping For Paper Towels



Sustainability features

This product has sustainability features recognized by trusted certifications.

Forestry practices



Made with materials from well-managed forests, recycled materials, and/or other controlled wood sources.

As certified by



The Forest Stewardship Council

CLIMATE PLEDGE FRIENDLY

Discover more products with sustainability features.

[Learn more](#)

Shopping For Paper Towels

Discover and shop for products with sustainability features

Climate Pledge Friendly collaborates with trusted third-party certifications and we've created our own certifications to highlight products that meet sustainability standards and support our commitment to help create a positive sustainability impact.



How is Climate Pledge Friendly connected to The Climate Pledge?

As a co-founder of and signatory to The Climate Pledge, Amazon has committed to be net-zero carbon across our businesses by 2040. Climate Pledge Friendly, inspired by this commitment, highlights products with sustainability certifications that help create a positive sustainability impact.

[Learn more about The Climate Pledge >](#)



Shopping For Paper Towels

6. More specifically, Amazon uses the Sustainability Leaf and FSC logos to convey that Amazon Basics Paper Products are sourced from FSC-certified forests via suppliers who practice sustainable forestry practices. In turn, because of these responsible forestry practices, Amazon also uses the Climate Pledge Friendly logo to convey that Amazon Basics Paper Products has a lower carbon footprint than other products without this designation.

7. Unfortunately, Amazon's environmental claims are simply forms of greenwashing. Greenwashing is the act of misleading consumers about the environmental practices of a company or a product. Greenwashing occurs when a company positions itself (or a specific product) as having a positive influence on environmental issues, when the company (or product) is either exaggerating its influence and/or actively engaging in negative environmental practices that do not align with its previously stated green goals. Here, Amazon misleads consumers because it does not disclose that Amazon Basics Paper Products are sourced from harvests that rely on harmful logging practices such as clearcutting and burning of Canada's boreal forest—an ecological jewel and one of the last primary forests left in the world. Below are some examples of harvests through which Amazon sources its wood pulp for Amazon Basics Paper Products:⁹

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UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF WASHINGTON

DAVID RAMIREZ,
and ROY CAMPBELL,
Plaintiffs,
vs.
Amazon.com, Inc.,
Defendant.

Case No. 2:25-cv-00465

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

HAGENS BERMAN



An In-House Perspective

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Litigation Risk

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

ALEXANDER ZAJAC, individually and on behalf of all others similarly situated,	Plaintiff's Address and County 225 Lastner Ln Greenbelt MD 20770 Prince George's County
Plaintiff,	8:23-cv-03145
- against -	Class Action Complaint
UNITED AIRLINES INC.,	Defendant's Address 233 S Wacker Dr Chicago IL 60606
Defendant	Jury Trial Demanded

I. DANGERS OF CLIMATE CHANGE

1. World temperature has risen by 1.1 °C since 1850 due to greenhouse gas ("GHG") emissions such as carbon dioxide (CO2) from burning fossil fuels.

42. As a result of the false and misleading representations and omissions about its environmental initiatives, flights on United cost more than on other airlines, higher than similar airline flights, represented in a non-misleading way, and higher than they would be sold for absent the misleading representations and omissions.

II. VOLUNTARY ENVIRONMENTAL INITIATIVES

5. Despite lofty government goals to address climate change, such attempts have repeatedly failed.



Discussion



Questions?

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