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Detecting and Navigating Greenwashing Claims

Corporate Social Responsibility ("CSR") has become an important consideration for businesses worldwide. Companies have recognized the power of branding their products as environmentally friendly or healthy and their product descriptions entice consumers to purchase the products as one way of supporting—or at least not harming—the Earth or their bodies.

Greenwashing is the misrepresentation of a company's products or practices as environmentally responsible or health-friendly. For some, it could be misrepresentation—making false or inaccurate statements that convince these issue-conscious consumers to buy their products and, in some cases, pay a premium for them. For others, it may be a failure to meet environmental goals despite best efforts.

Litigation involving greenwashing claims is on the rise. We discuss some of the types of claims we have seen so far and what to anticipate in the coming years.

Environmental and Sustainability Product Labels

Companies are increasingly becoming involved in representing their products as healthy or environmentally safe.[1] Typical descriptions might include "eco-friendly," "green," "environmentally safe," or "healthy."

In some cases, the company announces specific practices, such as identifying a source for an ingredient or claiming that the company does not use specific types of resources. In other cases, the company might use labeling that makes the product look like it has been produced with sound environmental practices while making no actual claims in that regard. Offering environmentally friendly products makes good business sense. But companies can face challenges from consumers if the statements are not backed up by specific, clear, factual evidence. We discuss a few examples here.

Claims Involving Company Practices

In a New York case, the plaintiff, on behalf of those similarly situated, alleges that Canada Goose US Inc. misrepresented its products because it buys fur from trappers who use inhumane methods like snares and leg traps. The plaintiff further alleges that Canada Goose has cultivated an image,

[1] The Federal Trade Commission has published guidance designed to help corporations develop responsible environmental marketing claims. The agency intends to update these guidelines soon. *See* Title 16 Part 260, Guides for the Use of Environmental Marketing Claims (also known as the Green Guides). <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-260?toc=1> (accessed April 22, 2022).

both on the company website and on the clothing tags, as a company that sources only furs obtained through humane, sustainable and ethical means.[2]

In another example, Earth Island Institute, an environmental group, has sued Blue Triton Brands (formerly Nestlé Waters North America) for injunctive and declaratory relief. Blue Triton, which sells about one third of the bottled water sold in the United States, pronounced itself as a 'guardian of sustainable resources' when it changed its name to reflect its strong commitment to sustainable environmental practices. Earth Island claims that Blue Triton is actually a major polluter because it continues to use large quantities of plastic, only a small percentage of its bottles are recycled, and the plastic releases harmful emissions in landfills.[3] Earth Island also claims various other environmentally harmful practices including natural resource (water) depletion, unauthorized water diversion, and harmful water extraction processes.[4]

Claims Involving Product Labeling

A plaintiff representing a class of consumers recently sued Rust-Oleum Corporation for misrepresentation. The plaintiff claims that the company marketed its Krud Kutter cleaning products as "non-toxic" and "earth friendly" but that the products are actually harmful to humans, animals, and the environment. The case has survived the company's motion to dismiss.[5]

In another recent case, *Hanscom v. Reynolds Consumer Products, LLC,*[6] the plaintiff claims Reynolds misrepresented its Hefty Recycling Bags. The plaintiff alleges that the company marketed the bags to facilitate recycling so less recyclable material would reach landfills[7] but, because they are made with LDPE plastic, "their Products [were] not recyclable and the labels' claims regarding recyclability [were] therefore false."[8]

Corporate Promises on Environmental Targets

Another category has emerged that has the potential to impact corporate bottom lines worldwide. Corporations are increasingly embracing the practice of setting environmental goals such as reductions in the greenhouse emissions they produce. These goals are designed to boost sales by demonstrating the company's eco-friendly bona fides.

Such goals can significantly impact the company's market capitalization at various stages. For example, a company might announce that it will reduce its carbon emissions by a specific percentage, based on its emissions in a designated base year, and will achieve this reduction by a

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[2] *Lee v. Canada Goose US, Inc.*, No. 20 Civ. 9809 (S.D.N.Y. June 29, 2021) (Court, construing pre-motion letter as a motion to dismiss, grants the motion in part and denies in part).
[3] *Earth Island Institute v. Blue Triton Brands*, No. 1:21-cv-02659 (D.D.C 2021) (Complaint, Paragraphs 8, 11, 12).
[4] *Id.* (Complaint, Paragraphs 14, 15).
[5] *Bush v. Rust-Oleum Corporation,* No. 20-cv-03268 (N.D. Cal. January 4, 2021) (denying Rust-Oleum's motion to *dismiss*).
[6] *Hanscom v. Reynolds Consumer Products, LLC,* No. 3:21-cv-03434-SK (N.D. Ca. May 7, 2021). (See also No. 4:31-cv-03434) (complaint).
[7] Complaint, Paragraph 3.
[8] *Id.* at Paragraph 27.

certain date. This type of environmental commitment can attract consumers and satisfy stockholders who insist on environmental accountability within the corporation.

The number of companies that miss their carbon emission reduction targets is expected to grow as more companies approach their target dates for reducing greenhouse gas emissions. These companies can anticipate higher litigation risk from their shareholders. Some companies might try to adjust their targets midstream as they realize they will not be able to achieve their targeted reductions on time. Such actions are likely to impact stock values and result in lawsuits as well.

Example Vega Engagement Related to Greenwashing Claims

Vega was recently retained by defendants to support Professor David Gal, a marketing professor at University of Illinois at Chicago, in litigation involving greenwashing claims. Specifically, consumers brought this case claiming that certain disposable plates produced by defendants and advertised as compostable actually contain chemicals that do not break down over time and can leach into the soil and water.

Professor David Gal was retained to opine on issues involving consumer choices and defendants' marketing strategy and pricing. Prior to joining the University of Illinois at Chicago, he served on the faculty of Northwestern University's Kellogg School of Management. He is an associate editor of the Journal of Consumer Psychology and has served on the editorial review board of Journal of Consumer Research and Journal of Marketing Research.

Vega Economics Offers Expertise in ESG Litigation

Vega Economics is an economic consulting firm specializing in expert testimony and data analysis. With our extensive network of experts, we can deliver exceptional quantitative solutions and meticulous expert reports on greenwashing claims. Vega offers analysis and expert testimony on company operations, including the environmental impact of same. Vega also has experience in the area of corporate reporting and disclosures. As corporations respond to the growing demand for ESG initiatives, we anticipate a wave of legal challenges when their disclosures and statements prove to be inaccurate.

Vega has experience and is ready to provide outstanding expert support in the following areas:

- Deceptive and Unfair Business Practices
- Human Rights Violations in the Supply Chain
- Negligence Claims Regarding Supplier Activities
- Climate Change Litigation
- Shareholder Claims Against Companies for Misstatements and Omissions
- Investor Claims of Material Misstatements Made in Connection with Securities Offerings

For additional inquiries, please contact info@vegaeconomics.com.