

GREENWASHING AND THE LEGAL RISKS OF FALSE ENVIRONMENTAL CLAIMS

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Environmental marketing has become an important means for companies across a wide range of industries to generate business. Both corporate customers and consumers are increasingly seeking “green” options—and companies that promote their sustainability efforts can often gain a significant competitive edge.

But these companies also need to be careful.

Making false environmental claims—a practice commonly referred to as “greenwashing”—has come under increasing scrutiny in recent years as well. In California, this is true at both the state and federal levels. Companies accused of greenwashing can face steep penalties in government enforcement actions as well as liability in commercial and civil litigation. Learn more from an experienced California environmental attorney at Bick Law LLP.

What Counts as Greenwashing?

We’ll begin by discussing what counts as “greenwashing.” There isn’t a single definition. As we said above, greenwashing is a common term used to describe false environmental claims in corporate marketing. The U.S. Federal Trade Commission (FTC), California, and other states have all taken their own approaches to combating greenwashing—and, notably, the FTC’s Green Guides and California’s anti-greenwashing law do not use the term “greenwashing” at all.

With this in mind, the following statement [from the FTC](#) provides a general overview of the fundamental concepts behind anti-greenwashing efforts and companies’ obligations to engage in truthful environmental marketing:

“Companies are offering consumers an ever-growing assortment of ‘green’ options. But whether your environmental claims are about the product or the packaging, you’ll need competent and reliable scientific evidence to support what you say.”

At the federal level, the FTC’s [Green Guides](#) are the primary source of guidance on what is (and isn’t) allowed. The Green Guides make clear that making false environmental marketing claims constitutes an unfair or deceptive practice under Section 5 of the Federal Trade Commission Act (FTC Act). While Section 5 of the FTC Act does not establish a private right of action, it *does* give the FTC the authority to pursue enforcement actions when warranted. As of 2026, the FTC can impose civil monetary penalties (CMP) in excess of \$50,000 for each violation of Section 5 in greenwashing cases.

In California, the Voluntary Carbon Market Disclosures Act (VCMMDA) addresses greenwashing, specifically regarding the marketing, sale, and purchase of carbon offsets. Governor Newsom signed the VCMMDA into law in October 2023 alongside SB253 and SB261, which impose environmental, social, and governance (ESG) reporting requirements for businesses in California. Crucially, however, while SB253 and SB261 only apply to businesses that meet certain revenue thresholds (\$1 billion and \$500 million, respectively), the VCMMDA applies to any business that markets, sells, or purchases carbon offsets in the state.

Similar to Section 5 of the FTC Act, the VCMDA imposes civil monetary penalties for noncompliance. Under [Section 44475.3](#), “[a] person who violates [the VCMDA] is subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500) per day, for each day that information is not available or is inaccurate on the person’s internet website, for each violation, not to exceed a total amount of five hundred thousand dollars (\$500,000)”

Importantly, however, the VCMDA is not the only law that applies to greenwashing in California. As noted on the California Department of Justice (CDOJ) [website](#), the CDOJ has been enforcing anti-greenwashing compliance since 2011—more than a decade before the VCMDA was signed into law. Greenwashing generally falls under California’s false advertising, deceptive trade practices, and consumer protection laws, and there are also state laws (e.g., [AB1201](#)) that specifically prohibit companies from making false claims about the biodegradability and compostability of plastic products.

In short, greenwashing can take *many* different forms, and companies in all industries need to be careful to ensure that they are not engaging in misleading environmental marketing practices. As noted in the quote from the FTC above, when making “green” claims, companies must be able to substantiate them with real-world data—and be prepared to provide that data to state and federal enforcement authorities when necessary.

Common Examples of Greenwashing

Any false environmental claims can constitute greenwashing—and potentially lead to enforcement action under Section 5 of the FTC Act or under state law. However, some forms of greenwashing are more common than others.

In its Green Guides, the FTC lists several types of claims that present risks for greenwashing. It lists these claims because they are among the most likely to be false or misleading. The claims highlighted in the FTC’s Green Guides include (but are not limited to) those involving:

- Carbon offsets and carbon neutrality
- Certifications and seals of approval
- Compostability
- Degradability
- “Free of” claims (including claims regarding PFAS)
- General environmental benefits
- Recyclability
- Recycled content
- Renewable energy
- Renewable materials

Recently, “free of” claims involving perfluoroalkyl and polyfluoroalkyl substances (PFAS) have come under increasing scrutiny in California. These “forever chemicals” have been making headlines largely due to ongoing national consumer litigation alleging that they can cause cancers and other serious health conditions. If a company falsely represents or implies that its products are PFAS-free or that its manufacturing processes do not release PFAS into the environment, it is an example of greenwashing that can lead to swift (and potentially high-risk) enforcement action.

Many greenwashing cases involve demonstrably false claims—such as misrepresentations about a company’s carbon footprint or claims about the use of post-consumer content. To constitute greenwashing, however, an environmental claim need not be strictly false.

In the Green Guides, the FTC provides the following as examples of claims that improperly imply environmental benefits:

- A manufacturer claims its products now contain “50 percent more recycled content,” even though their recycled content has increased from 2% to 3%. “Although the claim is technically true, it likely conveys the false impression that the manufacturer has increased significantly the use of recycled fiber.”
- A manufacturer claims that its trash bags are “recyclable.” Since trash bags are generally thrown away and not recycled, “[e]ven if [a] bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no meaningful benefit exists.”

In a [Summary of the Green Guides](#), the FTC provides additional guidance regarding environmental claims that may cross the line from permissible marketing language (or “puffery”) to false statements or misleading implications. The FTC’s advice includes:

- “Marketers should not make broad, unqualified general environmental benefit claims like ‘green’ or ‘eco-friendly.’” Why? Because “[b]road claims are difficult to substantiate, if not impossible.”
- “Marketers should qualify general claims with specific environmental benefits,” and “[q]ualifications for any claims should be clear, prominent and specific.”

The FTC’s summary provides additional examples that are specific to each of the common types of greenwashing listed above. While this summary and the Green Guides themselves are far from comprehensive—and the FTC makes clear that companies cannot rely on these resources exclusively—they offer practical insights into when company executives and marketing personnel should consider potential greenwashing concerns.

Recent Examples of Greenwashing Litigation

To see the state and federal prohibitions on greenwashing in action, we can look at some recent examples of greenwashing litigation. Here are a few recent examples of greenwashing cases involving both consumer lawsuits and governmental enforcement actions:

The Nike “Sustainability” Class Action Litigation

One of the most highly publicized greenwashing cases in recent years is the Nike “Sustainability” class action litigation. This litigation involves allegations that Nike’s “Sustainability” clothing line was falsely marketed as containing “recycled and organic fibers.” While a federal judge [granted](#) Nike’s motion to dismiss for failure to state a claim in 2024, the lead plaintiff subsequently filed an amended complaint and then took the case to the U.S. Court of Appeals for the Eighth Circuit. The Eighth Circuit [affirmed](#) the dismissal of the litigation late last year.

Carbon Offset Litigation Involving Apple and Other Companies

Several companies, including Apple, have faced lawsuits alleging that they have engaged in carbon offset greenwashing in recent years. [This article](#) from the University of Pennsylvania’s Center for Science, Stability & the Media provides a nice overview of the issues involved in these cases.

With the recent enactment of the VCMDA, we expect this to be a priority enforcement area in California in the years ahead. As a result, companies that promote their use of carbon offsets—including by claiming they are “net zero” or “carbon neutral”—will need to be very careful going forward.

Kohl’s and Walmart “Bamboo” Textile Litigation

Kohl's and Walmart **agreed to settlements** with the FTC in 2022 after the Commission accused them of “marketing dozens of rayon textile products as bamboo,” and, “making deceptive environmental claims, touting that the ‘bamboo’ textiles were made using ecofriendly processes, while in reality converting bamboo into rayon requires the use of toxic chemicals and results in hazardous pollutants.” The companies agreed to pay \$2.5 million and \$3 million, respectively, which the FTC described at the time as, “by far the largest penalties in this area.”

Again, these are just a few of *numerous* examples. Greenwashing remains a priority enforcement area for the FTC and CDOJ, as well as a major focus for many class action plaintiffs’ attorneys. Given this, all companies that make environmental claims in their marketing materials and content should prioritize compliance going forward.–

How Can (and Should) Companies Avoid Greenwashing?

With all of this in mind, what can (and should) companies do to avoid greenwashing? To mitigate their risk of facing governmental enforcement actions and private litigation involving allegations of false or misleading environmental claims, companies can take steps, including:

1. Avoid Obvious Risks for Greenwashing Allegations

First and foremost, companies can (and should) avoid obvious risks for greenwashing allegations. Along with making demonstrably false claims, this includes making essentially unprovable claims. As noted above, the FTC takes the position that using terms like “green” and “eco-friendly” constitutes greenwashing because these claims cannot be substantiated, yet they can be influential to consumers.

2. Make Sure All “Green” Claims Can Be Substantiated with Real-World Data

Along with avoiding obvious risks for greenwashing allegations, companies should also ensure that all potentially justifiable environmental claims can be substantiated with real-world data. To be clear, however, it isn’t enough that a claim is capable of being proven—companies must have *actual data* to support their environmental claims. This applies across the board, from claims about the materials used to manufacture products to claims about carbon neutrality.

3. Avoid Making Assumptions or Relying on Third Parties’ Representations

In this same vein, companies should also be careful to avoid making assumptions about the environmental benefits or impacts of their products or processes. This includes relying on third parties’ representations without independent verification.

4. Do Not Turn a Blind Eye to Influencers’ and Marketing Agencies’ Environmental Claims

Just as companies should not rely on third parties’ environmental claims, they also should not turn a blind eye to environmental claims made on their behalf. If an influencer or marketing agency engages in greenwashing, for example, the fact that the influencer or marketing agency is an independent third party generally will not serve as a defense to liability.

5. Establish Procedures to Ensure that Environmental Claims Are Subject to Legal Review

Companies can also mitigate their risk of facing greenwashing allegations by establishing procedures to ensure that all environmental claims are subject to legal review. By engaging their **environmental compliance counsel** to review these claims, companies can ensure they make informed decisions about what they publish.

Schedule a Call with a California Environmental Attorney at Bick Law LLP

Do you have questions (or concerns) about greenwashing? If so, we can help. Our attorneys have extensive experience in this area, and we serve as both compliance and litigation counsel for greenwashing matters. To schedule a call with a California environmental attorney at Bick Law LLP, give us a call at 949-432-3500 today.