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More Environmental Claims, More Greenwashing Challenges

By **Simone Jones, Richard Smith and Kimberly Quick** (January 29, 2025, 4:36 PM EST)

A growing number of consumers say they consider the sustainability and other environmental effects of the products they purchase. In turn, companies have increasingly begun to emphasize their climate-friendly initiatives when marketing their brands, using words like "green," "eco-friendly" and "sustainable" to describe their products.

This emphasis might attract a more eco-conscious consumer base, but it also comes with risk: Companies that fail to ensure that those claims are accurate and supported by objective evidence — and even businesses that do — might find themselves on the wrong side of a greenwashing claim.

Greenwashing claims allege that companies falsely or deceptively represent their business, products, investments or services as more environmentally friendly than they are. As the number of companies making these types of representations has surged, so, too, have challenges to this environmental-based marketing. These claims pose significant concern for companies up and down the supply chain, from manufacturers to distributors to retailers.

In 2024, these challenges proved not only numerous, but also varied. And arguments previously foreclosed to plaintiffs were revived. The D.C. Court of Appeals' decision in *Earth Island Institute v. Coca-Cola Co.*[1] is perhaps the most notable example. Earth Island Institute previously sued Coca-Cola under D.C.'s Consumer Protection Procedures Act, claiming that the company's advertised sustainability plans constituted false and deceptive marketing by representing the company as more sustainable than it actually was.

The D.C. Superior Court had dismissed the lawsuit, holding that (1) aspirational statements cannot create a valid claim under the consumer act; (2) statements regarding "corporate ethos, hopes and philosophies" in corporate communications could not be considered "part of the product itself" and thus could not form a claim; and (3) Coca-Cola's claims were so limited and vague that they could not actually be misleading.

The D.C. Court of Appeals reversed the dismissal in August. Finding that "vague and ambiguous statements ... may yet be actionable as misrepresentations," the court looked to statements on Coca-Cola's website and social media accounts and found that in the aggregate, they could mislead consumers into thinking that Coca-Cola's sustainability commitment was more robust than it really was.

The statements in question were innocuous — that Coca-Cola intended to make 100% of its packaging "recyclable globally by 2025," that the company intended to collect and recycle a bottle or can for every one sold by 2030 and that the company acts "to create a more sustainable and better shared future." Nonetheless, the Court of Appeals reasoned that Earth Island had plausibly alleged that the commitments were unlikely to be achieved and that Coca-Cola had no intention of achieving them.



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Because Coca-Cola remains one of the largest producers of single-use plastics, the court concluded, its claims about being a sustainable company would be misleading if its recycling efforts could never offset its environmental harms.

Earth Island serves as a warning that environmental claims are increasingly subject to attack, and it provides plaintiffs with a playbook for challenging corporate sustainability-related representations and goals.

The Expanding Landscape of Greenwashing Litigation

Plaintiffs' and regulators' greenwashing claims often are premised solely on state consumer protection statutes, making state courts the battleground for greenwashing litigation. In 2024, state attorneys general and private citizens brought ambitious claims in these courts, targeting representations made about diverse products spanning multiple, and sometimes unexpected, industries.

In Massachusetts, for example, plaintiffs filed a putative class action alleging that Eversource Energy, an energy provider in the Northeast, deceptively marketed, promoted and sold natural gas to residential customers as "clean," "safe" and "good for the environment." Plaintiffs also averred that Eversource made environmental promises it could not keep.

The 49-page complaint particularly took issue with the company's commitment to become carbon-neutral by 2030. Plaintiffs said this goal was feasible only if Eversource purchased significant carbon offsets for methane leaks — an action that Eversource admitted it had yet to take.[2]

In October, two customers of an Oregon natural gas company **filed a greenwashing suit** alleging largely the same claims.[3] And in December, the town of Carrboro, North Carolina, sued Duke Energy, the state's largest power provider, saying Duke **engaged in "widespread greenwashing"** to suggest to the public that it is committed to clean energy and addressing the climate crisis."[4]

State-based greenwashing lawsuits have spread beyond power and utility companies. In *People v. JBS USA Food Co.*,[5] New York state's attorney general **challenged meatpacker** JBS Foods' claims that it would become "net zero" by 2040.

According to the complaint, this representation violated state consumer protection laws because the company failed to develop a suitable plan to support its claim. Like in *Earth Island* and **Ortiz v. Eversource Energy**, filed in Massachusetts state court in June, the lawsuit also challenged the feasibility of any such plan JBS would make because, the suit said, the agricultural technology needed to accomplish such plans does not exist.

Likewise, Los Angeles County counsel sued PepsiCo, Coca-Cola and their manufacturers and distributors, claiming that the defendants' marketing of their products as recyclable and part of a circular economy is "theater." [6]

Like in state courts, federally filed lawsuits touched many different industries. Two cases stand out. In April, plaintiffs filed a second amended class action accusing Delta Air Lines of misrepresenting its plans to become fully carbon-neutral. These misrepresentations, say plaintiffs, caused them to purchase and overpay for Delta flights.[7] A lawsuit filed in Massachusetts federal court claimed that Elsevier, a global publishing house, was actively supporting fossil fuel expansion even as it pledged to protect the climate in its public-facing marketing campaigns.[8]

Courts have yet to resolve many of these cases. But the pace of filing and the breadth of the allegations should inform businesses that claims premised on environmental marketing stand to increase in number. Future cases are likely to more closely scrutinize not just the products but also the behaviors of the companies that sell them.

A More Stringent Regulatory Landscape — For Now

Although an analysis of litigation trends can be useful, it is not enough to fully mitigate risk. Businesses should also understand the federal and state regulatory landscapes surrounding

greenwashing.

Federally, both the Securities and Exchange Commission and the Federal Trade Commission historically have evaluated and regulated potential greenwashing claims. The SEC **launched** its Climate and ESG Task Force in 2021 with the goal of rooting out misconduct related to environmental, social and governance violations, such as misrepresentations in climate risk disclosures, but disbanded the task force last summer.

In 2023, the SEC updated its 22-year-old "names rule" to require registered investment funds that include words like "green" and "sustainable" in their names to place 80% of their assets in investments corresponding to those factors. While the SEC adopted climate rules in March, they are currently stayed pending legal challenges in the Eighth Circuit. The SEC under the Trump administration is expected to drop support for these rules and is generally not expected to continue its focus on greenwashing.

The FTC brought environmental marketing enforcement claims long before the term "greenwashing" came into fashion. The commission's "green guides" were first drafted in 1992 to set the agency's position on environmental marketing and prevent companies from running afoul of Section 5 of the FTC Act. The guides were last updated in 2012, but the FTC announced its intention to revise them again in 2023. Though unlikely, publication of the updated guides could be imminent.

Even if courts or the new presidential administration opts to roll back some of these restrictions, many states are eager to step into any regulatory gap. California, for instance, has enacted a specific environmental marketing statute that explicitly incorporates the standards contained in FTC's green guides for certain marketing representations, and has dramatically expanded organizational standing to pave the way for private challengers.

A Colorado law that went into effect on Jan. 1, 2024, tightened the standards around representing a product as compostable. And 2024 bills introduced in states like New Hampshire, New York and Washington propose bolstering requirements against deceptive or misleading recycling claims. These varied state regulations mean that industry might have to navigate a patchwork of different regulations, rendering what was once considered climate-conscious "puffery" and other environmental claims increasingly risky.

What Does This Mean for Businesses and Advertisers?

Companies would be wise to heed the warning of the Earth Island court, which said, "Businesses cannot insulate themselves from suit simply by avoiding concrete claims. Vague and ambiguous statements, incapable of being strictly true or false, may yet be actionable as misrepresentations." Before making a climate-friendly marketing promise or claim, companies should realistically evaluate whether their business practices and practical logistics align with those commitments.

Regardless of the federal resolve, 2024 signaled that greenwashing litigation will carry on, and possibly increase, in state and federal courts. Private plaintiffs and governments alike remain prepared to examine and litigate marketing language that they claim paints a business as greener than its practices demonstrate.

Businesses already know how to defend against such claims. The most effective preparation for this surge in litigation is adherence to existing best practices surrounding governance, disclosure and due diligence. Businesses must substantiate all marketing claims with evidence and data.

Any inclination toward puffery or exaggeration should be met with caution, understanding that these tactics create greater risks of costly litigation or reputational damage. To facilitate more accurate marketing campaigns, companies can coordinate among marketing, legal and sustainability teams to ensure that claims are evidence-backed, consistent across platforms and evaluated for greenwashing risk before publication.

Companies might also consider seeking third-party certification of sustainability claims where available.

Conclusion

Despite the impending political sea change at the federal level, businesses across industries should recognize that they remain under heightened scrutiny regarding the way they discuss and advertise sustainability and other environmentally beneficial initiatives. A proactive approach to verifying and substantiating claims will help protect conscientious companies, even as the legal and regulatory landscape continues to shift.

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[1] **Earth Island Institute v. Coca-Cola Co.** , No. 22-CV-0895 (D.C. Court of Appeals).

[2] Ortiz v. Eversource Energy.

[3] See Blumm v. Northwest Natural Gas Co., 24-CV-48490 (Or. Cir. Ct. 2024).

[4] Town of Carrboro v. Duke Energy Corp., 24CV003385-670 (N.C. Super. Ct. 2024).

[5] Dkt. No. 450682/2024 (N.Y. Sup. Ct. 2024).

[6] The People of the State of California v. PepsiCo Inc. (Defendants removed the matter to the Central District of California, but the People filed a motion to remand.).

[7] Berrin v. Delta Air Lines Inc., 2:23-cv-04150 (C.D. Cal. 2023).

[8] Lyall v. Elsevier Inc., 1:24-cv-12022 (D. Mass. 2024).

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