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Karunya Swaminathan

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REGULATING GREENWASHING: CORPORATE LIABILITY FOR MISLEADING ENVIRONMENTAL CLAIMS UNDER CONSUMER PROTECTION LAW

Karunya Swaminathan¹

ABSTRACT

Sustainability plays an important role in consumer choices. Most customers prefer products that appear environmentally friendly. Many businesses have responded to this demand. They market their products as green, sustainable, or eco-friendly. Although this promotional effort contributes to conscious consumption, not all environmental claims are genuine. Many companies overstate their environmental standards while others claim without any evidence to support them. This approach is termed as greenwashing. Greenwashing is the use of false, vague or misleading environmental claims to make the product or the company appear environmentally responsible when they are not. Greenwashing creates the illusion that consumers are buying environmentally sound products when this is not the case. Moreover, it hurts companies who practice sustainability.

One of the most popular examples of this is the Volkswagen emissions scandal. The brand promoted some of their diesel vehicles as eco-friendly and low-emission. Subsequent research showed that the vehicles used software to defeat emissions tests. During normal use, the cars produced much higher pollution levels. The scandal demonstrated how wrong environmental claims can mislead consumers and regulators. This article discusses greenwashing from the standpoint of consumer protection. It deals with the liability of companies misrepresenting consumers through environmental claims. The study adopts a doctrinal and a policy-based approach. It assesses the regulatory frameworks in place in the United States, the European Union, and India.

The study examines laws, guidance on the rules and actions taken to enforce them. Common forms of greenwashing are identified by researchers. These are environmental wording, unsubstantiated claims and selective use of information. Such practices interfere in decision-making of consumers. The legal mechanisms to combat the practices are under evaluation. There

¹ UG Student, Symbiosis Law School, Hyderabad. You may contact the author at this email address: 23010324070@student.slsh.edu.in

are a variety of consequences for greenwashing such as civil liability, administrative fines, and even criminal penalties. The assessment has identified multiple regulatory gaps. Frequently, there is no clarity regarding the legal requirements. There is a high degree of variability in terms of how regulations will be enforced or evaluated in different jurisdictions. A lack of sufficient penalties may discourage businesses from engaging in misconduct.

Ultimately, the study concluded that consumer protection laws provide the framework for regulating greenwashing. To ensure corporate accountability, there must be improved enforcement mechanisms and stronger standards.

Keywords: Greenwashing; Consumer Protection Law; Environmental Claims; Corporate Liability; False Advertising

Introduction

Jay Westerveld was the environmentalist who coined the term 'greenwashing' in 1986.² He stated that hotels promote towel reuse to enhance their socially responsible image while worsening their environmental impact. That term encompasses a much broader array of tactics employed by companies to project an image of caring for the planet. These practices include confusing product labels and misleading corporate sustainability reports. Greenwashing is the act of misleading consumers regarding the environmental practices of a company or the environmental benefits of a product or service.

To a greater extent, environmental values influence the purchasing decisions of consumers. According to a Nielsen IQ survey conducted in 2023, 66% of shoppers globally consider sustainability when purchasing.³ This rises to 73% within the millennials age group. On average, products labelled sustainable have a premium of about 9.7%. This leads to a powerful financial incentive for firms to embellish their environmental credentials. Corporations use greenwashing to appear more responsible. This practice harms businesses looking for environmental and societal outcomes and reduces confidence in the market.

The escalation in deceptive environmental claims has led to many regions introducing regulation in this area. A 2021 study by the European Commission revealed the extent to which greenwashing is carried out online.⁴ Subsequently, authorities in the US, EU, and India have begun responding. Legal frameworks are so diverse that it is almost impossible to enforce greenwashing cases as generally the consumers who have been misled are contacted only after the misleading practice has occurred. Consumer protection laws are largely a good remedy for deceptive commercial practices, but they were not really intended to cover complicated environmental marketing claims. This paper reveals that consumer protection law by itself is not sufficient to regulate greenwashing efficiently as most legal regimes depend on ex-post enforcement and extremely loose standards of substantiation. Based on a comparative study of regulatory measures in the United States, the European Union, and India, this paper advocates that a successful regulation would entail at least compulsory claim checking, penalties corresponding to the turnover, and the use of ESG disclosure frameworks.

² Jay Westerveld, Commentary: Greenwashing, *N.Y. Times* (1986).

³ Nielsen IQ, *Green Divide: Consumer Sustainability Sentiment and Spending* (2023).

⁴ European Commission, *Behavioural Study on Consumers' Engagement in the Circular Economy* (2021). W.S. Laufer, *Social Accountability and Corporate Greenwashing*, 43 *J. Bus. Ethics* 253 (2003).

Literature Review

Understanding Greenwashing and Its Development

Laufer (2003) studied the tactics of greenwashing and classified them as intentional deceit and accidental misrepresentation.⁵ In 2010, TerraChoice released their ‘Seven Sins of Greenwashing’.⁶ This list focuses on different misleading green claims, including vagueness, irrelevance, hidden trade-offs, lack of proof, lesser of two evils, false labels and outright fabrication. A lot of legal and regulatory bodies still reference this framework.

According to Delmas and Burbano (2011), the misleading of the reputation was a planned strategy with serious implications⁷. Research has been conducted on the relationship between greenwashing and consumer law. In 1993, Carlson, Grove, and Kangun investigated the truthfulness of some claims made in environmental advertising. Their findings illustrated that existing rules that pertained to ads are severely deficient. Muris pointed out in 2002 that the FTC’s guidance-based rules were insufficient, because non-binding tools neither sanction violators’ behaviour nor do they punish violators in 2019, Hodges examined EU ways of protecting consumers and found that collective legal actions are playing an ever-increasing role in the fight against greenwash.

Consumer Protection and False Advertising

Researchers have been looking into how greenwashing connects with consumer protection laws. Back in 1993, Carlson, Grove, and Kangun explored claims in environmental advertising and found that existing rules for ads were seriously inadequate.⁸ Muris pointed out back in 2002 that the FTC’s guidance-based rules didn’t go far enough, highlighting a major issue in the case of non-binding tools that fail to punish violators.⁹ Hodges looked at EU methods for protecting consumers in 2019 and found that collective legal actions are playing an increasingly big role in tackling greenwashing.¹⁰

⁵ W.S. Laufer, *Social Accountability and Corporate Greenwashing*, 43 J. Bus. Ethics 253 (2003).

⁶ TerraChoice, *The Sins of Greenwashing: Home and Family Edition* (2010).

⁷ M.A. Delmas & V.C. Burbano, *The Drivers of Greenwashing*, 54 Calif. Mgmt. Rev. 64 (2011).

⁸ L. Carlson, S.J. Grove & N. Kangun, *A Content Analysis of Environmental Advertising*, 12 Journal of Advertising 27 (1993).

⁹ Timothy J. Muris, *The Federal Trade Commission and the Future Development of U.S. Consumer Protection Policy* (2002).

¹⁰ Christopher Hodges, *Collective Redress and Consumer Protection in the European Union* (2019).

Corporate Environmental Accountability

Bebchuk and Tallarita (2020) contend that voluntary ESG pledges will not have any credibility or integrity unless backed up by stringent laws.¹¹ The greenwashing problem occurs when an organization does not base their environmental claims upon evidence and/or therefore become liable for false claims. According to Eccles, Krzus and Serafeim, there is great importance in integrating financial and sustainability reporting to allow for true accountability.¹²

How Authorities Are Tackling Greenwashing

Evidence shows that requiring substantiation of environmental claims makes more of an impact than merely using a voluntary sustainability labeling system.¹³ The proposed EU Green Claims Directive has received nearly universal support by academics because it will strengthen evidentiary standards; however, detractors contend that compliance costs will be excessive and that the EU may risk being captured by the industries they regulate.¹⁴ There has been much discussion by academics and public policy officials in the US about potentially converting the FTC's Green Guides into mandatory regulations to increase the level of enforcement of misleading/environmental marketing claims.¹⁵ Indian scholars have also identified problems with the gaps in legislative objectives between environmental and consumer protection laws and the need for institutional capacity to properly enforce them.¹⁶

Research Gap

Most of the studies devote attention to environmental regulations and corporate disclosure rules but do not dedicate attention to consumer protection law and its role in addressing false environmental claims across the globe. Liability systems are also not given their due attention.

Research Methodology

Through doctrinal research, the paper will compare the regulatory frameworks of various jurisdictions. Doctrinal research entails a close examination of the constitutive elements that make

¹¹ L.A. Bebchuk & R. Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 Cornell L. Rev. 91 (2020).

¹² R.G. Eccles, M.P. Krzus & G. Serafeim, *Market Interest in Nonfinancial Information*, 23 J. Applied Corp. Fin. 113 (2011).

¹³ Lucia A. Reisch, Cass R. Sunstein & Wencke Gwozdz, *Beyond Carrots and Sticks: Europeans Support Health Nudges*, 36 *Food Pol'y* 119 (2017).

¹⁴ Nicolas de Sadeleer, *The EU Green Claims Directive and Environmental Advertising Regulation*, 32 *Rev. Eur. Comp. & Int'l Env't L.* 234 (2023).

¹⁵ P. Kannan & Y. Gao, *Environmental Marketing Claims and the FTC Green Guides: Toward Stronger Enforcement*, 47 *Bus. Law.* 121 (2021).

¹⁶ Ritu Mehta & Arjun Singh, *Greenwashing and Consumer Protection in India*, 14 *Indian J. L. & Env't* 52 (2022).

up the system. These include the statutes, court decisions, guidelines and regulations. Law scholars use comparative legal analysis to examine which rules and regulations are more effective and which are less so. Case studies show the practical functioning of these regulations and their failure in preventing the misleading environmental claims. To further support the findings of this study, we also utilized several different types of source material, including academic research papers, government regulatory documents, non-governmental organization (NGO) publications, and survey data from industry participants.

Research Questions

- What defines greenwashing under consumer protection laws, and how do different regions interpret it?
- How effective are the consumer protection regimes of the US, EU and India in deterring greenwashing?
- Do existing legal systems stop greenwashing and make corporations accountable?
- What changes are needed to improve corporate accountability for greenwashing?

Research Objectives

- To study what greenwashing means, its different types, and its role in law and business.
- To explore laws addressing false environmental claims in India, the EU, and the US.
- To assess how different countries handle corporate accountability under consumer protection laws.
- To identify weaknesses in laws and propose concrete legal enhancements.

Rise of Greenwashing

Greenwashing happens when corporations make false claims about their sustainability to mislead consumers.¹⁷ This is often visible in the packaging of the, in advertisements, corporate sustainability reports, general company communications, and even across social media platforms. Greenwashing can be classified into three broad categories¹⁸-

¹⁷ W.S. Laufer, *Social Accountability and Corporate Greenwashing*, 43 J. Bus. Ethics 253 (2003).

¹⁸ TerraChoice, *The Sins of Greenwashing: Home and Family Edition* (2010).

- Product level greenwashing- it is when the product is marketed as sustainable and recyclable even though most recycle facilities cannot recycle the product. E.g. The plastic films and adhesive in plastic bottles aren't recyclable despite claims it to be 100% recyclable
- Corporate greenwashing – it is when a company makes vague claims toward environmental friendliness, such as aiming for "net zero by 2030," without a concrete strategy to back it up. A prime example is a fast-fashion company releasing a new “Conscious Collection” while most of the company’s work and waste continues as usual.
- Process greenwashing is where a company makes false claims about the environmental impact of the processes they carry out, or where they employ other forms of deception.¹⁹ An example of this would be a company describing itself as renewable energy-based while offsetting huge amounts of emissions from dirty, or non-green, sources.

Corporations can be held liable for greenwashing under various laws

Type	Description	Legal Relevance
Vagueness	Undefined terms: ‘green’, ‘eco-friendly’, ‘natural.’	Misleading advertising under most frameworks
No Proof	‘Reduces carbon footprint’, no data provided	Violates FTC substantiation requirements
Irrelevance	‘CFC-free’ where CFCs are already banned by law	Deceptive by omission; exploits consumer ignorance
Hidden Trade-offs	‘Recycled’ paper product from an unsustainable supply chain	Material omission distorting consumer choice
False Labels	Invented Eco certification logos or fake endorsements	Fraud; passing off; consumer protection violation
Fibbing	Outright false claims; fabricated test results	Consumer fraud: potential criminal liability

¹⁹ T.P. Lyon & A.W. Montgomery, *The Means and End of Greenwash*, 24 Org. & Env't 223 (2015).

Corporations can be held liable for greenwashing under various laws. Consumer protection laws focus on banning deceptive business practices. Environmental claims may raise several legal issues, including:

- false claims when a statement is incorrect;
- incomplete details when accurate but partial information gives a misleading view; or
- Repetitive marketing tactics that influence consumer choices.

Greenwashing can lead to costly civil lawsuits, but in addition companies may face administrative fines or penalties in respect of consumer protection, advertising or environmental laws. More seriously greenwashing in this context of what constitutes accurate disclosure, as in the case of Volkswagen's emission test deception, could constitute a criminal offense to the extent that it is deemed to be a fraud.²⁰ As for the specific regulatory framework, it differs from one country to another. The EU's Green Claims Directive, for example, relies on strict liability for claims that can't be backed up with proof.²¹ In the US, the FTC Act requires proof that the claims are deceptive.²² India, the Consumer Protection Act 2019 puts the onus on businesses to ensure their ads aren't false or misleading, but still allows them a bit of leeway if the ad was made in good faith.²³

Legal Frameworks Regulating Greenwashing

United States

- The FTC's Green Guides, which were first created in 1992 and last updated in 2012, set out the main rules on environmental claims in the US.²⁴ The Green Guides clarify many technical terms such as "recyclable," "biodegradable," "compostable," and "carbon neutral," and enforcement of misleading environmental claims occurs under Section 5 of the FTC Act.²⁵ while the Green Guides function as interpretive guidance., which prohibits unfair or misleading business practices. The FTC has undertaken some major enforcement actions against Volkswagen, Keurig, and more for false carbon offset claims against businesses. The Green Guides are primarily to be interpreted, which is to say they function

²⁰ United States v. Volkswagen AG, No. 16CR20394 (E.D. Mich. 2017).

²¹ European Commission, *Proposal for a Proposed Directive on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)* COM (2023) 166 final.

²² Federal Trade Commission Act, 15 U.S.C. §§ 41–58.

²³ Consumer Protection Act, No. 35 of 2019 (India).

²⁴ Federal Trade Commission, *Guides for the Use of Environmental Marketing Claims*, 16 C.F.R. pt. 260 (2012).

²⁵ Federal Trade Commission Act, 15 U.S.C. §§ 41–58.

as guidance than actual rules i.e., they're nonbinding, which means that companies aren't directly liable for violating the Guides themselves. When the FTC wants to regulate a corporation, the FTC must show that a representation is probably misleading to a reasonable consumer.²⁶ Further, the guides are outdated in the sense they haven't changed since the time when social media and ESG reporting didn't exist. The consumers are left with limited choice as they cannot sue in federal court under the FTC act. Therefore, they rely on various state laws, which are often insufficient in terms of coverage.

- In *Earth Island Institute v. Coca-Cola Co.*, a group of environmental groups sued Coca-Cola for what they called deceptive environmental advertising. The environmental groups argued that through various ads and sustainability reports, Coca-Cola has portrayed itself as an environmentally responsible company and has misled consumers with such labels while at the same time being one of the largest contributors of plastic pollution to the world.²⁷ The plaintiffs argued that by marketing itself as an “eco-friendly” brand, Coca-Cola is engaging in “green” deception of consumers, creating the false impression that their products are environmentally friendly when in fact they may cause harm.

A D.C. Circuit Court of Appeals agreed with a D.C. Superior Court ruling that struck down a lawsuit that claimed that trash-disposal company Republic Services had made false and misleading statements about sustainability by calling itself “The Future of Waste” and saying that it was working toward a “World Without Waste.” The appeals court found that statements like “World Without Waste” were not capable of being verified as true or false and so weren't eligible to be brought as a false advertising claim under D.C. consumer-protection law.²⁸ The court found that such statements qualified as “puffery,” the term for marketing language that isn't meant to be taken seriously. In this case, the court found that the statements at issue “operate primarily as advertising and not as statements of fact upon which a reasonable consumer would rely.”

European Union

The EU takes a stronger approach to greenwashing. In 2005, the Unfair Commercial Practices Directive (UCPD) prohibited misleading business-to-consumer communication practices – which includes unsubstantiated environmental marketing claims.²⁹ More recently, the Green Claims

²⁶ P. Kannan & G. Gao, *Regulating Environmental Marketing Claims in the United States* (2021).

²⁷ *Earth Island Institute v. Coca-Cola Co.*, 2021 WL 2535537 (D.D.C. 2021).

²⁸ Christopher Hodges, *Collective Redress and Consumer Protection in the European Union* (2019).

²⁹ Directive 2005/29/EC on Unfair Commercial Practices.

Directive (COM (2023) 166) was proposed,³⁰ which requires companies to provide sufficient scientific evidence for any environmental claims they make about products or services. The companies must prove it by publishing the “validity assessment” carried out by an independent third party. The Directive will also require companies to publish independent verification of certain green labels and it prohibits the use of ambiguous terms, such as “ecofriendly”, unless they can be substantiated by “robust scientific evidence”. Fines for non-compliance could be as high as 4% of annual turnover. The Corporate Sustainability Reporting Directive was implemented in 2022.³¹ This directive requires European companies with over 500 employees to report on certain environmental statements and is enforced under the European Sustainability Reporting Standards (ESRS). The companies’ reports must be independently assured.

Legal challenges to climate spin ongoing in Europe Meanwhile, there have been legal challenges in Europe concerning adverts which claim that companies are supporting or mitigating the impact of climate change. In February 2022 environmental groups filed a complaint in Europe over Royal Dutch Shell advertisements that described its gasoline as “carbon neutral.” The advertising claim was made good on the condition that customers also bought carbon offset credits from Shell. European regulators and consumer groups are contesting the advertising claiming the carbon neutral claim is misleading and given that carbon offsetting has been a key strategy for the entire industry, the adverts are likely misleading as they have been deemed to be so by the Dutch Advertising Code Committee.³² The Committee ruled that Shell's advertisements could mislead consumers into thinking they were choosing more sustainable products than they actually were, thereby introducing an additional regulatory hurdle for companies attempting to claim that their products, practices or policies are climate friendly.

India

Consumer Protection Law – India the consumer protection law in India is the Consumer Protection Act 2019.³³ This Act ensures to prohibit false and misleading advertisements and penalize the violators, which includes even the advertiser’s pitching mediator. The Central Consumer Protection Authority (CCPA)³⁴ was set up to regulate these companies in case they breach the provisions of the Act and in some cases also imposes penalty on mediators as well who

³⁰ European Commission, *Proposal for a Directive on Substantiation and Communication of Explicit Environmental Claims*, COM (2023) 166 final.

³¹ Directive (EU) 2022/2464 on Corporate Sustainability Reporting.

³² *ClientEarth v. Shell plc*, Complaint before Dutch Advertising Code Committee (2022).

³³ Consumer Protection Act, No. 35 of 2019 (India).

³⁴ Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements* (2022).

is in a role of a pitch man. The CCPA on 02 Feb 2022 through its notice instructed advertisers to substantiate the environmental claims that they do while promoting any products and reminded advertising self-regulatory industry body ASCI (Advertising Standards Council of India)³⁵ to direct the advertisers to observe what has been communicated in the CCPA notice. In 2024, the ASCI also directed these advertisers to explain the advertising in more detail and that the advertising must be more transparent and clearer for conveying the advertisement's message. Although India's regulatory framework is developing, significant structural challenges remain. The greenwashing cases in courts in India are relatively less and enforcement has been very differential in India. Also, the Act does not mandatorily undertake "pre-clearance" of environmental product claims before launching products.

Recent developments in India indicate increasing regulatory scrutiny of misleading advertising. In the recent case of *Indian Medical Association v. Patanjali Ayurved Ltd.* (2024)³⁶ the Indian Supreme Court examined an action in relation to what Patanjali had claimed in relation to the health and wellbeing benefits of certain of their products. Patanjali had issued a range of adverts which contained absolutely no evidence to support the extraordinary health claims. The Court held that Patanjali had issued misleading ads and that the Advertising Standards Council of India, the relevant advertising regulator, required greater enforcement powers to investigate misleading ads. Whilst the judgement in relation to health claims is quite straightforward it is worth noting that in relation to environmental and sustainability advertising claims the Court made it clear that it intends to scrutinise more closely any companies that are making unsubstantiated or misleading advertising claims.

Case Studies of Greenwashing

The Volkswagen Diesel Gate Scandal (2015): Volkswagen advertised its diesel cars as superior and compliant with emission standards, claiming they were superior to petrol vehicles. Investigations found the use of 'defeat device' software, which tricked emissions tests. These cars emitted pollutants at levels 10 to 40 times above the legal limit during regular use. The legal consequences were massive. In the US, the company faced settlements totalling over USD 14.7 billion and criminal charges against its executives.³⁷ Germany fined them EUR 1 billion, and total global liabilities surpassed USD 30 billion.³⁸ This case showed that greenwashing through

³⁵ Advertising Standards Council of India, *Guidelines on Environmental Claims in Advertising* (2024).

³⁶ *Indian Medical Association v. Patanjali Ayurved Ltd.*, (2024) 8 S.C.R. 401 (India).

³⁷ *Volkswagen AG*, supra note 37.

³⁸ *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal. 2016).

engineering and regulatory breaches constitutes consumer fraud. It fell under false advertising, deceptive trade practices, securities fraud, and environmental regulations.

H&M Greenwashing Controversy (2021–2023): The Changing Markets Foundation reported that 96% of H&M's online sustainability claims lacked proof based on H&M's own outlined methods.³⁹ In Norway, the Consumer Authority found that H&M's sustainability labels violated the Norwegian Marketing Control Act.⁴⁰ This led to class-action lawsuits in the Netherlands. H&M decided to take down its sustainability scorecard in 2022. This situation shows that an entire sustainability rating system, not just a single advertisement, can constitute a deceptive business practice.

BP 'Beyond Petroleum' Campaign: BP rebranded itself with the slogan 'Beyond Petroleum' to present the image of a shift toward renewable energy. However, internal records showed the company was spending less than 4% of its capital on renewables.⁴¹ No legal action followed, highlighting a major regulatory failure. This showed how current systems do not address corporate greenwashing. The urgent need for standardised ESG disclosure requirements to create consistency between public commitments made by organisations and the funds that they invest has been further underscored.

Keurig Recyclable Pods Litigation (USA, 2020): Keurig recyclable pods case demonstrated how even though consumers were being told by Keurig that they could recycle their single-use coffee pods at home, nearly all US municipalities do not recycle the pods through their recycling programs. This case ultimately resulted in a USD 10 million settlement due to claims made by Keurig, which were true in nature, but were misleading because they did not take into account the ability of the average consumer to recycle them.⁴²

Critical Analysis

Efforts at creating a framework to prevent misconduct are under way and the EU has made significant progress on implementation of new standards for large corporations creating greater accountability and the FTC has created clear examples of deterrent effect through the enforcement of their rules.⁴³ but there remains opportunities for improvements in this area, as illustrated by the

³⁹ Changing Markets Foundation, *Synthetics Anonymous: Fashion Brands' Addiction to Fossil Fuels* (2021).

⁴⁰ Norwegian Consumer Authority v. H&M Hennes & Mauritz AB, Case No. 21/02066 (2022).

⁴¹ Changing Markets Foundation, *Synthetics Anonymous: Fashion Brands' Addiction to Fossil Fuels* (2021).

⁴² *Smith v. Keurig Green Mountain, Inc.*, No. 4:18-cv-06690-HSG (N.D. Cal. 2020).

⁴³ L. Reisch, C.R. Sunstein & W. Gwozdz, *Nudging, Nannying and Liberating Choices*, 46 *Journal of Consumer Policy* 1 (2017).

BP case which indicates a lack of enforcement for corporate-level greenwashing, despite the existence of clear evidence over the practice.⁴⁴ This exposes a serious problem in controlling environmental claims made by organisations. Both the US and India allow misleading claims to reach the public because they do not require verification before products hit the market.⁴⁵

In most cases, determining if an environmental claim made by a business is misleading requires some form of specialised scientific or engineering expertise, which may not be available to most regulators.⁴⁶ Multinational corporations take advantage of differences in the legality and regulatory regimes of different countries to alter how they message their products and to avoid complying with regulations which are stricter in countries with more regulatory oversight. This is because fast internet communication allows for millions of consumers to receive greenwashing messages before authorities have time to respond, that also leads to the possibility of many consumers believing they're supporting sustainable practices when they aren't.⁴⁷

Information asymmetry can also be used to understand greenwashing.⁴⁸ Environmental characteristics like carbon emissions, lifecycle sustainability, and supply chain practices are difficult to understand without having expertise, so many consumers will not have the ability to independently verify them. Corporations possess a much larger degree of knowledge regarding their products than do consumers, so consumers will often rely on environmental marketing messages to help them make a purchase decision. Because of this imbalance, false sustainability marketing messages impact consumers' decisions on whether to purchase products. Consumer protection legislation is designed to deal with false advertising, but in most cases, this legislation will only come into effect after the consumer has been harmed by the false advertising. Therefore, consumer protection legislation by itself typically won't be enough to correct the structural imbalance of knowledge which allows companies to greenwash consumers. Another structural impediment to regulating greenwashing is the lag that occurs between when there are consumer complaints and/or publicity around the misleading green claim, and when regulatory agencies begin investigating the claim.⁴⁹ Conversely, a marketing campaign conducted by corporations to promote environmentally sustainable products can reach potentially millions of consumers within minutes via digital marketing and social media. The difference in speed between corporate

⁴⁴ Id.

⁴⁵ European Commission, *Proposal for a Proposed Directive on Substantiation and Communication of Explicit Environmental Claims*, COM (2023) 166 final.

⁴⁶ *Volkswagen AG*, supra note 37

⁴⁷ European Commission, *Proposal for a Proposed Directive on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)* COM (2023) 166 final.

⁴⁸ T. P. Lyon & A.W. Montgomery, *The Means and End of Greenwash*, 24 *Org. & Env't* 223 (2015).

⁴⁹ L. Reisch, C.R. Sunstein & W. Gwozdz, *Nudging, Nannying and Liberating Choices*, 46 *J. Consumer Pol'y* 1 (2017).

communication and speed at which regulatory enforcement takes place is substantial; therefore, misleading environmental claims may easily spread across the globe before corrective measures can be taken. As such, many times enforcement is reactive and cannot effectively prevent the extensive dissemination of false sustainability claims. There is currently no universal definition for "greenwashing", therefore various jurisdictions have different criteria with which to establish the legitimacy of environmental claims made by a corporation, as well as different methods of proving legitimate claims and punishing unlawful claims. The European Union has very strict standards of proof, while in the United States the enforcement of environmentally-based laws is significantly lacking, which means corporations are often provided with opportunities to take advantage of discrepancies in regulatory systems among various countries. Establishing at least some level of commonality between international standards would significantly reduce the problems associated with establishing sustainable corporate practices on a global basis.

Gap	Description	Reform Required
No universal definition	No internationally binding legal definition exists	UNEP-led international agreement
No premarket verification	Claims made before substantiation is required	Mandatory premarket substantiation (EU model)
Weak penalties	Fines disproportionate to corporate turnover	Turnover-based penalties (GDPR model: 2–4%)
ESG loopholes	Voluntary, inconsistent sustainability reporting	Mandatory reporting with legal liability
Digital gaps	Social media and AI content are inadequately covered	AI governance and digital services frameworks
Limited private remedies	Few private rights of action for consumers	Class action rights; statutory damages

A common finding across all the case studies was the disconnect between how companies communicate about their environmental initiatives and how well they execute those initiatives; for example, different departments (marketing, sustainability, legal and management) within organisations typically administer environmental claims without proper

coordination/communication. Individual accountability for corporate greenwashing is unclear. Volkswagen showed that executives can face legal action, but this is rare.⁵⁰ When companies use outside advertising agencies, PR teams, or certification bodies, it leads to unclear responsibilities, and current rules don't address this problem.

Conclusion

Many regulatory hurdles still need to be overcome to address greenwashing. The environmental marketing practices that currently fall short of the required standard are increasing in number and complexity. While many countries have laws that prohibit misleading environmental marketing claims, they are predominantly enforced on an ex-post basis through administrative procedures and are primarily carried out by regulatory authorities that are ill-equipped to address the complexity of the issues at hand. Moreover, these authorities do not always have sufficient human and financial resources. What is more, enforcement is frequently only undertaken after the consumer has already taken a purchasing decision.

As environmental misrepresentation is most associated with product labelling and advertising, it has historically not been a key focus point for commentators. However, with companies increasingly engaging in corporate governance and sustainability communications greenwashing has become an evolving term of relevance. Companies are using broad environmental statements, sustainability marketing, as well as climate change pledges, to create the impression that they are environmentally responsible, while often without effecting changes to real conduct in line with the stringent measures required to meet the goals of the Paris Agreement.

An Examination of Consumer Protection Regulations in USA, EU & India Through Comparative Study Reveals that Environmental Greenwashing Violates Consumer Protection Laws, Lack of Adequate Enforcement and Penalties The study found that the consumer protection law provides a basic framework to deal with the environmental greenwashing through comparative analysis of laws and regulations applicable in the USA, EU and India. Currently, enforcement of law and adequacy of penalty is considered inadequate for an effective deterrence of greenwashing practices in the consumer market. The reasons attributed to such failure are inadequate substantiation required under the consumer protection law, discrimination in various regulations applicable in different jurisdictions, absence of effective private actions and other administrative restrictions,

⁵⁰ *Volkswagen AG*, supra note 37.

which leads to failure of enforcing effective consumer redressal and allows greenwashing to carry on in the market unabated.

Better regulation is needed. Better regulation will be needed to address the challenges highlighted by a new report on greenwashing from the Halifax Regional Fire and Emergency Management Services. The report recommends the implementation of a mandatory ESG disclosure regime along with improvements to the regime governing the substantiation of environmental marketing claims and greater international harmonization of standards and approaches to regulation to address misleading and confusing representations made in relation to environmental and social performance and which can be confusing and misleading for consumers.

Policy Recommendations

The following measures could strengthen the regulation of greenwashing:

- International organisations like the United Nations Environment Programme (UNEP) need to come up with a model legal definition of greenwashing which could be adopted in national legislation.
- Introduce mandatory pre-market substantiation of environmental claims. company must prove its environmental statements are true before it can put them in an ad or a brochure.
- Large scale greenwashing using terms such as “carbon neutral” or “net zero emissions” Require independent third-party verification.
- Fines should be able to be levied that are proportionate to the turnover of the organisation, to provide an effective deterrent.
- New laws should make it easier for consumers to launch group legal action over false or misleading green claims, pay less in damages and gain wider court powers.
- chief executives of companies that make misleading statements about environmental issues should face potential litigation for their role in governance
- It is important to include in the regulations also misleading environmental claims which may be spread through digital advertising, or through social media and bots.

- It is fundamental to get an international governmental coordination of Governments, international organisations and regulatory authorities to standardise the standards and reduce regulatory fragmentation.

Greenwashing continues to erode consumer confidence, confuse market competition, and impede the success of genuine sustainability efforts. While many jurisdictions, including the US, EU, and India have consumer protection legislation that provides a legal framework to address misleading environmental assertions, this study finds that enforcement is inconsistent and primarily reactive. Due to the lack of a universally accepted definition of greenwashing; minimal substantiation standards; and weak penalties for corporations who conduct greenwashing across multiple jurisdictions, there are numerous opportunities for corporations to take advantage of regulatory loopholes. As environmental marketing grows increasingly complex and digitally mediated; these factors will complicate the ability of regulators to prevent fraud or deceptive sustainability representations. To enable regulators to ensure meaningful corporate responsibility, it will be important to strengthen regulatory frameworks by establishing mandatory substantiation of environmental claims; implementing independent verification mechanisms; increasing penalties as a function of corporate sales; and establishing better mechanisms for consumers to seek redress. If these reforms are not made, the continued prevalence of greenwashing will negatively impact both consumer protections and the credibility of international sustainability initiatives.