

# GREEN MARKETING

## TIPS TO AVOID THE DIRTY CONSEQUENCES OF GREENWASHING



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Increasingly, companies are eager to showcase the environmental benefits of their products and practices. So-called “green marketing” can be an effective tool in a company’s marketing and corporate public relations strategies as environmental sustainability and awareness become more important to consumers. A company’s green marketing claims are permissible when they accurately and legally portray the environmental benefits of a company’s products and practices.

Companies engaging in green marketing, however, must exercise caution to ensure that green marketing claims do not inadvertently slip into the deceptive realm of “greenwashing.”

Greenwashing generally occurs when companies misleadingly market the

supposed environmental benefits of their products or practices. Many credit the first use of the term “greenwashing” to environmentalist Jay Westerveld, who possibly coined the term in the 1980s. When visiting a resort, Mr. Westerveld observed a note directed to customers asking them to reuse their towels to reduce ecological damage and help save the environment. He thought the request was not environmentally motivated, but rather served as a cost-savings mechanism. Almost four decades later, the concept of greenwashing remains highly relevant.

Classic examples of greenwashing include: (1) misleading or vague labeling (e.g., eco-friendly, all natural), (2) emphasizing the environmentally beneficial aspects of a product or practice, while minimizing

environmentally problematic aspects, and (3) including misleading “green” imagery (e.g., pictures of forests and streams on the packaging for an environmentally harmful product).

Companies engaging in greenwashing face consequences ranging from private lawsuits, public lawsuits brought by state and federal agencies, and reputational damage. A company’s goal to obtain consumer goodwill through green marketing can quickly turn sideways if the company is accused of engaging in greenwashing. For that reason, companies must be mindful of these issues when undertaking any green marketing campaign.

Here are some tips to avoid the dirty consequences of greenwashing:

### 1. GREEN MARKETING CLAIMS MUST BE FACTUALLY SUPPORTED

A company cannot make a green marketing claim based on aspirations or euphoric-sounding taglines. Companies must ensure that facts support the claim. Some states, like California, actually have recordkeeping requirements that a company must follow when making green marketing claims, including records of the factual basis for the claims.

### 2. GREEN MARKETING CLAIMS MUST BE LEGALLY COMPLIANT

Companies must understand the legal requirements for asserting specific green marketing claims. There are numerous laws and regulatory guidance that can potentially impact a company’s green marketing claims. For example, the Federal Trade Commission has published the Green Guides, which are designed to help marketers avoid making environmental claims that mislead consumers. States can, and do, adopt more stringent green marketing requirements that must be followed. There also may be product-specific federal and state laws that have green marketing implications. Finally, environmental, social, and governance (ESG) considerations are relevant to green marketing claims.

### 3. AVOID UNQUALIFIED ENVIRONMENTAL BENEFIT CLAIMS, BE SPECIFIC, AND FOREGO OVERSTATING BENEFITS

Companies must avoid unqualified environmental benefit claims such as “eco-friendly” or “all natural.” If average consumers were polled, there would be no general consensus regarding what these terms mean. Such ambiguity in terms, without qualifying information, renders a company potentially liable for greenwashing.

Companies should also make sure that when a consumer reviews the claim, the consumer can be reasonably expected to know what the company is asserting and what environmental benefit the company is claiming. Likewise, the claimed environmental benefit cannot be an overstatement of the actual benefits.

### 4. LEGAL AND MARKETING TEAMS SHOULD WORK TOGETHER

Marketing is typically a separate division from legal, which is usually fine. But if a company is going to engage in a green marketing campaign, it is advisable to have legal counsel involved to ensure that any claims, including those made on product labels, comply with the law. Again, there are a lot of nuances to

the types of green marketing claims that a company can legally make. An uninformed marketing team not up to date with these requirements can create company risk and liability. Therefore, it is imperative that marketing and legal teams work together in developing a green marketing strategy.

### 5. PERIODICALLY AUDIT MARKETING FOR CONTINUED COMPLIANCE

Green marketing campaigns must be periodically monitored to ensure continued compliance with the law. A claim that was legally sound a few years ago may no longer be allowed. Company turnover and staff changes can also mean that the newest members of the marketing team lack awareness of previously discussed legal requirements. It is important for companies to periodically review and reassess a green marketing campaign to ensure that something did not fall through the cracks or otherwise change (either factually or legally), which renders a previously permissible claim now risky or illegal.

While implementing these tips may seem onerous and lead companies to believe that the cost of compliance is too great, companies should consider the significantly graver expense associated with noncompliance. An ounce of prevention can help minimize the chance that a company is faced with multi-million-dollar liability, tarnished brand reputation, or consumer boycotts. 

