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Intellectual Property Alert

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Global greenwashing update

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Read about new carbon offset laws springing up domestically and internationally and how companies can avoid falling into the greenwashing trap.



What's the Impact

- / Exercise caution—organizations planning and executing green-oriented campaigns must avoid misleading consumers about the green attributes of their goods and services.
- / Avoid making statements about green or carbon-offset claims without competent and reliable scientific evidence.
- / California's AB 1305 is the latest consumer protection law aimed to curb false advertising and corporate greenwashing—will other regulatory bodies follow its lead?

Planning and executing green-oriented campaigns could be risky business for consumer-facing companies as scrutiny of environmental marketing and advertising campaigns is rising around

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the globe. Regulators in the United Kingdom, United States, and Switzerland have made headlines by increasing regulatory and enforcement efforts. This uptick means organizations planning and executing green-oriented campaigns must avoid misleading consumers concerning the eco-friendly attributes of their goods and services, especially where a company's claims are based upon positive environmental impacts due to the purchase of carbon offset credits.

Greenwashing Enforcement of Carbon Offsetting Programs

Switzerland

While last summer's FIFA Qatar World Cup captivated the attention of billions of fans around the globe, the Swiss Fairness Commission found FIFA's statements concerning the "fully carbon neutral" qualities of its tournament to be misleading. While FIFA had promoted the Qatar World Cup as the first completely climate neutral tournament, the calculations underlying those claims were based upon its purchase of carbon offset credits and did not account for emissions from the construction of stadiums and fan travel. Fundamentally, the Commission's findings centered on the fact that there was no definitive and generally accepted method for measuring the purported climate impacts or ensuring measures to meet those goals had been implemented.

Carbon offsetting strategies, like the one employed by FIFA, are becoming an increasingly common way for brands to engage in environmental or "green" marketing. But simply purchasing carbon offset credits is no longer a one-way ticket to green advertising. Instead, best practices moving forward for companies in the US, EU, UK or elsewhere, entails honest and candid disclosure of a program's ecologically-sound attributes and impacts on the environment, as well as collection and public disclosure of reliable scientific evidence to support green or carbon-offset claims.

United States — California

While the long-awaited update to the FTC's "Green Guides" remains a work in progress, California has taken the first step through its new carbon offset law, Assembly Bill 1305 (the Voluntary Carbon Market Disclosures Act or VCMDA), which is set to go into effect on January 1, 2024.

The VCMDA will apply to a range of entities operating in California that market or sell voluntary carbon offsets, or make claims regarding the achievement of net-zero emissions, carbon neutral status, or significant carbon emissions reductions and it may be a signal for what is to come on a federal level.

The VCMDA focuses on creating requirements surrounding the disclosure of key metrics like the number of offset credits issued, the data and calculation methods needed to allow for independent recreation of emissions reduction estimates, and details regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits.

Specifically, the VCMDA requires buyers of voluntary carbon offsets that make claims “regarding the achievement of net zero emissions or other, similar claims,” to disclose the following on their website:

- / The name of the business entity selling the offset and the offset registry or program;
- / The project identification number, if applicable;
- / The project name as listed in the registry or program, if applicable;
- / The offset project type, including whether the offsets purchased were derived from a carbon removal, an avoided emission, or a combination of both, and site location;
- / The specific protocol used to estimate emissions reductions or removal benefits; and
- / Whether there is independent third-party verification of company data and claims listed.

Entities that violate these provisions will be “subject to a civil penalty of not more than \$2,500 per day, as specified, for each violation, not to exceed a total amount of \$500,000, which would be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by a district attorney, county counsel, or city attorney in a court of competent jurisdiction.” The VCMDA would also be read alongside preexisting consumer protection laws like California’s Unfair Competition Law and the FTC’s “Green Guides.”

Greenwashing Enforcement of Fashion Companies

The UK and the EU’s respective regulatory authorities have been actively updating climate-centric regulations and conducting investigations and [enforcement actions against entities in the fashion sector](#).

For example, the UK’s Competition Market Authority (CMA) and Advertising Standards Authority (ASA) recently began a formal investigation into several well-known fashion brands over potentially misleading eco-friendly and sustainability claims about their products.

The CMA and ASA have prioritized fashion companies as it claims that entire lines of clothing are being labeled as sustainable and eco-friendly without any supporting proof that the process— from material selection, to manufacturing, to sale and ultimate delivery—is good for the environment. While providing proof of a companies’ green-oriented practices can be difficult at times, obtaining third-party industry accreditations to verify and substantiate ecologically sound claims is essential.

Without competent and reliable scientific evidence to support green or carbon-offset claims, companies should be wary of making them. They should also be narrowly tailored to avoid stating or implying a greater benefit than what the business has or is hoping to achieve. Context continues to matter.

The Verdict

As regulators across the globe continue ramping up [regulatory and enforcement efforts aimed at “green” marketing](#), multinational corporations face increasingly complex reporting and disclosure requirements. These new regulations, which may mirror California’s VCMDA, will operate in unison with other consumer protection laws aimed at curbing false advertising and corporate greenwashing. This regulatory surge will create increased exposure for unsubstantiated climate-centric claims across a host of industries for companies operating in the US, EU, UK, or elsewhere.

To avoid falling into the greenwashing trap, companies should make sure to support green or carbon-offset claims with quantifiable evidence and keep claims limited in scope to avoid implying sweeping environmental benefits that can be viewed as misleading.

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