STOP IN THE NAME OF LAW

How litigation is challenging offsetting claims.

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Executive summary

Consumers have become more interested in sustainable products and services, and companies have been trying to appease this new demand by presenting themselves as environmentally responsible with new labels, claims, and ads. However, this eco facade is usually far from reality and is more connected with disingenuous greenwashing than real environmental change.

Controversially, carbon credits have been playing a key role in these practices. Many companies portray their products, services or operations as carbon neutral, based on the erroneous idea that the emissions they generate can be offset by distant climate mitigation projects.

These claims, however, have faced growing legal and regulatory scrutiny. This briefing examines a selection of landmark cases concerning carbon credit offsetting claims brought before courts and regulatory authorities in Europe, Australia and the United States (US). The briefing also reviews the evolving regulatory frameworks governing such claims. The selected cases illustrate differences in how courts across jurisdictions approach compensation-based claims.

There is a clear difference between the different court jurisdictions. In the European Union, the United Kingdom, and Australia, courts and regulators have become increasingly sceptical of green claims based on carbon credits. In the United States, courts have generally been more reluctant to side with plaintiffs challenging such advertisements. These differences are also reflected in their respective regulatory landscapes. While the European Union and the United Kingdom have taken important steps through the Empowering Consumers for the Green Transition (ECGT) Directive and the Digital Markets, Competition and Consumers (DMCC) Act, the US continues to rely heavily on the increasingly outdated Federal Trade Commission's Green Guides.

Despite this fragmented global landscape, one trend is clear: getting away with misleading offsetting claims is increasingly difficult and making such claims is a gamble for companies. Litigation, regulatory investigations, settlements, as well as reputational and financial consequences, are increasing the risk of relying on carbon credits to substantiate climate claims.

Nevertheless, further action is needed to move away from compensation-based claims altogether. Companies should place in-house emissions reductions at the centre of their climate strategies and stop using carbon credits for offsetting purposes. Policymakers, in turn, should establish clear prohibitions on misleading offsetting claims, whether they relate to individual products or services or to companies as a whole, while ensuring that environmental claims are transparent, substantiated and reflect genuine emissions reductions.

Introduction

Sustainably marketed products are in growing demand. Consumers are increasingly reaching for green-labelled products: in the US, for instance, products marketed as being sustainable accounted for nearly half of the growth in demand for consumer packaged goods between 2013 and 2025. This increased demand for products and services with reduced environmental impact has led to a surge of vague, misleading, and often inaccurate sustainability claims.

Many companies have portrayed themselves or their products as being environmentally friendly without adequately substantiating such claims. Instead, they rely on vague environmental buzzwords, such as 'carbon-neutral', 'climate-neutral' and 'net-zero' that convey a misleading impression of their actual environmental performance.

These green claims often rely on the purchase of carbon credits from emission reduction or removal projects that are intended to compensate for the company's own CO_2 emissions. This practice, known as offsetting, has become one of the principal mechanisms by which companies market their products and services as being carbon neutral or as having a neutral impact on the climate. Despite increasing scrutiny of this practice by regulators, the UN, NGOs and academia, it remains a common marketing practice around the globe.

The shortcomings of offsetting have been well documented. Often, carbon projects that generate credits fail to satisfy robust quality and integrity standards. In addition, reliance on inexpensive carbon credits risks deterring companies from pursuing genuine emissions reductions in their own operations and value chains. For example, peer-reviewed research found that for Delta Air Lines and easyJet, investments in decarbonisation were crowded out by the allocation of funds to carbon offsetting.

Above all, offsetting distorts consumers' understanding of companies' environmental performance. It obscures the distinction between businesses that are genuinely reducing their emissions and those primarily relying on compensation mechanisms. A survey conducted by the European Consumer Organisation (BEUC) found that the vast majority of consumers believe a product labelled as carbon neutral has been produced without emitting carbon dioxide. However, as previously stated, this claim often reflects the mere purchase of carbon credits rather than reductions in the product's carbon footprint.

This brief explores how courts and regulatory authorities across Europe, the United States, and Australia have dealt with litigation cases concerning corporate environmental claims related to the purchase of carbon credits. It also outlines the most significant regulatory developments shaping the evolving framework governing environmental claims in these jurisdictions. While the approaches adopted across jurisdictions vary, they all point to a common trend: unsubstantiated claims, particularly those that rely on carbon compensation through carbon credits, are facing unprecedented legal and regulatory scrutiny, exposing companies to growing financial and reputational risks. Beyond the implications for businesses, effective enforcement plays a crucial role in preserving consumer trust in sustainability claims and, in turn, supporting the transition towards more sustainable consumption.

The end of greenwashing impunity in Europe

The advancement of corporate greenwashing litigation in Europe has been driven by both the actors bringing these claims before the courts and by the judges willing to engage with and uphold them. This distinguishes Europe from many other jurisdictions. Northern European courts, in particular, have delivered a series of bold rulings in recent years, establishing a clear precedent on what is and is not permissible in companies' climate-related advertising strategies. From the food sector to the tech and energy industries, companies across the board have faced greenwashing lawsuits, particularly over how they use carbon credits to substantiate their climate performance claims.

The growing wave of litigation in Europe has largely been driven by the Unfair Commercial Practices Directive (UCPD), adopted by the European Parliament in 2005 to regulate unfair consumer-facing business practices. The directive was subsequently transposed into the national legislations of member states, creating a uniform legal framework for advertising practices across the EU. Since then, the directive has been updated. In 2012, a Multi-stakeholder Dialogue on Environmental Claims (MDEC) was launched. This led to the development of specific guidelines in 2017 aimed at making the directive's enforcement more effective. According to these guidelines, companies' so-called green claims must be, among other things, "clear, specific and unambiguous," and must not include "aspirations of future environmental efforts." The latter point is particularly critical when claims are unsubstantiated or rely on carbon credits that cannot guarantee a long-term impact.

Swedish court rejects compensation-based 'net-zero' claims.

The 2017 guidelines proved crucial in one of Europe's first landmark cases over misleading green claims. At the centre of the case was Arla, the Swedish dairy producer, which in 2019 started labelling some of their products with a tag that said "net zero climate footprint", a claim based on the purchase of carbon credits. In 2021, Sweden's advertising watchdog, Consumer Ombudsman, filed a lawsuit against Arla for misleading environmental claims.

On 2 February 2022, the Swedish Market Court delivered a groundbreaking ruling that set an important precedent for how compensation claims should be treated in judicial proceedings across Europe. The Court found that because the word "net" appeared inconspicuously within the label "net zero climate footprint", the overall impression created for consumers was that Arla's products had no climate impact whatsoever, when in reality the company had purchased carbon credits to offset its products' ongoing emissions.

The court also weighed in on the level of knowledge that an average consumer could reasonably be expected to have. Notably, the court dismissed Arla's reasoning that since its dairy products are organic, the advertisements are aimed at consumers who would reasonably be knowledgeable about what compensation claims entail. Instead, the court found the average consumer lacks the expertise to fully comprehend what such claims actually mean.

The court ultimately found Arla's advertisements misleading and in violation of the Swedish Marketing Act. It ordered Arla Foods to discontinue advertising its products as having "net-zero climate footprint" or using similar claims, with any breach of the prohibition subject to SEK 1 million penalty.[1]

What makes this ruling especially noteworthy is that the court explicitly addressed the nature of compensation claims and the uncertainty about the long-term impact of carbon credits. It found that it was unverifiable and inadmissible to claim that emissions would be compensated through carbon credits over a 100-year period.

Indeed, for carbon crediting projects involving temporary CO_2 storage (e.g. in trees), it is unreasonable to assume they can guarantee long-term storage on climate-relevant timescales, which is to say over one thousand years. Among other reasons, this is because once such projects stop generating carbon credits, in most cases, there will be little to no

[1] Around 90,000 EUR based on the exchange rate at the time.

meaningful checks to verify that they are still removing and storing CO_2. Most programmes rely on alternatives to long-term monitoring, such as "buffer pools" (further discussed in the next section), which are largely inadequate, and nascent insurance offerings, which are mostly untested over a meaningful period of time. The considerable "permanence" risk facing many project types means that the temporarily stored CO_2 may be re-released to the atmosphere in future years due to reasons, like fire, drought, insects, human intervention or mismanagement – all of which would undermine any carbon neutral claims made on the back of such credits.

Altogether, it is profoundly significant that the court ruled in favour of the plaintiffs and found the use of carbon credits to claim carbon neutrality misleading, since these credits are unrelated to the products' actual impact and cannot reliably offset ongoing emissions that are heating the atmosphere over the next centuries to millennia.

German courts draw the line on nature-based offsetting

The permanence risk concerning the long-term impact of carbon credits also proved decisive in a 2025 German ruling. The Frankfurt regional court found Apple, the tech company, culpable for misleading advertising, thereby violating Section 5(1) of the German Unfair Competition Act (UWG). The disputed claim came from an online statement by Apple Distribution International Ltd., which read: "The Apple Watch is our first CO_2 neutral product." Apple justified this assertion by explaining that the carbon footprint of these products was partly cancelled out through nature-based carbon crediting projects. However, it did not name any specific projects.

The case was brought before the court by the organisation Deutsche Umwelthilfe (DUH). During the proceedings, it was revealed that the contested credits originated from a eucalyptus plantation project in Paraguay, on land leased until 2029 with no guarantee of renewal. On 26 August 2025, the German court upheld the lawsuit and rendered the advertisement misleading. Its reasoning centred on the project's short duration, which could not guarantee emission mitigation until as late as 2050. The tech company was ordered to cease the advertisement and, in the event of non-compliance, would face fines of up to 250,000 euros.

Notably, the court considered the effectiveness of buffer pools, which are the main tool carbon credit certifiers rely on to mitigate the risk of non-permanence. Projects must allocate a share of their carbon credits, corresponding to their estimated permanence risk, into a common buffer pool for all projects facing such risks. In principle, this means that a wildfire burning down trees underpinning carbon credits from one project will be backed up by the surplus credits set aside in the common buffer pool by other projects that have not been affected by any such event. Apple alluded to this mechanism in its defence, yet the court rejected the argument outright, ruling that buffer pools cannot ensure that stored emissions remain permanently bound. This aligns with peer-reviewed research (Badgley et al. 2022; Anderegg et al. 2025) that found current buffer pools cannot reliably guard against permanent threats since they structurally underestimate risk and are undercapitalised.

This case formed part of a broader series of legal proceedings initiated by DUH against multiple corporations concerning misleading environmental claims based on offsetting schemes.

DUH's first successful case in this legal campaign targeted the fossil fuel major TotalEnergies in 2022, leading to a ruling that broke new ground in how courts treat offsetting claims. TotalEnergies Warme & Kraftstoff Deutschland had been advertising its heating oil, Thermoplus, as "CO_2 compensated" and "CO_2 neutral". DUH brought this lawsuit before the Düsseldorf Regional Court, arguing that the carbon-credited projects that TotalEnergies relied on could not offset the product's emissions. Additionally, they stated that consumers were not provided with sufficient information about the projects underpinning the claim. Among the ventures TotalEnergies relied on to support this assertion was the Tambopata National Reserve REDD+ project in the Madre de Dios region of the Peruvian Amazon.

The Düsseldorf Regional Court, in a key decision, held that even if a project yields environmental and secondary benefits, such as those tied to agroforestry, these cannot negate the heating oil's greenhouse gas emissions. The court noted that forest protection could be conceived as climate protection. Still, it underscored the failure to establish any reliable, concrete connection between the project's emission reductions and the heating oil's emission reductions. With this reasoning, the court struck at the very foundation of offsetting logic.

The court went even further. It found that TotalEnergies misconstrued the affirmation that the carbon credit project was instrumental in granting land rights to the families, as those rights had already been awarded prior to the project's launch.

On these grounds, the court determined that the marketing of the heating oil was misleading and constituted a violation of Article 5a of the Unfair Competition Act (UWG).

KLM case: halting offsetting in the aviation sector

Few sectors have used compensation claims to support their environmental marketing facade as much as the aviation industry. They have been among the most visible adopters of directing consumers to voluntary carbon offsetting schemes. One prominent example was the Dutch airline company KLM, which became the defendant in one of the first major greenwashing cases brought against an airline.

In 2022, the Dutch organisations Fossielvrij and Reclame Fossielvrij sued KLM. They contended that some of the advertisements in the airline's "Fly Responsibly" campaign violated the EU Unfair Commercial Practices Directive. Part of the dispute concerned KLM's "CO2ZERO" programme, which allowed ticket purchasers to pay an additional fee to compensate for the emissions generated by their flight, with the funds going to reforestation projects. The claimants argued that KLM's environmental marketing, in particular 19 advertisements disseminated through its website, social media channels, and billboards, conveyed a misleading message about the real impact of air travel and the effectiveness of the "CO2ZERO" program.

In its 2024 ruling, the Amsterdam District Court largely upheld the claimants' arguments, finding that 15 of the 19 contested advertisements were misleading and therefore unlawful. The court concluded that many of the statements made in the context of KLM's "Fly Responsibly" campaign, including references to a "more sustainable future for aviation", were too vague and insufficiently substantiated. They failed to clearly explain how the advertised environmental benefits would be achieved, thereby creating a misleading impression for consumers.

The court's findings concerning claims relating to KLM's compensation programme "CO2ZERO" (statements 4, 8, 14, 15, and 16) are particularly important. The court examined a statement that said: "With our CO2ZERO service you can reduce the impact of the flight on the environment". The court found that this suggested a direct relationship between the consumer's financial contribution to carbon crediting projects and a reduction in the flight's environmental impact. In doing so, it gave the impression that the negative effects of air travel could be easily erased by participating in the programme, even though there is no direct correlation to make this claim.

Another important part of the ruling was the court's recognition that the environmental benefits of such offsetting projects are inherently uncertain and only materialise, if at all, over a long period of time. The court noted that there is no guarantee that the trees planted in the reforestation projects will survive and continue to store carbon over time. Consequently, KLM's claims overstated the capacity of the programme to compensate for the emissions generated by air travel.

This judgment is another example of judicial scepticism of offset-based compensation claims. The court was not convinced that a sufficiently direct and certain relationship exists between the emissions generated by a flight and the environmental benefits of reforestation or forest protection projects funded through carbon credits. By rejecting this connection, a court once again challenged the underlying logic of offsetting as a basis for marketing claims, namely the notion that emissions associated with a product or a service can be cancelled out through mitigation activities undertaken elsewhere.

Moreover, the KLM judgement demonstrates how litigation can catalyse broader regulatory and enforcement action. Following concerns similar to those highlighted in this proceeding, the European Consumer Organisation (BEUC) raised a red flag in 2023 that several European airlines were misleading consumers through sustainability and offsetting claims, thus breaching the Unfair Commercial Practices Directive (UPCD). This prompted a coordinated EU-wide enforcement action, resulting in several airlines committing to amend their environmental marketing practices. This illustrates how litigation can have knock-on effects that shape enforcement priorities and accelerate the development of stricter standards for environmental claims.

A final whistle for carbon neutrality claims: the Qatar FIFA World Cup 2022 case

As previously stated, courts across Europe have played an increasingly active role in scrutinising and sanctioning misleading corporate environmental claims. However, judicial intervention is not always necessary as several countries empower independent regulatory bodies to prohibit unfair commercial practices. One example is the Swiss Fairness Commission in Switzerland. In 2023, following complaints lodged by Carbon Market Watch and other civil society organisations, it found that the Fédération Internationale de Football

Association (FIFA) had engaged in misleading advertising by presenting the 2022 Qatar World Cup as a "carbon-neutral" event.

Carbon Market Watch found that FIFA had significantly underestimated the event's emissions, particularly those arising from the construction of new stadiums, and had purchased carbon credits that corresponded to less than one-third of FIFA's own estimate of the tournament's carbon footprint. Since FIFA failed to demonstrate that its emissions had been accurately calculated and fully compensated, the Swiss Fairness Commission concluded that its carbon neutrality claim amounted to misleading and unfair advertising, calling on FIFA to discontinue the claim and refrain from making similar unsubstantiated statements in the future.

United Kingdom: from advertising scrutiny to stronger consumer enforcement

Similarly, in the United Kingdom, significant disputes concerning unlawful environmental advertising practices have been resolved by regulatory authorities rather than courts. In particular, the Advertising Standards Authority (ASA), the UK's independent advertising regulator, has received a number of complaints concerning corporate environmental marketing claims in recent years.

One notable case involved an advertising campaign by Shell promoting its "Shell Go+ Loyalty Scheme". The oil and glass company claimed that consumers could "drive carbon-neutral" if they participated in this program. Following complaints by 17 individuals concerning the misleading nature of the ad, the ASA launched an investigation. It was only then that Shell clarified that this claim was based on the purchase of carbon credits to compensate for the lifecycle emissions associated with fuel purchases made by Shell Go+ members. In other words, rather than reducing the emissions generated by the fuel itself, Shell sought to compensate for those emissions through offsetting.

The ASA concluded that the advertisements failed to make this distinction clear. Nothing indicated that the claim relied on a carbon offsetting programme. Consumers were thus more likely to interpret that the "Shell Go+ Loyalty Scheme" involved an actual carbon-neutral fuel. As a result, ASA found the claim deceptive and in breach of the Broadcast Committee Advertising Practice (BCAP) Code provisions on misleading advertising and environmental claims.

The aviation industry has likewise not escaped scrutiny from the ASA. One of the most prominent cases dealing with carbon credits and marketing involved a 2023 Lufthansa Google ad that said, "Fly now with Lufthansa [...] Fly more sustainably". This case was part of an investigation carried out by ASA's broader Climate Change and Environment project, which used AI-assisted monitoring to assess more than 100,000 advertisements made by airline companies. Lufthansa argued that its "Fly more sustainably" claim referred to its "Green fares" program available to passengers, which combined sustainable aviation fuels that were claimed to reduce 20% of flight-related emissions, with carbon credits from climate projects to offset the remaining 80%. However, as this information was not disclosed, ASA considered that omission unacceptable and misleading to consumers, irrespective of the limited space available in the advertisement.

The same investigation also led to a recent ruling against LinkedIn advertisements by Qatar Airways that promoted a voluntary carbon offsetting programme for corporate customers. The advert invited customers to "bulk offset the carbon emissions from your past and future flights" and to "travel consciously by offsetting your flight's carbon footprint". The programme relied on carbon credits from two solar projects in India (VCS 1815, VCS 1931) and one hydropower project in Côte d'Ivoire (VCS 1522). Although Qatar Airways provided evidence from the Verra Registry that confirmed they had acquired the respective credits, this was not sufficient to substantiate the offsetting claims. The ASA found the advertisements deceptive because there was no evidence that retiring those credits reduced or counterbalanced the emissions generated by the flights. This once again underscored the fact that fossil emissions cannot be balanced out by unrelated carbon credits generated elsewhere.

The ASA's activities have not been limited to misleading environmental claims involving carbon credits. Over the past two years, the organisation has also been particularly active in scrutinising environmental claims made by the fashion industry, upholding complaints against companies such as Nike, Lacoste and Superdry for making insufficiently substantiated sustainability claims.

A longstanding limitation of the UK's enforcement framework has been the ASA's lack of authority to impose financial penalties. Its rulings are usually limited to requiring the withdrawal or amendment of misleading advertisements, while also exposing the offending companies to reputational harm. However, the adoption of the Digital Markets, Competition and Consumers Act 2024 (DMCCA) marked a significant strengthening of the

UK's consumer protection regime. Under the new framework, the Competition and Markets Authority (CMA) has been granted the power to impose fines of up to £300,000 or 10% of a company's global turnover for serious infringements. This development is expected to considerably curb greenwashing in the UK in the years to come.

Australia: enforcement builds pressure on misleading claims

In Australia, corporate environmental claims are increasingly subject to regulatory scrutiny. This development is driven largely by the active enforcement efforts of the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC). These bodies possess broad powers to intervene where environmental statements are considered misleading. Although neither regulator is expressly mandated to combat greenwashing, both have identified this phenomenon as a significant enforcement priority in recent years.

ASIC, in particular, has pursued an enforcement strategy, ranging from infringement notices and corrective disclosures to initiating legal action against companies alleged to have misrepresented their environmental credentials. Notably, ASIC successfully brought proceedings before the Federal Court of Australia against three major superannuation and investment entities: Active Super, Mercer and Vanguard. In these cases, the court found that certain environmental, social, and governance (ESG) claims were deceptive, resulting in the imposition of financial penalties and reinforcing the expectation that sustainability claims must be accurate, substantiated and transparent.

While ASIC's intervention in this area is primarily grounded in its duty to safeguard market integrity and protect investors, the ACCC approaches misleading environmental claims from a consumer protection perspective. In 2025, ACCC elevated greenwashing to an enforcement priority, yet again signalling the increased scrutiny of environmental and climate-related claims directed at consumers.

That same year, the ACCC commenced proceedings against Edgewell Personal Care Australia and Australian Gas Networks. In both cases, which do not involve the use of carbon credits, the regulator alleges that the companies made environmental and climate-related statements liable to mislead consumers about the impact of their products and services on the environment. At the time of publishing, both cases are pending before the courts.

Perhaps the most consequential greenwashing challenge in Australia to date has arisen not from regulatory enforcement, but from private litigation. In 2023, the advocacy organisation Parents for Climate filed a lawsuit against EnergyAustralia, one of the country's largest energy companies and biggest polluters[2]. The case alleged that the energy giant had misled consumers by marketing electricity generated by fossil fuels as carbon-neutral through its 'Go neutral' program. The claim centred on EnergyAustralia's reliance on carbon credits to 'offset' emissions associated with its energy products and the implication that customers were likely thinking they were making a positive contribution to the environment by being part of their program. Parents for Climate challenged the scheme's underlying premise, arguing that carbon credit projects cannot adequately compensate for the climate harm caused by the combustion of fossil fuels.

The case closed on 19 May 2025 with a settlement and a notable development whereby EnergyAustralia announced it would gradually phase out the "Go neutral" product and shift its environmental actions from an offsetting-based approach to prioritising internal emission reductions. In a public statement, the company apologised to its customers and clarified that "offsets do not prevent or undo the harms caused by burning fossil fuels". Their Chief Customer Officer further acknowledged "legitimate public concern" about the effectiveness of such compensation schemes. EnergyAustralia's claims were linked to Australia's government-backed carbon neutrality certification scheme, Climate Active, which has itself been subject to close scrutiny over the quality of the carbon credits it generated to support carbon neutrality claims. In 2023, the Environmental Defenders Office, on behalf of the Australia Institute, filed a complaint with the ACCC challenging the potentially deceptive use of the Climate Active programme and its carbon-neutral certification. The complaint set out extensive concerns about the programme's integrity and reliance on carbon offsetting, adding to the growing scrutiny that contributed to Climate Active's loss of favour.

In the fallout, major entities, such as PwC, Telstra and Australia Post, joined EnergyAustralia in halting their involvement in Climate Active due to concerns about reputational damage and financial penalties. On 28 July 2026, it was announced that Climate Active would close down, likely by mid-June 2027.

[2] See figure 6 in the embedded hyperlink which shows that EnergyAustralia was ranked third within Australia in Scope 1 emissions in 2022-2023.

The case did not result in a judicial ruling on the merits, as it was resolved through a settlement reached by the parties just before the final hearing. Nevertheless, this lawsuit is widely regarded as a landmark challenge to carbon neutrality claims based on carbon offsetting. Combined with EnergyAustralia’s public apology and withdrawal of the product, it sets an important precedent that is likely to influence future corporate environmental marketing and greenwashing litigation in Australia.

The greenwashing enforcement landscape in the United States

Federal enforcement in a hostile climate policy environment

The landscape of greenwashing enforcement in the United States remains comparatively fragmented and less developed than in the jurisdictions discussed above, a reality that mirrors the broader retrenchment of federal environmental and climate policy under the second Trump administration. Judicial responses have likewise been more restrained, with courts generally exhibiting greater reluctance to rule in favour of the plaintiff alleging misleading environmental statements. Nevertheless, some encouraging developments have emerged at the subnational level. In particular, several State Attorneys General, along with state consumer protection frameworks, have increasingly sought to address deceptive environmental marketing practices, signalling a growing recognition of the need for more robust oversight and enforcement.

At the federal level, the principal authority responsible for addressing misleading environmental claims is the Federal Trade Commission (FTC). The agency is empowered to issue cease-and-desist orders and, in cases of non-compliance, to seek civil penalties exceeding $50,000 per violation. One of the FTC’s most notable enforcement actions involved retailers Kohl’s and Walmart, which agreed to pay civil penalties of $2.5 and $3 million, respectively, to settle allegations that they had deceptively marketed certain textile products as being made from bamboo. Despite such cases, FTC enforcement in the greenwashing sphere has lost momentum in recent years. This is partly attributable to the agency’s shifting enforcement priorities, as well as budgetary constraints and staff reductions.

Perhaps the most significant factor behind the comparatively stagnant state of greenwashing enforcement in the United States is the continued reliance on an outdated regulatory framework for environmental marketing claims. The FTC's primary guidance document in this area is the Green Guides. Although not legally binding, this document serves as the principal benchmark for assessing the truthfulness of environmental claims. The problem, however, is that the Green Guides have not been substantively revised since 2012. Consequently, they do not address many of the claims that have become central to corporate sustainability marketing in the post-Paris Agreement era, including claims to be carbon neutral, climate neutral, and net zero. This regulatory lag has created a significant enforcement gap, depriving regulators, courts and consumers of clear guidance on how such claims should be understood and evaluated, and increasing the risk of misleading environmental marketing that is difficult to challenge.

The FTC acknowledged the need for reform when it launched a review of the Green Guides in 2022, with updated guidance expected in 2025. Yet, at the time of writing, no revision has been adopted. Moreover, the change in administration has raised legitimate doubts about whether an update will be prioritised in the near future or whether this outdated framework will remain in place, thereby making some contemporary forms of greenwashing largely incontestable.

Outdated rules, new litigation risks

The outdated nature of the FTC Green Guides has had serious consequences in private greenwashing litigation in the United States. Despite offering no guidance on climate-related marketing claims, the Green Guides continue to serve as an important interpretative reference for courts assessing allegedly deceptive environmental representations. This was illustrated in the 2024 litigation against Danone, in which the company was accused of misleading consumers by marketing its Evian bottled water as carbon neutral.

At an early stage of the proceedings, the court considered the claim ambiguous, suggesting it constituted a "general environmental benefit claim" under the FTC Green Guides that could mislead consumers. Upon reconsideration, however, the court reached the opposite conclusion. It held that in the absence of a regulatory standard governing carbon neutrality claims, it would be expected that a consumer would look for more information beyond the front label of the product. The court found that additional explanations found on the reverse side of the bottle were sufficient to clarify the meaning of the claim.

This reasoning effectively shifts the burden from the advertiser to the consumer created by the regulatory vacuum. Rather than requiring businesses to ensure that climate-related claims are clear and sufficiently substantiated at the point of sale, the ruling suggests that it is the consumers who actually bear the responsibility for seeking supplementary information in order to understand these admittedly ambiguous claims. This approach sits uneasily with the fundamental objective of consumer protection law: protecting consumers from misleading commercial practices rather than expecting them to compensate for gaps in the regulatory framework.

The court also pivoted from its initial opinion that the term carbon neutral should be treated as a "general environmental benefit claim", which would be considered deceptive under the FTC Green Guides. Instead, it concluded that the expression has a sufficiently specific meaning because it refers to recognised methods of balancing emissions, such as carbon offsetting, and is therefore less likely to mislead consumers. The court's shift in reasoning illustrates the legal ambiguity generated by an outdated regulatory framework. In the absence of clear and up-to-date guidance on climate-related claims, courts are left to develop inconsistent interpretations of increasingly prevalent marketing practices, with potentially significant consequences for both consumer protection and legal rigour.

A similar outcome happened in a case brought against Apple in 2025 concerning the company's marketing of certain Apple Watches as being carbon neutral. This lawsuit had a very different outcome than the aforementioned case against Apple in Germany. In the United States, the plaintiffs alleged that Apple had deceptively substantiated its carbon neutrality claims by relying on low-quality carbon credits from four carbon projects, including the Chyulu Hills REDD+ project in Kenya and the Guinan afforestation project in China. They argued, first, that these projects were incapable of delivering the emissions reductions claimed by Apple, alleging that the credits generated did not accurately represent the amount of carbon actually removed from the atmosphere. Second, they contested that the company had failed to retire a sufficient volume of credits to compensate for the emissions associated with producing the watches.

The US District Court for the Northern District of California rendered both of the plaintiffs' arguments unsubstantiated. It held that they had not provided sufficient evidence to demonstrate that the underlying carbon projects lacked environmental integrity, noting that Verra's methodologies had been tested and audited. Additionally, the court argued they had not substantiated their statement that Apple had retired an insufficient number of credits since this would require further information about the number of Apple Watches sold. This ruling illustrates the considerable evidentiary weight courts may attach to third-party verification, thereby shifting the burden from the company making the claim, without even examining the shortcomings in the auditing processes, onto those challenging the reliability of the underlying credits.

It is particularly significant that the court relied on the FTC Green Guides. In arguing that challenges against environmental claims must satisfy the same "reasonable basis" standard imposed on advertisers, the court effectively transformed the Guides into a benchmark for assessing claimants' evidence. As in the Evian case, this approach risks shifting the burden created by an outdated regulatory framework from the companies making these carbon neutrality claims to regular consumers and those seeking to challenge greenwashing.

In these circumstances, the evidentiary threshold risks becoming increasingly difficult for claimants to satisfy, thereby limiting the chances of winning private greenwashing litigation in cases where compensation has been used to substantiate misleading claims.

Despite its dismissal, this case marked an important development in compensation-based greenwashing litigation. By accepting that the integrity of the carbon projects underlying Apple's carbon neutrality claims could be scrutinised, the court signalled that companies may increasingly be expected to conduct robust due diligence before relying on carbon credits to substantiate their claims.

An encouraging case in the US greenwashing litigation landscape came in 2024, when the US District Court for the Central District of California allowed a frequent Delta Airlines customer, who alleged that she had been misled about the airline's climate performance, to pursue injunctive relief[3] against the company. The lawsuit alleges that Delta misled consumers by promoting itself as the "first carbon-neutral airline" while relying on low-quality carbon credits to substantiate that claim. Until then, such cases had often faced difficulties in establishing a direct link between a misleading statement and the individual harm suffered by a consumer, which is necessary to seek certain forms of legal redress. By recognising that the plaintiff had standing to proceed, this decision potentially lowered an important procedural barrier for consumers seeking to challenge misleading climate claims. Although the proceedings are ongoing, this ruling signals a willingness in some US

[3] A court order requiring a person or entity to do, or to refrain from doing, a specified act.

courts to consider suits scrutinising the integrity of compensation claims and reinforces the increasing litigation risks associated with the use of carbon credits in corporate marketing.

The cases above illustrate the comparatively reluctant approach of US courts in siding with plaintiffs in greenwashing cases involving carbon credits. Although consumer protection lies at the heart of the relevant legal frameworks, courts have often set a high bar for consumers seeking to challenge corporate climate claims, particularly when it comes to questioning the integrity of certified carbon credits or demonstrating individual harm. Nevertheless, recent litigation developments, even where they have not resulted in final rulings, suggest that the risks associated with such claims are becoming increasingly tangible for companies.

Although they do not involve carbon credits, a series of high-profile settlements in 2025 demonstrated the growing risk of utilising unsubstantiated climate claims. Tyson Foods agreed to discontinue its “net-zero by 2050” and “climate-smart” claims, and JBS USA agreed to pay $1.1 million to settle allegations that its “net-zero by 2040” ambition was deceptive. These cases show that, even without a judicial ruling, questionable climate claims can expose companies to tangible financial and reputational consequences.

Europe’s “empowering consumers for the green transition” directive: a proper first step

While greenwashing litigation has grown considerably in recent years and has become an increasingly effective mechanism for holding companies accountable for misleading environmental claims, litigation alone cannot substitute a coherent regulatory framework. Effective consumer protection requires clear, harmonised rules that set acceptable environmental marketing practices, provide legal certainty for businesses, and discourage reliance on compensation with carbon credits at the expense of in-house emissions reductions.

Thus, the creation of the Empowering Consumers for the Green Transition Directive (ECGT) represents a significant regulatory development. By amending the EU consumer protection framework,[4] the Directive strengthens the rules for environmental claims made to consumers. For example, it prohibits certain generic environmental claims, such as "eco-friendly" or "ecological", if the company cannot "demonstrate recognised excellent environmental performance relevant to the claim".

Most notably, the ECGT has a particularly strict approach to compensation-based claims. Climate claims at the product level (goods and services) that are based solely on the offsetting of greenhouse gas emissions through carbon credits are prohibited, irrespective of the quality or integrity of the underlying carbon projects. In doing so, the Directive shifts the regulatory focus from *ex-post* litigation to *ex-ante* prevention, providing greater legal clarity while reducing the potential for misleading climate-related marketing.

The Directive will become gradually enforceable from 27 September 2026; Member States are explicitly required to impose effective and proportionate penalties. For widespread infringements, fines must be at least 4% of the company's annual turnover in the Member State's jurisdiction. In practice, national transpositions are likely to lead to different sanctioning regimes. In Italy, for instance, violations of the new ECGT rules will fall within the existing enforcement framework for unfair commercial practices, under which the ACGM may impose fines of up to 10 million euros per infringement. Enforcement of the new rules will largely remain in the hands of national authorities, including consumer protection and advertising regulators, as well as national courts, depending on the institutional framework of each Member State.

The ECGT Directive marks a turning point in the regulation of environmental marketing. From this September, companies selling products and services to EU consumers will need to fundamentally reassess how they communicate environmental claims and how they substantiate them, given that offsetting is no longer allowed. It is noteworthy that the Directive applies irrespective of where a company is established, meaning that non-EU companies selling into the EU market must also comply with its requirements. This creates a strong incentive for multinational companies to align their environmental claims and marketing (even if occurring outside of the EU) with the ECGT if they want to operate in the EU without facing financial repercussions.

[4] The Directive on Empowering Consumers for the Green Transition (Directive (EU) 2024/825, ECGT Directive) amends two existing consumer directives, namely the Unfair Commercial Practices Directive (Directive 2005/29/EC, UCPD) and the Consumer Rights Directive (Directive 2011/83/EU, CRD)

Nevertheless, the Directive is not without shortcomings. While it represents a significant step forward, EU legislators failed to impose comprehensive restrictions on all compensation-based climate claims. The Directive bans compensation-based claims for products and services, but not for company-level claims. This means carbon credits could still be used to compensate for their overall emissions, which could misrepresent a company's climate action and delay in-house decarbonisation. It should be noted that company-level compensation claims can still be challenged under the Unfair Commercial Practices Directive (UCPD) under its general rules on unfair and misleading practices. Under Article 5(1), unfair practices are prohibited, and Article 5(4)(a) states that practices which are considered misleading under Articles 6 and 7 are unfair. There have already been legal challenges based on these broader UCPD provisions.

The product-level offsetting claim ban, which was added to Annex I of the UCPD, encompasses "commercial practices which are in all circumstances considered unfair": in other words, a blanket prohibition. If a company makes a product-level offsetting claim, the practice is automatically considered unfair and is therefore prohibited. By contrast, if a company makes a company-level offsetting claim and it is challenged, the claim is assessed on a case-by-case basis to determine if it is deceptive and therefore unfair under the UCPD.

Ultimately, while the EU has strengthened the regulations around environmental marketing and challenged the role of offsetting in many corporate climate claims, there is still a way to go to seal the remaining regulatory loopholes and to prioritise internal decarbonisation.

Conclusion: from green claims to real emission cuts

The regulatory and litigation landscape leaves little doubt that unsubstantiated climate-related claims, particularly those relying on carbon offsetting, now expose companies to significant legal and commercial risks. The EU has taken a key step towards establishing a clearer and more robust framework for environmental marketing through the ECGT Directive. The United Kingdom has also moved in the same direction through the DMCC Act, significantly strengthening the UK's approach to misleading environmental claims. Australia's regulatory bodies have also actively undertaken enforcement efforts to curb greenwashing. By contrast, the United States continues to rely on the outdated FTC Green Guides, leaving businesses, consumers and courts with an increasingly inadequate regulatory framework. As other major jurisdictions tighten the rules governing climate-related marketing, the need for the US to modernise and harmonise its regulatory approach is increasingly pressing. Updating the Green Guides to address contemporary climate claims, particularly compensation-based claims, would not only reduce legal uncertainty domestically but also promote greater international consistency in the regulation of environmental marketing.

Overall, the growing wave of greenwashing litigation demonstrates that these risks extend well beyond the possibility of regulatory fines. Even when proceedings do not result in liability, companies may be faced with substantial legal costs and suffer reputational damage for the time a lawsuit is filed and attracts public attention, potentially influencing consumer behaviour and investor confidence. Furthermore, newly adopted regulatory frameworks, coupled with technological advances such as AI-driven monitoring tools capable of detecting misleading marketing, are making enforcement more effective.

The rise in greenwashing litigation, alongside stricter regulatory frameworks and amplified awareness, has fundamentally altered the risk landscape for companies, regardless of the outcome of any legal proceedings against them. Rather than investing in marketing claims that cannot withstand scrutiny, companies should invest in genuinely decarbonising their operations and communicating those efforts transparently and credibly.

Businesses should adopt corporate climate strategies built around ambitious, science-based targets consistent with the Paris Agreement path of limiting temperature warming to 1.5°C. These must also be accompanied by transparent reporting of Scope 1, 2, and 3 emissions. To achieve urgent decarbonisation, sustained investment in decarbonisation is crucial, both through currently available solutions and through research that can unlock cuts in emissions that are today considered hard to abate. If additional resources remain after prioritising internal decarbonisation, companies that still wish to purchase carbon credits from climate mitigation projects beyond their value chain must adopt the "contribution model" rather than offset their emissions at great legal risk.

Recommendations

Building on the findings of this report, Carbon Market Watch has prepared a set of recommendations aimed at policymakers, companies, and consumers.

Regardless of their country or jurisdiction, policymakers tasked with developing and enforcing legislation on corporate climate action and related marketing must address regulatory gaps that continue to enable greenwashing and work towards a more harmonised framework. Specifically, they should:

- **Adopt legislation that bans offsetting claims.** These consumer-facing claims, which rely heavily on carbon credits, are deceptive, regardless of whether they relate to a product or service, or to a company's overall environmental performance. While the EU has recently prohibited offsetting-based claims in relation to products and services, corporate-level compensation claims remain theoretically possible, though highly risky. European policymakers should extend this prohibition to all offsetting claims, thereby safeguarding consumer trust while simultaneously incentivising genuine in-house emissions reductions that actually change business models and the climate for the better.

- **Establish meaningful penalties to deter non-compliance.** Historically, significant financial penalties have been one of the strongest incentives for corporate compliance. EU Member States and other jurisdictions should ensure that sanctions for greenwashing are sufficiently dissuasive and proportionate, so that companies cannot treat them as a negligible cost of doing business or simply absorb them into their annual operating budgets.

- **Update antiquated frameworks and guidance to keep pace with rapidly changing environmental marketing practices.** The United States, for example, was identified as having one of the most outdated regulatory frameworks for climate-related claims. As illustrated above, recent litigation has clearly exposed the shortcomings of the current framework and the legal uncertainty it creates. Policymakers across the globe should prioritise updating their consumer-protection frameworks to reflect contemporary climate marketing practices, strengthening substantiation requirements and explicitly prohibiting offsetting claims. Above all, any reform should be guided by its primary objective: it should ensure that consumers, rather than misleading practices, receive the protection they deserve.

Companies, for their part, must:

- **First and foremost, abandon offsetting-based marketing and invest in genuine internal decarbonisation,** communicating their progress transparently and with credible evidence. Companies do not need to abandon all environmental claims altogether, but must ensure they communicate their environmental performance transparently, accurately, and on the basis of robust evidence. When making climate claims, they should uphold key principles, which Carbon Market Watch elaborated in an earlier briefing, "How to spot and avoid offsetting claims."

- **Maintain a clear hierarchy between in-house emissions reductions and external climate action.** Carbon credits could be used in a complementary way with a Beyond Value Chain Mitigation (BVCM) approach, without implying that they compensate for a company's own emissions. Rather, such investments should be communicated for what they are: contributions to climate mitigation projects beyond the company's value chain, but not substitutes for internal decarbonisation.

Consumers, finally, should:

- **Approach climate claims involving carbon credits with caution.** They should check whether companies provide clear and accessible information that supports their environmental claims, including details on the underpinning carbon crediting projects. Vague language, statements that sound good to be true, and/or missing, unclear or difficult-to-access information should be treated as red flags regarding the transparency and credibility of the claim.

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