



AMC 2025

Session 6

**Greenwashing & Other
Trending Litigation
Concerns: Is it Too Easy
Being Green?**

Moderated by:

Benjamin J. Pliskie, Red Oak Law LLC, New Berlin

Panelists:

*Benjamin Fuchs, Law Office of Benjamin J. Fuchs, Malibu, CA
Kevin L. Grzebielski, Wisconsin Department of Justice, Madison
Sarah A. Slac, Foley & Lardner LLP, Madison*

About the Presenters...

Ben Fuchs is the founder and managing attorney of the Law Office of Benjamin J. Fuchs as well as of counsel for DC-based Nidel & Nace, P.L.L.C., where he specializes in representing consumers in greenwashing and other false advertising class actions. He previously litigated with a leading national plaintiffs' boutique, focusing on consumer class actions, and before that represented unions and workers with the nation's largest worker-side labor law firm. Ben received his law degree from Tulane University Law School, where he graduated with order of the barristers honors, and his bachelor's degree in journalism from the University of Oregon.

Kevin L. Grzebielski Wisconsin Department of Justice, Madison.

Benjamin J. Pliskie is the founder of Red Oak Law LLC in New Berlin, WI, where he focuses on business law, real estate, estate planning, and probate matters. He received his undergraduate degree from the University of Wisconsin-Madison in Political Science and History, and his law degree from the University of Wisconsin Law School. Ben is licensed to practice in Wisconsin, Illinois, and Indiana.

Sarah A. Slack is an attorney in the Environmental Group in the Madison office of Foley & Lardner LLP. She received her undergraduate degree from Grinnell College, and a joint degree in law and land use planning from the University of Iowa where she was a member and senior note and comment editor of the Iowa Law Review and elected to the Order of the Coif. Ms. Slack is a board member of the Environmental Section of the State Bar of Wisconsin and is a member of the Dane County Bar Association. Ms. Slack's practice focuses on Brownfield remediation/redevelopment, environmental compliance counseling, transactions, and environmental litigation. Ms. Slack counsels residential and industrial property developers, as well as municipal, nonprofit and institutional clients about remediation and Brownfield redevelopment. Ms. Slack also provides counsel to clients regarding air emissions, waste management, underground storage tank compliance, and water discharge permitting and compliance.

What is Greenwashing?

I. What is Greenwashing?

- The act of misleading consumers by making unclear or poorly substantiated claims regarding a company's environmental practices or the environmental benefits of product or service.

II. Common forms of greenwashing

- Misleading symbols
- Self-issued certifications, labels
- Vague statements
- Selective disclosures or criteria
- Jargon
- Lack of references; lack of proof

III. Common Jargon in Greenwashing

- Clean
- Low-carbon
- Carbon-neutral
- Sustainable
- Recycled
- Natural
- Renewable

IV. FTC Green Guides (16 C.F.R Chapter 230)

V. Types of Environmental Claims

- General Environmental Claims
- Carbon Offset Claims
- Certification and Seals of Approval
- Compostable Claims
- Degradable Claims
- Free-of Claims
- Non-toxic Claims
- Ozone-safe Claims
- Recyclable Claims
- Refillable Claims
- Renewable Energy Claims
- Renewable Materials Claims
- Source Reduction Claims

VI. Related State Laws

- Prohibition of “Misleading Claims”: California, Maryland, Minnesota, Wisconsin
- Extended Producer Responsibility (EPR): California, Colorado, Maine, Minnesota, Oregon
- Requirements for “Compostable” Products: California, Washington
- Recycling and Recyclability Claims: California
- Climate Disclosure Requirements: California, and proposed in New York, Colorado, New Jersey, Illinois
- and general tort law

VII. Consequences of greenwashing

- FTC Regulatory Enforcement and Fines
 - Fines of \$50,120 per violation
 - In 2022, the FTC issued fines ranging between \$1.75-\$4.3 million for deceptive environmental claims
- State Enforcement and Fines
 - Often under deceptive advertising laws
- Class-Action Lawsuits
 - Claims made against Delta, Nike, Kroger, Amazon, Florida Crystals
- Brand Harm
- Investor Action

VIII. Panel Discussion

IX. Takeaways and Best Practices

X. General Principles for Avoiding Greenwashing

- Use specific environmental benefit claims where possible
 - Use clear, prominent, understandable language to limit the scope of the claims.
- If general claims will be used, be sure to qualify with specific benefit
 - Keep any qualifications and disclosures near claims
- Look at the whole picture in evaluating claims
 - Images can act as claims too
- Distinguish between benefits of product, package, and service
 - Clearly specify whether the claimed environmental benefit applies
- Do not overstate an environmental attribute
 - Do not state an environmental benefit if the benefits are negligible
- Clearly articulate the basis for any comparative claims
- Including sneaky comparisons like “more” and “improved”
 - And most importantly: Substantiate (and quantify and qualify) all claims

XI. Key Takeaways

- Do not make unqualified general environmental benefit claims where all reasonable interpretations of these claims cannot be substantiated.
- Use clear and prominent qualifying language to convey that a general environmental claim refers only to a specific and limited environmental benefit.
- Do not overstate a benefit or imply it is significant if the benefit is negligible.
- Consider the trade-offs resulting from the touted environmental benefit when substantiating a claim.
- Avoid terms with imprecise meanings.



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What is Greenwashing?

Sarah A. Slack

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What is Greenwashing?

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The Race



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■ Common Forms of Greenwashing

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FTC's Green Guides (16 C.F.R. Chapter 230)

- FTC's Green Guides provide nonbinding guidance that describe what environmental advertising claims are unfair or deceptive under Section 5 of the FTC Act.
- Green Guides describe how the Commission believes a reasonable consumer would likely interpret certain claims.
- State as well as Federal courts will refer to the Green Guides as the relevant standard for deciding whether a reasonable consumer would find a claim misleading.
- Applies to all forms of marketing: labelling, advertising, promotional materials, etc.
- Applies to words, symbols, logos, depictions, product brand names, etc.

Courts and the FTC rely on the Green Guides when deciding if an environmental claim is false or misleading.



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Types of Environmental Claims

- | | |
|---------------------------------------|------------------------------|
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| ▪ Carbon Offsets Claims | ▪ Recyclable Claims |
| ▪ Certification and Seals of Approval | ▪ Refillable Claims |
| ▪ Compostable Claims | ▪ Renewable Energy Claims |
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Panel Discussion

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Takeaways and Best Practices

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General Principles for Avoiding Greenwashing

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3. **Look at the whole picture in evaluating claims**
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4. **Distinguish between benefits of product, package, and service**
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5. **Do not overstate an environmental attribute**
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6. **Clearly articulate the basis for any comparative claims**
 - Including sneaky comparisons like “more” and “improved”
7. **And most importantly: Substantiate (and quantify and qualify) all claims**



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Key Takeaways

1. Do not make unqualified general environmental benefit claims where all reasonable interpretations of these claims cannot be substantiated.
2. Use clear and prominent qualifying language to convey that a general environmental claim refers only to a specific and limited environmental benefit.
3. Do not overstate a benefit or imply it is significant if the benefit is negligible.
4. Consider the trade-offs resulting from the touted environmental benefit when substantiating a claim.
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