

## Greenwashing - New Guidelines and the Path to Compliance

In today's climate conscious and sustainability focused age, consumer's demand for environmentally friendly products and services is surging. This has unfortunately also led to proliferation of misleading and deceptive practice of products and services with unverified claims. The Central Consumer Protection Authority ("CCPA")<sup>1</sup> which is established under the Consumer Protection Act, 2019 ("Act") has promulgated the 'Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims' ("Guidelines"), which is pathbreaking for the Indian legal regime on 'greenwashing'. The Guidelines are already in effect since October 15, 2024.

The term 'greenwashing' means a misleading or deceptive practice involving the making of any exaggerated, false, vague or unsubstantiated environmental claim by use of misleading words, imagery or symbols<sup>2</sup>. Claims which seek to conceal or omit any information to create an impression that a company's products, services or operations are eco-friendly or less harmful to the environment than they actually are, would also qualify as greenwashing<sup>3</sup>.

The Guidelines are now an important legislation to regulate misleading advertisements in greenwashing.



It provides a strict and strong regime emphasizing on adequate disclosures and dissemination of true, accurate, complete and non exaggerated information. This Client Alert highlights the law makers' increasingly activist approach and provides the path to compliance.

<sup>1</sup> The CCPA is established under Section 10 of the Act and operates under the Ministry of Consumer Affairs, Food and Public Distribution.

<sup>2</sup> As per the Guidelines, the term 'Greenwashing' means:

(a) any deceptive or misleading practice, which includes concealing, omitting, or hiding relevant information, by exaggerating, making vague, false, or unsubstantiated environmental claims;

(b) use of misleading words, symbols, or imagery, placing emphasis on positive environmental aspects while downplaying or concealing harmful attributes,

but shall not include (i) use of obvious hyperboles, puffery, or (ii) the use of generic color schemes or pictures; either not amounting to any deceptive or misleading practice, or (iii) a company mission statement that is not specific to any product or service.

<sup>3</sup> *Ibid.*

## I. Lawmakers' emphasis on Consumer Protection

The recent decision of the Supreme Court indicates that it is focusing on consumer protection and has mandated strict compliance against any misleading advertisements or claims. The emphasis is on making the corporates liable to provide true, complete and accurate picture of the products or services. It is important as the Supreme Court<sup>4</sup> through a series of 12 orders in a writ petition over 2022-2024 questioned the respondent, Union of India and several other Ministries (including the Ministry of Ayush) in relation to the actions taken by each of them to ensure protection of consumers from false/misleading claims and advertisements. The Supreme Court directed the respondent to follow the promises made in the affidavit that it submitted, which *inter alia* included recalling stocks of non-compliant products, discontinuing misleading advertisements and implementing an internal comprehensive governance framework.

Pertinently, this writ petition is a strong example of judicial activism as going beyond the facts of the case, the Supreme Court specifically referred to Consumer Protection Act, 1986 and the 'Guidelines for Prevention of Misleading Advertisements and Endorsements of Misleading Advertisements, 2022'. It highlighted that the Act has dedicated an entire chapter that contemplates and regulates matters relating to violation of the rights of the consumers, unfair trade practices and false/misleading advertisements which are prejudicial to public interest, and specifically opined that "such provisions ought to be used with more vigour". In this backdrop, the issuance of the Guidelines pursuant to the Act holds great significance.

These Guidelines also now codify what was voluntarily<sup>5</sup> being done through self-regulation by a non-statutory body, the Advertising Standards Council of India ("ASCI"). The ASCI has for more than 10 years adjudicated on various unsubstantiated claims such as: (a) hand wash liquid<sup>6</sup> and vegetable cleaning liquid<sup>7</sup> are eco-friendly; (b) the container of a strawberry shower scrub<sup>8</sup> is made of 30% recycled plastic.

Further, even globally, there is increasing litigation against corporates for false or misleading sustainability claims. The United States District Court of the Western District of Texas, in *Uslar v. Vital Farms*<sup>9</sup>, held that Vital Farms has misled consumers by labelling its egg cartons as "humane" and "ethical"<sup>10</sup>. Similarly, the United States District Court of Northern District of California, in *Smith v. Keurig Green Mountain*<sup>11</sup>, dealt with a class action lawsuit filed against Keurig Green for a false advertisement claiming its K-Cups as recyclable, while in reality there were limitations for such recycling. The consumers of K-Cups were awarded compensation as the court held that such consumers have purchased the K-Cups due to such false representation. The federal court of Australia in 2024, in *Australian Securities and Investments Commission v. Mercer Superannuation (Australia) Limited*<sup>12</sup>, held that the representations of Mercer Superannuation that seven of its 'Sustainable Plus' investment options did not include companies involved in fossil fuels, gambling and alcohol industries, are false and misleading. Mercer had misleadingly marketed to investors who 'are deeply committed to sustainability'.

<sup>4</sup> *Indian Medical Association & Anr v. Union of India & Ors.*, Writ Petition (Civil) No. 645 of 2022

<sup>5</sup> While it is not legally binding and is recommendatory in nature, the Department of Consumer Affairs in the recent press release dated March 26, 2024, has stated that any advertisement which is non-compliant with the ASCI Code or which may violate the Act should be forwarded by the ASCI to CCPA for appropriate action. Recently, in February, 2024, the ASCI also issued 'Guidelines for Advertisements Making Environmental/Green Claims'. We note that these are in line with the Guidelines.

<sup>6</sup> Ekam Eco Solutions Pvt. Ltd. – Zerodar CARE Natural Hand Wash Liquid. Can be accessed here: [Complaint Outcomes Details - ASCI \(ascionline.in\)](#). The claim made in this case was that the product is "eco-friendly".

<sup>7</sup> Eco Natural Venture – Veggie Washer – Natural Fruit and Vegetable Cleaner Liquid. Can be accessed here: [Complaint Outcomes Details - ASCI \(ascionline.in\)](#).

<sup>8</sup> Quest Retail Private Limited – The Body Shop – Strawberry Shower Scrub 200 ml. Can be accessed here: [Complaint Outcomes Details - ASCI \(ascionline.in\)](#). The claim made in this case was that the product is made of 30% recycled plastic.

<sup>9</sup> 2022 WL 1491091 (W.D. Tex. Jan. 31, 2022)

<sup>10</sup> This decision was arrived at relying on evidence suggesting that the company, at least partially, sourced products from inhumane facilities.

<sup>11</sup> 2023 WL 2250264 (N.D. Cal. Feb. 27, 2023)

<sup>12</sup> 2024 [FCA] 850

## II. Regulatory framework prior to the Guidelines

Until the Guidelines, there was no specific law addressing greenwashing in India. However, general misleading and deceptive advertisements and unfair trade practices were regulated within broader rules and regulations like the Act (not specific to ‘greenwashing’), ASCI and few legislations specific to certain products – like food<sup>13</sup> and medicines<sup>14</sup>.

## III. Path to Compliance

### 1. What does it apply for?

All environmental claims<sup>15</sup>, i.e., with respect to any (a) goods, (b) services, (c) manufacturing, (d) process, (e) packaging, (f) use, or (g) disposal.

### 2. Who does it apply to?

(a) A manufacturer, service provider, or trader whose goods, product, or service is the subject of an advertisement or the advertising agency, or (b) endorser whose service is availed for advertising such products or services.

### 3. What are companies required to do?

**Prohibition:** No person covered shall engage in greenwashing and misleading environmental claims.

**Criteria:** The Guidelines, *inter alia*, specify the following minimum criteria for advertisements for not being considered as misleading:

- (a) *truthfulness and accuracy:* all facts should be verified by independent, credible authorities;
- (b) *clarity and unambiguity:* generic words without disclosures or qualifiers or failing to substantiate the exact impact should be avoided;



- (c) *fair and meaningful comparisons:* details of environmental attributes and against what barometer it is measured should be expressly provided;
- (d) *use of imagery:* using pictorial depiction without substantiating the claims to sensorily manipulate the consumer should be avoided; and
- (e) *independent verification:* endorsements by environmental organizations or experts should be from credible, legally recognized bodies; and not from unofficial sources.

### 4. How can companies protect themselves?

- (a) *Independent verification:* Third party or independent verifications with verifiable evidences should be obtained.
- (b) *Avoid using generic terms:* Generic terms such as clean, green, sustainable, etc. should

<sup>13</sup> Food Safety and Standards Act, 2006.

<sup>14</sup> Drugs and Cosmetics Rules 1945

<sup>15</sup> Any representation in any form regarding:

(a) any goods (in whole or as a component), the manufacturing process, packaging, use, or disposal; or

(b) any service (or portion thereof) or process involved in providing the service,

that suggest environment friendly attributes aimed at conveying a sense of environmental responsibility or eco-friendliness.

not be used without adequate, accurate, and accessible qualifiers; or substantiated and adequate disclosures.

- (c) *Technical terms explained:* While using technical terms (such as greenhouse gas emissions), consumer-friendly language shall be used to explain the meaning and implications of the terms.
- (d) *Disclosure and qualification:* Avoid selective disclosures, specify if claims relate to the whole or a part of its product/service.

## 5. Contravention and penalties

CCPA can levy penalties for contravention of the Guidelines in accordance with the Act. If such directions/ penalties are not followed, it can file a complaint with a competent court as specified in the Act. The competent court has the power to levy higher penalties or issue orders for imprisonment. Consumer can also file a complaint with a competent court in accordance with the Act. Indicative penalties are below:

### Penalty for any offender

Fine of approx. INR 10 lakhs to INR 50 lakhs, depending on repetition of offences.

### Criminal liability by the competent court

Imprisonment of approx. 2 years to 5 years.

### Specifically for endorser

Prohibition from endorsing from approx. 1 year to 3 years.

## 6. Next Steps

Companies should take immediate cognizance of this new law and consider taking the following key actions:

- (a) *Adoption of policies:* Review of existing policies/ framing new policies governing green claims in relation to its products or services;
- (b) *Periodic review of and providing report to the board:* The company should provide a periodic report (annual, semi-annual) on steps taken to prevent the practice of greenwashing. Specifically for listed companies, it should be also tabled to the stakeholders relationship committee<sup>16</sup> or any committee formed to review environmental, sustainability and governance;
- (c) *Adequate controls for review of communication:* Train staff members or take legal advice to review any communication, advertisements for any violation of the Guidelines. This should include review of existing advertisements and communication by any external supplier. Companies should also establish suitable escalation mechanisms;
- (d) *Conduct training sessions:* Conduct of workshops to analyse reputational risks, its potential impact and suitable mitigation plans.

## Conclusion

The Supreme Court is increasingly taking an activist approach towards consumer protection. The lawmakers are also increasingly following the north light of 'keeping consumer first'. It is likely that more consumer friendly legislations may be promulgated in future. Hence, corporates may well begin the journey of strengthening their checks and balances to meet expected global standards on greenwashing and to maintain effortless business continuity.

<sup>16</sup> Regulation 20 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015

## Key Contacts:

**L. Viswanathan**  
Senior Partner  
[lviswanathan@cyrilshroff.com](mailto:lviswanathan@cyrilshroff.com)

**Bose Varghese**  
Senior Director - ESG  
[bose.varghese@cyrilshroff.com](mailto:bose.varghese@cyrilshroff.com)

**Lakshmi Prakash**  
Partner  
[lakshmi.prakash@cyrilshroff.com](mailto:lakshmi.prakash@cyrilshroff.com)

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Peninsula Chambers, Peninsula Corporate Park, GK Marg, Lower Parel, Mumbai 400 013, India  
T +91 22 6660 4455 E [cam.mumbai@cyrilshroff.com](mailto:cam.mumbai@cyrilshroff.com) W [www.cyrilshroff.com](http://www.cyrilshroff.com)  
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