



HOFFMANN EITLE

— Tension between the attraction of green-branding and the risk of greenwashing:

Overview of the current state and prospects of the legal development in the European Union

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— “Companies should optimize their products in climate protection – and not climate fraud.”

Director Jürgen Resch - Environmental Action Germany (DUH)

Example of greenwashing

- „Fast fashion“ industry is notorious for the rather detrimental environmental impact.
- Today, many consumers are reluctant to buy „fast fashion“.
- Through the use of certain claims, consumers can be tricked into buying the clothes anyway.
- H&M used the label „Conscious“ for some of their products, but reports revealed that the claim „Conscious“ was unsubstantiated.
- In 2022, H&M was sued for misleading claims in connection with the „Conscious“ collection.

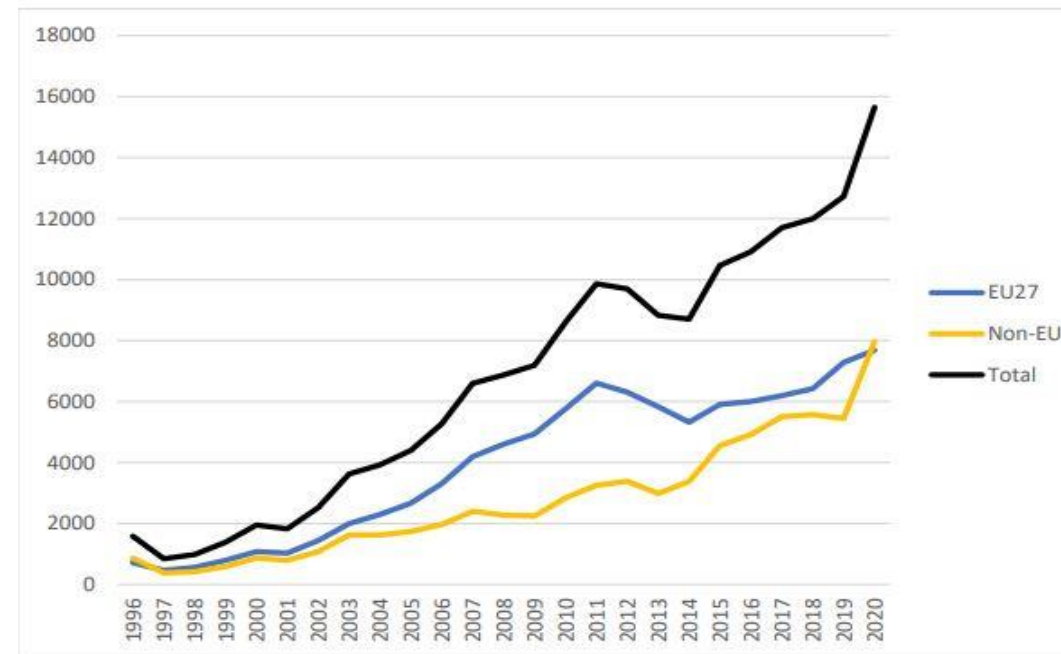


— The rise of green-branding and green claims

The rise of green-branding and green claims

- In the recent years an increase of „green“ EU trademark applications has been observed.

Figure 1. Green EUTM filings, 1996-2020



Source: “Green EU trade marks – Analysis of goods and services specifications, 1996-2020”, p. 6., 19 https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_Green_EU_trade_marks/2021_Green_EU_trade_marks_FullIR_en.pdf), accessed on 24.07.2023.

A conceptual illustration of a green car made of leaves on a city street. The car is a dense, rounded shape composed of many small green leaves, sitting on a light blue surface. To the left of the car, a large cloud of green leaves is blowing away, suggesting wind or motion. In the background, a city skyline with various skyscrapers is visible under a clear blue sky. The overall scene is bright and clean, emphasizing the 'green' theme.

Green-branding and green claims vs. greenwashing

Green-branding

- Describes the practice of using trademarks that convey messages of environmental friendliness.
- Such trademarks are characterized by use of the colour green, the depiction of leaves or clear water or words such as „green“, „eco“, „sustainable“, or „zero impact“.
- Therefore, the trademarks appeal to consumers who are becoming more aware of the need to protect the environment.



„The best from the region“

German TM No.
302021028394



„climate neutral“

German TM No.
302021002924



„La Natura Compostable capsule system“

EUTM No.
017924950

Green-branding

Individual trademarks

- Companies can target specific environmental aspects of their practices within their trademarks.



EUTM No.
018331741

Collective marks

- Owned by an organization or association and can be used by anyone who is member of that association.
- Build consumer confidence in the products/services.



EUTM No.
008674327

Certification mark

- Used to certify that standards established in a statute for the certification mark are met.
- Goods and services bearing the mark have to comply with prescribed standards.



EUTM No.
009426172

Green claims

- Sustainability-related product communication.
- Environmental claims made by companies about their products or services.
- Characterized by use of terms such as „sustainable“, „climate-friendly“, „CO2-neutral“, „nature“ or „good for the environment“ in advertising.



Greenwashing

- Coined by environmentalist Jay Westervelt in 1986 .
- Describes the use of false, misleading, or unsubstantiated claims about the environmental friendliness of products, services, or practices.
- Claims are often vague, unclear and difficult to substantiate.
- Difficulty in defining „sustainable“, „eco“, „green“, „neutral“ or „environmentally friendly“ does not give free licence to use those terms without clear, objective and supporting data.



— Current legal situation and development

Legal development

— According to the EU Commission



53 % of green claims give vague, misleading or unfounded information.



40 % of claims have no supporting evidence.

- However, environmental labels and claims need to be credible, reliable and trustworthy in order to allow consumers to make better informed purchasing decisions.
- This will also boost the competitiveness of businesses.

Case law in Germany



- Claim „Klimaneutral“ („climate neutral“) was found inadmissible, because the packaging lacked information on what exactly the climate or environmental neutrality consisted of.



- Claim „Klimaneutral“ („climate neutral“) was found admissible, because the information in relation to the climate neutrality was provided on the company's website.

Green Claims Directive



Proposal Green Claims Directive, March 2023, European Commission.



Directive on substantiation and communication of explicit environmental claims.



Aims to establish common criteria against greenwashing and for environmental claims.



Requires substantiation of claims about environmental aspects.



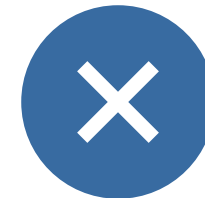
Only allows new public labelling schemes when developed at the EU level and restricts private labelling schemes.



Provides important safeguard to protect consumers.

Green Claims Directive

- Environmental claims need to be substantiated (Art. 5, 6 GCD)
- Companies need to provide consumers with further information on the substantiation of the green claims
- Claims need to be verified and certified (Art. 10 GRC)
- Prohibits generic environmental claims
- Restricts private labelling schemes



— Key takeaway

- The main goal of the Green Claim Directive is the creation of reliable environmental claims.
- The directive will apply to all companies that advertise with green claims or use eco-labels in the EU.
- The exact requirements for green claims still depend on the further development of the proposal and the transition of the directive into national law.

Thank you for your attention!



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