

Green to Greed: Unravelling Corporate Deception

Environmental issues, such as climate change, pollution, biodiversity loss, greenhouse effect, resource depletion, and many others, transcend not only political boundaries but also geographical barriers. Given the extensive impact of environmental issues, there is a broad consensus that countries must join their hands to collectively address these challenges. The same is reflected in the declarations made at different summits and conventions held under the aegis of the United Nations such as PARIS SUMMIT, 2015, COP28.



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INTRODUCTION

The Dalai Lama offered a thought-provoking response when questioned about what surprised him most about humanity. He said ‘Man. Because he sacrifices his health in order to make money. Then he sacrifices money to recuperate his health.’

The wise words stated by the Dalai Lama reflect the present day relationship of humankind and the environment. Humankind, in its pursuit of technological progress to enhance quality of life, has been exploiting the environment and natural resources, without realizing that Nature is paramount and advancements lacking eco-friendliness can be degenerative and ultimately futile. Efforts are being made on war scale to restore and recuperate the ecology, environment, flora, and

fauna of our planet Earth. This includes reconsidering and abandoning technologies and machines developed through significant investments and extensive research, as they are found to be harmful to Earth, its ecology, and environment.

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Post the Paris Agreement in 2015, there has been a spurt in net-zero commitments towards carbon foot prints, from all sectors. The increase in commitments has led to a surge in the number of criteria and benchmarks used to establish net-zero goals, each varying in their level of robustness. The economies and its stakeholders, including corporations, consumers, and legislators, are incorporating “green touch” to anything and everything they can imagine. The consumers alike are responding to the eco-friendly products and investment schemes even at a higher cost.

With the net-zero commitments and the pledges to reduce carbon footprints, it feels like finally the human race has woken up from the slumber to go out of the way in being ‘eco-friendly’. The environment friendly measures are part of the Environment, Social and Governance (ESG) practice, the new benchmark (or talisman) for every walk of life and lifestyle. Whether it’s food, clothing, fashion, electronic gadgets, or any other commercial product, ESG principles are smeared across the products and brands.

A green economy backed by green products and services should ideally reverse the ill effects of industrialization, deforestation, synthetic and non-biodegradable products, etc. However, to the surprise of all, global warming is on rise, ill effects of climatic change are increasing, world is witnessing far more hurricanes as opposed to the last decades and so on. So, are these efforts too little too late? Or are the green claims a putative ‘greenwashing’, leading consumers, investors, and regulators astray with false narratives and spreading a culture of misinformation and bewilderment?

Customers, investors, and markets are smitten with ESG, pushing the companies to hold the flag post of ‘eco-friendly’ missionaries. However, these purported green claims often turn out to be a fad. So much so that the Secretary General of the United Nations, António Guterres, constituted a United Nations High-Level Expert Group on Net Zero Emissions Commitments by Non-State Entities – Companies, Mainly Oil or Energy; financial institutions, cities and regions. Its report was presented by the Committee during the 27th Climate Summit (CO27), held at Sharm el Sheikh (Egypt).

The report focuses on greenwashing and calls for measures to end “dishonest” accounting with which some companies “evade” their responsibility to reduce their carbon footprint.

WHAT IS GREENWASHING?

In recent years, the term ‘greenwashing’ has gained popularity as a marketing strategy, whereby the companies portray their products or services as ‘environmentally friendly’, even when they are not. Greenwashing manifests in various ways, including the use of vague terms, showcasing fake certifications, or employing deceptive imagery or language. For instance, a company might advertise its product as “100% natural” or “chemical-free,” although this claim may not hold entirely true. Even industries like ‘fast fashion’, known for their intrinsic lack of sustainability and environment friendly, often market themselves as eco-friendly.

Although there is no universally agreed-upon categorization for greenwashing, the term has been defined in various ways. In essence, greenwashing involves companies misleading consumers by falsely portraying themselves as environmentally friendly or sustainable as a marketing tactic, rather than as a core tenet of their business model.

GREENWASHING: LEGAL FRAMEWORK

India

Greenwashing is essentially a governance issue in the domain of environment, thus intertwined with ESG. With the exception of the Securities and Exchange Board of India (SEBI), which has defined greenwashing and issued circulars, India does not have specific regulations governing greenwashing. However, there are laws, voluntary codes and rules, etc in place to address false or misleading marketing claims, thereby deal with the incorrect environmental claims or greenwashing.

The only other attempt is the recently issued ‘Draft Guidelines for Prevention and Regulation of Greenwashing’ put up for public consultation by Central Consumer Protection Authority. The said draft guidelines have been prepared by a committee constituted by Department of Consumer Affairs (DoCA). The definitions in the draft guidelines of ‘greenwashing’¹

¹ 2(e) “Greenwashing” means- (i) any deceptive or misleading practice, which includes concealing, omitting, or hiding relevant information, by exaggerating, making vague, false, or unsubstantiated environmental claims. (ii) use of misleading words, symbols, or imagery, placing emphasis

and ‘environmental claims’² do reflect the attempt by the government to tackle the menace of ‘greenwashing’ however the final guidelines and their implementation shall reflect the true impact of the same, given there are no penal consequences in the first instance.

In addition to above, there are some laws, voluntary codes and regulations in place to address false or misleading marketing claims, thereby deal with the incorrect environmental claims or greenwashing.

Considering the green claims in the investment field, the SEBI, post defining “green debt security”, in November 24, 2022 issued a circular mandating disclosures and compliances in relation to the same (i.e. business activities and product offerings which are environment friendly).

SEBI in its subsequent circulars dated February 03, 2023 has defined greenwashing as “making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation.”, SEBI released another circular of the same date dealing with ‘Do’s and Don’ts relating to Green Debt Securities to avoid occurrences of Greenwashing’. A subsequent circular dated February 6, 2023 provides for appointment of a recognised third-party agency to review the concerned project, eligibility, and issue of green debt securities.

To ensure increased accountability, SEBI in 2012 made it mandatory for the top 100 listed companies by market capitalisation to file a business responsibility report (BRR) capturing their non-financial performance across ESG factors. SEBI introduced new ESG reporting requirements in May 2021 for the top 1,000 listed companies, mandating these companies to disclose their ESG performance through a new format called the Business Responsibility and Sustainability Report (“BRSR”), in their annual report. Given the dismal response from companies during the FY 2021-22, this measure was necessitated to ensure it keeps pace in achieving India’s net-zero target by 2070. The remaining listed entities not falling in top 1,000 may voluntarily submit such reports.

SEBI has also issued Credit Rating Agencies (Amendment) Regulations, 2023 which *inter-alia* stipulate the regulatory framework for ESG ratings. This shall go a long way in companies making green claims accountable and prone to regulatory action.

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 colour schemes or pictures; either not amounting to any deceptive or misleading practice.

2. 2(f) “Environmental claims” means: any representation, in any form, regarding: (i) a good (either in its entirety or as a component), the manufacturing process, packaging, the manner of use of the good, or its disposal; (ii) a service (or any portion thereof) or the process involved in providing the service, Suggesting environmentally friendly attributes.

Explanation - It may include, but not limited to: (i) having a neutral or positive impact on the environment or contributing to sustainability; (ii) causing less harm to the environment compared to a previous version of the same product or service; (iii) causing less harm to the environment than competing goods or services; (iv) being more beneficial to the environment or possessing specific environmental advantages;

all aimed at conveying a sense of environmental responsibility or ecofriendliness associated with the good or service.”



Currently, with exception of SEBI and the draft guidelines, there are no specific laws or regulations in India directly dealing with greenwashing. However, there are few laws or voluntary codes or regulations which deal with advertisement and trade practise and can be invoked to combat greenwashing.

- a) Consumer Protection Act 2019 (CPA, 2019). 'Greenwashing' is an unfair trade practice under Section 17 of the CPA, 2019. CPA, 2019 protects consumers against false and misleading ads, including the ones which make incorrect green claims such as a product being bio-degradable, energy efficient, etc.
- b) The Advertising Standards Council of India (ASCI), a voluntary self-regulatory organization of the advertising industry in India, has issued a guideline for advertising across various sectors and to curb misleading advertisements. ASCI has been the flag bearer for ethical advertisements and to ensure that the advertisements are honest, and not deceptive. Thereby, covering the misleading advertisement on green claims.
- c) Bureau of Indian Standards (BIS) under BIS Act, 2016 (replacing BIS Act, 1986), deals with standardization and certification of goods, services, etc. ECO Mark Scheme was instituted by the Government of India for labelling of environment friendly products. The Scheme covers an array of products including FMCG. To administer the Scheme, BIS has included supplementary criteria for the ECO Mark within the relevant Indian Standards. BIS conducts enforcement actions to prevent the unauthorized use of the Standard Mark or its imitation by unscrupulous traders and manufacturers lacking a valid BIS license. These measures also serve to safeguard consumers against deceptive representations regarding the quality of products labelled with the BIS Standard Mark.
- d) The Ministry of Environment, Forest and Climate Change (MoEFCC) initiated the Green Good

Deeds (GGDs) movement in January 2018 as a societal endeavor aimed at promoting widespread environmental consciousness across all societal strata and inspiring individuals to embrace eco-friendly lifestyles. The initiative also offers guidance to companies regarding environmental assertions made in their advertisements.

The existing codes by prohibiting the use of false or misleading claims in advertisement offer a too, to deal with the instances of greenwashing. An advertiser engaged in greenwashing, is likely to be in violation of said existing codes. For example, ASCI prohibited Bharat Petroleum's advertisement in 2017 that claimed "Go Green With Speed For IT Reduces Emissions" due to unsubstantiated environmental claims. In such instances, a company's reputation is significantly harmed, resulting in revenue and credibility losses.

BEYOND INDIAN BORDERS

Several countries have issued appropriate guidelines or regulations to contain greenwashing, which includes.

United States: The Federal Trade Commission (FTC) has promulgated guidelines concerning environmental marketing representations, commonly referred to as the Green Guides, with the intent of assisting marketers in refraining from making misleading environmental claims to consumers. Initially published in 1992, the Green Guides underwent revisions in 1996, 1998, and 2012. Furthermore, the Green Guides prohibits the use of false or deceptive assertions, including the use of unqualified terms such as "eco-friendly" or "green." Although the Green Guides lack legal enforceability, they provide the Federal Trade Commission (FTC) with the authority to pursue legal measures against companies that engage in deceptive or misleading environmental assertions.

European Union: The European Union has enacted the "Green Claims" Regulation to combat greenwashing and safeguard consumers and the environment. This

Regulation mandates that environmental labels and assertions must be credible and reliable, enabling consumers to make more informed purchasing choices.

United Kingdom: The Competition and Markets Authority (competition regulator to tackle unfair behaviour) published the Green Claims Code, which encourages companies to ensure that the green claim made is fair and accurate. Marketing communication must be clear and should not exaggerate the positive environmental impact. If a business does not follow these rules, it is breaking consumer law, and could be brought to court.

Furthermore, there exist independent organizations that certify products as environmentally sustainable, such as the Forest Stewardship Council (FSC), the Rainforest Alliance, and the Energy Star program. These certifications can aid consumers in distinguishing authentic environmentally friendly products.

Apart from the above, several other countries have also enacted laws to address Greenwashing, which includes China's Green Advertising Law and Brazil's Consumer Protection Code.

The legal landscape concerning greenwashing is progressively developing across various jurisdictions, with a shared acknowledgment of the imperative to combat greenwashing and safeguard consumers against deceptive or inaccurate environmental assertions. Moreover, regulations or voluntary codes may lead to legal repercussions if advertisements are determined to contravene the stipulated regulations or codes, as outlined above.

INSTANCES OF GREENWASHING

Greenwashing encompasses activities ranging from deceptive packaging to the use of ambiguous language to make environmentally friendly claims. Although prevalent across various industries, below are a few well-known household names that have been identified for engaging in greenwashing:-

Volkswagen: In 2015, Volkswagen advertised the environmentally friendly and low-emission attributes of its vehicles in marketing campaigns. However, upon investigation, Volkswagen acknowledged installing 'defeat devices' in numerous vehicles. Subsequently, the Federal Trade Commission (FTC) found that diesel car engines were emitting nitrogen oxide pollutants at levels up to 40 times higher than the US regulatory limit.

McDonald's: In 2019, the fast-food chain launched an initiative aimed at reducing the utilization of single-use plastics within its restaurants. However, the company's newly introduced paper straws, intended to replace the previous straws due to their thickness and other attributes, were determined to be non-recyclable. Additionally, concerns have been raised regarding the environmental impact of the company's beef laden menu, which is purported to generate over 22 million metric tons of greenhouse gases annually.

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Starbucks: In a manner akin to McDonald's, Starbucks ceased the utilization of plastic straws and all types of straws altogether, introducing a sippy lid for all beverages instead. Nevertheless, it was discovered that the new lid contained a greater amount of plastic compared to the previous straw-lid combination.

Coca-Cola: In its advertisement for a low-sugar beverage, the company promoted it as a "green, healthy alternative" as compared to other soft drinks. The beverage purportedly contained the natural sweetener Stevia; however, it was later revealed to still contain over 4 teaspoons of sugar per 330ml, thereby misrepresenting its low-sugar claim.

Coca-Cola asserts its environmental cleanliness and sustainability, despite being identified as one of the largest contributors to plastic pollution globally. The company is currently facing legal action regarding these environmental concerns.

Walmart: It was discovered that Walmart improperly marketed approximately two dozen textile products as being made from bamboo, whereas they were actually made of rayon. According to the Federal Trade Commission (FTC), the process of converting bamboo into rayon involves the use of toxic chemicals, leading to the production of hazardous pollutants. In a lawsuit filed against Walmart, the court validated the accusations of greenwashing and ordered Walmart to pay \$3 million in civil penalties.

GREENWASHING IN FAST FASHION

Another critical focus area for environmentalists is fast fashion. ReMake, a fashion non-profit organization, estimates that only 20% of discarded textiles are recycled or reused, while the remaining 80% are either burned or disposed of in landfills.

Fashion companies such as H&M, Zara, and Uniqlo contribute significantly to the vast amounts of textile waste generated by the garment industry.



H&M: In 2012, H&M introduced its eco-friendly clothing line named the “Conscious Collection.” The company asserted that it used recycled polyester and organic cotton in this collection. However, the claim of being eco-friendly was deemed as greenwashing because the provided information regarding sustainability was insufficient, particularly considering that the Conscious Collection is marketed as having environmental benefits.

Zara: In 2022, the brand launched a limited-edition line of “sustainable clothing” produced from polyester derived from captured carbon emissions. Despite this initiative, the brand faced criticism for continuing to endorse the practice of over-production and over-consumption, which critics argue nullifies the positive impact of these sustainability efforts.

GREENWASHING IN INDIA

Indian market story is no different from the trend world over and lack of focused regulatory framework adds to the woes of consumers.

1. **Godrej Industries:** In 2012, Godrej Industries in its marketing campaign claimed that its Good Knight Fast Card mosquito repellent was “100% natural” and “chemical-free”. However, the Advertising Standards Council of India (ASCI) determined this claim to be false and misleading.
2. **Hindustan Unilever Limited (HUL):** The renowned FMCG player advertised its product ‘Surf Excel Easy Wash’ detergent as “100% natural” and “environment-friendly,” despite containing synthetic ingredients. In 2011, the Indian government, through the Ministry of Environment and Forests, filed a case against Hindustan Unilever Limited (HUL) for making false claims in its advertising. Consequently, HUL was fined INR 10 lakhs by the Central Pollution Control Board.

3. **Voltas AC:** In 2013, Voltas Limited, a company under the Tata Group, initiated a marketing campaign asserting that its air conditioners (ACs) were “eco-friendly” and possessed a “5-star energy rating.” However, it was later revealed that the ACs actually had a lower energy rating than claimed in the campaign.
4. **Godrej Soaps:** In 2015, Godrej Consumer Products Limited was scrutinized for inaccurate claims regarding the environmental benefits of its Godrej No. 1 soap. The company’s advertisement asserted that the soap was “100% natural,” “biodegradable,” and “eco-friendly,” although it contained synthetic ingredients.
5. **Bharat Petroleum:** In 2017, the ASCI issued a ban on Bharat Petroleum’s advertisement that claimed “Go Green With Speed For IT Reduces Emissions” due to unsubstantiated environmental assertions.

The above stated are handful of examples and list is long covering every sector and industry including service industry.

BEYOND THE PRIVATE AND FINANCIAL SECTORS

The legislators of countries when making policies need to be conscious that ecology and environment work on the fine balance of its constituents. For example, in order to undo the effects of coal, diesel and similar fossil fuel emissions, the change to CNG may be laudable, however the same must not be done without analysing the side effects of CNG and if they are more grave and serious.

Similarly, blending of ethanol may have multifarious benefits ranging from cutting down the forex expenditure, reducing dependency on foreign countries for oil, replacing oil with a bio and renewable fuel, the farmers getting money from even the bagasse. However, one needs

to consider the downsides, i.e. issues of whether it has impact on food security, or whether excessive sugarcane plantation would lead to water scarcity, etc.

The claim, therefore, of a policy being eco-friendly or leading to a shift which benefits the environmental needs to be made with caution. A linear benefit opening the gateways for another ecological adversary may be an example of 'greenwashing' in the field of policy making by the legislators or decision making bodies.

STEPS TO REIN GREENWASHING

While, specific laws dealing with 'greenwashing' would provide much needed impetus to curb down greenwashing, however the same would not be a panacea for all the woes. Few steps to rein in greenwashing are as below: -

1. Conscious consumerism is a potent tool to promote sustainability and environmental protection and check misleading claims. Furthermore, the consumers should not rely solely on marketing campaigns and green labels to make purchasing decisions. It is essential to ask questions, and verify (green) claims before purchasing products. Moreover, the government needs to take stricter action against companies that indulge in greenwashing, as this practice is not only harmful to the environment but also to consumers who may be misled into making unsustainable choices.
2. Robust legal or regulatory framework: There is an urgent necessity for a strong legal framework to ensure that companies making inaccurate environmental claims are held accountable and subjected to legal actions, including penalties, for their deceitful conduct. The focus needs to shift from voluntary codes and generic provisions to a targeted legal framework. While some progress has been achieved by SEBI and draft guidelines have been prepared by DoCA for Prevention and Regulation of Greenwashing, as discussed earlier, there is a crucial need for more comprehensive guidelines to be enforced.

Further, the framework can provide a positive nudge as extra FSI for green buildings, the law can also provide for incentive by way of tax relief and other specific industry based concessions for genuine green claims.

3. Integration of sustainability into business strategies: Companies should adopt a forward-looking approach to their sustainability initiatives rather than focusing solely on short-term gains from green claims and marketing. This broader perspective will not only help in building trust with consumers but also showcase a long-term commitment to environmental causes. Taking steady and robust steps in this direction will also mitigate the pressure of immediate large investments and reduce the risk of business disruptions.
4. Third-party certifications and standards play a crucial role in establishing clear and measurable

criteria for sustainable products and services. These certifications not only help companies to showcase their commitment to sustainability but also ensure that consumers receive more accurate and trustworthy information. Additionally, these certifications contribute to building brand value by demonstrating adherence to recognized environmental and ethical standards.

The role of media campaign in spreading awareness and bring bad reputation to the companies found guilty of greenwashing can play a significant role. While, ASCI hold the reins tight in bringing the dark horse to public notice, but equally important is to applaud genuine claims. A recognition of the actual good work will develop trust with the customers and would be worth more than any sponsored market campaign run by a company.

CONCLUSION

To conclude, the world is realizing that melting glaciers, global warming, non-biodegradable products, air, water, land and several other pollutions need not only be reined in but the effects need to be reversed. The agenda, accordingly, is moving from discussions to framing voluntary codes to implementing policies to gradually internalizing the green life and lifestyle. This whole shift becomes ineffective and meaningless when the greenwashing takes the centre stage. The struggle is not limited to misleading market campaigns or false green labels but runs deeper to internalize the fact that key to human survival is to befriend the nature and not exploit it. If the economic development of a country comes at the cost of the forest fire, floods, extreme temperatures, erratic cycle of seasons, the country as well as the world is getting poorer and is economically regressing. The World Economic Forum has in fact identified that out of ten risks in the next ten years that the world would be facing, six of them are environmental risks (source: World Economic Forum, Global Risks Perception Survey 2022-23).

It is indubitable that the ineffable effects of green and clean environment on health, diversity (in terms of flora and fauna) and sustained development can find application by adopting eco-friendly lifestyle. Development, a policy, a technology needs to be tested on the touchstone of environmental impact and sustainable development. A sustained growth can push the economy; any deviation shall mean recuperating the ill effects by spending an equal or more amount of money, making net gain zero or even negative, as reflected by the Dalai Lama on man and his health.

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