

The Importance of Green Claims – How to Seize the Opportunities

Companies: Please make green claims and seize the opportunities!

Green claims are of utmost importance for the green transition of the economy. They visibly demonstrate companies' engagement for the long-term wellbeing of all people and planet. Evidently, green claims must be accurate and substantiated.

In 2020, the EU Commission carried out an inventory of environmental claims against the principles of the EU Unfair Commercial Practices Directive (UCPD): clarity, unambiguity, accuracy and verifiability. The study found that 53% of the claims provided vague, misleading or unfounded information, and 40% of the claims were unsubstantiated.

In order to empower consumers for the green transition, in March 2023, the EU Commission submitted a proposal for a Green Claims Directive ("GCD") to the EU Parliament. Scheduled to come into force in 2028, the directive seeks to ensure that all explicit environmental claims are substantiated and clearly communicated. The directive's main goal is to eliminate unverified and deceptive greenwashing practices, helping consumers make better-informed decisions. With the same objective, the revision of the Swiss Unfair Competition Act (UCA), which enters into force on 1 January 2025, requires that green claims be documented and objectively verifiable.

The question whether products or brands do have a positive or even zero impact on the environment has recently attracted much attention, such as for instance the EU Commission's request to 20 airlines for substantiation of their green claims.

***In a nutshell:** Companies should thoroughly document the basis for their green claims and implement a robust process to identify and monitor their claims. It is essential to ensure that green claims are verifiable. Additionally, in the EU, companies shall be required to have their green claims pre-certified by accredited verifiers.*

Green Claims Require Substantiation and, in the EU, ex ante certification is aimed

Although the GCD and the amendments to the UCA were proposed with the same goal, they differ in the implementation: In Switzerland, green claims must be objective and verifiable, yet there is no legal requirement for independent *ex ante* verification. Swiss and foreign companies making claims in Switzerland which are not objectively verifiable, are exposed to civil claims by competitors, consumers, and trade and consumer associations. Senior management may even be subject to criminal complaints.

The EU imposes more detailed regulations, requiring independent *ex ante* verification and certification of green claims. Verified green claims will be "passported" through the Internal Market Information System. Regarding sanctions, Member States shall provide penalties and measures for infringements (fines, confiscation, exclusion from public procurement, public



Daniel Lucien Bühr
Partner
Zurich



Gabriela Svalduz
Senior Associate
Zurich

funding etc.).

In Switzerland, market players monitor, in the EU the Member States

In Switzerland, no public agency is foreseen to monitor green claims, leaving competitors, consumers, and trade and consumer associations as supervisors through their power to legal action. In the EU, Member States will be instructed to mandate independent third-party bodies to verify environmental claims, monitor the market and provide access to justice.

How can we assist?

LALIVE's ESG Focus Group in Geneva and Zurich assists companies making green claims in implementing robust processes for the identification and substantiation of their claims. We also assist and represent companies in green claims disputes.

The authors thank Kevin Njie, Sibylle Schneider and Sandro Ackermann for their assistance in preparing this article.