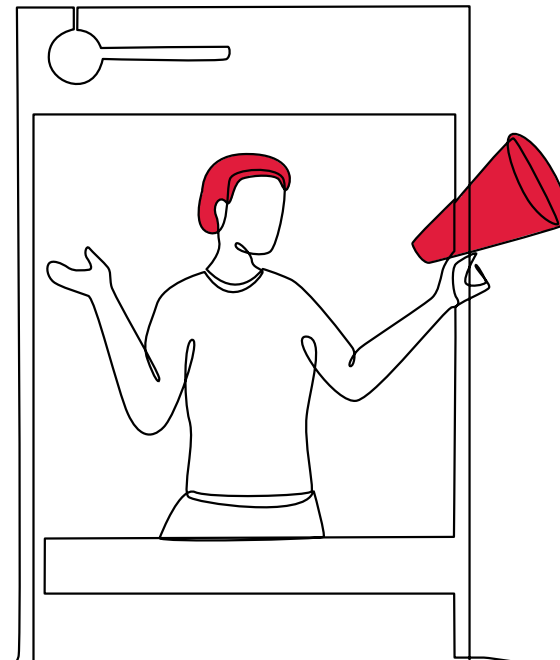


# Greenwashing



# Greenwashing can undermine genuine efforts to address environmental issues and erode public trust



## What is greenwashing?

Greenwashing is when businesses represent themselves as doing more to protect the environment than they are. This misrepresentation may be around their product's sustainability, their processes or, in the financial sector, the labelling of investment funds.

While there is no statutory definition in the UK of greenwashing<sup>1</sup>, a series of regulations around greenwashing in recent years has focused the attention of business on the issue and led to 'greenhushing', where companies refuse to publicise ESG information out of fear of attracting possibly negative attention to their efforts.<sup>2</sup>

Greenwashing can occur both when businesses make representations to consumers, and also other businesses. It is typically regarded as a problem related to advertising, but in fact is much wider ranging. Here we look at the different aspects of greenwashing.

## What is greenwashing in advertising?

In the UK, The Advertising Standards Authority (ASA) regulates most advertising and promotion across media. To do so, it applies Advertising Codes which are written by the Committees of Advertising Practice (CAP and BCAP). These Codes, such as the [Guidance on Misleading Environmental Claims](#), have sections that apply to environmental claims and social responsibility, as well as rules to ensure ads are not misleading. (The ASA now employs AI to check phrases like 'recyclable', 'compostable' and 'carbon neutral' to ensure they come with sufficient context and caveats attached.)<sup>3</sup> The ASA secured the amendment or withdrawal of 27,378 advertisements in 2023, an average of over 500 per week.<sup>4</sup>

Mistakes to avoid are:

- Claiming to be on track to reduce your company's polluting emissions to net zero when no credible plan is in place.
- Being vague or non-specific about your operations or the materials used.
- Applying misleading labels such as "green" or "eco-friendly," which do not have standard definitions and can be easily misinterpreted.

- Implying that a minor improvement has a major impact or promoting a product that meets the minimum regulatory requirements as if it is significantly better than the standard.
- Emphasising a single environmental attribute while ignoring other impacts.
- Claiming to avoid illegal or non-standard practices that are irrelevant to a product.
- Communicating the sustainability attributes of a product in isolation of corporate activities (and vice versa) – e.g. a garment made from recycled materials produced in a high-emitting factory that pollutes the air and nearby waterways.

To help businesses, the ASA has produced [e-learning](#) on environmental claims (and how to avoid inadvertently mis-leading consumers).

## How are consumers protected against greenwashing?

The [Competition and Markets Authority's \(CMA\) Green Claims Code \(GCC\)](#) applies to advertising and any product or service, by any commercial entity, aimed at/supplied to a UK consumer, including by a non-UK business, a distributor or an online platform.

The Green Code requires that any environmental claims must be fully supported by data, and, in the case of a product, these must consider that product's whole lifecycle from material sourcing through manufacturing to disposal.

In general, while companies wish to publicise the efforts they have made to reduce the impact of their products on the environment, they should avoid giving a false impression (including through words, logos, branding or advertising) that the product (or service) is 'green' or more sustainable or environmentally friendly than its competitors.

Although the Code is guidance, in 2024 the CMA [published binding commitments agreed with ASOS, Boohoo and Asda \(George\)](#) in relation to their green claims, [and warned](#) that fashion retailers should comply with guidance on green claims or risk fines of up to 10% of global turnover. The letter outlined general principles which firms should bear in mind to ensure that environmental claims are not misleading - namely, to verify that claims:

- Are truthful and accurate
- Are clear and unambiguous
- Do not omit or hide important information
- Compare goods or services in a fair and meaningful way
- Consider the full cycle of the product or service
- Are substantiated

[The Green Claims Code checklist - GOV.UK \(www.gov.uk\)](#) references consumer protection law, specifically [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](#).

This consumer law, and the guidance set out above, is set to be strengthened by [Digital Markets, Competition and Consumers Act 2024](#), which is expected to be in force by the end of this year. This will introduce the direct enforcement powers mentioned above (10% of global turnover) and make it unlawful for a business to engage in "unfair commercial practices" including making misleading statements about a product or service, including by omitting material information if it is likely to affect consumers' decisions.

## How are businesses protected against greenwashing?

Similar provisions exist under the [Business Protection from Misleading Marketing Regulations 2008 \(BPRs\)](#). These do the following:

1. Prohibit misleading advertising – there is an express prohibition of any form of advertising that is likely to deceive other businesses and affect their economic behaviour. This includes false or exaggerated environmental claims (i.e.: greenwashing).
2. Set strict conditions on comparative advertising – so that when a business compares their products to those of competitors any environmental claims made are accurate and not misleading.
3. Detail enforcement and penalties - enforcement authorities, such as the Office of Fair Trading (OFT), have the power to take action against businesses that engage in the above including the ability to seek injunctions and impose penalties including 'significant' fines and compensation to businesses affected by the misleading marketing containing greenwashing.

## How are investors protected against greenwashing?

The Financial Conduct Authority's (FCA's) anti-greenwashing rule (AGR), which applies to all FCA-authorized firms, is designed to ensure that consumers are protected from misleading sustainability-related claims, enabling them to make informed decisions that are aligned with their sustainability preferences. It has also published an [ESG sourcebook](#) which sets out rules and guidance concerning a firm's approach to environmental, social and governance matters.

All sustainability-related claims made by financial services and companies about their products and services must be fair, clear and not misleading. Financial firms that fail to comply could face supervisory action by the regulator.

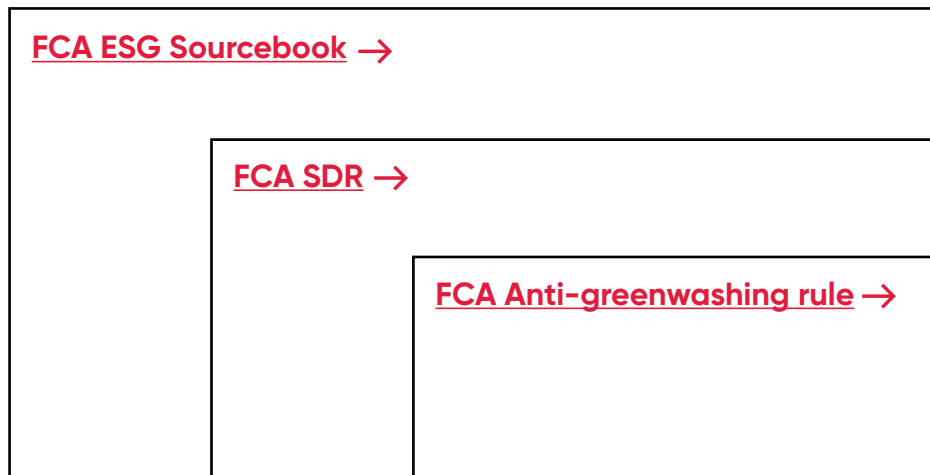
In addition, the [UK Sustainability Disclosure Requirements \(SDR\)](#) are regulations designed to enhance transparency and trust in sustainability-related information provided by businesses, and which include measures to prevent greenwashing, ensuring any sustainability claims are accurate and substantiated.

<sup>1</sup> [Greenwashing: what do you need to know? | The Law Society](#)

<sup>2</sup> ['Green hushing' on the rise as companies keep climate plans from scrutiny, FT October 18, 2022.](#)

<sup>3</sup> [FT "UK advertising watchdog turns to AI to help police 'dodgy' green claims"](#)

<sup>4</sup> [ASA Annual Report 2023](#)



---

**For More  
Information  
Contact One  
of Our Partners  
Today →**

**Email: [contact@ouryclark.com](mailto:contact@ouryclark.com)**

**Oury Clark London:**

10 John Street, London WC1N 2EB

**Tel: +44 (0) 20 7067 4300**

**Oury Clark Slough:**

Herschel House, 58 Herschel Street  
Slough SL1 1PG

**Tel: +44 (0) 1753 551111**



---

**Disclaimer:** This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

© Oury Clark