



FALSE ENVIRONMENTAL CLAIMS: AN ANALYSIS OF THE LEGALITY OF CORPORATE GREENWASHING IN THE UK AND EVALUATING IF THERE IS A NEED FOR REFORM

*Katie Hawkins*¹

Abstract

Corporate Environmental Responsibility places an obligation on companies to consider the environment when making executive decisions. However, with consumer demands for environmentally friendly products increasing, companies are not being honest about their environmental claims. A company's environmental performance and reputation has become a key factor for a consumer's purchasing decision. However, some companies are unable to meet consumer demands for environmentally friendly products. In response, companies are using false green claims. Such claims are used by companies to mislead consumers into believing a product or service has environmentally beneficial qualities or characteristics. This is also known as greenwashing. There is no specific legislation that prohibits greenwashing. Therefore, this article will analyse current UK legislation and regulating authorities that help prevent corporate greenwashing and evaluates if the current enforcement measures are satisfactory. The article then identifies developing enforcement measures and suggested reform for corporate greenwashing in the UK.

Introduction

The pattern of consumer consumption and behaviours has become one of the main causes of environmental deterioration worldwide.² Ivanova et al identified that between 60–80 percent of the impacts on the planet have come from household consumption.³ The study highlights that consumer habits have become one of the leading issues in the deterioration of the environment. Therefore, if consumer consumption habits change, our environmental

¹ Katie graduated in 2022 with a First in LLB (Hons) Law

² Tan Booi Chen and Lau Teck Chai, 'Attitude towards the Environment and Green Products: Consumers' Perspective' (2010) 4(2) Management Science and Engineering 27

³ Diana Ivanova and others, 'Environmental Impact Assessment of Household Consumption' (2016) 20(3) Journal of Industrial Ecology 526

footprint could change significantly as well. To help transform consumer habits, there has been increasing levels of media coverage on environmental decline, such as the impacts of climate change.⁴ With the increase in media coverage, consumers are becoming increasingly concerned about environmental issues and want to change their consumer habits. Consequently, this has forced companies to become more environmentally conscious of meeting consumer demands.

To satisfy consumer demands, companies are starting to promote their green claims to consumers. Companies use green claims to communicate to consumers how environmentally advantageous their goods or services are. Green claims can include how a company's products are manufactured, packaged, consumed, distributed, or disposed of.⁵ However, it could be argued that some corporate structures are not designed with the environment and climate protection in mind. Consumers are demanding companies to deliver environmentally friendly goods and services. However, some companies are unable to meet these consumer demands. Subsequently, as companies are recognising that the environment is an influential factor in consumer purchasing decisions, they are willing to market their products and services with false green claims to increase profit, regardless of whether they are truly environmentally friendly.⁶ These false green claims are known as greenwashing.

Greenwashing is defined by Nurse as 'the dissemination of false or incomplete information by an organization to present an environmentally responsible public image'.⁷ Therefore, greenwashing describes a company that manufactures false green claims to influence consumers into believing that their product or service is environmentally friendly. The term greenwashing was coined in 1986 by environmentalist Jay Westerveld.⁸ Westerveld introduced 'greenwashing' in a paper on multiculturalism two years after visiting a hotel.⁹ In

⁴ Valerie Hase and others, 'Climate change in news media across the globe: An automated analysis of issue attention and themes in climate change coverage in 10 countries (2006-2018)' (2021) 70 *Global Environmental Change* <<https://doi.org/10.1016/j.gloenvcha.2021.102353>> accessed 3 May 2022

⁵ Organisation for Economic Co-operation and Development, 'Environmental Claims: Findings and Conclusions of the OECD Committee on Consumer Policy' (DSTI/CP(2010)16/FINAL, Organisation for Economic Co-operation and Development, March 2011) <<https://www.oecd.org/sti/consumer/48127506.pdf>> accessed 8 March 2022

⁶ Stuart Bell, Donald McGillivray, Ole Pederson, Emma Lees, and Elen Stokes, *Environmental Law* (Oxford University Press, 9th edn, 2017) 322

⁷ Angus Nurse, *Clean Up Greenwash: Corporate Environmental Crime and the Crisis of Capitalism* (Rowman & Littlefield, 2022) 41

⁸ Bruce Watson, 'The troubling evolution of corporate greenwashing' *The Guardian* (20 August 2016) <<https://www.theguardian.com/sustainable-business/2016/aug/20/greenwashing-environmentalism-lies-companies>> accessed 12 December 2021

⁹ Erica Orange, 'From eco-friendly to eco-intelligent' (2010) 44(5) *The Futurist* 28

the hotel, Westerveld came across a note asking customers to reuse their towels as part of an environmental strategy as 'reusing the towels would reduce ecological damage'.¹⁰ The new term reflected how the hotel was misleading customers with a false environmental claim as reusing towels would have no impact on protecting the island's ecosystem. After Westerveld published his paper, greenwashing quickly became popular in the media. As awareness of greenwashing increased, more companies were being called out on using false green claims. Today, greenwashing has become more prevalent as consumers are increasingly prioritising 'the impact of their environmental footprint' and are considering 'the sustainability of their purchases'.¹¹ Consequently, this article will analyse the role of a consumer and company reputation, overall evaluating how this can influence corporate greenwashing.

Greenwashing also highlights the lack of clear information about products and services as a significant problem. Vague information prevents consumers from 'making enlightened choices and being able to communicate their preference'.¹² Subsequently, consumers are being overloaded with 'unnecessary or unreliable information' about green claims.¹³ Companies are responsible for their consumers and the environment. Nevertheless, some companies continue to be ignorant of both. Therefore, this article will aim to identify the legality of greenwashing and how companies have the ability to manufacture false green claims to mislead consumers. It will also evaluate the current UK enforcement measures to determine if they are efficient at preventing false green claims, followed by an analysis of developing enforcement measures and suggested reform.

1 Corporate environmental responsibility and green claims

1.1 Introduction to corporate environmental responsibility

Corporate environmental responsibility (CER) places an obligation on companies to consider the environment when making executive decisions. CER includes upholding environmental commitments and awareness while being transparent in their reporting, measuring, and

¹⁰ Ibid.

¹¹ Carlton Daniel and Francesco Liberatore, 'UK Regulator Ramps Up Action Against Greenwashing' (2022) 12(91) *The National Law Review* <<https://www.natlawreview.com/article/uk-regulator-ramps-action-against-greenwashing>> accessed 1 April 2022

¹² Eléonore Maitre-Ekern and Carl Dalhammar, 'Towards a hierarchy of consumption behaviour in the circular economy' (2019) 26(3) *Maastricht Journal of European and Comparative* 394

¹³ Ibid.

auditing under current regulations.¹⁴ CER derives from corporate social responsibility (CSR). No clear definition of CSR is provided in the literature. The lack of a clear definition is reinforced by Moir: ‘there are emerging methods of assessing corporate social performance but these are not established and are subject to considerable debate’.¹⁵ Nonetheless, CSR encapsulates considerations companies must reflect on when making executive decisions.

Bisschop has identified that there is no commonly agreed definition of CSR:

*‘the definition entails conceptualisations of CSR ranging from (1) mere regulatory compliance over (2) a responsibility to shareholders, employees, customers and suppliers to (3) a broad-minded perception of CSR as the responsibility of a company as a member of the immediate society and the global community’.*¹⁶

Bisschop’s statement underpins how these obligations give companies the responsibility to make choices for the benefit of society. More specifically, Bisschop reinforces the significance of company responsibility by being a ‘good corporate citizen’.¹⁷ Bisschop highlights that CSR means being a good corporate citizen through decision-making that is not only based on ‘financial or economic factors like profits or return on investment’, but also includes ‘the social, environmental and other consequences of their activities’.¹⁸ Bisschop’s statement recognises how the consequences of company decisions can affect financial, economic, social and environmental factors. Furthermore, Matten and Moon identify CSR as ‘clearly oriented and communicated policies and practices of firms that reflect business responsibility for some of the wider societal and ecological good’.¹⁹ Matten and Moon’s research emphasises the guidelines companies should follow in decision-making, providing the structure to ensure their business practices do not inhibit their responsibility to the community. The World Business Council for Sustainable Development support Matten and Moon’s research, which proposes CSR as the ongoing commitment by companies to ‘behave ethically and contribute to economic development, while improving the quality of life of the workforce and their families as well as of the local community and society at large’.²⁰ Overall, CSR reflects the importance of companies contributing to the improvement of society in

¹⁴ Lieselot Bisschop, ‘Corporate environmental responsibility and criminology’ (2009) 53(4) *Crime, Law and Social Change* 349

¹⁵ Lance Moir, ‘What do we mean by corporate social responsibility?’ (2001) 1(2) *Corporate Governance International Journal of business in society* 16

¹⁶ Bisschop (n14)

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Dirk Matten and Jeremy Moon, ‘Implicit’ and ‘Explicit’ CSR: A conceptual framework for a comparative understanding of corporate social responsibility’ (2008) 33(2) *Academy of Management Review* 404

²⁰ Moir (n15)

corporate decision making.

The most important factor of CSR today is the responsibility towards the environment. The UN Climate Change Conference (COP26) demonstrates the global objective for developing, protecting, and restoring the environment.²¹ Internationally, over 5,200 companies have joined the UN's Race to Zero.²² Alongside COP26, the UK Government's Net Zero Strategy sets out the policies and proposals for decarbonising all sectors of the UK economy to meet the Government's net zero target by 2050.²³ The governmental strategy validates the necessity for the UK's change of approach towards preserving and restoring the environment. The importance of taking the environment into account for corporate businesses has become pivotal within modern corporate practices. Chang and Huang comment that with the development of environmental sustainability and green business management, 'increasing demands have been made on businesses in the areas of environmental corporate social responsibility'.²⁴

The environment is becoming a fundamental factor in decision-making. Companies are striving to meet environmental demands and satisfy regulatory authorities. Furthermore, Chang and Huang established that companies are identifying how the environment is becoming an integral part of their business:

'in addition to international environmental treaties, businesses have also begun to recognise environmental protection as part of corporate social responsibility (CSR) in response to international environmental thinking and greater expectations for CSR from the community'.²⁵

By incorporating environmental protection aims into a business, companies are facilitating the reduction of emissions and waste into the environment, while helping to reduce the impact future generations could face.²⁶

The incorporation of environmental aims into CSR emphasises the development of CER.

²¹ 'What is a COP?' (*UN Climate Change Conference 2021*) <<https://ukcop26.org/uk-presidency/what-is-a-cop/>> accessed 21 March 2022

²² Department for Business, Energy & Industrial Strategy and Lee Rowley MP, 'COP26 sees UK businesses lead the world in climate change commitments' (*GOV.UK*, 4 November 2021) <<https://www.gov.uk/government/news/cop26-sees-uk-businesses-lead-the-world-in-climate-change-commitments>> accessed 02 March 2022

²³ Department for Business, Energy & Industrial Strategy, 'Net Zero Strategy: Build Back Greener' (*GOV.UK*, 19 October 2021) <<https://www.gov.uk/government/publications/net-zero-strategy>> accessed 4 May 2022

²⁴ Shun-Pin Chuang and Sun-Jen Huang, 'The effect of the environmental corporate social responsibility on environmental performance and business competitiveness: the mediation of green information technology capital' (2018) 150(4) *Journal of Business Ethics* 991

²⁵ *Ibid.*

²⁶ *Ibid.*

Bisschop defines CER as:

*‘the responsibility of business towards various stakeholders to take into account the environmental consequences of business activities and the longer-term environmental needs in order to avoid compromising the sustainability of future generations’.*²⁷

Additionally, a company must ‘take the environment into account in decision-making processes and involves environmental commitment and awareness, transparent reporting, measuring and auditing and means going beyond regulatory compliance’.²⁸ Bisschop stated the factors companies must consider when taking the environment into account for decision-making. The objective of these decisions is to protect and restore the environment. Protection and restoration of the environment is supported by Holtbrügge:

*‘CER deals with a company’s relationship with the environment. It contains the obligations of decision makers to take responsible actions which aim to protect and improve the environment as a whole, and which are also in line with their own interests’.*²⁹

Holtbrügge highlights how companies will evaluate their decisions to determine the outcomes for the environment, reflecting the corporate responsibility to preserve and restore the environment.

As societal concerns about preserving and restoring the environment has increased, it is placing a pressure on companies to represent themselves as environmentally friendly. Holtbrügge has identified that significant changes in global climate and environmental conditions have resulted in ‘a growing public awareness of CER, making corporate environmental responsibility an important topic for both the business world and academic literature’.³⁰ ‘Public awareness’ is the driving force behind the development of CER. Consequently, this is pinpointing the importance of reputation and the role of the consumer as influences for a company’s environmental performance.

1.2 Reputation and the impact of the consumer

A company’s environmental performance is becoming a key factor for consumers. Consumers are more ‘eco-conscious’, resulting in environmental claims playing an

²⁷ Bisschop (n14)

²⁸ Ibid.

²⁹ Dirk Holtbrügge, ‘How International is Corporate Environmental Responsibility? A Literature Review’ (2012) 18(2) Journal of International Management 180

³⁰ Ibid.

'increasingly pivotal role in buyers' decision-making processes.³¹ Consequently, customer dynamics are shifting towards a market which is more eco-conscious. A study with 8,000 consumers in 16 countries demonstrated that environmental responsibility has become a progressively significant factor for consumers.³² The study found that 85 percent of consumers were willing to change brands or their own behaviours to protect the environment.³³ Markham et al. also identified that between 2009 and 2010, the number of environmentally friendly products (also called green products) on the market growing by 73 percent is evidence that consumers want to change their consumer habits to protect the environment.³⁴ These figures highlight a proliferation of consumer demands for environmentally friendly goods and services.

A substantial increase in the demand for green products from consumers introduces a new pressure on companies to portray themselves as environmentally friendly to be able to compete. A Eurobarometer survey conducted by the European Commission on the 'Attitudes of Europeans towards the environment' questioned consumer perceptions and practices around a company's environmental performance. The survey found that four in five respondents said that 'big companies and industry are not doing enough to protect the environment'.³⁵ Therefore, companies need to develop their environmental performances to meet the demands of consumers. Doherty maintains that 'businesses are coming under increased commercial and regulatory pressure to produce goods and services with strong eco credentials'.³⁶ Henceforth, a company having an environmentally friendly reputation will be a fundamental factor to promote. The importance of having a positive environmental reputation is supported by Szabo and Webster: 'many firms are striving to improve their environmental positions by presenting their environmental efforts to the public'.³⁷ With the increasing demand for an environmentally friendly reputation from consumers, companies are introducing new marketing strategies. Doherty identifies that companies are 'applying

³¹ Edward Turtle, Christine Graham and Carolina Ljungwaldh, 'Getting the green light for environmental claims' (*Cooley*, 14 October 2021) <<https://products.cooley.com/2021/10/14/getting-the-green-light-for-environmental-claims/#page=1>> accessed 4 November 2021

³² Szerena Szabo and Jane Webster, 'Perceived Greenwashing: The Effects of Green Marketing on Environmental and Product Perceptions' (2020) 171(2) *Journal of Business Ethics* 719

³³ *Ibid.*

³⁴ David Markham, Anshum Khare and Terry Beckham, 'Greenwashing: a Proposal to Restrict its Spread' (2014) 16(4) *Journal of Environmental Assessment Policy and Management* 1

³⁵ European Commission, 'Attitudes of Europeans towards the environment' (Eurobarometer, European Commission, March 2020) <<https://europa.eu/eurobarometer/surveys/detail/2257>> accessed 16 April 2022

³⁶ John Doherty, 'Greenwash? Environmental Claims, regulatory Action and Legal Risks' (*Penningtons Manches Cooper*, 16 November 2020) <<https://www.penningtonslaw.com/news-publications/latest-news/2020/greenwash-environmental-claims-regulatory-action-and-legal-risks>> accessed 10 December 2021

³⁷ Szabo (n32)

green marketing strategies to help gain competitive advantage and appeal to ecologically conscious consumers'.³⁸ The introduction of green marketing strategies aims to satisfy the new target audience of eco-conscious consumers. A consistent approach to promoting a company's environmental performance is by making green claims. However, some UK companies are misleading consumers by manufacturing false green claims.

1.3 Green Claims

Green claims are declarations made by companies about environmentally beneficial qualities or characteristics of goods and services.³⁹ These qualities and characteristics include the way a company's products are manufactured, packaged, consumed, distributed, or disposed of.⁴⁰ Green claims are giving companies the opportunity to make environmental statements to help consumers make informed choices about their goods and services. However, some companies are using green claims as an opportunity to mislead consumers. Companies are intentionally manipulating their environmental performances and manufacturing green claims to mislead consumers into believing their products benefit the environment. Markham et al. support this point:

'while the number of 'green' products available in the market has grown, these conditions has also resulted in firms deliberately misleading consumers about their environmental performance or environmental benefits of their products'.⁴¹

The Competition and Markets Authority (CMA) established that greenwashing comprises of 'vague claims and unclear language' including terms such as 'eco' or 'sustainable' or references to 'natural products' without an adequate explanation or evidence to substantiate the claims.⁴² The CMA further identifies that false green claims can also include 'own brand eco logos and labels not associated with an accredited organisation' and 'hiding or omitting certain information, such as a product's pollution levels, to appear more eco-friendly'.⁴³ Therefore, greenwashing creates a false impression, as manufacturing false green claims to manipulate consumers into believing a product is environmentally responsible is deceptive.

³⁸ Doherty (36)

³⁹ Organisation for Economic Co-operation and Development, 'Environmental Claims: Findings and Conclusions of the OECD Committee on Consumer Policy' (DSTI/CP(2010)16/FINAL, Organisation for Economic Co-operation and Development, March 2011) <<https://www.oecd.org/sti/consumer/48127506.pdf>> accessed 8 March 2022

⁴⁰ Ibid.

⁴¹ Markham (n34)

⁴² Competition and Markets Authority, 'Global sweep finds 40% of firms' green claims could be misleading' (GOV.UK, 28 January 2021) <<https://www.gov.uk/government/news/global-sweep-finds-40-of-firms-green-claims-could-be-misleading>> accessed 11 December 2021

⁴³ Ibid.

If the perception is that corporate greenwashing is rising, it must be questioned why companies are making false green claims. There is a clear link between consumer demands for environmentally friendly products and an increase in greenwashing. Turtle et al. maintain that the demand for green products has led to an increase in greenwashing as companies are giving a 'false impression or misleading information'.⁴⁴ Therefore, it could be reasoned that with a pressure on companies to be 'green', there is an increased temptation to greenwash. The argument that pressures from consumers drives companies to greenwash is supported by Doherty:

'pressures, on top of the usual competitive strains, are suspected of increasing the temptation to 'greenwash': where a business focuses on green PR and marketing, without truly dealing with the environmental impact of its products'.⁴⁵

Doherty highlights the commercial pressure to use misleading green claims to satisfy the consumer demands for environmentally friendly products. Markham et al. also identifies that 'the leading driver of greenwashing results from pressure on businesses to demonstrate conformity with societal expectations around environmental sustainability'.⁴⁶ Markham et al. recognise how societal pressure from consumers has influenced companies to make false green claims. Consequently, it can be concluded that greenwashing is a result of companies wanting to satisfy the consumer demands for green goods and services, regardless of their environmental impact. Bell et al. reinforces this point: 'manufacturers are recognising that green claims are a factor when buying goods, leading to companies purposefully greenwashing to increase purchases'.⁴⁷

Examples of greenwashing highlight how companies are manufacturing false green claims. The popular clothing brand named H&M, provides an example of greenwashing used to manipulate consumers into believing their product is environmentally friendly. In 2019, H&M launched a line of clothing called 'Conscious'. They claimed to use 'organic' cotton and recycled polyester. However, the line was 'a marketing tactic used to make themselves appear more environmentally friendly'.⁴⁸ Consequently, H&M was criticised by the Norwegian Customer Authority for 'misleading' their consumers with the marketing of their Conscious Collection as 'the information given regarding sustainability was not sufficient, especially given that the Conscious Collection is advertised as a collection with

⁴⁴ Turtle (n31)

⁴⁵ Doherty (n36)

⁴⁶ Markham (n34)

⁴⁷ Bell (n6) 332

⁴⁸ Deena Robinson, '10 Companies and Corporations Called Out For Greenwashing' (*Earth.org*, 2 August 2021) <<https://earth.org/greenwashing-companies-corporations/>> accessed 18 April 2022

environmental benefits'.⁴⁹ Another company accused of greenwashing was Volkswagen. Volkswagen promoted their new 'clean diesel' engines to their eco-conscious consumers. They proceeded to fit over eleven million cars with software that manipulated emission tests.⁵⁰ In 2015, they admitted to cheating emissions tests with a 'defect' device with 'software which could detect when it was undergoing an emissions test and altering the performance to reduce the emissions level'.⁵¹ In reality, Volkswagen cars were releasing up to 40 times more than the permitted amount of nitrogen oxide pollutants.⁵² Volkswagen has exhibited the use of greenwashing through dishonest portrayal of their 'clean diesel' engines. Hence, manipulating consumers by portraying themselves as more environmentally friendly. The next example of greenwashing can be shown by the Alliance to End Plastic Waste (AEPW). AEPW is a Singapore-based non-profit backed by companies such as Shell, ExxonMobil, and Dow.⁵³ They claimed to be spending \$1.5 billion cleaning up plastic waste in developing countries.⁵⁴ However, 'AEPW not only failed to honour their promise to clean up the Ganges River in India, but its member organisations went forward with plans to produce even more plastic'.⁵⁵ AEPW demonstrates the use of false green claims by using a false narrative. Overall, these examples demonstrate how companies are using false green claims as an opportunity to manipulate consumers' purchasing decisions, regardless of their environmental impact.

In conclusion, as consumer demands for environmentally friendly products increase, companies are willing to deliberately misrepresent their environmental performances and manufacture false green claims to gain profit. By misleading consumers, companies are disregarding their environmental responsibility, potentially causing damage to the environment, as well as undermining consumer confidence. Szabo and Webster reinforce this point: 'greenwashing may not only affect a company's profitability, but more importantly, result in ethical harm'.⁵⁶ Therefore, new enforcement measures against greenwashing need to be implemented to help prevent the acceleration of future harm to the environment.

⁴⁹ Ibid.

⁵⁰ Alinda Gupta, 'Top 5 Greenwashing Scandals of the Past Decade' (*Jumpstart*, 30 November 2021) <<https://www.jumpstartmag.com/top-5-greenwashing-scandals-of-the-past-decade/>> accessed 11 March 2022

⁵¹ Russel Hotten, 'Volkswagen: The Scandal Explained' *BBC News* (10 December 2015) <<https://www.bbc.co.uk/news/business-34324772>> accessed 11 March 2022

⁵² Ibid.

⁵³ Carlyann Edwards, 'What is Greenwashing?' *Business News Daily* (24 February 2022) <<https://www.businessnewsdaily.com/10946-greenwashing.html>> accessed 11 March 2022

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Szabo (n32)

2 Establishing the Legality of Greenwashing

2.1 The Current Law

Currently, there is no UK legislation that identifies greenwashing as unlawful and prohibits companies from making false green claims. The lack of legislation is noted by Ezekwesili who observed that ‘there is no legislation in the UK specific to greenwashing’.⁵⁷ However, in the absence of specific regulation, there are restrictions within UK consumer laws that places a responsibility on companies to not mislead consumers. The legislation that limits the use of corporate greenwashing is the Trade Descriptions Act 1968 and the Consumer Protection from Unfair Trading Regulations 2008.

The Trade Descriptions Act 1968 (TDA) represents restrictions in UK law that aids in the removal of greenwashing in companies. Section 1 of the TDA places safeguards against claims that are factually incorrect.⁵⁸ The TDA highlights that a company is prohibited to give any description, both directly and indirectly, that is false towards a consumer.⁵⁹ Therefore, the TDA helps to eliminate false claims that are misleading consumers. However, most of the enforcement measures the Trade Descriptions Act 1968 used to help eliminate greenwashing by misleading consumers has been replaced by the Consumer Protection from Unfair Trading Regulations 2008.⁶⁰

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) represents the leading UK law designed to prohibit greenwashing in companies. Specifically, Unsworth pinpoints that Regulations 5 and 6 of the CPRs can help prevent greenwashing.⁶¹ Regulation 5 prohibits misleading actions in a commercial practice.⁶² Should a company’s actions contain false information, whereby their presentation ‘deceives or is likely to deceive the average consumer’, or ‘cause or is likely to cause the average consumer to take a

⁵⁷ Ebony Ezekwesili, ‘How ‘Green’ are you? ‘Greenwashing’ claims scrutinised by regulators’ (*Burges Salmon*, 28 September 2021) <<https://www.burges-salmon.com/news-and-insight/legal-updates/commercial/how-green-are-you-greenwashing-claims-scrutinised-by-regulators>> accessed 22 March 2022

⁵⁸ Trade Descriptions Act 1968, s 1

⁵⁹ *Ibid.*, s 2

⁶⁰ Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277)

⁶¹ Matthew Unsworth, ‘Sustainability or Spin? Greenwashing and the law’ (*Legal Cheek*, 19 March 2021) <<https://www.legalcheek.com/lc-journal-posts/sustainability-or-spin-greenwashing-and-the-law/>> accessed 3 November 2021

⁶² Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), reg 5

transactional decision they would not have taken otherwise', the company's actions will contravene Regulation 5 of the CPRs 2008.⁶³ Secondly, regulation 6 prohibits misleading omissions in a commercial practice.⁶⁴ A commercial practice is liable for committing a misleading omission if the company 'omits', 'hides', provides any material information which is 'unclear, unintelligible, ambiguous or untimely', and 'fails to identify its commercial intent, unless this is already apparent from the context'.⁶⁵ If the company also 'cause or is likely to cause the average consumer to take a transactional decision they would not have taken otherwise', they will contravene Regulation 6 of the CPRs 2008.⁶⁶ Overall, the CPRs aid in a general prohibition against unfair commercial practices that result in greenwashing.

The European Union's (EU) Regulations against false green claims can also be included in this section. Identifying EU regulations highlights that although the UK is no longer a member of the EU, the UK would still need to meet the EU market's standard to be able to sell UK manufactured products in Europe. In 1992, the EU established the European Eco-labelling scheme across member states.⁶⁷ The European Eco-labelling scheme is now known as Regulation 66/2010.⁶⁸ The Eco-labelling scheme was designed to provide a label which would convey to consumers which products could be distinguished as environmentally friendly.⁶⁹ The label consisted of a blue and green flower.⁷⁰ The flower provided a 'consistent, objective, and identifiable symbol' that identified to the consumer that the product had been 'assessed and approved against a set of approved criteria'.⁷¹ The system of approval consisted of three stages.⁷² First, the European Commission would oversee the Eco-labelling scheme and classify a product group after consulting and negotiating with the European Eco-labelling Board, consumer groups, environmental interest groups and the industry.⁷³ Once the product group was classified, the criteria for the approval of the label would then be established.⁷⁴ The second stage of the eco-labelling process requires that

⁶³ *Ibid.*, s 2(b)

⁶⁴ Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), reg 6

⁶⁵ *Ibid.*, s 1

⁶⁶ *Ibid.*, s 1

⁶⁷ 'EU Ecolabel' (*European Commission*) <<https://ec.europa.eu/environment/ecolabel/>> accessed 27 April 2022

⁶⁸ Council Regulation (EC) 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel [2010] OJ L 27

⁶⁹ European Commission, *The European Eco-label at a Glance* (European Commission) <https://ec.europa.eu/environment/archives/ecolabel/pdf/triptyque/versionfinal_en.pdf> accessed 27 April 2022

⁷⁰ Bell (n6) 322

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

the manufacturer must apply to the national competent body for approval.⁷⁵ The final stage is the revision of the product group criteria.⁷⁶ The final stage can be initiated by the European Commission or any Member states following consultation of the European Eco-labelling Board.⁷⁷ Overall, the European Eco-labelling scheme provides a clear and identifiable system that uses a label to convey to consumers that a product can be trusted, minimising the chance of corporate greenwashing.

2.2 Regulating Authorities

Regulating authorities also provide enforcement measures to help prevent companies from greenwashing. The Competition and Markets Authority (CMA) and the Advertising Standards Authority (ASA), both provide methods to stop companies from misleading consumers with false claims. These regulating authorities also introduce self-regulating measures, giving companies guidance on how to adhere to the existing law.

The CMA is the UK's competition regulator. The CMA is responsible for promoting competition, both within and outside of the UK, for the benefit of consumers.⁷⁸ This is enforced under section 25 of the Enterprise and Regulatory Reform Act 2013.⁷⁹ The CMA also has the responsibility for enforcing consumer protecting legislation. However, the current consumer law is vague. Therefore, on the 20 September 2021, the CMA published the Green Claims Code to provide guidance for companies when making environmental claims.⁸⁰ Overall, the CMA aims for companies to promote environmentally accurate claims on their goods, services, processes, and brands.⁸¹ The Green Claims Code is based on the existing consumer laws as referenced under the previous sub-heading. The code sets out six principles to help companies understand and comply with current obligations under consumer law.⁸² The first three principles state that environmental claims must be 'truthful and accurate', 'clear and ambiguous' and 'must not omit or hide important relevant

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Competition and Markets Authority, 'Vision, values and strategy for the CMA' (*Competition and Markets Authority*, January 2014)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/274059/CMA13_Vision_and_Values_Strategy_document.pdf> accessed 24 March 2022

⁷⁹ Enterprise and Regulatory Reform Act 2013, s 25(3)

⁸⁰ Competition and Market Authority, 'Green claims code: making environmental claims' (*GOV.UK*, 20 September 2021) <<https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services>> accessed 24 March 2022

⁸¹ Ibid.

⁸² Ibid.

information'.⁸³ The fourth principle states that 'comparisons must be fair and meaningful'.⁸⁴ The final two principles convey that claims must 'consider the full life cycle of the product and service' and 'be substantiated'.⁸⁵ These principles provide companies with clear guidance to help navigate and understand current UK laws. This is maintained by Israel et al. who observe that the Green Claims Code 'aims to help businesses comply with consumer protection law'.⁸⁶ Furthermore, 'the CMA states that if businesses follow the principles in the Green Claims Code, they are less likely to mislead consumers and less likely to fall foul of the law'.⁸⁷ Israel et al. highlight that the Green Claims Code can eliminate the risk of companies misleading consumers by introducing a measure of self-regulation. The CMA stated that companies are expected to comply with the Green Claims Code by January 2022.⁸⁸ There will be no grace-period. Tuson and Cullen justify the CMA's swift actions as they will be 'applying existing law and, strictly speaking, businesses should already be complying with this'.⁸⁹ If the Green Claims Code is breached, it could result in criminal liability for directors and other officers of corporate bodies.⁹⁰

The ASA provides a further enforcement measure against greenwashing. The ASA is the UK's advertising regulator.⁹¹ They are responsible for administering the Advertising Codes prepared by the Committee of Advertising Practice (CAP).⁹² The CAP's Advertising Codes include the UK Code of Non-broadcasting Advertising and Direct & Promotional Marketing (CAP Code).⁹³ The CAP Code provides the 'rule book for non-broadcast advertisements,

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Marc Israel, Jacquelyn MacLennan, Peter Citron, 'UK clampdown on greenwashing' (*White & Case*, 28 September 2021) <<https://www.whitecase.com/publications/alert/uk-clampdown-greenwashing>> accessed 10 December 2021

⁸⁷ Ibid.

⁸⁸ Deirdre Taylor, Mairi McMartin and Kirsty Everley, 'UK CMA Adopts Green Claims Code and Consults on Environmental Sustainability: Time for a Compliance Review' (*Gibson Dunn*, 7 October 2021) <<https://www.gibsondunn.com/uk-cma-adopts-green-claims-code-and-consults-on-environmental-sustainability-time-for-a-compliance-review/>> accessed 26 March 2022

⁸⁹ Sophie Tuson and Ciara Cullen, 'CMA publishes guidance on environmental claims – how can retailers avoid greenwashing?' (*Reynolds Porter Chamberlain LLP*, 5 October 2021) <<https://www.rpc.co.uk/perspectives/retail-therapy/retail-compass-autumn-2021/retail-compass-cma-publishes-guidance-on-environmental-claims-how-can-retailers-avoid-greenwashing/>> accessed 26 March 2022

⁹⁰ Sian Conway-Wood, 'What is the Green Claims Code?' (*Ethical Hour*, 7 January 2022) <<https://ethicalhour.co.uk/what-is-the-green-claims-code/>> accessed 26 March 2022

⁹¹ Advertising Standards Authority, 'Who we are and what we do' (*Advertising Standards Authority*) <<https://www.asa.org.uk>> accessed 25 March 2022

⁹² Ibid.

⁹³ Advertising Standards Authority, 'Non-broadcast Code' (*Advertising Standards Authority*) <<https://www.asa.org.uk/codes-and-rulings/advertising-codes/non-broadcast-code.html>> accessed 25 March 2022

sales promotions and direct marketing communications'.⁹⁴ Rule 11 of the CAP Code, titled 'Environmental claims', contains the rules about companies making green claims for products and services.⁹⁵ Rule 11 states that 'the basis of environmental claims must be clear', 'absolute claims must be supported by a high level of substantiation', and 'marketing communications must not mislead consumers about the environmental benefit that a product offers'.⁹⁶ Subsequently, under these rules the ASA has the power to request the withdrawal of the infringing advert.⁹⁷ The ASA will then publish its judgement, deciding if a company has breached the CAP Code. If a company consistently breaches the CAP Code, the ASA can refer the company to other regulating bodies such as the Trading Standards.⁹⁸ The Trading Standards consist of local authority departments that aim to 'promote and protect' the economy, as well as safeguarding the 'health, safety and wellbeing of citizens by enhancing the professionalism of its members'.⁹⁹ Trading Standards officers will investigate the breach and enforce consumer protection legislation if the company is found to be in violation of the consumer law.

A breach of the CAP Code reflects the use of corporate greenwashing. A breach of the CAP Code can be shown in the 'ASA Ruling on Ryanair Ltd t/a Ryanair Ltd'.¹⁰⁰ On 15 September 2019, Ryanair released a press advert stating:

'Europe's Lowest Fares, Lowest Emissions Airline' and 'Ryanair has the lowest carbon emissions of any major airline – 66g CO₂ for every passenger kilometre flown. This is because we have the youngest fleet of aircraft (avg. age 6 years), the highest load factors (97% of seats filled) and newest most fuel-efficient engines'.¹⁰¹

Additionally, on 23 September 2019, Ryanair released a TV advert, containing a voice-over which stated, 'Fly Ryanair. Europe's low fare, Low CO₂ emissions airline from just £14.99. Book Ryanair today'.¹⁰² Ryanair argued that the 'metric they used to measure CO₂ emissions was grams of CO₂ per passenger'.¹⁰³ Their claim was substantiated by the Airline Efficiency

⁹⁴ Ibid.

⁹⁵ Advertising Standards Authority, '11 Environmental claims' (*Advertising Standards Authority*) <https://www.asa.org.uk/type/non_broadcast/code_section/11.html> accessed 25 March 2022

⁹⁶ Ibid.

⁹⁷ Ezekwesili (n57)

⁹⁸ Ibid.

⁹⁹ 'About CTSI' (Chartered Trading Standards Institute) <<https://www.tradingstandards.uk>> accessed 17 April 2022

¹⁰⁰ Advertising Standards Authority, 'ASA Ruling on Ryanair Ltd t/a Ryanair Ltd' (*Advertising Standards Authority*, 5 February 2020) <<https://www.asa.org.uk/rulings/ryanair-ltd-cas-571089-p1w6b2.html>> accessed 26 March 2022

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

Rankings published by Brighter Planet.¹⁰⁴ Brighter Planet is a 'leading provider of carbon and energy calculations an authority on sustainability initiatives'.¹⁰⁵ They concluded that Ryanair emitted the least CO₂ per passenger mile compared to nineteen other airlines. However, the ASA highlighted that other factors such as seating density impacted the portrayal of the green claim. Overall, the ASA found that although the claims in the adverts could be 'understood relatively' and 'satisfied that CO₂ per passenger distance was an appropriate method to compare the carbon footprint of passengers on different airlines', the foundation of the green claims had not been made clear to consumers.¹⁰⁶ Therefore, Ryanair's claims of being 'Europe's... Lowest Emissions Airline' and 'low CO₂ emissions' were misleading.¹⁰⁷ The ASA's 'Ruling on Ryanair Ltd t/a Ryanair Ltd' portrays how the ASA can enable their powers to stop companies from making false green claims by upholding rulings to create a precedent to illustrate to other companies that false environmental claims are not permitted.

The ASA's 'Ruling on Alpro (UK) Ltd t/a Alpro' also demonstrates the ASA's power at stopping companies from making false green claims.¹⁰⁸ In October 2021, a poster for Alpro was seen on the left side of a bus stating 'Next stop. Your recipe to a healthier planet!', and the right side stating, 'Good for the planet' and 'Good for you'.¹⁰⁹ Alongside the statements were images of three Alpro products, including almond, oat and plain milk cartons.¹¹⁰ The claimant put forward that 'Good for the planet' was a misleading claim and the claim could not be substantiated, due to the belief that commercial almond farming was causing environmental damage.¹¹¹ Alpro argued that the overall context of the advertisement was that consuming plant-based products, such as the Alpro products depicted in the advert, had a 'lower environmental impact than alternative dairy-based products'.¹¹² Subsequently, Alpro suggested that consuming more plant-based products would contribute to a 'healthier planet' and was 'Good for the planet'.¹¹³ Additionally, Alpro stated that the almonds in their products were 'cultivated in a sustainable way which minimised water use and protected biodiversity and pollinating insects'.¹¹⁴ However, the ASA upheld that Alpro had not provided sufficient

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Advertising Standards Authority, 'ASA Ruling on Alpro (UK) Ltd t/a Alpro' (*Advertising Standards Authority*, 20 October 2021) <<https://www.asa.org.uk/rulings/alpro--uk--ltd-a20-1081249-alpro--uk--ltd.html>> accessed 2 May 2022

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

context in the advert to interpret the 'Good for the planet' claim.¹¹⁵ The ASA highlighted that the claim could be 'interpreted in more than one way'.¹¹⁶ On the other hand, the investigation did find that the almonds used in the production of Alpro's almond drink were not sourced from areas of the world that have a negative environmental impact.¹¹⁷ Nevertheless, the CAP Code requires companies to make their environmental claims clear and that any unqualified claim could result in consumers being misled if they 'omit significant information'.¹¹⁸ The ASA's assessment found that Alpro had provided an analysis to establish the environmental impact across the lifecycle of two of the three products on the advertisement.¹¹⁹ However, Alpro's oat drink had not assessed 'the environmental impact of that product's entire lifecycle, including, for example transport, packaging and retail'.¹²⁰ Consequently, the ASA found that the 'Good for the planet' claim in the advert was misleading and breached the Code. Overall, the ASA's 'Ruling on Alpro (UK) Ltd t/a Alpro' reflects that making unsubstantiated green claims breaches the CAP Code, as omitting information is misleading consumers. Similarly to Ryanair, this ruling has demonstrated the ASA's power in holding greenwashing companies accountable. Furthermore, the ruling can create a precedent against other greenwashing companies, such as Oatly UK Ltd (another plant-based company), which was subjected to a similar ruling in January 2022.¹²¹

Overall, alongside the Trade Descriptions Act 1968 and the Consumer Protection from Unfair Trading Regulations 2008, the CMA and ASA reflect the alternative enforcement measures that can be used to help prevent companies from greenwashing. Moreover, the CMA and ASA highlight the impacts that companies can face for misleading consumers, including criminal liability, sanctions, fines and reputational damage.

2.3 Evaluating the Current Law

It has been established that current enforcement measures that help prevent greenwashing include the Trade Descriptions Act 1968, the Consumer Protection from Unfair Trading Regulations 2008, the CMA's Green Claims Code, and the ASA. However, the current law, regulatory authorities and government initiatives are still unsatisfactory in preventing

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Advertising Standards Authority, 'ASA Ruling on Oatly UK Ltd t/a Oatly' (*Advertising Standards Authority*, 26 January 2022) <<https://www.asa.org.uk/rulings/oatly-uk-ltd-g21-1096286-oatly-uk-ltd.html>> accessed 2 May 2022

companies from greenwashing.

Firstly, it must be recognised that there is no legal definition for 'greenwashing'. Cherry confirms there is no official statutory definition within UK law, nor are there any common law elements of a tort that 'would systematize our understanding in a legal, doctrinal sense'.¹²² Cherry's point is reinforced by Robinson, who identifies a lack of legal definitions in her analysis of greenwashing companies.¹²³ Robinson substantiates this view by highlighting the example provided by H&M's 'Conscious' line.¹²⁴ H&M marketed their clothes to consumers using a sustainability initiative: 'Shop our selection of sustainable fashion pieces that make you both look and feel good'.¹²⁵ However, Robinson recognised that there is no single legal definition for marketing-friendly words such as 'sustainable', 'green', or 'environmentally friendly'.¹²⁶ Consequently, the lack of legal definitions that recognise the validity of green claims emphasises that companies are able to use 'green' language to manipulate consumers into buying a product, irrespective of consumer laws.

As previously stated, there is currently no specific UK legislation that identifies greenwashing as unlawful and prohibits companies from making false green claims. Therefore, the Trade Descriptions Act 1968 and the Consumer Protection from Unfair Trading Regulations 2008 provide the legislation used to help prevent companies from greenwashing. However, consumer laws are still limiting, as they only place a responsibility on companies not to mislead consumers. Ezekwesili identifies how the current consumer laws are limited when stopping greenwashing:

'greenwashing claims will only fall foul of these provisions if the misleading claim causes or is likely to cause the average consumer to take a transactional decision they would not have taken otherwise'.¹²⁷

Unsworth reinforces this point, as he emphasises that a deceptive eco-claim will only constitute an offence under either regulation if it 'causes or is likely to cause consumers to enter into a transaction when they would not otherwise have done so'.¹²⁸ Therefore, both regulation 5 and regulation 6 of the Consumer Protection from Unfair Trading Regulations 2008 reflect that a company can only be misleading a consumer after they have made a 'transactional decision', and no action can be taken against a company before a consumer makes a

¹²² Miriam A. Cherry, 'The Law and Economics of Corporate Social Responsibility and Greenwashing' (2014) 14 Davis Business Law Journal 282

¹²³ Robinson (n48)

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Robinson (n48)

¹²⁷ Ezekwesili (n57)

¹²⁸ Unsworth (n61)

'transactional decision'.¹²⁹ Harris supports this point, as she argues that the Consumer Protection from Unfair Trading Regulations 2008 'creates criminal sanctions and direct consumer redress for breaches' but is yet to be 'directed to eco claims'.¹³⁰ As current UK legislation does not directly prevent a company from making false green claims, the legislation needs to be reviewed. Adams and Nehme maintain the argument for review:

'a review of the general laws that regulate misleading and deceptive conduct is required to determine whether such laws provide protection to consumers and investors'.¹³¹

Consequently, the current legislation is not satisfactory at preventing greenwashing and needs to be reformed to prevent consumers from being misled by false green claims.

As the current UK legislation against greenwashing was identified as vague, the Government introduced the CMA's Green Claims Code to help companies adhere to consumer laws. However, it can be argued that the Green Claims Code is still inefficient at preventing greenwashing. Bell et al. maintain that the Code is 'a voluntary code of practice with all of the weaknesses that such self-regulatory systems possess'.¹³² The first weakness of the Green Claims Code is that it is not legally binding. Davies and McQueen support this point, as they state that 'the guidance itself is not legally binding, the consumer protection legislation (the Consumer Protection from Unfair Trading Regulations 2008) that lies behind it is'.¹³³ Furthermore, Turtle et al. highlight that the purpose of the Code is not to replace or substitute the existing UK legislation but emphasises that companies should comply with the existing obligations placed on them.¹³⁴ Both these statements suggest that the Green Claims Code does not add much to the current law but helps companies adhere to it. From this conclusion, it could be argued that the Green Claims Code helps to increase awareness of greenwashing among companies. To support the argument that the Code helps to increase awareness of greenwashing, the CMA also produced a 'Green claims checklist'.¹³⁵ The

¹²⁹ Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277)

¹³⁰ Jacqueline Harris, 'Greenwashing under regulatory scrutiny' (*Pinsent Masons*, 26 January 2021) <<https://www.pinsentmasons.com/out-law/analysis/greenwashing-under-regulatory-scrutiny>> accessed 1 April 2022

¹³¹ Michael Adams and Marina Nehme, 'No New Specific Legislations Required to Deal with "Greenwashing"' (2011) 63(7) *Keeping Good Companies* 419

¹³² Bell (n6) 322

¹³³ Gwendoline Davies and Nick McQueen, 'Greenwashing and Consumer Protection: What Businesses Need to Know' (*Walker Morris*, 22 June 2021) <<https://www.walkermorris.co.uk/publications/greenwashing-and-consumer-protection-what-businesses-need-to-know/>> accessed 1 April 2022

¹³⁴ Turtle (n31)

¹³⁵ 'The Green Claims Code Checklist' (*GOV.UK*, 20 September 2021) <<https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/green-claims-and-your-business>> accessed 4 April 2022

checklist contains thirteen statements to which companies should answer 'yes', in order to comply with consumer protection law.¹³⁶ The thirteen statements list criteria that companies should apply to their claim, to determine that it is accurate and will not mislead consumers with false green claims. However, the Green Claims Code is self-regulating. Consequently, consumers rely on companies to independently ensure that they are correctly following the Green Claims Code. The lack of regulation from external authorities could give companies the opportunity to make false green claims by being purposefully ignorant of the Code. Therefore, the Green Claims Code should be evaluated to determine if self-regulation is the most efficient method to control corporate greenwashing.

The limitations listed reflect that the CMA, like the current consumer laws, still cannot prevent companies from making false green claims. However, Daniel and Liberatore argue that the CMA's powers are still more extensive than the current UK legislation:

'where appropriate (which in practice is not very often), the regulators can intervene by bringing civil or criminal court proceedings or accepting undertakings from the infringing business'.¹³⁷

In contrast, the CMA's powers regarding a breach of competition law are more extensive and wide-ranging.¹³⁸ Daniel and Liberatore's statement shows that in comparison to current UK consumer laws, regulating authorities have been more successful in preventing corporate greenwashing. Nonetheless, greenwashing has continued to increase. Markham et al. identify that the growth of greenwashing is 'understandable', as 'regulators have only rarely used the regulatory tools at their disposal to attempt to quash the practice'.¹³⁹ Therefore, regulating authorities are not helping prevent greenwashing to their fullest potential and perhaps need to be empowered further to help stop companies from making false green claims.

Overall, the current enforcement measures from both legislation and regulating authorities are not satisfactory at preventing companies from making false green claims. Unsworth argues that corporate greenwashing may not be that easy to avoid, due to the current enforcement measures:

'In defence of these, and other companies, greenwashing is not always easy to avoid. The consumer, tort and contract law rules... are very general and establish only that sellers must not mislead buyers'.¹⁴⁰

¹³⁶ Ibid.

¹³⁷ Liberatore (n11)

¹³⁸ Ibid.

¹³⁹ Markham (n34)

¹⁴⁰ Unsworth (n61)

However, these enforcement measures 'do not offer any insight as to what a misleading sustainability claim looks like or how it could be amended, qualified or better substantiated'.¹⁴¹ Therefore, the current UK legislation needs to be reformed, and the rules set out by the UK regulating authorities need to be developed.

3 Reform

3.1 Comparison of International Enforcement Measures

International legislation and other enforcement measures against greenwashing, both current and developing, will be analysed, and compared to the UK's legislation and regulatory authorities. The similarities and differences of enforcement measures against corporate greenwashing will highlight international legislation and initiatives the UK can adopt to help eliminate corporate greenwashing.

Enforcement measures in Australia provide an example of how the UK could develop its consumer laws. Australian Consumer Law has two main provisions that affect how companies can make environmental claims.¹⁴² The first provision places an obligation on companies to 'not engage in any conduct that is likely to mislead or deceive consumers'.¹⁴³ Misleading conduct can include silence, predictions and false advertising.¹⁴⁴ The second provision prohibits companies from making false or misleading representations.¹⁴⁵ Australian Consumer Law requires companies to not falsely represent goods as being a 'particular standard, quality, value, grade, composition, style or model or having a particular history or previous use' or 'have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have'.¹⁴⁶ However, Australian Consumer Law has not been able to eliminate greenwashing in Australia. Flack et al. maintain that the Australian Competition and Consumer Commission (ACCC) need to develop its legislation to reduce false green claims.¹⁴⁷ Furthermore, Flack et al. stated that:

¹⁴¹ Ibid.

¹⁴² Competition and Consumer Act 2010 (Cth)

¹⁴³ Ibid., sch 2, s 18(1)

¹⁴⁴ Australian Competition & Consumer Commission, *Green marketing and the Australian Consumer Law* (Australian Competition & Consumer Commission, 2011)

<<https://www.accc.gov.au/system/files/Green%20marketing%20and%20the%20ACL.pdf>> accessed 12 April 2022

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Haydn Flack, Sarah Barker and Yumi Bhattarai, 'ACCC 2022/23 Priorities: The green light to target greenwashing' (*Lexology*, 17 March 2022)

'there remains... a continuing gap in the ACCC's broader engagement with sustainability-related issues – particularly in relation to the exercise of its powers in relation to anti-competitive conduct under the Competition & Consumer Act'.¹⁴⁸

Subsequently, in March 2022, the ACCC announced their 2022/23 enforcement priorities against misleading environmental and sustainability claims.¹⁴⁹ The Chair of the ACCC identified that greenwashing is a concern for both consumers and businesses.¹⁵⁰ Furthermore, the Chair recognised that greenwashing is 'reducing confidence in the market and leading to unfair competition from businesses making misleading claims'.¹⁵¹ To reduce or even stop greenwashing, the ACCC wants to closely examine businesses making environmental and sustainability claims, including 'claims about consumer goods, manufacturing, the energy sector, and carbon neutrality'.¹⁵² Reducing greenwashing by developing consumer laws can be applied to the UK. By acknowledging the need to reform the current legislation, the UK could identify how regulations 5 and 6 of the Consumer Protection from Unfair Trading Regulations 2008 might be developed to help reduce companies from making false green claims.

The United States also has efficient enforcement measures against greenwashing that the UK might adopt. The US has three main enforcement measures in place to prevent greenwashing. The first measure regulating greenwashing is section 5 of the Federal Trade Commission (FTC) Act.¹⁵³ Section 5 of the Act gives the FTC the authority to bring claims against 'unfair methods of competition' and 'unfair or deceptive act or practises'.¹⁵⁴ However, the FTC Act does not allow consumers to bring a claim against greenwashing companies; only the FTC can.¹⁵⁵ For a company to be found liable for greenwashing, the FTC must 'prove the likelihood that a reasonable consumer would be misled by information from a deceptive

<<https://www.lexology.com/library/detail.aspx?g=c822c767-0d60-4f5d-9aa5-16db77221376>>
accessed 10 April 2022

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Gilbert and Tobin, 'ACCC releases its 2022-23 Compliance and Enforcement Priorities' (*Gilbert and Tobin*, 10 March 2022) <<https://www.gtlaw.com.au/knowledge/accc-releases-its-2022-23-compliance-enforcement-priorities>> accessed 12 April 2022

¹⁵¹ Ibid.

¹⁵² 'Compliance and enforcement priorities for 2022/23' (*Australian Competition & Consumer Commission*, 3 March 2022) <<https://www.accc.gov.au/media-release/compliance-and-enforcement-priorities-for-2022-23>> accessed 10 April 2022

¹⁵³ Federal Trade Commission Act, 15 U.S.C. § 41-58

¹⁵⁴ Ibid., § 45 (US)

¹⁵⁵ Marc McAree and Gieselle Davidian, 'Greenbiz and Getting to Market: What It Takes to Go Green and Limit Liability' (*American Bar Association*, 25 April 2019)

<https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2016_17/winter/greenbiz_and_getting_to_market_what_it_takes_to_go_green_and_limit_liability/#19> accessed 10 April 2022

advertiser'.¹⁵⁶ If the company violates the Act, the company may receive a penalty, including cease and desist orders, civil penalties and fines.¹⁵⁷ The second enforcement measure the US has used since 1992 is the FTC's 'Green Guides'.¹⁵⁸ The Green Guides address unfair or deceptive environmental marketing claims under Section 5 of the FTC Act, as well as helping marketers avoid making misleading environmental claims towards consumers.¹⁵⁹ Most significantly, the Green Guides also focus on using environmental terms in product or service advertising.¹⁶⁰ The Green Guides set out when terms such as 'recyclable' and 'non-toxic' can be used 'by way of illustrative examples'.¹⁶¹ They were most recently revised in October 2012. The revisions included certifications and seals of approval, carbon offsets, 'free of' claims, nontoxic claims, 'made with renewable energy' claims, and 'made with renewable materials' claims.¹⁶² However, the Green Guides do not include organic, sustainable, and natural claims.¹⁶³

The Lanham Act provides the final regulation against greenwashing enforced in the US.¹⁶⁴ Section 43(a) of the Lanham Act imposes civil liability upon a company for any advertising that 'misrepresents the nature, characteristics, qualities, or geographic origin of... goods, services, or commercial activities'.¹⁶⁵ Similarly to section 5 of the FTC Act, under the Lanham Act, consumers cannot bring a claim against a company for greenwashing. Only parties with commercial or competitive interests with the company have standing under the Act'.¹⁶⁶ For a claim to be successful, five elements must be proven. Firstly, the defendant must have made a 'false or misleading statements of fact concerning a product'.¹⁶⁷ Secondly, the statement must have deceived 'a substantial portion of the intended audience'.¹⁶⁸ Thirdly, the statement must also be likely to 'influence the deceived consumers' purchasing decisions'; and fourthly, 'the advertisements were introduced into interstate commerce'.¹⁶⁹ The final element to prove that a company is liable for greenwashing is that 'there is some causal link between the challenged statement and harm to the plaintiff'.¹⁷⁰ If a company is found liable, they can

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ 'Environmentally Friendly Products: FTC's Green Guides' (*Federal Trade Commission*) <<https://www.ftc.gov/news-events/topics/truth-advertising/green-guides>> accessed 5 April 2022

¹⁵⁹ Federal Trade Commission Act, 15 U.S.C. § 45

¹⁶⁰ Markham (n34)

¹⁶¹ Unsworth (n61)

¹⁶² McAree (n155)

¹⁶³ Ibid.

¹⁶⁴ Lanham Act, 15 U.S.C. § 1051-1127

¹⁶⁵ Ibid., § 1125

¹⁶⁶ Ibid., § 1051

¹⁶⁷ McAree (n155)

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

receive civil penalties such as 'injunctions, disgorgement of profits, and payment of plaintiffs' damages and costs'.¹⁷¹

Compared to the UK, US enforcement measures are more efficient at eliminating corporate greenwashing. The US legislation directly identifies the role of false green claims when misleading consumers through the FTC Act and Lanham Act. The FTC Act and Lanham Act set out the regulations for policing false or deceptive greenwashing claims. Consequently, companies are being held accountable for greenwashing. Therefore, it can be suggested that the UK should adopt more direct legislation against greenwashing to help stop companies from making false green claims and hold companies accountable for their actions. The US 'Green Guides' are also very effective against greenwashing. Although both the Green Guides and the UK's Green Claims Code are not legally binding, the US Guide provides clear definitions of 'green' terms. Subsequently, the UK should implement new statutory definitions for terms such as 'greenwashing', 'sustainable', 'biodegradable', 'carbon neutral', and 'environmentally friendly' to help companies reduce their chances of misleading consumers.

3.2 Emerging UK Enforcement Measures

To combat the increasing number of companies that are greenwashing, the UK government and regulating authorities are now developing their current enforcement measures. Following the publication of the CMA's Green Claims Code, the CMA is 'now moving forward with its greenwashing investigation'.¹⁷² The CMA is primarily focusing on the fashion industry. The fashion industry is a significant polluting industry and accounts for 10% of the world's carbon emissions.¹⁷³ Consequently, action against fashion companies that are willing to make false green claims at the cost of damaging our environment needs to be taken. In January 2022, the CMA announced that their investigation would 'scrutinise green claims in light of consumer protection law' and will particularly consider 'claims concerning the use of recycled materials as well as claimed 'sustainable' branded clothing ranges'.¹⁷⁴ The CMA's investigation, it is to be hoped, will help reduce the amount of false green claims in the fashion industry and hold greenwashing companies accountable under consumer laws.

¹⁷¹ Ibid.

¹⁷² Liberatore (n11)

¹⁷³ Rachel Donald, 'Why 'eco-conscious' fashion brands can continue to increase emissions' *The Guardian* (9 April 2022) <https://www.theguardian.com/environment/2022/apr/09/why-eco-conscious-fashion-brands-can-continue-to-increase-emissions?CMP=Share_iOSApp_Other> accessed 12 April 2022

¹⁷⁴ Liberatore (n11)

Additionally, from July to October 2021, the Department for Business, Energy & Industrial Strategy ran a consultation on reforming competition and consumer policy.¹⁷⁵ The consultation highlighted that the government considers that 'slow action and weak sanctions available to the CMA and the courts charged with ruling on consumer protection law breaches' allows companies to get away with greenwashing.¹⁷⁶ There are also no civil fines for breaches, so companies that breach consumer laws can go unpunished.¹⁷⁷ Consequently, the lack of penalties is 'undermining trust in the system'.¹⁷⁸ The consultation suggested that with 'stronger powers' the CMA could implement fines without any court actions, which could 'shorten enforcement by many months or years, stopping harm to consumers far sooner'.¹⁷⁹ The CMA has responded by endorsing the proposal.¹⁸⁰

The ASA is also developing how it handles misleading green claims.¹⁸¹ However, the ASA has limited the development of restricting misleading green claims to the food and beverage sector.¹⁸² The ASA found that several food and drink companies have 'fallen foul of the rules over the past few months'.¹⁸³ Consequently, an increase in holding companies accountable for making false green claims will be enforced by the ASA. To support the elimination of companies making false green claims in the food and drink sector, the Environment Agency (EA) has also launched a new project to establish standardised metrics to measure environmental performance.¹⁸⁴ The EA's project aims to make it easier for companies and consumers to understand 'the environmental performance of companies in key areas such as greenhouse gas reduction and resource efficiency'.¹⁸⁵ Furthermore, the EA hopes that the initiative will help manufacturers communicate their environmental performance more effectively to the public, reducing the chance of greenwashing and encouraging companies

¹⁷⁵ Department for Business, Energy & Industrial Strategy, *Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers* (Department for Business, Energy & Industrial Strategy, July 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf> accessed 13 April 2022

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ Liberatore (n11)

¹⁸² *Ibid.*

¹⁸³ Caroline Greenwell and Peter Carlyon, 'Nowhere to Hide for Greenwashing Brands' (*Lexology*, 11 April 2022) <<https://www.lexology.com/library/detail.aspx?g=d59416b4-e6bb-4ff1-9947-bf1d158405b5>> accessed 12 April 2022

¹⁸⁴ Environment Agency and Department for Business, Energy and Industrial Strategy, 'Project launched to tackle greenwashing in food and drink sectors' (*GOV.UK*, 4 October 2021) <<https://www.gov.uk/government/news/project-launched-to-tackle-greenwashing-in-food-and-drink-sectors>> accessed 12 April 2022

¹⁸⁵ *Ibid.*

to aim for 'greener manufacturing processes and business operations helping to tackle climate change'.¹⁸⁶

The European Commission has proposed a final emerging enforcement measure against greenwashing. On 30 March 2022, the European Commission published a new proposal to improve the regulation on what companies can and cannot say to their consumers, specifically focusing on climate impact and preventing greenwashing.¹⁸⁷ The proposal will make several amendments to the Unfair Commercial Practices Directive.¹⁸⁸ The European Commission's proposal identifies that claims such as 'carbon neutral' and 'climate neutral' are not adequate and need to be substantiated.¹⁸⁹ The European Commission also proposes that false green claims should be prohibited 'unless clear information is provided to substantiate them on the same medium where the claim is made' or if a company can demonstrate 'excellent environmental performance'.¹⁹⁰ The final proposal prohibits a company from displaying a voluntary sustainability label that is not based on a third-party verification scheme or established by public authorities.¹⁹¹ The European Commission's proposal conveys a need to develop legislation against greenwashing across Europe. Greenwell and Carlyon maintain that 'further regulation from the European Commission and regulators in the UK is inevitable'.¹⁹² Therefore, the proposal highlights that UK enforcement measures against greenwashing will be developed soon.

Overall, these emerging enforcement measures and proposals would help to reduce corporate greenwashing. However, the number of companies making false green claims is still rising. Therefore, the remainder of the section will provide proposed reforms for legislation and regulating authorities, to help eliminate corporate greenwashing in the UK.

3.3 Suggested Reform

To help eliminate corporate greenwashing in the UK, several suggestions for reform are

¹⁸⁶ Ibid.

¹⁸⁷ Gilles Dufrasne, 'EU works to beef up regulations on green claims while NGOs take to the courts to combat greenwashing' (*Carbon Market Watch*, 31 March 2022) <<https://carbonmarketwatch.org/2022/03/31/eu-works-to-beef-up-regulations-on-green-claims-while-ngos-take-to-the-courts-to-combat-greenwashing/>> accessed 12 April 2022

¹⁸⁸ Council Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') [2005] OJ L 149

¹⁸⁹ Dufrasne (n187)

¹⁹⁰ Ibid.

¹⁹¹ Greenwell (n183)

¹⁹² Ibid.

advocated. The suggested ideas for reform will include recommendations to amend the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and present new proposals for the government and regulating authorities to adopt, in order to minimise companies being able to make false green claims.

Firstly, regulations 5 and 6 of the CPRs identify that a company can only be liable if their claim 'causes or is likely to cause the average consumer to take a transactional decision they would not have taken otherwise'.¹⁹³ Consequently, a company would only be breaching either regulation if the consumer made a transactional decision. Therefore, it is suggested that the transactional decision test should be removed. The CMA has stated that 'it is arguable that the average consumer and transactional decision tests pose unnecessary and unhelpful legal requirements'.¹⁹⁴ If the CPRs removed the transactional decision test, it would allow companies to be more transparent with their environmental claims. Additionally, a company will no longer only be breaching the law and misleading consumers after a transactional decision but will breach regulations 5 and 6 of the CPR as soon as they have made a misleading environmental claim. Subsequently, all corporate environmental claims will be complete and accurate.

Another suggestion to reduce corporate greenwashing under the CPRs is to amend Schedule 1.¹⁹⁵ Schedule 1 of the CPRs list all the 'commercial practices which are in all circumstances considered unfair'.¹⁹⁶ However, companies making false green claims are not included in the list. Therefore, to help eliminate greenwashing, a company claiming their product or service is 'green' when it is greenwashing, should be added to Schedule 1 of the CPRs.

Another suggestion for reform is introducing 'green' definitions into the UK's legislation and regulating authorities. By introducing 'green' statutory definitions for terms such as 'greenwashing', 'sustainable', 'biodegradable', 'carbon neutral' and 'environmentally friendly', the claims that companies direct towards consumers will be clear and reliable. Introducing 'green' definitions is reinforced by the CMA. The CMA recommended that the

¹⁹³ Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), reg 5

¹⁹⁴ Competition and Markets Authority, 'Environmental sustainability and the UK competition and consumer regimes: CMA advice to the Government' (GOV.UK, 14 March 2022)

<<https://www.gov.uk/government/publications/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government>> accessed 14 April 2022

¹⁹⁵ Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), sch 1

¹⁹⁶ Ibid.

government should create 'statutory definitions of commonly used environmental terms'.¹⁹⁷ By implementing this recommendation, companies would be able to recognise and understand if their claim follows the criteria of what constitutes their product or service being 'green'. Furthermore, companies would be encouraged to be truthful about their claims and not purposefully mislead consumers with false green claims. The CMA's publication supports this point, as the CMA believes that providing clear statutory definitions would enable consumers to 'easily compare products and stop unscrupulous businesses deliberately misusing these terms'.¹⁹⁸

The next suggestion for reform is to make it compulsory for companies to provide all environmental information to consumers. This suggestion is supported by the CMA. The CMA published advice to the government in March 2022 that recommends that the Secretary of State should implement a new rule that places an obligation on companies to disclose all their environmental information.¹⁹⁹ By introducing new measures that impose an obligation on companies to disclose their environmental information, consumers would be better informed to identify environmentally friendly products and services and give them the opportunity to make a transactional decision based on the company's environmental impact. Therefore, placing this obligation on companies would encourage them to be truthful about their product or service. Moreover, this could also help influence a company's 'green' decisions, as the demand for 'environmentally friendly' products is rising.

The advertising mediums on which companies can convey their false environmental claims can also be restricted. Currently, the UK's regulating authorities and legislation only address false green claims in advertising. Markham et al. highlight that although current legislation and regulating authorities can be used to address misleading environmental claims, "these laws are limited to advertising and do not include other promotional mediums where firms have been known to greenwash".²⁰⁰ These 'other promotional mediums' include 'public statements, material posted on company websites or sustainability reports'.²⁰¹ Therefore, the current enforcement measures should further expand their powers from advertising, allowing greenwashing across all company publications to be eliminated.

¹⁹⁷ Competition and Markets Authority, 'Environmental sustainability and the UK competition and consumer regimes: CMA advice to the Government' (*GOV.UK*, 14 March 2022) <<https://www.gov.uk/government/publications/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government>> accessed 14 April 2022

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ Markham (n34)

²⁰¹ *Ibid.*

The final proposal to help reduce corporate greenwashing in the UK is to increase the regulating authorities' powers. As previously identified, the CMA and ASA help to minimise consumers being misled through advertising. However, 'regulators have only rarely used the regulatory tools at their disposal to attempt to quash the practice' as their lack of powers have limited their ability to hold companies accountable for greenwashing.²⁰² Therefore, the UK government should incorporate the Department for Business, Energy & Industrial Strategy's consultation paper on reforming competition and consumer policy into the current UK legislation.²⁰³ This would allow the CMA to implement fines without any court actions and remedy the false green claims faster. Overall, increasing the regulating authorities' power will help minimise corporate greenwashing before a consumer's transactional decision.

Conclusion

Companies are obligated to be truthful toward their consumers. However, greenwashing has become increasingly prevalent, as consumers want more environmentally friendly products and services that companies cannot provide.

The first section highlighted that Corporate Environmental Responsibility places an obligation on companies to consider the environment when making executive decisions. Companies must demonstrate their environmental commitment and awareness while being transparent with their reporting, measuring, and auditing.²⁰⁴ This is important for companies, as the objective of these decisions is to help protect and restore the environment. Consequently, company reputation has become an integral factor in consumers' purchasing decisions. The research has identified that consumers are becoming more 'eco-conscious', resulting in a growing demand for more environmentally friendly products.²⁰⁵ Companies are shifting towards having a greener reputation to satisfy consumers. A consistent approach companies are using to promote their environmental performance is by making green claims. However, the research has found that companies often try to manipulate consumers with false green claims. False green claims have been established as declarations made by companies about

²⁰² Ibid.

²⁰³ Department for Business, Energy & Industrial Strategy, *Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers* (Department for Business, Energy & Industrial Strategy, July 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf> accessed 13 April 2022

²⁰⁴ Bisschop (n14)

²⁰⁵ Turtle (n31)

the 'environmentally friendly' qualities or characteristics of goods and services that are factually incorrect.²⁰⁶ False green claims are also known as greenwashing. Examples of corporate greenwashing, such as H&M and Volkswagen, have demonstrated that companies are often able to promote their products as green, highlighting that the current UK enforcement measures are unsatisfactory in preventing greenwashing.

There is no specific UK legislation against greenwashing. However, UK consumer laws still places a responsibility on companies to not mislead consumers. The Trade Descriptions Act 1968 and the Consumer Protection from Unfair Trading Regulations 2008 provide provisions against companies misleading consumers with factually incorrect claims. However, there is no clear legal definition for greenwashing. This limits current enforcement measures, as having no definition for greenwashing creates restrictions. The CPRs are also limited against prohibiting corporate greenwashing, as it only places an obligation on companies to not mislead their consumers. Companies will only be liable if their actions or omission 'causes or is likely to cause consumers to enter into a transaction when they would not otherwise have done so'.²⁰⁷ Journal articles have highlighted that current consumer legislation needs to change, to accommodate the prohibition of greenwashing.

The research has also shown that the UK uses regulating authorities to help reduce corporate greenwashing. The CMA and the ASA enforce consumer protection legislation. The CMA also published the Green Claims Code to provide guidance, helping companies promote environmentally accurate claims. However, the Code is not legally binding and can only be used as guidance. On the other hand, it can be argued that the Green Claims Code does create awareness. The Code helps to educate companies on what constitutes greenwashing, limiting a company's chances of unknowingly greenwashing. However, this does not account for companies willing to use false green claims to mislead consumers. Over the past year, the number of companies the ASA has banned for greenwashing has tripled.²⁰⁸ Several brands, such as Ryanair, Alpro, Quorn and Shell have breached the CAP Code by greenwashing, resulting in the advertisement being banned by the ASA.²⁰⁹ Ultimately, this

²⁰⁶ Organisation for Economic Co-operation and Development, 'Environmental Claims: Findings and Conclusions of the OECD Committee on Consumer Policy' (DSTI/CP(2010)16/FINAL, Organisation for Economic Co-operation and Development, March 2011)

<<https://www.oecd.org/sti/consumer/48127506.pdf>> accessed 8 March 2022

²⁰⁷ Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277)

²⁰⁸ Zoe Tidman, 'Number of adverts banned for 'greenwashing' triples in a year' *The Independent* (20 March 2022) <<https://www.independent.co.uk/climate-change/news/adverts-greenwashing-triple-asa-watchdog-b2039055.html>> accessed 30 April 2022

²⁰⁹ Ellen Ormesher, '8 times brands fell foul of ASA for 'greenwashing'' *The Drum* (23 March 2022) <<https://www.thedrum.com/news/2022/03/23/8-times-brands-fell-foul-asa-greenwashing>> accessed 30 April 2022

represents how the current enforcement measures are still not preventing false environmental claims and corporate greenwashing is still rising.

An analysis of the international enforcement measures has highlighted how the UK can adopt measures to help eliminate corporate greenwashing. The Australian Competition and Consumer Commission has identified greenwashing as a current issue and wants to examine companies making environmental claims more closely.²¹⁰ The United States also has efficient enforcement measures against greenwashing that the UK can adopt. Under the Federal Trade Commission Act's 'Green Guides', the US has produced 'green' terms that help educate companies on what constitutes a green claim.²¹¹ If the UK developed 'green' terms to incorporate into the green Claims Code and legislation, companies could become more knowledgeable about greenwashing, reducing the number of companies unintentionally greenwashing.

The research has also noted that the UK has identified greenwashing as an issue and is taking steps to develop current enforcement measures. The CMA continues to investigate greenwashing, explicitly holding the fashion industry accountable.²¹² This will enable the CMA to highlight what entails an environmental claim and show other companies that greenwashing is not acceptable. The CMA has also endorsed the Department for Business, Energy & Industrial Strategy's proposal to increase the CMA's powers by allowing them to implement fines without court action, therefore reducing the time companies can continue greenwashing.²¹³ The Environment Agency has also introduced a new project to establish a standardised method to measure a company's environmental performance.²¹⁴ This would enable consumers to observe a company's environmental impact, reducing the chance of being misled by false green claims and encouraging companies to be truthful. Research has also identified that the European Commission has recently proposed to improve regulation against greenwashing. The proposal aims to amend the Unfair Commercial Practices

²¹⁰ Ibid. (n 147)

²¹¹ McAree (n155)

²¹² Liberatore (n11)

²¹³ Department for Business, Energy & Industrial Strategy, *Reforming Competition and Consumer Policy: Driving growth and delivering competitive markets that work for consumers* (Department for Business, Energy & Industrial Strategy, July 2021)

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf)

[001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf)> accessed 13 April 2022

²¹⁴ Environment Agency and Department for Business, Energy and Industrial Strategy, 'Project launched to tackle greenwashing in food and drink sectors' (*GOV.UK*, 4 October 2021)

<<https://www.gov.uk/government/news/project-launched-to-tackle-greenwashing-in-food-and-drink-sectors>> accessed 12 April 2022

Directive,²¹⁵ including introducing 'green' terms and a labelling scheme.²¹⁶ This proposal would drive companies to provide more precise information about their claims, reducing the likelihood of consumers being misled with false claims.

The final section highlighted a series of recommendations to help eliminate corporate greenwashing. Firstly, the Consumer Protection from Unfair Trading Regulations 2008 should be reformed. Removing the transactional decision test would help reduce greenwashing. A company will only breach the CPRs if an action or omission 'causes or is likely to cause consumers to enter into a transaction when they would not otherwise have done so'.²¹⁷ Introducing false green claims into Schedule 1 of the CPRs would further enable the elimination of greenwashing.²¹⁸ Including greenwashing in the list of 'commercial practices which are in all circumstances considered unfair' would specify to companies that greenwashing would contravene UK law.²¹⁹

Further suggestions have been made to introduce 'green' statutory definitions. Clear definitions would inform companies if their product or service could fall within the purpose of being 'sustainable', 'biodegradable', 'carbon neutral', or 'environmentally friendly'. This would also empower consumers to make a buying decision that is supported by legal definitions. The CMA has also suggested that companies provide all environmental information for consumers.²²⁰ Consequently, the consumer would be able to identify environmentally friendly companies and their products and make an informed transactional decision.

Overall, this analysis has identified that the current UK enforcement measures against greenwashing need to be developed. Developing current enforcement measures could help inform consumers about false green claims and eliminate corporate greenwashing through legislation and regulating authorities. If companies market their products and services as having government-supported green claims, a company's environmental performance will be projected positively towards 'eco-conscious' consumers. This could potentially increase

²¹⁵ Council Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') [2005] OJ L 149

²¹⁶ Ibid.

²¹⁷ Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277)

²¹⁸ Ibid, Sch 1

²¹⁹ Ibid.

²²⁰ Competition and Markets Authority, 'Environmental sustainability and the UK competition and consumer regimes: CMA advice to the Government' (GOV.UK, 14 March 2022) <<https://www.gov.uk/government/publications/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government>> accessed 14 April 2022

profit for companies and provide an incentive for companies to eliminate greenwashing in their marketing.