



3 COMPANIES FOUND TO HAVE ENGAGED IN GREENWASHING

27 September 2022

Introduction

Sustainability and positive impact on the environment continue to be an increasing strategic focus area and a vocal point for companies.

The increased focus on these important topics is reflected in marketing and branding initiatives initiated by companies.

It has become apparent that the positive impact (or just less of a negative impact) that products or services may have on the environment and climate can be a selling point for companies and can as such provide a competitive edge.

With the increased attention on the importance and value of being a sustainable company, greenwashing has become a focus area for the Danish Consumer Ombudsman (the

“Ombudsman”) in the efforts to ensure that companies do not brand themselves as being more sustainable or environmentally friendly than they in reality are.

When a company promotes itself with a more environmentally friendly image than what the actual circumstances can support, this is known as greenwashing.

Notice from the Danish Consumer Ombudsman

23 September 2022, the Ombudsman publicised a [notice](#) informing about 3 Danish cases in which the Ombudsman had found that the marketing activities infringed the Danish Marketing Practise Act (in Danish “*Markedsføringsloven*”). The companies had claimed some environmental benefits to their products, a claim which was found to be unsubstantiated and consequently seen as greenwashing.

The companies were found to have infringed the Marketing Practise Act in the following ways.

- A company had advertised with the phrase “*Refuel greener – new 95 with less CO2 emission*”.¹ It was, however, found that the environmental impact of the fuel was about the same as that of the competitors’ products. The statement was therefore misleading.
- Another company advertised that their sponges were “*100% natural*”.² The Ombudsman found that the sponge had undergone a lengthy manufacturing process and thus concluded that the sponges could not be advertised as “*100% natural*”. The statement was therefore misleading.
- Lastly, a company had advertised its sunscreen with the words “*environmentally friendly*” and the phrase “*take care of the ocean and yourself with biodegradable sunscreen*”.³ The sunscreen was, however, found to have a damaging effect on the ocean environment, especially on corals. The statement was therefore misleading.

As early as in 2014, the Ombudsman released [guidelines](#) on the greenwashing issue with a [short version](#) published in 2021.

As a general principle – also clearly stated in both Danish and EU legislation – companies engaging in environmental advertisement (and in advertisement in general) must be able to support and document their statements.

¹ In Danish “*Tank grønnere – ny 95 med mindre CO2 udledning*”

² In Danish “*100% naturlig*”

³ In Danish “*miljøvenlig*” and “*Pas på havet og dig selv med biologisk nedbrydelig solcreme*”

Such documentation must be based on standard scientific evidence, and where any (substantial) disagreement exists within the scientific community, such disagreement must also be communicated in the company's advertisement. A company cannot legally choose only to include certain information in their advertisements that will give a skewed image of the circumstances.

The Ombudsman generally makes a distinction between general and concrete statements.

General statements are positive statements regarding a company or products such as "*environmentally friendly*", "*green*", or "*sustainable*". Such statements may reasonably lead consumers to believe that the company or product in question has no negative impact on the environment. Therefore, in order for such statements not to be misleading, the company or product in question must be one of the absolute best on the market with regards to the environmental impact.

The use of the word "sustainable" (in Danish "*bæredygtig*") in particular is subject to strict demands. Sustainable is interpreted by the Ombudsman to mean the fulfilment of the current generation's needs without jeopardising the future generations' possibility to fulfil their needs. If a company wishes to include "sustainable" in their advertisement, a lifecycle analysis must prove that the product or service in question does not jeopardise future generations' possibility to fulfil their needs. Further, "sustainable" also must take into account social and ethical issues.

Concrete statements regarding a product's environmental impact requires that the company is able to document the specific statement, e.g. if a product is promoted as being produced with "100% recyclable material".

Our Comments

It has a strong value for companies to be able to brand themselves as sustainable and environmentally friendly. Many companies all over the world invest heavily in adapting their business strategies to a more sustainable business model.

There is an obvious need for the market to be able to rely on the information provided in marketing activities. The advertisements made by the 3 Danish companies were clearly misleading in the meaning of the Marketing Practise Act, the Unfair Business-to-Consumer Commercial Practices Directive, and the guidelines published by the Ombudsman regarding environmental advertisement.

Misleading advertisement, such as greenwashing (and truthful environmental advertisement for that matter), has a clear potential to be highly effective as the environmental characteristics of products and services are increasingly of concern to consumers. Being able to utilise the effectiveness hereof without having to bear the cost of achieving ‘environmental friendliness’ is a compelling reason for companies to participate in greenwashing.

In addition to being misleading, greenwashing is also a problem for the green transition as it hampers green innovation.

The recent notice from the Ombudsman underlines the importance of this topic.

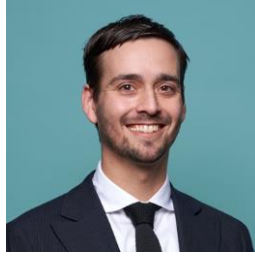
Need help with environmental advertisement?

At Moalem Weitemeyer, we are following both the regulatory and market evolution of environmental advertisement and are always ready to advise our clients on the current situation

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:



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