



DANISH CROWN – JUDGMENT ABOUT GREENWASHING

On March 1, 2024, the Western High Court of Denmark delivered its verdict in the case initiated by the Danish Vegetarian Society and the Climate Movement in Denmark (the "Associations") against Danish Crown regarding alleged “greenwashing” by the company.

The associations asserted that Danish Crown violated Section 5 of the Danish Marketing Practices Act by employing misleading advertising tactics by using the statements “*Danish pig is more climate-friendly than you think*” and “*Climate-controlled pig*”.

Additionally, The Associations also urged the Court to prohibit Danish Crown from using these expressions in future marketing endeavors and asked that Danish Crown would be required to rectify the statement “*Danish pig is more climate-friendly than you think*”.

The Court ruled that the statement “*Danish pig is more climate-friendly than you think*” could not be considered misleading under Section 5 of the Danish Marketing Practices Act. Consequently, Danish Crown was acquitted of the claims related to this statement.

Regarding the statement “*Climate-controlled pig*”, the Court concluded that Danish Crown had violated Section 5 of the Danish Marketing Practices Act on misleading advertising. However, the Association’s plea for a prohibition on all future marketing use of the term “*Climate-controlled pig*” was not upheld.

As the case was deemed a matter of principle, it was processed by the Western High Court of Denmark as first instance. The verdict in the Danish Crown case can be directly appealed to the Supreme Court due to its precedent-setting nature.

The Consumer Ombudsman's Recent Interventions

The Danish Consumer Ombudsman has increased the focus on greenwashing in recent years, emphasizing that claims to have any effect on the climate requires more than mere likelihood of a correlation.

In a case from January 2024, CO2 compensation for forest conservation projects was deemed to necessitate documentation of an actual threat to forest areas. In this case, the Consumer Ombudsman stated that CO2 compensation through forest conservation projects is inadequate if it is only implied, rather than documented, that deforestation would occur in the relevant forest areas had it not been for the conservation projects. The use of such statements requires evidence that future deforestation in those areas would indeed occur if they were not encompassed by conservation projects.

As per the Consumer Ombudsman, this marketing approach is considered misleading for consumers who pay an extra fee for their fuel, intended to fund CO2 compensation to offset emissions.

Update on the Consumer Ombudsman's Quick Guide and EU's Directive on Green Claims

The Danish Consumer Ombudsman is currently updating the “Quick Guide for Companies on Environmental Marketing” with the latest practices and illustrative examples. Additionally, progress is expected in the legislative process concerning the awaited EU directive on green claims, which was proposed in March 2023. The EU Parliament is expected to address this directive during March 2024.

This progression signals the need for businesses to exercise caution when making environmental statements and it is expected to impact marketing practices in 2024.

Our Remarks

The number of complaints and cases related to misleading environmental marketing has steadily increased. In 2023, the Danish Consumer Ombudsman received 146 complaints, resulting in 54 plaintiffs and 4 police reports. Businesses should exercise caution when making environmental claims without sufficient documentation.

At Moalem Weitemeyer, we have dedicated Corporate & Commercial and litigation teams who are experts in competition and marketing law and are prepared to support your company in addressing any challenges related to “greenwashing”. With extensive experience and specialized knowledge, our team is poised to provide legal counsel and manage any issues that may arise in environmental marketing. We understand the importance of regulatory compliance and we are available to ensure that your business successfully navigates through the intricate legal aspects of this domain.

Reach out to us to ensure that your company maintains an ethical and lawful foundation for its environmental communication.

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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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