



DENTONS

Legal Framework Applicable to Greenwashing

Country Focus: France

Grow | Protect | Operate | Finance

France	
Legal definition of greenwashing	✗
Targeted greenwashing legislation	✗
Direct regulation of greenwashing (through consumer protection, advertising standards, unfair competition or environmental law frameworks)	✓
Soft law guidance or standards on greenwashing	✓
Applicability of existing national legal frameworks to greenwashing (depending on facts)	✓

Summary of relevant laws and provisions

In France, greenwashing, or the use of misleading or deceptive environmental claims, can be regulated by various legal frameworks, such as consumer protection law, contract law, environmental standards law, unfair competition law, and criminal law.

1. Consumer protection law prohibits misleading commercial practices that may affect the economic behavior of consumers or harm the interests of a competitor. This law applies to any communication, action, omission or practice related to the promotion, sale or supply of goods or services, including environmental claims. The law requires that environmental claims be precise, justified, verifiable and not exaggerated. Also, they must comply with the recommendations of the French Advertising Regulatory Authority (ARPP).
2. Contract law allows the nullity of a contract based on fraud (“dol”) or mistake (“erreur”) if the consent of a party was vitiated by a false or inaccurate representation of the essential characteristics of the good or service, including its environmental qualities or impact.
3. Environmental standards law imposes specific obligations and prohibitions on the advertising of the environmental impact of goods and services, such as the use of logos, labels, or references to carbon footprint, biodiversity, or circular economy. These provisions apply to any person who produces, distributes, or advertises goods or services, and they are subject to the control of the Ministry of Environment and the Directorate General for Competition, Consumer Affairs and Fraud Control (DGCCRF).
5. Unfair competition law is based on the general civil liability law and protects the interests of competitors who may suffer harm from the dishonest or unlawful behavior of another market participant. This law can be invoked to sanction greenwashing practices that create confusion, discredit, or parasitism, such as the imitation of a competitor’s environmental label or the denigration of a competitor’s environmental performance even if it does not expressly refer to greenwashing.
6. Criminal law does not expressly refer to greenwashing practices, but it could also be used to punish greenwashing practices deception, for example depending on the circumstances and the intention of the perpetrator. This offence can be committed by any person who, by any means, misleads or attempts to mislead the buyer or user of a good or service about its nature, origin, composition, quality, or environmental impact.

Summary of guidance and soft law

In addition to the legal frameworks mentioned above, there are also some guidance and soft law instruments that aim to prevent or reduce greenwashing in France. These include:

1. The ARPP recommendations on environmental claims, which provide ethical and professional standards for advertisers and media to ensure that environmental claims are honest, truthful, and respectful of the environment and consumers.
2. The French National Strategy for Ecological Transition to Sustainable Development (SNTEDD), which sets out the objectives and priorities for the implementation of the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change, and which encourages the development of responsible and transparent communication on environmental and social issues.

Claims & enforcement

Greenwashing claims can be brought by various actors and bodies, depending on the legal framework and the type of remedy sought. These include:

1. Consumers, who can refer misleading commercial practices to the DGCCRF or to the courts, either individually or collectively through a group action or a consumer association.
2. Competitors, who can sue for unfair competition before the civil courts and seek injunctions, damages, or publication of the decision.

3. NGOs, who can bring civil actions in cases of deceptive commercial practices or unfair competition, if they can justify an interest in doing so.
4. Public authorities, who can initiate administrative or criminal proceedings and impose sanctions for violations of environmental standards law or criminal law, such as fines, injunctions, confiscation, or imprisonment.

Sanctions & remedies

The sanctions and remedies for greenwashing vary according to the legal framework and the nature and gravity of the infringement. They can include:

1. Fines up to 300,000 euros for individuals and up to 10% of the average annual turnover / 1,500,000 euros for legal persons, depending on the legal provision breached and the circumstances of the case.
2. Imprisonment, which can be up to five years, depending on the offence committed and the aggravating factors.
3. Civil damages, which can be awarded to compensate for the harm suffered by the victims of greenwashing, such as the loss of customers, the loss of reputation, or moral prejudice.
4. Injunctions, which can be ordered by the administrative or judicial authorities to stop or prevent the continuation of the greenwashing practice, if necessary, under a penalty.
5. Publication of the decision, which can be ordered by the administrative or judicial authorities to inform the public of the greenwashing practice and its sanction, and to restore the truth.

Evidence & substantiation

The evidence and substantiation requirements for greenwashing claims depend on the legal framework and the burden of proof. In general, the following principles apply:

1. The claimant must prove the existence and the harm of the greenwashing practice, unless there is a legal presumption in its favor.
2. The respondent must prove the accuracy and the justification of the environmental claim, unless there is a legal presumption in its favor.
3. The public officials, such as the DGCCRF agents, have investigative powers and can require the disclosure of any document or information that may justify the environmental claim.
4. The courts can order any measure of inquiry or expertise that may be useful for the resolution of the dispute, such as the examination of witnesses, the production of documents, or the appointment of an expert.

Recent litigation

To date, our team is not aware of any litigation in France focusing specifically on greenwashing.

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