



DENTONS

Legal framework applicable to Greenwashing

Country focus: Kenya

Grow | Protect | Operate | Finance

| Kenya | |
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| 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 Kenya, greenwashing, or the use of misleading or deceptive environmental claims, can be regulated by various legal frameworks, such as environmental law consumer protection law, contract law, advertising standards law, unfair competition law, civil law, tort law (where applicable) and criminal law.

1. Environmental law in Kenya contains provisions on greenwashing with respect to carbon market investments. The Climate Change Act, 2016 makes it an offence for participants in a carbon market to give false or misleading information with respect to environmental or financial gains from the carbon investment market and manipulate carbon credit measurements in order to claim additional measurements.
2. Consumer protection law contains provisions that protects consumers from improper trade practices including deceptive, misleading, unfair or fraudulent conduct by businesses regarding goods or services in consumer transactions. The Kenya Consumers Protection Advisory Committee is established as a regulator whose functions include establishment of conflict resolution mechanisms on consumer issues and where appropriate referral of complaints to the appropriate competent authority for further action.
3. Contract law does not expressly provide for greenwashing however contracts may be nullified if parties engaged in misrepresentation on terms of the contract. Civil and tort law remedies may also be sought.
4. Unfair competition law protects consumers from unfair and misleading market conduct with provisions to enhance welfare and while promoting effective competition within the market. The Competition Authority (CAK) is established to promote and enforce compliance with consumer law provisions through investigation and action on anti-competitive conduct. The CAK also regulates **advertising standards** through oversight on anti-competitive or misleading conduct by market participants.
5. Criminal law does not expressly provide for greenwashing practices however where acts constituting greenwashing occur, prosecuting agencies may rely on certain broad offences under the Penal Code such as fraud and utterance of false statements by officials of companies.



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 Kenya including The Paris Agreement on Climate Change adopted by the Conference of the Parties at the 21st session in Paris in 2015.

Relevant regulators such as the Competition Authority of Kenya have in the past applied global best practices such as guidelines on the implementation of the Sustainable Development Goals in their determinations on regulated conduct.

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. The National Environmental Tribunal for resolution of disputes under the Climate Change Act, 2016.
2. The Competition Authority of Kenya for resolution of claims arising from infringement on provisions on consumer welfare.

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. Offences under the Climate Change Act, 2016 with regard to greenwashing on carbon emissions will attract upon conviction a fine not exceeding five hundred million shillings, imprisonment for a period not exceeding ten years or both.
2. The Competition Act prescribes specific sanctions for a wide range of prohibited actions however the Act prescribes a general penalty of a fine not exceeding five hundred thousand shillings, imprisonment for a term not exceeding three years, or both.
3. Civil and contractual damages, which can be awarded to compensate for the harm suffered by the victims of greenwashing under contract or otherwise.
4. Injunctions, which can be ordered by the administrative or judicial authorities to stop or prevent the continuation of the greenwashing practice.

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 claimants must generally prove the existence of the greenwashing practice and the harm caused to them unless the specific instance provides for a legal presumption in their favour.
2. Public Authorities and regulators have investigative powers including on their own motion to establish the existence of greenwashing practice, the harm caused and to levy applicable sanctions.

Recent litigation

The Climate Change (Amendment) Act, 2023 introduced provisions on regulation of carbon markets that include prohibition on greenwashing with regard to misreporting on carbon emissions.

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