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GREENWASHING: WHY ENVIRONMENTAL CLAIMS NEED LEGAL REGULATION

-Sneha Gupta

ABSTRACT:

Walk into a supermarket today and we can see that the entire establishment has turned green. Shampoos promise to be planet-friendly, clothes belong to consciousness collections, packaging is made of 100% sustainable materials, and companies announce their plans to become carbon neutral someday in the distant future. Green has turned out to be a very profitable color.

But what happens when the color is greener than the product?

This is where greenwashing comes in. To put it simply, greenwashing occurs when organizations make unsubstantiated or misleading claims about the environmental benefits of their services, products, or operations. There is an element of lying, but usually, it is a shade less egregious, as it could just be a combination of vague statements, selective information disclosure, appealing green imagery, or climate-friendly pledges that do not have a concrete plan behind them[1].The issue with greenwashing is that it does not just create bad advertising; it could deter consumers from choosing genuinely climate-conscious options and reward unsustainable companies for their misleading claims.

SUSTAINABILITY AS A SELLING POINT:

Environmentally aware customers have grown in recent years and continue to grow. Companies have responded to this change in consumer behavior in the usual way - by trying to appeal to them. There is no shame in making truthful statements about the environmental impact of one's

[1] Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024, Guideline 2(e), Central Consumer Protection Authority, Department of Consumer Affairs, Government of India.

product or service. The problem begins when being sustainable is much easier to talk about than to actually do.

Take, for instance, a company that promises to be carbon neutral. What does that really mean? What are the company's emissions? How do they offset those that they cannot eliminate? Does the company even have such policies and programs in place? An average consumer, browsing the supermarket shelves, would not be able to calculate the carbon footprint of any given product in front of them. They would have to take it from the companies, which have much more information at their disposal than the average buyer. This asymmetry of information is what greenwashing takes advantage of.

Luckily for consumers, India has taken notice of this issue. In October 2024, the Central Consumer Protection Authority ("CCPA") adopted the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 ("Greenwashing Guidelines"). The Greenwashing Guidelines define greenwashing quite broadly as "concealment or omission of any information or making of any exaggerated, unsubstantiated, or misleading claims in relation to environmental aspects." In other words, companies cannot use vague environmental statements as marketing tools anymore.

INDIA'S LEGAL RESPONSE TO GREENWASHING: A GOOD START?

Prior to the adoption of the Greenwashing Guidelines, there was not much that could be done about greenwashing in India, as misleading environmental claims did not fall under any specific legislation. However, the Consumer Protection Act, 2019 ("CPA") prohibits misleading advertisements and gives the CCPA extensive authority over them. In particular, Section 21 of the CPA allows the CCPA to direct the discontinuation and modification of misleading advertisements and imposes penalties on those responsible, including hefty fines of up to ₹10 lakh and ₹50 lakh for repeat offenders[2].

The Greenwashing Guidelines build upon the CPA and its prohibitions by providing more detail with regards to environmental claims. Essentially, any marketer that wishes to use words such as "green," "eco-friendly," "sustainable," "natural," or "carbon neutral" has to be prepared to substantiate their claims fully. Additionally, such companies must take care not to make any

[2] The Consumer Protection Act, No. 35 of 2019, § 2(28), INDIA CODE (2019).

unsubstantiated comparisons and ensure that their environmental claims are measurable and verifiable, wherever possible, backed up with relevant certification or third-party scientific research, where applicable[3].

Notably, the Advertising Standards Council of India (“ASCI”) has adopted similar guidelines for advertisers, requiring absolute statements such as “environment friendly” or “sustainable” to be backed up by verifiable data and/or authoritative accreditation[4].

Should these guidelines be enough to stop corporations from exploiting environmentally conscious consumers? I do not think so. They might be a good start, but I am afraid that there is more to the issue than most people usually consider.

GREENWASHING AND ENVIRONMENTAL JUSTICE:

When evaluating the consequences of greenwashing, it is essential to take a step back and view the issue from a holistic perspective. The ability to choose between more and less environmentally friendly products is a privilege, as many of the world’s natural resources are located in specific areas and are disproportionately affected by pollution. People who live near industrial sites, landfills, mines, and polluted rivers bear the brunt of environmental damage, even when they are not directly responsible for it. Therefore, when an irresponsible company is greenwashing one of its less polluting departments, it is not just the consumer that is being deceived. People who live near areas of pollution are the real victims of greenwashing, as they are often the ones that suffer the consequences of the production process. This indirect exploitation is the reason why I believe that environmental law, and not just advertising law, should govern greenwashing.

India’s environmental laws have been steadily evolving in recent years, with the Supreme Court frequently reiterating the importance of the environment in the Indian legal system. In particular, Article 21 of the Indian Constitution guarantees the fundamental right to life, which has since been interpreted to include the right to a healthy environment. Additionally, Articles 48A and 51A(g) impose a duty to protect and improve the environment on both the state and individuals.

[3] Id. § 21.

[4] Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024, Central Consumer Protection Authority, Department of Consumer Affairs, Government of India.

In *Vellore Citizens' Welfare Forum v. Union of India*[5], the Supreme Court found that the Precautionary Principle and the Polluter Pays Principle were integral to Indian environmental law. These principles, which have since been adopted in numerous other jurisdictions, require companies to internalize the costs of pollution control and hold them strictly liable for any damage to the environment.

The Polluter Pays Principle is particularly relevant to the discussion of greenwashing, as it highlights the asymmetry between the profits that corporations can make through misleading environmental claims and the damage that they ultimately cause. If the environment has to pay for the corporate profits, the very existence of greenwashing is a sign that the Polluter Pays principle is not truly followed in India. After all, there is nothing stopping a company that engages in greenwashing from continuing to pollute as before or making other environmental damage, as long as they can profit from the appearance of sustainability.

The Supreme Court's observations in *Hanuman Laxman Aroskar v. Union of India*[6] are also worth noting. In that case, the Court stated that "environmental governance" should focus on ensuring that the environment is "a living and vibrant entity" and that "equity, transparency, and procedural propriety in all matters relating to the environment" should be promoted. In other words, environmental law in India is supposed to be about more than just ticking boxes or adopting policies on paper - it has to make a real difference. This philosophy should also be applied to corporate environmental claims.

WHY THE LAW SHOULD GO BEYOND ADVERTISING LAW

As mentioned above, the Greenwashing Guidelines represent a welcome change, as do the new guidelines issued by the Advertising Standards Council of India. However, I do not think that they go far enough. In particular, I believe that India's legal system needs to take the following steps in order to adequately combat greenwashing.

First, environmental claims should be standardized and verified to ensure that they meet specific criteria. That way, an average consumer would not have to be an expert to distinguish between legitimate and misleading claims.

[5] *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647.
[6] *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 S.C.C. 401 (India).

Second, regulators should ensure that companies adhere to the principle of full disclosure. In other words, when a company advertises one particular pro-environmental aspect of its operations, it should not hide other aspects that could potentially harm the environment.

Finally, I think that the issue of greenwashing should be brought into alignment with existing environmental law. In particular, when greenwashing leads to consequences for the environment, it should be punished as an offense under environmental law, not just deceptive advertising. The problem with misleading advertising is that it usually only affects the consumer, who decides that the product is not worth buying after realizing that the advertising campaign was misleading. However, in the case of greenwashing, there are usually much broader repercussions that could be felt by many different parties.

At the end of the day, greenwashing is problematic because it creates unfair advantages for companies that engage in misleading environmental marketing. Law cannot dictate what companies say about their sustainability efforts, but it can certainly dictate which statements have to accompany those that they make. India’s new Guidelines represent a step in that direction and, as mentioned above, should be praised for being a good start. At the same time, I believe that India’s environmental laws should also recognize the importance of honest communication in order to strike a balance between protecting the rights of consumers and promoting environmental sustainability.

After all, in a country where the right to a healthy environment is constitutionally protected, protecting the environment also means protecting the truth told about it.