

Greenwashing in Latin America

A Practical Guide for CG&R Companies

The rise of conscious consumerism has led to consumers actively seeking sustainable, eco-friendly and ethically produced goods.

In response to this growing demand, many consumer goods and retail (CG&R) companies have embraced sustainability as a marketing tool, using green credentials as a powerful selling point, attracting environmentally aware consumers.

However, this has given rise to a significant challenge: the risk of greenwashing by overstating how environmentally friendly their product, aims and policies are.



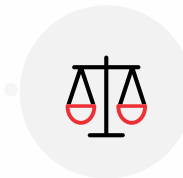
Reputation damage

A company who claims to be sustainable but is later exposed for unethical labor practices can face widespread public outrage and boycotts, causing irreparable damage to the company's reputation.



Loss of market share

A company that overstates the eco-friendliness of its packaging may lose market share when the public discover deception and competitors capitalize on this to gain a competitive edge.



Legal consequences

Legal authorities are increasingly cracking down on greenwashing practices. Companies may face hefty fines, which can significantly impact profitability and brand image.



Consumer distrust and disengagement

If consumers perceive a lack of authenticity in a company's sustainability claims, they may become skeptical of all green marketing efforts, affecting sales and long-term customer loyalty.

Greenwashing legal landscape and impacts on Latin America

The EU Green Claims Directive

The proposed EU Green Claims Directive¹ is poised to have a significant impact on both business practices and legislation in Latin America.

Overall, the EU's proposed law on green claims has the potential to reshape business strategies and legislation in Latin America. It may encourage greater transparency, sustainability, and consumer confidence in environmental claims, ultimately benefiting both businesses and the environment across the region.

Concerns include:

- Aligning environmental disclosure and advertising practices with the new EU standards if companies wish to access European markets. This might necessitate internal changes on how environmental performance is measured and communicated
- Governments across the region may introduce or strengthen legislation aimed at curbing greenwashing and bolstering consumer trust. This could lead to more stringent requirements for businesses to substantiate their environmental claims, fostering greater transparency in the region's markets.
- As consumers become more accustomed to credible and trustworthy environmental labels, they may demand similar standards from domestic companies.

Greenwashing regulation in Latin America

The absence of specific legislation regulating greenwashing in Latin America poses several challenges and uncertainties for businesses operating in the region.

Countries usually rely on general consumer protection laws to address instances of greenwashing, including determinations that mandate veracity of advertisements, and consumers' right to adequate and truthful information.

Concerns include:

- Struggling to understand what constitutes greenwashing and how to avoid engaging in deceptive environmental marketing practices. This lack of clarity can lead to inadvertent greenwashing and potential damage to a company's reputation.
- Potential legal consequences of making misleading environmental claims, which can hinder companies' ability to develop effective marketing strategies that genuinely reflect their environmental efforts as they may fear legal repercussions in the absence of clear guidelines.
- To address greenwashing without dedicated legislation, some countries i turn to industry self-regulation and voluntary codes of conduct, such as Brazilian CONAR, Argentinian CONARP and the Colombian CONARP to help promote responsible environmental marketing. Yet, these may lack the teeth of legally enforceable regulations, leaving room for continued greenwashing practices
- Lack of dedicated legislation also makes it challenging for regulatory bodies to take swift and effective action against businesses engaged in greenwashing practices.

¹ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A0166%3AFIN>

Greenwashing bills of law in practice

There are efforts in some countries to regulate the practice of greenwashing, as well as the use of green claims by companies, through bills of law.

Brazil: Bill No. 2041/2021

This bill seeks to prohibit legal entities with environmental problems (arising from judicial, administrative or arbitration proceedings related to environmental infractions, as well as other liabilities) from disseminating any form of advertising that promotes a positive environmental image for the company, or associates the company's commercial activities with environmental sustainability concepts and criteria.

Colombia: Bill No. 015/2022

This bill discusses the practice of greenwashing on the national stage, and seeks to regulate labeling, advertising and any other form of marketing that alludes to qualities, characteristics or attributes of products that are environmentally friendly.

Brazil: Bill No. 2.838/2022

This bill aims to establish a classification for sustainable economic activities, with the aim of protecting investors from greenwashing activities. In addition, there are several bills that aim to regulate green certifications, such as Bill 735/2022, which seeks to create the "Green Investment Seal" and promote sustainable practices in the Brazilian corporate market, providing that the government will grant the green seal to institutions that are part of the financial and capital markets and that adopt sustainable practices.

Chile: Bill No. 15044-12

This bill, which was passed in Congress on 31 May 2022 and is still under discussion, seeks to prevent and sanction greenwashing.



Mitigating risks

Companies need a well-thought-out strategy to mitigate the risks associated with greenwashing claims.

Six key ways you can safeguard brand integrity

Vendor contract scrutiny

- Thoroughly evaluate and address the terms of contracts with vendors.
- Ensure agreements explicitly endorse sustainability principles and hold vendors accountable for adhering to them.

Data-driven authenticity

- Back up green claims with robust technical facts and data.
- Substantiate sustainability assertions with credible evidence before consumers, stakeholders and consumer authorities.

Certification vigilance

- Establish internal due diligence procedures to consistently verify the legitimacy of these certifications.
- Scrutinize supplier practices to confirm alignment with the green claims endorsed by certifications.

Transparent information sharing

- Enhance transparency with consumers by providing accessible information.
- Consider incorporating QR codes on product packaging.

Stay informed

- Stay abreast of legislative developments, case law, and global discussions surrounding greenwashing.
- Continuous vigilance is crucial to adapt to changing standards and expectations.

Legal expertise

- Seek counsel from the legal team when formulating and reviewing Environmental, Social and Governance (ESG) initiatives and advertisements featuring green claims.
- Legal expertise can help navigate potential pitfalls and ensure compliance.

Five-step journey toward authenticity



Contact us today

Across Latin America, our team of legal professionals are here to assist you.

Argentina



Roberto Grané
Partner
Roberto.Grane@
bakermckenzie.com



Santiago Maqueda
Partner
Santiago.Maqueda@
bakermckenzie.com

Brazil



Renata Amaral*
Partner, Trench
Rossi Watanabe
Renata.Amaral@
trenchrossi.com



Alexandre Jabra*
Senior Associate,
Trench Rossi Watanabe
Alexandre.Jabra@
trenchrossi.com



Beatriz Spalding*
Associate, Trench
Rossi Watanabe
Beatriz.Spalding@
trenchrossi.com

Chile



Diego Ferrada
Partner
Diego.Ferrada@
bakermckenzie.com

Colombia



María Cecilia Reyes
Partner
MariaCecilia.Reyes@
bakermckenzie.com



Camila Jiménez
Senior Associate
Camila.Jimenez@
bakermckenzie.com

Mexico



Raymundo Enriquez
Senior Counsel
Raymundo.Enriquez-Guinea@
bakermckenzie.com



Federico Ruanova-Guinea
Senior Counsel
Federico.Ruanova-Guinea@
bakermckenzie.com

Peru



Alvaro Gutiérrez
Partner
Alvaro.Gutierrez@
bakermckenzie.com



Nicole Freire
Senior Associate
Nicole.Freire@
bakermckenzie.com

Venezuela



Jesús Dávila
Partner
Jesus.Davila@
bakermckenzie.com



Jesús Villegas
Senior Associate
Jesus.Villegas@
bakermckenzie.com



Useful Resources

[Being Prepared for the EU
Greenwashing Legislation Claims
Directive | Insight | Baker McKenzie](#)

[Positive Luxury: ESG Policy Guide |
Insight | Baker McKenzie](#)

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