Greenwashing: An Overview

Companies are responding to rising global demands for environmentally safe products and sustainable practices. A business may employ strategies to promote itself in respect of addressing such demand, including by seeking to create a favorable impression upon relevant stakeholders who may then be prompted to buy from or invest in it.

However, while businesses may be motivated to make public statements about their sustainability records and climate change commitments, unverified and unsubstantiated claims can lead to allegations of 'greenwashing' if such marketing tactics are designed to make the public believe that a company is doing more to protect the environment than it really is. 'Greenwashing' refers to the practice of misleading consumers, investors and other stakeholders by making false or exaggerated claims or use of misleading words or imagery about a company's environmental or sustainability-related performance while downplaying or concealing harmful attributes, often by using vague terms such as 'green', 'natural', 'pure' or 'eco-friendly'.

As greenwashing laws and cases evolve, companies may face increased scrutiny and legal risks, including in respect of their product/packaging claims, carbon/climate neutrality statements, sustainability promises, or assertions related to environmental, social, and governance parameters ("**ESG**"). For example, a company's claim that its packaging is made from 100% recycled materials without providing verifiable evidence or statutory certifications to substantiate such claim may be considered misleading. In an ongoing case in Australia, the accuracy of a large oil and gas company's emissions reduction plan is being judicially proceeded against because, among other things, such plan allegedly stems from untested scientific assumptions.

GREENWASHING IN INDIA

Greenwashing in India has attracted attention from certain regulatory authorities, including the Advertising Standards Council of India (the "**ASCI**"), the Central

Consumer Protection Authority (the "**CCPA**"), the Securities and Exchange Board of India (the "**SEBI**") and the Reserve Bank of India (the "**RBI**").

ASCI. The ASCI regulates advertising and related activities in India. With respect to greenwashing, it has issued Guidelines for Advertisements Making Environmental/Green Claims ("**ASCI Green Guidelines**"), which became effective from February 15, 2024. The ASCI Green Guidelines provide guidance on greenwashing for advertisers and seek to ensure that their pro-environment claims are reliable, verifiable and transparent.

Companies often make broad claims about their products, services, processes, brands or operations – even when only a small component is actually 'green'. Under the ASCI Green Guidelines, general claims are required to be based on the full lifecycle of the advertized product or service unless the advertisement states otherwise, and must make clear the limits of such lifecycle. Claims that are based on only a part of an advertized product or service's life cycle may mislead consumers about its total environmental impact.

Accordingly, the ASCI Green Guidelines require advertisements to make claims which are limited to the part of the product or service that actually has an environmental benefit. Similarly, advertisements should not mislead consumers about purported benefits by highlighting the absence of an environmentally damaging ingredient if it is not usually found in competing products/services. Further, advertisements should not claim an environmental benefit if it results from a legal obligation, especially when competing products are subject to the same requirements. An advertiser should not use visual elements (*e.g.*, a recycling logo) which convey a false impression that the product is less harmful or more beneficial to the environment unless required by law to do so.

In addition, promises of becoming 'green' should not be made unless an entity has already developed clear and actionable plans detailing how such environmental objectives and/or aspirational claims will be achieved in the future.

The ASCI has previously imposed fines on certain Indian companies for greenwashing, including with respect to false and misleading claims about:

1. a mosquito repellent being "100% natural" and "chemical-free";
2. energy-efficient ACs being "eco-friendly" and having a "5-star energy rating" when in reality such products had a lower rating; and

3. the environmental benefits of a soap where the company had claimed that such product was "100% natural", "biodegradable" and "eco-friendly", when, in fact, it contained synthetic ingredients.

CCPA. As the regulatory body under the Consumer Protection Act, 2019 ("**CPA**"), the CCPA seeks to protect consumers against improper trade practices and unverified claims, including by initiating relevant investigations and complaints.

Previously, pursuant to a gazette notification dated June 9, 2022, the CCPA had issued Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 ("**2022 Guidelines**") under the CPA. The 2022 Guidelines apply to all advertisements regardless of form, format or medium. They also apply to (i) manufacturers, service providers or traders whose goods, products or services are the subject of an advertisement, and (ii) advertising agencies or endorsers whose services are availed for the advertisement of such goods, products or services (collectively, "**Applicable Persons**").

In addition, on October 15, 2024, the CCPA issued the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environment Claims, 2024 ("**Greenwashing Guidelines**").

What's new?

Like the 2022 Guidelines, the Greenwashing Guidelines apply to Applicable Persons. Additionally, the Greenwashing Guidelines also apply to all 'environmental claims' – defined to include representation in any form regarding goods or services suggesting environmentally friendly attributes aimed to convey a sense of environmental responsibility or eco-friendliness. The Greenwashing Guidelines require (i) all advertisements making 'environmental claims' to comply with certain specified obligations, and (ii) Applicable Persons to disclose all material information in detail either by inserting a QR code, URL or any such technology or digital medium with respect to the relevant advertisement or communication if and when they make an environmental claim.

Further, the Greenwashing Guidelines prescribe certain standards of adequacy with respect to such mandatory disclosures, including by prohibiting the selective highlighting of favorable data; requiring specificity, credible certifications and verifiable scientific evidence; as well as in respect of comparative and aspirational or futuristic claims, accessibility, and consistency.

A separate note is annexed to the Greenwashing Guidelines to provide guidance in respect of making environmental claims, including through illustrations related to (a) truthfulness and accuracy, (b) clarity and ambiguity, (c) fair and meaningful comparisons, (d) absolute and relevant claims, (e) the use of imagery without substantive claims, as well as (f) endorsement by environmental organizations, experts, or other endorsers.

Potential impact

Non-compliance may lead the CCPA to impose fines or bans, both of which may increase for repeated violations. In addition, there may be significant reputational costs.

Importantly, the Greenwashing Guidelines are not intended to stifle environment-related efforts. As long as environmental claims are backed by proper disclosures and credible evidence, companies may continue to highlight their initiatives in this regard. The overarching goal of the Greenwashing Guidelines is to protect consumers from misleading information, while promoting, at the same time, genuine environmental responsibility within the business community.

SEBI. Acknowledging concerns from investors and other market participants related to greenwashing, the SEBI issued a circular on February 3, 2023 ("**SEBI Greenwashing Circular**") for the purpose of offering guidance to entities which have listed, or propose to list, green debt securities so that such issuers can avoid the occurrence of greenwashing. The SEBI Greenwashing Circular *inter-alia* suggests that issuers of green debt securities should ensure certain checks before issuing such securities and undertake continuous monitoring and evaluation of actions taken towards (i) sustainable operations, and (ii) reducing adverse environmental impacts, and refrain from making false claims or the use of misleading labels, including by creating an impression of third-party certifications.

RBI. Pursuant to its circular dated April 11, 2023, the RBI released a framework for the acceptance of green deposits ("**Framework**"), which came into effect from June 1, 2023.

Under the Framework, the RBI has identified certain green activities and projects which will be eligible for financing out of the proceeds raised through green deposits, including sectors such as renewable energy, energy efficiency, clean transportation, climate change adaptation, sustainable water and waste management.

The Framework specifies certain requirements related to the allocation of proceeds in connection with green deposits, including (1) necessary reporting and disclosures, (2) annual and independent third-party verification/assurance, and (3) annual impact assessments.

CONCLUSION

Compliance with the guidelines for greenwashing will likely lead businesses to incur additional costs, including on account of third-party verification and certification requirements. This could pose a challenge, in particular for smaller businesses, including micro, small and medium enterprises (MSMEs). Separately, companies which operate across multiple jurisdictions will need to align with international standards (such as the European Union's proposed green claims directive and new law banning greenwashing and misleading product information) while addressing local market dynamics and requirements.

On the other hand, inadequate monitoring or insufficient resources to enforce the greenwashing guidelines may lead businesses to circumvent them, thereby undermining their effectiveness.

While the number of class-action lawsuits filed by private citizens related to greenwashing has significantly increased in the United States over recent years, the Greenwashing Guidelines could give rise to a similar spurt in India, given changing trends in the country. To navigate challenges related to the implementation of the Greenwashing Guidelines, an ongoing collaboration between businesses, regulators, legal professionals and verification/certification bodies/agencies may prove useful.

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