



Greenwashing in the sky? European Authorities Review the Aviation Sector's Sustainability Claims

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‘Sustainability’ is no longer a vague, meaningless, and trendy buzzword. Rather, the topic has grown in significance within public opinion and has increasingly received more recognition and expression within law (particularly, EU ESG law). As a result of growing sustainability, companies could also market their sustainability initiatives, such as their circular economic practices. Therefore, ‘sustainability’ is increasingly becoming a competitive parameter. Promoting, however, sustainability initiatives within advertisements could be perceived by the regulatory authorities as potential ‘greenwashing’. This risk is not purely hypothetical.

On 22 May 2025, the Dutch consumer protection authority (*Authority for Consumers and Markets*, **ACM**) published a statement that – together with 16 other national consumer protection authorities of the International Consumer Protection and Enforcement Network (**ICPEN**) – they signed an open letter. The ICPEN’s open letter calls upon the aviation industry, in general, to review their sustainability claims. It encourages businesses to raise standards of compliance by providing common principles that apply when making environmental claims.

This action is part of a much wider call to action by European consumer protection authorities, as the European Commission launched on 30 April 2024 a joint targeted action with national consumer protection authorities against 20 airlines for alleged greenwashing practices. In addition, on March 20, 2024, the Amsterdam District Court ruled that certain past sustainability advertisements made by the Dutch air carrier, Royal Dutch Airlines (**KLM**), were misleading to consumers.

In this post, we briefly discuss the risks of making sustainability claims within advertisements relating to greenwashing. Although the examples in our article concern the aviation sector, the legal

framework regarding 'green claims' is relevant for all other sectors.

Legal definition of greenwashing, green claims, and green-hushing

By expressing the degree of sustainability with regard to products or services, companies aim to gain the trust of (potential) consumers. However, the increasing importance of sustainability among consumers also comes with a risk; sustainability statements within advertisements could also be perceived by the regulatory authorities as misleading through the means of 'greenwashing'.

Following para. 4.1.1. of the revised Commission's Guidelines on Unfair Consumer Practices, the definition of so-called 'greenwashing' encompasses exaggerating a company's environmental efforts and credentials, frequently through misleading the public or downplaying activities that may be detrimental to the environment. For example, this includes sustainability claims regarding the concerned product's composition, the way they are produced, the way they can be disposed of or the fact that their use is more energy-efficient or less polluting. By and large, the same definition of greenwashing can be found within the guidance of national consumer protection authorities, such as, for example, ACM's Guidelines Sustainability Claims as well as the proposed EU legislation on addressing green claims (encompassing the Empowering Consumers Directive and the proposed Green Claims Directive).

Contrastingly, the opposite of greenwashing is 'green-hushing'. Green-hushing refers to the behaviour of companies when they downplay their sustainability efforts or under-report their achievements out of fear of greenwashing.

Like other industries, the aviation sector aims to promote its sustainability efforts. However, as mentioned before, sustainability statements within advertisements could be perceived as greenwashing by the regulatory authorities. As demonstrated by the examples below, this risk is not purely hypothetical.

EU – Investigation by the European Commission

As said, the European Commission announced its joint investigation against 20 airlines for alleged misleading greenwashing practices. According to the Commission, the claims made by airlines about offsetting their CO₂ emissions and promoting their ambition to achieve net-zero emissions by climate projects or through the use of sustainable fuels are deemed to be misleading, as allegedly these claims wrongly suggest that consumers can contribute to these offsets by paying additional fees.

Hence, the Commission deems these claims to be allegedly incompatible with Articles 5, 6 and 7 of the Unfair Commercial Practices Directive.

The Commission identified several types of potential misleading practices by the 20 airlines. In general, most of these practices involve the use of the words 'sustainable', 'green' or 'responsible' in an absolute way. Moreover, the Commission preliminary holds that the reference to 'sustainable aviation fuels' is not supported by a justification regarding the impact of such fuels on the environment. Furthermore, the Commission preliminary deemed several sustainability initiatives, such as CO₂ compensation schemes, providing CO₂ flight comparisons, and presenting consumers with a CO₂ calculator, to be lacking scientific evidence or not supported by other sufficient and accurate information. Finally, the way that certain airlines formulated their sustainability ambitions, such as their goal to achieve net-zero greenhouse gas emissions or other future environmental performances, was also regarded by the Commission to be allegedly lacking clear and verifiable commitments, targets and an independent monitoring system.

The Commission's preliminary views regarding the qualification of these sustainability claims are by and large based on the same reasoning provided by the earlier Dutch KLM-judgment.

NL – Judgment KLM

Introduction

In the KLM-judgment, a Dutch environmental advocacy group, 'Stichting Fossielvrij' (**Fossielvrij**), accuses KLM of making misleading claims, which constitute an unlawful effort to portray KLM's activities as more environmentally friendly than they truly are. This includes claims stemming from KLM's 'Fly Responsibly campaign', such as, among other things, '*Be a hero, fly CO₂ZERO*' as well as claims of being '*CO₂ neutral*'.

General remarks

According to the District Court of Amsterdam, KLM's marketing assertions contained misleading environmental claims, characterised by ambiguous and generalised statements regarding purported environmental benefits. This constitutes a risk of creating the impression among consumers that a KLM product or activity has no (or a lesser) negative impact on the environment than it actually does, which could be misleading.

Interestingly, the court explicitly states in its decision that it also takes into account the consumer's preference for (more) sustainable products and their desire to make better choices. Hence, environmental claims or sustainability claims are reviewed strictly by the court.

Legal framework

The court assessed to what extent KLM's advertising expressions and ambitions can be regarded to be unfair and misleading pursuant to the 'Unfair Commercial Practices Act' (*Wet oneerlijke handelspraktijken*), which has been implemented as a specific form of tort within Article 6:193b-193d of the 'Dutch Civil Code' (*Burgerlijk Wetboek – BW*).

To determine whether KLM's advertising expressions and ambitions are deemed unfair and misleading pursuant to Articles 6:193b – 6:193d BW, the court refers to the Commission's Guidance on Unfair Consumer Practices, which in turn provides guidance on the Directive on Unfair Consumer Practices 2005/29.

Furthermore, the court also draws inspiration from other relevant public law regulations regarding the use of sustainability or environmental claims in advertisements when interpreting the applicable statutory civil law standards. This includes ACM's 'Guidelines on Sustainability Claims 2023' (*ACM Leidraad Duurzaamheidsclaims 2023 – ACM's Guidelines*), both the 'Advertising Code' (*Reclame Code – RC*) and the 'Environmental Advertising Code' (*Milieu Reclame Code – MRC*), and their interpretation within the decisions by the 'Dutch Advertising Code Committee' (*Reclame Code Commissie – RCC*); the competent and independent dispute adjudicator responsible for resolving commercial advertising disputes pursuant to, which is based on a well-established Dutch tradition of self-governance within the advertisement sector.

Court's assessment

In essence, the court ruled that most of the claims made by KLM were misleading and, therefore, unlawful. The court thereby distinguished between 'product-related advertising sustainability expressions', which are directly related to the (sustainability) status of a product, and 'sustainability ambitions' concerning KLM's statement regarding their ambitions.

Regarding KLM's product-related environmental claims, the court found that KLM exaggerated the positive impact of initiatives such as sustainable aviation fuels and reforestation, creating a false impression of the sustainability of flying with the airline. This lack

of precise and specific information provided to consumers constitutes a violation of fair advertising standards as stipulated by consumer protection laws. KLM had already announced the cessation of the contested marketing claims, relieving it of the obligation to rectify them. Additionally, KLM retains the right to promote flying without being required to alert consumers to the unsustainable nature of its current practices. However, should KLM choose to communicate its greenhouse gas reduction objectives, it must do so truthfully, substantively, and accurately, refraining from any form of greenwashing, as is ruled by the Amsterdam District Court.

Furthermore, regarding KLM's sustainability ambitions, the court ruled that certain statements made in KLM's ambitions are 'environmental claims' containing vague and general references to alleged environmental benefits. This includes claims like:

- *“Join us in creating a more sustainable future”*; or
- *“Moving towards a more sustainable future”, “(...) traveling more sustainably is our greatest adventure ever.”*

According to the court, these claims are not sufficiently concrete on the presumed environmental benefits and to which specific aspects of flying with KLM these presumed environmental benefits see. Moreover, KLM did not provide a substantive explanation of the concrete actions that are going to be taken to achieve this ambition. For instance, it is not clear how consumers can contribute to a “sustainable environment” when they would have joined KLM's ‘Fly Responsibly Initiative’. Furthermore, the court ruled that, in the end, the mentioned solutions by KLM for achieving net-zero CO₂ emissions were not sufficiently substantiated to justify their environmental claims. The mentioned milestones are currently not sufficient and refer to uncertain future innovations. Moreover, the effect of reforestation does not actually reduce CO₂ emissions and thus is factually incorrect.

Impact of these regulatory developments regarding the review of green claims

Both the ICPEN's open letter and the Commission's announcement, in light of the *KLM*-judgment, underline the potential liability and litigation risks associated with ‘sustainable’ or ‘green’ claims, in case these claims are later found to be unsubstantiated or false, thereby misleading consumers. Consequently, claims stating, for example, that greenhouse gas emissions (caused by air traffic) could be offset by climate projects or by using sustainable fuels could be seen as potentially misleading by the regulatory authorities. This also applies to the incorrect usage of terms such as

'green', 'sustainable', or 'responsible' in a completely general way, or when stating a company's sustainability ambitions (such as achieving net-zero greenhouse gas emissions or other future environmental performances) without clear and verifiable commitments, targets, and independent monitoring could be perceived as misleading. The same goes for providing supporting sustainability tools or comparison schemes without providing the underlying scientific proof and methods.

Although these examples are based on claims relating to sustainability claims that concern the aviation sector, the reasoning regarding the assessment of environmental claims is deemed relevant for all sectors in general, using these claims in their advertisements. Companies, therefore, should in general refrain from exaggerating their environmental credentials or their proclaimed sustainability benefits, as is emphasised by the Amsterdam District Court.

Furthermore, the *KLM*-judgment demonstrates how different legal instruments work as communicating vessels. Firstly, the judgment builds upon earlier decisions on sustainability advertising/green claims issued by the RCC, the Dutch competent and independent dispute adjudicator for the advertising sector, based on self-governance. In an earlier decision rendered on 8 April 2022, the RCC succinctly concluded that KLM's marketing assertions were deceptive. Fossielvrij utilised RCC's decision as the foundation for its claims in this class action lawsuit against KLM. Secondly, the court refers to other legal sources with regard to its interpretation of assessing green claims. In turn, these legal provisions seem to follow the same line of reasoning or use, more or less, the same definitions. As mentioned before, the court explicitly refers to Chapter 4 of the Commissions Guidance on Unfair Practices, the ACM's Guidelines, and the MRC, which correspond with Directive Empowering Consumers for the Green Transition 2024/825.

Conclusion

The Commission's announcement of the recent joint enforcement action and the *KLM*-judgment indicate that sustainability claims are under high scrutiny by the European Commission and the national consumer protection authorities. Based on the underlying reasoning, the interpretation regarding the definitions and requirements of 'sustainability claims' and 'environmental claims' etc. is evolving towards greater harmonization.

We conclude that although the European Commission and national consumer protection authorities are intensively monitoring sustainability statements made within advertisements to protect

consumers against (potential) greenwashing, companies should not be afraid to actively promote their genuine sustainability efforts. By not communicating about sustainability efforts and even downplaying them, companies and sectors could unnecessarily fall within the trap of 'green-hushing'.

That said, any sustainability or environmental claim made within an advertisement must be accurate, clear, specific, up-to-date, and substantiated with facts that are supported by evidence. In addition, with regard to sustainability ambitions, these must be substantiated by a plan, which clearly demonstrates the way to achieve this ambition and how the concerned environmental benefit will be gained.

Navigating, therefore, this grey area between potential 'greenwashing' and 'green-hushing' can be complicated. Our ESG experts offer guidance on how to advertise your sustainability efforts accordingly. We happily assist in helping you achieve your ESG ambitions.

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