

FAQs ON GREENWASHING



“**Greenwashing**” is the process of conveying a false impression or misleading information on company’s products being environmentally sound. Greenwashing involves making an unsubstantiated claim to deceive consumers into believing that a company’s products are environmentally friendly and that they have a greater positive environmental impact than they actually do.

This deceptive practice has emerged as a critical issue in India’s environmental landscape. Businesses today are experiencing a paradigm shift in consumer preferences based on environmental, social and governance parameters. With the global demand being guided by environmental considerations, companies are lured into portraying themselves as being ‘green’ and are capitalising on the consumers’ growing eco-consciousness (although in reality the position is different and far from reality).

It is pertinent to note that the expression Greenwashing was not previously expressly defined but was dealt with in essence under the Consumer Protection Act, 2019 (“**Act**”) read with the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (“**Misleading Advertisement Guidelines, 2022**”).

The Ministry of Consumer Affairs has recently on 15 October 2024, introduced new provisions vide Guidelines for Prevention and Regulation of Greenwashing, 2024 (“**Guidelines**”) that expressly addresses the growing issue of Greenwashing within India.

In this Article we are setting out certain relevant FAQs on “Greenwashing” based on the aforesaid legislation in India. Further the FAQs on Consumer Protection Act, 2019 can be accessed [here](#).)

1. What is “Greenwashing”?

Greenwashing has been expressly defined under the Guidelines to mean:

- (i) any deceptive or misleading practice that includes concealing, omitting, or hiding relevant information by exaggerating, making vague, false, or unsubstantiated environmental claims and
- (ii) use of misleading words, symbols, or imagery that lays emphasis on positive environmental aspects while downplaying or concealing harmful attributes.

2. Are there any exceptions to what constitutes Greenwashing under the Guidelines?

The Guidelines specify that the use of obvious hyperboles, puffery, or generic colour schemes or pictures that do not amount to deceptive or misleading practices are not considered Greenwashing.

3. What are the applicable laws and regulations governing Greenwashing in India?

- i. Consumer Protection Act, 2019
- ii. Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022
- iii. Guidelines for Prevention and Regulation of Greenwashing, 2024.
- iv. Guidelines for Advertisements Making Environmental/ Green Claims by the Advertising Standards Council of India (“ASCI”).
- v. Environment Protection Act, 1986
- vi. Securities Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021¹

4. Which is the governing authority with respect to Greenwashing in India?

The “Central Authority” i.e. the Central Consumer Protection Authority (as defined under the Consumer Protection Act, 2019) is the governing authority with respect to Greenwashing in India.

5. To whom would Greenwashing legislation apply?

The Guidelines apply to:

- i. All advertisements regardless of form, format or medium; and
- ii. to a manufacturer, service provider, product seller, advertiser, or trader whose goods, products or services are the subject of an advertisement, or to an advertising agency or endorser whose service is availed for the advertisement of such goods, products or services;

6. What are the nature of claims that are dealt with under the Guidelines?

The following claims can be made with respect to Greenwashing in India under the Guidelines:

- (i) all environmental claims; and
- (ii) aspirational or futuristic environmental claims (may be made only when clear and actionable plans have been developed detailing how those objectives will be achieved).



¹ Circular No.: SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020 “Dos and don’ts relating to green debt securities to avoid occurrence of greenwashing” can be accessed at: https://www.sebi.gov.in/legal/circulars/feb-2023/dos-and-don-ts-relating-to-green-debt-securities-to-avoid-occurrences-of-greenwashing_67828.html

7. What are environmental claims?

Environmental claims have been defined in the Guidelines to mean any representation in any form regarding:

- i. any goods (either in its entirety or as a component), the manufacturing process, packaging, the manner or use of the goods, or its disposal; or
- ii. any service (or any portion thereof) or the process involved in providing the service, which suggest environmentally friendly attributes aimed to convey a sense of environmental responsibility or eco-friendliness.

8. What compliances would advertisements making environmental claims have to adhere to?

Advertisements making environmental claims would have to comply with the following:

Generic terms such as 'clean', 'green', 'eco-friendly', 'carbon-neutral', 'cruelty-free', 'good for the planet' and such other similar assertions should be substantiated with adequate qualifiers and evidence. This means that such claims should be backed by verifiable data or certifications that support the environmental benefits being claimed. Further, technical terms like Environmental Impact Assessment, Greenhouse Gas Emissions, Ecological Footprint, should be explained in a consumer-friendly manner.

9. How should aspirational or futuristic environmental claims be handled?

Aspirational or futuristic environmental claims may be made only when clear and actionable plans have been developed detailing how those objectives will be achieved.

10. What are the requirements for making comparative environmental claims?

Comparative claims should be based on verifiable and relevant data disclosed to consumers. These claims should specify exactly what aspects are being compared and should be supported by evidence that is accessible to consumers.

11. What are the adequate disclosures that should be made in relation to environmental claims?

All environmental claims should be accurate, disclose all material information and be easily accessible, and not contradict the relevant environmental claim. They could be made in the advertisement or through a QR code, URL, (or any such technology or digital medium) that links to relevant information and the research done in relation to such disclosures should not be cherry picked to highlight favourable observations while obscuring others that are unfavourable.

Further, specific environmental claims such as carbon offsets, carbon neutral, carbon neutral, compostable, degradable, free-of, sustainability claims, non-toxic, 100% natural, ozone-safe and ozone-friendly, recyclable, refillable, renewable and similar assertions should be supported by disclosure about credible certification, reliable scientific evidence, or independent third-party verification. The disclosures made in relation to the environmental claims shall be easily accessible to the consumer and not contradict the relevant environmental claim

12. What is the liability if an entity is found to be in contravention of the Guidelines?

The provisions of the Act will apply to any contravention of these Guidelines. These are discussed at length in FAQ 17.

13. Are these Guidelines in derogation with other laws regulating Greenwashing?

These Guidelines are in addition to and not in derogation of other laws, except where provisions of other specific laws conflict with these Guidelines. In such cases, that specific law will prevail. Further if there any ambiguities or disputes in interpretation of these Guidelines, the decision of the Central Authority shall be final.

14. What are the key differences between the Guidelines and the Misleading Advertisement Guidelines, 2022?

Provision	Greenwashing Guidelines 2024	Misleading Advertisement Guidelines, 2022
Application	To any advertising agency, manufacturer, service provider or trader making an environmental claim regarding their product or service rendered.	To all advertisements and manufacturers, service providers or traders who endorses misleading or dishonest goods, products or services. The application is not limited to environmental claims.
Prohibition	Prohibits Greenwashing and misleading environmental claims.	Prohibits surrogate or indirect advertisements, advertisements aimed at children which condone dangerous activities or which may be detrimental to their health, or advertisements of products or services which are prohibited from being produced, sold or provided by law.
Disclosures	Requires that any environmental claim should be substantiated with adequate disclosures which should be accessible to the consumer and should not contradict the environmental claim.	Requires every manufacturer, service provider, advertiser or advertising agency to substantiate any claim or description in the advertisement with ascertainable facts, based on independent research so as to not abuse the trust of consumers.

15. What is the mechanism of making a complaint for violation of Greenwashing?

Although there is no express provision of making a complaint or an environmental claim under the Guidelines. The following redressal mechanism for making complaints could be considered:

- A. ASCI addresses misleading advertisements under the ASCI Code. Specifically, Section 2.1 of the ASCI Code relates to misleading claims, which includes false environmental claims made in advertisements. An aggrieved consumer could file a complaint via ASCI's online portal or by emailing their complaints to the ASCI; or

- B. An aggrieved consumer could address a complaint to the Consumer Disputes Redressal Commission in accordance with the provisions of the Act.

If a complaint is made before the Consumer Dispute Redressal Commissions, then the said complaint could be filed at either the District, State or National levels, depending upon the following pecuniary jurisdictions:

- i. At the District commission level having jurisdiction over matters involving an amount up to INR 10 million; or
- ii. At the State commission level having jurisdiction over matters involving amount from INR 10 million till INR 100 million; or
- iii. At the National commission level having jurisdiction over matters involving amount more than INR 100 million.

Further, if a complaint is filed under para (b) of this FAQ, then it should be made in writing before the competent forum either in offline or online mode after the requisite fees have been paid. An online complaint can be made at <http://edaakhil.nic.in/>. A complaint could be presented by the complainant either in person or an agent. Additionally, it could be sent by registered post along with the requisite court fees.

A complaint should be filled within 2 (two) years from the date on which the cause of action had arisen.

16. What is the procedure for making an appeal for complaints with respect to Greenwashing?

- i. There is neither any express provision in the Guidelines dealing with complaints nor appeals, however a consumer who is aggrieved by the order of a Commission could make an appeal before the higher Commission subject to the timelines prescribed in the Act.
- ii. An appeal against the order of the District Commission can be made before the State Commission on grounds of facts or law within a period of 45 (forty-five) days from the date of such order. Similarly, an appeal against the order of the State Commission can be made before the National Commission within a period of 30 (thirty) days from the date of such order. The National Commission shall also be the competent forum for an appeal against the order of the Central Authority established under the Act and such an appeal should be made within 30 (thirty) days from the date of receipt of such order.
- iii. An appeal before the State or National Commission shall be heard and disposed within a period of 90 (ninety) days from the date of admission. An appeal against the order passed by the National Commission shall be made before the Supreme Court of India within a period of 30 (thirty) days from the date of such order.

17. What is the penalty for indulging in Greenwashing ?

The Guidelines do not expressly deal with penalties for Greenwashing, however the Act prescribes the following penalties:

Offences	Penalty
Non-Compliance of direction of Central Authority	Imprisonment up to 6 (six) months or fine up to INR 2 million or with both.
False and misleading advertisements	Manufacturer or the service provider shall be punished with imprisonment up to 2 (two) years and fine up to INR 1 (one) million. For

	subsequent offence, imprisonment up to 5 years or with fine up to INR 5 (five) million.
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18. What measures are other jurisdictions implementing to combat Greenwashing?

Greenwashing has been expressly legislated in the United States of America (**US**), European Union (**EU**) and United Kingdom (**UK**). In the US, the Federal Trade Commission ("**FTC**") has issued the "[Green Guides](#)", which, while not legally enforceable, enable the FTC to act against misleading environmental claims.

The EU's "[Green Claims Regulation](#)" is more stringent, mandating that environmental labels and assertions be credible and reliable to protect consumers and the environment.

The [UK has enacted the "Green Claims Code"](#) emphasizing on fair and accurate marketing communication, the non-compliance of which constitutes a breach of consumer laws and is subject to legal action.

Compared to the Guidelines in India, globally the trend on Greenwashing is way more stringent wherein certain jurisdictions have enforced more rigid penalties and bearing stricter legal repercussions for its non-compliance.

In Conclusion:

The Guidelines, represent a progressive step towards addressing the pervasive issue of Greenwashing and the detrimental impact it has on consumers and the environment. By providing a definition of the expression Greenwashing, the Guidelines have attempted to identify what comes within its purview, somewhat laying the groundwork for regulatory enforcement. There has also been an attempt to align these Guidelines with the existing statutory frameworks, bridging the Environment Protection Act, 1986, and corporate governance provisions under the Companies Act, 2013, to create a more cohesive approach.

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