Civil Liability For Greenwashing In Corporate Marketing

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ABSTRACT

This article examines the configuration of civil liability arising from greenwashing in corporate marketing. The research problem is the information asymmetry created by misleading environmental communications and its effect on contractual good faith and consumer purchasing decisions. Using a qualitative, descriptive-analytical approach grounded in the doctrinal-legal method and comparative analysis, the study reviews specialized literature and consumer-protection regulation in the European Union and Latin America. The findings show that greenwashing is not limited to an administrative infringement: it generates civil liability for the breach of consumers' legitimate expectations regarding product sustainability. The study concludes that strengthening the criteria for attributing liability — including reversing the burden of proof — is necessary to make compensatory protection effective in green markets.

Keywords: civil liability, greenwashing, environmental marketing, consumer protection, economic law.

INTRODUCTION

The climate crisis has changed the way markets operate. Sustainability, which until recently was a secondary ethical value in business strategy, has become a genuine selling point. That shift brings with it a problem: a growing number of companies advertise an environmental commitment that does not match their actual operations. This practice, known as *greenwashing*, poses one of the most difficult challenges facing consumer law today, because it distorts the information that makes markets function efficiently.

The problem underlying this study is twofold: the erosion of consumer trust and the emergence of unfair competition. When a company projects an environmental responsibility it does not have, it does more than breach an ethical duty — it causes both economic and non-economic harm to consumers who base their purchasing decisions on sustainability criteria.

The purpose of this article is to examine the configuration of civil liability arising from greenwashing in corporate marketing: its constituent elements, its legal implications, and the obstacles to its application in consumer law. The research question guiding this study is: are the traditional mechanisms of civil liability sufficient to redress the harm caused by greenwashing in contemporary corporate marketing? The working hypothesis holds that greenwashing is not limited to an administrative infringement for misleading advertising, but instead constitutes a case of strict civil liability, insofar as it breaches good faith and causes both economic and non-economic harm to consumers — which calls for a review of the traditional criteria for attributing civil liability.

2 METHODOLOGY

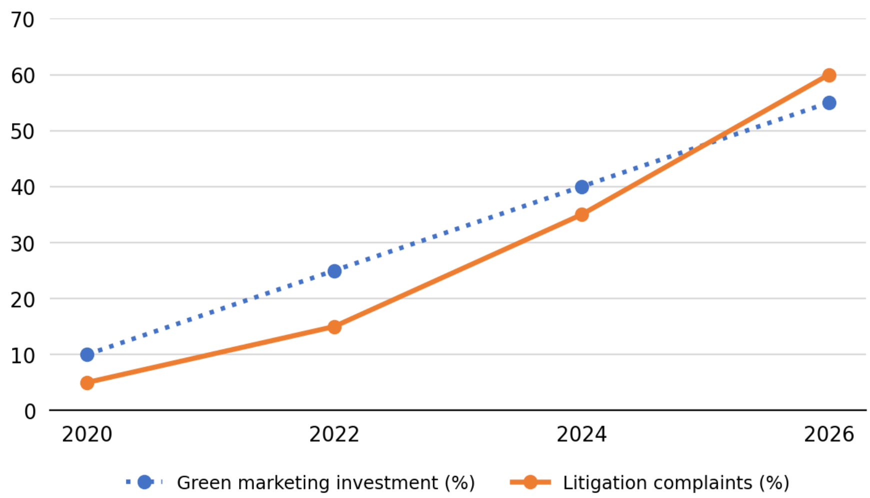
This research follows a qualitative, descriptive-analytical approach, grounded in the doctrinal-legal method and comparative analysis: the former allows for a systematic interpretation of the civil liability rules applicable to misleading advertising, while the latter makes it possible to contrast the regulatory frameworks of the European Union and Latin American countries in order to identify differences in the criteria for attributing liability.

Three techniques were applied for data collection and analysis in the course of this study:

- A documentary and bibliographic review of literature indexed in Scopus and Web of Science on greenwashing, consumer law, and civil liability.
- A comparative analysis of the regulatory frameworks of the European Union and Latin America, using a matrix that contrasts the criteria for attributing liability.
- A study of two cases — automotive and textile — selected for their relevance, economic impact, and legal repercussions.

The analysis was carried out through theoretical triangulation among legal doctrine, current regulation, and relevant case law. Because this is a documentary study that does not involve human subjects or personal data, it presents no ethical risks related to data collection; the sources and selection criteria are detailed in the Materials and Methods file accompanying this submission.

Figure 1. Correlation between green marketing investment and the growth of litigation (2020–2026)



Source: authors' own elaboration, based on OECD (2021) and European Commission (2023).

3 RESULTS

3.1 The phenomenon of greenwashing in the global market

The concept of *greenwashing* evolved from an environmentalist critique into a category of analysis within economic law: it originally described the disproportionate use of green advertising to conceal a poor environmental record, and today it is also expressed through technical omissions, unsupported private certifications, and vague claims — "eco-friendly," "natural" — lacking any verifiable scientific basis (Dahl, 2010). Recent literature indicates that the practice intensifies where environmental regulation is weak (OECD, 2021).

Environmental marketing should function as an information bridge that rewards sustainable companies. In practice, the opposite occurs: the complexity of supply chains prevents the average consumer from verifying what is communicated to them, and organizations exploit that gap to capture the premium that consumers would otherwise pay for genuinely sustainable products. When verifying environmental quality costs more than the benefit obtained from the purchase, the market tips toward an inefficient equilibrium in which the dishonest producer crowds out the compliant one (Lyon & Montgomery, 2015); this same asymmetry also explains why some companies prefer silence over the risk of an external audit (Lyon & Maxwell, 2011).

Greenwashing practices are not uniform. TerraChoice (2010) classified them into several typologies, ranging from the "sin of the hidden trade-off" — highlighting a minor ecological attribute to obscure a larger impact — to labels that mimic non-existent official certifications. In the financial domain, this translates into reports that inflate compliance with ESG criteria. The risk is systemic: if investors and consumers lose confidence in these indicators, capital moves away from the genuine green economy, which can in turn give rise to civil litigation once the overvaluation is corrected.

3.2 Legal framework of corporate civil liability

Civil liability in green marketing should not be understood merely as a sanction for deception: it is also a mechanism for correcting market failures, at a time when the European Union is moving toward stricter regulation of environmental claims (European Commission, 2023). The principle of objective good faith is the cornerstone of commercial communications: in environmental marketing, it translates into a heightened duty of transparency, under which businesses must not only refrain from lying but must also provide truthful, clear, and complete information that allows consumers to make informed decisions (Kotler, Kartajaya & Setiawan, 2021). Greenwashing defeats that expectation and generates a negative informational externality: the cost of the deception is borne by consumers and the environment, while the benefit accrues to the company; the duty to inform must therefore extend across the entire life cycle of the product (Stiglitz, 2010).

For civil liability for greenwashing to arise, three elements must concur, adapted to today's digital and financial reality: the wrongful act, that is, the dissemination of environmental claims that are false or impossible to verify; the harm, which is twofold in nature — economic, consisting of the premium paid for a non-existent benefit, and non-economic, consisting of the injury to the consumer's ethical values; and the causal link between the misleading advertising and the purchasing decision.

The difficulty lies in proving that causal link. The international trend points toward reversing the burden of proof: it is the company that must demonstrate, with scientific evidence, the truthfulness of its claims (Reich, 2016), which protects the average consumer against the supplier's technical superiority. Moreover, the harm is not confined to the individual buyer: when a corporation misrepresents its environmental impact, it erodes systemic trust in the ecological transition — a harm of a collective or diffuse nature. This is why legal scholarship proposes broadening standing to bring claims to include consumer associations and state bodies, and even allowing punitive damages in some systems, with the aim not only of compensating but of deterring, by neutralizing through the award of damages the benefit obtained through deception.

3.3 Comparative analysis of sanctions and litigation

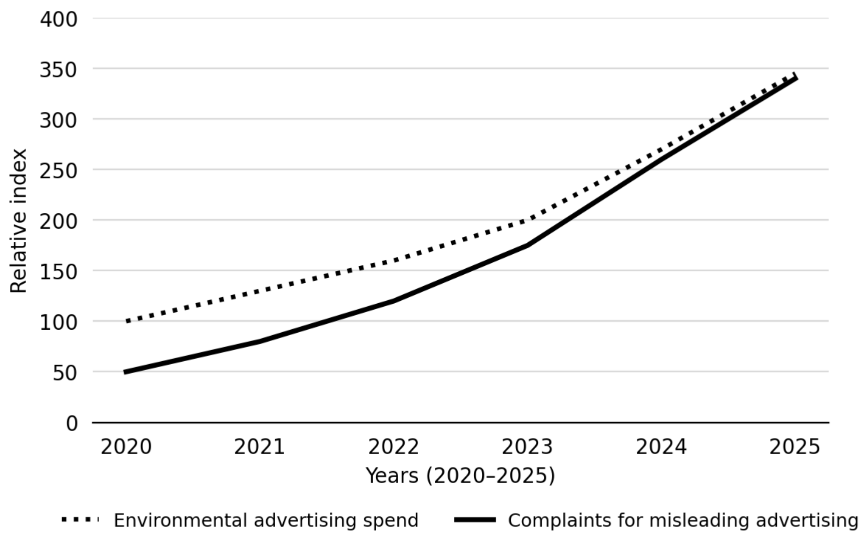
The legal response to greenwashing is not uniform: some jurisdictions rely more heavily on administrative sanctioning law, while others recognize civil liability for collective harm (Table 1).

Table 1. Comparison of sanctioning criteria in the European Union and Latin America

Analysis criterion	European Union (Directive (EU) 2024/825)	Latin America (general trend)
Standard of proof	Prior verification by independent bodies.	Ex post control, following a consumer complaint.
Type of liability	Trend toward strict-liability schemes, linked to unfair competition.	Predominantly fault-based (requires intent or negligence).
Sanctions	Up to 4% of annual turnover.	Fixed monetary fines (limited).
Civil redress	Cease-and-desist actions and, in certain cases, deterrent mechanisms.	Compensation for proven direct damages.

Source: authors' own elaboration (2026).

Figure 2. Trend in complaints for misleading advertising (2020–2025)



Source: authors' own elaboration (2026).

Table 2 systematizes the regulatory differences among various economic blocs and confirms that the global market still lacks a uniform environmental *lex mercatoria*.

Table 2. Comparative legislation and approaches to environmental liability

Jurisdiction	Governing standard or guideline	Liability approach
Brazil	Consumer Defense Code (Código de Defesa do Consumidor); CONAR Standard Code.	Advertising ethics centered on comprehensive consumer protection.
Ecuador	Organic Law for Consumer Protection (LODC).	Administrative and civil protection against advertising that misleads consumers about a product.
European Union	Directive (EU) 2024/825.	Strict prohibition of generic environmental claims lacking recognized independent certification.
United States	FTC Green Guides.	Technical guidelines requiring prior scientific evidence for terms such as “biodegradable” or “carbon neutral.”

Source: authors' own elaboration (2026).

While the European Union is moving toward mandatory prior verification, control in Latin America remains predominantly ex post: action is taken only once the harm has already occurred. This disparity creates a risk for transnational companies, because a campaign designed to meet Latin American standards may prove unlawful in the European market and trigger civil liability for unfair competition. That uncertainty raises the cost of regulatory compliance and reinforces the need to move toward common criteria for attributing liability and achieving comprehensive redress for harm.

3.4 Case studies: the automotive sector and fast fashion

The Volkswagen case (Dieselgate) is the most widely cited example of greenwashing on a global scale: the company built a brand identity around “environmental cleanliness” that turned out to be a technological artifice, causing harm that was not merely individual but systemic, affecting both the securities market and public health. European and U.S. courts ordered vehicle buybacks and compensation for the vehicles' loss of value on the used-car market (Guidara, 2025), confirming that when environmental marketing is a determining factor in obtaining consumer consent, its falsity can invalidate the effectiveness of the contract. A similar pattern appears in fast fashion: several brands have launched lines under labels such as “Conscious” or “Join Life,” certified by their own in-house seals without external audit, and found to constitute unfair commercial practices in class actions in Norway and the Netherlands. There, the harm extends beyond fines, and civil liability reaches into the capital markets, where shareholders can hold management accountable for exposing the company to undisclosed reputational risk.

4 DISCUSSION

The rise in complaints shown in Figure 2 confirms that administrative fines are not enough: harm to consumers must be redressed comprehensively so that deception stops being a profitable cost-saving strategy.

4.1 The burden of proof and the precautionary principle

Under traditional civil law, it is the claimant who must prove the harm; but in green-marketing litigation there is a technical asymmetry that consumers cannot overcome on their own. For this reason, a central proposal of this study is to apply the principle of reversing the burden of proof: whoever puts an environmental claim into circulation should already possess the scientific evidence to support it beforehand. A company's “technical silence” should be interpreted as a presumption of unlawfulness (Posner, 2014), which obliges marketing and finance departments to audit their campaigns before launching them.

4.2 Toward more effective redress

Comprehensive redress should not be limited to refunding the price of the product. This study proposes three levels of response:

- Damages with a deterrent function: the sanction must exceed the benefit obtained; otherwise, it simply becomes another operating cost.
- Cease-and-desist orders and public rectification: the company must fund a corrective campaign of the same scale as the original one to inform the public that its claims were false (Hart & Moore, 2008).
- Accountability in financial reporting: inconsistencies between environmental marketing and actual operations should be treated as false information disclosed to the securities market.

This three-pronged approach allows civil liability to fulfill its dual function: compensating the injured party and preventing environmental deception from being repeated as a business strategy.

5 CONCLUSION

This study confirms the hypothesis put forward: greenwashing is not limited to an administrative infringement, but instead constitutes a case of civil liability, insofar as it breaches good faith and causes both economic and non-economic harm to consumers. The transition toward a climate-neutral economy requires that environmental information be treated with the same rigor as financial information. On a theoretical level, this research contributes to a reappraisal of the criteria for attributing civil liability, incorporating the economic analysis of law and informational asymmetry as relevant categories: today's consumers lack the technical tools to verify ecological claims, which justifies moving toward strict or quasi-strict liability schemes in which any mismatch between the environmental promise and the product's actual operation gives rise to an obligation to provide redress, without the need to prove the supplier's intent to deceive.

The effectiveness of compensatory protection also depends on reversing the burden of proof, which facilitates access to justice and discourages the strategic use of deception. Nor should redress be confined to the individual sphere: it extends to systemic market trust and the credibility of the ecological transition, such that deterrent damages, cease-and-desist orders with public rectification, and liability for inaccurate financial disclosures are all suitable tools for ensuring that the cost of deception exceeds the benefit obtained. Future research is suggested on the empirical study of greenwashing in emerging economies and on evaluating the effectiveness of new regulations aimed at preventing it.

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8 AUTHORSHIP STATEMENT

The authors declare that this work is original, has not been previously published, and is not under review at another journal, and that no conflicts of interest exist. All authors contributed to the conceptualization, methodology, formal analysis, and writing of the manuscript; the relevant data are available within the article itself.