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Report on Greenwashing in the Food Sector Highlights Consumer-Focused Regulatory Activity on Climate Claims

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A **report** released by Dutch environmental advocacy group Changing Markets Foundation has highlighted alleged “greenwashing” in the UK and German food sectors, including via claims such as ‘carbon neutral,’ ‘climate positive,’ and ‘net zero,’ as well as specific claims about low methane. The report also stated that green advertising was impacting consumer choices, with 42% of UK consumers more likely to buy products with ‘carbon neutral’ labels and 29% “willing to pay slightly or much more” for products so labelled. “In Germany the picture is much the same, with 35% of consumers more likely to buy a meat or dairy product labelled ‘carbon neutral’ and 36% more likely to buy meat or dairy labelled ‘climate positive’, with 32% and 36% willing to pay more for these labels, respectively.” Changing Markets in its Report also identified over 50 examples of what it claims are misleading “green” claims on food products themselves and within marketing materials for food products, with meat and dairy companies featuring prominently.

The report represents an example of continued focus on consumer greenwashing, with the European Commission, for example, recently publishing its proposed draft “**Green Claims Directive**,” which we **recently discussed**. The Green Claims Directive will oblige companies to be more transparent about the potential environmental impacts of their products. The Directive resulted from analyses carried out by the EC, which found that more than 50% of environmental claims for publicly available goods and services were “vague, misleading or [based on] unfounded information.” Likewise, the UK’s advertising regulator, the Advertising Standards Authority (ASA), **recently announced** the publication of updated guidance for advertisers making environmental sustainability-related claims to consumers, including use of the terms “carbon neutral” and “net zero.”

Taking The Temperature: In addition to increasing regulatory guidance regarding green advertising, regulatory enforcement activity and private litigation also has been on the rise. For instance, last year the ASA ruled that two UK retail banking advertisements, which made claims about the financial institution’s green credentials, were “misleading” and “omitted material information.” The billboard advertisements, which stated how the bank was planting trees and transitioning to net zero, were posted on bus stops in Bristol and London in October 2021 just prior to the COP26 climate change summit. The ASA determined that the two advertisements should not be used again and that the bank should ensure that future marketing communications making environmental claims were “adequately qualified and did not omit material information about its contribution to carbon dioxide and greenhouse gas emissions.”

In January, a global food products company was sued for violating France’s Corporate Duty of Vigilance Law on the ground that the company does not have an adequate plan to reduce its plastic footprint. And, in Australia, the Australian Securities & Investments Commission (ASIC) issued three infringement notices to the Australian unit of a large U.S.-headquartered asset manager for greenwashing infringements. The breach involved three funds that were set up to exclude certain tobacco investments but excluded only manufacturers of cigarettes and related products, not companies involved in the sale of such products. The ASIC was concerned that the disclosure statements for these funds “may have been liable to mislead the public by overstating an exclusion, otherwise known as an investment screen.”