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Airlines Face Increasing Greenwashing Challenges

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On September 27, 2023, KLM Royal Dutch Airlines filed a request with the Amsterdam District Court, asking it to dismiss a greenwashing suit brought by environmental activist groups. According to a [statement by ClientEarth](#), which represents the groups, in 2019 KLM dropped its “Fly Responsibly” advertising campaign after the groups filed a petition but the carrier did not address carbon offset marketing claims or make any commitments about future advertising.

The motion follows the Court’s decision in July, pursuant to which Dutch environmental groups Fossilvrij and Reclame Fossilvrij were granted permission to bring a class action lawsuit based on their complaint against KLM Royal Dutch Airlines for violating the European Unfair Consumer Practices Directive. KLM’s ‘Fly Responsibly’ campaign was comprised of 19 advertisements promoting its use of sustainable aviation fuel, reforestation and onboard changes to reduce its carbon footprint. The Dutch carrier opposed the claims, and in a statement, said: “The court declared Fossilvrij’s claims admissible. That only means that Fossilvrij may continue with the procedure. KLM is ambitious when it comes to its climate approach and would like to involve its customers in the subject...We no longer use the 19 communications that are central to this case. We look forward to the substantive handling of the case with confidence.”

The case is one of several commenced against airlines based on alleged greenwashing. For instance, in 2020, the UK’s Advertising Standards Authority (ASA) censured Ryanair based on a finding that the airline made misleading and unsubstantiated comparative claims in its 2019 advertising touting that it was “Europe’s lowest emissions airline.” In April 2023, ASA found that two of Etihad Airways’ claims concerning “sustainable aviation” lacked context and exaggerated the immediate positive environmental impact of flying the airline and were

therefore misleading. And a month earlier, the ASA found that Lufthansa's advertising claim "Connecting the world. Protecting its future," in the context in which it was presented, could be understood by consumers as an environmental claim and that it was misleading because it suggested that Lufthansa had already taken action to mitigate its environmental impact, but that the airline's initiatives found on its website through a link in the advertisement were aspirational.

Greenwashing in the transportation sector, and in particular in the airline industry, has also caught the attention of consumer protection regulators in other jurisdictions. The Netherlands Authority for Consumers and Markets recently warned Ryanair that its sustainability claims related to carbon offsets were misleading. The ACM's findings were part of an investigation into carbon offset advertising claims across the Dutch aviation industry. The consumer regulator concluded that Ryanair's claims might give would-be passengers the false impression that they could "fly greener" on the airline – in other words, that it was significantly more sustainable to fly Ryanair than other, supposedly less sustainable airlines.

Taking the Temperature: [We have previously discussed](#) other litigation and regulatory action against airlines relating to sustainability statements. In July 2023, the Bureau Européen des Unions de Consommateurs (BEUC), an umbrella entity for European independent consumer organizations, filed a complaint on behalf of itself and 23 of its member organizations from 19 countries with the European Commission and relevant consumer protection agencies, accusing 17 European airlines of greenwashing in connection with their marketing practices, in breach of the EU regulations governing unfair commercial practices.

In the United States, [a consumer class action was filed in California federal court](#), alleging that Delta Air Lines falsely claimed that it is the world's "first carbon-neutral airline." The plaintiff, on behalf of a putative class of California consumers who purchased a ticket on Delta Airlines after March 6, 2020, claims that Delta relied on carbon credits to offset its reported emissions, but the benefits from those carbon credits are exaggerated, therefore, rendering Delta's reported emissions data misleading.

As we have been reporting, greenwashing in general is a key concern for companies across all sectors. The European Union has an [ongoing legislative campaign](#) to challenge misleading sustainability claims in advertising. Outside the EU, the UK's Advertising Standards Authority (ASA) earlier this year [released updated guidance](#) for advertisers making environmental sustainability-related claims to consumers, including use of the terms "carbon neutral" and "net zero." And in the U.S., the Federal Trade Commission announced that it is [seeking public comment](#) on potential revisions to its Green Guides for the Use of Environmental Marketing Claims, in particular to address carbon offsets and climate change-related marketing claims. Likewise, in July 2023, the [Australian Competition and Consumer Commission](#) released [draft guidance](#) for businesses making environmental and sustainability claims (the Draft Greenwashing Guidance). The Draft Greenwashing Guidance establishes best practices under the Australian Consumer Law setting out how businesses operating in Australian jurisdictions can avoid greenwashing.

In addition, [as we have noted](#), research shows an accelerating trend in climate-related litigation of all kinds, greenwashing suits among them. One significant driver of litigation overall is the publicity generated, and greenwashing litigation in particular threatens adverse reputational impact.