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Court Declares Austrian Airlines Liable for Greenwashing

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An Austrian regional court found Austrian Airlines AG (AUA), a subsidiary of German airline Lufthansa, liable for greenwashing for advertisements offering carbon-neutral flights that used 100% sustainable aviation fuel (SAF), [according to a statement](#) by the Vienna-based Association for Consumer Information (Verein für Konsumenteninformation) (VKI). On September 25, 2023, AUA published information about the decision on its website and social media, as mandated by the court in its June ruling, concluding that the ads misled consumers about the airline's use of SAF.

VKI sued AUA in the Korneuburg Regional Court, flagging an ad the airline published on its website and Twitter account for flights from Vienna to Venice for the 2022 Biennale Arte exhibition. The ad stated: "Fly to the Biennale CO2-neutrally? No art for us! 100% SAF." The association argued the ad misled consumers about the SAF's environmental benefits. AUA also imposed a "hefty surcharge" of more than 50% of the ticket price for the alleged carbon-neutral flights, with the airline purchasing SAF to be added to future flights, VKI said.

"In principle, we welcome all corporate efforts that serve to protect the environment," VKI lawyer Barbara Bauer said in the association's statement. "But promoting flights as CO2-neutral when this is not technically possible and it cannot even be ensured that sustainable aviation fuel is used in the specific flight is definitely going too far."

SAF is mixed with conventional kerosene fuel. Currently, the admixture proportion of SAF in fossil kerosene is a maximum of 5%, according to ASTM D1655, the standard specification for aviation turbine fuels. Therefore, conducting carbon-neutral flights with 100% percent SAF is not possible at present, said Bauer, and the court agreed.

In 2021, member airlines committed to net-zero carbon emissions by 2050 at the 77th International Air Transport Association (IATA) Annual General Meeting. To achieve net-zero emissions, 65% of the total emissions reductions will "in all probability need to be achieved" by using SAF, [according to IATA](#). However, IATA estimated that the global production of SAF in

2022 covered only 0.1% to 0.15% of the aviation fuel used. IATA represents approximately 300 airlines comprising 83% of global air traffic.

In a statement following the publication of the June judgment, AUA said: “It follows from the ruling that Austrian Airlines should have provided clearer information about the use of sustainable aviation fuels (SAF), its possible uses and advantages with regard to the advertising statement in question. Austrian Airlines takes the ruling into account in current and future advertising statements.” No financial penalties were imposed on AUA, but the court ordered AUA to remove information on its website that contained the claims about the carbon-neutral flights to Vienna. Advertisements about flights using SAF now include references to carbon offsetting.

Taking the Temperature: [As we have previously discussed](#), litigation against airlines relating to alleged greenwashing has increased in the European Union and the United States this year. 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 violation 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, rendering Delta’s reported emissions data misleading.

The “penalty” imposed on AUA is comparable to the approach taken by the UK’s Advertising Standards Authority (ASA) in relation to ads by a global bank in which it was deemed to have misled consumers by omitting material information in connection with [use of terms](#) such as “carbon neutral” and “net zero,” or its ban of advertisements by three oil and gas companies that contained accurate statements about the companies’ “green” climate and environmental profiles but were [deemed misleading](#) in the context of their overall operations.

The Austrian court’s ruling against AUA as well as other pending actions come at time when both the EU and the U.S. are considering measures to regulate marketers’ environmental claims. In the U.S., for instance, the Federal Trade Commission (FTC) is [considering public comments received](#) on proposed revisions to its Green Guides for the Use of Environmental Marketing Claims. Among the questions posed is whether current guidance on carbon offsets and renewable energy claims is sufficient. Although the guidance in the Green Guides is non-binding, the FTC and others have cited the guidance in enforcement actions and litigation. Meanwhile in September, the EU Parliament and Council [reached a provisional agreement](#) updating a list of banned commercial practices, including marketing practices related to greenwashing.