

CADWALADER



**August 6, 2024**

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In this week's edition, we discuss a Colombian court's ruling in favor of an indigenous community who challenged the legality of a carbon credit project and a letter written by environmental activist groups to 71 airlines warning them against greenwashing.

### **Colombia Court Rules in Favor of Indigenous Group in Challenge to Carbon Credits Project**

On July 15, 2024, the Constitutional Court in Colombia **ruled in favor** of six indigenous tribes who had challenged the validity of an agreement establishing carbon credit projects in the Amazon's Pira Parana territory. The deal, made between U.S.-based Ruby Canyon Environmental and Colombia-based intermediary, Masbosques, was, the Court held, imposed on the indigenous communities illegally. It is estimated that \$3.8 million worth of credits related to the projects were ultimately sold to Delta airlines. **As we discussed in July 2023** and in the update below, Delta faces a class action lawsuit following greenwashing allegations.

The agreement that is the subject of the judgment in Colombia required indigenous communities to preserve 7,100 square kilometers but the tribes argued that false representatives had signed the agreement on their behalf and had violated their rights to territorial autonomy and self-government. The tribes' representatives have now been given six months to decide whether to authorize a new agreement. Should no agreement be reached, the project in the territory must be terminated. The effectiveness of the carbon credit project in the Pira Parana territory has been questioned in particular due to the remoteness of the region and the relatively low risk of deforestation there.

The judgment comes at a time when criticism around the effectiveness and integrity of carbon credits is under scrutiny, as we have observed in several issues including **here**, **here** and **here**. In particular, in June 2024, police in Brazil launched "Operation Greenwashing," with the aim of dismantling a criminal organization suspected of selling approximately R\$180 million in carbon credits where the underlying projects involved the illegal invasion of areas across Brazil. Carbon credit projects based in the Amazon region tend to be REDD+ projects, which focus on reducing emissions from deforestation and forest degradation. Tackling illegal deforestation is an ongoing challenge for the region. In January 2023, agents from Brazil's environmental protection agency, the Institute of Environment and Renewable Natural Resources (Ibama), **carried out the first significant environmental enforcement activity** with the aim of preventing loggers and ranchers from carrying out illegal deforestation and land clearance for agriculture. In June 2023, **we discussed ClientEarth's complaint against Cargill** over alleged deforestation and related human rights issues in Brazil.

Globally, tackling deforestation is a key priority for lawmakers. In December 2022, **the European Commission published the Deforestation Regulation**, which will require companies to show that the products they are selling within the territory do not come from illegally deforested areas. In order to sell their products in the EU, companies will have to show their geographical origination, which in practice means providing the relevant GPS coordinates to prove the area has not been deforested. On May 13, 2024, **the U.S. Department of Agriculture announced** that, in partnership with 17 states, it will conserve nearly 168,000 acres of "economically and ecologically significant" forestlands.

### **Environmental Groups Warn Airlines Against Greenwashing**

On July 18, 2024, three environmental activist groups - Fossielvrij NL, Reclame Fossielvrij and ClientEarth – **wrote to 71 airlines** operating out of Schipol Airport in Amsterdam, warning them of the risks of greenwashing. This follows the Dutch court's ruling against KLM earlier this year; **as we discussed previously**, the court held that KLM had misled customers through vague environmental claims and depicted an "overly rosy picture" of its use of sustainable aviation fuel (SAF).

The letter outlines legal guidelines regarding environmental advertising within the aviation industry and emphasizes that current and future advertisements by airlines must comply with these guidelines to avoid misleading the public about the environmental impacts of flying. The organizations have set out specific legal red lines for advertising including that:

- Claims about aviation sustainability must be truthful and not exaggerate the environmental benefits of certain measures, such as fleet renewal or alternative fuels.
- Airlines should not use terms like "sustainable aviation fuel" and must accurately describe the limited impact of alternative fuels.

- Offset claims suggesting that contributions to reforestation or biofuels can neutralize flight emissions are misleading and should be avoided.

The letter clarifies that aviation growth is inconsistent with the Paris Agreement's goals and that airlines must not suggest that they are on a path to sustainability or net-zero emissions without substantial evidence. The organizations also stress the importance of reducing air traffic to meet climate objectives, as technological innovations alone will not suffice. The letter concludes by urging airlines to adhere to these guidelines in their advertising practices to avoid contributing to the current climate crisis.

**As we frequently discuss**, greenwashing complaints against airlines are increasingly common. For example, in March 2024, the Cologne Regional Court in Germany **upheld a complaint** concerning advertisements by Eurowings in which it was claimed that certain of its flights were “CO2 neutral.” That same month, a Dutch court held that KLM misled customers through vague environmental claims and depicted an overly optimistic picture of its use of SAF. KLM has also been the subject of a greenwashing suit in Amsterdam concerning its “Fly Responsibly” campaign. In 2023, Austrian Airlines AG was **held liable for greenwashing** in respect of claims related to carbon-neutral flights and the airline's use of SAF. In the UK, the Advertising Standards Agency has censured Etihad Airways, and Ryanair, which has also been **warned about its sustainability claims** related to carbon offsets by the Netherlands Authority for Consumers and Markets.

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.

In another related development, on April 30, 2024, **the European Commission announced** that it had written to 20 airlines identifying potentially misleading green claims and asking that the companies bring their practices in line with EU consumer law within 30 days. An update on the requested response is awaited.