CADWALADER

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In this week's edition, we discuss the UK's advertising regulator's continued focus on greenwashing enforcement – this time, in relation to Virgin Atlantic and its use of sustainable aviation fuel. We also discuss the latest high profile exit from Climate Action 100+.

UK Advertising Regulator Upholds Greenwashing Complaint Against Virgin Atlantic

On August 7, 2024, the UK's Advertising Standards Authority ruled against Virgin Atlantic, holding that the airline's advertisement promoting its use of sustainable aviation fuel (SAF) misled consumers. The radio advertisement claimed that on November 28, 2023, Virgin Atlantic would "take to the skies on our unique flight mission from London Heathrow to JFK to become the world's first commercial airline to fly transatlantic on 100% sustainable aviation fuel." The ASA held that while some consumers would understand that the flight in question had, uniquely, flown transatlantic using only SAF, a significant proportion would understand the claim "100% sustainable aviation fuel" to mean that the fuel used was 100% sustainable. As a result, some consumers would have been likely to believe that the SAF had no negative environmental impacts at all, but this was not the case. While SAF is a sustainable alternative for conventional jet fuel, it still has some environmental impact. The ASA did acknowledge that the specific SAF mix used for the flight, referred to as Flight 100, was calculated to have delivered savings of 64% in greenhouse gas emissions compared to fossil derived aviation fuel over its full lifecycle, but that this was not acknowledged in the ad.

Virgin Atlantic's advertisement claimed that its use of sustainable aviation fuel was a significant step towards reducing its carbon footprint. However, the ASA concluded that the ad exaggerated the impact of SAF, particularly in terms of its availability and effectiveness in curbing emissions. While SAF is indeed a more sustainable alternative to conventional jet fuel, it is not a silver bullet; current supplies are limited, and its overall contribution to reducing aviation's carbon emissions remains small. The ruling required Virgin Atlantic to withdraw the ad and ensure future advertisements are more transparent about the realities of sustainable aviation technologies.

As we have observed frequently, greenwashing is a significant concern for regulators globally and the aviation sector has often found itself at the center of that concern. The ASA has also taken similar action against Ryanair, Etihad Airways, Lufthansa and others. 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." Action against greenwashing continues to trend in the airline sector with little sign of abating.

The UK is not alone in this regulatory push. For example, earlier this year, a Dutch court held that KLM misled customers through vague environmental claims and depicted an "overly rosy picture" of its use of SAF. Across Europe, authorities are tightening the screws on environmental claims more broadly. The European Union has introduced new guidelines requiring companies to substantiate any green claims with credible evidence. These measures are part of the EU's broader strategy to combat greenwashing, including the **proposed EU Green Claims Directive**, which aims to standardize how environmental claims are communicated to consumers.

In the United States, the Federal Trade Commission (FTC) has also been active in this area, **revising its Green Guides** to address modern-day environmental marketing issues. The FTC has targeted companies across various sectors, from automotive to fashion, for misleading environmental claims.

The ASA's decision against Virgin Atlantic sends a clear message to businesses: environmental claims must be backed by solid evidence and presented in a context that does not mislead consumers. As sustainability becomes a more prominent factor in consumer decision-making, the risks of greenwashing are not limited to reputational but extend to legal.

Goldman Sachs Fund Leaves Climate Action 100+

On August 9, 2024, Goldman Sachs Asset Management (GSAM) became the most recent asset manager to leave Climate Action 100+ (CA100+), following a series of similar departures earlier in the year. The exit marks another significant departure from the group, following a trend of high-profile financial institutions distancing themselves from the initiative this year.

CA100+ is an investor-led initiative aimed at pressing the world's largest corporate greenhouse gas emitters to take action on climate change. Launched in 2017, the group coordinates investor pressure on corporations to adopt robust climate strategies, including commitments to net-zero emissions by 2050. The initiative has been supported by over 700 investors collectively managing more than $68 trillion in assets.

GSAM's decision to leave the group comes on the heels of similar exits by other major financial institutions in 2024. **As we discussed previously**, BlackRock scaled back its participation in CA100+ after raising concerns about its Phase 2 commitment, which involved a change to the group's aim from pressuring companies to actively encouraging them to reduce their GHG emissions. In our February 28 edition, **we discussed the departure of two major asset managers**, JP Morgan Asset Management (JPMAM) and State Street Global Advisers.

These exits highlight a growing tension within the financial industry about how to balance climate advocacy with fiduciary responsibilities and shareholder expectations. The departure of influential firms could impact CA100+'s ability to drive corporate climate action, potentially slowing their progress on global emission reductions. However, financial institutions are increasingly looking to implement their own climate strategies independently, rather than working through collective platforms. Goldman Sachs, for example, continues to emphasize its commitment to sustainability and climate risk management, stating that it remains focused on integrating climate considerations across its investment strategies. **As we observed in a previous edition**, Invesco cited a similar reason for its exit. CA100+ is also not the only climate action collective experiencing exits – **as we discussed in December 2022**, Vanguard, one of the world's largest asset managers, announced its withdrawal from the Net Zero Asset Managers (NZAM) initiative, citing concerns over the potential legal and fiduciary risks associated with its involvement.