Misleading Markets: Consumer Protection in the Age of Climate Washing

Ciara Peacock
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Consumer Protection Law Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol126/iss1/12

This Student Note is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
MISLEADING MARKETS: CONSUMER PROTECTION IN THE AGE OF CLIMATE WASHING

ABSTRACT

Consumer protection claims against companies misrepresenting their carbon footprints through “carbon-neutral” and “net zero” advertising are on the rise. These misrepresentations have developed as a result of the proliferation of carbon credits in the voluntary carbon market. The voluntary carbon market allows companies to invest in carbon offsets, which are carbon reduction projects that are intended to remove additional carbon from the atmosphere to offset the companies’ carbon emissions. Because carbon credits offer cheap alternatives to internal emissions reductions, businesses have begun heavily investing in carbon credits and advertising that their products or services are “carbon-neutral” or “net zero.” However, corporations may not realize their goals for years to come, and many carbon credit programs do not guarantee permanent removal of carbon from the atmosphere. Some companies may be unaware of the shortcomings, but others may be exaggerating their positive impacts on the climate, otherwise known as “climate washing.” Thus, consumers may be purchasing products with the impression there is no carbon footprint when in fact the company may not have come close to offsetting its carbon emissions. This Note addresses current consumer protection laws and litigation in the emerging era of climate washing.

I. INTRODUCTION .................................................................368

II. THE EMERGENCE OF “CARBON-NEUTRAL” AND “NET ZERO” MARKETING .................................................................370
    A. A Brief History of Carbon Markets .....................................371
    B. The Rise of Private Carbon Trading ..............................372
    C. Greenwashing, Climate Washing, and Greenhushing ..........374

III. CURRENT LAW RELATED TO FRAUDULENT “CARBON-NEUTRAL” AND “NET ZERO” MARKETING ......................................................376
    A. Regulatory and Statutory Consumer Protection Mechanisms in the U.S. .................................................................377
       1. The FTC’s ‘Green Guides’ .............................................377
       2. SEC Enforcement and Regulations ..............................379
    B. Climate Washing Case Law in the U.S. ..........................380
1. Citizens Climate Lobby v. California Air Resources Board 380
2. Earth Island Institute v. Coca-Cola.................................382
3. Dwyer v. Allbirds ........................................................383
4. Dorris v. Danone Waters of America ................................384
5. Blackburn v. Etsy, Inc. ....................................................385
C. International Case Law and Regulations .........................386

IV. CONSIDERATIONS FOR PLAINTIFFS, LAWMAKERS, AND BUSINESSES .................................................................388
   A. Consumers Can Move the Needle by Continuing to File
      Complaints ......................................................................389
   B. Lawmakers on All Levels Can Mitigate Climate Washing ....390
   C. Businesses Should Be Incentivized to Engage in Effective
      Carbon Reduction Practices ..............................................391

V. CONCLUSION .........................................................................393

I. INTRODUCTION

When the Bootleg fire burned over 400,000 acres of Oregon forests in 2021, Microsoft had a problem.1 The fire ravaged through about 20% of Green Diamond’s forested acreage, a timber company that sold carbon offsets to Microsoft with the promise of removing 265,000 tons of carbon from the atmosphere.2 The burned trees could no longer absorb carbon from the atmosphere, thus they could no longer be included in Microsoft’s calculus of its carbon offsets.3 With an aggressive goal of becoming carbon negative by 2030 and a $1 billion climate fund devoted to carbon reduction projects, any disruptions to Microsoft’s carbon mitigation efforts would threaten its capacity to achieve its goal.4

---

2 Craig Welch, Polluters are using forests as ‘carbon offsets.’ Climate change has other plans., NAT’L GEOGRAPHIC (May 4, 2022), https://www.nationalgeographic.com/environment/article/forests-as-carbon-offsets-climate-change-has-other-plans.
4 Welch, supra note 2; Brad Smith, Microsoft will be carbon negative by 2030, MICROSOFT: OFFICIAL MICROSOFT BLOG (Jan. 16, 2020), https://blogs.microsoft.com/blog/2020/01/16/microsoft-will-be-carbon-negative-by-2030/.
Despite Microsoft’s aggressive climate commitments, the Bootleg fire highlights a common concern with carbon-neutral promises. Companies are only carbon-neutral if they remove as much carbon from the atmosphere as they produce. The carbon market allows companies to receive carbon credits for purchasing carbon offsets; but these offsets only work if the carbon is permanently removed from the atmosphere. Many voluntary carbon credit programs rely on forests as carbon sinks, but the increasing effects of climate change on forests diminishes their capacity to capture and store carbon. As the global community has become more concerned with the imminent threats posed by climate change, many companies have made big promises about carbon reductions, from carbon-neutral and net zero promises to products labeled as having no carbon footprint.

Increasing awareness of the ineffectiveness of carbon offsets coupled with largely unregulated carbon markets makes it hard to determine whether companies are truly neutralizing their carbon emissions or simply making empty promises. Fraudulent environmental marketing has a long history in consumer protection law, but the added complexities surrounding carbon credit programs pose important questions about how businesses should be marketing their environmental practices without misleading consumers.

---


7 Oliver Griffin, Wildfires, logging turn protected forests into carbon emitters, REUTERS (Oct. 28, 2021), https://www.reuters.com/business/cop/wildfires-logging-turn-protected-forests-into-carbon-emitters-report-2021-10-27. While old growth forests have long been known to be some of the most effective methods of carbon sequestration, climate change creates immediate threats to forest health, making them less effective at permanent carbon sequestration. See also Paul Catanzaro & Anthony D’Amato, Forest Carbon: An Essential Natural Solution For Climate Change (2006), https://masswoods.org/sites/masswoods.org/files/Forest-Carbon-web_1.pdf.

8 The terms “carbon-neutral” and “net-zero” are used interchangeably throughout this note to speak broadly about their generally similar ideas of CO2 reduction, although they have technically different meanings. See Demystifying Carbon-neutral vs. Net Zero – and How You Get There, STAND FOR TREES, https://standfortrees.org/blog/carbon-neutral-vs-net-zero/ (last visited Nov. 9, 2023).


10 Id.; see also Shelly Welton, Neutralizing the Atmosphere, 132 YALE L. J. 171, 180 (2022); George Gigounas, Kristy Balsanek & Erin Heiferman, Corporate Net-Zero Commitments, 38 NAT. RES. & ENV’T 9, 9 (2023).

This Note provides an overview of the evolution of carbon credits and the misleading nature of marketing surrounding corporate climate goals. Section II discusses the history of carbon markets from the Kyoto Protocol to voluntary markets, and the subsequent evolution of consumer protection issues with corporate participation in voluntary carbon markets. Section III provides an overview and analysis of case law that has addressed issues with carbon markets, working up to current case law dealing with misleading advertising related to carbon-neutral practices and products. Section IV discusses recommendations for stakeholders moving forward, given the rapidly developing litigation and scholarship about climate washing.

Carbon offset programs have misled businesses and consumers, and offsets will not reduce enough carbon from the atmosphere to effectively mitigate the effects of climate change. But until more effective climate change options evolve, consumers have the opportunity to raise awareness about climate washing through litigation, businesses have the capacity to reevaluate their carbon reduction plans, and lawmakers have the power to develop regulations and standardized expectations to encourage effective climate action.

II. THE EMERGENCE OF “CARBON-NEUTRAL” AND “NET ZERO” MARKETING

Long before the terms carbon-neutral and net zero emerged in the common lexicon, the global community was hard at work developing mechanisms for mitigating the effects of climate change. In the 1990s, the U.N. developed a regulated cap-and-trade program through the Kyoto Protocol. The Protocol placed caps on emissions in developed countries and sought to incentivize these countries to invest in mitigating the effects of climate change on the global south. Cap-and-trade programs soon emerged in the private sector, and the increasing effects of climate change have since evoked a stark increase in corporations committed to minimizing their carbon footprints.

These interests grew as a result of investor and consumer demand for more climate-conscious business practices. In response, corporations began making public commitments in the form of “carbon-neutral” or “net zero” promises; pledging to eradicate their carbon footprints on timelines consistent with those set by the United Nations Framework Convention on Climate Change.
Many of these pledges, however, are based on investments in voluntary carbon credits that do not fully or permanently remove carbon from the atmosphere. Thus, consumers and investors may be getting the wrong impression from companies making these carbon-neutral commitments.

A. A Brief History of Carbon Markets

The Kyoto Protocol established the first official carbon market program. The Kyoto Protocol is an international agreement operationalizing the UNFCCC. The Protocol set emissions reductions requirements for 37 countries, focusing on developed countries with the highest levels of carbon emissions. The Kyoto Protocol established a unitization system for carbon, each country received a certain limit of carbon units they emitted, and any excess had to be mitigated. Countries emitting more carbon than they were allotted under the Protocol could purchase carbon credits, excess carbon units from nations that emitted less carbon and thus had units to spare. This market-based approach allows countries to supplement national emissions reductions measures through other “market-based mechanisms.” In addition to “actual emissions units,” countries can receive credit for three other project investments, each counting as one tonne of CO2: International Emissions Trading (“IET”), Certified Emissions Reduction (“CER”), and Joint Implementation (“JI”).

16 See generally id.
17 See generally Welton, supra note 10.
18 What is the Kyoto Protocol?, supra note 12.
19 Id.
20 Id.
21 Emissions Trading, supra note 12.
22 Id.
23 Emissions Trading, supra note 12. Joint implementation projects provide emissions reduction units to countries that invest in removal projects in other developed countries with limitation commitments. Joint implementation, United Nations Framework Convention on Climate Change, https://unfccc.int/process/the-kyoto-protocol/mechanisms/joint-implementation (last visited Nov. 9, 2023). Certified emission reduction units are given to countries that participate in the Clean Development Mechanism by investing in emission-reduction projects in developing countries. The Clean Development Mechanism, United Nations Framework Convention on Climate Change, https://unfccc.int/process-and-meetings/the-kyoto-protocol/mechanisms-under-the-kyoto-protocol/the-clean-development-mechanism (last visited Nov. 9, 2023) [hereinafter CDM]. This is the only unit that is “saleable” as part of an investment and credit scheme under the Kyoto Protocol. Id. Land use, land-use change, and forestry (LULUCF) units offer credits for projects that protect and enhance carbon “sinks,” though the program notes that LULUCF projects are less permanent given threats like wildfire and rising tree mortality potentially reversing the carbon storage efforts. Land Use, Land-Use Change and Forestry (LULUCF), United Nations Framework Convention on Climate Change, https://unfccc.int/topics/land-use/workstreams/land-use—land-use-change-and-forestry-lulucf (last visited Nov. 9, 2023).
While countries can receive units by investing in any of these three unit systems, CERs are the only projects that establish saleable credits that can be sold and traded under the Kyoto Protocol. For carbon credits to effectively contribute to emissions reductions, the offset must remove more carbon from the atmosphere than would have been removed during business as usual. This is referred to as “additionality.” Countries are required to monitor their reductions, create registries, and report all information to the secretariat annually. Since the enactment of the Kyoto Protocol, the UNFCCC has sought to incorporate other parties and non-state actors in carbon reductions efforts. The Climate Neutral Now Initiative and the Race to Zero Campaign expanded the scope of non-state participants in the carbon markets and successfully ignited climate action goals in the private sector.

B. The Rise of Private Carbon Trading

In addition to the UNFCCC’s successful initiatives, the rising popularity of corporate net zero commitments stems in part from the development of environmental, social, and governance goals (“ESG”) as an investment trend. ESG investing involves analyzing the costs and benefits of a company’s choices or effects on environmental, social, and governance issues. The environmental arm of this trifecta emerged as companies became aware of the economic impact of climate change on their bottom lines. As companies face more and more

---

24 See CDM, supra note 23.
costs from the impacts of climate change, investors have demanded climate action goals to ensure corporate stability well into the future. ESG reporting can focus on a variety of environmental factors including a company’s environmental impacts or the risks the company faces as a result of climate change.

Emissions reductions are a common goal in ESG, and carbon credits have immense popularity as a mechanism for achieving this goal because of their affordability. Evolving research shows that it is hard to measure whether companies are meeting these reductions goals, and available information is likely not truly representative of business practices. Thus, these growing carbon-neutrality promises may not be having the impact originally imagined. When businesses create reductions goals, they can reduce their emissions by changing their business practices, or they can buy credits of varying sources which allow them to offset their carbon emissions by getting credit for investing in clean or renewable energy, or other carbon reduction projects.

One research group reveals data showing that “[n]et zero targets aim to reduce the analyzed companies’ aggregate emissions by only 40% at most, not 100% as suggested by the term ‘net zero.’ All of the 25 companies assessed in this report pledge some form of zero-emission, net zero or carbon-neutral target.” A striking report by Net Zero Stocktake shows that companies making promises to become net zero have unreliable plans for how to implement these policies. Many companies have either taken no action to neutralize their carbon emissions, or have only established these promises as long term goals.

The 2022 Net Zero Stocktake report highlights other major issues with carbon offset projects, including “additionality, permanence, avoidance of double counting, leakage, and the accuracy of quantified impacts.” The report notes that companies with net zero dates that are nearer in the future have higher reliance on carbon credits, so they are doing less to make long-term changes to

33 Id. at 73.
35 Id.
38 Id.
39 Id. at 29.
their emissions, and instead reaching carbon-neutrality more quickly by investing in carbon credits.\textsuperscript{40} Thus, net zero promises give companies the opportunity to gain clout by touting environmental goals without legitimately contributing to climate action.

While carbon offsets are one measure of reducing a company’s carbon footprint, they are not as effective as internal emissions reductions such as energy efficiency initiatives within the company, or transitions to renewable energy.\textsuperscript{41} Carbon offsets offer an easier path to carbon reduction when internal transformations would take more time and money to achieve, but they cannot be considered the end-all-be-all.\textsuperscript{42} Unfortunately, many companies have over relied on carbon credits to reach ESG goals, despite the risk of litigation from regulatory bodies, consumers, and investors.\textsuperscript{43}

C. Greenwashing, Climate Washing, and Greenhushing

Litigation over misleading environmental advertising existed long before the rise of ESG.\textsuperscript{44} The term “greenwashing” emerged decades ago to describe marketing claims that misrepresent the environmental effects of a product or practice.\textsuperscript{45} As environmental claims in marketing became more popular, so did concerns about their validity.\textsuperscript{46} Consumer protection claims quickly arose, with plaintiffs suing businesses for fraudulent claims about various environmental issues including recyclability, toxic or chemical ingredients, and overall impact on the environment.\textsuperscript{47} As Robin Rotman notes, greenwashing has harmful effects all around:

Greenwashing hurts business competitors, consumers, and the environment. It is well documented that even isolated instances of greenwashing can make consumers skeptical of all products marketed as “green,” and can lead consumers to question not only the supposed eco-attributes of those products, but all claims about those products made in marketing materials. Purchasers of “green” products are not the only ones who are affected;

\textsuperscript{40} See Lin, supra note 9, at 749–51.
\textsuperscript{41} Welton, supra note 10, at 180.
\textsuperscript{42} See Kinkela, supra note 31; Lin, supra note 9; Akriti Bhargava, Benjamin Franta, Karla Martinez Toral & Aradhina Tandon, CSSN Research Report 2022:1: Climate Washing Litigation: Legal Liability for Misleading Climate Communications 4 (2022).
\textsuperscript{43} Amanda Shanor & Sarah E. Light, Greenwashing and the First Amendment, 122 Colum. L. Rev. 2033, 2043 (2022).
\textsuperscript{44} Id.
\textsuperscript{45} Id. at 2038.
\textsuperscript{47} Id.
exposure to fraudulent “green” marketing materials can leave broad swathes of consumers confused, dissatisfied, and disloyal. If allowed to continue, greenwashing can ultimately lead consumers to avoid products that are marketed as “green.” Frankly, this is a shame given the magnitude of environmental challenges and the importance and urgency of reducing the environmental impact of consumptive activities.48

As companies shifted their focus to advertising climate-related issues, including net zero promises, the new term “climate washing” emerged to more appropriately describe the conduct.49 Climate washing litigation focuses specifically on claims related to impacts on the climate.50 These cases, as opposed to greenwashing cases, center around the notion that businesses misrepresenting their commitments to mitigating climate change are detrimentally impacting the environment.51 Lawsuits are arising around fraudulent climate advertising because the current models provided to businesses, such as carbon offsets, are seen by some as a “‘burn now, pay later’ approach to tackling climate change.”52

The term “greenhushing” is the latest term to enter the lexicon as a response to rising climate washing litigation and critique.53 This refers to the phenomenon of companies remaining silent about their carbon reductions initiatives out of fear of potential legal consequences.54 “When corporations greenhush, emissions targets are harder to assess and knowledge-sharing limited, leading to less ambitious targets, decreased collaboration across industries, and slowed progress.”55 Further, heightened critique of corporate promises to mitigate climate change will deter businesses from pursuing or attempting to transform their practices.56

Therein lies the question, as climate-conscious marketing evolves, to what extent should consumers hold businesses accountable, and how much leniency should they receive as they navigate a new realm of decision-making?

50 Id.
51 Id.
54 Id.
55 Gigounas, Balsanek & Heiferman, supra note 10, at 12.
56 Id.
While consumer law has long protected consumers from fraudulent marketing, should businesses be given leeway to evolve and establish better environmental practices, or are corporations taking advantage of a hot-button issue for profit’s sake?

III. CURRENT LAW RELATED TO FRAUDULENT “CARBON-NEUTRAL” AND “NET ZERO” MARKETING

Greenwashing litigation is no new advent, but carbon offsets change present a nuanced issue with these claims. Because the carbon footprint does not have a direct effect on the quality or nature of the product, it may be hard to show an injury under traditional consumer protection theories. Without statutes or regulations to rely on, there are many gaps to fill in bringing consumer protection claims against companies for claiming they are net zero.\(^57\) The Federal Trade Commission ("FTC") and Securities and Exchange Commission ("SEC") have offered guidance on climate-related claims, and both agencies are in the process of revising or developing new rules.\(^58\) While other countries have codified policies preventing fraudulent climate claims, the U.S. has been slow to step up to the plate.\(^59\)

Although government organizations have recently transformed regulations to hold businesses to higher standards with ESG programs and carbon reduction efforts, consumers continue to make purchases in the market space relying on statements businesses make about their environmental efforts. Consumers have successfully brought lawsuits against companies for material representations regarding organic or sustainably sourced labeling, but lawsuits regarding carbon reduction practices have seen less success.\(^60\) Only a handful of cases have been brought in the U.S. but based on the rapid rise in popularity of carbon offsets, and the ever-growing climate commitments by businesses, these claims are likely to continue to evolve.\(^61\) Without codified law, it may be very hard to successfully bring these claims based on the fact that companies are permitted to make promises and engage in puffery.

---

\(^{57}\) See infra Sections III.B, IV.A.


\(^{59}\) See infra Section III.C.

\(^{60}\) Caitlin M. Ajax & Diane Strauss, Corporate Sustainability Disclosures in American Case Law: Purposeful or Mere "Puffery"?, 45 Ecol. L. Q. 703, 726 (2018).

\(^{61}\) See infra Section III.
A. Regulatory and Statutory Consumer Protection Mechanisms in the U.S.

There is currently no federal or regulatory scheme codified to specifically address climate washing. While the FTC has a section on carbon offsets in its Green Guides, it has not yet codified this guidance. The SEC, however, has proposed rulemaking, and appears to be tackling some of these claims more aggressively. While the SEC is investor-based, their aggressive rulemaking shows that the federal government has taken note of fraudulent activity in emissions reduction reporting, and a collective understanding of this problem will bolster future actions even if they are brought through different agencies or through civil actions.

1. The FTC’s ‘Green Guides’

The Green Guides are regulatory guidance that establish basic principles for green marketing. In recent decades, consumers have shown demand for more environmentally friendly products. As companies have responded to this by advertising how their products are sourced and what their products are made of, the FTC developed a series of guidelines to assist businesses in how to advertise to consumers without misrepresenting their practices.

The Green Guides are currently under revision for the first time since 2012. While the 2012 version includes a section on advertising about carbon offsets, the requests for comment indicate that the agency is concerned about transforming awareness on climate change claims about “net zero” and “carbon-neutral” claims. The carbon offset recommendations state:

(a) Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and

---

66 Id. § 260.5.
to ensure that they do not sell the same reduction more than one time.

(b) It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.

(c) It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.\(^{69}\)

Some scholars have recommended that the FTC codify the Green Guides.\(^{70}\) While this guidance is not codified on the federal level, some states have incorporated the Green Guides into their statutory schemes.\(^{71}\) Outside of these few states, it may be hard to find ways to successfully bring these claims in court until the Green Guides are codified. Because of the nebulous nature of the carbon markets, consumers may struggle to surpass the pleading stage.\(^{72}\)

Where federal certification standards and the Lanham Act can help consumers in traditional consumer protection claims, carbon credits are not directly related to the consumer product, and thus create a more complex issue for showing an injury.\(^{73}\) The FTC has pursued greenwashing claims under the FTC ACT, using the Green Guides to support its claims.\(^{74}\) The FTC contains a segment on carbon-emissions marketing, and reminds businesses that they should not make promises about emissions reductions further than a few years.

---

\(^{69}\) 16 C.F.R. § 260.5 (2023).


\(^{73}\) See generally Shanor & Light, supra note 44. The FTC Act states that a marketing practice is unfair when “the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” Id. (quoting 15 U.S.C.A. § 45(n) (Westlaw through P.L. 118-19) (West 2023)) (emphasis added).

out. However, because this guidance is not codified, businesses may still be able to evade consumer claims under the guise of “puffery.”

The Green Guides direct businesses not to inform consumers that they are participating in offsets that are aspirational, but companies in recent years have been doing exactly this. If entities can gain points with consumers by making climate-friendly pledges but evade responsibility for missing their goals by using a “puffery” defense, this gap in accountability could incentivize aggressive claims with minimal action. Failed carbon mitigation claims mean carbon keeps dumping into the atmosphere while consumers are led to believe their dollar is supporting climate-friendly business.

2. SEC Enforcement and Regulations

In 2021, the SEC launched a Climate and ESG Task Force under its Division of Enforcement. While the SEC is, of course, focused on securities regulation, investor demand for ESG reporting has bolstered the corporate focus on emissions reductions. The task force was developed to monitor misconduct in ESG reporting in part to address climate washing. Further, the SEC has a proposed rulemaking that seeks to standardize climate-related disclosures. The development of the rulemaking very much evolved as a result of the rapid growth of net zero pledges. Speaking at the Center for American Progress, Commissioner Caroline Crenshaw noted the benefits of net zero pledges while recognizing the need for quality monitoring:

So while net-zero emissions pledges are an important step forward, they underscore the loud, repeated, and sustained calls for decision-useful metrics – metrics calculated using reliable and comparable methodologies that enable investors to decide whether the companies mean what they say. That is a core purpose of the SEC’s disclosure obligations.

75 Id.
76 Ajax & Strauss, supra note 60, at 706–08.
79 Id.
82 Id.
Just a few months later, the commissioner announced the SEC’s proposed rulemaking. While the proposed rule would require companies to disclose when they rely on carbon offsets to achieve their own carbon-reduction goals, this does not necessarily address the issues with reliability and quality of those carbon offsets in reducing carbon from the atmosphere. Thus, climate washing may continue to permeate the securities sector despite the SEC’s formalized rulemaking. This reality shows just how dense carbon-market fraud has become.

B. Climate Washing Case Law in the U.S.

Consumer protection claims have multiplied in the last few years, with complaints against Delta, Danone, Etsy, and Nestlé for their misrepresentations regarding carbon-neutral pledges. These claims have been brought under state consumer protection statutes, generally where consumer protection laws are more plaintiff-friendly, such as in New York and California. Case law on carbon credits in the U.S. is minimal, thus the following summaries include some earlier cases related to cap-and-trade programs, and other emissions reductions issues to follow the evolution of this area of law. The following summaries detail court holdings to date and may offer insight as to what these claims may look like going forward. In the minimal case law that exists, there have been a variety of outcomes. Some companies have proactively reduced their carbon-neutrality statements, while others have worked to maintain their assertions even after directives to change the marketing language.

1. Citizens Climate Lobby v. California Air Resources Board

In 2006, California became the first state in the U.S. to create an official cap-and-trade program. The California Cap-and-Trade program sets limits on GHG emissions and permits businesses to purchase allowances from a reserve, with allowances slowly being reduced and the price of purchase slowly increasing to incentivize actual emissions reductions.


84 Id.

85 See infra Sections III.B.1–5.

86 Id.


against the California Air Resources Board (“CRB”), challenging its additionality measurement system under the cap-and-trade program.\textsuperscript{89} The Climate Lobby argued that the additionality standard would increase the number of offset credits on the market so much that the price of credits would plummet.\textsuperscript{90} The court denied the writ, concluding that the CRB had not exceeded its delegated authority in choosing its standardized additionality mechanisms.\textsuperscript{91}

The court explored additionality issues in depth, making special note of the complicated nature of these measurements.\textsuperscript{92} “The fundamental challenge is that additionality is based on hypotheticals and counter-factuals and can never be shown with absolute certainty.”\textsuperscript{93} The court carefully considered the CRB protocols along with the effectiveness of the standards followed by the Kyoto Protocol’s CDM.\textsuperscript{94} “A CDM project is additional if `GHG emissions are reduced below those that would have occurred in the absence of the registered CDM project activity.’”\textsuperscript{95} Despite being the gold standard, the court noted, even projects monitored under the CDM consistently failed to meet additionality requirements.\textsuperscript{96}

After highlighting the striking data showing the inexact nature of additionality measurements (“this determination is exceedingly difficult and inherently uncertain”),\textsuperscript{97} the court found that the CRB had “adequately considered all relevant factors” in developing additionality measurement protocols, thus they were neither arbitrary nor capricious.\textsuperscript{98} This unpublished case was decided a decade ago, but minimal new case law has emerged discussing these additionality issues. Given that much of the emerging cap-and-trade economy in the U.S. exists in private markets, it may take more time before discussions about additionality come to light in U.S. courts, which will place an extra burden on plaintiffs to explain and highlight how additionality issues threaten the effectiveness of carbon credit programs.

\begin{itemize}
\item \textsuperscript{89} Citizens Climate Lobby, 2013 WL 861396, at *1–2.
\item \textsuperscript{90} Id. at *3.
\item \textsuperscript{91} Id. at *20.
\item \textsuperscript{92} See generally id.
\item \textsuperscript{93} Id. at *7.
\item \textsuperscript{94} Id. at *4–5.
\item \textsuperscript{95} Id.
\item \textsuperscript{96} Id. at *5.
\item \textsuperscript{97} Id. at *4.
\item \textsuperscript{98} Id. at *20.
\end{itemize}
2. Earth Island Institute v. Coca-Cola

In 2021, Earth Island Institute brought an action against Coca-Cola Co. for false and deceptive marketing under the District of Columbia Consumer Protection Procedures Act (“DCCPPA”). The complaint alleged that the company misled consumers by advertising its “commit[ment] to reducing plastic pollution while polluting more than any other beverage company and actively working to prevent effective recycling measures in the U.S.” The D.C. Superior Court granted Coca-Cola’s motion to dismiss because the company’s statements were aspirational in nature, they were not tied to a “product or service,” and the statements did not “create a misleading ‘general impression’ or ‘mosaic of representations,’” as required by the DCCPPA.

The court concluded that many of the statements were more about general corporate ethos than they were about specific promises to the consumer. But the statements that referenced specific goals set to be achieved by certain dates were still not enough to convince the court that Coca-Cola was violating consumer protection acts. The statements about future recycling and sustainability plans were considered aspirational goals, and thus were not misleading to consumers.

This holding poses a challenge to climate washing litigation, given that many corporate net zero statements are centered on promises about emissions reductions and net-neutrality that may not take full effect for many years. Although Coca-Cola’s messaging was centered around recyclability and general sustainability practices, precluding businesses from liability for their promised commitments based on the intangible nature of carbon credits highlights the biggest issue. If companies can evade consumer protection through climate washing, consumers will believe companies are changing their conduct while continuing to dump carbon into the atmosphere at a catastrophic rate. The Green Guides tell businesses not to include aspirational mentions of net zero claims, but until that is codified with specific language about carbon credits and net-neutrality, consumers may face substantial hurdles in making it past the motion to dismiss stage under current state consumer protection laws.

---

100 Complaint at *6, Id. at *3.
101 Earth Island Inst., 2022 WL 18492133, at *3.
102 Id. at *4.
103 Id. at *5.
104 Id. at *6.
105 Crenshaw, Virtual Remarks, supra note 81.
106 See supra Section III.A.1.
3. Dwyer v. Allbirds

Here, Dwyer brought claims under New York deceptive practice and false advertising statutes.\(^\text{107}\) The court, again, granted Allbirds’s motion to dismiss for failure to plead facts to plausibly show consumers were misled by Allbirds’s carbon footprint statements.\(^\text{108}\) Allbirds made a variety of claims about the sustainable and animal friendly nature of its products, including claiming that the “average carbon footprint of its products is 7.6 kg CO2e.”\(^\text{109}\) The website also noted that its “entire footprint is offset to zero.”\(^\text{110}\) Dwyer argued that the carbon emission calculations Allbirds used excluded the carbon footprint of the sheeps’ life cycle (the shoes were made of wool) but the court reasoned that the complaint was about methodology, not the misleading nature of the company’s statements.\(^\text{111}\)

The court critiqued Dwyer’s allegations in multiple ways.\(^\text{112}\) First, it noted that the Dwyer did “not allege that a reasonable consumer would expect Allbirds to use another method of calculation.”\(^\text{113}\) Next, Dwyer had failed to allege facts that Allbirds was not “calculating the carbon footprint as advertised.”\(^\text{114}\) The court found that Allbirds’s statements provided sufficient details about methodology and that the statements did “not mislead the reasonable consumer because it makes clear what is included in the carbon footprint calculation, and does not suggest that any factors are included that really are not.”\(^\text{115}\)

But most important to the issue of climate washing was the court’s finding that “Plaintiff does not allege that a reasonable consumer would expect a carbon footprint calculation for a shoe manufacturer to include non-atmospheric inputs, such as land occupation and eutrophication, or to include carbon generated from the production of raw materials before they come into the manufacturer’s hands.”\(^\text{116}\) This holding exemplifies the threat posed by carbon-neutral advertising because it is almost impossible to imagine a world where every consumer, corporate executive, and judge has the same impression of where the carbon-neutral calculus ends on the supply chain. While Allbirds described the limits of its carbon-neutral calculations on its website, these


\(^{108}\) Id. at 152.

\(^{109}\) Id. at 145.

\(^{110}\) Id.

\(^{111}\) Id. at 150–51

\(^{112}\) Id. at 149–51.

\(^{113}\) Id. at 150.

\(^{114}\) Id.

\(^{115}\) Id.

\(^{116}\) Id.
statistics are not always freely publicized by companies claiming they are carbon-neutral.\footnote{\textit{Id.}}

4. Dorris v. Danone Waters of America

In one of the first U.S. consumer protection cases alleging misleading carbon-neutral claims, Dorris filed a putative class action against Danone Waters for labeling Evian water as “carbon-neutral.”\footnote{Complaint at *1, Stephanie Dorris v. Danone Waters of America, No. 7:22-cv-08717 (S.D.N.Y. Oct. 13, 2022).} The complaint asserts that the company mislead consumers by stating that the water is carbon-neutral because most individuals in the United States do not understand the difference between carbon-neutral and carbon zero.\footnote{\textit{Id.} at *10.} In its discussion of the carbon-neutral claims made by Evian’s label, the complaint shows the packaging and the lack of explanation thereon.\footnote{\textit{Id.} at *2.} Further, the complaint asserts that despite the ‘carbon-neutral’ statement on the bottle, the product nonetheless leaves a carbon footprint “because the product’s lifecycle still releases CO2 into the earth’s atmosphere.”\footnote{\textit{Id.} at *13.}

The complaint asserts that even if the label were to reference only the fact that carbon emissions are neutralized by Danone’s investments in carbon offset projects, it is nonetheless contributing to carbon production because it relies on other companies in the chain of production that are not carbon-neutral.\footnote{\textit{Id.} at 14.} By advertising the product as carbon-neutral, Dorris argues, “Defendant implies that the CO2 produced by the Product’s manufacture has already been offset or will be offset in the near future. However . . . the reality is that the implementation . . . takes 10 to 20 years.”\footnote{\textit{Id.} at 15.}

The crux of these cases will turn on showing that consumers believe carbon-neutral means immediate carbon offsetting, or no carbon emissions at all, when the carbon-neutral projects advertised in fact will not offset carbon for years to come.\footnote{\textit{Id.} at *10.} Following the \textit{Allbirds}\footnote{See supra Section III.B.3.} holding, this complaint would likely not survive a motion to dismiss, but California may be more willing to see the nuance in these consumer protection claims because of its codified cap-and-trade system.

\footnotesize
\begin{itemize}
\item \footnote{\textit{Id.}}
\item \footnote{Complaint at *1, Stephanie Dorris v. Danone Waters of America, No. 7:22-cv-08717 (S.D.N.Y. Oct. 13, 2022).}
\item \footnote{\textit{Id.} at *10.}
\item \footnote{\textit{Id.} at *2.}
\item \footnote{\textit{Id.} at *13.}
\item \footnote{\textit{Id.} at 14.}
\item \footnote{\textit{Id.} at 15.}
\item \footnote{\textit{Id.}}
\item \footnote{See supra Section III.B.3.}
\end{itemize}
Again, these claims warrant a reframed analysis that diverges from longstanding consumer protection and greenwashing case law. The cases cited in Danone’s motion to dismiss state longstanding principles that may otherwise successfully boot similar claims, but climate washing warrants a revised approach to traditional greenwashing law because carbon emissions have immediate impacts, thus delayed results are not in fact neutralizing carbon footprints.

5. Blackburn v. Etsy, Inc.

In October 2023, a California district court dismissed a climate washing complaint against Etsy. Blackburn filed a putative class action alleging that Etsy’s guarantee of a carbon-neutral shipping process was fraudulent because it relied on the voluntary carbon offset market which is unreliable because “nearly all offsets issues by [this] market over promise and under deliver on their net carbon impact due to endemic methodological errors and fraudulent accounting.” The complaint asserted four claims:

1. violation of California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq. (“CLRA”);
2. violations of California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 (“FAL”);
3. Unlawful, Unfair, and Fraudulent Trade Practices pursuant to California Business and Professions Code section 17200; and
4. negligent misrepresentation pursuant to California Civil Code section 1710.

The court dismissed the negligent misrepresentation claim without leave to amend, noting that Blackburn should have argued why the claim was not barred by the economic loss doctrine in its Opposition to the Motion to Dismiss. The court dismissed the other three claims, with leave to amend, for failing to plead facts sufficient to show standing. The court explained the California rule for showing standing in false advertising claims, which requires that the allegations in the complaint show that the consumer paid more than what they would have otherwise because of the labeling or representation of the

---

126 See generally Motion to Dismiss, Stephanie Dorris v. Danone Waters of America, No. 7:22-cv-08717 (S.D.N.Y. Apr. 27, 2023).
129 Id. at *4.
131 Id. at *8.
product. \textsuperscript{132} “That increment, the extra money paid, is economic injury and affords the consumer standing to sue.” \textsuperscript{133}

An allegation that a consumer paid a premium price for a product is not sufficient to pass this threshold. \textsuperscript{134} With Etsy, the court noted, the complaint alleges that the products are unique or handmade items, and thus it was unclear whether the products could be purchased elsewhere and moreover whether they would be available at a cheaper price. To allege standing, the court held that Blackburn would have to allege facts that “make it plausible that the allegedly false information about the carbon offsets caused Plaintiffs to pay a price premium.” \textsuperscript{135}

The court concluded that the complaint failed to plead facts to support standing noting “there is no single product purchased by the class, the alleged misstatement has nothing to do with the quality of any particular product, and many factors may have contributed to a consumer’s decision to purchase a particular item.” \textsuperscript{136} In a footnote following this conclusion the court mentioned that class certification may be impossible in this case because Etsy customers were purchasing different products at different prices, and the materiality of the offsetting statements to the purchase decision “may require individualized determinations that may not be suitable for class-wide treatment.” \textsuperscript{137}

This opinion offers the most extensive analysis of a consumer protection claim about climate washing and highlights some of the issues plaintiffs will face in bringing these claims in the future. Because consumer class actions require commonality, and because these claims are not about material misrepresentations of the product, one must wonder how to show a common injury. This, however, is the key to the climate washing issue. If consumer protection claims require some issue with the quality or effect of the product, there may be no way to meet the standing requirement where the premium paid is for a statement about the general practices of the business. Although the district court gave Blackburn leave to amend her complaint, it is hard to predict whether any amendments could allege facts sufficient to surpass the standing requirement.

C. International Case Law and Regulations

While there is minimal case law within the United States, other nations are taking action against corporations for misleading statements about carbon-

\textsuperscript{132} Id. at *6.
\textsuperscript{133} Id. (quoting Kwikset Corp. v. Superior Court, 51 Cal. 4th 310, 330 (2011)).
\textsuperscript{134} Id. at *7 (citing Naimi v. Starbucks Corp., 798 F. App’x 67, 70 (9th Cir. 2019)).
\textsuperscript{135} Id. at *7 (citing Davidson v. Kimberly-Clark Corp., 889 F.3d 956, 996 (9th Cir. 2018)).
\textsuperscript{136} Id. at *7–8.
\textsuperscript{137} Order at *8 n. 2.
neutral programs.\footnote{Climate Change Litigation Databases, GLOB. CLIMATE CHANGE LITIG. DATABASES, SABIN CTR. FOR CLIMATE CHANGE L., https://climatecasechart.com/non-us-climate-change-litigation/ (last visited Nov. 9, 2023).} For example, organizations in France, Switzerland, United Kingdom, and Belgium have all brought suits against FIFA for misleading consumers by advertising that the 2022 World Cup was carbon-neutral.\footnote{Notre Affaire À Tous v. FIFA, GLOB. CLIMATE CHANGE LITIG. DATABASES, SABIN CTR. FOR CLIMATE CHANGE L., http://climatecasechart.com/non-us-case/notre-affaire-a-tous-v-fifa (last visited Nov. 9, 2023).}

The French non-profit Notre Affaire à Tous filed its complaint in with the Jury de Dénontologie Publicitaire, a French self-regulatory organization for greenwashing, but the complaints from all five countries were jointly heard in Switzerland.\footnote{Id.} Germany has also seen multiple cases based on misleading assertions about corporate climate neutrality advertisements.\footnote{The Act Against Unfair Competition, GLOB. CLIMATE CHANGE LITIG. DATABASES, SABIN CTR. FOR CLIMATE CHANGE L., https://climatecasechart.com/non-us-principle-law/the-act-against-unfair-competition/ (last visited Nov. 9, 2023).}

Germany has holdings on over a dozen cases discussing misleading commercial practices as they relate to climate neutral claims.\footnote{Id.} As far back as 2009, German courts concluded that certain ‘climate neutral’ claims were fraudulent to consumers.\footnote{Higher Regional Court of Koblenz’s decision on company’s climate neutral claims regarding grave lights, GLOB. CLIMATE CHANGE LITIG. DATABASES, SABIN CTR. FOR CLIMATE CHANGE L., http://climatecasechart.com/non-us-case/higher-regional-court-of-koblenzs-decision-on-companys-climate-neutral-claims-regarding-grave-lights/ (last visited Nov. 9, 2023).} German courts have established strict standards and expectations for environmental advertising,\footnote{Regional Court of Frankfurt am Main’s decision on company’s climate neutral claims regarding frozen croquettes, GLOB. CLIMATE CHANGE LITIG. DATABASES, SABIN CTR. FOR CLIMATE CHANGE L., https://climatecasechart.com/non-us-case/regional-court-of-frankfurt-am-mains-decision-on-companys-climate-neutral-claims-regarding-frozen-croquettes/ (last visited Nov. 9, 2023).} where United States precedent is more unpredictable because states have very different consumer protection standards and no federal law governs.

The Netherlands recently updated its green advertising regulations, changing the name from Environmental Advertising Code to the Dutch Sustainability Claims Code.\footnote{Manuela Cox & Lisette den Butter, Dutch Advertising Code Foundation publishes (new) Code for Sustainability Claims, BIRD & BIRD (Feb. 28, 2023), https://www.twobirds.com/en/insights/2023/netherlands/dutch-advertising-code-foundation.} Under the Netherlands Code for Environmental Advertising, Netherlands courts have held that “CO2 Neutral” labeling is misleading where the label lacks context and is thus unclear to the average
consumer.\textsuperscript{146} The availability of more information from the website on the advertisement did not offer sufficient clarification under Netherlands Code for Environmental Advertising.\textsuperscript{147}

IV. CONSIDERATIONS FOR PLAINTIFFS, LAWMAKERS, AND BUSINESSES

Stakeholders around the globe are determined to hold corporations accountable for their net zero promises.\textsuperscript{148} The proliferation of net zero goals combined with emerging knowledge about the ineffectiveness of carbon offset programs provides a recipe for climate washing. Consumers are increasingly concerned about the environmental impacts of their purchases, and consumer protection laws must be adapted to the changing nature of misleading environmental claims.\textsuperscript{149}

“Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace.”\textsuperscript{150} The impacts of climate change are worsening around the globe, and consumers have chosen to assert their concern about this through their purchasing choices. Climate washing may erode trust in this process and could thwart climate action by giving the false impression that businesses are positively impacting the environment, when in fact carbon credit programs are reinforcing the status quo. Consumers, lawmakers, and businesses all have the opportunity to prevent climate washing in the pursuit of mitigating climate change.

At the time of this Note’s publication, some of the cases in Section III are still being litigated, the Green Guides are under review, and the SEC has yet to publish its revised regulations. Businesses are taking varied approaches to climate washing litigation; some continue to publicize carbon-neutral goals,


\textsuperscript{147} RCC Ruling on Chiquita, supra note 146.


while others have eliminated their advertising entirely.\(^{151}\) As this area of law is clearly evolving quite rapidly, the following section offers considerations for further research as stakeholders around the globe work to develop solutions to address climate washing and climate change.

**A. Consumers Can Move the Needle by Continuing to File Complaints**

As exemplified by the evolution of greenwashing litigation, the development of climate washing cases in the courts can help raise awareness about issues with carbon-neutral promises. Even the threat of litigation may cause businesses to reevaluate their practices, and giving courts the opportunity to opine on climate washing can provide legislators more information when developing regulations. By bringing these claims in front of courts, plaintiffs can highlight how climate washing poses nuanced issues that are not properly addressed by current consumer protection law.

As noted in the cases above, courts have dismissed climate washing claims for standing issues, and for failure to address the reasonable consumer analysis essential to consumer protection claims.\(^ {152}\) Because of the relative nuance of carbon-credits, and the lack of regulation in voluntary markets, these hurdles may prove insurmountable under current consumer protection standards. However, these issues existed in the early days of greenwashing claims, and ultimately the law caught up with those issues. As Cara Beth Musciano highlights in her discussion of ESG reporting, early greenwashing issues posed hard questions about deceptive practices:

For greenwashing claims, pointing to precise harms might be difficult. Some commentators suggest that greenwashing, or the mere prevalence of green marketing generally, creates skepticism in the market and results in consumer cynicism; in turn, this effectively precludes green marketing from having any actual clout or influence on consumers. As ecologist Jay Westerveld originally described in a 1986 essay, a classic case of greenwashing is hotel signage suggesting that guests reuse their towels for the sake of the environment. Presuming the hotel’s motivation behind the signs was to save costs, its conservation claim is intentionally deceptive.\(^ {153}\)

---


\(^{152}\) See *supra* Section III.

As to the reasonable consumer issues, Jason Cohen argues that judges hold consumers to too high of a standard when considering what a reasonable consumer would perceive and argues that this objective standard applied to consumers is especially risky because it “does not reflect the reality of human behavior.” Although greenwashing litigation has come a long way since Jay Westerveld’s observations in the 1980s, the aspirational nature of carbon-neutral promises means that courts, legislatures, and regulatory bodies will need to reestablish their expectations of what reasonable consumers would understand from carbon-neutral marketing.

The voluntary carbon market presented an opportunity for companies to make substantive effort to mitigate their carbon footprint, but the lack of clarity and regulation has created confusion and led to unreliable results. While making this showing during the pleading phase may be difficult, continued efforts at highlighting bad actors are the only way to establish accountability in climate washing.

Consumers should also keep in mind which businesses may be most important to hold accountable when it comes to climate washing. For example, those businesses that have the most impact on carbon emissions may be more directly affecting climate change through sales of their products. On the other hand, products that aren’t inherently associated with greenhouse gases nonetheless have a carbon footprint, and these companies have developed their own net zero goals. Ultimately, all of this misconduct falls within the purview of consumer protection law and establishing standards for both realms will be useful in mitigating climate washing.

B. Lawmakers on All Levels Can Mitigate Climate Washing

Federal regulations should focus on standardizing expectations for corporations when setting emissions reduction goals. Carbon credit programs should require specificity, and the expansion of carbon credit programs throughout the United States could help with standardization. However, enforcement in these spaces will be key—if enforcement is lacking, then businesses will continue to be able to make broad claims and statements without penalty. They will continue to impact the climate while being rewarded for their conduct through things like ESG because they are offsetting their behavior instead of transforming it. Because many consumer protection cases are brought

154 Id. at 17.
155 Barbara Haya et al., supra note 25, at 1118.
157 See generally Data Explorer, NET ZERO TRACKER, https://zerotracker.net/ (last visited Nov. 9, 2023).
under state law, it is important for states to evaluate their own consumer protection laws. States like California, New York, and West Virginia have broad consumer protection statutes that provide plaintiffs important opportunities to call attention to fraudulent behavior and carry it out in court. Whether states wish to reevaluate their consumer protection statutes, or regulate voluntary carbon markets more heavily, they have immense opportunity to impact climate action.

Courts always have the unique opportunity of seeing cases and addressing new issues in light of longstanding precedent. But when new issues present themselves, sometimes they warrant new analysis and new law. Adhering to old law and standards may provide improper outcomes especially because climate change poses immediate harms that are rapidly worsening. Thus, giving plaintiffs leeway to amend their complaints, or at least letting plaintiffs reach the discovery phase may be important in opening the forum for developing climate washing claims.

C. Businesses Should Be Incentivized to Engage in Effective Carbon Reduction Practices

At the onset of the development of carbon credits and carbon markets, climate activists were aware of the dangers of fraud arising with the development of these efforts.\(^{158}\) The fear arose out of the reality that the nations responsible for developing these markets and working on their emissions were dedicating almost no resources to regulating the markets.\(^{159}\) “This imbalance can only lead to an emissions market dangerously reliant upon the integrity of corporations to file accurate reports of emissions levels, and reductions.”\(^{160}\)

Further, carbon offset programs allowed companies to continue producing the same amount of emissions and simply buying carbon credits to mitigate that conduct.\(^{161}\) The carbon markets did not incentivize companies to change their habits to reduce carbon emissions through their practices because it was more convenient to purchase credits.\(^{162}\) As climate washing litigation has evolved, it appears climate activists’ concerns were correct, yet carbon credits only seem to be growing in popularity in certain spaces.

While businesses should be held to the highest standards when making statements about their practices and products, some argue that hypercriticism of climate goals could have a chilling effect on efforts to mitigate carbon emissions.\(^{163}\) Businesses have well-established incentives to mitigate their


\(^{159}\) *Id.* at 5.

\(^{160}\) *Id.* at 4.

\(^{161}\) Welton, *supra* note 10, at 229.

\(^{162}\) *Id.*

carbon emissions and contribute to climate action. However, affordable paths to mitigation are always enticing to corporations with shareholders to please; thus collective climate action must not reinforce the ‘burn now pay later’ behavior that threatens to stall progress towards mitigating climate change. This includes demanding corporate transparency about environmental goals. As Amanda Shanor explains, “[b]ecause information about the climate impacts, risks, and performance of firms are crucial to the public’s ability to make informed choices about its political and economic future, the First Amendment allows society to demand that such statements be accurate and not misleading.”

Carbon markets have been criticized as a conservative economic approach to environmental issues, but the rapid development of ESG and net zero promises shows that corporations are responsive to market demands and are willing to take steps to participate in mitigating climate change. However, the warming globe does not have time to wait out experimentation. As the SEC Commissioner, Caroline Crenshaw, noted, climate action must be taken now, and if corporations investing in carbon offsets are not taking the utmost precautions to ensure their dollars are contributing to carbon reduction, the work is irrelevant. Carbon sequestration projects, if done properly, can provide great benefits to businesses and consumers. Thus, a transformation from climate washing to climate disclosure may sufficiently cultivate information sharing amongst corporations without misleading consumers. As many European courts found, labels that state “carbon-neutral” without anything more can mislead consumers. Instead of these broad claims, businesses should limit their discussion of environmental practices to spaces where they can properly explain the extent of those policies, such as websites. Streamlining this information makes it accessible to regulatory bodies as well, thus removing the incentive to climate wash. By focusing efforts on disclosure and effective carbon reduction investments, companies can still offer consumers the information they seek when making purchases without flooding ad space with unsubstantiated carbon-neutral promises.

Corporate responsiveness to consumer demand expands beyond the dollar when litigation poses a serious threat. Companies can minimize their risk of climate washing litigation by eliminating climate-related marketing schemes and focusing solely on disclosure. The combination of consumers’ growing interest in climate-conscious products with increasingly affordable (though unreliable) carbon credits provides powerful incentives to establish net zero goals that may never materialize. Thus, companies should focus on more

164 Shanor & Light, supra note 44, at 2117.
165 Welton, supra note 10, at 180.
166 Crenshaw, Virtual Remarks, supra note 81.
167 See Preetha Chakrabarti, Helen O. Ogunyanwo & Tiffany C. Aguiar, Environmental Marketing Claims: Where We Are and Where We’re Headed, 65 ORANGE CNTY. LAW. Aug. 2023, at 32, 33; Welton, supra note 10, at 194 (“Costs of credits vary depending on the type of offset
tangible emissions reductions that will, in fact, offer a net-positive to the climate by effectively moving towards net zero.

V. CONCLUSION

The climate crisis ignited international concern decades ago. Over thirty years after the first international agreement on climate change, businesses and countries are still struggling to effectively transform their practices to reduce the human impact on the environment. As this Note has made clear, every global iteration of legal action has struggled to establish transformative climate change solutions. Consumer protection claims can move the needle, and companies can make more effective changes by focusing on reducing emissions instead of neutralizing them. However, courts and regulatory agencies are moving predictably slowly. With the nebulous nature of carbon markets and the complex scientific expertise required for effective carbon reduction, this field of law may not stabilize any time soon. Until then, consumers, lawmakers, and corporations have the opportunity to be proactive in stamping out climate washing and work instead towards impactful climate action.

Ciara Peacock*

---

* J.D. Candidate, West Virginia University College of Law, 2024; B.A. Political Science, University of Mary Washington, 2015. This note would not have been possible without the impeccable instruction and support offered by the faculty and staff of the WVU College of Law. I extend my sincere gratitude to Nicholas Stump, Ann Eisenberg, Amy Cyphert, Anna Strange, and Jennifer Powell who each offered critical insights and support throughout this note writing process.