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From Puffery to Greenwashing: Vague Environmental and Climate-Related Claims under EU and UK Consumer Law

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Abstract. Environmental and climate-related claims increasingly occupy a contested boundary between lawful commercial puffery and actionable greenwashing. This paper examines how EU and UK consumer law determines when vague sustainability language becomes legally misleading. Through a comparative analysis of the EU Unfair Commercial Practices Directive, Directive (EU) 2024/825, the UK Digital Markets, Competition and Consumers Act 2024, relevant regulatory guidance, and selected decisions involving SHEIN, HSBC, Lufthansa, and KLM, the paper identifies three interrelated considerations: whether a claim conveys verifiable environmental implications, whether it creates a misleading overall impression through omission or selective framing, and whether it is capable of affecting the transactional decisions of the average consumer. It further distinguishes this general analysis from specific practices prohibited in all circumstances under the amended UCPD. The paper argues that substantiation requirements should correspond to the factual implications reasonably conveyed by an environmental claim, while preserving appropriate space for legitimate commercial promotion and expression.

Keywords: greenwashing, vague environmental claims, commercial puffery, unfair commercial practices, average consumer

1. Introduction

In the current era of climate governance, corporate marketing is increasingly saturated with environmental and climate-related claims, ranging from "carbon neutral" and "net-zero" to "environmentally responsible" and "sustainable." Businesses frequently employ broad and aspirational language to communicate environmental responsibility and climate commitment. Such claims often occupy a linguistic and legal grey area between lawful commercial puffery and potentially misleading environmental representation, thereby creating a significant challenge for consumer law.

This challenge has become increasingly visible in recent enforcement and judicial practice concerning environmental marketing. In the European Union, regulators and national courts have adopted a progressively stricter approach toward vague sustainability claims that lack substantiation or imply unverifiable environmental benefits. Similar concerns have emerged in the United Kingdom through statutory enforcement, administrative guidance, and advertising self-regulation.

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Recent regulatory actions and disputes involving Shein, HSBC, Lufthansa, and KLM illustrate different doctrinal dimensions of this boundary.

The regulatory framework governing environmental marketing is also evolving rapidly. Within the European Union, the Unfair Commercial Practices Directive 2005/29/EC establishes a general prohibition on misleading commercial practices, reinforced by Directive (EU) 2024/825, which strengthens the regulation of generic environmental claims through strict verifiability standards. In the United Kingdom, the Consumer Protection from Unfair Trading Regulations 2008, alongside the Digital Markets, Competition and Consumers Act 2024, the CMA Green Claims Code, and the Advertising Standards Authority, forms a robust multi-layered scrutiny framework.

Against this background, this paper asks: under EU and UK consumer law, when does a vague environmental or climate-related claim cross the boundary from lawful commercial puffery into actionable greenwashing? This paper adopts a comparative legal analysis, examining the regulatory frameworks of the European Union and the United Kingdom. It systematically analyses the relevant EU directives (particularly the UCPD and Directive (EU) 2024/825), UK statutory provisions (the DMCCA 2024 and its predecessor CPRs 2008), administrative guidance (CMA Green Claims Code), and self-regulatory standards (ASA CAP Code), together with a comparative analysis of selected judicial and regulatory decisions from the e-commerce, banking, and aviation sectors. On this basis, this paper argues that, under the general prohibitions on misleading commercial practices, vagueness alone does not necessarily render a commercial claim unlawful. Legal actionability may arise where broad environmental language conveys verifiable factual implications, creates a misleading overall impression through material omission or selective framing, and is capable of materially affecting the transactional decisions of the average consumer. In addition, the amended UCPD introduces specific per se prohibitions under which certain generic environmental claims may be unlawful without a separate case-by-case demonstration of consumer deception.

2. Conceptual framework

Commercial communication necessarily involves a degree of abstraction, simplification, and rhetorical generalization. Businesses routinely employ broad and aspirational language to promote products, corporate identity, or corporate values, particularly in fields associated with sustainability, environmental responsibility, and climate governance. Expressions such as "environmentally responsible," "sustainable," or "committed to a greener future" are commonly used as promotional language designed to shape consumer perception and strengthen brand identity rather than to communicate precise scientific or technical information.

Commercial puffery provides the conceptual starting point for analysing vague environmental and climate-related claims under consumer law. It refers to generalised or exaggerated promotional statements that are ordinarily understood as expressions of commercial persuasion rather than objectively verifiable factual representations. As the Federal Trade Commission has long recognised, the Commission generally will not pursue cases involving "obviously exaggerated or puffing representations, i.e., those that the ordinary consumers do not take seriously" [1]. Modern advertising regulation has therefore long recognised that such statements generally fall outside the scope of legal liability because reasonable consumers do not interpret them as factual assertions capable of objective verification. Recognising commercial puffery preserves the distinction between regulating misleading commercial practices and regulating ordinary commercial expression. Otherwise, consumer law would impose unrealistic standards of precision upon commercial communication and undermine legal certainty.

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Environmental and climate-related claims, however, present a more complex situation. Greenwashing has been authoritatively defined as "the intersection of two firm behaviors: poor environmental performance and positive communication about environmental performance" [2]. It is also widely understood as "the act of misleading consumers regarding the environmental practices of a company or the environmental benefits of a product or service" [3]. The United Nations also points out that it tricks the public into thinking a firm or other organization takes more steps to guard the environment than it really does [4]. Some scholars further point out greenwashing means a group of tricky marketing actions. In these actions, an organization gives false or over-stated public information about the good environmental influence of its goods, services, or itself [5]. But greenwashing has not been treated as one separate legal idea in past rules [6].

Marketing related to the environment often uses wide-ranging and changing ideas. These ideas do not have steady meanings, and science groups also do not reach the same understanding on them. Words like "carbon neutral", "net zero", and "sustainable" may stand for complex technical methods, long-term promises from companies, future environment-related goals, or a mix of these parts. So unclear statements about environment and climate can work in two ways at the same time. They act as advertising words, and they also send out messages that sound like real facts. So their legal value does not only come from using general or hope-filled expressions. It depends on what ordinary customers will naturally get from these statements under real business situations.

This point makes environmental marketing different from common commercial over-praise. As more buyers start to care about environmental protection when they shop, environment-related statements are easier to change people's buying choices and form their judgements about how well a business protects nature. Customers may reasonably read these statements as real information about emission cuts, environment-friendly actions, environmental results, or influence on nature. So an unclear environmental statement can carry legal weight, if it passes on hidden factual messages about environmental performance and changes how customers view things.

3. Legal framework

3.1. European Union consumer law

Within the European Union, rules for environment- and climate-related statements mainly come from consumer law. This law bans business actions that cheat buyers. The main legal rule is the Unfair Commercial Practices Directive 2005/29/EC (UCPD). It says "unfair commercial practices shall be prohibited". A business action is unfair when it "materially distorts or is likely to materially distort the economic behaviour" of common buyers. The UCPD centers on buyers. It checks whether a business action may cheat buyers and change their shopping choices. It does not only ask people to prove that the words are literally wrong.

This idea is clearly shown in Article 6, which talks about misleading actions. Under Article 6, a business action may be misleading in two cases. First, it "contains false information". Second, its "overall presentation" "deceives or is likely to deceive the average consumer", even when some separate statements may not be literally wrong. The Directive also requires that this kind of cheating can make buyers take a "transactional decision" they would not have taken otherwise. This rule shows that the legal check on business messages goes beyond clear factual mistakes. It also includes the total feeling that common buyers get from the message. So environment- and climate-related statements may become misleading, when general or hope-filled words pass on hidden factual messages about environmental performance or sustainability.

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The UCPD also deals with misleading omissions through Article 7. A business action may be misleading when it "omits material information" that common buyers need to make a clear shopping choice. It may also be misleading when such information is shown in an "unclear, unintelligible, ambiguous or untimely manner". This rule is especially important for environmental marketing. In this field, technically correct statements may still create a misleading total feeling. This can happen when businesses only choose to show part of the facts, do not add necessary limits, or leave out important background information.

Recent legislative reforms further demonstrate the European Union's increasingly stringent approach to environmental claims. Directive (EU) 2024/825, adopted on 28 February 2024 and entering into force on 26 March 2024, set a transposition deadline for Member States of 27 March 2026, with its substantive provisions taking effect on 27 September 2026. Although not yet applicable at the time of writing, the Directive provides a clear indication of the future direction of EU consumer law governing environmental and climate-related claims.

Directive (EU) 2024/825 specifically targets "generic environmental claims", defined under the amended Article 2, first paragraph, point (p) of the UCPD as "any environmental claim made in written or oral form, including through audiovisual media, that is not included on a sustainability label and where the specification of the claim is not provided in clear and prominent terms on the same medium."

Most significantly, the Directive amends Annex I of the UCPD (the "blacklist") by inserting point 4a, which strictly prohibits: "making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim." This prohibition covers generic environmental claims such as "environmentally friendly," "eco-friendly," "green," or "climate friendly" where the trader cannot demonstrate recognised excellent environmental performance relevant to the claim [7].

Furthermore, regarding future-oriented commitments, the newly inserted Article 6(2)(d) of the UCPD prohibits making environmental claims about future environmental performance unless they are backed by: "clear, objective, publicly available and verifiable commitments contained within a detailed and realistic implementation plan..."

3.2. United Kingdom consumer law

The United Kingdom has traditionally regulated misleading commercial practices through the Consumer Protection from Unfair Trading Regulations 2008 (CPRs 2008), which closely reflected the structure of the EU Unfair Commercial Practices Directive (UCPD). Since the consumer protection provisions of the Digital Markets, Competition and Consumers Act 2024 (DMCCA 2024) entered into force on 6 April 2025, however, the statutory framework has been modernised and largely consolidated under the DMCCA. Part 4, Chapter 1 of the Act provides that "Unfair commercial practices are prohibited," preserving the core principles previously embodied in the CPRs while establishing a more comprehensive and modern consumer protection regime. Although the CPRs remain important in understanding the historical development of UK consumer law, the DMCCA now constitutes the principal statutory framework governing misleading commercial practices.

The substantive regulation of misleading commercial practices is principally contained in Section 226 concerning misleading actions. Under Section 226(1) of the DMCCA 2024: For the purposes of this Chapter, a commercial practice involves a misleading action if the practice involves— (a) the provision of false or misleading information relating to a product, a trader or any other matter relevant to a transactional decision, (b) an overall presentation which is likely to deceive the average

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consumer about a matter relating to a product, a trader or any other matter relevant to a transactional decision, (c) any marketing of a product which creates confusion, or is likely to create confusion, with any product, trade mark, trade name or other distinguishing mark of another trader, or (d) a failure to comply with a requirement in a code of conduct to which subsection (5) applies in circumstances where the trader asserts that the trader acts in compliance with that code.

This statutory text confirms that UK law is concerned not merely with literal truthfulness, but with the holistic "overall presentation" and the potential to deceive.

Correspondingly, Section 227 regulates misleading omissions. Under Section 227(1) of the DMCCA 2024: "a commercial practice involves a misleading omission if, considering the matters mentioned in subsection (3), the practice— (a) omits material information, (b) omits information which the trader is required under any other enactment to give to a consumer as part of the practice, or (c) fails to identify its commercial intent (unless it is already apparent from the context)."

To clarify the scope of "omission," Section 227(4) further specifies that references to omitting information include providing information "(a) in a way that is unclear or untimely, or (b) in such a way that the consumer is unlikely to see it." Under Section 227(2), "material information" is explicitly defined as "information that the average consumer needs to take an informed transactional decision." This contextual approach prevents traders from hiding behind literal truth while omitting systemic realities.

Alongside the statutory framework, the United Kingdom has also developed increasingly detailed regulatory guidance concerning environmental marketing through the CMA Green Claims Code. The Code states that "all claims must be true and accurate" and "must not mislead consumers by giving them a false impression, even if the information they contain is factually correct." This guidance closely mirrors the broader consumer law focus on overall impression and consumer perception reflected in both the CPRs and the DMCCA. Importantly, the Code specifically addresses vagueness in environmental claims, stating that businesses "should not use terms which have vague or multiple meanings, such as 'eco-friendly' or 'sustainable', without explanation, in a way that could mislead consumers." The CMA further emphasises that "[w]hat is left out can be as important as what is included" and that businesses must provide consumers with "the whole picture." The Code also imposes a clear expectation of substantiation, requiring businesses to "back up their claims with robust, relevant and objective evidence."

Beyond these substantive standards, Part 3, Chapter 4 of the DMCCA strengthens enforcement by granting the CMA direct powers to investigate consumer-law infringements and impose enforcement measures without first obtaining a court order in many cases.

This stricter regulatory orientation is further reflected in the practice of the Advertising Standards Authority (ASA). Although ASA rulings do not constitute judicial precedent or statutory law, they provide influential regulatory guidance concerning the application of advertising standards. The ASA has indicated that environmental claims will receive "a brighter regulatory spotlight" and has emphasised that environmental advertising may breach the applicable rules where it presents "an incomplete, exaggerated or otherwise misleading picture" of environmental impact. Taken together, the DMCCA 2024, viewed against the legislative background of the CPRs 2008, together with the CMA Green Claims Code and ASA regulatory practice, demonstrates the United Kingdom's increasingly comprehensive and contextual approach towards environmental and climate-related claims under consumer law. Nevertheless, as under EU law, the legal framework does not regard vagueness itself as actionable greenwashing. Rather, the central legal issue remains whether vague environmental and climate-related claims create misleading environmental implications capable of materially influencing the average consumer.

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3.3. Comparative analysis

Despite operating under distinct legislative traditions, the EU and UK legal frameworks share fundamental substantive commonalities in their evaluation of environmental claims. Both jurisdictions evaluate legal actionability through the objective benchmark of the "average consumer" who is reasonably well-informed, observant, and circumspect. Furthermore, both legal regimes move beyond literal truthfulness to focus on the holistic "overall impression" created by commercial representations, recognising that factually accurate statements become misleading when qualified information is obscured or selectively presented. Under their general statutory prohibitions on misleading actions and omissions, both systems ordinarily require the commercial practice to be capable of causing the average consumer to take a "transactional decision" that would not otherwise have been taken. This requirement should nevertheless be distinguished from specific practices prohibited in all circumstances, including the new environmental provisions inserted into Annex I of the UCPD.

The primary divergence between the two legal regimes lies in their normative architecture and statutory design. The European Union heavily favours a statutory harmonisation model that increasingly incorporates per se prohibitions embedded in statutory blacklists. Under Directive (EU) 2024/825, generic environmental claims lacking recognised excellent environmental performance are placed directly on Annex I's blacklist, establishing an automatic prohibition that eliminates the need to prove specific consumer deception on a case-by-case basis. In contrast, while the United Kingdom maintains a general blacklist of 32 commercial practices that are unfair in all circumstances under Schedule 20 of the DMCCA 2024, this list does not contain any specific prohibitions targeting environmental or climate-related claims. Instead, the UK system relies on a multi-layered normative structure that combines general statutory prohibitions under the DMCCA 2024 with administrative soft law, such as the CMA Green Claims Code, and non-statutory advertising standards enforced by the ASA. Rather than enacting rigid statutory blacklists for generic environmental claims, the UK approach operationalises broad statutory standards through detailed administrative principles and contextual guidance.

A corresponding divergence exists in the enforcement mechanisms and pathways of legal actionability across the two legal orders. Enforcement in the European Union relies primarily on public administrative supervision by national competent authorities alongside private civil litigation in national courts, where judicial determinations yield binding injunctions and legal precedent. Conversely, the UK framework operates through a distinct dual-track enforcement mechanism combining direct administrative penalties and frontline self-regulation. Under Part 3 of the DMCCA 2024, the CMA possesses direct statutory powers to investigate breaches and impose administrative fines without court intervention, while the ASA acts as an agile frontline self-regulatory forum. Although ASA rulings do not constitute judicial precedent or statutory enforcement decisions, they can require the amendment or withdrawal of non-compliant advertisements within the self-regulatory system and may generate significant reputational consequences.

4. Comparative case analysis

4.1. Verifiable factual implication: the SHEIN decision

The SHEIN investigation illustrates how vague environmental and climate-related claims may become legally actionable where they convey implied factual representations concerning environmental performance. In September 2024, the Italian Competition Authority (AGCM)

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initiated formal administrative proceedings (Case PS12709) against Infinite Styles Services Co. Ltd., the Dublin-based entity managing SHEIN's European operations, under Articles 20, 21, and 22 of the Italian Consumer Code. The proceedings concluded in August 2025, when the AGCM imposed a fine of €1 million for ambiguous and misleading environmental claims associated with the "evoluSHEIN by Design" collection, including overstated claims concerning circularity and recyclability [8]. The Authority found that environmental claims appearing in sections such as "#SHEINTHEKNOW," "evoluSHEIN," and "Social Responsibility" were "vague, generic and/or overly emphatic," and in certain respects "misleading or omissive." It also considered certain claims concerning circularity and product recyclability to be false or at least confusing, while the presentation of the evoluSHEIN collection omitted its limited significance within SHEIN's overall product range. Furthermore, the company's emissions-reduction commitments and its goal of achieving "zero emissions by 2050" were presented in a vague and generic manner that was inconsistent with its reported increases in greenhouse gas emissions.

The legal significance of the SHEIN decision lies not merely in the use of vague environmental language, but in the fact that such language conveyed implied factual representations capable of objective verification. Expressions relating to "circularity," recyclability, or emissions reduction were not interpreted merely as aspirational corporate messaging; rather, they implied measurable environmental performance and concrete sustainability practices capable of substantiation. The regulatory concern therefore arose because the promotional language suggested objectively verifiable environmental qualities without providing sufficient evidentiary support or contextual clarification, creating an actionable disconnect between long-term pledges and operational realities.

4.2. Contextual integrity and selective environmental framing: the HSBC ASA ruling

The Advertising Standards Authority (ASA) ruling on 19 October 2022 concerning HSBC UK Bank plc demonstrates that environmental and climate-related claims may become misleading even where the statements themselves are factually accurate. The ASA considered two outdoor poster advertisements highlighting the bank's climate initiatives, including its commitment to provide up to $1 trillion in transition financing and its role in planting two million trees in the UK to lock in carbon. While accepting that the advertisements described genuine environmental activities, the ASA concluded under CAP Code Rules 3.1, 3.3 and 11.1 that they created a misleading overall impression of HSBC's environmental credentials by omitting material contextual information regarding its continued financing of businesses responsible for significant greenhouse gas emissions, particularly within the fossil fuel and thermal coal sectors.

The significance of the HSBC decision lies not in the falsity of the environmental claims themselves, but in the incompleteness of the overall environmental representation. The advertisements accurately described particular sustainability initiatives. However, by selectively highlighting positive environmental activities while omitting information concerning the bank's continued financing of high-emission industries, they presented consumers with an unbalanced picture of HSBC's overall environmental performance. The ASA's assessment accordingly focused upon the overall impression conveyed by the advertisements rather than the literal accuracy of individual statements. The decision therefore confirms that selective framing and material omission may render an advertisement misleading even where its individual statements are factually accurate.

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4.3. Sustainable aviation and misleading environmental impression: Lufthansa and KLM

In its enforcement regarding Deutsche Lufthansa AG, the UK Advertising Standards Authority (ASA) addressed aviation greenwashing across two separate rulings in 2023, establishing strict limits on generalised green assertions. In its 1 March 2023 ruling, the ASA examined a poster advertisement featuring the slogan *"LUFTHANSA GROUP. CONNECTING THE WORLD. PROTECTING ITS FUTURE. #MakeChangeFly"*. The ASA rejected Lufthansa's defence that the statement was merely an aspirational campaign tagline, holding under CAP Code Rules 3.1, 11.1, 11.3 and 11.4 that consumers would understand it as an absolute environmental claim implying that Lufthansa was actively protecting the planet from the impact of aviation. In its 6 December 2023 ruling, the ASA evaluated a paid Google search advertisement containing the claim *"Fly more sustainably"*. Although Lufthansa argued that this statement referred specifically to its "Green Fares" option—which incorporates 20% Sustainable Aviation Fuel (SAF) and 80% carbon offsetting—and was constrained by character limits, the ASA ruled under CAP Code Rule 3.1, 11.1 and 11.3 that the basis of a comparative claim is material information that cannot be omitted. In both instances, the ASA concluded that the environmental benefits implied by the promotional language exceeded the actual significance of the measures described, creating a misleading overall impression.

A similar approach emerged in the Dutch judicial proceedings in *Stichting Fossielvrij NL v. KLM Royal Dutch Airlines NV* (District Court of Amsterdam, 20 March 2024, Case No. C/13/719848 / HA ZA 22-524, ECLI:NL:RBAMS:2024:1512). The court considered a series of sustainability-focused advertising campaigns under Articles 6:193b and 6:193c of the Dutch Civil Code (transposing EU UCPD Articles 6 and 7), including the tagline "Fly Responsibly" and representations concerning sustainable aviation fuel, carbon-offsetting measures, and reforestation initiatives. The court held that 15 out of the 19 challenged claims were misleading and unlawful because they created the false impression that flying with KLM could be rendered environmentally sustainable or responsible. Although KLM relied upon genuine sustainability initiatives and future climate commitments, the court found that the overall environmental messaging presented an excessively optimistic picture of aviation's environmental impact and overestimated the effectiveness of mitigation measures such as SAF and carbon offsetting. The Amsterdam District Court found the majority of KLM's sustainability claims misleading [8].

Both the ASA and the Dutch court focused upon how consumers were likely to understand broad sustainability-oriented language when viewed in the context of the advertisements as a whole. Expressions such as "Fly Responsibly" and "Fly more sustainably" were therefore considered capable of conveying stronger environmental implications than the underlying environmental measures could reasonably support.

At the same time, the two cases illustrate subtle differences between the UK and EU approaches. The ASA's decisions concerning Lufthansa reflect the United Kingdom's advertising self-regulatory model, which places particular emphasis on consumer interpretation and the overall impression created by advertising. By contrast, the KLM judgment adopts a formal judicial analysis centred upon statutory consumer-law provisions governing misleading commercial practices and the substantiation of environmental claims. Despite these institutional differences, both approaches reach a common conclusion that sustainability claims must be assessed against the overall environmental reality presented to consumers.

These cases show that limited or incremental environmental improvements will not ordinarily substantiate broad claims of "sustainable" or "responsible" aviation unless the scope and basis of

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those claims are clearly qualified. Enforcement practice suggests that vague sustainability language may attract particularly close scrutiny in high-emission sectors because it can create a disproportionately benign impression of environmental impact.

5. Discussion

5.1. A three-factor analytical framework

The foregoing analysis demonstrates that neither EU nor UK consumer law treats vagueness itself as inherently unlawful. Rather, consumer law increasingly evaluates environmental and climate-related claims according to the misleading implications they convey to the average consumer within their full communicative context.

Based on the comparative analysis above, this paper proposes a three-factor analytical framework for distinguishing legitimate commercial promotion from actionable greenwashing under consumer law. This framework is principally intended to assess environmental claims under the general prohibitions on misleading actions and omissions. Where a claim falls within a practice prohibited in all circumstances, such as a relevant prohibition under Annex I of the amended UCPD, the per se rule should be applied before the three-factor analysis.

First, consumer law should consider whether an environmental and climate-related claim conveys an implied factual representation capable of objective verification. Where sustainability-oriented language implies measurable environmental performance, emissions reduction, recyclability, or other objectively verifiable environmental qualities, it moves beyond ordinary promotional abstraction and constitutes an implied factual representation.

Second, consumer law should assess whether the claim creates a misleading overall environmental impression through material omission or selective framing. Misleadingness frequently arises not through direct falsity but through the omission of material information, selective emphasis upon positive environmental attributes, or the presentation of an incomplete environmental narrative. Under both EU and UK consumer law, misleading commercial practices may arise where material information is omitted or presented in a manner capable of distorting consumer understanding. Accordingly, environmental and climate-related claims should be assessed within their full communicative context, including surrounding qualifications, omitted information, visual presentation, and the overall environmental impression conveyed to the average consumer.

Third, consumer law should consider whether the environmental and climate-related claim is capable of materially influencing consumer decision-making, particularly in light of the commercial and industrial context in which it is made. Both EU and UK consumer law adopt the "average consumer" standard and require that misleading commercial practices be capable of causing a "transactional decision" that would not otherwise have been taken. However, where such claims are likely to influence purchasing decisions or other transactional choices by shaping consumer perceptions of the trader's environmental responsibility in a meaningful way, particularly within industries characterised by substantial environmental impacts, the risk of consumer harm becomes legally significant and consumer law possesses a stronger justification for intervention.

These three factors are interrelated, although they do not necessarily operate as rigid cumulative requirements. A claim is more likely to constitute actionable greenwashing where its verifiable environmental implications lack adequate substantiation, or where it creates a misleading overall impression through omission or selective framing, provided that the misleading practice is capable of affecting the transactional decisions of the average consumer. Outside the scope of specific per se

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prohibitions, generalised promotional language that does not convey such misleading implications should ordinarily remain lawful.

5.2. Substantiation and the allocation of evidentiary responsibility

The development of a clearer analytical framework for environmental and climate-related claims also raises an important evidentiary question concerning substantiation and the allocation of evidentiary responsibility. Environmental marketing frequently involves substantial information asymmetry, as consumers rarely possess the technical capacity to verify complex sustainability assertions independently.

Both EU and UK consumer law increasingly respond to this problem by imposing heightened expectations of substantiation for environmental claims. Under Directive (EU) 2024/825, generic environmental claims may become unlawful where traders cannot demonstrate "recognised excellent environmental performance relevant to the claim." Likewise, under the DMCCA 2024, supported by the CMA Green Claims Code, businesses are expected to "back up their claims with robust, relevant and objective evidence." These developments reflect an emerging regulatory expectation that traders bear a substantiation obligation where environmental and climate-related claims are capable of materially influencing consumer understanding.

Importantly, however, substantiation obligations should not be interpreted as requiring businesses to prove every form of generalised environmental aspiration or value-oriented branding. Such an approach would risk collapsing the distinction between lawful commercial promotion and actionable environmental representation. Instead, the intensity of substantiation should correspond to the factual implications reasonably conveyed by the claim itself. The stronger the implied representation concerning measurable environmental performance, sustainability achievement, or emissions reduction, the stronger the corresponding evidentiary responsibility should become.

At the same time, maintaining a distinction between substantiation and absolute scientific certainty remains essential. Climate governance and sustainability practices frequently involve evolving methodologies, predictive modelling, and future-oriented commitments that may not always permit complete precision. Consumer law should therefore require reasonable substantiation proportionate to the nature of the environmental claim, while avoiding unrealistic evidentiary standards that would effectively discourage legitimate sustainability communication.

6. Conclusion

The rapid expansion of environmental and climate-related marketing has made it increasingly difficult for consumer law to distinguish legitimate commercial promotion from actionable greenwashing. Through a comparative analysis of EU and UK law, this paper has shown that modern regulation focuses on the communicative effects of such claims rather than linguistic imprecision alone. Under the general prohibitions on misleading commercial practices, environmental claims may become actionable where they convey verifiable environmental implications or create a misleading overall impression through material omission or selective framing, and are capable of affecting the transactional decisions of the average consumer. This general analysis operates alongside specific per se prohibitions, particularly those introduced into Annex I of the UCPD by Directive (EU) 2024/825.

Building upon these findings, this paper has proposed a three-factor analytical framework for claims assessed under the general prohibitions on misleading actions and omissions centred upon implied factual representation, overall environmental impression, and consumer impact, together

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with a proportional approach to substantiation based upon the factual implications conveyed by environmental claims. This framework seeks to preserve an appropriate balance between effective consumer protection and legitimate commercial communication, while providing a clearer analytical basis for distinguishing lawful promotional puffery from actionable greenwashing under both EU and UK consumer law.

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