The curious case of 'eco-friendly' products: combating the menace of greenwashing

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Abstract
Greenwashing is a practice where businesses engage in deceptive representation to market their products and services as environmentally friendly. This has become a growing concern since it undermines genuine efforts in tackling climate change and environmental issues. This paper examines the concept, methods, impacts of greenwashing across industries, regulatory frameworks and its impact on consumer trust and sustainability. By analysing existing literature on the subject, the paper identifies key strategies employed in greenwashing, such as vague labelling, hidden trade-offs, irrelevant claims, lesser of the two evils and predatory delay. Further, it discusses the regulatory landscape in India and abroad aimed at combating greenwashing, including stricter environmental reporting standards, substantiated environmental claims, third-party certifications, and ESG disclosures. The findings underscore the need for stronger enforcement mechanisms and consumer education to mitigate greenwashing and promote genuine corporate sustainability. This research contributes to a deeper understanding of greenwashing and offers actionable recommendations for policymakers, businesses, and consumers.

Keywords: greenwashing, sustainability, third-party certifications, ESG disclosures, environmental claims, guidelines

1. Introduction

Climate change poses a significant threat to environment and life on earth. The Sustainable Development Goals (SDGs) established by the United Nations has placed certain responsibilities on State and individuals to tackle climate change among various other objectives. In order to achieve SDG 12 which talks about 'sustainable production and consumption' conscious and consistent efforts have been made by Governments and businesses.

India, the fourth-largest emitter of greenhouse gases, has implemented various measures such as Swachh Bharat Abhiyan, Pradhan Mantri Ujjwala Yojana, National Policy on Biofuels, Extended Producer Responsibility, Use of environment-supportive fuels, recycling and ban on plastic bags, Imposition of Green tax, National Mission on Sustainable Agriculture etc., in its pursuit of reducing emissions by one fourth. Among industries that have ecological impact, the consumer goods industry, with its production, consumption and disposal methods, leaves a large carbon footprint in the environment. Addressing this issue can have a huge impact in mitigating climate change.

The increasing importance of sustainability and environmental protection has resulted in the consumers displaying a higher concern about the environment. This concern is reflected in opting for products and availing services advertised as 'eco-friendly'. The businesses in order to meet this growing demand for environment friendly products, offers a wide variety of products–ranging from skincare, cleaning products, clothing etc. trumpeting claims such as 'green', 'natural', 'organic' and so on. A recent survey conducted by Hewlett-Packard revealed that more than 80% expressed inclination towards sustainably sourced products and further believed that the sustainability practices that a company engages in predominantly influences their choice of product.

Also, there is constant pressure on the companies to demonstrate how committed they are towards sustainability. The international community has also been working towards sustainability. However, despite all this attention, there exists a regulatory vacuum with respect to responsibilities of businesses in relation to manufacturing and marketing of products and services. This has resulted in exaggerated environmental claims and efforts made by a company misleading the consumers. This issue is popularly referred to as '*Greenwashing*'– a term first coined by the environmentalist Jay Westerveld in 1986 to refer to companies that claimed to be environmentally friendly without backing up their claims with sufficient evidence.

2. Understanding greenwashing

2.1 Concept and definition

The practice of greenwashing is neither a recent issue nor a response to customer demands for environment friendly products. It was used for the first time in the 1980s by American Environmentalist Jay Westerveld to refer to a hotel's towel reuse policy under the guise of sustainability. Greenwashing refers to the exaggeration of a company's efforts in relation to environmental protection and sustainability to that extent where others identify the company as green. In simple terms, greenwashing refers to companies' practice of spending more time and resources in projecting themselves and their products as 'green' compared to what they actually spend on reducing the environmental impact of their activities. Thus in reality their efforts to protect the environment are negligible.

In India, the term ‘Greenwashing’ has not been defined in any of the legislations, regulations or guidelines. The circular dated February 3rd 2023 issued by the Securities and Exchange Board of India (SEBI), defined greenwashing as ‘making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation’.

Even though greenwashing has been around for more than 40 years, in recent times there has been an alarming increase in the number of businesses that engage in such practice. This is mainly due to the ‘green’ demand from the consumers. In 2010, one of the global agencies, Terra Choice, identified and defined the misrepresentations and manipulations committed by businesses/corporations in promoting themselves as ‘green’. The different methods of greenwashing predominantly present in Fast-Moving Consumer Goods (FMCG) sector includes environmental imageries, misleading labels, hidden trade-offs, irrelevant caims, lesser of the two evils and predatory delay.

2.2 Methods of greenwashing in FMCG sector

2.2.1 Environmental imageries

This refers to using visuals/ symbols such as mountains, trees, leaves, green packaging, etc to project themselves as ‘organic’/ ‘eco-friendly’/’green’/’sustainable’ without backing their projection with evidence.

2.2.2 Misleading labels

This refers to using self-made/ self-declared labels such as “Certified”, “100% organic”, etc. without any evidence to support such labels.

2.2.3 Hidden trade-offs

This type of greenwashing refers to the practice where a company highlights a product’s positive/ environment friendly attributes while ignoring all negative/ non-environmental friendly aspects of the same product.

For example, in 2022, Deutsche Bank had undergone investigation for investment fraud. It was alleged that investors were misled about its “green” investments. However, subsequent police raids, uncovered the fact that ESG factors were considered only in few investments and not all of them.

2.2.4 Irrelevant claims

When a substance is not used in production as a result of it being banned under law, it cannot be advertised as a part of green initiative. For example, ‘CFC- free’ label. This substance is banned under the Montreal protocol and when a company follows the same this does not amount to ‘green’ initiative.

2.2.5 Lesser of the two evils

This is a method of greenwashing, where the company’s claim may be true within the product category, but poses a greater risk of environmental damage as a whole.

2.2.6 Predatory delay

This is a relatively new method of greenwashing. This phenomena refers to large corporations making huge climate pledges. One example of such trend among corporations has been the promising “net zero” leading up to COP27.

For instance, Samsung has recently announced its plan for achieving both direct and indirect net zero carbon emissions by the year 2050. The company has, however, been called out many times over allegations of greenwashing. Initially, the company promised to operate its global facilities with 100% renewable energy by 2020. Currently, only 20% of the total operations of the company run on renewable energy, whereas the other 80% is still dependent on electricity produced by burning fossil fuels.

2.3 Greenwashing in Environmental, Social and Governance (ESG) disclosures

Greenwashing has become a cause of serious concern in the context of ESG disclosures as well since it impacts the decisions made by investors based on misleading information. For example, a company that asserts to have strong commitment towards sustainability, may be involved in activities that harm the environment. Similarly, a company might claim to have fair labour practices while engaging in other unethical practices. This affects not just the investors and the companies they invest in, but also the environment and society at large.

Though there are no specific legislations or guidelines in India to address this issue, the ASCI Code laid down by Advertising Standards Council of India applies not just to the advertising of goods or services but also to the advertising of processes, brands, and operations. Though such regulations appear to regulate advertising and protect consumer/investor interests, it actually covers ESG commitments and compliances as well. Thus any environmental claim made with regard to processes, brands, or operations of businesses is brought under the scrutiny of ASCI.

In addition to this, in order to motivate companies to align their practices with India’s global commitment to social, environmental, and economic responsibilities, the Ministry of Corporate Affairs has issued the National Guidelines on Responsible Business Conduct (National Guidelines). Also, SEBI has issued the Business Responsibility Report (BRR), Business Responsibility and Sustainability Reporting (BRSR), and the BRSR Core, which mandates public-listed companies to make ESG disclosures in accordance with the national guidelines.

ESG disclosures are being held in high regard by all kinds of investors at the time of making investment decisions mainly because of conscious consumerism. The Indian consumer market is willing to adopt greener and better alternative options in order to contribute towards addressing climate change and the commercial urge to seize the moment is perceivable. However, a false environmental claim can result in the permanent loss of consumer/investor interest and goodwill of the business.

3. Regulatory landscape in India

Though India does not have a dedicated law that addresses greenwashing, existing consumer protection laws and regulations play a major role in addressing unfair trade practices and misleading advertisements including deceptive environmental and sustainability claims. Consequently, greenwashing has come under the radar of the regulatory bodies such as Advertising Standards Council of India ("ASCI"), the Central Consumer Protection Authority ("CCPA"), the Securities Exchange Board of India ("SEBI"), and the Reserve Bank of India ("RBI") to mention a few.

3.1 Existing legislations and greenwashing

3.1.1 Consumer protection act, 2019

Though there are no direct provisions under the Consumer Protection Act, 2019 which addresses the issue of greenwashing, the same may be brought under 'unfair trade practices' and 'misleading advertisements'. The Act defines 'unfair trade practice' as practices which employ any unfair method or deceptive practice to promote the sale, use or supply of any good/service, including false/ misleading representations regarding "quality"/ "characteristics"/ "benefits" of the product or services and 'misleading advertisement' to include false description of a product or service. Violation of these provisions attract fines up to INR 10 lakhs along with imprisonment up to 2 years.

3.1.2 Trademarks act, 1999

Trademark is a mark that distinguishes goods and services offered by a brand, from that of others, using a graphical representation. Brands project themselves as sustainable or environment friendly by using terms such as 'natural', 'green', 'clean', 'organic', 'herbal' etc. in their trademark. However, this may not be always true resulting in greenwashing. The Trademarks Act, 1999 plays a major role in preventing such practices by disallowing the registration of such trademarks that are generic 'green' terms. This prevents companies from monopolizing generic environmental terms especially with the intent to greenwash their products. However, companies may register 'green trademarks' that reflect their eco- friendly products or services. For example, Godrej has registered the tagline 'Good and Green' in order to emphasize their objective of manufacturing environment friendly products and create greener India. It is pertinent to note that Godrej Industries has been fined twice by the Advertising Standards Council of India for making false and misleading claims about two of its products 'Good Knight Fast Card mosquito repellent' and 'Godrej No.1 Soap' that they were '100% natural', 'chemical-free' and 'eco- friendly'.

Thus, though there are provisions under Trademarks Act to prevent greenwashing, practical problems in its implementation, such as oversight, lack of follow up and registration of trademarks not being compulsory, hinders effective operation.

3.2 Role of regulatory bodies in tackling greenwashing

3.2.1 Advertising Standards Council of India (ASCI)

In order to protect consumers from misleading advertisements, the ASCI, a non-statutory private body, was formed for self-regulating advertising content. It functions through a code of self-regulation which outline guidelines for advertisers. ASCI's 'Code for Self-Regulation of Advertising Content in India', though does not specifically discuss greenwashing, lays down that all claims made in advertisements, including environmental claims, must be backed up by factual evidence/ research without any exaggerated statements. For instance, if a manufacturer claims that their product is "100% natural", the same should be substantiated with concrete evidence.

Further, owing to the significant influence that celebrities have on consumer behaviour, ASCI's 'Guidelines for Celebrities in Advertising' places higher standard of responsibility on the endorser in ensuring that the claims made in the advertisement that they appear in, or the product that they endorse, are capable of substantiation, and are not deceptive in nature. For example, if a Celebrity endorses a cosmetic product claiming it to be "Chemical-free" or "Organic" the guidelines expect the celebrity to have verified this claim to a reasonable extent before endorsing the product.

In addition to the above, ASCI regularly monitors advertisements and looks into complaints regarding misleading claims. However, powers of ASCI are limited in this aspect. The Courts have time and again reiterated ASCI can issue recommendations but these do not have the force of law unless the party submits to them. It has also been emphasized that the ASCI has been established as a self-regulatory body with respect to matters relating to advertising and not for dispute resolution. ASCI cannot assume the powers of a civil court by the mere presence of a complaints committee.

3.2.2 The Securities and Exchange Board of India (SEBI)

The SEBI has played a proactive role in addressing greenwashing. It took cognisance of the issue before the ASCI and CCPA. In February 2023, the SEBI issued a circular providing guidance in relation to advertising green debt securities ("SEBI Guidance"). The circular defined 'greenwashing' as: "Making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation" and this was the first attempt made by any Indian authority to define the term 'greenwashing'. It imposes duty upon issuers of green debt securities to ensure that there are no misleading labels/ misrepresentation regarding any certification.

3.2.3 Reserve Bank of India (RBI)

RBI, as a measure towards mitigating climate change, issued a circular dated April 11, 2023 ("RBI Circular"), to encourage regulated entities to allow customers to make green deposits, (i.e., deposit for financing activities which contribute to mitigation of climate change, climate adaptation, and other objectives, including biodiversity management and nature-based solutions) to protect the interest of such depositors by addressing greenwashing concerns and help augment the flow of credit to green activities/projects.

3.3 Role of other bodies

The Centre for Science and Environment has initiated Green Rating Project (GRP) through which the environmental performance of companies in India are rated by assessing the company's policies and performance in relation to the environment. The Indian Green Building Council (IGBC), a nonprofit organization with the aim of promoting sustainable building practices in India, has developed a rating system for green buildings. These initiatives hold companies accountable in relation to the environmental claims made by them which in turn promote genuine sustainability efforts.

Further, efforts such as 'eco-labelling' standard by Bureau of Indian Standards (BIS) and Green Good Deeds Movement' of the Ministry of Environment, Forest and Climate Change are other measures taken by the Government in ensuring that the environmental claims made by companies in their advertisements are not misleading/ deceptive.

Under the Organic Product umbrella, the Indian government has taken active steps to safeguard consumers' rights and prevent the spread of counterfeit goods.

The Food Safety and Standards Authority of India (FSSAI) and various other organization in the food industry have established distinct emblems such as Jaivik Bharat, India Organic Logo etc. to assist buyers in checking real organic products.

4. International regulatory landscape

The problem of greenwashing is not restricted to any particular geographical area or sector. It has been in practice for quite some time now across all countries. Most countries have drafted their own guidelines and regulations to tackle this issue.

4.1 United States of America

The U.S. Securities and Exchange Commission (SEC) has been playing a vital role in addressing the issue of greenwashing in the United States. The Climate and ESG Task Force, was launched by SEC in the year 2021, with the primary objective of tackling environmental, social and governance-related misconduct by identifying material gaps or misstatements in climate risk disclosure.

Further, the Federal Trade Commission (FTC) has issued 'Green Guides' which discusses how environmental claims in advertising should meet the requirements of being non-deceptive. The Green Guides also included that specific environmental claims must be based on reliable scientific evidence.

4.2 European Union

The European Union's proposed Green Claims Regulation has laid down rules in relation to corporate advertising. According to the Regulation when a company makes environmental claims, such claims must be precise, accurate, and verifiable. In 2020, the European Commission proposed guidelines for environmental claims across the EU, with aims to harmonise the rules on environmental claims within the European Union (EU). These include criteria for substantiation of environmental claims, including science-based metrics and avoidance of vague and misleading language. The guidelines themselves do not have binding legal power, but any violation by the company would be liable for action under consumer protection laws.

4.3 Canada

In 2019, the Competition Bureau of Canada issued the "Environmental Claims: A Guide for Industry and Advertisers", which discusses regarding guidelines for companies making environmental claims in their advertising to avoid false or misleading representations in their claims. Among other requirements listed in the guidelines, environmental claims should be specific, accurate, and not misleading, utilize clear and specific language, and provide evidence to support environmental claims.

4.4 Australia

The Australian Competition and Consumer Commission (ACCC) has played an active role in addressing greenwashing. In 2021 ACCC successfully brought greenwashing proceedings against Volkswagen for false representations about the compliance of its vehicles with Australian diesel emissions standards in violation of the Australian Consumer Law.

It has further issued guidelines according to which environmental claims made by companies in their advertisements have to be clear, precise, and not misleading.

4.5 United Kingdom

In UK, misleading marketing is addressed by the Consumer Protection for Unfair Trading Regulations 2003 (CPUT) and the Business Protection from Misleading Marketing Regulations 2008 (BPRs) administered by the Competitions and Markets Authority (CMA).

There are also self-regulatory codes overseen by CMA and the Advertising Standards Authority (ASA) which ensures companies' environmental claims in advertisements are specific, accurate, and not misleading. Further, there are organizations such as Forest Stewardship Council (FSC), the Rainforest Alliance and the Energy Star program, that certify products as environment friendly.

4.6 Singapore

In Singapore, environmental claims in advertisements are evaluated under the Singapore Code and the Consumer Protection (Fair Trading) Act 2003 (CPFTA). The Advertisement Standards Authority of Singapore may suggest an advertisement to be modified or withdrawn if it is found to be greenwashing under the Singapore Code, and such practice may be prosecuted under the CFPTA.

4.7 South Korea

The Korean Fair Trade Commission ("KFTC"), has recently released its proposed amendments to its existing Review Guidelines dealing with Environment-related Labels and

Advertisements (the "KFTC Guidelines"). The object of these amendments are to address 'greenwashing' more effectively in line with international regulations. The proposed amendments also include 'self-checklist for labelling and advertising related to the environment'. This allows businesses to verify in advance if their advertising related to the environment is unlawful. South Korea is also the first country to impose fines for the offence of greenwashing.

These are some examples of how the menace of greenwashing is addressed globally.

5. Conclusion and Suggestions

Greenwashing, though in practice for several decades, has come to the forefront recently, due to the higher rate at which it is practised, mainly because of conscious consumerism and an increased demand for 'green'/ 'environment friendly products. It is increasing at an alarming rate and undermines the genuine efforts to mitigate climate change.

The regulatory landscape dealing with the issue of greenwashing in India is still evolving. Though covered under the existing legislations and regulations such as the Consumer Protection Act 2019, ASCI Code, SEBI Circulars etc. the seriousness of greenwashing demands a dedicated, well-structured comprehensive guideline that aligns with international best practices.

Encouraging companies to be transparent about their environmental practices and holding them accountable for false claims is crucial. This can be facilitated through public reporting and independent audits. The Securities and Exchange Board of India (SEBI) can mandate more detailed disclosures on sustainability practices in annual reports. In some cases, greenwashing might be unintentional due to the lack of conceptual understanding by the businesses. Self- checklist similar to the one proposed by South Korea might be helpful for the businesses to ensure that their advertisement do not fall under greenwashing.

Further, there needs to be sufficient technical expertise to verify environmental claims and clearer guidelines for eco-labelling and certifications. Promoting the use of reputable third-party certifications can ensure that environmental claims are verified and trustworthy. Certifications from bodies like the Forest Stewardship Council (FSC) and the Indian Green Building Council (IGBC) provide credibility to genuine green products and practices.

Lack of consumer awareness is another major issue that needs to be addressed for efficient tackling of greenwashing. The role of NGOs and media is significant in educating consumers about greenwashing and how to identify genuinely eco-friendly products. Campaigns like the "Eco-India" initiative aim to inform consumers about sustainable choices and the pitfalls of greenwashing. It is also essential to balance greenwashing regulations and policies with market innovations.

To conclude, tackling greenwashing is a priority for regulators globally and, as they tighten their guidance on sustainability claims, the amount of regulation and legislation relating to greenwashing is increasing. However, the menace of greenwashing may be tackled effectively only with the collective effort of all stakeholders. Regulatory clarity along with effective implementation, may strike a balance between the compliance concerns and the protection of consumer interests.

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