



## When stones are claimed emeralds. Eco-sustainability claims and the spectre of greenwashing.

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In the course of the XIII century, chivalry formally put its sword at the service of justice, mercy, and the protection of the deprived and the oppressed. This was an *escamotage* to make habits and costumes of knights – not exactly in line with the spiritual and religious canons of the time – acceptable, leaving knights free to keep acting the same way.

The trick worked, chivalry being lined up with high values as kindness and righteousness from then on.

If in the Middle Age spiritual needs permeated the personal sphere, nowadays – also – more substantial, yet vital, needs affect the common sentiment. Reputational washing, as an evolving animal, adapts and takes different declinations.

One of these is greenwashing.

You may have heard this term before, in relation to claims praising how a specific product is eco-sustainable, has no impact on the environment, is produced respecting the ecosystem and, finally, makes the consumer believe he is contributing to the environmental challenge simply swiping his credit card.

Of course, not every green claim is a trap. However, practice is picturing a reality in which marketing campaigns claiming the eco-sustainability of products often seem ungrounded.

It is therefore essential to understand what greenwashing consists in and how companies and consumers can escape it.

We were talking about reputational washing. Actually, this is how greenwashing manifested at the very beginning, when ungrounded green claims were used to cover polluting or otherwise environmentally impacting conducts of companies. The term is borrowed from whitewashing, which literally means camouflaging imperfections brushing them with paint.

Greenwashing, at least at the origins, was exactly this: a brush of green paint over coal, pretending to make it look like emerald.

The phenomenon has however changed overtime. If at the beginning catching consumers' attention for the sake of sales was probably a secondary target, the link between eco-sustainability and sales growth has progressively become clear to companies, to the point that several traders have started structuring their marketing strategies around this topic, giving rise to the phenomenon of green marketing.

Green marketing essentially aims at intercepting the eco-sensitivity of consumers by claiming the sustainability of products and services, for whatever reason they might be deemed eco-friendly – for their components, materials, their industrial manufacturing process, applications, and so on.

Crudely speaking, green claims try to raise sales by tapping into the widespread feeling of 'green is better'. And they're right: recent surveys show that at least 70% of consumers prefer to buy eco-friendly products and are willing to bear an increase in price for this.

Moreover, the current political and social backdrop has created a favourable terrain to legitimate this market strategy: humankind is struggling to remedy the damages produced by decades (*rectius*, centuries) of pollution and unscrupulous exploitation of the environment. In this context, industries are compelled to pay their share in the difficult environment recapitalization process, by making their products more and more eco-friendly.

So, what is the point with trying to take economic advantage of this commitment? Well, to the extent that the claimed features making a product sustainable are real, green claims are a legitimate way to try to monetize the environmental commitment of manufacturers.

A company making efforts to contribute to the environmental challenge is perfectly entitled to transform its commitment into a marketing tool, trying to sell to consumers not only the product, but also the values behind it.

Beware the wolf in sheep's clothing, however.

Greenwashing not only stands for misuse of green claims to cover a company's negative environmental impact. It also creeps in claims which – maybe, probably – have a grain of truth, but where companies tend to emphasize allegedly green features which, looked closely, are not worth it.

From a legal standpoint, these conducts have predictably been classified by regulatory authorities as unfair commercial practices, in particular as misleading or aggressive commercial conducts.

In particular, regulatory authorities tend to consider green claims unfair when claiming sustainability in a too generic, sometimes megalomaniac way.

Practice shows that greenwashing, at least nowadays, essentially takes two forms. First, it usually occurs when a company is not so accurate in providing information, or in making sustainability data easily accessible in order to verify them. Usually, the lack of information comes along with the use of generic, evanescent terms in advertisements or labels such as 'ethical', 'eco-friendly', 'impact-free' and other such buzzwords not actually explaining a lot to the buyer.

A second type of marketing claim, usually detected as unfair, is the one based on stressing the sustainable side by using superlatives in advertising messages. Fine examples are those claiming the product as 'the most ecologic' or 'the best for the environment' and similar others.

This, of course, let alone the paradigmatic case of claiming sustainability when the product is by definition polluting (that's the case of 'green diesel', for example).

Whatever the form, the key point addressed by enforcers is the lack of information, or at least its difficult or impossible accessibility.

To complete the picture, a recent screening carried out by the EU Commission, together with national antitrust authorities, on websites targeting misleading environmental claims, seems to confirm the trends of greenwashing and the attention paid by regulatory authorities to the aforementioned expressions of this conduct.

The screening, whose outcomes have been published at the end of January, shows that in more than half of the cases the trader did not provide sufficient information to assess the claim's accuracy. In 37% of cases, the claim included vague and general statements, aimed to give the impression to consumers that a product had no negative impact on the environment. Finally, in 59% of cases the trader had not provided easily accessible evidence to support the green claim.

It should be clear, at this point, that falling into the trap is easy, for both consumers and companies.

Now, manufactures should of course keep claiming sustainability of their products, bearing in mind however some simple but key principles that can prevent righteous green claims from falling into the net of unfairness: avoid forcing the green side of products, and limit the claim to the actual, verifiable and believable magnitude of their sustainability.

Practically speaking, providing information on the grounds of the claimed sustainability on brochures, websites, or any other support at hand of consumers (and watchdogs) is of course a first useful step towards compliance. Further commitment is however required, especially in preventively assessing whether an even existing environmental-friendly feature is really worth a claim focused on it or stressing it way too much.

In providing information to consumers, clarity is key. It is necessary to provide numbers, facts and figures supported by science. For instance, it is appropriate to clarify what percentage of a product is made with recycled materials. Or, to make another example, how a specific material – like natural fibres for clothes, assumed to be ecologic by definition – is sourced and treated, in order to determine the magnitude of the product's sustainability and possible trade-offs of the use of a material and the contouring industrial process.

Consumers, on their side, should increase their level of attention. Help in this direction can come from certified labels and marks attesting this or that ecologic

feature of a certain product or service, although a mark is not always guarantee of quality and sustainability, nor is the average consumer aware of the legal and practical implications of most signs on labels.

Luckily for consumers, public and private, individual and collective, remedies against unfair green claims exist. Public enforcers – mainly antitrust and consumer authorities, entitled of the application of consumer law – are showing their attention for the phenomenon, applying injunctive and fining measures to companies in several industries and of different size.

In this context, consumers associations play an important role in aggregating collective interests and complaints and bringing them to the attention of public enforcers, or even in tribunals for civil remedies (activating compensatory and injunctive reliefs).

The already well-structured wall of the enforcement against unfair commercial practices is therefore strengthening with the rich contribution of detection and repression of greenwashing conducts.

However, giving a look around – as the EU Commission did recently – the feeling of greenwashing running at a faster pace than real sustainability does not seem unjustified.

Taking a close look at fashion – one the most interested industries by environmental impact – it is noteworthy how the ‘2019 *Pulse of the Fashion Industry Update*’ stresses that the sector has improved its social and environmental performance in last years, but at a slower rate, affirming that ‘fashion companies are not implementing sustainable solutions fast enough to counterbalance negative environmental and social impacts of the rapidly growing fashion industry’.

Given the context, consumers’ exposure to unfair green claims is probably higher than expected. In this scenario, raising the attention is a suggestable step, not only for consumers, but mainly for companies, in order not to leave behind crumbs than might have unexpected legal, economic and reputational downsides. In this direction, committing in compliance assessments aimed at carefully structuring and evaluating marketing campaigns, and detecting potential unfair practice, might pay dividend and be an investment for the sake of environment, and reputation.