



DENTONS

Legal framework applicable to Greenwashing

Country focus: Brazil

Grow | Protect | Operate | Finance

Brazil	
Legal definition of greenwashing	X
Targeted greenwashing legislation	X
Direct regulation of greenwashing (through consumer protection, advertising standards, unfair competition or environmental law frameworks)	X
Soft law guidance or standards on greenwashing	✓
Applicability of existing national legal frameworks to greenwashing (depending on facts)	✓

Summary of relevant laws and provisions

In Brazil, greenwashing is not directly regulated by any specific law. However, legal frameworks that prohibit deceptive, false or unfair practices in advertising, consumer protection and contract law would apply to indirectly regulate greenwashing.

The following legal frameworks could indirectly regulate greenwashing:

- Consumer protection law; and
- Contract law.

In addition to these legal frameworks, it is worth mentioning that advertising standards are regulated directly by the private sector, through the National Council for Advertising Self-regulation – CONAR. Although CONAR is not a public authority, but a private association, hundreds of companies, media bodies and publicity agencies are members of CONAR and adhere to CONAR's Brazilian Advertising Self-Regulation Code, that indirectly regulates greenwashing.



Summary of guidance and soft law

Although greenwashing is not directly regulated in Brazil, consumer law and contract law could indirectly regulate greenwashing:

1. The Code of Consumer Defense and Protection provides that (i) consumers have the right to adequate and clear information about products and services; (ii) any misleading or abusive advertising campaigns are prohibited; and (iii) failing to have factual, technical, and scientific data on which to base advertisements is a crime, among other provisions.
2. Civil Code regulates all aspects of contracts in general and provides that exercising rights exceeding the limits imposed by its economic or social purpose, by good faith or by good morals is considered an unlawful act.
3. On a soft law level, the Securities and Exchange Commission of Brazil published a guide proposing a definition for greenwashing (behavior or activities that make people believe the company is doing more to protect the environment than it actually is), as well as examples of acts that would be considered greenwashing (inappropriate use of specific terms related to sustainability; false statements about commitments related to sustainability; deceptive marketing practices that deliberately misrepresent the sustainable impact of the product).

Claims & enforcement

Greenwashing claims can be brought by various actors and bodies, depending on the legal framework and the type of remedy sought.

1. Consumer law can be enforced by administrative proceedings conducted by the Public Prosecution Offices, which can promote civil investigations seeking to identify damages caused by violations of consumer protection law, as well as any Federal, State or Municipal authorities with powers to

inspect and control the consumer market, who may impose administrative penalties. Legal proceedings are also used to enforce consumer law, hence any individual or legal person can file lawsuits. Public Prosecution Offices, Legal Defense Offices, public authorities in the Federal, State or Municipal levels and associations that fulfill minimum requirements set forth by applicable laws can also file public civil actions.

2. Contract law is enforced through legal proceedings. Any individual or legal person whose rights are violated can file lawsuits to impose civil liability (in case of damages) and/or affirmative or negative covenants to have legal obligations fulfilled. Moreover, Public Prosecution Offices can conduct investigations and press charges on individuals that allegedly practiced contractual actions that are considered crimes (such as fraud, if all legal requirements from criminal law are fulfilled, according a case-by-case assessment).

Sanctions & remedies

The sanctions and remedies for greenwashing vary according to the legal framework and the nature and gravity of the infringement. They can include:

1. Civil perspective: lawsuits to impose civil liability (in case of damages) and/or affirmative or negative covenants to have legal obligations fulfilled; civil investigations seeking to identify damages caused by violations of consumer protection law, which could either result in public civil actions or conduct adjustment agreements.
2. Administrative perspective: Administrative penalties, such as fines and suspension of activities.
3. Criminal perspective: Criminal penalties, such as imprisonment and fine for individuals that commit crimes according to details of a concrete case.

Evidence & substantiation

The evidence and substantiation requirements for greenwashing claims depend on the legal framework and the burden of proof. As a rule, in Brazil, disclosing private information is not mandatory.

1. In exceptional cases, based on the probability of the right and details of a concrete case, a judge can order the disclosure and/or search and seizure of documents and information.
2. Public Prosecution Offices have specific powers for investigation which authorize them to request documents, information and other evidence to public and private parties. Refusing to disclose, delaying the disclosure or omitting data that are deemed necessary for filing a public civil action is a crime that subjects the party to one to three years of imprisonment and fine. Nevertheless, a party is not obliged to disclose information that is considered classified according to applicable laws. In case of classified information, Public Prosecution Offices can file a public civil action without these information and a judge will decide whether or not the defendant is obliged to present them.
3. In cases related to consumer protection law, consumers have the specific privilege to have the protection of their rights facilitated, by shifting the burden of proof in favour of the consumer when the judge, according to ordinary rules from experience, finds that (i) the consumer's claim is credible, or (ii) the consumer does not have the means to satisfactorily prove the facts while the supplier would be in a better position to prove such facts.

Recent litigation

To date, our team is not aware of significant litigation in Brazil focusing specifically on greenwashing.

Key contact



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