



DENTONS

Legal framework applicable to Greenwashing

Country focus: Nigeria

Grow | Protect | Operate | Finance

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

Summary of relevant laws and provisions

In *Nigeria*, greenwashing, or the use of misleading or deceptive environmental claims, is neither explicitly defined nor regulated by law. However, it may be regulated through laws relating to consumer protection, unfair competition, contract, advertising standards and criminal law.

1. Consumer protection and unfair competition law in Nigeria prohibits misleading commercial practices by persons involved in the production of, or trade in, goods, or the provisions of goods and services. Specifically, such laws prohibit the use of trade descriptions or the making of representations that are likely, or calculated, to be misleading to consumers with respect to such goods and services. The law applies to all undertakings and commercial activities within or having effect in Nigeria. Certain industry sectors, such as the financial services sector, also have specific regulations aimed at protecting consumers of financial products/ services from inadequate and misleading information.
2. Under Nigerian contract law, parties are bound by the clear provisions of a contract which they voluntarily entered into, and the court is bound to give effect to the same. The contract must however have all the elements of a valid contract and must not be illegal, fraudulent, tainted with deceit, or against public policy. As such, where the terms of a contract include representations, warranties, indemnities, undertakings, and/or obligations as to environmental claims or impact, non-compliance with the same may be grounds for an action or claim for breach of contract.
3. Advertising standards require all advertising and marketing communications in Nigeria or directed at the Nigerian market to be legal, decent, honest, truthful, respectful, prepared with a high sense of social responsibility, and be devoid of misinformation or disinformation. In this way, companies are required to ensure that in marketing their products, statements made must be true and must not mislead/misinform consumers.
4. Under Nigeria's criminal law framework, greenwashing offences are not explicitly referred to or provided for. It however provides for offences relating to inducement by fraud or false pretence (with intent to defraud) to obtain anything capable of being stolen. It also prohibits the publication by a promoter, director, officer, or auditor of a corporation or company (either existing or intended to be formed) of false information which is intended to either: (a) deceive or defraud any member, shareholder, or creditor of the corporation or company; or (b) induce any person to become a member of, or to entrust or advance any property to the corporation, or to enter into any security for the benefit of the corporation. Greenwashing practices may, therefore, be punishable through the criminal law framework in Nigeria depending on the circumstances and the intention of the perpetrator.

Summary of guidance and soft law

We are not aware that Nigeria has any soft law instruments aimed at preventing or reducing greenwashing.

Claims & enforcement

Greenwashing claims can be brought through the previously discussed legal frameworks by various actors and bodies, depending on the applicable legal framework and the type of remedy sought. These include:

1. Aggrieved consumers who may seek to enforce their rights or resolve any dispute by:
 - i. referring the matter to the person or company that supplied the goods or services for resolution;
 - ii. referring the matter to the applicable industry sector regulator with jurisdiction;
 - iii. filing a complaint directly with the Federal Competition and Consumer Protection Commission (FCCPC) – the Federal agency responsible for consumer protection matters); or
 - iv. directly approaching a court with appropriate jurisdiction to seek redress.
2. The FCCPC is also empowered in certain cases to apply to a competent court for injunctive reliefs against a defaulting undertaking to refrain the undertaking from continuing a course of conduct that is detrimental to the interests of consumers.
3. Industry regulators are also generally empowered (under their establishment statute) to take enforcement steps and actions to protect consumers of products and services provided by entities regulated by them. For example, in the financial services industry, the Central Bank of Nigeria has broad enforcement powers which allow it to, among others, conduct investigations, impose administrative fines, and cancel/withdraw operating licenses.

4. Consumer protection groups accredited by the FCCPC may commence administrative or legal proceedings by filing a complaint with the FCCPC; or commencing proceedings before the Competition and Consumer Protection Tribunal (CCPT) – a specialized tribunal established under the Federal Competition and Consumer Protection Act; or instituting an action before a court of competent jurisdiction.
5. Any person or legal entity aggrieved by the actions of a registered advertising practitioner or an advertiser can bring claims and file complaints.

Sanctions & remedies

The sanctions and remedies in relation to greenwashing vary according to the legal framework and the nature and gravity of the infringement. These may include:

1. Administrative Sanctions – The FCCPC and the Advertising Practitioners Disciplinary Committee are empowered to issue monetary penalties or fines.
2. Criminal Sanctions – Under Nigerian consumer protection law, any person who contravenes any consumer right commits an offence and, in the case of a natural person, is liable on conviction to imprisonment for a term not exceeding 5 years or to a payment of fine not exceeding N10,000,000 or to both fine and imprisonment. In the case of a body corporate, the body corporate is liable on conviction to a fine of not less than N100,000,000 or 10% of its turnover in the preceding business year, whichever is higher. In addition, each director of the body corporate is liable to be proceeded against and if convicted, will be subject to the penalties applicable to natural persons.
3. The court may also order a convicted undertaking to pay compensation for any personal injury, loss, or damage resulting from the offence. The quantum of the compensation may be as the court deems fit or as assessed by a competent professional authority.
4. In contractual matters, the aggrieved party may terminate the contract and/or bring an action for breach alongside a claim for damages.

Evidence & substantiation

The evidence and substantiation requirements for greenwashing claims depend on the legal framework and the burden of proof. In general, the following principles apply:

1. Where the greenwashing claim is made as a civil matter, the primary position is that the party asserting a state of affairs has the burden of proof and the standard of proof is on the balance of probabilities.
2. In criminal cases, the burden of proof rests on the prosecution based on the presumption of innocence guaranteed by Nigerian law; the standard of proof is proof beyond a reasonable doubt.

Recent litigation

To date, our team is not aware of any litigation in Nigeria claim made specifically in relation to greenwashing.

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