



DENTONS

Legal Framework Applicable to Greenwashing

Country Focus: Hong Kong

Grow | Protect | Operate | Finance

Hong Kong	
Legal definition of greenwashing	✗
Targeted greenwashing legislation	✗
Direct regulation of greenwashing (through consumer protection, advertising standards, unfair competition or environmental law frameworks)	✗
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 Hong Kong, greenwashing, or the use of misleading or deceptive environmental claims, is neither defined by law, nor is it directly regulated by any specific law. However, various legal frameworks that prohibit deceptive, false or unfair practices in advertising, consumer protection, contract law, unfair competition law, tort law or criminal law may apply — depending on the context and the jurisdiction.

For example:

1. Consumer protection law provides that it is a criminal offence (i) to apply a false or misleading trade description to any good or service or (ii) to misleadingly omit or hide material information or provide material information in an unclear, unintelligible ambiguous or untimely manner resulting in a consumer making a transactional decision that the consumer would not have otherwise made.
2. General principles of contract law and codified ordinance relating to the sale of goods which is applicable to all contracts of sale governed by Hong Kong law provide that goods for sale must be as described by the seller.
3. Common law principles and statutory provisions against misrepresentation provide that a representee who is induced to enter into a contract to their detriment as a result of an untrue statement of past or present fact or law that is made by the misrepresenting representor may claim damages for loss arising out of the misrepresentations.
4. Tort law principles also allow the representee to make tortious claims such as tort of deceit or the tort of intentional infliction of emotional distress, as applicable.
5. Finally, certain misrepresentations may lead to criminal liabilities. For instance:
 - if the fraudulent or reckless misrepresentation was made to induce a person to enter into an agreement to acquire securities, structured products or collective investment schemes;
 - if false or misleading information as to a material fact was disclosed, circulated or disseminated to induce a person to subscribe the securities or futures or to affect the price of such securities or futures; or
 - if the relevant misrepresentations were made to commit fraud.

Summary of guidance and soft law

In addition to the legal frameworks mentioned above, there are also some guidance and soft law instruments that aim to prevent or reduce greenwashing in Hong Kong. These include:

1. Television Code and Radio Code, which sets out advertising standards applicable to licensees of television programme service and sound broadcasting service, such as advertisements should be honest and truthful and great care should be exercised by the licensee to prevent presentation of false, misleading or deceptive advertising.
2. Code of Practices issued by the Association of Accredited Advertising Agencies of Hong Kong, which is a self-regulatory regime of the advertising industry to a similar effect as above.

Claims & enforcement

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

1. Consumers, who have suffered loss as the direct victims of greenwashing.
2. Public authorities, which can initiate administrative or criminal proceedings and impose sanctions for violations of environmental standards law or criminal law, such as fines, injunctions, confiscation, or imprisonment.

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. Fines up to HK\$10 million for contravention of the Securities and Futures Ordinance, depending on the legal provision breached and the circumstances of the case.
2. Imprisonment, which can be up to 14 years for contravention of the Trade Description Ordinance, depending on the offence committed and the aggravating factors.
3. Civil damages, which can be awarded to compensate for the loss suffered by the victims of greenwashing, such as the loss of customers, the loss of reputation, or moral prejudice.
4. Injunctive relief, which can be obtained by administrative or judicial authorities to stop or prevent the continuation of the greenwashing practice, if necessary, under a penalty.
5. Publication of the decision, which can be made by the administrative or judicial authorities to inform the public of the greenwashing practice and its sanction, and to restore the truth.

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. The claimant must prove the existence and the harm of the greenwashing practice, unless there is a legal presumption in its favor.
2. The respondent must prove the accuracy and the justification of the environmental claim, unless there is a legal presumption in its favor.
3. The public officials, have investigative powers and can require the disclosure of any document or information that may justify the environmental claim.
4. The courts can order any measure of inquiry or expertise that may be useful for the resolution of the dispute, such as the examination of witnesses, the production of documents, or the appointment of an expert.

Recent litigation

To date, our team is not aware of any litigation in Hong Kong focusing specifically on greenwashing.

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