

The background of the slide is an aerial photograph of a dense, vibrant green forest. A dark blue river or stream meanders through the trees on the right side of the image. The left side of the image is partially obscured by a dark teal, semi-transparent graphic overlay that contains the text.

DENTONS

Legal Framework Applicable to Greenwashing

Country Focus: Italy

Grow | Protect | Operate | Finance

Italy	
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 Italy, albeit there is no specific regulation applying to greenwashing, the use of misleading or deceptive environmental claims can fall within various legal frameworks, such as consumer protection law, misleading advertising law, unfair competition law, tort law and criminal law.

1. Consumer protection law prohibits commercial communications capable of misleading and distorting the consumer behaviour. This law applies to business-to-consumer relationships and, in particular, to any action, omission, conduct and commercial communications carried out by companies (including foreign ones) in connection with the sale, promotion or supply of a product to Italian consumers. A commercial practise is misleading if it provides false information and is therefore untruthful or deceives or is likely to deceive the average consumer. The Italian Competition Authority (“ICA”) is competent to hear claims brought by the interested parties.
2. Legislative Decree no. 145 of 2007 (“**Misleading Advertising Decree**”), applying to business-to-business relations, provides that advertising is deceptive and prohibited when it is likely to mislead the undertaking to which it is addressed, impairing its economic behavior, or when it is likely to harm other undertakings.
3. Greenwashing conducts can be sanctioned as torts, in general, where the requirements of Article 2043 of the Italian Civil Code are fulfilled (unlawful conduct, harmful event, causal link between the conduct and the event, fraud or negligence on the part of the injurer).

4. Unfair competition law prohibits undertakings from directly or indirectly making use of means that are not in accordance with professional fairness and are likely to damage the business of a competitor. According to well settled case-law, any commercial mendacity capable of harming a competitor falls within the scope of such “general clause”: as a result, communications misleadingly claiming environmental merits might amount to unfair competition, as recently stated by Court of Gorizia (see slide 5, *Recent litigation*, for more details).
5. Criminal law does not expressly sanction greenwashing as a crime. However, greenwashing practices may be criminal conducts when they fulfill the requirements for the crimes of *Fraud in the exercise of trade* (Article 515, Italian Criminal Code), *Fraud* (Article 640, Italian Criminal Code) and *Aggravated fraud to obtain public funds* (Article 640-bis, Italian Criminal Code).

Summary of guidance and soft law

Besides the above-mentioned statutory provisions, some guidance and soft law is available in Italy to prevent or tackle greenwashing in Italy.

In particular, the Italian Advertising Self-Regulatory Code (“CAP”) issued by the Italian Self-regulatory Advertising Authority (“IAP”), provides a set of rules of conduct also specifically against dissemination of environmentally misleading commercial communications (Article 12, CAP).

Based on Article 12 CAP, the IAP has repeatedly taken a stance on misleading "green" claims, outlining that commercial communication with environmental claims must provide (i) specific indications to support the claim as regards the environmental benefit it effectively refers to; (ii) a clear understanding of what the actual sustainable characteristics of that product are.

Claims & enforcement

Actions against greenwashing can be brought by the affected entities or individuals under the different sets of applicable statutory or soft law. These include:

1. Competitor undertakings having the legal standing to bring claims before the civil courts or the ICA.
2. Consumers affected by the misleading commercial practice and any other interested party may enforce their rights before a civil court or the ICA, either individually or collectively through their associations or in the context of a class action.

3. Public authorities having investigative powers who can initiate *ex officio* administrative or criminal proceeding. Also the IAP’s “Control Committee” may institute proceedings before the Jury *ex officio*.

Sanctions & remedies

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

1. In case of Consumer Code or Misleading Advertising Decree violations, the ICA is entitled to order: (a) the withdrawal of the products from the market or cessation of the relevant communication; (b) the payment of administrative fines ranging from Euros 5,000 to 5,000,000 depending on the seriousness of the violation, its duration and the economic dimension of the tortfeasor; (c) the publication of the order or a corrective statement, with costs to be borne by the tortfeasor; (d) preliminary measures (i.e. the provisional suspension of the communication in the event of particular urgency).
2. In case of unfair competition acts, the competitor may request before civil courts: (i) an injunction; (ii) corrective measures; (iii) the publication of the judgement; (iv) compensatory damages.
3. In case of criminal conduct, sanctions are (i) imprisonment of up to two years or a fine of up to 2,065 euros for the crime of “fraud in the exercise of trade”; (ii) imprisonment from six months to three years and a fine from 51 euros to 1,032 euros for the crime of “fraud” (iii) for the crime of “aggravated fraud for obtaining public fundings”, where the liable subject is a natural person, imprisonment from two to seven years, where the liable subject is an undertaking, a fine up to five hundred quotas.
4. In case of a misleading advertising pursuant to Article 2 CAP, the IAP Jury is entitled to order to cease such advertising activity and to give public notice of the violation, even if it does not provide for any fines/economic penalties.

Evidence & substantiation

The evidence and substantiation requirements for greenwashing claims depend on the applicable legal framework and the burden of proof regime. In general:

1. Before the ICA and the IAP Jury, the burden of proving the truthfulness of the advertising message is on the party who disseminated it.
2. In case of unfair competition proceedings before civil courts, the burden of proof is on the plaintiff.
3. In case of proceedings before criminal courts, if the defendants are natural persons, the burden is on the Public Prosecutor.
4. Where the criminal conduct has been committed by an entity, pursuant to Legislative Decree No. 231/2001:
 - when the crime has been committed by an apical member (*apicale*) of the company, the burden of proof is on the company itself to prove that their Organizational Model was prepared in such a way as to prevent the commission of the offence referred to in Article 25-bis, par.1 of Legislative Decree No. 231/2001;
 - when the crime has been committed by an employee (*sottoposto*), the burden of proof is on the Public Prosecutor.
4. The ICA may at any time request undertakings, associations of undertakings or individuals to provide information and to file documents useful for an investigation.

4. The IAP Jury's finding that a given communication is deceptive has an impact on the assessment of the same communication in judicial proceedings (for instance, see Lazio Administrative Court, judgement no. 8109 of 2017, in *DeJure*).
5. The courts can order *ex officio* the provision of further evidence, such as the examination of witnesses, the filing of documents, or the appointment of an expert.

Recent litigation

- **Court of Gorizia, judgement of November 25, 2021, in *One Legale*.**
(*Alcantara S.p.a. vs Miko S.r.l.*)

The case was brought before the local Court of Gorizia by Alcantara S.p.A. ("**Alcantara**"), a manufacturer of a micro-fiber product used in the automotive sector, against Miko S.r.l. ("**Miko**"), one of its main Italian competitors. Alcantara argued that Miko's "green claims" constituted an act of unfair competition. On that basis, Alcantara requested an interim injunction preventing its competitor from continuing to make such environmental claims.

The Court ruled that the accused statements were vague, generic, false, and non-verifiable and needed to be immediately removed from any website, social media platform, tv advertisement, magazines, and other promotional material. The Court also ordered Miko to publish the Court's decision on its website for 60 days.

Although the ruling has thereafter been revoked in the appeal phase due to lack of the "urgency" requirement, in Italy this ruling is becoming recognized as a landmark decision in the fight against greenwashing and deceptive sustainability communications.

- **ICA, decision no. 20559 of 10 December 2009**

In December 2009, the ICA concluded an investigation procedure aimed at verifying the truthfulness of the green claims that a well-known water company used for its advertising campaign on “eco-friendly” plastic bottles, produced with less plastic, “less energy and more love for the environment”. However, green claims emphasizing the environmental compatibility of the new line of bottles and likely to influence consumers' purchasing choices, lacked sufficient documentary evidence to make them verifiable.

The Authority issued a fine of EUR 70,000, which was revoked on appeal by the Regional Administrative Court of Lazio.

In 2017 the Council of State finally reconfirmed the sanctioning measure against the company for breach of Articles 20 and 21 of the Consumer Code.

- **ICA, decision no. 26137 of 4 August 2016**

In August 2016, the ICA imposed a sanction of EUR 5,000,000 on a well-known automobile manufacturer.

The sanction was justified by (i) the distribution of diesel vehicles in Italy containing software that made it possible to alter the measurement of nitrogen oxide (NOx) emission levels during control tests; (ii) the dissemination of misleading advertising messages - attributing to the manufacturer a particular environmental sensitivity - significantly distorting the economic behavior of consumers.

The ICA decision was challenged by the company before the Regional Administrative Court of Lazio, which confirmed the sanction. The company further appealed the decision before the Council of State that referred to the Court of Justice of the European Union (“**CJEU**”) a request for preliminary ruling. In September 2023, the CJEU stated that, according to the principle of *ne bis in idem*, the fine imposed by the ICA was prevented by the EUR 1 billion fine already paid in force of a German ruling on the same facts.

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