Companies Face Greater Scrutiny for Misleading Environmental Claims and Nonstandard Sustainability Reporting

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Environmental, Advertising and Consumer Protection

As more companies recognize the value of enhanced sustainability reporting and publicize the positive environmental features of their products and services, they should also be attentive to greater public scrutiny of "green" claims. Companies that engage in greenwashing—asserting exaggerated, misstated, or immaterial environmental claims—are increasingly exposed to reputational damage and legal battles, as regulators, investors, and civil society actors dedicate more resources to scrutinizing environmental claims. Companies also face growing pressure from investors to publish standardized and rigorous sustainability information that allows for cross-industry benchmarking.

Misleading Sustainability Reporting and Environmental Claims

The public's appetite for private sector efforts to protect the environment has increased as new projections of the impacts of climate change and environmental degradation emerge. As companies report more information about their environmental footprints, they expose themselves to greater risks of misreporting environmental impacts and publishing information that regulators would consider misleading or deceptive. In addition to advertising that highlights environmental claims, formal sustainability reporting has grown in popularity in recent years. Sustainability reporting among the S&P 500 jumped from 20 percent in 2011 to 85 percent in 2015. With 93 percent of the 250 largest Fortune 500 companies reporting on environmental metrics, sustainability reporting is now considered standard among large- and mid-cap companies worldwide. Nearly 100 sustainability reporting laws were introduced around the world in 2016 and 2017, and the host of new legislative instruments to encourage sustainability reporting have likely advanced the prevalence of sustainability reporting in the business community. Updates to reporting guidelines by non-governmental organizations such as GRI, SASB, TCFD, and CDP, and greater levels of stock exchange involvement in sustainability reporting have also probably contributed to this trend.

Regulators have been active in bringing enforcement actions against companies for misleading environmental labeling practices. For example, the Federal Trade Commission has continued to police the environmental marketing space by bringing law enforcement actions, most notably its cases against Volkswagen, for making allegedly deceptive "clean diesel" claims.

Investor Interest in Sustainability Disclosures

Investors have demonstrated rising interest in companies' environmental claims. Last year alone, assets in sustainable investment funds grew 37 percent, according to Bloomberg. In just five years, the assets managed under Environmental, Social, and Governance (ESG) investment strategies nearly doubled, accounting for $22.9 trillion in managed assets worldwide in 2017. Furthermore, in response to an Ernst & Young survey, 68 percent of institutional investor respondents said that non-financial performance frequently or occasionally played a pivotal role in their decision making in the previous year.

Despite the popularity of sustainability reporting, companies' reporting strategies remain fragmented. Advocacy groups like sustainability and corporate governance leader Ceres have documented that less than 10 percent of the 476 largest companies in the Forbes Global 2000 engage in third-party auditing or other robust verification processes for their sustainability reporting. The Ceres report published this summer also noted that one-third of companies do not assess the extent to which the sustainability practices they adopt are material based on the significance of the economic, environmental, or social impact for the reporting organization. Moreover, 23 percent of companies provide no information about board-level oversight of material sustainability issues. In response, influential investors like BlackRock Inc. and the California State Teachers' Retirement System have pressed companies this year to adopt standard sustainability reporting frameworks in their annual meetings with corporate boards.

As more investors pay attention to sustainability claims and push companies to strive for more ambitious goals, it is likely that reactions to and consequences for false, misleading, and nonstandard claims will become harsher. Companies would be well advised to scrutinize their sustainability reporting and environmental claims to ensure they are neither misleading nor deceptive, comply with the Federal Trade Commission's Green Guides and truth in advertising laws, and are premised on justifiable and widely-accepted sustainability metrics.

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