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Getting Green Claims Right: 'Bring Everybody Into The Same Room'

by [Ryan Nelson](#)

Maggie Spicer, attorney and founder of Source Beauty LLC, discusses her approach with clients to developing green claims they can feel confident about.

Beauty companies making green claims do so at their own peril in an increasingly litigious US climate while facing a growing number of regulations in the US and abroad that must be navigated now and in coming years.

There were at least 17 greenwashing class actions against consumer product companies in the US that were filed or decided by courts within the two years prior to June 2023, according to an [August 2023 post](#) by Mintz attorney Jacob Hupart, et al.

The lawsuits reviewed by Mintz were filed by private plaintiffs and typically included allegations of fraud, misrepresentation, unjust enrichment, deceit, and breach of express warranty.

“Crucially, a large proportion of these cases have so far survived motions to dismiss,” the authors observe, adding, “These trends indicate that courts appear to be taking greenwashing lawsuits seriously, plunging companies into an uncertain landscape.”

Hupart et al. point specifically to *Smith v. Keurig Green Mountain*, in which plaintiffs challenged the coffee maker’s recyclability claims on K-cup coffee pods, leading to a \$10m settlement finalized in February 2023.

The Mintz attorneys say cases have been increasing most visibly in the footwear and apparel sectors, as well as the food and beverage space, which often serves as a testing ground for allegations later brought against cosmetics companies. (Also see "['No Preservatives' Class Actions Come For Cosmetics; Neutrogena 'Preservative Free' Shampoo Targeted](#)" - HBW Insight, 23 Jan,

2024.)

Regulations specifically governing use of green claims also are on the rise around the globe.

The European Union is progressing toward a [directive on green claims](#) that would require cosmetics companies and others to follow detailed rules on substantiating and communicating the environmental attributes of products in consumer-facing contexts. (Also see "[What You Need To Know About The EU Green Claims Directive, With PHD's Jo Stephenson](#)" - HBW Insight, 25 Jun, 2023.) Compliance with the requirements would have to be verified and certified by a third party.

The European Parliament recently voted overwhelmingly in favor of a companion legislation, the Directive on Empowering Consumers for the Green Transition, which will ban use of deceptive environmental claims such as "carbon neutral" that rely on offsetting. (Also see "[EU Parliament Green-Lights Anti-Greenwashing Directive](#)" - HBW Insight, 26 Jan, 2024.)

The United Kingdom has its Green Claims Code, which requires that environmental claims be truthful and accurate, not omit or hide important information, and consider the full lifecycle of the advertised product, among other points. The Competition and Markets Authority's guidance on the subject can be found [here](#).

CMA announced in December 2023 that it would be investigating environmental claims across Unilever PLC's portfolio to determine if they are true and not misleading, citing concerns that the British company "may be overstating how green certain products are through the use of vague and broad claims, unclear statements around recyclability, and 'natural' looking images and logos." (Also see "[Unilever Is Early Target Of UK Authority's Personal-Care Greenwashing Probe](#)" - HBW Insight, 15 Dec, 2023.)

Stateside, California passed multiple laws in 2023 establishing climate-related disclosure requirements, including the [Voluntary Carbon Market Disclosures Act](#), which entered into force on 1 January 2024. The "anti-greenwashing" VCMDA affects entities operating or making claims within California regarding "net zero" emissions, "carbon neutral" status, or significant reductions in carbon dioxide or greenhouse gas emissions. (Also see "[New US, EU Climate-Related Disclosure Requirements Will Have Ripple Effects Through Value Chains](#)" - HBW Insight, 2 Jan, 2024.)

Meanwhile, the US Federal Trade Commission is sifting through more than 1,300 stakeholder comments as it considers updates to its Guides for the Use of Environmental Marketing Claims ("Green Guides"), last revised in 2012. (Also see "[US FTC Pushed For Environmental Reg Harmonization, Organic Definition – 'Green Guides' Comments](#)" - HBW Insight, 22 May, 2023.)

The FTC has indicated that [coming changes](#) could address issues including carbon offset and



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renewable energy claims, as well as the terms “recyclable” and “recycled content.”

HBW Insight spoke recently with Maggie Spicer, attorney and principal at Source Beauty LLC, which provides legal and ESG consulting to cosmetics and personal-care companies, about the regulatory gauntlet firms are up against and the innovation opportunities the current environment affords to organizations making clearly defined and thoughtfully communicated green claims.

Q HBW Insight: Companies face increasing regulatory complexity when it comes to making statements about the environmental impacts of their products and operations. How are companies managing this, and to what extent do all these anti-‘greenwashing’ regulations and rules have a ‘greenhushing’ effect?

A Maggie Spicer: The thing is, if you take a step back and assess all the environmental claims you’re making, which probably aren’t that many, you’re probably talking about kind of the big hitters – the recyclability of your packaging, the materiality of your packaging. You’re really only talking about a few core recyclability or sustainability issues. What I do with a lot of clients, I’ll go in and assess the claims they’re making and I will essentially develop guidelines. If you want to talk about this, here’s how I need you to substantiate it, and here’s how we’re going to do it. It brings the compliance over to the marketing team and the product development team and, you know, people who are actually bringing the product to the market. A lot of times, they just don’t substantiate. They just say, ‘Well, the packaging manufacturer said it was sustainable, so we said it was sustainable.’ Or they put a recyclability logo on it. So it doesn’t really require too much complex legal analysis to get them to a better place.

Q HBW: But is there a common legal standard around the world, or even within

the US, on when you can call your packaging recyclable, for example?

A Spicer: That's definitely one of the most complicated ones, which is unfortunate because it's also the most ubiquitous. Because California is developing its own standard. Federally, we're talking about different standards. So that's an area where there is some complexity.

A But typically personal-care packaging only utilizes a very specific number of materials. So we're not talking about resin codes 1, 2, 3, 4, 5, 6. We don't use all of those. When I work with a company typically they'll say, 'Our packaging, the primary packaging, is resin code 1 and 2,' and we can move forward with that. So a lot of times, it's a very specific analysis of the packaging that they use. If you've got a glass dropper, okay, we need to be clear in making a recyclable packaging claim that the dropper part is not considered recyclable the same way the main bottle is. So that's where the nuance comes in. The design can be very tricky because we utilize a lot of very small packaging, and sometimes with multiple components. So it can be a bit of a tough area to convey that easily to a consumer. But consumers also are asking for this information. They want to know.

Q **HBW: So – similar to what has been advised for 'natural' and 'clean' claims on cosmetic products – provide as much information as you can about how you as a brand define those terms, make that rationale readily available, use clear and conspicuous disclosures...**

A Spicer: Brands are using, you know, QR codes, really basic technology, to say, 'Hey, this is resin code number 1, check local.' Then all you have to do is know what your county recycles. If it's specific, if it's substantiated and if it's science-based, you're probably good. You just need to communicate that clearly to a consumer, and you need to explain how you substantiated it. You need to have a reasonable substantiation.

Q **HBW: Any other green claims that can be particularly challenging or problematic?**

A Spicer: We talked about recyclability. There's a flip side: recycled content. This is an area where brands get in trouble a lot, because they'll say 'packaging made with recycled content.' They won't say how much, they won't say what component. They might say '100% recycled content' when that only refers to the bottle and not the dropper, or one component instead of the other. They're not specific enough with it. So that's one where you see a lot of enforcement cases and a lot of consumers getting very angry, because they feel misled. It's an area where, when you're at the ideation stage and you're talking to your packaging supplier and you're talking to your designers, you want to be thinking about that. Because if you develop something that's plastic but you use a cardboard outer shell, that's going to make it look like it's made out of cardboard. When consumers open that up and they look at it and they realize it's full of plastic, they're going to be very upset.

Q HBW: It sounds like a key to success here for any green-minded beauty company is having that unified vision across divisions and beyond to the wider supply network.

A Spicer: It's a great opportunity for brands to innovate, because at this stage, where we are as an industry, it only makes sense to bring everybody into the same room and say, consumers are focused on sustainability. So hey marketers, why don't you talk to product design and let's all come together so we all understand when we're talking about recyclability, this is what we mean. This is how it's going to play out design, this is how it's going to land with our target consumers. Don't outsource marketing and just hope it's going to work. Don't take something off the shelf, tag it with a recyclability logo and then hope it doesn't get a red flag in the market. Brands can get a lot of value right now innovating in that sense and shaking up the way we've typically built and sold products. (Also see "[Global Political Winds May Change, But Beauty Focus On Impact And Sustainability Is Here To Stay](#)" - HBW Insight, 31 Jan, 2024.)