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“Green” is the New Black: Enforcing Consumer Protection Laws Against Greenwashing in the Fashion Industry

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“GREEN” IS THE NEW BLACK: ENFORCING CONSUMER PROTECTION LAWS AGAINST GREENWASHING IN THE FASHION INDUSTRY

ABSTRACT

As climate change continues to relentlessly change landscapes, threaten harvests, and increase the frequency of natural disasters, legislators and regulators globally must expand upon their efforts to protect the environment and citizens from the harmful practices of corporations, some of the greatest contributors to climate change. One of the greatest perpetrators of harm to the environment is the fashion industry. The harm is further compounded by the rise of fast fashion companies. These companies utilize methods of rapid production and encourage overconsumption, resulting in a rampant storefront to landfill cycle. However, legal activists, politicians, the public, and some industry leaders have increasingly taken action to curtail the harmful effects of these fast fashion companies.

To compete for consumer attention and to protect their images in the face of increased environmental activism, fast fashion companies have begun greenwashing their products and supply chain. Through greenwashing, companies misrepresent the sustainability of their products or services, allowing the consumer to believe they are making a more environmentally friendly purchase than they really are.

This Comment outlines the current major approaches of the United States, United Kingdom, and France toward preventing greenwashing by fashion companies. This Comment looks at the successes of consumer protection laws and actions against companies accused of greenwashing to provide guidance for fashion companies and other countries that have yet to implement similar regulatory schemes. Additionally, while the United States, the United Kingdom, and France are regarded as three leaders in anti-greenwashing legislation, they each will benefit from more comprehensive and intelligible laws guiding enforcement efforts.

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INTRODUCTION

As the world faces the increasing threat of climate change, consumers are looking to do their part by making more sustainable purchases.¹ Brands of all industries are making positive changes to create more eco-friendly products and supply chain choices focused on Environmental, Social, and Governance factors, known collectively as “ESG” (ESG).² Unfortunately, to compete for eco-conscious consumers, these brands often overstate their efforts to become environmentally friendly.³ This is a harmful process known as “greenwashing.”⁴

One industry that has become notorious for greenwashing is the fashion industry.⁵ As climate change has worsened at a rapid pace, so has the fashion industry grown to become an increasingly fast-moving business over the last seventy years.⁶ Vying for consumers’ attention in a competitive market, some companies such as H&M, Zara, and ASOS⁷ have gone from adhering to the traditional four-season schedule of releasing garments to nearly weekly through a series of “micro-seasons.”⁸ These brands are known as “fast fashion” companies, and they operate on a model that seeks to quickly produce as many pieces at as low cost as possible.⁹ This inherently unsustainable model has been criticized as customers have shifted towards the desire to make more sustainable

¹ In a 2021 study conducted by Simon-Kucher & Partners of over 10,000 people from seventeen different nations, eighty-five percent of people indicated that they have “shifted their purchase behavior towards being more sustainable in the past five years.” *Recent Study Reveals More Than a Third of Global Consumers Are Willing to Pay More for Sustainability as Demand Grows for Environmentally-Friendly Alternatives*, BUS. WIRE (Oct. 14, 2021, 11:33 AM), <https://www.businesswire.com/news/home/20211014005090/en/Recent-Study-Reveals-More-Than-a-Third-of-Global-Consumers-Are-Willing-to-Pay-More-for-Sustainability-as-Demand-Grows-for-Environmentally-Friendly-Alternatives>.

² Lucy Pérez et al., *Does ESG Really Matter – and Why?*, MCKINSEY Q. (Aug. 10, 2022), <https://www.mckinsey.com/business-functions/sustainability/our-insights/does-esg-really-matter-and-why>.

³ Deena Robinson, *10 Companies Called Out for Greenwashing*, EARTH.ORG (July 17, 2022), <https://earth.org/greenwashing-companies-corporations/>.

⁴ *What Is Greenwashing and How to Spot It*, GREEN BUS. BUREAU (Dec. 7, 2021) [hereinafter GREEN BUS. BUREAU], <https://greenbusinessbureau.com/green-practices/what-is-greenwashing-and-how-to-spot-it/>.

⁵ Robinson, *supra* note 3.

⁶ Audrey Stanton, *What is Fast Fashion, Anyway?*, THE GOOD TRADE (Sept. 2, 2022), <https://www.thegoodtrade.com/features/what-is-fast-fashion>.

⁷ Terry Nguyen, *Gen Z Doesn’t Know a World Without Fast Fashion*, VOX (July 19, 2021, 8:00 AM), <https://www.vox.com/the-goods/2021/7/19/22535050/gen-z-relationship-fast-fashion>.

⁸ *Id.*

⁹ See generally Esme Stallard, *Fast Fashion: How Clothes Are Linked to Climate Change*, BBC (July 29, 2022), <https://www.bbc.com/news/science-environment-60382624> (explaining that the term, fast fashion, “describes the quick turnover of fashion trends and the move towards cheap, mass-produced clothing - with new lines constantly released.”).

purchases.¹⁰ To appease these demands, fast fashion brands have made small steps towards becoming eco-friendly such as using more sustainable fabrics.¹¹ However, they have also increased their practice of creating misleading advertisements that overstate how eco-friendly their products and business model truly are through greenwashing.¹²

In recent years, countries and individual citizens globally have increased efforts to protect consumers from greenwashing by the fashion industry.¹³ In 2022, the United States reiterated its commitment to holding fast fashion companies accountable for greenwashing. Specifically, the Federal Trade Commission (FTC) charged both Kohl's Inc. and Walmart Inc. with making deceptive environmental claims related to their use of bamboo and rayon in textile products.¹⁴ Following this action by the FTC, consumers have filed a class action against popular Swedish brand, H&M, in the Southern District of New York, which is ongoing as of November 2023.¹⁵ As will be discussed later, the suit, *Commodore v. H&M Hennes & Mauritz LP*, alleges that H&M designed its labeling, marketing, and advertising to mislead consumers about its products' environmental attributes.¹⁶

¹⁰ See Mary Jo DiLonardo, *What Is Fast Fashion—and Why Is It a Problem?*, TREEHUGGER (Oct. 5, 2022), <https://www.treehugger.com/fast-fashion-environmental-ethical-issues-4869800>; Robinson, *supra* note 3; Press Release, Competition & Mkts. Auth., ASOS, Boohoo and Asda Investigated Over Fashion 'Green' Claims (July 29, 2022) [hereinafter Press Release, Competition & Mkts. Auth.], (available at <https://www.gov.uk/government/news/asos-boohoo-and-asda-investigated-over-fashion-green-claims>).

¹¹ See also Emily Chan, *Is Fast Fashion Taking a Green Future Seriously?*, VOGUE FR. (Aug. 23, 2019), <https://www.vogue.fr/fashion/article/how-effective-are-fast-fashion-brands-sustainability-initiatives>.

¹² See Robinson, *supra* note 3.

¹³ See Lesley Fair, *\$5.5 Million Total FTC Settlements with Kohl's and Walmart Challenge "Bamboo" and Eco Claims, Shed Light on Penalty Offense Enforcement*, FED. TRADE COMM'N (Apr. 8, 2022), <https://www.ftc.gov/business-guidance/blog/2022/04/55-million-total-ftc-settlements-kohls-and-walmart-challenge-bamboo-and-eco-claims-shed-light>; Class Action Complaint at 1, *Commodore v. H&M Hennes & Mauritz LP*, No. 7:22-cv-06247 (filed July 22, 2022) [hereinafter *Commodore*]; Press Release, Competition & Mkts. Auth., *supra* note 10; Bella Webb, *France Has Laid Down the Law on Sustainability: What Does It Mean for Fashion?*, VOGUE BUS. (Jan. 23, 2023), <https://www.voguebusiness.com/sustainability/france-has-laid-down-the-law-on-sustainability-what-does-it-mean-for-fashion>.

¹⁴ Fair, *supra* note 13. But see Derek Guy, *Is It Classist To Be Against Fast Fashion?*, PUT THIS ON (Aug. 11, 2022), <https://putthison.com/is-it-classist-to-be-against-fast-fashion/>; Sandeep Raghuvanshi, *Critics of Fast Fashion in Hard Times Should Think Again*, MINT (July 1, 2020), <https://www.livemint.com/opinion/online-views/critics-of-fast-fashion-in-hard-times-should-think-again-11593614235751.html>.

¹⁵ *Commodore*, *supra* note 13, at 1. As of November 10, 2023, H&M has filed a motion to dismiss, and Ms. *Commodore* has filed a memorandum in opposition to H&M's motion. Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss, *Commodore v. H&M Hennes & Mauritz LP*, No. 7:22-cv-06247 (filed Mar. 17, 2023). The case has been redesignated to a Magistrate Judge. See *Commodore v. H&M Hennes & Mauritz LP (7:22-cv-06247)*, COURT LISTENER (last updated, Nov. 10, 2023), <https://www.courtlistener.com/docket/63893587/commodore-v-hm-hennes-mauritz-lp/>.

¹⁶ See *Commodore*, *supra* note 13, at 1.

As part of a wider investigation into corporate greenwashing, the United Kingdom's Competition and Market Authority (CMA) has similarly begun investigating a plethora of fast fashion brands for their alleged greenwashing practices.¹⁷ Specifically, the CMA has stated it will begin scrutinizing the environmental claims made by ASOS and Boohoo, as well as other fashion companies.¹⁸

France, another advocate for tougher regulations against environmental representations, has begun implementing stricter fines and even imprisonment as punishment for individuals and companies that are found to have greenwashed.¹⁹ Hoping to become a carbon-neutral state by 2050, France has specifically tightened representations about products', services', and companies' carbon outputs.²⁰

These ongoing lawsuits and investigations are important in setting standards and demonstrating to large fashion companies that consumers value truthful marketing and sustainable purchases. Moreover, they show that governments have a role in protecting their citizens' values and an increasing "willingness to investigate and prosecute entities unable to substantiate their green claims."²¹ However, the effects of fast fashion consumption, manufacturing, and dumping are not confined to the United States, United Kingdom, and France.²² Due to this, it will be critical for all countries to develop stronger guidelines for consumer protection that not only pertain to greenwashing, but specifically greenwashing claims in the fashion industry as well.

Despite the increase of concern surrounding greenwashing, there are still great obstacles that companies, consumers, and governments will need to hurdle to ensure fashion companies create advertisements that are transparent about the environmental effects of certain garments and manufacturing processes. Section I of this Comment will elaborate on the definition of greenwashing, followed by Section II's application of greenwashing to the fast fashion industry. Section III will then summarize what major steps the United States, United Kingdom, and

¹⁷ See Press Release, Competition & Mkts. Auth., *supra* note 10.

¹⁸ *Id.*

¹⁹ See Webb, *supra* note 13.

²⁰ *See id.*

²¹ Matthew Dunlap et al., *Truly Green or Emperor's New Clothes? - The UK CMA Targets Fast Fashion First In Its Investigation of Sustainability Claims*, MORRISON FOERSTER (Aug. 2, 2022), <https://www.mofo.com/resources/insights/220802-uk-cma-targets-fast-fashion>.

²² Rachel Bick et al., *The Global Environmental Injustice of Fast Fashion*, 17 ENV'T HEALTH 92, 92 (2018).

France have taken to combat greenwashing both broadly and specifically directed at the fashion industry. Section IV will begin by analyzing to what extent these moves are likely to be effective and what changes the three countries can implement to improve upon their existing policies. Section IV(B) will then provide general guidance for fast fashion companies on ensuring their marketing materials do not greenwash their products and practices and suggest methods for substantiating environmental claims.

I. GREENWASHING

Although records of greenwashing date back to the 1960s, the actual term, “greenwashing,” was coined in the 1980s.²³ When environmentalist Jay Westerveld visited a hotel in Fiji in 1983, he was disturbed by the irony of the hotel’s request that guests reuse towels in order to save the environment despite expanding the hotel and harming the surrounding ecosystems.²⁴ Three years later, Westerveld remembered the incident and wrote an article in a New York literary magazine, coining the term “greenwashing.”²⁵ Since then, the term has gained global recognition and use in describing the marketing tactic by which a company exaggerates or outright lies about the company’s efforts to be sustainable, primarily for financial gain.²⁶ It is meant to trick ecologically conscious consumers by toting environmental responsibility when, in reality, the company continues to perpetrate destructive practices on the environment or to create harmful products.²⁷ Greenwashing manifests in a variety of ways including outright deception, subtle advertising, and most frequently, ambitious claims without full transparency about the actual impacts of the products or services.²⁸

Genuine environmental claims “properly describe the impact of the product, service, process, brand or business, and do not hide or misrepresent crucial

²³ Bruce Watson, *The Troubling Evolution of Corporate Greenwashing*, THE GUARDIAN (Aug. 20, 2016), <https://www.theguardian.com/sustainable-business/2016/aug/20/greenwashing-environmentalism-lies-companies>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ GREEN BUS. BUREAU, *supra* note 4.

²⁷ *Id.*

²⁸ Solene Rauturier, *Greenwashing Examples: 8 Notorious Fast Fashion Claims and Campaigns*, GOOD ON YOU (Jan. 21, 2022), <https://goodonyou.eco/greenwashing-examples/>.

information.”²⁹ However, companies may greenwash the effects of a product or service on the environment by publishing misleading claims, or omitting and hiding information, to create the impression that the product or service is less harmful or more beneficial to the environment than it truly is.³⁰ Specifically, a company may engage in greenwashing when it falsely claims a product or service has a positive environmental impact or no impact on the environment; is less damaging to the environment than a previous version of the same good or service; or is less damaging to the environment than competing goods or services.³¹

More specifically, greenwashing falls under the umbrellas of either selective disclosure or decoupling.³² Selective disclosure entails embellishing information related to positive environmental performance while concealing information about negative environmental impacts.³³ For example, selective disclosure may occur when a garment is advertised as being made of recycled materials when, in reality, the garment is composed of some recycled materials and other unrecyclable materials as well.³⁴ Decoupling, on the other hand, occurs when companies put a positive spin on some actions despite having a record of negative actions.³⁵ Decoupling may occur when a company starts a campaign to plant trees for every garment purchased yet continuously utilizes unsustainable, or outright harmful, practices.³⁶ Essentially, greenwashing through decoupling occurs when companies participate in activities that are *symbolic* of environmental protection to alleviate the external public pressures and uncertainties, yet do not engage in behavior that is beneficial to the environment or do not fulfill other environmental commitments.³⁷

When analyzing whether a company is making an environmental claim, the United Kingdom’s CMA states that there are a number of important

²⁹ COMPETITION & MKTS. AUTH., MAKING ENVIRONMENTAL CLAIMS ON GOODS AND SERVICES (Sept. 20, 2021) [hereinafter MAKING ENVIRONMENTAL CLAIMS], <https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services>.

³⁰ *Id.*

³¹ *Id.*

³² Lawrence Loh & Yvonne Yock, *Time for Better Consumer Safeguards in S'pore Over 'Greenwashing' Products That Are Not Sustainable*, TODAY (Nov. 29, 2021), <https://www.todayonline.com/commentary/time-better-consumer-safeguards-over-greenwashing-products-are-not-sustainable>.

³³ *Id.*

³⁴ *See id.*

³⁵ *Id.*

³⁶ *See id.*

³⁷ Sebastião Vieira de Freitas Netto et al., *Concepts and Forms of Greenwashing: a Systematic Review*, 32 ENV'T SCIS. EUR. 1, 6 (2020), <https://enveurope.springeropen.com/articles/10.1186/s12302-020-0300-3>.

considerations including the meaning of any terms used, the qualifications and explanations of what is said, and the evidence supporting those claims.³⁸ Additionally, the colors, pictures, and logos used, and overall presentation of the claim may be relevant.³⁹ A common marketing tool is the use of images depicting ocean or rainforest scenes to make consumers believe a company is concerned about the environment.⁴⁰ Information that is not included in an advertisement or is hidden may also be equally indicative of greenwashing.⁴¹ For example, companies that use advertisements with broad statements such as, “Your purchase helps protect our world,” yet fail to include information explaining why that is, are likely culprits of greenwashing. Thus, the effectiveness of greenwashing is that it is often not explicit nor easily identifiable.⁴²

II. GREENWASHING IN THE FAST FASHION INDUSTRY

One of the most pervasive culprits of greenwashing is the fashion industry, likely due in part to the extensive environmental harm the industry creates.⁴³ In 2000, less than 50 billion pieces of clothing were produced worldwide.⁴⁴ In 2019, that number surpassed 130.6 billion.⁴⁵ This surge in production is due in part to the rise of fast fashion companies.⁴⁶ Fast fashion is the rapid design, production, and sale of high volumes of clothing items.⁴⁷ The primary concerns of fast fashion include trend replication, low quality, competitive pricing, and

³⁸ MAKING ENVIRONMENTAL CLAIMS, *supra* note 29.

³⁹ *Id.*

⁴⁰ See also *How Color Effects Us*, ANCHORPOINT GRAPHICS, [hereinafter ANCHORPOINT], <https://anchorpointgraphics.com/how-color-effects-us/> (last visited Feb. 21, 2023) (“Packaging designed in greens, featuring images of water, flowers, or nature scenes, with messaging containing meaningless, vague terms like ‘pure,’ or adding prefaces like ‘bio’ & ‘eco’ to their names – greenwashed products are everywhere.”).

⁴¹ MAKING ENVIRONMENTAL CLAIMS, *supra* note 29.

⁴² For further examples of types of greenwashing, see de Freitas Netto et al., *supra* note 37, at 8–9 (articulating thirteen forms of greenwashing “sins”).

⁴³ Bick et al., *supra* note 22.

⁴⁴ *A New Textiles Economy: Redesigning Fashion’s Future*, ELLEN MACARTHUR FOUND. (2017), <https://ellenmacarthurfoundation.org/a-new-textiles-economy>. The global market value of the Fast Fashion industry is expected to reach 133 billion U.S. dollars by 2026. *Id.*

⁴⁵ *Why We Still Need a Fashion Revolution*, FASHION REVOLUTION, <https://www.fashionrevolution.org/about/why-do-we-need-a-fashion-revolution/> (last visited Sept. 24, 2023). Despite an increase in the number of items owned, the average per person expenditure on clothing and footwear in the E.U. and U.K. has decreased from around thirty percent in the 1950s to twelve percent in 2009 and only five percent in 2020. Kirsi Niinimäki et al., *The Environmental Price of Fast Fashion*, 1 NATURE REVS. EARTH & ENV’T, 189, 189–200 (Apr. 7, 2020).

⁴⁶ *Id.*

⁴⁷ Stanton, *supra* note 6.

hasty production.⁴⁸ As humans increasingly desire (and often expect) to obtain products immediately, the fashion industry has sped up to deliver.⁴⁹ In order to keep up with surging demand and competition to produce similar garments at low prices, fast fashion companies often resort to poorly made pieces using cheap and low-quality materials like synthetic fabrics.⁵⁰ As a result, consumers can purchase and obtain a virtually endless cycle of clothing at any time.⁵¹

Until the mid-1900s, the fashion industry adhered to a strict four seasons schedule for releasing new lines of pieces.⁵² However, since then, the industry has shifted toward producing at a rate of fifty-two micro-seasons per year, releasing a new line of clothing nearly weekly.⁵³ Zara, a Spanish clothing brand, was one of the first companies to follow this model when it began delivering new merchandise to its stores bi-weekly in the early 2000s.⁵⁴

The materials and processes employed in fast fashion garment-making are often harmful to the environment as well.⁵⁵ All fashion manufacturing begins with textile production, the process by which synthetic and natural fibers are created.⁵⁶ In 2018, approximately ninety percent of the clothing sold in the United States was made with cotton or polyester.⁵⁷ Both materials are known for the hazards they pose to human health and the environment.⁵⁸ Polyester, a synthetic fiber, is derived from oil, while cotton, a natural fiber, requires copious amounts of water and pesticides to grow.⁵⁹ The fast fashion industry relies primarily on these materials and other inexpensive synthetic fibers, which in

⁴⁸ *Id.*

⁴⁹ *Top Fast Fashion Retailers in Singapore*, MEDIAONE (Dec. 15, 2020) [hereinafter MEDIAONE], <https://mediaonemarketing.com.sg/top-fast-fashion-retailers-singapore/>.

⁵⁰ Stanton, *supra* note 6.

⁵¹ MEDIAONE, *supra* note 49. Some legal experts also argue that the absence of formal intellectual property protection does not extend to the cut of clothing and shape of many fashion items and therefore the absence of such protections accelerate fashion design cycles. 2 PETER MENELL ET AL., *INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGY AGE: 2022* 988 (Clause 8 Publ'g 2022); *see also* CAL RUASTALIA & CHRISTOPHER SPRIGMAN, *THE KNOCKOFF ECONOMY* (2012).

⁵² Stanton, *supra* note 6.

⁵³ *Id.* Additionally, increased consumption levels have pushed companies to produce increasingly inexpensive garments by outsourcing labor to lower and middle-income countries. Bick et al., *supra* note 22.

⁵⁴ Stanton, *supra* note 6.

⁵⁵ Bick et al., *supra* note 22.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* For example, to create a single cotton shirt, one would need roughly 3,000 liters of water. Beth Howell, *Top 7 Most Polluting Industries in 2022*, THE ECO EXPERTS (Oct. 4, 2022), <https://www.theecoexperts.co.uk/blog/top-7-most-polluting-industries>.

2021 represented over two-thirds of material found in textiles, although this number is expected to rise to three-fourths by 2030.⁶⁰ The dependence of the fast fashion industry on synthetic fibers is problematic not only for the production of low-quality and quickly disposable clothing, but also for the reliance on fossil-fuel extraction, one of the most significant contributors to climate change.⁶¹

Moreover, while fashion companies often claim to use recyclable materials in their clothing, once this recyclable material is combined with other non-recyclable materials, the garment often cannot be recycled itself as the individual fibers cannot be separated and disposed of properly.⁶² Additionally, while much clothing touts a composition made from recycled water bottles (often referred to as “downcycling”), this can also be harmful as the plastic is combined with other materials and the clothing is quickly tossed out rather than the plastic being converted into something for longer-term use or into a product that will also be recyclable later.⁶³

While the entire fashion industry has negative effects on the environment through the materials used and the manufacturing process, what is unique to the phenomenon of fast fashion is the speed at which it operates and the overconsumption mentality it encourages in consumers.⁶⁴ Sustainability and fast fashion are incompatible. The model of rapid production means the copious use of resources, such as water and oil, as well as the fast disposal of unrecyclable garments that often end up in landfills in developing countries.⁶⁵ The fast fashion model encourages consumers to shop constantly, keep up with trends that are produced weekly, and to consider items as virtually disposable.⁶⁶ In fact, the average U.S. consumer disposes of approximately eighty pounds of garments every year, amounting to five percent of landfills.⁶⁷ Every second, the equivalent

⁶⁰ CHANGING MKT. FOUND., SYNTHETICS ANONYMOUS: FASHION BRAND’S ADDICTION TO FOSSIL FUELS 7–65 (June 2021) [hereinafter SYNTHETICS ANONYMOUS], http://changingmarkets.org/wp-content/uploads/2021/07/SyntheticsAnonymous_FinalWeb.pdf.

⁶¹ *Id.*

⁶² See Laura Navone, et al., *Closing the Textile Loop: Enzymatic Fibre Separation and Recycling of Wool/Polyester Fabric Blends*, 102 WASTE MGMT. 149, 149–150 (2020).

⁶³ SYNTHETICS ANONYMOUS, *supra* note 60.

⁶⁴ Emma Edwards, *The Fast Fashion Psychology That Makes You Spend More*, THE BROKE GENERATION, <https://thebrokegeneration.com/blog/2021/06/07/psychology-fast-fashion/> (last visited Feb. 16, 2023); see also Stallard, *supra* note 9. While fashion companies have launched “eco” collections using organic and recycled materials, these lines do not solve the larger problem, which is overconsumption. *Id.*

⁶⁵ Alex Crumbie, *What Is Fast Fashion and Why Is It a Problem?*, ETHICAL CONSUMER (Oct. 5, 2021), <https://www.ethicalconsumer.org/fashion-clothing/what-fast-fashion-why-it-problem>.

⁶⁶ Bick et al., *supra* note 22.

⁶⁷ *Id.*

of a garbage truckload of clothing is burnt or buried in a landfill.⁶⁸ Moreover, fashion companies produce so much material that clothing often ends up unsold and “dumped” in lower and middle-income countries for sale.⁶⁹ What is not sold in lower and middle-income countries ends up as trash, posing additional health risks as many of these countries do not have robust municipal waste systems.⁷⁰

To keep up with a growing portion of the population that is concerned about the environmental impact of their purchases, the fast fashion industry has begun increasingly advertising their products and practices as environmentally friendly.⁷¹ In some instances, these marketing claims are truthful indicators of truly sustainable practices and materials.⁷² However, often the claims offer only a green-gilded snapshot of a much larger picture, although this may not be clear to a consumer.⁷³ In the fast fashion industry, environmental advertisements are particularly concerning because they often either mislead consumers as to the sustainability of an individual product or do not account for the overall effect of the company on the environment.⁷⁴

For example, in a recent study of various fashion giants, thirty-nine percent of products sold by the companies had some sustainable claim attached to them.⁷⁵ However, fifty-nine percent of those products which had a claim attached to them flouted the United Kingdom’s guidelines on greenwashing in some way.⁷⁶ Notably, H&M was the brand analyzed in the study with the highest

⁶⁸ Tay Suan Chiang, *Fashion Goes Green*, THE BUS. TIMES (Jan. 1, 2022), <https://www.businesstimes.com.sg/lifestyle/feature/fashion-goes-green>. Inexpensive fast fashion companies are not the only ones to burn unsold merchandise. Ruairi Kavanagh, *France Leads Fight to Transform Fashion Industry’s Wasteful Footprint*, S. EU SUMMIT (June 17, 2019), <https://southeusummit.com/europe/france/france-leads-fight-to-transform-fashion-industrys-wasteful-footprint/> (“In 2018 it was revealed that Burberry routinely burned unsold stock, with a staggering 33 million euros worth of clothing apparel, accessories and perfumes going up in flames. Other notable brands accused of similar practices include Michael Kors, Louis Vuitton and Juicy Couture.”).

⁶⁹ Bick et al., *supra* note 22. The industry has an overproduction rate of thirty to forty percent, compared to the electronic industry overproduction rate of one percent. Webb, *supra* note 13.

⁷⁰ Bick et al., *supra* note 22.

⁷¹ Mehar Mehar, *The Deception of Greenwashing in Fast Fashion*, DOWN TO EARTH (Feb. 16, 2021), <https://www.downtoearth.org.in/blog/environment/the-deception-of-greenwashing-in-fast-fashion-75557>.

⁷² See, e.g., Kai Burkhardt, *15 Sustainable Clothing Brands to Help You Feel Better About Your Closet*, CNN UNDERSCORED (Feb. 14, 2023, 4:03 PM), <https://www.cnn.com/cnn-underscored/fashion/best-sustainable-clothing-brands>.

⁷³ See Mehar, *supra* note 71.

⁷⁴ See *id.*

⁷⁵ SYNTHETICS ANONYMOUS, *supra* note 60.

⁷⁶ *Id.*

rate of claims that flouted the guidelines, with ninety-six percent of claims made violating the guidelines to some extent.⁷⁷

Greenwashing by fast fashion companies provides a plethora of novel questions. Primarily, advertising garments as sustainable raises questions on the reliability of the data on which advertisements are based, how to legally define “sustainable” and “environmentally friendly,” and what elements of the product, service, or practice these terms are meant to describe. Due to the novelty and uncertainty surrounding the topic, there has been an increase in both government enforcement actions and civil suits alleging greenwashing.⁷⁸ Governments globally are confronted not only with enforcing existing laws, but also potentially enacting new legislation to protect consumers from greenwashing. While many countries, including the United States, United Kingdom, and France, have implemented decently comprehensive guides interpreting their greenwashing regulations, there is still great ambiguity and need for enforcement of such rules. Moreover, most countries have yet to define any regulations aimed at protecting consumers from greenwashing in general, let alone within the fashion industry.⁷⁹

Consumers, regardless of where they globally reside, have the right to make educated purchases and to support companies that share similar values. In countries that have yet to create comprehensive laws and guides on greenwashing, consumers may easily be deceived through misleading advertisements. Without guides tailored to environmental marketing within the fashion industry, companies may be more likely to advertise unsubstantiated or ambiguous claims to the detriment of both consumers and the earth.

III. MAJOR APPROACHES BY COUNTRIES

To provide recommendations for nations in implementing and enforcing stricter consumer protection laws against greenwashing by fast fashion companies, this Section introduces the current major practices of the United States in Subsection A, the United Kingdom in Subsection B, and France in Subsection C; three of the leading countries in greenwashing regulations and

⁷⁷ *Id.*

⁷⁸ *Greenwashing Disputes on the Rise*, NORTON ROSE FULBRIGHT (Apr. 2022), <https://www.nortonrosefulbright.com/en/knowledge/publications/e87c69e7/greenwashing-disputes-on-the-rise>.

⁷⁹ *See generally How Big is The Problem of Greenwashing?*, FUTURE BRIDGE, <https://future-bridge.eu/how-big-is-the-problem-of-greenwashing/> (last visited May 28, 2023) (“[M]ajor Asian countries like Singapore and China have little to no greenwashing regulations.”).

enforcement.⁸⁰ The governments of these countries are also actively investigating fashion companies' potentially greenwashed advertisements.⁸¹ Examples of anti-greenwashing action taken by citizens, governments, and NGOs are also included to demonstrate the wide breadth of interest in enforcement.⁸² By analyzing the strengths and weaknesses of these three nations, further recommendations are provided for implementing and enforcing stricter consumer protection laws against greenwashing by fast fashion companies.

A. *The United States*

In 2022, the United States was the country with the largest apparel market in the world.⁸³ To compete in such a wide market, fashion companies in the United States often use greenwashing to gain consumer attention. In response to the increase in greenwashing advertisements, there has been an increase in enforcement from both the federal government, through agency action of the FTC, and committed consumers, through class action lawsuits.

1. *The Federal Trade Commission, Green Guides, and Enforcement*

In 1992, the FTC published the first issue of “Guides for the Use of Environmental Marketing Claims” (Green Guides) to help marketers avoid making environmental claims that are misleading to customers.⁸⁴ Later revised in 1996, 1998, and 2012, the Green Guides provide guidance on “1) general principles that apply to all environmental marketing claims; 2) how consumers are likely to interpret particular claims and how marketers can substantiate these claims; and 3) how marketers can qualify their claims to avoid deceiving

⁸⁰ See Fair, *supra* note 13; Commodore, *supra* note 13, at 1; Press Release, Competition & Mkts. Auth., *supra* note 10; Webb, *supra* note 13.

⁸¹ See Fair, *supra* note 13; Commodore, *supra* note 13, at 1; Press Release, Competition & Mkts. Auth., *supra* note 10; Webb, *supra* note 13.

⁸² See Fair, *supra* note 13; Commodore, *supra* note 13, at 1; Press Release, Competition & Mkts. Auth., *supra* note 10; Webb, *supra* note 13.

⁸³ P. Smith, *Revenue of the Apparel Market Worldwide by Country in 2022*, STATISTA (Feb. 13, 2022), <https://www.statista.com/topics/965/apparel-market-in-the-us/>. In 2022, the U.S. had the largest apparel market revenue at \$312 billion, surpassing China in second place at \$286.5 billion. *Id.* The U.K. came in at fifth place with \$73.38 billion in revenue and France came in tenth with \$33.65 billion in revenue. *Id.*

⁸⁴ *Environmentally Friendly Products: FTC's Green Guides*, FED. TRADE COMM'N. [hereinafter *Environmentally Friendly Products*], <https://www.ftc.gov/news-events/topics/truth-advertising/green-guides> (last visited Sept. 9, 2022). “The Green Guides are not agency rules or regulations. Instead, they describe the types of environmental claims the FTC may or may not find deceptive under Section 5 of the FTC Act.” Press Release, Fed. Trade Comm'n, FTC Issues Revised “Green Guides,” Will Help Marketers Avoid Making Misleading Environmental Claims (Oct. 1, 2012) [hereinafter Press Release, FTC].

consumers.”⁸⁵ Beyond general updates, the latest edition from 2012 specifically includes new sections on the use of carbon offsets, “green” certifications and seals, and claims about renewable energy and materials.⁸⁶

The Green Guides apply to “claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service to individuals.”⁸⁷ The claims may be through labeling, advertising, promotional materials, or “all other forms of marketing in any medium” and can be either “asserted directly or by implication, through words, symbols, logos, depictions, product brand names, or any other means.”⁸⁸

While the Green Guides are not themselves rules or regulations, they provide guidance of what the agency may or may not find deceptive under Section 5 of the FTC Act, 15 U.S.C. § 45.⁸⁹ The examples provide the FTC’s views on how reasonable consumers likely interpret certain claims and what claims the FTC is likely to find misleading across industries.⁹⁰ Additionally, under Section 5, the agency can take enforcement action against deceptive claims, which ultimately can lead to FTC orders prohibiting deceptive advertising and marketing by non-compliant companies and the imposition of fines if those orders are later violated.⁹¹

Among other examples, the Green Guides provide that a claim, such as “Eco-friendly: made with recycled materials,” is not deceptive if (1) the “statement ‘made with recycled materials’ is clear and prominent,” and (2) the marketer can substantiate “that the entire product or package, excluding minor, incidental components, is made from recycled material.”⁹² In addition to requirements (1) and (2), the claim is not deceptive if, (3) “making the product with recycled materials makes the product more environmentally beneficial overall,” and (4) the context of the ad does not imply other deceptive claims.⁹³ Examples such as these allow companies to model their advertisements appropriately and avoid the possibility of legal action. It also allows consumers to have greater

⁸⁵ *Environmentally Friendly Products*, *supra* note 84.

⁸⁶ Press Release, FTC, *supra* note 84.

⁸⁷ 16 C.F.R. § 260.1(c).

⁸⁸ *Id.* § 260(c).

⁸⁹ *Id.* § 260.1(a).

⁹⁰ *Id.* § 260.1(d).

⁹¹ *Id.* § 260.1(a); *see also* Press Release, FTC, *supra* note 84.

⁹² *Id.* § 260.

⁹³ *Id.*

confidence that, when they see an advertisement such as “Eco-Friendly: made with recycled materials,” the purchase is in fact sustainable.

While these examples are meant to demonstrate common instances of greenwashing across most industries, the Green Guides provide another example given in relation to the fashion industry. It proposes the example of a marketer advertising its clothing line as “made with wind power.”⁹⁴ In reality, the marketer buys wind energy for only 50% of the energy it uses to make the clothing in the line.⁹⁵ The Green Guides state that the marketer’s claim is deceptive because reasonable consumers are likely to interpret the claim to mean that the power used in making the clothing line was composed entirely of renewable energy.⁹⁶ This example can be applied to various industries other than the fast fashion industry. However, the main idea, that making broad statements about the production of a clothing item that are only partially true, is certainly a pervasive problem in the fast fashion industry.

Beyond the publication of the Green Guides, the FTC has increased enforcement actions against apparel manufacturers for their violations of Section 5(a)(1) of the FTC Act, and other relevant statutes.⁹⁷ In 2022, the FTC brought claims against both Kohl’s and Walmart “for falsely marketing dozens of rayon textile products as bamboo,” demonstrating the FTC’s commitment to combating misleading environmental claims.⁹⁸ Both companies were charged with making deceptive environmental claims, claiming that the “bamboo” textiles were made using eco-friendly processes.⁹⁹ In reality, the textiles contained rayon that was converted from bamboo through a process that requires toxic chemicals and results in hazardous pollutants.¹⁰⁰ As per the FTC, the process of creating rayon uses chemicals like sodium hydroxide that are hazardous to the environment including carbon disulfide, carbonyl sulfide, ethylene oxide, methanol, methyl chloride, propylene oxide, and toluene.¹⁰¹

⁹⁴ *Id.* § 260.15(d).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Complaint, United States v. Kohl’s Inc., No. 1:22-cv-00964 (filed Apr. 8, 2022) [hereinafter Kohl’s Complaint]; Complaint, United States v. Walmart Inc., No. 1:22-cv-00965 (filed Apr. 8, 2022) [hereinafter Walmart Complaint].

⁹⁸ See Kohl’s Complaint, *supra* note 97; Walmart Complaint, *supra* note 97.

⁹⁹ See Kohl’s Complaint, *supra* note 97; Walmart Complaint, *supra* note 97.

¹⁰⁰ Alex Assoune, *The Truth About Bamboo Fabric You Need To Know*, PANAPRIUM, <https://www.panaprium.com/blogs/i/bamboo-fabric> (last visited Jan. 17, 2023).

¹⁰¹ Fair, *supra* note 13.

As stated in the United States District Court for the District of Columbia's ("D.C. District Court") order settling the disputes between the FTC and Kohl's, the FTC sent Kohl's a letter dated January 27, 2010, informing Kohl's that "certain acts or practices in connection with the advertising of textile fiber products may violate the Textile Act and the Textile Rules and are unfair or deceptive under Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1)."¹⁰² Specifically, "products that reference or imply fiber content must disclose the generic fiber names recognized or established by the FTC."¹⁰³ Kohl's and Walmart, therefore, erred in marketing products using the term "bamboo" and not the generic fiber name, "rayon," as required by the Textile Act and Textile Rules.¹⁰⁴

The D.C. District Court further ordered both companies to stop making deceptive claims, which includes false or unsubstantiated claims.¹⁰⁵ The D.C. District Court also ordered Kohl's and Walmart to cease violating the Textile Act and Textile Rules and to pay further civil penalties—a penalty of \$2.5 million from Kohl's¹⁰⁶ and a penalty of \$3 million from Walmart.¹⁰⁷ In addition, both companies must comply with the FTC's demand to provide mandatory reports for the next decade.¹⁰⁸

While most of the deceptive claims by Kohl's and Walmart involved bed and bathroom linens, and not fashion garments, the FTC's action and imposition of penalties should serve as a serious warning for fashion companies. Walmart and Kohl's were both ordered to pay millions of dollars as a penalty for making misleading claims and were found to have also violated the Textile Act and Rules.¹⁰⁹ Fashion companies will therefore have to make sure environmental advertisements on the fiber content of garments are not only clear and not misleading, but also in compliance with specific guidelines under the Textile Act and Rules.

¹⁰² Stipulated Order and Judgement for Civil Penalties, Permanent Injunction, and Other Relief at 2, United States v. Kohl's Inc., No. 22-964 (D.D.C. May 4, 2022) [hereinafter Kohl's Order].

¹⁰³ Fair, *supra* note 13.

¹⁰⁴ Rules and Regulations Under the Textile Act, 16 C.F.R. § 303 (2023).

¹⁰⁵ Kohl's Order, *supra* note 102, at 9.

¹⁰⁶ *Id.*

¹⁰⁷ Stipulated Order and Judgement for Civil Penalties, Permanent Injunction, and Other Relief at 8, United States v. Walmart Inc., No. 22-965 (D.D.C. Apr. 8, 2022) [hereinafter Walmart Order].

¹⁰⁸ See Kohl's Order, *supra* note 102, at 10–11; Walmart Order, *supra* note 107, at 10.

¹⁰⁹ Kohl's Order, *supra* note 102, at 9.

2. *Class Action Against Fast Fashion Brand H&M*

An example illustrating the increase in efforts by private citizens to hold fast fashion companies accountable for greenwashing in the United States can be seen in the lawsuit, *Commodore v. H&M Hennes & Mauritz LP*, a class action filed by petitioner Chelsea Commodore against fast fashion giant H&M for greenwashing.¹¹⁰ The complaint, currently pending as of 2023, contains three counts: (1) Deceptive Acts or Practices under New York General Business Law § 349;¹¹¹ (2) False Advertising under New York General Business Law § 350;¹¹² and (3) Unjust Enrichment.¹¹³ Additionally, the complaint argues that H&M's advertising methods attempt to capitalize on the growing number of consumers who care about the environment, but that H&M's methods do so in a "misleading and deceptive way."¹¹⁴ Ms. Commodore articulates two main reasons why H&M's advertising is misleading and deceptive: first, many of the products are simply not created as sustainably as H&M claims; and second, the pace at which H&M produces items is in itself unsustainable.¹¹⁵

Ms. Commodore states that the case revolves around "H&M's labeling, marketing, and advertising that is designed to mislead consumers about its products' environmental attributes, through the use of false and misleading 'environmental scorecards' for its products called 'Sustainability Profiles.'"¹¹⁶ According to the complaint, "on June 28, 2022, an independent investigation revealed that H&M's Sustainability Profiles contained falsified information that did not comport with the underlying data."¹¹⁷ Over half of the Sustainability Profile "scorecards" on H&M's website claimed an article of clothing "was better for the environment when, in fact, it was no more sustainable than comparable garments made by the company and its competitors."¹¹⁸ The complaint asserts that H&M misrepresented the nature of its products through the falsification of Sustainability Profiles and use of Sustainability

¹¹⁰ Commodore, *supra* note 13, at 1.

¹¹¹ *Id.* at 16.

¹¹² *Id.* at 17.

¹¹³ *Id.* at 18.

¹¹⁴ *Id.* at 2.

¹¹⁵ *See id.*

¹¹⁶ *Id.* at 1.

¹¹⁷ *Id.*

¹¹⁸ Amanda Shendruk, *H&M Showed Bogus Environmental Scores for Its Clothing*, QUARTZ (June 28, 2022), <https://qz.com/2180075/hm-showed-bogus-environmental-higg-index-scores-for-itsclothing/>.

Misrepresentations at the expense of consumers who are willing to pay a premium due to their belief that they are buying sustainable products.¹¹⁹

The complaint further states that H&M advertises a discount for customers who bring their old clothing into H&M stores for the business to recycle.¹²⁰ In reality, H&M does not recycle the items itself and instead partners with I:Collect, who theoretically takes the garments and recycles them for H&M.¹²¹ However, the complaint claims that I:Collect indicates that only thirty-five percent of what it collects is recycled and used for products like carpet padding, painters' cloths, or insulation.¹²² Much of the products thus end up in second-hand clothing markets, and then landfills and incinerators.¹²³

The complaint does not only attack the materials used in H&M products and its dodgy recycling methods. The complaint also addresses the fact that the sheer volume of garments produced by H&M is unsustainable.¹²⁴ The recycling industry cannot keep up with the number of garments purchased and tossed.¹²⁵ Specifically, the complaint claims that H&M's production is "unworkable," stating, "[i]t would take H&M more than a decade to recycle what it sells in a matter of days."¹²⁶ According to the complaint, H&M's attempt to market itself and its products as sustainable is at odds with its business model which is "trend-driven, high-volume designs for fast-fashion products that negatively impact the environment."¹²⁷

However, in suing H&M, Ms. Commodore must not solely show that H&M's products or model are unsustainable, but that H&M misrepresented their sustainability, and that she reasonably relied on these misrepresentations when purchasing H&M products.¹²⁸ Additionally, as a suit by a private citizen and not the FTC, it is likely the Green Guides will not be introduced as a method for evaluating whether H&M violated state laws as alleged in the complaint, nor in relation to the claim of Unjust Enrichment.

¹¹⁹ Commodore, *supra* note 13, at 2; *see* Shendruk, *supra* note 118.

¹²⁰ *Let's Close the Loop*, H&M, https://www2.hm.com/en_us/sustainability-at-hm/our-work/close-the-loop.html (last visited Jan. 10, 2023).

¹²¹ *Id.*

¹²² Commodore, *supra* note 13, at 6.

¹²³ *Id.* The complaint does not cite from where this information was collected. *See generally id.*

¹²⁴ *See id.*

¹²⁵ *See id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 8.

¹²⁸ *Id.* at 12–13.

B. *United Kingdom*

The United Kingdom is home to many fast fashion companies such as Boohoo,¹²⁹ ASOS,¹³⁰ Nasty Gal,¹³¹ and Pretty Little Thing,¹³² to name a few. Attention over the past few years has revolved mainly around the use of modern slave labor at clothes workshops in Leicester during the first Coronavirus lockdown by U.K. fast fashion companies.¹³³ However, the problems of the U.K. fast fashion industry also spread to greenwashing. One of the actors leading the way of the anti-greenwashing movement in the United Kingdom is the CMA through regulatory action and investigations into potential violations.

1. *The CMA and the Green Claims Code*

The U.K.'s CMA is the nation's primary competition regulator and has been diligent in publishing careful guidance for companies to follow in order to avoid greenwashing.¹³⁴ In September 2021, the CMA published its Green Claims Code (GCC), providing guidance for businesses on how to comply with their existing obligations under consumer protection laws when making environmental claims regarding their products or services.¹³⁵ According to the GCC, under the Consumer Protection from Unfair Trading Regulations of 2008, claims must be "truthful and accurate;" "clear and unambiguous;" "fair and meaningful;" and "substantiated."¹³⁶ Additionally, "claims must not omit or hide important relevant information" and must "consider the full life cycle of the product or service."¹³⁷

Perhaps one of the most effective elements of the GCC is the inclusion of example scenarios, similar to those of the Green Guide. Most applicable to the

¹²⁹ BOOHOO, <https://us.boohoo.com/> (last visited Feb. 13, 2023).

¹³⁰ ASOS, <https://www.asos.com/us/> (last visited Feb. 13, 2023).

¹³¹ NASTY GAL, <https://www.nastygal.com/> (last visited Feb. 13, 2023).

¹³² PRETTY LITTLE THING, <https://www.prettyslitlething.us/> (last visited Feb. 13, 2023).

¹³³ Helle Abelvik-Lawson, *The UK's Fast Fashion Habit Is Getting Worse – and It's Destroying the Planet*, GREENPEACE (Nov. 23, 2020), <https://www.greenpeace.org.uk/news/the-uks-fast-fashion-habit-is-getting-worse-and-its-destroying-the-planet/>. Boohoo was accused of forcing employees in their Leicester factories to continue working at full capacity during the Covid-19 epidemic, raising human rights concerns in the fashion industry. See LABOUR BEHIND THE LABEL, BOOHO & COVID-19 3, (June 2020), <https://labourbehindthelabel.net/wp-content/uploads/2020/06/LBL-Boohoo-WEB.pdf>.

¹³⁴ See Competition & Mkts. Auth., *Green Claims Code - Get Your Green Claims Right*, U.K. GOV., <https://greenclaims.campaign.gov.uk/> (last visited Jan. 10, 2023).

¹³⁵ *Id.*

¹³⁶ MAKING ENVIRONMENTAL CLAIMS, *supra* note 29.

¹³⁷ *Id.*

problems posed by greenwashing in the fast fashion industry is “Case Study 2: Product Example” (“Case Study”).¹³⁸ The Case Study describes a scenario in which a business makes a claim that a new version of its product is now “50% more environmentally friendly” because it now contains some materials that are recycled and recyclable products.¹³⁹ However, the fact pattern states that the same production process is still followed, using significant amounts of energy.¹⁴⁰ Additionally, some of the other materials in the product are not recyclable and require specialist disposal.¹⁴¹ This is a greenwashing tactic commonly employed by fast fashion companies.¹⁴² A garment is marketed as being more eco-friendly, yet the garment is not made entirely out of recycled or recyclable materials.¹⁴³ Most importantly, the advertisement does not account for the unchanged production process fast fashion employs in creating the product, which is often detrimental to the environment.¹⁴⁴

The Case Study goes on to explain that such a claim could mislead consumers about the environmental performance of the product for a plethora of reasons.¹⁴⁵ Most importantly, “the claim suggests it refers to the overall environmental performance of the product, when in fact it only refers to a specific element and does not mention that other aspects of the product have a negative environmental impact.”¹⁴⁶ The Case Study also labels the language as vague because the advertisement does not explain what “environmentally friendly” means.¹⁴⁷ The GCC concludes the Case Study by reiterating that the hypothetical business will need to be able to substantiate the claim.¹⁴⁸ Specifically, the GCC mentions that while the company may have evidence to show the increase in the amount of recycled material used in the product, it will likely be more difficult for the company to substantiate the more general claim that the product is “50% more environmentally friendly,” due to the term’s ambiguity.¹⁴⁹

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *See Adidas – Affichage – Plainte Fondée*, JURY DE DÉONTOLOGIE PUBLICITAIRE (Aug. 9, 2021)

[hereinafter *Adidas*], <https://www.jdp-pub.org/avis/adidas-affichage-plainte-fondee/>.

¹⁴³ *Id.*

¹⁴⁴ MAKING ENVIRONMENTAL CLAIMS, *supra* note 29.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

Beyond examples, the GCC also provides a list of thirteen concise questions companies should be able to answer in the affirmative when making environmental claims about products or services.¹⁵⁰ These questions range from whether there is up-to-date, credible evidence to show that the green claim is true to whether durability or disposability information is clearly explained and labeled.¹⁵¹ Moreover, the GCC makes clear that if a company cannot answer any of the thirteen questions with a sturdy “yes,” the CMA, Trading Standards Services, Advertising Standards Authority, or other sector regulators may take action, including bringing court proceedings against the company.¹⁵²

2. *The CMA’s Investigations into Boohoo, ASOS*

In January 2022, the CMA announced that the fashion retail sector would be the first industry analyzed under the GCC’s guidelines.¹⁵³ The CMA selected the fashion industry as the first sector to review as the CMA “recognised the impact of fashion on carbon emissions (reported to account for between two percent to eight percent of all global carbon emissions), the increased desire of consumers to choose more environmentally sustainable options when buying clothes and the related growth in environmental claims promoted by fashion businesses.”¹⁵⁴

Currently, the CMA is looking closely into potentially “misleading environmental claims made by fashion brands such as ASOS Plc, [and] Boohoo Group Plc,” among others.¹⁵⁵ The CMA announced its concern that the companies may have: used overly broad and vague statements in claiming their products are more sustainable than they are; set unreasonably low criteria for inclusion of garments in their sustainable product lines; failed to accurately apply these criteria; failed to provide adequate information about the products; and been unclear as to whether references to environmental standards applied to

¹⁵⁰ Competition & Mkts. Auth., *The Green Claim Code Checklist*, U.K. Gov. (Sept. 20, 2021), <https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/green-claims-and-your-business>.

¹⁵¹ *Id.*

¹⁵² *Id.* As greenwashing can occur with respect to a specific garment, an entire company, or supply chains, the GCC will be implemented in three scopes related to greenhouse gas emissions. *Id.* Scope One covers emissions from sources owned by the company itself. *Id.* Scope Two covers indirect emissions from purchased electricity, heat, and steam. *Id.* Lastly, Scope Three includes all other indirect emissions across the company’s value chain, including (but not limited to) purchased goods, business travel, distribution, and investments. *Id.*

¹⁵³ Press Release, Competition & Mkts. Auth., *supra* note 10.

¹⁵⁴ Dunlap et al., *supra* note 21.

¹⁵⁵ Angelika Hellwegger, *UK: Greenwashing in The Fashion Industry - UK Enforcement News*, MONDAQ (Aug. 17, 2022), <https://www.mondaq.com/uk/consumer-law/1222626/greenwashing-in-the-fashion-industry—uk-enforcement-news>.

individual products or the company overall.¹⁵⁶ The companies have responded by asserting they are committed to providing accurate information about their products.¹⁵⁷

Founded in 2006 in Manchester, the United Kingdom's historic textile district, Boohoo has become one of the largest fast fashion retailers, generating over £1.98 billion in revenue in 2022 through over twenty million customers.¹⁵⁸ Attempting to appeal to consumers who are increasingly concerned about the sustainability of their purchases, Boohoo implemented a sustainability plan, "UP.FRONT, Fashion Ready for the Future."¹⁵⁹ Boohoo continues to promote the plan and states it focuses on three areas: smarter manufacturing of clothes, better terms for suppliers, and responsible business practices to reduce their carbon footprint.¹⁶⁰

Also subject to the initial CMA investigation is ASOS, an online fashion website selling over 850 brands, including its own line, which accounts for a quarter of its products.¹⁶¹ Following the release of the CMA's statement, ASOS quietly removed its website page formerly titled "The Responsible Edit" ("Edit").¹⁶² The Edit was released in June 2019 and was "heralded as a one-stop shop for environmentally-conscious fashions," featuring 3,700 items from a range of brands that were supposedly sustainable, although it is unclear what criteria the pieces met to obtain this label.¹⁶³ Additionally, ASOS removed from its website a shopping filter feature "that purportedly only displayed 'items that met certain sustainability criteria, such as using recycled materials and sustainable fibres.'"¹⁶⁴ At the time this Comment has concluded, the U.S. version of ASOS' webpage includes a link at the bottom of the page called

¹⁵⁶ Dunlap et al., *supra* note 21.

¹⁵⁷ Becky Morton, *Asos, Boohoo and Asda Investigated Over Green Claims*, BBC (July 29, 2022), <https://www.bbc.com/news/business-62344564>.

¹⁵⁸ BOOHOO GRP. PLC, ANNUAL REPORTS AND ACCOUNTS 2022 1, 4 (2022), <https://www.boohooplc.com/sites/boohoo-corp/files/2022-05/boohoo-com-plc-annual-report-2022.pdf>.

¹⁵⁹ UP.FRONT Boohoo Group's Sustainability Plan, BOOHOO GROUP PLC, <https://www.boohooplc.com/sustainability> (last visited Sept. 6, 2022).

¹⁶⁰ *Id.*

¹⁶¹ Lara Robertson, *How Ethical is ASOS?*, GOOD ON YOU (Jan. 5, 2022), <https://goodonyou.eco/how-ethical-is-asos/>. In 2021, retailers such as ASOS were releasing at least 5,000 new styles every week. Nguyen, *supra* note 7.

¹⁶² Mark Faithfull, *Asos Removes 'Responsible Edit' Amid CMA Greenwashing Probe*, RETAIL GAZETTE (Aug. 30, 2022), <https://www.retailgazette.co.uk/blog/2022/08/asos-edit-greenwashing/>.

¹⁶³ *Id.*

¹⁶⁴ Ashley Lightfoot, *ASOS Faces CMA Investigation into Potential Greenwashing*, LATANA (Sept. 7, 2022), <https://latana.com/post/asos-faces-cma-investigation-potential-greenwashing/>.

“Corporate Responsibility,” leading to another page that states: “We’re transforming into a Net Zero emissions business that embraces more circular systems to manage waste and resources wisely.”¹⁶⁵ The page says the company will achieve Net Zero carbon emissions across its value chain and “ensure that 100% of ASOS-brand products and packaging are produced using more sustainable or recycled materials” by 2030.¹⁶⁶

Despite Boohoo and ASOS’ efforts to market items as sustainable or attempt to demonstrate a commitment to sustainability, Good On You (GOY), the leading website in rating fashion companies’ sustainability levels, cast doubts on the authenticity of these claims.¹⁶⁷ Regarding Boohoo, GOY notes that Boohoo uses few eco-friendly materials, and there is no evidence that Boohoo has taken meaningful action to reduce or eliminate hazardous chemicals.¹⁶⁸ GOY concedes that Boohoo has set targets to reduce greenhouse gas emissions generated from its operations and supply chain but states there is no evidence Boohoo is on track to meet those targets.¹⁶⁹ GOY has similar complaints about ASOS but also mentions that it has found no evidence ASOS implements water reduction initiatives in most of its supply chain.¹⁷⁰ According to GOY, there is no evidence Boohoo or ASOS minimize textile waste during manufacturing.¹⁷¹

As demonstrated by its ongoing investigation into Boohoo, ASOS, and other fast fashion brands, the CMA has begun necessary steps towards enforcing the GCC. While not law itself, the GCC is a powerful tool because it reiterates the responsibilities of the CMA and also states that infringements of consumer protection law may be dealt with by the CMA through criminal enforcement, civil action, or both.¹⁷² This may also include enhanced consumer measures, which require businesses to take additional steps to protect consumers.¹⁷³ “This can include requirements to pay redress to those who have been harmed by the failure to comply with consumer protection law and measures to ensure that

¹⁶⁵ ASOS, *Planet*, ASOS PLC, <https://www.asosplc.com/fashion-with-integrity/planet/> (last visited Jan. 23, 2022).

¹⁶⁶ *Id.* Different versions of ASOS’ websites in different countries potentially broadens the scope of legal action ASOS could be subjected to in the future. *Id.*

¹⁶⁷ *See Boohoo*, GOOD ON YOU, <https://directory.goodonyou.eco/brand/boohoo> (last visited Oct. 1, 2023); ASOS, GOOD ON YOU, <https://directory.goodonyou.eco/brand/asos> (last visited Oct. 1, 2023).

¹⁶⁸ *See Boohoo*, *supra* note 167.

¹⁶⁹ *See id.*

¹⁷⁰ *See ASOS*, *supra* note 167.

¹⁷¹ *See Boohoo*, *supra* note 167; *ASOS*, *supra* note 167.

¹⁷² MAKING ENVIRONMENTAL CLAIMS, *supra* note 29.

¹⁷³ *Id.*

similar breaches do not occur in future.”¹⁷⁴ The GCC will likely also be beneficial to the CMA in deciding when to investigate and take legal action against fashion industries. Regulators other than the CMA will also be likely to follow suit if the CMA does decide to act, so companies should anticipate legal action beyond that of the CMA.¹⁷⁵

C. France

While the idea of French fashion might initially bring to mind luxury brand names such as Louis Vuitton and Chanel, French citizens are also consumers of fast fashion brands.¹⁷⁶ However, the country has been heralded as an “ambitious but realistic” leader in creating “meaningful sustainability legislation” and “proactive” for “pushing the agenda forward more so than other countries.”¹⁷⁷ The most substantial aspects of France’s plan to curb greenwashing include the Climate and Resilience Law and the Anti-Waste and Circular Economy Law.¹⁷⁸ However, the Advertising Regulatory Authority (ARPP), through the Advertising Ethics Jury (AEJ), and NGO Zero Waste France’s suit against Adidas, also demonstrate a nationwide movement against greenwashing.

1. Regulatory Government Action

France, a leader in the fashion world, is now also a leader in greenwashing (*écoblanchiment* in French) regulations. Aspiring to become a carbon-neutral society by 2050, France recently enacted the Climate and Resilience Law (*Loi Climat et Resilience*) in 2021 (“2021 Resilience Law”) to complement existing French law and provide greater environmental protections.¹⁷⁹ The 2021

¹⁷⁴ *Id.*

¹⁷⁵ Kate Hawkins et al., *Greenwashing: Exploring the Risks of Misleading Environmental Marketing in China, Canada, France, Singapore and the UK*, GOWLING WLG (Sept. 20, 2022), <https://gowlingwlg.com/en/insights-resources/articles/2022/the-regulation-of-greenwashing/>.

¹⁷⁶ *Ultra-Fast Fashion Charms Young Despite Damaging Environment*, FR. 24 (July 29, 2022), <https://www.france24.com/en/live-news/20220729-ultra-fast-fashion-charms-young-despite-damaging-environment>.

¹⁷⁷ Webb, *supra* note 13.

¹⁷⁸ See Loi 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets [Law 2021-1104 of August 22, 2021 on Combatting Climate Change and Building Resilience to its Effects], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE] [hereinafter Law 2021-1104 of August 22, 2021]; Loi 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l’économie circulaire [Law 2020-105 of February 10, 2020 Regarding a Circular Economy and the Fight Against Waste], J.O. [Official Gazette of France], Feb. 11, 2020 [hereinafter Law 2020-105 of February 10, 2020].

¹⁷⁹ See Law 2021-1104 of August 22, 2021, *supra* note 178.

Resilience Law focuses on themes that the French Government has proclaimed are likely to affect citizens' daily lives, including consumption.¹⁸⁰ According to a press release from the Council of Ministers, consumption habits have a significant impact on the environment.¹⁸¹ Additionally, consumer behavior has evolved in recent years, with a committed transition towards the ideology of purchasing less and purchasing better.¹⁸² To protect French consumers and this emerging attitude, the 2021 Resilience Law provides that advertisements must be visible or accessible to the consumer at the time of purchase, and they must be reliable and easily understandable.¹⁸³ Additionally, statements about the environmental effects of a product must be true for the entire life cycle of the garment and take into account the environmental effects of the production system employed.¹⁸⁴

Among other improvements, the 2021 Resilience Law strengthens the French Consumer Code (FCC), which provides for a number of misleading commercial practices and potential penalties, to also target environmental claims.¹⁸⁵ For example, the 2021 Resilience Law amended Article L. 121-2 2° b) of the FCC, which attacks claims made about the essential characteristics of a good or service, including substantial qualities, composition, accessories, and origin, to also include the environmental impact of a product.¹⁸⁶ Additionally, Article L. 121-2 2° e) of the FCC now targets claims about “[t]he scope of the advertiser’s commitments, in particular with respect to the environment, the nature, the process or the reason for the sale or the provision of services.”¹⁸⁷

The 2021 Resilience Law also extended punishments for misleading consumer practices available under the FCC.¹⁸⁸ The FCC previously provided that engaging in misleading commercial practices was punishable by up to a two-year prison term and a fine of €300,000.¹⁸⁹ It also provided “that the amount of the fine can always be increased to 10% of the turnover or 50% of the cost

¹⁸⁰ The other five themes are production and work, movement, housing, eating, and judicial protection of the environment. See Code de la Consommation [C. Con.] [Consumer Code] art. L. 121-2 2° b) (Fr.).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Hawkins et al., *supra* note 175.

¹⁸⁴ *Id.*

¹⁸⁵ Law 2021-1104 of August 22, 2021, *supra* note 178.

¹⁸⁶ C. Con. [Consumer Code] art. L. 121-2 2° b) (Fr.).

¹⁸⁷ *Id.* art. L. 121-2 2° e) (author’s translation).

¹⁸⁸ Laure Marolleau, *France: Update on “Greenwashing” Regulation*, WORLD L. GRP. (June 5, 2022), <https://www.theworldlawgroup.com/news/advertising-and-the-environment-update-on-greenwashing-regulation>.

¹⁸⁹ *Id.*

incurred for the advertising or the practice that constitutes the offense.”¹⁹⁰ The 2021 Resilience Law amended the penalties under the FCC to include the potential for fines to be increased to eighty percent of the costs incurred for the offensive marketing practice if it is based on environmental claims.¹⁹¹

Additionally amended is Article L. 229-68 of the French Environmental Code (FEC), which prohibits advertisements from stating that a product or service is carbon neutral.¹⁹² Advertisers are exempt from this rule if they make the following readily available to the public: “[a] greenhouse gas emissions assessment report that incorporates the direct and indirect emissions of the relevant product or service and [t]he process by which the greenhouse gas emissions of the relevant product or service are first avoided, then reduced, and finally offset.”¹⁹³ Additionally, the emissions reduction trajectory must be described using “quantified annual progress targets” and “[t]he methods for offsetting residual greenhouse gas emissions” must comply with minimum standards defined by decree.¹⁹⁴ In accordance with France’s carbon-neutral goals, the 2021 Resilience Law expands on the FEC to prevent manufacturers from making claims on a product, packaging, or in advertising that indicate the product, service, or activity of the manufacturer is carbon-neutral, or does not have a negative impact on the climate.¹⁹⁵

In February 2020, France adopted the Anti-Waste and Circular Economy Law, with the goal to eliminate waste and pollution from the entirety of a product’s life cycle.¹⁹⁶ The commitments outlined include phasing out single-use plastic by 2040, promoting better resource management, and increased transparency in advertising.¹⁹⁷ Specifically, starting in January 2023, French Decree 2022-748 AGEC (Anti-Waste for a Circular Economy Law) (“Decree”) requires verified environmental labeling for large clothing brands (those with a

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Code de L’Environnement [C. Env.] [Environmental Code] art. L. 229-68 (Fr.).

¹⁹³ *Id.* (author’s translation).

¹⁹⁴ *Id.* (author’s translation).

¹⁹⁵ Armelle Sandrin-Deforge & Gaspar Cottard, *Environmental Labels, Greenwashing, and Ecocide Tackled by France’s New Climate Law*, JONES DAY (Nov. 2021), <https://www.jonesday.com/en/insights/2021/11/environmental-labels-greenwashing-and-ecocide-tackled-by-frances-new-climate-law>.

¹⁹⁶ Law 2020-105 of February 10, 2020, *supra* note 178.

¹⁹⁷ *Id.*

turnover above €50 million) selling in France with requirements for smaller companies phased in throughout 2024 and 2025.¹⁹⁸

The Decree applies to waste-generating products, which includes textile apparel and footwear.¹⁹⁹ Affected companies must provide consumers with information on the environmental qualities and characteristics of their products in the form of a dematerialized product sheet, accessible during the purchase act, such as on a clothing tag.²⁰⁰ Specifically, these product sheets allow purchasers of these products to know at the time of purchase: the amount of recycled material incorporated, recyclability, the presence of hazardous substances,²⁰¹ geographical traceability of the three major manufacturing steps (weaving, dyeing, assembly/finishing), and the presence of plastic microfibers when the proportion by mass of synthetic fibers is greater than fifty percent.²⁰² The Decree also reiterates the already existing ban on the use of claims that products or packaging are “biodegradable,” and “environmentally friendly.”²⁰³

2. Professional ARPP and the AEJ

Another unique aspect of France’s current approach to greenwashing is the supervisory body, the AEJ, established by the French ARPP.²⁰⁴ The AEJ reviews complaints by any natural or legal person on ethical issues in advertising, and while it cannot issue civil penalties, the AEJ can publish its reviews and opinions on the complaints.²⁰⁵ The ARPP was established in 2008 in response to complaints over lack of environmental claim regulation in advertisement, although it traces its origins back to the Advertising Control Office, established in 1935 under the Law of 1901.²⁰⁶

¹⁹⁸ Debbie Shakespeare, *France Moves First on Eco-label Regulations*, APPAREL INSIDER (Jan. 11, 2023), <https://apparelinsider.com/france-moves-first-on-eco-label-regulations/>.

¹⁹⁹ *French AGECE Law: Decree n° 2022-748 of April 29, 2022, Issued for the Environmental Labeling of Waste-Generating Products for the French Market*, INTERTEK (June 15, 2022) [hereinafter INTERTEK], <https://www.intertek.com/consumer/insight-bulletins/decreed-n-2022-748-issued/>.

²⁰⁰ *Id.*

²⁰¹ As defined by Council Regulation No. 1907/2006, Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), art. 59, 2006 O.J. (L 396) (EC).

²⁰² INTERTEK, *supra* note 199.

²⁰³ *Id.*

²⁰⁴ *Rôles et Missions*, AUTORITÉ DE RÉGULATION PROFESSIONNELLE DE LA PUBLICITÉ, <https://www.arpp.org/qui-sommes-nous/roles-et-missions/> (last visited Feb. 20, 2023).

²⁰⁵ *Id.*

²⁰⁶ Thierry Libaert, *De la Critique du Greenwashing à L'accroissement de la Régulation Publicitaire*, 42 COMM'N & ORG. 267, 268 (2012).

In August 2021, the AEJ published its opinion on Adidas' advertisements for its Stan Smith shoes.²⁰⁷ Specifically, the advertisements, pictured below, displayed the popular Stan Smith shoe appearing to crush a plastic water bottle with the text: "Stan Smith forever – 100% iconic, 50% recycled" and "Let's end plastic waste."²⁰⁸ Furthermore, the complaint reviewed asserts that the use of green text insinuates environmental claims and that the phrase "50% recycled" "misleads the public because it is not clear if half of the materials that make up the product are recycled or if they can be recycled at the end of their life and, if so, how."²⁰⁹



Adidas Stan Smith Shoe Advertisement mentioned in AEJ Complaint²¹⁰

In the opinion, the AEJ noted first, that the Stan Smith claim gives the impression that fifty percent of the whole shoe is recycled.²¹¹ However, at the bottom of the advertisement in small lettering, the ad states "*New Stan Smith featuring a Primegreen upper made from a minimum of 50% recycled materials. Any plastic used on the foot is recycled."²¹² The AEJ stated that "upper" is a technical concept unknown to the general public, making the statement confusing.²¹³ Additionally, the AEJ found the statement that plastic used on the

²⁰⁷ *Adidas*, *supra* note 143.

²⁰⁸ *Id.*; see Ministry of Waste (@MinistryofWaste), TWITTER (Aug. 31, 2021, 9:06 AM), <https://twitter.com/MinistryofWaste/status/1432691147474939911> (author's translation).

²⁰⁹ *Adidas*, *supra* note 143 (author's translation).

²¹⁰ See Ministry of Waste (@MinistryofWaste), TWITTER (Aug. 31, 2021, 9:06 AM), <https://twitter.com/MinistryofWaste/status/1432691147474939911> (author's translation).

²¹¹ *Adidas*, *supra* note 143 (author's translation).

²¹² *Id.* (author's translation).

²¹³ *Id.*

foot is recycled confusing as well and likely unintelligible to the majority of people.²¹⁴ In regard to this specific advertisement, the AEJ stated that Adidas did not adequately enable the consumer to know the exact proportion of the shoe which is recycled, and on what this data is based.²¹⁵ Moreover, the AEJ found the imagery, “which evokes the planet Earth,” suggests that Adidas is actively engaged in meaningful efforts to put an end to plastic waste.²¹⁶ This sentiment is reinforced by the depiction of the Stan Smith sneaker crushing a plastic bottle.²¹⁷

The AEJ then concluded that the advertisement disregards the ARPP’s Sustainable Development Recommendations that the “advertising message must accurately express the action of the advertiser or the properties of its products, in line with the supporting elements that can be transmitted,” and “advertising message must be proportionate to the extent of the actions carried out by the advertiser in terms of sustainable development as well as to the properties of the product it is promoting.”²¹⁸ Finally, Adidas disregarded the recommendation that “[s]igns or symbols may only be used if their origin is clearly indicated and if there is no risk of confusion as to their meaning . . . [a]nd advertising must not attribute to signs, logos or symbols a value greater than their effective scope.”²¹⁹

Following the publication of the AEJ opinion, Adidas continued to be at the center of legal disputes in France as seen in the environmental defense association and NGO, Zero Waste France’s announcement in June 2022 that it had filed a complaint against Adidas for deceptive marketing practices.²²⁰ Specifically, Zero Waste France accused the athletic equipment and clothing manufacturing group of only making “facade commitments” on their environmental practices.²²¹ Zero Waste France accused Adidas of making “shameless” and “disproportionate” statements on their environmental

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* (author’s translation).

²¹⁷ *Id.*

²¹⁸ *Id.* (author’s translation).

²¹⁹ *Id.* (author’s translation).

²²⁰ Noa Moussa, *France: NGO Files Complaint Against Adidas & New Balance Over Allegations of Greenwashing*, BUS. & HUM. RTS. RES. CTR. (June 24, 2022), <https://www.business-humanrights.org/en/latest-news/france-ngo-files-complaint-against-adidas-new-balance-over-allegations-of-greenwashing/>; see Tribunal Judiciaire de Strasbourg [Judicial Court of Strasbourg] Complaint, *Zero Waste France v. Adidas France*, June 22, 2022 [hereinafter *Zero Waste France*].

²²¹ Moussa, *supra* note 220 (“When brands intend to save the planet by selling sneakers, Zero Waste France pulls out the red card.”).

commitments while failing to implement changes to their unsustainable production models.²²²

Zero Waste France referenced the AEJ's opinion on Adidas' Stan Smith advertisement and further attacked Adidas advertisements that say nothing about the "environmental impact of recycled polyester or the technical impossibility of its infinite recycling."²²³ Specifically, Zero Waste France pointed to Adidas' FutureCraft Footwear campaign and its use of slogans like "Made to be remade" and "End plastic waste,"²²⁴ and how Adidas markets the line as a way to "preserve the planet."²²⁵ Despite Adidas' attempts to market Stan Smiths and its FutureCraft Footwear campaign as sustainable, the complaint pointed to various inconsistencies between the information concerning the sustainability of materials provided on the sales page and provided on the appendix page of the product.²²⁶

Zero Waste France also cited the Practical Guide to Environmental Claims for Traders and Consumers ("Practical Guide") published by the Ministry of Ecology in conjunction with the Ministry of Commerce.²²⁷ The Practical Guide sets out the conditions under which certain environmental claims can be considered to comply with the rules on misleading commercial practices.²²⁸ It requires that environmental claims are "explicit and precise so as not to mislead the consumer or sow doubt in his mind," and "based on scientific evidence."²²⁹ Based on the Practical Guide, the AEJ opinion, and Article L. 121-2 of the FCC, Zero Waste France addressed how Adidas markets garments and footwear as

²²² *Id.*

²²³ Zero Waste France, *supra* note 220, at 9 ("Dans cet avis, le Jury conclut à la méconnaissance par Adidas des exigences de la Recommandation Développement Durable de l'ARPP en matière de clarté du message ainsi que des points 3 et 6 de cette recommandation." ["In this opinion, the Jury concludes that Adidas has failed to comply with the requirements of the ARPP's Sustainable Development Recommendation in terms of the clarity of the message as well as points 3 and 6 of this recommendation."]).

²²⁴ Alice Elfassi, *On Your Marks, Get Set, Attack: Zero Waste France Files a Complaint Against Adidas and New Balance for Greenwashing*, ZERO WASTE FR. (June 22, 2022), <https://www.zerowastefrance.org/zero-waste-france-plainte-adidas-new-balance-greenwashing/>; Zero Waste France, *supra* note 220, at 5.

²²⁵ Elfassi, *supra* note 224; Zero Waste France, *supra* note 220, at 5.

²²⁶ Zero Waste France, *supra* note 220, at 5.

²²⁷ *Id.* at 9; see MINISTÈRE DE L'ÉCOLOGIE, DU DÉVELOPPEMENT DURABLE, DES TRANSPORTS ET DU LOGEMENT & MINISTÈRE DE L'ÉCONOMIE, DES FINANCES ET DE L'INDUSTRIE, LE GUIDE PRATIQUE DES ALLÉGATIONS ENVIRONNEMENTALES À L'USAGE DES PROFESSIONNELS ET DES CONSOMMATEURS [A PRACTICAL GUIDE TO ENVIRONMENTAL CLAIMS FOR TRADERS AND CONSUMERS] (2012), https://www.economie.gouv.fr/files/directions_services/dgcrf/documentation/publications/brochures/2012/Guide_allegat_environ_en_2012.pdf.

²²⁸ Zero Waste France, *supra* note 220, at 9.

²²⁹ *Id.* (author's translation).

environmentally friendly based on vague and obscure criteria and also how it relies on an unsustainable production model.²³⁰ According to Zero Waste France, the advertisement the companies use to market their products attempt to “make the overproduction and then the purchase of new textile products blameless,” ultimately fueling the overexploitation of natural resources and waste production.²³¹

Zero Waste France concludes its complaint by stating the FutureCraft Footprint webpage and the sustainability webpage of Adidas France’s website “are likely to mislead the consumer about the environmental impact of the product and the scope of the advertiser’s environmental commitments.”²³² Specifically, the use of the term “sustainable” and description of the FutureCraft Footprint as “preserving the planet,” are necessarily misleading with regard to the “environmental and incompressible carbon impact of the production of a new textile product.”²³³ At the time this Comment has concluded, Adidas has yet to respond to the complaint.

IV. COMPARISON AND RECOMMENDATIONS

The guidelines set by the United States, the United Kingdom, and France help companies understand what may or may not be found as violations of consumer protection laws. They help consumers understand what to look for in potentially misleading advertisements and encourage awareness of the practice of greenwashing. Based on the growing concern provided by climate change and consumer demand for transparent advertising, it is likely that other countries without guidelines that are specifically targeted towards greenwashing will follow the examples set by the United States, the United Kingdom, and France. However, it is crucial for the three countries to continue to bolster existing regulations and implement further instructions for companies on how to avoid greenwashing to protect the growing number of environmentally conscious consumers.

Due to the relative novelty of greenwashing by fast fashion companies, governments, companies, and consumers globally may find it difficult to

²³⁰ *Id.* at 7, 9, 21; Elfassi, *supra* note 224.

²³¹ Elfassi, *supra* note 224 (author’s translation).

²³² Zero Waste France, *supra* note 220, at 9 (author’s translation).

²³³ *Id.* at 20 (author’s translation).

understand when environmental claims are dishonest, bogus, or unclear.²³⁴ It may be easy to understand how an oil spill can harm ecosystems or the effect of planes pummeling greenhouse gas emissions into the air. Demonstrating that a fashion company's utilization of a rapid quick-to-market and quick-to-landfill business model is unsustainable, despite the creation of organic garments, requires a more nuanced approach. This Section will therefore outline potential solutions to greenwashing in the fast fashion industry that can be taken by governments in Subsection A, as well as ways in which companies can put themselves in the best positions for compliance in Subsection B.

A. *Potential Solutions by Governments*

As previously stated, the United States, the United Kingdom, and France illustrate the potential of anti-greenwashing regulations in their application to fast fashion companies. As these three countries test the power of these regulations, and other countries build on these models and implement their own guides, it will be easier to see what gaps exist in the current regulations and codes and how to fill them to better suit the fashion industry. In the current absence of clear standards on what constitutes greenwashing, companies, including those that are making valid and truthful statements, are apprehensive to employ methods of environmental marketing for fear of backlash.²³⁵ Companies therefore look to regulators to provide clarity and guidance.²³⁶ Countries must create more comprehensive regulations or develop existing regulations. To avoid ambiguity and difficulty in litigating whether a claim qualifies as greenwashing, regulations will need to account for specific greenwashing claims not currently included explicitly.²³⁷

For example, countries seeking to prevent fast fashion companies from misleading consumers into buying products marketed as "green" should publish specific words or even regulate which words fashion companies can use in describing their merchandise.²³⁸ The abundance of words companies such as

²³⁴ See Lydia Noyes, *A Guide to Greenwashing and How to Spot It*, ECOWATCH (Nov. 26, 2022), <https://www.ecowatch.com/greenwashing-guide-2655331542.html>.

²³⁵ Richard Dahl, *Green Washing: Do You Know What You're Buying*, 118 ENV'T HEALTH PERSP. A246, A250 (2010), <https://ehp.niehs.nih.gov/doi/epdf/10.1289/ehp.118-a246>.

²³⁶ See generally *Independence of Regulators and Protection Against Undue Influence*, OECD, <https://www.oecd.org/gov/regulatory-policy/independence-of-regulators.htm> (last visited Feb. 21, 2023).

²³⁷ Dahl, *supra* note 235.

²³⁸ The U.S. Green Guides "caution marketers not to make broad, unqualified claims that a product is "environmentally friendly" or "eco-friendly" because the FTC's consumer perception study confirms that such claims are likely to suggest that the product has specific and far-reaching environmental benefits. . . . Finally,

H&M use to market their products can lead to consumer confusion. The terms fast-fashion companies use are often misleading as they may induce reasonable consumers into purchasing the product and thinking the item is sustainable, when in reality, the word chosen by the company is not actually equivalent to sustainable. For example, words such as “conscious” or “responsible” can easily convince an average consumer that a product is environmentally friendly while these words are chosen specifically in an attempt to avoid legal recourse for greenwashing.²³⁹ By limiting the words fashion companies can use when advertising products, companies will be less likely to use misleading words and consumers will be more confident that their purchases are truly sustainable.

However, as mentioned, greenwashing can also occur in the form of not just text, but color palettes chosen for marketing and displays as well.²⁴⁰ This will likely be more difficult to regulate without more specific guidelines. It will also be more difficult to enforce because it is much harder to prove a company’s use of green tags and ocean images in campaigns is likely to induce a customer into purchasing the product under the belief the product is sustainable, as opposed to proving a company’s use of specific words is inducing customer’s to purchase for the same sustainability reasons.²⁴¹ France’s AEJ opinion on Adidas, stating that the image of a shoe crushing a water bottle and the use of imagery that evokes planet earth, provides hope that regulators and courts will not let aesthetic elements of advertisements elude greenwashing enforcement.²⁴²

Another solution may be to reserve the use of words for when garments meet specific garment content specifications. For example, companies such as H&M often market garments as sustainable because they are partially made with sustainable materials but are made up of mostly unsustainable fibers. By requiring that the garments contain at least sixty percent sustainable fibers

either because the FTC lacks a sufficient basis to provide meaningful guidance or wants to avoid proposing guidance that duplicates or contradicts rules or guidance of other agencies, the Guides do not address use of the terms ‘sustainable,’ ‘natural,’ and ‘organic.’ Organic claims made for textiles and other products derived from agricultural products are covered by the U.S. Department of Agriculture’s National Organic Program.” Press Release, FTC, *supra* note 84.

²³⁹ “An environmentally ‘conscious’ label implies a benevolent intent in product development . . . [and] is often used in an unprovable way that may rankle authorities.” Elsa Wenzel, *Greenwashing Terms to Avoid at Any Cost*, GREENBIZ (Jan. 4, 2023), <https://www.greenbiz.com/article/greenwashing-terms-avoid-any-cost>.

²⁴⁰ See MAKING ENVIRONMENTAL CLAIMS, *supra* note 29.

²⁴¹ See Wenzel, *supra* note 239 (“Because some consumers have indicated they will pay more money for products they believe to be environmentally friendly, it’s only natural that corporations depict their goods and services as worth that premium, dousing ads in Pantone shades of Foliage, Greenbriar or Treetop and virtue-signaling with stock phrases and clichés.”); ANCHORPOINT, *supra* note 40.

²⁴² See *Adidas*, *supra* note 143.

(among other specifications), for example, governments can protect consumers from purchasing goods marketed as sustainable despite having a majority of unsustainable compositions. Even without formal legally binding content regulations, greenwashing guides can help create clearer standards by which fashion companies can follow. Guides should incorporate garment fiber compositions that companies should aim for if they hope to market a garment as sustainable. For example, instead of requiring that a garment marketed as sustainable contains a certain number of sustainable fibers, providing general percentage ranges may provide a more easily achievable goal for companies.

In the United Kingdom's CMA announcement that it would be investigating fast fashion companies' sustainability marketing, the CMA stated they believed the companies set "unreasonably low" criteria for inclusion of garments in their sustainable product lines.²⁴³ However, without some form of formal range published by the CMA or other governmental agency, it is unclear what "unreasonably low" criteria may mean in this context and will certainly be difficult to prove widely across various garments and clothing lines.

One form of greenwashing, selective disclosure, is regularly used by fast fashion companies to advertise one sustainable element of a garment, while not including accurate information on other less sustainable elements. Selective disclosure is commonly seen in marketing materials that advertise a garment's life cycle and the supply chain which produced the garment. Fashion companies often state that their products are made sustainably, basing this statement on only one fraction of the supply chain process, such as stating that a garment was manufactured without any carbon emissions.²⁴⁴ Regulators should therefore make specific provisions that require claims about the sustainability of a garment be true for the entire supply chain that produced the garment and the product's life cycle.

By requiring greater supply chain transparency, companies will be prevented from marketing products as eco-friendly when the supply chain producing the garment is actually harmful to the environment and consumers will be better

²⁴³ Press Release, Competition & Mkts. Auth., *supra* note 10.

²⁴⁴ See generally Lu Yi, *Decarbonising the Fashion Supply Chain*, GREENSTORY (May 23, 2022), <https://blog.greenstory.io/decarbonising-the-fashion-supply-chain> ("Around 70% of the fashion industry's emissions come from upstream activities such as materials production, preparation and processing. The remaining 30% are associated with downstream retail operations, the use-phase and end-of-use activities. The fashion industry – from material sourcing through supply chains to washing and waste – has an enormous carbon footprint. In the fashion supply chain, all stakeholders and participants have a role to play in driving decarbonization.").

educated on the manufacturing process behind their purchases. This may come from the requirement that fashion companies only market items as sustainable if the entire supply chain that manufactured the garment is sustainable. However, this may be difficult and create unrealistic expectations that companies are unable to reach and will therefore not even attempt to achieve.

Encouraging or requiring companies to better advertise all the steps that go into making their garments provides an opportunity for companies to market which steps they have made more sustainable and which they have yet to improve. This honesty may provide consumers with more accurate understandings of the company's sustainability achievements while also acknowledging imperfections. It may also serve to encourage companies to make significant efforts to create more eco-friendly supply chains, partner with more sustainable manufacturing companies, and develop a more responsible garment-making process to provide customers with more appealing advertisements.

Fashion companies may further be confused about the requirements regarding certifications and substantiated claims. As articulated by the U.K. GCC, "[t]he nature of most environmental claims means consumers are likely to expect them to be based on supporting evidence. Where they are not, businesses are likely to have fallen below the standards of diligence and care consumers are entitled to expect of them."²⁴⁵ As greenwashing continues to plague the fashion industry, ethical fashion certifications are increasingly helpful for conscious consumers. The U.K. GCC and French 2021 Resilience Law both qualify that representation must only be made if they are true for the entirety of the product's life cycle.²⁴⁶ For example, the GCC states: "Businesses should therefore consider what elements of the life cycle of a product or service are most likely to be of interest to consumers when making an environmental claim and how they affect the accuracy of that claim."²⁴⁷

While the governments of the United States, the United Kingdom, and France have reiterated the importance of supporting environmental claims with evidence, it is unclear to what extent this requires third-party support. The U.K. GCC states that businesses should be able to back up their claims and hold "robust, credible, relevant and up to date evidence that supports them."²⁴⁸

²⁴⁵ Press Release, FTC, *supra* note 84.

²⁴⁶ MAKING ENVIRONMENTAL CLAIMS, *supra* note 29; Law 2021-1104 of August 22, 2021, *supra* note 178.

²⁴⁷ MAKING ENVIRONMENTAL CLAIMS, *supra* note 29.

²⁴⁸ *Id.*

However, the GCC does not necessarily require that business substantiate their claims with third-party research. The GCC provides examples of forms of substantiation such as published research or studies a business has commissioned or conducted, but this again falls short of a direct requirement for third-party substantiation.

The U.S. Green Guide goes slightly further by stating that a reasonable basis for claims must be made using evidence that “consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.”²⁴⁹ While this does not explicitly call for third-party evaluation, the requirement that claims are substantiated by qualified persons provides a more specific standard by which companies must support their claims.

The U.S. Green Guides includes a section that cautions companies on the use of certifications and seals of approval, as they may be considered endorsements covered by the FTC’s Endorsement Guides.²⁵⁰ In addition, the Green Guides caution marketers not to use certifications or seals that do not clearly convey the basis for the certification, because this is likely to convey to consumers that a product has general environmental benefits.²⁵¹

However, while a company may support a product’s green claims with certification, this does not necessarily mean the claim is properly substantiated. According to a 2018 study by the Changing Markets Foundation, out of eighty-three certification schemes reviewed, only a small handful satisfactorily address sustainability performance across multiple companies’ entire supply chains.²⁵² Among hundreds of green labels available today, only a few are broadly recognized as highly reliable.²⁵³ There is also an increasingly pressing problem of self-certification, which is often not entirely reliable either.²⁵⁴ Through

²⁴⁹ 16 C.F.R. § 260.2 (2012).

²⁵⁰ Press Release, FTC, *supra* note 84.

²⁵¹ *Id.*

²⁵² See generally CHANGING MKT. FOUND., THE FALSE PROMISE OF CERTIFICATION (May 2018), https://changingmarkets.org/wp-content/uploads/2018/05/False-promise_full-report-ENG.pdf.

²⁵³ Dahl, *supra* note 235. One example of such reliable green labels is Green Seal, which awards a seal of approval to companies that meet standards that examine a product’s environmental impact along every step of the production process, including its supply of raw materials. *Id.*

²⁵⁴ *Id.*

environmental labels attained by self-certification, a company can virtually purchase any label they want.²⁵⁵

For example, a fast fashion company can purchase a label for a garment claiming it has been certified as “eco-friendly” despite its creation through environmentally harmful production or having a high synthetic fiber content. In an investigation into Energy Star, a joint program of the U.S. Environmental Protection Agency and Department of Energy, the U.S. Government Accountability Office showed that while Energy Star provides labels to companies who submit data about products and seek the stamp of approval, the majority of categories Energy Star “certifies” are through self-certification.²⁵⁶ This leaves the certification process “vulnerable to fraud and abuse by unscrupulous companies.”²⁵⁷ Governments, therefore, need to provide companies with greater clarity as to what extent third-party certification is required, and what to look for when evaluating which certification scheme to employ.

The need to ensure the accuracy of information provided by third parties is also seen in the complaint for *Commodore v. H&M*.²⁵⁸ H&M based its garments’ sustainability profiles off information provided by the Higg Index.²⁵⁹ The facts alleged in the complaint demonstrate that the information from the Higg Index was often misleading or completely false.²⁶⁰ The Green Guide reiterates this point by noting: “[t]hird-party certification does not eliminate a marketer’s obligation to ensure that it has substantiation for all claims reasonably communicated by the certification.”²⁶¹ Other countries therefore should not only implement requirements for third-party substantiation but should also specify that compliance with the requirement does not preclude companies from legal action if claims are not properly substantiated.

While the United States, the United Kingdom, and France have created moderately comprehensive guidelines to protect consumers from greenwashing, these guidelines must be enforced against companies for them to have any real impact. Although private citizens and NGOs have taken matters into their own

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Commodore*, *supra* note 13, at 1.

²⁵⁹ *Id.* at 6.

²⁶⁰ *Id.*

²⁶¹ 16 C.F.R. § 260.6(c) (2012).

hands to some extent, as demonstrated by *Commodore v. H&M* and Zero Waste France's suit against Adidas, governments must also show they take consumer protection seriously.²⁶² As seen in the U.S. FTC's action against Kohl's and Walmart, and the U.K. CMA's investigation into Boohoo, among others, it appears the two countries have started to do so.

Further enforcement mechanisms beyond punitive measures may be to release advisory opinions as a way of providing warning and discouraging companies from greenwashing due to the publicity such opinions are likely to produce. While the AEJ France is a great tool, a way to provide examples to companies on the mistakes of their peers, and a method to break down why some instances of environmental claims qualify as greenwashing, its opinions are merely advisory. France will need to put the greater fines and prison penalties created by the 2021 Resilience Law to the test to deter companies from greenwashing, punish those who chose to do so, and demonstrate a commitment to consumer protection and the country's overall environmental goals.

B. What Fashion Companies Can Do

With the effects of climate change becoming increasingly evident and serious, consumers will likely continue to care more about purchasing climate-conscious clothing items. To avoid greenwashing, fast fashion companies will need to ensure that their claims on environmental effects and sustainability are clear, accurate, and supported by objective evidence, and that public statements on decarbonization commitments are backed up by action. Companies should acknowledge their environmental shortcomings, as well as make genuine efforts to improve.

Fashion companies that are concerned about potential government action based on environmental claims should first determine whether they are making environmental claims. Claims are environmental when they suggest their product is better for the environment than an alternative.²⁶³ The suggestive element is perhaps the most subjective part of this definition. A claim does not need to assert directly that a garment or company practice is better for the environment than an alternative.²⁶⁴ It need only suggest. The examples provided by the Green Guide, the GCC, and the Practical Guide may help companies

²⁶² See generally *Commodore*, *supra* note 13.

²⁶³ *Green Claims Code: Are You Unintentionally Greenwashing?*, ENERGY SAVING TRUST (Feb. 1, 2022) <https://energysavingtrust.org.uk/green-claims-code-are-you-unintentionally-greenwashing/>.

²⁶⁴ *Id.*

understand circumstances when an advertisement does not outright claim that a product or service is sustainable yet is still likely to suggest to consumers that it is.

After establishing the existence of environmental claims in a fashion company's marketing, the business should evaluate to what extent the claim can be supported by reliable data. Contracting with third parties that specialize in analyzing companies' sustainability measures and environmental consequences will be beneficial in gaining unbiased data and information on how the company can improve or what statements are not in fact substantiated. However, as discussed, third-party data is not entirely risk-proof and fashion companies should exercise due diligence in making sure they partner with third parties with dependable track records.

Countries may also follow France's lead of requiring certain disclosures on product packaging or that certain information is available at the time of purchase.²⁶⁵ Therefore, it is prudent for fashion companies to begin incorporating garment composition and production information into their packaging or on price tags. However, not all information on the extent to which a product is sustainable is likely to fit on a price tag. The GCC suggests that companies include links or QR codes on price tags or advertisements that can easily lead consumers to more information.²⁶⁶ Using these suggestions, companies can protect themselves by leading consumers to information on what certain terms mean as well as broader information on what effects the company's overall practices have on the environment.

Another safety-net companies may want to consider is the incorporation of an environmental management system (EMS) to detail the company's environmental program and efforts to become more sustainable.²⁶⁷ This will help provide greater information to consumers, as required by many existing regulations, as well as help companies manage their progress to becoming more environmentally friendly.²⁶⁸ Additionally, when a company has an EMS in place, consumers not only have greater clarity, but greater confidence in the

²⁶⁵ See INTERTEK, *supra* note 199.

²⁶⁶ Jessi Baker, *3 Things Brands Must Do to Comply with the 'Green Claims Code'*, FORBES, <https://www.forbes.com/sites/jessibaker/2021/09/21/3-things-brands-must-do-to-comply-with-the-green-claims-code/?sh=294c8b06dce0> (last visited Jan. 25, 2023).

²⁶⁷ See Reza Zarghamee et al., *Environmental Management Systems Bridge the Gap Between ESG Goals and Implementation*, PILLSBURY L. (June 17, 2022), <https://www.pillsburylaw.com/en/news-and-insights/ems-bridge-gap-esg-goals.html>.

²⁶⁸ *Id.*

company as well because EMSs are supposed to meet certain international standards such as ISO 14001.²⁶⁹ ISO 14001 was developed by the nongovernmental International Organization for Standardization in Geneva, which sets out a variety of voluntary environmental standards.²⁷⁰ Not only does this provide an additional form of certification, but demonstrates to consumers that the company is making meaningful efforts to reform their products and services.²⁷¹

CONCLUSION

The substantial increase in fashion and textile consumption over the last fifty years has significantly contributed to global warming and other forms of environmental harm such as water pollution and unrecyclable materials dumped in developing nations.²⁷² Fast fashion companies can never be truly sustainable while implementing the very business model that makes them fast fashion: producing as many products as quickly as possible, at as low of a cost as possible. For many fast fashion retailers, considerations of pollution and waste are of tertiary concern after cost reduction and increased production to market speed.²⁷³ Therefore, no matter what percentage of their clothing is made of recyclable material, any advertisement claiming the garment is “sustainable” is most likely greenwashing without any reference to further information illustrating the company’s business model and practices.²⁷⁴ The consumer protection codes of the United States, the United Kingdom, and France all provide for this discrepancy to some extent by including some requirement or guidance that companies do not make unqualified statements in their advertisements.

More comprehensive regulations and guidance are essential in preventing greenwashing. The United States, the United Kingdom, and France have become leaders in the anti-greenwashing movement. However, it is imperative that their governments not only continue to expand upon existing regulations but clarify

²⁶⁹ Dahl, *supra* note 235.

²⁷⁰ ISO 14001 and Related Standards: *Environmental Management*, ISO, <https://www.iso.org/iso-14001-environmental-management.html> (last visited Feb. 13, 2023).

²⁷¹ See Zarghamee et al., *supra* note 267.

²⁷² See Ngan Le, *The Impact of Fast Fashion on the Environment*, PRINCETON STUDENT CLIMATE INITIATIVE (July 20, 2020) <https://psci.princeton.edu/tips/2020/7/20/the-impact-of-fast-fashion-on-the-environment>.

²⁷³ Niinimäki et al., *supra* note 45.

²⁷⁴ See Stallard, *supra* note 9 (explaining that the larger problem is not simply the use of organic and recycled materials, but a society-wide issue of overconsumption).

their implications for the fashion industry as one of the greatest industrial polluters. Most importantly, they must turn their words into action through investigations and enforcement. Additionally, while the governments of the United States, the United Kingdom, and France begin investigating the fashion industry, this is likely just the start of actions against all sectors, which demonstrate significant environmental concerns and patterns of greenwashing.²⁷⁵ Therefore, it is prudent of not only other companies within the fashion industry, but companies in all industries to reconsider the truthfulness of the environmental claims they are making.

While fast fashion companies are unlikely to change their business model due to its profitability, if there are more stringent requirements, they will hopefully, at minimum, put greater effort into creating sustainable products and overseeing supply chain procedures. More aggressive anti-greenwashing regulations will also force these companies to exercise greater transparency regarding their business model. This will ultimately give greater power to consumers by allowing them to make educated purchases and decide which businesses to support.

At the time this Comment has concluded, *Commodore v. H&M*, the CMA's investigation into Boohoo, ASOS, and others, and Zero Waste France's suit against Adidas are still ongoing.²⁷⁶ Some lawyers speculate *Commodore v. H&M* will be settled due to H&M's desire to avoid the poor publicity a trial would almost certainly bring, and it is possible this logic will apply to Zero Waste France's suit against Adidas.²⁷⁷ However, climate activists such as Ms. Commodore and Zero Waste France may not be so ready to settle, hoping not for large monetary outcomes, but to bring the attention of consumers, businesses, and the government to the problem of greenwashing.

With global supply chains, fast fashion companies touch nearly every region of the world to some extent through the growth of fibers, manufacturing of textiles, construction of garments, marketing and selling of garments, or dumping unsold pieces onto developing countries.²⁷⁸ Because of this, all

²⁷⁵ Dunlap et al., *supra* note 21.

²⁷⁶ See *Commodore*, *supra* note 13; Hellwegger, *supra* note 155; *Adidas*, *supra* note 142.

²⁷⁷ Brett Mathews, *H&M Class Action: What Lawyers Told Us*, APPAREL INSIDER (Aug. 8, 2022), <https://apparelinsider.com/hm-class-action-what-lawyers-told-us/>.

²⁷⁸ Bick et al., *supra* note 22. In the 1980s and 1990s, nations with large textile production markets such as China and Korea expanded into nations with quota-free access to the American market, which was the largest at the time. See NIKOLAY ANGUELOV, *THE DIRTY SIDE OF THE GARMENT INDUSTRY: FAST FASHION AND ITS*

countries stand to benefit from the implementation and enforcement of anti-greenwashing efforts to both protect consumers and encourage greater sustainable practices throughout the fashion industry. As fast fashion spawns a culture of disposability and overconsumption, educated consumers are demonstrating a countertrend toward making sustainable purchases.²⁷⁹ However, it will ultimately be up to regulators around the world to ensure this growing attitude among shoppers does not make them victims to greenwashing by fast fashion's desire to prey on well-intentioned consumers.

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NEGATIVE IMPACT ON ENVIRONMENT AND SOCIETY 63 (2016). These new areas included Bangladesh, Sub-Saharan Africa, Nepal, and the Caribbean. *Id.*

²⁷⁹ *See id.*