

# Green Claims in advertising

---

YOUR TRUSTED ESG GUIDE

# Sustainability claims

The pressure is on for businesses. Your customers, shareholders, employees and industry peers all want you to act sustainably.

We believe most businesses want to transition towards a more sustainable future. But we also see that businesses sometimes overstate their real sustainability efforts. Or they can't substantiate the green claims they make with valid data from reliable sources.

Many businesses end up claiming that a product, service or even their business is more sustainable than it actually is. This can be in advertising, sustainability reports, (financial) product information, and even industry agreements. This is known as greenwashing.

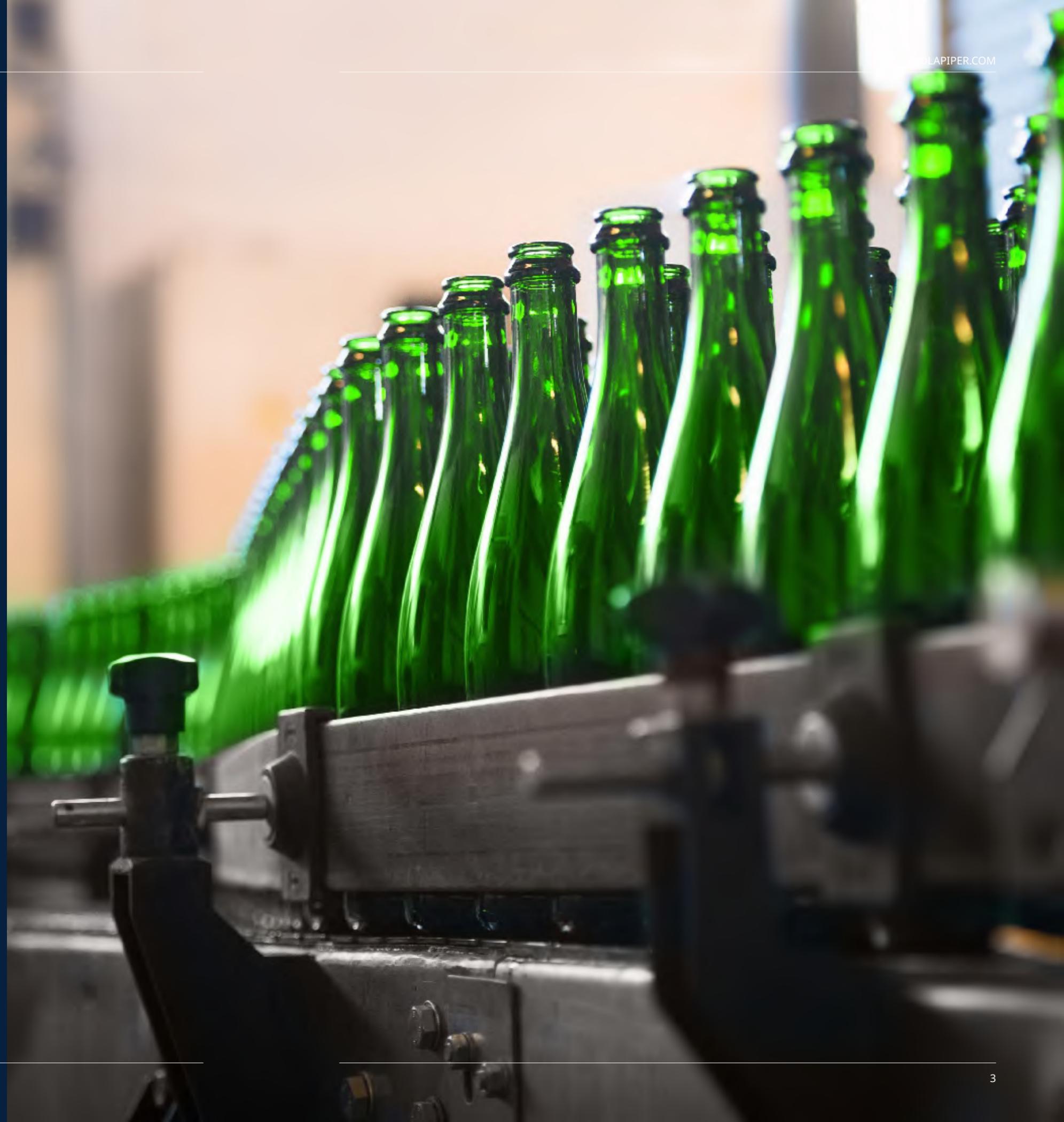
## Greenwashing in advertising

Advertising is one of the most public areas in the ESG landscape. It attracts attention from your customers, and from your employees, peers, competitors, shareholders and market authorities.

You have to substantiate the sustainability claims you make. Consumer scepticism and criticism are increasing every day. Legislation is becoming stricter. NGOs can and will litigate. And market authorities routinely scrutinise sustainability claims and corporate communications.

On your journey towards a more sustainable future, DLA Piper's Green Claims team will help you substantiate your green claims and prevent greenwashing.

Businesses shouldn't be punished for doing the right thing. But they shouldn't tell stories that are rosier than reality.



### Identify and mitigate the risks



We understand the pressure you're under. Many studies show the upside of showcasing the green side of your business. It's an area that can boost growth in your business. But doing it the wrong way can leave you open to liability. We'll help you decide which risks you're willing to accept when making a sustainability claim by getting you the best overview of those risks on a global level. We'll also help you understand which risks are real and where to direct your time and effort. We prevent unnecessary escalation of complaints and investigations by making the right adjustments.

### Analyse your sustainability claim



The legal landscape of sustainability claims is dynamic, so it's hard to navigate. We'll help you analyse the sustainability claims you've made in the past and those you'll make in the future. We have teams around the world, so we can benchmark your claim quickly and efficiently against laws and regulations in many countries.

### Representing you in court



With sustainability claims being increasingly scrutinised, there's a substantial risk that NGOs, regulators, consumer organisations or competitors will initiate proceedings over your claims. We'll defend you in civil court, in complaint procedures and in discussions with regulators. We'll also help you prevent unfair competition resulting from greenwashing by competitors. We regularly help clients in litigation proceedings in the Netherlands – from all levels of the court system to the self-regulatory Advertising Code Committee and the Authority for Consumer and Markets.

### Substantiate your sustainability claim



A justified sustainability claim has to be supported by valid data from legitimate sources. But not all the ESG data in your business is equally trustworthy. We'll help you collect and analyse data that's reliable and relevant to your claim.

### Unsubstantiated green claims

A large European online fashion platform allowed customers to apply sustainability filters to their searches. They also made sustainability claims about clothing, even though they weren't sure the clothes were actually more sustainable than alternatives.

The Dutch market authority then instructed the national market authority to approach the fashion platform. The Dutch market authority is known for its very forward and stringent interpretation of greenwashing legislation.

We advised on how to best manage the situation. We guided the platform away from absolute sustainability claims towards more precise, substantiated and defensible claims.

### Showcase under scrutiny

A large international airline needed help on how to best use sustainability claims in the field of aviation.

Aviation is one of the most scrutinised sectors in terms of carbon output. The airline company wanted to show that it was making an effort to do better and play its part in the transition towards a more sustainable aviation industry.

Working with a network of international colleagues, we helped the airline develop best practices and avoid pitfalls in their industry.

### Getting it right the first time

A leading global food company wanted to introduce new packaging materials with sustainability claims. They'd made the effort to do better and were eager to show it.

Putting sustainability claims on packaging is a tricky operation. Companies need to get it right first time to prevent recalls and avoid action from competitors.

We gave them specific guidance on what they were allowed to claim, how they should support their claims, and how they could avoid attracting unwanted attention from market authorities and competitors.



## Do you want to know more?

Do not hesitate to **give us a call** to discuss. We are here to **help**.



### Léon Korsten

Partner, Litigation & Regulatory

+31 (0)6 5519 6362 | leon.korsten@dlapiper.com

Léon Korsten advises on and litigates in cases involving EU and national competition law, state aid, market regulation (enforcement and supervision), public procurement and civil-law enforcement. He also advises on and assists in investigations and raids conducted by the regulatory authorities and he regularly conducts internal investigations for his clients. Léon also assists clients in drafting and implementing compliance programmes.

He has handled many European and Dutch competition law cases, including the Dutch civil proceedings which led to the famous 1999 Eco Swiss/Benetton judgment of the European Court of Justice.

Léon is Global Co-Chair of DLA Piper's Antitrust & Competition Group.



### Richard van Schaik

Partner, Intellectual Property and Technology

+31 (0)6 5200 5925 | richard.vanschaik@dlapiper.com

Richard van Schaik advises on all aspects of intellectual property, including trademark, unauthorised parallel import and copyright matters. He is specialised in data protection law.

Richard is heading the Dutch Data Protection team which advises clients from many business sectors, such as banking, IT, telecom and advertising. He has a broad experience on national and international data protection audits, transfer agreements (outside EU), clearances, e-mail and internet policies, data security and provides advice on compliance issues.

In addition, Richard has specific experience in advertising law. He has obtained many landmark decisions and has been involved in a great number of litigation procedures at every court level in the Netherlands and at the Advertising Code Committee.



### Rutger Stoop

Lawyer, Intellectual Property and Technology

+31 (0)6 4188 9968 | rutger.stoop@dlapiper.com

Rutger Stoop is a seasoned litigator, specializing in the field of intellectual property.

He focuses on trademark, design, advertising and copyright law. He provides strategic advice to clients on all aspects of product design, protected product designations, advertising and the protection of brands and trade names in general.

## DLA Piper

### Your trusted ESG guide

**Environment, Social and Governance (ESG)** can no longer be regarded as just a corporate box ticking or report writing exercise.

It is now firmly established as the umbrella under which all facets of the transition towards a more sustainable future are gathered.

In the past few years, we've seen the ESG legal framework evolve rapidly. Making the transition towards a more sustainable future an undeniable and critical necessity for every business. Your organisation's social license depends on meeting stakeholder's ESG expectations, complying with the ESG legal framework and driving performance through a well-articulated strategy.

We believe that by making businesses better, we make the world a better place. On your journey towards a more sustainable future, DLA Piper is well positioned to be your trusted ESG guide. Wherever you are in your transition, we will guide you with forward-looking and pragmatic legal advice. With our global mind-set and vast practical experience, we can help you navigate environmental, social and governance challenges and seize ESG-related opportunities.

