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Quoted

Greenwashing; liability
and litigation risks in
the Netherlands

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About Loyens & Loeff

Greenwashing; liability and litigation risks in the Netherlands

I Introduction: what is 'greenwashing'?

1. Over the past decade, businesses have generally increased the use of green claims¹ in their marketing materials as society's focus on topics such as sustainability and climate change has increased. Also, various research shows that the number of false, misleading or vague green claims has therefore increased. According to an impact assessment by the European Commission in 2022, 53.3% of all green claims contain vague, misleading or unsubstantiated information and 40% of all green claims made by businesses in the EU have no supporting evidence.²
2. Greenwashing is not yet a fixed or legally defined concept in EU or Dutch legislation but merely described in practice as businesses capitalizing on green claims that cannot be substantiated or do not have a factual or scientific basis. In this context, green claims are considered claims on businesses, products and services that may suggest or create the impression that the business, a product or service has a positive impact on the environment or causes less environmental harm than competing businesses, goods or services.
3. The term greenwashing was introduced in 1986 by researcher Jay Westerveld.³ Westerveld used the term greenwashing to describe the practice of a hotel in Fiji that placed signs declaring 'save towels to save the environment' in hotel rooms. Westerveld coined the term greenwashing to describe a practice of businesses exuding environmental awareness while concealing their real impact on the environment. As a result of the rise of greenwashing and related liability and litigation risks, the concept of greenhushing - businesses hiding their sustainability ambitions to avoid scrutiny from stakeholders and regulators or legal actions - has emerged.
4. In this *Quoted*, we will focus on answering two questions:
 - (i) is the forthcoming EU legislation on greenwashing necessary in the light of the current legal framework under Dutch law?; and
 - (ii) do we expect to see an increase in greenwashing cases in the Netherlands?

II Current Dutch legal framework

II.1 Unfair commercial practices

5. In the Netherlands, there is currently no specific legislation to prevent greenwashing claims. To determine whether a claim can be considered

¹ In this *Quoted*, the term *green claims* also includes sustainability and environmental claims.

² Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information.

³ J. Pearson, *Are We Doing the Right Thing?*, J. Corp. Citizsh. 2010, page 37.

greenwashing, the Unfair Commercial Practices Directive (the **UCP Directive**) is relevant,⁴ which is implemented in Section 6.3.3 of the Dutch Civil Code (**DCC**) through the Unfair Commercial Practices Act (the **UCP Act**).⁵ The European Commission has provided guidance on interpretation and application of the UCP Directive.⁶

6. Under Dutch law, an unfair commercial practice constitutes a species of the general tort.⁷ Although the UCP Act does not explicitly regulate greenwashing, it offers a legal framework to address and prevent greenwashing as an unfair commercial practice. The UCP Directive, like the UCP Act, applies to unfair commercial practices of businesses towards consumers, both before, during, and after a commercial transaction related to a product or a service.⁸ The UCP Act specifically addresses misleading and aggressive practices by businesses towards consumers.⁹
7. The UCP Act stipulates two cumulative requirements for a commercial practice to be considered unfair; a qualification under which greenwashing could fall:
 - (i) the provision of factually incorrect (*i.e.*, false) or misleading information; and

- (ii) the information must be of such nature as to cause the average consumer to take a transactional decision that he would not have taken otherwise. This is known as the so-called 'manipulation requirement'.¹⁰

8. The UPC Act¹¹ includes several non-exhaustive aspects in respect of which the information provided by the trader may be misleading.¹² The concept of the "average consumer" is assessed on a case-by-case basis. Under the UPC Directive and EU case law, this consumer is reasonably well-informed, observant, and circumspect, considering social, cultural, and linguistic factors. Consumers are expected to engage with the trader's information and seek clarification where necessary.
9. Furthermore, the UCP Act covers two specific misleading practices: (i) marketing (including comparative advertising) that causes confusion with a competitor's product; and (ii) failure to comply with obligations of a code of conduct the trader has committed to, such as by referring to it on their website.¹³ On top of that, the UCP Act contains a so-called 'black list' of explicitly prohibited commercial practices that are considered misleading under all circumstances.¹⁴

4 Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive).

5 Articles 6:193a-6:193j DCC. See for example K.I.M. van Leusden, 'Van green claims naar greenwashing', *MvO* 2024/8-9, page 205.

6 Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (2021/C 526/01).

7 Article 6:162 DCC.

8 Article 3 of the Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive).

9 Articles 6:193c-193g DCC and Articles 6:193h and 6:193i DCC.

10 Articles 6:193b para. 2 DCC.

11 Article 6:193c DCC.

12 Articles 6:193c para. 1 DCC.

13 Article 6:193c DCC.

14 Articles 6:193g and 6:193i DCC.

II.2 Remedies in case of misleading commercial practices

10. If a consumer alleges that a company is engaging in a misleading commercial practice, the consumer can claim:

- (i) compensation for damages;¹⁵
- (ii) annulment of the legal act (*vernietiging*);¹⁶ or
- (iii) rescission of the contract (*ontbinding*).¹⁷

11. In addition to the UCP Act, greenwashing could - at least in theory - also be assessed under the legal concept of non-conformity. This concept, rooted in consumer law, refers to situations where a delivered product or service does not meet the agreed or expected standards. However, the standard remedies under Dutch law for non-conformity - such as repair or replacement - are generally less relevant in the context of greenwashing and will therefore not be further discussed.¹⁸

II.2.1 Compensation for damages

12. A consumer can rely directly on the UCP Act to claim compensation for damage suffered because of a purchase made because of misleading information. In order to bring such a claim, at least three conditions must be met:

- (i) attribution of the green claim that can be qualified as greenwashing (see [paragraph 7](#) above);
- (ii) a causal link between the greenwashing claim and the conclusion of the contract; and

(iii) the consumer must have suffered damage as a result of entering into the agreement.¹⁹

13. The business bears the burden of proving the accuracy and completeness of the information it provides.²⁰ Proving causation is more challenging for consumers, as the reversal of the burden of proof does not relate to causation or the existence of harm.²¹ The consumer must first prove that the 'average consumer' would not have entered into the contract in the absence of the misleading communication and then prove that his contract was concluded as a result of the unfair commercial practice.²² In addition, the consumer must prove and substantiate both the existence and the amount of damages.

14. In addition to invoking the UCP Act, the consumer can rely on general Dutch tort law for failure to comply with a legal obligation.²³ In this case, besides the three aforementioned requirements, the principle of relativity applies.²⁴ This requirement implies that the standard (derived from - for example - the UCP Act) that was violated must have had the purpose of protecting against the damages that occurred (as a result of greenwashing).

15. In relation to consumers, it is questionable whether Dutch tort law serves as a full alternative to the UCP Act in a business-to-consumer context, as the UCP Act already sets clear standards. This may be different for business-to-business relations because the legal standards under the UCP Act are adopted for

¹⁵ Article 6:193 DCC.

¹⁶ Article 6:193j para. 3 DCC.

¹⁷ Article 7:17 DCC.

¹⁸ Article 7:21 DCC.

¹⁹ J.E.S. Hamster, 'Vijftig tinten groen – de vele civiele kleuren van greenwashing', *NTBR* 2022/49, page 13.

²⁰ Article 6:193j para. 1 DCC.

²¹ E.E.C. van Nieveld and F.M. Verburgs, 'Is de consument het kind van de rekening in geval van greenwashing?', *TvOB* 2024/6, page 156.

²² J.E.S. Hamster, 'Vijftig tinten groen – de vele civiele kleuren van greenwashing', *NTBR* 2022/49, page 8.

²³ Article 6:162 DCC.

²⁴ Article 6:163 DCC.

business-to-consumer relations and are therefore only partially applicable to business-to-business relationships, which are less well-defined.²⁵

II.2.2 Annulment of the contract

16. To successfully annul the contract,²⁶ the consumer must prove the causality between the incorrect claim and the conclusion of the contract, as the reversal of the burden of proof does not apply for this remedy. This requirement could be a stumbling block for consumers.²⁷ The fact that the average consumer makes or could make a decision to enter into a transaction that the consumer would not have made otherwise due to the way the product or service was marketed does not automatically mean that the *individual* consumer was influenced by the practice when they decided to enter into an agreement. It is the responsibility of the consumer to state and, if necessary, prove the latter.²⁸ However, it appears that in practice, this is not a significant obstacle. It is not uncommon for Dutch courts to assume that consumers may have been misled into agreeing to something they did not fully understand.²⁹

II.2.3 Rescission of the contract

17. Consumers also have the right to rescind a contract as a whole or in part if a product does not meet expectations, if the product is non-compliant.³⁰ Partial termination may be a solution, for example via a price reduction. In the case of full dissolution, the deviation of the product must be significant enough to justify it. In the context of green claims, it is essential to assess the correlation between the absence of a sustainable aspect and the remaining components of

the product. In general, Dutch courts seem to be more inclined to adjust the price than to completely rescind the contract.³¹

III Empirical analysis of decisions of the RCC

18. Over the past few years, there has been a relatively large number of greenwashing cases (28 cases since 2020)³² before the Dutch Advertising code commission (Dutch acronym: **RCC**, *Reclame Code Commissie*) and by its appellate body, the Board of Appeals (Dutch acronym: **CvB**, *College van Beroep*). In these cases, both individual consumers and (competing) businesses have filed complaints against businesses using claims that could allegedly be characterised as greenwashing. As we will discuss in [chapter IV](#) below, in the cases of *Perfetti Van Melle/Benbits* and *Fossielvrij/KLM*, civil litigation followed after the RCC ruled that Benbits' and KLM's advertisements constituted greenwashing because the advertisements contained green claims that were false and/or misleading.
19. Our analysis of RCC and CvB decisions³³ identifies two key criteria in the assessment of environmental claims: the presentation of an overly positive image and the material likelihood of misleading the average consumer. The line between legitimate green claims and greenwashing is crossed when claims are incomplete, inaccurate, or overly optimistic about the environmental benefits. The RCC and CvB often use terms such as 'incomplete', 'inaccurate', 'suggestive' and 'misleading' to describe such claims. Contextual factors, including the intended audience and the broader societal discourse, are also considered.

²⁵ Articles 6:194-6 :196 DCC.

²⁶ Article 6:193j para. 3 DCC.

²⁷ J.E.S. Hamster, 'Vijftig tinten groen – de vele civiele kleuren van greenwashing', *NTBR* 2022/49, page 8.

²⁸ C.M.D.S. Pavillon, L.B.A. Tigelaar, 'Vernietiging van de overeenkomst bij een oneerlijke handelspraktijk; een hanteerbare sanctie?', *Contracteren* 2018, no. 3, para. 3.2.

²⁹ J.E.S. Hamster, 'Vijftig tinten groen – de vele civiele kleuren van greenwashing', *NTBR* 2022/49, page 8.

³⁰ Articles 7:17 DCC in conjunction with 7:22 para. 1 DCC.

³¹ J.E.S. Hamster, 'Vijftig tinten groen – de vele civiele kleuren van greenwashing', *NTBR* 2022/49, page 8-9.

³² This Quoted was finalized on 20 May 2025. The authors did not consider any relevant developments after that date.

³³ The authors have conducted an empirical analysis into RCC and CvB decisions that can be found on the [website](#) of the SRC and have selected the decisions with the search term "greenwashing".

Greenwashing occurs, for example, when claims are not only factually inaccurate, but also have a significant potential to mislead consumers.

III.1 The RCC

20. The RCC is not a regulatory authority, but a body for handling complaints and disputes in respect of advertisements. The Dutch Advertising Foundation (Dutch acronym: **SRC**, *Stichting Reclame Code*) is the organisation under which the RCC operates. The RCC is funded by advertisers in the Dutch market and deals with the self-regulation system of advertising. These rules, formulated by the advertising industry itself (a form of soft law), are laid down in the Dutch Advertising Code (the **Code**).³⁴ Both businesses and consumers may file a complaint with the RCC if they believe an advertisement breaches the Code (e.g., due to greenwashing). If a violation is found, the RCC may recommend that the advertiser stops the practice. While the RCC cannot impose formal sanctions or award damages, it monitors compliance. RCC decisions can be appealed, which are handled by the CvB. As we will discuss in this [chapter III](#), the RCC has developed a clear standard for assessing greenwashing claims. The 28 RCC decisions so far have not yet sparked a broader wave of case law on greenwashing in the Netherlands, as we will discuss in [chapter IV](#) below.

III.2 Green claims provisions in (self) regulation

21. The RCC assesses green claims based on articles 7 and 8 of the Code. These provisions (self-) regulate unfair and misleading advertising.

Article 7 of the Code reads as follows:

“Advertising shall not be dishonest. Advertising is considered to be dishonest if it contravenes with the requirements of professional devotion, and if it substantially disrupts or may disrupt the economic behaviour of the average

consumer reached, or targeted, as regards to the product. Misleading and/or aggressive advertising is considered to be (by any means) dishonest.”

Article 8 of the Code reads (among others):

“8.1 When assessing whether or not an advertisement is misleading, all characteristics and conditions, the factual context, the limitations of the means of communication, and the public for which it is intended are to be taken into consideration.”

“8.2 All advertising including incorrect information, or information that is unclear or ambiguous for the average consumer in respect of one or more elements as listed in points a to g hereunder, and which would consequently entice or may entice the average consumer to make a decision on a transaction which he would otherwise not have made, is considered to be misleading (..).”

22. Since 1 February 2023, the Code for Sustainability Advertising (Dutch acronym: **CDR**, *Code Duurzaamheidsreclame*) has been in effect in the Netherlands. Article 3 CDR specifically deals with misleading green claims and is therefore - in conjunction with Articles 7 and 8 NRC - currently used by the RCC and the CvB as an assessment criterion in the context of misleading green claims.

Article 3 of the CDR reads:

“3.1 Sustainability claims must be presented in a clear, specific, correct and unambiguous manner. Sustainability advertising may not contain any statements, images, logos or other design or quality marks that could mislead the average consumer, in terms of the overall impression the advertising conveys, about sustainability aspects of the advertised products, or about the advertiser’s contribution to maintaining and promoting sustainability in general, thus leading consumers to make a transactional decision they would not

³⁴ <https://www.reclamecode.nl/engels/dutch-advertising-code/general/>.

otherwise have taken.”

“3.2 When an advertiser communicates its sustainability ambition, it should be made sufficiently clear that it concerns an aim and not the current situation. Such a sustainability claim should not give an overly positive picture of the current and future results in the field of sustainability. It is misleading to advertise an aspiration that cannot reasonably be expected to be achieved.”

III.3 Analysis of RCC’s greenwashing decisions

23. An empirical examination of the RCC and CvB rulings shows that two standards have become central in assessing green claims: (i) ‘painting an overly rosy picture’ and (ii) materially distorting the economic behaviour of the average consumer. Painting an overly rosy picture has already been adopted by the civil court in the *Fossielvrij/KLM*-ruling (see in [paragraph IV.1](#) below).

III.3.1 Painting an overly rosy picture

24. From the RCC decisions, it appears that incompleteness of information was qualified as painting an overly rosy picture in the first RCC decisions regarding greenwashing. In later RCC decisions, this standard was also based on inaccuracy, suggestive wording and raising expectations that were not (yet) fulfilled. At the same time, the application of this standard is ambiguous. The RCC and the CvB use different terms - such as ‘inaccurate’, ‘distorted’, ‘one-sided’ or ‘suggestive’ - often without a sharp distinction. The degree of expressiveness also varies; sometimes providing an overly optimistic view is directly cited as a reason for misguidance, sometimes it is only implicitly assumed. Nevertheless, some touchstones can be identified in the rulings discussed. In exceptional cases, the CvB has permitted one-sided or incomplete expressions, provided they are clearly understood by the average consumer to present a positive perspective.

In this regard, context and social debate can play a mitigating role. It is important to note that consumer knowledge may not always have a significant impact.³⁵

25. An example of a RCC decision in which the RCC found that an advertiser had painted too rosy a picture were Shell’s 2024 advertisements. The complainant argued that Shell’s advertisements, which appeared at bus stops, in newspapers, on websites, on TV and in cinemas, gave a misleading impression of Shell’s actual contribution to the energy transition. This was mostly because the adverts only highlighted specific aspects, failing to mention the ratio between fossil and low-carbon energy products in Shell’s overall business model. The case revolved around the following statements by Shell:³⁶

“And before you know it, you are placing fast chargers throughout the Netherlands. Discover more” accompanied by Shell’s logo.

“And before you know it, you are building a factory that makes biofuel. Discover more” accompanied by Shell’s logo.

“It starts with one wind turbine. And before you know it, you are building four wind farms for power from offshore wind. Discover more” accompanied by Shell’s logo.

26. The CvB blamed Shell for not expressing that fossil activities were still part of its core business.³⁷ The fact that the CvB assumed that the average consumer knows Shell as a supplier of fossil fuels did not alter this. Since Shell did not explicitly state that fossil activities were part of its core business, only the business logo and the message that Shell is committed to sustainable energy remained. This gave the

³⁵ CvB 13 November 2024, [2024/00022 – CVB](#).

³⁶ CvB 13 November 2024, [2024/0002in 2 – CVB](#).

³⁷ CvB 13 November 2024, [2024/00022 – CVB](#).

average consumer too rosy a picture of the phase of the energy transition Shell was in.³⁸

27. Furthermore, the context may necessitate applying the standard to a specific target group, rather than the average Dutch consumer. The RCC did this with a decision on 21 December 2020 in which the RCC decided that too a rosy picture of how pigs are kept alive was portrayed to children. This decision was upheld by the CvB.³⁹
28. The RCC and the CvB assign weight to the relativity of expressions. For example, the expressions that a programme “[contributes] to a more sustainable future of aviation” and “SAF has the potential to reduce CO2 emissions by up to 85 per cent compared to fossil fuel” did not paint too rosy a picture, according to a CvB decision in 2020.⁴⁰ In doing so, the RCC (and, affirmatively, the CvB) emphasised that the expression was clearly forward-looking and spoke only of potential for reduction; the expressions were therefore not absolute. There was no suggestion embedded about the extent to which SAF was already being used and/or CO2 emissions reduced. By only highlighting the potential of SAF in the future, the expressions did not provide a sufficiently accurate representation of the relationship between the use of SAF and regular paraffin, nor of SAF as a solution to the climate problem.⁴¹

III.3.2 Materially distorting the economic behaviour of the average consumer

29. The second standard, as set out in Article 5 of the UPC Directive and Article 7 of the Code, is that the economic behaviour of the average consumer must not

be materially distorted. This is a standard of assessment for unfairness. In that context, misguidance is a form of materially distorting economic behaviour. In practice, however, a trend can be discerned in which the RCC and the CvB have started to apply this standard specifically in the assessment framework of misguidance, especially as regards to green claims. In addition, this standard is linked to providing an overly optimistic view. It could be possible that civil courts will also apply this standard or similar ones in future civil cases.

30. An example of application of the standard in the context of green claims can be found in a 2022 RCC decision.⁴² When Albert Heijn advertised with the statement “Consumers again find Albert Heijn to be the most sustainable supermarket”, the individual complainant in the proceedings argued that the supermarket chain was not allowed to market itself as such. Although Albert Heijn came out on top in a Sustainable Brand Index 2022 survey, there was no statistically significant difference between number one and number two, as Albert Heijn also acknowledged. The RCC considered that when an advertiser uses a title as ‘winner’ in its advertising it has a responsibility, in the context of professional diligence, to make sure that such an outcome and the underlying research are correct. According to the RCC, this applies even more to topics such as sustainability.⁴³ The RCC found that Albert Heijn failed to meet its duty of professional diligence by not contacting the research bureau to clarify the study’s findings before filing its complaint. As a result, Albert Heijn acted irresponsibly. Additionally, the green claim in question was considered likely to mislead the average consumer, thereby violating Article 7 of the Code.

³⁸ CvB 13 November 2024, [2024/00022 - CVB](#), para. 7.16.

³⁹ CvB 16 March 2021, [2020/00480 - CVB](#).

⁴⁰ CvB 13 October 2020, [2020/00136/1 - CVB](#).

⁴¹ CvB 13 October 2020, [2020/00136/1 - CVB](#).

⁴² RCC 2 November 2022, [2022/00214](#).

⁴³ RCC 2 November 2022, [2022/00214](#), para. 1-6.

31. Since the CDR came into force, the CvB has explicitly applied the standard under Article 3.1 CDR, on misleading green claims.⁴⁴ The case revolved around the hashtags “#palmoilfree” and “#palmoilfreeproducts” that The Flower Farm used to advertise its hazelnut spread on Instagram. However, The Flower Farm could not exclude the fact that palm oil was not used throughout the production chain - particularly in the feeding of dairy cows.⁴⁵ The CvB considered:

“Unlike The Flower Farm, the Board considers that the false suggestion that ‘palm oil-free’ as part of the sustainability claim in this case is likely to materially distort the economic behaviour of the average consumer. Precisely those consumers who, from a sustainability perspective, attach importance to the exclusion of any form of palm oil (processing) in or on behalf of a food product will be disappointed in the expectations raised by the expressions about avoiding palm oil. The expressions appeal specifically to this consumer. Based on the foregoing, the hashtags “#palmoilfree products” and “#palmoilfree” should be deemed to be in violation of Section 3.1 CDR to the extent that they can be associated with The Flower Farm’s hazelnut paste in the context of the sustainability claim.”⁴⁶

32. Substantially distorting the economic behaviour of the average consumer thus began as a standard of unfairness under Article 7 of the Code but has gradually shifted in the context of green claims to a standard of misleading. It is therefore not inconceivable that civil courts will apply this standard in the context of greenwashing. At the same time, however, it has been shown that consumer

sophistication is not always a sufficient consideration, as demonstrated by the RCC’s decision in a case against Shell.⁴⁷

IV Recent Dutch case law

33. Below we will discuss three recent greenwashing cases in the Netherlands. In two of these cases, the RCC ruling was considered useful for bringing civil greenwashing claims.

IV.1 Fossielvrij/KLM

34. On 6 July 2022, Fossielvrij NL (**Fossielvrij**) initiated a class action against Dutch Royal Airlines KLM (**KLM**) before the District Court of Amsterdam.⁴⁸ Fossielvrij argued that 19 advertising statements by KLM were misleading and unlawful, and thus potentially constituted greenwashing. The advertisements included various green claims under the Fly Responsibly campaign, the product CO2ZERO and the ‘green’ marketing claims around the KLM Real Deal Days. Prior to these class action, Fossielvrij initiated complaint proceedings against part of KLM’s advertisements with the RCC. On 8 April 2022, the RCC determined that KLM’s advertisements were misleading and recommended that KLM ‘no longer advertise in such a manner’.⁴⁹ However, the RCC does not have the authority to impose a ban. KLM essentially disregarded the decision, which led Fossielvrij to initiate civil court proceedings.
35. In the class action, Fossielvrij demanded a declaratory judgment, asserting that KLM’s advertisements are misleading and unlawful, and that KLM’s

⁴⁴ CvB 10 October 2023, [2023/00232 - CVB](#).

⁴⁵ CvB 10 October 2023, [2023/00232 - CVB](#), para. 1-7.5.

⁴⁶ CvB 10 October 2023, [2023/00232 - CVB](#), para. 7.6-7.7.

⁴⁷ CvB 13 November 2024, [2024/00022 - CVB](#).

⁴⁸ [Writ of summons 6 July 2022 of Fossielvrij against KLM](#).

⁴⁹ RCC 8 April 2022, [2021/00553](#).

actions constitute a violation of fundamental rights and the UCP Act.⁵⁰

Alternatively, Fossielvrij based its claim on the Dutch tort law.⁵¹ In addition, Fossielvrij claimed from KLM (ii) an injunction to (a) disclose the advertisements and (b) publish similar advertisements in the future. Finally, Fossielvrij formally requested that KLM remove and rectify the advertisements.

36. Fossielvrij's objective was to achieve clarity regarding the definition of misleading advertisements. Fossielvrij argued that a court ruling would be necessary to establish this clarity. The District Court of Amsterdam concurred with Fossielvrij that a court judgment was necessary to clarify when advertisements can be misleading in the context of greenwashing in business-to-consumer relationships.
37. The District Court of Amsterdam ruled that 15 out of 19 of KLM's advertisements were misleading and unfair, and therefore unlawful.⁵² However, as KLM had stopped using these advertisements during the proceedings, the court could not issue an order for them to be removed. The court also ruled that Fossielvrij's request for an injunction against future KLM advertisements was too broad and disproportionate. Due to the media attention surrounding the case and the judgment, the District Court of Amsterdam deemed it unnecessary to rectify the advertisements. Nevertheless, it seemed that this rectification claim was the reason for Fossielvrij being admissible in its claims, since the advertisements had already been removed by KLM during the proceedings and KLM argued that Fossielvrij therefore no longer had a sufficient interest in its claims.
38. In the judgment, the court ruled that businesses like KLM are allowed to inform consumers about their sustainability ambitions, provided that the information is

honest and clear. These claims have a positive impact on the climate if they are not misleading. However, incorrect or misleading information about sustainability can distort consumers' economic behaviour, constituting 'greenwashing'. The district court identified four reasons why 15 of 19 of KLM's claims qualified as 'greenwashing': (i) lack of concrete information about the environmental benefits of KLM products, (ii) exaggeration of the contribution of measures to climate ambitions, (iii) incorrect or misleading information about climate impact and (iv) a lack of transparency on the minimum impact of measures.

39. The District Court of Amsterdam ruled that the advertisements qualified as greenwashing under the UCP Act. However, the court did not specify to what extent the advertisements infringed which specific articles of law.⁵³ By doing so, the judgment does not clarify whether, for example, consumers could cancel contracts with KLM that were concluded because of one or more of the 15 advertisements? And could KLM be considered liable for any damages? These questions remain unanswered, which is to be expected given the nature of Fossielvrij's claims. Despite leaving some questions unanswered, the court's ruling in this case set a precedent for addressing greenwashing claims.

IV.2 Perfetti van Melle/Benbits

40. In 2023, the Court of Appeal rendered a judgment in a business-to-business case on alleged misleading statements regarding chewing gum in the case of *Perfetti van Melle Benelux/Benbits*.⁵⁴ Perfetti van Melle and Benbits are both businesses selling chewing gum. Perfetti van Melle argued that Benbits had engaged in greenwashing, by stating in advertisements that its chewing gum was "natural".

⁵⁰ As incorporated within Articles 6:193a through 6:193j DCC.

⁵¹ Article 6:162 para. 2 DCC.

⁵² District Court of Amsterdam 20 March 2024, ECLI:NL:RBAMS:2024:1512 (*Fossielvrij/NL/KLM*).

⁵³ Articles 6:193a-6:193j DCC.

⁵⁴ Court of Appeal Amsterdam 21 March 2023, ECLI:NL:GHAMS:2023:725 (*Perfetti Van Melle Benelux/Benbits*).

Perfetti van Melle argued that this advertisement was misleading, unlawful and therefore an unfair commercial practice.

41. Before initiating proceedings before the Dutch courts, Perfetti van Melle submitted the case to the RCC. The RCC ruled that the advertisement of Benbits was not sufficiently substantiated and was therefore considered to be misleading.⁵⁵
42. The Amsterdam Court of Appeal only accorded relative value to the RCC decision because the RCC did not consider the recent evidence and was therefore not fully aware of the latest research results submitted by Benbits in the civil proceedings before the court of appeal. Consequently, the court of appeal dismissed Perfetti's claims for a ban on the advertisement, as Benbits was able to substantiate its statements with new evidence that had not been available during the proceedings at the RCC. Perfetti van Melle had failed to convincingly argue that Benbits's statements would cause considerable damage, while the consequences for Benbits, if the claim were to be granted, would be considerable, especially in its attempt to market its product as a more expensive alternative.

IV.3 ANVR and TUI/Municipality the Hague

43. In the case of General Dutch Association of Travel Companies (Dutch acronym: **ANVR**, *Algemene Nederlandse Vereniging van Reisondernemingen*) and TUI against the Municipality of The Hague, ANVR sought injunctive relief at the District Court of The Hague against a municipal decision.⁵⁶ On 12 September 2024, the Municipality Council of The Hague introduced a ban on advertising products and services related to fossil fuels, flight holidays, airline tickets, grey electricity contracts, gas contracts, cruise trips, or cars with fossil or hybrid fuel engines in public spaces. The ban aimed to protect residents' health, mitigate climate change, and enhance the environment. The General Local Government Ordinance

(Dutch Acronym: **APV**, *Algemene Plaatselijke Verordening*) was amended to reflect this change.

44. ANVR argued that the ban violated the Dutch constitution, the UCP Directive, general principles of proper administration, and was unlawful towards ANVR (among others based on the unfair commercial trading practices rules). The Municipality of The Hague was joined by the Foundation Climate Tipping Points, which includes Fossielvrij Onderwijs and Fossielvrij Den Haag. Both the Municipality and Fossielvrij contested ANVR and TUI's claims. ANVR and TUI were allowed by the District Court to join in the proceedings by the Dutch tour operators Prijsvrij.nl and D-Reizen.
45. The District Court ruled that the prohibition on fossil advertisements falls under the APV and acknowledged the Municipality's autonomy in implementing measures benefiting its residents. The court emphasized that judicial intervention is only justifiable if the Municipality's choices are evidently incorrect or unlawful. The court found no need to revoke the ban or prohibit its enforcement and dismissed ANVR's claims.
46. In particular, the District Court ruled that the ban on fossil fuel advertisements did not violate the UPC Directive. ANVR (and the Dutch tour operators that joined ANVR) argued that consumers could not be granted a higher level of protection than that set out in the UPC Directive, except in relation to certain subjects mentioned in the Directive, such as financial services and the protection of consumers' health and safety (e.g., regarding alcohol, tobacco or pharmaceutical products). ANVR argued that the ban on fossil advertisements could not be included among these exceptions and offered a higher level of consumer

⁵⁵ CvB 6 April 2022, [2021/00281](#).

⁵⁶ District Court of The Hague 25 April 2025, ECLI:NL:RBDHA:2025:6874.

protection than permitted under the UPC Directive. For this reason, too, the ban on fossil advertisements was unmistakably non-binding, according to ANVR.

47. The District Court did not accept this line of reasoning. The UPC Directive protects consumers' economic interests against unfair business practices by businesses. The Municipality referred to the guidelines for implementing the UPC Directive, published by the European Commission. These guidelines state that the UPC Directive does not apply to national rules protecting interests that are not economic in nature and therefore does not affect Member States' ability to adopt rules on commercial practices for health, safety, or environmental protection purposes. The District Court ruled that the Municipality had sufficiently substantiated that the ban on fossil advertisements aimed to prevent the negative effects of climate change and protect the health of residents and visitors to The Hague, rather than protect the economic interests of consumers. Considering the above, ANVR had not demonstrated that the ban on fossil advertisements fell within the scope of the UPC Directive.

V Regulatory trends in The Netherlands

48. The Authority for the Financial Markets (Dutch acronym: **AFM**, *Autoriteit Financiële Markten*) and the Authority for Consumers & Markets (Dutch acronym: **ACM**, *Autoriteit Consument & Markt*) are regulatory bodies that monitor and supervise the financial and consumer markets. The AFM supervises the financial markets and its market participants.⁵⁷ The ACM (among others) monitors competition, protects consumer interests and regulates specific sectors, such as energy and

telecommunications.⁵⁸ Both the AFM and the ACM focus on ensuring compliance with consumer regulations. The demarcation of the AFM's powers, in particular, is determined by the concept of 'financial services or activities'.⁵⁹ The AFM focuses on these financial services or activities.⁶⁰

49. In the Netherlands, Dutch regulators have established a more comprehensive regulatory framework to combat greenwashing used to start the conversation with the relevant market players and to take regulatory measures if need be. In the context of greenwashing, the regulatory framework consists of the guidelines of the AFM and the ACM on green claims.⁶¹

V.1 Examples of proactive supervision by both the AFM and ACM on greenwashing

50. The risk of consumers being misinformed about the true sustainability of products and services has led to various legislative initiatives on green claims by both EU and national regulators. Whilst legislative processes require a greater investment of time, national regulators have taken the necessary steps to combat greenwashing in the meantime such as the guidelines of the AFM and the ACM regarding sustainability-related claims.⁶² Furthermore, the AFM and the ACM actively monitor compliance with greenwashing regulations and take enforcement action, such as imposing penalties on non-compliant businesses. As of 2023, the AFM has identified sustainability as a priority for monitoring.⁶³
51. The ACM not only monitors green claims made by businesses but also plays a more active role in preventing sectoral greenwashing practices, by proactively

⁵⁷ Article 1:25 of the Financial Supervision Act.

⁵⁸ Article 2:5 of the Act establishing the Authority for Consumers & Markets.

⁵⁹ C.W.M. Lieveke, 'Wet handhaving consumentenbescherming: de rol en het speelveld van de AFM', *FR* 2022/5, page 109-119.

⁶⁰ A 'financial service or activity' is defined in article 1 of the Consumer Protection Enforcement Act.

⁶¹ <https://www.afm.nl/nl-nl/sector/themas/duurzaamheid/duurzaamheidsclaims> and <https://www.acm.nl/nl/publicaties/leidraad-duurzaamheidsclaims-0>.

⁶² [Duurzaamheidsclaims](https://www.acm.nl/nl/publicaties/leidraad-duurzaamheidsclaims-0) and <https://www.acm.nl/nl/publicaties/leidraad-duurzaamheidsclaims-0>.

⁶³ [guidelines-sustainability-claims.pdf](#), please be also referred to our earlier blog on this subject: [Sustainability claims and greenwashing: guidance at the national and European level | Loyens & Loeff](#).

sending letters to businesses in different sectors. The ACM sent a letter to 170 businesses in the energy, clothing and dairy sectors in May 2021. In the letter, the ACM urges businesses active in the sector to review their green claims and adjust them where necessary to bring them in line with the UCP Act.⁶⁴ On 11 April 2024, the ACM urged the Dutch supermarket chain Albert Heijn to remove the advertising claim that Albert Heijn was “the most sustainable supermarket”.⁶⁵ Albert Heijn complied with ACM’s instructions. The ACM issued the instruction after the RCC decided that Albert Heijn’s advertisement was misleading (as discussed in [paragraph 30](#) above).

52. On 30 April 2024, the ACM and other European consumer watchdogs called upon 20 European Airlines to revise their misleading green claims within 30 days.⁶⁶ The joint action of the ACM and other European regulators was instigated following a complaint from the European consumer organisation BEUC, a European Commission Notice and other EU consumer authorities. The regulators have found that many airlines green claims that can be considered as misleading actions or omissions under the UCP Directive.⁶⁷ Examples of misleading green claims include exaggerating the impact of ‘sustainable’ fuel and CO2 offsetting, which have minimal impact on flights’ real-world environmental impact. Airlines are being asked to adjust their claims. Those that fail will face penalties.
53. On 24 April 2025, the ACM sent a letter to businesses in the food industry, in which it urged businesses to check their green claims and align them with the ACM guidance on green claims.⁶⁸ Another more recent example of the proactive role the ACM takes - together with various other regulators which are member of the International Consumer Protection and Enforcement Network (**ICPEN**) -

is another open letter to the fashion retail sector of 30 April 2025.⁶⁹ In this letter, the ACM urges fashion retailers to review their environmental (green) claims to ensure they comply with consumer protection laws. The ACM aims to improve the transparency and accuracy of environmental claims in the fashion retail sector, helping consumers make informed choices and encouraging sustainable practices within the sector.

54. The AFM and ACM play a proactive role in tackling greenwashing by providing guidance, carrying out monitoring activities and taking enforcement action. These regulators aim to ensure that green claims are accurate and not misleading by providing sector-specific guidance, monitoring, and enforcement actions. This regulatory approach reflects a broader shift towards administrative oversight as an alternative to civil litigation for promoting transparency and consumer trust in green communications.

VI Upcoming EU legislation of greenwashing

55. The growing commercialisation of sustainability, driven by consumer demand, has led to an increase in green claims by businesses and thereby raising the risk of greenwashing. Recently, the European legislator has proposed new regulations to prevent and penalise misleading environmental claims and enhance consumer protection.

VI.1 The Empowering Consumers for the Green Transition Directive

56. As part of the New Consumer Agenda and the Circular Economy Action Plan of the EU, the regulation of greenwashing will be further intensified and harmonized

⁶⁴ <https://www.acm.nl/nl/faq-duurzaamheidsclaims-nav-sectorbrieven>.

⁶⁵ [Supermarktketen Albert Heijn verwijdt onjuiste duurzaamheidsclaims na actie ACM | ACM.nl](#).

⁶⁶ [ACM en Europese consumententoezichthouders: luchtvaart moet stoppen met greenwashing | ACM.nl](#).

⁶⁷ [Action against twenty airlines for misleading greenwashing practices](#)

⁶⁸ <https://www.acm.nl/system/files/documents/sectorbrief-over-duurzaamheidsclaims-aan-levensmiddelen-bedrijven.pdf>.

⁶⁹ https://icpen.org/sites/default/files/2025-04/ICPEN%20MEC%20Open%20letter%20to%20the%20fashion%20and%20textile%20industry%20FINAL%20300425_0.pdf.

in the coming period as follow up on the European Green Deal. The European Commission has made two proposals to this end: (i) the Empowering Consumers for the Green Transition Directive (**ECGT Directive**)⁷⁰ and (ii) the Green Claims Directive.⁷¹ The ECGT Directive and Green Claims Directive have been in the works for quite some time.

57. The ECGT Directive will enter into force on 27 September 2026. The ECGT Directive will affect two existing consumer EU law directives: the Consumer Rights Directive⁷² and the aforementioned UCP Directive. The proposed changes aim to better align EU consumer law with the green transition, supporting more sustainable consumer choices in line with the European Green Deal. Consumers will benefit from clearer, harmonised information on product durability, reparability and legal guarantees. By 27 September 2025, the European Commission will define the design and content of standardised labels for commercial durability guarantees and legal guarantee notices through implementing acts.⁷³
58. Furthermore, the ECGT Directive will explicitly prohibit vague environmental claims, meaning that businesses will no longer be permitted to self-declare as 'green' or 'environmentally friendly' if they cannot demonstrate that they actually are. Moreover, the utilisation of voluntary sustainability (green) logos deemed unreliable will be prohibited.

VI.2 The Green Claims Directive

59. The most recent version of the Green Claims Directive introduces specific rules that complement the proposed amendments to the ECGT Directive. Both aim

to jointly address greenwashing. However, the Green Claims Directive extends beyond the ECGT Directive: it sets detailed requirements for how businesses must substantiate, communicate, and verify environmental claims, with a clear focus on voluntary 'green' claims in B2C contexts. A key feature of the Green Claims Directive is the mandatory third-party verification of environmental claims. Once verified, businesses receive an EU-wide certificate confirming compliance, which protects them from regulatory penalties.

60. On 20 June 2025, the European Commission announced its intention to withdraw the Green Claims Directive proposal, after receiving a letter from lawmakers in the European Parliament expressing their concerns over the direction of the negotiations. In particular, the Commission cited concerns over the inclusion of micro-enterprises in the scope of the Directive. However, a formal withdrawal of the proposal requires the approval of the College of 27 EU Commissioners.⁷⁴
61. The Commission has since clarified that a formal withdrawal would only be considered if micro-enterprises were to remain within the scope of the Green Claims Directive. This outcome has already been agreed to exempt by the European Parliament. Despite the confusion over the support for the Green Claims Directive, the European Commission has reiterated its commitment to advancing the Green Claims Directive as a key component of the EU's broader strategy to regulate green claims and strengthen consumer protection.⁷⁵
62. While the proposal formally remains on the table, the path forward is still uncertain. As of 1 July 2025, the interinstitutional negotiations will be steered by Denmark

⁷⁰ Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information (Empowering Consumers for the Green Transition Directive), COM(2022) 143 final, 2022/0092(COD), 30 March 2022.

⁷¹ Proposal for a Directive of the European Parliament and the Council on substantiation and communication of explicit environmental claims (Green Claims Directive), COM(2023) 166 final 2023/0085 (COD), 22 March 2023.

⁷² Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance.

⁷³ https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/sustainable-consumption_en.

⁷⁴ Please refer to our newflash regarding the possible withdrawal of the Green Claims Directive proposal: [ESG newflash: Green Claims Directive heading towards its end? | Loyens & Loeff](#).

⁷⁵ Please refer to our latest update on the status of the Green Claims Directive proposal: [ESG Update: Green Claims Directive is here to stay? | Loyens & Loeff](#).

as the new rotating Presidency of the Council. Following Italy's withdrawal of support of the Green Claims Directive, the Council will be required to obtain a new negotiation mandate. The timing and direction of further discussion will largely depend on the Council's ability to re-establish a common position.

VI.3 Remedies and enforcement

63. As discussed in [paragraph 57](#) above, the ECGT Directive will supplement to the Consumer Rights Directive and UCP Directive. The remedies that are available in the Netherlands under the UCP Directive are discussed in [paragraph II.2](#) above. As the UCP Directive has been incorporated into Dutch law through the UCP Act, Dutch legal remedies are available to consumers who have suffered damages as a result of a UCP Directive violation. The ACM is responsible for enforcing the UCP Directive.

VII What is next?

64. In this *Quoted*, we have discussed the existing and upcoming legal framework regarding greenwashing in the Netherlands and the EU, the empirical analysis that we conducted into RCC decisions, regulatory trends and Dutch greenwashing cases.
65. The legal framework for assessing potential greenwashing claims has been quite clear since the judgment of the Amsterdam District Court in the *Fossielvrij/KLM* case (as discussed in [paragraph IV.1](#) above). This judgment is regarded as an important ruling that clarifies what could constitute greenwashing in a business-to-consumer context under Dutch civil law. The substantial amount of RCC decisions addressing greenwashing issues has resulted in the establishment of clear standards for both standardising greenwashing and preventing it. It appears that Dutch civil courts adhere to these same standards. In addition, Dutch

regulators such as the AFM and the ACM have been proactive in their efforts to prevent greenwashing by publishing guidelines and proactively sending letters to businesses in various sectors (see [chapter V](#) above). The ECGT Directive will impose further obligations, explicitly prohibiting vague green claims. The Green Claims Directive may introduce harmonized EU guidance on when a green claim qualifies as greenwashing. However, legal ambiguity still persists as the next steps regarding the Green Claims Directive proposal remain uncertain.

66. We do not expect that there will be a significant increase in greenwashing litigation in the Netherlands in the coming years, because existing greenwashing standards are already relatively well-established and will continue to evolve with the introduction of forthcoming EU regulations and regulatory guidance. Furthermore, following the *Fossielvrij/KLM* case, there is no immediate imperative to initiate new greenwashing cases before civil courts as the judgment serves as a guiding precedent. However, disputes arising from a judgment that is rendered in a greenwashing case, may give rise to further civil litigation in the future (e.g., the partial annulment of a consumer contract resulting in a potential pay-out to consumers that want their money back, or damages).
67. The so far limited number of civil greenwashing cases in the Netherlands can be attributed to the proactive role of regulators such as the AFM and ACM, who have issued updated guidelines and actively monitor compliance. Additionally, the accessible complaint procedure before the RCC offers an effective and less costly alternative to civil litigation. While RCC decisions may serve as a basis for civil claims, most greenwashing cases are likely to remain within the administrative or self-regulatory domain rather than progressing to civil courts.
68. In its 2023 annual report, the SRC questioned whether businesses will continue to make green claims in advertising, anticipating a decline due to upcoming EU

legislation and the rise of greenhushing.⁷⁶ However, in its 2023 annual report the SRC did not expect cases of greenwashing before the RCC to disappear entirely.

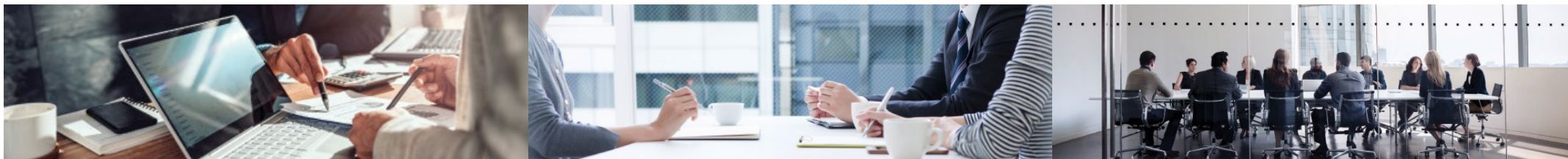
69. In its 2024 annual report, the SRC stated that green claims remained a prominent theme in advertising, as reflected in the 41 decisions that the RCC ruled on concerning green claims in 2024.⁷⁷ Unlike in previous years, where absolute claims such as “CO2-neutral” or “climate neutral” were frequently challenged, these types of green claims were notably absent according to the RCC from the 2024 complaints. Instead, concerns shifted toward green ambitions and the use of terms like “cleaner,” “green energy,” “sustainable heating,” “most sustainable in the world,” and “newest energy.” According to the RCC, the trends in 2024 show complainants are still critical of how green claims are presented.
70. These trends seem to suggest that contrary to the SRC’s expectations in its 2023 annual report, the commercial usage of green claims has not diminished. In fact, the continued number and nature of greenwashing complaints in 2024 indicate that green claims are still widely used. Although these trends do not yet point to a significant rise in civil litigation, the persistent critical stance toward green claims in advertising - particularly regarding the framing and terminology used - suggests that civil litigation risks cannot be ruled out. Nevertheless, in line with our expectations, most greenwashing disputes continue to be addressed through regulatory or self-regulatory mechanisms (such as the RCC).
71. That said, regulatory sanctions - such as fines - may still serve as a trigger for civil litigation in greenwashing cases, as has been observed in other areas such as mass claims and competition law. The feasibility of such civil litigation remains uncertain, particularly due to the difficulty of quantifying damages. Individual cases

concerning the potential consequences of greenwashing, such as annulments or damages claims, may arise but are expected to remain limited and case specific.

72. The future of greenwashing, as well as the related liability and civil litigation risks, remains uncertain. The confusion around the status of the Green Claims Directive has created ambiguity around EU-level harmonisation. Nevertheless, the ECGT Directive will strengthen the legal framework on greenwashing by explicitly prohibiting vague or unsubstantiated green claims and will clarify the regulations with which businesses must comply. In any case, businesses will face increasing scrutiny in the evolving legislative landscape on greenwashing. While most greenwashing disputes are expected to be resolved through regulatory or self-regulatory mechanisms, the risk of civil litigation cannot be ruled out.

⁷⁶ https://www.reclamecode.nl/media/0gxaym2/src_code_opmaak-jaarverslag-uitgebreid_2024_online_def-2.pdf.

⁷⁷ <https://www.reclamecode.nl/media/jfnlxn3o/src-jaarverslag-2024.pdf/>.



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