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

Emma Sammons

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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. 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). Unfortunately, to compete for eco-conscious consumers, these brands often overstate their efforts to become environmentally friendly. This is a harmful process known as “greenwashing.”

One industry that has become notorious for greenwashing is the fashion industry. 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. Vying for consumers’ attention in a competitive market, some companies such as H&M, Zara, and ASOS have gone from adhering to the traditional four-season schedule of releasing garments to nearly weekly through a series of “micro-seasons.” 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. This inherently unsustainable model has been criticized as customers have shifted towards the desire to make more sustainable purchases.

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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.


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


5 Robinson, supra note 3.


8 Id.

purchases. To appease these demands, fast fashion brands have made small steps towards becoming eco-friendly such as using more sustainable fabrics. 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.

In recent years, countries and individual citizens globally have increased efforts to protect consumers from greenwashing by the fashion industry. 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. 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. 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.


12 See Robinson, supra note 3.


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. Specifically, the CMA has stated it will begin scrutinizing the environmental claims made by ASOS and Boohoo, as well as other fashion companies.

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. Hoping to become a carbon-neutral state by 2050, France has specifically tightened representations about products’, services’, and companies’ carbon outputs.

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.” However, the effects of fast fashion consumption, manufacturing, and dumping are not confined to the United States, United Kingdom, and France. 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

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18 Id.
19 See Webb, supra note 13.
20 See id.
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. 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. Three years later, Westerveld remembered the incident and wrote an article in a New York literary magazine, coining the term “greenwashing.” 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. 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. 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.

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

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24 Id.
25 Id.
26 GREEN BUS. BUREAU, supra note 4.
27 Id.
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. 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.

More specifically, greenwashing falls under the umbrellas of either selective disclosure or decoupling. Selective disclosure entails embellishing information related to positive environmental performance while concealing information about negative environmental impacts. 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. Decoupling, on the other hand, occurs when companies put a positive spin on some actions despite having a record of negative actions. Decoupling may occur when a company starts a campaign to plant trees for every garment purchased yet continuously utilizes unsustainable, or outright harmful, practices. 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.

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

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30. Id.
31. Id.
33. Id.
34. See id.
35. Id.
36. See id.
considerations including the meaning of any terms used, the qualifications and explanations of what is said, and the evidence supporting those claims. 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. Information that is not included in an advertisement or is hidden may also be equally indicative of greenwashing. 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.

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. In 2000, less than 50 billion pieces of clothing were produced worldwide. In 2019, that number surpassed 130.6 billion. This surge in production is due in part to the rise of fast fashion companies. Fast fashion is the rapid design, production, and sale of high volumes of clothing items. 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, 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.
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 Niinimaki et al., The Environmental Price of Fast Fashion, 1 NATURE REVIEWS. EARTH & ENVIRON’Y, 189, 189–200 (Apr. 7, 2020).
46 Id.
47 Stanton, supra note 6.
hasty production. As humans increasingly desire (and often expect) to obtain products immediately, the fashion industry has sped up to deliver. 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. As a result, consumers can purchase and obtain a virtually endless cycle of clothing at any time.

Until the mid-1900s, the fashion industry adhered to a strict four seasons schedule for releasing new lines of pieces. 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. 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.

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

48 Id.
50 Id.
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 RUASTILLA & CHRISTOPHER SPRIEGMANN, 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. 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. 

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. 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.

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. 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. The fast fashion model encourages consumers to shop constantly, keep up with trends that are produced weekly, and to consider items as virtually disposable. In fact, the average U.S. consumer disposes of approximately eighty pounds of garments every year, amounting to five percent of landfills. Every second, the equivalent

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61 Id.


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.


66 Bick et al., supra note 22.

67 Id.
of a garbage truckload of clothing is burnt or buried in a landfill. Moreover, fashion companies produce so much material that clothing often ends up unsold and “dumped” in lower and middle-income countries for sale. 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.

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. In some instances, these marketing claims are truthful indicators of truly sustainable practices and materials. However, often the claims offer only a green-gilded snapshot of a much larger picture, although this may not be clear to a consumer. 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.

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. 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. Notably, H&M was the brand analyzed in the study with the highest

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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.


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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{77} Id.


\textsuperscript{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. The governments of these countries are also actively investigating fashion companies’ potentially greenwashed advertisements. Examples of anti-greenwashing action taken by citizens, governments, and NGOs are also included to demonstrate the wide breadth of interest in enforcement. 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. 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. 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.
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.” In reality, the marketer buys wind energy for only 50% of the energy it uses to make the clothing in the line. 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. 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. 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. Both companies were charged with making deceptive environmental claims, claiming that the “bamboo” textiles were made using eco-friendly processes. In reality, the textiles contained rayon that was converted from bamboo through a process that requires toxic chemicals and results in hazardous pollutants. 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.

94 Id. § 260.15(d).
95 Id.
96 Id.
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.
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).” Specifically, “products that reference or imply fiber content must disclose the generic fiber names recognized or established by the FTC.” 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.

The D.C. District Court further ordered both companies to stop making deceptive claims, which includes false or unsubstantiated claims. 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’s and a penalty of $3 million from Walmart. In addition, both companies must comply with the FTC’s demand to provide mandatory reports for the next decade.

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. 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.

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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.
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

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\(^{110}\) *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.

Misrepresentations at the expense of consumers who are willing to pay a premium due to their belief that they are buying sustainable products.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{122} Much of the products thus end up in second-hand clothing markets, and then landfills and incinerators.\textsuperscript{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.\textsuperscript{124} The recycling industry cannot keep up with the number of garments purchased and tossed.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.

\begin{itemize}
\item[119] Commodore, supra note 13, at 2; see Shendruk, supra note 118.
\item[121] \textit{id.}
\item[122] Commodore, supra note 13, at 6.
\item[123] \textit{id.} The complaint does not cite from where this information was collected. \textit{See generally id.}
\item[124] \textit{See id.}
\item[125] \textit{See id.}
\item[126] \textit{id.}
\item[127] \textit{id.} at 8.
\item[128] \textit{id.} at 12–13.
\end{itemize}
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

\(^{135}\) 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”). 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. However, the fact pattern states that the same production process is still followed, using significant amounts of energy. Additionally, some of the other materials in the product are not recyclable and require specialist disposal. This is a greenwashing tactic commonly employed by fast fashion companies. A garment is marketed as being more eco-friendly, yet the garment is not made entirely out of recycled or recyclable materials. 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.

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. 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.” The Case Study also labels the language as vague because the advertisement does not explain what “environmentally friendly” means. The GCC concludes the Case Study by reiterating that the hypothetical business will need to be able to substantiate the claim. 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.

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138 Id.
139 Id.
140 Id.
141 Id.
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. 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. 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.

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. 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.”

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. 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

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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.


154 Dunlap et al., supra note 21.

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

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. 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.” 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.

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. Following the release of the CMA’s statement, ASOS quietly removed its website page formerly titled “The Responsible Edit” (“Edit”). 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. 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.’” At the time this Comment has concluded, the U.S. version of ASOS’ webpage includes a link at the bottom of the page called

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156 Dunlap et al., supra note 21.
160 Id.
161 Id.
162 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.
163 Id.
“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.”

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.

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. 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. 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. 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. According to GOY, there is no evidence Boohoo or ASOS minimize textile waste during manufacturing.

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. This may also include enhanced consumer measures, which require businesses to take additional steps to protect consumers. "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

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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.
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.” 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.

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. 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.”

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. 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. The 2021

174 Id.
Resilience Law focuses on themes that the French Government has proclaimed are likely to affect citizens’ daily lives, including consumption.\textsuperscript{180} According to a press release from the Council of Ministers, consumption habits have a significant impact on the environment.\textsuperscript{181} Additionally, consumer behavior has evolved in recent years, with a committed transition towards the ideology of purchasing less and purchasing better.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{185} For example, the 2021 Resilience Law amended Article L. 121-2 2\textdegree{} 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.\textsuperscript{186} Additionally, Article L. 121-2 2\textdegree{} 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.”\textsuperscript{187}

The 2021 Resilience Law also extended punishments for misleading consumer practices available under the FCC.\textsuperscript{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.\textsuperscript{189} It also provided “that the amount of the fine can always be increased to 10\% of the turnover or 50\% of the cost

\textsuperscript{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\textdegree{} b) (Fr.).
\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Hawkins et al., supra note 175.
\textsuperscript{184} Id.
\textsuperscript{185} Law 2021-1104 of August 22, 2021, supra note 178.
\textsuperscript{186} C. Con. [Consumer Code] art. L. 121-2 2\textdegree{} b) (Fr.).
\textsuperscript{187} Id. art. L. 121-2 2\textdegree{} e) (author’s translation).
\textsuperscript{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

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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).
197 Id.
turnover above €50 million) selling in France with requirements for smaller companies phased in throughout 2024 and 2025.\footnote{Debbie Shakespeare, France Moves First on Eco-label Regulations, APPAREL INSIDER (Jan. 11, 2023), https://apparelinsider.com/france-moves-first-on-eco-label-regulations/}

The Decree applies to waste-generating products, which includes textile apparel and footwear.\footnote{French AGEC Law: Decree no 2022-748 of April 29, 2022, Issued for the Environmental Labeling of Waste-Generating Products for the French Market, \textsc{Intertek} (June 15, 2022) [hereinafter \textsc{Intertek}], https://www.intertek.com/consumer/insight-bulletins/decree-n-2022-748-issued/} 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.\footnote{\textsc{Id.}} 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,\footnote{Id.} 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.\footnote{Id.} The Decree also reiterates the already existing ban on the use of claims that products or packaging are “biodegradable,” and “environmentally friendly.”\footnote{Id.}

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.\footnote{Rôles et Missions, \textsc{Autorité de Régulation Professionnelle de la Publicité}, https://www.arpp.org/qui-sommes-nous/roles-et-missions/ (last visited Feb. 20, 2023).} 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.\footnote{Id.} 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.\footnote{Thierry Libaert, \textit{De la Critique du Greenwashing à L’accroissement de la Régulation Publicitaire}, 42 \textsc{COMMC’N & ORG}. 267, 268 (2012).}
In August 2021, the AEJ published its opinion on Adidas’ advertisements for its Stan Smith shoes. 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.” 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.”

Adidas Stan Smith Shoe Advertisement mentioned in AEJ Complaint

In the opinion, the AEJ noted first, that the Stan Smith claim gives the impression that fifty percent of the whole shoe is recycled. 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.” The AEJ stated that “upper” is a technical concept unknown to the general public, making the statement confusing. Additionally, the AEJ found the statement that plastic used on the

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207 Adidas, supra note 143.
209 Id. (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. 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. 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. This sentiment is reinforced by the depiction of the Stan Smith sneaker crushing a plastic bottle.

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.” 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.”

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. Specifically, Zero Waste France accused the athletic equipment and clothing manufacturing group of only making “facade commitments” on their environmental practices. Zero Waste France accused Adidas of making “shameless” and “disproportionate” statements on their environmental

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214 Id.
215 Id.
216 Id. (author’s translation).
217 Id.
218 Id. (author’s translation).
219 Id. (author’s translation).
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.\textsuperscript{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.”\textsuperscript{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,”\textsuperscript{224} and how Adidas markets the line as a way to “preserve the planet.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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

\textsuperscript{222} Id.\textsuperscript{223} Id.\textsuperscript{224} 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.”)).\textsuperscript{225} 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.\textsuperscript{226} Elfassi, supra note 224; Zero Waste France, supra note 220, at 5.\textsuperscript{227} Zero Waste France, supra note 220, at 5.\textsuperscript{228} 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.\textsuperscript{229} Zero Waste France, supra note 220, at 9.\textsuperscript{229} Id. (author’s translation).
environmentally friendly based on vague and obscure criteria and also how it relies on an unsustainable production model. 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.

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.” 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.” 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).


\[233\] *Id.* at 20 (author’s translation).
understand when environmental claims are dishonest, bogus, or unclear.\textsuperscript{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.\textsuperscript{235} Companies therefore look to regulators to provide clarity and guidance.\textsuperscript{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.\textsuperscript{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.\textsuperscript{238} The abundance of words companies such as


\textsuperscript{237} Dahl, supra note 235.

\textsuperscript{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. 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 pallets chosen for marketing and displays as well. 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. 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.

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. 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. 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

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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.” 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. 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.”

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.”

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.” 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. 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. 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. Among hundreds of green labels available today, only a few are broadly recognized as highly reliable. There is also an increasingly pressing problem of self-certification, which is often not entirely reliable either. Through

250 Press Release, FTC, supra note 84.
251 Id.
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.\textsuperscript{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.\textsuperscript{256} This leaves the certification process “vulnerable to fraud and abuse by unscrupulous companies.”\textsuperscript{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 \textit{Commodore v. H&M}.\textsuperscript{258} H&M based its garments’ sustainability profiles off information provided by the Higg Index.\textsuperscript{259} The facts alleged in the complaint demonstrate that the information from the Higg Index was often misleading or completely false.\textsuperscript{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.”\textsuperscript{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

\textsuperscript{255} Id.
\textsuperscript{256} Id.
\textsuperscript{257} Id.
\textsuperscript{258} Commodore, supra note 13, at 1.
\textsuperscript{259} Id. at 6.
\textsuperscript{260} Id.
\textsuperscript{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. 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. 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. It need only suggest. The examples provided by the Green Guide, the GCC, and the Practical Guide may help companies

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262 See generally *Commodore*, supra note 13.


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. 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. 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. 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. 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.
268 Id.
company as well because EMSs are supposed to meet certain international standards such as ISO 14001. ISO 14001 was developed by the nongovernmental International Organization for Standardization in Geneva, which sets out a variety of voluntary environmental standards. 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.

**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. 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. 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. 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

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269 Dahl, supra note 235.
271 See Zarghamee et al., supra note 267.
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.\footnote{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, \textit{Commodore v. H&M}, the CMA’s investigation into Boohoo, ASOS, and others, and Zero Waste France’s suit against Adidas are still ongoing.\footnote{276} Some lawyers speculate \textit{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.\footnote{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.\footnote{278} Because of this, all

\footnote{275} Dunlap et al., \textit{supra} note 21.  
\footnote{276} See Commodore, \textit{supra} note 13; Hellwegger, \textit{supra} note 155; Adidas, \textit{supra} note 142.  
\footnote{278} Bick et al., \textit{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. \textit{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. 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.

EMMA SAMMONS