POSSIBILITIES OF LEGAL MECHANISMS TO COUNTERACT GREENWASHING TO ACHIEVE THE PRINCIPLES OF SUSTAINABLE DEVELOPMENT

a Alexander Petrov, b Valery Stepenko, c Kazbek Tagibov, d Andrey Rybakov, e Elena Kirillova, f Muhammad Alikhadzhiev

ABSTRACT

Objective: The paper examines the practice where companies use environmental advertising or statements about their environmental responsibility to promote their products or services (greenwashing). The objective of the study is to analyze the main signs of greenwashing and develop recommendations for countering environmental offenses.

Methods: The research methods are based on the analysis of a limited number of studies that were selected according to special parameters and comprehensively considered. Methods of analogy and comparative analysis were also used.

Results: The main signs of greenwashing, the negative consequences to which greenwashing can lead, and the main measures to control this kind of environmental offense are considered. According to the results of the study, it has been concluded that at the international level, greenwashing should be defined as a socially dangerous culpable act that contradicts the norms of law and harms society, the state, individual citizens, and the environment.

Conclusion: To counteract greenwashing, it is necessary to introduce a ban on the application of seals that are not introduced by state bodies and are not based on a certification system; a ban on eco-friendly labeling without providing evidence, and without certificates; and a ban on eco-friendly statements about the product, if they relate only to a certain aspect of the product. Furthermore, a system of public reports needs to be introduced where manufacturers can publish reports about their production processes and product test results. This will help consumers make informed decisions about the purchase of products. Besides that, environmental, social, and governance principles need to be implemented in the contract system, together with a penalty system.
Keywords: greenwashing, ecology, organic products, drinks, vegetable raw materials, sustainable development, closed-loop economy, legal relations, responsibility, environmental advertising.

Received: 28/08/2023
Accepted: 27/11/2023
DOI: https://doi.org/10.55908/sdgs.v11i12.1630

POSSIBILIDADES DE MECANISMOS LEGAIS PARA COMBATER A LAVAGEM ECOLÓGICA A FIM DE ALCANÇAR OS PRINCÍPIOS DO DESENVOLVIMENTO SUSTENTÁVEL

RESUMO

Objetivo: O artigo examina a prática em que as empresas utilizam publicidade ambiental ou declarações sobre sua responsabilidade ambiental para promover seus produtos ou serviços (greenwash). O objetivo do estudo é analisar os principais sinais de lavagem verde e desenvolver recomendações para combater as infrações ambientais.

Métodos: Os métodos de pesquisa são baseados na análise de um número limitado de estudos que foram selecionados de acordo com parâmetros especiais e considerados de forma abrangente. Métodos de analogia e análise comparativa também foram utilizados.

Resultados: São considerados os principais sinais de greenwash, as consequências negativas a que a greenwash pode conduzir e as principais medidas para controlar este tipo de crime ambiental. De acordo com os resultados do estudo, concluiu-se que a nível internacional, a lavagem verde deve ser definida como um ato culpado socialmente perigoso que contradiz as normas da lei e prejudica a sociedade, o Estado, os cidadãos individuais e o meio ambiente.

Conclusão: Para contrariar o branqueamento ecológico, é necessário introduzir uma proibição da aplicação de selos que não sejam introduzidos por organismos estatais e não se baseiem num sistema de certificação; uma proibição da rotulagem ecológica sem apresentação de provas e sem certificados; e uma proibição de declarações ecológicas sobre o produto, caso digam respeito apenas a um determinado aspecto do produto. Além disso, é necessário introduzir um sistema de relatórios públicos em que os fabricantes possam publicar relatórios sobre os seus processos de produção e os resultados dos ensaios dos produtos. Tal ajudará os consumidores a tomar decisões informadas sobre a compra de produtos. Além disso, os princípios ambientais, sociais e de governação têm de ser implementados no sistema de contratos, juntamente com um sistema de sanções.

Palavras-chave: lavagem verde, ecologia, produtos orgânicos, bebidas, matérias-primas vegetais, desenvolvimento sustentável, economia de ciclo fechado, relações jurídicas, responsabilidade, publicidade ambiental.

1 INTRODUCTION

Environmental issues are one of the most important global problems in modern conditions. The growth of production, scientific and technological progress, and uncontrolled use of natural resources lead to negative environmental consequences (Lane, 2009). There is no shortage of goods in many countries of the world, according to the British Legatum Institute, which published a rating of economic prosperity of 167
countries. The top ten countries in terms of economic prosperity include the Netherlands, Luxembourg, Iceland, Germany, and New Zealand; a high level of prosperity is observed in Ireland, the UK, Canada, Austria, Japan, Singapore, and the USA (Centre for Human Technologies, 2023). In those countries, there is even a risk of excessive production, where the material needs of citizens are satisfied, and producers in competitive conditions are forced to look for ways to promote their products on the market (Riles, 2015). A new value system is being formed related to the sustainable development of society and compliance with environmental, social, and governance (ESG) principles aimed at caring for the environment. In the last decade, more and more countries have supported a closed-loop economy model, when production and consumption are based on the principles of sustainable development (Bairati, 2022). Consumers' interest in eco-products is growing, so manufacturers are rethinking their marketing strategies and resorting to eco-positioning (Athanasiou, 1996). Thus, additional information about the environmental value of the product becomes a means of competing for a competitive advantage in the market.

The environmental friendliness of the product or actions aimed at preserving the environment contributed to the emergence of a new type of offense called greenwashing. Greenwashing is a practice where companies use environmental advertising or statements about their environmental responsibility to promote their products or services, but do not actually implement real environmental protection measures, or don't do it effectively enough (Namzhilon, 2023). This may lead to consumers believing that the company cares about nature and ecology, when in fact this is far from the case (Ramus & Montiel, 2005). The practice where product manufacturers mislead consumers with eco-labels is gaining global momentum. The main problems that greenwashing generates are unfair competition, violation of consumer rights, discrediting of products, underdevelopment of the organic market, and restriction of intellectual property (Delmas & Burbano, 2011). In general, greenwashing poses a threat to sustainable development, undermining the eco-friendly model of responsible production and consumption (Du, 2015; Ekstrand & Nilsson, 2011).
2 LITERATURE REVIEW

The problems of environmental marketing and environmentalization of consumption have resulted in the appearance of research papers on possible measures to counteract greenwashing. Greenwashing can lead to negative environmental consequences in the form of water, soil, and air pollution. However, the researchers state that the main signs of this offense are observed in the practice of working with the packaging of goods.

Greenwashing is harmful to health since the harmful components included in the products are not indicated on the packages (Yang et al., 2020). Manufacturers who have used greenwashing rarely comply with quality standards and therefore products can be harmful to health (Bullock, 2018). The incomplete list of product components that manufacturers indicate on the packaging is misinformation and misleading customers is a malicious violation of consumer rights (Nemes et al., 2022). In addition, fake certification in certain cases may be considered a malicious violation of consumer rights, but in any case, it is a sign of greenwashing (Wu et al., 2020). In 2023, a study commissioned by the EU Commission was conducted to examine the authenticity of eco-promises. According to the results, about 230 eco-labels of products were counted. More than half of the selected products contained misleading eco-promises, and 40% of products contained eco-lies, that is, unconfirmed information like "environmentally friendly", "eco-friendly", "green", etc. (Vollero, 2022).

To avoid malicious violations, manufacturers have started working on consumer manipulation technologies related to packaging.

First, this concerns the packaging design. Application of eco-labels and packaging design in green tones, and images of nature (Parguel et al., 2015) which people associate with environmental friendliness may mislead buyers (Gallicano, 2011; Seele & Gatti, 2017). Manufacturers prefer to use too small a font to indicate harmful components in the composition of products (Noronha & Wang, 2015). Wholesome components are indicated on the packaging in large font, and harmful additives that are present in the products are printed in very small font, which can only be read with a magnifying glass (Noronha & Wang, 2015; Szabo & Webster, 2021). This manufacturers' trick lets them increase the demand for products since buyers often read only the information printed in large font and pay attention to the packaging design (Laufer, 2003; Szabo & Webster, 2021).
Second, through the packaging of goods, the manufacturers state that their activities are aimed at achieving the principles of sustainable development without clear explanations or evidence for this. For example, manufacturers present compliance with minimum quality standards as an outstanding eco-advantage of their products (Fischetti, 2023; Vollero et al., 2011) or can position themselves as active fighters for the environment. To do this, they write on the packaging of goods that they participate in environmental initiatives to protect the environment, while it turns out that they did not participate in any environmental program (Yang et al., 2020). Recently, manufacturers have begun to change plastic packaging to packaging that is very similar to paper but made of composite materials. The manufacturer usually states that the packaging is biodegradable, therefore it does not pollute the environment, and the company looks very responsible not only regarding the environment but also the products (Astakhova et al., 2020). In such cases, only part of the packaging can be eco-friendly. For example, a tube of cream is advertised as made of recycled material that is biodegradable, but in practice, only the lid of the tube is made of recycled material (Cherry & Sneirson, 2012; Dixon, 2020).

Realizing the danger of greenwashing, researchers have proposed different measures of organizational and technical counteraction.

1. Introduction of the procedure for voluntary certification of products. Knight and Smith (2008) wrote about the need to ban fake (false) goods certification. In addition to the prohibition of fake (false) certification, the need to amend the legislation on liability for such acts was expressed (de Freitas Netto et al., 2020). However, we are inclined to believe that the solution to this problem is seen not only in the prohibition of fake certification but also in the introduction of a procedure for voluntary certification of products that meet the eco-parameters (Marquis et al., 2016).

2. Encouraging manufacturers who are focused on restoring goods in the process of their use: Torelli et al. (2020) write on encouraging manufacturers who produce products and goods that can be restored and reused. This position is focused on the principles of sustainable development. The fewer goods are sent to landfill, the less nature will be polluted by recycled items.

3. Lead sealing of products. The way out of the situation when manufacturers use unfair methods and mislead customers about the quality of products is the sealing

of products with Flutix seals, which will guarantee the environmental friendliness of goods and products (Adamkiewicz et al., 2022).

4. Stating clear requirements when informing customers about biodegradable packaging and the need for its use. Biodegradable packaging is packaging that decomposes into biological components in the environment, such as soil or water (Wood, 2003). It is created from natural materials such as corn starch, wheat, straw, cotton, and other plant fibers. Biodegradable packaging has several advantages over traditional plastic packaging, as it does not pollute the environment during disposal, does not contain harmful chemicals, and can be recycled for reuse (Kerret & Tal, 2005). In addition, biodegradable packaging can help reduce the amount of waste in landfills and reduce the negative impact on the environment.

5. Creating a database of eco-friendly products and manufacturers. It is necessary to inform customers about eco-friendly products and manufacturers who take care of both the quality of the goods and the environment, comply with all requirements, participate in environmental initiatives, voluntarily certify products, and allow independent examination of products (Griese et al., 2017). In the future, a digital database of eco-friendly products and manufacturers should be created, access to which should be provided to consumers. This database requires the function of scanning eco-labeling and online identification of eco-friendly products by barcode (Teichmann et al., 2023).

Many researchers have considered the problems of greenwashing (Feinstein, 2013; Majláth et al., 2011; Mitchell, Ramey, 2011; Parguel et al., 2011) and the main signs and features of this offense. However, in terms of measures to counteract greenwashing, studies are fragmentary and depend on both the possibilities of their application and the specifics of the sphere in which the interaction between sellers and buyers takes place.

If we consider greenwashing as an offense, then the signs of greenwashing highlighted by researchers in the form of consumer deception should be attributed to the objective side of the illegal act. The subjective side of greenwashing consists of direct intent, since manufacturers deliberately mislead consumers with eco-labels, certificates, lies about product quality, and other practices.
The object of greenwashing is property relations in the consumer sphere arising from the purchase of goods and services. The subject of infringement is the legitimate rights and interests of consumers in the field of purchasing goods and services.

Thus, according to its legal characteristics, greenwashing is an illegal continuing action. The subjective side of this offense consists of direct intent, and the objective side of greenwashing is observed in the form of consumer deception. Therefore, we believe it is necessary to conduct research on its counteraction, including based on international legal practice accumulated during this time.

Thus, the purpose of this study was to develop recommendations on countering eco-offenses.

3 METHODS

To provide an overview of anti-greenwashing measures for the period up to 2023, in this study we selected the work of researchers from different countries whose studies, in our opinion, have a long-term impact on research trends on this issue. In this study, we used an academic review and a comparative analysis of works. For a comprehensive analysis, studies were selected that contained the definitions of "greenwashing", "signs of greenwashing", and "measures to counteract greenwashing".

When searching for documents, we followed the Preferred Reporting Elements for Systematic Reviews and Meta-analyses (PRISMA) standards. PRISMA requires that all stages of the search and verification be described in detail and recorded by researchers. The PRISMA flowchart consists of four stages: the definition of papers, the verification of papers, the decision on the acceptability of research, and the final compilation of a list of studies for inclusion in a systematic review.
Step 1: Data Collection

We selected works written by various researchers on the following topics: "The main signs of greenwashing", "measures to counteract greenwashing", and "eco-offense". A bibliographic search was conducted in the Scopus and Web of Science databases, on the https://scholar.google.com.sv/scholar resource, and on official websites where the main international legal acts, judicial practice, social surveys on the purchase of organic products and on methods of misleading with the help of eco-labels and promises about the environmental friendliness of products are posted. We collected 1,232 publications in several categories.

Step 2. Data filtering using selection criteria.

The studies were selected according to the following criteria:

1. The author has at least three publications on greenwashing over the past 10 years;
2. More than 50% of legal studies in the total number of publications by the particular author;
3. The author's profile should indicate that their publications are thematically related to legal studies;
4. The work should have been written in the period from 2013 to 2023.

With this approach, 250 publications were initially selected.

Step 3. Data filtering after reading the full text.

We read the full text of the papers where it was difficult to determine the relevance based on the title and the abstract. After a thorough discussion, 60 papers were selected.

The use of this technique allowed us to identify the objective side, the subjective side, the subject and object of greenwashing, and develop a system of measures to counteract greenwashing.

4 RESULTS

During the study, the analysis of research papers demonstrated signs of greenwashing which had been identified in 45% of the analyzed papers. The main features of greenwashing are as follows:

- use of terms related to the environment, but without real improvements in environmental indicators: 10%;
- use of environmentally friendly materials and technologies, but without compliance with production standards: 18%
- a promise of high environmental standards, but the lack of evidence of their implementation: 12%;
- advertising products or services as environmentally friendly, although they may contain harmful substances or produce waste: 15%;
- use of fake logos and signs of environmental safety, use of fake certificates: 10%;
- concealment of information about the actual production and use of products or services: 22%;
- creating a false impression about the quality of products or services by using environmental information: 13%.

Manufacturers' use of environmental advertising to mislead customers is illegal (Bowen & Aragon-Correa, 2014; Douma, 2021). Therefore, it is necessary to develop a system of actions to counteract greenwashing (Du, 2015; Furlow, 2010). Based on the
signs of greenwashing identified by the researchers, the following measures can be proposed to counteract:

1. To restrict the use of environmental terms without improving environmental performance, it is necessary to create rules and standards for advertising and marketing. Governments and regulators may set requirements for the content and design of advertisements to prevent the use of false or misleading statements.

2. When using environmentally friendly materials and technologies without complying with production standards, manufacturers using environmental protection terms should provide:
   - report on greenhouse gas emissions (direct and indirect emissions from production);
   - methods by which greenhouse gas emissions are reduced (greenhouse gas emission reduction plan);
   - methods of compensation of residual greenhouse gas emissions.

3. In the case of the manufacturers' promise of high environmental standards without evidence of their implementation, it is necessary to use independent auditors and experts. Auditors can verify the accuracy of the information that companies use in their advertising and marketing, and report violations.

4. To prevent cases of advertising products or services that may contain harmful substances or produce waste as environmentally friendly, it is necessary to strengthen control over advertising agencies and companies. Governments may impose additional requirements on companies that engage in advertising and marketing, including verifying the accuracy of information and compliance with standards.

5. When using fake logos, environmental safety signs, or certificates, manufacturers must prove that their products are environmentally friendly, the packaging is recyclable, and the manufacturing process is safe for the environment. Let us give an example of a truly eco-friendly production of clean products. The Allbirds website describes in detail how the shoes of the company are made. They are made of animal wool, the laces are made of recycled plastic containers, and the insoles are soaked in castor oil. Even the packaging is made of recycled cardboard (Miller, 2017). Environmental labeling of products without certificates that are approved by government agencies should not be used. The
positive experience of Western European countries, when there is an **independent certification scheme for eco-products** with a special EU certification mark, should be adopted by other countries and used as an effective means of countering greenwashing (Kurpierz & Smith, 2020; Lane, 2013, 2014). Certification of products should be carried out by independent experts who will make an assessment based on scientific knowledge and the latest technologies. At the same time, information about experts and state bodies who decide which products should be labeled as eco-friendly should be detailed, accessible, free, and understandable. Experts should develop requirements for the eco-labeling system and present them to interested parties. The conditions for participation in product labeling should be proportional to the turnover of enterprises so that small enterprises can also participate. Experience shows that small enterprises lead in the presentation of high-quality eco-friendly products on the market (Riles, 2015).

6. To prevent the concealment of information about the actual production and use of products or services, manufacturers must be open in their production processes. They should provide information about the production process, including the materials used, technologies, and methods of quality control. Manufacturers can publish reports on their production processes and production results. This will help consumers make informed decisions about buying products.

7. If a manufacturer creates a false impression about the quality of products or services by using environmental information, then they must prove that their products are organic and environmentally safe. Slogans like "bio", "natural", and "environmentally friendly", as well as makeshift seals marked "without microplastics" should become a thing of the past, like advertising that is not supported by evidence. **The use of fake seals confirming the environmental friendliness of products should be prohibited** at the legislative level. Manufacturers should cooperate with regulatory authorities, such as certification and product quality supervision authorities, to ensure that all necessary standards and requirements are met.

Having analyzed all the main signs of greenwashing and proposed a system of measures to counteract this offense, we believe that one of the most effective measures to counteract greenwashing is the introduction of ESG principles into the contract system. Such an approach will ensure the reduction of waste and harmful substances and will
allow for the creation of environmentally friendly products. If a manufacturer adheres to the principles of sustainable development when establishing production, such a manufacturer not only preserves the environment by reducing greenhouse gas emissions, creating biodegradable packaging, and minimizing the use of harmful components in the composition of products but also provides budget savings based on the life cycle of products. Furthermore, the manufacturer immediately positions the company as an adherent of the ESG principles and the rightholder of organic products, since even when purchasing the necessary ingredients, the manufacturer focuses on environmental characteristics.

5 DISCUSSION

Having considered the measures proposed by experts to counteract greenwashing (Aggarwal & Kadyan, 2014; Cherry, 2014), we agree with the proposal to create a unified register or digital database that contains information about organic producers and those who comply with the principles of sustainable development. We think that organic producers who have received the certificate should be included in the unified register of producers of eco-friendly products, which should be created to inform consumers. The information should be available to any buyer. The algorithm of consumer actions will be as follows: when buying a product that indicates that it is certified and belongs to the class of organic products, the buyer finds the appropriate labeling, product name, and certificate number in the register, which is posted on the digital platform and receives an answer whether the product is environmentally friendly, safe and of high quality.

Thus, eco-labeling, certification, and the unified register of organic products are interrelated, complementary measures to counteract greenwashing, which should not be applied separately, but only as a single action.

Environmental advertising of products should be presented in clear language and readable font (Shanor & Light, 2022). Environmental statements should accurately determine whether they relate to the product, packaging, production method, or part of the product and part of the packaging (Coppolecchia, 2010).

Considering the proposal on the use of Flutix seals (Zych et al., 2021), we note that six variants of seals were proposed, which in various cases distinguish different criteria for products, their production and packaging, for example, the sign Flutix RECYCLED marks products containing recyclable materials made of plastic, glass,
cardboard, and the sign Flutix RECYCLABLE – DIN plus indicates that the packaging can be recycled. For consumers, this certification of products looks difficult. One needs to possess certain knowledge to understand which seal characterizes organic products, which informs about the possibility of packaging processing, and which indicates environmentally safe production. In the future, such a complex certification can be useful, important, and effective, but at the initial stage of countering greenwashing, the use and application of a ban on fake seals, arbitrary eco-markings, recognition of greenwashing as an offense, and the introduction of penalties for this act will be more significant and necessary.

Since greenwashing is a serious offense, manufacturers must bear legal responsibility for this act. Therefore, it is necessary to use a system of penalties. The amount of the fine should depend on the severity of the violation, for example, the maximum fine should not exceed 5% of the total annual turnover of products. Malicious violators who have used greenwashing repeatedly can be excluded from public procurement procedures, tenders, and grants.

6 CONCLUSIONS

According to the results of the study, we concluded that it is necessary to recognize greenwashing as an offense that harms the environment, the health of citizens, and the business reputation of manufacturers. This act should entail legal responsibility. Greenwashing is an illegal act committed after civil law transactions for the sale of goods and the provision of services, causing damage to consumers by misleading them about the environmentally friendly characteristics of products to make a profit at a minimal cost to protect the environment.

To counteract greenwashing, it is necessary to implement:
- a ban on the application of seals that have not been introduced by state bodies and are not based on a certification system;
- prohibition of eco-friendly labeling without providing evidence and/or certificates;
- prohibition of eco-friendly statements about the product as a whole, if they relate only to a certain aspect of the product;
- public reports: manufacturers can publish reports on their production processes and product test results. This will help consumers make informed decisions about buying products;
- implementation of ESG principles in the contract system;
- a system of penalties.

The legal mechanism for countering greenwashing is complex. It should be considered in the context of consumer protection, suppression of unfair competition, and support of trust in instruments that save the environment. In this regard, we would like to focus on the following ways of counteracting greenwashing:

- education and enlightenment: informing consumers about what greenwashing is and which products may contain hidden flaws;
- legislation: development of laws that prohibit the use of certain terms and logos without certification;
- standards and certification: the establishment of standards and certificates that allow consumers to easily identify products manufactured in compliance with environmental and social norms;
- advertising and marketing: using marketing tools that help consumers distinguish between products with and without environmental benefits;
- self-regulation: the creation of independent expert organizations that monitor compliance with rules and standards and punish violators.

The scope of the study is limited by the size of the sample of sources. As already mentioned, a total of 250 research publications were initially used in the study, including monographs, reports, and statistics. After a thorough sampling, 51 papers were selected that specifically described the main signs of greenwashing, measures to counter this offense, the harm that greenwashing caused, and the prospects for proposals on compliance with environmental requirements for the products.

In further research on the problems of greenwashing, it is necessary to consider ways of environmental education to increase the effectiveness of measures to counter eco-offenses.
REFERENCES


Possibilities of Legal Mechanisms to Counteract Greenwashing to Achieve the Principles of Sustainable Development


