



UNWRAPPING THE TRUTH

The Katjes "Climate Neutral" Fruit Gum Ad Ruling and Green Claims Across the Globe

With rising customer consciousness of climate change and environmental topics, the last years have seen a steep increase of environmental claims in marketing.

"Greenness" clearly sells – from banking services and investment products to airplane travel, electric cars and fuel and from washing detergents to smoothies and baby food. This has led to increased scrutiny from regulatory authorities and policymakers around the globe. On 27 June 2024, the highest German civil court (the German Federal Court of Justice or *Bundesgerichtshof*, the **BGH**) delivered a groundbreaking verdict against fruit gum manufacturer Katjes, laying down the limitations and requirements for the use of the term "climate neutral" (*klimaneutral*) in product advertising.¹ This briefing describes the background and content of the *Katjes* ruling, how it aligns with judgments and regulatory practice in other countries, how policymakers are trying to tackle the issue and, most importantly, what companies can do to protect themselves against the consequences of unsubstantiated green claims.

¹ [First Civil Panel of the BGH – Judgment dated 27 June 2024 - I ZR 98/23](#)

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1. What is the background to the *Katjes* ruling?

In a 2021 advertisement in a food industry trade magazine, fruit gum manufacturer Katjes had claimed that "since 2021, [it] has been producing all products in a climate-neutral manner" (translated). The advertisement also included a logo of the consulting company ClimatePartner, accompanied by the statement "climate neutral product". The advertisement also referred to a ClimatePartner website containing further information on climate neutrality via a link and a QR code. Katjes achieved "climate neutrality" by compensating the greenhouse gas (GHG) emissions generated in the production process by financing climate protection projects with the support of ClimatePartner.² This information was available on the ClimatePartner website but not in the advertisement itself.

The Central Office for Combating Unfair Competition (*Zentrale zur Bekämpfung unlauteren Wettbewerbs*, the **Competition Association**), a German industry association, challenged this advertisement in the German courts as being misleading. The Competition Association claimed that readers of the magazine would understand "climate neutral" to mean that the fruit gums were produced without generating GHG emissions. It also contended that Katjes would, at a minimum, have to explain in the advertisement itself that climate neutrality of the products was only achieved through compensation measures and not by eliminating GHG emissions at the point of production.

Prior to the judgment handed down by the BGH, the case had been considered by two lower civil courts who ruled as follows:

- In the first instance, the Regional Court of Kleve (*Landgericht Kleve*) dismissed the Competition Association's claims as unfounded.³ It held that the term "climate neutral" is in general not understood to mean "free of GHG emissions". Accordingly, climate neutrality can also be achieved by compensation. The court held that the advertisement was not misleading because it could be expected that the readers of a food industry trade magazine are aware that climate neutrality could be achieved by compensation.
- In the second instance, the Higher Regional Court of Düsseldorf (*Oberlandesgericht Düsseldorf*) confirmed this position.⁴ It held that consumers can be expected to understand the term "climate neutral" to mean a balanced GHG emissions balance. Consumers will generally know that this balance can also be achieved through compensation measures. The court held that companies must explain how they achieve climate neutrality, but that this explanation can also be provided on a separate website accessible via a link or a QR code.

2. What was held in the *Katjes* ruling?

Although the ruling was delivered on 27 June 2024, the full text of the judgement has only been published on 5 July 2024. In its judgment, the BGH overruled the lower courts and held that the Katjes advertisement in question was misleading for the following reasons:

- Advertising a product as "climate neutral" can always be considered to be significant for the purchasing decision of a consumer.
- Environmental claims made in advertising have an increased risk of misleading consumers due to the high personal value that the environment has for many consumers, similar to health.
- When making environmental claims, companies therefore need to clarify the meaning and content of terms indicating the environmental or "green" benefits or features of a product or company. This clarification needs to be included in the advertisement itself.
- Reduction and compensation of GHG emissions are two possible ways of achieving "climate neutrality" but are not equally valid. Reduction is always preferable to achieve climate change mitigation.

² <https://www.climatepartner.com/en>

³ Regional Court of Kleve - Judgment dated 22 June 2022 - 8 O 44/21

⁴ Higher Regional Court of Düsseldorf – Judgment dated 6 July 2023 - I-20 U 152/22

- Considering the need to clarify "green terms" used in an advertisement (see above), the ambiguous term, "climate neutral", may only be used if the company explains how such neutrality is achieved. An explanation must include details of the measures taken to reduce or eliminate GHG emissions from the activities of the company, as well as any compensation or offsetting measures that the company has taken.
- This explanation must be included directly in the advertisement. Requiring the consumer to visit a separate website is not sufficient. If the required explanation is not contained directly in the advertisement, the use of the term "climate neutral" is incorrect and may be deceptive.

The judgment demonstrates the importance German courts have attached to environmental claims in advertising since the 1980s and, at the same time, raises the bar for companies who wish to use the term "climate neutral" significantly. Following a series of lower court cases relating to "climate neutrality" claims for various products and companies in the last two years (including, inter alia, a delivery service, a supermarket chain, a detergent manufacturer as well as a heating oil company and a food producer) the BGH has now finally decided that "climate neutral" is an ambiguous term which may only be used with an accompanying explanation in the advertisement. The BGH reinforces its position that environmental claims are subject to special scrutiny and clarifies that both the general public as well as the readers of a widely distributed food magazine need more information not to be misled in their purchasing decisions. Interestingly, the BGH also takes a strong position on compensation measures and offsetting which it considers to be less valid and only second to GHG emissions reduction – another critical voice on the raging international debate on voluntary carbon markets.

As a consequence of its findings, the BGH ordered Katjes to refrain from making statements or advertisements referring to the climate neutrality of its products or using logos regarding its climate neutrality.

3. How does the *Katjes* ruling fit into the global context?

The judgment in the *Katjes* case fits very well into a broader landscape of rulings on green claims and greenwashing from courts and authorities around the globe, some of which are set out below. Although national laws are very different, a review of recent rulings across a variety of jurisdictions reveals a relatively consistent picture. In all jurisdictions, allegedly misleading environmental claims, in particular in relation to climate, are under increased scrutiny. In some jurisdictions like the UK or Australia, this is driven by regulatory authorities, while in Germany, Italy and Spain cases are often brought to the courts by consumer, environmental or industry associations or competing companies.

"Drive CO2 neutral" in the Netherlands

In a ruling from 2021, the Dutch Advertising Code Committee (*Reclame Code Commissie*, the **RCC**) considered a complaint regarding a campaign advertisement published by an oil and gas company, which included the statement "Make a difference. Drive CO2 neutral".⁵ The complaint, made by two NGOs, alleged that the oil and gas company falsely claimed that the damage caused by CO2 emissions can be offset or neutralised through voluntary carbon credits. Noting there is a high bar for environmental claims to be demonstrably correct, the RCC held that the average consumer would understand the term "neutralised" to mean that harm caused by CO2 emissions was compensated entirely by offsetting measures, and that, as such, the oil and gas company's claim was too absolute and therefore misleading.

"Climate neutral milk" in the Netherlands

The RCC also recently considered a complaint in relation to an advertisement by a dairy producer for "climate neutral" organic milk, which was displayed on the product packaging, website, videos and commercials. The complaint argued that this claim implied that the milk had no effect on the climate whatsoever, and as such, could not be substantiated and was misleading. The RCC held, referring to its decision in the "Drive CO2 neutral" case, that an average consumer would interpret the reference to "climate neutral" to mean that the production of the milk had no impact on the climate and that any adverse effects

⁵ <https://climatecasechart.com/non-us-case/rcc-ruling-on-shell-drive-co2-neutral-1/>

were neutralised or cancelled out. As such, the RCC found that the dairy producer had not demonstrated with absolute certainty that it had fully and permanently offset its emissions and that therefore, its claim could not be substantiated and was misleading. The dairy producer subsequently appealed this decision, claiming that it had met all the established and highest standards for claiming climate neutrality, as well as stating that its "climate neutral" claim was relative rather than absolute as it related only to certain products that were labelled as such. The appeal body partially confirmed the decision of the RCC, finding that the dairy producer's statements were misleading to the extent that no clarification was provided to indicate that the claim related specifically to the label.

"Flying responsibly" in the Netherlands

In a recent case against a Dutch airline in the Netherlands,⁶ the court considered the airline's advertisement to its customers which included the phrase 'Fly Responsibly', based on a greenwashing claim raised by an NGO. The court ruled that the advertisement was misleading because the airline's environmental claims were too vague and statements about environmental benefits were not sufficiently substantiated. The use of the phrase overemphasised the impact of measures such as sustainable aviation fuels and reforestation.

Detergent being "kinder to our planet" in the UK

In the UK, a global detergent manufacturer advertised that its plastic detergent bottles were made of 50% recycled plastic and claimed that its products could be used to wash at lower temperatures, thereby providing a product that is "kinder to our planet".⁷ The Advertising Standards Authority (ASA), the UK's advertising regulator, held that the advertising was misleading because the statement was not substantiated (inter alia by explaining the comparison and the product's total environmental impact).

Banking services advertised with selective sustainable projects in the UK

The ASA came to a similar conclusion in relation to poster advertisements published by a global bank on bus stops describing selective sustainable objectives and projects together with contextual imagery (waves, trees). Since the bank ASA noted that the bank omitted to disclose material information to consumers since it continued to significantly finance investments in high emitting businesses and industries.⁸

Fashion being "better for the environment" or "sustainable" in the UK

The Competition Markets Authority (CMA), the UK's competition regulator, launched an investigation against certain fashion companies using green credentials such as "eco" or "sustainable" product ranges and claims about recycled products being "better for the environment".⁹ As a consequence, the fashion brands have now signed an undertaking committing to ensuring that all green claims are accurate and not misleading, making key information clear and prominent, expressed in plain language, easy to read, and clearly visible to shoppers. The undertaking also requires that the brands must not use "natural" imagery to suggest that a product is more environmentally friendly than it actually is, and that any claims made to consumers about environmental targets must be supported by a clear and verifiable strategy.

"Environmentally friendly" microfibres in Italy

An Italian manufacturer of a microfibre product brought a claim against a marketer of such products in the automotive sector.¹⁰ The marketer had advertised a suede-like microfibre product as "environmentally friendly" and claiming that a "reduction of energy consumption and GHG emissions by 80%" had been achieved for the product. The Italian court found the marketer's claims to be vague, ambiguous, false and unverifiable and ordered it to immediately remove them from all websites, social media platforms, TV

⁶ FossielVrij NL v. Royal Dutch Airlines (KLM), see <https://www.clientearth.org/media/cx4po41h/klm-judgment-20-march-2024.pdf>

⁷ ASA ruling on Unilever UK Ltd, available at <https://www.asa.org.uk/rulings/unilever-uk-ltd-a22-1150985-unilever-uk-ltd.html>

⁸ ASA ruling on HSBC, available at <https://www.asa.org.uk/rulings/hsbc-uk-bank-plc-g21-1127656-hsbc-uk-bank-plc.html>

⁹ <https://www.gov.uk/cma-cases/asos-boohoo-and-asda-greenwashing-investigation>

¹⁰ <https://climatecasechart.com/non-us-case/alcantara-spa-v-miko-srl/>

advertises, magazines and other advertising material and, in addition, to publish the court's decision on its website for 60 days.

Baby food jars being "climate positive" in Switzerland

An NGO filed a complaint with the Swiss Fair Advertising Commission, the Swiss advertising regulator, against a producer of baby food which advertised its baby food jars as "climate positive".¹¹ The regulator held that this statement was misleading because the company could not substantiate how it had calculated all climate-relevant effects associated with the jar production and how it had fully overcompensated these effects.

"Climate neutral" heating oil in Switzerland

A heating oil provider was targeted by the same NGO because it had advertised its heating oil product as "climate neutral". The Swiss advertising regulator considered this to be misleading for lack of substantiation how all climate-relevant effects had been calculated and subsequently.¹²

Organising a "carbon neutral" Football World Cup criticised in Switzerland

Following a claim made by a coalition of 140 civil society organisations, the Swiss Fair Advertising Commission considered whether FIFA's advertising of the 2022 Football World Cup as "carbon neutral" was misleading. The commission found that the advertisement did not meet the strict standards applying to environmental claims. In particular, FIFA was not able to explain on which scientific basis it had estimated the relevant GHG emissions prior to the actual event using and how it ensured that these GHG emissions would be fully compensated in the future.¹³

"Sustainable and environmentally friendly" soda company in the United States

In the United States, a complaint was filed against a soda company in the Superior Court of the District of Columbia by an NGO, who alleged that the soda company engaged in deceptive marketing by advertising that it was a "sustainable and environmentally friendly company" in spite of allegedly being one of the world's largest contributors to plastic pollution. In a rather unusual decision as compared to the other cases, the court found that the company's statements were aspirational in nature and that statements regarding "corporate ethos, hopes and philosophies" could not be considered as "part of the product itself" and therefore could not lead to a misrepresentation.¹⁴

"Carbon neutral" bottled water in the United States

Advertising of bottled water as "carbon neutral" was attacked as false and misleading in a class action lawsuit in the federal district court for the Southern District of New York.¹⁵ The complaint alleged that the manufacturing process was not carbon neutral, and that even where carbon offsets were used to achieve supposed carbon neutrality, the offsets in question would not take place for decades. The court allowed the consumer plaintiffs to proceed with the claims in January 2024 because it considered that the term "carbon neutral" could mislead a reasonable customer and that consumers could not be expected to visit a website to obtain more information. The court also noted that the advertisement was exactly the type of "general environmental benefit claim" challenged in the Federal Trade Commission's Green Guides (see Section 4 below).

Beef sold as "Net Zero" in the United States

In February 2024, the New York State Attorney filed a complaint in the New York Supreme Court against a food company heavily involved in the sale of beef. The company allegedly misled consumers by making

¹¹ <https://climatecasechart.com/non-us-case/stiftung-fur-konsumentenschutz-v-hipp/>

¹² <https://www.faire-werbung.ch/wp-content/uploads/2023/10/LK1060923.pdf>

¹³ <https://climatecasechart.com/non-us-case/klimaallianz-v-fifa/>

¹⁴ <https://climatecasechart.com/case/earth-island-institute-v-coca-cola-co/>

¹⁵ <https://climatecasechart.com/case/dorris-v-danone-waters-of-america/>

false representations on the sustainability of its business, including statements on its "Net Zero by 2040" commitment.¹⁶ A decision on this complaint is still outstanding.

4. Do policymakers and regulators establish further rules on green claims?

Unsubstantiated, misleading or ambiguous use of environmental claims in advertising (and beyond) has also been in focus of a number of policymakers and regulators, with some recent examples set out below:

Green Transition and Green Claims Directives in the EU

With the Green Transition Directive published on 6 March 2024¹⁷ and the proposed Green Claims Directive¹⁸ which is still under negotiation, the EU takes a comprehensive step on regulating environmental or social labels and claims in business-to-consumer commercial practices. The Green Transition Directive adds certain environmental claims to the list of unfair commercial practices (such as the use of uncertified sustainability labels, making generic environmental claims without demonstrated performance and selective claims relating to only a part of the business). In particular, the Green Transition Directive bans claims based on the offsetting of GHG emissions that a product has a neutral, reduced or positive impact on the environment in terms of GHG emissions. Accordingly, the "climate neutrality" claim made by Katjes based on compensation measures can – even with a clear explanation in the advertisement – no longer be upheld once the Green Transition Directive has been implemented into German law by 26 March 2026 at the latest. The proposed Green Claims Directive contains rules on how voluntary environmental claims and labels need to be substantiated, verified and communicated. Its finalisation is part of the newly elected EU Parliament's plan of work from October 2024.

UK anti-greenwashing Rule and Green Claims Code

The UK has recently received specific anti-greenwashing rules and related guidance for the financial services sector issued by the Financial Conduct Authority (**FCA**).¹⁹ The rules were introduced as part of a package of measures designed to inform and protect consumers and improve trust in the market for sustainable investments (see our [briefing on the FCA's final rules on SDR and investment labels](#)). In addition to the anti-greenwashing rule, the package of measures covers investment labels, naming and marketing requirements as well as requirements for distributors. Under the anti-greenwashing rule an FCA-authorized firm must ensure that marketing content is consistent with the sustainability characteristics of the relevant product or services and is fair, clear and not misleading, including sufficient substantiation and meaningful comparisons. This is further supplemented by the CMA's Green Claims Code (the **Code**), which was published in September 2021, and which contains guidance aimed at helping businesses understand and comply with their existing consumer protection obligations when making environmental claims. Among other things, this Code contains six principles for businesses making green claims, including making claims that are: (1) truthful and accurate; (2) clear and unambiguous; (3) do not omit or hide important information; (4) compare goods or services in a fair and meaningful way; (5) consider the full life cycle of the product or service; and (6) are substantiated (see our briefings [on the Code](#) and the [CMA's focus on greenwashing](#)).

Advertising rules under the Environmental Code in France

France has implemented an extensive environmental programme, inter alia in the Environmental Code (*Code de l'Environnement*)²⁰ which, among other things, deals with environmental advertising claims. Since 1 January 2023, the Environmental Code prohibits the use of "carbon neutral", "zero carbon", "with a zero carbon footprint", "climate neutral" "fully / 100% compensated" or similar terms in advertising unless the

¹⁶ <https://climatecasechart.com/case/people-v-jbs-usa-food-co/>

¹⁷ Directive (EU) 2024/825, available at <https://eur-lex.europa.eu/eli/dir/2024/825/oj>

¹⁸ <https://www.consilium.europa.eu/en/press/press-releases/2024/06/17/green-claims-directive-council-ready-to-start-talks-with-the-european-parliament/>

¹⁹ <https://www.fca.org.uk/publications/finalised-guidance/fq24-3-finalised-non-handbook-guidance-anti-greenwashing-rule>

²⁰ https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074220/

company using such terms provides a detailed report on the website, including the GHG emissions balance of the product or service covering its entire life cycle. This report must be updated annually and contain detailed information on reduction or compensation measures undertaken by the company. The Environmental Code also provides for a mandatory categorisation of products and services (into classes A to E) based on their GHG emissions, biodiversity impact and water and natural resource consumption, although these categories are still being tested and developed by the French Environmental Transition Agency (ADEME) and not yet mandatory. It is expected that they will become mandatory for the food and clothing sectors in 2024²¹. Finally, the Environmental Code also prohibits advertising for certain fossil fuel energies and prescribes a "CO2 warning" for advertising on combustion cars. The French Consumer Council (*Conseil National de la Consommation*) has published extensive guidance on environmental claims in advertising.²²

Green Guides of the US Federal Trade Commission

In the US, the US Federal Trade Commission measures green claims against its Green Guides,²³ which date from 2012 and are currently in the process of being revised.²⁴ Marketers should not make broad, unqualified general environmental benefit claims like "green" or "eco-friendly" and should clearly qualify general claims with specific environmental benefits. The same principles apply to claims regarding carbon offsets and the use of terms like "compostable", "degradable", "free-of" "made with renewable energy/materials" and others.²⁵ The update may include specific rules on "climate neutral" claims since these have been mentioned during the consultation process.

Australian Competition and Consumer Commission's guide on making environmental claims

In Australia, companies are invited to follow the Australian Competition and Consumer Commission's guide when "Making Environmental Claims", published in December 2023 to avoid violations of the Australian Consumer Law Act. Similar to the CMA's Code, this guide asks businesses to follow eight principles when making environmental and sustainability claims to ensure they are trustworthy, including: (1) making claims that are accurate and truthful; (2) having evidence to back up your claims; (3) not hiding or omitting important information; (4) explaining any conditions or qualification on your claims; (5) avoiding broad and unqualified claims; (6) using clear and easy-to-understand language; (7) ensuring that visual elements do not give the wrong impression; and (8) being direct and open about the company's sustainability transition.²⁶

5. How can companies prepare for stricter scrutiny on green claims?

The cumulative impact of the various anti-greenwashing judgments like the *Katjes* ruling and associated legislation on environmental claims made in connection with products or services is likely to be immense: from climate neutral toilet paper purchased in the local drugstore to net zero asset management strategies - anything directly or ultimately sold to consumers with a green claim could fall within the scope of greenwashing scrutiny. This scrutiny meets existing advertising practices which in the past have often relied on generic or selective environmental claims issued without sufficient proof or substantiation. In many cases, green claims used in advertising campaigns have not undergone a full legal or compliance review and marketing departments are not yet sufficiently sensitised to the particular dangers of misleading environmental advertising. This could be a fertile ground for further case law and investigations and the current landscape shows that regulators, competitors, and consumers already have sufficient ammunition to target what they consider to be unsubstantiated "green" or "social" claims.

²¹ <https://agirpourtatransition.ademe.fr/entreprises/ecoconception/communiquer-performance>

²² https://www.economie.gouv.fr/files/files/directions_services/cnc/avis/2023/Allegations_environne_mentales/guide_2023.pdf

²³ <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>

²⁴ <https://www.ftc.gov/news-events/topics/truth-advertising/green-guides> and <https://www.ftc.gov/news-events/news/press-releases/2024/03/federal-trade-commission-extends-public-comment-period-proposed-improvements-energy-labeling-rule>

²⁵ https://www.ftc.gov/system/files/documents/public_events/975753/ftc_-_environmental_claims_summary_of_the_green_guides.pdf

²⁶ <https://www.accc.gov.au/system/files/greenwashing-guidelines.pdf>

Frameworks and guidance by policymakers and regulators, like the proposed Green Claims Directive in the EU or the UK anti-greenwashing rules can support companies in better understanding, how a "fair, clear and not misleading" environmental claim could be made. However, even these rules leave room for interpretation and ambiguity and will need to be carefully applied by companies.

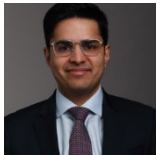
Moreover, the statements made by the BGH in the *Katjes* ruling can also be applied beyond the term "climate neutral". If compensation is generally not considered equally valid, what does this mean for compensation measures relating to other topics, such as biodiversity or the use of plastics? A number of companies have, for example, turned to being "nature positive" or "plastic neutral" by financing compensation measures, such as the restoration of natural habitats or collecting and recycling ocean plastic. In these cases, it would be advisable to at least clearly communicate on the compensation together with the respective claim. While the BGH and many cases focus on advertising, similar standards could also be applied to other environmental statements made by companies, e.g. in sustainability reporting, on websites or as part of climate transition plans. It is also questionable whether the clear statement of the BGH that emissions compensation is not of equal value as emissions reduction can play a role for determining if and how much of their GHG emissions companies chose to compensate.

Against this backdrop of uncertainty and litigation risks, companies will generally benefit from taking a cautious approach to making green claims. This does not necessarily mean that no green claims or other environmental statements should be made, but all such claims and statements should be reviewed to ensure that they are aligned with case law and regulatory practice and checked against any upcoming regulation. The stakes are high for any company selling products or services to consumers and no sector can be considered safe, as demonstrated by the description of selected cases above.

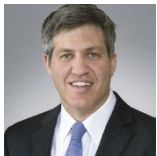
6. Contacts



**Heike Schmitz, Partner
Co-Head EMEA ESG**
T +49 69 2222 82540
M +49 172 731 8669
heike.schmitz@hsf.com



Shantanu Naravane, Partner
T +44 20 7466 2077
M +44 7730 092 192
shantanu.naravane@hsf.com



**Benjamin Rubinstein, Partner
Head US ESG**
T +1 917-542-7818
M +1 917-816-0167
benjamin.rubinstein@hsf.com



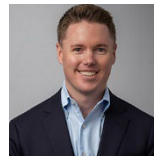
Leonie Timmers, Senior Associate
T +34 914 23 40 88
M +34 606 69 51 54
leonie.timmers@hsf.com



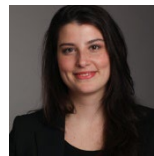
**Silke Goldberg, Partner
Global Head of ESG**
T +44 20 7466 2612
M +44 7809 200255
silke.goldberg@hsf.com



**Iria Calvino, Partner
Co-Head EMEA ESG**
T +34 914 23 40 22
M +34 648 92 18 20
iria.calvino@hsf.com



Mark Smyth, Partner
T +61 2 9225 5440
M +61 456 721 415
mark.smyth@hsf.com



Tara Theiss, Trainee
T +44 20 7466 2645
M +44 7407 858709
tara.theiss@hsf.com

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