
TRADEMARKS AS VECTORS OF DECEPTION: AN ANALYSIS OF GREENWASHING AND CONSUMER PROTECTION LAW

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ABSTRACT

A trademark defines the origin of a particular product. But in recent years, it is being used as a way of misrepresenting its true nature to make it environment friendly in the eyes of the consumer by deceptive means. This paper examines the use of marks, logos, colours and invented seals to suggest an environmental virtue a product does not possess, the practice now widely called greenwashing, and asks how well Indian law is placed to catch it. The argument is that the problem sits awkwardly across two bodies of law that rarely speak to each other: trademark law, which decides what may be registered and owned, and consumer protection law, which decides what may be said in the market. Trademark law screens a green mark once, at the door, and then largely forgets about it; consumer protection law, armed since 2024 with dedicated guidelines on greenwashing, polices the claim but treats the mark itself as someone else's department. The paper contends that this division of labour leads to creation of a gap through which it becomes easier for deceptive green marks to pass through without any consequences thereof and instead of forming new statutory frameworks or overlapping statutes, there must be a harmonization between the two, i.e., trademarks and consumer protection law.

Keywords: greenwashing; green trademarks; consumer protection; misleading advertisement; environmental claims; deception.

1. INTRODUCTION

There is something almost touching about how readily a shopper will trust a colour. A bottle of detergent dressed in leaf-green, stamped with a little drawing of a sapling and the word “natural”, sells better than the identical liquid in a plain white tub, and it does so even when nothing inside the bottle has changed. The colour and the picture are doing the work. They are making a promise that this product is gentler on the world than its rivals and the shopper, with no time to read a chemistry textbook in the aisle, takes the promise at face value. Most of the time the promise is harmless. Sometimes it is a lie. This paper is about the lies, and about whether the law that governs marks and the law that governs claims are, between them, equipped to deal with it.

The lie has a name now. “Greenwashing” describes the practice of presenting a product, a service or a whole company as more environmentally responsible than it actually is i.e., through words, images, colours or symbols that suggest a virtue the thing does not possess.¹ The term began as activists’ slang and has since hardened into a category that regulators take seriously. What interests me here is not greenwashing in the abstract but greenwashing as it lives inside a trademark: the leaf, the seal, the invented eco-label, the brand name built around the word “green” or “pure”. These are not stray marketing puffs that vanish with the campaign. They are durable, registered, owned assets, and the law treats them as property. That changes the problem in ways the existing scholarship, which tends to file greenwashing under advertising regulation, has not fully reckoned with.

India regulates green deception through two doors. Trademark law guards the first; it decides whether a mark may be registered and protected at all, and consumer protection law guards the second; it decides whether a claim, once made, is misleading and what should happen if it is. Each door is reasonably well built. The trouble is that they open onto the same room and nobody is watching the space between them. A green mark slips past the trademark examiner because, at the moment of registration, it is not obviously false; it then anchors a campaign that consumer law would condemn, but consumer law goes after the campaign and leaves the mark standing, ready to anchor the next one. The deception is not in the claim alone or in the mark alone. It is in the way the mark lends the claim a borrowed permanence. Catching it requires

¹Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024, ¶ 1, issued by Cent. Consumer Prot. Auth. pursuant to Consumer Protection Act, 2019, § 18, No. 35, Acts of Parliament, 2019 (India).

the two frameworks to harmonize rather than going unacknowledged.

The discussion runs in six further parts. Part 2 explains what a trademark is for and why a green mark is a peculiar and slippery thing. Part 3 sets out how trademark law screens such marks, and where that screen lets deception through. Part 4 turns to consumer protection law and the 2024 greenwashing guidelines, which are the centre of gravity of the present regime. Part 5 looks abroad i.e., to the United States, the European Union and France, for ways other systems have tried to close the same gap. Part 6 gathers the analysis into a diagnosis and a short set of proposals. Part 7 concludes.

2. GREEN MARKS AS TRADEMARKS

The statute defines trademark as a mark capable of distinguishing the goods or services of one person from those of another, and it expressly contemplates that the mark may be a word, a device, a shape, a combination of colours, and so on.² The classic justification for protecting such signs is economic and almost mundane. A mark lets a buyer find again the product she liked last time without having to inspect it afresh, and it lets the maker capture the reward of a good reputation rather than watch it leak away to imitators. The mark is, in the old phrase, a badge of origin.

But a badge of origin quietly does a second job. Because the buyer associates the mark with a consistent level of quality, the mark comes to carry an implied assurance, not merely “this came from X” but “this is the sort of thing X makes, and X makes good things”.³ That second, quality-guaranteeing function is where the green mark makes its mischief. An ordinary brand promises consistency; a green mark promises a specific, verifiable, factual virtue, that the product is recycled, or biodegradable, or carbon-neutral, or kind to animals. The promise is no longer “trust the maker” but “trust this factual claim about the world”, and factual claims can be checked against reality in a way that a feeling of brand loyalty cannot.

This is what makes the green mark a peculiar object. It is half badge, half assertion. Considered as a badge, it behaves like any other mark and the law knows what to do with it. Considered as an assertion, it is an advertisement compressed into a symbol and an advertisement that has

²Trade Marks Act, 1999, § 2(1)(zb), No. 47, Acts of Parliament, 1999 (India)

³See generally W. R. Cornish, D. Llewelyn & T. Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* 205–06 (8th ed. 2013).

been registered, dated and turned into property that can be defended against all comers. When the assertion is false, the falsehood does not evaporate when a particular campaign ends. It is baked into an asset the proprietor will use again and again. A misleading television spot has the lifespan of its airtime. A misleading mark has the lifespan of the registration, which is to say, with renewals, forever. That difference in durability is, I will argue, the heart of the regulatory difficulty, and it is precisely the feature that a regime built around policing individual claims is least well suited to address.

3. SCOPE AND LIMITATIONS OF TRADEMARK SCREENING

Trademark law does have tools that bear on green deception, and it is worth setting them out before explaining why they are not enough. They sit in the absolute grounds for refusal, the intrinsic reasons a mark may be turned away regardless of who else is in the field.

The first tool is the bar on descriptive marks. A sign that consists exclusively of an indication of the kind, quality or characteristics of the goods cannot ordinarily be monopolised, the reason being that no single trader should be allowed to fence off a word the whole trade needs.⁴ On its face this catches a great deal of green vocabulary: “eco”, “green”, “natural”, “pure” are descriptions before they are brands. And Indian practice has indeed treated such words as common property; the contest over the word “pure” for food products, in which the term was held to be descriptive and customary rather than the private estate of one trader, is the familiar illustration.⁵ The difficulty is that the descriptiveness bar is concerned with monopoly, not with truth. It asks whether a word is too useful to others to be owned, not whether the product actually has the quality the word describes. A mark can clear the descriptiveness hurdle because it is suggestive or fanciful rather than baldly descriptive and still convey a thoroughly false environmental impression.

The second and more promising tool is the bar on deceptive marks: a mark shall not be registered if it is of such a nature as to deceive the public or cause confusion.⁶ Here, at last, is a provision aimed squarely at deception. A mark that depicts a forest for a product made

⁴Trade Marks Act, 1999, *supra* note 2, § 9(1)(b) (barring registration of marks consisting exclusively of indications that may serve in trade to designate the kind, quality, intended purpose, value, or other characteristics of the goods or services).

⁵*Nestlé India Ltd. v. Mood Hospitality Pvt. Ltd.*, (2010) 42 PTC 514 (Del.) (treating the term “pure” for food products as descriptive and customary, and thus not subject to exclusive appropriation).

⁶Trade Marks Act, 1999, *supra* note 2, § 9(2)(a).

entirely of virgin plastic, or that incorporates a fabricated certification seal, is on its face a candidate for refusal under this head. If the deceptiveness screen worked as well in practice as it reads on the page, much of the registered green deception would never have been registered.

It does not work that well, and the reasons are instructive. The examiner assesses deceptiveness at a single moment i.e., registration and on the face of the mark, without the product in front of him. A leaf device is not inherently deceptive; it deceives only when attached to a product that does not live up to it, and whether it does is a fact the examiner has no means of knowing. Worse, the assessment is essentially static. The examiner cannot foresee the campaign the mark will later anchor, the packaging it will sit on, or the implied comparison it will later be made to carry. He sees the symbol; he cannot see the lie the symbol will be enlisted to tell. So the deceptiveness bar, powerful in theory, in practice screens out only the crudest cases ; the mark that lies on its own face and waves through the far larger class of marks that are innocent in isolation and deceptive only in use.

There is a structural point lurking here. Trademark examination is, by design, a gatekeeping exercise: it happens once, looks at the mark in the abstract, and is over. Green deception, by contrast, is a phenomenon of use. It lives in the relationship between a symbol and a product and a context, and that relationship can change long after the gate has closed.⁷ Asking a one-time, face-of-the-mark screen to police an ongoing, in-use deception is asking it to do something it was never built to do. This is not a failure of the examiner. It is a mismatch between the shape of the tool and the shape of the problem, and no amount of diligence at the registration stage will cure a mismatch of that kind.

Furthermore, the current regulatory landscape often fails to address the 'halo effect' created by these marks, where consumers conflate the brand's registered identity with its environmental ethics. As noted in recent commentary, the persistent use of these marks creates a form of 'reputational greenwashing' that is difficult to challenge once the mark is legally entrenched, thereby necessitating a more rigorous evidentiary standard at the time of initial registration.⁸

⁷*Id.* § 9(1)(b)–(c).

⁸ See, e.g., IP and Legal Filings, 'Assessing the Impact of Greenwashing on Trademark Validity' (2026), available at: <https://www.ipandlegalfilings.com/assessing-the-impact-of-greenwashing-on-trademark-validity/> (last accessed June 3, 2026).

4. CONSUMER PROTECTION LAW AND THE 2024 GUIDELINES

If trademark law screens the mark and then loses interest, consumer protection law begins exactly where that interest fades; at the point of use. Its instinct is to ask not “what may be owned?” but “what may be said?”, and on the question of green claims it now says a good deal.

The foundation is the broad definition of an unfair trade practice, which reaches any statement or visible representation that falsely represents that goods have characteristics or qualities they do not have.⁹ A green claim that a product lacks the advertised quality falls within this language without strain; the visible-representation limb is wide enough to capture a logo or a colour scheme as readily as a sentence. Sitting alongside it is the defined notion of a misleading advertisement, which expressly includes an advertisement that conveys a false representation or that deliberately conceals important information.¹⁰ Concealment matters here, because so much greenwashing works not by outright falsehood but by trumpeting one green attribute while staying silent about a larger environmental cost, the hidden trade-off.

The general provisions of trademark law were redefined in 2024, when the Central Consumer Protection Authority was created to deal with misleading advertisements at large¹¹ in order to make sharp guidelines on greenwashing. The guidelines do something the older law only implied: they name the practice, define it, and lay down what a green claim must satisfy to be lawful. Terms such as “clean”, “green”, “eco-friendly”, “cruelty-free”, “carbon-neutral”, “natural”, “organic” and “pure” may not be used as bare assertions; they must carry accessible, verifiable qualifiers and rest on independent study or credible third-party verification.¹² The burden, in other words, shifts onto the trader to prove the claim, which is exactly the right place to put it, since the trader alone holds the evidence.

The enforcement teeth are real if not enormous. The Authority may order an offending advertisement to be discontinued or modified, may impose a penalty running into lakhs of rupees, rising for repeat offenders, and may bar an endorser from making endorsements for a

⁹Consumer Protection Act, 2019, § 2(47), No. 35, Acts of Parliament, 2019 (India) (defining “unfair trade practice” to include false representations regarding sponsorship, approval, performance, characteristics, or quality of goods or services).

¹⁰*Id.* § 2(28) (defining “misleading advertisement” to include false descriptions, false guarantees, representations constituting unfair trade practices, or deliberate concealment of important information).

¹¹*Id.* §§ 10, 18, 21 (establishing the Central Consumer Protection Authority and outlining its powers to issue directions and penalties regarding misleading advertisements).

¹²Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024, ¶¶ 5–7, issued by Cent. Consumer Prot. Auth. (India)

period of years.¹³ For a marketing budget of any size these sums are not ruinous, and one may doubt whether they will deter a large advertiser for whom the fine is merely a cost of doing business. But the discontinuance power matters more than the money: an order to pull a campaign hits the thing the advertiser actually values, which is the campaign's reach.

And yet, here is the point on which this paper turns, the guidelines police the claim and stop at the mark. They can order a misleading advertisement off the air. They cannot, of their own force, touch the registered mark that the advertisement was built around, because the mark lives in a different statute administered by a different authority. The consumer regulator condemns the campaign; the trademark register, indifferent to the condemnation, keeps the mark on its books. The proprietor pays the fine, retires the campaign, and relaunches next quarter around the very same leaf and the very same seal. The deceptive asset survives the punishment of its use.

5. INTERNATIONAL APPROACH

India is not alone in finding that general advertising law catches green deception clumsily, and the responses elsewhere are worth studying, less for transplant than for the direction in which they point.

The United States took the route of detailed guidance. Its Green Guides set out, in considerable practical detail, how environmental marketing claims will be assessed as to what a general "environmentally friendly" claim implies, when a seal of approval misleads, how a comparative claim must be substantiated.¹⁴ The Guides are not, in themselves, a statute creating fresh offences; they inform the application of the existing prohibition on deceptive practices.¹⁵ Their virtue is the certainty they give an honest advertiser, who can read them and know what is expected. Their limitation is the same as India's: they operate on the claim, after it is made, and have nothing to say about a deceptive symbol considered as property.

The European Union has tried something more ambitious and more interesting: a shift from policing claims after the event to verifying them before they are made. Its proposed regime on environmental claims contemplates that explicit green claims be substantiated and checked by

¹³Consumer Protection Act, 2019, § 21, No. 35, Acts of Parliament, 2019 (India).

¹⁴Fed. Trade Comm'n, Guides for the Use of Environmental Marketing Claims (Green Guides), 16 C.F.R. § 260 (2026).

¹⁵*Id.*

an accredited body before they reach the consumer at all.¹⁶ The instinct here is exactly the one Indian trademark law gestures at but cannot deliver which is to catch the deception at the gate, except that the European gate is built for claims and is informed by evidence about the actual product, which is precisely the evidence the trademark examiner lacks. Ex ante verification is demanding and will be argued over, but it identifies the right target: the moment before the false green signal enters the market.

France went further still in one narrow respect, conditioning the lawful use of particular claims like “carbon neutral” and its cousins on the prior publication of a supporting report, with administrative penalties for those who use the words without doing the work.¹⁷ The French move is instructive because it attaches the legal consequence to the use of a specific phrase, which is structurally close to attaching it to the use of a specific mark. It hints at a model in which a green signal is not merely screened once but carries an enduring evidentiary condition for as long as it is used.

Read together, the foreign experiments trace a single arc: away from after-the-fact punishment of claims and towards before-the-fact verification of the signal, informed by evidence about the product itself. That is the direction India’s regime, split between a mark-screening statute that lacks evidence and a claim-policing guideline that lacks reach over the mark, has not yet been able to take, not because either regulator is unwilling but because neither alone commands both the evidence and the reach that the task requires.

6. DIAGNOSIS AND SOME PROPOSALS

The diagnosis can now be stated compactly. India regulates green deception with two instruments that are each sound and that together leave a hole. The trademark screen catches deception at the gate but is blind, because it judges the symbol without the product. The consumer guidelines see the product and the claim clearly but arrive after the gate, and they cannot reach back through it to disturb the registered mark. The deception that survives is the deception that is invisible at registration and embodied in a durable mark, which is to say, the most common and most damaging kind. The fault is not in either regime but in the absence of

¹⁶Proposal for a Directive of the European Parliament and of the Council on the Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive), COM (2023) 166 final (Mar. 22, 2023)

¹⁷Code de l’environnement [Environmental Code] art. L229-68 (Fr.), as amended (effective Jan. 1, 2023)

a hinge between them.

Four proposals follow, in rough order of how much they would help.

First, and most importantly, build the hinge. A finding by the consumer regulator that a mark has been used to convey a misleading environmental claim should be capable of being communicated to, and acted on by, the trademark registry whether as a ground for inviting the proprietor to show cause why the mark should not be qualified, conditioned or, in a clear case, rectified. The point is modest but structural: a condemnation of the use should be able to follow the mark home. At present the two authorities operate as strangers; what is needed is a channel, not a merger.

Second, put the evidence where the screen is. The trademark examiner cannot assess a green mark's truth because he has no evidence about the product. Borrowing the European instinct, an applicant seeking to register a mark whose dominant feature is an explicit environmental signal could be required to lodge substantiation for that signal at the point of application i.e., turning the examiner's blind, face-of-the-mark screen into an informed one for the narrow class of marks where it matters most.

Third, make honest use of the tool the law already has but underuses: the certification mark. The statute already provides for marks that signify that goods meet a defined, certified standard, policed by a proprietor who must himself satisfy the registry of his competence to certify.¹⁸ A robust, trusted certification-mark regime for environmental qualities would give honest traders a credible signal to use and consumers a signal worth trusting, and would by contrast expose the self-declared leaf-and-sapling marks for the unverified assertions they are. The remedy here is not prohibition but the cultivation of a better alternative.

Fourth, and least glamorous, take self-regulation seriously as a feeder rather than a substitute. The advertising industry's own code addresses environmental claims, but it binds only members and lacks the force of law.¹⁹ Treated as a first-tier filter whose findings flow upward to the statutory regulator, rather than as a parallel and toothless universe, it could do useful triage. Treated, as now, as an alternative to enforcement, it mostly absorbs complaints that

¹⁸Trade Marks Act, 1999, *supra* note 2, §§ 2(1)(e), 69–78

¹⁹Advertising Standards Council of India, Code for Self-Regulation of Advertising Content, ch. IV, § 4 (as amended) (noting that the Code is a voluntary self-regulatory instrument lacking the force of law, although its provisions regarding environmental claims are recognized through cooperation with statutory regulators).

ought to have consequences.

None of these is a grand redesign, and that is deliberate. The Indian framework does not need a third statute layered on top of the two it has. It needs the two it has to be wired together, and the screen that fires too blindly to be given something to see. The proposals are, in the end, plumbing rather than architecture but it is the plumbing that is presently missing.

7. CONCLUSION

The leaf on the bottle is a small thing to build an argument around, but it carries more than it looks. It is at once a badge of origin, which trademark law understands, and a factual claim about the world, which consumer law understands, and the difficulty is that no single body of law understands it as both at once. Trademark law owns the symbol and ignores the claim; consumer law polices the claim and cannot reach the symbol. Between the two, a durable, registered, repeatable green deception goes comfortably about its business.

The encouraging part of the story is that nothing here is broken. The trademark screen is a sensible gate; the 2024 guidelines are a real and welcome advance; the consumer regulator now has both a definition to work with and teeth to bite with. What is missing is not competence but connection. Give the consumer regulator a channel back to the register, give the trademark examiner the evidence he presently lacks, build up the honest certification mark as a rival to the dishonest leaf, and treat self-regulation as a tributary rather than a dead end and the corridor between the two regimes, through which so much green deception now escapes, begins to close. The shopper who trusts a colour deserves a legal order in which that trust is, more often than not, repaid.

REFERENCES

- [1] Trade Marks Act, 1999 (Act 47 of 1999).
- [2] Consumer Protection Act, 2019 (Act 35 of 2019).
- [3] Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 (Central Consumer Protection Authority, Ministry of Consumer Affairs, Government of India).
- [4] Securities and Exchange Board of India, Circular on Green Debt Securities (2023).
- [5] Reserve Bank of India, Framework for Acceptance of Green Deposits (11 April 2023).
- [6] Advertising Standards Council of India, Code for Self-Regulation of Advertising Content (as revised).
- [7] Federal Trade Commission, Guides for the Use of Environmental Marketing Claims (Green Guides), 16 C.F.R. Part 260 (United States).
- [8] Proposal for a Directive on the Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive), COM(2023) 166 final (European Union).
- [9] Environmental Code (France), as amended with effect from 1 January 2023, and associated decrees on environmental claims.
- [10] W. R. Cornish, D. Llewelyn and T. Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (Sweet & Maxwell, 8th edn., 2013).
- [11] Nestlé India Ltd. v. Mood Hospitality Pvt. Ltd. (litigation concerning the descriptive term “pure” for food products).
- [12] IP and Legal Filings, ‘Assessing the Impact of Greenwashing on Trademark Validity’ (2026), <https://www.ipandlegalfilings.com/assessing-the-impact-of-greenwashing-on-trademark-validity/>