

**PAINT THE LINE GREEN: EVALUATING CONSUMER  
PROTECTION AND THE REASONABLE PERSON  
STANDARD IN ENVIRONMENTAL GREENWASHING  
CLAIMS**

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**TABLE OF CONTENTS**

ABSTRACT _____	338
I. INTRODUCTION _____	339
II. THE PROBLEM _____	340
A. CURRENT FALSE ADVERTISING LAW _____	340
1. <i>Greenwashing's Flawed Definition</i> _____	340
a. Defining Greenwashing through the FTC's "Green Guides" _	343
2. <i>The FTC's Limited Interventions</i> _____	346
a. The "Bamboo Cases" _____	346
3. <i>The Lanham Act's Shortcomings</i> _____	348
a. Pleading and Standing _____	349
II. STATE APPROACHES TO GREENWASHING REGULATION _	351
A. MISSOURI STATE STATUTE _____	351
1. <i>Lizama v. H&amp;M Hennes &amp; Mauritz LP</i> _____	351
2. <i>Ellis v. Nike USA, Inc.</i> _____	355
B. CALIFORNIA STATE STATUTE _____	356
III. AN INCORRECT "REASONABLE PERSON" STANDARD ____	359
IV. SOLUTIONS _____	360
A. REWRITING THE MMPA _____	360
B. REIMAGINING THE REASONABLE CONSUMER _____	361
V. CONCLUSION _____	365

**ABSTRACT**

As more consumers become informed about climate change and their own environmental impact, more businesses begin to market their products as “green,” “eco-friendly,” or “sustainable.” However, not all products marketed as environmentally friendly<sup>1</sup> actually are; greenwashing, the deceptive marketing practices that misrepresent or exaggerate a product’s or service’s environmental benefits, is on the rise. Imagine a consumer chooses to buy a new outfit from their favorite brand’s “sustainable” line. They forego other options because they believe their choice will support the brand’s apparent efforts to conserve water and reduce their carbon footprint. Then, the consumer later finds out that the new “sustainable” line is not significantly more sustainable than their other lines, contrary to their initial impression. How can this consumer successfully make a conscious effort to support, and thereby promote, environmentally-friendly clothing production if marketing is not trustworthy?

Policymakers have attempted to protect consumers from this exact type of injury, through false advertising laws. However, lawsuits alleging greenwashing rarely succeed, and consumers rarely get justice. No existing legal framework protects consumers—the federal Lanham Act protects businesses from other businesses, individual consumers do not have standing to sue, the Federal Trade Commission’s Green Guides are nonbinding, and individual state consumer protection statutes apply an overly broad definition of a “reasonable consumer” standard that fails to account for the differences between sustainable shoppers and average shoppers.

This Note argues that greenwashing claims alleging false and misleading advertising fail because courts do not recognize the differences between sustainable shoppers and everyday shoppers, who have different reasons to choose one product over another.<sup>2</sup> Examining federal false advertising law, the FTC’s limited enforcement authority, and recent litigation in Missouri and California state courts, this Note argues that courts routinely conflate

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1. *See infra* note 5. “Environmentally friendly” refers to a claim that a product has overall reduced environmental harm across its lifecycle, including resource use, emissions, and waste, relative to comparable products.

2. *See e.g., infra* note 139.

sustainable shoppers and everyday shoppers and dismiss their false advertising claims. By deeming environmentally friendly representations as ambiguous rather than as actual deceptive practices, courts do not consider the social and behavioral factors that influence sustainable shoppers. This Note then proposes a reimagined reasonable consumer standard that considers the psychological, social, and behavioral factors that influence sustainable shoppers, given interdisciplinary research in consumer psychology and sustainable decision making. By redefining the reasonable person standard for greenwashing claims, courts can better align consumer protection laws with the realities of the marketplace, give sustainable shoppers a path to hold brands accountable, and more effectively deter deceptive marketing.

## I. INTRODUCTION

As retail shoppers consider the environmental implications of their purchases, businesses and retailers engage in alleged false advertising through greenwashing.<sup>3</sup> However, despite existing consumer-protection laws, individual consumer claims of greenwashing rarely succeed in court. Greenwashing is misunderstood, and false advertising laws are not designed to protect individual consumers. While the current FTC Guides define examples of greenwashing, federal laws under the Lanham Act protect only businesses, not consumers. State laws have also been unsuccessful in protecting consumers, and state courts fail to consider “reasonable consumers” in the context of sustainability.

This piece reimagines the reasonable person standard as applied to sustainable shoppers across multiple industries, from fashion and beauty to food and beverage. This Note first reviews what qualifies as greenwashing and how it applies to the current False Advertising Statute in the Lanham Act. It then explores alternatives to the Lanham Act, such as independent state laws, and explains why these greenwashing claims also commonly fail. This Note concludes by

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3. *Business of Sustainability Index*, PDI TECHS. (Apr. 26, 2023), <https://pditechnologies.com/resources/report/2023-business-sustainability-index>; *Greenwashing: 20+ recent stand-out examples*, APEKA (Jan. 12, 2026), <https://thesustainableagency.com/blog/greenwashing-examples/>.

proposing a new reasonable person standard that considers the psychology behind choices that lead to sustainable shopping.

## II. THE PROBLEM

### A. CURRENT FALSE ADVERTISING LAW

Consumers wishing to sue retail corporations for false advertising face two main roadblocks. First, there is no universally agreed-upon definition for the many terms used to denote a commitment to sustainability<sup>4</sup> on product labels and descriptions.<sup>5</sup> This eventually leads to confusion regarding the extent of a product's sustainability compared to the consumers' expectations, especially when facing uncommon terminology.<sup>6</sup> Second, current legal remedies are not designed to cover claims when a consumer is misled or deceived by a product's label or advertisement and wishes to file a legal complaint. The current guidelines for False Advertising claims under the Lanham Act, as well as individual state Statutes, fail to entirely encapsulate the practice of greenwashing.

#### 1. *Greenwashing's Flawed Definition*

Greenwashing refers to “a set of deceptive marketing practices in which an entity publicly misrepresents or exaggerates the positive environmental impact of attributes of a product.”<sup>7</sup> The fashion industry, which was this author's initial introduction to greenwashing, is the second-biggest source of water consumption

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4. See John C. Dernbach, *Achieving Sustainable Development: The Centrality and Multiple Facets of Integrated Decisionmaking*, 10 *IND. J. GLOB. LEGAL STUD.* 247, 251 (2003) (describing sustainable development as requiring the “integration of environmental protection and restoration” to maintain ecological systems over time).

5. Guides for the Use of Environmental Marketing Claims, 16 *C.F.R.* § 260 (2012) [hereinafter *Green Guides*].

6. Thomas Farbacher, *The Federal Trade Commission's Green Guides: Failing the American Consumer and Planet*, 36 *LOY. CONSUMER L. REV.* 135, 137 (2023).

7. Amanda Shanor & Sarah E. Light, *Greenwashing and the First Amendment*, 122 *COLUM. L. REV.* 2033, 2037 (2022).

and produces about 8% of global carbon emissions.<sup>8</sup> In 2019, seeing how much the fashion industry has contributed to the problem, the United Nations (UN) Environmental Assembly established the UN Alliance for Sustainable Fashion, with the goal of eradicating the dangerous practices of the fashion industry.<sup>9</sup>

One of the biggest culprits of water consumption within the fashion industry is the growing “fast fashion” industry.<sup>10</sup> Fast fashion refers to the “rapid design, production, distribution and marketing of inexpensive clothing” designed to reflect quick-changing trends in luxury fashion.<sup>11</sup> Shein is one of the largest fast-fashion companies, with brands like H&M and Zara run according to similar models: recreating contemporary luxury designs for the mass market, so these products are readily available at affordable prices.<sup>12</sup> Between July and December 2021, Shein added between 2,000 and 10,000 new styles to its platform per day, initially producing each design in small batches of approximately 50 to 100 units to test consumer demand.<sup>13</sup> Along with producing enough carbon emissions to rival the entire European Union’s consumption,<sup>14</sup> the fashion production industry contributes to the pollution of rivers, streams, and other bodies of water.<sup>15</sup> The act of washing this quantity of clothes during production

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8. Press Release, U.N. Env'tl. Programme, UN Alliance for Sustainable Fashion Addresses Damage of “Fast Fashion”, U.N. Press Release (Mar. 14, 2019).

9. *Id.*

10. *Id.*

11. Rasmila Maiti, *Fast Fashion and Its Environmental Impact*, EARTH.ORG (Jan. 5, 2024), <https://earth.org/fast-fashions-detrimental-effect-on-the-environment/>.

12. *Id.*

13. See Louise Matsakis, Meaghan Tobin & Wency Chen, *How Shein beat Amazon at its own game — and reinvented fast fashion*, REST OF WORLD (Dec. 14, 2021), <https://restofworld.org/2021/how-shein-beat-amazon-and-reinvented-fast-fashion/> (reporting that Shein added between 2,000 and 10,000 new styles per day in 2021); see also *SHEIN Is the Most Popular Brand in the World*, DSCENE (Dec. 19, 2022), <https://www.designscene.net/2022/12/shein-most-popular-brand.html> (noting that items are initially produced in batches of approximately 50–100 pieces).

14. Maiti, *supra* note 11.

15. Morgan McFall-Johnsen, *These facts show how unsustainable the fashion industry is*, WORLD ECON. F. (Jan. 31, 2020), <https://www.weforum.org/stories/2020/01/fashion-industry-carbon-unsustainable-environment-pollution/>.

releases 500,000 tons of microfibers that end up in the ocean, totaling about the same amount of microfibers as 50 billion plastic bottles.<sup>16</sup>

The UN Framework Convention on Climate Change predicts that carbon emissions from textile manufacturing will increase by 60% within the next five years.<sup>17</sup> Thus, the fashion industry is both severely contributing to the problem while attempting to fix it.

A growing number of Americans are more seriously considering how their purchases and products affect the environment.<sup>18</sup> Gen-Z<sup>19</sup> cites current climate events as making them more likely to consider the environmental impact of products when making purchases.<sup>20</sup> These new shopping habits have led retailers to market their products as “green” or “eco-friendly,” which may not always be the exact truth. For example, Ralph Lauren set a goal of using 100% sustainably sourced materials by 2025.<sup>21</sup> In its 2024 Global Citizenship & Sustainability Report, Ralph Lauren reported that 97% of its cotton is sustainably sourced and 87% of its polyester is recycled, with the goal of all of these categories hitting 100% by the end of 2025.<sup>22</sup> The report details further that cotton being “sustainably sourced” under Ralph Lauren standards means meeting at least one of its own defined sustainability attributes: organic, transitional/in-conversion, Better Cotton, recycled, regenerative, U.S. Cotton Trust Protocol, or Fair-Trade certified.<sup>23</sup> With such a vast

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16. *Id.*

17. *Fashion Industry, UN Pursue Climate Action for Sustainable Development*, UNITED NATIONS CLIMATE CHANGE (Jan. 22, 2018), <https://unfccc.int/news/fashion-industry-un-pursue-climate-action-for-sustainable-development>.

18. PDI TECHS., *supra* note 3.

19. *Generation Z*, ENCYC. BRITANNICA <https://www.britannica.com/topic/Generation-Z> (last visited Mar. 30, 2026).

20. *See The State of Consumer Spending: Gen Z Shoppers Demand Sustainable Retail*, FIRST INSIGHT, <https://www.firstinsight.com/white-papers-posts/gen-z-shoppers-demand-sustainability> (last visited Mar. 22, 2026) (“62% of Gen Z shoppers prefer to buy from sustainable brands . . . Gen Z and Millennials are the most likely to make purchase decisions based on personal, social and environmental values”).

21. RALPH LAUREN, 2024 GLOBAL CITIZENSHIP & SUSTAINABILITY REPORT 7 (2024), [https://corporate.ralphlauren.com/on/demandware.static/-/Sites-RalphLauren\\_Corporate-Library/default/dw95dc0796/documents/2024\\_reports\\_and\\_policies/RL-2024-GCSRReport.pdf](https://corporate.ralphlauren.com/on/demandware.static/-/Sites-RalphLauren_Corporate-Library/default/dw95dc0796/documents/2024_reports_and_policies/RL-2024-GCSRReport.pdf).

22. *Id.* at 15.

23. *Id.* at 16.

definition of sustainable cotton, the term can mean anything: from being able to be recycled to being officially certified.<sup>24</sup> Ralph Lauren's labels thus lack transparency.<sup>25</sup> A closer examination of the polyester provisions states that "87% of our polyester apparel units had a sustainability attribute" without any further explanation.<sup>26</sup> With almost everything being considered "sustainable," consumers are led to believe they are contributing to sustainability without consistent definitions or scientific evidence. Although federal law purports to protect businesses from clearly defined false labeling and advertising, it currently fails to guard consumers against greenwashing.

a. Defining Greenwashing through the FTC's "Green Guides"

Currently, the only designated guidelines when it comes to marketing practices in environmentally friendly products are the Federal Trade Commission's "Green Guides."<sup>27</sup> The Green Guides provide guidance and examples on how to make "green" claims.<sup>28</sup> Green claims are any claims or labels pertaining to a product's environmental qualities, such as an item being compostable, degradable, recyclable, or made with recycled content or renewable energy/materials, being adequately displayed.<sup>29</sup> The Green Guides apply to any of the aforementioned claims regarding a product, package, or service.<sup>30</sup> That is to say, the Green Guides insist that advertisements or labels be honest and transparent, never intending to deceive consumers.<sup>31</sup> The Green Guides were first developed in 1992 and help prevent retailers and marketers from stating or implying

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24. *A Comprehensive Guide to Different Types of Cotton*, RECOVER (Jan. 15, 2024), <https://recoverfiber.com/newsroom/guide-to-different-types-of-cotton> (discussing the different categories of cotton that consumers come across in the market).

25. Press Release, Rainforest Action Network, Ralph Lauren Targeted by New 'Out of Fashion' Campaign (Apr. 23, 2015), <https://www.ran.org/press-releases/ralph-lauren-targeted-by-new-out-of-fashion-campaign/> (stating that without strong sourcing policies, the company "cannot guarantee" its fabrics are not contributing to deforestation and related harms).

26. RALPH LAUREN, *supra* note 21, at 16.

27. Green Guides, *supra* note 5, § 260.2.

28. *Id.* § 260.1.

29. *Id.* § 260.4.

30. *Id.* § 260.1.

31. *Id.*

“‘environmental benefits if the benefits are negligible’ and ‘unqualified general environmental benefit claims’ without ‘clear and prominent qualifying language that limits the claim to a specific benefit or benefits.’”<sup>32</sup> However, the Green Guides are not legally binding; they are guidelines and recommendations and therefore unenforceable in court.

The latest official revisions to the FTC Green Guides were included in the 2012 version with the purposeful intentions of “providing guidance to marketers and companies 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 consumers.”<sup>33</sup> While this version of the Green Guides provides guidelines for defining labels such as “renewable,”<sup>34</sup> “environmentally preferable,”<sup>35</sup> or “eco-friendly,”<sup>36</sup> the Guides are not legally binding. They serve solely as the guidepost for retailers and marketers to prevent fines and penalties from the FTC and for the public to know the FTC’s stance on these issues.<sup>37</sup>

Though Green Guides can serve as a persuasive authority in establishing legal precedent for actions under Section 5 of the FTC Act, they still fail to provide individual consumers with any defenses against these practices. Section 5 of the FTC Act does, however, prohibit deceptive acts or practices that affect commerce, which allows the FTC to file claims against some businesses for false advertising practices.<sup>38</sup> Deceptive acts include any representations, omissions, or practices that are likely to mislead reasonable consumers and materially affect their decisions.<sup>39</sup> Under FTC Guidelines, all express or implied claims conveyed by the advertisement must be identified by marketers, who then must ensure

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32. *Id.*

33. *Environmentally Friendly Products: FTC’s Green Guides*, FED. TRADE COMM’N, <https://www.ftc.gov/news-events/topics/truth-advertising/green-guides> (last visited Apr. 1, 2026).

34. *Id.* § 260.15(d).

35. *Id.* § 260.3(d).

36. *Id.* § 260.4(d).

37. Farbacher, *supra* note 6, at 137–38.

38. FTC Policy Statement on Deception, Letter from FTC Hon. John D. Dingell (Oct. 14, 1983), 103 F.T.C. 174, 174 (1984).

39. *Id.* at 174–75.

that all reasonable interpretations of their claims are “truthful, not misleading and supported by a reasonable basis before they make the claims.”<sup>40</sup> To present truthful scientific claims, data must be backed by evidence such as extensive research,<sup>41</sup> analysis, and even controlled experiments.<sup>42</sup> This evidence must then strike a balance between being understandable and useful to the reasonable consumer, but also respected and accepted by the relevant scientific fields.<sup>43</sup> Specifically, brands must ensure their sustainability claims are both supported by scientific evidence and understood by everyday consumers. The central issue, then, lies in the incongruence between the abridged sustainability claims in packaging and advertising and the reality reported in officially published corporate material, which is accessed by only a few consumers. While certain brands and retailers like H&M are committed to bolstering their reputations through sustainable practices, the inconsistency between its Corporate Social Responsibility Reports and what its day-to-day consumers understand can and should fall under Section 5 deceptive acts.<sup>44</sup>

While the FTC Green Guides serve only as a guide for business practices, the FTC works with the goal of protecting consumers from unfair business practices by enforcing laws and conducting investigations.<sup>45</sup> To implement these changes, the FTC would need to acquire the same ability to enact binding requirements on marketers and retailers that Congress has conferred to the Department of Agriculture.<sup>46</sup> In 1990, Congress passed the Organic Food

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40. FTC Policy Statement Regarding Advertising Substantiation 104 F.T.C. 839 (1984).

41. Siham Sulieman, *New Materials for Sustainable Fabrics*, CHEMISTRY WORLD (Mar. 27, 2025), <https://www.chemistryworld.com/opinion/new-materials-for-sustainable-fabrics/4021150.article>.

42. FED. TRADE COMM’N, *supra* note 33.

43. *Id.*

44. See *H&M Is Being Sued Over “Misleading” Sustainability Marketing, Product Scorecards*, THE FASHION L. (Jul. 28, 2022), <https://www.thefashionlaw.com/hm-is-being-sued-over-misleading-sustainability-marketing-product-scorecards/> (describing discrepancies between reported data and advertised environmental benefits).

45. *Enforcement*, FED. TRADE COMM’N, <https://www.ftc.gov/enforcement> (last visited Nov. 24, 2024).

46. Farbacher, *supra* note 6, at 141–42.

Productions Act, which established national standards for what food can be marketed as “fresh” or “organic.”<sup>47</sup> This Act empowered the U.S. Department of Agriculture to administer official certifications for those labels.<sup>48</sup> Farmers and producers are now required to adhere to all requirements of this process in order to label their products as organic.<sup>49</sup> The Green Guides, however, allow the FTC to define what certain labels mean, but do not bind marketers and retailers to adhere to these definitions in order to use the labels. The FTC instead takes a reactive approach, where they later use these guidelines as a basis to pursue enforcement actions against marketers and retailers.<sup>50</sup> The Green Guides only require marketers to clearly and prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers.<sup>51</sup> They are not required to adhere to specific rules to label their products as recyclable.<sup>52</sup> Instead, the FTC creates a sliding scale; the more conditions an item meets to be recycled, the more detailed the marketer can be in labeling it recyclable.<sup>53</sup>

## 2. *The FTC’s Limited Interventions*

### a. The “Bamboo Cases”

The FTC also attempts to enforce better environmental practices by pursuing litigation against businesses that engage in more obviously misleading practices, such as mislabeling textiles. In 2022, the FTC received a combined \$5.5 million payment from Kohl’s in relation to the Textile Fiber Products Identification Act, the Textile Rules, and the FTC Act through the company’s use of Bamboo in its products.<sup>54</sup> The FTC alleged that Kohl’s had been advertising products as being

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47. *Id.* at 141.

48. *Id.*

49. *Id.*

50. *Id.* at 143.

51. *Id.* at 141; *see* Green Guides, *supra* note 5, § 260.12.

52. Farbacher, *supra* note 6, at 142.

53. *Id.*

54. Stephanie Weaver, *Kohl’s, Walmart to pay \$5.5 million for falsely claiming rayon products were bamboo, FTC says*, FOX 13 NEWS (May 5, 2022), <https://www.fox13news.com/news/kohls-walmart-to-pay-5-5-million-for-falsely-claiming-rayon-products-were-bamboo-ftc-says>.

made of bamboo, a natural fiber, when the products were actually made of rayon.<sup>55</sup> Rayon is created by extracting cellulose from trees and other plants and then processing this cellulose into a man-made, plastic fiber used as a textile.<sup>56</sup> While any plant can produce this cellulose, Bamboo is often used.<sup>57</sup> However, regardless of whether the cellulose was extracted from what was once Bamboo and is now plastic, the end product is always labeled as “Rayon.”<sup>58</sup> In fact, the extraction of cellulose to create rayon uses toxic chemicals and often results in the emission of hazardous pollutants, completely contrary to Kohl’s claims that its bamboo products are environmentally friendly alternatives.<sup>59</sup>

The deceptive practice of labeling the man-made textile “rayon” as the natural plant “bamboo” is in fact quite common.<sup>60</sup> Bamboo’s characteristics make it seem like one of the most environmentally friendly materials, being used to build houses and schools, roads and bridges, used in medicine, and used to develop a strong, durable fabric, which allows it to be commonly used in textiles.<sup>61</sup> Under the belief that Bamboo may be the pinnacle of eco-friendly textiles, consumers are more likely to choose it for its qualities over artificial

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55. *Id.*

56. Press Release, Fed. Trade Comm’n, FTC Charges Companies with “Bamboo-zling” Consumers with False Product Claims (Aug. 11, 2009), <https://www.ftc.gov/news-events/news/press-releases/2009/08/ftc-charges-companies-bamboo-zling-consumers-false-product-claims>.

57. *Id.* See also *Bamboo Benefits*, ECONATION, <https://econation.one/bamboo/> (last visited Nov. 24, 2024). Bamboo is a renewable resource, whose popularity is aided by the fact it is fast growing and requires very little care to grow. *Id.* Bamboo does not require any pesticides or fertilizers, fully matures in 3–5 years, is carbon neutral, produces more oxygen than trees and grows in a myriad of natural environments and ecosystems.

58. *Id.*

59. Press Release, Fed. Trade Comm’n, FTC Uses Penalty Offense Authority to Seek Largest-Ever Civil Penalty for Bogus Bamboo Marketing from Kohl’s and Walmart (Apr. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-uses-penalty-offense-authority-seek-largest-ever-civil-penalty-bogus-bamboo-marketing-kohls>.

60. *The Truth About Bamboo Sheets and Plant-Based Fabrics*, GOOD HOUSEKEEPING (Jun. 24, 2021), <https://www.goodhousekeeping.com/home/a35604410/bamboo-eucalyptus-fabric-false-labeling/>.

61. *Id.*

textiles, such as polyester or even processed rayon.<sup>62</sup> Thus, retailers feel they can market rayon that may or may not contain cellulose extracted from Bamboo as Bamboo itself, deceiving consumers into believing they have made an environmentally friendly purchase and have not contributed to chemical processing and carbon emissions from the rayon production process. Kohl's defended its labeling, arguing that using Bamboo fibers, as opposed to other textiles, was beneficial to the environment and that these products were free of harmful chemicals and manufactured in ways that would not produce any carbon emissions.<sup>63</sup> Siding with the FTC, the court ordered Kohl's to pay a combined \$5.5 million in civil penalties for misleading customers.<sup>64</sup> The court found that Kohl's claims were intentionally misleading because its products were made of rayon, not the bamboo Kohl's claimed to have used.<sup>65</sup>

The FTC filed similar claims against Nordstrom, Bed Bath and Beyond, Backcountry.com, and JCPenney.<sup>66</sup> In 2022, these brands were ordered to pay a combined penalty of \$1.3 million to the FTC for violating the Textile Act and Rules for mislabeling rayon as bamboo.<sup>67</sup> These "FTC Bamboo Cases" demonstrate the FTC's ability and commitment to pursue litigation against businesses engaging in deceptive practices when they are obvious and explicit, such as mislabeling textiles and their composition. However, the FTC's commitment to pursue action aside from the Bamboo Cases is unclear.

### *3. The Lanham Act's Shortcomings*

Given the lack of specific provisions addressing greenwashing and the protection of only competing businesses, the Lanham Act also

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62. *Is Bamboo A Sustainable Fabric?*, SUSTAINABILITY AWARD (May 15, 2025), <https://sustainabilityaward.org/is-bamboo-a-sustainable-fabric/>.

63. *ECONATION*, *supra* note 57.

64. *Id.*

65. *Id.*

66. Press Release, Fed. Trade Comm'n, Nordstrom, Bed Bath & Beyond, Backcountry.com, and J.C. Penney to Pay Penalties Totaling \$1.3 Million for Falsely Labeling Rayon Textiles as Made of "Bamboo" (Dec. 9, 2015), <https://www.ftc.gov/news-events/news/press-releases/2015/12/nordstrom-bed-bath-beyond-backcountrycom-jc-penney-pay-penalties-totaling-13-million-falsely>.

67. *Id.*

leaves individual consumers without federal false advertising laws to protect them. Contained in Section 43(a)(1)(B) of the Lanham Act, a business is prohibited from making any statement that “misrepresents the nature, characteristics [or] qualities of its own or a competitor’s products or services.”<sup>68</sup> If successful in their claim, a plaintiff may obtain an injunction or damages for their loss. To state a claim for false advertising under the Lanham Act, a plaintiff must allege “(1) a false or misleading statement; (2) in connection with commercial advertising or promotion that (3) was material; (4) was made in interstate commerce; and (5) damaged or will likely damage the plaintiff.”<sup>69</sup>

There are a few issues with the Lanham Act regarding the use of false advertising to combat greenwashing. Firstly, it is difficult to state a claim for loosely defined greenwashing. Secondly, because the Lanham Act is designed to address competitive injuries between retailers, it does not recognize individual consumers as the parties injured by greenwashing.

#### a. Pleading and Standing

While the Lanham Act has been used to address cases of false advertising in the context of greenwashing, it has only been used on behalf of businesses or corporations, not individual consumers, leaving them with little to no legal recourse against greenwashing practices. Pleading requirements also ask that the plaintiff provide evidence that it is plausible that the defendant purposely misled the consumer.

*Red Rock Sourcing LLC v. JGX LLC* outlines a basic false advertisement case that successfully protected a business from the effects of its competitor’s greenwashing.<sup>70</sup> A further reading of Section 43(a) of the Lanham Act details that a misleading description or representation of fact is one that “in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or

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68. The Lanham Act, 15 U.S.C. § 1125(a)(1)(B) (2023).

69. *Unlimited Cellular, Inc. v. Red Points Sols., S.L.*, 677 F.Supp.3d 186, at 190 (S.D.N.Y. Jun. 14, 2023) (emphasizing necessary prongs to file False Advertising Claims under the Lanham Act).

70. *Red Rock Sourcing LLC v. JGX LLC*, No. 21 Civ. 1054 (JPC), 2024 WL 1243325, at \*42 (S.D.N.Y. Mar. 22, 2024) [hereinafter *Red Rock*].

geographic origin of his or her or another person's goods, services, or commercial activities."<sup>71</sup> Faced with a claim of counterfeit manufacturing and distribution of hand sanitizer, the Southern District of New York dismissed plaintiff Red Rock Sourcing's claim of false advertising.<sup>72</sup> Initially, the defendant filed a motion to dismiss for failure to state a claim, believing that Red Rock had failed to specify any false or misleading statements the defendant had made for the purpose of advertising a counterfeit product.<sup>73</sup> The defendant's motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure (FRCP) triggered a *Twombly* analysis, where "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."<sup>74</sup> Thus, Red Rock's complaint must have included enough information to make it plausible that the defendants acted unlawfully.<sup>75</sup> It is not enough to just demonstrate a sheer possibility; it must be plausible given the facts.<sup>76</sup> In the context of greenwashing as a form of false advertising, this would require the plaintiff to demonstrate the plausibility of the defendant's unlawful actions in advertising.<sup>77</sup> They must demonstrate not that a plaintiff can misunderstand an advertisement or label, but that the defendant has used, in commerce, a false designation of origin or false or misleading description and representation of fact; like, for example, JGX describing its textiles as "natural" or made with higher-quality materials.<sup>78</sup>

Standing is the legal right to initiate a lawsuit based on a plaintiff's alleged injury being traceable to a defendant's unlawful conduct.<sup>79</sup> For false advertising claims, both constitutional and statutory standing apply. First, under Article III of the U.S. Constitution, an

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71. 15 U.S.C. § 1125(a)(1).

72. *Red Rock* at \*10.

73. *Id.* at \*8.

74. *Id.* at \*10 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

75. *Id.* at \*10.

76. *Id.*

77. *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)) (explaining that a plausible claim must be "context-specific" and the court must draw on its judicial experience and common sense to determine plausibility).

78. 15 U.S.C. § 1125(a)(1).

79. *McBurney v. Cuccinelli*, 780 F.Supp.2d 439, 445 (E.D. Va., 2011) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

injury must be traceable to a defendant's alleged conduct.<sup>80</sup> Second, under the Lanham Act, the injury must be within the "zone of interests" that the Lanham Act was enacted to protect commercial interests.<sup>81</sup>

While the Lanham Act has the potential to combat greenwashing under its False Advertisement provision, it can only do so on behalf of businesses, protecting them from deceptive practices.<sup>82</sup> An individual consumer is unable to file a claim under the Lanham Act and is therefore unprotected from false advertising practices. Individual consumers also spend their hard-earned money on products they believe to be the better choice for the environment and the world they live in. These consumers also deserve a legal remedy against misleading advertising practices.

## II. STATE APPROACHES TO GREENWASHING REGULATION

### A. MISSOURI STATE STATUTE

#### 1. *Lizama v. H&M Hennes & Mauritz LP*

With no federal law to protect consumers from greenwashing, consumers must look to state law for recourse. For instance, in Missouri, the Missouri Merchandising Practice Act (MMPA)

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80. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (citing U.S. CONST. art. III, § 2, cl. 1).

81. *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 137 (2014) (citing 15 U.S.C. § 1125(a)(1)).

82. In *Fashion Group, LLC v. Johnny's Signature, Inc.*, No. 18 Civ. 2959 (PGG), 2019 WL 4572202, at \*2–5 (S.D.N.Y. Sept. 20, 2019), plaintiffs alleged that defendants falsely labeled their garments as containing 78% rayon and 22% nylon, a fabric blend associated with higher quality and environmental benefits, when testing of twenty-seven samples showed that none contained the advertised composition. Plaintiffs further alleged that these misrepresentations allowed defendants to sell their products to retailers such as Ross, Burlington, and Amazon at lower prices, thereby diverting sales and causing plaintiffs to lose revenue, profits, market share, and business relationships. The court held that plaintiffs had adequately pleaded Article III standing because those economic injuries were fairly traceable to defendants' advertising practices and that the alleged false advertising could proximately cause plaintiffs' injuries under the Lanham Act.

provides a vehicle for individual consumers to file greenwashing claims. The MMPA prohibits “the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce.”<sup>83</sup> However, the MMPA has also failed to protect consumers because of its “reasonable consumer” standard.<sup>84</sup> Not only is this standard too broad, but it also does not consider the sustainability practices that influence consumer’s purchasing decisions.

Norway’s Consumer Authority investigated H&M’s Conscious Collection and reported that H&M used insufficient, unsubstantiated, or misleading information claims to convince consumers that its products were more sustainable.<sup>85</sup> In its 2023 Sustainability Report, H&M reported an 85% share of recycled or sustainably sourced materials, but this figure includes materials that are as little as 25% recycled; while promising, this claim is still misleading.<sup>86</sup> Lizama, the plaintiff in *Lizama v. H&M Hennes & Mauritz LP*, is alleged to

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83. MO. REV. STAT. § 407.020.1 (2020).

84. *Lizama v. H&M Hennes & Mauritz LP*, No. 4:22 CV 1170 RWS, 2023 WL 3433957, at \*1 (E.D. Mo. May 12, 2023). In a class action case on behalf of Missouri residents who made similar purchases, the plaintiff purchased a sweater from H&M’s “conscious choice” collection and sued under the MMPA for false advertising. *See id.* However, this case failed under the MMPA because H&M’s advertising never claimed that its “Conscious Collection” products were the most sustainable products, but instead were slightly more sustainable than other options. *Id.* at \*5. In 2020, H&M’s Conscious Collection released a garment made of Hemp Biofibre™, which was made of hemp crop waste and a cellulosic fiber called Eastman Naia™ Renew, and Vegea™. Rahmata Dem, *H&M Presents Its New Sustainable Collection Created with 3 Innovative Materials from Waste*, HORSE MAG. (May 3, 2024), <https://www.magazinehorse.com/en/hm-presents-digitally-presents-new-sustainable-conscious-exclusive-collection-created-with-3-innovative-sustainable-materials-2/>. That same year, H&M announced a 50% circulose and 50% sustainably sourced wood, fabric blend. *Creating H&M’s Most Sustainable Collection Ever*, H&M GRP. (May 15, 2020), <https://hmgroupp.com/our-stories/creating-hms-most-sustainable-collection-ever/>.

85. *See* Natasha Hitti, *H&M Called Out for “Greenwashing” in its Conscious Fashion Collection*, DEZEEN (Aug. 2, 2019), <https://www.dezeen.com/2019/08/02/hm-norway-greenwashing-conscious-fashion-collection-news/>.

86. H&M GRP., ANNUAL AND SUSTAINABILITY REPORT 202311 (2023), <https://hmgroupp.com/wp-content/uploads/2024/03/HM-Group-Annual-and-Sustainability-Report-2023.pdf>.

have purchased a sweater from this collection, believing it to have been made using “more sustainable and environmentally friendly” methods.<sup>87</sup> Nevertheless, further investigation led Lizama to discover that the Conscious Collection “contains a higher percentage of synthetics [than H&M’s] main collection,” and is therefore no more sustainable.<sup>88</sup> Lizama alleged that recycled polyester is not more sustainable than regular polyester, since even recycled polyester is a low-quality material that will only end up in the trash.<sup>89</sup> After finding other consumers with the same experience, Lizama filed a class action lawsuit against H&M, alleging that reasonable consumers would take a Conscious Collection designation of “sustainable” to mean that the product is made of “sustainable and environmentally friendly materials that are less harmful and beneficial to the environment.”<sup>90</sup>

Lizama sought relief under the MMPA.<sup>91</sup> H&M then filed a motion to dismiss for failure to state a claim,<sup>92</sup> further supplemented by Rule 9(b) of the FRCP, which requires that “a party must state with particularity the circumstances constituting fraud or mistake.”<sup>93</sup> H&M claimed that, in the context of false advertising and fraud, it never misrepresented the Conscious Collection’s meaning.<sup>94</sup> The judge held that H&M averred that they did not represent that its Conscious Choice products are sustainable, or more sustainable than its competitors, just that the line included H&M’s most sustainable products.<sup>95</sup> Lizama claimed that he purchased the Conscious Choice Collection sweater after seeing an H&M advertisement on its website that read that the Conscious Choice Collection was “[t]he shortcut to

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87. *Lizama*, *supra* note 84, at \*4.

88. *Id.* (quoting Complaint at ¶ 44, *Lizama v. H&M Hennes & Mauritz LP*, No. 4:22 CV 1170 RWS, 2023 WL 3433957 (E.D. Mo. May 12, 2023)).

89. *See id.*

90. *See id.*

91. MO. REV. STAT. § 407.020.1.

92. *Lizama*, *supra* note 84, at \*3.

93. FED. R. CIV. P. 9(b).

94. *See Lizama*, *supra* note 84, at \*3.

95. Craig Cardon, Dane Brody Chanove & Rachel Tarko Hudson, *Lizama et al. v. H&M: A Lesson in Artful Crafting of Green Marketing Claims*, JD SUPRA (Jun. 23, 2023), <https://www.jdsupra.com/legalnews/lizama-et-al-v-h-m-a-lesson-in-artful-6730864/>.

more sustainable shopping.”<sup>96</sup> Lizama also claimed the advertisement read, “[y]ou can identify our most environmentally sustainable products by looking out for our green Conscious hangtags.”<sup>97</sup> Lizama also alleged that the Conscious Choice Collection’s campaign photos, displaying models surrounded by greenery along with claims such as “59% Recycled polyester,” mislead customers into believing these are “green” and “environmentally friendly” products.<sup>98</sup> Yet, as Lizama alleged, further research and knowledge of the fabrics and practices used by H&M illustrate that the Conscious Choice Collection is no more sustainable than H&M’s regular collections.<sup>99</sup>

To prevail on a claim under the MMPA, a plaintiff must allege that they “(1) purchased merchandise from the defendant; (2) for personal, family, or household purposes; and (3) suffered an ascertainable loss of money or property (4) as a result of the defendant’s use of one of the methods or practices declared unlawful by the Act.”<sup>100</sup> To be considered misrepresentation under the MMPA, the information supplied must be false as a result of “the speaker’s failure to exercise reasonable care.”<sup>101</sup> Nevertheless, the Eastern District of Missouri held that H&M had not engaged in any false advertising.<sup>102</sup> The court noted that an important consideration was not the statements H&M made regarding sustainability, but instead were the statements it had not made.<sup>103</sup> Namely, H&M never directly claimed that the Conscious Choice Collection was “environmentally

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96. *See Lizama*, *supra* note 84, at \*4.

97. *Id.*

98. *Id.*

99. URSKA TRUNK ET AL., SYNTHETICS ANONYMOUS: FASHION BRANDS’ ADDICTION TO FOSSIL FUELS 45 (2021), <https://changingmarkets.org/wp-content/uploads/2021/06/CM-Synthetics-Anonymous-online-format.pdf> (demonstrating examples of Conscious Collection pieces that are seemingly falsely labeled).

100. *Lizama v. H&M Hennes & Mauritz LP*, No. 4:22 CV 1170 RWS, 2023 WL 3433957, at \*5 (E.D. Mo. May 12, 2023) (citing MO. REV. STAT. § 407.025.1 (2020)).

101. *Renaissance Leasing, LLC v. Vermeer Mfg. Co.*, 322 S.W.3d 112, 134 (Mo. 2010) (en banc).

102. *See Lizama*, *supra* note 84, at \*6.

103. *See id.* at \*5.

friendly.”<sup>104</sup> The court found that H&M only stated that the Conscious Choice Collection is made of “more sustainable materials,” which does not necessarily mean that the products themselves are sustainable or more sustainable than its competitors.<sup>105</sup> It held that no reasonable consumer would understand this to mean that the Conscious Choice Collection is inherently sustainable.<sup>106</sup> Yet, the court got this wrong. What does it matter that one collection is slightly more sustainable than another, if neither is sustainable to begin with? If a consumer chooses to shop sustainably, they are likely doing so because of the environmental impact of their choice.<sup>107</sup>

## 2. *Ellis v. Nike USA, Inc.*

The plaintiff in *Ellis v. Nike USA, Inc.* also had her claim dismissed by the Eastern District of Missouri for a failure to “plausibly allege more than conclusory facts that the Defendant’s statements were misleading, false, or fraudulent.”<sup>108</sup> Ellis purchased three items from Nike’s Sustainability Collection after allegedly viewing the product’s “handtag labeling, marketing and advertisements” claiming the products were misrepresented as being sustainable.<sup>109</sup> Ellis asserted that Nike claimed these products were made with “recycled and organic materials” when in reality, they were “made with virgin synthetic and non-organic materials that are harmful to the environment.”<sup>110</sup> While the court held that Ellis failed to plausibly allege that Nike’s claims were misleading, false, or fraudulent because there was nothing in Nike’s Sustainability Collection label that claimed it was made with recyclable and organic materials, the court did analyze how it would have interpreted Ellis’s claims under the MMPA.<sup>111</sup> In doing so, it emphasized the importance of a

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104. *Id.*

105. *Id.*

106. *Id.*

107. *See infra* note 142.

108. *Ellis v. Nike USA, Inc.*, No. 4:23-CV-00632-MTS, 2024 WL 1344805, at \*4 (E.D. Mo. Mar. 28, 2024).

109. *Id.* at \*1.

110. *Id.* (quoting Amended Complaint at ¶ 36, *Ellis v. Nike USA, Inc.*, No. 4:23-CV-00632-MTS, 2024 WL 1344805 (E.D. Mo. Mar. 28, 2024)).

111. *Id.* at \*3.

“reasonable customer” being misled to establish an MMPA claim.<sup>112</sup> The court reasoned that, under the MMPA, Ellis’s claim still would have been dismissed because she presented no evidence as to the exact claims Nike made about its sustainability collection.<sup>113</sup>

Together, these cases demonstrate the flaws of using the MMPA to address instances of greenwashing. In finding for the retailers in *Lizama* and *Ellis*, the Eastern District of Missouri’s interpretation focused on false interpretations of true statements, holding that no reasonable consumer would believe that H&M describing its Conscious Choice Collection as “sustainable” to mean more sustainable than other companies, when the line is just more sustainable than other H&M lines.<sup>114</sup> However, this understanding does not fully consider the nuances of greenwashing claims, which do not rely on false statements as we know them, but rather the consumer’s interpretations of the statements. While the MMPA succeeds in establishing who has standing and an injury to make a claim against a retailer, including individual consumers as opposed to retailers and businesses under the Lanham Act, the MMPA, much like California’s statute, still fails to address the root of what greenwashing actually is and the harm that it causes.

#### B. CALIFORNIA STATE STATUTE

While California has also developed a false advertising statute that has been used in greenwashing cases, these claims have also failed due to an overbroad reasonable person standard.<sup>115</sup> In California, a

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112. *Id.*

113. *Id.* at \*3–4.

114. Stuart Kaplow, *H&M Wins Dismissal of Greenwashing Lawsuit*, GREEN BLDG. L. UPDATE (May 28, 2023), <https://www.greenbuildinglawupdate.com/2023/05/articles/greenwashing/hm-wins-dismissal-of-greenwashing-lawsuit/>.

115. Under the California False Advertising Law:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or

likelihood of deception implies more than the possibility of an advertisement being misunderstood by a few consumers, but rather the advertisement being misunderstood by a significant portion of the general consuming public, or targeted consumers.<sup>116</sup>

Even when a plaintiff attempted to meet the reasonable consumer standard, the Ninth Circuit Court of Appeals still held that there was no false advertising because more specific ingredient information was available on the back of the product packaging.<sup>117</sup> In *McGinity v. Procter & Gamble Company*, the plaintiff sued Procter & Gamble under California's Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act,<sup>118</sup> alleging that the shampoo and conditioner he purchased displayed a "Nature Fusion" label on the front.<sup>119</sup> The plaintiff claimed that this label led consumers to believe the products were made with all-natural ingredients, as

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disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine. CAL. BUS. & PROF. CODE § 17500 (2010).

116. *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 508 (Ct. App. 2003).

117. *McGinity v. Procter & Gamble Co.*, 69 F.4th 1093, 1099 (9th Cir. 2023).

118. *Id.* at 1096.

119. *Id.* at 1095–96.

opposed to potentially harmful synthetic ingredients.<sup>120</sup> The plaintiff alleged that the “Nature Fusion” label, affixed atop an avocado and a green leaf, encouraged consumers to believe that the shampoo and conditioner were made of natural products when they were really made of non-natural synthetic ingredients.<sup>121</sup> He stated that he would not have purchased these particular products if he knew they were not made of natural ingredients because he wanted to buy natural shampoo and conditioner.<sup>122</sup>

The plaintiff’s evidence included a survey of over 400 consumers.<sup>123</sup> Of these consumers, 74.9% believed the “Nature Fusion” label on the shampoo signified more natural than synthetic ingredients in the shampoo, as did 77.4% of consumers when shown the same label on the conditioner.<sup>124</sup> More specifically, 52.6% of the consumers believed that the phrase “Nature Fusion” meant the shampoo did not contain any synthetic ingredients, with 49.1% believing that phrase meant the product contained only natural ingredients.<sup>125</sup>

Compared to the Nature Fusion shampoo and conditioner in *McGinity*, the Ninth Circuit determined that the front label of the shampoo and conditioner was not false, but ambiguous.<sup>126</sup> However, in *Williams v. Gerber Products*, where further reading of the ingredient list showed that the snacks were not actually made with the real fruit advertised by Gerber Products, the Ninth Circuit looked to FDA requirements for ingredient lists.<sup>127</sup> To the FDA, a reasonable consumer does not need to read beyond the back labels because the simple ingredient list provides more detailed information on ingredients and nutritional facts.<sup>128</sup> The Ninth Circuit thus applied this FDA reasonable food consumer analysis to reasonable shampoo

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120. *Id.* at 1096.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *See id.* at 1099.

127. *Id.* at 1098. In reality, none of the fruit illustrations featured on the box in *Williams* were used as ingredients and the first two ingredients listed were corn syrup and sugar. *See id.*

128. *See McGinity*, 69 F.4th at 1098 (quoting *Williams v. Gerber Products*, 552 F.3d 934, 939–40 (9th Cir. 2008)).

consumers, believing both reasonable consumers to be ones that stop reading at the ingredient labels.<sup>129</sup> In considering the plaintiff-presented survey, the Ninth Circuit reinforced that the survey was inapplicable because it did not allow the participants to see the back label of the shampoo.<sup>130</sup> The court believed that without the rear label to clarify what Nature Fusion means, the survey undermined just how much a reasonable consumer needs to know about the product in order to make a purchase.<sup>131</sup>

### III. AN INCORRECT “REASONABLE PERSON” STANDARD

The Ninth Circuit’s holding in *McGinity* explains why existing false advertising and consumer protection laws fail to cover greenwashing.<sup>132</sup> Greenwashing does not rely on false advertising in the way that we recognize it in other examples; it relies on the consumers’ good faith in making environmentally friendly decisions. There is no universal agreement as to what is *really* sustainable.<sup>133</sup> Greenwashing relies on the fact that words like “sustainable” do not have a universal definition, along with consumers not always being fully aware of how certain fabrics are manufactured or that certain artificial fabrics may be better for the environment than natural fabrics.<sup>134</sup> Research conducted by the *International Journal of Advertising* showed that solely claiming that a product is “environmentally friendly” or that the producer “cares about the environment” leads consumers to believe that it is an environmentally beneficial product, even in the absence of any evidence to support this claim.<sup>135</sup> It is this association of “green,” “natural,” and “sustainable” with “eco-friendly” that allows retailers and manufacturers to get away with slapping a leaf on a label, the

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129. *See id.*

130. *See id.*

131. *See id.*

132. *See id.*

133. RALPH LAUREN, *supra* note 21, at 16.

134. Rainforest Action Network, *supra* note 25.

135. *See* Michael J. Polonsky et al., *How Meaningless and Substantive Green Claims Jointly Determine Product Environmental Perceptions*, 44 INT’L J. ADVERT. 396, 416 (2024).

consumer purchasing it believing they are doing a good deed for the planet, and the retailer never being held accountable because there were no explicit lies.<sup>136</sup> Additionally, there is no socially agreed-upon definition behind words like “green” or “sustainable.” *Merriam-Webster Dictionary* recognizes a definition of green (often capitalized) to mean “relating to or being an environmentalist political movement;” “concerned with or supporting environmentalism;” or “tending to preserve environmental quality (as by being recyclable, biodegradable, or nonpolluting).”<sup>137</sup> Alternatively, the FTC Green Guides, a set of legally non-binding guidelines published by the Federal Trade Commission to help businesses avoid making deceptive or misleading environmental claims, do not define what “green” means, only displaying examples of when “green” can be deceptive.

#### IV. SOLUTIONS

##### A. REWRITING THE MMPA

The Missouri Merchandising Practices Act may provide a broad cause of action for deceptive practices, but its lack of clear standards for what constitutes “deceptive” environmental marketing leaves room for ambiguity. Unlike the Lanham Act, the MMPA allows individual consumers the right to bring false advertising claims. To allege false advertising or deceptive practices under the MMPA, a plaintiff must allege that they “(1) purchased merchandise from the defendant; (2) for personal, family, or household purposes; and (3) suffered an ascertainable loss of money or property (4) as a result of the defendant’s use of one of the methods or practices declared unlawful by the Act.”<sup>138</sup> Defining deceptive practices under “methods or practices declared unlawful” is not always easy.<sup>139</sup> The Green Guides cover qualifications and disclosures related to

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136. *See McGinity*, 69 F.4th at 1095.

137. *Green*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/green> (last visited Mar. 19, 2026).

138. *Lizama v. H&M Hennes & Mauritz LP*, No. 4:22 CV 1170 RWS, 2023 WL 3433957, at \*5 (E.D. Mo. May 12, 2023) (quoting MO. REV. STAT. § 407.025.1 (2020)).

139. *Id.*

environmental marketing, and state that they should all be “clear, prominent and understandable.”<sup>140</sup> The Green Guides recommend using “plain language and sufficiently large type” along with adding any disclosures, if necessary, “in close proximity” to the claims.<sup>141</sup> The Green Guides also recommend clearly expressing distinctions between products, packages, and services.<sup>142</sup> Additionally, the Green Guides express that “an environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit.”<sup>143</sup> This thus intends to prohibit stating or implying environmental benefits that are, in fact, not substantive or negligible.<sup>144</sup> Lastly, the Guides cover comparative claims, asking that they include “substantiation for the comparison.”<sup>145</sup> Adding this specific request for comparative claims to a future proposed modified MMPA provision would directly target common greenwashing practices. For example, the statute could explicitly state that requiring further reading of labels to define labels such as “sustainable,” “natural,” or “green” as unlawful. It could also state that phrases like “more sustainable” must be supported by substantive data, which would clearly be presented to consumers whether online when they order products, or in person along with price and textile composition. With these changes, the statute would include concrete, universally adhered to definitions for buzzwords like “green,” “natural,” “sustainability,” and “eco-friendly” to prevent misrepresentations among different brands or retailers. Thus, it would be more difficult for greenwashing claims to fall through the cracks because they are clearly defined.

#### B. REIMAGINING THE REASONABLE CONSUMER

Ultimately, there must also be a redefinition of who would be considered a reasonable consumer in these sustainable shopper contexts. Redefining the reasonable consumer to consider the traits of

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140. *Id.* § 260.3(a).

141. *Id.*

142. *See id.* § 260.3(b).

143. *Id.* § 260.3(c).

144. *Id.* § 260.3(c).

145. Green Guides, *supra* note 5, § 260.3(d).

sustainable shoppers could shed light on why those purchases are conducted differently and why greenwashing in particular must be treated as false advertising. A possible reason that greenwashing cases in California and Missouri continue to fail is that they rely on a reasonable person standard that does not take sustainability goals into account. When faced with particular claims of greenwashing, courts should look not to just a reasonable person, but to a reasonable person who exhibits sustainable consumer behavior, and, more importantly, considers the effects of sustainable choices when shopping. After all, sustainable consumers are ones making sustainable purchases. Sustainability-focused consumers looking to make sustainable purchases choose to prioritize certain factors over others, such as the product's effect on pollution and wasteful use of natural resources, in relation to the conservation of natural resources.<sup>146</sup>

What should redefining the reasonable person standard to account for sustainable consumers consider when identifying sustainable consumers? In a 2018 article, one set of researchers identified four research focuses in regard to sustainable consumer behavior: cognitive barriers, the self, social influence, and product characteristics.<sup>147</sup> In considering sustainable consumer behavior from a cognitive perspective, they identified two cognitive processes:<sup>148</sup> one known for its rapid, almost autonomous processing, and the other associated with “more refined and deliberative processing.”<sup>149</sup> The second process makes decisions after considering all options and long-term effects, such as reading full ingredient lists or further investigating textile manufacturing processes.<sup>150</sup> Researchers expected to see this second system at play when making environmentally related decisions; however, research demonstrates that daily sustainable decisions can also be made using the first

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146. Bipul Kumar, Ajay K. Manrai & Lalita A. Manrai, *Purchasing Behavior for Environmentally Sustainable Products: A Conceptual Framework and Empirical Study*, 34 J. RETAILING & CONSUMER SERVS. 1, 5–7 (2017).

147. Remi Trudel, *Sustainable Consumer Behavior*, 2 WILEY CONSUMER PSYCH. REV. 85, 85 (2018).

148. *Id.* at 87.

149. *Id.*

150. *See id.*

system.<sup>151</sup> The authors interpreted these results to mean that anything that can “decrease effort and reduce sacrifices consumers must make will improve the likelihood of sustainable behavior.”<sup>152</sup> This form of thinking and decision processing is detrimental to sustainability efforts because consumer behavior is focused on immediate costs, as opposed to future benefits.<sup>153</sup> This could explain why consumers are unlikely to investigate Corporate Responsibility Reports or textile ingredients and compositions. Thus, while we may think that sustainable shoppers will conduct further research, they may actually be trusting the information presented to them.

Consumers are also focused on themselves.<sup>154</sup> Research supports that consumers are motivated by presenting themselves in a way that benefits their status and reputation.<sup>155</sup> Consumers who purchase with sustainability in mind tie themselves to a self-image of someone who is “green” and “eco-friendly,” making purchases that align with this image.<sup>156</sup> Sustainable consumers are also more likely to make these purchases when they can signal to others that they are doing so.<sup>157</sup> This could explain why large, concise labels like “Conscious Collection” or “Nature Fusion” attract so many consumers. Being able to demonstrate one’s own commitment to sustainability by choosing one brand or collection over another, and wearing these recognizable clothes in front of others, motivates consumers to make these decisions.<sup>158</sup>

Another focus of sustainable consumers that should be considered in redefining the reasonable person is social influence and social norms. The researchers in question define social norms as “the unwritten rules developed through shared interactions of a social group.”<sup>159</sup> The more people are informed of the dangers of climate change and the contributions they can make to combat it, the more they acquire unwritten rules regarding how they are socially expected

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151. *See id.*

152. *Id.*

153. *See id.*

154. *See id.* at 88.

155. *See id.* at 89.

156. *Id.* at 90.

157. *Id.* at 89.

158. *See id.*

159. *Id.*

to behave in ways that fight climate change.<sup>160</sup> Using these aforementioned factors to determine what a reasonable and sustainable consumer would consider in making purchases, courts should adopt an updated “Reasonable Consumer Standard.” Under this analysis, businesses would be held liable for falsely advertising to consumers who consider the environmental consequences of their purchases when making sustainable decisions.

Consumers have been shown to be driven by “social proof,” which are the examples they see around them.<sup>161</sup> As more and more “sustainable” fashion brands emerge, whether they actually are, or are just advertised as such, consumers begin to see the social proof of sustainable shopping and product use.<sup>162</sup> This encourages them to partake in these purchases and activities.<sup>163</sup> Consumers often want others to see what they consume and what it says about them and, in these cases, their commitment to sustainability.

Lastly, the actual products themselves need to be considered when evaluating a reasonable consumer. Researchers consider product characteristics when evaluating sustainable consumer behavior.<sup>164</sup> Multiple studies demonstrate that true sustainability characteristics can actually deter consumer purchases.<sup>165</sup> For example, a 2010 study found that sustainable products and their packaging are associated with gentleness and softness, while regular products and their packaging were associated with strength.<sup>166</sup> This greatly affected the choices consumers made when presented with the two options,<sup>167</sup> which likely influences how some retailers will label something as more sustainable for advertising purposes; but, they will not truly

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160. *See id.* at 89 (citing Katie Baca-Motes et al., *Commitment and Behavior Change: Evidence from the Field*, 39 J. CONSUMER RSCH. 1070 (2012), where guests who made special commitments to practice sustainable behaviors and wear a pin that demonstrated they were more likely than control guests to reuse their towels or turn off the lights when leaving).

161. *Id.* at 92.

162. *See id.*

163. *See id.*

164. *See id.*

165. *See id.*

166. Michael G. Luchs et al., *The Sustainability Liability: Potential Negative Effects of Ethicality on Product Preference*, 74 J. MKTG. 18, 19–20 (2010).

167. *See* Trudel, *supra* note 147, at 92; Luchs et al., *supra* note 166, at 20.

make a product sustainable because it will no longer be the strong, reliable product they once marketed.<sup>168</sup>

Ultimately, when we look deeper into marketing practices and consumer behavior, we see how true sustainability may, in fact, drive consumers away while the illusion of sustainability keeps consumers purchasing.<sup>169</sup>

## V. CONCLUSION

Despite an increase in claims of greenwashing, the law as it stands today, at both the federal and state levels, is not designed to protect individual consumers from the harms of greenwashing. In order to truly protect individual consumers from false advertising in the context of greenwashing, the reasonable person standard must be revised. Because the FTC does not have the power to protect consumers the way the FDA does, the FTC Green Guides continue to be nonbinding, and the Lanham Act does not apply to individual consumers, because of its focus on protecting businesses and trademarks. With only state statutes remaining, consumers are left to file claims that do not take into account the one thing that leads consumers to make the decisions they do: a commitment to sustainability. If we were to accept this sustainable consumer behavior research, the law would be directed in a way that defines the reasonable consumer as a sustainable one. It is only this way that greenwashing claims can succeed and businesses can be held accountable for manipulating consumers who only want to protect the planet.

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168. *See id.*

169. *See id.* at 93.