

## Advertising with Carbon Offsetting – The Legal Framework in Germany Now and to Come

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### 1. Introduction

At times, the line between authentic environmental claims and ones that could be considered "greenwashing"—misleading or false environmental marketing—can be unclear. This is particularly true for the often-used term "climate neutral," which can imply both actual avoidance of carbon emissions and compensation for them through offsetting.

So far, Germany—where consumer protection associations increasingly are taking legal action against businesses that advertise environmental efforts<sup>1</sup>—has lacked specific legislation governing the use of environmental terms in advertisements. As a result, the legal framework that determines when an environmental claim becomes misleading was shaped by case law. In a recent judgement, the German Federal Court of Justice (Bundesgerichtshof) ("BGH") ruled that advertising that includes the term "climate neutral" is prohibited if used to describe carbon offsets.

This raises the question of whether businesses still are permitted to promote their efforts to offset emissions and, if so, how they can do it legally within the evolving German and EU regulatory environment, which is making it more and more challenging to communicate about genuine sustainability initiatives.

### 2. Current Legal Framework in Germany

In Germany, misleading and unfair commercial practices (including advertisements) are illegal pursuant to the Act Against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb) ("UWG"). Violations can lead to lawsuits, fines, and claims for damages.<sup>2</sup>

Section 5 of the UWG provides that a commercial practice is misleading if it influences consumers' or market participants' decisions by providing false or deceptive information about specific circumstances, such as a product's characteristics. Due to the absence of clear, standardized rules regarding the environmental characteristics of products, German courts have had to establish standards for advertising that includes environmental terms and claims. One such claim, "climate neutral," has become the focus of legal scrutiny, as consumer protection associations increasingly have begun to take legal action against environmental claims in advertisements.

The BGH ruled that advertising a product as "climate neutral" is misleading, and thus prohibited by the UWG, if the advertiser compensates for its CO<sub>2</sub> emissions solely through carbon offsets and offers no further

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<sup>1</sup> For instance, Deutsche Umwelthilfe just filed lawsuits against five companies seeking orders that they to cease and desist from using environmental terms in their advertising, <https://www.deutschlandfunk.de/irrefuehrende-werbung-deutsche-umwelthilfe-klagt-gegen-fuenf-firmen-100.html>, last accessed 22 April 2025.

<sup>2</sup> See UWG Section 8 para. 1, Section 9, and Sections 19 and 20.

information or clarification in the advertisement as to how this neutrality is achieved.<sup>3</sup>

Under established BGH case law, a statement is considered misleading pursuant to Section 5, para. 1 of the UWG if it causes the audience to interpret the statement in a manner that differs from the actual facts.<sup>4</sup> In the context of environmental terminology, which often lacks universally agreed-upon definitions, the term "climate neutral" can be understood in two ways: as referring to actual emissions reduction or compensation for emissions through offsetting. The BGH treats these concepts as non-equivalent and regards the term "climate neutral" as inherently ambiguous. It also has held that because emissions reduction generally is preferable to offsetting, clarification is required.<sup>5</sup> In the absence of a clear definition, the court believes consumers will assume that "climate neutral" does not refer solely to offsetting and, as a result, will be misled.

Given the increasing value consumers put on sustainability, the BGH recognizes a heightened risk of consumer misperception through the use of ambiguous environmental terminology.<sup>6</sup> Consequently, the standards for accuracy, unambiguity, and clarity are particularly strict for advertising related to health and the environment.<sup>7</sup> Germany now mandates that any ambiguous terms in this area are clearly and directly defined in advertisements to clarify which specific meaning is intended.<sup>8</sup>

The Regional Court of Hamburg followed the BGH's decision with respect to an advertisement that claimed "climate neutrality" through "voluntary carbon offsets," but found that consumers would still be misled if no further information was provided about the extent to which and form in which these measures actually were implemented.<sup>9</sup>

Recently, the Regional Court of Cologne upheld strict standards regarding the clarified claim of achieving "climate neutrality" for the advertised service through offsetting. The court stated that, due to an insufficient connection between the offsetting measures and the service itself, the service could not truly be considered "neutral."<sup>10</sup>

### 3. Changes to Come

The announcement of the "EU Green Deal," which is intended to make Europe "climate-neutral" by 2050,<sup>11</sup> is driving new regulatory measures. The EU wants consumers to participate in the "green transition," and plans

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<sup>3</sup> BGH, Decision of 27 June 2024, I – ZR 98/23, concerning a candy manufacturer's advertisement that contained the statement "Since 2021, [the company] has been producing all products in a climate-neutral manner" as well as a label with the words "climate-neutral" and "product" and the reference to a website.

<sup>4</sup> BGH, Decision of 27 June 2024, I – ZR 98/23 para. 18.

<sup>5</sup> BGH, Decision of 27 June 2024, I – ZR 98/23 para. 29.

<sup>6</sup> BGH, Decision of 27 June 2024, I – ZR 98/23 paras. 25 f.

<sup>7</sup> BGH, Decision of 27 June 2024, I – ZR 98/23 paras. 23 f.

<sup>8</sup> BGH, Decision of 27 June 2024, I – ZR 98/23 para. 26.

<sup>9</sup> LG Hamburg, Decision of 9 August 2024, 315 O 108/22, under III. 1. a. bb.

<sup>10</sup> In a case filed by Deutsche Umwelthilfe against Lufthansa, <https://www.ito.de/recht/nachrichten/n/84o2924-lg-koeln-lufthansa-co-2-neutrale-werbung-unzulaessig>, last accessed 22 April 2025.

<sup>11</sup> European Commission 'The European Green Deal - Striving to be the first climate-neutral continent', [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en), last accessed 22 April 2025.

to stop greenwashing<sup>12</sup> altogether and is updating rules on commercial practices and consumer protection.<sup>13</sup> To address environmental claims more comprehensively, the EU adopted Directive (EU) 2024/825 ("empowering consumers for the green transition").<sup>14</sup> This directive amends the Unfair Commercial Practices Directive (2005/29/EC)<sup>15</sup> and the Consumer Rights Directive (2011/83/EU).<sup>16</sup>

The EU defines greenwashing as "misleading environmental claims."<sup>17</sup> Directive 2024/825 mainly covers environmental claims in business-to-consumer relations, and prohibits misleading claims about a product's environmental impact through (i) offsetting emissions, (ii) unspecified and unverifiable generic environmental claims on products, (iii) uncertified sustainability labels, and (iv) false claims about a product's repairability and durability. It must be transposed into national laws by March 27, 2026, with full implementation starting September 27, 2026.

The EU also is in the process of adopting a "Green Claims Directive"<sup>18</sup> that will further restrict how businesses can advertise with and disseminate information on environmental topics. The proposal includes obligations to assess and substantiate environmental claims.<sup>19</sup>

Directive 2024/825 already aims to establish standards to govern the substantiation and transparency of environmental claims. It addresses carbon offsetting by restricting the terminology that can be used to describe and promote it. Claims stating that a product "has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions" are prohibited if they rely solely on the offsetting of greenhouse gas

<sup>12</sup> Defined as "The practice of giving a false impression of the environmental impact or benefits of a product, which can mislead consumers" in European Parliament (published 15 January 2024, last updated 21 March 2024) 'Stopping greenwashing: how the EU regulates green claims', <https://www.europarl.europa.eu/topics/en/article/20240111STO16722/stopping-greenwashing-how-the-eu-regulates-green-claims>, last accessed 22 April 2025.

<sup>13</sup> European Parliament (published 3 February 2021, last updated 17 May 2024) 'How the EU wants to achieve a circular economy by 2050', <https://www.europarl.europa.eu/topics/en/article/20210128STO96607/how-the-eu-wants-to-achieve-a-circular-economy-by-2050>, last accessed 22 April 2025; European Parliament (published 15 January 2024, last updated 21 March 2024) 'Stopping greenwashing: how the EU regulates green claims', <https://www.europarl.europa.eu/topics/en/article/20240111STO16722/stopping-greenwashing-how-the-eu-regulates-green-claims>, last accessed 22 April 2025.

<sup>14</sup> Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information (OJ L, 2024/825, 6.3.2024).

<sup>15</sup> Directive 2005/29/EC C of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), (OJ L 149, 11.6.2005, p. 22).

<sup>16</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, (OJ L 304, 22.11.2011, p. 64).

<sup>17</sup> Recital 1 of Directive (EU) 2024/825; Environmental claims are defined as "any message or representation which is not mandatory under Union or national law, in any form (...) which states or implies that a product, product category, brand or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time" in Article 1 para.1 of Directive (EU) 2024/825 amending Directive 2005/29/EC with Article 2 para. 2 point (o).

<sup>18</sup> See process European Parliament 'Substantiating green claims in "A new plan for Europe's sustainable prosperity and competitiveness"' <https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness/file-substantiating-green-claims>; European Parliament '2023/0085(COD) Substantiation and communication of explicit environmental claims (Green Claims Directive)', [https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2023/0085\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2023/0085(COD)), last accessed 22 April 2025.

<sup>19</sup> Article 3 of Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims and environmental labels (Green Claims Directive), 22.3.2023, COM/2023/166 final.

emissions.<sup>20</sup> Examples of such claims are “climate neutral,” “CO2 neutral certified,” “carbon positive,” “climate net zero,” “climate compensated,” “reduced climate impact,” and “limited CO2 footprint.”<sup>21</sup> These terms are deemed to suggest that the product itself has no environmental impact, and are considered “misleading claims” if the claimed benefits result from external offsets. Claims about a product’s lifecycle impact are permitted only if they are based on the product’s inherent characteristics, rather than on emissions offsets outside its value chain.<sup>22</sup>

Recital 12 states that “such claims should be prohibited in all circumstances.” However, it adds that this “prohibition should not prevent companies from advertising their investments in environmental initiatives, including carbon credit projects, as long as they provide such information in a way that is not misleading and that complies with the requirements laid down in Union law.”<sup>23</sup> Nonetheless, Directive 2024/825 establishes a general prohibition on “[c]laiming, based on the offsetting of greenhouse gas emissions, that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions.”<sup>24</sup>

This will be transposed into German Law through amendments to the UWG. A recent draft proposed by the Federal Ministry of Justice also contains general prohibitions against these claims, and aligns with the wording of the directive.<sup>25</sup> If adopted by the legislature, the amendment will enter into force on September 27, 2026.<sup>26</sup>

## 4. Outlook

The new regulations intend to create a more unified and transparent approach to environmental claims, forcing businesses to substantiate and offer proof of their environmental claims. German case law already established the requirement that businesses clarify which meaning of a term applies within an advertisement. According to the BGH, the term “climate neutral” still can be used to promote carbon offsetting if appropriate information is provided in the advertisement.

Directive 2024/825 goes well beyond German case law, by establishing general prohibitions, for example, regarding the use of term “climate neutral” to describe carbon offsetting. The term will be tolerated in advertisements only when used to describe the actual lifecycle impact of the product.

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<sup>20</sup> This regulation is outlined in Recital 12 and Annex 2 Section 4c of Directive (EU) 2024/825. Article 1 para. 4 of Directive (EU) 2024/825 (referring to the Annex) amends Annex I of Directive 2005/29/EC, which lists misleading commercial practices that are considered unfair and are therefore prohibited under Article 5 of Directive 2005/29/EC.

<sup>21</sup> Recital 12 of Directive (EU) 2024/825.


<sup>22</sup> Recital 12 of Directive (EU) 2024/825.

<sup>23</sup> Recital 12 of Directive (EU) 2024/825.

<sup>24</sup> Article 1 para. 4 and Annex to Directive (EU) 2024/825 amending Annex I of Directive 2005/29/EC; Article 5 para. 1 of Directive 2005/29/EC prohibits unfair commercial practices whereas according to Art. 5 para. 5 Annex I lists commercial practices that shall in all circumstances be regarded as unfair.

<sup>25</sup> Article 1 para. 4 lit. b, ‘Drittes Gesetz zur Änderung des Gesetzes gegen den unlauteren Wettbewerb, Diskussionsentwurf des Bundesministeriums der Justiz’ (last updated 9 December 2024), will prohibit “*Making a claim based on the offsetting of greenhouse gas emissions that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions*” under Section 3 para. 3 UWG and the Annex amended with No. 4c, [https://www.bmj.de/SharedDocs/Downloads/DE/Gesetzgebung/DiskE/DiskE\\_AendG\\_UWG\\_EmpCo.pdf?\\_\\_blob=publicationFile&v=3](https://www.bmj.de/SharedDocs/Downloads/DE/Gesetzgebung/DiskE/DiskE_AendG_UWG_EmpCo.pdf?__blob=publicationFile&v=3), p. 6, last accessed 22 April 2025.

<sup>26</sup> Article 2, ‘Drittes Gesetz zur Änderung des Gesetzes gegen den unlauteren Wettbewerb, Diskussionsentwurf des Bundesministeriums der Justiz’ (last updated 9 December 2024), [https://www.bmj.de/SharedDocs/Downloads/DE/Gesetzgebung/DiskE/DiskE\\_AendG\\_UWG\\_EmpCo.pdf?\\_\\_blob=publicationFile&v=3](https://www.bmj.de/SharedDocs/Downloads/DE/Gesetzgebung/DiskE/DiskE_AendG_UWG_EmpCo.pdf?__blob=publicationFile&v=3), p. 8, last accessed 22 April 2025.



On the upside, businesses can continue to promote their sustainability efforts, including carbon offset projects, but they must be careful about how they present them. Now that certain terminology, which previously was used commonly, now prohibited, companies' focus should shift. Instead of relying on catchy "labels," they should explain their actions clearly. For example, carbon offsetting can still be advertised, but the emphasis should be placed on detailing the specific nature of these initiatives. This is particularly important as the EU moves toward stricter regulations, which Germany appears to anticipate, with regard to environmental claims related to future objectives and to generic claims, such as labeling products "environmentally friendly,"<sup>27</sup> which Germany is expected to align with. This means avoiding terms like "climate neutral" in advertising unless the claims can be substantiated with solid evidence of actual emissions reductions and relevant information is provided in the advertisement.

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<sup>27</sup> For future goals see LG Stuttgart, Decision of 10 January 2022, 36 O 92/21 KfH and Recital 4, Article 1 para. 2 point (b) of Directive (EU) 2024/825 amending Directive 2005/29/EC with Article 6 para. 2 point (d); for generic environmental claims see OLG Hamm, Decision of 19 August 2021, 4 U 57/21 and Recital 9, Article 1 of Directive (EU) 2024/825 amending Directive 2005/29/EC with Article 2 point (p) and Article 1 para. 4 and Annex (2) of Directive (EU) 2024/825 amending Directive 2005/29/EC with Annex I Section 4a.