

Ethics washing – 5 tips to help protect your business

MINI GUIDE



Certified



Corporation

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Ethics washing, greenwashing, bluewashing, pinkwashing, ethical laundering, eco washing... the list of terms continues to grow, and with it grows the risk of businesses coming under scrutiny if what they do doesn't align with their stated values, the promises they make publicly, the goods or services they offer, or if they misrepresent their brand to the public. Simple mistakes, inaccuracies or misleading claims can have big consequences, risking lasting reputational damage among key stakeholders, loss of income and even regulatory intervention.

We want to help you protect your organisation's good name and avoid ethics washing based challenges, so have put together our top tips to help reduce your exposure.

What is ethics washing?

Ethics washing, a term not too dissimilar from greenwashing, is used to describe the practice of when organisations share false or misleading information about themselves to paint their organisation in a better light, even if they have no way of backing up their claims. An example is having an excellent (public) diversity and inclusion policy, but then discriminating against applicants when recruiting. By making false claims, organisations may be deceiving their stakeholders into believing they are having a more positive impact on society than they really are.

What are the consequences?

Being accused of ethics washing, even if the business can justify its claims, can seriously damage a business's reputation and ultimately negatively impact its income. A Harvard Business Review **study** has shown that customers are highly likely to be aware of the gap between stated goals and implementation and that customer satisfaction levels fall as the number of goals outweighs the number of actions. This is already happening; it was recently reported that **Boohoo has broken its promise** to overhaul its practices and to make clothes fairly and ethically, which has led to significant bad publicity stemming from the BBC Panorama documentary.

Greenpeace has an ongoing **campaign against Dove**, who it claims fuel human and environmental crises by producing huge volumes of single use plastic in sharp contradiction with its 'Real Beauty' campaigns which carry a message of female empowerment, as well as its **public claims** to lead the fight against plastic waste. If found guilty of other kinds of washing, for example greenwashing, a business might face regulatory action in the form of fines and bans on advertising.



There is also the potential to face legal action. The new Digital Markets, Competition and Consumer Bill was published in April 2023 and tackles (amongst other weighty issues) unfair commercial practices (UCPs) including misleading actions and omissions. Ethical or greenwashing is not mentioned explicitly, but CMA investigations into greenwashing will fall under their new UCP powers once the Bill is in force. There are both civil and criminal penalties for breaches.

In this mini guide, we share our top tips to help protect your business's good name.



1. Practise what you preach

Ensuring you practise what you preach may be the most important tip to protect your business from any allegations of ethics washing. Even if resources are tight, undertaking a governance review and general review of your policies and procedures including your diversity and inclusion and employment policies, will help you to avoid any potential issues in the future surrounding your business's operations. Make sure they all align with each other and support the values which your business prides itself on.



2. Be honest at all times and make sure you are speaking facts

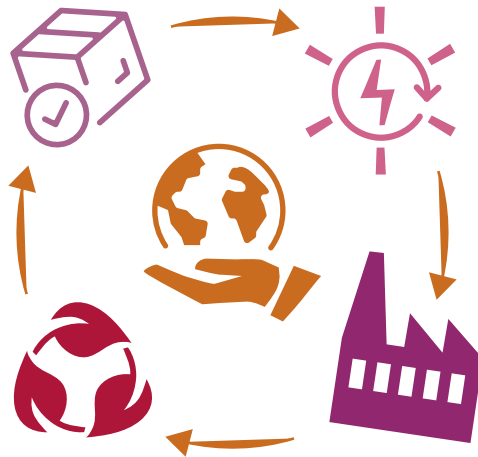
The first thing to do with any campaign you run, or any goods or services you are advertising, is to be honest about your credentials. Resist the temptation to prioritise optics over substance. Make sure that any social or environmental claims you are making are demonstrably true and clear for the reader to understand. If you aren't completely honest about the ethical or green credentials of the work your business is doing then you could face difficult questions, including by the Advertising Standards Authority, and potentially even fines by the CMA.

If you claim to have a positive working environment, do you pay a living wage and ensure your people can work flexibly to support their personal responsibilities? If you're claiming to be green – what evidence do you have to back up your claims if challenged? Have you taken action to reduce your carbon footprint? Have you set yourself targets and verified your data? You need to be ready to respond to questions with evidence that supports what you say – or be proactive and transparent and make the evidence available upfront. Prioritise transparency in reporting and share detailed information about your environmental and ethical initiatives, goals and progress. Not acting in line with your stated claims can leave you liable to reputationally damaging legal action.

Certifications from recognised organisations such as **B Corp** can add credibility to your claims and demonstrate that your business has undergone thorough assessment by independent experts.

3. Introduce sustainable supply chains

An organisation's supply chain typically accounts for over **ten times more emissions** than its operations. Understanding and addressing the impact of your supply chain is key for any business that wants to reduce its negative impact on society and the environment. We have seen a real move in the market towards including sustainability and impact drafting in contracts to make improvements to supply chains, reduce environmental damage and guard against modern slavery. Changes include provisions addressing specific issues like contractual carbon neutral targets, or commitments to confirming working practices at third party suppliers are fair and do not include modern slavery. Make sure that any products produced by your business are ethically sourced or manufactured. If your business is raising awareness about climate change or other ethical issues, or has a public net zero commitment, then not doing so could be a significant risk for you.

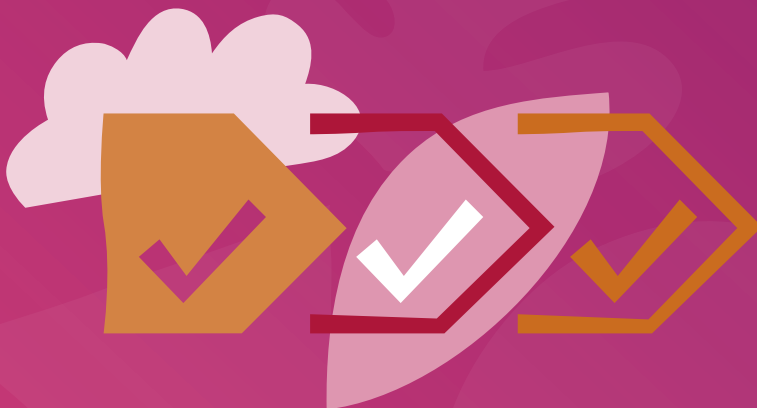


4. Commitment beyond compliance

Compliance with laws and regulations is essential, but it's only a baseline. True ethical leadership requires going above and beyond legal mandates. Companies should proactively identify ethical challenges within their industry and take proactive steps to address them, setting higher standards for themselves and their peers.

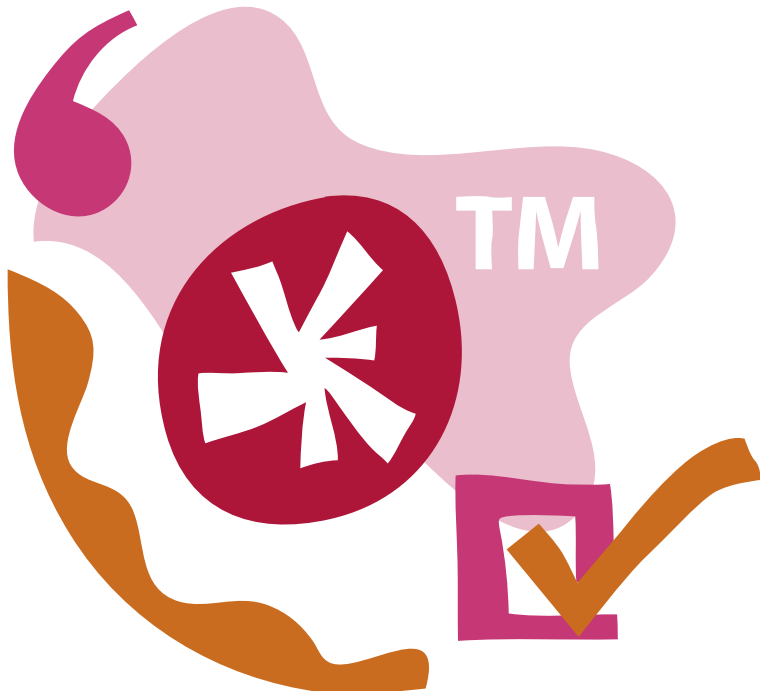
Successfully mitigating the risk of ethics washing requires organisation-wide cooperation, starting with board-level and senior management engagement in the business risk management and governance strategies.

However, you should also engage stakeholders such as employees, customers and communities and actively listen in order to understand their perspectives, which fosters trust and legitimacy. Businesses should hold themselves accountable by establishing robust mechanisms for monitoring, evaluating and improving their ethical performance.



5. Make sure that your brand is protected

It's important that your Intellectual Property, brand and trade names and mark(s) are protected so that you have the power to stop other parties from using branding that is the same, or confusingly similar, to yours or otherwise infringes your rights. Confusion can mislead the public, seriously damage your reputation, and divert your customers away from you.



How we can help

We specialise in assisting businesses in these matters, whether that's helping to respond to claims or complaints or protecting intellectual property and enforcing it in a responsible manner. We review draft advertisements and communications with a critical but helpful eye. We offer clear and concise commercial and strategic advice to businesses grappling with challenges that may arise or that may impact their reputation.

We are experts in trade marks – from clearance searches to registration in the UK and worldwide, and we can also help you with licensing, and with resolving IP-related disputes of all kinds. We always make sure we minimise the need for costly court action and harmful publicity.

We can also help you to look at your supply chain in a more strategic way and tailor any commercial contracts to ensure your ESG goals are achieved. Our team of expert lawyers can help you to review and draft your contracts with suppliers, as well as thinking about additional reporting and audit rights to enable tracking supplier performance.

We can help you on your journey to do business in a way that is values-driven, as well as profitable. As the first law firm in the UK to certify as a B Corp, we can also support you in this journey, going beyond the legal essentials to advise on practical steps to strengthen your initial application and to create bespoke and innovative legal, constitutional and governance structures.

Get in touch

If your business would like support in any of these areas, is already facing allegations of ethics washing, or if you have any questions on how to protect your brand more generally, please get in touch.

We can provide training sessions for your in-house marketing, communications, and branding teams, as well as senior stakeholders. We can discuss how to spot, and avoid, ethical washing claims and how to respond if any issues arise.

We are happy to meet with you on a no obligation basis to discuss how we might support you.



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Making a profit is core to all businesses but our goal is to combine this with a real social purpose. Our values are pivotal to us, they shape our decisions and the way we live and work.

We focus on positive social impact as much as we focus on being a successful law firm. Our top tier legal advice is coupled with a real desire to drive change and we were the first UK law firm to achieve B Corp certification, awarded to businesses that balance purpose and profit.

Today, our clients are diverse – from corporate household names, to public bodies, to start-ups. We're also the firm of choice for thousands of charities and social enterprises. We continue to lead the market we helped to shape.

Bates Wells challenges what is possible in legal expertise delivery.

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