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Swiss IP News We provide you with updates on new decisions, the relevant legislative process and other trends in the fields of intellectual property and unfair competition law from a Swiss perspective.



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Greenwashing in Focus of Consumer Protection: The Swiss Commission for Fairness Qualifies Further Green Advertising Statements as Unlawful

Following the disqualification of FIFA's green advertising claim (see our newsletter [here](#)), the Swiss Commission for Fairness (Commission) has issued reprimands to two other companies following complaints launched by the Swiss Foundation for Consumer Protection. Statements regarding climate neutrality and climate positivity are subject to strict evidence requirements, which were not sufficiently taken into account in the present cases.

"Kübler Heizöl ist klimaneutral" **(SLK 168/23 of 6 September 2023)**

The first complaint of the Swiss Foundation for Consumer Protection was directed against the promotional claim "Kübler Heizöl ist klimaneutral" ("Kübler heating oil is climate neutral"). Kübler Heizöl AG as the respondent justified this claim with the reduction of its own carbon emissions and with compensation through climate projects and pointed out that it had the "Certified CO2 Neutral by Swiss Climate" label and hired an external auditor for checking its carbon balance data.

Referring to the Federal Act against Unfair Competition and the International Chamber of Commerce's Code on Advertising and Commercial Communication Practices (ICC Code), the Commission stated that marketing communications should not contain statements or visual representations that may mislead consumers in any way about the environmental aspects or benefits of products or activities undertaken for the benefit of the environment. In particular, general environmental claims should be either qualified or avoided unless they apply, without limitation, in all reasonably foreseeable circumstances. In particular,

statements such as "environmentally friendly" or "environmentally safe", "green", "sustainable", "CO2 friendly" and any other statements implying that a product or activity has no – or only a positive – CO2 impact on the environment may only be made without qualifications if they meet high evidentiary standards. However, as long as there are no definitive, generally accepted methods for measuring sustainability or confirming its accomplishment, it must not be claimed that such sustainability targets have been achieved.

In the Commission's opinion, the respondent did not meet the requirements for fair commercial communication including a reference to the environment. In particular, the Commission held that it was not clear to the average addressee whether the claim referred to the product (heating oil) or the company itself (and at least with regard to the product, the claim was clearly wrong). In addition, the respondent did not sufficiently meet the aforementioned evidence requirements. According to the Commission, "climate neutrality" comprised the neutrality of all influences of a product or a company on climate change. It would therefore not be sufficient to simply

present a carbon balance sheet or a certificate proving "CO2 neutrality". The Commission therefore qualified Kübler's promotional claim as unfair, upheld the complaint and recommended that Kübler refrain from using such claim.

**«Unsere Gläschen sind klimapositiv»
(SLK 169/23 of 6 September 2023)**

The second complaint of the Swiss Foundation for Consumer Protection was directed against the promotional claim of the baby food manufacturer HiPP «Unsere Gläschen sind klimapositiv» ("our glasses are climate positive"). The respondent justified the statement by claiming that its own and external environmental protection projects overcompensated for carbon emissions.

Again, the Commission referred to the principles of the ICC Code (see above). In the Commission's opinion, HiPP also did not meet the requirements for fair commercial communication including a reference to the environment. The Commission held that when "climate neutral" or, as in the present case, even "climate positive" was referenced, this included the neutrality of all influences of a product or a company on climate change or, in the case of "climate positive", a surplus of measures that help to slow down climate change. According to the Commission, this required a plausible and comprehensible calculation of all climate-damaging effects carried out according to generally accepted methods as well as proof of corresponding overcompensation measures. In the absence of such evidence, the Commission also qualified this advertising statement as untrue and therefore unfair and upheld the complaint by recommending that HiPP refrain from using such claim.

Comment

These developments show that the risk for companies to expose themselves to greenwashing accusations is increasing significantly in Switzerland.

Against this backdrop, companies are well advised to review their environmental marketing. Although there is no clear green advertising regulation in Switzerland, it is becoming apparent that green claims in advertising must undoubtedly be clear in terms of their content, correspond to the facts and be verifiable on the basis of factual evidence and recognised methods.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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