

Newsletter

Avoiding Climate-Washing – Key Points for Practice



Dr. iur. des. Andreas Hösli
Attorney-at-Law, Counsel

In commercial communications, claims such as “climate friendly,” “CO₂ neutral,” or “sustainable” must be examined critically. The recently published implementation guidance of the Federal Office for the Environment on Art. 3(1)(x) of the Unfair Competition Act provides greater legal certainty in a field that continues to evolve dynamically.

Dr.iur.des. Andreas Hösli, Attorney-at-Law, LL.M. (UNSW)¹

On 1 January 2025, in the course of the revision of the CO₂ Act, an amendment to the Federal Act on Unfair Competition (UCA) entered into force. Specifically, the Federal Parliament amended the catalogue of unfair advertising and sales methods and other unlawful conduct under Art. 3(1) UCA. Under the new Art. 3(1)(x) UCA, any person acts unfairly who makes claims about themselves, their goods, works or services concerning the climate impact caused that cannot be substantiated by objective and verifiable evidence. This clearly raises the bar for climate-related advertising. The legislature thereby aims to counteract the risks of unfair conduct arising from greenwashing.

1. Increasing Enforcement

Even prior to 2025, claims such as “climate-friendly,” “net zero,” or “environment-friendly” were viewed with growing scepticism. General provisions of the UCA already applied, in particular Art. 3(1)(b) UCA (incorrect or misleading statements) and Art. 3(1)(i) UCA (concealment of the condition, quantity, purpose, use, or dangerousness of goods, works or services). Unlike in some other countries, where such actions are more widespread, lawsuits before Swiss courts remain rare. However, greenwashing allegations led to numerous complaints before the Swiss Fairness Commission

¹ The author contributed to the drafting of the implementation guidance from the Federal Office for the Environment discussed in this article.

(SFC). In many of these cases, which were mostly initiated by consumer protection organisations (see Art. 10 UCA), the SFC sided with the complainants and recommended that advertisers refrain from the contested statements. In one case (“climate-neutral” winter sports), the State Secretariat for Economic Affairs (SECO) intervened (see Art. 10 UCA) and reprimanded the advertiser. In some cases, it was reported that criminal complaints had been filed (see Art. 23 UCA). For liability risks, see section 8 below.

2. FOEN Implementation Guidance

In early March 2026, the Federal Office for the Environment (FOEN), based on a competence norm in the revised CO₂ Act, published a much-anticipated Implementation Guidance on the assessment of climate-related statements within the meaning of the UCA (implementation guidance). Back in January 2026, the FOEN had already issued a guidance document on the reporting of emissions in flight offers (Art. 7a CO₂ Act).

The Implementation Guidance identifies an increased risk of greenwashing in climate-related claims, particularly in connection with the use of compensation measures. Mechanisms that operate outside the company’s value chain such as a forestry project in a third country that has no apparent connection to the life cycle of the advertised product, are considered particularly problematic.

The aim of the Implementation Guidance is to promote consistent application practices and to make specialist knowledge available to affected private individuals, authorities and courts. This is intended to enhance legal certainty and, in doing so, to counteract Greenwashing, i.e. the deliberate withholding of climate-related information. The Implementation Guidance explains key terminology and sets out the requirements for the objectivity and verifiability of climate-related claims. It then provides an overview of the methods and standards referenced in Swiss regulations and lists further

resources. However, this list is purely indicative and does not imply any statement regarding the reliability of the referenced methods and standards.

In line with the scope of the UCA, the Implementation Guidance applies both in the B2B sector (between competitors) and in the B2C sector (between suppliers and customers), regardless of whether such information is provided voluntarily (e.g. in advertising) or to comply with legal requirements (e.g. reporting obligations).

3. Key Points Regarding the Use of Climate-Related Statements

The following general principles are key:

- A holistic view of a company's climate impact must be taken by taking into account the entire value chain of a company (Scope 1, Scope 2 and Scope 3 emissions) or the entire life cycle of a product.
- A climate-related claim must meet both formal and substantive minimum requirements (keywords: clarity, truthfulness, relevance, adequacy, timeliness). It is essential that a claim be easily understandable, applying an objective standard (the average consumer). It must also be clearly communicated whether the claim refers to the company as a whole, the entire product, or only part thereof (e.g., the packaging). The latter can be misleading if the packaging accounts for only a very small share of the product's life-cycle climate impact. It must further be specified whether the claim relates to measures that are merely planned or to climate impact reductions already achieved. Images, colours and other audiovisual elements are also taken into account. The relevance criterion requires a significant (i.e., non-marginal) reduction in climate impact. Moreover, significant negative environmental impacts elsewhere may not be concealed or set off against a positive climate performance. Statements made to comply with a statutory obligation (or general in-

dustry standards) must be identified as such. Exaggerated assertions must be avoided (adequacy). Finally, claims must be based on current data and scientific knowledge and be updated as necessary.

4. Caution regarding the use of compensation measures

The use of compensation measures via CO₂ certificates is permitted only to a very limited extent:

- The principle of the hierarchy of measures (subsidiarity) applies, according to which companies must prioritise achieving the greatest possible reduction in emissions within their own value chain. Emissions that are difficult to avoid may be offset by negative emissions (removals). Voluntary offsetting using CO₂ certificates is only an option as a third priority, but must not be used to prevent, postpone or replace emission reductions within the company's own value chain. This hierarchy is based on the Climate and Innovation Act (CIA).
- Claims regarding the climate impact of products (including services) must not be justified by compensation measures (in line with EU legislation due to come into force shortly; see section 7 below).
- Claims regarding a company's carbon footprint may, to a limited extent, be based on compensation measures.
- CO₂ certificates generated by using a private standard (voluntary carbon market) must meet high quality standards (keywords: additionality, permanence, avoidance of double counting) and may, in principle, only be used for so-called contribution claims, but cannot replace emissions reductions within the company's value chain.

5. Guidelines on specific claims

The Implementation Guidance provides guidance on certain terms frequently used in the market:

- Claims such as “climate-neutral” and “climate-positive” cannot, in fact, be scientifically substantiated and may therefore, as a rule, no longer be used.
- The term “CO₂-neutral” (for company-related claims) is now only permissible if all CO₂ emissions that are difficult to avoid are fully offset by negative emissions (removals), which, in the view of the FOEN, can currently only be achieved through international and national certificates for negative emissions in accordance with the CO₂ Act; for product-related claims, the term “CO₂-neutral” is de facto ruled out.
- “Net zero” generally refers to a future state and implies that a net-zero target has been set for the company (e.g. 2040); in accordance with the requirements for net-zero roadmaps (see also the Federal Office of Energy’s Net-Zero Roadmap Guidance Document), a reduction pathway for greenhouse gas emissions is required, as well as, where applicable, a build-up pathway for negative emissions (removals).
- For claims such as “climate-compensated” or “CO₂-compensated”, specific, quantitative statements about the extent of the compensation must be made (e.g., “50% compensated”), and the requirements for compensation (see above) must be adhered to.
- Vague and generic claims such as “climate friendly”, “climate compatible”, “reduced CO₂ footprint”, or “with a climate protection contribution” require a sufficient and clearly understandable explanation of the nature and extent of the reduction in climate impact. Likewise, widely used expressions such as “environmentally compatible”, “environmentally

friendly”, “ecological”, “green”, “sustainable”, “éco”, or “ESG”² are regarded as vague or generic climate related claims where climate impacts constitute a material part of the product’s or company’s environmental impact.

The requirements set out in the Implementation Guidance also apply to climate-related claims in mandatory reporting, in particular in transition plans (net-zero roadmaps) comparable with the Swiss climate targets that reporting companies must publish under Art. 964a et seq. CO. They likewise apply to statements in voluntarily published reports and in voluntary transition plans pursuant to Art. 5(2) CIA.

6. Substantiation of climate related claims

Art. 3(1)(x) UCA requires that climate-related claims be supported by objective and verifiable evidence. A wide range of standards and methodologies is, in principle, available for this purpose.

The Implementation Guidance sets out general requirements for substantiating climate-related claims:

- Objectivity: substantiation relies on current, recognised standards and methodologies, with particular regard to the transparency and scientific quality of the methodology, good governance, and independent verification.
- Appropriate methodology: in particular with respect to the assumptions adopted and the reference periods (for comparative claims, additionally: comparability).
- Traceability (transparency): the accuracy of the statements must be capable of proof in the event of a dispute. In addition, the clarity requirement (pro-

² The term ESG is used, in particular, in the context of financial products and services. In this area, in addition to the requirements of the UCA as specified by the Implementation Guidance, The Federal Council’s position on the prevention of greenwashing in the financial sector of 16 December 2022 as well as the relevant self regulatory standards (SBVg, AMAS, SVV, ASIP) may be relevant.

hibition of misleading conduct) demands that information essential for the average consumer's understanding be disclosed together with the claim. This information must be easy to find and provided in the immediate vicinity of the claim. Further information (though not essential information) may be made available, for example via a weblink or QR code. Where appropriate, substantiation may be supported by independent verification; however, there is no requirement for prior approval.

According to the Implementation Guidance, Art. 3(1) (x) UCA entails a reversal of the burden of proof. In contrast, part of the doctrine assumes a heightened burden of substantiation but not a reversal of the burden of proof in the technical sense of civil procedure law (cf. Art. 13a UCA).

The Implementation Guidance provides helpful orientation as to which standards and methodologies may be considered suitable, at least in principle, for the substantiation of climate-related claims. It distinguishes between standards referenced in Swiss regulations (e.g., the GHG Protocol) and other standards (e.g., ISO standards or the SBTi). Importantly, the mere mention of a method or standard in the Implementation Guidance does not, in itself, imply that it constitutes an objective and verifiable basis; rather, suitability must be assessed on a case-by-case basis.

7. Developments in EU-Law

The Implementation Guidance reflects current developments in EU law. In the EU, the requirements for sustainability-related claims, i.e., claims concerning environmental matters (including climate-related claims) or social aspects (e.g., fair working conditions), are currently being tightened. In particular, Member States must transpose the Empowering Consumers Directive (EmpCoD) into national law by 27 September 2026. Among other things, EmpCoD prohibits uncertified sustainability labels and claims that a product has a

neutral, reduced or positive climate impact by virtue of compensation measures. The EU rules also apply to Swiss companies operating within the EU. In addition to sanctions such as injunctions, infringements of EmpCoD may be penalised with fines of up to 4% of annual turnover. The fate of the proposed Green Claims Directive, which would introduce further tightening of environmental claims (e.g., an ex ante verification requirement for all relevant claims by a state-approved body), is currently uncertain.

8. Liability risks

Violations of Art. 3 UCA give rise to civil and criminal liability.³ Any person who is threatened or harmed by unfair competition in their economic interests may apply to a court to prohibit an imminent infringement, eliminate an existing infringement, or declare the unlawfulness of an infringement, if it continues to have a disruptive effect (Art. 9 UCA). In addition, professional and trade associations as well as consumer protection organisations are entitled, under Art. 10 UCA, to bring actions in the interests of their members or in the interest of consumers. The Confederation, represented by SECO, also has standing (Art. 10(3) UCA), although this is rarely used in practice. Furthermore, anyone who intentionally violates Art. 3 UCA may be criminally prosecuted and punished with imprisonment of up to three years or a monetary penalty (Art. 23 UCA). Recently, the media have repeatedly reported such criminal complaints. If an offence is committed in the course of conducting business or by agents, liability of the principal/employer under the Federal Act on Administrative Criminal Law is possible (Arts. 6–7 in conjunction with Art. 26 UCA). Where false or misleading climate-related statements are made in company reports, whether in voluntary or legally mandated reports, Art. 325^{ter} of the Swiss Criminal Code (SCC) applies (fine of up to CHF 100,000).

³ For an overview, see Isabelle Romy, *Les moyens d'action contre le greenwashing*, PCEF/ZZZ 69/2025 p. 32.

9. Conclusion

The requirements for climate-related statements have increased under Art. 3(1)(x) UCA – the Implementation Guidance is a helpful document for practical application. Companies bear responsibility to proceed with care when communicating climate-related claims. Such claims must always rest on robust, objective evidence; accordingly, documentation is essential. In addition, verify in advance whether the standards you use are scientifically sound, widely recognised, and up to date.

The value of transparent and substantiable claims cannot be overstated, protecting not only against liability risks but also reputational harm. To avoid legal risks, seeking early advice from qualified experts is recommended.

Sustainability, particularly in the areas of the environment, social issues and corporate governance, is becoming increasingly important to our clients.

We would like to support you in tackling the associated challenges. To this end, our Sustainability (ESG) Desk brings together the wide-ranging expertise and many years of experience of our specialists for the benefit of our clients. The key to capitalising on the opportunities and mitigating the risks associated with sustainability challenges lies in an interdisciplinary approach and collaboration.

Contact the co-heads of our ESG Desk:



Prof. Dr. Isabelle Romy
Attorney-at-Law, Partner



Dr. Marc Hanslin
Attorney-at-Law, Partner



Dr. Umberto Milano
Attorney-at-Law, Partner