

## ENVIRONMENTAL LAW / SUSTAINABILITY BULLETIN

November 2024

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### Recent Regulatory Trends in Japan Concerning Greenwashing

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#### I. Introduction

In recent years, along with heightened awareness about climate change and sustainability, so-called “greenwashing” has come under increasing scrutiny. While the exact definition of greenwashing differs somewhat from one commentator to the next, the term generally refers to advertising methods that mislead consumers by misrepresenting environmental impacts and benefits in the content of product advertisements and the like.

On October 1, 2024, amendments to the Act against Unjustifiable Premiums and Misleading Representations (the “**Unjustifiable Premiums Act**”) came into effect, including stronger penalties for violations and the introduction of a so-called “commitment procedure” to better facilitate regulatory enforcement by the Japan Consumer Affairs Agency. These amendments mean that businesses need to take even greater care that the content of advertisements for their products are appropriate.

This bulletin provides an overview of greenwashing regulations in Japan as well as actual case examples of violations.

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### II. Regulatory Trends in Japan

#### 1. The laws in question and related guidelines

##### (1) Laws in question

###### (a) Unjustifiable Premiums Act

Article 5, Item 1 of the Unjustifiable Premiums Act prohibits business operators from advertising<sup>1</sup> to general consumers that the quality, standard or other details of the goods or services they sell are significantly better than they actually are or that the goods or services are significantly better than those of other business operators supplying similar goods or services, and thereby be likely to unjustly induce customers or impede general consumers from making an independent and rational choice.

This means that advertisements making claims such as “environmentally friendly,” “carbon neutral,” or “biodegradable” but which lack reasonable grounds for doing so may constitute a “misleading representation of superior quality” and may violate the Unjustifiable Premiums Act. In addition, if a business operator is requested by the Consumer Affairs Agency to submit materials showing reasonable grounds to support the content of the advertisement and fails to do so within the deadline, the advertisement will be deemed<sup>2</sup> (in the context of an order to take measures) to be a misleading representation of superior quality (the rule against undemonstrated advertising content; Article 7, Paragraph 2 of the Act).

If the advertisement is found to be a misleading representation of superior quality, the company may be ordered to eliminate the misperception given to general consumers, to stop the advertisement, and to take necessary measures to prevent its recurrence (order to take measures; Article 7, Paragraph 1 of the Act). With certain exceptions, an order to pay a surcharge equivalent to 3% of sales during the subject period will also be issued for misleading representations (Article 8, Paragraph 1 of the Act). In the event of an order to take measures or a surcharge payment order being issued, the Consumer Affairs Agency will publicly disclose the relevant details, including the company name and the content of the advertisement. In light of this, the potential risk to a company's reputation should not be underestimated.

<sup>1</sup> The Unjustifiable Premiums Act uses the term “represent,” but in this bulletin we use the term “advertise” for clarity.

<sup>2</sup> In the context of an order to pay surcharge, there is a presumption (Article 8, Paragraph 3 of the Act).

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The Unjustifiable Premiums Act provides that a qualified consumer organization authorized by the prime minister may demand an injunction against misleading representations (Article 30 of the Act), and in many cases the details of such demands are also made public.

Amendments to the Unjustifiable Premiums Act that came into effect in October 2024, introduced new provisions for “commitment procedures,” which ensure that a business operator that has engaged in advertising suspected of violating the Act will not be subject to an order to take measures or a surcharge payment order if it files a corrective action plan or an impact corrective action plan and receives approval from the Commissioner of the Consumer Affairs Agency (Article 27 and below of the Act), as well as a new direct penalty provision, under which penalties can immediately apply for misleading representations, etc. without requiring administrative action to be taken first (Article 48 of the Act).

The Consumer Affairs Agency has published detailed guidelines and other information regarding the interpretation of the Unjustifiable Premiums Act. Business operators need to be aware of the contents of these in addition to the statutory provisions, so please also see our discussion of those guidelines further below.

### (b) Consumer Contract Act

Article 4, Paragraph 1, Item 1 of the Consumer Contract Act provides that a consumer may rescind a consumer contract entered into with an entrepreneur if, in soliciting the consumer to enter into the contract, the entrepreneur tells the consumer material information that is not true and the consumer thereby concludes the contract under the mistaken belief that the information provided by the entrepreneur is true. Unlike rescission for fraud under the Civil Code (Article 96, Paragraph 1 of the Code), this type of rescission for misrepresentation does not require intent or negligence on the part of the business.

This means that if the product or service is described to the consumer as “environmentally friendly,” “carbon neutral,” “biodegradable” or the like despite it lacking such attributes in reality, and the consumer concludes a contract with the mistaken belief that these descriptions were true, the contract may be rescinded pursuant to the Act.

The Consumer Contract Act allows qualified consumer organizations to seek injunctions against acts that violate the Consumer Contract Act

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(Article 23 of the Act). Such injunctions are made public in the same way as in 1(1)(a) above.

### (c) Unfair Competition Prevention Act

The Unfair Competition Prevention Act is a law aimed at ensuring fair competition among business operators. Under the Act, if a business operator makes a false representation in an advertisement for a product or service that could mislead consumers about the quality or content of the product or service, this constitutes “unfair competition” (Article 2, Paragraph 1, Item 20).

If the unfair competition infringes or is likely to infringe on the business interests of others, such as by depriving other businesses of their customers, injunctive relief and the like may be available to affected parties (Article 3, Paragraphs 1 and 2 of the Act), and if it infringes on the business interests of others through intentional or negligent acts of unfair competition, the affected parties may be able to claim damages (Article 4 of the Act and Article 709 of the Civil Code).

Therefore, if a product is labeled as “recycled material,” “biodegradable,” “energy-saving,” “reduced carbon emissions,” “improved fuel efficiency”, etc., contrary to its actual performance, there is a possibility that other competing businesses that have lost customers due to such labeling may demand an injunction and claim damages.

## (2) Guidelines, etc.

### (a) Environmental Labeling Guideline

The “Environmental Labeling Guideline” announced by the Ministry of the Environment in March 2013<sup>3</sup> aim to ensure that environmental labeling functions as useful information that is easy for consumers to understand and relate to, and to promote the establishment of systems that enable businesses and organizations to provide appropriate environmental information, and to deepen mutual understanding of environmental information among various stakeholders. It is a document that summarizes what businesses and other organizations should work on in order to promote the provision of environmental information that is beneficial to both businesses and consumers, mainly by examining the various types of environmental information that are transmitted to consumers by businesses. In addition to being applicable to

<sup>3</sup> <https://www.env.go.jp/policy/hozen/green/ecolabel/guideline/guideline.pdf> (in Japanese)

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manufacturers, importers, distributors, and their business associations, the Guideline also applies to “environmental labeling,” meaning labeling that describes environmental considerations and features such as environmental impact reduction effects at each stage of a product’s life cycle, from raw material extraction to recycling and disposal. Therefore, it should be noted that not only advertisements to promote specific products but also advertisements created to enhance a company’s image are subject to this regulation.

The Guideline presents the following requirements as conditions for appropriate environmental labeling, and requires that businesses making environmental labeling comply with ISO/JIS Q 14020 (general principles) and ISO/JIS Q 14021 (environmental claims through self-declaration; see also the commentary below).

- (i) The information must be accurate and based on evidence.
- (ii) It should not mislead consumers.
- (iii) The content of the environmental labeling must be verifiable.
- (iv) It is not ambiguous or abstract.

In a section of the Guideline provided as reference information about the Unjustifiable Premiums Act, the Ministry of Environment cautions that “when a business operator affixes an environmental label on an environmentally friendly product, it must do so appropriately and based on objective and reasonable grounds.”

### Report on the Actual Conditions Concerning Advertising Labeling of Environmentally Friendly Products

In March 2001, the Japan Fair Trade Commission (JFTC) published its “Report on the Actual Conditions Concerning Advertising Labeling of Environmentally Friendly Products,” which notes that whether or not a product is environmentally friendly appears to be a major factor for consumers when selecting a product, and it lists the following specific five issues seen in the labelling of environmentally friendly products.

- (i) It is not clear whether the labeling refers to the product as a whole or not.
- (ii) The product is labeled as using recycled materials, etc., but it is not clear what percentage of the product is made from recycled materials.
- (iii) It is questionable as to whether the information on the label is based on any evidence.

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(iv) There is a risk that the product may be mistakenly perceived as being more environmentally friendly than it actually is due to vague labeling such as “environmentally friendly.”

(v) The product is labeled with an environmental symbol, but it is not clear how environmentally friendly the product actually is.

The Report then presents the following five points to keep in mind regarding advertising labeling claiming that a product is environmentally friendly.

*(i) The scope of coverage indicated by the labeling should be clear*

It is necessary to clearly indicate whether the content of the advertisement labeling regarding positive environmental impacts pertains to a part of the product, such as the packaging, or to the entire product, so that general consumers can clearly understand the content without being misled.

*(ii) When emphasizing that certain raw materials, etc. have been used, clearly indicate the percentage*

When emphasizing that certain environmentally friendly raw materials or ingredients have been used, it is necessary to clearly indicate the percentage used, e.g., “60% recycled paper.”

*(iii) Labeling must be supported with empirical data, etc.*

When an advertising label emphasizes that the components of a product have some effect on environmental conservation, it is necessary to provide evidence, such as empirical data, to show that the product has such an effect when used under normal conditions.

*(iv) Vague or abstract claims should not be made without context*

Vague or abstract claims such as “environmentally friendly” should be accompanied by an explanation of the reasons why the product supports environmental conservation.

*(v) Points to keep in mind when displaying environmental marks*

With regard to using marks indicating that a product is environmentally friendly, when the mark is certified by a third-party organization, it is required that the mark enable consumers to clearly understand the reason for the certification. In addition, the business must also provide an explanation adjacent to the location of the mark so that the reason for certification can be clearly understood.

**ENVIRONMENTAL LAW / SUSTAINABILITY BULLETIN****(b) Guidelines Concerning Undemonstrated Advertising Content**

The “Guidelines for the Application of Article 7, Paragraph 2 of the Act Against Unjustifiable Premiums and Misleading Representations - Guidelines for Regulations on Advertising Content That Has Not Been Demonstrated - (the so-called Guidelines Concerning Undemonstrated Advertising Content)” published by the JFTC in 2003<sup>4</sup> provide ideas on what kind of materials can be considered to demonstrate reasonable evidence to support advertising claims in line with the rule against undemonstrated advertising outlined above.

Specifically, the following two requirements must be met: (1) the submitted materials must comprise content that is objectively proven, and (2) the effects and attributes claimed in the advertisement must correspond appropriately to the content demonstrated by the submitted materials. Regarding (1), the results must be objectively demonstrated by results obtained through tests and surveys, by opinions of experts, professional associations or professional organizations, or by academic literature, and must be able to explain that the specific effects and attributes claimed in the advertisement are true. As for (2), in addition to the submitted materials themselves being objectively substantiated, the effects and attributes claimed in the advertisement must appropriately correspond to the content substantiated by the submitted materials.

Even if materials are submitted as evidence but they do not satisfy these requirements, such materials will not be deemed to provide reasonable grounds to support the claims in the advertisement, and the advertisement will be deemed to be a misrepresentation of superior quality and in violation of the Unjustifiable Premiums Act. For example, if the effectiveness of the biodegradability of a plastic is confirmed only under certain limited experimental conditions, the requirement in (1) may be considered to be satisfied, but requirement (2) would be violated unless the advertisement clearly stated that such effectiveness was confirmed only in such limited experimental conditions.

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<sup>4</sup> <https://www.japaneselawtranslation.go.jp/ja/notices/view/123>



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### (c) ISO/JIS Q 14021 (Environmental claim by self-declaration)

This is an environmental label used by companies that provide products and services to promote the environmental friendliness of their products and services. The standard prescribes the following 12 terms that can be used to make environmental claims, as well as definitions and certain requirements for making each claim.

- (1) Compostable
- (2) Degradable
- (3) Designed for Disassembly
- (4) Extended Life Product
- (5) Recovered Energy
- (6) Recyclable
- (7) Recycled Content
- (8) Reduced Energy Consumption
- (9) Reduced Resource Use
- (10) Reduced Water Consumption
- (11) Reusable and Refillable
- (12) Waste Reduction

### (d) Carbon Offsetting Guidelines<sup>5</sup>

The “Carbon Offsetting Guidelines” issued by the Ministry of the Environment in 2015 and revised to version 3.0 in 2024 explain the basic concepts and procedures necessary to implement highly credible carbon offsetting initiatives. The guidelines describe in detail the implementation flow and procedures for implementing highly credible carbon offsetting.

### (e) Greenwashing and how to avoid it: an introductory guide for Asia’s finance industry<sup>6</sup>

Negative impacts of greenwashing are a concern in the finance industry as well, which needs to avoid inappropriate labeling that could constitute greenwashing. In its October 2023 update, “Greenwashing and how to avoid it: an introductory guide for Asia’s finance industry,” ClientEarth, a nonprofit environmental law organization, describes greenwashing in the finance industry as generally referring to false, deceptive, or misleading

<sup>5</sup> <https://www.env.go.jp/content/000209289.pdf> (in Japanese)

<sup>6</sup> [https://www.clientearth.asia/media/ngohuxno/clientearth\\_%E3%82%B0%E3%83%AA%E3%83%BC%E3%83%B3%E3%82%A6%E3%82%A9%E3%83%83%E3%82%B7%E3%83%A5%E3%81%A8-%E3%81%9D%E3%81%AE%E5%9B%9E%E9%81%BF%E6%96%B9%E6%B3%95\\_ ja\\_lores\\_01112\\_3.pdf](https://www.clientearth.asia/media/ngohuxno/clientearth_%E3%82%B0%E3%83%AA%E3%83%BC%E3%83%B3%E3%82%A6%E3%82%A9%E3%83%83%E3%82%B7%E3%83%A5%E3%81%A8-%E3%81%9D%E3%81%AE%E5%9B%9E%E9%81%BF%E6%96%B9%E6%B3%95_ ja_lores_01112_3.pdf)



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claims or representations about the nature or extent to which a financial product, investment strategy, or company has a positive impact on the environment or climate, and provides the following five key recommendations for avoiding greenwashing risks.

- (1) Screen your green: Scrutinize the accuracy and credibility of any green claim.
- (2) In good and green faith: Be transparent about how the green objectives are integrated into the financial product and financial objective.
- (3) Walk your green talk: Ensure the company or fund's green image is consistent with the internal actions of the company or fund and their actions in relation to third parties.
- (4) Observe the changing shades of green: Expectations and regulations are rapidly evolving, so monitor developments in all relevant jurisdictions.
- (5) Be alert to green duties: Know your legal and fiduciary duties to investors/stakeholders

Although none of these guidelines are legally binding, it is advisable for companies to display advertisements that comply with these guidelines in order to reduce the risk of damage to their overall reputation by having an advertisement being called out as greenwashing.

### 2. Actual case examples

Due to the limited space in this bulletin, we have selected below just a few of the actual case examples of violations.

#### (1) Cases of violation of the Unjustifiable Premiums Act

- (a) Order to take measures under the Unjustifiable Premiums Act concerning biodegradable plastic products<sup>7</sup>

On December 19, 2022, the Consumer Affairs Agency issued cease and desist orders to a total of ten companies (including sellers of fishing tackle, cutlery, straws, and cups, etc., sellers of garbage bags and plastic bags, and sellers of BB bullets for air guns) for advertising without

<sup>7</sup> <https://www.caa.go.jp/notice/entry/031584/>, <https://www.caa.go.jp/notice/entry/031610/>, <https://www.caa.go.jp/notice/entry/031612/>, <https://www.caa.go.jp/notice/entry/031623/>  
The above notices are in Japanese.

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evidence that their products were made of “biodegradable plastic” or were “compostable.”

Although these companies submitted materials to support their claims, they were ultimately issued with the orders as they were deemed not to have provided reasonable grounds to support their claims due to reasons such as the results not being from experiments conducted under conditions in which the products were actually likely to be used.

In addition, one business selling fishing equipment was later ordered to pay a surcharge of 17.74 million yen, while the manufacturer of BB bullets for air guns was ordered to pay a surcharge of 13.53 million yen.<sup>8</sup>

(b) Order to take measures under the Unjustifiable Premiums Act concerning thermal insulation tinting film for window glass

On February 27, 2015, the Consumer Affairs Agency issued cease and desist orders to companies that manufacture and sell window tinting film, claiming that the company advertised, without evidence, the energy-saving effects of the film, such as “reduces heat entering through the window glass by 40% to 50% in summer and reduces 20% to 30% of heat escaping in winter. Although these businesses also submitted materials to support such claims, they were ultimately issued with the orders due to being deemed not to have provided reasonable grounds to support such claims due to reasons such as the results not being from experiments conducted under conditions in which the products were actually likely to be used.

The business operators in question filed a lawsuit seeking revocation of the orders, but although a temporary stay of execution of the orders was granted (Tokyo District Court Decision of April 20, 2015 (reported in Hanrei Times Vol. 1424, page 205), the request for revocation was ultimately dismissed and it was confirmed by the court that the order was valid (Tokyo District Court Decision of November 10, 2016 (Hanrei Times Vol. 1443, page 122)).

*Table summarizing the actual cases of violation of the Unjustifiable Premiums Act discussed in this bulletin*

<sup>8</sup> <https://www.caa.go.jp/notice/entry/034955/>,  
[https://www.caa.go.jp/notice/assets/representation\\_cms209\\_240222\\_1.pdf](https://www.caa.go.jp/notice/assets/representation_cms209_240222_1.pdf)

The above notices are in Japanese.

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Date of disposition	Products for sale	Advertising media	Advertising claims made	Disposition
December 19, 2022	Fishing equipment (pseudo-bait)	Packaging	“Biodegradable bait,” “This product is made of biodegradable resin that is degraded by microorganisms in the water, and everything, including the preservative solution, is harmless to fish and humans.”	Order to take measures (and one of the companies was ordered to pay a surcharge)
December 19, 2022	Cutlery, straws, cups, etc.	Internet, packaging, e-newsletters	“Compostable and biodegradable cutlery,” “Cutlery made of compostable, biodegradable PLA that returns to the soil in about three months,” and an image of plant leaves over water with the words “Environmentally friendly and biodegradable PLA that returns to the ocean.”	Order to take measures
December 19, 2022	Garbage bags and plastic bags	Internet, packaging	“PLA + PBAT polylactic acid (PLA) is an environmentally friendly, fully biodegradable plastic that can be used as a measure to reduce plastic,” “What is PLA biodegradable plastic?” “PLA (polylactic acid) is hydrolyzed by moisture in the environment to form low-molecular-weight compounds, which are ultimately broken down by microorganisms, etc. into carbon dioxide and water.” “These poop bags are made of cornstarch, which biodegrades in about two years and does not	Order to take measures

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			emit toxic gases when incinerated.” “They are biodegradable and therefore eco-friendly.”	
December 19, 2022	BB bullets for air guns	Internet, packaging, posters	“High quality biodegradable ecological BB bullets that are 100% degradable.” “These BB bullets are composed of environmentally friendly plant-derived materials and mineral components, and do not use any petroleum-based raw materials. They are also suitable for outdoor field use because microorganisms in the soil and water break them down into water and carbon dioxide after they fall to the ground.” Advertisements such as “Made primarily from safe biodegradable plant-derived biomass plastic,” “Biodegradable,” etc. Some businesses used images showing products fallen to the ground crumbling over time.	Order to take measures (one of the companies was ordered to pay a surcharge)
February 7, 2015	Window tinting film	Leaflets, website	Advertisements such as “reduces heat entering through window glass by 40-50% in summer and 20-30% of escaping heat in winter,” and “improves heating and cooling effectiveness by 20-40%.”	Order to take measures (sought a stay of execution but lost)

## (2) Other cases

In the “Report of the Study Group on Eco Mark Labeling” published by the Japan Environment Association in December 2001,<sup>9</sup> it was pointed out

<sup>9</sup> <https://www.ecomark.jp/pdf/hkh.pdf> (in Japanese)

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that the use of the Eco Mark with the notation “Earth-friendly” is ambiguous, and the study group considered that the labeling should be changed to a clear labeling system such as an “environmental labeling program eco mark” program or an “eco mark” program.

### III. Conclusion

Given the increasingly high level of focus on greenwashing across Japanese society, care must be taken in the wording of advertisements and promotions that claim to reduce environmental impacts.

### PUBLICATIONS

- Book "Regulations Regarding Genomes"  
Publication Shojihomu Co., Ltd.  
Author Kazuo Yoshida
  
- Article "EU Emissions Trading System (EU ETS) - Implications for System Design in Japan"  
Publication Jurist No.1602  
Author Takeshi Mukawa
  
- Article "Overview of the EU Corporate Sustainability Due Diligence Directive and its Impact on Japanese Companies"  
Publication Accounting & Audit Journal Vol.36 No.10  
Author Chihiro Tsukada and Akane Hirata (Co-Author)