

# Is Twitter the New FTC *and* EPA? Publicized Private Action as the Anti-Greenwashing Mechanism in Modern Society

CLAIRE FISCHER\*

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## INTRODUCTION

Consumers are using their wallets to enact environmental and social change, now more than ever.<sup>1</sup> However, this willingness to spend more on social and eco-conscious options opens consumers up to a wide range of deceptive practices, causing them to pay inflated prices for only a minimal amount, if any, of the

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\* Georgetown Law, J.D. 2020; University of Missouri-Columbia, B.A. 2016. © 2021, Claire Fischer.  
 1. *Green Generation: Millennials Say Sustainability Is a Shopping Priority*, NIELSEN (Nov. 5, 2015), <https://perma.cc/7N9K-G99C> [hereinafter *Green Generation*].

sought benefit. “Greenwashing” is an example of these deceptive practices, where brands and retailers disseminate information—typically through marketing or labeling—that presents a more environmentally friendly picture of the product, company, or service than reality proves.<sup>2</sup> Greenwashing can present itself in several forms. One is when a company promotes an “environmental program or product while its core business is inherently polluting or unsustainable.”<sup>3</sup> Another is when a company uses targeted advertising to highlight a specific “green achievement” to divert attention away from its environmentally harmful practices.<sup>4</sup> Yet another is when a company utilizes inaccurate or misleading “buzzwords” on specific products to make the consumer believe that it is a more sustainable or healthier choice. Due to current resource restrictions and political pressure, government enforcement of greenwashing is unlikely to prove sufficient to protect consumers and mitigate the practice’s negative environmental impact. Because of this inability to effectively regulate, widespread access to mass media, the growing concern about climate change and the environment, and consumers’ willingness to “put their money where their mouths are,” publicized private lawsuits may be the most effective method to curb the spread of “greenwashing.” With a majority of consumers seemingly willing to pay more for products and services labeled as “all-natural,” “organic,” or “eco-friendly,”<sup>5</sup> holding these companies accountable for their claims through judicial pressure and the public eye may be the only way to halt these deceptive practices, especially in the wake of the Trump Administration’s policy changes.

## I. BACKGROUND

The term “greenwashing” was coined by Jay Westerveld in a 1986 article calling out the hotel industry’s arguably ironic campaign to “save water” by reusing bath towels. He also criticized the industry’s use of many other practices that significantly harm the environment and noted that, in reality, the hotels themselves would see the biggest positive impact from this project—lower laundry costs.<sup>6</sup> Greenwashing as a concept, however, dates as far back as the 1960s, when the first influential environmental movement began. Companies quickly and consistently recognized the market demand for more sustainable products leading up to the world’s first Earth Day in 1970.<sup>7</sup> In the 1980s, after the Bhopal gas leak,

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2. Chris Devauld & Leila Green, “Don’t Throw Anything Away”: *Greenwashing in Public Relations*, in *PROCEEDINGS OF ANZCA: MEDIA, DEMOCRACY, AND CHANGE AUSTL.* 2 (2010).

3. Roddy Scheer & Doug Moss, *How Can Consumers Find Out If a Corporation Is “Greenwashing” Environmentally Unsavory Practices?*, *SCI. AM.* (June 29, 2013), <https://perma.cc/KDB3-VUBE>.

4. *Id.*

5. *Green Generation*, *supra* note 1.

6. Jim Motavalli, *A History of Greenwashing: How Dirty Towels Impacted the Green Movement*, *AOL* (Feb. 12, 2011), <https://perma.cc/RTJ7-TCEY>.

7. Joshua Karliner, *A Brief History of Greenwash*, *CORPWATCH* (Mar. 22, 2001), <https://perma.cc/N7MQ-L68V>; Devauld & Green, *supra* note 2, at 1.

Chernobyl nuclear accident, and Exxon Valdez oil leak, consumers' emphasis on environmentally friendly practices strengthened, and companies and their marketing departments took note.<sup>8</sup> In 1990, polls found that one-fourth of all household products had a sustainable label attached to them and that seventy-seven percent of Americans' buying habits were influenced by a company's environmental reputation.<sup>9</sup> Since then, these consumer buying patterns have seen a steady increase. A 2015 Nielson poll showed that sixty-six percent of global respondents are willing to pay more for sustainable offerings. When looking exclusively at millennial consumers, this number jumps to seventy-three percent, and at Generation Z, to seventy-two percent.<sup>10</sup>

One would think that this emphasis on environmental sustainability and corporate America's response to it would be positive for all involved, and in some ways that is true. Several of the world's biggest corporate names are taking concrete steps to help fight environmental issues.<sup>11</sup> Admittedly, even non-greenwashing companies face difficulties because a product's potential environmental impact is extremely complex and manufacturers may struggle to communicate that information to consumers.<sup>12</sup> However, thousands of other corporations are using this social awareness to prey on consumers by overcharging for products and underdelivering on promises. Corporations continue to be held unaccountable for their unsustainable practices, further harming the environment.

One company, called TerraChoice, conducted a study of environmental claims made on products in large stores and developed the "Seven Sins of Greenwashing" to help consumers avoid these misleading environmental claims.<sup>13</sup> The first is the "sin of the hidden tradeoff," which occurs when a company suggests that a product is eco-friendly due to one specific characteristic "without attention to other important environmental issues."<sup>14</sup> The second is the "sin of no proof," which relates to a lack of reliable independent certification.<sup>15</sup> The third, the "sin of vagueness," refers

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8. Karliner, *supra* note 7.

9. *Id.*; Devauld & Green, *supra* note 2, at 1–2.

10. *Consumer-Goods' Brands that Demonstrate Commitment to Sustainability Outperform Those that Don't*, NIELSEN (Oct. 12, 2015), <https://perma.cc/LM9H-RKF4> [hereinafter *Consumer-Goods' Brands*]. Although poll bias exists and, therefore, these numbers may not accurately reflect actual purchasing behavior, companies are nevertheless taking note of these reported consumer preferences and responding accordingly in their labeling, which shows that the numbers still have an impact. Nicole Caldwell, *Thanks to Consumer Demand, Companies Are Greener than Ever*, GREEN MATTERS, <https://perma.cc/JQV3-QFHS> (last updated 2019).

11. Matthew Heimer, *Here's How 5 World-Changing Companies Are Helping the Environment*, FORTUNE (Aug. 21, 2016), <https://perma.cc/Q98S-93KV>.

12. *Introduction to Ecolabels and Standards for Greener Products*, ENV'T PROT. AGENCY, <https://perma.cc/H57E-9EQN> (last updated Aug. 3, 2020) [hereinafter *Introduction to Ecolabels*, ENV'T PROT. AGENCY]; *Manufacturer Information on Greener Products*, ENV'T PROT. AGENCY, <https://perma.cc/H57E-9EQN> (last updated Aug. 3, 2020).

13. *Research Study: Sins of Greenwashing*, UL.COM, <https://perma.cc/SZU3-X9DN> (last visited Nov. 3, 2020).

14. *Id.*

15. *Id.*

to claims that are “so poorly defined or broad” that the real meaning will confuse a consumer.<sup>16</sup> A common example of this is the “all natural” label on many products which contain ingredients that are technically natural, but still dangerous to health or the environment.<sup>17</sup> The “sin of worshipping false labels” exists when a company feigns a third-party endorsement when the alleged certification does not exist.<sup>18</sup> The “sin of irrelevance” occurs where companies advertise the existence or absence of an ingredient or characteristic presumed to be “good” or “bad” by consumers, even though either the law requires the ingredient be included or the product is never made with the “bad” ingredient.<sup>19</sup> The “sin of lesser of two evils” is easily illustrated by greenwashed advertisements for “organic cigarettes” or “fuel-efficient sport-utility vehicles.”<sup>20</sup> Finally, the “sin of fibbing” includes companies making inherently false claims, such as claiming to be vegan when the product includes honey and other animal byproducts.<sup>21</sup>

Greenwashing not only harms consumers, but harms the environment, as well.<sup>22</sup> As previously noted, consumers are purchasing from companies that align with their environmental and social interests.<sup>23</sup> When companies effectively market their products as better for the environment than they truly are, consumers are likely to continue purchasing from those companies and, therefore, are helping to perpetuate non-sustainable business practices and products. Although both the federal and state governments have tried, and continue to try, to regulate this widespread consumer and environmental danger, their efforts alone have proven insufficient. This Note will argue that private lawsuits, acting as an alternate form of both the “disclosure regime” and the “name and shame” tactic often utilized by the federal government, may be more successful in eradicating greenwashing than reliance on additional governmental regulation. In the era of accessible media and a higher demand for corporate accountability, widespread news of private lawsuits against “beloved companies” seems more likely to force these companies to take action in favor of the environment and consumers than government enforcement.

In Part III of this Note, I will discuss the existing federal framework regulating certain aspects of greenwashing and take a brief look at the states’ and several independent entities’ roles in doing so. In Part IV, I will explore the federal government’s enforcement efforts after the creation of the Green Guides and will compare the Federal Trade Commission’s and Environmental

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16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*; *Truly Organic? FTC Says No, Alleges Retailer Mised Consumers About Its Products*, FED. TRADE COMM’N (Sept. 19, 2019), <https://perma.cc/QA84-VZZ4>.

22. Richard Dahl, *Green Washing: Do You Know What You’re Buying?*, ENV’T HEALTH PERSPECTIVES (June 1, 2010), <https://perma.cc/LW8X-U6XJ>.

23. *Consumer-Goods’ Brands*, *supra* note 10.

Protection Agency's ability and willingness to enforce greenwashing regulations during President Obama's and President Trump's administrations as well as discuss potential explanations for the difference. In Part IV, I will also discuss two specific case studies illustrating how publicized private action serves as effective enforcement instruments. The *Honest Co.* cases<sup>24</sup> show how private lawsuits can force corporations to take remedial action in the face of public scrutiny. The *La Croix* case<sup>25</sup> does the same, but also illustrates the risks that may come with a lawsuit-based "name and shame" regime.

## II. CURRENT REGULATION AND ENFORCEMENT EFFORTS

### A. FEDERAL REGULATION AND ENFORCEMENT

Four federal agencies currently have the largest roles in regulation and enforcement of greenwashing: the Federal Trade Commission ("FTC"), the Environmental Protection Agency ("EPA"), the Food & Drug Administration ("FDA"), and the United States Department of Agriculture ("USDA").

#### 1. Federal Trade Commission

The FTC arguably plays the biggest role in the consumer protection aspect of greenwashing, through the enforcement of its "Green Guides." The Green Guides are industry guidelines created to "help marketers avoid making environmental marketing claims that are unfair or deceptive under Section 5 of the FTC Act."<sup>26</sup> They provide not only general guidance to marketers on how to qualify their statements to avoid misleading consumers, but also guidance on how consumers are likely to interpret particular claims.<sup>27</sup> Although the Green Guides independently lack the force and effect of law, the FTC has power under Section 5 of the FTC Act to bring suit to prevent such misrepresentations.<sup>28</sup> To successfully bring a claim under Section 5, the FTC must show "either that an advertisement is facially or literally false, or that, although the advertisement is not literally false, [it] is likely to mislead or confuse consumers."<sup>29</sup> The Green Guides were originally released in 1992 and then revised in 1996, 1998, and, most recently, 2012.<sup>30</sup>

24. *Buonasera v. Honest Co.*, 208 F. Supp. 3d 555, 559 (S.D.N.Y. 2016); Class Action Complaint at 15–19, 21–23, *Michael v. Honest Co.*, No. 2:15-CV-07059 (C.D. Cal. Sept. 7, 2015), 2015 WL 6087456; Complaint & Demand for Jury Trial ¶ 1, *Kellman v. Honest Co.*, No. RG 16813421 (Cal. Super. Ct. Alameda Cnty. Apr. 27, 2016); Complaint & Demand for Jury Trial ¶ 1, *Hiddlestone v. Honest Co.*, No. 2:16-CV-07054 (W.D. Cal. Sept. 20, 2016).

25. Complaint, *Rice v. Nat'l Beverage Corp.*, No. 1:18-CV-07151 (N.D. Ill. Oct. 25, 2018).

26. 16 C.F.R. § 260.1 (2020).

27. *Green Guides*, FED. TRADE COMM'N, <https://perma.cc/U85B-CQ4E> (last visited Oct. 23, 2020) [hereinafter *Green Guides*].

28. 15 U.S.C. § 45(a)(1); 16 C.F.R. § 260 (2020).

29. *Greenwashing: What Your Clients Should Avoid*, AM. BAR ASS'N (Apr. 5, 2019), <https://perma.cc/G69Y-ECHJ>.

30. *Green Guides*, *supra* note 27.

The most recent revision began in 2010 under the supervision of David Vladeck, then Director of the FTC's Bureau of Consumer Protection and current Professor at Georgetown University Law Center. This revision required a significant amount of financial and personnel resources and was somewhat controversial within the agency due to questions about its feasibility.<sup>31</sup> In the end, the new guidelines included substantial changes regarding the use of certifications and seals of approval and claims about renewable energy and carbon offsets, but these changes were still not as comprehensive as some, including Vladeck, had hoped.<sup>32</sup> For example, notably absent were definitions for the terms "natural," "organic," and "sustainable."<sup>33</sup> Though marketers can still be held accountable for improper use of these terms, their omission was intentional due to an inability to determine consumer perception of them.<sup>34</sup>

## 2. Environmental Protection Agency

The EPA has likewise provided guidance to consumers about which products are the most environmentally sustainable in certain categories, but its focus is primarily on federal purchasers. The EPA has developed voluntary "standards, criteria documents and ecolabeling programs . . . to protect human health and the environment" reaching a broader range of products.<sup>35</sup> Some examples of these "include ENERGY STAR<sup>TM</sup>, WaterSense, and Safer Choice . . . [which focus on] energy efficiency, water efficiency, and green chemistry."<sup>36</sup> The EPA was also directed by the National Technology Transfer and Advancement Act ("NTTAA") and the Office of Management and Budget ("OMB") to work jointly with private sector standard developers to create standards that meet government needs.<sup>37</sup> However, many of these standards are developed both by the public agency and by private actors that presumably have their own agenda, and certain risks and benefits inevitably come with public-private partnerships.<sup>38</sup>

The EPA has also developed the "Guidelines for Environmental Performance Standards and Ecolabels for Use in Federal Procurement" ("the Guidelines"), but these were created for, and apply to, purchasers acting on behalf of the federal

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31. Interview with David Vladeck, Professor, Georgetown Univ. L. Ctr., in Wash., D.C. (Nov. 30, 2018). Professor Vladeck served as the Director of the FTC's Bureau of Consumer Protection from 2009–2012.

32. *Green Guides*, *supra* note 27; Interview with David Vladeck, *supra* note 31.

33. FED. TRADE COMM'N, THE GREEN GUIDES: STATEMENT OF BASIS AND PURPOSE 249 (2012).

34. *Id.* at 263–64.

35. *Introduction to Ecolabels*, ENV'T PROT. AGENCY, *supra* note 12.

36. *Id.*

37. *Id.*

38. *Government Objectives: Benefits and Risks of PPPs*, PUB. PRIV. P'SHIP LEGAL RES. CTR., <https://perma.cc/2CND-9HSB> (Oct. 31, 2016); TILMAN ALTENBURG, THE PRIVATE SECTOR AND DEVELOPMENT AGENCIES: HOW TO FORM SUCCESSFUL ALLIANCES 5 (2005).

government.<sup>39</sup> The Guidelines aim to provide federal purchasers with an easier way to identify, evaluate, and select “environmentally preferable” products.<sup>40</sup> The Guidelines were created to satisfy the Federal Acquisition Regulations, which direct federal agencies to “maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance).”<sup>41</sup> The Guidelines address four main aspects of environmental performance standards and labels: the process for developing the standard, the environmental effectiveness of the standard, a conformity assessment, and the management of ecolabeling programs.<sup>42</sup>

The Guidelines are the basis for the EPA’s development of the “Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing” (“the Recommendations”), and those Recommendations serve as the “EPA-issued guidance” required by the Federal Acquisition Regulations.<sup>43</sup> The Recommendations are the specific “tool” given to federal purchasers to help them identify accurate and reliable “environmentally sustainable products and services,” therefore meeting “their agency’s sustainability goals” as well as other pieces of federal legislation and policy directives.<sup>44</sup> Because the federal government is the single largest purchaser in the United States,<sup>45</sup> the Recommendations likely have a large impact on certain products. However, these Guidelines and Recommendations offer insufficient protection for everyday consumers. The Recommendations only provide buyers with an affirmative label to search for—signaling a product is trustworthy—as opposed to deterring companies from mislabeling or regulating inaccurate labels. This positive encouragement from the U.S. government to purchase environmentally sustainable products certainly enhances the overall well-being of the environment. However, on its own, it does not go far enough to reach and regulate non-federal purchases of products falsely or inaccurately claiming to help the environment.

### 3. Food & Drug Administration

Both the FDA and the USDA could, through their rulemaking power, define “natural” for the specific products and industries they regulate, but they would most likely face immense political pressure from lobbyists within their controlled industries not to do so.<sup>46</sup> Although the FDA has no formal definition, it has a self-

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39. *Guidelines for Environmental Performance Standards and Ecolabels for Use in Federal Procurement*, ENV’T PROT. AGENCY, <https://perma.cc/A7DJ-MVH8> (last updated Sept. 23, 2020).

40. *Id.*

41. 48 C.F.R. § 23.703(b)(1) (2020); ENV’T PROT. AGENCY, *supra* note 39.

42. ENV’T PROT. AGENCY, *supra* note 39.

43. *Id.*

44. *Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing*, ENV’T PROT. AGENCY, <https://perma.cc/NL24-QML4> (last updated Aug. 28, 2020).

45. *Id.*

46. M. Muller, *Naturally Misleading: FDA’s Unwillingness to Define “Natural” and the Quest for GMO Transparency Through State Mandatory Labeling Initiatives*, 48 SUFFOLK UNIV. L. REV. 511, 523,

described “longstanding policy” regarding the use of “natural” in food and beverage labeling, and even held a notice and comment period in 2016 during which it received over 7,600 comments, though it has taken no further action to define it yet.<sup>47</sup> As recently as March 2018, Dr. Scott Gottlieb, the former Commissioner of the FDA, stated at the National Food Policy Conference that the FDA recognizes the need for clarity of the term and will “have more to say on the issue soon.”<sup>48</sup> Should this definition be provided, it would only apply to the food and drug industries, but considering the widespread desire for guidance on this issue, many courts and other agencies would likely consider this definition when ruling.<sup>49</sup>

#### 4. U.S. Department of Agriculture

Finally, the USDA regulates, *inter alia*, the term “organic” on food labels using acceptable qualifiers (for example, “100% organic,” “organic,” “made with organic”) based on the proportion of organic products used and provides certifications for those in compliance.<sup>50</sup> Another example of the USDA’s attempts to regulate greenwashing is the “USDA Certified Biobased Product” certification. This is available for a range of household products such as detergents and fertilizers derived from a minimum percentage of “plants and other renewable agricultural, marine, and forestry material,” but does not apply to food, animal feed, or biofuels.<sup>51</sup> Companies that violate either the Green Guides or FDA and USDA regulations face substantial civil penalties.<sup>52</sup> It should also be noted that, although these federal agencies have the ability to enforce and further define these issues, the Trump Administration continuously acted on its desire to make federal regulatory standards more lenient and, therefore, reduced the power of several federal agencies.<sup>53</sup>

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528–29 (2015); Dan Nosowitz, *Reminder: The Word “Natural” Means Absolutely Nothing on Food Labels*, MOD. FARMER (Apr. 29, 2019), <https://perma.cc/VX2W-98E2>.

47. *Use of the Term Natural on Food Labeling*, U.S. FOOD & DRUG ADMIN., <https://perma.cc/F9FS-TLCH> (Oct. 22, 2018); *Use of the Term Natural on Food Labeling*, REGULATIONS.GOV, <https://perma.cc/5ZFD-RJY2> (last visited Oct. 25, 2020).

48. Scott Gottlieb, Commissioner, U.S. Food & Drug Admin., *Reducing the Burden of Chronic Disease*, Remarks Before the National Food Policy Conference (Mar. 29, 2018), <https://perma.cc/T67F-AS5D> (Oct. 22, 2018).

49. See generally Charles Sipos & Lauren Staniar, *When Will the FDA Define ‘Natural’? Sooner Than You Might Think...*, FOODNAVIGATOR-USA (Mar. 6, 2018), <https://perma.cc/2TYP-FGH9> (discussing the doctrine of primary jurisdiction). If the FDA successfully promulgates a properly drafted definition, the number of lawsuits would most likely drastically decrease because most companies would quickly adjust their marketing efforts to comply.

50. 7 C.F.R. § 205.301 (2020).

51. U.S. Dep’t of Agric., *Popular Topics, What Is Biopreferred?*, BIOPREFERRED, <https://perma.cc/4JYY-UMLG> (last visited Oct. 25, 2020).

52. See generally *FTC Raises Civil Penalty Maximums to Adjust for Inflation*, FED. TRADE COMM’N (June 29, 2016), <https://perma.cc/DBS6-3PDP>.

53. See *infra* Part IV.A.3.



## B. STATE REGULATION AND ENFORCEMENT

State governments have also taken significant steps to protect consumers from greenwashing. These protections typically come in two forms: general consumer protection acts and/or environmental-specific marketing acts.<sup>54</sup> Every state has a general consumer protection law prohibiting unfair or deceptive practices, many of which are similar to the FTC Act.<sup>55</sup> However, unlike the FTC Act, all of the state consumer protection laws permit private rights of action for consumers.<sup>56</sup> The strength of these acts varies greatly between states regarding the scope of the acts, states' enforcement abilities, and consumers' "access to justice."<sup>57</sup> Several common weaknesses are overly narrowly drawn statutes regarding the scope of either practices or businesses covered, weak remedies, and restrictive pre-conditions for consumers to bring suit.<sup>58</sup>

At least eight states—California, Indiana, Maine, Michigan, Minnesota, Rhode Island, New York, and Wisconsin—have enacted laws expressly regulating environmental marketing claims.<sup>59</sup> States have often served as "laboratories" for experimentation in economic and social regulation, and several of them actually began addressing greenwashing and environmental issues before the federal government did so.<sup>60</sup> Because of this, one would think that, absent federal action, the states could lead the charge in protecting consumers and the environment against greenwashing. Perhaps ironically, one key issue with relying on enforcement under these state statutes is that many of them have been repealed and replaced with adoption of the revised Green Guides. California, Indiana, Maine, Michigan, Minnesota, New York, and Rhode Island have adopted specific parts or all of the Green Guides into their own environmental marketing laws.<sup>61</sup> This means that many of the gaps that restrict enforcement of the Green Guides will also restrict state enforcement. State governments also, like the federal government, often lack sufficient resources to "police the marketplace fully."<sup>62</sup> Additionally, though state action is often the most effective way to tackle local issues, it does not have

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54. Robert B. White, *Preemption in Green Marketing: The Case for Uniform Federal Marketing Definitions*, 85 IND. L.J. 325, 331 (2010).

55. NAT'L CONSUMER L. CTR., CONSUMER PROTECTION IN THE STATES: A 50-STATE EVALUATION OF UNFAIR AND DECEPTIVE PRACTICES LAWS 33 (2018).

56. *Id.*

57. *Id.* at 9. "Access to justice" includes determinations of consumers' ability to join their claims in a class action, the availability of punitive damages as well as attorneys' fees, a requirement that plaintiff consumers show a public impact, and the existence of special advance notice requirements, among others. *Id.* at 12.

58. *Id.* at 9.

59. White, *supra* note 54, at 332–34.

60. *Id.* at 345 (discussing statutes that existed in California, Indiana, New York, and Rhode Island before the 1992 Green Guides were issued).

61. CAL. BUS. & PROF. CODE § 17580.5 (West 2018); MINN. STAT. ANN. § 325E.41 (West 2018); N.Y. COMP. CODES R. & REGS. tit. 6, § 368.1(a)–(b) (2018); 6 R.I. GEN. LAWS ANN. § 6-13.3-1 (West 2018).

62. NAT'L CONSUMER L. CTR., *supra* note 55, at 32.

as expansive a reach in order to pressure or affect national or international companies' behavior. Reliance on state action also creates uncertainty due to its lack of uniformity.

### C. NONGOVERNMENTAL ENFORCEMENT

The Green Guides are also used by the National Advertising Division (“NAD”) of the Better Business Bureau, an independent self-regulatory system overseeing the advertising industry. The NAD handles around 150 cases a year spanning many different issues, including greenwashing, and accepts complaints from individual consumers.<sup>63</sup> When companies fail to comply with NAD directives, the NAD will direct the complaints to the FTC or other applicable regulatory agencies.<sup>64</sup>

Several nongovernmental organizations and grassroots movements focused on environmental protection have joined the fight against greenwashing, as well. One of these international organizations, Greenpeace, launched a campaign in 2009 to call out companies committing greenwashing and to help consumers make more eco-friendly purchases.<sup>65</sup> There are also a number of private efforts to provide consumers with resources to fact-check the reliability and independence of ecolabels. Ecolabel Index is an online global directory that tracks over 450 ecolabels across the world and provides information about the companies or groups behind the certification and whether the certifications require independent third-party assessments.<sup>66</sup>

### D. PRIVATE RIGHT OF ACTION FOR COMPETING COMPANIES

Finally, actions may be brought under Section 43 of the Lanham Act, which applies to trademark issues and false advertising, such as greenwashing.<sup>67</sup> However, it is an insufficient protection mechanism because everyday consumers are often denied standing under the Lanham Act, making it mainly available only to a company's competitors hoping to stop its false product claims.<sup>68</sup> In addition

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63. COUNCIL OF BETTER BUS. BUREAUS, *National Advertising Division*, <https://perma.cc/CB4M-CR4N> (last visited Nov. 3, 2020).

64. *Resolution of Referrals from BBB National Programs, including NAD, CARU, DSSRC, and ERSP*, FED. TRADE COMM'N, <https://perma.cc/NKD3-UN8S> (last visited Nov. 3, 2020).

65. Scheer & Moss, *supra* note 3.

66. ECOLABEL INDEX, <https://perma.cc/C4RT-TD5Q>; Scheer & Moss, *supra* note 3.

67. 15 U.S.C. § 1125(a); Ashley Lorange, *An Assessment of U.S. Responses to Greenwashing and Proposals to Improve Enforcement*, HOFSTRA L. STUDENT WORKS, 2010, at 1, 13.

68. *Made in the USA Found. v. Phillips Foods, Inc.*, 365 F.3d 278, 280 (4th Cir. 2004) (“At least half of the circuits hold (and none of the others disagree) that . . . [consumers are barred] from suing under the [Lanham Act.]”); *Barrus v. Sylvania*, 55 F.3d 468, 470 (9th Cir. 1995); *Serbin v. Ziebart Int'l Corp.*, 11 F.3d 1163, 1179 (3d Cir. 1993); *Dovenmuehle v. Gilldorn Mortg. Midwest Corp.*, 871 F.2d 697, 701 (7th Cir. 1989); *Colligan v. Activities Club of N.Y., Ltd.*, 442 F.2d 686, 692 (2d Cir. 1971); Lorange, *supra* note 67, at 13. *See also* Christopher A. Cole & Linda A. Goldstein, “Green” Is so Appealing, N.Y. L. J. (Sept. 15, 2002) (discussing previous greenwashing cases brought under 43(a) of the Lanham Act).

to this issue of standing, the Lanham Act is complex and difficult to interpret due to its exceptionally vague, ambiguous wording.<sup>69</sup> There is little guidance to interpret it in general and no guidance provided in the Green Guides.<sup>70</sup>

Ultimately, a combination of more comprehensive federal regulations, additional states enacting environmental marketing laws, and greater consumer access to judicial relief would be the most effective and ideal path forward. However, in the current political climate, due to a lack of government resources and a potential stalemate in the legislative and administrative processes, utilizing publicized private consumer lawsuits to stimulate public awareness and demand for greater corporate accountability is likely the most effective path forward.

### III. ANALYSIS

#### A. GREENWASHING ENFORCEMENT: THEN AND NOW

When a brand or retailer violates the FTC Act, the Bureau of Consumer Protection's Division of Enforcement brings civil actions.<sup>71</sup> Before the Green Guides were revised in 2012, the Division had only brought forty-five enforcement actions under them—seven of which were brought during Obama's first term and none of which were brought under the Bush Administration.<sup>72</sup> During the revision process, Vladeck told the Senate Subcommittee on Consumer Protection that "tougher enforcement and environmental guidelines [were] a major part of the Commission's agenda."<sup>73</sup> One change in the Green Guides that enhanced enforcement efforts was the newfound ability to bring claims against retailers, as opposed to only brands, to ensure that the marketer actually responsible for the violation, whichever side they are on, was held liable.<sup>74</sup> Starting in 2013, the first year of enforcement of the revised Green Guides, through the beginning of 2016, the Division filed at least twenty-eight enforcement actions covering everything from light bulbs to baby diapers to alleged "bamboo" products.<sup>75</sup> However, in 2017—the first year of the Trump Administration—the Division brought only five enforcement actions—one against an infant mattress company, which was their first challenge of an "organic" product, and four

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69. Lorange, *supra* note 67, at 14.

70. *Id.*

71. *Division of Enforcement*, FED. TRADE COMM'N, <https://perma.cc/DR9Z-3YRB> (last visited Nov. 3, 2020)

72. Kati Tusinski Berg & Kim Sheehan, *The New Green Guides*, 22 MEDIA ETHICS, no. 1, 2010, <https://perma.cc/KY3F-T5AD>.

73. Gabriel Nelson, *Will U.S. Government Crackdown on "Greenwashing"?*, SCI. AM. (Feb. 4, 2010), <https://perma.cc/CG7K-SEZB>.

74. 16 C.F.R. § 260.1 (2020).

75. Tricia Dunlap, *FTC Green Guides Enforcement Actions: Are You Protected?*, SUSTRANA (Feb. 23, 2016), <https://perma.cc/R7PJ-ZAMA>; Press Release, Fed. Trade Comm'n, *FTC Cracks Down on Misleading and Unsubstantiated Environmental Marketing Claims* (Oct. 29, 2013), <https://perma.cc/7Z4L-KM37>.

against paint companies.<sup>76</sup> No actions were filed against companies under the Green Guides in 2018,<sup>77</sup> and only one action was filed in 2019—against Truly Organic, Inc., a national company that, according to the FTC, falsely claimed its bath and beauty products were “100% organic,” “certified organic,” and vegan.<sup>78</sup> The inaction of federal agencies in confronting this issue during the previous administration is likely the result, at least in part, of executive action that trended away from environmental protection, as well as the disempowerment of federal agencies through personnel and budget reductions.

### 1. Executive Action Trending Away from Environmental Protection

Though the FTC is an independent agency, there is a longstanding debate about just how “independent” administrative agencies really are. Though these agencies derive their authority from Congress, the president decides who heads them, and those decisions are often made along party lines and with certain policy priorities in mind.<sup>79</sup> The president retains removal power over the agency heads, and “the power to remove is the power to control.”<sup>80</sup> The Supreme Court has also recognized this question of independence noting that “. . . one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter’s will.”<sup>81</sup> This specter of influence exists in both political parties, and examples of its use can be seen in the administration of every recent president.

If this influence does play a role in an agency’s agenda, looking to the Trump Administration’s record on environmental regulation and enforcement is increasingly relevant, especially when considering the negative effects greenwashing has on the environment. Although, at its core, greenwashing is a consumer protection issue, the environmental and social undertones cannot be ignored. During his presidency, the Trump Administration took drastic steps to roll back dozens of environmental protection policies enacted during the Obama Administration.<sup>82</sup> Several of the Trump Administration’s most infamous attempts to minimize

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76. *Green Guides*, *supra* note 27.

77. Lesley Fair, *Edge of ’17*, FED TRADE COMM’N BUS. BLOG (Jan. 3, 2017, 2:13 PM), <https://perma.cc/N579-86W7>; Blog Posts Tagged with “Environmental Marketing,” FED. TRADE COMM’N BUS. BLOG, <https://perma.cc/S57H-HFJ6>. I was unable to find any reports of new 2018 enforcement actions after extensive research using this FTC database and other news sources. However, I cannot say with absolute certainty that no investigations or enforcements are continuing from prior years, just that I have found no new actions reported during my research.

78. FED. TRADE COMM’N, *supra* note 21.

79. VIVIAN CHU & TODD GARVEY, CONG. RSCH. SERV. LEGAL SIDEBAR, SEPARATING POWER SERIES: PRESIDENTIAL INFLUENCE V. CONTROL OVER INDEPENDENT AGENCIES (2015), <https://perma.cc/UXG9-HWH9>

80. *Silver v. U.S. Postal Serv.*, 951 F.2d 1033, 1039 (9th Cir. 1991).

81. *Humphrey’s Ex’r v. U.S.*, 295 U.S. 602, 629 (1935).

82. *A Running List of How President Trump is Changing Environmental Policy*, NAT’L GEOGRAPHIC (May 3, 2019), <https://perma.cc/Y3DA-YCS8>.

federal involvement in mitigating climate change include pulling the country out of the Paris Climate Accord and a push to defund or limit what can be reported in the National Climate Assessment, a report compiled every four years and issued by thirteen federal agencies.<sup>83</sup> The Trump Administration-controlled EPA likewise eliminated planned regulations on pollution from sewage plants, reduced the number of waterways protected by the Clean Water Act, and cut back efficiency standards that would have increased cars' fuel efficiency significantly by 2025.<sup>84</sup> A look at the rapidly weakening EPA under the direction of President Trump indicates that this trend is likely to continue, unless intervening action is taken by the next Administration.<sup>85</sup>

## 2. Disempowerment of Federal Agencies

The dismantling of the EPA is a solid example of President Trump's intent to decrease government involvement in many areas, including environmental protection, and disempower federal agencies. Within the first eighteen months of the Trump Administration, nearly 1,600 employees left the EPA, while less than 400 new employees were hired.<sup>86</sup> These cuts may be a result of a March 2017 Executive Order proposing a plan to "reorganize governmental functions and eliminate unnecessary agencies . . . components of agencies, and agency programs."<sup>87</sup> This proposal resulted in a comprehensive plan to merge, rename, and eliminate various agencies and their sub-parts.<sup>88</sup> By September 2017, the number of permanent personnel had decreased in "all Cabinet departments except Homeland Security, Veterans Affairs and Interior" with the Department of Education taking the biggest hit at approximately 9.4 percent.<sup>89</sup> Limited government has its advantages, and, certainly, needless regulation should be eliminated for efficiency's sake, but the uncertainty plaguing federal agencies at the moment may further limit their ability and willingness to enact substantive regulation or continue meaningful enforcement, especially in areas the Trump Administration and current FTC have seemingly sidelined.

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83. Coral Davenport & Mark Landler, *Trump Administration Hardens Its Attack on Climate Science*, N.Y. TIMES (May 27, 2019), <https://perma.cc/MH8K-VYCY>; Coral Davenport & Kendra Pierre-Louis, *U.S. Climate Report Warns of Damaged Environment and Shrinking Economy*, N.Y. TIMES (Nov. 23, 2018), <https://perma.cc/YF6Y-EUGB>.

84. Grace Panetta, *11 Ways the Trump Administration Has Guttled Environmental and Public Land Protections*, BUS. INSIDER (May 30, 2019), <https://perma.cc/TGF7-ZT9W>.

85. Brady Dennis, Juliet Eilperin, & Andrew Ba Tran, *With a Shrinking EPA, Trump Delivers on His Promise to Cut Government*, WASH. POST (Sept. 8, 2018), <https://perma.cc/VPF8-Q985>.

86. *Id.*

87. Exec. Order No. 13,781, 82 Fed. Reg. 13,959 (Mar. 13, 2017).

88. See generally OFF. OF MGMT. & BUDGET, *DELIVERING GOVERNMENT SOLUTIONS IN THE 21ST CENTURY: REFORM PLAN AND REORGANIZATION RECOMMENDATIONS* (2018).

89. Lisa Rain & Andrew Ba Tran, *How the Trump Era Is Changing the Federal Bureaucracy*, WASH. POST (Dec. 30, 2017), <https://perma.cc/5XW6-HNS7>; Brady Dennis, Juliet Eilperin & Andrew Ba Tran, *With a Shrinking EPA, Trump Delivers on His Promise to Cut Government*, WASH. POST (Sept. 8, 2018), <https://perma.cc/U3UT-857D>.

The Trump Administration brought a decreased amount of greenwashing enforcement, a trend away from environmental protection, and a diminished power to act in federal agencies. Coupled with the existing gaps in greenwashing regulations that are unlikely to be filled anytime soon, it seems unlikely that government action, if relied upon alone and absent sweeping efforts under the new Administration, will be sufficient protection for the environment and consumers over the next few years, if not longer.

#### B. USE OF PRIVATE LAWSUITS TO PICK UP THE GOVERNMENT'S SLACK

Without the ability to rely solely on the federal government or state legislatures for widespread action, there may be a third option—private lawsuits that both stir public demand for accountability and create common law to, in turn, pressure both companies and government to act. In the era of widespread access to social media such as Twitter, Facebook, and other sites, and a higher public demand for corporate accountability, widespread news of private lawsuits against popular companies seems more likely to force these companies to stop greenwashing than the unlikely threat of government enforcement. The use of private action acts as an alternate form of the “disclosure regime,” often utilized by the federal government, which theorizes that when consumers have all necessary information, they will make informed decisions accordingly. It is also an example of the “name-and-shame” regime used by both governmental and private regulatory entities. As noted above, all states provide for a private right of action in their consumer protection or environmental marketing statutes.<sup>90</sup> This has paved the way for classes of consumers to join together to stand up to companies marketing and selling greenwashed products using both state and federal regulations as guidance. In fact, when the Green Guides were revised, Vladeck hoped that they would provide guidance in both public and private lawsuits.<sup>91</sup> Two particular case studies—The Honest Co. and La Croix—illustrate the impact consumer lawsuits can have on companies that allegedly commit greenwashing.

##### 1. The (Not So) Honest Co.: The Reward of Private Action

The Honest Company (“Honest”) was created in 2011 by actress Jessica Alba to fill a perceived gap in the market for healthy, “natural” baby products and home goods. It advertises itself as a “wellness brand . . . [for those] looking for safe products, simple solutions and clear information about their choices.”<sup>92</sup> It built its brand

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90. NAT'L CONSUMER L. CTR., *supra* note 55, at 32.

91. Vladeck, *supra* note 31.

92. *Who We Are*, THE HONEST CO., <https://perma.cc/C3V4-SAL8> (last visited Nov. 14, 2020).

around what it calls the “Honest standard of safety and transparency.”<sup>93</sup> The brand quickly but steadily grew in popularity and, in 2015, gained “unicorn status,”<sup>94</sup> a classification given to companies valued at over \$1 billion, rarely given to start-up companies.<sup>95</sup> This status did not last beyond 2017, however, after a series of mishaps and lawsuits brought the company’s value down.<sup>96</sup> From 2015 to 2016, the company was confronted with independent studies discovering a chemical in their laundry detergent that it had actively denied using, a widespread product recall of baby powder, and several consumer lawsuits challenging its use of the term “natural.”<sup>97</sup>

The lawsuits were filed in New York and California by consumers alleging that they were misled by labels on several household products.<sup>98</sup> Eventually, Honest settled these lawsuits for \$7.35 million, entitling each consumer to a mere \$2.50, and agreed to stop labeling products with non-natural ingredients as “natural.”<sup>99</sup> However, the highly publicized lawsuits contributed significantly to the company’s failure to be acquired and potentially go public in 2016, when a potential investor pulled out and instead invested in its competitor, Seventh Generation, a company that emphasizes its commitment to creating environmentally friendly products.<sup>100</sup> Despite the small financial remedy for consumers, as a result of these lawsuits, Honest retained new management, slimmed down their product offerings, and reformulated their scrutinized products with a higher focus on eco-friendliness and transparency.<sup>101</sup> Its website now provides more details about its “Honest standard,” highlighting each step of the revamped process from “Ingredient & Material Assessment” to “Testing & Validation” to “Label Transparency.”<sup>102</sup> These changes, enacted because of consumer demand, helped save the company from further devaluation. In 2018, the company was given a

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93. *Id.* A brief survey of the market comparing one of their best-selling products, baby diapers, shows that Honest diapers cost approximately 37¢ per diaper, while Pampers, not even a generic competitor, costs 28¢ per diaper. These prices were taken from Amazon and represent diapers of equal size.

94. *The Global Unicorn Club*, CB INSIGHTS (Aug. 16, 2015), <https://perma.cc/UK8C-B2NR>.

95. Sam Hollis, *The Rise, Fall, and Rise Again of The Honest Company*, JILT, <https://perma.cc/FG5Z-BZB9> (last updated Feb. 11, 2020).

96. *Id.*

97. Steve Tobak, *Jessica Alba’s “Honest” Mess*, ENTREPRENEUR (Mar. 29, 2017), <https://perma.cc/A32T-C57K>.

98. *Buonasera v. Honest Co.*, 208 F. Supp. 3d 555, 559 (S.D.N.Y. 2016); Class Action Complaint at 15–19, 21–23, *Michael v. Honest Co.*, No. 2:15-CV-07059 (C.D. Cal. Sept. 7, 2015), 2015 WL 6087456; Complaint & Demand for Jury Trial ¶ 1, *Kellman v. Honest Co.*, No. RG 16813421 (Cal. Super. Ct. Alameda Cnty. Apr. 27, 2016); Complaint & Demand for Jury Trial ¶ 1, *Hiddlestone v. Honest Co.*, No. 2:16-CV-07054 (W.D. Cal. Sept. 20, 2016).

99. Anne Bucher, *Jessica Alba’s The Honest Co. Settles ‘Natural’ Labeling Class Action*, TOP CLASS ACTIONS (July 4, 2017), <https://perma.cc/AT8P-ZJV3>.

100. Jordan Valinsky, *Jessica Alba’s The Honest Co. Just Got a \$200 Million Lifeline*, CNN BUS. (June 6, 2018), <https://perma.cc/E3KF-8TN8>.

101. Hollis, *supra* note 95.

102. *The Honest Standard*, THE HONEST CO., <https://perma.cc/XF55-EJR5> (last visited Oct. 18, 2020).

new \$200 million investment,<sup>103</sup> and sales are increasing once more, proving that making necessary changes for both consumer health and the environment and ensuring consumers are receiving “honest” information pays off.

## 2. La Croix: The Risk of Private Action

This second case touches on the risks involved with a private action-based solution, namely frivolous litigation and deterrence from creating sustainable products. In early October 2018, consumers filed a class-action lawsuit<sup>104</sup> against National Beverage, the maker of the beverage “La Croix,” flavored sparkling water that has become an increasingly popular substitute for other carbonated and sugary beverages, particularly among millennials and Generation Z.<sup>105</sup> With brightly colored packaging and advertised health benefits, sales of seltzer in 2018 nearly tripled from those in 2008.<sup>106</sup> La Croix, the market leader,<sup>107</sup> faced allegations that their seltzer was mislabeled as 100% natural when it “allege[dly] . . . includes ingredients used in cockroach insecticide as well as other artificial ingredients.”<sup>108</sup> National Beverage categorically denied these allegations,<sup>109</sup> and the lawsuit did not progress to trial.<sup>110</sup> One of the main chemicals at issue in the lawsuit, Limonene, is considered a “naturally occurring chemical” by the National Institute of Health and is not dangerous to consumers.<sup>111</sup> After nearly a year and a half of legal action, the plaintiffs dropped the case and retracted their claims in February 2020.<sup>112</sup>

Regardless of the lawsuit’s merits, after the news broke, La Croix’s parent company’s stock dropped nine percent in one week, and, in the month after the news broke, National Beverage Corporation’s shares fell 20.7 percent.<sup>113</sup> These figures illustrate that consumers are paying attention and care about what is in the products they purchase. The La Croix case shows us one potential risk of

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103. Valinsky, *supra* note 100.

104. Ashley May, *LaCroix Faces Lawsuit for Allegedly Including Cockroach Insecticide Ingredient in Its Sparkling Water*, USA TODAY (Oct. 5, 2018), <https://perma.cc/6VT8-PBLQ> (updated Oct. 8, 2018).

105. Emine Saner, *Bubbling Up: Why ‘Craft’ Sparkling Water Is Being Toasted by Soft Drink Lovers*, THE GUARDIAN (Mar. 21, 2018), <https://perma.cc/G3TS-YQ4G>.

106. Jennifer Maloney, *‘It’s the Fizz’: How Seltzer Is Upending Coffee and Beer*, WALL ST. J. (Aug. 27, 2018), <https://perma.cc/9TZT-Z4RJ>.

107. *Id.*

108. May, *supra* note 104.

109. *Id.*

110. Bethany Biron, *A Lawsuit Challenging LaCroix’s Claims of Natural Ingredients Has Been Dismissed*, BUS. INSIDER (Feb. 20, 2020, 7:10 PM), <https://perma.cc/V2D9-Y24L>.

111. Neel V. Patel, *The ‘All-Natural’ Label on Your LaCroix Is Meaningless, But that Doesn’t Mean the Seltzer Is Bad for You*, POPULAR SCI. (Oct. 4, 2018), <https://perma.cc/6M66-3NNG>; Nat’l Ctr. for Biotechnology Info., *Limonene*, PUBCHEM, <https://perma.cc/5DUZ-3L82> (last visited Oct. 19, 2020).

112. Biron, *supra* note 110.

113. Kevin Kelleher, *LaCroix ‘Insecticide’ Lawsuit Caused Its Parent Company’s Stock to Tumble 9% This Week*, FORTUNE (Oct. 5, 2018, 6:01 PM), <https://perma.cc/LRM2-EESM>; The Motley Fool, *Why National Beverage Corp. Shares Fell 21% in October*, NASDAQ.COM (Nov. 12, 2018), <https://perma.cc/FV9T-6MFL>.



encouraging private action—frivolous litigation. This lawsuit gained the nation’s attention and caused real, negative impacts on the beverage’s parent company. However, it also forced one of the thousands of companies who push the boundaries of permissible package labeling to defend itself to the American people. There is no doubt that other beverage makers using similarly ambiguous labels took note. Additionally, the nominal relief (\$2.50) each plaintiff gained in the Honest settlement, which overall was seen as a success, seems insufficient to encourage many consumers to embark on frivolous litigation *en masse*.

Relatedly, concerns about a deterrent chilling effect are valid. If the threat of meritless litigation becomes too high, companies may avoid the risk and stall their attempts at producing healthy, environmentally safe products. However, money and the market still prevail, and the market shows that these products are what the consumers want.<sup>114</sup> Additionally, despite this unwanted attention, by December 6, 2018, National Beverage had reported a “rise in its second-quarter profit, due to a 6.8% increase in sales”<sup>115</sup> and, as mentioned above, Honest is well on its way to financial recovery. With the low threat of government-imposed fines and consumer demand for sustainable products at an all-time high, it seems unlikely that any potential chilling effect would cause enough harm to outweigh the substantial benefit to the environment, consumers, and economy that would occur.

### 3. Common Law as a Gap Filler (and Nudge) for Federal Regulation

Two additional benefits of using private lawsuits as a method of enforcement are the creation of common law to fill gaps in regulation and placing an emphasis on the need for uniform, comprehensive regulation in this area. Should any of these lawsuits proceed past the settlement negotiation phase, common law could fill in existing gaps in the current regulatory framework by, for example, narrowing in on a definition for “natural.” Should enough cases move forward such that different courts are defining terms and deciding cases in contradictory ways, the resulting confusion would further emphasize the need for uniform and comprehensive regulation from the agencies with power to do so. For example, although the La Croix lawsuit may be a “stretch,” the plaintiffs’ ability to bring this suit arguably stemmed from the “ambiguous nature of how the FDA distinguishes natural chemicals from synthetic ones.”<sup>116</sup> If businesses are being forced to

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114. *Consumer-Goods’ Brands*, *supra* note 10.

115. Patrick Thomas, *LaCroix Maker Reports Increased Earnings*, MARKETWATCH (Dec. 6, 2018, 7:57 PM), <https://perma.cc/6TQM-WSSX>. National Beverage Corporation share price fell again in 2019 after another lawsuit, this one “alleging its president considered falsely claiming its drink containers were free of Bisphenol A” (more commonly referred to as BPA). In September 2018, the stock had traded as high as 123.27, but in June 2019, the stock price dipped to \$42.49, the lowest it had been in a year. Jesse Pound, *LaCroix Parent Company’s Stock Falls to Multiyear Low Following Lawsuit*, CNBC (June 11, 2019), <https://perma.cc/QF45-S4UD>.

116. Patel, *supra* note 111.

defend their labelling through private lawsuits, and the insufficient guidance and ambiguous language provided by federal and state governments is the very thing allowing these lawsuits to proceed, the government may receive pressure from the industries, as well, instead of exclusively from consumers.

#### IV. CONCLUSION

The global threat to the environment and acknowledgement of that threat has never been more severe, and companies' marketing departments have taken note that consumers care now more than ever about their personal impact on the environment through the products and services they use. New products and services advertised as environmentally and socially friendly are popping up daily, and with these new labels and healthier ingredients often comes inflated prices. Both federal and state governments have taken steps to curb greenwashing, but with the market for these products rapidly growing, the current lull in enforcement leaves government protections insufficient and consumers and the environment under-protected. There is a real opportunity for the federal government to continue the momentum generated by the 2012 revision of the Green Guides to create uniform, comprehensive regulations that aid both business and consumers. However, given the decreased record of enforcement since President Trump took office, diminished resources in the FTC and EPA, whether from other investigations or the reorganization of federal agencies, and a previous presidential agenda that actively worked against environmental protection, additional revisions and clarifications seem unlikely to occur any time in the near future.

Although the Supreme Court has cautioned against using class actions as "quick fix substitute[s] for democratic processes,"<sup>117</sup> meritorious lawsuits have the ability to act not as "quick-fixes," but as effective public enforcement vehicles used to inform consumers, hold brands socially and environmentally accountable, and encourage Congress and the federal agencies to adopt a consistent and comprehensive solution. Consumers have the world at their fingertips through technology. Coupling this widespread access to information with access to the justice system allows consumers to take their well-being into their own hands during a time when their government is unlikely to do so. Although a substantive and comprehensive regulatory system may, in an ideal world, be the most effective solution to eradicate greenwashing, in our current one, perhaps we ought to rely on Twitter.

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117. Sipos & Staniar, *supra* note 49 (discussing *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 594 (1997)).