

FAKE GREEN AS A SOCIAL PHENOMENON AND ITS UNFOLDING INTO GREENWASHING

FAKE GREEN COMO FENÔMENO SOCIAL E O SEU DESDOBRAMENTO NO GREENWASHING

Artigo submetido em 06 de agosto de 2026

Artigo aprovado em 09 de agosto de 2026

Artigo publicado em 09 de agosto de 2026

Scientia et Ratio

Volume 6 – Número 10 – 2026

ISSN 2525-8532

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ABSTRACT: This research aims to examine fake green as a contemporary social phenomenon and its specific unfolding in the practice of greenwashing, also known in Brazil as environmental makeup or greenwashing. It starts from the premise that a proper understanding of greenwashing, as a category examined by consumer law, depends on a prior examination of its broader sociological substrate, otherwise the legal analysis will be limited to a superficial description of its phenomenology, without reaching the reasons for its persistence and dissemination in the consumer market. Initially, the social construction of contemporary ecological awareness and the genesis of fake green as an environmental

performance dissociated from real engagement are examined. Subsequently, the way in which ecological marketing functions as a vehicle for transposing this social phenomenon to the market environment is investigated, using the catalog of the seven sins of greenwashing, consolidated by the TerraChoice Environmental Marketing Inc. Institute, as an empirical systematization of this process. This study analyzes the social and psychological mechanisms that underpin the proliferation of corporate fake green, highlighting the trust of the green consumer, structural informational asymmetry, and the appropriation of the symbolism of environmental seals, certificates, and labels. Finally, it examines the legal framework of this phenomenon within the Brazilian Consumer Protection Code, as well as its diffuse effects on the credibility of socio-environmental discourse and on free competition among suppliers. The hypothetical-deductive method is adopted, through an interdisciplinary bibliographic review and a survey of relevant legislation. It concludes that greenwashing cannot be adequately addressed without understanding its sociological roots in fake green, and that the Brazilian legal system, while not expressly using such terms, possesses technically adequate normative instruments for its qualification as a fully-fledged consumer offense.

Keywords: Fake Green. Greenwashing. Ecological Awareness. Green Consumer. Consumer Protection Code.

RESUMO: A presente pesquisa tem por objeto o exame do fake green como fenômeno social contemporâneo e de seu desdobramento específico na prática do greenwashing, também tratada no Brasil pelas expressões maquiagem ambiental ou maquiagem verde. Parte-se da premissa de que a compreensão adequada do greenwashing, enquanto categoria examinada pelo direito do consumidor, depende do exame prévio de seu substrato sociológico mais amplo, sob pena de a análise jurídica limitar-se à descrição de sua fenomenologia superficial, sem alcançar as razões de sua persistência e disseminação no mercado de consumo. Examina-se, inicialmente, a construção social da consciência ecológica contemporânea e a gênese do fake green enquanto performance ambiental dissociada de engajamento real. Investiga-se, na sequência, de que modo o marketing ecológico funciona como veículo de

transposição desse fenômeno social ao ambiente mercadológico, tomando-se o catálogo dos sete pecados do greenwashing, consolidado pelo Instituto TerraChoice Environmental Marketing Inc., como sistematização empírica de tal processo. Analisam-se, ainda, os mecanismos sociais e psicológicos que sustentam a proliferação do fake green corporativo, com destaque para a confiança do consumidor verde, a assimetria informacional estrutural e a apropriação da simbologia de selos, certificados e rótulos ambientais. Por fim, examina-se o enquadramento jurídico de tal fenômeno no Código de Defesa do Consumidor brasileiro, bem como seus efeitos difusos sobre a credibilidade do discurso socioambiental e sobre a livre concorrência entre fornecedores. Adota-se o método hipotético-dedutivo, mediante revisão bibliográfica interdisciplinar e levantamento da legislação pertinente. Conclui-se que o greenwashing não pode ser adequadamente enfrentado sem a compreensão de sua raiz sociológica no fake green, e que o ordenamento jurídico brasileiro, conquanto não empregue expressamente tais denominações, dispõe de instrumentos normativos tecnicamente adequados para sua qualificação como ilícito consumerista pleno.

Palavras-chave: Fake Green. Greenwashing. Consciência Ecológica. Consumidor Verde. Código de Defesa do Consumidor.

1 INTRODUCTION

The Industrial Revolution led to the development and consolidation of a strong industrialization process, which, in turn, caused a true depersonalization of the commercial transaction established between a consumer and a producer. This circumstance allowed for easy and increasing manipulation of the consumer by the supplier. Indeed, the supplier, possessing the knowledge and mechanisms of production, as well as advanced persuasion techniques, managed to determine how consumer relations would be established and even discovered that, through the use of marketing and advertising practices, it would be possible to create a veritable army of impulse consumers, eager to satisfy needs programmed by new products.

This logic of production and consumption, sustained for decades without any relevant concern for the planet's material limits, has resulted in a very high price to be paid by future generations, and today our society is already suffering the consequences, with an excessively high consumption model, extreme environmental degradation, and intense deterioration of social values. These consequences are motivating a different sentiment among consumers at the beginning of the 21st century, which is the appreciation of products and services from companies with ethical and responsible stances regarding sustainable consumption movements and the socio-environmental issue as a whole.

It turns out that this transformation of ecological awareness, far from being restricted to the strictly legal or market-related sphere, constitutes, above all, a broad-spectrum social phenomenon that reconfigures the very criteria by which individuals and institutions construct their identity before the social body. If, at a certain historical moment, prestige and social recognition stemmed primarily from the ostentatious display of consumption, material accumulation, and the exhibition of goods as a sign of upward mobility, a new sign of social distinction has emerged in parallel, without the first phenomenon disappearing: the appearance of ecological responsibility. It is precisely in this shift, from material ostentation to the ostentation of environmental virtue, that the central object of this article is located: the phenomenon that contemporary literature has termed "fake green," and its specific unfolding in the realm of consumer relations, identified by the expression "greenwashing."

The term "fake green," in a literal translation, refers to the idea of false green, designating any manifestation, whether individual, institutional, or corporate, that simulates environmental engagement without corresponding effective transformation of behavior or production processes. It is not a phenomenon that originates solely within the market universe; on the contrary, fake green precedes and transcends greenwashing, manifesting itself also in political discourse, in individuals' positions on social media, and in institutional practices that seek, through mere appearance, to capture the social prestige associated with the environmental cause without bearing the real costs of its effective promotion.

Greenwashing, as examined by consumer law doctrine, thus represents only one possible manifestation, albeit probably the most studied and the most economically relevant, of a broader and earlier social phenomenon.

This article aims to investigate precisely this relationship between gender and species, between fake green as a contemporary social phenomenon and greenwashing as its specific manifestation in the consumer market. It is acknowledged that Brazilian legal doctrine, when addressing this topic, tends to focus its analysis directly on the category of greenwashing, examining it from the already established categories of consumer law, notably misleading advertising and abusive advertising. This approach, while correct and necessary, risks neglecting a broader understanding of the social substrate that makes greenwashing possible and, moreover, economically advantageous for the supplier who uses it. Without understanding fake green as a preceding social phenomenon, the legal analysis of greenwashing risks being limited to a superficial description of its phenomenology, without reaching the deeper reasons for its persistence and dissemination.

The central research problem guiding the development of this article can be formulated as follows: how does fake green, understood as a social phenomenon linked to the search for recognition and legitimacy before the community, become, within the scope of consumer relations, the specifically legal practice of greenwashing, and what are the repercussions of this conversion on the system of consumer protection and on an ecologically balanced environment? The hypothesis is that greenwashing cannot be adequately understood, nor effectively combated, if analyzed in isolation from the broader social and psychological dynamics that underpin fake green, insofar as the informational asymmetry exploited by the supplier and the trust placed by the green consumer are rooted in mechanisms of social legitimation that far exceed the strictly market-driven universe.

For the development of this proposal, this article is structured as follows. Initially, it examines fake green as a contemporary social phenomenon, investigating the social construction of

ecological awareness and the genesis of environmental performance dissociated from real engagement. Next, it analyzes how this social phenomenon is transposed into the market universe, becoming greenwashing through ecological marketing, highlighting the empirical catalog consolidated by the TerraChoice Environmental Marketing Inc. Institute, known as the seven sins of greenwashing. Following this, it investigates the social and psychological mechanisms that legitimize and perpetuate fake green in the consumer market, notably the trust of the green consumer and the emptied symbolism of environmental seals, certificates, and labels. Finally, it discusses the legal repercussions of this phenomenon on the consumer and environmental protection system, examining its framework within the Consumer Protection Code and its diffuse effects on the credibility of socio-environmental discourse and on free competition among suppliers.

2. FAKE GREEN AS A CONTEMPORARY SOCIAL PHENOMENON

2.1 The social construction of ecological awareness and the emergence of the green appeal

The mass consumer society, structured in the post-World War II period, consolidated consumption not only as a subsistence necessity but as a way of life itself, transforming the purchase and use of goods into rituals in which the spiritual and ego satisfaction of the population began to be sought through the very act of consuming. This process, designed to boost the economy, gave rise to a category of impulsive consumers, whose behavior is shaped by market pressures to consume, destroy, replace, and discard things at an ever-increasing rate. It is a deliberately constructed social arrangement, not a natural and spontaneous tendency of human behavior, in which the individual is reconstructed, from the market's perspective, as a subject in a permanent state of dissatisfaction.

It turns out that this same society, which established consumption as a parameter for personal fulfillment and social standing, began, in the last decades of the 20th century, to reap the deleterious effects of this logic on the environment. Natural resources, contrary to

the consumerist appetite that sustains this economic model, are not inexhaustible, and the intensive and continuous exploitation of these resources, without any relevant concern for their replenishment capacity, has produced, over decades, a very high price to be paid by future generations. It is in the face of this increasingly visible environmental crisis, materialized in phenomena such as global warming, water scarcity, and the accelerated loss of biodiversity, that a new collective awareness regarding the planet's limits is being built on a social level.

It is important to emphasize that this ecological awareness does not arise spontaneously and uniformly throughout the community, nor does it result from a purely rational process of assimilating scientific data about the environmental crisis. Rather, it is constructed socially, through a complex process of circulating discourses, images, and symbols, conveyed by the media, formal education, organized social movements, and, increasingly intensely since the turn of the century, by corporate communication strategies themselves. Ecological awareness, therefore, is not a pre-existing given that the market merely identifies and reacts to; it is, to a large extent, also constructed by the very market forces that subsequently exploit it commercially, in a circular feedback loop between social demand and market supply that makes it difficult to pinpoint exactly where authentic awareness ends and its commercial exploitation begins.

It is within this context of the social construction of ecological awareness that what has become known as the “green appeal” emerges, an expression that designates the commercial attractiveness exerted by products, services, brands, and institutional discourses that present themselves as aligned with the environmental cause. The green appeal, as a sociological category, precedes and is broader than its strictly advertising manifestation; it also manifests itself in the social valuation of the individual who adopts habits identified as sustainable, in the political legitimacy conferred on environmentally engaged discourses, and in the academic and professional respectability attributed to those dedicated to the ecological agenda. The green consumer, examined by consumerist literature, is only one of

the possible manifestations of a broader social subject, which we could call the green citizen, whose identity is constructed, in a significant part, by public and visible adherence to the environmental cause.

The problem that arises, and which will be developed throughout this article, is that this same dynamic of social construction of prestige associated with the environmental cause creates the structural conditions for such prestige to be sought through means that dispense with real transformation of behavior or production processes. If social recognition, political legitimacy, and competitive market advantage can be obtained by the mere appearance of environmental commitment, without requiring conclusive and verifiable proof of such commitment, a powerful social and economic incentive is created for individuals and institutions to opt for simulation over effective transformation, especially when the latter proves to be more costly, slower, and less visible from a communicational point of view than the former.

2.2 From authentic environmental engagement to ecological performance: the genesis of fake green

It is from this structural tension, between the high cost of effective environmental transformation and the comparatively low cost of its simulation, that one can understand the genesis of the phenomenon that contemporary literature calls “fake green.” The term, coined by semantic approximation to the already consolidated word “fake news,” designates any manifestation of environmental commitment that is publicly presented as authentic but lacks verifiable factual correspondence, essentially configuring an ecological performance dissociated from real engagement.

It is important to emphasize that this is not a phenomenon equivalent, in its entirety, to greenwashing as examined by consumer law. Fake green constitutes a broader category, which also encompasses expressions of individuals on social media, institutional positions of

entities not directly linked to the consumer market, and political discourses that use the environmental agenda as an instrument of electoral legitimation without corresponding, in subsequent legislative or administrative practice, an effective commitment to environmental protection. Greenwashing, as already examined in other parts of this research, represents only the manifestation of fake green that occurs specifically within the scope of consumer relations, through product labeling and advertising.

The genesis of fake green can be understood through a dual movement. On the one hand, there is the genuine expansion of environmental engagement in contemporary society, a movement manifested in the proliferation of non-governmental organizations dedicated to the cause, the strengthening of formal environmental education, as provided for in Brazilian law by Law No. 13.186 of 2015, which established the Policy for Education for Sustainable Consumption, and the growing pressure from investors and consumers for more effectively responsible corporate practices. On the other hand, and parallel to this legitimate movement, its distortion flourishes, consisting precisely in the appropriation of the language, symbols, and prestige associated with the first movement, without a corresponding substantial transformation of behavior.

This distortion should not be understood as an accidental or marginal phenomenon, resulting from occasional isolated deviations in conduct. Rather, it constitutes a rational and predictable response to a system of social incentives that rewards appearance as much as, or even more than, substance. When society builds mechanisms for public recognition, whether in the form of social prestige or competitive market advantage, without developing, in parallel, equally robust mechanisms for verifying and proving what is being proclaimed, an environment conducive to the proliferation of ecological performance dissociated from real commitment is created.

It is precisely this environment that enables the transition of fake green, as a diffuse social phenomenon, to its specific manifestation in the consumer market, in the form of

greenwashing. As I have already had the opportunity to examine, it did not take long for the ecological appeal to spread across the most varied markets, publicizing, through very well-crafted advertisements, the production cycle, the activities involved, the form of distribution, the marketing, or any other business aspect that could be perceived as environmentally correct. And, parallel to this movement, abuses practiced in the consumer market also began to emerge, as some suppliers manipulated information, including incomplete, incorrect, or even outright false data on labels or advertisements, with the intention of conveying to the consumer the perception that their brand or product is environmentally correct.

The examination of this transition, from the broad social phenomenon of fake green to its specific marketing manifestation in greenwashing, constitutes the object of the next section of this article, in which we will investigate how ecological marketing served as an institutional vehicle for this transposition, and how the empirical catalog consolidated by the TerraChoice Environmental Marketing Inc. Institute, known as the seven sins of greenwashing, can be read as a true systematization of the strategies by which corporate fake green manifests itself concretely in consumer relations.

3. FROM APPEARANCE TO MARKETING PRACTICE: FAKE GREEN CONVERTED INTO GREENWASHING

3.1 Green marketing as a vehicle for transferring fake green concepts to consumer relations

Recognizing the shift in the consumer market towards the new wave of green and sustainable consumption, many large, far-reaching companies have seen these consumer desires as a real business opportunity. This has led them to modify their strategic visions, instituting actions that were often not even foreseen in our legislation, with the intention of projecting an image to the public that the company is committed to the satisfaction, well-being, and quality of life of its customers, employees, society in general, and, above all, to the preservation of forests and seas. It is precisely in this corporate movement of capturing

the green appeal, examined in the previous section of this article as a manifestation of the broader social phenomenon of “fake green,” that the institutional vehicle through which this phenomenon specifically enters the universe of consumer relations is located: ecological marketing, also called green marketing.

Green marketing is an activity designed to provoke and facilitate any correspondence, with the goal of meeting human needs with minimal use of environmental resources. Through it, one party provides goods, services, or ideas that another party needs, while maintaining environmental protection and contributing to sustainable development. In its original conception, therefore, green marketing should represent nothing more than the legitimate communication of transformations effectively implemented in the production chain, capable of reducing the environmental impact of the manufacturing, distribution, and disposal of products offered to the market, thus fulfilling a merely instrumental function and subordinate to the factual reality it proposes to communicate.

The problem is that it is precisely this potentially legitimate communication function that becomes the gateway for the transposition of fake green into the market environment. Marketing, as a technique, is neutral regarding the content it conveys; it is equally capable of communicating real transformation and simulating non-existent transformation, and the difference between the two uses does not lie in the technique employed, but in the correspondence, or lack thereof, between the constructed message and the underlying productive reality. It is precisely this instrumental malleability of ecological marketing that allows us to understand why fake green, a broader social phenomenon, has found particularly fertile ground for its proliferation in the consumer market: marketing provides corporate fake green with all the necessary technical tools for its mass dissemination, through sophisticated advertising campaigns, carefully designed packaging, and labels created by professionals specializing in persuasive communication.

Greenwashing, a distorted appropriation of ecological marketing, involves mechanisms used

to attempt to confer an ecologically responsible and sustainable characteristic to a product or even to a company's image. This practice is generally carried out through advertising. It's important to emphasize that greenwashing doesn't only occur through advertising, but also through labels, information provided to consumers, and even through certificates and seals. This multiplicity of vehicles through which corporate fake green manifests itself corresponds precisely to the multiplicity of tools that contemporary marketing makes available to suppliers—tools that, while neutral in themselves, are all the more effective in disseminating deception the more sophisticated and ubiquitous marketing communication becomes in the consumer's daily life.

The term "greenwashing," it is worth recalling, was first used in 1986 by the American environmentalist Jay Westerveld, when criticizing the practice of hotels that asked guests to reuse towels under the pretext of environmental protection, when, in reality, such a measure aimed primarily at reducing operational laundry costs, without any consistent sustainability program on the part of these establishments to justify the ecological appeal directed at the guest. This inaugural episode is revealing, for the purposes of this article, precisely because it highlights, from its historical origin, the basic structure of the transposition of fake green to the consumer market: an environmental discourse of legitimate appearance, conveyed through a communication instrument directed directly to the consumer, concealing a real motivation of a strictly economic nature and devoid of any substantial environmental commitment.

3.2 The seven sins of greenwashing as an empirical catalog of corporate fake green

A landmark study on environmental claims included on product labels, conducted in 2007 and 2008 by the TerraChoice Environmental Marketing Inc. Institute, with the purpose of identifying which marketing practices effectively corresponded to greenwashing, found that the practice of greenwashing was extremely frequent in seven types of conduct, cataloged and identified in the aforementioned study as the seven sins of greenwashing. This catalog,

for the specific purposes of this article, can be read as a true empirical systematization of the strategies by which corporate fake green manifests itself concretely in consumer relations, functioning as a methodological bridge between the sociological analysis of the phenomenon, developed in the previous section, and its legal qualification, which will be examined in subsequent sections.

The first sin, called hidden cost-benefit, occurs when the supplier suggests that a certain product is ecological based on a single environmental attribute, ignoring other equally or even more relevant aspects of the production process that, if known, would substantially contradict or relativize the sustainability claim. The second sin, lack of proof, occurs when the environmental claim cannot be supported by easily accessible information or reliable certification from an independent third party, leaving the consumer without any effective means of verifying what is being advertised. The third sin, called imprecision, occurs when the claim is so vague or so broadly defined that its real meaning is liable to be misinterpreted by the consumer, as happens, for example, with generic expressions such as “environmentally friendly product” or “green product,” devoid of any objective measurement parameter.

The fourth sin, known as the cult of false labels, consists of using words or images that give the impression of endorsement by a third party that, in reality, does not exist, simulating certification where there is no independent audit or verification process. The fifth sin, called irrelevance, refers to environmental claims that, although possibly true, are absolutely irrelevant or of little use to consumers seeking environmentally preferable products, as occurs when the absence of a certain substance already prohibited by law for the entire product category is announced, creating the false impression of a competitive advantage where, in reality, there is no real benefit. The sixth sin, known as the lesser of two evils, applies to claims that may even be true within a given product category, but which risk diverting the consumer’s attention from the larger environmental impacts associated with the category as a whole, as is the case, for example, in certain ecological appeals directed at

cigarettes said to be more environmentally responsible. Finally, the seventh sin, called lying, occurs in the most serious cases, where the environmental claim is simply false, constituting explicit fraud that is easily identifiable when subjected to independent technical examination.

A combined reading of these seven sins reveals something particularly relevant to understanding corporate “fake green” as a social phenomenon converted into a marketing practice: in none of the seven categories, with the possible exception of the last, is there necessarily a blatant lie easily identifiable by the average consumer. What is observed, in almost all the cataloged hypotheses, is the subtle manipulation of perception, through the strategic selection of true information, undue generalization of specific attributes, and distortion of the relative relevance of a given environmental data point in relation to the entire production process. This finding confirms the sociological hypothesis developed in the previous section of this article: corporate “fake green” is not, as a rule, based on explicit lies, but on the exploitation of informational asymmetry and the trust placed by the green consumer in the environmental discourse directed at them, precisely because this trust has been socially constructed as a positive value, without a corresponding development of robust social verification mechanisms.

It is precisely this exploitation of socially constructed trust, and the informational asymmetry that accompanies it, that constitutes the object of examination in the next section of this article, in which the social and psychological mechanisms that legitimize and perpetuate fake green in the consumer market will be investigated, with emphasis on the role played by the ecological symbolism conveyed through environmental seals, certificates and labels that are frequently devoid of any sound technical basis.

4 SOCIAL AND PSYCHOLOGICAL MECHANISMS OF LEGITIMIZATION OF FAKE GREEN

4.1 Green consumer confidence and informational asymmetry as fertile ground for environmental deception.

The natural consequences brought about by rampant consumerism are motivating a different sentiment among consumers, who, since the beginning of the 21st century, have begun to value products and services from companies that demonstrate ethical and responsible stances regarding socio-environmental issues. These consumers, whom we can call green consumers, are adopting a new consumption pattern, known as green consumption, which occurs when consumers, in addition to seeking products and services with the highest quality and the best price, add environmental variables to their selection process, giving preference to products and services that do not cause environmental degradation during their production, distribution, consumption, and final disposal processes.

What this section will examine is precisely the psychological and social mechanism that sustains this willingness of the green consumer to trust the environmental claims presented to them, and how such trust, socially valued and encouraged, becomes a vulnerability exploitable by corporate fake green tactics. The trust of the green consumer is not an isolated or individual phenomenon; it stems directly from the social construction of ecological awareness examined in the first section of this article, insofar as the very process of social legitimization of the environmental cause presupposes, as a condition of possibility, that the environmental discourses conveyed by the media, education, and advertising are received with a minimum degree of credibility by the community.

This socially vested credibility in environmental discourse, however, encounters an insurmountable structural obstacle for the average consumer: the informational asymmetry that characterizes, in a practically ineradicable way, the relationship between supplier and consumer regarding technical knowledge about production processes, environmental impacts, and supply chains. The consumer, however informed and engaged they may be regarding environmental issues, rarely has the technical means, time, and financial resources to verify, on their own, the veracity of claims relating to the origin of the raw materials used, the manufacturing processes employed, the energy consumption of the production chain, or the final destination of the waste generated. This structural informational vulnerability is

recognized, in legal terms, by the Consumer Protection Code, which expressly affirms it as one of the foundations of the consumer protection microsystem itself, recognizing the vulnerability of the consumer in the consumer market.

It is precisely at the intersection of socially constructed trust and structurally insurmountable informational asymmetry that the fertile ground for environmental deception lies. The supplier who practices fake green knows, even if intuitively and without necessarily articulating this knowledge in technical terms, that the green consumer tends to initially attribute credibility to any environmental claim, precisely because society has already built, over decades, the positive value associated with ecological discourse, and that this consumer, at the same time, hardly has the effective means to subject such a claim to independent technical verification before making their purchase decision. The exploitation of this dual condition, socially stimulated trust and technical incapacity for individual verification, constitutes the psychological and social core that explains why corporate fake green proves so effective and persistent as a marketing strategy.

It is important to clarify that this is not about attributing any naiveté or negligence to the consumer that would justify exempting the supplier from liability. On the contrary, it is precisely the recognition that such vulnerability is structural, and not due to an individual failure of the consumer, that justifies the protective intervention of the legal system, by imposing on the supplier the burden of proving the veracity and correctness of its environmental claims whenever these are questioned by the competent authority, thus reversing the logic that it would be up to the consumer to demonstrate the falsity of what was advertised to them. This reversal of the burden of proof, as established by Article 38 of the Consumer Protection Code in relation to advertising information and communications in general, proves to be a particularly suitable legal instrument for confronting corporate fake green, precisely because it recognizes, on a normative level, the same asymmetry that, on a social and psychological level, makes the green consumer vulnerable to environmental deception.

4.2 Seals, certificates and labels: ecological symbolism emptied of technical basis.

If informational asymmetry and socially constructed trust explain why the green consumer is receptive to environmental claims, it is necessary to examine, complementarily, the specific symbolic instrument through which such receptiveness is most effectively captured by corporate fake green: environmental seals, certificates, and labels. These symbols, in their legitimate conception, fulfill an extremely relevant function in the sustainable consumer market, insofar as they seek precisely to overcome the informational asymmetry examined in the previous section, condensing complex technical information into a symbol of rapid visual comprehension—information that the consumer would otherwise be unable to process individually at the time of purchase.

The problem is that it is precisely this function of symbolically condensing technical information that makes such seals and certificates particularly susceptible to appropriation by fake green initiatives. One of the seven sins of greenwashing cataloged by the TerraChoice Environmental Marketing Inc. Institute, already examined in the previous section of this article, is precisely called the cult of false labels, and consists of using words or images that give the impression of endorsement by a third party that, in reality, does not exist, simulating certification where there is no independent audit or verification process. This is a particularly insidious manifestation of corporate fake green because it directly appropriates the very instrument that society developed to combat information asymmetry, emptying it of its legitimate function and transforming it, itself, into a vehicle of disinformation.

The effectiveness of this appropriation stems, to a large extent, from the fact that the average consumer, when faced with a technical-looking seal or certificate, tends to attribute to such a symbol a degree of credibility equivalent to that conferred on effectively recognized certifications, subject to an independent and periodically renewed audit process, such as those governed by the ABNT ISO 14021 technical standard of 2017, which establishes specific parameters and guidelines for environmental self-declarations made by suppliers.

The problem lies precisely in the circumstance that the distinction between a technically sound seal and a merely decorative seal, created by the supplier itself without any underlying verification process, is practically imperceptible to the lay consumer, who lacks the technical knowledge to differentiate, at first glance, the legitimate certification from the merely aesthetic one.

This finding is particularly relevant for understanding fake green as a social phenomenon converted into a marketing practice, because it shows that ecological symbolism, as employed by the unscrupulous supplier, is not limited to communicating an environmental claim; it lends that claim an appearance of institutionality and technical verification that, considered in isolation, the mere advertising statement would not be able to convey with equal persuasive effectiveness. The seal, the certificate, and the label thus function as credibility amplifiers, capable of conferring an air of scientificity and impartiality to claims that, in reality, have not undergone any independent technical scrutiny, thus constituting the most sophisticated and, therefore, most dangerous manifestation of corporate fake green.

It is in light of this observation that it becomes necessary to examine, in the following section of this article, how such social and psychological mechanisms for legitimizing fake green practices, once identified and understood within their own dynamics, are framed within the legal system for consumer protection, particularly the Consumer Protection Code, and what the broader repercussions of this phenomenon are on the credibility of socio-environmental discourse as a whole and on free competition between suppliers genuinely committed to sustainability and those who merely use it as a means of market differentiation.

5 LEGAL REPERCUSSIONS OF FAKE GREEN ON THE CONSUMER AND ENVIRONMENTAL PROTECTION SYSTEM

5.1 From social conduct to consumer law violations: its application within the Consumer Protection Code

Having examined fake green marketing in its sociological dimension, as a phenomenon of constructing and capturing prestige associated with environmental causes, and having demonstrated how this phenomenon is converted, in the consumer market, into a systematizable marketing practice based on the seven sins cataloged by the TerraChoice Environmental Marketing Inc. Institute, it remains to investigate how this specific social conduct is framed within the Brazilian legal system for consumer protection. For the purposes of this article, it is not enough to recognize that corporate fake green marketing constitutes a reprehensible social phenomenon from an ethical standpoint; it is necessary to demonstrate, with technical precision, its qualification as a consumer offense with concrete legal consequences.

The first normative anchor point lies in Article 37 of the Consumer Protection Code, which prohibits misleading and abusive advertising. Misleading advertising, according to the first paragraph of said article, is any form of information or communication of an advertising nature that is wholly or partially false, or that, in any other way, even by omission, is capable of misleading the consumer regarding the nature, characteristics, quality, quantity, properties, origin, price, and any other data about products and services. It is immediately apparent that the seven sins of greenwashing examined in the previous section of this article find, in this provision, an almost automatic framework: whether through the omission of relevant data, as occurs in the sin of hidden cost-benefit, or through the deliberate imprecision of claims, or through the simulation of non-existent certification, all these behaviors converge to characterize misleading advertising, in its commissive or omissive form.

However, the legal framework for corporate fake green advertising is not limited to misleading advertising. It is also necessary to consider the possibility of abusive advertising, as stipulated in the second paragraph of the same article 37, which qualifies as abusive, among other things, advertising that takes advantage of a child's lack of judgment and experience, or that is capable of inducing the consumer to behave in a way that is harmful or

dangerous to their health or safety. Although the central hypothesis of greenwashing most frequently revolves around the misleading modality, the characterization of the abusive modality cannot be ruled out, depending on the specific circumstances, particularly when the exploitation of the green consumer's trust, examined in the previous section of this article, reaches a level of sophistication capable of completely neutralizing the consumer's critical capacity.

Add to this the already examined principle of consumer vulnerability, expressly recognized by item I of article 4 of the Consumer Protection Code, which justifies the protective intervention of the State precisely because of the structural informational asymmetry that I examined in the previous topic. And add, further, the basic right to adequate and clear information about the different products and services, provided for in item III of article 6 of the same law, which requires the supplier to correctly specify the quantity, characteristics, composition, quality and risks that the products present, a requirement that, applied to the environmental context, imposes on the supplier who advertises any ecological attribute the duty to do so with sufficient technical precision so as not to induce the consumer to an erroneous conclusion about the real environmental impact of the product or service offered.

Finally, one cannot disregard the aforementioned Article 38 of the Consumer Protection Code, which assigns to those sponsoring advertising the burden of proving, whenever requested by the competent authority, the veracity and accuracy of the advertising information or communication. This provision, examined from the perspective of corporate fake green, reveals itself as a procedural instrument of central importance, insofar as it relieves the consumer, structurally vulnerable from a technical and informational standpoint, of the burden of producing a practically impossible negative proof, transferring to the supplier, who effectively possesses knowledge about their own production process, the responsibility of demonstrating the accuracy of what they advertised.

The systematic combination of these provisions—the prohibition of misleading and abusive

advertising in Article 37, the recognition of consumer vulnerability in Article 4, the right to adequate and clear information in Article 6, and the reversal of the burden of proof in Article 38—allows us to conclude that the Brazilian Consumer Protection Code, although it does not expressly use the terms “fake green” or “greenwashing” in its legal text, enacted in 1990, has a sufficient and technically adequate normative framework for classifying such conduct as a full-fledged consumer offense, endowed with all the applicable legal, civil, and administrative consequences.

5.2 Diffuse effects of fake green on the credibility of socio-environmental discourse and free competition

Having established the specific legal framework of corporate fake green practices within the consumer protection microsystem, this final section will examine the broader and more diffuse repercussions of this phenomenon, which transcend the individual relationship between a given offending supplier and the consumer directly harmed by them. The aim is to investigate how the dissemination of fake green practices progressively erodes the credibility of the socio-environmental discourse as a whole, and how this erosion produces deleterious effects on free competition among suppliers.

The first diffuse effect to be considered is precisely that which stems from the cumulative nature of the phenomenon. Each new instance of corporate fake green identified and publicized, whether through journalistic reports, judicial or administrative decisions, or the actions of civil society organizations dedicated to monitoring business practices, contributes to increased consumer skepticism regarding any subsequent environmental claim, even if it is entirely true and technically sound. This constitutes a vicious cycle: the more unpunished and widespread the practice of fake green remains, the greater the generalized consumer distrust of all corporate socio-environmental discourse becomes, which, paradoxically, also discourages genuinely committed suppliers from investing in transparent communication of their real progress, fearing being confused with those who only feign such commitment.

This effect, which we could call the erosion of the collective credibility of environmental discourse, has relevant legal consequences, insofar as it directly affects the effectiveness of the National Consumer Relations Policy itself, which has as one of its objectives, foreseen in article 4 of the Consumer Protection Code, the harmony of consumer relations, founded on good faith and the balance between the rights and duties of consumers and suppliers. When consumer confidence in the environmental discourse of the market deteriorates in a generalized way, due to the proliferation of corporate fake green practices, precisely this balance that the National Consumer Relations Policy proposes to preserve is broken, producing diffuse damage that affects the collective of consumers, and not only those directly deceived by a specific campaign.

The second diffuse effect to be examined concerns free competition among suppliers. When a supplier achieves commercial success through fake green practices, without bearing the real costs of redesigning its production processes, it not only deceives the individual consumer but also indirectly and systemically harms those competitors who have genuinely invested in sustainability, who then compete on unequal terms with those who only simulate such a commitment at a much lower cost. This effect goes beyond the strictly consumerist sphere and enters the field of unfair competition, insofar as the supplier practicing fake green practices obtains an illegitimate competitive advantage precisely because it does not incur the financial and operational costs that a truly sustainable productive transformation would demand of its competitors.

This diffuse dual effect—erosion of the collective credibility of environmental discourse and distortion of free competition among suppliers—allows us to understand why combating corporate “fake green” practices cannot be treated as a matter of exclusively individual interest, to be resolved on a case-by-case basis through isolated complaints from aggrieved consumers. Rather, it is a matter of collective and diffuse interest, which legitimizes and recommends the action of public consumer protection agencies, the Public Prosecutor’s Office, and legitimate civil associations, through collective procedural instruments, in addition

to the already examined individual protection available to each specifically deceived consumer.

It is therefore evident that fake green, initially examined as a social phenomenon linked to the construction and capture of prestige associated with the environmental cause, and subsequently investigated in its specific conversion into the marketing practice of greenwashing, systematized from the seven sins cataloged by specialized literature and sustained by social and psychological mechanisms of exploiting the trust of the green consumer, finds, in the Brazilian legal system for consumer protection, a technically adequate normative framework, capable of supporting not only the individual liability of the infringing supplier, but also the confrontation of its diffuse effects on the collective credibility of the socio-environmental discourse and on the fairness of competition in the consumer market.

FINAL CONSIDERATIONS

This article presents a study on fake green as a contemporary social phenomenon and its specific unfolding in the practice of greenwashing, which, in Brazil, is also referred to as environmental makeup or greenwashing. It starts from the premise that a proper understanding of greenwashing, as a legal category examined by consumer law, depends on a prior examination of its broader sociological substrate; otherwise, legal analysis will be limited to a superficial description of its phenomenology, without reaching the deeper reasons for its persistence and dissemination in the consumer market.

From the research conducted, it was first observed that contemporary ecological awareness is not a pre-existing given that the market merely identifies and reacts to, but a socially constructed phenomenon through the circulation of discourses, images, and symbols conveyed by the media, formal education, and corporate communication strategies themselves, in a circular feedback loop between social demand and market supply. Secondly,

it was demonstrated that this same dynamic of social construction of prestige associated with the environmental cause creates the structural conditions for such prestige to be sought through means that dispense with real behavioral transformation or productive processes, giving rise to the phenomenon of “fake green,” a broader category preceding greenwashing, which also manifests itself in political discourse, individual positions on social media, and various institutional practices.

Thirdly, it was found that ecological marketing functions as an institutional vehicle for transposing fake green marketing into the market environment, insofar as the advertising technique, neutral regarding the content it conveys, is equally capable of communicating real transformation and simulating non-existent transformation. Furthermore, the catalog of the seven sins of greenwashing, consolidated by the TerraChoice Environmental Marketing Inc. Institute between 2007 and 2008, can be read as a true empirical systematization of the strategies by which such transposition is concretely carried out, revealing that corporate fake green marketing is not, as a rule, based on explicit lies, but on the subtle manipulation of consumer perception through the strategic selection of true information, undue generalization of specific attributes, and distortion of the relative relevance of certain environmental data.

Fourthly, it was examined that such manipulation finds fertile ground in the conjunction between the socially constructed trust of the green consumer and the structurally insurmountable informational asymmetry that characterizes their relationship with the supplier, an asymmetry that the Consumer Protection Code itself expressly recognizes by establishing the vulnerability of the consumer as the foundation of the protective microsystem, and which manifests itself in a particularly insidious way through the appropriation of the symbolism of environmental seals, certificates and labels, instruments conceived precisely to overcome this asymmetry and which, once emptied of sound technical basis, become themselves vehicles of misinformation.

Finally, it has been demonstrated that this specific social conduct finds a technically adequate legal framework within the Brazilian consumer protection system, notably in the prohibition of misleading and abusive advertising provided for in Article 37 of the Brazilian Consumer Protection Code, in the recognition of consumer vulnerability in Article 4, in the right to adequate and clear information in Article 6, and in the reversal of the burden of proof established by Article 38. These provisions, when systematically combined, allow corporate fake green to be classified as a full-fledged consumer offense, even though the legal text, enacted in 1990, does not expressly use such terms. Furthermore, it has been shown that the effects of such a phenomenon are not limited to the individual sphere of the directly deceived consumer, projecting themselves diffusely onto the collective credibility of the entire socio-environmental market discourse and onto the fairness of competition among suppliers, creating a vicious cycle in which the impunity of the practice fuels widespread distrust, which, in turn, discourages even the genuinely committed supplier from transparently communicating their real progress.

Therefore, the hypothesis formulated in the introduction of this article is confirmed: greenwashing cannot be adequately understood, nor effectively confronted, if analyzed in isolation from the broader social and psychological dynamics that underpin fake green as a contemporary social phenomenon, insofar as the informational asymmetry exploited by the supplier and the trust placed by the green consumer are rooted in mechanisms of social legitimation that far exceed the strictly market-driven universe.

Recognizing this sociological root does not remove the problem from the scope of law, nor does it diminish the usefulness of the categories already consolidated by consumer law; on the contrary, it allows for a more precise qualification of the very object upon which such legal categories should apply, and recommends that addressing the phenomenon combine the rigorous application of already available normative instruments with the strengthening of social mechanisms for independent verification, education for sustainable consumption, and informational transparency, the only mechanisms capable of reducing, at its origin, the social

space that currently enables the persistence of fake green and its marketing manifestation in greenwashing.

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