

ESG — RISK AND/OR OPPORTUNITY? WHAT ARE THE LIABILITIES AND  
LITIGATION RISKS TO BE AWARE OF AND HOW TO COMMUNICATE OR NOT  
COMMUNICATE? HOW TO DETECT AND WHY TO AVOID GREEN WASHING

This panel will analyze the current regulatory ESG landscape and advise companies on how  
to best navigate this landscape, without falling victim to green washing

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## Resumes of Speakers

Döne Yalçın

Döne Yalçın is a Partner in Vienna, the Managing Partner of CMS Turkey and the Head of CMS Sustainability for Austria and CEE. She is admitted to the bar in both Austria and Turkey. Yalçın has more than 18 years' professional experience and advises clients on a wide range of legal matters, especially [Corporate Law/M&A](#) and [Litigation & Arbitration](#). She also heads the LegalTech and Knowledge Management areas in Vienna and CEE.

In recent years, she has focused particularly on ESG matters, which is an ever-growing challenge and thus increasingly a risk for companies. She supports clients from a wide range of sectors in matters including ESG risks in corporate transactions (as well as ESG related due diligence), the implementation of appropriate corporate governance structures, the preparation of codes of conduct, contract management, implementation of appropriate reporting and notification systems, and directors' and officers' liability issues. Furthermore, she is a founding member of the global CMS Sustainability Initiative and a member of both the global CMS Sustainability and ESG Steering Committee.

In addition to heading the Corporate/M&A team in Istanbul, Yalçın heads the [Litigation & Arbitration](#) department. As a dual qualified lawyer, she is active in this area in both Austria and Turkey. Infrastructure disputes form her area of expertise, where she advises on ad hoc and formal proceedings.

Her clients include companies from the industrial manufacturing, technology, energy, construction and financial services sectors.

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### Memberships & Roles

- Member of the Global Sustainability/ESG Steering Committee at CMS Legal
- Chair of the International Committee of the International Association of Defence Counsel (IADC)
- Member of the Steering Committee of the Campaign for Greener Arbitration
- Member of the Supervisory Board of DenizBank AG
- Member of the Women Leaders Network

- Vice-President of the Association of Austrian and Turkish Entrepreneurs an

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Sylvie Gallage-Alwis

After 10 years practicing in a major international law firm, Sylvie became one of the founding partners of the Paris office of Signature Litigation and heads its product liability / industrial risk practice.

Sylvie is both an Avocat à la Cour in France and a Solicitor in England & Wales. She is specialised in all cutting-edge complex disputes linked to products, namely product liability, product safety, toxic tort, mass litigation/class action, regulatory compliance, and environment. She is involved in several very high-profile French industrial disaster pending cases.

Sylvie also assists the manufacturers she works for in commercial litigation (e.g. sudden termination, unfair competition, significant imbalance cases) and contract / Terms & conditions review.

Sylvie is highly recognised for her skills as a litigator by directories. She is described by Who's Who Legal as a "dynamic and determined litigator", who is "a firm favourite among clients" as "she always goes the extra mile to support her clients, and is proactive in seeking commercial solutions to disputes".

Sylvie has been ranked for a number of years as a 'Thought Leader' in the Who's Who Legal France: Product Liability Defence Guide, which notes her "rigorous analysis, strategic guidance and seasoned litigation" on complex product disputes and recognises her as a "a star in the international world" and "well-connected expert". She is also recognised as one of the 'Global Elite Thought Leaders' in Who's Who Legal's Product Liability Defence 2022 Guide, which notes Sylvie "cuts a distinguished figure in the market for representing manufacturers in the automotive, energy and food industries".

She has won several awards such as the "Best in Product Liability" award at the 2019 LMG Euromoney Europe Women in Business Law Awards and the Lexology Client Choice award in Product Liability in 2021. In The Legal 500 EMEA, France chapter, Sylvie is recognised as a 'Leading Individual' for product liability within the Dispute Resolution: Commercial Litigation category.

Sylvie has experience in all ranges of product-related litigation. She "stands out in the product liability space for her creative solutions and strategic understanding of the many cases she works on".

She represents a variety of globally recognised manufacturers from industries such as automotive, electronic products, life sciences, cosmetics, new technologies, steel, energy, food, toys, consumer goods etc. In this scope, she has developed strong regulatory knowledge, putting together innovative defences. She is working on very technical legal issues such as the dieselgate, the generalisation of the anxiety damage, alleged planned obsolescence, the liability of marketplaces, class actions and climate justice claims – always representing the manufacturer.

Sylvie is further known in the French market as a leading toxic tort / mass litigation lawyer. As such, she has been involved in most pro-company case law rendered in recent years, notably in asbestos-related cases, with some cases mentioned in the French Civil and Social Security Codes because of the significant reversal in case law they represent.

Sylvie is an active member of the International Association of Defense Counsel (IADC) and the Association of Defense Trial Attorneys (ADTA). She also regularly attends meetings of the International Consumer Product Health and Safety Organization (ICPHSO).

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Christian Murad

## PROFILE

Bilingual, U.S./Canadian qualified lawyer with extensive experience in emerging markets and working across cultures and functional teams

## EXPERIENCE

### **Kellogg Company, Dubai 2018-Present**

Legal Director, MENAT & Sub-Saharan Africa

- Rated as “Top Talent” within the global legal function, recognized for restructuring the function in MENAT and driving engagement within the regional legal team
- Leadership team role, advising senior executives in the region and global on litigation, corporate projects, crisis management, and investigations
- Chair the local incident management and collaborate with a cross-functional team through crises involving consumer, regulatory, cybersecurity and reputational matters including establishing policies on prevention, preparedness, and response mechanisms
- Manage a team of 10 lawyers across the region to manage disputes (litigation & arbitration file of 200+ matters), investigations, corporate governance, and controls
- Conduct investigations involving staff and external partners as well as managing the external investigations with public entities, including interviews, response to written requests for information, and settlement negotiations
- Lead and manage corporate transactions and group projects including M&A, data privacy, corporate governance, restructurings, and government relations matters

- Established the standard internal investigations playbook for Global Legal & Compliance team members to establish best practices in conducting investigations involving FCPA, Anti-Bribery and Cybersecurity matters

**Middlesex University Dubai, Dubai 2015 - Present**

Adjunct Lecturer

- Adjunct Lecturer of Law and Policy of WTO; Companies Law; and Consumers Law

**Honeywell, Dubai**

Legal and Compliance Manager, Middle East & Turkey 2014-2018

- Rated above peers and received a “Right and Fast Lawyer” award along with 2 High Growth Region Excellence awards for leadership skills and team engagement
- Cybersecurity lead for risk mitigation planning and incident response including investigations around data security breaches and reputation management
- Lead investigations relating to governmental contracts involving commercial partners in the oil & gas and aerospace industries in the Middle East, Africa, and Central Asia
- Conducted asset recovery investigations relating to cybersecurity incidents involving commercial partners
- Incorporated and managed international subsidiaries (including new presence in Pakistan, Iran, and Kazakhstan) ▪ Lead counsel on several megaprojects in the infrastructure, oil & gas and defense sectors handling complex negotiations and compliance with US laws and local regulations

**EDUCATION**

Wayne State University Law School

Juris Doctor

- Wayne Law Review, Editorial Board Member, Executive Note & Comment Editor
- Small Business Enterprises and Nonprofit Corporations Clinic
- University of Toronto
- Bachelor of Commerce & Finance, with Distinction
- Dean’s List

**PROFESSIONAL AFFILIATIONS**

- The International Association of Defense Counsel (IADC), International Committee Board Member & Membership Chair
- Canadian Business Council & Northern Emirates, Board Member

**PUBLICATIONS AND PRESENTATIONS**

- Asian Legal Business, presentation on Managing Investigations in the Middle East (2020)
- In-house Congress, presentation on Effective Crisis Management in the Middle East & Africa (2019)

- The Institute for Entrepreneurship & Business Excellence (February 2018), The Basics of Law for Entrepreneurs
- ABA, The Year-in-Review (2015) - Middle East and North Africa (50 Int'l Law. 650)
- ABA, The Year-in-Review (2012) - Middle East and North Africa (47 Int'l Law. 654)

## ADMISSIONS

Illinois and Ontario

## LANGUAGES

Fluent in Arabic; Basic level in German and French

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Doris Pichler-Herrig

## **Experience**

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### **IKEA Austria GmbH**

Country Legal Manager

### **Fujitsu Technology Solutions GesmbH**

Legal & Commercial Manager

Local Compliance Advisor

### **Ericsson Austria GmbH**

Group Legal Counsel

## **Education**

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**University of Vienna, Law Faculty**

## Context

Greenwashing puts reputations on the line. As global heating and other environmental issues have come to the forefront of public consciousness in recent years, with extreme weather events and increasingly urgent warnings about the damage humans are doing to the planet, consumers have taken a greater interest in the environmental impact of the products they buy and use. Dozens of surveys have revealed that consumers prefer environmentally-friendly products, and that they are willing to pay a premium to get them. Naturally, business have responded to this concern, with brand-owners increasingly highlighting the benign or even beneficial effects their products and services have on the natural world.

However, environmental issues are highly technical, and therefore raise a significant risk of confusing and misleading consumers, who may be persuaded to part with their cash to obtain products whose environmental benefits may be less than they appear. A European Commission website screening project, which reported in January, found that green claims were exaggerated, false or deceptive in 42% of cases, and more than half the time the information provided was inadequate.

2021 therefore saw an increased focus from regulators on misleading green claims. In the UK, the Competition and Markets Authority recently published a new Green Claims Code, setting out six key principles for traders to follow when making environmental claims, together with over 100 pages of examples and more detailed advice, and has implied that enforcement in this area may follow soon in 2022. The Advertising Standards Authority recently carried out a review of its regulation of green claims regulation, announcing its decisions following the first stage of its review in September. In January 2021 the Netherlands Consumer and Markets Authority published Guidelines on Sustainability Claims, and in August 2021, the French government issued its Climate and Resilience Law. Similar developments are in train across Europe.

Given the level of public concern about the environment, we expect that a finding that a business has been misleading consumers about its environmental credentials has the potential to be even more damaging to its reputation than other advertising breaches.

At our panel, we will look at specific cases of green claims / greenwashing litigation that are as mentioned on the rise in Europe and which illustrates how courts are being used to drive change and discuss some key points to remember when making green claims such as:

1. Be clear

Environmental claims are often technical and complex. Where terms are unclear, explain what you mean by them. Use appropriate qualifications and clarifications in the ad – significant qualifications should not be on a separate web page or another location where they are likely to go unread – but remember that these must be genuine qualifications of clarifications, and must not contradict the main claim. Avoid industry jargon, or explain it when used.

2. Be specific

Identify the specific environmental benefit of your product or service and state it clearly. Avoid terms like “sustainable”, “green”, “environmentally friendly”, “eco-friendly” or “kind to the planet”, which are largely meaningless. Comparative claims, such as “more sustainable” or

“greener”, may be acceptable if you explain the specific environmental benefit clearly. A claim made for a product or service generally should be based on a “cradle-to-grave” assessment, taking into account the environmental effects of inputs such as raw materials, water and electricity, manufacturing, transport, use and end-of-life disposal. Even with more narrowly-framed claims, make sure you consider all aspects – a common pitfall is to claim that packaging is recyclable or plastic free, without considering whether inner packaging, glue or tape, all of which form part of the packaging, meet that description.

### 3. Limit your claims to what you can prove

Start with the evidence you have, and work out what claims you can make based on that evidence. A common pitfall is to start with the claim and then cast about for evidence to support it, which often leads to a broader claim than can be substantiated. If you have taken waste out of the supply chain, limit your claim to the supply chain. If you have reduced CO<sub>2</sub> emissions from transport, limit your claim to transport.

### 4. Substantiation should be thorough and detailed

Because they are often technical and detailed, environmental claims may require in-depth substantiation, and you may need to expend significant time and effort compiling it. For example, claims regarding carbon neutrality or reduced carbon require a thorough survey of a business’s operation and supply chain over a significant period, first to determine its baseline carbon emissions and then to track its progress towards reduced carbon or carbon neutrality. Be aware that terms such as “biodegradable”, “organic”, “renewable”, “compostable”, “recycled”, “recyclable”, “reusable” and “carbon-neutral” have specific technical meanings, and be ready to substantiate them accordingly. Substantiation by reference to an independent test standard, such as ISO 14021 on self-declared environmental claims, tends to be more persuasive than a standard developed in-house. Take care with symbols, which have specific meanings and rules for use. Make sure evidence is up to date. Make sure claims are accurate for normal use of the products, or qualify them accordingly – for example, if a product is only biodegradable in a specialist facility, and is likely to go to landfill where it will not degrade any quicker than normal products, do not claim “biodegradable”, or at least state that specialist facilities are required.

### 5. Don’t claim normal product features, or things you are required to do by law, as environmental benefits

For example, in the UK, rinse-off toiletry products must not contain micro beads. Claiming such products are “micro bead free” is misleading, as it implies that the products have a particular environmental advantage over other products, which they do not.

### 6. Take care with comparisons

Comparative advertising raises its own specific issues, and, where it refers to a competitor or its product or service by name, can substantially heighten risks by opening up the possibility of trademark infringement. Make sure you compare like with like – the comparison should be of products or services meeting the same needs or intended for the same purpose. The features compared should be material and representative, and also “verifiable”, which requires the detailed basis of the comparison to be disclosed proactively, either in the advertising itself or by way of a “signpost” in the ad directing readers to the source of information.