Enviro Marketing Lessons From NY Greenwashing Ruling

By **Alex Bahn, Jon Solorzano and Reese Poncia** (November 5, 2026)



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On Oct. 8, a five-judge panel of the New York Supreme Court Appellate Division, First Department, **unanimously affirmed** the dismissal of New York City's consumer protection suit against ExxonMobil, Shell and BP in City of New York v. Exxon Mobil Corp.

While the key takeaway is, of course, that the oil majors were able to fend off attacks on their environmental marketing claims, the opinion offers important lessons for preparing, publicizing and defending such claims.

For background, New York City sued ExxonMobil, Shell and BP in April 2021 under two greenwashing theories of its consumer protection law. First, the city alleged the companies were engaged in product greenwashing, claiming that ads for certain gasoline products touted lower emissions without disclosing that gasoline nevertheless produces greenhouse gas emissions. Second, the city alleged the companies also engaged in corporate greenwashing by overstating their enterprisewide efforts to address climate change.

At the trial level, the court dismissed both claims, finding as to the first that the product statements were taken out of context or were aspirational statements or puffery, and, as to the second, that the corporate statements were not made in connection with the sale of a consumer good.

On appeal the higher court affirmed, finding that the product statements "make plain that the advertised products are gasolines" and only that they produce fewer emissions than other gasolines, and that consumers have common sense to know that means gasoline products still have climate impacts.

Several aspects of the trial and appellate decisions deserve a close look: the city's theory that consumers can somehow be both focused on climate risks and at the same time misled because they weren't sufficiently apprised of them; the court's refusal to adopt a consumer-perception standard; the line it drew around corporate-level messaging; and other questions the court expressly left unanswered.

From Climate Damages to Advertising Claims

Exxon was New York City's second attempt at pinning liability on the oil majors for both the marketing of their products and the climate impacts the city attributes to them. The city's earlier 2018 federal action brought nuisance and trespass theories but was halted by the U.S. Court of Appeals for the Second Circuit, which held in City of New York v. Chevron Corp. that a municipality may not "utilize state tort law to hold multinational oil companies liable for damages caused by global greenhouse gas emissions."[1]

Rather than seeking federal review by the U.S. Supreme Court, three weeks later the city pivoted to the current state action targeting the same companies' advertising practices

under the New York City Consumer Protection Law.

The city's move is a familiar one. Damages-based climate theories keep running into federal preemption defenses, which argue that federal law forecloses the claims, so plaintiffs increasingly seek to reframe the dispute as one about what companies say rather than what they and their products do.

The state decision in Exxon broadly disproves the city's theory — under the consumer protection law at least — that energy companies should be held accountable for climate change based on their product- and corporate-level marketing.

The Pleading Paradox

The city's theory was one of omission, not falsity. The complaint rested on the premise that New York consumers are acutely aware that fossil fuel combustion drives climate change, and that this awareness shapes their purchasing decisions.

According to the city, the companies' ads were misleading because they promoted the products as producing lower emissions than conventional gasoline without disclosing that the products still generate greenhouse gas emissions, thereby misleading consumers into thinking their purchases of gasoline products did not contribute to climate change.

But the city's own allegation of widespread consumer awareness undercut its claim that the ads could also somehow mislead the same aware consumers. In granting the defendants' motions to dismiss, the trial court observed that the city "cannot have it both ways" by alleging both that consumers are "aware of and commercially sensitive to" the climate effects of fossil fuels and that those "same consumers are being duped by" the failure to disclose that gasoline emits greenhouse gases.[2]

The state appellate court adopted that logic, reasoning that the public's awareness of the fossil fuel-climate link is what gives reduced emissions advertising its "persuasive force."[3] Because the court found the ads identified the products as gasoline and claimed only that they provide reduced emissions relative to other gasolines, even unsophisticated consumers would understand that using them still contributes to climate change.

For defendants, this points to a line of attack worth running in omission-based greenwashing cases: checking whether a plaintiff's materiality allegations concede the very knowledge the alleged omission supposedly concealed.

No Choice Between Consumer Standards

The parties sharply disputed the governing consumer perception standard. The defendant companies urged the reasonable consumer test the New York Court of Appeals applied in Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank in 1995.[4]

The city, on the other hand, argued that the proper standard should be the older Guggenheimer v. Ginzburg formulation from 1977, which protects "the ignorant, the unthinking and the credulous who, in making purchases, do not stop to analyze but are governed by appearances and general impressions."[5]

The appellate panel signaled that the reasonable consumer standard "appears to be better supported in current law," noting that city law requires its rules to be consistent with the Federal Trade Commission Act and General Business Law Section 350.[6] Yet the court

declined to decide which standard governs, because the claims failed under either test.

While the court did not retire the credulous consumer standard, meaning enforcement authorities can still invoke it, because the court found that these ads would not mislead even the least sophisticated consumer, invoking that more lenient standard would not appear to help plaintiffs challenging similar ads.

Context and the Full Statement

The trial court found that the complaint distorted some statements by selectively excerpting them. In one example, the complaint quoted ExxonMobil as describing its Synergy Supreme+ fuel as "2X cleaner for better gas mileage," while the full statement claimed that the fuel "keep[s] your engine 2x cleaner for better gas mileage."

The appellate court's analysis likewise turned on qualifying words. It emphasized that ExxonMobil stated premium fuels "[b]y improving engine efficiency and fuel economy ... can help reduce greenhouse gas emissions compared to conventional lubricants and fuels," and that deposit removal "can lead to fewer emissions."[7]

Statements from Shell and BP were similarly tied to engine cleanliness and intake valve deposits relative to ordinary fuels. Other statements, such as describing a product as the "latest breakthrough technology" that "was created to let you drive cleaner, smarter and longer," were viewed as nonactionable puffery.[8]

For marketing and legal teams paying mind to greenwashing risks, the lesson is that explicit comparators (such as "compared to" and "than ordinary fuels"), as well as hedged causal language ("can help," "can lead to"), may carry real weight under scrutiny. Noncomparative claims or claims that state environmental benefits in absolute terms may have the opposite result under a greenwashing microscope.

The Quantification Argument and Its Limits

On appeal, the city tried to recast its theory as a challenge to the companies' failure to quantify the emissions reductions provided by their products. The court rejected that effort on two grounds: The theory was not articulated in the initial complaint, and the city cited no precedent requiring a seller advertising a relative benefit to quantify the benefit's magnitude.

But the court added a caveat. It noted that the city had not come forward with evidence that the emissions reduction was "so minute, as compared to other gasolines, as to be legally insignificant."[9] That statement potentially leaves room for a future plaintiff to argue that a technically accurate comparative claim may nevertheless mislead if the advertised benefit is relatively trivial in use.

Corporate Greenwashing Messaging and the Statutory Text

The appellate court's holding as to the second cause of action — corporate greenwashing — rests on the consumer protection law's requirement that a deceptive statement be made "in connection with the sale" or offering for sale of consumer goods or services.

The city argued that because the consumer protection law reaches conduct that indirectly deceives consumers, it also covers corporate-level statements. Thus, under the city's logic, statements about the companies themselves that are not tied to the sale of any particular

product are within scope. The appellate court endorsed the trial court's view that even an indirect deception must still be made in connection with a consumer sale, and that the city's theory would render that requirement meaningless.

The court also observed that the city did not allege that the companies sold consumers any product based on the alternative energy technologies their corporate statements described.

The court then contrasted the consumer protection law with New York General Business Law Section 349, which reaches deceptive acts "in the conduct of any business, trade or commerce," and with other jurisdictions' statutes that are similarly not tied to a specific consumer transaction. On that basis, it found irrelevant the decisions the city cited from Connecticut, Vermont, Massachusetts and the District of Columbia.

While the consumer protection law's sale requirement broke the city's corporate greenwashing claims in Exxon, the court also made clear that corporate sustainability statements may face exposure under broader statutes, including Section 349 and the laws of the jurisdictions cited by the city, but distinguished by the court.

The ruling therefore is no safe harbor for corporate climate messaging. If the same statement were tied directly to a product consumers can buy, or challenged under a broader statute, the outcome could change.

What the Court Did Not Decide

Having affirmed the trial court's findings under the consumer protection law, the appellate panel found it unnecessary to reach two of the companies' alternative defenses: that claims against Shell based on conduct before April 22, 2018, were time-barred, and that the corporate greenwashing claim violates the First Amendment.

The latter question — whether consumer protection laws can reach corporate-level sustainability messaging consistent with the First Amendment — therefore remains open.

Practical Takeaways

For companies, the ruling brings several lessons:

- Frame product-level environmental claims comparatively, identify the comparator, and describe the product clearly enough that its basic nature is obvious on the face of the ad.

- Use qualifying language and explain (where applicable) the mechanism behind the benefit, and review how individual phrases read or appear if excerpted out of context.

- Substantiate both the existence and the significance of any claimed environmental benefit, given the court's "legally insignificant" caveat.

- Treat corporate-level sustainability statements as a distinct risk category, particularly in jurisdictions whose consumer protection laws are not tied to a specific consumer transaction.

In litigation, seek to identify paradoxical assumptions: A plaintiff who pleads that consumers already know a fact in order to establish materiality may struggle to claim those same consumers were deceived by its omission.

The New York appellate decision is a real win for these companies and provides helpful and practical lessons for framing comparative environmental claims carefully. At the same time, the ruling's reach is limited by the consumer protection law's narrow text, and the basics still apply: Environmental claims should be accurate, properly qualified and presented in context.

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[1] City of New York v. Chevron Corp. 993 F3d 81, 85 (2d Cir 2021), affd 325 F Supp 3d 466 (S.D.N.Y. 2018).

[2] City of New York v. Exxon Mobil Corp., 226 N.Y.S.3d 863, 879 (N.Y. Sup. Ct. 2025).

[3] City of New York, No. 2025-01687, slip op. at 8, 12.

[4] 85 NY2d 20, 26 (1995).

[5] 43 NY2d 268, 273 (1977).

[6] City of New York, No. 2025-01687, slip op. at 11.

[7] City of New York, No. 2025-01687, slip op. at 12-13 (emphasis added).

[8] Id. at 13.

[9] Id. at 14.