



The Importance of Navigating ESG Concerns

TASTING NOTES

Environmental, social, and governance (ESG) concerns for consumer packaged goods (CPG) companies have become increasingly prominent in recent years. As consumers and investors place greater emphasis on sustainability and ethical practices, CPG companies are facing new challenges and opportunities. It's important to stay ahead of the curve and navigate the ever-changing landscape of sustainability, responsible investing, and corporate governance.

WHAT IS ESG?

ESG has three components:

1. **Environmental concerns**, which focus on how companies promote sustainability and stewardship of natural resources.
2. **Social concerns**, which generally address how companies treat their employees, customers, suppliers, and communities. Factors include diversity, inclusiveness, and recruitment practices.
3. **Governance concerns**, which center on whether the actions of company leadership align with stated goals. Factors include risk management, compliance, ethical business practices, avoiding conflicts of interest, and accounting integrity and transparency.

REGULATORY UPDATES

GOVERNMENT ENFORCEMENT

We've seen increasing scrutiny of ESG claims in recent years from government regulators. As investor demand for climate and other ESG information soars, the SEC has responded with an all-agency approach, setting up a Climate and ESG Task Force to identify potential ESG-related misconduct.

The Federal Trade Commission (FTC) is also expected to revise and update its *Green Guides for the Use of Environmental Claims* in the next year. The FTC is expected to provide updates with respect to claims regarding (1) carbon offsets and climate change; (2) the term "recyclable"; (3) the term "recycled content"; and (4) the need for additional guidance regarding claims such as "compostable," "degradable," "ozone-friendly," "organic," and "sustainable," as well as those regarding energy use and efficiency.

UPTICK IN ESG LITIGATION

Litigation trends regarding ESG claims made against companies have gained momentum in recent years. As the focus on ESG issues increases, stakeholders, including investors, consumers, and advocacy groups, are closely scrutinizing companies' ESG-related statements and practices. Litigation trends related to ESG claims include the following:

- **Greenwashing allegations.** Greenwashing refers to the practice of misleadingly portraying a company's products, services, or overall practices as environmentally friendly or sustainable. Companies facing allegations of greenwashing may be subject to legal action from consumers or regulatory authorities. Lawsuits have been filed against companies for exaggerated or false claims about their ESG initiatives, environmental impact, or sustainable practices.
- **Failure to disclose material ESG risks.** Companies that fail to disclose material ESG-related risks face potential legal challenges. Inadequate disclosure of environmental liabilities, supply chain risks, labor issues, or climate change-related risks can lead to lawsuits, including those from shareholders.
- **Human rights and labor practices.** ESG litigation also extends to companies' human rights and labor practices. Allegations of labor exploitation, discrimination, or violations of international human rights standards can result in legal action.
- **Class-action lawsuits.** Class-action lawsuits related to ESG initiatives are on the rise. These lawsuits involve claims such as consumer deception, securities fraud, or harm caused by a company's failure to meet ESG commitments. Such actions are often brought on behalf of a group of affected individuals or investors seeking compensation for alleged damages resulting from ESG-related misrepresentation or negligence.

TAKEAWAYS

As ESG considerations become increasingly important to stakeholders, companies must ensure accurate and transparent ESG disclosures, align their practices with stated commitments, and mitigate ESG-related risks. By proactively addressing ESG issues, implementing robust compliance measures, and maintaining diligent reporting, companies can minimize the risk of litigation and reinforce their reputations as responsible and sustainable entities.

For additional information, please email [Charles Sipos](#), [Kristine Kruger](#), or [Tommy Tobin](#).