



**LUND**  
UNIVERSITY

# **“The House has Already Burned Down”**

A Research Study Exploring Greenwashing in the Swedish  
Legal Practice

Amanda Rehm

---

Lund University  
Sociology of Law Department

Master Thesis (SOLM02)  
Spring 2022



Supervisor: Michael Molavi

Examiner: Rustamjon Urinboyev

## Abstract

As the interest in greenwashing as a strategy for marketing increases, monitoring institutions in Sweden have not failed to acknowledge the tendency of unwarranted and exaggerated statements that has left the impression of products or services without any legitimate support. Even as institutions have voiced their active engagement in tackling this problem, critique has been raised arguing that greenwashing is only increasing with little resistance to deter its practice. While institutions operate to control and combat greenwashing, there is a general lack of research of the concept itself, but also in terms of addressing the relationship between the ambition behind the law prohibiting greenwashing and the experience of the law in the practice. Moreover, this thesis aims to examine the legal awareness, or socio-legal realities, as identified by relevant actors concerning the current strategies prohibiting and enforcing the prohibition of greenwashing in Sweden. The aim is to identify what strategies are currently put into practice to combat greenwashing, what obstacles can be identified to explain the present situation of sub-optimality, and address the potential approaches that can be suggested for further improvement when enforcing the law to deter future crime. While drawing on the theoretical concept of legal consciousness, this research derives from a qualitative approach where it in combination with a literature review will study these socio-legal realities in the form of interviews.

The research findings show that there is no issue in referring to the legal norms that reflect a strong rule of law. Moreover, these individuals describe the law as well-formulated and angles the issue toward the application of the law, rather than the actual norms. The political diversity between the informants becomes evident in the second research question where there are different ambitions to tackle greenwashing and recognise its seriousness and urgency. The public interest in greenwashing has not been identified as a prioritised issue and has been experienced to have little room in the political as well as in the legal discourse. The diverse interest in identifying active obstacles to greenwashing has also been reflected in the identification of potential approaches for improvement and further development. While some informants argue that the field will develop in its own time, other informants call for action on both institutional and collective level. Here, concerns call for a need of stronger sanctions, clearer directives, and a collective legitimacy of the phenomenon to establish a legal consciousness that recognises the seriousness, urgency and consequences of deceptive environmental marketing.

*Keywords: greenwashing, deceptive environmental marketing, legal consciousness, sociology of law, environmental claims, green marketing, greenwashing in Sweden.*

## **Acknowledgements**

With this thesis, I end my two years of studies within the Master programme of Sociology of Law. Since I have been studying at Lund University for the last five years, I would like to express my gratitude to the academy, inspiring professors, as well as all encouraging colleagues for their support throughout the years.

I want to direct my deepest gratitude to the eight participants of my study and thank them for sharing their knowledge, experience, and time with me. I also want to express my thanks to my family and friends who have supported me from the beginning.

Lastly, I want to thank my supervisor, Michael Molavi, for his support and advice which has guided me in this project.

## Table of Content

<b>Abstract</b>	<b>1</b>
<b>Table of Content</b>	<b>3</b>
<b>Abbreviation List</b>	<b>5</b>
<b>Introduction</b>	<b>6</b>
<b>Background</b>	<b>7</b>
2.1. The Shaping of Greenwashing	7
2.2. The Regulation of Deceptive Environmental Claims in Swedish Marketing	9
2.4. The Formulation of the Problem	10
<b>Aim and Research Questions</b>	<b>11</b>
<b>Disposition</b>	<b>12</b>
<b>Academic Background</b>	<b>13</b>
5.1. The Political Field of Greenwashing	14
5.2. Greenwashing Effects on an Individual Level	16
5.3. Interventions for Combatting Greenwashing	17
5.3.1. <i>Combating Greenwashing on an Individual Level</i>	18
5.3.2. <i>Combating Greenwashing Through Legislative Action</i>	18
5.4. Summarising Reflections	21
<b>Methodology</b>	<b>23</b>
6.1. Selection Process	24
6.2. Thematic Analysis	25
6.3. Validity, Reliability, and Generalisability	26
6.4. Ethical Considerations	26
<b>Theoretical Framework</b>	<b>27</b>
7.1. Legal Consciousness	28
7.2. Typologies of Legal Consciousness	28
7.3. Theoretical Reflections	29
7.4. Relevance to the Subject	30
<b>Compilation of Empirical Data</b>	<b>32</b>
8.1. The Legal Consciousness and Legal Norms	34
8.1.1. <i>The Experience of Combatting Greenwashing</i>	34
8.1.2. <i>The Nature of Legal Norms</i>	36
8.1.3. <i>The Influence of Research</i>	38

8.2. The Problematisation of Greenwashing in Practice	40
8.2.1. <i>Nothing Hinders Greenwashing</i>	40
8.2.2. <i>Supervision and Legal Enforcement</i>	42
8.2.3. <i>“The House has Already Burned Down”</i>	45
8.3. Suggestions for Further Improvement	47
8.3.1. <i>Institutional Action</i>	47
8.3.2. <i>Collective Recognition</i>	50
<b>Discussion</b>	<b>52</b>
<b>Concluding Remarks</b>	<b>55</b>
10.1. Future Research	58
<b>Bibliography</b>	<b>60</b>
<b>Appendix</b>	<b>66</b>

## Abbreviation List

Greenwashing - *Deceptive or misleading environmental statements in marketing*

*Deceptive marketing - Something considered advertising malpractice if it to some extent impacts the receivers ability to make a well-founded business decision. (SFS 2008:486 8§ own translation)*

Marketing - *Advertising and other measures in the business sphere which are likely to promote the sale of and access to products including the actions, omissions, or other conduct or conduct of a trader before, during, or after the sale or delivery of products to consumers or traders (SFS 2008:486 3§ own translation)*

CMMS - Consumer Market Monitoring Survey

CSR - Corporate Social Responsibility

ICC - International Chamber of Commerce

IRM - Institute for Advertising and Media Statistics [*Institutet för Media- och Reklamstatistik*]

KO - Swedish Consumer Agency [*Konsumentverket*]

KOn - Swedish Consumer Ombudsman [*Konsumentombudsmannen*]

LC - Legal Consciousness

MFL - Swedish Marketing Act [*Marknadsföringslagen*]

PMD - Patent and Marketing Court [*Patent- och Marknadsdomstolen*]

RO - Swedish Advertising Ombudsman [*Reklamombudsmannen*]

## 1. Introduction

In June 2007 the Swedish Consumer Agency issued an injunction targeting the company Kia Motors Sweden AB. This concerned a statement describing the car KIA Picanto ECO as “*environmentally friendly*”. In reaction to the campaign, the Swedish Consumer Agency urged the company to reformulate the advertisement to avoid leaving the impression that the car solely has a positive impact on the environment. Since then, Kia Motors Sweden AB has advertised for the same car by using statements such as “...*a really good deal - not only for the environment but also for the wallet.*”. The Swedish Consumer Agency still deemed the updated statements as contravening in terms of the law, and in turn, the institution issued a report against Kia in Stockholm District Court.<sup>1</sup>

The case was brought to the Court of Appeal in 2011 where the final judgement argued, in line with the Swedish Consumer Agency, that the environmental statements were not fulfilling the demands on supporting evidence and precision that applies to this legal area. The final judicial decision sanctioned the company to pay the state an amount of 400 000 Swedish Krona for violating the law.<sup>2</sup> This was the last time that the Swedish Consumer Agency filed a company and demanded financial payment on the charges of deceptive environmental claims related to advertising.

This example can be loosely translated into the concept of *greenwashing* that has taken form in the marketing industry as posing products, services, and indirectly companies as more eco-friendly, environmental-conscious, and climate efficient than they truly are.<sup>3</sup> But what do these qualities in fact imply and where does this leave the state law combating the same illegal actions? These are merely two of many questions that can be identified in the present discourse. When expanding the discussion, we can acknowledge how Kia, much like many other companies, takes an active part in a global market where it is no longer enough to only be functional or emotionally appealing<sup>4</sup>.

Consumers’ increasing interest and expectations of environmentally-friendly products and services have resulted in a quicker response from the companies to promote their business as “green” in order to meet the consumer’s concern for climate change. Often this gives rise to unwarranted and exaggerated claims of sustainability or a lesser environmental impact<sup>5</sup>. This is where the laws of marketing come into play. However, neither this issue nor the debate

---

<sup>1</sup>Hovr B 8332-10:3.

<sup>2</sup> Ibid.

<sup>3</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015). Can evoking nature in advertising mislead consumers? The power of “executional greenwashing.” *International Journal of Advertising*, 34(1), p. 108.

<sup>4</sup> Vlad, V. C., & Luca, F-A. (2020). Delivering Sustainability - Green Marketing Evolution. *Network Intelligence Studies*, 4(16), p. 170

<sup>5</sup> Eng, N., DiRusso, C., Troy, C. L. C., Freeman, J. T., Liao, M. Q., & Sun, Y. (2021). “I had no idea that greenwashing was even a thing”: identifying the cognitive mechanisms of exemplars in greenwashing literacy interventions. *Environmental Education Research*, 27(11), 1600.

surrounding it is new to our decade and it is important to acknowledge its relevance in multiple disciplines. The lone example of Kia illuminates how marketing, business finance, and politics are closely intertwined with other societal aspects, broadening the perspective to include matters concerning environmental justice and tying it to the socio-legal field.

## 2. Background

### 2.1. The Shaping of Greenwashing

In 2018, the Institute for Advertising and Media Statistics (IRM) presented its annual report revealing how much Swedish companies spend on marketing communication. This concept included expenses for investments in media, marketing charges, as well as the costs of production. The shocking number of 80 billion Swedish Krona now exceeded the previous record and came to symbolise the development of the marketing industry in relation to trends in advertising and media.<sup>6</sup> Since then, the annual investments in marketing communication have decreased somewhat<sup>7</sup>. However, this does not disregard the issue concerning green advertising not being supported by legitimate evidence. As the interest in the environment and sustainability across the globe has gained more attention, the everyday customer has also adopted a more sceptical outlook when integrating with the landscape of marketing. An honest green market is generated by the production and investment strategies that promote products characterised by, for instance, resource conservation (such as energy and water conservation), low pollution, low toxicity, and recycling. The green circle of sustainable economics feeding a global market, therefore, relies on the consumers' awareness and attitude to choose the product with the best environmental characteristics.<sup>8</sup>

It is safe to say that the average consumer has become more aware of the negative implications that advertising could have on the environment. Nevertheless, the consumer still encounters various obstacles in the process of making daily purchases, including a lack of specific environmental information, negative perception, distrust, high product prices, and low practicality. Research has shown that a majority of consumers do care for the environment, however, their attitudes do not promote green production purchase intention.<sup>9</sup> This further underscores the need to educate consumers about the distinction between genuine attempts to minimise the environmental impact and the exaggerated or fabricated material applied for profit-making without much consideration of the following impact.

---

<sup>6</sup> IRM (Institutet för reklam- och mediestatistik). (2019) Årsrapport 2019 - Svensk Reklammarknad.

<sup>7</sup> IRM (Institutet för reklam- och mediestatistik). (2021) Årsrapport 2021 - Svensk Reklammarknad 2021.

<sup>8</sup> Li, G., Yang, L., Zhang, B., Li, X., & Chen, F. (2021). How do environmental values impact green product purchase intention? The moderating role of green trust. *Environmental Science & Pollution Research*, 28(33) p.46021.

<sup>9</sup> Ibid.



*“The phenomenon of greenwashing has been used as a relevant concept to describe the efforts by companies to mislead their customers into thinking that their practices, as well as their products and services, are more environmentally friendly than they truly are.”*<sup>10</sup>

While pinpointing the central phenomenon of this project, this quote describes the complexity of how the politics of the market industry has impacted the everyday life of the individual. The consumer could have every intention to contribute to a green market, however, the practice of greenwashing further distinguishes the divide between having concern for the environment or having knowledge of the environment, and in turn increasing the risk of misleading consumers for private gain<sup>11</sup>. Therefore, the issue of spotting deception in advertising is something that has been suggested to be further recognised to open up an inclusive and honest market.<sup>12</sup> When looking at the impact of greenwashing, the increasing interest in communicating environmental statements has led to increased pressure on companies to live up to the expectations of the consumer as well as competing companies. The stress inflicted upon smaller companies could make the opportunity of entering the market on equal terms difficult and unfair when overshadowed by companies that continue to thrive on misleading or false advertising. The same pressure could also contribute to a lesser quality in the communication itself, where we today can find unclear or untruthful advertising.<sup>13</sup>

The problematisation mentioned above provides additional examples to how greenwashing lays the foundation for an unethical business that operates not only on a local but also on an international and global scale. In the legal example presented in the introduction, the court of appeal argued that the *“average consumer wants to live consumer-friendly, but at the same time, they believe it is difficult to live environmentally-friendly. Even though the trust in environmental statements within the business industry is quite low, the average consumer attaches greater weight to these claims.”*<sup>14</sup> In the prevention of greenwashing, legal institutions apply case laws to set the foundation for a legal practice where every legal case should be evaluated individually and with an overall assessment of the marketing practice<sup>15</sup>. While recognising the fast pace adding to the complexity of managing a sustainable business in today’s modern era, are the legal institutions keeping pace?

---

<sup>10</sup> Olk, S. (2021). The Effect of Self-Congruence on Perceived Green Claims’ Authenticity and Perceived Greenwashing: The Case of EasyJet’s CO2 Promise. *Journal of Nonprofit & Public Sector Marketing*, 33(2), p. 115.

<sup>11</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018). Misleading Consumers with Green Advertising? An Affect–Reason–Involvement Account of Greenwashing Effects in Environmental Advertising. *Journal of Advertising*, 47(2), p. 127.

<sup>12</sup> Fernandes, J., Segev, S., & Leopold, J. K. (2020). When consumers learn to spot deception in advertising: testing a literacy intervention to combat greenwashing. *International Journal of Advertising*, 39(7), p. 1115.

<sup>13</sup> SB Insight. (2021). Kartläggning: Miljöargument i marknadsföring på den svenska konsumentmarknaden 2021. p. 15.

<sup>14</sup> MD 2011:12.

<sup>15</sup> MD 1991:11.

## 2.2. The Regulation of Deceptive Environmental Claims in Swedish Marketing

In terms of relevant regulation of environmental advertising, Sweden abides by the Marketing Act<sup>16</sup>. This regulation aims to foster the interests of consumers and businesses in relation to the marketing of products and prevent marketing that is considered improper to consumers and businesspersons. The concept of marketing is defined as “*advertisement and other measures in the business sphere which are likely to promote the sale of and access to products including the actions, omissions, or other conduct or conduct of a trader before, during, or after the sale or delivery of products to consumers or traders*”.<sup>(17)</sup>own translation). With the ratification of the *European Parliament’s and council’s directive 2005/28/EG*, a variety of prescriptions that encompasses a marketing practice could now be found in terms of unfair marketing. The three overarching clauses focus on marketing as deviating from following the principles: *ethical marketing practice*, *deceptive marketing*, and *aggressive marketing*.

More specifically, the deceptive marketing practices relevant to advertising are regulated in the 10 § “*Ban on deceptive marketing practices*” where “*a business person may not apply false claims or other presentations that are deemed deceptive in the question of the business person’s own or someone else’s business*”<sup>(18)</sup>own translation). This was one of the “black-listed” business practices regulated after the ratification of an European directive<sup>19</sup>. With deceptive advertising, the law refers to the manufacturing which regards the occurrence, art, amount, quality and other distinctive characteristics of the product. This paragraph also includes the term *deceptive omission*, which concerns such cases where the necessary information is provided in an unclear, incomprehensible, ambiguous, or improper manner. More specifically and relevant is the second notion in the second section which focuses on the origin, use, and risks, such as the impact on health and *the environment*.<sup>20</sup>

In addition, the Swedish Consumer Agency has according to *the European Parliament and council’s regulation (EU) 2017/2394* the responsibility of surveilling the national market for consumer protection. This indicates that while the Swedish courts operate to protect the consumer’s interests and rights through the juridical process, KO exerts surveillance in the same area and works with educational and preventative purposes to implement and enforce the politics of the state. According to the standard practice, this institution will at first contact the targeted company behind the questioned marketing, commercial, or advertisement. If the company does not make an effort to change its marketing, the institution can pass on an order (of prohibition or information sharing) or take the case to court.<sup>21</sup> This agency has previously acknowledged how already notified companies refuse to respond to their reprimands, and when the agency, due to the lack of response, felt the responsibility to take the case to court,

---

<sup>16</sup> SFS 2008:486 The Swedish Marketing Act.

<sup>17</sup> Ibid. §3 The Swedish Marketing Act.

<sup>18</sup> Ibid. §10 The Swedish Marketing Act.

<sup>19</sup> 2005/29/EG European Parliament and Council

<sup>20</sup> SFS 2008:486 10§2 The Swedish Marketing Act.

<sup>21</sup> Ibid.

the judicial system would take too long to settle for a judgement. This limitation was used as an argument to criticise the previous law as unpredictable and ineffective. Arguing that the process to uphold legal certainty was too time-consuming, the consumer would be left exposed to unfair marketing for an unnecessarily long time. However, a new proposition gave the institution strengthened possibilities for sanctioning illegal marketing such as greenwashing. This implied an opportunity for the institution to order binding injunctions of immediate effect, where the cases in question are of lesser weight. The general intention behind this amendment was to provide the KO with the capacity and legal authority to apply effective and deterrent sanctions as a precondition for the strong protection of the consumer's rights without the legal affirmation and judgement of the legal court.<sup>22</sup>

For worse violations, the Patent and Market Court (PMD) could, on the behalf of the KO, impose the accused with a market disruption charge, which is in the most common case combined with an economic penalty<sup>23</sup>. The court can also settle for imposing a fine of prohibition to complement the severity of the violation. The juridical evaluation of the appropriate penalty will be examined based on the nature of the marketing's infringement, duration, extent, and impact. The economic fee, also referred to as a prohibition under the penalty of a fine, concerns an amount of 10 000 to 10 million Swedish Krona. This economic span was motivated to deter "unserious business persons" that would previously take the risk of being targeted for evaluation and legal prosecution because the economic profit gained through that marketing would be much greater.<sup>24</sup> On this notion, the KO holds the same juridical legitimacy as the criminal courts, which authorises the accused to appeal the final judgement to the Patent and Marketing Court of Appeal<sup>25</sup>.

## 2.4. The Formulation of the Problem

While there are strict regulations, set by institutions and policies for marketing in Sweden, the application of greenwashing strategies is increasing. This notion becomes interesting when a report ordered by the European Commission alarms the sudden increase of environmental advertising where little to none receive discernible consequences. The report presented data from a global sweep which found that 42% of firms' green claims were either misleading, exaggerated, or vague<sup>26</sup>. In line with this trend, the KO reports a sharp increase in environmental arguments in marketing not only on an international scale but on a national level. In a comparative survey from 2015, unspecific terms such as circular economy, sustainable, environment, climate neutral, and recycle, were highly prevalent and were mostly identified in the electricity industry. Today this industry is joined by businesses for clothes, shoes, dairy products, cars, restaurants, cafes, and bars. The information applied is often

---

<sup>22</sup> SFS 2016:793 Lag om ändring i Marknadsföringslagen (2008:486)

<sup>23</sup> SFS 2016:223 49§ Lag om ändring i Marknadsföringslagen (2008:486)

<sup>24</sup> Ds, 2015:45 Stärkta sanktionsmöjligheter för Konsumentombudsmannen.

<sup>25</sup> SFS 2008:486 51§ The Swedish Marketing Act.

<sup>26</sup> CMMS, 2021. European Commission, Market Monitoring.

generic and lacks detailed information to support green statements like the ones mentioned above.<sup>27</sup> With this background, there is an expectation from the written law and the public opinion to emphasise anti-greenwashing policies to deter unethical marketing practices that continuously mislead the everyday consumer to fuel non-sustainable ways of doing business. In other words, aligned with the MFL, there is an ambition to control the marketing landscape in order to prevent greenwashing, however, according to the media response and the statistical results, this is not the direction in which Swedish marketing is currently heading. This begs the question of whether there de facto is a shared ambition to stop greenwashing in practice.

### 3. Aim and Research Questions

A report ordered by the KO states that it is difficult, or even impossible, for the consumer to understand if a product is environmentally friendly or not.<sup>28</sup> Today the Swedish market communicates terms such as “sustainable”, “sustainability”, “climate-smart”, and “green” more frequently through statements and claims to reflect a form of legitimacy to the general customer. At the same time, this field is closely supervised by governmental institutions. However, while an increased prevalence of false environmental advertisements has been recognised, legal sanctions are rarely applied<sup>29</sup>. The legal case of Kia<sup>30</sup> is the one exception that shows a direct form of palpable consequences to violating the law. Here we enter the politics of a dynamic business market where the distinction between the customers' expectations and the company's own business priorities and values are evident.

This research intends to gain insight into the experience of deceptive environmental marketing as it is legislated in the MFL<sup>31</sup>. Deriving from a qualitative approach, this study aims to examine the legal awareness, or socio-legal realities, as identified by key legal actors that hold both knowledge and experience in the prevention of greenwashing in Swedish marketing. In light of their interpretation of the law, the focus will be on how these individuals interpret the enforcement of the law in terms of prohibiting greenwashing. While there previously has been a focus on the consequences of misleading advertising, we know less about what interventions should be prioritised to combat greenwashing. Therefore, this research strives to identify what anti-greenwashing strategies are currently put into practice, what obstacles can be identified to explain the present sub-optimal situation, and address the potential approaches that can be suggested for further improvement to strengthen the enforcement of the law.

Furthermore, due to the lack of academic research within the field of deceptive environmental marketing in Sweden, this research does not only aim to contribute to the discussion of the

---

<sup>27</sup> SB Insight. 2021. Kartläggning: Miljöargument i marknadsföring på den svenska konsumentmarknaden 2021.

<sup>28</sup> Ibid.

<sup>29</sup> 2020/21:3067 Motion: Falsa miljöpåståenden i reklam (MP).

<sup>30</sup> Svea Hovr B 8332-10.

<sup>31</sup> SFS 2008:486 The Marketing Act.

consumers' right to truthful information in advertising but also intends to provide information to broaden the socio-legal understanding of how Swedish law operates and could operate in practice. While highlighting the influence of social and legal aspects of greenwashing, there is a strong relevance to the academic field of sociology of law which focuses on the interplay between law and social norms influencing the individual's everyday life. Building on each other, the following questions will guide this research process:

- (1) How is greenwashing understood by legal actors associated with the implementation of the Swedish Marketing Act?
- (2) What are the main obstacles identified by these legal actors to combat greenwashing in Sweden?
- (3) How can these obstacles be addressed and what additional changes, if any, are required to further limit the practice of greenwashing in Sweden?

In light of the aim behind the above-mentioned questions guiding this thesis, the material sought is the own perspective of individuals about the law. The first question is more informatively formulated, in the sense that asks how greenwashing is understood. The interviewees sharing their opinions on this matter will reflect on and refer to the legal understanding as they understand the question. This empirical data could be described as a form of legal consciousness. Their legal awareness will show itself more evident in the answers to the following research questions, which open up for a more critical discussion on the current practice of law. While the research questions and aim focus on generating data that depends on the individual opinion, the theoretical framework of legal consciousness is found relevant to give meaning to the attitudes toward the law, and more interestingly, to shine light upon the potential, "colourful" discussion on the subject of greenwashing in Sweden.

## 4. Disposition

This thesis begins with an *Introduction* and *Background* followed by a section describing the *Aim* and *Research Questions*. Adding to the academic knowledge of the subject in question, an *Academic Background* will be followed by a section about the applied *Methodology* and *Theoretical Frameworks*. The main section of the research study includes a *Compilation of the Empirical Data*, where the result and analysis are combined and thereafter followed by a *Discussion* and *Concluding Remarks*. Taking a step back from the research process, I reflect on the possible and perhaps needed academic contributions in the section on *Future Research*. The thesis is concluded with two final sections consisting of a *Bibliography* and an *Appendix*.

## 5. Academic Background

This literature review strives to provide an academic background to the studied fields relevant to unethical environmental marketing practices in Sweden. Due to the lack of academic work grounded in the sociology of law with this specific focus, this literature review will broaden its informative scope and draw from related topics of greenwashing. In addition, there has been little to no research focusing on green marketing in the Swedish context - a result that has been similarly found in other Nordic countries. This topic has, however, been recognised to a larger extent in lower academic work, such as in master's and bachelor's theses. In this research, greenwashing has been studied from the perspectives of graphic design<sup>32</sup>, strategic information and communication<sup>33</sup>, and business administration (Lentfer<sup>34</sup>; Krafft & Saito<sup>35</sup>). While the literature mentioned above illustrates an increase in academic interest in the rationales of greenwashing, the discipline of sociology of law has not yet engaged in this discussion. Regardless of whether the sociology of law has an innate background in investigating the laws of society, the regulations relating to environmental concerns have been left somewhat unexplored. With this research gap in mind, the ambition behind this thesis stands out in terms of its contribution to the state of the art, where a socio-legal perspective now invites environmentally-related issues to the breadth of its discipline.

Hence, a limitation will restrict the scope to the European perspective where the concept of greenwashing has been found most relevant. This decision can also be motivated by the shared political practices in business marketing, which due to the collaboration and ratification of European directives is closely linked to Swedish marketing practices. Even though greenwashing has been a concept that has been around since the 80s, it has been further highlighted in relation to legal complexities in terms of digitalisation and expanding business industries. Therefore, this literature review will include academic research from 10 years back (from 2012 to 2022) but will mainly prioritise the five recent years to stay close to the socio-legal discourse that has been discussed more frequently over the last couple of years. While no previous research has studied the exact research problem as is planned for this study, the adopted search strategy will include keywords such as *greenwashing*, *false advertising*, *misleading environmental marketing*, or *misleading marketing AND climate*. Hence, the literature review will circulate related topics, where themes will focus on greenwashing and false advertisement in terms of a global and digitalised market as well as the influence of misleading environmental marketing impacting the customer's decision-making. The final sections will include previous research focusing on the suggested

---

<sup>32</sup> Eriksson, I. (2021). *The Green Lie: Informing consumers about greenwashing and its consequences*. Luleå Universitet.

<sup>33</sup> Von Ahn, A. (2018). *In the Eyes of the Beholder*. Borås Högskola.

<sup>34</sup> Lentfer, S., Lison, M., Stenberg, S. (2021). *The Impact of the EU Taxonomy on Greenwashing: With a Case on the Swedish Sustainable Finance Sector*. Jönköping Universitet.

<sup>35</sup> Krafft, J., Saito, R. (2015). *Greenwashing: An Experimental Study about the Effects of Misleading and Deceptive Environmental Claims in Advertising*. Göteborgs Universitet.

strategies for protecting the consumer's interest in the market, which will be followed by a discussion on examples of interventions found relevant to combat misleading and false marketing.

### 5.1. The Political Field of Greenwashing

Corporate Social Responsibility is a concept referring to the extent to which a business can differentiate itself from its competitors based on various prioritised social aspects of responsibility. This phenomenon has been studied extensively in relation to business capacity, global markets, and the practice of taking on responsibility for doing business on a larger scale.<sup>36</sup> Within the academic discourse, scholars have related this concept to the recurring *gap problem* interwoven in marketing politics (Waites<sup>37</sup>; Hinsch<sup>38</sup>; Vlad & Luca<sup>39</sup>; Bañares<sup>40</sup>). While a majority of 96% from a previous study showed that individuals express environmental concern, only 65% are willing to act on their values. Following up on these results, another study relates this concern to the global field of marketing where expressed sympathies toward sustainable business intentions are rarely practised. The so-called “green marketing evolution” has been infiltrated by what today are common misleading behaviours that describe how the path towards green principles is not an easy fix but rather a deep reconfiguration of whole businesses<sup>41</sup>. This has resulted in a bigger number of businesses that exploit the green path and mislead customers and competitors, which in turn has generated damage to all green players, creating rejection, cynicism, and confusion<sup>42</sup>. Researchers such as Béatrice Parguel<sup>43</sup> and Stacie Waites<sup>44</sup> have studied how effective green marketing strategies may manipulate the consumer through misleading advertising. They mean that it is already a known fact that different forms of marketing have the power to impact purchase intentions, but the next question to ask is if we know *why* this is. The result found that trust is an important mediator in explaining the relationship between green marketing and purchase intentions. They argue that effective green marketing signals their political initiatives through the daily influence of the media to enhance consumer purchases.<sup>45</sup>

---

<sup>36</sup> Lee, H. C. B., Cruz, J. M., Shankar, R. (2018) Corporate Social Responsibility (SCR) Issues in Supply Chain Competition: Should Greenwashing Be Regulated? *Decision Sciences*. 49(6), 1088-1115

<sup>37</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) Signaling green: Investigating signals of expertise and prosocial orientation to enhance consumer trust. *Journal of Consumer Behaviour*. 19(6). 632-644.

<sup>38</sup> Hinsch, C., Tang, Y., Lund, J. D. (2021) Compulsion and reactance: Why do some green consumers fail to follow through with planned environmental behaviors? *Psychology and Marketing*. 38(12) 2209-2226.

<sup>39</sup> Vlad & Luca. (2020) (see n. 4)

<sup>40</sup> Bañares, A.B., Silva, M.F., & Rodríguez, S.R. (2021). Green but ignored? The irrelevance of television advertisements on energy sustainability in Spain and its impact on consumer perceptions. *Energy research and social science*, 73.

<sup>41</sup> Vlad & Luca. (2020) (see n. 4) p. 170.

<sup>42</sup> Ibid. p. 177.

<sup>43</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>44</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) (see n. 37)

<sup>45</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

However, even though not all customers respond in the same manner, the result from Waites' study shows that companies that do invest in green marketing can yield immediate benefit by communicating signals to legitimise environmental initiatives<sup>46</sup>. In addition, other academic work has studied the same distinction by examining environmental claims, consumers' brand perceptions, and purchasing intentions within the energy sector<sup>47</sup>. Parguel<sup>48</sup> has chosen to apply a theoretical concept of *executorial greenwashing* to study the process of using nature-evoking elements in advertising to artificially enhance the own brand's ecological image. When applying strategies to counteract the results of this concept, it does not have the effect of revising the judgement of low knowledge decisions, however, it is successful for experts and non-experts.<sup>49</sup> In other words, this concept contributes to a greater expansion of the distinction between the consumer's brand perception and purchasing intentions. In contrast to the previous research, this study points out how the main companies have not prioritised the investment of reconfiguring their business to create a green image. The consumer's purchase decision still relies far more on price perception than on companies' commitments to protect the environment. This study gives an example of how the investment in advertising a campaign in a specific media does not necessarily need to shape the customer's perception. It is therefore a broad sphere of communication strategies to be applied to different behaviour in multiple markets<sup>50</sup>.

When including how the specific businesses direct their advertising depending on public opinion, it is also interesting to take into account how corporations behave and answer to accusations of severe environmental harm as a result of their own business. As the response could be tied to the concept of corporate social responsibility (MacManus<sup>51</sup>: Schoultz & Flyghed<sup>52</sup>), this behaviour is often referred to by the denial industry as a defence mechanism for businesses to withhold the consumers' trust.<sup>53</sup> The authors mean that businesses can apply a fluctuating crisis-management strategy where irregular arguments aim to deflect any negative rumour that could mislead the public opinion to believe that the harmful event was an "accident", "out of their control", "a defence of necessity", and that through the denial of knowledge one can repaint the picture of events for their own benefit<sup>54</sup>. How this advertising is received depends on multiple aspects, such as the level of knowledge of the customer, the

---

<sup>46</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) (see n. 37) p. 639.

<sup>47</sup> Bañares, A.B., Silva, M.F., & Rodríguez, S.R. (2021) (see n. 40)

<sup>48</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>49</sup> Ibid. p. 126.

<sup>50</sup> Bañares, A.B., Silva, M.F., & Rodríguez, S.R. (2021) (see n. 40) p. 8-9.

<sup>51</sup> MacManus, T. (2016) The denial Industry: Public relations, 'crisis management' and corporate crime. *International Journal of Human Rights*. 20(6) 785-797

<sup>52</sup> Schoultz, I., Flyghed, J. (2020) Denials and confessions. An analysis of the temporalization of neutralizations of corporate crime. *International Journal of Law, Crime, and Justice*. 62.

<sup>53</sup> MacManus, T. (2016) p. 786. (see n. 51)

<sup>54</sup> Schoultz, I., Flyghed, J. (2020) (see n. 52) p. 748-749.



interest in environmental justice, and the investment of the company itself to save its own reputation (Parguel<sup>55</sup>: MacManus<sup>56</sup>: Özsoy & Avcilar<sup>57</sup>: Joshi & Knodor<sup>58</sup>: Waites<sup>59</sup>: Li<sup>60</sup>).

## 5.2. Greenwashing Effects on an Individual Level

When looking closer at the masking of the more harmful effects a product or service has on the environment, there are multiple research studies that have been conducted with the aim to gain a better understanding of the consumer's own awareness of unethical green marketing (Özsoy & Avcilar<sup>61</sup>: Schmuck<sup>62</sup>: Kahraman & Kazancoglu<sup>63</sup>: Fernandes<sup>64</sup>: Kusa & Urminova<sup>65</sup>: Olk<sup>66</sup>). The rising interest to study the general awareness of deceptive marketing is mainly dominated by quantitative strategies with the intention to compare and generalise an opinion and perception (Özsoy & Avcilar<sup>67</sup>: Schmuck<sup>68</sup>: Fernandes<sup>69</sup>: Kusa & Urminova<sup>70</sup>: Olk<sup>71</sup>).

Research highlights “*a frustrating paradox at the heart of green business initiatives - while 65% of respondents claim to want to buy sustainable brands, only 26% follow through with an actual purchase.*”<sup>72</sup> Researchers have previously argued that eco-labeling in marketing to create an attractive image is based on what the customer perceives as most favourable (Özsoy & Avcilar<sup>73</sup>: Waites<sup>74</sup>: Joshi & Knodor<sup>75</sup>: Li<sup>76</sup>). One study about consumer awareness has found that the variable of believability is of great significance to individual purchases. Moreover, by taking into account the global reputation of a brand, where it is recognised as trustable, powerful, and sympathetic, it does not make any sense for the brand to target an

<sup>55</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>56</sup> MacManus, T. (2016) (see n. 51)

<sup>57</sup> Özsoy, T., Avcilar, M. Y. (2016) An investigation of the Effects of Consumers' Environmental Attitudes on Perceptions of Green Ads and Attitudes Toward the Brand. *Journal of Academic Research in Economics*. 8(1). 7-37.

<sup>58</sup> Joshi, P., Kronrod, A. (2020) Sounds of Green: How Brand Name Sounds Metaphorically Convey Environmental Friendliness. *Journal of Advertising*. 49(1) 61-77.

<sup>59</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) (see n. 37)

<sup>60</sup> Li, G., Yang, L., Zhang, B., Li, X., & Chen, F. (2021) (see n. 8)

<sup>61</sup> Özsoy, T., Avcilar, M. Y. (2016) (see n. 57)

<sup>62</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018) (see n. 11)

<sup>63</sup> Kahraman, A., Kazançoğlu, I. (2019) Understanding consumers' purchase intentions toward natural-claimed products: A qualitative research in personal care products. *Business Strategy and the Environment*. 28(6).

<sup>64</sup> Fernandes, J., Leopold, J. K. (2020) (see n. 12)

<sup>65</sup> Kusá, A., Urmínová, M. (2020) Ecolabelling of Products as the Part of Green Marketing and Its Impact on Consumer Behaviour. *Megatrends & Media: Media Farm - Totems & Taboo*. 351-361.

<sup>66</sup> Olk, S. (2021). (see n. 10)

<sup>67</sup> Özsoy, T., Avcilar, M. Y. (2016) (see n. 57)

<sup>68</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018) (see n. 11)

<sup>69</sup> Fernandes, J., Segev, S., & Leopold, J. K. (2020) (see n. 12)

<sup>70</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>71</sup> Olk, S. (2021). (see n. 10)

<sup>72</sup> Hinsch, C., Tang, Y., Lund, J. D. (2021) (see n. 38) p. 2209.

<sup>73</sup> Özsoy, T., Avcilar, M. Y. (2016) (see n. 57)

<sup>74</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) (see n. 37)

<sup>75</sup> Joshi, P., Kronrod, A. (2020) (see n. 58)

<sup>76</sup> Li, G., Yang, L., Zhang, B., Li, X., & Chen, F. (2021) (see n. 8)

audience with the use of deceptive green claims and messages in their advertisements<sup>77</sup>. Another study argued that the consumer, depending on the level of information about the deceptive green marketing, bases their purchasing decisions on green scepticism, where the knowledge of greenwashing practices has made the consumer more aware of specific features, such as the use of vague wording or nature evoking images to spot deceptive or misleading information in marketing<sup>78</sup>.

Due to the lack of in-depth results, some researchers have conducted qualitative research to gain an understanding of the attitudes and behaviour of the individuals they base their purchasing intentions on. One study followed up on the consumer's purchasing intentions in relation to greenwashing and found that there may be a relationship between environmental concern and greenwashing perception. Furthermore, if nature-claimed products' price is high, consumers will generally think of the product as natural. Therefore, these consumers are more willing to pay more to buy natural products. However, the researcher makes it clear that this result may not be true for every brand.<sup>79</sup>

### 5.3. Interventions for Combatting Greenwashing

In the majority of scholarly work focusing on greenwashing, there is a unanimous agreement concerning the need for more education about green marketing and how its potential for manipulation as false environmental claims in advertisements (Fernandes<sup>80</sup>, Kahraman & Kazançoğlu<sup>81</sup>, Johnson<sup>82</sup>, Balaceanu<sup>83</sup>, Bretcu<sup>84</sup>, Kusá & Urmínová<sup>85</sup>, Prody<sup>86</sup>, Sekhon & Armstrong<sup>87</sup>, Naderer & Oprea<sup>88</sup>). However, how exactly to tackle the use of misleading and false advertising related to environmental statements has been brought about by a discourse of contrasting suggestions. This will be further discussed below.

<sup>77</sup> Özsoy, T., Avcilar, M. Y. (2016) (see n. 57) p. 28.

<sup>78</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018) (see n. 11) p. 127-145.

<sup>79</sup> Kahraman, A., Kazançoğlu, I. (2019) (see n. 63) p. 1218-1233.

<sup>80</sup> Fernandes, J., Segev, S., & Leopold, J. K. (2020) (see n. 12)

<sup>81</sup> Kahraman, A., Kazançoğlu, I. (2019) (see n. 63)

<sup>82</sup> Johnsson, F., Karlsson, F., Rootzén, J., Ahlbäck, A., Gustavsson, M. (2020) The framing of a sustainable development goals assessment in decarbonizing the construction industry – Avoiding “Greenwashing”. *Renewable and Sustainable Energy Reviews*. 131.

<sup>83</sup> Balaceanu, C. T., Zaharia, D. L., Gruiescu, M., Constantinescu, M., Deák, G. (2020) Sustainable Measures in Environmental Protection Through Green Products. *International Journal of Conservation Science*. 11(4).

<sup>84</sup> Bretcu, A. (2019) Ecomarketing, the Response of Marketing to Contemporary Society's Ethical Requirements. *Analele Universitatii "Eftimie Murgu" Resita: Fascicola II, Studii Economice*. XXVI. 44-53.

<sup>85</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>86</sup> Prody, M. J. (2016) Combating Greenwashing through Public Critique. *Communication Teacher*. 30(2) 94-99.

<sup>87</sup> Sekhon, T. S., Armstrong, S. C. (2020) Conspicuous anticonsumption: When green demarketing brands restore symbolic benefits to anticonsumers. *Psychology and Marketing*. 37(2)

<sup>88</sup> Naderer, B., Oprea, J. S. (2021) Increasing Advertising Literacy to Unveil Disinformation in Green Advertising. *Environmental Communication*. 15(7) 923-936.

### 5.3.1. Combating Greenwashing on an Individual Level

Scholars have recognised how “*in an era of online media where information is available from a myriad of sources, the consumer’s self-education is only a click away.*”<sup>89</sup>. Furthermore, the more expertise consumers develop in relation to green claims, the less motivated advertisers will be to distribute deceptive messages. However, in order for this to have any effect, the consumer must take their responsibility to make informed purchase choices seriously. Even if the consumer engages with marketing every day, the concept of ecolabelling is seldom a phenomenon that the individual is educated in. (Kusá & Urmínová<sup>90</sup>; Prody<sup>91</sup>). Efforts operating on the micro-level have for instance targeted the everyday consumer where studies have looked closely at whether individuals apply any techniques for evaluating green marketing claims.<sup>92</sup> Based on social experiments in the United States, Germany, and the Netherlands, textual and quiz-based literacy interventions could help educate individuals to recognise misleading statements as well as legitimate green claims in advertisements. Other interventions have argued for more educational interventions where literacy is combined with textual and visual elements<sup>93</sup>.

According to Angela Bretcu, “*there have been many actions and interventions that intended to be environmentally friendly, but that has failed and later been found to be greenwashing or simply a marketing strategy*”<sup>94</sup>. In line with Sekhon and Armstrong<sup>95</sup>, Bretcu argues that information on green marketing has the capacity to influence the individual to reflect and revalue their purchase intentions and move away from overconsumption.<sup>96</sup> However, recognising that consumption is directly tied to other factors, such as global economies which are vastly ingrained in societies across the world, and economic paradigm must also be changed by companies that must focus on sustainable activities in meeting the intellectual, spiritual, and educational needs of the consumers<sup>97</sup>. In line with this acknowledgement, scholars have grasped just how deeply rooted politics is in greenwashing, and acknowledge how different strategies operating in both the short and long term could impact marketing practices (Johnsson<sup>98</sup>, Bretcu<sup>99</sup>).

### 5.3.2. Combating Greenwashing Through Legislative Action

---

<sup>89</sup> Fernandes, J., Segev, S., Leopold, J. K. (2020) (see n. 12) p. 1142.

<sup>90</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>91</sup> Prody, M. J. (2016) (see n. 86)

<sup>92</sup> Naderer, B., Oprea, J. S. (2021) (see n. 88)

<sup>93</sup> Fernandes, J., Leopold, J. K. (2020) (see n. 12)

<sup>94</sup> Bretcu, A. (2019) (see n. 84) p. 51

<sup>95</sup> Sekhon, T. S., Armstrong, S. C. (2020) (see n. 87)

<sup>96</sup> Bretcu, A. (2019) (see n. 84)

<sup>97</sup> Ibid. p. 51.

<sup>98</sup> Johnsson, F., Karlsson, F., Rootzén, J., Ahlbäck, A., Gustavsson, M. (2020) (see n. 82)

<sup>99</sup> Bretcu, A. (2019) (see n. 84)

A larger majority of scholars recognise the importance of hard law that could function as an instrument to combat specific societal issues (Coppolecchia<sup>100</sup>; Parguel<sup>101</sup>; Schmuck<sup>102</sup>; Balaceanu<sup>103</sup>; Fernandes<sup>104</sup>; Rotman<sup>105</sup>; Kusá & Urmínová<sup>106</sup>; Sekhon & Armstrong<sup>107</sup>). In addition, researchers have pushed for advertisers to self-regulate and adhere to ethical and green-friendly guidelines (Fernandes<sup>108</sup>; Kahraman & Kazançoğlu<sup>109</sup>; Johnsson<sup>110</sup>; Kusá & Urmínová<sup>111</sup>). Some see the benefits of making marketing practice more transparent through the collaboration with the evaluation of an<sup>112</sup>. This suggestion pushes for establishing criteria to clarify what is required and should guide improvements to protect and stimulate the green market. Overall, the marketing communication is in need of refinement and environmental claims should mainly focus on high-quality and clear information provided to consumers (Kusá & Urmínová<sup>113</sup>; Kahraman & Kazançoğlu<sup>114</sup>).

When looking at the attitude toward stricter regulations in Europe, harsher sanctions and preventative measures could act as instruments to stimulate friendly competition across member states of the European Union<sup>115</sup>. An article from 2015<sup>116</sup> discusses preventative actions against false environmental statements and takes an example from Norway of a stricter approach to banish green advertising for automotive vehicles, as well as France's prohibition of representing motor vehicles in natural backgrounds. In line with this view, change should be initiated by the government, non-governmental organisations, or other parties that have the credibility to make an impact on change. Dominated by a top-down approach, the belief of these scholars argue that a change for green marketing will not be done solely by the individual or the lone consumer, but rather by the bigger institutions and organs of society. (Kusá & Urmínová<sup>117</sup>; Sekhon & Armstrong<sup>118</sup>)

Despite the overwhelming support for regulating the field of greenwashing, other researchers have raised contradicting voices. One example could be illustrated by Parguel's article which mentions that "*a complete ban on green advertising may be excessive because it may deter*

---

<sup>100</sup> Coppolecchia, K. E. (2010) The greenwashing Deluge: Who will rise above the waters of deceptive advertising. *University of Miami Law Review*. 64(4) 1353-1406

<sup>101</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>102</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018) (see n. 11)

<sup>103</sup> Balaceanu, C. T., Zaharia, D. L., Gruiescu, M., Constantinescu, M., Deák, G. (2020) (see n. 83)

<sup>104</sup> Fernandes, J., Segev, S., Leopold, J. K. (2020) (see n. 12)

<sup>105</sup> Rotman, M. R., Gossett, J. C., Goldman, Hope, D. (2020) Greenwashing no more: The case for stronger regulation of environmental marketing. *Administrative Law Review*. 72(3) 417-443

<sup>106</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>107</sup> Sekhon, T. S., Armstrong, S. C. (2020) (see n. 87)

<sup>108</sup> Fernandes, J., Segev, S., Leopold, J. K. (2020) (see n. 12)

<sup>109</sup> Kahraman, A., Kazançoğlu, I. (2019) (see n. 63)

<sup>110</sup> Johnsson, F., Karlsson, F., Rootzén, J., Ahlbäck, A., Gustavsson, M. (2020) (see n. 82)

<sup>111</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>112</sup> Johnsson, F., Karlsson, F., Rootzén, J., Ahlbäck, A., Gustavsson, M. (2020) (see n. 82).

<sup>113</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>114</sup> Kahraman, A., Kazançoğlu, I. (2019) (see n. 63)

<sup>115</sup> Balaceanu, C. T., Zaharia, D. L., Gruiescu, M., Constantinescu, M., Deák, G. (2020) (see n. 83)

<sup>116</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015). (see n. 3) p. 126.

<sup>117</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>118</sup> Sekhon, T. S., Armstrong, S. C. (2020) (see n. 87)

car makers from making a real effort to improve their cars' carbon footprints"<sup>119</sup>. This concern could be further explained in an article about corporate social responsibility (CSR). Many critics argue for stronger regulations because the behaviour deceives the market and discourages firms from going genuinely green and applying strategies such as CSR. However, instead of discussing the ethical aspect of this problem, the authors explore the outcome of a dynamic market from an economic perspective.<sup>120</sup> The results describe how regulation of greenwashing will most likely make the markets compete on cost and price alone. This could discourage firms from greenwashing practices, which will only benefit the environment when CSR is profit maximising because going green will be an inferior strategy when CSR is profit-reducing. Furthermore:

*“Greenwashing is only profitable when the market is relatively uninformed. Hence, if the market is completely informed, implementing corporate social responsibility is an inferior strategy for firms when it is profit-reducing, leading to a polluting equilibrium. That is, the firms that go green in CSR profit-reducing scenarios will now go brown (not implement CSR practices) because there is no incentive for the brown firm to greenwash when there are no uninformed customers.”<sup>121</sup>*

The article ties back to the importance of education and awareness. Still, raising awareness to prevent greenwashing practices does not necessarily guarantee firms to “go green” because the cause of not doing so is dependent on the high cost that comes with the implementation of CSR. As a proposal, the authors conclude that a more effective strategy for governments is to enhance the incentives for implementing CSR by lowering the cost such as providing subsidies or partnership opportunities to the private sector.<sup>122</sup>

When looking closer at the terminology of greenwashing, other previous studies have proposed a refinement or reorientation of the concept itself (Fernandes<sup>123</sup>, Coppolecchia<sup>124</sup>, Jones<sup>125</sup>). More specifically, how the concept of greenwashing will be redefined will ultimately reflect the values that drive the market. This brings us back to the subject of accountability, cultural diversity, and the practical questions of how to best combat this phenomenon. In the Swedish context, there has been previous legislation enforced to protect the integrity of the customer. For instance, due to the criminal policy in the 1960s, the Swedish government constituted a legal ban on smoking, called the Swedish Tobacco Act<sup>126</sup>. This law has restricted the allowance for where to smoke, the extent of trading, as well as the

<sup>119</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>120</sup> Lee, H. C. B., Cruz, J. M., Shankar, R. (2018) (see n. 36)

<sup>121</sup> Lee, H. C. B., Cruz, J. M., Shankar, R. (2018) (see n. 36) p. 1109.

<sup>122</sup> Ibid.

<sup>123</sup> Fernandes, J., Segev, S., Leopold, J. K. (2020) (see n. 12)

<sup>124</sup> Coppolecchia, K. E. (2010) (see n. 100)

<sup>125</sup> Jones, E., Kennedy, H. E., Johnston, J. (2019) Rethinking Greenwashing: Corporate Discourse, Unethical Practice, and the Unmet Potential of Ethical Consumerism. *Sociological Perspectives*. 62(5) 728-754

<sup>126</sup> SFS 1993:581 Tobakslag.

direct or indirect representation of the tobacco business in media for marketing purposes. The regulations prohibit the marketing practice to use tobacco advertising in magazines, newspapers, and journals, as well as on radio and television.<sup>127</sup> Looking towards the more central concept for this thesis, a motion concerning the regulation of unethical environmental advertising was brought to Parliament. The document<sup>128</sup> proposed how to best prevent the application of false environmental statements in advertisements by formulating more direct and precise criteria for guiding marketing practices and providing the KO with a strengthened supervising authority. However, this motion was rejected by the Parliament.

#### 5.4. Summarising Reflections

When looking at the methodologies applied in the relevant literature, a majority of the academic research found often refers to a quantitative methodology, where the authors can generate and generalise an understanding (Özsoy & Avcilar<sup>129</sup>; Schmuck<sup>130</sup>; Li<sup>131</sup>; Sekhon & Armstrong<sup>132</sup>). Due to the lack of qualitative strategies, only a smaller scope of academic work intends to look for more in-depth knowledge on the subject (Parguel<sup>133</sup>; Bañares<sup>134</sup>; Schoultz & Flyghed<sup>135</sup>). This aim has been found more common in the study of consumers' interests, knowledge, and reasoning in regard to misleading environmental marketing practices (Schmuck<sup>136</sup>; Olk<sup>137</sup>).

Overall, greenwashing literature is consistent when arguing for the growing distinction between the consumer's brand perception and purchasing intentions (Parguel<sup>138</sup>; Vlad & Luca<sup>139</sup>; Waites<sup>140</sup>; Bañares<sup>141</sup>; Hinsch<sup>142</sup>). Most relevant literature also recognise the significance of involving regulators and policymakers to review and develop CSR standards and legislation. For instance, the responsibility for fair and ethical marketing partly lies in corporations taking account for providing full records of their own marketing practices and upholding a

<sup>127</sup> Sohlberg, T. (2019) In favor of tobacco control? Former smokers' support for tobacco policies. *Nordic Studies on Alcohol and Drugs*. 36(6) p. 198.

<sup>128</sup> Riksdagsförvaltningen (2020) Falska miljöpåståenden i reklam. Otion 2020/21:3067 av Amanda Palmstierna (MP). [website accessed 2022-01-25]

[https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/falska-miljopastaenden-i-reklam\\_H8023067](https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/falska-miljopastaenden-i-reklam_H8023067)

<sup>129</sup> Özsoy, T., Avcilar, M. Y. (2016) (see n. 57)

<sup>130</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018) (see n. 11)

<sup>131</sup> Li, G., Yang, L., Zhang, B., Li, X., & Chen, F. (2021) (see n. 8)

<sup>132</sup> Sekhon, T. S., Armstrong, S. C. (2020) (see n. 87)

<sup>133</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>134</sup> Bañares, A.B., Silva, M.F., & Rodríguez, S.R. (2021) (see n. 40)

<sup>135</sup> Schoultz, I., Flyghed, J. (2020) (see n. 52)

<sup>136</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018) (see n. 11)

<sup>137</sup> Olk, S. (2021). (see n. 10)

<sup>138</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>139</sup> Vlad & Luca. (2020) (see n. 4)

<sup>140</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) (see n. 37)

<sup>141</sup> Bañares, A.B., Silva, M.F., & Rodríguez, S.R. (2021) (see n. 40)

<sup>142</sup> Hinsch, C., Tang, Y., Lund, J. D. (2021) (see n. 38)

transparent business. (Schoultz & Flyghed<sup>143</sup>; Jones<sup>144</sup>). This falls in line with the previously mentioned work preferring advertisers and companies to self-regulate and set stricter guidelines for themselves in their marketing practices (Fernandes<sup>145</sup>; Kusá & Urmínová<sup>146</sup>; Kahraman & Kazançoğlu<sup>147</sup>; Johnsson<sup>148</sup>).

Other interventions operating to counteract greenwashing have pushed for governmental efforts operating on a top-down approach (Coppolecchia<sup>149</sup>; Parguel<sup>150</sup>; Lee<sup>151</sup>; Balaceanu<sup>152</sup>; Rotman<sup>153</sup>; Kusá & Urmínová<sup>154</sup>; Sekhon & Armstrong<sup>155</sup>). This concerns stricter legislation and mandatory policies applied on a national level, however, awareness campaigns have also been suggested to extend the knowledge base for ensuring a better understanding of environmental claims and to locate interactive tools for preventing greenwashing.<sup>156</sup>

Furthermore, there is a consensus about the need for further education on how to combat greenwashing, both on individual and national levels (Prody<sup>157</sup>; Bretcu<sup>158</sup>; Kahraman & Kazançoğlu<sup>159</sup>; Johnsson<sup>160</sup>; Balaceanu<sup>161</sup>). In addition, there is academic work that recognise greenwashing as an active problem within marketing (Waites<sup>162</sup>; Schoultz & Flyghed<sup>163</sup>; Bañares<sup>164</sup>), where a majority point out the impacts on an individual level (Özsoy & Avcilar<sup>165</sup>; Schmuck<sup>166</sup>; Kusá & Urmínová<sup>167</sup>; Olk<sup>168</sup>). However, there is a lack of more precise suggestions for how to implement those same interventions, which is most likely the result of the low attention that this subject previously has had within the academic field.

---

<sup>143</sup> Schoultz, I., Flyghed, J. (2020) (see n. 52)

<sup>144</sup> Jones, E., Kennedy, H. E., Johnston, J. (2019) (see n. 127)

<sup>145</sup> Fernandes, J., Segev, S., Leopold, J. K. (2020) (see n. 12)

<sup>146</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>147</sup> Kahraman, A., Kazançoğlu, I. (2019) (see n. 63)

<sup>148</sup> Johnsson, F., Karlsson, F., Rootzén, J., Ahlbäck, A., Gustavsson, M. (2020) (see n. 82)

<sup>149</sup> Coppolecchia, K. E. (2010) (see n. 100)

<sup>150</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>151</sup> Lee, H. C. B., Cruz, J. M., Shankar, R. (2018) (see n. 36)

<sup>152</sup> Balaceanu, C. T., Zaharia, D. L., Gruiescu, M., Constantinescu, M., Deák, G. (2020) (see n. 83)

<sup>153</sup> Rotman, M. R., Gossett, J. C., Goldman, Hope, D. (2020) (see n. 105)

<sup>154</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>155</sup> Sekhon, T. S., Armstrong, S. C. (2020) (see n. 87)

<sup>156</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018) (see n. 11)

<sup>157</sup> Prody, M. J. (2016) (see n. 91)

<sup>158</sup> Bretcu, A. (2019) (see n. 89)

<sup>159</sup> Kahraman, A., Kazançoğlu, I. (2019) (see n. 84)

<sup>160</sup> Johnsson, F., Karlsson, F., Rootzén, J., Ahlbäck, A., Gustavsson, M. (2020) (see n. 82)

<sup>161</sup> Balaceanu, C. T., Zaharia, D. L., Gruiescu, M., Constantinescu, M., Deák, G. (2020) (see n. 88)

<sup>162</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) (see n. 41)

<sup>163</sup> Schoultz, I., Flyghed, J. (2020) (see n. 57)

<sup>164</sup> Bañares, A.B., Silva, M.F., & Rodríguez, S.R. (2021) (see n. 42)

<sup>165</sup> Özsoy, T., Avcilar, M. Y. (2016) (see n. 62)

<sup>166</sup> Schmuck, D., Matthes, J., & Naderer, B. (2018) (see n. 11)

<sup>167</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>168</sup> Olk, S. (2021). (see n. 10)

## 6. Methodology

The standpoint which will be adopted in this research is *phenomenological epistemology*. Typically applied within the social sciences, this approach brings forth an overarching perspective encompassing strategies for research while putting an emphasis on subjectivity, descriptions, and interpretations, which is most often associated with a qualitative research approach<sup>169</sup>.

Furthermore, the qualitative strategy relies on rich information that provides meaning to a natural environment<sup>170</sup>. In light of the ambition to understand the practice of law based on others' experiences, this method has been found naturally relevant for fulfilling the purpose of the thesis. Tying the aim of the research to phenomenological epistemology, there is a focus on interpreting truth and the enterprise of knowledge production in the academic field based on the information of the lived experience. As a result, the human intellect is recognised as world dependent and, the researcher finds themselves “*always and already ‘thrown’ into a world with which they are practically involved*”<sup>171</sup>.

The qualitative approach can take various forms in the generation of relevant data, however, in this research, it will be applied to qualitative interviews. This strategy allows the researcher to focus on the instrument of storytelling and analyse the perception of another. Recognising this approach as time-consuming, it is in relation to the complexity of the subject of deceptive environmental statements, an approach that contributes to a contextual understanding and description. Tying back to the epistemological standpoint, it is important for the researcher to interpret and reflect on this information as a piece of lived experiences described by a primary source<sup>172</sup>. With regard to the time frame of the research process, the more suitable way of executing qualitative studies will be to conduct semi-structured interviews. This format follows a predetermined list of questions and themes relevant for answering the research questions.<sup>173</sup> Furthermore, characterised by a less controlled format, semi-structured interviews allow the researcher more flexibility, but also the informant the opportunity to ask questions of clarity during and after the interview. As a result, this will leave space for open-ended answers where the interviewee may elaborate more freely on points of interest<sup>174</sup>.

---

<sup>169</sup> Denscombe, M. (2018) Forskningshandboken. För småskaliga forskningsprojekt inom samhällsvetenskaperna. *Studentlitteratur*. 3(3) p. 143-144.

<sup>170</sup> Bryman, A. (2014) Samhällsvetenskapliga metoder. *Liber*. 2(6) p. 373.

<sup>171</sup> Jackson, T. P. (2016) The Conduct of Inquiry in International Relations. Philosophy of science and its implications for the study of world politics. *The New International Relation Series*. Routledge. 2. p. 153.

<sup>172</sup> Bryman, A. (2014) (see n. 172) p. 46x

<sup>173</sup> Denscombe, M. (2018) (see n. 170) p. 267.

<sup>174</sup> Ibid. p. 175.



## 6.1. Selection Process

Based on the research questions presented in the previous chapter, a specific set of criteria will limit the selection of interviewees to legal actors and individuals representing relevant knowledge both from within and outside of the legal justice system. Important to the generation of empirical material is that these individuals, regardless of their profession, will hold the knowledge and an understanding of the MFL (SFS 2008:486 10:2§) and its application in practice. Naturally, this highlights a national limitation where this research centres on the application of Swedish law and its praxis. To broaden the scope of information relating to the practice of deceptive environmental marketing, I have interviewed lawyers, legal advisors, and judges that have or currently are working within the PMD. Furthermore, I have reached out to lawyers representing the KO, the Swedish Advertising Ombudsman (RO), as well as scientists and scholars who can relate their own work and knowledge to the legal field of deceptive environmental marketing. This will include the main stages that the law applies to when enforced, making their different perspectives on the same subject even more interesting in terms of legal consciousness of the MFL and further development for a stronger rule of law. Contact with the interviewees was established through email where some contacts referenced me to other individuals that they deemed more relevant for providing information on the subject. This process could be interpreted as a snowball effect where the first contact generated a wider range of contacts, creating an expanded network of potential participants.

However, due to the current timing where society was opening up again after harsher waves of the Covid-19 pandemic, I found it more appropriate to not hold the interviews in person. The informants were employed in KO, RO, PMD, various legal firms, and universities, and had previous experience in business marketing as well as in the legal and political context surrounding it. Seven of the interviews were conducted over the telephone while one preferred to meet using the Microsoft Office video platform. These interviews were conducted over the time span of three weeks and were from 45 minutes to one hour long. To avoid having the dialogue steer out of context, I was on occasion required to circulate back to the main focus to cover all themes of importance in order to answer my research questions. These themes focused on their experience of greenwashing, the potential obstacles in the present implementation of the law, and the additional changes required to further limit the practice of greenwashing in Sweden.

One of the first questions asked is how they interpret the current regulation that prohibits deceptive environmental claims in marketing, what they recognise is the ambition behind it, and whether this regulation has been successful. In relation to the apparent increase of environmental claims in Swedish marketing, other questions concern the apparent gap between what the law states and how the law is applied. *According to your experience, has this gap between written law and the law in practice been discussed in your legal environment?* Another question could be formulated in a somewhat problematic sense where

it gives the interviewees the opportunity to reflect and think critically on their own experiences of the practice of law: *do you experience that there is any specific problem in the context of legal matters that circulate deceptive environmental claims in advertising? If yes, how could that recognised problem be avoided?* All of the interviews were with the permission of the interviewee audio recorded for further transcription and analysis. (See Appendix A).

## 6.2. Thematic Analysis

Thematic analysis is one of the methods which is most often applied when doing qualitative studies and is a strategy that has been adopted in this research. The National Centre for Social Research describes it as the practice of establishing central themes and subthemes of recurring data to synthesise relevant information sorted into different organised variables.<sup>175</sup> Thematic analysis has been described as an “*accessible, flexible, and increasingly popular method of qualitative data analysis. (...) it provides the qualitative researcher with a foundation in the basic skills needed to engage with other approaches to qualitative data analysis*”<sup>176</sup>. Relating it to the aim of this thesis, it allows the researcher to not only recognise and make sense of experiences but also identify patterns of meaning significant to answer the research questions.

While qualitative interviews naturally offer an extended amount of material, it is important to not recognise all information as necessary to answer the research questions. Therefore the first limitation of processing data is to naturally exclude information that is not of interest to the research questions. When reading the information from the interviews, relevant information will be marked according to different codes and categorisations in order to more easily identify suitable information. Different codes could divide information into various argumentations, metaphors, valuing words, or the use of specific concepts that responds well to the problem which questions environmental claims within the context of deceptive marketing. During the process of analysis, a reflexive standpoint will be applied for investigating the material to question whether any information catches my attention, why that is, whether there are any interesting connections between different data, and if there is any data that was unexpected.

---

<sup>175</sup> Bryman, A. (2014) (see n. 170) p. 528.

<sup>176</sup> Braun, V. & Clarke, V. (2012) Thematic analysis. In H. Cooper, P. M. Camic, D. L. Long, A. T. Panter, D. Rindskopf, & K. J. Sher (Eds), *APA handbook of research methods in psychology, Vol. 2: Research designs: Quantitative, qualitative, neuropsychological, and biological* (pp. 57-71). Washington, DC: American Psychological Association. p. 2.

### 6.3. Validity, Reliability, and Generalisability

I want to acknowledge the generalisability of the results for this research study where there is no ambition to make any wider claims in terms of extending the significance of the generated data to processes and voices outside of this study. Findings generated by qualitative studies are often constrained by the context in which it was gathered and are difficult to replicate, quantify, and generalise<sup>177</sup>. This implies that the empirical data generated in this research may only be representative of the collected experiences that have been actively shared in the eight interviews. However, the result may indicate further research or provide informative reasoning in terms of deceptive marketing practices. On a different note, I want to acknowledge the obvious obstacle regarding the translation of languages. While a majority of the information has been collected in the Swedish language, an emphasis is put on the translation process to be done carefully. Furthermore, there may be words or concepts that have no direct translation, which puts an even bigger responsibility on the researcher to apply meaning to a term to the best of their ability.

Although there is no general consensus regarding what qualitative research entails in detail, the process of applying a qualitative approach is often used in research and has long been advocated for within various academic fields<sup>178</sup>. While qualitative research in practice cannot be described in a lesser number of concrete steps, there are scholars who use this notion to their advantage by applying a research strategy where flexibility is motivated as a contributing benefit for ensuring validity, reliability, and credibility throughout the research project.<sup>179</sup> This calls for a higher level of reflexivity in the research, something that will be taken into consideration in this research as well. For instance, it is important to establish a foundation for what relevant concepts such as these are interpreted. Reflexivity will also become important when avoiding the influence of social biases, external as well as internal. Hence, a strategy to avoid misconceptions and biases is for both parties in the dialogue to ask questions to clarify or follow up on unclearness, something that the chosen methodological format allows.

### 6.4. Ethical Considerations

With the ambition to adhere to ethical considerations, I not only recognise the standards of doing academic research but also recognise the sensitivity of the subject when including information provided by other individuals. Some scholars have described the notion of ethical considerations as somewhat of an academic reflex or a bureaucratic nuisance. “*However,*

---

<sup>177</sup> Bryman, A. (2014) (see n. 170)

<sup>178</sup> Ibid.

<sup>179</sup> Ibid. p. 562.

when done correctly, ethical reviews can be extremely useful when doing research”<sup>180</sup>. This quote recognises how ethics induces a necessary practice to uphold an academic standard in the process of conducting research. Established as significant principles for when doing academic research, especially when conducting fieldwork, the participant’s rights for anonymity, confidentiality, voluntary informed consent, data ownership, and release are highly important<sup>181</sup>. These principles fall in line with the regulations implemented in the Swedish law and *Ordinance (2018:1879) with instructions for the Ethics Review Authority*, inspiring this research to uphold an ethical code as would have been expected in any higher academic work.

While this research builds upon interviews with (a majority of) individuals working for authorities, institutions, and companies, it could very well be the case that the informants prefer to have their personal information concealed. Asking individuals to take part in an interview for a research project is “equivalent to requesting them to share with the world their insight and perspective”<sup>182</sup>. Hence, it is important to establish a mutual understanding of informed consent. Upon the first contact with the participants, the participants were recruited through email contact where I presented the purpose of this study to then ask about a potential interest to participate in an interview. With the expressed interest in partaking, the interviewees were provided information about their own rights in terms of ethical consideration. Based on a form of informative consent (see Appendix B), I could establish a common ground of understanding of the procedure, the expectations of their participation, and their own rights if partaking in the study. This information included elements of interest for the research, such as the purpose of the interview, their own voluntary participation, and the right to have their information concealed. Another principle that was acknowledged, refers to how the data generation is only to be used for the same research project and must not be shared as a source for other forms of research<sup>183</sup>. In the form, the participants verbally gave their consent to having their interviews recorded, transcribed, reviewed, and then destroyed after they had fulfilled the purpose of the study. Moreover, I have respected the participant’s wishes to use non-specific titles to anonymise their identity.

---

<sup>180</sup> Blundo, G. (2007) Hidden acts, open talks. How anthropology can “observe” and describe corruption. In: M. Nuijten and G. Anders, eds. *Corruption and the secret of law: A legal anthropological perspective*. Farnham: Ashgate. p. 18.

<sup>181</sup> Lähdesmäki, T. (2020). *Challenges and Solutions in Ethnographic Research: Ethnography With a Twist*. [Elektronisk resurs] (1st ed.). Routledge. p. 72.

<sup>182</sup> Lähdesmäki, T. (2020) (see n. 181)

<sup>183</sup> Bryman, A. (2014) (see n. 170) p. 132.

## 7. Theoretical Framework

### 7.1. Legal Consciousness

*“If one pauses to consider the issues being addressed, it would appear that no theory of law could be considered complete without some explicit treatment of the phenomena of legal consciousness.”*<sup>184</sup>

This quote paves the way for the recognition of a more in-depth element of legal consciousness (LC) that contributes to the function of legality in terms of one’s awareness of legal systems and the subjective experience of law. The use of the theoretical framework in academic work has increased in the last few years. It has been adopted by scholars based in various disciplines, where studies have focused on issues of abortion (Wilson<sup>185</sup>), sexualities (Oswald & Kuvalanka<sup>186</sup>; Hull<sup>187</sup>), as well as migration (Abrego<sup>188</sup>) informal economies (Urinbojev & Vargas<sup>189</sup>), and ombudsmen (Gill & Greutzfeldt<sup>190</sup>). These few examples suggest that if anything, socio-legal scholarship on LC has gathered pace (Hertogh<sup>191</sup>; Halliday<sup>192</sup>; Butler & Grier<sup>193</sup>).

### 7.2. Typologies of Legal Consciousness

As the experience of the law shed light both upon legal positions and the under-explored LC of ordinary people, the theorist Susan Silbey meant that this process needs to be further studied. The LC was explained as a product of a legal process that “*draws its hegemonic power from the existence of competing and oppositional cultural narratives about law’s*

---

<sup>184</sup> Butler, W. E., Grier, P. T. (2012) Legal Consciousness: Some Comparative Legal Aspects, Legal Consciousness, and the Legal of I. *Journal of Comparative Law*, 7(1) p. 40.

<sup>185</sup> Wilson, J. C. (2011). Sustaining the State: Legal Consciousness and the Construction of Legality in Competing Abortion Activists’ Narratives. *Law & Social Inquiry*, 36(2), 455–483.

<sup>186</sup> Oswald, R. F., & Kuvalanka, K. A. (2008). Same-Sex Couples: Legal Complexities. *Journal of Family Issues*, 29(8), 1051–1066. <https://doi-org.ludwig.lub.lu.se/10.1177/0192513X08316274>

<sup>187</sup> Hull, K. E. (2016). Legal Consciousness in Marginalized Groups: The Case of LGBT People. *Law & Social Inquiry*, 41(3), 551–572.

<sup>188</sup> Abrego, L. J. (2019). Relational Legal Consciousness of U.S. Citizenship: Privilege, Responsibility, Guilt, and Love in Latino Mixed-Status Families. *Law & Society Review*, 53(3), 641–670.

<sup>189</sup> Vargas Falla, A. M., & Urinbojev, R. (2015). Everyday Forms of Resistance to the Law: An Ethnographic Study of Street Vendors in Bogotá. *Droit et Société*, 91(3), 623–638.

<sup>190</sup> Gill, C., & Creutzfeldt, N. (2018). The “Ombuds Watchers”: Collective Dissent and Legal Protest Among Users of Public Services Ombuds. *Social & Legal Studies*, 27(3), 367.

<sup>191</sup> Hertogh, M. (2018) Nobody’s Law. Legal Consciousness and Legal Alienation in Everyday Life. *Springer Link*. p. 469.

<sup>192</sup> Halliday, S. (2019) After Hegemony: The varieties of legal consciousness research. *Social and Legal Studies*. p. 1-2.

<sup>193</sup> Butler, W. E., Grier, P. T. (2012) (see n. 184) p. 40.

*character*”<sup>194</sup>. Together with her colleague Patricia Ewick, Silbey developed a three-parted typology for how to better comprehend legality. In this perspective, law gains legitimacy in society as a result of the interplay between two of the three common narratives: (1) before the law: (2) with the law: (3) against the law.<sup>195</sup>

*Before the law* perceives the law as an abstract entity, removed from the everyday experiences of life. Understood as an autonomous, objective, and rational system of known rules or procedures, individuals believe the law to be neutral. The second classification of LC is related to individuals who stand with the law and perceive the legal system as “*an arena of contest*” where victory depends on one’s legal proficiency. Here, the ability to acquire lawyers and navigate in the legal field is the most important factor in determining the outcome of the legal game. The third classification is referred to as *Against the law* where the law is viewed as a commodity of power, struggling to effectively resolve legal conflicts and serve justice. This slow-moving mechanism is further described as inaccessible to everyday citizens where the law as a product of subjective power continuously fails to provide for the less powerful.<sup>196</sup>

In addition to the application of Ewick and Silbey’s understanding of LC based on their classification model, I will also use Fritsvold’s concept of *Under the law*. Rooted in a collective identity of “*deep ecology*”, this concept of legal pluralism which Fritsvold applies in the context of radical environmentalists, describes how a corrupt social order has produced a corrupt system. This classification aims to broaden the previously mentioned variations of consciousness by presenting a view on legitimacy where law masks the illegitimacy of the existing order while actively reproducing inequalities.<sup>197</sup>

*“Against the Law observes that the law often fails as an asset to achieve justice; Under the Law views this failing as intentional and perceives the law as an active agent of injustice. (...) They do not stand Before the Law, work With the Law, or engage in the modest resistance of those Against the Law. Rather, [these individuals] often engage in flamboyant acts of instrumental lawbreaking for the purpose of symbolic or actual subversion. They purposefully, and often very visibly, break the law and openly challenge the legitimacy of law and the social order.”*<sup>198</sup>

### 7.3. Theoretical Reflections

---

<sup>194</sup> Halliday, S. (2019) (see n. 192) p. 5.

<sup>195</sup> Ibid. p. 6.

<sup>196</sup> Fritsvold, D. E. (2009) Under the law: legal consciousness and radical environmental activism. *Law & Social Inquiry*. 34(4) p. 804-805.

<sup>197</sup> Ibid. p. 806.

<sup>198</sup> Ibid. p. 807.

In spite of the widespread adoption of the concept, this framework has been recognised for lacking a unitary definition (Engel & Chua<sup>199</sup>; Horák<sup>200</sup>). This notion begs for a clear definition of “law” and “consciousness”, but it does also call for answering basic methodological questions that separate different approaches to LC. Much like the concept of consciousness, the four classifications mentioned above may not necessarily fit one individual’s complete attitude and behaviour towards legality. Instead, an individual’s LC is multifaceted and at times even contradictory<sup>201</sup>. In a systematic review, Sam Halliday<sup>202</sup> discusses how different approaches could be better understood with the help of questions such as: Why should we study LC? What is meant by it and whose LC is being explored? These questions will be answered in line with the limitations and focus of the study.

Relating to Ole Hammerslev’s thoughts on the legal profession as the target for research that intends to examine the relationship between the elite, power, law, and society in general<sup>203</sup>, this research acknowledges how an individual as a subject for this qualitative study may vary in their response where they, on the one hand, express their own values as private actors, and on the other hand, generate information that is more in line with the expectations of the institutions they represent. Given this notion, an individual may move between the theoretical classifications applied in this research, which is why they will be applied in regard to specific arguments and expressions.

#### 7.4. Relevance to the Subject

Borrowing the description from Reza Banakar, the sociology of law encompasses the “*interdisciplinary field of research which embraces a host of disparate and seemingly irreconcilable perspectives and approaches to the study of law in society*”<sup>204</sup>. While it has been regarded as a source of theoretical pluralism and methodological innovation, it has at the same time been criticised for causing theoretical fragmentation and eclecticism in research. However, it has been found that the production of knowledge “*employs special theories and applies social scientific methods to the study of law, legal behaviour, and legal institutions to describe and analyse legal phenomena in their specific social, cultural, and historical contexts*”<sup>205</sup>. Sociology of law could also be referred to as the study of norms which in comparison with legal science has a focus on the operational side of legal rules and regulations.<sup>206</sup>

---

<sup>199</sup> Chua, J. L., Engel, M. D. (2019) Legal Consciousness Reconsidered. *Annual Review of Law and Social Science*. 15(1) p. 344.

<sup>200</sup> Horák, F., Lacko, D., Klocek, A. (2021) Legal Consciousness: A Systematic Review of its Conceptualization and Measurement Methods. *Anuario de Psicología Jurídica*. 31(1) p. 17.

<sup>201</sup> Fritsvold, D. E. (2009) (see n. 196) p. 810.

<sup>202</sup> Halliday, S. (2019) (see n. 192) p. 2.

<sup>203</sup> Banakar, R., & Travers, M. (2005). *Theory and method in socio-legal research*. Hart Pub. p. 325

<sup>204</sup> Banakar, R. (2014) Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity. *Springer International Publishing AG*. p. 2.

<sup>205</sup> Ibid. p. 2.

<sup>206</sup> Hydén, H. (2021) Sociology of Law as the Science of Norms. *Routledge*. p. xi.

In line with this philosophy, Anne Griffiths describes how scholars today learn to review legal pluralism where the law has developed into something more spatialised in terms of transnationalisation of personal, economic, communicative, and religious relations that have given rise to conditions of legal flux.<sup>207</sup> Furthermore, globalisation has blurred the lines between international, foreign, and domestic law.<sup>208</sup> In this process of doing law, we can illuminate how *“the position of professionals in the business or legal sphere who may draw selectively on the laws of multiple jurisdictions to create transnational legal constructs designed to undermine public interest to meet their business needs in ways that may subvert national regulations”*<sup>209</sup>. Such activities raise questions about the ethics and viability of CSR. Relating to the Swedish regulation of greenwashing, we can take notice of how the MFL is influenced by legal rules emanating from different levels, such as European laws and directives, as well as Nordic guidelines and Swedish initiatives. Griffith further notes how environmental degradation has been confined to dealing with indigenous communities and the protection of their rights and territories. The legal systems must now open the scope to acknowledging the interrelationship between environmental health and human rights in general where the state can take action against these types of violations in a broader arena.<sup>210</sup>

Fritsvold complements this problem by raising attention to a distinction between the written form of environmental law and the law in practice. He argues that even though these laws are frequently violated, they are rarely prosecuted. *“And sometimes the laws are just not written in a way that is effective in protecting the environment”*<sup>211</sup>. Furthermore, this integrated outcome resulting from a long historic socio-political debate has emanated in this gap, where we instead should aim to examine the *“interplay between law as a system of legal rules, practices, doctrines, and decisions, on the one hand, and as a form of experiences, specific sphere of social action and an institutionally-based form of socio-cultural practices, on the other”*<sup>212</sup>. With this as a starting point, this research strives to take part of the information that is presented by the empirical material indicating underlying structures, values, and norms, that define what law is experienced today. In turn, this creates an opportunity to study norms applied in the legal context where social constructions operating in both the societal and the legal fields of society can contribute to further motivating how the theory of LC is of socio-legal relevance for this research.

The typologies described above illustrate a model of how to view law. However, in order *“to know the uses of the law, we need to know not only how and by whom the law is used, but also when and by whom it is not used”*<sup>213</sup>. Furthermore, connected to the Swedish context, I will

<sup>207</sup> Banakar, R., Travers, M. (2005) (see n. 203) p. 133-139

<sup>208</sup> Banakar, R. (2014) (see n. 204) p. 270-271.

<sup>209</sup> Ibid. p. 271.

<sup>210</sup> Ibid. p. 281.

<sup>211</sup> Fritsvold, D. E. (2009) (see n. 196) p. 811.

<sup>212</sup> Banakar, R. (2014) (see n. 204) p. 54.

<sup>213</sup> Ewick, P., Silbey, S. S. (1991-1992) Conformity, Contestation, and Resistance: An Account of Legal Consciousness Symposium on Feminist Critical Legal Studies and Postmodernism: Part One: A Diversity of Influence. *New England Law Review*. 26(3) p. 737.



reach out to individuals with varied knowledge of the law, meaning that the LC will be subjective and dependent on the understanding of and previous experience of the law. However, there is a risk that these perspectives could reflect an idealisation of what these individuals believe law ought to be, rather than what the law in fact is experienced as in practice. Even though this risk is harder to control, it is something to have in mind throughout the generation of the data, especially in the formulation of the research question.

Whilst LC has become more recognised as a theoretical framework and applied in more research, it has, as previously mentioned, rarely been applied in the context of green justice. Neither has the approach been used for research focusing on greenwashing. This makes the application of the concept all the more interesting. Not only is LC a broad framework that could provide a qualitative understanding of the dimensions of which law operates, but in this specific context, we could explore the breadth of sociology of law where it has a significant impact on environmental topics relevant to current political discussions of climate change, marketing, and corporate social responsibility. More specifically, this framework could help shed light upon the experience of the increase of deceptive environmental marketing and the prohibiting strategies applied to uphold a strong MFL.

## 8. Compilation of Empirical Data

In the following chapter, I will present the empirical result generated from the qualitative interviews. All interviews have been conducted in Swedish and have for this research been translated to English. To make a distinction between the material and answer the research questions, three themes will guide the presentation of the material focusing on the experience of greenwashing, the potential obstacles identified in the implementation of the law, and, if any, additional changes required to further limit the practice of greenwashing in Sweden.

The informants will be addressed based on their profession and their statements will be further clarified and discussed in relation to the theoretical framework of legal consciousness.

Pseudonym	Affiliation	Duration of interview
Informant A	Holds a high position on a management level within an important institution combating Greenwashing. Educated in law.	40 minutes
Informant B	Employed as an attorney-at-law and legal counsel at a law firm. Educated in law.	35 minutes
Informant C	Lawyer employed as a senior associate at a law firm. Educated in law.	25 minutes
Informant D	Lawyer employed at an institute combating greenwashing. Educated in law.	50 minutes
Informant E	Planner and strategist in sustainability communications.	45 minutes
Informant F	Lawyer employed at a law firm. Educated in law.	35 minutes
Informant G	Research director for sustainability research with previous employment in PMD. Educated in law.	80 minutes
Informant H	Creative leader and spokesperson in market law issues, Greenpeace Nordic. Educated in Market Law.	40 minutes

In the table above (see Appendix C), you can find information about the informants participating in the study. Each participant has given the pseudonym “Informant” followed by a letter for identification. The additional columns provide information about the individual’s affiliation and the duration of the interview. The first Informant (A) holds a high position on a management level within an important institution combating greenwashing. The second interviewee, Informant B, is employed as an attorney-at-law and legal counsel at a law firm. The third interviewee, Informant C, is a lawyer employed as a senior associate at a law firm. Informant D is also a lawyer but is employed at an institute combating greenwashing. Informant E is a planner and strategist in sustainability communications, while Informant F is a lawyer employed at a law firm. Informant G is a research director for sustainability research

with previous employment in PMD, and, lastly, the creative leader and spokesperson in market law issues for Greenpeace Nordic is referred to as Informant H.

## 8.1. The Legal Consciousness and Legal Norms

### 8.1.1. The Experience of Combatting Greenwashing

The results show that when asking the informants what they view as greenwashing, all refer to the definition used in the Marketing Act. Exemplified by Informant C, the MFL could be described as bisectional where the law on the one hand creates a framework for fair marketing practice and, on the other hand, protects the consumer's interest from being manipulated into purchasing a product or service based on false information. The results further show that when looking closer at how environmental marketing is regulated, there is a presumption that a statement is deceptive when it lacks specific information. This legal norm is regulated in the tenth paragraph of the MFL which specifically mentions claims and statements that could have an impact on health and the environment. The informants highlight MFL's two demands on marketing practices demanding marketing to be clear and truthful in its formulation. For instance, an advertisement could claim that a product is climate-friendly, however, this concept is according to legal standards vague and nonspecific. It is, therefore, necessary to define what is insinuated. As Hydén<sup>214</sup> emphasises, the sociology of law can be referred to as the study of norms, which has a focus on the operational side of legal rules. Relating this line of thinking to the result and legal consciousness, there is a general high legal awareness in terms of legal norms. In other words, by definition, the informants share an understanding of the legal practice, which influences their view on greenwashing as a legal issue.

When describing how greenwashing is regulated in Sweden, most informants refer to the overarching *principle of custom* for marketing practices. This is described as rooted in moral values and explained as a somewhat general principle. However, in Informant B's experience with legal cases of greenwashing, the common case often looks to the tenth paragraph. This broader principle of customs is a wide concept that must be filled with some form of content and is where legal actors who work with this law may glance at the guiding principles of the ICC. This organisation has presented a framework for Environmental Marketing Communications that, in response to the growing complexity of "green" claims, provides a list of concepts that could be important to define. This could for instance concern concepts such as "reusable", "energy-efficient", and "decomposable". When asking the question of how the informants interpret and experience the regulations about deceptive environmental marketing, Informant B explains that:

---

<sup>214</sup> Hydén. H. (2021) (see n. 206)

*“The main element of the intention behind these regulations is, obviously, to protect the consumer’s interest. The aim of the law is to create sound prerequisites for healthy competition and appropriate competition. This concerns both businesspeople as well as the relationship between a company and the consumer. The consumer should not be deceived if I am allowed to express myself simply. That is really the keynote of the framework.”* (Informant B)

The interpretation explained above concerns companies’ practice of applying statements in their marketing that are neither verified nor indicated on. In other words, the informants describe how marketing does not allow the use of vague statements where other parties are led to believe that this is acceptable behaviour. Informant G mentions their own involvement in a previous court case about the Swedish grocery store Coop AB that was reported and brought up in the Patent and Market Court. They explain how the company’s campaign could be criticised on multiple accounts.

*“What stood out was the film. (...) In this specific case, they argued that the food was poisonous if it is not harvested in a specific way. And you cannot say that- then you should prove that. It is very serious to say that everything that is not organic is poisonous but at the same time, most of these statements are fuzzy.”* (Informant G)

This informant argues that if one is to argue that their product is “*good for the environment*”, then one has to specify in what way this is true. Informant A exclaims that a statement does not necessarily need to be false, instead, it can be truthful but due to its amplification in relation to the product in general it becomes deceiving for the consumer.

While the number of reports is too great to examine, the institution has to prioritise what violations are more significant and create a case for supervision. In the case of unclarity, the errand is handed over to the Konsumentombudsmannen (KOn), who raises the question in court. The attorney may insist on specific legal sanctions, such as a market disruption fee, imposition to provide information on fines, or the prohibition under penalty of a fine. Moreover, Informant C explains that prohibition fines are frequently applied sanctions in court cases that concern deceptive environmental claims. This penalty is almost always applied and could imply 100-200 thousand per violation and has been described as an effective strategy to deter future violations when multiple points of violations could be identified on one accord. Another institution focusing on deceptive environmental statements is the RO. The results describe how many companies are tested after being recommended for evaluation, according to RO’s set of regulations. While this institute operates in reference to the same principle that MFL consists of, it does not hold any legal authority and their sanctions are more of the social kind where the convicted cases are published on their website, on social media, and used as guiding documents for future praxis.

While the law can be analysed in different ways, in this thesis we can highlight how, according to the experiences shared by the informants, we can see that all informants can reference the law as it is formulated in the books. The informants with a juridical background stood out with more detailed answers when referring to the formulation of the law. This can be identified with a generally high legal consciousness that prioritises legal norms and chooses to define greenwashing as a socially constructed concept within the socio-legal field. Compared to the background chapter presenting deceptive environmental claims according to the MFL, the descriptive statements above correspond well to the law in written form. However, this does not necessarily have to reflect their LC. Moreover, this could have less to do with how the law is applied or what they view as legitimate and more to do with how one can describe this specific law. This will be more evident in the discussion below where opinionated questions will be presented and related to the chosen theoretical framework.

### 8.1.2. *The Nature of Legal Norms*

*“The Swedish Marketing Act is fantastic because it is technique neutral. It does not matter which media you look at, we can make use of it in all possible contexts.” (Informant A)*

In this quote, Informant A reflects on her view on the regulation related to environmental marketing. This is not an unpopular opinion among the interviewees. Informant C contributes to the same argument by highlighting how this feature of the law reflects the breadth of marketing, where it can be found relevant in media such as the internet, video, or television. Reconnecting to the previous research<sup>215</sup>, we can note how companies that invest in green marketing can yield immediate benefit by communicating signals to legitimise their own business. However, these signals could be used to communicate messages based on misleading or false premises.

If the MFL, due to its extensive application, has been recognised for its flexibility, other aspects have been recognised for its difficulties. Informant E provides an example to better explain the complexity of marketing influence.

*“If a business owner publishes a campaign with the intention to target a specific group of people, the business owner has to be sure that these individuals are the only recipients who will be subject to the marketing. This could be through an email or published in a specific magazine which only reaches out to a specific group of subscribers.” (Informant E)*

---

<sup>215</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) (see n. 37)

With this quote, Informant E describes how if the information contains arguments that could be viewed as false or deceptive in association with the environment, it is up to the legal examination to decide on whether and how the average consumer has been misled. It could therefore be difficult to decide on what impact information is if it was published in a media that reached multiple targeting groups, such as an advertisement in a bigger newspaper. Informant B follows up with reflections from their own experience with the legal examination, pointing out the significant principle of burden of proof. They explain that the nature of this legal norm differentiates from other legal areas and could therefore be interpreted as a “reversed” principle, entailing the assumption that the actor who expressed themselves in a deceptive manner has to support the same information in relation to what the average consumer is expected to comprehend. Reflecting on these results, the law is perceived as just and functioning. However, the result also makes a point of how different actors can choose different statements to their marketing practices in order to sell their products and services. By reflecting the law as an arena of contest where different actors have different access to legitimacy depending on what legal rules they apply, this informant can be identified with a *With the law* consciousness. In this analytical reasoning, the law can be particularly strict in these forms of marketing. Furthermore, this is one point that the Informants agree upon:

*“If you claim that this product is presented from an environmental perspective, then you have to be able to prove it because there is a certain discrediting of other products that are not as good for the environment. This is the reversed burden of proof. I would not say problematise but it means that you have to have evidence for it when making statements about the environment. The environment and health specifically are perceived as even more strict just because it is close at hand. It takes advantage of the individual’s fear of climate change and fear for negative effects.”*

(Informant F)

When looking at why the MFL is as strict as it is described, the results direct the line of thinking to the breadth of a global market. Many informants point out how Sweden stands out because of its own legal culture in terms of protecting the consumer on the market. Informant B mentions that this trait has not been as prioritised in other European cultures. *“I dare say that in Sweden, we are considered quite strict”* (Informant B).

Addressing the result, Informant G points out that the competitiveness of the market could explain the high burden of proof in this specific area. The informant’s statements mean that legal awareness has not yet been established and is not implemented in every relevant field or in every company’s business practices. This, they argue, is a phase that might pass with time due to the nature of legal norms. In time we will not see the same interest in greenwashing as we do today, where it no longer will be regarded as a sensitive matter to competing companies. As the legal norms will develop to set standards with more precise boundaries, companies will lose interest in the risks of greenwashing. Relating this philosophy to the

research on corporate social responsibility and green marketing constructed by Lee<sup>216</sup>, this information confirms previous research in terms of indicating that greenwashing is only profitable when the market is relatively uninformed. One can interpret that this profit will only be the result of investments in deceptive environmental marketing as long as the legal rules are clearly defined and the enforcement of the same norms is taken seriously. This assumption highlights how the room for greenwashing will be further delimited and controlled as the legal field of this subject will develop.

### 8.1.3. *The Influence of Research*

*“We conduct a lot of research right now in every area. This includes the environment.” (Informant C)*

Even if the majority of the informants experience that there is an ambition to generate new research that society can lean on in the application of the law, they have also noticed that the research on deceptive marketing is lacking, especially when focusing on environmental claims. However, even if the development of science supports the law, the results emphasise the need to acknowledge the already existing legal standards and developing guidelines, which are a result of the influence of parallel legal practices. Informant F explains how the research should have been conducted before you make your marketing statement. This has become the main rule - advertisers have to support their claims right away and not go looking for evidence to back up their arguments in hindsight. The result shows that the law, the case law, and science have fallen behind in this specific field, and due to this slow-moving process, the blurred lines of legal norms that Anne Griffiths<sup>217</sup> refers to, have led corporations to a vague understanding of what exactly is expected in marketing in accordance with the law. In an analytical reflection, one can emphasise the bigger issue with the influence of the research that concerns how the legal area today is not yet fixed. The following quote falls in line with my own reflections, where a temporary unstableness opens up the opportunity for corporations to benefit from the current state:

*“The requirements of verifying and proving what we have today might not be legitimate tomorrow.” (Informant C).*

Moreover, the result also highlights how reported violations that have been brought to the court of law face a *free burden of proof*, which means that you are allowed to put forward as much evidence to support your claim as you want. However, you must count on the fact that other actors might bring forward their own research to indicate other results. Informant G further described the importance and impact of research with an example from her own experience in court. This concerns the aforementioned case against the company Coop AB.

---

<sup>216</sup> Lee, H. C. B., Cruz, J. M., Shankar, R. (2018) (see n. 36)

<sup>217</sup> Banakar, R., Travers, M. (2005) (see n. 203)

*“In this case, multiple researchers were called in from different directions as witnesses to verify marketing claims. (...) Quite a lot of emphasis was put on research in order to argue for their own cause. While one side tried to support their claim, Coop, in this case, the other meant that there was no science that could support their claims. Both sides looked to science to support their claims, partly for what was available within the field but also to call in witnesses which at the time did not belong to the ordinary case that I have worked with.” (Informant G)*

Drawing on an analytical discussion, important inquiries could question how a legal actor working within the legal system knows what research is stronger or considered more legitimate. Engaging in more analytical reflections, there will always be more acceptable and less acceptable research to draw on, but to what subjective legitimacy is that decision based? In line with the consciousness *With the law*, the law can be understood as an open arena for the legitimate pursuit of interests. This is therefore something to have in mind even in legal examinations in what could be regarded as taken-for-granted institutions. At the same time, the delay in the development in this particular legal area of deceptive marketing can also be described as something naturally evolving. Even if we have already stated that the Informants of this study are legally aware of the norms and procedures that steer the practices of greenwashing, and that a majority find the MFL well-formulated, there are still grey zones where greenwashing strategies can make use of undefined concepts that are trivial for deceiving marketing.

While relating to the discussion in previous sections that mention Lee’s research and the reasoning behind Banakar’s view on law, the perception generated from the result which emphasises the naturally occurring process of “*phasing-out*” will eventually come to pass when the competitiveness on the market has established clearer rules to abide by. This is why the responsibility mostly lies on bigger institutions to manifest new standards applicable to the modern market we have today. The same interpretation could be confirmed by the example above, where Informant G describes how the researchers who were present to bear witness in the court case presented their resumes to win a legitimate status. Circulating back to the analytical reflections, this could be somewhat problematic even in the prioritisation of academic sources, methods, and institutional associations. Questions such as these have coined one of the biggest discussions within the generation of science, namely *how* to do science. In the legal examination of deceptive marketing, the prioritisation of new research could be difficult when there is already little academic research to lean on. Even though this was no requirement, all Informants highlighted their merits and showed whether they were well published or had a good reputation within the academic community. Furthermore, they explain how a scientist with self-respect can show a variation and potential conflicts within the state of knowledge of the area to be witnessed. This makes the legal field, currently under development, somewhat unstable. Ultimately, it is up to the judgement of the judges to decide on how strong the evidence that has been brought forward is. In conclusion, and in relation to



the academic background, this statement corresponds to the findings on how greenwashing-related research has been, and still is, establishing new standards in the field of deceptive environmental marketing.

## 8.2. The Problematisation of Greenwashing in Practice

### 8.2.1. *Nothing Hinders Greenwashing*

*“The phenomenon of greenwashing was first coined in the 80s. Today it is used frequently in the climate and environmental movement. It feels like it has exploded now with Fridays for the future and Greta Thunberg. However, it also feels like we discussed greenwashing even before because a concept was needed to explain the experience of businesses, politicians, and society trying to tell us that they do enough but that they, in a way, do not.”* (Informant, E)

While a majority of the interviewees recognise an increased interest and engagement in environmental issues from the general public, it is not strange that companies adapt their products, services, and marketing based on the same interests. This confirms previous literature written by Joshi & Knodor<sup>218</sup> and Bañares<sup>219</sup>. Informant H explains greenwashing in relation to two principles where we at first must note the number of greenwashing cases has increased, which in turn must indicate that it is possible to make a profit on environmental marketing. Advertising is already fairly expensive and a majority of companies today are good at prioritising their investments.

*“So if we see an increase in environmental statements in marketing, which we do, then it is a clear sign that there is money to make a profit of. Then you could figure that it is about whether you sell more or that you can make more money for the product or service if it is experienced as good for the environment or bad for the environment.”* (Informant H)

They further explain how it is frightening when you recognise that it most likely is pressure on the market for individuals who want to pay more for better products, something that has been recognised in previous research<sup>220</sup>. The second principle focuses on the enforcement of protecting legislations that operate against greenwashing. This is the responsibility of the KO and the KOn, with cooperative institutions to ensure that environmental statements are used correctly. They further explain that we are more often left with a situation where people are

<sup>218</sup> Joshi, P., Kronrod, A. (2020) (see n. 58)

<sup>219</sup> Bañares, A.B., Silva, M.F., & Rodríguez, S.R. (2021) (see n. 40)

<sup>220</sup> Kahraman, A., Kazançoğlu, I. (2019) (see n. 63)

deceived in an ineffective market. Ideally, the intention behind the market is to help reach higher efficiency and an effective system for innovation. In line with this thinking, Informant E expresses:

*“Of course, I want to believe that everyone means well, and there are probably many that greenwash unintentionally. (...) Then there are also many that do it consciously.”* (Informant E)

They mean that regardless of how the law is formulated, there is nothing that actually hinders companies from greenwashing. Drawing on the theoretical framework, this perception could be related to *With the law* in terms of recognising a problem, not with the law itself, but with the application and enforcement of its imperatives. This form of LC becomes relevant when focusing on the contestants of the arena where the legal actors who apply the law actively choose not to enforce the written law. Informant D contributes to the discussion by explaining how they deem bigger companies to be relatively aware of the legal norms. While the demands on precise and clear communication make it difficult for companies to make the fast and simplified messages that they are used to, there is little that deter companies from greenwashing. When questioning what their thoughts are on the awareness of the legal rules that apply to deceptive environmental marketing, Informant B reasons:

*“On the contrary, I do not want to imply that every company is completely aware of the rules. That is probably the other way around, otherwise, I would not have a job.”* (Informant B)

This quote alone could be interpreted as a legal awareness of competing actors in the legal field that draws on different legal norms to make a profit on the market. Engaging in a more analytical discussion, it is presumed that the companies' decision to intentionally take the risk of applying greenwashing strategies, in spite of the law, positions companies outside of the legal agreement of ethical conduct. Informant B explains that:

*“and this is solely my private opinion, that it is immensely tiring to see the marketing of the sort sustainable. Everyone can say that anything is sustainable. This concept is watered down to the point where it no longer has no real function.”* (Informant B)

Reflecting on this quote, my own tends to draw in the same direction. What does it in fact mean that something is green or sustainable? In what aspect does the advertiser indicate that a product or service is perceived sustainable? Are we supposed to immediately interpret this to be about sociologically sustainability, and economic sustainability or are we to reflect upon environmental consequences? This also shines light upon the misuse of the concept of *sustainability*, where the definition has been emptied of its meaning and left available for advertisers to apply it to meet their own ends. For a value that is favoured by the general public, it has been shaped into something rather nonspecific and is now being abused in the prevailing discourse.

Circulating back to the result, the result indicates that the cause of greenwashing often has to do with a lack of knowledge, however not in the sense that you have to prove your marketing claims, but rather in the extent to which it is expected as evidence and to the degree of reliability the evidence should hold. Informant F means that it is easy to put together an advertisement to reach out to the public and sell your product. In the same process, there is no control function to stop deceptive marketing, which makes the prerequisites for an honest and ethical market inconsistent. They experience that it is fairly simple to ignore the MFL, mainly because the controlling function relies on an actor that rarely does react.

### 8.2.2. Supervision and Legal Enforcement

As mentioned in the first chapter about *The Experience of Combatting Greenwashing*, there are different sanctions that could be applied as a result of a conviction. One of them is the so-called “prohibition under the penalty of a fine”. According to Informant B, this is an effective instrument to deter future violations. While the “market disruption charge” is also a possible penalty, it is applied in more severe violations and is, as opposed to the prohibition under the penalty of a fine, applied with immediate effect. In contrast to this result, Informants E and H explain how they scarcely saw this penalty being applied due to the low number of cases that are actually brought to legal attention.

When studying the supervision and legal enforcement for deceptive environmental marketing, we can look back to what was previously mentioned in the introduction. In 2017 the KO was given the authority to sue advertisers in court for violating the MFL. The new authority implied that the institution did not need to include the traditional first step of making contact with the companies to correct their advertisement to communicate marketing according to the law. When the informants were asked about this authorisation, a majority were not certain whether this has ever been applied. Two informants meant that the institution has chosen to not apply this and that there has not been any discussion about it. Informant H explains that this is a clear example of how you could provide an institution with the right instrument to combat a problem, however, there must be supporting politics for actual enforcement.

Informant E argues that even though specific marketing has been criticised and taken to the court, it will take time which ultimately means that many more companies have an open window to greenwash. During this time, especially in 2021, greenwashing has exploded and neither the district court nor KO has taken any distinctive action against it. However, at the same time, it does not matter if a company is being the focus of legal examinations because the sanctions would not have a deterring impact. Moreover, Informant H argues that fines that are handed out are merely a small part when put in relation to the profit they have already made on greenwashing.

*“I think it is insane how they (the Consumer agency) have not put to use their full capacity in the legal forum, handed out more prohibiting fines, or investigated more errands when we are in the middle of a climate crisis, and greenwashing has never been more popular. It is basically the same thing as greenwashing.”* (Informant E)

Continuing on the same line of thinking, they further question the extent to which the KO claims that they prioritise environmental marketing claims. The informants explain that when an advertisement is reported to the KO, it has to compete with around 30 000 other errands every year. What determines the decision to process it depends, for instance, on the nature of the violation and whether there have been previous reports on the same advertisement. Even if they have recognised that the institution has publicly expressed its focus on greenwashing, Informant E means that this is something that has not been shown in their practice. Instead, this *“interest”* is something that has been expressed to satisfy public opinion and to appear politically correct. However, this Informant argues that as long as they do not choose to make use of this capacity, *“no one will know and no one will care”*. Informant H falls in line with this argumentation by expressing how the institution’s ambition does not align with the public interest:

*“When companies formulate themselves in a problematic manner in association with the environment, the KO’s focus does not lie on putting an end to the marketing, rather it is to show that the institution takes action in some way.”* (Informant H).

Furthermore, they argue that the standard reaction to these violations is for this institution to send an informative letter to the company. In accordance with this result, KO is not perceived to be taking action against greenwashing. Instead, what has come to matter is that they can say that they have done something to act, no matter the result.

*“You can say that Sweden is an extremely business-friendly country. There is no limit to what a company can do because the industry is at the centre, which means that businesses are allowed to do basically anything. And when people get angry and start making demands because the companies do not even follow the Marketing Act, then the authorities realise that they need to do something. They will send a letter saying there is no way to act if you are serious about stopping companies. If you were, then you would punish these companies with larger sanctions, and something would happen. But it does not. Companies are able to violate these laws how much they want because there are no consequences.”* (Informant H)

While this quote brings forth a critical view of how environmental marketing has been managed, other results challenge this perspective. Informant A, argues that their supervision historically has been efficient when it comes to deceiving environmental statements in

marketing. This result describes that there are many older judgments to lean on, however, in line with the increasing application of greenwashing strategies, the current practice must not lose speed.

*“This is why we as an institution must keep monitoring the market, receive reports from consumers who experience that they have been misled, and open errands for what we deem is motivated and prioritised.”*  
(Informant A).

The result also highlights a legal argument that is perceived as irrelevant, however, that often takes the floor in the political debates on greenwashing. According to these experiences of law, there is a lack of understanding in terms of what marketing in its legal formulation in fact does. Instead of engaging in a discussion regarding how greenwashing should be further combated through the means of legal norms, politicians have been explained to divert the discussion to the topic of freedom of speech, something which would overstep the fundamental legal norms there are in modern society. Informant E describes:

*“I want to be one of those people who say that cannot use this argument in this context because it has, according to the law, nothing to do with this. You must always be able to support the claims you make in accordance with the Marketing Act. Freedom of speech implies that if a journalist, for instance, writes something and uses an anonymous source, then the journalist has the right not to expose the source. The freedom of speech is there to protect the freedom of the people. However, a company must always be able to prove and support its arguments in marketing, which implies that they have to reveal its sources.”* (Informant E)

The results show that politicians today do not always comprehend the difference between marketing and freedom of speech. If urgent matters such as greenwashing are being blocked from accessing the political field by being dominated by other arguments, how is greenwashing expected to develop within the legal systems? This line of thought could be interpreted as a trait of *With the law* consciousness, where actors and even institutions like the KO navigate in the legal field chose to not only divert the conversation from the pressing issue of greenwashing but also to avoid an increasing public interest.

More specifically, the result indicates that advertising is included in the freedom of trade, not in the freedom of speech. What is perceived as basic knowledge to the informants in this research study has today become a popular counter argument in political discourse concerning marketing regulation. This has, for instance, been an argument against the proposition of a potential advertising ban on fossil fuels. Such an argument could indicate that even though the MFL is forward-looking, *“you cannot censor all marketing. It would violate our fundamental principle of freedom of speech, which is why violations must be held accountable after its occurrence”* (Informant D).

### 8.2.3. “The House has Already Burned Down”

In the question regarding whose responsibility it is to combat greenwashing, the results show that everyone should contribute to practice beneficial to society. However, some informants mean that the process of reporting violations such as these should be the responsibility of competing individuals and the everyday consumer. Others argue that it should be KO who should act in these situations. On the other hand, Informants B and C experience that the KO's current practice is efficient and is in compliance with the rule of law. Moreover, Informant F experiences that it has been more common for the competing company to react to deceptive marketing. However, when asked how frequently this occurs, the informant acknowledges that it belongs to the anomaly to actually report your competing business because it requires a great deal of financial muscle. This shortcoming is also recognised in the KO's work where the process of reporting violations of deceptive marketing practices, in the end, is limited. The result further confirms that these forms of violations are not prioritised in the legal practice and that it most likely depends entirely on the competition and the consumers to raise these questions.

Informant E follows up on this reflection where they mean that there is a higher demand on the general public if this process relies mainly on individuals to report marketing. One valid question one could raise is whether this strategy is efficient if the general consumer is not informed of the right practices. Relying on individuals to report is asking private citizens to engage in public regulatory functions for which they are neither trained nor salaried.

*“Perhaps this had a function in the 90s when you measured advertising but today we can find advertising everywhere. Are people supposed to report all the time?”* (Informant E).

Informant H stresses that the legal systems we have today do not acknowledge its importance or severity even though they hold knowledge of it being a problem.

*“You find that the court always prioritises businesses in these situations.”* (Informant, H).

Moreover, this informant means that when it comes to businesses and environmental statements there is generally no intention to start a conflict. Instead, *“you want the cookie and you want to eat it”* (Informant H). This deflection lays a foundation for not acknowledging violations of this sort which signals that there are no legal reactions to greenwashing. Engaging in a more analytical discussion, legal actors reflect their political ambition when prioritising the businesses before illicit actions on the market. This could have implications for *With the law* consciousness that underscores the navigation of legal techniques and skill sets for meeting one's own goals and therefore be interpreted as a law that fails as an asset to achieve justice.

*“In other words, the house has already burned down.”* (Informant, H).

With this quote, the informant argues for the disappointing standard case of greenwashing, where a company’s advertisement in almost every case reaches too many consumers before it is being reacted to. This sparks an analytical discussion that questions the current practice of combatting greenwashing. When, and if, the violation first is recognised in the legal setting, it would have already been too late and the greenwashing would have served its purpose. In addition, this practice is a non-efficient way of addressing legal problems. When considered in terms of environmental values, it matters little if the company needs to pay a fine months after the violation in question. Even though an advertisement is convicted and the company is sanctioned with a fine, the damage is already done. The informant argues that prohibiting fines has little to no deterring effect on decreasing the future prevalence of greenwashing. Whilst perceiving most greenwashing as carefully calculated results where risks are weighed against potential benefits, this form of advertising is not only described as a daring statement, but also a well-calculated strategic business decision. Some informants argue that it is not to a company’s nor the KO’s disadvantage that the errands lifted in court are very few and that the sanctions for violating the law most often end with a warning.

However, other Informants argue that the delay in legal action is natural in every legal area. Informant G recognises the concern highlighted above where it is often the case that the company has moved on to another campaign by the time a judgement is legitimised and there is nothing that says that it will be recognised by the public. Furthermore, Informant F and H argue that the signals from this way of practising the law are clear, there is no danger in violating the MFL, because there are no consequences. Tying back to the critique on how deceptive environmental claims have been recognised within the legal practice, the result highlights the need for development within the KO to strengthen the group which focuses on green marketing and use the authority they already have. While referencing the previous words of Informant H:

*“We have speed limits but no police or speed cameras”* (Informant, H).

This quote indicates that the problem is that no one ensures its implementation. Furthermore, they experienced that the KO has chosen to prioritise environmental marketing because of the expectation from the general opinion. Even though this is something that the institution has expressed before, they do not believe that this is information that has reached Swedish companies. Instead, its priority is something that has been said in order to uphold a politically correct image. Related to previous literature, this falls in line with the behaviour that could be detected in bigger companies when officially augmenting their business practices. Defence mechanisms that Schoultz and Flyghed<sup>221</sup> and MacManus<sup>222</sup> mention could reflect what Informant E mentions as prevalent when companies aim to maintain consumer’s trust while at

---

<sup>221</sup> Schoultz, I., Flyghed, J. (2020) (see n. 52)

<sup>222</sup> MacManus, T. (2016) (see n. 51) p. 786

the same time being accused of violating the trust of the same group, which could include violations such as greenwashing in their marketing.

In contrast to these forms of LC, Informant A describes how the main goal is to aim for correction. The ideal situation would be to get the companies to adapt their marketing in line with the legislation that exists.

*“If we would, for every shortcoming, have to sue a company in court, then it would cost society an enormous amount of money.”* (Informant A)

However, reported violations must be taken seriously. Informant A experienced that the best solution would be if KO could give companies a correction where they send out an informative letter entailing that their practice does not harmonise with the law. This letter would further imply how specific marketing has been interpreted as deceptive and inappropriate, offering an opportunity for the company to correct its advertisement.

*“The company often replies as the 16 cases from last year did, that they prefer to correct themselves. That is the most usual scenario. Socio-economically, this is a good solution to end a marketing campaign.”* (Informant 1).

### 8.3. Suggestions for Further Improvement

Drawing on the two general approaches mentioned in the background, greenwashing can be combated through legislative and individual action. This thematic division has also been recognised in the empirical material generated in this research study and will be discussed further in the sections below.

#### *8.3.1. Institutional Action*

When questioning what approaches can be suggested for improving the enforcement of the law, the results describe the law as well formulated and well adapted to the trends of modern society. A majority of the informants highlight how regardless of whether deceptive environmental marketing is prioritised in the court of law or not, it is more a question of whether society has the resources to prioritise every relevant case. Some emphasise the significance of preventative interventions where lawyers and other legal advisors educate other lawyers. Today this takes the form of seminars, courses, and lectures and contributes to further understanding of how one should not use claims that are not verified, vague, or supported by facts.



Even though authorities are the leading instruments for combating these crimes, an emphasis is put on self-regulation and the responsibility of the corporation to take the law seriously. In line with previous literature, the burden of proof lies with the companies marketing their business, something that highlight CSR (MacManus<sup>223</sup>: Lee<sup>224</sup>). Informant C continues:

*“In fact, I do not believe that there is so much we can do aside from letting ICC, KO, and courts proceed as usual so that the actors on the market know how to behave.”* (Informant C)

These informants explain their experience of how science and case law are falling behind, which is why there is a need to await clear guidelines from the judicial system - something that requires time. The results also envision how new guidelines influenced by an international discourse are needed to guide companies to shape a common practice on the market. Informant D is one of the voices arguing that even though companies today are not used to the more direct communication which the law demands, they are convinced that education is a must for avoiding a repetition of greenwashing. They specifically mention the ICC, which recently released (on the 22nd of April) new guidelines focusing specifically on environmental claims. This entails more specific definitions of environmental terms that have been found frequently applied in marketing. Moreover, this new information could contribute to the biggest education initiative seen in Sweden in 30 years. Informant D continues:

*“This ongoing intervention does not only aim to target practitioners, and marketers but will also function as comments and advice for those who apply the legal rules.”* (Informant, D).

In other words, the results show that greenwashing is still under development, and in due course, market law cases will pave the way for a new and updated case law where institutional action can prioritise this form of violation. However, this is only a small part of establishing a developed practice. In time we can expect new directives, policies, and initiatives from an EU level to ratify on a national scale. As politicians of the European Union develop legal practices in combination with the influence of nearby jurisprudence, legal practices in this area can draw on similar procedures to establish a clear narrative for environmental marketing. This confirms the conclusions made by previous scholars, such as Kusá and Urmínová<sup>225</sup> and Sekhon and Armstrong<sup>226</sup>, arguing how green marketing should be controlled by bigger legal institutions from a top-down approach.

In line with the results above, Informant F argues that there is a need for an effective control function to act on unethical marketing. The preconditions are there, however, they are not applied, which means that if a company wanted to it could very easily ignore the law. To

---

<sup>223</sup> MacManus, T. (2016) p. 786. (see n. 51)

<sup>224</sup> Lee, H. C. B., Cruz, J. M., Shankar, R. (2018) (see n. 36)

<sup>225</sup> Ibid.

<sup>226</sup> Sekhon, T. S., Armstrong, S. C. (2020) (see n. 87)

avoid this, there is a need for an authority that is not afraid to surveil the market, act on potential violations, and do so proactively. Informant F argues:

*“I would say that proactive work has started but it has to increase from the authorities’ perspective because they have the resources necessary to bring forth change”.* (Informant F)

This informant explains that the current practice of institutional action expects competitors and consumers to report violations on each other, however, there are few individuals who agree with this philosophy. Instead, some Informants wish to see KO take the subject more seriously and make more honest efforts to act more proactively, faster, and harsher on reported violations that are supported by some form of tracking function to detect obvious faults. Drawing on previous academic research, artificial intelligence has been suggested for future surveillance, something that Johnson<sup>227</sup> discusses to make marketing more transparent. This author argues that through collaboration with an independent third party who receives corporate claims to avoid the influence of social biases and misconceptions, greenwashing could be controlled more effectively. Gathered from the empirical material, greenwashing has not yet been fully recognised in legal practice, and should be something that companies and authorities alike work against instead of only expressing their ambitions to do so.

In summary, while many informants agree that greenwashing is a concept that has been around for the last decades, not many have a great insight to how this should be prevented. Informant H reflects:

*“This says something about the gap between understanding of marketing and what marketing does. If you want to forbid fossil fuels by 2030, then it is most likely that you would want to avoid marketing for the services that rely most on fossil fuels 2021. It is not logical to not banish the marketing first.”* (Informant H)

Looking at the system from a bigger perspective, Informant H describes how they think that “money talks” when it comes to these forms of violation. They imply that in the end, it always comes down to economic powers, which is why an effort to increase the fines is an efficient strategy for two specific reasons. While discussing the benefits of the suggestion, it would, first, provide the state treasury with more money. This is something that must happen more often, which puts a responsibility on supervising and enforcing institutions to work more frequently with these forms of violations. Second, also a result of the first notion, is that the state authorities and politicians would recognise the worth of the process as good business.

*“This is also why we have so many metre men. They say that it is important for fire trucks and police to pass through and so on. However, I*

---

<sup>227</sup> Johnsson, F., Karlsson, F., Rootzén, J., Ahlbäck, A., Gustavsson, M. (2020) (see n. 82)

*think that most understand that the reason is that the municipality needs money in its budget. In the same way, I believe that a higher fine that is distributed frequently will over time shape the market and operate in a more functional way.” (Informant H).*

Furthermore, as the results indicate, in line with the academic background and have permeated this thesis, politics is deeply rooted in greenwashing which together with other factors, such as global economies must be changed in order to meet the intellectual, spiritual, and educational needs of the consumer<sup>228</sup>. As discussed above, institutional action is one form of strategy for combating deceptive environmental marketing, however, in addition to this, the results suggest another approach presented below.

### 8.3.2. Collective Recognition

While some informants emphasise the need for supervisory work operating to prevent greenwashing on an institutional level, other informants have also argued for the more fundamental issue of raising awareness on the subject. This result confirms the previous academic work of Vlad and Luca<sup>229</sup> who have found that it is not an easy fix to demand a green marketing evolution where businesses are reconfigured to adopt a greener practice. They further argue that this has become the main obstacle due to the fact that if it was easy to establish, then everyone would do it<sup>230</sup>. Moving back to the results, Informant A means that there are no resources for surveilling all greenwashing and that it is not possible for authorities to control such a widespread phenomenon. Instead, these informants see the value in leaning towards the case law we already have and hope that companies adopt the rules that apply instead of pushing their boundaries. Informant G notes:

*“I think that many companies experience the same thing even today. There is a sort of fear that whatever you say and whatever you do will be criticised.” (Informant G).*

With this quote, the informant explains that even though there should exist a certain collective recognition of the concept, it is important to not strike too hard and deter companies from expressing their environmental developments from the beginning. Instead of legal sanctions, it is societal judgement and “naming and shaming” strategies that have the most significant impact. Informant E explains that it is the stigma coming from the society that these advertisers really fear. While the informant recognises this as an efficient strategy with a substantial impact on greenwashing practices, another informant (G) everts this opinion of the strategy as too harmful a punishment for businesses. Instead, Informant G puts an emphasis

---

<sup>228</sup> Bretcu, A. (2019) (see n. 84)

<sup>229</sup> Bretcu, A. (2019) (see n. 84)

<sup>230</sup> Ibid.

on the corporations while at the same time reducing greenwashing to one of the many problems companies face:

*“There are always problems. If you have done one thing right then there will be ten bad things. In other words, I believe that there is a tricky demarcation because companies do want to try to impact society and move toward what is better for us humans and for the environment. If you as a company have started to invest in this, why should you not be able to tell others about it? The thing is that there is a way to go about it that only boosts its own business.”* (Informant G).

This informant argues that not every corporation greenwashes intentionally and that there must be room and understanding for corporations to try. Furthermore, Informant H describes the media landscape as fragmented, making the consequences of violating the MFL less problematic for the own brand. Informant F contributes to the discussion by suggesting that a convicted corporation should be recognised in media and should therefore publically inform their deceptiveness in the very same media that they used to publish their marketing in the first place. This is a strategy to reach the same audience that they first intended to target in order to admit their wrongs. Moreover, in order to legitimise the issue of greenwashing, there is a need for collective recognition of its definition and consequences.

*“I believe that there is a need for a social movement that pushes this question and I believe that it is about to happen, but perhaps it is not happening fast enough.”* (Informant H).

With this quote, Informant H presents a more complex dimension to the phenomenon of greenwashing while emphasising how societal development is heading towards dismantling which is not stilled by the continuing organisation of individualism that permeates modern society. They mention how non-governmental organisations such as Friends of the Earth Sweden and Greenpeace are working with marketing issues, however, the pace at which it is going might be too slow and the support behind the question too little. The result further indicates that even if they believe that consumer associations and engagement in grassroots-organisations could be effective, there are none, which is a huge defect in modern Swedish society. In other words, this experience of the law does not perceive the system as efficient and focuses its main critique on the application of legal norms. Drawing on the theoretical framework of Ewick and Silbey<sup>231</sup>, we can note how applicants of the law play the legal field to their advantage and we can interpret it as an asset that has failed to achieve justice. This lack of enforcement could also be tied to an Under the law consciousness where the law has not prioritised environmental issues and therefore this particular subject has not reached legal legitimacy. Moreover, popular movements are on the way to being replaced by the overarching ambition to realise oneself in an individualistic society.

---

<sup>231</sup> Ewick. P., Silbey. S. S. (1991-1992) (see n. 213)

In an analytical reflection, when looking back at the research raised in previous chapters, academic literature has not been too direct in terms of what interventions or strategies are recommended to combat greenwashing. On the one hand, we have found that there is a lower number of informants who believe that there is no need for bigger change because of their trust and belief in the current practice of the law. However, these actors also believe that there is a lack of self-regulation from the marketing actors which means that these parties must take on more responsibility in the question. This opinion is shared among legal actors who practice or have a history of practising the law. On the other hand, the majority of informants push for more scientific support where the development of updated legislation and clear guidelines could more easily guide corporations in their practices. Even if this is something that the majority of informants believe is a necessary contribution to the current legal practice, there are a few informants who point out the greater need for systemic change or more engagement from enforcing institutions.

## **9. Discussion**

While the first section of the analysis presents the informants interpreted experiences in terms of what they view as law, this has little to do with the law in practice. This form of awareness is instead discussed in the second section where a smaller number of informants share a legal consciousness that notices the increased use of deceptive marketing, however, do not view any serious faults with the current application of the law. They argue that this specific paragraph of the MFL falls, much like any other legal area, in line with the trends of societal change and develops at its own pace. Furthermore, this opinion stresses that one should trust the legal authorities with time. However, the larger majority indicate that even though the current regulations are well formulated and stricter than many other legal areas, these ambitions are rarely reflected upon in the practice of the law. Explained and contextualised in three separate segments, there is in contrast to the public opinion a lack of interest from implementing actors within legal institutions to apply the law to an extent where greenwashing is recognised as a legitimate threat to consumer rights.

This is exemplified in the absence of effective sanctions that deter companies from continuing to apply greenwashing strategies. Due to the undeveloped legal practice of deceptive environmental marketing, greenwashing has blurred the lines for ethical marketing and opened up the opportunity for corporations to thrive on misleading premises. For reasons aside from the justification of the law, businesses that use deceptive environmental claims in marketing contribute to, for instance, the damaging effect on the climate when related to fossil fuels. When companies like these merely receive a slap on the wrists as a result of violating the law, this research argues that implementing actors do too little to make the practice of the law effective. Interestingly, the informants describe a system driven by competing companies, critical consumers, and monitoring institutions to take responsibility and account for reporting marketing that violates existing regulations. The results imply that it

belongs to the anomaly to report your competing company. Why would a competing company that most likely engages in a similar form of misleading marketing report a competing corporation, challenge the status quo, and at the same time risk its own business? When corporations decide not to take that risk, it effectively allows the market forces to determine enforcement where greenwashing becomes an everyday activity and the valued concepts of the environmental association are being abused and watered down to a point where the consumer no longer can make well-founded business decisions. Moreover, if the regulatory governance relies on uneducated and uninformed citizens or competing corporations to monitor and report violations, what is the point of a public regulatory state? The result implies that the main responsibility lies with the more powerful actors with the legitimacy to take the violations seriously. Based on the poor regulatory approach shared for this empirical material, the main critique is, therefore, directed toward the implementing actors such as political actors as well as representatives in the KO with influence on the legal practice and the legislature.

Informants have described the current situation of this lack of priority in legal practice as generating a process where the *“house has already burnt down”*. However, informants closer to the legislative practice, explain the tendency of slower legal court processes as a natural process rather than a hindrance to make deceptive environmental marketing a priority within the legal practice. If these actors hold the power to influence the legal discourse on a level of enforcing the law and at the same time view this problem as just another undeveloped field that needs to be *“waited out”*, then it does not look good for the fundamental codes of marketing, nor does it provide any support for climate-related issues.

The latter description is presented by more critical informants, representatives of academic, and business marketing who stress that the current prioritisation of these violations does little to assist the reduction of the distinction between the written and practised law. Moreover, what has been made clear based on the empirical material in relation to the applied theoretical frameworks is that there are different ambitions and expectations in terms of what influence the concept of greenwashing should have in the context of law and politics as well as how this law should be practised. The result further presents different solutions to how to prioritise greenwashing in practice, such as increasing sanctions, and monitoring responsibilities from institutions and legitimising the phenomenon in political discussions. However, interventions like these would not be efficient as long as the implementing actors who bear the responsibility to apply legal rules do not enforce these ambitions.

In addition, the result does not only imply that greenwashing is a threat to consumer rights but also encompasses bigger and equally as stressful issues, such as climate change. As presented in the analysis, there are businesses that benefit from deceiving the average consumer while contributing to further environmental damage. In light of climate change, the results illuminate marketing of poor sustainability, such as fossil-related businesses that play an important role in dominating space for an honest and sustainable market. Relating to the background, larger companies depending on greenwashing strategies that are allowed to use

the market without any legal consequences does not only block the opportunity for other more environmentally friendly business, but also prevents further development for an informative, honest, and innovative market, something that should generate serious concerns on national and global spheres alike.

Reflecting on the use of Ewick and Silbey's<sup>232</sup> and Fritsvold's<sup>233</sup> theoretical framework of LC, four typologies were presented in the introduction. However, not all were found relevant to the empirical material generated in this study. While a majority of the informant's statements could be identified as a *With the law* consciousness, a few could be related to *Before the law* and *Under the law*. The fourth typology, *Against the law*, could not be identified in the empirical material, something that could be explained when reflecting on the position and legal profession of the Informants. One could suggest that the informants who found themselves close to the law such as lawyers and experts in the court of law have a tendency to express a *Before the law* consciousness. The vast majority who still hold great knowledge about the legal practice and its regulations expressed a perspective that recognised the law as an asset that can fail to achieve justice for some and was more often identified with *With the law*. These informants could be represented by the legal arena but would in the common case be represented by the academic field and the external experiences of marketing relating to the practice of advertising businesses.

Looking at this theoretical framework more critically, these categories help give meaning to individual experiences of the law. However, this presupposes that all individuals are aware of the legal system in question and that the individual has an understanding of what these legal rules imply. Fritsvold's<sup>234</sup> perspective contributed to further explaining the complexity of the law while adding a dimension of the experience of the law that would otherwise be excluded or vaguely related to if only interpreted in line with Silbey's and Ewick's three original consciousnesses<sup>235</sup>. Still, it is not unwise to be open to the possibility that other theoretical models could have shunned light upon other interesting angles relevant to this study. Furthermore, there have been instances where an informant has moved from identifying as *Before the law*, to then moving toward a *With the law* or *Under the law* consciousness. This reaffirms the constructivist understanding of individuals being multifaceted and should very rarely be boxed into one category alone. In addition, this iterative interpretation could also be explained by the understanding of the researcher and the interviewee's willingness to open up and find their more in-depth experiences, something that could be related to the format and the strategy of interviewing.

The result of this study emanates from the experiences of a group of individuals with different degrees of involvement in the practice of law in terms of deceptive environmental marketing. It is important to recognise the limits that this result reflects, the experiences of the law. It

---

<sup>232</sup> Ewick. P., Silbey. S. S. (1991-1992) (see n. 213)

<sup>233</sup> Fritsvold, D. E. (2009) (see n. 196)

<sup>234</sup> Ibid.

<sup>235</sup> Ewick. P., Silbey. S. S. (1991-1992) (see n. 213)

does not necessarily mean that the experience of the law deviates from what the law says or how it is implemented, but because there could be a certain distinction between them, it is important to highlight the extent to which the result is generalisable. All informants represent a position within the legal field of how greenwashing is combated, from the court of law and monitoring institutions to the academic field and climate activism. However, even though the understanding based on these positions could provide a broad outlook on the experiences of greenwashing in Sweden, the range of the result is representative of these specific individuals.

## 10. Concluding Remarks

The aim of this research study was to gain insight into the experience of deceptive environmental marketing as it is legislated in the MFL. The intention was to examine the legal awareness, or socio-legal realities, as identified by key legal actors that hold both knowledge and experience in the prevention of greenwashing in Swedish marketing. This was done by exploring how these legal actors perceive greenwashing, and what norms and values have shaped their understanding of the phenomenon. The theoretical framework together with semi-structured interviews allowed the researcher to take part in the informants' subjective description and interpretation of greenwashing, which allows for a recognition of the more in-depth element of legal consciousness that contributes to the function of legality in terms of one's awareness of legal systems and subjective experience of law. Accordingly, this study was shaped by the following three research questions.

*(1) How is greenwashing understood by legal actors associated with the implementation of the Swedish Marketing Act?*

Summarising the results, it is an undeniable fact that the Swedish legal system interrelates with the social and political spheres of Swedish society. This conclusion is drawn based on the result and confirms the arguments of previous literature (Vlad & Luca<sup>236</sup>; Waites<sup>237</sup>; Parguel<sup>238</sup>). The different informants, representing both legal and societal organisations have shared their experiences of deceptive environmental claims in marketing practices, which in everyday speech is referred to as greenwashing, a rising concept of interest among public opinion. The norms and values that the informants describe, seem to have prioritised and thereby legitimised the legal structures in which the specific legal norms that regulate greenwashing are operating. In other words, greenwashing is explained in reference to the existing law and is further reflected as a strong rule of law and described as well-regulated due to its continuing influence by European and international politics. Drawing this conclusion to the socio-legal studies already established, we can highlight Anne Griffith's<sup>239</sup> pluralistic view of modernised law. In line with her conceptualisation of law, greenwashing,

---

<sup>236</sup> Vlad & Luca. (2020) (see n. 4)

<sup>237</sup> Waites, F. S., Stevens, L. J., Hancock, T. (2020) (see n. 37)

<sup>238</sup> Parguel, B., Benoit-Moreau, F., & Russell, C. A. (2015) (see n. 3)

<sup>239</sup> Banakar, R. (2014) (see n. 204) p. 270-271.



and the MFL, have been shaped by values and norms emanating from different levels that in combination with globalisation have blurred the lines between international foreign, and domestic law. For instance, the regulations borrowed and inspired by already existing legislation demand environmental marketing to be clear and truthful in its formulation, where information to support the said statement should be found in direct connection with the advertisement. The results indicate that there are clear expectations and directives on how to behave, shaping the practice in the field of the market. However, environmental statements have fallen victim to vague applications to a point where they no longer hold any specific function and are instead interpreted as misleading and deceptive.

*(2) What are the main obstacles identified by these legal actors to combatting greenwashing in Sweden?*

In consideration of the second research question, the informants experience that there is an overarching responsibility to follow the principles of the law, which includes all actors engaged in the advertising market. This confirms the previous academic work of Lee<sup>240</sup>, MacManus<sup>241</sup>, Schoultz and Flyghed<sup>242</sup> (among others). However, for these actors to take part in an honest market the results emphasise the need for more in-depth research, guidelines, and taxonomies that one can refer to when applying specific statements with environmental associations. In order to avoid misleading the average consumer, it becomes imperative to reflect upon potential obstacles that could hinder the efficiency of this particular practice.

Looking more closely at the results, the underlying reasons found point to a field of political diversity where the voices and interests driving greenwashing as an important issue have little room in the political and legal discourse. Since greenwashing may have been a phenomenon that has been unreflected and taken for granted, one could argue that the implementation of the law has failed, where the preventative strategies enforced to deter this crime do not correspond well with the anticipated effect. Instead, informants name multiple difficulties in the implementation of the law that do not reflect the political interest of the public opinion. Even if there is a general awareness concerning how greenwashing is not being prioritised in practice, there are fewer than agree on the need for urgent change. Based on the results in this study, these individuals represent the legal institutions that work more closely with the application of the law, which confirms previously mentioned conclusions about how political influences dominating the legal system overshadow developing practice to implement interventions to combat greenwashing in Sweden.

The intention to change the current practice of greenwashing is to deter crime by enforcing the law as it has been regulated. One theme that emerged through the interviews was “the house has already burned down”, emphasising that even if there are laws that prohibit this behaviour, there is nothing that actually hinders corporations from greenwashing. Before the

---

<sup>240</sup> Lee, H. C. B., Cruz, J. M., Shankar, R. (2018) (see n. 36)

<sup>241</sup> MacManus, T. (2016) (see n. 51) p. 786.

<sup>242</sup> Schoultz, I., Flyghed, J. (2020) (see n. 52)

legal system reacts to deceptive marketing, it is already too late, the risks of being sanctioned are not high enough to deter future crime, and even though there are legal norms that restrict the room for how to do marketing, there is no one to ensure its implementation. Even if the legal awareness of greenwashing is high, and the informants themselves are well educated in the matter, their experiences point to the fact that it is not anything self-evident, which is presented in the discussions on its legal prioritisation in comparison to other legal fields. This becomes particularly prominent when institutions such as KO present data on an increased application of greenwashing, which can argue that the legal definition of the concept and its restrictions has not yet become normatively implemented.

*(3) How can these obstacles be addressed and what additional changes, if any, are required to further limit the practice of greenwashing in Sweden?*

Drawing on the more critical discussions, the empirical material implies that there is a need for legitimising greenwashing in the implementation of the law. This does not only impact the enforcement of the legal practice in the court of law but also points to the responsibility of KO to act upon relevant errands for it to have an impact on the everyday behaviour in marketing. What can be highlighted from this study's results is that it is not an efficient approach for regulatory governance to download their functions of monitoring the market for greenwashing to private citizens or competing corporations in order to combat greenwashing.

Regardless of whether the suggestions for intervention differ, there is a general consensus regarding the requirement for a stronger rule of law with legal actors that have the ambition to prioritise the law in its application. This result confirms the point argued for in previous research, such as Rotman<sup>243</sup>; Kusá & Urmínová<sup>244</sup>; Sekhon & Armstrong<sup>245</sup>. The current practice of enforcing the law includes the same incentives that are set in favour of greenwashing practices. Moreover, even if the law has been described and is being experienced as well-formulated, there is nothing that hinders greenwashing today. When viewing the problem from this perspective, it should not be controversial to point out that the house has already burned down.

For a concluding discussion, I want to emphasise how my results to some extent verify previous research, even though there is not much academic research to go on. It confirms that greenwashing is highly dependent on the political, as well as socio-legal fields that permeate and influence nearby structures in society. However, as has been stated on multiple occasions throughout this thesis, the academic work focusing on greenwashing in the Swedish context is next to non-existent. Together with my methodological strategy and theoretical framework, I have been able to contribute to research by exploring the experience of greenwashing in the legal system, questioning its present operationalisation, and opening the floor for suggestions for improvement in the development of establishing a solid foundation for legitimising the

---

<sup>243</sup> Rotman, M. R., Gossett, J. C., Goldman, Hope, D. (2020) (see n. 105)

<sup>244</sup> Kusá, A., Urmínová, M. (2020) (see n. 65)

<sup>245</sup> Sekhon, T. S., Armstrong, S. C. (2020) (see n. 87)

phenomenon. Moreover, I have shown tendencies of what the culture, in light of a socio-legal perspective, is interpreted as today and compiling the data into trends of attitudes regarding the challenges that could problematise the enforcement of the law. When considering the result in light of existing research, this study contributes to broadening the field of sociology of law while inviting new data concerning environmental issues in a modern era of digitalisation. Not only does this result stand out in terms of showing the complexity of environmental issues in today's legal culture, but it also adds to the (undeveloped and) unexplored subject of greenwashing.

As new scientific knowledge is generated, this thesis also offers a unique contribution to the discipline of sociology of law where its approach focuses on the experience of key individuals on different levels and positions. This methodological spread became highly relevant to provide an all-encompassing understanding of the legal structures operating to combat greenwashing. While this research has not been conducted before, it has confronted the informants with questions that they do not so often reflect upon and is one of the first academic research focusing on this specific field in Sweden - hopefully, it can inspire new research where it does not become the last. With this thesis, I hope to enlighten and remind the reader of the urgency and importance of this subject, highlighting its overarching characteristics that opens up for a broader discussion while relating to a diversity of academic disciplines and societal issues.

### 10.1. Future Research

The phenomenon of greenwashing has as mentioned in the background and empirical material, been around for some time. However, the result also implies that it could be regarded as a contemporary concept that only now is being processed, not only through the voice of the public but also based on governmental initiatives. Still, there is a lack of academic research to support and build on the knowledge that already exists on greenwashing. Unfortunately, the extent to which it has been prioritised could be reflected in the focus of the chapter about the Academic background, which could generate interest in other fields of studies including sociology of law and criminology encompassing features of marketing and the right to honest and true information. This goes hand in hand with the result of this research, highlighting how there is knowledge and regulations for deceptive environmental marketing. However, its application does not reflect the written law.

In terms of future research, there is a need for more academic work focusing on greenwashing in general, from a European perspective but especially within the Swedish context. Based on the research that already exists, there is a consensus regarding what greenwashing is and its general impact. However, there are few suggestions for how to avoid greenwashing, this applies especially to the Swedish context. It would therefore be interesting to look closer at the stages of the institutional work, which bears the main responsibility for monitoring and

processing misleading advertisements in the legal system. This could both be directed to political instances as well as the legal system and the KO. Moreover, while the result of this study implies that the practice needs to become more efficient, it could be fruitful to look closer at what practice in specific should be subject to improvement. In addition, by the end of the generation of empirical material, the ICC released a report with updated definitions of concepts that had been found frequently used in environmental marketing. It would be interesting to evaluate whether this contribution has brought any clarity to how environmental marketing should look in practice and how this updated taxonomy has been applied.

## 11. Bibliography

### LITERATURE

- ABREGO, L. J. (2019). Relational Legal Consciousness of U.S. Citizenship: Privilege, Responsibility, Guilt, and Love in Latino Mixed-Status Families. *Law & Society Review*, 53(3), 641–670.
- BALACEANU, C. T., Zaharia, D. L., Gruiescu, M., Constantinescu, M., Deák, G. (2020) Sustainable Measures in Environmental Protection Through Green Products. *International Journal of Conservation Science*. 11(4).
- BANAKAR, R. (2014) Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity. *Springer International Publishing AG*.
- BANAKAR, R. & TRAVERS, M. (2005). *Theory and method in socio-legal research*. Hart Pub
- Bañares, A.B., Silva, M.F., & Rodríguez, S.R. (2021). Green but ignored? The irrelevance of television advertisements on energy sustainability in Spain and its impact on consumer perceptions. *Energy research and social science*, 73, <https://doi.org/101835>
- BLUNDO, G. (2007) Hidden acts, open talks. How anthropology can “observe” and describe corruption. In: M. Nuijten and G. Anders, eds. Corruption and the secret of law: A legal anthropological perspective. *Farnham: Ashgate*. 27–52.
- BRETCU, A. (2019) Ecomarketing, the Response of Marketing to Contemporary Society’s Ethical Requirements. *Analele Universitatii "Eftimie Murgu" Resita: Fascicola II, Studii Economice*. XXVI. 44-53
- BRYMAN, A. (2014) Samhällsvetenskapliga metoder. *Liber*. 2(6)
- BUTLER, W. E., GRIER, P. T. (2012) Legal Consciousness: Some Comparative Legal Aspects, Legal Consciousness, and the Legal of I. *Journal of Comparative Law*. 7(1) 40-62
- CHUA, J. L., ENGEL, M. D. (2019) Legal Consciousness Reconsidered. *Annual Review of Law and Social Science*. 15(1) 335-353  
<https://doi.org/10.1146/annurev-lawsocsci-101518-042717>
- COPPOLECCHIA, K. E. (2010) The greenwashing Deluge: Who will rise above the waters of deceptive advertising. *University of Miami Law Review*. 64(4) 1353-1406

CMMS, 2021. European Commission, Market Monitoring.

DENSCOMBE, M. (2018) Forskningshandboken. För småskaliga forskningsprojekt inom samhällsvetenskaperna. *Studentlitteratur*. 3(3) p. 143-144.

ENG, N., DiRusso, C., Troy, C. L. C., Freeman, J. T., Liao, M. Q., & Sun, Y. (2021). “I had no idea that greenwashing was even a thing”: identifying the cognitive mechanisms of exemplars in greenwashing literacy interventions. *Environmental Education Research*, 27(11), 1599–1617. <https://doi-org.ludwig.lub.lu.se/10.1080/13504622.2021.1976732>

ERIKSSON, I. (2021). *The Green Lie: Informing consumers about greenwashing and its consequences*. Luleå Universitet.

EWICK, P., SILBEY, S. S. (1991-1992) Conformity, Contestation, and Resistance: An Account of Legal Consciousness Symposium on Feminist Critical Legal Studies and Postmodernism: Part One: A Diversity of Influence. *New England Law Review*. 26(3) 731-750.

FERNANDES, J., LEOPOLD, J. K. (2020) When consumers learn to spot deception in advertising: testing a literacy intervention to combat greenwashing. *International Journal of Advertising*. 39(7). 1115-1149. <https://doi.org/10.1080/02650487.2020.1765656>

FRITSVOLD, D. E. (2009) Under the law: legal consciousness and radical environmental activism. *Law & Social Inquiry*. 34(4) 799-824

GILL, C., & CREUTZFELDT, N. (2018). The “Ombuds Watchers”: Collective Dissent and Legal Protest Among Users of Public Services Ombuds. *Social & Legal Studies*, 27(3), 367.

HALLIDAY, S. (2019) After Hegemony: The varieties of legal consciousness research. *Social and Legal Studies*. <https://doi.org/10.1177/0964663919869739>

HERTOGH, M. (2018) Nobody’s Law. Legal Consciousness and Legal Alienation in Everyday Life. *Springer Link*.

HINSCH, C., Tang, Y., Lund, J. D. (2021) Compulsion and reactance: Why do some green consumers fail to follow through with planned environmental behaviours? *Psychology and Marketing*. 38(12) 2209-2226. <https://doi.org/10.1002/mar.21570>

HÒRAK, F., Lacko, D., Klocek, A. (2021) Legal Consciousness: A Systematic Review of its Conceptualization and Measurement Methods. *Anuario de Psicología Jurídica*. 31(1) 9-34 <https://doi.org/10.5093/apj2021a2>

- HULL, K. E. (2016). Legal Consciousness in Marginalized Groups: The Case of LGBT People. *Law & Social Inquiry*, 41(3), 551–572.
- HYDÉN, H. (2021) *Sociology of Law as the Science of Norms*. Routledge.
- IRM (Institutet för reklam- och mediestatistik). (2021) Årsrapport 2021 - Svensk Reklammarknad 2021.
- JACKSON, T. P. (2016) The Conduct of Inquiry in International Relations. Philosophy of science and its implications for the study of world politics. *The New International Relation Series*. Routledge. 2(1).
- JOHNSSON, F., Karlsson, F., Rootzén, J., Ahlbäck, A., Gustavsson, M. (2020) The framing of a sustainable development goals assessment in decarbonizing the construction industry – Avoiding “Greenwashing”. *Renewable and Sustainable Energy Reviews*. 131. <https://doi.org/10.1016/j.rser.2020.110029>
- JONES, E., Kennedy, H. E., Johnston, J. (2019) Rethinking Greenwashing: Corporate Discourse, Unethical Practice, and the Unmet Potential of Ethical Consumerism. *Sociological Perspectives*. 62(5) 728-754 <https://doi.org/10.1177/0731121419849095>
- JOSHI, P., KONROD, A. (2020) Sounds of Green: How Brand Name Sounds Metaphorically Convey Environmental Friendliness. *Journal of Advertising*. 49(1) 61-77 <https://doi.org/10.1080/00913367.2019.1696720>
- KAHRAMAN, A., KAZANÇOĞLU, I. (2019) Understanding consumers’ purchase intentions toward natural-claimed products: A qualitative research in personal care products. *Business Strategy and the Environment*. 28(6). 1218-1233. <https://doi.org/10.1002/bse.2312>
- KRAFFT, J., SAITO, R. (2015). *Greenwashing: An Experimental Study about the Effects of Misleading and Deceptive Environmental Claims in Advertising*. Göteborgs Universitet.
- KUSÁ, A., URMÍNOVÁ, M. (2020) Ecolabelling of Products as the Part of Green Marketing and Its Impact on Consumer Behaviour. *Megatrends & Media: Media Farm - Totems & Taboo*. 351-361.
- LEE, H. C. B., Cruz, J. M., Shankar, R. (2018) Corporate Social Responsibility (SCR) Issues in Supply Chain Competition: Should Greenwashing Be Regulated? *Decision Sciences*. 49(6), 1088-1115 <https://doi-org.ludwig.lub.lu.se/10.1111/deci.12307>
- LENTFER, S., Lison, M., Stenberg, S. (2021). *The Impact of the EU Taxonomy on Greenwashing: With a Case on the Swedish Sustainable Finance Sector*. Jönköping Universitet.

LI, G., Yang, L., Zhang, B., Li, X., & Chen, F. (2021). How do environmental values impact green product purchase intention? The moderating role of green trust. *Environmental Science & Pollution Research*, 28(33), 46020–46034.

<https://doi-org.ludwig.lub.lu.se/10.1007/s11356-021-13946-y>

LÄHDESMÄKI, T. (2020). *Challenges and Solutions in Ethnographic Research: Ethnography With a Twist. [Elektronisk resurs]* (1st ed.). Routledge. ISBN: 9780367376857

MACMANUS, T. (2016) The denial Industry: Public relations, ‘crisis management’ and corporate crime. *International Journal of Human Rights*. 20(6) 785-797.

<https://doi.org/10.1080/13642987.2016.1156882>

NADERER, B., OPREE, J. S. (2021) Increasing Advertising Literacy to Unveil Disinformation in Green Advertising. *Environmental Communication*. 15(7) 923-936.

OLK, S. (2021). The Effect of Self-Congruence on Perceived Green Claims’ Authenticity and Perceived Greenwashing: The Case of EasyJet’s CO2 Promise. *Journal of Nonprofit & Public Sector Marketing*, 33(2), 114–131.

<https://doi-org.ludwig.lub.lu.se/10.1080/10495142.2020.1798859>

OSWALD, R. F., & Kunalanka, K. A. (2008). Same-Sex Couples: Legal Complexities. *Journal of Family Issues*, 29(8), 1051–1066.

<https://doi-org.ludwig.lub.lu.se/10.1177/0192513X08316274>

PARGUEL, B., Benoit-Moreau, F., & Russell, C. A. (2015). ‘Can evoking nature in advertising mislead consumers? The power of “executional greenwashing.”’ *International Journal of Advertising*, 34(1), 107–134. <https://doi.org/10.1080/02650487.2014.996116>.

PREEM. (2021). Preem Progress Book. Snabbspår mot klimatneutralitet - Hållbarhetsredovisning 2021.

ROTMAN, M. R., Gossett, J. C., Goldman, Hope, D. (2020) Greenwashing no more: The case for stronger regulation of environmental marketing. *Administrative Law Review*. 72(3) 417-443

SB INSIGHTS. 2021. Kartläggning: Miljöargument i marknadsföring på den svenska konsumentmarknaden 2021.

SEKHON, T. S., ARMSTRONG, S. C. (2020) Conspicuous anticonsumption: When green demarketing brands restore symbolic benefits to anticonsumers. *Psychology and Marketing*. 37(2)



- SCHMUCK, D., Matthes, J., Naderer, B. (2018) Misleading Consumers with Green Advertising? An Affect– Reason–Involvement Account of Greenwashing Effects in Environmental Advertising. *Journal of Advertising*. 47(2) 127-145. <https://doi.org/10.1080/00913367.2018.1452652>
- SCHOULTZ, I., FLYGHED, J. (2020) Denials and confessions. An analysis of the temporalization of neutralizations of corporate crime. *International Journal of Law, Crime, and Justice*. 62. <https://doi.org/10.1016/j.ijlcrj.2020.100389>
- SOHLBERG, T. (2019) In favor of tobacco control? Former smokers' support for tobacco policies. *Nordic Studies on Alcohol and Drugs*. 36(6) 496-510. <https://doi.org/10.1177/1455072519853914>
- VARGAS FALLA, A. M., & URINBOYEV, R. (2015). Everyday Forms of Resistance to the Law: An Ethnographic Study of Street Vendors in Bogotá. *Droit et Société*, 91(3), 623–638.
- VLAD, V. C. & LUCA F-A.. (2020). Delivering Sustainability - Green Marketing Evolution. *Network Intelligence Studies*, 4(16), 169–179.
- VON AHN, A. (2018). *In the Eyes of the Beholder*. Borås Högskola.
- WAITES, F. S., Stevens, L. J., Hancock, T. (2020) Signalling green: Investigating signals of expertise and prosocial orientation to enhance consumer trust. *Journal of Consumer Behaviour*. 19(6). 632-644. <https://doi.org/10.1002/cb.1867>
- WILSON, J. C. (2011). Sustaining the State: Legal Consciousness and the Construction of Legality in Competing Abortion Activists' Narratives. *Law & Social Inquiry*, 36(2), 455–483.
- ÖZSOY, T., AVCILAR, M. Y. (2016). An investigation of the Effects of Consumers' Environmental Attitudes on Perceptions of Green Ads and Attitudes Toward the Brand. *Journal of Academic Research in Economics*. 8(1). 7-37

## LEGAL SOURCES

Motion 2020/21:3067. *Falska miljöpåståenden i reklam av Amanda Palmstierna, MP*. [False environmental statements in marketing by Amanda Palmstierna, MP] Sveriges Riksdag. <https://data.riksdagen.se/fil/53526977-3149-4968-8718-DE21608A491E>

European Commission. (2005) *Directive 2005/29/EG of the European Parliament and of the Council. Official of the European Union. L 149/22. Directive on Unfair Commercial Practices*. European Commission. <http://data.europa.eu/eli/dir/2005/29/oj>

Regeringen. (2015) *Ds, 2015:45 Stärkta sanktionsmöjligheter för Konsumentombudsmannen*. Departementsserien och promemorior från Finansdepartementet. Stockholm: Sveriges Regering. <https://www.regeringen.se/4a7892/contentassets/edfd23b5ab3f455bb05251b8b3c61846/starkt-a-sanktionsmojligheter-for-konsumentombudsmannen-ds-201545>

SFS 2008:486 *Marknadsföringslagen*. [The Swedish Marketing Act] Stockholm.

SFS 2016:793 *Lag om ändring i Marknadsföringslagen (2008:486)* Finansdepartementet KO.

SFS 2016:223 49§ *Lag om ändring i Marknadsföringslagen (2008:486)* [Amendment of The Swedish Marketing Act 2008:486] Finansdepartementet.

SFS 1993:581 *Tobakslag* [The Tobacco Law] Socialdepartementet.

Svea Hovrätt beslut, 2011-06-17, Mål nr. B 8332-10.

Marknadsdomstolen beslut, 2011-05-31, Mål nr. MD 2011:12.

Marknadsdomstolen beslut, 1991, Mål nr. MD 1991:11.

## 12. Appendix

### APPENDIX A: QUESTIONNAIRE

#### APPENDIX A: INTERVIEW QUESTIONS

*Målet med denna intervjun är att få ta del av din uppfattning och dina erfarenheter kring hur man arbetar med vilseledande miljöpåståenden i praktiken.*

##### Din upplevelse av lagen

1. Enligt MFL finns det, enligt principen för god marknadsföringssed, en paragraf som förbjuder vilseledande påståenden relaterat till bland annat miljön. Är denna bestämmelse något som du har mött tidigare i ditt arbete?
  - a. Vad tänker du att denna paragraf handlar om?
  - b. Utifrån din erfarenhet - på vilka grunder kan man bedöma om en marknadsföring är vilseledande?
2. Vilka skulle du säga är de vanligaste fallen för appliceringen av denna bestämmelse? (för KO och domstol)
  - a. Vilka konsekvenser finns det om man använder vilseledande miljöreklam?
  - b. Tror du att företag på svenska marknaden har vetskap om de sanktioner som kan förekomma om man rör sig utanför ramarna av MFL?
3. KO har bland annat beskrivits som en institution med tillgång till "effektiva och avskräckande sanktioner" för att säkerställa ett starkt konsumentskydd: Anser du att man har lyckats med detta i praktiken när det gäller vilseledande marknadsföring kopplat till miljö?
4. 2016 gavs KO stärkta sanktionsmöjligheter med befogenheter att utdöma viten med omedelbar verkan - enligt din erfarenhet - hur har denna befogenhet applicerats i KOs egna arbete?
5. Skulle du säga att det är många ärenden som uppmärksammas och som sedan går till rättsförhandling?
6. Även om vi har en MFL som reglerar användningen av miljöpåståenden i Sverige så har bland annat KO alarmerat för en ökad användning av falska miljöpåståenden. Är detta, om man ska kalla det gapet, mellan skriven lag och lagen i praktiken något som har diskuterats i din juridiska omgivning/rättsliga diskurs?

### Problematisering av lagen och rekommendationer för framtida utveckling

1. Upplever du att det finns någon särskild problematik när det kommer till tillsynsarbetet med miljöpåståenden i praktiken?
2. Samtidigt som det finns en lag som förbjuder vilseledande miljöpåståenden så har reklamen som sedan tagits till rättsförhandling redan nått ut till en större population. Om “huset redan har brunnit ner” på grund av att vi idag har ett system som bygger på att reklam har nått ut till många individer innan någon hinner reagera eller tillrättavisa den. Vad tänker du kring detta om man riktar fokus mot förebyggande tillsynsarbetet?
  - a. Vilka signaler kan detta skicka ut till andra bolag och konsumenter?
3. Om man spekulerar lite - finns det något som skulle kunna göras för att säkra en större laglydighet i detta område?
4. Slutligen, finns det någon som du själv skulle vilja se förändras i praktiken kring arbetet kring vilseledande miljöargument i marknadsföring?
5. Hur kan yttrandefrihet bli relevant att ta upp i diskussionen kring vilseledande miljöpåståenden?

## APPENDIX B: CONSENT FORM



INFORMED CONSENT BY SUBJECT TO PARTICIPATE IN INTERVIEW ON AN RESEARCH STUDY EXPLORING GREENWASHING IN THE SWEDISH LEGAL PRACTICE.

TITLE OF RESEARCH: "The house has already burned down"

The University of Lund and the student (principal investigator) conducting this project subscribe to the ethical conduct of research ant to the protection at all times of the interests, comfort, and safety of the subjects. This form and the information it contains are given to you for your own protection and full understanding of the procedures. Your affirmation will signify that you have received the information which describes the procedures, possible risks, and benefits of this research project, that you have received an adequate opportunity to consider the information presented below, and that you voluntarily agree to participate in the project.

An audio recording of your voice will be made during the interview, which will be reviewed only by the Principal Investigator. All research materials will be held confidential by the Principal Investigator and kept in a secure manner. These research materials will be destroyed after the completion of the study.

I have been asked by Amanda Rehm, of the Lund University to participate in a research project study, I have been informed of the personal risks and benefits to me in taking part. I understand that I may withdraw my participation in this study at any time, where all information connected to me will be removed.

I understand that my consent for voluntarily taking part in this study is required prior to my participation in a study such as this. I agree to participate by participating in an interview, over telephone or Zoom, to answer a semi-structured questionnaire. I understand that these activities will be requires approximately one hour at a time schedules with Amanda R. I agree to have contact with the Principal Investigator after the interview if there are questions of clarification in relation to my given data that are needed answering.

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**APPENDIX C: LISTING THE INFORMANTS**

<b>Pseudonym</b>	<b>Affiliation</b>	<b>Duration of interview</b>
Informant A	Holds a high position on a management level within an important institution combating Greenwashing. Educated in law.	40 minutes
Informant B	Employed as an attorney-at-law and legal counsel at a law firm. Educated in law.	35 minutes
Informant C	Lawyer employed as a senior associate at a law firm. Educated in law.	25 minutes
Informant D	Lawyer employed at an institute combating greenwashing. Educated in law.	50 minutes
Informant E	Planner and strategist in sustainability communications.	45 minutes
Informant F	Lawyer employed at a law firm. Educated in law.	35 minutes
Informant G	Research director for sustainability research with previous employment in PMD. Educated in law.	80 minutes
Informant H	Creative leader and spokesperson in market law issues, Greenpeace Nordic. Educated in Market Law.	40 minutes