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NEWSLETTER
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EmpCo Directive

New Rules for Green Claims and Labels

Environmental claims have become a central marketing tool, but also a growing source of legal risks. With the adoption of the Empowering Consumers for the Green Transition Directive (EU) 2024/825 (EmpCo Directive), the EU has introduced far-reaching new rules to combat greenwashing and strengthen consumer protection. Companies operating in the EU must prepare for a significant shift in how environmental advertising and sustainability labels must be designed and substantiated by September 2026.

Objective and Implementation

The primary objective of the EmpCo Directive is to enable consumers to make informed purchasing decisions and to prevent misleading environmental claims. It amends core EU consumer law, in particular the Unfair Commercial Practices Directive, and is a key element of the European Green Deal. The Directive must be transposed by Member States by 27 March 2026, with application for all companies operating in the EU from 27 September 2026.

New Rules on Environmental Advertising

The Directive introduces strict requirements for environmental ("green") claims. At its core, it seeks to eliminate vague, misleading or unsubstantiated statements:

1. Generic environmental claims such as "eco-friendly", "green" or "climate neutral" are generally prohibited unless they can be substantiated by recognized, verifiable environmental performance.
2. Companies must ensure that any environmental claim is clear, specific and evidence-based. Claims about future environmental performance (e. g. climate neutrality targets) must be supported by concrete, verifiable commitments and monitoring mechanisms.
3. Misleading practices are explicitly added to the "blacklist" of unfair commercial practices. This includes, for example, claims that exaggerate environmental benefits or rely solely on offsetting without transparent disclosure.

Overall, the Directive significantly raises the evidentiary threshold for sustainability-related marketing.

New Requirements for Environmental Labels

A particularly important innovation concerns environmental and sustainability labels. The Directive prohibits the use of labels that are not based on a recognized certification scheme or established by public authorities.

This directly targets the proliferation of private, non-transparent "green seals" that may mislead consumers. In practice, companies will need to ensure that any label they use is:

- based on a credible and transparent certification system, and
- subject to objective criteria and oversight.

Labels created solely for marketing purposes without independent verification will no longer be permissible.

Practical Implications and Need for Action

The EmpCo Directive creates immediate and substantial compliance obligations for companies operating in the EU.

First, existing marketing materials and product communication must be reviewed. Many commonly used claims – particularly broad or image-based sustainability messages – may no longer be compliant.

Second, companies must establish robust substantiation processes. Environmental claims will need to be backed by reliable data, scientific methodologies and, where appropriate, third-party verification.

Third, internal governance and compliance structures should be adapted. This includes training marketing teams, implementing approval processes for environmental claims, and ensuring consistency across jurisdictions.

Finally, businesses should monitor the interaction with the still possible Green Claims Directive, which may introduce even more detailed rules on verification and certification of environmental claims.

Customs Seizures

An often-overlooked Tool for Combating Product and Trademark Piracy

Counterfeiting and product piracy remain a major challenge for brand owners. An often underused but key enforcement mechanism is the border seizure application, which enables customs authorities to detain suspected infringing goods at the EU's external borders and, in certain cases, within the internal market. For rights holders, this instrument offers a cost-efficient and highly effective first line of defence.

Practical Importance

According to the latest report by the European Union Intellectual Property Office (EUIPO), authorities in the EU detained approximately 112 million counterfeit items in 2024, with an estimated value of more than EUR 3.8 billion, representing the highest value recorded to date. Of these, around 20 million items were intercepted at the EU's external borders alone, with a value of roughly EUR 1.5 billion, marking a ten-year high. The figures also reveal structural trends: nearly 74% of seized goods fall within a limited number of product categories such as clothing, toys, cosmetics, and digital media, while seven EU Member States account for around 90% of all detentions.

Germany reflects similar developments: More than 5 million counterfeit goods were seized by German customs in around 17,000 cases in 2024, with a total value of approximately EUR 417 million. A notable trend is the increasing importance of small consignments in postal traffic, which now account for the majority of cases, driven by e-commerce and direct-to-consumer shipments. Against this background, border seizure applications have become an indispensable enforcement tool.

Legal Frameworks

At EU level, border measures are primarily governed by Regulation (EU) No. 608/2013. This framework allows rights holders to request customs intervention by filing an application for action. Two main types of applications exist.

A Union application may be filed in one Member State but can extend to several or all EU Member States, provided the underlying IP right – such as an EU trademark or design – is valid in those territories. In contrast, a national application (e. g. in Germany under Sect. 146 German Trademarks Act) is limited to the respective Member State and typically complements the EU system, for example in cases involving parallel imports or goods already in free circulation.

In practice, combining both types of applications can be advisable to ensure comprehensive protection.

How the Procedure Works

Customs authorities generally act only upon application by the rights holder. While ex officio action is possible in exceptional cases, it is limited and requires that the infringement be obvious and the rights holder easily identifiable.

Once an application is granted (typically for one year, renewable), customs authorities monitor relevant shipments. If suspicious goods are identified, they are detained and the rights holder is notified. The rights holder must then react quickly – usually within 10 working days (or 3 days for perishable goods) – to confirm whether an infringement exists.

If the importer or sender does not object, the goods can be destroyed under customs supervision without court proceedings. This simplified destruction procedure is one of the major practical advantages of the system. However, rights holders must initially bear storage and destruction costs, which in practice are often difficult to recover from infringers located outside the EU.

Key Considerations for Rights Holders

For an application to be effective, it should include detailed product information that allows customs officers to distinguish genuine goods from counterfeits. Designating a knowledgeable contact person who can respond quickly to customs inquiries is equally critical.

The border seizure system is particularly effective where goods enter the EU from third countries. However, its success depends on proactive engagement by rights holders. Without a valid application in place, customs authorities will often be unable to act.

Liability of Logistics Providers

German Court Ruling causes Stir in the IP and Logistics Community

A recent decision by the Higher Regional Court Düsseldorf has sparked considerable attention. The court held a logistics service provider liable under the German doctrine of "Störerhaftung" (interferer liability) in connection with the distribution of counterfeit goods. we take a look at the expected impact of the ruling on the logistics industry.

The ruling of the Higher Regional Court Düsseldorf

The case (ruling of 07 August 2025, 20 U 9/25) concerned counterfeit branded sports jerseys originating from China and distributed via a logistics structure involving a German service provider. The provider offered foreign sellers the use of a German address, which was used as the sender and return address for shipments into the EU.

The court found that the logistics provider had made a causal and willful contribution to the trademark infringements. Importantly, it did not limit itself to a passive role in transport but was seen as actively facilitating the distribution of infringing goods. After receiving notice of the infringements, the provider failed to take sufficient measures to prevent further violations. As a result, the court imposed injunctive obligations and articulated relatively far-reaching duties, including the possibility of refusing shipments or taking additional control measures – such as verification of sender information, blocking of suspicious senders, and random checks as needed.

Why the Decision Is Likely an Exceptional Case

Despite initial concerns, the ruling should be viewed as a fact-specific exception rather than a shift in general liability standards.

First, the provider's business model was atypical. By offering its own German address to foreign sellers and acting as a return hub, it assumed a role that went beyond that of a neutral logistics intermediary. This closer integration into the distribution structure was key to the court's assessment.

Second, German case law on interferer liability traditionally requires specific knowledge or clear indications of infringement before imposing extensive duties. A general awareness that goods from certain regions may be counterfeit is not sufficient to trigger liability.

Third, any obligations imposed on intermediaries must remain proportionate and reasonable. Broad monitoring or inspection duties for high-volume logistics providers would be impractical and inconsistent with established principles. The court's reasoning therefore hinges on the particular combination of repeated notice, identifiable infringing activity, and the provider's operational involvement.

Practical Implications

For most logistics providers operating under standard models, the decision does not create a general risk of liability for trademark infringements. Routine transport and delivery services, without additional involvement in the distribution chain, remain outside the typical scope of "Störerhaftung". However, the case highlights that risk may arise in individual situations, particularly where logistics providers:

- Take on functions beyond mere transport (e.g. acting as sender or return address),
- Receive concrete notices of infringement and fail to react appropriately, or
- Facilitate distribution structures that make infringements foreseeable.

Design Law

LEGO hits (brick) wall at the General Court

With its judgment of 14 January 2026 (T-628/24), the General Court of the European Union provided important clarification on the assessment of individual character in EU design law. The decision – concerning a modular LEGO building element – has attracted considerable attention (as well as some justified critique) as it illustrates both the strictness of the "overall impression" test and the challenges of protecting designs for modular products.

Background of the Case
The dispute arose between Lego A/S and a competitor seeking to invalidate a registered EU design for the following building block element:

Both the EUIPO and its Board of Appeal had already declared the design invalid for lack of individual character due to the following prior LEGO design:

The General Court confirmed this finding and dismissed LEGO's appeal.

Considerable degree of designer's freedom

A key contribution of the judgment lies in its structured restatement of the four-stage assessment for determining individual character:

- First, the relevant product sector must be identified.
- Second, the "informed user" must be defined, including their level of attention and knowledge of prior designs.
- Third, the degree of design freedom must be assessed.
- Finally, the overall impressions of the contested design and the nearest earlier design must be compared directly.

The assumption of a high degree of design freedom was likely decisive for the outcome of the proceedings.

The court acknowledged that creative freedom is limited by the need for the blocks to connect with each other. However, it still found that there is considerable design freedom due to the many possible variations, including shape, size, components, and overall appearance. To an informed user, the contested design appears as a continuation of an existing pattern. Differences in the shape of the blocks (e.g., square vs. rectangular) are seen as minor and receive little attention. As a result, designs without significant differences create the same overall impression.

Critique

However, this assessment appears questionable. The court failed to take into account that the designs in question do not consist solely of squares or a combination of squares, but each also features a crescent-shaped clamp. The addition of another square therefore does not result in the contested design being a "continuation of the same pattern established in the prior design," as this would have required another clamp.

Furthermore, the court did not sufficiently consider that the informed user will pay close attention to the design differences precisely because of the necessary interoperability of the components.

Specific Challenges for Modular Products

Notwithstanding the critique, the case highlights the particular difficulties of protecting modular and interoperable products, such as building blocks.

The Court acknowledged that the designer's freedom is partly constrained by the need for interconnection. However, it also emphasized that this does not eliminate design freedom altogether. Designers still have significant scope regarding shape, proportions and visual appearance.

As a result, relatively small differences may be insufficient if the overall visual concept remains unchanged. This creates a high threshold for establishing individual character in sectors where products must be compatible with existing systems.

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