Regulatory and Investor Scrutiny is Challenging Company Sustainability Commitments

A wide range of food and consumer product companies are being challenged to demonstrate their offerings meet their sustainability claims.

August 19, 2021

A broad spectrum of companies—from small startups to multi-nationals—believe there is added value in voluntarily reporting their environmental, social, and governance (ESG) and sustainability commitments. And for good reasons. The messaging in social media and in-store advertising speaks to consumers about company behaviors, accomplishments, and practices around environmental compliance and social responsibility. Developing these commitments internally also helps unite and organize a company's resources towards increasing market share, creating added product value, and managing reputational and other business risks.

In some cases, such reporting is prompted by a broad set of stakeholders who are increasingly asking for more detailed information from companies on ESG issues. Government agencies and non-governmental organizations (NGOs) are dedicating more and more resources to scrutinizing environmental claims and beginning to hold companies accountable for asserting exaggerated, misstated, or immaterial claims about corporate social responsibility (CSR), ESG, and sustainability performance. Companies face growing pressure from investors, as well, to publish standardized and rigorous sustainability information that allows for cross-industry benchmarking. By addressing these mounting pressures proactively, companies of all kinds have the opportunity to sharpen their ESG and sustainability reporting while avoiding some of the worst potential consequences of unsubstantiated claims and perceptions of green-washing.

No Longer Strictly Voluntary

Increasingly, ESG and sustainability disclosures are no longer strictly voluntary. The Prince's Accounting for Sustainability Project (A4S) reports, at present, 614 sustainability reporting requirements are in place in 84 countries and 25 stock exchanges covering 16,500 companies. A host of new legislation is anticipated by 2025 to encourage or require ESG and sustainability reporting by the global business community. The number of NGOs monitoring a company's ESG reporting and progress on biodiversity, climate, environmental justice, nature, water, and other environmental and social issues is growing quickly. Deeper engagement in a company's sustainability reporting by financial institutions is also adding considerable pressures to this trend.

The courtroom is emerging as another avenue for holding companies accountable for their claims and commitments. In the past year alone, several lawsuits have been filed in U.S. courts asserting sustainability representations in advertising and labeling of various consumer products and offerings are false or misleading. A consumer advocacy group has challenged a national grocery store chain that its claims about sustainably sourced seafood are not credible. Earlier this year, the world's largest salmon farmer settled a similar complaint without admission regarding some of its seafood products. One of the world's largest companies is facing claims that its plastic recycling policy falls short of consumer expectations. And, recently, a national restaurant chain received a class action complaint alleging that some of its menu items are not sustainably sourced as advertised.

Claims Have Consequences

These and similar legal actions point to the challenges food producers and distributors and many other consumer-facing companies can expect to face when disclosing, either voluntarily or because of regulatory mandate, their ESG commitments and sustainability practices. Stakeholders are paying close attention to sustainability claims and pushing for more ambitious goals. Companies are likely to experience more legal challenges in court, more regulatory oversight, and much closer inspection by investors of their business practices. As companies continue to improve and expand information about their CSR, ESG, and sustainability performance, stakeholders will expect to find greater accuracy and consistency in the disclosures.

Reactions from consumer groups, NGOs, and other stakeholders to ESG, CSR, and sustainability disclosures that are perceived as green-washing or that convey false or nonstandard claims are likely to be harsh. Companies would be well advised to scrutinize their sustainability reporting and environmental claims to ensure they are neither misleading nor deceptive, comply with relevant regulations and guidance, and adhere to truth in advertising laws worldwide.

Increasingly, companies must also document that their statements are premised on justifiable and widely accepted sustainability metrics. The European Union is leading the way with respect to ESG due diligence, investing, and regulation. The U.S. is currently lagging, but not for long. The U.S. Federal Trade Commission intends to initiate a review of its Green Guides in 2022. By 2025, the failure of companies to incorporate ESG practices and monitor their performance may invite costly consequences.

How Exponent Can Help

The many facets of ESG and sustainability are evolving rapidly in response to the growing sophistication of consumers and the need for more explicit trade and marketing oversight by national and international regulatory authorities. Exponent's team of industry experts in chemical regulation and food safety, environmental and polymer science, data sciences, and chemical, electrochemical, mechanical, and civil engineering is helping companies pivot their operations and corporate culture to meet sustainability goals in response to changing consumer attitudes, investor expectations, and evolving technologies. Exponent's SMART approach to setting sustainability goals is informed by rigorous analysis and reporting to help businesses reduce their physical, transitional, and liability risk while building an organization's capital and creating long-term stakeholder value.

Exponent has prepared expert reviews and recommendations addressing a wide range of environmental performance practices and commitments for clients. Our experts are advising the business and investment communities on priorities around resilience, a low-carbon future, material recycling, and a host of actions tied to achieving United Nations sustainable development goals (SDGs). We work with clients to define product environmental footprints, provide third-party auditing of sustainability practices, and support corporate environmental programs and commitments. We understand the considerable work required to bring foods and consumer products safely and successfully to market.

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