



AI Washing: impact on UK businesses and consumers

The new age greenwashing: how to avoid AI washing and the risks for UK businesses

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United Kingdom

What is AI washing?

In March 2024, the United States Securities and Exchange Commission (“SEC”) brought charges against two investment advisors for making false and misleading statements about their purported use of artificial intelligence (“AI”). In words that could not better describe the concept of AI washing, the SEC Chair stated that these companies “*marketed to their clients and prospective clients that they were using AI in certain ways, when in fact they were not*”. The message: if you claim to use AI, make sure you in fact are and your corresponding representations as to its use are not false or misleading.

AI washing as a concept has developed in a manner similar to greenwashing, where companies may make (misleading) green and sustainability-related claims about products and services to appeal to the growing number of environmentally conscious consumers and investors. The risk of AI washing arises where organisations similarly seek to entice investors and purchasers, encouraging them to

invest or make purchases emphasising AI and other AI related terminologies where this cannot be substantiated or overall is considered misleading. This might take the form of claiming to use AI when in fact a less sophisticated technology is being used, exaggerating what an AI tool can do or suggesting a service or action is undertaken entirely using AI when it is not and may only make up a very small element of a service or tool.

Risks of AI Washing

AI washing has existed for a number of years but is becoming more frequent and significant given the recent rapid developments in AI technology and its regulation and governance.

Some of the risks of AI washing are:

- **contracting with or investing in businesses considered to be innovative and at the forefront of the use of AI when in fact they are not, which may have an impact on return of investment or future business plans and goals**
- **procuring services that do not meet operational requirements and expectations**
- **overpaying for services**
- **consumer distrust around any products or services claiming to use AI**
- **misleading consumers**

What actions can be taken against businesses who use AI washing with consumers in the UK?

In the UK, the Advertising Standards Agency (“ASA”) has provided some guiding principles when making representations about AI and AI capabilities and says that companies should take care not to mislead about what their products are or can do. In particular, a marketer should not:

- **falsely claim that a product uses AI**
- **exaggerate what an AI product can do**

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— claim that an AI product does something better than a non-AI product, unless this is supported by adequate evidence

The ASA issued a [ruling](#) in October 2023 against an Instagram advertisement that was captioned “Enhance your Photos with AI”, stating that the company responsible had misleadingly exaggerated the capabilities of the product. The ASA ruled that the ‘before’ and ‘after’ images advertised by the company as having been produced by their product, taken along with the claim in the caption “Enhance your Photos with AI”, misled the consumers into understanding that they would be able to achieve similar ‘after’ images, when in fact that was not the case.

Under the Consumer Protection Regulations 2008, as amended by the Digital Markets, Competition and Consumers Act 2024 (the “DMCC”) that received royal assent earlier this year, it is an offence to provide to a consumer, false or misleading information (or an overall presentation) relating to a product, the trader or any other matter relevant to a transactional decision, that is likely to deceive the average consumer. In these circumstances, a consumer has the right to unwind the contract, receive a refund or a discount and to claim damages in respect of any financial loss, distress or physical inconvenience or discomfort suffered. The Competition & Markets Authority (“CMA”) regulates this area (in addition to its competition powers) and the DMCC has granted it new powers of enforcement. The CMA will be able to issue enforcement notices and fines of up to 10% of annual global turnover to businesses that are in breach of consumer protection law, including those practicing AI washing.

In addition, under the UK’s Consumer Rights Act 2015, where a business is supplying a service to a consumer, a term of the contract will include anything that is said or written to the consumer about the business or the service, where that information is taken into account by the consumer before entering the contract or when making any decision about the service later on. This means that misleading information about the AI capabilities of a business or a service that it provides, such as a financial service or an IT service, may result in a breach of the consumer contract by the business making such claims.

Other regulators, such as the Financial Conduct Authority, have their own rules and regulations that are also relevant to AI washing such as the consumer duty, rules relating to financial promotions and adverts and guidance on the treatment of vulnerable customers. Failure to comply with these regulations could result in further reputational and financial damage to any entities to which they apply.

In addition to the regulatory enforcement mechanisms set out above, contractual disputes in the supply chain may arise, in addition to the potential for investment/shareholder disputes relating to broader claims made about an organisation’s AI use and activities.

What can businesses do to mitigate the risks of AI washing?

It is important that businesses carry out thorough due diligence before appointing suppliers. Due consideration should be given to any claims regarding the use or provision of AI within the services to be provided. A key question is what is; meant by AI when it is referred to in any pitch or marketing materials. There is no single definition of AI and different people will consider different tools and technologies to fall in and out of the scope of this definition.

The details of the services to be provided, including any AI solution, should be clearly set out in a contract, with appropriate contractual provisions in relation to its use, including intellectual property, data security and liability provisions that reflect the specific AI tool being used and the nature of the arrangement between the parties.

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In relation to external consumer communications, from adverts, to claims about specific products/services and the organisation's broader activities, these should be carefully reviewed pre-publication in light of the above considerations. Organisations should ensure claims are verified, substantiated and kept under review as technologies develop. Claims made also need to be consistent with other related areas, such as energy use/carbon footprint.

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