

Evaluating Performative Speech Acts in Judicial Reviews of False Environmental Advertising

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Abstract

False environmental advertising has become a central concern in consumer protection and climate governance, yet judicial assessment of such claims remains theoretically underdeveloped. Courts routinely evaluate whether corporate environmental statements are “misleading,” but they lack a systematic framework for distinguishing between aspirational discourse and binding performative commitments. This study addresses that gap by applying speech act theory to judicial reasoning in greenwashing cases, asking how courts implicitly evaluate the performative force of corporate environmental utterances. Drawing on a qualitative doctrinal analysis of leading judicial decisions—principally the Paris Tribunal’s 2025 ruling in *Greenpeace France and Others v. TotalEnergies*—supplemented by a structured coding protocol applied across 47 adjudicated claims, the study develops a Performative Judicial Review Framework (PJRF). The framework classifies corporate environmental statements along three dimensions: assertive content, commissive force, and directive address. Key findings indicate that 89.4% of judicial findings of misleading conduct involved statements that combined strong commissive framing (“ambition,” “commitment”) with weak assertive substantiation, while courts consistently rejected the “mere puffery” defense where temporal specificity was present. The study concludes that judicial review of environmental advertising operates as an implicit speech-act evaluation and that explicit theoretical articulation would improve consistency and

predictability. Implications extend to regulators, adjudicators, and corporate communicators seeking to align environmental discourse with verifiable conduct.

Keywords: performative speech acts, greenwashing adjudication, environmental advertising, judicial review, corporate commitments

1. Introduction

1.1 Background

The proliferation of corporate environmental claims has generated a corresponding expansion in regulatory and judicial scrutiny. From the European Union's Empowering Consumers Directive to enforcement actions by national consumer protection authorities, the legal architecture governing environmental advertising has tightened considerably over the past decade. Courts in multiple jurisdictions have begun to treat corporate climate communications not as innocuous marketing rhetoric but as legally actionable representations capable of deceiving consumers and distorting market behavior.

The landmark decision of the Paris Judicial Tribunal in October 2025, which found TotalEnergies liable for misleading commercial practices regarding its carbon neutrality and energy transition claims, marked a turning point in judicial engagement with corporate environmental discourse. The court rejected the company's argument that its statements were merely aspirational, holding that the language of "ambition to achieve carbon neutrality by 2050" conveyed a present and concrete commitment rather than a future aspiration. This reasoning implicitly engaged with questions that speech act theory has long theorized: what does an utterance *do* when it is uttered, and under what conditions does it bind the speaker to consequences?

Speech act theory, originating with Austin's distinction between constative and performative utterances and extended by Searle's taxonomy of illocutionary acts, provides a vocabulary for analyzing how corporate environmental statements function as commitments, assertions, and directives. Recent scholarship has begun to apply performative theories to sustainability discourse, arguing that corporate purpose becomes socially legible through patterned discursive acts that bind the firm to evaluative scrutiny rather than through single declarative statements. Okeke and Ugbebor (2026) advance a Performative Purpose Alignment Theory (PPAT) that treats purpose communication as performative, emphasizing semantic alignment, tonal configuration, and narrative architecture across reporting periods. Separately, Okeke (2026) develops a diagnostic tool for assessing corporate environmental misrepresentation across four dimensions: misleading environmental claims, strategic disclosure practices, ESG metric manipulation, and green trust.

Judicial review of false environmental advertising, however, has not been systematically analyzed through this theoretical lens. Courts evaluate whether statements are “misleading” without explicit recourse to the performative dimensions of those statements—whether they assert verifiable facts, commit the speaker to future conduct, or direct audiences to adopt certain beliefs. The result is a body of adjudication that is intuitively sensitive to performative force but theoretically under-articulated.

1.2 Problem Statement

Existing scholarship on greenwashing has advanced considerably in conceptualizing and measuring corporate misrepresentation. Okeke’s (2026) validated scale for greenwashing provides a multidimensional instrument capturing misleading claims, selective disclosure, and ESG metric manipulation . Legal scholarship has documented the expansion of climate litigation and the increasing willingness of courts to scrutinize environmental advertising . Yet a critical gap persists at the intersection of speech act theory and judicial decision-making.

Courts adjudicating false environmental advertising cases routinely confront statements that are neither purely factual assertions nor purely future-oriented promises. When TotalEnergies declared its “ambition to achieve carbon neutrality by 2050,” was it asserting a present fact about its strategy, promising future conduct, or expressing an aspiration immune from verification ? The Paris Tribunal’s answer—that the statement constituted a present and concrete commitment—was legally efficacious but theoretically unelaborated . No framework currently exists for systematically evaluating how judges assess the performative force of environmental utterances, what linguistic markers they treat as indicative of binding commitment, or how their implicit speech-act reasoning varies across claim types.

This gap matters practically as well as theoretically. Without an articulated framework, judicial outcomes may depend on unstated intuitions rather than transparent criteria. Corporate communicators lack guidance on which discursive forms are likely to attract liability. Regulators cannot predict which claims will survive judicial scrutiny. And the growing body of greenwashing adjudication accumulates without theoretical integration, limiting its precedential coherence.

1.3 Objectives of the Study

General objective: To develop and validate a Performative Judicial Review Framework (PJRF) for analyzing how courts evaluate the illocutionary force of corporate environmental statements in false advertising adjudication.

Specific objectives:

1. To identify the linguistic and contextual markers that judicial decision-makers treat as indicative of binding performative commitment in environmental advertising claims.

2. To design a coding framework that classifies corporate environmental statements along assertive, commissive, and directive dimensions and correlates these classifications with judicial outcomes.
3. To validate the framework against a corpus of adjudicated greenwashing cases and assess its predictive accuracy in anticipating judicial findings of misleading conduct.

1.4 Research Questions

1. What combination of linguistic markers and contextual factors most accurately predicts judicial findings that an environmental advertising statement constitutes a binding commitment rather than non-actionable puffery?
2. How does the Performative Judicial Review Framework compare to conventional “misleadingness” analysis in terms of explanatory coherence and predictive accuracy across adjudicated cases?
3. What are the barriers to explicit judicial adoption of performative analysis, and how might these be addressed through doctrinal clarification or regulatory guidance?

1.5 Significance of the Study

For practitioners and administrators: The framework offers a diagnostic instrument for assessing litigation risk before environmental claims are published. Corporate legal and communications teams can evaluate proposed claims against the criteria courts have implicitly applied, reducing exposure to misleading advertising findings.

For policymakers and regulators: The study provides an empirically grounded basis for guidance on environmental claim substantiation. Rather than blanket prohibitions on aspirational language, regulators can target specific performative configurations—particularly commissive framing without assertive substantiation—that courts have consistently found deceptive.

For academic literature: The research bridges speech act theory and consumer protection law, extending Okeke and Ugbebor’s (2026) performative framework from sustainability discourse analysis to judicial decision-making . It also complements Okeke’s (2026) diagnostic tool by providing a qualitative, adjudication-focused counterpart to quantitative greenwashing measurement .

For future researchers: The PJRF establishes a replicable methodology for analyzing judicial reasoning across jurisdictions and claim types, enabling comparative research on how different legal cultures evaluate performative commitment.

1.6 Scope and Limitations

This study analyzes judicial decisions and regulatory adjudications concerning false environmental advertising issued between 2020 and 2026, with primary emphasis on European

and common law jurisdictions where reasoned decisions are publicly available. The corpus centers on the Paris Tribunal's *TotalEnergies* decision as the most fully reasoned contemporary judgment, supplemented by decisions from France, the United Kingdom, Australia, and Canada. Consumer-facing commercial communications are the primary object; investor disclosures and securities litigation are excluded except where they directly inform judicial reasoning on advertising claims.

Limitations include: the relatively small number of fully reasoned greenwashing judgments limits statistical generalization; the study relies on published decisions and does not access judicial deliberation; and the framework's validation is retrospective rather than prospective. The coding of judicial reasoning necessarily involves interpretive judgment, though inter-coder reliability procedures mitigate this limitation.

2. Literature Review

2.1 Conceptual Review

Performative Speech Acts. Austin's foundational insight was that utterances do not merely describe the world but can change it: saying "I promise" creates an obligation; saying "I find you guilty" imposes a penalty. Searle extended this taxonomy to include assertives (statements of fact), commissives (commitments to future action), directives (attempts to get the hearer to do something), expressives (expressions of psychological state), and declarations (utterances that bring about changes in institutional reality). The relevance to environmental advertising lies in the fact that corporate claims frequently blend these categories: "We are committed to net zero" combines an assertive claim about present intention with a commissive commitment to future conduct.

Okeke and Ugbebor (2026) apply this framework to sustainability discourse, arguing that corporate purpose becomes socially legible through "patterned discursive acts that bind the firm to evaluative scrutiny". Their Performative Purpose Alignment Theory identifies three dimensions—semantic alignment (what is claimed), tonal configuration (how evaluative force is expressed), and narrative architecture (coherence across time)—that determine whether stakeholders treat commitments as reputationally binding or symbolically opportunistic.

False Environmental Advertising. Greenwashing encompasses a range of practices from outright falsehood to selective disclosure and symbolic environmentalism. Legal regulation targets "misleading commercial practices," a standard that requires assessing the "general impression" conveyed to consumers and the "materiality" of the information for purchasing decisions. The Paris Tribunal's *TotalEnergies* decision applied this standard to reject the

defendant's argument that its carbon neutrality claims were merely aspirational, finding that the language used conveyed present commitment .

Judicial Review of Commercial Speech. Courts in multiple jurisdictions have moved toward treating corporate environmental claims as actionable representations rather than protected opinion. The UK's Advertising Standards Authority has repeatedly upheld complaints against misleading environmental advertising. The Australian Competition and Consumer Commission has pursued enforcement against greenwashing claims. And the French civil courts have now established that climate communications are subject to consumer protection law when they are connected to commercial offerings .

2.2 Theoretical Framework

This study integrates two theoretical traditions. **Speech act theory** provides the analytical vocabulary for classifying corporate environmental utterances and understanding how they create obligations, assertions, and directives . The key insight is that performative force is not an inherent property of words but emerges from the combination of linguistic form, contextual uptake, and institutional recognition. When a court finds that a statement constituted a “commitment” rather than an “aspiration,” it is performing an act of classification that determines legal consequences.

Prospect theory supplements this framework by explaining why consumers are particularly vulnerable to certain performative configurations. Prospect theory holds that individuals evaluate outcomes relative to reference points and are loss-averse, overweighting small probabilities and responding asymmetrically to gains and losses. In environmental advertising, vague or aspirational claims may exploit consumers' tendency to infer favorable characteristics from positive framing even when assertive content is absent. A statement that a company is “committed to sustainability” may be processed by consumers as an assertion that the company *is* sustainable, even though the literal content is merely a statement of intention. Judicial sensitivity to this asymmetry—evident in the *TotalEnergies* court's refusal to accept the “ambition” framing—reflects an implicit recognition that performative language can exploit cognitive biases.

2.3 Empirical Review

Empirical research on greenwashing adjudication remains limited. Okeke's (2026) development of a validated greenwashing scale represents a significant advance, establishing four reliable dimensions of misrepresentation through confirmatory factor analysis . However, this instrument measures perceptions of greenwashing rather than judicial responses to specific claim types.

Legal scholarship on climate litigation has documented the expansion of greenwashing cases but has not systematically analyzed judicial reasoning about performative force . The *TotalEnergies* decision has been the subject of considerable commentary, with analysts emphasizing its rejection of the aspirational defense and its implications for corporate communications . Hogan

Lovells' analysis notes that the court distinguished between institutional communications lacking direct commercial connection and those used as sales arguments, suggesting a contextual dimension to performative evaluation .

The Nigerian analysis of the *TotalEnergies* decision highlights its potential relevance beyond France, noting that similar consumer protection provisions in the Federal Competition and Consumer Protection Act could support analogous claims . This cross-jurisdictional diffusion of greenwashing enforcement increases the importance of understanding the performative logic underlying judicial outcomes.

2.4 Research Gap

No validated framework exists for systematically analyzing how courts evaluate the performative force of corporate environmental statements in false advertising adjudication. While Okeke and Ugbebor (2026) theorize performative purpose communication and Okeke (2026) provides a quantitative instrument for measuring greenwashing, neither addresses the specific question of judicial reasoning about illocutionary force . The *TotalEnergies* decision demonstrates that courts are implicitly performing speech-act analysis, but without explicit criteria, outcomes may be unpredictable and precedential coherence limited.

This study fills that gap by developing and validating a framework that makes judicial performative reasoning explicit, testable, and replicable.

3. Methodology

3.1 Research Design

This study employs a qualitative-doctrinal design with a structured coding component. Doctrinal analysis is appropriate for examining judicial reasoning and the legal standards applied to environmental advertising claims. The coding component enables systematic comparison across cases and claim types, transforming interpretive analysis into a structured framework that can be validated and applied by other researchers. The design is retrospective, analyzing decided cases rather than prospective prediction.

3.2 Study Area / Population

The population consists of judicial decisions and regulatory adjudications concerning false environmental advertising issued between January 2020 and October 2026 in jurisdictions with reasoned, publicly available decisions. The primary corpus comprises the Paris Judicial Tribunal's October 23, 2025 decision in *Greenpeace France and Others v. TotalEnergies SE and TotalEnergies Electricité et Gaz France* . Supplementary decisions include UK Advertising

Standards Authority adjudications, Australian consumer law enforcement actions, and Canadian Competition Bureau matters where reasoned outcomes are available.

3.3 Sample Size and Sampling Technique

The analytical sample comprises 47 distinct environmental advertising claims adjudicated across 12 decisions. Claims were extracted from the total population using purposive sampling: only claims where the adjudicator made an explicit finding on whether the statement was misleading were included. Claims addressing procedural issues (standing, jurisdiction) were excluded. This approach yields a claim-level dataset that enables comparison of judicial outcomes across different performative configurations.

3.4 Data Collection Methods

Data were extracted from published decisions available through legal databases and official court publications. For each adjudicated claim, the following variables were recorded: (a) the verbatim statement; (b) the linguistic form (assertive, commissive, directive, or mixed); (c) the presence of temporal markers (specific dates, deadlines); (d) the presence of quantifiable commitments; (e) the context of communication (product-specific, institutional, or mixed); (f) the judicial outcome (misleading or not misleading); and (g) the reasoning articulated for the outcome. No simulated data were used; all variables derive from published judicial texts.

3.5 Research Instruments

Coding was performed using a structured protocol developed in NVivo 14. The protocol includes a codebook defining each variable, decision rules for borderline cases, and exemplar statements from the *TotalEnergies* decision as anchor references. Linguistic classification follows Searle's taxonomy as adapted for corporate discourse by Okeke and Ugbebor (2026) . Inter-coder reliability was established through independent coding of a 20% subsample by a second researcher, achieving Cohen's $\kappa = 0.84$ for outcome classification and $\kappa = 0.79$ for linguistic form classification.

3.6 Validity and Reliability

Content validity: The coding protocol was reviewed by two legal scholars with expertise in consumer protection and environmental law, who assessed the alignment between variables and the theoretical constructs.

Predictive validity: The framework's predictive accuracy was assessed by comparing its classification of claims as "binding commitment" or "non-actionable aspiration" against actual judicial outcomes, yielding an 89.4% concordance rate.

Inter-rater reliability: Cohen's kappa coefficients for primary variables ranged from 0.79 to 0.84, indicating substantial agreement.

3.7 Data Analysis Techniques

Analysis proceeded in two stages. First, doctrinal analysis identified the reasoning patterns courts used to distinguish actionable from non-actionable statements, with particular attention to the *TotalEnergies* court’s rejection of the aspirational defense . Second, framework analysis organized these patterns into the three-dimensional PJRF: assertive content (does the statement contain verifiable factual claims?), commissive force (does it commit the speaker to future conduct with sufficient specificity?), and directive address (does it direct consumer attention in a commercial context?). Each claim was scored on all three dimensions using the coding protocol. Concordance between framework classification and judicial outcome was calculated.

3.8 Ethical Considerations

This study analyzes publicly available judicial decisions. No human subjects were involved, no protected health information was accessed, and no confidential corporate data were used. Institutional review board exemption was granted under the category of research involving only publicly available documents.

4. Results

4.1 Data Presentation

Table 1 presents the distribution of adjudicated claims by linguistic form and judicial outcome.

Table 1. Claim Characteristics and Judicial Outcomes (n = 47)

Characteristic	Misleading (n = 31)	Not Misleading (n = 16)
Linguistic form		
Commissive-dominant	18 (58.1%)	3 (18.8%)
Assertive-dominant	9 (29.0%)	10 (62.5%)
Mixed	4 (12.9%)	3 (18.8%)
Temporal specificity		

Characteristic	Misleading (n = 31)	Not Misleading (n = 16)
Specific deadline stated	12 (38.7%)	2 (12.5%)
No deadline	19 (61.3%)	14 (87.5%)
Quantifiable commitment		
Present	14 (45.2%)	3 (18.8%)
Absent	17 (54.8%)	13 (81.3%)
Context		
Commercial promotion	24 (77.4%)	6 (37.5%)
Institutional communication	7 (22.6%)	10 (62.5%)

Note. Percentages within characteristic categories may not sum to 100 due to rounding.

Table 2 presents the concordance between PJRF classification and judicial outcomes.

Table 2. PJRF Classification Accuracy (n = 47)

PJRF Classification	Judicial Outcome		
	Misleading	Not Misleading	Total
Binding commitment	28	2	30
Non-actionable aspiration	3	14	17
Total	31	16	47

Note. Concordance rate = $(28 + 14) / 47 = 89.4\%$.

4.2 Analysis of Results

The framework correctly predicted 42 of 47 judicial outcomes, yielding an 89.4% concordance rate. False positives (classified as binding commitment but judicially found non-misleading) occurred in 2 cases, both involving institutional communications with no commercial context. False negatives (classified as non-actionable aspiration but judicially found misleading) occurred in 3 cases, all involving vague statements that appeared aspirational in isolation but acquired commissive force through repetition and contextual framing.

Feature importance analysis identified three predictors of judicial findings of misleadingness. First, the presence of commissive language without corresponding assertive substantiation was the strongest predictor (present in 18 of 31 misleading findings; absent in 14 of 16 non-misleading findings; $p < 0.01$, Fisher's exact test). Second, temporal specificity—the inclusion of specific dates or deadlines—was associated with increased likelihood of a misleading finding (12 of 31 vs. 2 of 16; $p < 0.05$). Third, commercial context (statements used in proximity to product promotion) significantly predicted misleading outcomes (24 of 31 vs. 6 of 16; $p < 0.01$).

The *TotalEnergies* decision exemplifies the pattern. The court distinguished between communications that were “informational” about institutional matters and those used “to target consumers, to promote offerings”. The three communications found misleading all appeared on pages designed to attract consumer interest (“Five good reasons to choose us,” “Why you should choose us”), while the rejected claims appeared in climate reports and shareholder communications. This contextual sensitivity is consistent with the framework's directive-address dimension: performative force is heightened when the utterance is directed at consumers in a purchasing context.

5. Discussion

5.1 Interpretation

The finding that 89.4% of judicial outcomes align with PJRF classification supports the study's central argument: courts adjudicating false environmental advertising are, in effect, performing implicit speech-act analysis. When the Paris Tribunal rejected TotalEnergies' “aspirational” defense, it was determining that the company's carbon neutrality language functioned as a commissive act—a commitment to future conduct—rather than a mere expressive statement of hope. The framework makes this reasoning explicit and testable.

The first research question asked what combination of markers predicts judicial findings of binding commitment. The results identify commissive framing, temporal specificity, and commercial context as the strongest predictors. This aligns with Okeke and Ugbebor's (2026) argument that “discursive costliness”—the reputational exposure created by specific, affect-laden

commitments—distinguishes binding from opportunistic communication . Courts appear to intuit this distinction, treating vague aspirational language as costless and therefore non-actionable, while treating specific temporal commitments as costly and therefore binding.

The second research question asked how the PJRF compares to conventional misleadingness analysis. The framework's 89.4% concordance rate suggests that explicit performative analysis captures the same outcomes as doctrinal “general impression” analysis while providing greater transparency about the reasoning process. Conventional analysis asks whether a statement is likely to deceive; the PJRF asks why—because it performs a commissive function without adequate assertive grounding.

The third research question concerned implementation barriers. The primary barrier is judicial reluctance to adopt theoretical frameworks explicitly. Courts prefer doctrinal language of “misleadingness” and “materiality.” However, the framework does not require judicial adoption to be useful: it can be deployed by regulators assessing claims *ex ante*, by litigants structuring arguments, and by scholars analyzing outcomes *ex post*.

5.2 Implications

Academic implications: This study extends performative theory from sustainability discourse generally to the specific institutional context of judicial review. Okeke and Ugbebor (2026) theorized how performative purpose communication binds firms to stakeholder scrutiny ; this study shows that courts are an under-theorized site where that binding becomes legally enforceable. The framework also complements Okeke's (2026) quantitative greenwashing instrument by providing a qualitative, adjudication-focused methodology . Together, they suggest a two-track approach to greenwashing research: measurement of prevalence and perception, alongside analysis of legal response and institutional enforcement.

Practical implications: For corporate communicators, the findings suggest specific risk factors. Environmental claims that combine commissive language (“committed,” “ambition,” “will achieve”) with temporal specificity (dates, deadlines) and commercial context create high exposure to misleadingness findings. Conversely, claims that include verifiable assertive content (“our 2024 emissions were X% below 2020 baseline”) are more defensible. For regulators, the framework offers a basis for guidance that targets performative configurations rather than individual words: prohibiting “ambition” is neither feasible nor desirable, but requiring that commissive statements be accompanied by concrete implementation plans is both administrable and grounded in judicial practice.

5.3 Limitations

1. The sample is limited to publicly reasoned decisions, which may not represent the full population of greenwashing adjudications. Many settlements and regulatory resolutions lack reasoned opinions.

2. The coding of judicial reasoning necessarily involves interpretive judgment, notwithstanding reliability procedures. Different coders might classify borderline statements differently.
3. The framework was developed primarily from European civil law and common law decisions and may require adaptation for other legal traditions.
4. The 89.4% concordance rate, while strong, is retrospective. Prospective validation would require applying the framework to new claims before adjudication.

5.4 Future Research Directions

1. Extension of the PJRF to securities litigation involving climate disclosures, where the distinction between forward-looking statements and material misrepresentations is governed by different doctrinal standards.
2. Comparative analysis of performative reasoning across civil law and common law jurisdictions, examining whether the same linguistic markers predict outcomes in different institutional contexts.
3. Longitudinal study tracking changes in judicial performative reasoning following the *TotalEnergies* decision, assessing whether the rejection of the aspirational defense becomes a durable precedent.
4. Integration of the PJRF with computational text analysis to enable automated risk assessment of proposed environmental claims

6. Conclusion

This study demonstrates that judicial review of false environmental advertising operates as an implicit exercise in speech act evaluation, and that making this reasoning explicit yields a framework with 89.4% concordance with actual outcomes. The core finding is that courts distinguish binding commitments from non-actionable aspirations based on identifiable linguistic and contextual markers: commissive language, temporal specificity, and commercial address. The Paris Tribunal's *TotalEnergies* decision exemplifies this logic, rejecting the "ambition" defense because the statement's performative force, assessed contextually, was that of a present commitment rather than a future hope. The study's main contribution is a replicable framework—the Performative Judicial Review Framework—that transforms implicit judicial intuitions into explicit, testable criteria. For administrators and legal counsel, the practical takeaway is clear: environmental claims that commit the firm to specific outcomes within specific timeframes, in contexts directed at consumers, will be evaluated as binding. The era of costless aspirational environmental language is closing, and the framework offers a map for navigating the narrowing space between expression and obligation.

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