AI Washing: When Hype Becomes Legal Risk

How companies can avoid overstating what their AI tools can do

A few years ago, companies raced to describe themselves as sustainable, carbon neutral and environmentally friendly. Then regulators, consumers and plaintiffs' lawyers began asking an inconvenient question: Can you prove it?

Now, companies making bold claims about the benefits of artificial intelligence are beginning to face the same scrutiny.

"AI-powered" has become a marketing buzzword. It can attract investors, generate press coverage and make a product sound more advanced. But when companies promise tools that are fully automated, nearly error-free, capable of replacing professionals or ready to deliver dramatic savings, the claim can outrun the technology.

That gap between what a company says its AI can do and what the product can actually deliver is increasingly described as "AI washing." Like its distant cousin, greenwashing, it can begin as enthusiastic marketing and end as a securities claim, false-advertising suit or regulatory investigation.

When "AI-powered" becomes more than puffery

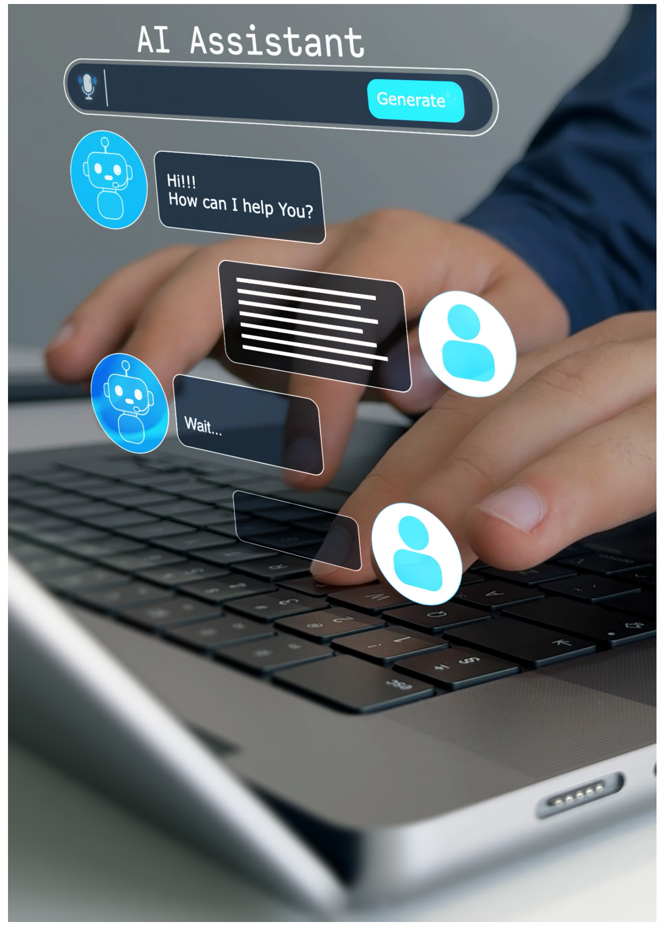
Ordinary marketing puffery is usually subjective. A company can call its product innovative or groundbreaking without necessarily making a statement that can be proven true or false. The issue is that AI claims often go further, potentially implicating California laws governing unfair, deceptive or misleading advertising.

98%

When a company says its platform is 98% accurate, eliminates the need for human review or will deliver a specific feature by a certain date, it is potentially making a factual representation. The same is true when a business promises that AI will increase productivity or replace work traditionally performed by a trained professional.

These types of statements can communicate more than a company intended. Customers and investors could assume the technology operates more independently, performs more consistently or is further along in development than it really is. An advertised accuracy rate may appear to reflect ordinary use even though it came from a narrow internal test, while marketing may imply that a promised feature is available even though it's still in development.

"Because AI is such a new concept, some of the marketing goes beyond ordinary puffery and comes close to guaranteeing that a product will do a particular thing," said CEB legal content specialist Dora Corby, who has practiced aviation law, business formation, insurance defense and personal injury law in California, Connecticut and New York.



A statement that is technically true can still pose risk if it omits an important limitation. A product described as "AI-powered" could use AI in only one part of a process that still depends heavily on human labor. Likewise, a system can generate an answer automatically but still require significant human review before the result can be relied on.

The legal question is whether a technically accurate claim still leaves customers or investors with the wrong impression about what the technology can actually do.

Investors, consumers and regulators are paying attention

AI-washing risk is developing along two tracks: investor and shareholder actions and consumer protection cases.

Startups often emphasize AI capabilities to secure funding, while public companies announce significant AI investments and development timelines to reassure the market that they are not falling behind.

"A lot of these companies are startups with two engineers in a room who understand how AI works and are eager to get their product in front of investors," Corby said. "They may be focused on securing funding and proving they have the next big idea before they have fully worked through the legal, operational and marketing risks."

Exposure can follow when a company overstates AI's role in its business, the maturity of its technology or the results its investment is likely to produce.

$400,000

The U.S. Securities and Exchange Commission has already brought enforcement actions involving allegedly misleading statements about the implementation of AI. In 2024, investment advisers **Delphia (USA) Inc. and Global Predictions Inc.** agreed to pay a combined $400,000 in civil penalties to settle charges related to statements about certain ways they were using AI when, in fact, they were not.

Apple has faced pressure from both directions. In ***Tucker v. Apple Inc.***, investors alleged in federal securities litigation that the company overstated its ability to deliver advanced AI features for Siri. A separate consumer class action claimed Apple advertised enhanced Siri capabilities that were not yet available on the affected iPhones. Apple agreed to a proposed $250 million settlement of the consumer case without admitting wrongdoing.

The Federal Trade Commission challenged AI claims through the "**Operation AI Comply**" initiative to challenge a range of AI-related claims. The agency has targeted companies accused of marketing AI products without adequate support for claims about professional capabilities, consumer outcomes and potential earnings.

The products and industries differ, but the legal principle does not—objective claims about a product, service or financial result need a reasonable basis. Adding "AI" to the sentence does not change that.

Using greenwashing as a blueprint

Greenwashing litigation showed how quickly appealing marketing language can become a legal problem. A claim such as "carbon neutral" might rely on offsets, future commitments or assumptions the average consumer does not understand. The phrase might not be entirely false, but the explanation behind it can still be incomplete.

AI companies should apply the same approach by documenting how performance was measured, what data was used, where human involvement remains necessary and whether real-world results support projected savings.

"Make sure the statement is verifiable in some kind of statistical, data-driven way," Corby said. "If someone challenges the claim, the company should be able to point to the data behind it and explain how the technology actually works."

Advising clients before marketing materials are finalized

The best time to evaluate AI marketing is before the language reaches a website, investor deck or press release.

Attorneys should ask founders, engineers or product leaders to describe the technology in their own words. That unfiltered explanation can help counsel distinguish current functionality from future aspiration.

"You can start to see where someone who is very attached to their product gets excited and starts talking about everything it could do. Counsel's job is to walk that back to what the product can actually support today," Corby noted.

Counsel should examine what evidence supports each objective statement, whether testing reflects representative use and where humans remain involved behind the scenes. Terms such as "fully automated," "autonomous" and "capable of replacing a professional" deserve particular scrutiny when users must still provide instructions, correct errors or make the final decision.

Counsel should also compare the company's website, demonstrations, investor materials, contracts, sales scripts and press releases. A careful disclaimer in one document does not necessarily correct a broader misleading impression created elsewhere.

Companies using AI for their products or services do not need to make their marketing boring, but they do need to make it defensible. Strong claims explain what the product does today, identify where human judgment remains necessary and separate future plans from current capabilities.

"You have to be involved at the beginning and verify at the end," Corby said. "That means understanding what the AI is supposed to do, checking what it actually produces and continuing to update the claims as the product, its limitations and its development timeline change."