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EARTH X MARKETS LEGAL SPOTLIGHT

Unlocking Demand in Carbon Markets through Safe Harbors for Corporate Green Claims

April 2026

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Executive Summary

Carbon markets hold significant potential as instruments of private climate finance, but their growth is increasingly constrained by legal uncertainty. Companies making climate-related claims based on carbon credits face mounting exposure to regulatory enforcement and civil litigation, even where the underlying credits have been independently verified by leading certification programmes. This litigation risk suppresses demand for high-integrity credits and frustrates the market's core purpose.

This paper focuses on the voluntary carbon market (**VCM**) and does not address compliance markets or mandatory emissions trading schemes. It also does not address Article 6 markets specifically, though many of the legal principles discussed are of potential relevance to corporate claims based on Article 6-connected credits.

Soft standards addressing both credit integrity and claim wording can provide actionable guidance ahead of statutory developments.

The paper analyses the legal architecture of safe harbor mechanisms and their application to carbon credit-based environmental marketing. The core analytical finding is that legal exposure in carbon markets arises from two distinct sources: credit integrity — the methodological and governance quality of the underlying credits — and claim integrity — the accuracy, scope, and consumer impression of the claim itself. Safe harbor mechanisms focused on credit integrity alone are insufficient. Courts have consistently held that liability may arise from the way claims are framed, independent of the quality of the credits relied upon to make these claims.

The application of safe harbor mechanisms specifically to carbon credit-based corporate claims is an emerging and largely undeveloped area of law. To our knowledge as of today, no jurisdiction has enacted such a mechanism. The sole legislative proposal of this kind which we have currently identified in the public domain is California Assembly Bill 1911 (introduced February 2026) which could create a statutory defense against misleading environmental marketing claims where the claim is based on credits from a qualifying programme. This model provides a template for future jurisdictional adoption.

This paper surveys the broader regulatory landscape governing environmental marketing claims. The EU EmpCo Directive, the FTC Green Guides, the Swiss FOEN Enforcement Aid, the ICC Environmental Marketing Framework, and the Gold Standard Claims Guidelines establish a standard of care for how climate claims should be structured, qualified, and communicated. None of these instruments is a safe harbor: they do not confer immunity from legal proceedings. However, they represent the kind of instrument that a jurisdiction could formally adopt as official guidance in the context of carbon credits, signaling that enforcement action is unlikely where a company has structured its claims in accordance with the framework's standards, representing an actionable near-term pathway that does not require legislation.

The path forward requires action on two tracks. In the near term, soft standards addressing both credit integrity and claim wording can provide actionable guidance ahead of statutory developments, and jurisdictions should be encouraged to formally adopt such standards as soft safe harbors, providing market participants with credible enforcement predictability. In the long term, a model statutory safe harbor standard — building on AB 1911 while incorporating claim-side lessons from the U.S., EU and Swiss frameworks — should be developed for adoption across jurisdictions.

Ultimately, this exercise is targeted at unlocking demand for carbon credits by designing a clear, predictable path for corporations to utilize these instruments while mitigating the legal and regulatory exposure typically associated with climate-related claims.

1. Introduction

This paper focuses on the VCM and does not address compliance markets or mandatory emissions trading schemes. It also does not address Article 6 markets specifically, though many of the legal principles discussed are of potential relevance to corporate claims based on Article 6 credits.

Carbon markets are designed as a central instrument in the global effort to limit greenhouse gas emissions. Voluntary carbon credit mechanisms enable private actors to finance real-world decarbonisation activity beyond what is required by law, and their potential contribution to the transition to a low-carbon economy is attracting growing attention from governments, investors, and companies alike.

Despite this potential, the pace of carbon market growth is slowed by mounting legal uncertainty. Corporations making climate-related claims – such as "carbon neutral", "climate positive", or "net zero" – on the basis of carbon credits - face increasing exposure to regulatory enforcement and civil litigation. Recent high-profile cases in Germany and the United States have demonstrated that environmental marketing claims based on carbon offsets can give rise to liability under consumer protection law, even where the underlying credits have been independently verified by leading certification programmes. This litigation risk acts as a significant barrier to market participation: it deters companies from communicating genuine climate action, suppresses demand for high-integrity carbon credits, and ultimately frustrates the market's core purpose of financing additional emissions reductions.

It is in this context that the concept of "safe harbor" provisions has emerged in carbon market policy discussions. The central premise is straightforward: if actors who rely on qualifying, high-integrity carbon credits could be afforded a degree of legal protection for doing so, the barrier posed by litigation risk would be reduced, demand for quality credits would increase, and the market would be better positioned to deliver on its climate mandate.

To give full context, our recent work with multinational corporations on aligning their green claims with international anti-greenwashing standards and consumer protection legislation, has highlighted the broader context of the issue. There is a significant increase in regulatory scrutiny and private litigation across the broader ESG landscape. This shift affects the core business considerations of corporate boards and financial institutions alike, as "greenwashing" risks now influence capital allocation. Consequently, carbon market actors must recognize that their activities are being integrated into a wider net of corporate accountability where transparency and substantiation are no longer optional, but foundational to institutional stability.

If actors who rely on qualifying, high-integrity carbon credits could be afforded a degree of legal protection for doing so, the barrier posed by litigation risk would be reduced, demand for quality credits would increase, and the market would be better positioned to deliver on its climate mandate.

This EARTH X MARKETS LEGAL SPOTLIGHT has been prepared with the goal of supporting the ongoing work of the IETA Legal Working Group and the Coalition to Grow Carbon Markets. It serves a dual purpose. In the long term, this paper is intended to contribute to a statutory safe harbor standard that can be adopted by states and jurisdictions. In the near term, it aims to advance a "soft" standard that can be implemented with the needed immediacy to support market growth: a framework of best practices governing how climate claims should be made and communicated, which corporations and governments can adopt ahead of formal statutory embodiment.

2. Safe Harbor: Scope and Purpose

A safe harbor is a legal provision – whether contained in a statute, regulation, or formal administrative guidance – that affords protection from legal liability or enforcement action, provided that specified conditions are satisfied.[1] Safe harbor provisions do not confer blanket immunity; rather, they create a conditional legal shield that allows parties to engage in defined activities while being protected from legal challenge, so long as they adhere to established criteria. They are typically created to encourage beneficial behaviour, reduce legal uncertainty, and promote economic activity and innovation.

Safe harbors exist in a variety of legal disciplines, including intellectual property law (where online platforms may be shielded from liability for user-generated infringing content), securities and financial regulation (where forward-looking statements made in good faith are protected from fraud liability, and where certain categories of disclosure attract protection from private litigation), competition and antitrust law (where defined categories of cooperation or standardisation agreements are treated as presumptively lawful), and environmental and natural resources law (where landowners who voluntarily improve habitats for listed species receive assurance against future liability for incidental harm).

A significant structural distinction exists between the traditional U.S. concept of a safe harbor and what is commonly described as a "soft safe harbor" in the EU context. In the United States, safe harbors are typically statutory or regulatory provisions enacted by Congress or administrative agencies that provide explicit immunity or limitation of liability where clearly defined conditions are met. In the EU, the term is sometimes applied to administrative guidance identifying conditions under which regulatory intervention is unlikely – a softer, non-binding standard that signals enforcement priorities without conferring explicit immunity.

The sections below survey representative examples from both systems before turning to their application in the carbon credit context. The structural lessons these examples offer for carbon market governance are examined in the Annex to this paper.

Safe harbor provisions do not confer blanket immunity; rather, they create a conditional legal shield that allows parties to engage in defined activities while being protected from legal challenge.

[1] What Does Safe Harbor Mean in a Legal Context?, LegalClarity, https://legalclarity.org/what-does-safe-harbor-mean-in-a-legal-context/

2.1 U.S. Frameworks

In U.S. law, safe harbors are typically statutory or regulatory provisions enacted by Congress or administrative agencies that provide explicit immunity or limitation of liability where clearly defined conditions are met. The mechanism is designed to be self-executing: once the conditions are satisfied, the protection operates as a matter of law, without requiring judicial discretion. Established examples across different legal domains — including the Digital Millennium Copyright Act (**DMCA**) and the Endangered Species Act (**ESA**) — share this common architecture: a precisely defined zone of compliant behaviour, and explicit immunity from legal proceedings for actors operating within it.

2.2 EU Frameworks

The EU approach differs structurally. What the European Commission describes as a "soft safe harbor" — as seen in the 2023 Horizontal Guidelines on sustainability standardisation agreements and the 2025 draft framework for Licensing Negotiation Groups — does not grant automatic immunity from liability. Instead, it generally identifies conditions under which the Commission is unlikely to intervene under competition law. This distinction is significant: a soft safe harbor of the EU-type offers a predictability signal for regulatory enforcement, but does not formally constitute a defense in private litigation. It describes compliant behaviour rather than immunising actors from proceedings arising from it. This distinction between the U.S. and EU models is relevant to the design of a safe harbor mechanism for carbon markets, and informs the analysis that follows.

3. Application of Safe Harbor to Carbon Credit Related Corporate Claims

The application of safe harbor mechanisms specifically to carbon credit-based corporate claims is an emerging and largely undeveloped area of law. To our knowledge as of today, there is no enacted legislation in any jurisdiction that creates a statutory safe harbor of the kind described in Section 2 for companies making environmental marketing claims specifically on the basis of voluntary carbon credits. The field is at an early stage: policy discussions are active - including within the IETA Legal Working Group and the Coalition to Grow Carbon Markets - but legislative action remains nascent. The sole example which we have currently identified in the public domain of a purpose-built statutory proposal of this kind is California Assembly Bill 1911, which has not yet been enacted into law.

California Assembly Bill 1911 (introduced February 2026)[2] proposes to add Section 17580.7 to the California Business and Professions Code, creating a statutory defense against claims of misleading environmental marketing where a company's environmental claim is based on the voluntary use of carbon credits issued by a qualifying carbon crediting programme.
Under existing California law, Section 17580.5 prohibits businesses from making untruthful, deceptive, or misleading environmental marketing claims, whether explicit or implied, by reference to the scope of environmental claims defined in the FTC Green Guides, discussed below. AB 1911 does not authorise such claims generally; it provides a conditional defense where the claim is based on qualifying carbon credits.

A programme qualifies if it: (i) is approved by the State Air Resources Board (**CARB**) under Title 17 California Code of Regulations §95986; (ii) is approved by ICAO for use in CORSIA; or (iii) meets substantive criteria addressing methodology transparency, registry integrity, third-party verification, governance, stakeholder consultation, social and environmental safeguards, double-counting prevention, and permanence. CARB is required to publish and maintain a list of qualifying programmes.

This model reflects the U.S. structural approach: a statutory provision that, where its conditions are satisfied, explicitly immunises the company from legal proceedings under the relevant cause of action.

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[2] California AB 1911 (February 2026).

4. Environmental Marketing Claims Frameworks

Domestic jurisdictions could state that where a company has structured and communicated its carbon credit related claims in accordance with such a framework, enforcement action would be unlikely.

A body of instruments establish a standard of care for environmental claims, both statutory and under guides. They do not confer immunity from legal proceedings, and compliance with them does not constitute a defense. What they do provide is a standard of care governing how climate claims should be substantiated, qualified, and communicated, thereby addressing the claim-integrity dimension of legal risk that credit-integrity safe harbors do not cover. That said, these frameworks carry meaningful legal significance in a second, distinct sense: they represent the kind of instrument that could be adopted as official guidance and designated as a "soft safe harbor" within the carbon credit context. Meaning: domestic jurisdictions could state that where a company has structured and communicated its carbon credit related claims in accordance with such a framework, enforcement action would be unlikely. While this would not establish statutory immunity, it would provide something of genuine practical value: a credible, government-backed signal that compliance reduces enforcement exposure. This pathway is one of the actionable near-term options examined in Section 6, and is particularly relevant for jurisdictions that are not yet in a position to enact legislation of the AB 1911 type.

4.1. The EU Empowering Consumers for the Green Transition Directive (Directive (EU) 2024/825)

Directive (EU) 2024/825 of 28 February 2024 (**EmpCo Directive**) entered into force on 26 March 2024, amending the Unfair Commercial Practices Directive (2005/29/EC) (**UCPD**) and the Consumer Rights Directive (2011/83/EU).[3] Member states are required to transpose it into national law by 27 March 2026, with the new rules applying from 27 September 2026. It imposes mandatory, directly enforceable obligations on traders engaging in commercial communications directed at consumers and operates through the existing enforcement machinery of member states' consumer protection authorities and courts.

The EmpCo Directive adds to Annex I of the UCPD (the "blacklist" of prohibited commercial practices), the practice of claiming, based on the offsetting of greenhouse gas emissions, that a product has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions. This effectively means that a future statutory safe harbor, if enacted in the EU, would be constrained by the EmpCo Directive's blacklist: it could not extend to product-level offset claims falling within the Annex I prohibition and would therefore be limited to company-level claims. This is a central distinction from California's AB 1911.

4.2. The U.S. Federal Trade Commission's (FTC) Green Guides

The U.S. FTC Guides for the Use of Environmental Marketing Claims define the scope and requirements applicable to environmental marketing in the United States.[4] They require that marketers identify all express and implied claims conveyed and ensure that all reasonable interpretations are truthful, not misleading, and supported by competent and reliable scientific evidence. Qualifications and disclosures must be clear, prominent, and placed in close proximity to the qualified claim, using plain language and sufficiently large type, without distracting elements that could undercut the disclosure. Claims must not overstate an environmental attribute or benefit, directly or by implication.

The Guides expressly address carbon offset claims. They require that marketers ensure offset claims are supported by competent and reliable scientific evidence, which claims accurately reflect the nature and scope of the offset activity, and that offsets not be claimed where the underlying emissions reductions are already required by law. The Guides also note that carbon offset claims that imply a broader environmental benefit than the evidence supports — for example, asserting "carbon neutrality" without adequate qualification — are likely to be found misleading.

California's AB 1911 expressly incorporates the FTC Green Guides by cross-reference, defining the environmental marketing claims to which the safe harbor applies by reference to the same claims covered by the Guides. This structural linkage is significant: the safe harbor addresses the credit dimension, while compliance with the Guides addresses the claim dimension. Together, they provide a more comprehensive framework – though one that still leaves room for claims to be found misleading on grounds not fully anticipated by either instrument.

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[3] Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information.

[4] 16 CFR Part 260 - Guides for the Use of Environmental Marketing Claims; Final Rule.

4.3. The Swiss FOEN Enforcement Aid

The Swiss Federal Office for the Environment (**FOEN**) published enforcement guidance in January 2025 interpreting the legal requirement to substantiate climate-related information on products and companies on an objective and verifiable basis, pursuant to the Swiss Federal Act against Unfair Competition (**UCA**).[5] Its key principles are:

- **Product-related climate information** may not be justified by offsetting measures – carbon credits cannot be used to substantiate climate claims about a product's own emissions profile.
- **Company-level claims:** offsetting is permissible under strict conditions, with direct emission reductions taking priority.
- **The term "climate-neutral**" is not currently verifiable and should not be used.

The FOEN guidance illustrates a national regulatory direction toward stricter standards for claim framing - particularly the prohibition on product-level offset claims.

4.4. The International Chamber of Commerce's (ICC) Environmental Marketing Framework

The ICC's Environmental Marketing Framework (2025) provides a globally applicable code of conduct for environmental claims in commercial communications.[6] It addresses claim substantiation, qualifying disclosures, the use of terms such as "carbon neutral" and "net zero", and the conditions under which offsetting can be relied upon. The Framework requires that claims be based on reliable and verifiable evidence, that offsetting be transparently disclosed as distinct from direct emission reductions, and that claims not convey an environmental benefit greater than what the evidence supports.

Compliance with the ICC Framework does not confer immunity from legal proceedings. However, it can inform a court's assessment of whether a company exercised appropriate care in formulating its environmental claims and may be relevant to defences based on reasonable reliance or good faith. More importantly, it provides operational guidance on how to structure and communicate claims in ways that reduce the risk of a court finding a misleading net impression – the very dimension that case law has shown safe harbors alone do not address.

[5] FOEN Enforcement Aid on Climate-Related Product and Company Information.

[6] ICC Framework for Responsible Environmental Marketing Communications (2025 edition).

4.5. The Gold Standard Claims Guidelines

The Gold Standard for the Global Goals Claims Guidelines[7] provide a framework governing how entities associated with Gold Standard-certified projects, including project developers, fund managers, intermediaries, and credit buyers, may communicate about certified impacts.

Of particular relevance to the safe harbor analysis is the Guidelines' distinction between three categories of carbon credit use: impact claims (describing the mitigation contribution represented by a credit, without implying offsetting); offsetting claims (asserting that an entity's emissions have been counter-balanced); and compliance use. This typology is significant because the Guidelines explicitly recognise that impact claims – framed as contributions to climate mitigation rather than assertions of neutrality – avoid the most acute legal risks associated with the "net impression" standard applied by courts. A company making a contribution claim rather than a carbon neutrality claim is less likely to be found to have created the misleading impression of complete or permanent neutrality.

The Guidelines further require that offsetting claims be made only where credits satisfy robust standards of additionality, permanence, and non-double-counting; that the scope of any claim be transparent; and that the temporal basis of any neutrality assertion be clearly disclosed.

Structurally, the Gold Standard Guidelines operate similarly to the FTC Green Guides and the ICC Environmental Marketing Framework: they do not confer immunity from legal proceedings but provide an operational standard of care that can inform a court's assessment of whether a company exercised reasonable diligence in formulating its environmental claims. Compliance with the Guidelines can therefore reduce, though not eliminate, legal exposure on the claim dimension.

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[7] The Gold Standard for the Global Goals Claims Guidelines (Version 2.0, 2022).

5. The Real-Life Application of Safe Harbor: Evidence from Case Law

Recent case law from multiple jurisdictions illustrates that legal exposure in carbon credit-related environmental marketing frequently arises not from the quality of the credits themselves, but from how climate claims are presented and understood by consumers. Courts have focused on the "net impression" created for consumers, encompassing timing, scope, implied meaning, and the durability of the environmental benefit asserted. Safe harbor mechanisms focused on credit integrity alone may not shield companies from liability where claims are found misleading on these grounds.

5.1. Deutsche Umwelthilfe v. Apple Distribution International (Frankfurt, 2025)

The Frankfurt Commercial Court found Apple's "carbon neutral" product claim misleading under German unfair competition law.[8] The central issue was not the technical integrity of the carbon credits, but the mismatch between the consumer's reasonable expectation of durable neutrality – informed by the Paris Agreement objective of limiting warming to 1.5°C by mid-century – and the temporal scope of the offsetting measures relied upon. The eucalyptus forestry project underlying Apple's claim was subject to land leases expiring in 2029, creating a structural permanence risk that, according to the Court, Apple's argument about the Verra buffer pool could not cure.

A statutory defense modelled on AB 1911 would primarily shield companies where the credibility or methodological integrity of the carbon credits themselves is challenged. In this case, however, the flaw identified by the court concerned the representation made to consumers. Even if the Verra programme were assumed to satisfy statutory eligibility criteria, the court could still find that the marketing claim was misleading because it implied a permanence factor that the underlying mitigation activity did not guarantee. Accordingly, a credit-integrity safe harbor would likely not have prevented liability in these proceedings.

5.2. Dib et al. v. Apple Inc. (N.D. California, 2026)

The Northern District of California dismissed this complaint at the pleading stage because plaintiffs failed to present competent and reliable evidentiary support for their allegation that Apple's carbon neutrality claims were false or misleading.[9] The court applied the evidentiary framework reflected in the FTC Green Guides and false advertising jurisprudence, holding that allegations challenging environmental marketing claims must be supported by competent and reliable scientific evidence. Plaintiffs' reliance on law firm analyses using publicly available data tools, without independent scientific validation, was insufficient.

Had California's proposed safe harbor under AB 1911 been in force, AB 1911 would have provided a different, and potentially more favorable, defense framework: providing a substantive defence where the challenged claim is based on credits from a qualifying programme, rather than addressing the sufficiency of plaintiffs' evidence. If Apple's offsets originated from a CARB-approved or CORSIA-eligible programme, such as Verra, the company could potentially invoke the statutory defence. However, the safe harbor would not resolve all theories of liability – courts could still assess whether the representation itself created a broader or more durable impression than the offsets could substantiate.

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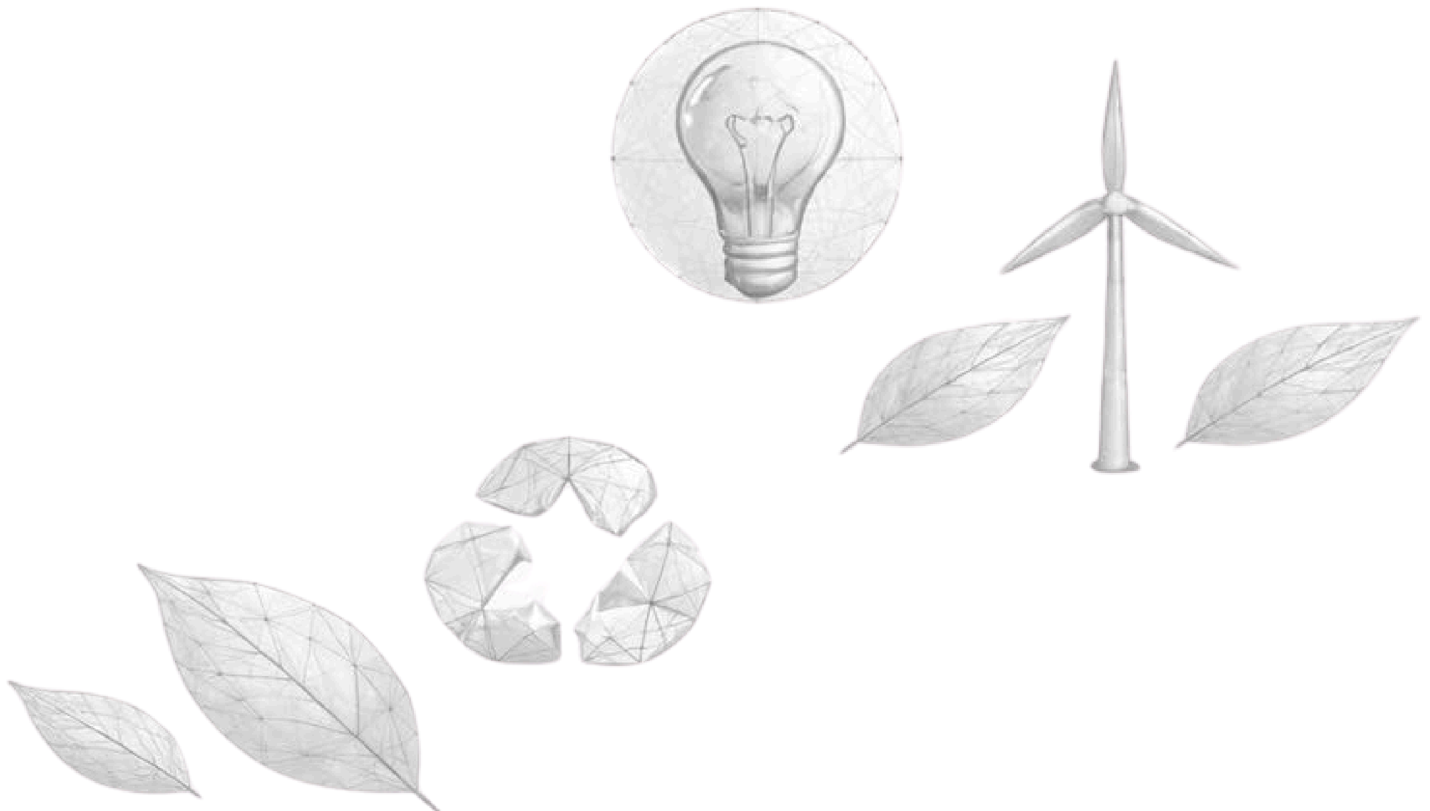
[8] Deutsche Umwelthilfe v. Apple Distribution International (Frankfurt, 2025).

[9] Dib et al. v. Apple Inc., (N.D. California, February 2026).

5.3. Berrin v. Delta Air Lines Inc. (C.D. California, 2023–ongoing)

This case represents one of the most prominent challenges to corporate carbon neutrality claims in the United States.[10] The plaintiff alleges that Delta's repeated assertion of being "the world's first carbon-neutral airline" was materially misleading because Delta relied on voluntary carbon offsets that allegedly did not produce real, additional, or permanent emissions reductions. The complaint alleges violations of California's CLRA, FAL, and UCL.

Had AB 1911 been in force when the claim was filed, it could have significantly affected Delta's defence where credits originated from qualifying programmes – potentially shifting the litigation away from a substantive debate about the scientific credibility of individual offset projects toward a threshold question of programme eligibility. However, the safe harbor would not have provided absolute immunity. Courts could still consider whether the phrase "the world's first carbon-neutral airline" conveyed a broader impression – such as complete or permanent neutrality – that offsetting alone cannot substantiate. The residual exposure arising from the framing and scope of the claim would remain.



[10] Berrin v. Delta Air Lines Inc. (C.D. California, 2023–ongoing).

6. An Actionable Approach

The analysis above supports a two-layer framework for understanding and managing legal risk in carbon credit-based environmental marketing:

- **Carbon credit integrity** – the methodological, governance, and verification quality of the underlying carbon credits. This layer is addressed by statutory safe harbor mechanisms such as the proposed AB 1911, which condition protection on the use of credits from qualifying programmes. The Swiss FOEN guidance also operates at this layer, by defining when company-level claims based on offsets are substantively permissible.
- **Claim integrity** – the accuracy, scope, and consumer impression of the marketing representation itself. This layer is governed by disclosure requirements, claim wording standards, and consumer perception norms, as reflected in the FTC Green Guides and the ICC Environmental Marketing Framework. Case law from Frankfurt and U.S. federal courts confirms that this layer is frequently the decisive one in litigation.

An effective legal framework must address both carbon credit integrity and claim integrity. Credit integrity without claim integrity leaves companies exposed to liability arising from the manner in which claims are framed. Claim integrity without credit integrity leaves companies exposed to challenges to the validity of the offsets themselves.

In the near term, this points to an actionable "soft law" framework that addresses both dimensions in a single integrated instrument. Such a standard would, for example:

- specify minimum integrity criteria for the carbon credits relied upon, aligned with existing programme standards and regulatory approval lists;
- establish requirements for how claims are worded, qualified, and disclosed to avoid creating a misleading net impression;
- require transparency about the scope of the claim (product-level or company-level), the vintage and source of the credits, and the temporal basis of the neutrality asserted;
- distinguish clearly between direct emission reductions and offsetting, and ensure that claims do not imply a degree of permanence or completeness that the offsets cannot guarantee;
- be compatible with emerging statutory frameworks, so that compliance with the industry standard can ultimately serve as a pathway to eligibility under a formal safe harbor.

In the long term, the goal is a model statutory safe harbor standard capable of adoption across multiple jurisdictions – building on the AB 1911 template while incorporating lessons from the EU and Swiss frameworks regarding the importance of claim-side standards.

An effective legal framework must address both carbon credit integrity and claim integrity.

7. Conclusion

Safe harbor mechanisms hold genuine promise as tools for reducing the legal uncertainty that currently constrains demand in voluntary carbon markets. By providing conditional protection to companies that rely on high-integrity carbon credits, they can reduce barriers to market participation, increase demand for quality credits, and support the broader objective of channeling private finance toward verifiable decarbonisation activity.

However, as this paper has demonstrated, safe harbors focused on credit integrity alone are not sufficient. Courts have consistently found that liability may arise from the manner in which claims are framed and the consumer impression they create, independently of the quality of the underlying credits. Both the Frankfurt Apple litigation and the Delta Air Lines case illustrate that the "net impression" standard applied by courts encompasses varied dimensions – temporal scope, implied permanence, claim framing – that credit-integrity mechanisms do not address.

The path forward requires a dual approach: promoting statutory safe harbor mechanisms at the jurisdictional level, building toward a model standard capable of adoption across legal systems; and developing a near-term, soft standard that addresses both layers of legal risk. Together, these tools can provide a foundation for credible and legally robust climate claims, enabling carbon markets to function as the instruments of decarbonisation they are designed to be.

Annex

This Annex provides a comparative overview of existing safe harbor mechanisms across U.S. and EU in legal domains unrelated to green claims and carbon credits. It describes the architecture, conditions, and scope of each instrument, and identifies the structural lessons they offer for the design of a safe harbor mechanism adapted to the carbon credit context.

U.S. Frameworks

The Digital Millennium Copyright Act (DMCA)

Section 512(c) of the DMCA,[11] limits the legal exposure of online service providers for copyright infringement arising from material uploaded by users to their platforms. The provision conditions protection on the absence of actual or constructive knowledge of infringing activity, the absence of a direct financial benefit from such activity, and prompt action to remove or disable access to infringing material upon notification. This structure – immunity contingent on specified conduct – is paradigmatic of the U.S. safe harbor model.

The Endangered Species Act (ESA)

Under Section 10(a)(1)(A) of the ESA,[12] landowners may enter into voluntary Safe Harbor Agreements (**SHAs**) with the U.S. Fish and Wildlife Service, whereby the landowner agrees to undertake habitat improvements for listed species in exchange for assurances that future incidental take resulting from those improvements will be authorised. The arrangement enables conservation activity that would otherwise create liability, by defining in advance the conditions under which taking is permissible.

[11] The Digital Millennium Copyright Act of 1998, 112 Stat. 2860 - Public Law No. 105-304 (10/28/1998).

[12] The Endangered Species Act (ESA) of 1973, 16 U.S.C. §§1531-1544.

EU Frameworks

Soft Safe Harbor for Sustainability Agreements (2023 Horizontal Guidelines)

The European Commission's 2023 Horizontal Guidelines introduce a "soft safe harbor" for sustainability standardisation agreements between competitors.[13] Unlike statutory safe harbors that confer automatic immunity, the mechanism identifies six cumulative conditions under which the Commission is unlikely to treat such arrangements as restrictions of competition under Article 101(1) TFEU.

The structural distinction is important: the EU instrument is administrative guidance, not statutory protection. It signals enforcement priorities and provides legal predictability, but does not shield parties from proceedings brought by third parties or national authorities applying domestic competition law.

Proposed Soft Safe Harbor for Licensing Negotiation Groups (Draft Revised Technology Transfer Guidelines, 2025)

In September 2025, the European Commission published draft revisions to the Technology Transfer Block Exemption Regulation (**TTBER**) and accompanying guidelines, which address Licensing Negotiation Groups (**LNGs**) – arrangements in which technology implementers jointly negotiate licensing terms with intellectual property holders.[14] The proposal introduces a soft safe harbor framework modelled on the sustainability standardisation mechanism, identifying seven conditions under which LNG arrangements are unlikely to restrict competition under Article 101(1) TFEU.

This development is notable as a further example of the EU's preference for conditional, guidance-based legal predictability over the affirmative statutory immunity characteristic of the U.S. model.

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[13] 2023/C 259/01 - Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements.

[14] C/2025/5024 - Communication from the Commission – Approval of the content of a draft for a Commission Regulation on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements and a draft for Commission Guidelines on the application of Article 101 of the Treaty to technology transfer agreements.

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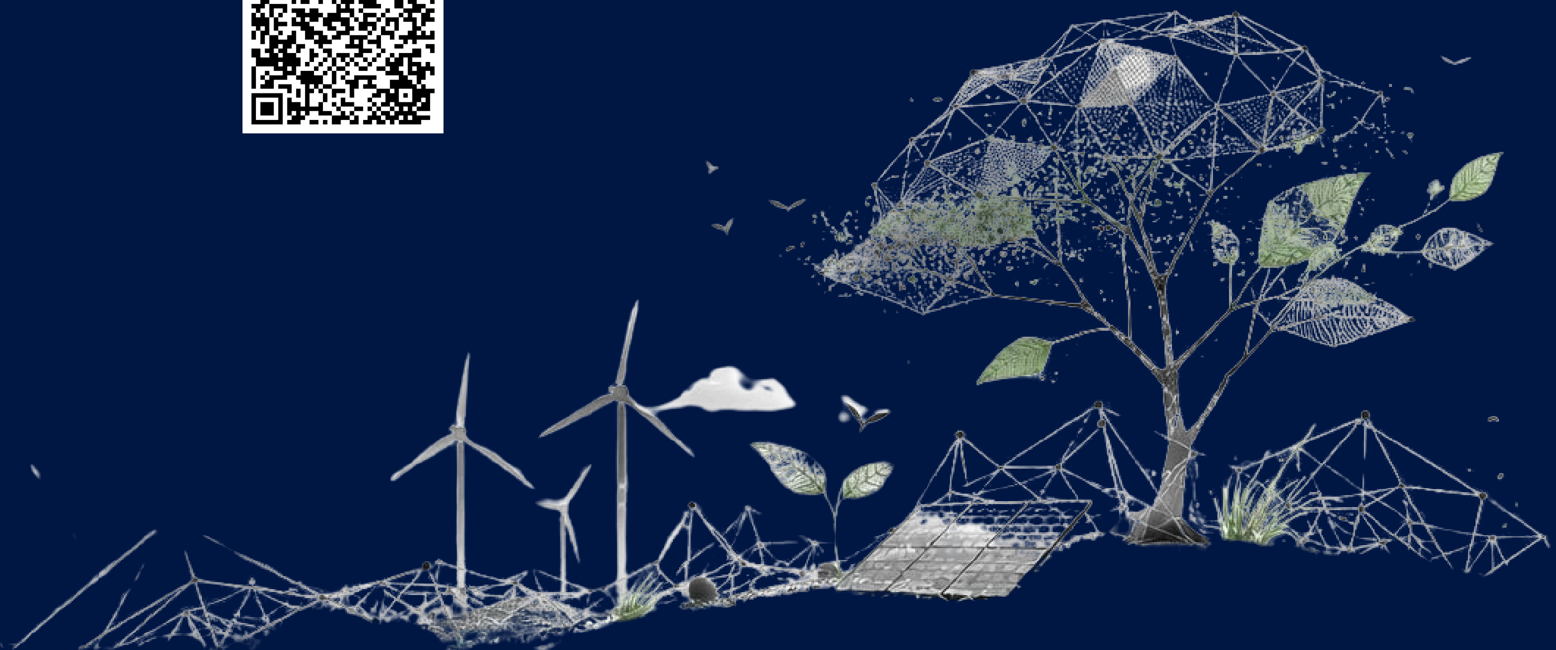
ABOUT HERZOG

Herzog Law

The Environment and Climate Change practice at Herzog Law offers its clients tailored regulatory and transactional advice on a broad range of innovative environment and climate change issues. Over the course of two decades, Herzog Law has consecutively been named a top-tier firm in the field of environment and climate change by both domestic and international rankings, including Chambers and Partners. Herzog Law works closely with clients on leveraging innovative sustainable finance tools to fund corporate decarbonization journeys and climate-tech projects. The team advises a multitude of leading domestic and multinational corporations and climate-tech companies, in a wide range of technology sectors, on carbon offsetting projects and transactions, global climate policy developments, legislation and regulation, and advises financial institutions and investment funds on environment and climate policy, risk management and transactional strategies. The practice is involved in both national and international forums developing carbon market tools and policies and is regarded globally as having exceptional practical expertise in the field.

Find out more about Herzog Law's Environment and Climate Change Practice

For more information:



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Ruth is actively engaged in global climate change initiatives. She has recently taken on the role of Co-Chair of the International Emissions Trading Association (IETA) Legal Working Group, after having completed a 3-year term as legal advisor to the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat on carbon market mechanisms under the Paris Agreement (Article 6). She also holds expert advisory roles with VERRA and Climate Action Data Trust.

Ruth holds a doctorate from NYU's School of Law, specializing in environmental policy and climate finance. In 2024, Ruth was appointed Director of Climate Change and International Collaborations at the Arison Center at Reichman University.

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Hanni is an associate in the Environment and Climate Change Practice at Herzog Law. Hanni advises a variety of corporations and tech companies on climate strategy development, sustainable finance, carbon trading, and regulatory compliance with climate law. She assists financial institutions and corporations to assess and manage environmental-financial risks, transforming regulatory challenges and market dynamics into strategic business opportunities and competitive advantages.

Hanni holds an LL.M. degree specializing in Public Law and Public International Law. Prior to joining Herzog Fox & Neeman, Hanni advised on international law in a governmental capacity, with a focus on multilateral negotiations. Her work included active participation in UNFCCC climate negotiations and contributions to the development of Article 6 of the Paris Agreement.