

**Questionnaire on AI-Washing 2025**

<b>SECTION I: National case law on AI-Washing</b>		
<b>Country</b>	<b>Case</b>	<b>Description</b>
Austria	N.A	No case law currently available
Brazil	N.A	No case law currently available
China		No case law currently available on unfair competition but has the case held as fraud based on Advertising law and Protection of Consumer Rights and Interests
Germany		No case law currently available
New Zealand	NA	No case law currently available
Sweden		No case law currently available
Switzerland	NA	No case law currently available
United States		Hoare v. Oddity Tech Ltd. et al <a href="https://www.pacermonitor.com/public/case/54921080/Hoare_v_Oddity_Tech_Ltd_et_al">https://www.pacermonitor.com/public/case/54921080/Hoare v Oddity Tech Ltd et al</a> (a potential class action brought by an investor who alleges that the Israeli beauty and wellness products company Oddity Tech Ltd. overstated its artificial intelligence technology capabilities before its initial public offering; pending)
		<ul style="list-style-type: none"> <li>• FTC Case: <a href="https://www.ftc.gov/legal-library/browse/cases-proceedings/evolv-technologies">FTC v. Evolv Technologies</a>, <a href="https://www.ftc.gov/legal-library/browse/cases-proceedings/evolv-technologies">https://www.ftc.gov/legal-library/browse/cases-proceedings/evolv-technologies</a> (FTC considered that Evolv's claims regarding the safety abilities of its AI 'Weapons Detection' Co. were misleading; settled)</li> </ul>
		<ul style="list-style-type: none"> <li>• SEC proceedings <a href="https://www.sec.gov/newsroom/press-releases/2024-36">https://www.sec.gov/newsroom/press-releases/2024-36</a> (SEC announced settled charges against two investment firms, Delphia and Global Predictions, for making false and misleading statements about their purported use of artificial intelligence)</li> </ul>
		<ul style="list-style-type: none"> <li>• <a href="https://www.justice.gov/usao-sdny/pr/tech-ceo-charged-artificial-intelligence-investment-fraud-scheme">https://www.justice.gov/usao-sdny/pr/tech-ceo-charged-artificial-intelligence-investment-fraud-scheme</a></li> <li>• <a href="https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282">https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282</a></li> <li>• <a href="https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282">https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282</a><a href="https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282">https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26282</a></li> </ul>

<b>SECTION II: National legal provisions on AI-Washing</b>		
<b>Country</b>	<b>Provision ("National Name")</b>	<b>Description</b>
Austria	Sec 2 Austrian Act on Unfair Competition ("UWG")	The law prohibits any business practice that misleads the customer in its commercial decision - whether by actively using

		<p>false or exaggerated statements or by omitting material information.</p> <p>Thus, businesses are not allowed to promote IT-goods or services as "AI-solution" or "AI-powered" if the product in question is just "regular software" or does not provide any artificial intelligence. The law does not define artificial intelligence but refers to the expectation of an informed customer. There is no reference to the definition of "AI-Systems" according to Art 3 (1) of the European AI-Act.</p>
Brazil	Bill No. 2.338 of 2023	<p>Brazil currently remains with no specific legislation on Artificial Intelligence (AI). However, Bill No. 2.338 of 2023 is underway, aiming to establish guidelines for the development and use of AI in the country. The proposal aims to guarantee safety, transparency, ethics, and the protection of citizens' rights, as well as establish principles for the responsible use of AI, such as non-discrimination, privacy, and transparency in automated decisions.</p> <p>The bill is awaiting approval. If approved, it will provide a regulatory framework for the use of AI in Brazil, establishing clear rules for companies, governments, and researchers using AI technologies in various areas.</p>
China	Article 8 of the Anti-Unfair Competition Law	<p>According to the relevant regulations in China, this should fall within the scope of regulation of Article 8 of the Anti-Unfair Competition Law, which stipulates that "Business operators shall not make false or misleading commercial promotion for the performance, functions, quality, sales, user evaluation, etc. so as to defraud or mislead consumers."</p>
Germany	Sec 5 and 5a German Act on Unfair Competition ("UWG")	<p>The law prohibits any business practice that misleads the customer in its commercial decision - whether by actively using false or exaggerated statements or by omitting material information.</p> <p>Thus, businesses are not allowed to promote IT-goods or services as "AI-solution" or "AI-powered" if the product in question is just "regular software" or does not provide any artificial intelligence. The law does not define artificial intelligence but refers to the expectations of an informed customer. There is no reference to the definition of "AI-Systems" according to Art 3 (1) of the European AI-Act.</p>
New Zealand	Fair Trading Act, s9	<p>New Zealand's Fair Trading Act prohibits anything done in trade that is misleading or deceptive or is likely to mislead or deceive. Making unsupported claims of use of AI would breach this provision.</p>
Sweden	Swedish Marketing Act, Section 8	<p>The law prohibits any business practice that misleads the customer in its commercial decision - whether by actively using false or exaggerated statements or by omitting material information.</p> <p>Thus, businesses are not allowed to promote IT-goods or services as "AI-solution" or "AI-powered" if the product in question is just "regular software" or does not provide any artificial intelligence. The law does not define artificial intelligence but refers to the expectation of an informed customer. There is no reference to the definition of "AI-Systems" according to Art 3 (1) of the European AI-Act.</p>

Switzerland	Unfair Competition Act (UCA), art. 2 and 3 b)	Art. 2 UCA provides that any conduct or business practice that is misleading or which otherwise violates the principle of good faith such that it influences the relationship between competitors or between suppliers and customers is unfair and unlawful. According to Art. 3 (1) (b) UCA provides that acts unfairly whoever provides incorrect or misleading information, among others about its business or its goods, works or services. Making unsupported claims of use of AI would potentially violate this provision.
United States	FTC Act Exchange Act	Section 5(a) of the FTC Act provides that “unfair or deceptive acts or practices in or affecting commerce . . . are . . . declared unlawful.” 15 U.S.C. Sec. 45(a)(1).  §§ 10(b), 20(a) of the Exchange Act of 1934; Rule 10b-5 (prohibiting to directly or indirectly use any measure to defraud, make false statements, omit relevant information, or otherwise conduct business operations that would deceive another person in the process of conducting transactions involving stock and other securities).

<b>SECTION III: Possible examples for AI-washing</b>		
Name	Country	Description
Andreas Seling	Austria	<p>a) A manufacturer of gear-controlling devices for cars promote its' software as "AI gear control". However, the solution does not fulfill the requirement of artificial intelligence but only features simple, rule-based computing. The manufacturer uses exaggerated wording to draw attention to its product. As a result, the customer can have the wrong impression, that the manufacturer is more innovative than a competitor. Thus, the customer is willing to pay more for or buy more likely the "AI-washed" controlling software.</p> <p>b) A provider of a mobile phone describes its' product as "AI powered" even though the phone itself only offers browser or app-based applications like ChatGPT. The advertisement creates the impression to the customer that the phone itself contains an AI element which distinguishes the product from other phones.</p>
Mathis Breuer	Germany	A software company sells a recruitment software, claiming “Our AI automatically analyzes applications and selects the best candidates using machine learning and deep learning for maximum precision!”.

		In reality, the system only uses basic keyword filtering without machine learning, follows only predefined rules set by humans and can't analyze complex factors like soft skills.
Stefano Codoni	Switzerland	Same as for Austria.
Hannah Fernandes	Brazil	<p>Same as the examples for Austria "a" and "b".</p> <p>c) Chatbot startups call themselves AI-based solutions when they use simple systems of predefined rules or automatic responses based on keywords without machine learning or natural language processing (real AI technologies). These companies take advantage of the marketing around AI to give the impression of innovation when they aren't applying the technology in any meaningful way.</p> <p>d) A company announced the use of Artificial Intelligence to personalize customers' shopping experience claiming it was using AI algorithms to predict consumer preferences and suggest products based on shopping behavior. However, upon investigation, it becomes clear that the system uses only a recommendation algorithm based on previous purchase histories, without any element of machine learning or advanced intelligence.</p>
Peter Klein	Germany	Same as the examples for Austria.
Jiang Limei	China	Same as the examples for Austria.
Sofia Ljungblad	Stockholm	Same as the examples for Austria.
William J. Morris	United States	<p>This promotion by Coca-Cola (<a href="https://www.coca-colacompany.com/media-center/coca-cola-creations-imagines-year-3000-futuristic-flavor-ai-powered-experience">https://www.coca-colacompany.com/media-center/coca-cola-creations-imagines-year-3000-futuristic-flavor-ai-powered-experience</a>) has been dubbed as potential AI washing. I am having difficulty identifying additional specific examples. There are lots of companies promoting AI, but to determine if it is AI washing an investigation would need to be made to see if the AI benefits are being overstated.</p> <p>Here is a list of some examples that have been enforced against by the FTC under its Operation AI Comply: <a href="https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces-crackdown-deceptive-ai-claims-schemes">https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces-crackdown-deceptive-ai-claims-schemes</a></p>

<b>SECTION IV: Possible interpretations of "AI" under unfair competition law</b>		
<b>Name</b>	<b>Country</b>	<b>Description</b>
Andreas Seling	Austria	<p>Currently there is no case available on the possible definition of "AI" in competition law cases. However, there are strong arguments, that the definition of AI in Art 3 (1) of the AI-Act can serve at least as a benchmark even though, there is no formal reference to the EU-provision.</p> <p>According to the definition of the AI-Act, an "AI-System" is "<i>a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments</i>"</p> <p>Following current legal literature, this definition is very broad and already allows that a lot of existing IT-solutions can be considered "AI".</p>
Mathis Breuer	Germany	Same as for Austria.
Damian Broadley	New Zealand	There has been no legal determination of a definition of AI to date.
Stefano Codoni	Switzerland	<p>Currently there is no case law which contains a clear definition of AI. In one case dealing with the constitutionality of certain new provisions in a Cantonal Police Law, the Swiss Federal Court referred to AI Systems as systems that "analyze and utilize large amounts of data based on algorithmic decision-making", as opposed to "modern databases that allow a structured collection of [...] data such as time, place and modus operandi of the incident, thereby facilitating the analysis of links between crimes by human analysts" (Federal Court Decision 1C_63/2023, of 17.10.2024; n. 4.5.2 and 4.5.3). The Federal Court also referred to certain literature as containing the definition of AI Systems at least in that specific legal sector (MONIKA SIMMLER/SIMONE BRUNNER, Smart Criminal Justice in der Schweiz - Die Kantone im Bann von Algorithmen?, in: Smart Criminal Justice, S. 9 ff., insbes. S. 11), implying that this is what the court regards as being a valid definition.</p>
Hannah Fernandes	Brazil	Same as for Austria.
Peter Klein	Germany	Same as for Austria.
Jiang Limei	China	<p>1. In China, the Provisional Measures for the Administration of Generative Artificial Intelligence Services, which came into effect on August 15, 2023, provides that generative AI "refers to the technology that generates text, pictures, sounds,</p>

		<p>videos, codes, and other content based on algorithms, models, and rules."</p> <ol style="list-style-type: none"> <li>2. Currently, no relevant cases concerning unfair competition have been obtained through the investigation.</li> <li>3. But I identified AI washing case happened between the Operator and Customer, which is regulated by Advertising Law (Article 17) and Law on the Protection of Consumer Rights and Interests (Article 55), a case held by court that using AI concepts for "pseudo-intelligence" for marketing is suspected of fraud.</li> </ol>
Sofia Ljungblad	Sweden	Same as for Austria.