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The rise of AI-washing: what investors need to know



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Artificial intelligence (“AI”) has become ubiquitous in today’s technological landscape. Whether it’s running algorithms that recommend streaming content, driving autonomous vehicles that navigate traffic, or even simply sorting an e-mail inbox, AI is undoubtedly a powerful tool that promises efficiency, scalability, and competitive advantage for modern technology companies. As a result, companies that focus on the enhancement of AI capabilities often garner heightened attention from investors seeking to capitalize on innovative new technologies. Take Nvidia, for example, which in July 2025 surpassed Apple and Microsoft to become the first publicly traded company to reach a \$4 trillion (€3.4 trillion) market capitalization, an achievement largely fueled by its dominance in the AI chip market. This evinces a larger trend whereby investors are rewarding companies perceived to be on the cutting edge of AI development and placing greater weight on companies’ AI-related claims.

While investors’ optimism in AI’s growth potential is far from unfounded, it has also given rise to a new form of misrepresentation known as AI-washing. AI-washing is much like greenwashing in the ESG space. Just as greenwashing involves companies misleading the market about the environmental impact of their products, AI-washing refers to companies’ over-exaggeration or falsification of their AI features. Tech executives invoke terms like “AI-powered,” “machine learning,” and “neural networks” to give the false and misleading impression that AI is deeply embedded in their products, when in fact its role is minimal or ineffective. Investors in these companies who fail to scrutinize these inflated claims may ultimately bear the financial consequences when the truth about a company’s actual use of AI comes to light and performance falls short of expectations. Fortunately, courts and regulatory agencies have reacted quickly to curtail fraudulent AI statements and legitimize securities fraud claims based on AI-washing.

1. AI-Washing in the Courts

Private securities class actions involving AI-washing claims have risen sharply in recent years, coinciding with the rise in AI technology. In 2024, fifteen such cases were filed (more than double the seven that were filed in 2023), with twelve more brought in the first half of 2025 alone.¹ Beyond the rise in volume, courts have shown a willingness to permit AI-washing securities claims to proceed past the motion to dismiss stage, giving investors meaningful legal recourse against these fraudulent practices. That said, the rapid advancement of AI and machine learning is a recent phenomenon, and the body of law addressing AI-washing is still in its early stages. It is therefore critical for investors to understand the current legal landscape and how it may develop in the coming years.

To successfully plead a private securities fraud claim in the United States under Rule 10b-5 of the Securities and Exchange Act of 1934, plaintiffs must establish six core elements: (1) a material misrepresentation or omission; (2) a culpable mental state (scienter); (3) a

connection with the purchase or sale of a security; (4) reliance by plaintiffs on defendants’ misstatements; (5) economic loss; and (6) loss causation. Just like any other Rule 10b-5 securities fraud claim, AI-washing claims are litigated under this framework, and recent rulings reflect that courts are receptive when pleadings are detailed and specific.

AI Matters to Investors. As indicated above, in order for corporate statements or omissions to be actionable under the securities laws, the actual subject matter must be material, or in other words, meaningful to investors in making their investment decisions. Fortunately for investors, courts have held that certain alleged corporate misstatements relating to AI capabilities are indeed material, so long as they are specific and verifiable. In *Jaeger v. Zillow Grp., Inc.*, 644 F. Supp. 3d 857 (W.D. Wash. 2022), the court held that plaintiffs plausibly alleged that Zillow misrepresented its use of automated pricing algorithms by concealing “the broader, more complicated, human-driven process” that was being implemented, and creating “the misleading impression that Zillow was still advancing its automation efforts.” While currently on appeal in the Ninth Circuit on other grounds, this ruling served as an early indication that misrepresentations regarding algorithmic tools and AI automation could support viable securities fraud claims.

Further, in *In re Upstart Holdings, Inc. Sec. Litig.*, 2023 WL 6379810 (S.D. Ohio Sept. 29, 2023) the court addressed corporate statements made regarding Upstart’s underwriting platform that utilized AI to assist banks in evaluating the viability of consumer loans. The court held that statements allegedly falsely touting the “significant advantage” that their AI model provided in evaluating loans, including “higher approval rates and lower interest rates at the same loss rate,” and the ability to “very quickly” adapt to variable macroeconomic conditions (such as COVID-19), “would likely be considered essential to a reasonable investor” in the investment decision-making process and therefore material. The court went on to sustain the complaint in part, legitimizing plaintiffs’ AI-washing claims.

Former Employees are Key. In sustaining AI-washing allegations, courts often rely heavily on the alleged testimony of former employees with knowledge of internal information demonstrating that statements made by their company were false or misleading to investors. In *In re GigaCloud Tech. Inc. Sec. Litig.*, 2025 WL 307378 (S.D.N.Y. Jan. 27, 2025), the court evaluated representations made by an e-commerce company that claimed to use AI and machine learning to provide end-to-end inventory solutions for large parcel merchandise. The court found actionable statements that the company’s “complex AI software” “optimize[d] routing” and “solve[d] the many practical problems faced by sellers and buyers,” basing its decision in large part on statements by former employees supporting allegations that the company’s software in fact “relied on manual computations,” and “required at least 100 IT employees to maintain.”

Even more recently, the court in *Helo v. Sema4 Holdings Corp.*, 2025 WL 1733387 (D. Conn. June 23, 2025) upheld as actionable statements made by Sema4, a health diagnostics testing company that claimed to use AI to enable personalized medicine for patients. Specifically, the company allegedly falsely touted its Centrellis data engine, which it claimed used “state-of-the-art AI” and “machine learning” to “deliver improved and personalized health insights.” In rendering this decision, the court relied primarily on testimony by former employees indicating that the Centrellis technology “never existed.”

Expanding the Scope of AI-Washing Claims. AI-washing claims extend beyond companies’ over-exaggerations of their AI capabilities, as courts have permitted securities fraud claims to proceed based on statements of company executives who themselves profess to be proficient in AI technology. In *Genesee Cnty. Employees’ Ret. Sys. v. DocGo Inc.*, 773 F. Supp. 3d 62 (S.D.N.Y. 2025), the CEO of the company – which dealt in healthcare

transportation and mobile services – “routinely” touted his “graduate degree in computational learning theory,” which he described as a “subset of artificial intelligence,” and proclaimed that the company built its own “routing optimization” software that “really leverages... AI.” The court found such statements actionable, holding that the CEO had used his degree “to bolster his assertions that he was a trustworthy steward of the ‘technology side’ of DocGo,” despite the undisputed fact that he “had not earned a graduate degree from any university in any subject.” Again, the court’s finding further establishes that such AI-related assertions are material to investors and that for a reasonable investor such information would “significantly alter the total mix of information” publicly available.²

AI-Washing Claims Must be Specific and Verifiable. While the above cases are promising for investors looking for legal recourse to protect themselves against AI hype, it is important to note that courts presiding over AI-washing cases still draw distinctions between statements of vague corporate optimism (“puffery”) and statements that are precise and provable. For instance, in *Upstart Holdings*, the company’s general praise of its AI underwriting model as “fairly magical,” or “doing the right things” was deemed by the court to be unverifiable and thus non actionable puffery. In contrast, the court in *Sema4 Holdings* found that the statement that “Centrellis is designed to transform” data analytics was not puffery, because it was accompanied by objectively verifiable assertions concerning the operational capabilities of Centrellis.³

2. Regulatory Response to AI Washing

Apart from private securities actions, regulators have also taken notice of the recent rise in AI-washing. Since 2021, the U.S. Securities and Exchange Commission (“SEC”) has issued numerous comment letters to public companies demanding that AI related disclosures be accurate, complete, and transparent.⁴ The SEC’s chair has even been involved, making several public appearances on news networks warning companies to ensure that their AI-disclosures are accurate, and advocating for additional guardrails to curb AI-washing practices.⁵ Recently, the SEC has initiated several enforcement actions regarding companies’ misleading claims about their AI technology. Below are a few highlights:

Delphia (USA) Inc. and Global Predictions Inc. (March 2024). The SEC settled charges against two investment advisers for misrepresenting AI use. Delphia claimed to incorporate its client data into machine learning software to predict investment trends, when in fact did not, resulting in a \$225,000 penalty. Global Predictions falsely anointed itself as the “first regulated AI financial advisor,” and misrepresented that its platform provided “[e]xpert AI-driven forecasts,” resulting in a \$175,000 penalty. Both settlements included cease and desist orders.⁶

Presto Automation Inc. (January 2025). The SEC brought a settled enforcement action against a publicly traded restaurant technology company based on misrepresentations that its AI drive thru speech recognition system eliminated the need for human order-taking, when in actuality the software was owned and operated entirely by a third party and required human intervention. The company agreed to a cease and desist order with no monetary penalty.⁷

Saniger / Nate Inc. (April 2025). The SEC and DOJ filed parallel civil and

criminal charges against Nate Inc., a mobile shopping application, and its founder Albert Saniger. Saniger allegedly misled the market about the app’s use of AI, machine learning, and neural network capabilities to automate e-commerce purchases, even though nearly all orders were manually processed by contract workers. While these actions are still ongoing, Saniger faces monetary penalties, disgorgement, a permanent injunction from future securities violations, a director and officer bar, as well as potential jail time of up to 40 years for securities and wire fraud.⁸

3. Key Takeaways

In today’s hypercharged AI environment, companies risk serious securities liability if they overstate, fabricate, or obscure the truth of their AI capabilities. For investors, the way courts and regulators have responded to the rise in AI-washing practices offers several important lessons:

- **AI Misrepresentations Are Material and Actionable:** Courts are increasingly recognizing that false or exaggerated statements about a company’s AI technology can form the basis of a securities fraud claim – especially when those statements are specific and verifiable.
- **Volume of AI-Washing Litigation Is Growing:** The number of AI-washing securities class actions is rising sharply, with courts showing a willingness to let properly pled cases proceed past the motion to dismiss stage, providing legal recourse for defrauded investors.
- **Insider Testimony Carries Weight:** Allegations based on the accounts of former employees with firsthand knowledge of internal practices can significantly strengthen AI-washing claims by revealing discrepancies between public statements and actual technological capabilities.
- **Executives’ Credentials Are Fair Game:** Courts have permitted fraud claims based on false statements about executives’ AI expertise when those credentials are used to bolster investor trust in the company’s technology or strategy. Implicit in this finding is the real-world understanding that today’s data companies highly prioritize AI expertise for their executives and employees, with Meta, for example, offering enormous \$250 million pay packages to retain and acquire AI technologists.⁹
- **Regulators Are Actively Enforcing Against AI-Washing:** The SEC and DOJ have launched multiple recent enforcement actions targeting false claims about AI capabilities, with penalties ranging from fines to potential criminal charges – highlighting that AI-washing is a priority for regulators as well as courts.



¹*Investors Increasingly Claim That AI Hype Is Securities Fraud*, Reuters (Aug. 7, 2025), available at <https://www.reuters.com/legal/legalindustry/investors-increasingly-claim-that-ai-hype-is-securities-fraud-2025-08-07/>; *AI-washing drives securities class actions*, Investment Executive (July 30, 2025), available at <https://www.investmentexecutive.com/news/from-the-regulators/ai-washing-drives-securities-class-actions/>.

²*DocGo Inc.*, 773 F. Supp. 3d at 81.

³*Sema4 Holdings*, 2025 WL 1733387 at *8.

⁴*Survey of AI-Related Comment Letters*, TCC (January 22, 2025), available at <https://www.thecorporatecounsel.net/blog/2025/01/survey-of-ai-related-comment-letters.html>.

⁵*Companies need guardrails, especially if using AI*, US SEC chair says, Reuters (February 14, 2024), available at <https://www.reuters.com/technology/companies-need-guardrails-especially-if-using-ai-us-sec-chair-says-2024-02-14/>.

⁶*SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence*, SEC.gov (March 18, 2024), available at <https://www.sec.gov/newsroom/press-releases/2024-36>.

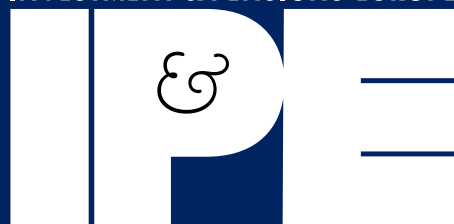
⁷*SEC Files AI-Washing Enforcement Action Against Restaurant Technology Company*, The D&O Diary (January 21, 2025), available at <https://www.dandodiary.com/2025/01/articles/artificial-intelligence/sec-files-ai-washing-enforcement-action-against-restaurant-technology-company/>.

⁸*SEC and DOJ Warm Up to Enforcement over AI Washing*, Holland & Knight (July 10, 2025), available at <https://www.hklaw.com/en/insights/publications/2025/07/sec-and-doj-warm-up-to-enforcement-over-ai-washing>.

⁹<https://www.nytimes.com/2025/07/31/technology/ai-researchers-nba-stars.html>.

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