

**IN THE MATTER OF:**

An application pursuant to s. 9(1)(b)  
of the *Competition Act*, RSC 1985, c C-34  
requesting the Commissioner cause an inquiry to be made  
into the conduct of Lululemon Athletica Inc.

February 8, 2024

## TABLE OF CONTENTS

<b>I.</b>	<b>OVERVIEW OF THE APPLICATION</b> .....	<b>1</b>
<b>II.</b>	<b>GREENWASHING, THE COMPETITION BUREAU’S GUIDANCE AND THE APPLICABLE LEGAL PRINCIPLES</b> .....	<b>3</b>
A.	The Climate Crisis, Environmental Pollution and Consumer Decision-making .....	3
B.	Competition Bureau Guidance.....	4
C.	Applicable Legal Principles .....	5
<b>III.</b>	<b>THE APPAREL INDUSTRY AND LULULEMON’S GREENHOUSE GAS EMISSIONS AND ENVIRONMENTAL POLLUTION</b> .....	<b>7</b>
A.	Greenhouse Gas Emissions.....	7
1.	The Apparel Industry .....	7
2.	Lululemon .....	8
B.	Pollution and Waste .....	10
1.	The Apparel Industry .....	10
2.	Lululemon .....	11
<b>IV.</b>	<b>THE APPLICANTS’ OPINION WHY LULULEMON’S PUBLIC REPRESENTATIONS ARE FALSE AND MISLEADING IN A MATERIAL RESPECT</b> .....	<b>13</b>
1.	Direct, unqualified environmental claims that are false or misleading .....	13
2.	Environmental claims that overemphasize minor environmental benefits .....	16
3.	Environmental claims relating to the company’s greenhouse gas emission targets that are misleading .....	18
4.	Environmental claims about the company’s “vision”, “goals” or “commitments” that are unrealistic.....	21
5.	The General Impression Conveyed by the <i>Be Planet</i> Marketing Campaign .....	22
<b>V.</b>	<b>CONCLUDING REMARKS</b> .....	<b>22</b>
	<b>APPENDIX A: EXAMPLES OF LULULEMON'S PUBLIC REPRESENTATIONS</b> .....	<b>23</b>

## I. OVERVIEW OF THE APPLICATION

The Applicants apply pursuant to s. 9 of the *Competition Act* (the “*Act*”) requesting the Commissioner cause an inquiry to be made into the conduct of Lululemon Athletica Inc. (“**Lululemon**”) with respect to its “*Be Planet*” marketing campaign.

Based on the information set out in this Application, the Applicants are of the opinion that Lululemon’s marketing activities constitute reviewable conduct under s. 74.01(1) of the *Act* and grounds exist for making an order against Lululemon pursuant to s. 74.1(1).

In 2020, Lululemon publicly released its “Impact Agenda” described as the company’s “stake in the ground toward an equitable, sustainable future.”<sup>1</sup> The Impact Agenda identifies three interconnected pillars of Lululemon’s “vision for success, goals and commitments and strategies.”<sup>2</sup> The third pillar of the Impact Agenda is described as follows:<sup>3</sup>

**Be planet.** Our products and actions avoid environmental harm and contribute to restoring a healthy planet.

Lululemon subsequently pursued a marketing campaign that makes public statements and presents images on its website and elsewhere that build upon and perpetuate the message that the company’s actions and products contribute to improving the environment and the restoration of a healthy planet.

In the opinion of the Applicants, this message is false and misleading.

As one of the largest apparel companies in the world, Lululemon has a significant and growing climate and environmental footprint. Its actions and products directly cause harm to the environment and the deterioration of the planet’s health. Further, since the start of the *Be Planet* campaign and in the face of a global climate crisis, the company’s greenhouse gas emissions have doubled. As well, the manufacture, transport and use of its products continue to create significant environmental harm: microplastics from Lululemon’s products are polluting our oceans and inland waters; landfills in countries around the world are collecting Lululemon’s discarded garments; fossil fuels are being used to power the factories of Lululemon’s suppliers and create their synthetic textiles; and the shipping of Lululemon’s products around the world is adding to greenhouse gas emissions as it also damages the marine environment.

The seriousness of Lululemon’s misleading representations is amplified by its position as one of Canada’s largest companies and a market leader of apparel sales in Canada. The breadth and influence of Lululemon’s public messaging is significant, not only putting a great number of

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<sup>1</sup> Lululemon, “2020 Impact Agenda” (2020) at 4, online (pdf): [https://pnimages.lululemon.com/content/dam/lululemon/www-images/Footer/Sustainability/lululemon\\_ImpactAgenda\\_October202023.pdf](https://pnimages.lululemon.com/content/dam/lululemon/www-images/Footer/Sustainability/lululemon_ImpactAgenda_October202023.pdf).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

Canadian consumers at risk of being influenced, but also causing much unintended environmental damage from their purchases.

The Applicants acknowledge Lululemon is taking steps to reduce the harm its business and products have on the environment. This Application is not a criticism of those efforts, rather it is directed at a marketing campaign that goes too far by creating the general impression that the company's actions and products are positively contributing to the environment and a healthier planet. The Applicants are of the opinion that representations of this nature are appropriate only for companies whose true purpose is protection of the environment and removing greenhouse gases from the atmosphere.

If the Commissioner finds that materially false and misleading representations have been made, the Applicants submit that, in light of their serious nature and impact, the Commissioner should seek a judicial order pursuant to s. 74.1(1) that Lululemon:

1. Remove in its entirety the *Be Planet* marketing campaign from its website and all other public forms of communication, including removal of:
  - a. all public representations that Lululemon's products minimize or avoid environmental harm and contribute to restoring a healthy planet; and
  - b. all public representations that Lululemon has adopted practices and created solutions that minimize or avoid environmental harm and contribute to restoring the environment or a healthy planet;
2. Issue a formal apology to all its Canadian customers for providing them with false and misleading information; and
3. Pay a fine of up to 3% of Lululemon's annual worldwide gross revenues, credited to the Environmental Damages Fund and to be paid to an organization for the purposes of climate mitigation and adaptation in Canada.

These orders will prevent Canadian consumers from being misled in the future about the climate and environmental impact of Lululemon's business activities and products, deter Lululemon and other companies from making similar false and misleading representations in the future, and provide funding for reparations to address the increased climate and environmental harm caused by the manufacture, transport and use of those products purchased due to Lululemon's misrepresentations.

## II. GREENWASHING, THE COMPETITION BUREAU'S GUIDANCE AND THE APPLICABLE LEGAL PRINCIPLES

### A. The Climate Crisis, Environmental Pollution and Consumer Decision-making

The world faces severe environmental challenges associated with climate change, biodiversity loss, pollution and waste. The United Nations describes the situation as follows:<sup>4</sup>

*Today, the Earth is facing a triple planetary crisis. Climate disruption. Nature and biodiversity loss. Pollution and waste. This triple crisis is threatening the well-being and survival of millions of people around the world.*

The Supreme Court of Canada has recognized that climate change is an “existential challenge” and “a threat of the highest order to the country, and indeed the world.”<sup>5</sup> The most recent report of the United Nation’s Intergovernmental Panel on Climate Change concludes:<sup>6</sup>

*Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts on food and water security, human health and on economies and society and related losses and damages to nature and people (high confidence).*

At the recent COP28, United Nations Secretary General Antonio Guterres spoke to the urgency of addressing this crisis:<sup>7</sup>

*We are in a race against time. ..., our planet is minutes to midnight for the 1.5 degree limit. And the clock keeps ticking.*

The Organization for Economic Cooperation and Development (“OECD”) reports that the world is producing twice as much plastic as two decades ago, with the bulk ending up in landfill, incinerated or leaking into the environment, and only 9% successfully recycled.<sup>8</sup> It is estimated that 11% of global plastic waste is generated from clothing and textiles.<sup>9</sup> A 2023 report from the European Parliament estimates that the per capita consumption of textiles in the European Union required on average 400 m<sup>2</sup> of land, 9 m<sup>3</sup> of water and 391 kg of raw material.<sup>10</sup>

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<sup>4</sup> United Nations, “Ambitious Action Key to Resolving Triple Planetary Crisis of Climate Disruption, Nature Loss, Pollution, Secretary-General Says in Message for International Mother Earth Day” (21 April 2022), online: <https://press.un.org/en/2022/sgsm21243.doc.htm>.

<sup>5</sup> *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 167.

<sup>6</sup> IPCC, “Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change” (Core Writing Team, H. Lee and J. Romero (eds.)), (2023) at 5, online (pdf): [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_FullVolume.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf).

<sup>7</sup> United Nations Secretary General, “Secretary-General's opening remarks at press encounter at COP28” (11 December 2023), online: <https://www.un.org/sg/en/content/sg/speeches/2023-12-11/secretary-generals-opening-remarks-press-encounter-cop28>.

<sup>8</sup> OECD, “Plastic pollution is growing relentlessly as waste management and recycling fall short, says OECD” (22 February 2022), online: <https://www.oecd.org/environment/plastic-pollution-is-growing-relentlessly-as-waste-management-and-recycling-fall-short.htm>.

<sup>9</sup> *Ibid.*

<sup>10</sup> European Parliament, “The impact of textile production and waste on the environment (infographics)” (last modified 15 November 2023), online: <https://www.europarl.europa.eu/news/en/headlines/society/20201208STO93327/the-impact-of-textile-production-and-waste-on-the-environment-infographics>.

Textile production is estimated to be responsible for about 20% of global clean water pollution from dyeing and finishing products.<sup>11</sup> Laundering synthetic clothes accounts for 35% of primary microplastics released into the environment.<sup>12</sup> A single laundry load of polyester clothes can discharge 700,000 microplastic fibres that can end up in the food chain.<sup>13</sup>

The World Health Organization identifies air pollution as one of the greatest environmental risks to health, with the main driver of the pollution, combustion of fossil fuels, also causing greenhouse gas emissions contributing to climate change.<sup>14</sup>

In light of these facts, many Canadians' concerns about the environment have caused them to shop for their apparel products sustainably, purchase planet-friendly products and avoid brands that sell products which contribute to climate change or the degradation of the planet. In other words, these issues are not only material to many Canadian consumers' purchasing decisions, they are a priority. Lululemon's own 2023 Carbon Disclosure Project report notes:<sup>15</sup>

*Consumers, particularly millennial and Gen Z consumers, are more likely to align themselves with brands who they trust to make decisions that reflect their values and benefit people and the planet.*

To avoid misleading consumers, it is therefore paramount that companies' representations regarding their contribution to the climate crisis and environmental pollution be not only truthful, but also clear and transparent.

## **B. Competition Bureau Guidance**

In recognition of companies' growing use of false or misleading environmental claims to attract consumers, the Competition Bureau has published guidance for Canadian companies. The Competition Bureau describes the problem of "greenwashing" as follows:<sup>16</sup>

*Countless Canadians are concerned about the environment and climate change. Therefore, many are looking for products and services that are less harmful to the environment. This has led to an increased demand for "green" products or services.*

*While the supply of "green" products has greatly increased in response to this demand, there has also been an increase of false or misleading environmental ads or claims, also known as greenwashing. This practice harms competition and innovation because consumers are being misled and are therefore unable to make an informed purchasing decision. Businesses who actually offer a product that has*

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> World Health Organization, "Air Pollution", online: [https://www.who.int/westernpacific/health-topics/air-pollution#tab=tab\\_1](https://www.who.int/westernpacific/health-topics/air-pollution#tab=tab_1).

<sup>15</sup> Lululemon Athletica Inc., "2023 Carbon Disclosure Project Report" (2023) at 7, online (pdf): <https://corporate.lululemon.com/~media/Files/L/Lululemon/our-impact/reporting-and-disclosure/lululemon-cdp-cc-2023.pdf>.

<sup>16</sup> Competition Bureau Canada, "Environmental Claims and Greenwashing" (2 December 2021), online: <https://ised-isde.canada.ca/site/competition-bureau-canada/en/environmental-claims-and-greenwashing>.

*a lower environmental impact may see their potential consumers being misled into purchasing products and services from competitors that made false or misleading claims.*

To address greenwashing, the Competition Bureau advises businesses that the laws it enforces prohibit businesses from making false or misleading environmental claims to promote a service, product or business interest.<sup>17</sup>

The Competition Bureau further advises that if businesses make environmental claims about their product or service, they should follow best practices:<sup>18</sup>

*Follow best practices by making sure that your claims:*

- *are truthful and **aren't misleading**;*
- *are **specific**: be precise about the environmental benefits of your product;*
- *are **substantiated and verifiable**: claims must be tested and all tests must be adequate and proper;*
- *do not result in misinterpretations;*
- ***do not exaggerate** the environmental benefits of your product; and*
- *do not imply that your product is **endorsed by a third-party organization** if it isn't; and,*

*If you're unsure whether a claim will mislead or misrepresent, then don't make the claim!"*

In other words, representations regarding the environment must be truthful, specific, precise, substantiated, verifiable and avoid exaggeration.

The Applicants submit that the importance of the Bureau's enforcement function is even greater when addressing concerns about environmental claims by companies who are market leaders in their industry with significant carbon and environmental footprints. The effect of these companies' misrepresentations will impact a larger number of consumers and, hence, have a greater detrimental impact on the environment.

### **C. Applicable Legal Principles**

The legal principles applicable to a determination of whether Lululemon has made false or misleading representations are not controversial and for the most part are enshrined in the *Act*. There are three main principles relevant to this application.

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

First, the general impression test is applicable to the inquiry to be conducted by the Commissioner into Lululemon's conduct. Section 74.03(5) of the Act establishes the applicability of the general impression test as follows:

*In proceedings under sections 74.01 and 74.02, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct.*

In the Competition Bureau's *The Deceptive Marketing Practices Digest*, the Bureau explains that "the general impression test effectively recognizes the power of the 'sum of the parts' in advertising, and ensures that the courts consider the overall impression that an advertisement as a whole makes on consumers."<sup>19</sup> Further the courts have held the general impression conveyed by a representation must be analyzed in the abstract – without considering the personal attributes of the consumer who has instituted the proceedings.<sup>20</sup> In other words, while the Commissioner may find that each environmental claim by Lululemon on its own may not be false or misleading, the Commissioner must consider all the companies representations together to consider the general impression they would leave with a consumer.

The second principle applicable to this application is that the Commissioner is not required to find that any person was misled by an environmental claim, but only that the claim was published for public view, and that it was untrue or misleading in a material respect. This principle is set out in s.74.03(4) of the *Act*. The purpose of this provision is to avoid turning the Commissioner's inquiry into an assessment of many different consumers' reactions to a company's representations and allow the Commissioner (and ultimately the court) to make the assessment of whether a representation is false, misleading and material.

Third, it is a requirement pursuant to s.74.01(1)(a) of the Act that the impugned representation be "material" to consumers' decision-making. The courts have interpreted "material" in this context as meaning "of much consequence or important or pertinent or germane or essential to"<sup>21</sup> the consumer's purchasing decision. As noted above, the Competition Bureau has already identified the materiality of environmental claims to many consumers' decisions. As stated by the Bureau, many Canadians are looking for products and services that are less harmful to the environment which has led to an increased demand for "green" products.

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<sup>19</sup> Competition Bureau Canada, *The Deceptive Marketing Practices Digest*, (6 June 2015) at 6, online (pdf): <https://isde-isde.canada.ca/site/competition-bureau-canada/sites/default/files/attachments/2022/cb-digest-deceptive-marketing-e.pdf>.

<sup>20</sup> *Richard v. Time Inc.*, 2012 SCC 8, at para 49.

<sup>21</sup> *R. v. Tege Investment Ltd.* (1978), 51 CPR (2d) 216 (AltaProvCt) at para 7.



### III. THE APPAREL INDUSTRY AND LULULEMON'S GREENHOUSE GAS EMISSIONS AND ENVIRONMENTAL POLLUTION

The apparel industry has a large global carbon and environmental footprint.

As one of the largest apparel companies in the world by market capitalization, Lululemon's carbon and environmental footprint is also substantial. It is estimated that Lululemon is valued at over \$58 billion USD.<sup>22</sup> Founded in 1998 and headquartered in Vancouver, Lululemon employs over 34,000 people, and operates over 670 stores worldwide.<sup>23</sup> In 2022, the company reported revenues of over \$8 billion USD,<sup>24</sup> with \$1.1 billion USD of those sales in Canada.<sup>25</sup>

#### A. Greenhouse Gas Emissions

##### 1. *The Apparel Industry*

It is estimated the apparel industry contributes between 1.8% to 8% of the world's greenhouse gas emissions.<sup>26</sup>

The vast majority of the apparel industry's emissions are created by its value chains.<sup>27</sup> The Greenhouse Gas Protocol, a global standardized framework to measure and manage emissions from private and public operations, classifies these value chain emissions as part of "Scope 3 emissions".<sup>28</sup> Scope 3 emissions are all indirect greenhouse gas emissions (not including generation of purchased energy) that occur in the value chain of a company, including both upstream and downstream emissions. In the apparel industry, upstream emissions include emissions from an apparel company's supply chain such as the production of raw materials,

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<sup>22</sup> Forbes, "Lululemon Athletica", February 2, 2024, online: <https://www.forbes.com/companies/lululemon-athletica/?sh=6c7e9382238c>.

<sup>23</sup> Lululemon, "About Us", <https://corporate.Lululemon.com/about-us>.

<sup>24</sup> Lululemon, "2022 Annual Report" (29 January 2023), online (pdf): <https://corporate.lululemon.com/~media/Files/L/Lululemon/investors/annual-reports/lululemon-2022-annual-report.pdf>.

<sup>25</sup> Statista, "Revenue of lululemon athletica in Canada from the fiscal year of 2012 to 2022" (2024), online: <https://www.statista.com/statistics/485785/revenue-of-lululemon-canada/#:~:text=In%20the%20fiscal%20year%20of%202022%2C%20ending%20January.grown%20positively%20with%20each%20consecutive%20year%20since%202015.>

<sup>26</sup> Apparel Impact Institute, "Taking Stock of Progress Against the Roadmap to Net Zero" (June 2023) at 2, online (pdf): [https://apparelimpact.org/wp-content/uploads/2023/07/Aii\\_RoadmapReport-752.pdf](https://apparelimpact.org/wp-content/uploads/2023/07/Aii_RoadmapReport-752.pdf); McKinsey & Company, "Fashion on Climate: How the fashion industry can urgently act to reduce its greenhouse gas emissions" (2020) at 5, online (pdf): <https://www.mckinsey.com/~media/mckinsey/industries/retail/our%20insights/fashion%20on%20climate/fashion-on-climate-full-report.pdf>; Quantis, "Measuring Fashion: Insights from the Environmental Impact of the Global" (2018) at 2, online (pdf): [https://quantis.com/wp-content/uploads/2019/11/measuringfashion\\_globalimpactstudy\\_quantis\\_2018.pdf](https://quantis.com/wp-content/uploads/2019/11/measuringfashion_globalimpactstudy_quantis_2018.pdf).

<sup>27</sup> Apparel Impact Institute and World Resources Institute, "Roadmap to Net Zero: Delivering Science Based Targets in the Apparel Sector" (November 2021) at 7, online (pdf): <https://files.wri.org/d8/s3fs-public/2021-11/roadmap-net-zero-delivering-science-based-targets-apparel-sector.pdf?VersionId=LxrwUSv9dHytM7zybuQgoJ8LUHBZVgM1>.

<sup>28</sup> Greenhouse Gas Protocol, "FAQ" at 1, online (pdf): [https://ghgprotocol.org/sites/default/files/standards\\_supporting/FAQ.pdf](https://ghgprotocol.org/sites/default/files/standards_supporting/FAQ.pdf); The GHG Protocol Corporate Standard classifies a company's GHG emissions into three 'scopes'. Scope 1 emissions are direct emissions from owned or controlled sources. Scope 2 emissions are indirect emissions from the generation of purchased energy. Scope 3 emissions are all indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.

transportation and distribution. Downstream emissions include emissions from the use and disposal of the apparel products.<sup>29</sup>

Based on a study of apparel and footwear brands, the Apparel Impact Institute and World Resources Institute calculated that 96% of the industry's total greenhouse gas emissions are Scope 3 emissions, with 80% of those generated from upstream manufacturing, production, and raw materials.<sup>30</sup> In order to stay within a 1.5C aligned trajectory, the Apparel Impact Institute projects the industry must reduce its emissions by at least 45 percent by 2030.<sup>31</sup> In other words, to be a part of the world's climate change solution, apparel companies must make significant cuts to their absolute emissions, including emissions from their supply chains.

## 2. Lululemon

The great majority of Lululemon's greenhouse gas emissions are Scope 3 emissions created by its supply chain.<sup>32</sup> Since Lululemon launched its *Be Planet* marketing campaign in 2020, rather than seeing a reduction in Lululemon's greenhouse gas emissions, those emissions have increased significantly. Lululemon's own reporting indicates that its reported Scope 3 emissions have more than doubled since 2020, as follows:<sup>33</sup>

- 2020: 829,456 tCO<sub>2</sub>e<sup>34</sup>
- 2021: 1,343,649 tCO<sub>2</sub>e<sup>35</sup>
- 2022: 1,691,009 tCO<sub>2</sub>e<sup>36</sup>

Lululemon's 2022 emissions are the equivalent of burning of over 720 million litres of gasoline, over 3.8 million barrels of oil or the fueling of over 518,000 passenger vehicles for a year.<sup>37</sup>

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<sup>29</sup> World Resources Institute and Science Based Targets initiative, "Apparel and Footwear Sector: Science-Based Targets Guidance" at 4 and 25, Figure 8, online (pdf): **Error! Hyperlink reference not valid.**[https://sciencebasedtargets.org/resources/files/SBT\\_App\\_Guide\\_final\\_0718.pdf](https://sciencebasedtargets.org/resources/files/SBT_App_Guide_final_0718.pdf).

<sup>30</sup> Apparel Impact Institute and World Resources Institute, *supra* note 27, at 7.

<sup>31</sup> Apparel Impact Institute, *supra* note 26 at 3.

<sup>32</sup> Based on information in Lululemon's 2022 Impact Report, it was calculated that Lululemon's Scope 3 emissions comprised 99.7% of its total emissions: Lululemon, "2022 Impact Report" at 50, online (pdf): <https://corporate.lululemon.com/~media/Files/L/Lululemon/our-impact/reporting-and-disclosure/2022-lululemon-impact-report.pdf>.

<sup>33</sup> Lululemon's reporting omits certain Scope 3 emissions categories and therefore these values do not represent the entirety of the company's emissions: *Ibid*, at 79.

<sup>34</sup> Lululemon, "2020 Impact Report" at 59, online (pdf): <https://corporate.lululemon.com/~media/Files/L/Lululemon/our-impact/our-impact-agenda/2020-full-impact-report.pdf>.

<sup>35</sup> Lululemon, "2021 Impact Report" at 67, online (pdf): <https://corporate.lululemon.com/~media/Files/L/Lululemon/our-impact/reporting-and-disclosure/2022-lululemon-impact-report.pdf>.

<sup>36</sup> 2022 Impact Report" *supra* note 32 at 79.

<sup>37</sup> Natural Resources Canada, "Greenhouse Gas Equivalencies Calculator" online: <https://oee.nrcan.gc.ca/corporate/statistics/neud/dpa/calculator/ghg-calculator.cfm#results>.

It appears these emissions will continue to increase significantly as Lululemon has a stated goal of doubling its 2021 revenue by 2026,<sup>38</sup> which will mean increased apparel manufacturing through its supply chain, and a corresponding increase in Scope 3 emissions.

Significantly, many of Lululemon's products are made with polyester and nylon, which are manufactured from fossil fuels.<sup>39</sup> Further, over 80% of Lululemon's manufacturers and suppliers are located in countries with significant fossil fuel reliance and minimal grid renewables, including Vietnam, Cambodia, Sri Lanka, Bangladesh, and Indonesia.<sup>40</sup> Vietnam, for example, is the location from which Lululemon sources most of its products (39%).<sup>41</sup> Vietnam, however, is reported to have the fastest growth in coal use of all countries in Southeast Asia, at an annual growth rate of 11%.<sup>42</sup> It is also reported that in 2021, coal accounted for 47% of the country's electricity generation mix<sup>43</sup> and, from 2017 to 2020, Vietnam's carbon emissions increased by over 50%.<sup>44</sup>

Additionally, while Lululemon represents that it is committed to working with its suppliers to increase use of renewable energy and eliminate on-site coal boilers,<sup>45</sup> such representations are not readily verifiable. Many of Lululemon's largest suppliers do not publish information relating to their coal usage or plans to switch to renewable energy. For example, Tan De Co Ltd., which the Applicants have identified as one of Lululemon's largest suppliers, does not publicly report using any renewable energy to power its factories, has not set public targets to reduce its emissions, and does not have a published plan to phase out coal use. If an inquiry into Lululemon's representations is undertaken, the Applicants request the Commissioner obtain from Lululemon their suppliers' past and present environmental reporting, including information relating to their reliance on coal and plans to switch to renewable energy.

The detrimental impact of Lululemon's products and actions on the environment is further increased by the company's use of air and marine freight to transport its products.

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<sup>38</sup> Lululemon, "lululemon Announces Five-Year Growth Plan to Double Revenue by 2026 to \$12.5 Billion" (20 April 2022), online: <https://corporate.lululemon.com/media/press-releases/2022/04-20-2022-113017957#:~:text=Leveraging%20its%20proven%20formula%20and%20supported%20by%20the,including%20product%20in%20novation%2C%20guest%20experience%2C%20and%20market%20expansion.>

<sup>39</sup> Gelfand Center, Carnegie Mellon University, "Natural vs. Synthetic Polymers" online: <https://www.cmu.edu/gelfand/lgc-educational-media/polymers/natural-synthetic-polymers/index.html>.

<sup>40</sup> Annual Report, 2022 *supra* note 24 at 5, In 2022, approximately 39% of their products were made in Vietnam, 14% in Cambodia, 12% in Sri Lanka, 8% in Bangladesh, and 7% in Indonesia, and the remainder in other regions.

<sup>41</sup> *Ibid.*

<sup>42</sup> Thang Nam Do and Paul J. Burke, "Phasing out coal power in a developing country context: Insights from Vietnam" (2023) 176 *Energy Policy* at 1, online: <https://www.sciencedirect.com/science/article/pii/S0301421523000976?via%3Dihub>.

<sup>43</sup> *Ibid* at 2.

<sup>44</sup> MacroTrends, "Vietnam Carbon (CO<sub>2</sub>) Emissions 1990-2024" online: <https://www.macrotrends.net/countries/VNM/vietnam/carbon-co2-emissions>.

<sup>45</sup> 2022 Impact Report, *supra* note 32 at 51.

Air freight creates approximately forty-seven times more CO<sub>2</sub> emissions than marine freight per ton-mile.<sup>46,47</sup> Accordingly, a company such as Lululemon that represents itself as taking actions which contribute to a healthy planet would, reasonably, be expected minimize the use of air freight to prioritize the health of the planet. However, when faced with supply chain difficulties caused by the COVID-19 pandemic, Lululemon chose the opposite. Lululemon chose to significantly increase its use of air freight, in disregard for the increased detrimental impacts on the environment. Lululemon explains the shift to air freight in its 2022 Impact Report:<sup>48</sup>

“Early in 2022, the COVID-19 pandemic contributed to ongoing supply chain disruptions. As a result, we experienced longer lead times and delivery challenges, including pressure on ocean freight and seaports. This meant continued use of increased air freight in the first half of 2022, impacting our Scope 3 target performance,”

Notably, a study that assessed the use of air freight by major companies in the apparel industry highlighted Lululemon’s high use of air freight. The study found that Lululemon transports by air freight approximately 30% of its products manufactured in Vietnam and Sri Lanka. In contrast, competitors such as Nike, Adidas and Puma transported less than 5% of their products from Vietnam by air.<sup>49</sup> In other words, while Lululemon’s competitors achieve some balance between the use of environmentally harmful air freight and protection of the planet, Lululemon pursues a significantly more aggressive air freight strategy.

## **B. Pollution and Waste**

### ***1. The Apparel Industry***

The pollution and waste created by the apparel industry is well documented.

Between 80 to 100 billion new clothing garments are produced globally every year,<sup>50</sup> with an increasing amount of these garments being made from synthetic fabrics such as nylon, acrylic, and polyester – materials made from plastic.<sup>51</sup> When these materials are washed, they release plastic

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<sup>46</sup> Vitality, “Air Freight vs Sea Freight Carbon Footprint: Which is Lower?” (2022), online: <https://vitality.io/air-freight-vs-sea-freight-carbon-footprint/#:~:text=Airfreight%20generates%2047%20times%20more,10%2D40%20grams%20per%20kilometer>.

<sup>47</sup> Per the OECD, in addition to releasing CO<sub>2</sub> emissions at high altitude, “In the upper troposphere (up to 10 kilometres), where most aircraft miles are logged, NO<sub>x</sub> emissions may react with other gases to form ozone, which is a potent greenhouse gas at this altitude. Although aviation accounts for only two per cent of global NO<sub>x</sub> emissions, their discharge directly into the upper troposphere may greatly increase their impact on ozone formation.” OECD, “The Environmental Effects of Freight” (1997) at 19, online (pdf): <https://www.oecd.org/environment/envtrade/2386636.pdf>.

<sup>48</sup> 2022 Impact Report *supra* note 32 at 52.

<sup>49</sup> PublicEye, “Following in Zara’s slipstream: the airborne fashion of other brands”, (December 18, 2023) online: <https://www.publiceye.ch/en/news/detail/following-in-zaras-slipstream-the-airborne-fashion-of-other-brands>.

<sup>50</sup> TheRoundup.org, “17 Most Worrying Textile Waste Statistics & Facts”, (updated 11 April 2023), online: <https://theroundup.org/textile-waste-statistics/>.

<sup>51</sup> Aravin Prince Periyasamy, Ali Tehrani-Bagha, “A review on microplastic emission from textile materials and its reduction techniques” (2022) 199, *Polymer Degradation and Stability*, online: <https://www.sciencedirect.com/science/article/pii/S0141391022000878>.

fibres into the water that flow into our rivers and oceans.<sup>52</sup> Researchers estimate that every year clothing releases 500,000 tonnes of microfibers into the ocean – the equivalent of more than 50 billion plastic bottles.<sup>53</sup> Microplastic pollution is one of the most pervasive environmental issues, raising concerns about water quality, effects on ecosystems and human health.<sup>54</sup>

The heavy use of synthetic materials in textiles makes many apparel products impossible to recycle.<sup>55</sup> It is estimated that the world produces 92 million tons of textile waste every year, with clothing and textiles making up at least 7% of the total amount of waste in global landfill space.<sup>56</sup> Synthetic fibres are non-biodegradable and can sit in landfills for up to 200 years.<sup>57</sup>

The textile sector was the third largest source of water degradation and land use in 2020. In that year, it took on average nine cubic metres of water, 400 square metres of land and 391 kilograms of raw materials to provide clothes and shoes for each EU citizen.<sup>58</sup>

Water scarcity is also a growing global problem, with an estimated 2.3 billion people living in water-stressed countries in 2018.<sup>59</sup> The apparel industry compounds this problem by using large amounts of fresh water throughout the production and manufacturing process.<sup>60</sup>

Marine freight transport of apparel products also causes significant damage to the planet's inland and ocean environments. According to the OECD:<sup>61</sup>

“Shipping poses threats to the environment both on inland waterways and on the ocean. These problems come from six major sources; routine discharges of oily bilge and ballast water from marine shipping; dumping of non-biodegradable solid waste into the ocean; accidental spills of oil, toxics or other cargo or fuel at ports and while underway; air emissions from the vessels' power supplies; port and inland channel construction and management; and ecological harm due to the introduction of exotic species transported on vessels.”

## **2. Lululemon**

The Applicants are of the opinion Lululemon's actions and products also cause harm to the environment in ways discussed above.

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<sup>52</sup> Concordia Precious Plastic Project, “Microplastic Pollution and the Fast Fashion Industry” online:

<https://www.cp3montreal.com/articles/microplastic-pollution-and-the-fast-fashion-industry>.

<sup>53</sup> *Ibid.*

<sup>54</sup> OECDiLibrary, “Policies to Reduce Microplastics Pollution in Water : Focus on Textiles and Tyres” (20 October 2021), online: <https://www.oecd-ilibrary.org/sites/92f53a72-en/index.html?itemId=/content/component/92f53a72-en#section-d1e390>.

<sup>55</sup> Concordia, *supra* note 52.

<sup>56</sup> TheRoundup.org, *supra* note 50.

<sup>57</sup> Concordia, *supra* note 52.

<sup>58</sup> European Parliament, *supra* note 10.

<sup>59</sup> United Nations Statistics Division, SDG 6 “Clean Water and Sanitation: Ensure availability and sustainable management of water and sanitation for all”, online: <https://unstats.un.org/sdgs/report/2021/goal-06/#:~:text=In%202018%2C%202.3%20billion%20people.by%20over%20%20per%20cent.>

<sup>60</sup> Lululemon's 2022 Impact Report, *supra* note 32 at 66.

<sup>61</sup> OECD, Environmental Effects of Freight *supra* note 47 at 11.

Based on information available to the Applicants, they understand Lululemon relies heavily on synthetic fabrics in their products, with polyester and nylon representing over 60% of the company's material mix.<sup>62</sup> Accordingly, based on the sources noted above, when Lululemon's polyester and nylon products are washed by consumers, significant amounts of microplastics are released. Further, while Lululemon claims that it is converting to recycled polyester and nylon in its products<sup>63</sup>, experts do not consider these products to be a truly sustainable alternative as they are energy intensive to manufacture, do not biodegrade and still release microplastics.<sup>64</sup> A 2021 study found that washing knitted recycled polyester fabric, which is used by Lululemon<sup>65</sup>, shed 2.3 times more microfibrils than virgin polyester.<sup>66</sup>

It is also likely that many millions of Lululemon's products also end up in landfills. Lululemon sells millions of garments each year. Many of Lululemon's products are made of synthetic textile materials that cannot or are not recycled,<sup>67</sup> meaning they contribute to the 92 million tons of textile waste filling landfills around the world every year.<sup>68</sup>

Additionally, in 2022, Lululemon reported that their priority suppliers, which produce approximately 84% of Lululemon's production value, used 29.2 billion litres of freshwater.<sup>69</sup>

Finally, as discussed above, Lululemon's supply chain sources its products from countries that rely heavily on fossil fuels, including coal.<sup>70</sup> Not only does combustion of coal emit greenhouse gases, but it also emits toxic and carcinogenic pollutants into the air, water, and land. In fact, coal is so detrimental to the environment that the UN Secretary General António Guterres has urged governments and private companies alike to end their reliance on coal, calling this "the single most important step to get in line with the 1.5-degree goal of the Paris Agreement".<sup>71</sup>

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<sup>62</sup> Lululemon's 2022 Impact Report *supra* note 32 at 55.

<sup>63</sup> *Ibid* at 55-58.

<sup>64</sup> Veronica Bates Kassatly and Dorothee Baumann-Pauly, "The Great Greenwashing Machine - Part 2: The Use and Misuse of Sustainability Metrics In Fashion" *Eco-Age*, online (pdf): [https://eco-age.com/wp-content/uploads/2022/03/Great-Green-Washing-Machine-Report-Part-2\\_FINAL.pdf](https://eco-age.com/wp-content/uploads/2022/03/Great-Green-Washing-Machine-Report-Part-2_FINAL.pdf), see p. 33-39.

<sup>65</sup> See for example: Shop.Lululemon.com, "Boxy Knit T-Shirt" online: [https://shop.lululemon.com/p/womens-t-shirts/Boxy-Knit-T-Shirt-MD/\\_/prod11450233](https://shop.lululemon.com/p/womens-t-shirts/Boxy-Knit-T-Shirt-MD/_/prod11450233). This Boxy Knit T-shirt is described as smooth, knit fabric and is made with 100% recycled polyester.

<sup>66</sup> İlkan Özkan & Sedat Gündoğdu, "Investigation on the microfiber release under controlled washings from the knitted fabrics produced by recycled and virgin polyester yarns" (2021) *The Journal of The Textile Institute*, 112:2, 264-272, online: <https://www.tandfonline.com/doi/full/10.1080/00405000.2020.1741760>.

<sup>67</sup> Concordia, *supra* note 52.

<sup>68</sup> TheRoundup.org, *supra* note 50.

<sup>69</sup> Lululemon's 2022 Impact Report, *supra* note 32 at 66.

<sup>70</sup> *Ibid* at 40, 41, 42 and 43. Also, Lululemon reports that in 2022, only 15 percent of electricity used by their manufacturers and materials suppliers came from renewable sources. While Lululemon claims to be committed to eliminating on-site use of coal, coal boilers continue to be used by their suppliers. See: 2022 Impact Report *supra* note 32 at 51.

<sup>71</sup> United Nations Climate Change, "UN Chief Calls for Immediate Global Action to Phase Out Coal" (2 March 2021), online: <https://unfccc.int/news/un-chief-calls-for-immediate-global-action-to-phase-out-coal>.

#### IV. THE APPLICANTS' OPINION WHY LULULEMON'S PUBLIC REPRESENTATIONS ARE FALSE AND MISLEADING IN A MATERIAL RESPECT

As mentioned, Lululemon commenced its *Be Planet* marketing campaign in 2020.<sup>72</sup> The contradiction between the messaging in Lululemon's *Be Planet* marketing campaign and the actual environmental impact of Lululemon's actions and products is stark. The discussion below identifies examples of Lululemon's public and material representations and provides the Applicants' opinion regarding why these representations are false and misleading in material respects. Copies of the representations in the form they are presented to the public are included in **Appendix A**.

In the Applicants' opinion, Lululemon makes four types of false or misleading public representations in the context of the *Be Planet* marketing campaign: (i) direct, unqualified environmental claims about the company's products and actions; (ii) environmental claims that overemphasize minor environmental benefits to deflect attention away for the substantial environmental harm caused by the company's activities and products; (iii) environmental claims relating to the company's greenhouse gas emission "targets"; and (iv) environmental claims about the company's "vision", "goals" or "commitments". Individually, many of the representations on their own are false or misleading. Taken together, the representations create a general impression that is false and misleading.

##### 1. Direct, unqualified environmental claims that are false or misleading

Source	Representation
<a href="#">Lululemon Impact Summary 2020, p. 9</a> <i>Appendix A, p. 24</i>	<u>Our lives are one with the health of the planet.</u> Our products and actions avoid environmental harm and contribute to restoring a healthy planet.
Lululemon website: <a href="#">Our Impact</a> <i>Appendix A, p. 25</i>	Our products and actions avoid environmental harm and contribute to restoring a healthy planet.

<sup>72</sup> Lululemon - Press Releases "lululemon athletica Inc. Releases Impact Agenda, Unveiling its Social and Environmental Goals and Strategies to Create a Healthier Future" (28 October 2020), online: <https://corporate.lululemon.com/media/press-releases/2020/10-28-2020-085826103>.



<p>Lululemon website: <a href="#">Our Planet</a></p> <p><i>Appendix A, p. 26</i></p>	<p>By adopting and evolving practices and mindful solutions, we enhance the products we offer and contribute to restoring the environment.</p>
<p>Lululemon website: <a href="#">Better Products</a></p> <p><i>Appendix A, p. 27</i></p>	<p>We’re adopting practices and creating solutions that enhance our products, minimize negative impact, and contribute to restoring the environment.</p>
<p><a href="#">Lululemon Impact Report 2022</a> p. 46</p> <p><i>Appendix A, p. 28</i></p>	<p>We work across our value chain to reduce our carbon and water footprint, improve chemical management, develop and sell products that reflect the values of our guests, and contribute to a healthier environment.</p>
<p><a href="#">Lululemon Impact Agenda 2020</a>, p. 25</p> <p><i>Appendix A, p. 29</i></p>	<p>We envision a future where we thrive within the limits of our one planet. That is why we act to avoid environmental harm and contribute to restoring a healthy planet.</p>

In summary, Lululemon publicly represents that its practices, solutions, products and actions contribute to restoring the environment and a healthy planet. However, as outlined above, the evidence available to the Applicants portrays a much different company. Instead of restoring the environment and a health planet, the evidence indicates:

- Lululemon is a part of a global industry that contributes between 1.8% to 8% of the world’s greenhouse gas emissions,<sup>73</sup> the vast majority of which are created by its value chains.<sup>74</sup>
- The Lululemon has an enormous supply chain that produces substantial greenhouse gas emissions and that, since making its *Be Planet* commitments, its Scope 3 emissions have more than doubled to 1,691,009 tCO<sub>2</sub>e.<sup>75</sup> It is also expected these emissions will continue to increase as Lululemon has a stated goal of doubling its 2021 revenue by 2026.<sup>76</sup>

<sup>73</sup> [Apparel Impact Institute](#) (Aii), [McKinsey](#) and [Quantis](#), *supra* note 26.

<sup>74</sup> Apparel Impact Institute and World Resources Institute, *supra* note 27, at 7.

<sup>75</sup> 2022 Impact Report, *supra* note 32 at 79.

<sup>76</sup> Lululemon, “Five-Year Growth Plan”, *supra* note 38.



- The products most heavily relied upon by Lululemon in their material mix – polyester and nylon – are produced from fossil fuels and are known to release significant amounts of microplastics into the planet’s oceans and inland waters when washed.
- Lululemon chooses to transport a higher percentage of its products by air freight than its competitors, despite knowing air freight generates significantly more greenhouse gas emissions than marine shipping.<sup>77</sup>
- Lululemon’s supply chain operations used more than 29 billion litres of freshwater in 2022.<sup>78</sup>
- A significant (but unknown to the Applicants) amount of Lululemon’s garments and packaging end up in landfills each year.

Lululemon also publicly represents:

- We work across our value chain to reduce our carbon ...footprint, ..., develop and sell products that reflect the values of our guests, and contribute to a healthier environment.<sup>79</sup>

This representation, however, is inconsistent with the following evidence:

- Lululemon’s Scope 3 emissions, which make up more than 99% of the company’s carbon footprint, have more than doubled since 2020.<sup>80</sup>
- The great majority of Lululemon’s supply chain is located in countries with a heavy fossil fuel reliance and minimal grid renewables, including Vietnam, Cambodia, Sri Lanka, Bangladesh, and Indonesia.<sup>81</sup>
- Vietnam is the location from which Lululemon sources most of its products (39%).<sup>82</sup> Vietnam is reported to have the fastest growth in coal use of all countries in Southeast Asia, at an annual growth rate of 11%.<sup>83</sup> In 2021, coal accounted for 47% of the country’s electricity generation.<sup>84</sup> Further, from 2017 to 2020, Vietnam’s carbon emissions increased by over 50%.<sup>85</sup>

Finally, the imagery Lululemon uses in combination with its messaging contributes to the false and misleading nature of the *Be Planet* marketing campaign. Pictures of rivers, healthy forests and

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<sup>77</sup> Public Eye, *supra* note 49.

<sup>79</sup> 2022 Impact Report, *supra* note 32 at 46.

<sup>79</sup> 2022 Impact Report, *supra* note 32 at 46.

<sup>80</sup> 2022 Impact Report, *supra* note 32 at 79.

<sup>81</sup> Annual Report, 2022 *supra* note 24 at 37. In 2022, approximately 39% of their products were made in Vietnam, 14% in Cambodia, 12% in Sri Lanka, 8% in Bangladesh, and 7% in Indonesia, and the remainder in other regions.

<sup>82</sup> *Ibid.*

<sup>83</sup> Do and Burke, *supra* note 42.

<sup>84</sup> *Ibid.*

<sup>85</sup> MacroTrends, *supra* note 44.

nature<sup>86</sup> do not accurately reflect the nature of Lululemon’s business or the impact of its activities and products on the environment.

## 2. Environmental claims that overemphasize minor environmental benefits

Lululemon uses its substantial marketing presence to overemphasize the significance of certain environmental initiatives that provide only minor improvements or benefit relative to the company’s overall climate and environmental footprint. The effect of this type of marketing deflects attention away from the significant environmental harm caused by Lululemon’s business, and leaves consumers with the general impression that Lululemon is a planet-friendly company. Examples of this type of representation are as follows:

Source	Representation
Lululemon website: <a href="#">Like New</a>  <i>Appendix A, p. 30</i>	<p><b>Getting after our goals.</b></p> <p>Like New is one of lululemon's commitments to help restore the environment. It lengthens the lifecycle of our gear that's built to be reused and recycled. We also are on track to make 100% of our products with sustainable materials by 2030, and as of 2021, we're sourcing 100% renewable electricity for our owned and operated facilities.</p>
Lululemon website: <a href="#">Like New</a>  <i>Appendix A, p. 31</i>	<p><b>Good feelings all around.</b></p> <p>What's better than great finds on gently used lululemon gear? Knowing you're helping restore a healthier planet.</p>
Lululemon Press Release: <a href="#">lululemon Delivers on its Impact Agenda Commitments with Two New Sustainability Initiatives Launching in May</a>  <i>Appendix A, p. 32</i>	<p>The new initiatives are the latest efforts from the brand under its Be Planet pillar, which is focused on making products that are better in every way for people and the planet.</p> <p>Lululemon is actively working to help create a healthier future, ...</p>

<sup>86</sup> See images found in Appendix A.

It should be noted that this Application is not a criticism of the efforts Lululemon is making to reduce the harm its business and products have on the environment. The Applicants acknowledge Lululemon is making efforts to decrease the amount of virgin polyester in its products, increase the energy efficiency of its stores, reduce of water-use intensity and water pollution, develop an apparel re-use program, and reduce single-use plastic. The Applicants do not say it is misleading for a company to describe the efforts it is taking to reduce harm to the environment. However, it is misleading for a company to go further and use these efforts to create the impression they are positively contributing to a healthier planet.

An example of how Lululemon overemphasizes its environmental harm reduction efforts is found in the messaging around its ‘Like New’ program.<sup>87</sup> This marketing uses the relatively minor harm reduction benefits of this program to repeat and emphasize the message that Lululemon is “helping restore a healthier planet”. For example, Lululemon’s website states:<sup>88</sup>

## **Good feelings all around.**

What's better than great finds on gently used lululemon gear? Knowing you're helping restore a healthier planet.

While this program may lead to some relatively minor reductions in environmental harm caused by the company, the Applicants are of the view it is false and misleading to use the program to suggest that a consumer who takes part is “helping restore a healthier planet.” Significantly, the program is not well-designed to achieve significant circularity. Products have to be returned in ‘like new’ condition, and gift cards given in exchange for ‘like new’ products can only be used on new items. In other words, while potentially promoting the use of some clothes for longer periods of time, the program is also promoting increased consumption of new clothes. While some discarded clothing may avoid the landfill for a few years, nothing about the program will “restore a healthier planet”.

There is also a lack of full disclosure and accountability associated with the program. Lululemon discloses no information about the total amount of their products sold in Canada or worldwide that are disposed into landfills or the relative proportion of products returned through this program that are resold.

The Lululemon ‘Like New’ website also contains the following representation:<sup>89</sup>

## **Getting after our goals.**

Like New is one of lululemon's commitments to help restore the environment. It lengthens the lifecycle of our gear that's built to be reused and recycled. We also

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<sup>87</sup> Lululemon Like New, online: <https://likenew.lululemon.com/about?icid=sep-06:homepage:hero:3:middle:about:lp>.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

are on track to make 100% of our products with sustainable materials by 2030, and as of 2021, we're sourcing 100% renewable electricity for our owned and operated facilities.

There are a number of issues with this statement.

First, for the same reasons discussed above, there is nothing about the program that will “restore the environment”. Rather, at best, the program will lead to some reduction to the tonnes of Lululemon apparel products that will end up in landfills.

Second, the statement that Lululemon is “on track to make 100% of our products with sustainable materials by 2030,” fails to mention the extent of “sustainable” material that will be used in each product. In other words, Lululemon does not mention that *each* of its products will not be 100% made from “sustainable” products or how little of each product will be comprised of such materials. Further and for the reasons discussed above, Lululemon’s products, even if made with recycled polyester or nylon will still cause environmental harm.<sup>90</sup>

Finally, Lululemon states “we’re sourcing 100% renewable electricity for our owned and operated facilities.” Lululemon, however, fails to also advise the consumer how little this achievement reduces the company’s total greenhouse gas emissions. A fully transparent representation would advise consumers that Lululemon’s owned and operated facilities have only ever made up an extremely small percentage of the company’s greenhouse gas emissions, whereas the company’s Scope 3 greenhouse gas emissions made up over 99.7% of the company’s emissions in 2022,<sup>91</sup> and are increasing.

### 3. Environmental claims relating to the company’s greenhouse gas emission targets that are misleading

The manner in which Lululemon publicly represents its plans to reduce its greenhouse gas emissions omits material information which makes those claims misleading. Examples of these types of claims are as follows:

Source	Representation
Lululemon website: <a href="#">Our Planet</a>  <i>Appendix A, p. 33</i>	<b>Climate Action</b>  Meet our 2030 science-based climate targets by achieving: <ul style="list-style-type: none"><li>• 60% absolute reduction of greenhouse gas (GHG) emissions in</li></ul>

<sup>90</sup> If Lululemon includes rPET (recycled polyester) material within its definition of sustainable material, there are significant environmental issues with its use as discussed earlier in the document.

<sup>91</sup> 2022 Impact Report *supra* note 32 at 50.

	<p>all owned and operated facilities<sup>2</sup> (Scope 1 and 2)</p> <ul style="list-style-type: none"> <li>• 60% intensity reduction of GHG emissions across our global supply chain<sup>3</sup> (Scope 3)</li> </ul>
<p>Lululemon website: <a href="#">Our Planet</a></p> <p><i>Appendix A, p. 33</i></p>	<p>Goal Met: Achieve 100% renewable electricity to power owned and operated facilities by 2021</p>
<p><a href="#">Lululemon Impact Agenda 2020</a>, p. 32</p> <p><i>Appendix A, p. 34</i></p>	<p>We’re working toward a carbon-neutral future, starting with cutting our own emissions across our value chain and supporting a global movement for action.</p>
<p><a href="#">Lululemon Impact Agenda 2020</a>, p. 32</p> <p><i>Appendix A, p. 34</i></p>	<p>By 2030, we will decarbonize our value chain, meeting ambitious science-based targets.</p>
<p>Lululemon website: <a href="#">Climate Action</a></p> <p><i>Appendix A, p. 35-36</i></p>	<p>We are making progress on our climate goals around carbon reduction.</p>

As an example of how Lululemon misrepresents through omission, the entirety of the first representation from the table above is set out below and discussed:<sup>92</sup>

### **Climate Action**

Meet our 2030 science-based climate targets by achieving:

- 60% absolute reduction of greenhouse gas (GHG) emissions in all owned and operated facilities<sup>2</sup> (Scope 1 and 2)
- 60% intensity reduction of GHG emissions across our global supply chain<sup>3</sup> (Scope 3)

Goal Met: Achieve 100% renewable electricity to power owned and operated facilities by 2021

Become a net-zero company by 2050<sup>4</sup>

<sup>92</sup> Lululemon, “Our Planet”, online: <https://corporate.lululemon.com/our-impact/our-planet>.

<sup>2</sup> Owned and operated refers to where lululemon has direct operational control. This goal refers to Scope 1 and 2 emissions.

<sup>3</sup> Includes purchased goods and services, and upstream transportation and distribution only. Intensity reduction is per net revenue from operations.

<sup>4</sup> The Science Based Target Initiative's Net-Zero standard requires companies to cut emissions by >90% and use permanent carbon removal and storage to counterbalance the final <10% of residual emissions that cannot be eliminated. We are submitting our application for SBTi's Net-Zero Standard certification in 2023.

There are three serious issues with this representation.

First, Lululemon presents its 60% Scope 1 and 2 emission reduction targets first, without mentioning that these emissions comprise only about 0.3% of Lululemon's total greenhouse gas emissions. In other words, the website fails to explain that achieving this goal will have a negligible impact on Lululemon's overall greenhouse gas emissions. Instead, by presenting the Scope 1 and 2 emission reduction targets in this manner, Lululemon creates the general (and false) impression that it is targeting significant greenhouse gas reductions.

Second, Lululemon presents the reduction targets for its Scope 3 emissions as "intensity" based rather than absolute. As the ultimate stated goal is to become a "net-zero company by 2050", intensity based targets provide limited, and potentially misleading, information, particularly in circumstances in which a company is planning for significant sales growth. The misleading impression left by this representation is that Lululemon's greenhouse gas emissions will be reducing towards net-zero when they are, in fact, increasing. If Lululemon attains its revenue growth targets for 2026,<sup>93</sup> then it is likely the company's Scope 3 emissions will continue to increase. The problems and controversial nature of "intensity-based" emission reduction targets is well-recognized. The Columbia Center on Sustainable Development reports:<sup>94</sup>

"GHG reduction targets set by companies can be based on absolute emissions or on emissions intensity. An absolute target consists of a set number of metric tons of emissions, usually expressed in CO<sub>2</sub>-equivalent (CO<sub>2</sub>e) to account for CO<sub>2</sub> as well as other GHGs. Often this number is indicated as a percentage of emissions relative to a selected base year. For example, a cement company analyzed set a 2030 goal to reduce its GHG emissions by 28% relative to its selected base year of 2007. In turn, intensity-based targets measure metric tons of CO<sub>2</sub>e per unit of production. Another cement company pledged to reduce its emissions intensity to below 520 kg CO<sub>2</sub>e per metric ton of output by 2030. *Intensity-based decarbonization goals are controversial, as they do not guarantee absolute emissions reductions.* If a company's emissions intensity decreases, but its production volume increases at a greater rate, its annual GHG emissions may still increase. Accordingly, absolute targets are preferable: a company that sets and achieves an absolute emissions target will shrink its carbon footprint, even if its production increases." [italics added]

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<sup>93</sup> Lululemon, "Five-Year Growth Plan", *supra* note 38.

<sup>94</sup> Jack Arnold and Perrine Toledano, "Corporate Net-Zero Pledges: The Bad and the Ugly" *Columbia Center on Sustainable Development*, (1 December 2021), online: <https://ccsi.columbia.edu/news/corporate-net-zero-pledges-bad-and-ugly>.

Finally, despite Lululemon’s many representations about being committed to restoring a healthy planet, Lululemon is not even on track to meet its own Scope 3 emission reduction target. In its most recent Impact Report, Lululemon reports that progress towards the target is not on track.<sup>95</sup> The intensity of the company’s Scope 3 emissions has only decreased by 7%. The report notes that this environmental initiative “needs acceleration”.<sup>96</sup>

In addition to its misleading presentation of its SBTi targets, Lululemon makes numerous general claims regarding its carbon emissions, including that it is working toward a carbon-neutral future, that it is decarbonizing its value chain, and that it is making progress on its climate goals. These statements create the misleading impression that Lululemon is reducing carbon emissions across its supply chain. This impression is directly contrary to the fact that Lululemon’s carbon emissions increased significantly since the *Be Planet* marketing campaign was started, with its total Scope 3 emissions having doubled between 2020 and 2022.

**4. Environmental claims about the company’s “vision”, “goals” or “commitments” that are unrealistic**

Examples of these types of claims are set out below.

Source	Representation
<a href="#">Lululemon Impact Agenda 2020</a> , p. 4  <i>Appendix A, p. 37</i>	<b>Be Planet.</b> Our products and actions avoid environmental harm and contribute to restoring a healthy planet.
Lululemon Website: <a href="#">Be Planet</a>  <i>Appendix A, p. 25</i>	We’re committed to making products that are better in every way-for ...the planet.

Through these statements, Lululemon promises its customers that its products and actions avoid environmental harm, contribute to the restoration of a healthy planet and are better in every way for the planet. At the same time, however, Lululemon is an apparel company with an enormous supply chain based in countries such as Vietnam, Cambodia, Sri Lanka, Bangladesh, and Indonesia that produces substantial, and increasing, amounts of greenhouse gas emissions in the course of manufacturing millions synthetic textile apparel products that are packaged and transported to Lululemon’s many stores around the world.

<sup>95</sup> 2022 Impact Report *supra* note 32 at 47.

<sup>96</sup> *Ibid.*

It leads one to ask how such an incredible transformation would take place? If there is an answer to this question, Lululemon has not provided it. Instead, based on the information presented in this Application, the Applicants are of the opinion such promises are unrealistic and therefore misleading.

### **5. The General Impression Conveyed by the *Be Planet* Marketing Campaign**

The *Be Planet* marketing campaign portrays Lululemon as something it is not.

As illustrated above, the marketing campaign creates the general impression that Lululemon is a company whose operations and products are planet-friendly and the company is committed to making products and taking actions that contribute to improving the environment and restoring the health of the planet. However, the evidence portrays a different company. Lululemon's actions and products create substantial and increasing greenhouse gas emissions and cause significant environmental pollution.

## **V. CONCLUDING REMARKS**

The urgency of addressing climate change and environmental pollution demands that the apparel industry be clear and transparent with their customers about the climate and environmental impacts caused by their business. Consumers who make choices based on climate and environmental information, cannot be misled. To do so, not only takes business unfairly from those companies who accurately represent their environmental impact, but also creates the risk of greater harm to the planet caused by misinformed purchases.

As an apparel company responsible for significant greenhouse gas emissions, landfill waste, and release of microplastics into the environment, Lululemon should not be marketing itself as a company whose products and actions contribute to restoring a healthy planet<sup>97</sup> or even suggesting it is committed to such an unrealistic outcome. Representations of this nature are misleading and should be reserved for companies whose true purpose is protection of the environment and removing greenhouse gases from the atmosphere.

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<sup>97</sup> Lululemon, "Our Impact" online: <https://shop.lululemon.com/en-ca/story/sustainability>. See: Be Planet.



**APPENDIX A - EXAMPLES OF LULULEMON'S PUBLIC REPRESENTATIONS**

Lululemon Impact Summary 2020, p. 9  
[lululemon-2020-impact-summary-en110521.pdf](https://www.lululemon.com/impact-summary-en110521.pdf)

Be Planet

**Our lives are one with the health of the planet. Our products and actions avoid environmental harm and contribute to restoring a healthy planet. Our goals:**

**SUSTAINABLE PRODUCT & MATERIAL INNOVATION**

Make 100% of our products with sustainable materials and end-of-use solutions to advance a circular ecosystem by 2030.

Achieve at least 75% sustainable materials for our products by 2025.<sup>6</sup>

**CIRCULARITY & NEW GUEST MODELS**

Offer our guests new business models that extend the life of products—reaching 100% of North American guests and piloting internationally by 2025.

**CLIMATE ACTION**

Meet our 2030 science-based targets.

Source 100% renewable electricity to power our owned and operated facilities by 2021.

**WATER & CHEMISTRY**

Reduce freshwater use intensity with our priority wet process suppliers by at least 20% by 2025.<sup>7</sup>

Implement ZDHC Manufacturing Restricted Substances List (MRSL) at 100% of priority suppliers by 2022.<sup>7</sup>

**WASTE & PACKAGING**

Reduce single-use plastic packaging by at least 50% per unit by 2025.

Learn more about how we're contributing to a healthier planet in our [Impact Report](#).

<sup>6</sup> We have defined sustainable materials as materials contributing to improved environmental and/or social impacts compared to conventional versions, including fibres that are recycled, renewable, responsibly sourced, or manufactured with low-resource processes.

<sup>7</sup> Priority suppliers are wet processing suppliers that produce 80% or more of our value annually and any supplier with production in a water-scarce region.

## Lululemon website: Our Impact

<https://shop.lululemon.com/en-ca/story/sustainability>



WOMEN MEN ACCESSORIES SHOES WE MADE TOO MUCH

Sign In

### Be planet.

Our products and actions avoid environmental harm and contribute to restoring a healthy planet.



#### Better products.

We're committed to making products that are better in every way—for people and the planet. We're adopting practices and creating solutions that enhance our products, minimize negative impact, and contribute to restoring the environment. We focus on making products with sustainable materials and end-of-use solutions, toward a circular ecosystem.

LEARN MORE



#### Climate change and renewable energy.

We created science-based targets approved by the Science Based Targets initiative. To achieve these targets, we're implementing strategies to invest in the transition to renewable energy, drive carbon reduction and energy efficiency across our value chain, and collaborate across industries for progress.

LEARN MORE

## Lululemon website: Our Planet

<https://corporate.lululemon.com/our-impact/our-planet>

**Our Planet**

### We envision a future where we thrive within the limits of our one planet.

**Be Planet** is one of three interconnected pillars in our Impact Agenda, with a vision that our products and actions avoid environmental harm and contribute to restoring a healthy planet.

Our intent is to make products that are better in every way for people and the planet, along with aesthetic, function, and quality. **By adopting and evolving practices and mindful solutions, we enhance the products we offer and contribute to restoring the environment.**



## Lululemon website: Better Products

<https://shop.lululemon.com/en-ca/story/product-sustainability>



WOMEN

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ACCESSORIES

SHOES

WE MADE TOO MUCH

Q Search

## Better Products



We're adopting practices and creating solutions that enhance our products, minimize negative impact, and contribute to restoring the environment.

Our journey to better products includes:

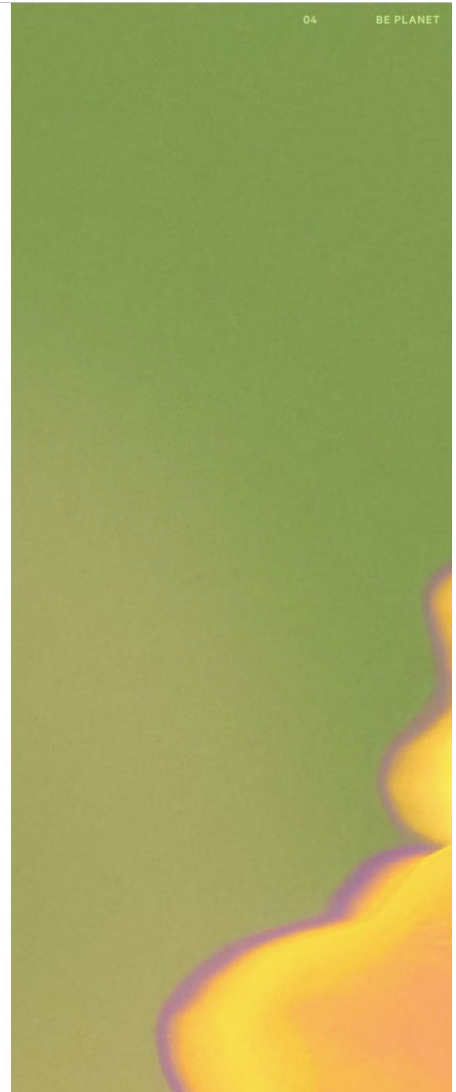
- innovating more sustainable materials
- creating circularity through new guest models
- using less water

**Lululemon Impact Report 2022, p. 46**

[https://corporate.lululemon.com/~/\\_media/Files/L/Lululemon/our-impact/reporting-and-disclosure/2022-lululemon-impact-report.pdf](https://corporate.lululemon.com/~/_media/Files/L/Lululemon/our-impact/reporting-and-disclosure/2022-lululemon-impact-report.pdf)

Our lives are *interconnected* with the health of the planet.

The potential of people is limitless, but the planet—our home—is not. At lululemon, we are on a journey to become a net-zero company and have set science-based targets that are the foundation for our climate action goals. We seek to lead in innovating preferred materials and create a circular ecosystem by designing out waste and keeping materials in use for as long as possible. **We work across our value chain to reduce our carbon and water footprint, improve chemical management, develop and sell products that reflect the values of our guests, and contribute to a healthier environment.**



**Lululemon 2020 Impact Agenda, p. 25**

[https://pnimages.lululemon.com/content/dam/lululemon/www-images/Footer/Sustainability/lululemon\\_ImpactAgenda\\_October202023.pdf](https://pnimages.lululemon.com/content/dam/lululemon/www-images/Footer/Sustainability/lululemon_ImpactAgenda_October202023.pdf)



# Our lives are one with the health of our planet.

We envision a future where we thrive within the limits of our one planet. That is why we act to avoid environmental harm and contribute to restoring a healthy planet.

At lululemon, we create products and experiences that reflect the values of our guests and our aspirations for a healthier world.

We will work to be part of a circular ecosystem, based on principles of designing out waste and pollution, keeping products and materials in use, regenerating natural systems, and using clean renewable energy.<sup>3</sup> Underlying is the

imperative to act on climate change, and we've set ambitious, science-based carbon targets that are linked to all of our Be Planet goals.

By transforming our materials and products, guest experience models, and supply chains and by partnering with our collective, suppliers, and industry stakeholders, we take responsibility to help evolve our industry toward a more sustainable future—one that is truly better for our planet.

We know we have a long way to go, but we're committed to accelerating our progress and being part of the solution.

**GOAL**

By 2030, we will make 100 percent of our products with sustainable materials and end-of-use<sup>5</sup> solutions, toward a circular ecosystem.



## Lululemon website: Like New

<https://likenew.lululemon.com/about?icid=sep-06;homepage;hero;3;middle;about:lp>

[lululemon](#) / [Like New](#)

 lululemon Like New

[WOMEN](#)

[MEN](#)

[TRADE-IN](#)

[ABOUT](#)

[LAST CALL](#)



Almost everything. We're accepting gently used items that are in good condition. We're not accepting items with significant pilling, rips, or discoloration), footwear, accessories, long sleeve and long sleeve shirts, yoga props, inflatable swimwear, swimwear, small bags, small pouches, and

Trading in with Like New is currently available

### Getting after our goals.

Like New is one of lululemon's commitments to help restore the environment. It lengthens the lifecycle of our gear that's built to be reused and recycled. We also are on track to make 100% of our products with sustainable materials by 2030, and as of 2021, we're sourcing 100% renewable electricity for our owned and operated facilities.

[LIKE NEW](#) / [JOURNEY TO NET ZERO](#) / [LIKE NEW](#)



[LIKE NEW](#) / [JOURNEY TO NET ZERO](#) / [LIKE NEW](#)



**Lululemon website: Like New (continued)**

**Shop Like New gear and start trade-in.**



**Good feelings all around.**

What's better than great finds on gently used lululemon gear? Knowing you're helping restore a healthier planet.

SHOP WOMEN'S

SHOP MEN'S



**Trade in. Get rewarded.**


Trade in eligible items and get credit you can use at lululemon.com and in any store.

- \$5 – All Shorts, Skirts, and Men's Shirts
- \$10 – All Hoodies, Sweatshirts, Sweaters, Pants, Crops, Leggings, Dresses, Large Bags (Backpacks, Duffles, and Totes larger than 10L)
- \$25 – All Outerwear

LEARN MORE

## Lululemon Press Release: lululemon Delivers on its Impact Agenda Commitments with Two New Sustainability Initiative Launching in May

<https://corporate.lululemon.com/media/press-releases/2021/04-20-2021-085727212>

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Home / Media / Press Releases / lululemon Delivers on its Impact Agenda Commitments with Two New Sustainability Initiatives Launching in May


# lululemon Delivers on its Impact Agenda Commitments with Two New Sustainability Initiatives Launching in May

Apr 20, 2021

*lululemon Like New recommerce program and Earth Dye product capsule reinforce the brand's focus on creating product experiences that are better for people and the planet*

VANCOUVER, British Columbia--(BUSINESS WIRE)-- lululemon athletica inc. (NASDAQ:LULU) today announced two new initiatives that underscore lululemon's commitment to its Impact Agenda and deliver on its future-facing commitments toward sustainability: lululemon*Like New*, the brand's first-ever recommerce program, and Earth Dye, a new, limited-edition collection made with earth-friendly dyes, both launching this May. The new initiatives are the latest efforts from the brand under its Be Planet pillar, which is focused on making products that are better in every way for people and the planet.

This press release features multimedia. View the full release here: <https://www.businesswire.com/news/home/20210420005419/en/>

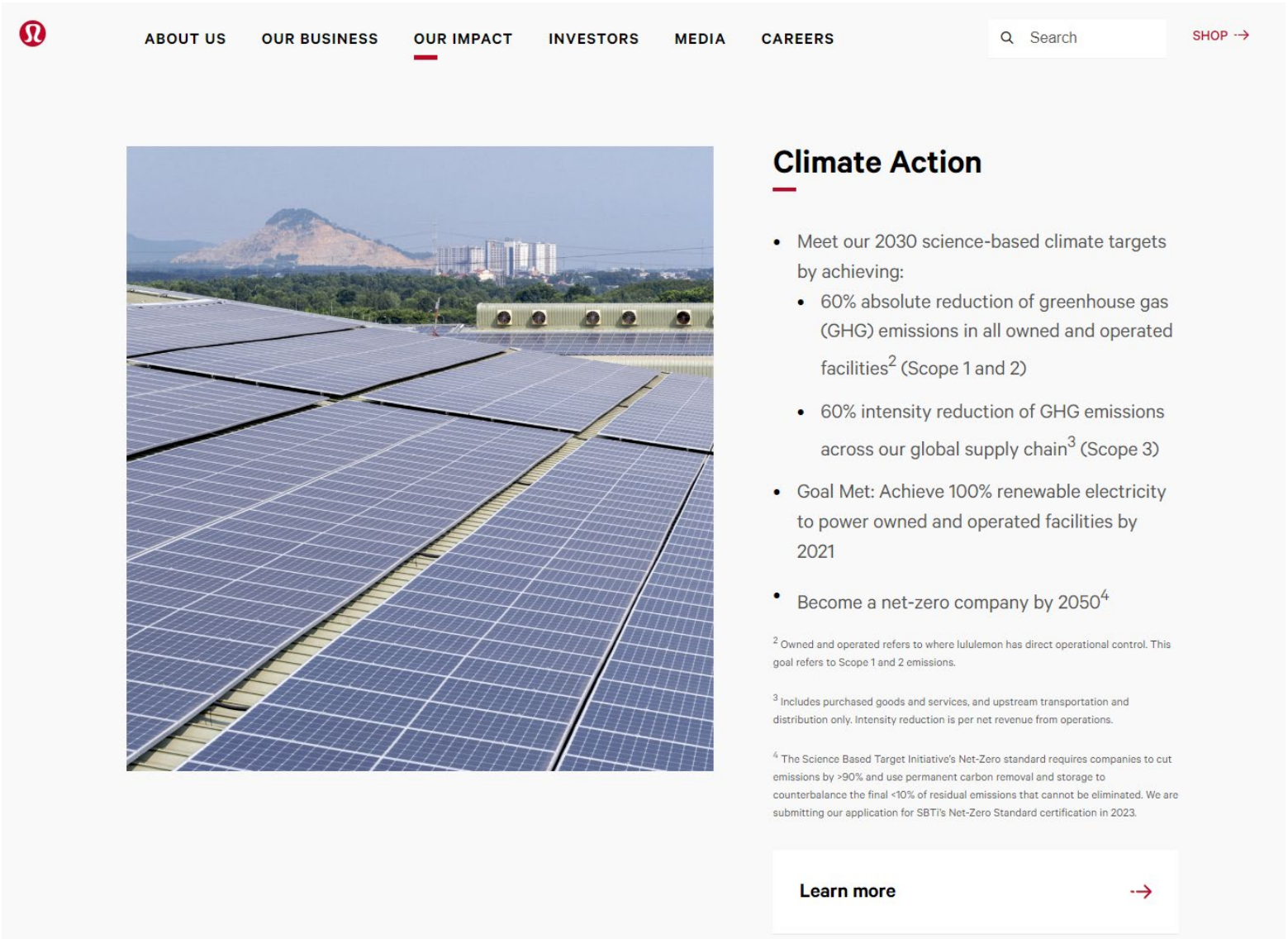


"lululemon is actively working to help create a healthier future, and we are focused on meeting the goals detailed in our Impact Agenda, including making 100 percent of our products with sustainable materials and end-of-use solutions by 2030," said lululemon CEO Calvin McDonald. "Our lululemon*Like New* and Earth Dye initiatives are both meaningful steps towards a circular ecosystem and demonstrate the sustainable innovation underway in product development and retail."

Released in Fall 2020, lululemon's Impact Agenda marked the brand's stake in the ground toward an equitable, sustainable future, and outlined its vision to minimize environmental impact and contribute to a better world. Developing products with sustainable materials and end-of-use solutions are central to the multi-year strategy.

## Lululemon website: Our Planet

<https://corporate.lululemon.com/our-impact/our-planet>



**Climate Action**

- Meet our 2030 science-based climate targets by achieving:
  - 60% absolute reduction of greenhouse gas (GHG) emissions in all owned and operated facilities<sup>2</sup> (Scope 1 and 2)
  - 60% intensity reduction of GHG emissions across our global supply chain<sup>3</sup> (Scope 3)
- Goal Met: Achieve 100% renewable electricity to power owned and operated facilities by 2021
- Become a net-zero company by 2050<sup>4</sup>

<sup>2</sup> Owned and operated refers to where lululemon has direct operational control. This goal refers to Scope 1 and 2 emissions.

<sup>3</sup> Includes purchased goods and services, and upstream transportation and distribution only. Intensity reduction is per net revenue from operations.

<sup>4</sup> The Science Based Target Initiative's Net-Zero standard requires companies to cut emissions by >90% and use permanent carbon removal and storage to counterbalance the final <10% of residual emissions that cannot be eliminated. We are submitting our application for SBTi's Net-Zero Standard certification in 2023.

**Learn more** →



**Lululemon Impact Agenda 2020, p. 32**  
[2020-impact-agenda.pdf \(lululemon.com\)](https://lululemon.com/2020-impact-agenda.pdf)



**GOALS**

By 2021, we will source 100 percent renewable electricity for our own operations.

By 2030, we will decarbonize our value chain, meeting ambitious, science-based targets.

## **Act on climate change and renewable energy.**

Climate change is the defining challenge of our time. Humans produce more carbon dioxide than nature can absorb, and the apparel industry contributes to this problem. We're working toward a carbon-neutral future, starting with cutting our own emissions across our value chain and supporting a global movement for action.

## Lululemon website: Climate Action

<https://corporate.lululemon.com/our-impact/our-planet/climate-action>

**Climate Action**

**Climate change is a defining challenge of our time. We're working to cut carbon emissions across our value chain, and support a global movement for action.**

Our strategy involves increasing efficiency, transitioning toward renewable energy sources, investing in raw material innovation, and cross-industry collaboration. Science-based targets help to align our goals with the Paris Agreement – to limit global warming to well-below 2°C above pre-industrial levels and pursue efforts to limit warming to 1.5°C.

**Lululemon website: Climate Action** *(Continued)*

<https://corporate.lululemon.com/our-impact/our-planet/climate-action>

<b>Renewable Electricity</b>	—
<p>We are making progress on our climate goals around carbon reduction.</p> <p>In September 2021, we signed a 15-megawatt virtual power purchase agreement (VPPA) with Enel Green Power for renewable energy from the Azure Sky wind project. The energy purchased is equivalent to the electricity needed to power 100% of our direct operations in North America. For our global operations, we purchased high-quality, renewable energy credits. We will continue to seek new opportunities that support net new renewable energy development in all regions where we operate.</p>	
<b>Energy Efficiency</b>	+
<b>Transportation and Logistics</b>	+
<b>Supplier Environmental Initiatives</b>	+
<b>Industry Collaboration</b>	+

## Lululemon Impact Agenda 2020, p. 4

[https://pnimages.lululemon.com/content/dam/lululemon/www-images/Footer/Sustainability/lululemon\\_ImpactAgenda\\_October202023.pdf](https://pnimages.lululemon.com/content/dam/lululemon/www-images/Footer/Sustainability/lululemon_ImpactAgenda_October202023.pdf)

# Our Impact Strategy

lululemon is a brand rooted in sweaty pursuits and personal growth, and our purpose is to elevate the world by realizing the full potential within every one of us.

In this moment, we see possibility within each of us to reflect on our priorities, evolve our strategies, and act boldly to contribute to a better world.

The costs of inaction are high. The global community must be more resilient in the face of global crises, including addressing inequity and turning the tide on climate change. To achieve a better and more sustainable future for all, we must accelerate progress in meeting the global challenges we all face, as outlined by the United Nations Sustainable Development Goals for 2030.

That's why we're bringing a new level of ambition to our impact work: to be responsible and do what's right. To activate the innovators and enable the doers. To create the space for each of us to make a difference, take action, and change the world for the better.

This Impact Agenda is our stake in the ground toward an equitable, sustainable future. Developed through internal and external engagement, it is rooted in the social and environmental contexts in which we operate and the societal issues that matter most for our business and industry. Our first holistic impact strategy, this agenda outlines our commitments to improve environmental impact, contribute to a healthier future, and create long-term value. It creates a path for change for our employees, guests, and communities that is grounded in who we are as a brand, building on our values, progress, and learnings over the past two decades.

Our Impact Agenda is organized into three interconnected pillars, each with a vision for success, goals, and commitments and strategies:

**Be human.** Our people succeed because we create an environment that is equitable, inclusive, and fosters growth.

**Be well.** Our communities thrive because we contribute to conditions that support mental, physical, and social wellbeing.

**Be planet.** Our products and actions avoid environmental harm and contribute to restoring a healthy planet.

We have a long way to go to meet our goals. We'll scale our successes, learn from our setbacks, and will report on our environmental, social, and governance progress at least annually.

Together, we will learn from today and build a healthier future—for ourselves, for our communities, and for our planet.