

Koninklijke Luchtvaart Maatschappij N.V.
Attn: Mr P.J.T. Elbers
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Fossilvrij NL
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ClientEarth
The Joinery
34 Drayton Park
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United Kingdom

Date: 24 May 2022

Subject: Stop misleading about sustainable flying!

Dear Mr Elbers,

1. Fossil Free NL and ClientEarth hereby invite you to a conversation about the sustainability claims of KLM. Fossil Free NL and ClientEarth note that there is a disparity between on the one hand the climate- and environment-related claims KLM makes in its marketing statements, and on the other hand the reality. We believe that KLM's sustainability marketing practices are false and/or misleading in a number of respects. In particular, the most recent version of the "Fly Responsibly" campaign and the ongoing marketing of the "CO2ZERO" products are a cause for concern.
2. We believe that the public is being misled by KLM's marketing and advertising practices regarding the feasibility of "sustainable" flying.¹ There is, however, no such thing as 'sustainable' flying. Nor is there any indication that it will exist in the foreseeable future, and certainly not in time to prevent the dangerous consequences of climate change. At the moment, only immediate decrease (*'degrowth'*) of aviation contributes to sustainability and climate objectives, but KLM is not committed to decreasing aviation.
3. KLM's marketing activities seek to continue aviation growth and thus contribute to the current pathway to climate disaster. Missing out on climate targets will lead to significant damage to the environment and escalating risks for current and future generations – Fossilvrij NL and ClientEarth feel it is necessary for them to, in line with their statutory purpose, protect the interests of those involved.

¹ Such misleading marketing is often called "greenwashing". Greenwashing is an overly charitable euphemism for actually misleading people using false climate or sustainability-related claims. Such deception contributes to dangerous climate change and thus violates human rights.

4. We demand KLM to remove the marketing detailed below within two weeks from today. If not, Fossilvrij NL and ClientEarth will start legal proceedings without further notice to establish that KLM is acting unlawfully, to obtain an injunction and to compel KLM to rectify the marketing.

About Fossil Free NL and ClientEarth

5. Fossilvrij NL² is a foundation that aims to promote, support and realise social, ecological and economic justice and health for current and future generations, to remove the social legitimacy of coal, oil and gas companies (the so-called "fossil companies") and to bring about alternative uses of investments and resources in order to accelerate the transition to a sustainable economy based on renewable energy. Fossil Free NL seeks to achieve its goal, among others, by calling on public and private institutions and organisations such as universities, municipalities, insurers, banks, religious organisations and pension funds to break their financial ties with coal, oil and gas companies and become 'fossil free' and by tackling and preventing misleading by the fossil industry and other companies, which misleading can lead to accepting and/or stimulating the use of fossil fuels and thereby contributing to the climate crisis.
6. Fossilvrij NL is a citizens' movement and leader of the "fossil-free movement" in the Netherlands. In that context, Fossilvrij NL supports and supervises campaign groups that support the achievement of its own goals. Reclame Fossilvrij³ is one such campaign group within the fossil free movement that campaigns for a legal ban on fossil advertising and sponsorship. This concerns advertising and sponsoring:
 - a. by the fossil fuel industry and the aviation industry,
 - b. for air travel and cruises, and
 - c. for cars, motorbikes and mopeds with a fossil fuel engine.
7. These 'fossil ads' promote (the use of) fossil fuel and the fossil fuel industry. This makes them an obstacle for the much needed transition and they contribute to worsening the climate crisis. That is why Reclame Fossilvrij, as part of the Fossil Free Movement, aims for a ban on fossil fuel advertising, comparable to that of tobacco-related advertisements.
8. Fossilvrij NL is supported by thousands of Dutch citizens and many Dutch and international advocacy organisations. The Fossilvrij campaign against ABP was also elected number one in Trouw's Sustainable 100 election in 2021, for its successful campaign to get the ABP pension fund to divest from fossil industries. The Reclame Fossilvrij campaign was elected third in the same election, amongst others due to their successful campaign to have the municipality of Amsterdam ban fossil ads.

² <https://gofossilfree.org/nl/>.

³ <https://verbiedfossilereclame.nl/>

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9. ClientEarth is an environmental charity that uses the power of law to protect life on earth. ClientEarth began in 2007 with one lawyer and his laptop. Now the organisation has more than 200 people, with eight offices around the world, making meaningful change for life on earth.
10. ClientEarth UK is based in the United Kingdom, but has offices in several major European cities, as well as in China and the United States. The statutes of ClientEarth's UK office are available on the UK Charity Commission website.⁴ The "Charitable Objects" of ClientEarth UK are, amongst others, to promote and encourage the enhancement, restoration, conservation and protection of the environment, including the protection of human health, for the public benefit and to promote, assist, undertake and commission research into the law, practice and administration of justice in connection with the environment and matters relating thereto, including the impact, direct or indirect, of any human activity on the environment and to disseminate the useful results of such research.
11. ClientEarth also acts against *greenwashing* by companies. It is well-recognised that good consumer information is necessary to promote environmental protection, in the form of achieving the goals of the Paris Climate Agreement. ClientEarth regularly appears in the media regarding *greenwashing* and other issues related to corporate climate accountability. For example, ClientEarth has taken action against BP and published an extensive and widely cited report on *greenwashing* by nine major high-emitting companies. ClientEarth has further engaged with the UK Competition and Markets Authority (CMA) on its guidelines and consumer protection, engaged with the UK Advertising Standards Authority in relation to its Climate Change and Environment Project, engaged with the UK Financial Conduct Authority in relation to its regulation of climate-related issues, and is intervening in a landmark French case against alleged *greenwashing* practices by TotalEnergies in France brought by Greenpeace France, Friends of the Earth France and Notre Affaire à Tous.

Introduction

12. Below we summarise why Fossielvrij NL and ClientEarth UK consider that:
 - a. KLM is pursuing a growth strategy and is also lobbying politically against climate-related regulation of the aviation sector, both of which are in conflict with global and Dutch sustainability goals; and
 - b. KLM presents or has presented the Fly Responsibly advertising campaign and the CO2ZERO product to the public in a false and misleading manner.
13. We are of the opinion that KLM is acting in violation of the law and its duty of care.

⁴ <https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/1053988/governing-document>

KLM's growth strategy and lobbying activities are not "sustainable"

14. A more sustainable future requires immediate and significant reductions in greenhouse gas emissions in all sectors by 2030 - i.e. in the next 7.5 years.
- Climate change is no longer a future risk. It is an urgent and dangerous reality facing people and ecosystems worldwide. Human-induced climate change is already affecting every region of the globe,⁵ with people suffering unprecedented consequences in the form of extreme weather, worsening droughts, floods and an increased risk of forest fires.⁶
 - Any increase in warming exacerbates climate impacts.⁷ A warming rising above 1.5°C (even temporarily) will result in severe and irreversible impacts and an increased likelihood of crossing climate 'tipping points'.⁸
 - According to the best available scientific evidence, maintaining the chance of limiting average global warming to 1.5°C above pre-industrial levels (the long-term temperature target of the Paris Climate Agreement⁹) requires an immediate and significant reduction of CO₂ emissions in all sectors to at least -48% globally and a rapid reduction of fossil fuel use by 2030, before reaching "net zero" in 2050.
 - Just before KLM's advertising campaign was launched in December 2021, the COP26 Glasgow Pact of November 2021 stressed that: "*limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other greenhouse gases; [...] this requires accelerated action in this critical decade*".¹⁰ (emphasis added)
15. The only feasible way to reduce aviation emissions in line with the Paris Climate Agreement target is to reduce the number of flights.

⁵ See IPCC 6th Assessment Report ('6AR'), Headline Statements, <https://www.ipcc.ch/report/ar6/wg2/resources/spm-headline-statements/>.

⁶ See for example W. Ripple et al, World Scientists' Warning of a Climate Emergency 2021, BioScience - September 2021 / Vol. 71 No. 9 (894-898).

⁷ "Every tonne of CO₂ emissions adds to global warming", see also IPCC SPM.10 at <https://www.ipcc.ch/report/ar5/wg1/summary-for-policymakers/figspm-10/> and https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_TS.pdf.

⁸ See also IPCC 6AR, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf, C.3.2

⁹ The Paris Climate Agreement, Article 2(1)(a).

¹⁰ Glasgow Climate Pact, paragraph 18

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- a. Flying is based on the combustion of fossil fuel kerosene (diesel) and is a significant and rapidly increasing cause of dangerous climate change.¹¹ It is an uniquely highly polluting product.¹²
 - b. The benefits and drawbacks of flying are very unevenly distributed around the world,¹³ and achieving the goal of the Paris Climate Accord requires fair and equitable climate action.¹⁴
 - c. Short-term reduction is essential if there is to be any chance of limiting the dangerous effects of climate change. However, in the short term, there are no feasible ways to make flying "sustainable". In particular, the sustainability 'solutions' advocated by KLM to increase the use of alternative fuels (biofuels or synthetic "e-fuels"), to use new aircraft types (electric, hydrogen or radically different aircraft frames) and to implement efficiency and operational improvements are not likely to reduce its emissions significantly by 2030.
 - d. To reduce the climate impact of aviation in line with the objective of the Paris Climate Agreement, the growth of the aviation sector must be limited.¹⁵
16. However, KLM and the aviation industry are following the opposite path. Both KLM and the industry in general continue to strive for year-on-year growth in aviation,¹⁶ which will further *increase* the impact of aviation on the climate - in contrast to the rapid *reduction* in emissions required for the Paris Climate Agreement target.
17. To maintain this strategy, industry organisations like IATA and the Airlines for Europe, supported by companies like KLM and its group company Air France-KLM S.A., are lobbying intensively *against* aviation regulation proposals that aim to achieve climate goals.¹⁷ This is in direct contradiction with the claims that they support those goals, and contradicts the impression that KLM's marketing gives.
18. Corporate lobbying against effective climate action has a significant negative impact on the world's ability to meet the goals of the Paris Climate Agreement, according to independent research from InfluenceMap.¹⁸ Climate Action 100+ - the global investor group working to combat

¹¹ "Emissions from shipping and aviation continue to grow rapidly" AR6 Working Group III ('WGIII') Tech Summary TS-67

¹² "Someone flying from Lisbon to New York generates roughly the same level of emissions as the average person in the EU does by heating their home for a whole year."

https://ec.europa.eu/clima/policies/transport/aviation_en

¹³ See IPCC AR6 WGIII Full Report, ch. 5, 5-26

¹⁴ Paris Climate Agreement, Art. 4.1, See also Art. 2.2. See also IPCC AR6 WGIII Tech Summary TS-111 and 121

¹⁵ See also IPCC AR6 WGIII Technical Summary TS-67, and <https://www.transportenvironment.org/wp-content/uploads/2022/03/TE-aviation-decarbonisation-roadmap-FINAL.pdf>.

¹⁶ "The KLM outlook is based on the following underlying assumptions: - Our 10-year network plan. This includes:
◇ Fleet renewal plan (for example introduction A320/A321); ◇ A KLM compound annual growth rate (CAGR) of 1,95% (SBTi is working with an industry CAGR of 2.9%)."

https://materials.klm.com/landingpage/Klimaatplan_KLM_120422.pdf

¹⁷ <https://influencemap.org/report/Aviation-Industry-Lobbying-European-Climate-Policy-131378131d9503b4d32b365e54756351>.

¹⁸ <https://influencemap.org/>

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climate change - is encouraging investors to call on airlines to stop directly and indirectly lobbying against policies aimed at achieving the industry's low-carbon goals. Investors are also called on to encourage airlines to ensure that their lobbying activities do not contradict their public statements on their climate goals.¹⁹

KLM has publicly committed itself to inadequate climate targets which, moreover, it will not even meet

19. In March 2018, KLM issued a one-page "Environmental Policy Statement" through which KLM articulated its policy to reduce its environmental footprint.²⁰ The statement reads as follows:

Environmental Policy Statement

We are committed to minimize the impact of our activities, by reducing our environmental footprint and protecting the environment beyond regulatory compliance.

We strive to minimize the environmental risks that arise as a result of our operations, by using KLM's Risk Control Strategy, with source control as the preferred measure.

We endeavour to reduce our environmental footprint by implementing the following policies:

- adopt the best available technologies;*
- strive to operate environmental efficient procedures;*
- promote creativity and support innovation among all our employees, suppliers and subcontractors;*
- promote environmental awareness among our employees and customers;*
- request our suppliers and subcontractors to implement measures aimed at reducing the environmental impact of their activities.*

By using the plan-do-check-act methodology and challenging ourselves, we ensure continuous improvement.

We expect our employees, suppliers and subcontractors to endorse the above commitments together with us, in order to implement this policy and pursue it companywide in all our day-to-day activities.

20. In particular, the Environmental Policy Statement lacks concrete measures regarding KLM's overall climate impact. In the Sustainability Report 2018, the subject "Main extra-financial risk" of

¹⁹ https://www.climateaction100.org/wp-content/uploads/2022/03/CA100_Aviation_Sector_Strategy_Final_March2022.pdf and <https://www.iigcc.org/download/investor-expectations-on-corporate-lobbying/?wpdmdl=1830&refresh=627d0f765591f1652363126>

²⁰ <https://img.static-kl.com/m/1cf94d2a0be01a46/original/Environmental-Policy-Statement.pdf>

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the "Carbon footprint" was described as the "Acceptability of air transport growth (CO₂ emissions)", which describes a risk for KLM's business model, not a risk for the environment.²¹ The report does not include any measures to reduce the overall climate impact. Instead, according to "Our Climate Action Plan", KLM's 'actions' would include pursuing fleet modernisation and "aeronautical research", operational efficiency improvements, 'offsetting' through offers to customers and the industry CORSIA²² scheme and "[u]sing and developing sustainable aviation fuels (SAF)".²³

21. In April 2022, KLM's Climate Action Plan announced a CO₂ emissions reduction target of 12% by 2030 compared to pre-COVID pandemic levels, and an intention to have these targets validated by the Science-Based Targets Initiative (the SBTi) under the application of a low ambition, high risk standard. On 15 July 2021, the SBTi announced that the application of that low standard would no longer apply to applications received by the SBTi after 15 July 2022.²⁴
22. The Climate Action Plan of April 2022 also refers to activities in the field of fleet modernisation, operational improvements, use and development of so-called 'Sustainable Aviation Fuels' (SAF), new research on airframes, compensation ("economic measures") - and now also electric and hydrogen aircraft.²⁵
23. The Climate Action Plan confirms that KLM:
 - a. Has failed to meaningfully reduce its climate impact after 2005, following the Paris Climate Agreement in 2015 or the publication of its Environmental Policy Statement;²⁶
 - b. Continues to opt for continuous growth instead of a rapid 'decarbonisation' aligned with 1.5°C trajectories necessary to limit severe and irreversible climate impacts;²⁷
 - c. Has identified no viable way to meet even its low- ambition emissions reduction target while continuing to expand its flights;²⁸ and

²¹ Page 14, <https://csrreport2018.airfranceklm.com/wp-content/uploads/2019/09/Air-France-KLM-Sustainability-Report-2018.pdf>

²² Carbon Offsetting and Reduction Scheme for International Aviation

²³ Pages 18-19, <https://csrreport2018.airfranceklm.com/wp-content/uploads/2019/09/Air-France-KLM-Sustainability-Report-2018.pdf>

²⁴ The SBTi announcement states that applications under the low ambition standard ("well below 2 °C"), which offers no chance of limiting warming to 1.5 °C, will not be allowed until July 2022, which may explain the timing of KLM's application. <https://sciencebasedtargets.org/news/sbti-raises-the-bar-to-1-5-c>

²⁵ https://materials.klm.com/landingpage/Klimaatplan_KLM_120422.pdf.

²⁶ Regardless of KLM's sustainability actions, KLM's disclosed CO₂ Scope 1 emissions decreased with the COVID-19 pandemic, but will increase again by 2024. Figures 3 and 8, https://materials.klm.com/landingpage/Klimaatplan_KLM_120422.pdf

²⁷ "A fundamental tension in corporate target setting: that rapid decarbonisation is incongruent with industry growth. And: "The KLM outlook is based on the following underlying assumptions: - Our 10-year network plan. This includes: ♦ A KLM compound annual growth rate (CAGR) of 1,95%. "https://materials.klm.com/landingpage/Klimaatplan_KLM_120422.pdf

²⁸ "the options to be evaluated are whether more SAF can be purchased, or whether SAF with a higher sustainability level than 75% is opted for [...] we need to push the boundaries of the market and go beyond the

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- d. Has set a target that excludes the largest part of its climate impacts (the non-CO2 climate impacts of flying through nitrous oxide emissions, contrails and soot emissions) that would be addressed effectively and immediately by reducing flying.²⁹
24. The truth is that KLM and the airline industry have 'business as usual' plans for a continuous increase in flying, accepting that this means that aviation is only fuelling the unfolding climate catastrophe.³⁰ Instead of contributing to the achievement of the Paris Agreement long-term temperature goal, KLM and the wider aviation industry are contributing to the status quo - the current catastrophic path to an estimated average global warming of 3.2°C above pre-industrial temperatures.³¹
25. Neither the aviation industry nor KLM are "on the path to a more sustainable future". Instead, aviation's pursuit of growth at any costs is hindering the fight to meet the Paris Agreement goal.
26. KLM's intensive marketing and lobbying efforts are impeding the decarbonisation transition by propagating a fiction that aviation can achieve the climate goals with various 'solutions' (sustainable fuels and new technologies), without significant restrictions on flying. KLM is also impeding transition by blocking, delaying and weakening aviation climate regulation.³²

KLM's 2021 'Fly Responsibly' advertising campaign is misleading

27. In early December 2021, KLM renewed its 'Fly Responsibly' advertising campaign, which has been running since 2019. In the recent campaign, KLM informs the Dutch public in vague but reassuring terms that KLM (and passenger aviation) is moving towards a more sustainable future.³³ Amongst others, we find the following specific wording:
 - a. *"Fortunately, the way we travel is changing / And we are moving together towards a more sustainable future / Because more sustainable travel is our greatest adventure ever / Together towards more sustainable travel".*³⁴

limits that we see to source the percentage of SAF that we need."

https://materials.klm.com/landingpage/Klimaatplan_KLM_120422.pdf

²⁹ *"Taking other greenhouse gases and warming effects into account, including non-CO2 effects, the impact of aviation to global warming is more than two times as large"*

https://materials.klm.com/landingpage/Klimaatplan_KLM_120422.pdf

³⁰ *"In some cases, notably with respect to aviation and shipping, sectoral agreements have adopted climate mitigation goals that fall far short of what would be required to achieve the long-term temperature goal of the Paris Agreement"* IPCC AR6 WGIII Tech Summary, TS-120.

³¹ IPCC AR6 WGIII SPM, C.1.

³² IPCC AR6 WGIII Technical Summary, TS-98, 106.

³³ Travel Professional News Article, KLM Launches New Sustainability Branding Campaign, read [here](#); Adformatie Article, KLM opts with dentsu for an integrated agency for creation and media, <https://www.adformatie.nl/bureaus/klm-kiest-met-dentsu-voor-een-geintegreerd-bureau-voor-creat>

³⁴ Facebook Ad Library Record

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- b. *"Join us in creating a more sustainable future".*³⁵
 - c. *"Together on the path to more sustainable travel"*³⁶
 - d. *"With Fly Responsibly, KLM is taking the lead in realising a more sustainable future for aviation. We recognise the urgent need to limit global warming. That is why we have committed ourselves to the objectives of the Paris Climate Agreement. But we can only succeed if we all work together. So join us today for a more sustainable future"*³⁷
 - e. *"The aviation industry has the ambition to achieve net zero carbon emissions by 2050 and to underline this promise, we are developing our own pathway based on the Science Based Targets initiative. This path consists of several measures, each of which will contribute to reducing our CO2 emissions. Such as fleet renewal, operational improvements and carbon offsetting. But by far the biggest contribution will be made by replacing fossil jet fuel with sustainable aviation fuel, or SAF (Sustainable Aviation Fuels)."*³⁸
28. Many more examples can be given and we refer to the Annex to this letter.
29. These words were accompanied by images and presentations that (among other things) referenced the interests of younger generations, nature and future aircraft designs. As of the date of this letter, KLM is still using these advertisements on its website and on several locations, at least at Schiphol Airport.³⁹
30. All this advertising is highly misleading because KLM is far from *"moving together towards a more sustainable future"*. As set out above, it is clear that KLM is not planning to achieve the emission reductions required to align to international and national climate targets and that its growth plans will most likely *not* result in a substantial reduction of its climate impact over the next critical years. The advertising is aimed at preserving KLM and the aviation industry's *"license to grow"*,⁴⁰ and is clearly at odds with the requirements of climate goals.
31. The advertising creates the overall misleading impression that KLM and the aviation industry are making flying sustainable.

³⁵ Photo of billboard in Amsterdam Schiphol

³⁶ KLM.nl website home page, news website 'banner' advertisement

³⁷ KLM Fly Responsibly page. Screenshot taken on 20 December 2021.

³⁸ https://flyresponsibly.klm.com/nl_nl#keypoints?article=whatWeDo

³⁹ Accessible today on the KLM.nl website home page, via the "Information" tab:
https://flyresponsibly.klm.com/nl_nl#home

⁴⁰ Page 151, Annual Report 2021, <https://www.airfranceklm.com/en/finance/publications>

The marketing of CO2ZERO is misleading

32. In addition to advertising campaigns about its purported environmental responsibility, KLM offers every potential customer a "compensation" product under the name "CO2ZERO", namely the possibility of "*reducing your impact*" through "*Sustainable Aviation Fuel*" or "*Reforestation*".⁴¹
33. However, these products offer false solutions to the harmful climate impact of flying. KLM claims that they compensate (or reduce or absorb) the climate impact of flights, but neither the "*Sustainable Aircraft Fuel*" nor the "*Reforestation*" products do so.
- a. The "*Reforestation*" product is based on the purchase of carbon credits by KLM. These credits are sold by a reforestation project. There are various problems with the claimed compensatory effect on the climate impact of aviation. For example:
 - i. Forest-based carbon credits do not compensate for the climate impact of aviation, because the two are not equivalent.⁴²
 - ii. The added value of financing reforestation is by definition uncertain ('additionality' cannot be guaranteed), whereas fossil fuel emissions are certain.
 - iii. Fossil fuels and trees are fundamentally incomparable stores of CO₂ (the "sustainability" of trees is much lower than the sustainability of the effect of CO₂ released from fossil fuels on the climate).
 - b. The product 'Sustainable Aviation Fuel' seems to constitute a contribution to the costs of KLM's purchase of biofuel, which accounts for a negligible part of its fuel consumption. This does not justify the claim that there is compensation of flight emissions, unless KLM actually purchases extra biofuel of which it can guarantee that it would not otherwise have purchased it ('additionality'). It does not appear that KLM does or can guarantee this.
34. These products do not make the CO₂ emissions into 'zero', nor do they "*reduce your impact*". These products only contribute to reforestation and to KLM's business, but they do not and cannot make up for aviation emissions. KLM's marketing of these products as valid 'offsets' undermines urgent action to mitigate dangerous climate change.
35. The effect of all this marketing is to encourage people to fly with KLM in the mistaken belief that they are thus acting sustainably in accordance with climate targets.
36. Inviting people to fly is also the goal of the recent "*KLM Real Deal Days*" - a campaign launched on 17 May 2022 within the Fly Responsibly campaign.⁴³ This promotional campaign invites people to purchase discounted flights to over fifty destinations for a fortnight and to choose to purchase

⁴¹ KLM.nl web booking pages.

⁴² https://newclimate.org/wp-content/uploads/2020/10/NewClimate_NetZeroReport_October2020.pdf

⁴³ <https://www.adformatie.nl/campagnes/klm-real-deal-dagen-campagne-stimuleert-duurzamere-brandstof>

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the CO2ZERO 'Sustainable Aviation Fuel' product when booking. If they choose to do so, KLM will 'double' every euro the consumer spends on this product (a "Sustainable Fuel Bonus").⁴⁴

37. KLM sells the flights under "The Real Deal Days" with the recommendation that "*when we travel more consciously, all moments are even more beautiful. KLM is investing heavily in sustainable fuel and we invite you to help us do so.*" The advertising recommends: "*KLM is taking the lead in creating a more sustainable future for aviation. That is why we are investing heavily in sustainable fuel (...). And you can help!*"
38. Recently, on 8 April 2022, the RCC reprimanded KLM for claiming that its reforestation compensation product completely neutralises the environmental impact of flying. However, the RCC, without having the full evidence, appears to leave room for KLM to continue making misleading claims that compensation is possible. KLM has opposed the complaint and apparently intends to maintain such claims in the future, thus continuing to suggest to the public that a small payment actually reduces the climate impact of aviation.⁴⁵ As explained above, these claims are false.
39. It is clear from the above that the CO2ZERO marketing therefore wrongly creates the overall misleading impression that flying can be made sustainable through 'compensation'.

KLM acts unlawfully by making false and misleading claims

40. KLM says one thing, but does another: KLM's advertising material suggests that KLM and the aviation industry are serious about environmental and climate targets, but in fact KLM and the wider industry prioritise continued growth and lobby intensively against climate regulation. For this reason alone, KLM's sustainability advertisements are false and misleading. These misleading advertisements are also harmful to the environment because they do not discourage people from flying and achieving emission reductions, but make people falsely believe that by deciding to do business with KLM they are contributing to a low-carbon economy.
41. Moreover, the advertising statements of KLM are in direct conflict with the Unfair Commercial Practices Directive (2005/29/EC) of the European Committee ("**UCPD**"), as incorporated in the Dutch Civil Code (BW) subsection 3A (art. 6:193a to j), in particular art. 6:193b and c BW. These advertisements also disregard the Guidelines of the Dutch Consumer Authority on Sustainability Claims ("**ACM Guidelines**") and the accompanying Sector Guidelines, issued in January 2021.⁴⁶

⁴⁴ <https://campaigns.klm.nl/nl/realdealdagen>

⁴⁵ <https://www.bnnvara.nl/kassa/artikelen/alles-wat-je-moet-weten-over-co2-compensatie-van-vluchten>

⁴⁶ ACM Guidelines on sustainability claims, January 2021, <https://www.acm.nl/nl/publicaties/leidraad-duurzaamheidsclaims>

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These guidelines reflect the updated guidelines of the European Commission on the interpretation and application of the UBD.⁴⁷

42. KLM's marketing wrongly presents the public with the image of a company that is "*moving a more sustainable future*", while KLM has no realistic plan to actually and substantially reduce its total emissions, although such a reduction is urgently needed to preserve the chance of stabilising climate change at safer levels, let alone that KLM is contributing to a more sustainable future (see par. 30). KLM has chosen to avoid taking the action that is necessary to bring flying in line with the climate targets; the company refuses to abandon its 'business as usual' growth plans. KLM also incorrectly presents compensation products and Sustainable Aviation Fuels as the solution to the impact of flying - while offsets products simply cannot reduce this enormous negative impact, KLM does not purchase guaranteed 'additional' biofuels and the use of these biofuels is negligible (see par. 33).
43. The law provides that it is unlawful for a company, through such conduct, to impair the average consumer's ability to make an informed decision, in the sense that it appreciably limits or is likely to limit the consumer's ability to make a transactional decision that he would not otherwise have made. This applies to false, untrue or insufficiently scientifically substantiated claims regarding the effect of a product on the environment and/or climate change.
44. Furthermore, the "Green Deal" and the "anti-greenwashing" proposal by the European Commission⁴⁸ make it clear that, in the interest of a sustainable future, there is a societal norm that claims related to (the impact on) the climate should not be made unless they are accurate and based on scientific evidence. The "greenwashing" of aviation not only harms consumers who rely on these claims, but also obstructs wider behavioural change and (exacerbated by lobbying) policy. Thus the environment and climate are also harmed.
45. Fossielvrij NL and ClientEarth believe that with these marketing claims KLM is acting in violation of statutory laws and in breach of its duty of care towards all Dutch citizens, both living and future generations.

Invitation to consult in order to avoid a procedure

46. We invite you to meet with us within two weeks of the date of this letter to discuss the above. In particular, we would like to know whether you consider that our arguments are factually incorrect or whether you are prepared to withdraw these claims without delay and to undertake not to make these or similar claims in the future.

⁴⁷ The UCPD guidelines were not yet been adopted in January 2021, but the ACM guidelines are based on the Working Document, Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices (2016), <https://eur-lex.europa.eu/legal-content/NL/LSU/?uri=celex:32005L0029>

⁴⁸ Proposal for a directive on empowering consumers for the green transition, 22 March 2022.

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47. If the discussion does not lead to a satisfactory result, Fossielvrij NL and ClientEarth are considering asking the court to order KLM to close the gap between its marketing statements and its current strategy of growth and lobbying, which clearly contradicts those statements.
48. In particular, Fossil Free NL and ClientEarth would seek orders that KLM pays a substantial penalty on pain of forfeiture, unless it:
- a. ceases making the statements listed in the Annex, or any similar statements, on its website or in its marketing or other publications and in the media.
 - b. stops advertising that claims and/or suggests that flying is or can be made "sustainable" or that the purchase of an "offset" product actually reduces, absorbs or offsets (or has an equivalent effect) some of the climate impact of aviation emissions.
 - c. rectifies the unlawful conduct referred to under I. a. and I. b. to undo the unlawful conduct referred to in I. a. and I. b. by rectifying the challenged unlawful allegations by (i) sending letters by post and e-mail with a rectification approved in advance by Fossielvrij NL and ClientEarth to all persons to whom KLM issued tickets between 1 December 2021 and 23 May 2022 and by (ii) placing a clear and legible half-page rectifying advertisement, to be agreed with Fossil Free NL and ClientEarth, in five national daily newspapers (Trouw, AD, Telegraaf, Volkskrant and NRC), and (iii) by adding a rectifying advertisement to be agreed with Fossil Free NL and ClientEarth to all its online marketing expressions, including banners and all social media accounts (Instagram, Twitter, LinkedIn etc.).
 - d. clarifies the negative climate impact of flying to consumers by adding a prominent warning text approved by Fossil Free NL and ClientEarth to the homepage of KLM's website, the website booking tool and tickets.
49. If you are in principle willing to comply with these requirements, we will be happy to discuss the appropriate specific wording of the letters and other rectification with you. Should the above not be clear to you, or insufficiently clear to you, we are of course prepared to explain it to you in more detail in a meeting.
50. We look forward to your response and are generally available to meet with you in the next two weeks.

Yours sincerely,

[signed]

Liset Meddens

CEO, Fossielvrij NL

[signed]

James Thornton

CEO, ClientEarth

ANNEX

This appendix gives *examples* of KLM's misleading statements. The texts below are public and are given in a context that is also relevant to the assessment, such as the accompanying pictures and footage. We reserve the right to complain about any aspect of the presentation of these and similar statements.

Responsible flying advertising

Advertising in social media:

Fortunately, the way we travel is changing

And together we are moving towards a more sustainable future

Because more sustainable travel is our greatest adventure ever

Together on the road to more sustainable travel

Physical advertising:

Join us in creating a more sustainable future

KLM.nl website, 'Fly Responsibly' webpage:⁴⁹

With Fly Responsibly, KLM is taking the lead in creating a more sustainable future for aviation. We recognise the urgent need to limit global warming. That is why we have committed ourselves to the objectives of the Paris Climate Agreement. But we can only succeed if we all work together. So join us today for a more sustainable future.

KLM.nl website, 'What we do' webpage:⁵⁰

The aviation industry has the ambition to achieve net zero carbon emissions by 2050 and to underline this promise, we are developing our own pathway based on the Science Based Targets initiative.

This path consists of various measures, all of which will contribute to reducing our CO2 emissions. Such as fleet renewal, operational improvements and carbon offsetting. But by far the biggest contribution will be made by replacing fossil aviation fuel with sustainable aviation fuel, or SAF (Sustainable Aviation Fuels).

CO2 emissions of the KLM Group have been steadily declining

Sustainable aviation fuel: a promising solution

[...] So why doesn't KLM just switch to SAF? Unfortunately, it is not that simple. The global production of SAF only covers about 0.1% of the total fuel consumption of the aviation industry and is held back by a status quo:

there is very little production capacity available worldwide

as a result, SAF is at least 2 to 3 times more expensive than regular paraffin

⁴⁹ https://flyresponsibly.klm.com/nl_nl#home

⁵⁰ https://flyresponsibly.klm.com/nl_nl#keypoints?article=whatWeDo

OFFICE TRANSLATION INTO ENGLISH OF ORIGINAL DUTCH VERSION

Due to the high prices, very few airlines are willing - and able - to purchase SAF and because there is so little demand, production capacity is not scaled up

To break this deadlock, a strong signal is needed from the aviation industry to increase and boost SAF production, and ultimately bring down prices. SAF is a crucial component of the aviation industry's trajectory to achieve zero carbon emissions by 2050. It is therefore important that we succeed.

KLM has therefore decided to act as an industry leader in creating this demand-driven signal. KLM currently has a significant share of the global SAF market, but this still covers less than 1% of our entire fuel consumption. To meet our climate ambitions, we aim to use 10% SAF by 2030. To do this, we are working with SkyNRG to build Europe's largest SAF plant. In addition, since January 2022, we have been blending in a small percentage of SAF on KLM flights departing from Amsterdam.

Yes, we are now talking about small quantities of SAF, which produce only small reductions in CO2 emissions. We cannot create this market alone, but we can - and will - show the way.

First passenger flight on sustainable synthetic paraffin.

[...] This first flight is an important milestone in the development of sustainable synthetic paraffin as a viable alternative to fossil fuels. It is also a major step towards a sustainable future for the aviation industry.

Smaller carbon footprint, more forests

For ten years, we have offered a simple service that allows you to offset your personal share of the CO2 emissions from your flight. With our CO2ZERO service, you can reduce the environmental impact of your flight.

Together, we can make your business travel more sustainable

KLM is not alone in its desire to do business in a more sustainable manner. Many other companies, in all sorts of industries, feel the same way. We are partnering with such companies to stimulate the availability of sustainable aviation fuel on a large scale and to make it more economically competitive with fossil paraffin.

STEP BY STEP TO A SUSTAINABLE FUTURE

SUSTAINABILITY CAN BE PROMOTED IN ALMOST ALL ASPECTS OF OUR BUSINESS. FOR EXAMPLE, A SMALL REDUCTION IN FLIGHT WEIGHT HAS A NOTICEABLE EFFECT.

KLM.nl website, 'What you can do' webpage:⁵¹

What you can do

[...] If you do decide to fly, there are always ways to reduce your impact on the environment.

CO2ZERO

⁵¹ https://flyresponsibly.klm.com/nl_nl#keypoints?article=WhatYoudo

OFFICE TRANSLATION INTO ENGLISH OF ORIGINAL DUTCH VERSION

[...] If you want to reduce the environmental impact of your flight even further, our CO2ZERO offer now includes a number of sustainable jet fuel options in addition to the reforestation programme.

Reforestation can compensate the CO2 emissions of the aviation industry in a natural way. With reforestation, you pay a small contribution to offset (part of) the impact of your flight on the environment. This does not affect the direct emissions of the flight itself, but you help by planting trees that absorb the CO2 from your flight.

The new SAF-based options in CO2ZERO have a double environmental benefit. First, you directly reduce the net CO2 emissions of a flight. Secondly, you help grow the SAF market.

With these initiatives, KLM aims to make flying more sustainable in a fully transparent manner. [...] Of the SAF income received through ticket prices and the extensive CO2ZERO programme, 100% will be used directly, transparently and exclusively to purchase new SAF and promote the production of SAF worldwide.

KLM.nl website, 'What the industry can do' webpage:⁵²

Together we can make a bigger difference

Only if we all work together can we really make a difference. All aviation industry stakeholders, all airlines, all manufacturers - the whole business community. Together, we can promote the production of sustainable jet fuel, accelerate fleet renewal and achieve more, faster and better. That is why we have launched this initiative calling on everyone to fly responsibly. We kindly invite you to join us in making aviation more sustainable.

CO2ZERO product

KLM.nl website, booking pages, 'Extra Options' webpage:⁵³

CO2ZERO

Reduce your impact

KLM.nl website, booking pages, CO2ZERO webpage:⁵⁴

CO2ZERO

At KLM, we are investing in a range of initiatives to reduce our footprint. You can also do your bit to make aviation a more sustainable industry. Let's change the future together!

With our reforestation programme, you offset (part of) the environmental impact of your flight. It does not affect the direct emissions of the flight itself, but your contribution helps restore forests that absorb CO₂.

How you can help [...] And, you can do more: join us by contributing to one (or both!) of our sustainability programmes, so that together we can create a better future. Reforestation is a

⁵² https://flyresponsibly.klm.com/nl_nl#keypoints?article=WhatIndustryDo

⁵³ <https://www.klm.nl/checkout/ancillaries>

⁵⁴ <https://www.klm.nl/ancillaries/f791ee8d-552c-4a37-a3c7-d31d05bba614/checkout/341cd33d-16b4-43d0-9d63-45370fa962e9/environmental/saf>

OFFICE TRANSLATION INTO ENGLISH OF ORIGINAL DUTCH VERSION

contribution from nature that reduces CO₂ emissions outside the aviation industry, but SAF has a direct impact on making flights more sustainable.

Restore forests to absorb [x] kg of your CO₂ emissions

Contribute to sustainable aviation fuel and reduce your CO₂ emissions by [x] kg

Your CO₂ absorbed by reforestation 0 kg CO₂

Your CO₂ reduced by SAF 0 kg CO₂

KLM Real Deal Days (website):⁵⁵

The Real Deal Days are about travelling for the moments that really matter. Because when we travel more consciously, all moments are even more beautiful.

KLM is investing heavily in sustainable fuel and we invite you to help us do so. If you choose this option during the Real Deal Days, KLM will double this amount with the Sustainable Fuel Bonus.

Sustainable Fuel Bonus

KLM is taking the lead in creating a more sustainable future for air travel. That is why we are investing heavily in sustainable fuel (also known as Sustainable Aviation Fuel, or SAF for short). And you can help! If you choose to contribute to our sustainable fuel programme during the Real Deal Days, KLM will double the amount with the Sustainable Fuel Bonus.

PS. Have you already made a booking or are you booking through a travel agent? Then you can log in via MijnReis and select your contribution there.

And under Frequently Asked Questions:

What are the KLM Real Deal Days?

KLM Real Deal Days is a price promotion from KLM that lasts for 2 weeks. This campaign offers discounts on more than 50 destinations worldwide. The Sustainable Fuel Bonus also applies to the campaign: if you book a ticket during the Real Deal Days and choose to invest in sustainable fuel, KLM will invest with you and double your contribution. Because when we travel more consciously, all our moments are even more beautiful.

What is the Sustainable Fuel Bonus?

KLM is taking the lead in creating a more sustainable future for air travel. That is why we are investing heavily in sustainable fuel (also known as Sustainable Aviation Fuel or SAF for short). If you choose to contribute to our sustainable fuel programme during the Real Deal Days, KLM will double this amount with the Sustainable Fuel Bonus. Select one of the three options that include Sustainable Aviation Fuel and reduce your expected CO₂ emissions. KLM will double every euro you contribute to SAF.

Will KLM also double your contribution to reforestation?

⁵⁵ <https://campaigns.klm.nl/nl/realdealdagen>

OFFICE TRANSLATION INTO ENGLISH OF ORIGINAL DUTCH VERSION

It's great if you choose to contribute to reforestation, but the Sustainable Fuel Bonus does not apply here. During the Real Deal Days campaign, this bonus only applies to sustainable aviation fuel (Sustainable Aviation Fuel or SAF for short).

Does the Sustainable Fuel Bonus also apply to KLM Holidays package holidays?

The Bonus only applies to flight ticket bookings. Package holidays fall outside the Sustainable Fuel Bonus, because a different sustainability proposition applies to KLM Holidays bookings. Are you booking a complete package holiday with KLM Holidays? KLM takes care of the expected CO2 impact of your share in the flight. All amounts are invested directly in the CO2OL Tropical Mix reforestation project in Panama.

Why is KLM taking this initiative?

We believe it is important that our customers make a conscious choice to fly. We understand that people are concerned about climate change and take responsibility for reducing the impact of our operations on our environment. In addition to fleet renewal and improving operational innovation and efficiency, we want to reduce emissions by encouraging the production of sustainable fuel. Therefore, we have chosen to blend 0.5% SAF as standard on flights from Amsterdam. Customers who want to do something extra can contribute to the purchase of even more sustainable fuel through CO2ZERO.

How is KLM reducing its carbon footprint?

An important contribution to the sustainability strategy is KLM's major investment in fleet renewal, with the introduction of more fuel-efficient and quieter aircraft. KLM also saves fuel through operational efficiency, including the optimisation and reduction of weight on board. The use of electric ground power is essential to reduce CO2 emissions from ground processes. KLM is also a pioneer of sustainable jet fuel, which reduces CO2 emissions by at least 75% compared to standard fossil fuel. In addition, we are working with many different parties to shape the future of flying, for example through the development of new, energy-efficient aircraft; the use of 100% renewable energy; climate-neutral aviation logistics operations; and the impact of sustainable aviation on the passenger. The stimulation of entrepreneurship and the training of new talent is also an important pillar.

What else is KLM doing in the area of sustainability?

Look further at Fly Responsibly | [KLM.com](https://www.klm.com)
