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S.D.N.Y. Waters Down Prior Ruling on “Carbon Neutral” Consumer Deception Claim

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The Southern District of New York recently reconsidered its partial denial of Defendant Danone Waters of America’s motion to dismiss claims alleging Danone falsely advertised Evian water as “carbon neutral.” Reversing his prior ruling, Judge Nelson S. Román concluded that the carbon neutral labeling on Evian water bottle products was not plausibly misleading to reasonable consumers. He reasoned that absent an industry convention of disclosure on the front label or governing regulation that says otherwise, a reasonable consumer should be expected to look beyond the front label to learn more, consult additional information available, and know that there is no such thing as a “carbon zero” product. *Dorris v. Danone Waters of America*, No. 22-CV-8717 (S.D.N.Y. Nov. 14, 2024).

The Evian water bottle products at issue included a label claim that the products are “Carbon Neutral,” as well as a logo for “Carbon Trust,” a third-party agency that relies on the international PAS standard in certifying whether a company or product is carbon neutral. Plaintiffs alleged this carbon neutral labeling on Evian water bottles was a form of “greenwashing,” which misled them to believe that “the Product’s manufacturing did not produce CO2 or otherwise cause pollution.”

The Court initially granted Danone’s motion to dismiss consumer deception claims under New York law, but denied its motion to dismiss claims brought under Massachusetts and California law. Reasoning that the term “carbon neutral” was “an ambiguous term that lacked precision and could plausibly mislead a reasonable consumer,” the Court held that under Massachusetts and California law, it would be premature to determine as a matter of law that a reasonable consumer could not be misled. In its reconsideration opinion, the Court reversed course and dismissed the balance of Plaintiffs’ claims (with leave to amend).

The Court retracted the previous weight it gave to Plaintiffs' argument that "carbon neutral" was an unqualified general environmental benefit claim prohibited by the FTC Green Guides. On reconsideration, the Court differentiated "carbon neutral" from the types of general environmental benefit claims identified in the Green Guides such as "eco-friendly," "greener," "eco-smart," and "environmentally friendly," finding that those claims seemed "more general and vaguer" than the term "carbon neutral." The Court pointed out that, unlike those more general environmental claims, the Merriam-Webster dictionary includes "only two codified definitions of 'carbon neutral,' which does not include carbon zero." Thus, the Court "presume[d] without holding that 'carbon neutral' is not a general environmental claim."

The Court noted that the FTC Green Guides are unclear in how they treat "carbon neutral" claims and there is no other industry convention or governing regulation that provides assurances to consumers about the veracity or clarity of the front label claim. Therefore, the Court reasoned, consumers should have consulted the back label, which provided "a link to Evian's website to learn more." On the website, Danone explains that "carbon neutral" means "contributing to reduce our emissions day after day" and "emissions that remain are then offset through our work with Livelihood Funds that has planted 130 million trees." Evian's website also provided a link on the website to Carbon Trust's website, which provided a fuller explanation of the certification process and relevant standards. The Court held that these types of disclosures "mitigate[d] concerns of consumers being misled at the point of sale." The Court further noted that the back label of the products disclosed that Evian water was sourced from the French Alps, which would have put a reasonable consumer on notice that the products could not have been produced without carbon emissions and a reasonable consumer would have looked to other sources of information for further clarity.

Advertisers are collectively breathing a sigh of relief at this decision. The prior decision effectively placed a blanket prohibition on making “carbon neutral” claims without onerous front label disclosures since, of course, no product can be produced without generating any carbon. The reconsideration decision may cause plaintiffs’ lawyers to reconsider bringing similar claims against other companies going forward, and gives advertisers some reassurance that in the event of a challenge courts appear to understand the limits of “carbon neutral” claims. With that said, including appropriate disclosures with “carbon neutral” claims remains critical to avoid conveying a broader or different message than intended.

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