

Company Accuses Competitor of Greenwashing in New Lawsuit

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Most of the lawsuits we've seen with allegations of "greenwashing" take the form of consumer class actions. These lawsuits can also take place between competitors, though. Last week, for example, Moldex-Metric filed a lawsuit against its competitor Protective Industrial Products alleging that the company made various false and misleading claims about the environmental benefits of a line of earplugs in violation of the Lanham Act and California Unfair or Deceptive Acts or Practices ("UDAP") statutes.

When Protective introduced its BioSoft earplug line last year, it launched an ad campaign with sweeping environmental claims. For example, Protective advertised that the earplugs were "eco-friendly," "sustainable," and the "world's first sustainable bio-based earplug." The company also made various specific claims, including that the earplugs are "82% bio-based," that they "decompose 76% in 180 days," and that they "emit 5.6 times less CO2 carbon emissions than traditional polyurethane foam earplugs."

Between March and July of this year, the competitors exchanged letters arguing about the substantiation for the claims. Unsatisfied with the response it received, Moldex commissioned its own biobased tests of the BioSoft products using the same lab Protective had purportedly used. According to the complaint, the tests revealed that "BioSoft products contain at best approximately 40%, and as low as 5%, biobased content." Based on these results, Moldex believes that Protective can't substantiate any of the challenged claims.

Carbon-14 dating is a scientific method used to verify biobased content in materials and products measuring the amount of radiocarbon present. "Biobased" claims are one of the few environmental benefit claims that can be verified by independently testing the product with this carbon-14 analysis.

Moldex leans on the FTC's Green Guides and argues that Protective's claims violate the Lanham Act and various California laws. Among other things, Moldex asks the court to issue an injunction requiring Protective "to issue corrective advertising to remedy consumer deception caused by its false environmental claims," to require Protective to notify distributors and retailers of the falsity of those claims, and to recall its marketing materials. Moldex will also seek damages in an amount to be proven at trial.

It's too early to predict how this case will turn out, but it demonstrates that even though the FTC may not currently be actively enforcing the Green Guides, companies still need to worry about challenges from other sources, particularly when those claims can be tested by independent analyses.