

# DC Court of Appeals Revives Greenwashing Suit Over Aspirational Claims

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In 2021, Earth Island Institute filed a [lawsuit](#) against Coca-Cola, alleging that the company's campaign to promote its sustainability efforts and goals amounted to greenwashing. A year later, the DC Superior Court [dismissed](#) the case holding, in part, that because statements about aspirational goals cannot be proven true or false, they cannot create a valid claim under the DC Consumer Protection Procedures Act (or "CPPA"). Last week, in a decision that could have broad implications for aspirational green claims, the DC Court of Appeals reversed the DC Superior Court's dismissal of the complaint.

Earth Island had alleged, among other things, that Coca-Cola wasn't taking the steps necessary to meet its stated goals of making 100% of its packages recyclable by 2025, using 50% recycled material in packages by 2030, or recycling a bottle or can for every one it sells by 2030. Moreover, even if the company were to achieve some of those goals, that may not make a big dent in the problem. For example, Earth Island argued that because of low recycling rates, even if Coca-Cola did make all of its packages recyclable, that would do little to mitigate "plastic pollution on the scale that Coca-Cola produces it."

The DC Superior Court had held that statements about future goals like the ones highlighted above – as well as more general statements like, "committed to creating a World Without Waste by taking responsibility for the packaging we introduce to markets and working to reduce ocean pollution," and "act in ways to create a more sustainable and better shared future" – were puffery. The DC Court of Appeals disagreed with that "rigid" puffery analysis. "Even aspirational statements can be actionable under the CPPA because they can convey to reasonable consumers that a speaker is taking (or intends to take) steps that at least have the potential of fulfilling those aspirations. Earth Island alleges that Coca-Cola neither takes nor intends to take any such steps, and if that is correct, then its representations could mislead reasonable consumers."

The Court of Appeals did not decide whether the statements were actually puffery – instead, it held that was an issue for a factfinder to determine. The court noted that it's possible that consumers would dismiss Coca-Cola's statements as "vacuous corporate jargon, not to be relied upon" or that they'd think that the company's efforts supported those statements. However, the court determined that it's also plausible that Coca-Cola's statements about its environmental sustainability efforts would mislead consumers. But these are "questions of proof that cannot be settled at the motion to dismiss stage."

Notably, the Court of Appeals acknowledged that "Coca-Cola's recycling initiatives are surely not nothing." So being able to demonstrate that a company has taken some steps to reduce its

environmental impact alone may not be enough to prevail in this type of lawsuit if those steps are perceived to be “insubstantial” when compared to the scope of the problem. (The decision includes an analogy of an obese man who promises his wife that he’ll lose weight but does nothing more than replace his usual cheeseburger with a salad for one meal. It’s something, but his wife might feel misled by his promises.)

Further, the Court of Appeals rejected Coca-Cola’s argument that the claims did not relate to “goods and services,” which it argued is a requirement under CPPA, since the claims only describe Coca-Cola’s values, aspirations, and goals as a business. The claims were shown on the Coca-Cola website, in a business and sustainability report, or on the company’s X feed. The Court concluded that “[i]f Coca-Cola makes misleading statements about whether its products are produced in a sustainable way and can be effectively recycled, then those statements are about ‘goods and services’ as the term is broadly defined in the CPPA.”

The DC Court of Appeals’ view of aspirational claims is a little closer to the view that NAD has articulated in recent years. In cases like [this one](#), we’ve seen NAD and regulators push to ensure that companies have some level of substantiation for their claims about their future plans. Although this trend may deter bad actors, it also can create significant challenges for good companies that want to talk about the steps they’ve taken to improve the environment and the steps they plan to take in the future, since there is not a clear threshold of how much or what steps may be enough.