



Lawsuit Questions Use of Carbon Offsets to Substantiate Green Claims

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Plaintiffs recently filed a class action lawsuit against Delta, alleging that the airline’s “carbon-neutral” claims, such as: “Carbon Neutral Since March 2020,” and “travel confidently knowing that we will offset the carbon emitted on your Delta flight,” are misleading because they are based on unreliable carbon offsets. The complaint does much more than challenge Delta’s specific claims, though. The plaintiffs claim that “nearly all offsets issued by the voluntary carbon market overpromise and underdeliver on their total carbon impact” and question whether such offsets can be used to substantiate a “carbon-neutral” claim.

The complaint alleges that there are various “foundational issues with the voluntary carbon offset market” that render “carbon-neutral” claims based on offsets inherently problematic, even those that have been verified by an independent third party. Relying largely on various articles that criticize offsets, the plaintiff focuses on four main themes:

- **Accounting Issues:** The complaint alleges that the voluntary carbon market has a “tendency to inflate” carbon impacts, resulting “in phantom carbon credits.” More specifically, the plaintiffs complain that major voluntary carbon markets often use “inaccurate projections” and that they “have engaged in fraudulently double and triple counting of projects.”
- **Non-Additional Offsets:** The complaint alleges that the major voluntary carbon markets often provide credit “for reductions that would have occurred regardless of the involvement of the voluntary carbon market.” The plaintiffs argue that “any claim of carbon neutrality that is even fractionally predicated on non-additional carbon projects is definitively false.”
- **Timing of Offsets:** The complaint alleges that any benefits from offsets may not be realized until far into the future. For example, although a flight today will “dump carbon dioxide into the atmosphere right now, ... saplings planted today won’t grow large enough to offset today’s emissions for decades.” Thus, Delta’s claims that it was carbon neutral in a calendar year are false.
- **Impermanent Offsets:** The complaint argues that because CO2 emissions “stay in the atmosphere for a century or more,” a company “must offset an equivalent amount of emissions for at least that long.” However, many offset projects may not last that long. For example, the plaintiffs allege that some forests associated with carbon crediting projects have already been destroyed by fires.

Although some of what the plaintiffs would seem to require of companies – such as accurate accounting to ensure that emission reductions are measured properly and not sold more than once – is consistent with the FTC’s Green Guides, other things arguably go beyond what the FTC requires. For example, the Green Guides don’t require that reductions happen immediately. Instead, they state that marketers should disclose if emission reductions won’t occur for at least two years.

The lawsuit was just filed and Delta hasn’t answered yet, so it’s too early to predict how this case will turn out. We’ll be watching this case closely, though, because the decision could have a significant impact on any company that makes claims based on the purchase of carbon offsets. Stay tuned for updates.