

New ESG Lawsuit Targets Aspirational Statements

Gonzalo E. Mon

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Earlier this month, the nonprofit Earth Island Institute filed a lawsuit against Coca-Cola, alleging that the company falsely and deceptively represents itself as “a sustainable and environmentally friendly company, despite being one of the largest contributors of plastic pollution in the world.”

These types of lawsuits aren’t new. As more companies have started to develop Environmental, Social, and Governance (“ESG”) goals and to make claims about their progress towards achieving those goals, we’ve seen more suits challenging the accuracy of those claims. But this lawsuit is a little different.

While most lawsuits target claims about past or present results (which, in many cases, can be proven or disproven), the current lawsuit targets many aspirational and forward-looking statements (which are inherently harder to prove or disprove).

Here are a few examples of the claims Earth Island Institute cites in their complaint:

- “Our planet matters. We act in ways to create a more sustainable and better shared future. To make a difference in people’s lives, communities and our planet by doing business the right way.”
- Coca-Cola plans to “make 100% of our packaging recyclable globally by 2025.”
- “Scaling sustainability solutions and partnering with others is a focus of ours.”
- “Part of our sustainability plan is to help collect and recycle a bottle or can for every one we sell globally by 2030.”
- “We’re using our leadership to achieve positive change in the world and build a more sustainable future for our communities and our planet.”

Earth Island Institute alleges that Coca-Cola’s campaign is misleading because “the company is far from what consumers would understand to be a sustainable business.” As evidence, the complaint cites the company’s current plastic production and casts doubts about how much of an impact the company’s sustainability plans will have in the future.

It’s too early to tell how this case will turn out, but companies that make claims based on future ESG goals will want to pay attention. If the court allows the case to go forward, it could suggest that companies will have to take greater care when talking about future goals.