

# LA Files a Lawsuit Alleging Plastic Recycling Deception as a Similar NY Suit is Dismissed

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On October 31, 2024, LA County Counsel filed a lawsuit against PepsiCo and Coca Cola on behalf of California in an attempt to hold the companies “accountable for their role in the plastic crisis that is overwhelming the County.” On the same day, a New York state judge dismissed a similar lawsuit that the NY Attorney General had filed against PepsiCo last year. We offer a high-level summary of key points below.

## LA County Lawsuit

The LA County Counsel’s complaint alleges that PepsiCo and Coca-Cola have knowingly created a false narrative around the recyclability or circularity of their plastic products when in fact “the vast majority of plastics cannot be recycled; that is, they cannot be collected, processed, and remanufactured into new products because of both technical and economic limitations.” This argument hinges on conflicting views of recyclability – whether a product must actually be recycled into something new or simply is capable of being recycled or “downcycled” into a new product. The FTC’s Green Guides say “capability” is enough, but as we reported [here](#), many are pushing for the FTC to amend its view and require “actuality.”

The complaint also alleges that chemical (or advanced) recycling is not a viable solution to the pollution problem, yet both PepsiCo and Coca-Cola market it as such. The complaint states that “very little of the plastic waste that undergoes this process will be recycled into new plastic, with a 2023 study finding that only 1 percent to 14 percent of the plastic was actually made into a new plastic product.” As we discussed [here](#), opponents of advanced recycling say that it is used to break down plastic into fuel, which will eventually get burned and end up in the atmosphere, so there’s no net benefit.

The complaint outlined a number of other environmental and safety impacts from plastic pollution, including the breakdown of plastic into microplastics – “tiny plastic bits measuring five millimeters or less, that are readily transported by air, wind, water, and the fecal matter of organisms that ingest them.” According to the complaint, microplastics are dangerous to the environment, humans, and animals, and “PepsiCo and Coca-Cola failed to disclose the presence of microplastics in their products and the resulting risks.”

ESG claims continue to face challenges from all angles, including through false advertising and UDAP statutes. This complaint also added a nuisance cause of action, alleging that PepsiCo and Coca-Cola created a nuisance by “promoting false solutions to the plastic waste crisis” that the companies helped create. Additionally, while we have seen greenwashing suits being brought by state attorneys general and consumers, this suit was brought by the County Counsel, which is afforded investigatory

and prosecutorial powers under California law.

### **New York Lawsuit**

The blow that PepsiCo and Coca-Cola must have felt when reading the LA County Counsel's complaint must have been softened somewhat when the New York Supreme Court dismissed a similar complaint in a scathing opinion that accused the New York AG of filing a "predatory lawsuit[] that seek[s] to impose punishment while searching for a crime."

In dismissing the public nuisance claims, the Court leaned heavily on a previous decision that had dismissed the AGoffice's lawsuit against Ruger in which the AG argued that illegally possessed handguns constituted a public nuisance and that the firearm manufacturer contributed to that nuisance because it should have known that its products would fall into the hands of criminals.

"If courts refused to impose a duty of care on firearm manufacturers," the Court found it difficult to see how such a duty could be imposed on PepsiCo, especially given that "thousands of other producers of the same materials...have seemingly escaped such scrutiny." Moreover, the Court worried that "imposing civil liability on a manufacturer for the acts of a third party seems contrary to every norm of established jurisprudence."

The Court also dismissed claims that PepsiCo engaged in deceptive practices by selling products that fail to include warnings about the known and foreseeable risks that follow from the intended use of their plastic products. For many of the reasons the Court cited in the context of the public nuisance claim, the Court found that these arguments "strain the bounds of credulity."

To be liable for deceptive or misleading conduct, a plaintiff must demonstrate that the defendant engaged in materially misleading acts that were likely to mislead the consumer. The Court determined that the AG had pled neither. Although the AG suggested that PepsiCo should have included warnings on product labels, the Court noted that no such obligation exists and that the AG hadn't shown that PepsiCo had made misleading statements.

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It's too early to tell how the California case will turn out or whether the court will take the same approach as the New York Supreme Court did. Nevertheless, it's clear that states, and especially California will use all tools available to hold large contributors of plastic waste responsible for the negative environmental impacts the products create. We will watch as these cases unfold and will report back on further developments.