

# Philadelphia Fires a Major Legal Salvo Against Two Companies Over “Recyclable” Claims

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October 9, 2025

The City of Philadelphia recently filed a lawsuit against S.C. Johnson & Son (the company that makes Ziploc plastic bags) and Bimbo Bakeries (a company that sells baked goods in plastic bags), accusing the companies of a “coordinated campaign of deception” to mislead consumers about the recyclability of those bags. The complaint argues that these companies misled consumers into believing they could buy these products without contributing to plastic waste in violation of the City’s Consumer Protection Ordinance. The complaint runs nearly 50 pages and covers a lot of ground but here are some of the highlights.

The complaint alleges that many of the bags the companies sell or use are marketed with the same standardized “How2Recycle” label or the “chasing arrows” symbol in the shape of a triangle. According to the complaint, consumers overwhelmingly understand the universal label and symbol to mean the bags can be recyclable—indeed, “91% of U.S. consumers think that if a product is recyclable in any sense (i.e., ‘technically recyclable’), then that means they can recycle it by putting it in their curbside municipal recycling bin.” Even if it’s theoretically possible to recycle the bags, the complaint argues that “technical and economic realities” make that recycling very unlikely.

The City alleges that the resin type (low density polyethylene or “LDPE”) most often used for making plastic bags may be technically recyclable, these bags generally cannot be recycled using typical curbside programs. Instead, it can only be recycled through special store drop-off programs. Even though some of the labels specifically mention “store drop-off” and include a website for more information, the City argues that consumers are still likely to be misled.

The City is concerned that “store drop-off recycling is not what consumers think of when they see the chasing arrows symbol.” Consumers who investigate further will find it hard to find drop-off locations and inconvenient to get to them. Even if consumers go through all the necessary steps to take these bags to those locations, the complaint alleges that only a small percent of plastic bags actually get recycled.

The complaint lands squarely in the middle of an ongoing national debate—which gained prominence during the FTC’s 2023 Green Guides workshop review (see [here](#))—about whether a product can be deemed recyclable based merely on theoretical possibility or technical capability, even when it is not being recycled due to market failures. In its comments to the Green Guides, EPA encouraged the FTC to clarify that products should only be marketed as recyclable if they have a strong end market and are being recycled at scale. Relying solely on technical recyclability (e.g., with the chasing arrows around a Resin Identification Code) is increasingly precarious. The FTC has yet to finish the update,

though.

The complaint details that the recycling process is constrained by economic and technical realities. Recycling is a business and, if there are no buyers for the reprocessed material, the process fails. This lack of demand—the absence of “significant end markets”—is the key problem with plastic film recycling. This issue has been an important consideration for states implementing extended producer responsibility (“EPR”) packaging laws (more on EPR laws [here](#)), where some states require that service providers (e.g., material recovery facilities, recyclers, processors) send collected recyclables to “responsible end markets.” The actual availability of those markets is limited for many materials, such as plastic film which is used in Ziploc and Bimbo bread bags.

Philadelphia is bringing this action under the City’s Consumer Protection Ordinance, which prohibits unfair or deceptive acts that impact individuals in the City. The complaint seeks robust relief, including a declaratory judgment finding the marketing unlawful, an injunction requiring the companies to revise their marketing claims, civil penalties of \$2,000 per violation, compensatory damages, restitution, and disgorgement of profits.

This lawsuit represents a powerful escalation in the fight against greenwashing, signaling that municipal governments are ready to use consumer protection laws to enforce standards for environmental claims. Prudent companies should prepare for a future where their recyclability claims must withstand the critical question of practical market viability.