

SDNY Allows False Advertising Suit Over “Carbon Neutral” Claims to Move Forward

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A 2022 class action lawsuit against Danone Waters’ evian spring water will move forward, thanks to a judge in the Southern District of New York, who decided this week that he could not determine as a matter of law that the term “carbon neutral” does not have the capacity to mislead consumers.

In its motion to dismiss the complaint that “carbon neutral” is misleading, Danone argued that no reasonable consumer would understand “carbon neutral” to mean the product emits no carbon dioxide during its lifecycle. How else could the product be transported from the French Alps to the United States without expending carbon dioxide in the process? Danone argued that consumers would not be misled because the “carbon neutral” claim is defined by the adjacent “Carbon Trust Certified” logo, the reference to the evian website to “Learn More about the Carbon Trust certification,” and the company’s use of the PAS 2060 standard for evaluation.

The judge did not agree, saying “carbon neutral” is a technical term that may mean a number of different things depending on the context. The judge agreed with plaintiff that it is akin to an unqualified general environmental benefit claim, which the FTC’s Green Guides warn advertisers not to make.

Danone argued the notion of adding a lengthy explanation on the label of what carbon neutrality means and the underlying data is not just unreasonable, it is not legally required. But the judge did not agree, saying that the steps consumers would need to take to visit two webpages to understand the meaning of “carbon neutral” and the Carbon Trust standards and certification process amounts to too much research.

The judge did not specifically address the plaintiff’s allegations that the “carbon offsetting market is awash with challenges, fuzzy math and tough-to-prove claims with a long history of overpromising and under delivering.” Delta was sued last year based on a similar challenge to the carbon offset market (see [here](#)).

This order raises a number of questions about how much information companies should be including on the product label, and if directing consumers to websites for important information is acceptable. The order also raises questions about the carbon offset market and whether claims based on carbon offsets will be permissible support for carbon reduction claims. We’ll continue to monitor this case as it develops.