SDNY Reverses its Position on “Carbon Neutral” Lawsuit

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In January, we reported that a judge in the Southern District of New York refused to dismiss a class action alleging that “carbon neutral” claims on bottles of Evian water were misleading. The judge determined that the term “carbon neutral” was “unfamiliar to and easily misunderstood” by reasonable consumers and that Danone Waters’ attempts to qualify the term with information on its website were insufficient. In a surprising turn of events, the Court reversed its position last week. Here are some highlights.

The Court initially determined that a jury should decide whether “carbon neutral” was misleading and that reasonable consumers shouldn’t be expected to look beyond misleading representations on the front of a package. Upon reflection, the Court decided that reasonable consumers would be expected to look to the back of the package for more information, which would have led them to a website with a broader explanation of what “carbon neutral” means.

The Court initially accepted the plaintiffs’ argument that “‘carbon neutral’ is precisely the type of ‘unqualified general environmental benefit’ claim that the FTC cautions marketers not to make.” Upon closer review of the examples in the FTC’s Green Guides – such as “eco-friendly” and “environmentally friendly” – the Court determined that “carbon neutral” was different. Accordingly, the Green Guides do not support the conclusion that “carbon neutral” is inherently misleading.

Although the Court initially gave more weight to the plaintiffs’ survey showing that consumers do not understand what “carbon neutral” means, the Court noted that the relevant question is “whether the label had the capacity to mislead consumers, *acting reasonably under the circumstances*.” Now, the Court determined “that a reasonable consumer would have inquired further and consulted the additional information available” on the back of the package and on the website.

The Court cited a case referencing “the general principle that deceptive advertising claims should take into account all the information available to consumers and the context in which that information is provided and used.” Here, the Court determined that a reasonable consumer would not believe, as the plaintiffs alleged, that the water bottles were transported from the Alps to their grocery stores without emitting any carbon.

The Court rejected the Plaintiffs’ interpretation that carbon neutral means carbon zero, saying “carbon zero products do not exist, so the idea that carbon neutral is misleading because it is not carbon zero is similarly premised on a logical fallacy. To hold otherwise would lead to the absurd result that every product that represents itself as carbon neutral, though true, would be misleading absent a lengthy disclosure about its definition of carbon neutral and the underlying standards and evaluation process that qualify it.”

The Court also cited a case holding that if “a front label is ambiguous, the ambiguity can be resolved

by reference to the back label." As a result, the Court determined that "if there was any ambiguity as to what 'carbon neutral' precisely meant it would have been cured not only by the context clues contained on the front of the product and its packaging, but by looking to the product's back label that would have prompted a reasonable consumer to learn more about Defendant's 'carbon neutral' claim."

This is certainly a positive development for marketers. The strategies for addressing climate change are complicated and it's true that consumers may not understand all of the relevant terms. But a decision that would have prevented marketers from using those terms without a full definition on a label would have been untenable. This case suggests that if a marketer uses a term that isn't inherently misleading, it could point people to a website for more information.