



ALLBIRDS' DEFEAT OF CONSUMER CLASS ACTION OFFERS VALUABLE GREENWASHING-AVOIDANCE GUIDEPOSTS

by William J. Hubbard

In response to consumers' growing demand for environmentally friendly products, many companies have made a conscious effort to go "green." The increasing importance of Environmental, Social, and Governance ("ESG") criteria to investors and other shareholders only increases that demand. As a result, not only do companies adopt sustainable and environmentally friendly practices, but they promote those efforts in product labeling and marketing. In doing so, they use green buzzwords such as "recyclable," "eco-friendly," or "natural" in their advertisements. Businesses that use such terms in an allegedly deceptive manner are not only publicly scolded for "greenwashing," but can be sued under state consumer protection statutes or investigated by the Federal Trade Commission for running afoul of its Guides for the Use of Environmental Marketing Claims (the "Green Guides"). The Green Guides suggest that when making a green claim, a company must have evidence and factual support upon which to base their assertions. A recent decision dismissing a class action against shoe manufacturer Allbirds for deceptive business practices reinforces the importance of having factual support for product claims and the value of referring to third-party tools and standards when making green claims.

The Green Guides

The FTC issued its [Green Guides](#) in 1992 and revised them in 1996, 1998, and 2012. While the Green Guides do not have the force of agency regulation, they illustrate what the FTC would consider "unfair or deceptive" under the FTC Act, and in turn became de facto standards for green marketing. Under the Green Guides, marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis. In terms of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence.

Allbirds

Allbirds manufactures, markets, labels, and sells shoes made from wool, and advertises its products with representations such as "sustainability meets style," "low-carbon footprint," "environmentally friendly," "made with sustainable wool," and "reversing climate change," and generally touts "our sustainable practices." In *Patricia Dwyer v. Allbirds Inc.*, U.S. District Court for the Southern District of New York, Case No. 21-cv-5238, plaintiff filed a class action against Allbirds seeking damages and injunctive relief for: (1) violations of Sections 349 and 350 of the New York General Business Law ("GBL"), which prohibit deceptive business practices and false advertising; (2) breach of express warranty; (3) fraud; and (4) unjust enrichment. Allbirds successfully moved to dismiss the complaint based primarily upon plaintiff's failure to plead any statements that were materially misleading.

For its environmental claims, Allbirds relies on the Higg Material Sustainability Index ("MSI"), a standard developed by the Sustainable Apparel Coalition to measure the environmental impact of apparel items. Allbirds also uses a life-cycle assessment ("LCA") to estimate its products' carbon footprint. Further, the company measures other greenhouse gases, like methane, converts them to CO₂ emissions and states the average carbon footprint of its products on its website, breaking down the total CO₂ emissions into categories for materials, manufacturing, use, and "end of life." The calculation specifies that "Allbirds transportation emissions are calculated separately and our entire footprint is offset to zero."

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Plaintiff asserted that Allbirds' environmental claims are misleading, specifically taking issue with its use of the Higg MSI, complaining that its methodology only addresses raw materials and lacks standards for comparing different materials. Plaintiff criticized Allbirds' LCA tool because it only measures the carbon footprint of each product and does not assess any other environmental impact of wool production—including the impacts on water eutrophication or land occupation. She claimed that if Allbirds calculated its carbon footprint from the production of wool and sheep farming overall—including methane emitted by sheep and runoff or chemicals used in cleaning or pesticides—as opposed to only its product, its carbon footprint would be larger.

The complaint also took issue with Allbirds' animal welfare claims, including its statement that “Our Sheep Live the Good Life” and advertisements showing sheep in “pastoral settings.” Plaintiff alleged such statements are misleading because all sheep bred for wool are also slaughtered and sold for their meat. She also relied on investigations of more than 100 large-scale wool operations which have found poor treatment of the animals as well as a painful procedure performed on sheep to treat for nesting parasitic bow flies.

Plaintiff alleged that had she known the truth about Allbirds' shoes, she would not have bought them or would have paid less for them.

Environmental Claims

The court first analyzed the cause of action arising under New York General Business Law, Sections 349 and 350, which prohibit “deceptive acts or practices in the conduct of any business, trade or commerce” and “false advertising in the conduct of any business, trade or commerce.”

On Allbirds' environmental impact claims, the court recognized that plaintiff took issue with the LCA tool and the Higg MSI, arguing that Allbirds did not take into consideration all potential environmental impacts. The court held that plaintiff's complaints about the tools were criticisms of the methodology and not a description of false, deceptive, or misleading statement about the product. Plaintiff did not allege that Allbirds' calculations were wrong or that it falsely described the way it calculates its environmental effects. Further, she did not allege that a reasonable consumer would expect Allbirds to use a different method of calculation of some other LCA tool.

Instead, the court found that Allbirds described the exact component of the calculation and plaintiff failed to provide any facts suggesting that Allbirds was not calculating the carbon footprint as advertised. On its website, Allbirds provides consumers with details regarding the LSA tool's methodology and the categories used in its calculations. The court also held that Allbirds did not materially mislead a reasonable consumer by relying on the Higg MSI to calculate CO₂ emissions of its materials. While there might be room for improvement of the Higg MSI, Allbirds clearly discloses its reliance on it as its data source for its CO₂ disclosures.

Animal Welfare Claims

Plaintiff also challenged Allbirds' marketing depiction of “happy” sheep. But again, she did not identify any misstatements in any advertising that would deceive consumers. The court found that the ads, which attempt to be humorous, make no representations at all. The statement “Our Sheep Live the Good Life and depictions of “happy” sheep in “pastoral settings” were found to be classic puffery, which is not actionable under Section 349.

Finding that all of Allbirds' statements, advertisements, and claims relating to its shoes were not materially misleading, the court dismissed Plaintiff's GBL claims. Plaintiff's remaining claims of breach of express warranty, fraud, and unjust enrichment were all premised on her assertions that Allbirds' environmental impact and animal welfare claims are materially misleading. Because the court found them not to be misleading under the general business claims, those claims also failed at the pleading stage and were dismissed.

Allbirds was able to defend against the deceptive marketing claims because it had the calculations and data to back up its claims, and it provided the analysis and calculations on its website for consumers to review and evaluate. Both the Green Guides and the court's decision in *Allbirds* provide marketers with good guideposts on the type of data and information that companies should compile and provide to consumers to avoid potentially brand-damaging, greenwashing claims.