

# Do You Strive to Make Aspirational Benefit Claims? Lessons Learned from Recent Decisions

## The Bottom Line

- Environmental claims, in general, are risky and may lead to challenges – companies must plan accordingly.
- Promises should not be illusory, and companies that aim to meet environmental goals should have an actionable plan in place.
- Companies should evaluate success toward meeting their goals to ensure claims are not deceptive.

Environmental marketing claims have been a focus of regulatory, self-regulatory, and class action activity. While claims about past or present environmental benefits clearly require sufficient substantiation, companies should not assume that aspirational statements can be made with impunity.

Earth Island Institute, an environmental nonprofit, sued Coca-Cola, claiming that the company deceptively marketed itself as sustainable and environmentally friendly, largely through the use of forward-looking aspirational statements. The Superior Court of the District of Columbia recently granted Coca-Cola's motion to dismiss this case, finding that Earth Island Institute failed to allege that these statements were provably false or plausibly misleading. To this end:

- The court determined that vague statements, such as “Our planet matters. We act in ways to create a more sustainable and better shared future. To make a difference in people’s lives, communities and our planet by doing business the right way,” point to a general theme of sustainability and corporate improvement, but do not contain promises or measurable data points that would render such statements true or false.
- The court found that statements with specific measurements, such as “Part of our sustainability plan is to help collect and recycle a bottle or can for every one

we sell globally by 2030,” hold the potential to be a promise to a consumer. But, as goals are set significantly in the future, these statements cannot create a valid claim until they are found to be inaccurate or misleading.

The National Advertising Division (NAD) has also been focused on aspirational environmental benefit claims – seemingly going further than the D.C. Superior Court in requiring that advertisers demonstrate that their goals and aspirations are not merely illusory, and provide evidence of the steps being taken to reach their stated goals. For example:

- In a challenge to Butterball’s claim that it “recognizes its responsibility to protect the planet,” the NAD found that efforts and improvements being taken by the company (e.g., reduced environmental footprint, reduction in waste per pound of product produced, reduction in electricity usage) sufficiently supported these vague, non-specific aspirations.
- The NAD determined that Chipotle’s claim that its burrito “could make our farmers . . . more organic . . . less carbon emitting” conveyed a forward-looking aspirational message that Chipotle is engaged in genuine efforts toward these goals, which was supported by evidence that Chipotle has, in fact, made significant efforts at achieving such.
- The NAD found that Everlane’s “No New Plastic . . . in 2018 we set out to remove virgin plastic from our entire supply chain by 2021” claim was supported largely based on compliance with a voluntary international standard that relies on well-established international and regulatory guidance for what constitutes recycled content.

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## For More Information

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