



Key Update:

- A federal court in New York denied Danone Waters of America's motion to dismiss a class-action lawsuit accusing it of falsely advertising Evian-branded bottled water as "carbon neutral."
- The putative class-action lawsuit claims that the Evian water bottles are not actually carbon neutral due to alleged emission of carbon dioxide during manufacturing.
- The court found that consumers could be confused by the term "carbon neutral," noting that understanding Evian's meaning "expects too much" from consumers.

The lawsuit seeks to represent a nationwide class and a California subclass of consumers who purchased Evian brand water bottles. The plaintiffs claimed that the Carbon Trust certification logo on the packaging misled customers into believing that the product's manufacturing process had no carbon footprint. The plaintiffs also assert that Danone's advertising is false and misleading because the organizations providing carbon credits allegedly will not implement the offset fund for 10 to 20 years.

Danone filed a motion to dismiss, arguing that the logo was based on a certification and that no reasonable consumer would believe that producing and shipping the product is a carbon dioxide-free process.

The court denied the motion to dismiss and held that the term "carbon neutral" is ambiguous, supporting the interpretation that it means "zero carbon emissions." The court noted that it is too much to expect consumers to engage in extensive research and rejected Evian's argument that consumers should visit two separate websites to understand the phrase.

Brands should pay close attention to sustainable advertising claims because challenges to these claims are common. Please see our [past articles](#) about [sustainability claims](#) and keep an eye out for the FTC's latest update of the Green Guides, which is expected to be released in 2024. We have published a [blog](#) regarding this public comment process, and the FTC hosted a May 23 [workshop](#) on recyclable claims.

Authors



[Jason S. Howell](#)

Partner

JHowell@perkinscoie.com [206.359.3134](tel:206.359.3134)



[Nathan W. Kosnoff](#)

Discovery Attorney

NKosnoff@perkinscoie.com [206.359.6673](tel:206.359.6673)

Explore more in

[Consumer Protection](#)

Blog series

Consumer Protection Review

Consumer Protection Review helps businesses that market and sell to consumers navigate federal and state legal issues related to advertising, privacy, promotions, products liability, government investigations, unfair competition, class actions and general consumer protection.

[View the blog](#)