

Coca-Cola Beats Enviros' 'Greenwashing' False Ad Suit In DC

By **Dave Simpson**

Law360 (November 15, 2022, 7:30 PM EST) -- Coca-Cola's advertised claims about its sustainability were general aspirational statements, not promises to its consumers, a Washington, D.C., superior court ruled in dismissing an environmental advocacy group's false advertising suit that claimed the soda maker is in fact a major polluter.

D.C. Superior Court Judge Maurice A. Ross dismissed Earth Island Institute's lawsuit on Thursday after having analyzed several of the Coca-Cola Co.'s advertising claims and finding most of them to lack in promises or measurable data points that could render them false.

"Phrases such as 'a more sustainable and better-shaped future,' 'a focus of ours,' 'a more sustainable future for our communities and our planet,' 'help develop more effective recycling systems,' and 'committed to creating' are extremely vague, and while they point to a general theme of sustainability and corporate improvement, there is not a measurable standard to apply as to whether or not defendant has met these general goals," Judge Ross said.

And while some statements did set specific goals about improved sustainability, those goals were caveated with the fact they weren't expected to be met until "significantly in the future," the judge said. This is not enough to create a violation of the District of Columbia Consumer Protection Procedures Act, he added.

"As future, aspirational goals, these statements cannot successfully create a valid claim under the CPPA until they have been found to be inaccurate or misleading," Judge Ross said.

In its June 2021 complaint, Earth Island claimed Coca-Cola markets itself as environmentally "sustainable" despite being the largest generator of plastic waste in the world.

It claimed that Coca-Cola is violating the CPPA by producing mounds of plastic while bragging on its website and in print, television and social media advertising that it is investing in sustainable packaging.

"A 'World Without Waste' declares the headline in one marketing campaign," the group said at the time. "Yet almost anywhere you look there's a plastic Coca-Cola bottle trashing the public park, washed up on the beach, or piled in a mountain of plastic at a waste processing facility. What these advertising campaigns ultimately amount to is a mountain of greenwashing."

The complaint pointed to a study from the Changing Markets Foundation, which found that Coca-Cola

produces 2.9 million metric tons of plastic waste each year, more than any other company. Coca-Cola, meanwhile, has done "very little" to address the problem of global plastic pollution, the group said.

The suit pointed to advertising slogans the beverage company has used, including "Sustainable Business" and a commitment to "Sustainable Package Collection." It highlighted tweets and press releases about Coca-Cola's interest in being environmentally sustainable.

In dismissing the suit and ordering it closed, Judge Moss said some of the statements the Earth Island Institute highlighted are "blatantly cherrypicked" from places like Twitter, Coca-Cola's website and its annual business and strategy report.

"Of note, none of the statements appear on the product itself," the judge said. "There is no plausible framework to determine whether a reasonable DC consumer could be misled by a general impression. Even taken together, the cited statements by Defendant are aspirational, limited, and vague such that, as a matter of law, such statements cannot be misleading."

Representatives for the parties did not immediately respond to requests for comments on Tuesday.

Earth Island is represented by Kim E. Richman of Richman Law & Policy.

The Coca-Cola Co. is represented by Steven A. Zalesin and Jane Metcalf of Patterson Belknap Webb & Tyler LLP.

The case is Earth Island Institute v. the Coca-Cola Company, case number 2021CA001846B, in the Superior Court of the District of Columbia, Civil Division.

--Editing by Kristen Becker.