

# Green and Bear it: Class Action Alleges "Greenwashing" By Fast Fashion Company

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On November 3, 2022, two consumers filed a putative class action complaint against a fast fashion company, claiming that the apparel company's "Conscious Choice" clothing line deceived consumers into buying products labeled as made from environmentally friendly materials, even though the clothes included materials like reformulated polyester, which is harder to recycle than the plastic bottles it is made from.

## The "Conscious Choice" Line

The apparel company's Conscious Choice line is marketed as "the shortcut to sustainable fashion." The line features apparel and accessories made from materials such as organic cotton or recycled polyester, which the company claims are more sustainable. On its website, the company describes the clothing line as "created with a little extra consideration for the planet" and that "at least 50% of each piece is made from more sustainable materials." To identify the line within stores, the company used a green hashtag and their marketing, advertisements, and social media for Conscious Choice apparel utilized green imagery, with models often surrounded by plants.

### *The Complaint*

Filed in the US District Court for the Eastern District of Missouri, the complaint alleges that the fast fashion company's Conscious Choice line misrepresents the line's environmental impact and misleads consumers into paying a price premium for allegedly environmentally friendly apparel.

Notably, the plaintiff alleges:

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- The company knew that consumers would pay more for a product labeled a “Conscious Choice,” more “sustainable,” and environmentally friendly, and intended to deceive plaintiffs and class members by marketing and labeling the products as “conscious,” “sustainable,” and environmentally friendly products.
  - The products at issue are primarily made of recycled polyester. The plaintiff alleges that recycled polyester has been heavily marketed by the company as a sustainable and environmentally responsible material, and presented to consumers as a more “conscious choice.” The plaintiff argues that given recycled polyester often ends up in a landfill or incinerated, it does not restrict the shedding of microplastics, and its use perpetuates disposable solutions. This material does not make a product a more “conscious choice,” more “sustainable,” or more environmentally friendly.
  - The company’s Conscious Choice Collection actually contains a higher percentage of synthetics than its main collection, namely 72% versus 61%, respectively.

### *The Green Guides*

The Green Guides were issued by the US Federal Trade Commission to help marketers avoid making environmental claims that could mislead consumers. The plaintiff cites several Green Guide provisions and principles in making their claims:

- **Overstatement of Environmental Attributes.** An environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit. Marketers should not state or imply environmental benefits if the benefits are negligible.
- **Comparative Claims.** Comparative environmental marketing claims should be clear to avoid consumer confusion about the comparison. Marketers should have substantiation for the comparison.
- **General Environmental Benefit Claims.** It is deceptive to misrepresent, directly or by implication, that a product, package, or service offers a general environmental benefit.
- **Unqualified General Environmental Benefit Claims.** Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.
- **Avoiding Deception.** To avoid deception, marketers should use clear and prominent qualifying language that limits the claim to a specific benefit or benefits.

### **Takeaway**

The suit against the fast fashion company reflects an increased focus on greenwashing claims by regulators and plaintiffs’ attorneys. Before dissemination of environmental benefit claims, companies

should confirm that the claims made by their product marketing and product labels are supported by competent and reliable substantiation.

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