

PFAS Consumer Fraud Trend Continues

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We [previously wrote](#) about the PFAS consumer fraud class action lawsuit filed against Coca-Cola in New York over one of the company's orange juice products. Now, in the last few days, two new lawsuits for different products types have been filed that allege similar consumer fraud allegations – one involving mouthwash and the other involving a sports energy drink. These cases are but the latest in a growing line of PFAS lawsuits that allege that certain consumer goods contain PFAS, that the products or company's values were marketed as healthy or environmentally friendly, and that consumers would not have purchased the products if they knew that the products contained PFAS.

As we predicted in early 2021, the increased attention on PFAS content in consumer goods in the scientific community and media presented [significant risks to various industries](#), and our prediction was that the developments would lead to a significant number of lawsuits alleging consumer fraud. Consumer goods industries, insurers, and investment companies interested in the consumer goods vertical with niche interest in cosmetics companies must pay careful attention to these lawsuits.

Colgate and BioSteel PFAS Consumer Fraud Lawsuits

On January 27, 2023, various plaintiffs filed a lawsuit in the Southern District of New York seeking a proposed class action against [Colgate-Palmolive](#) and Tom's of Maine. The [lawsuit](#) alleges that the companies manufacture a brand of mouthwash, which is advertised as "natural", and that the companies market themselves as making products that are healthy and safe for consumers and the planet. Testing showed that the mouthwash contained certain types of PFAS in certain quantities and, as such, the statements regarding natural content, safe for use by consumers, and protective of the planet were false, misleading or induced consumers to purchase products when the presence of PFAS in the products was not disclosed.

In the Complaint, plaintiffs allege the following counts against Coca-Cola:

- Violation of state consumer protection laws and the federal Magnuson-Moss Warranty Act
- Violations of various state consumer protection laws
- Breach of warranty

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- Fraud
 - Constructive fraud
 - Unjust enrichment

The plaintiffs seek certification of a nationwide class action lawsuit, with subclasses defined as consumers in California and Illinois. In addition, the lawsuit seeks damages, fees, costs, and a jury trial.

Similarly, and on the same day, a separate [lawsuit](#) was filed against BioSteel in the Eastern District of New York. The company manufactures a sports energy drink, which is marketed as the “healthiest” available on the market and eco-friendly. Testing conducted on the product showed that certain PFAS were in the energy drink at certain levels. The class proposed is a nationwide class and a New York subclass of plaintiffs. The Complaint makes similar legal allegations against BioSteel as were made against Colgate and Tom’s in the mouthwash case.

Just the Beginning For Consumer Products Companies

With studies underway, legislation pending that targets consumer goods, and increasing media reporting on PFAS in consumer goods and concerns over human health, product manufacturers should be increasingly wary of lawsuits similar to the Coca-Cola lawsuit being filed against them. There are an increasing number of PFAS consumer fraud cases being filed, with some of the below as representative of recent trends:

- Cosmetics industry:
 - *Brown v. Cover Girl*, New York (April 1, 2022)
 - *Anderson v. Almay*, New York (April 1, 2022)
 - *Rebecca Vega v. L’Oreal*, New Jersey (April 8, 2022)
 - *Spindel v. Burt’s Bees*, California (March 25, 2022)
 - *Hicks and Vargas v. L’Oreal*, New York (March 9, 2022)
 - *Davenport v. L’Oreal*, California (February 22, 2022)
- Food packaging industry:
 - *Richburg v. Conagra Brands*, Illinois (May 6, 2022)
 - *Ruiz v. Conagra Brands*, Illinois (May 6, 2022)
 - *Hamman v. Cava Group*, California (April 27, 2022)
 - *Azman Hussain v. Burger King*, California (April 11, 2022)

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- *Little v. NatureStar*, California (April 8, 2022)
 - *Larry Clark v. McDonald's*, Illinois (March 28, 2022)
 - Food products:
 - *Lorenz v. Coca-Cola*, New York (December 28, 2022)
 - *Toribio v. Kraft Heinz*, Illinois (November 29, 2022)
 - Apparel products:
 - *Krakauer v. REI*, Washington (October 28, 2022)
 - Hygiene products:
 - *Dalewitz v. Proctor & Gamble*, New York (August 26, 2022)
 - Feminine hygiene products:
 - *Gemma Rivera v. Knix Wear Inc.*, California (April 4, 2022)
 - *Blenis v. Thinx, Inc.*, Massachusetts (June 18, 2021)
 - *Destini Canan v. Thinx Inc.*, California (November 12, 2020)

As the above is indicative of, several major companies now find themselves embroiled in litigation focused on PFAS false advertising, consumer protection violations, and deceptive statements made in marketing and ESG reports. The lawsuits may well serve as test cases for plaintiffs' bar to determine whether similar lawsuits will be successful in any (or all) of the fifty states in this country. Companies must consider the possibility of needing to defend lawsuits involving plaintiffs in all fifty states for products that contain PFAS.

It should be noted that these lawsuits would only touch on the marketing, advertising, ESG reporting, and consumer protection type of issues. Separate products lawsuits could follow that take direct aim at obtaining damages for personal injury for plaintiffs from consumer products. In addition, environmental pollution lawsuits could seek damage for diminution of property value, cleanup costs, and PFAS filtration systems if drinking water cleanup is required.

Conclusion

It is of the utmost importance that businesses along the whole supply chain in the consumer products industry evaluate their PFAS risk. Public health and environmental groups urge legislators to regulate PFAS at an ever-increasing pace. Similarly, state level EPA enforcement action is increasing at a several-fold rate every year. Now, the first wave of lawsuits take direct aim at the consumer products industry. Companies that did not manufacture PFAS, but merely utilized PFAS in their manufacturing processes, are therefore becoming targets of costly enforcement actions at rates that continue to multiply year over year. Lawsuits are also filed monthly by citizens or municipalities against companies that are increasingly not PFAS chemical manufacturers.

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National Law Review, Volumess XIII, Number 32

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