

# Carbon Neutrality Suit Against Delta Airlines Signals the Arrival Time of “Greenwashing” Litigation

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A [recent class action](#) filed against Delta Airlines is among the first major consumer cases targeting claims of carbon neutrality. The complaint, filed in *Mayanna Berrin v. Delta Airlines Inc.*, No. 2:23-cv-04150 (C.D. Cal.) on May 30, 2023, in the United States District Court for the Central District of California, takes aim at Delta Airlines’ “carbon neutral” representations, alleging an unreliable carbon offset market renders Delta Airlines’ environmentally friendly representations false and misleading. When marketing carbon reduction achievements, companies should be aware of potential overstatements that may lead to litigation claims and should hire ESG counsel to efficiently and effectively advise on these matters.

## The Lawsuit

Plaintiffs’ representative Mayanna Berrin filed the class action lawsuit on behalf of a putative class of consumers, alleging Delta Airlines is “grossly misrepresenting the total environmental impact of its business operation in its advertisements, corporate announcements, and promotional materials, thereby attaining undeserved market share and extracting higher prices from consumers.” The complaint brings three causes of action under California consumer protection statutes: (1) the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*; (2) the False Advertising Law, Business and Professions Code § 17500, *et seq.*; and (3) the Unfair Competition Law, Business and Professions Code §17200, *et seq.*

At the center of the plaintiffs’ substantive allegations is Delta Airlines’ reliance on its participation in the [carbon offset market](#) and representing itself as “the world’s first carbon-neutral airline.” Plaintiffs allege these carbon offset markets are unreliable due to inaccurate accounting, dubious crediting practices, delayed and speculative emissions reductions, and impermanent projects subject to disease, natural disasters, and human intervention. In other words, the plaintiffs deem the carbon offset markets unreliable as self-regulated and devoid of standardization. The plaintiffs further claim these alleged misrepresentations caused them to purchase and overpay for Delta Airlines’ flight tickets when some of them otherwise would not have, but for Delta Airlines’ “carbon neutral” representations.

## Broader Trends and Implications

More companies and organizations are creating ESG reports with a fulsome evaluation of their environmental, social, and governance metrics and accomplishments. (For example, see Foley & Lardner's 2023 ESG report [here](#)). As consumers have begun basing their purchasing decisions on ESG factors and initiatives, companies have begun highlighting their commitments to ESG efforts in marketing their products and services. These campaigns have brought a rise in class action lawsuits involving "[allegations of false or deceptive advertising related to consumer products](#)," known in the environmental context as *greenwashing*. These class actions have started to shift from challenging the performance or features of products to challenging alleged falsities surrounding advertisements describing a company's environmental, sustainability, and ethics practices.

The rapid growth of the carbon commodities market holds significant promise for companies seeking to offset carbon emissions. However, in broadcasting these efforts to consumers, companies should ensure their environmental claims are substantiated and built to withstand any alleged false advertising and greenwashing claims. In particular, companies should (i) independently verify the accounting of purchased carbon offsets; (ii) provide limiting liability language via a website link on any advertisements promoting their carbon reduction efforts, which fulsomely describes the limitations of any such carbon reduction efforts; and (iii) engage ESG counsel to evaluate fully the advantages and risks of making carbon reduction claims in public statements, to avoid civil and SEC liability.

*This article was written with the assistance of summer associate Kelsey Kreindler.*

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