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Recyclability, liability for plastics producers: Cases to watch in 2022

Articles

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Marc Rollo and Alexis Way discuss the rising trend of lawsuits against plastic products producers and sellers in this *Plastics News* article, "Recyclability, liability for plastics producers: Cases to watch in 2022," published April 5, 2022.

Read the full article below.

Recyclability, liability for plastics producers: Cases to watch in 2022

There is a rising trend of lawsuits being filed across the country against plastic products producers and sellers alleging the companies are violating state consumer protection statutes related to labeling. While litigation is still in the early stages for many of the cases, rulings are anticipated to be made this year that could have a far-reaching impact on plastics products manufacturers and sellers.

Here are three key cases to watch in 2022 that will impact the industry:

Smith v. Keurig Green Mountain

In March 2022, a settlement was made between Kathleen Smith, a California resident, and Keurig Green Mountain. Smith alleged Keurig Green Mountain's plastic coffee pods were mislabeled as "recyclable" because the pods were not recyclable due to their size, composition and the lack of market reuse. Smith claimed the reason she purchased the Keurig brand of coffee pods was because of their ability to be recycled and she would not have purchased them otherwise.

Early in litigation, Keurig Green Mountain filed a motion to dismiss arguing that there was no injury to Smith, the labeling on the coffee pods was truthful and the packaging contained a disclaimer regarding recyclability. The district court judge denied the motion citing that Smith sufficiently pled that she suffered an economic injury as a result of Keurig Green Mountain's mislabeling of the coffee pods. In September 2020, the district court also granted class certification and allowed the case to proceed as a class action on consumer fraud claims.

Although it appears the merits of this case will not be litigated due to the settlement, there is still significance to be drawn from its decisions. First, it demonstrates what a plaintiff must allege to withstand initial motions to dismiss in support of class-action consumer fraud claims related to labeling products as recyclable. Second, it shows that plastic products manufacturers and sellers can be exposed to class-action consumer protection suits related to claims of recyclability.

Swartz v. Coca-Cola Co.

In another class-action suit coming out of the same California district court, Coca-Cola Co., BlueTriton Brands Inc. and Niagara Bottling LLC are being sued for violations of the California Consumers Legal Remedies Act and the California Unfair Competition Law.

In Swartz, three California residents claim defendants "defrauded consumers, and continue to defraud consumers, by labeling their single-use plastic water bottles as '100% Recyclable' even though they know the bottles are not actually 100 percent recyclable" because the bottle caps and labels are not recyclable.

The damages plaintiffs requested include restitution and an injunction preventing defendants from labeling and advertising their products as "100% Recyclable" unless they are actually 100 percent recyclable. This will be an interesting case to follow as it will impact the meaning of "recyclable" under the law.

Earth Island Institute v. Crystal Geyser Water Co.

Earth Island Institute, an environmental organization, filed suit in California state court in San Mateo County against Crystal Geyser Water Co., Clorox Co., Coca-Cola Co., PepsiCo Inc., Nestle USA Inc., Mars Inc., Danone North America, Mondelez International Inc., Colgate-Palmolive Co. and Procter & Gamble Co. Earth Island alleged that the recycling symbol on the defendants' products misinformed consumers as to what would happen to those products once placed in a recycling bin and sought relief under several California state laws, including the California Consumers Legal Remedies Act.

One key issue that arose early on was whether the case should be heard in state court or federal court — with the California district court determining the case should be heard in California state court where it was originally filed. By allowing this case to proceed in state court, where claims tied to plastic pollution, advertising of recyclability and consumer fraud will be determined by California state law, it potentially indicates that plastic product manufacturers and sellers could be exposed to different thresholds and different standards of liability in each state.

While these cases discussed are in their infancy, plastic product manufacturers and sellers can still take steps to prepare. Being familiar with the Federal Trade Commission's Green Guides, keeping up to date on state laws regarding consumer protection and recyclability of plastics, and working with your attorney to evaluate your own claims of recyclability with a critical eye can help reduce potential liability down the road.

Marc Rollo is chair of the environmental law department and the petroleum industry practices group at Archer in Voorhees, New Jersey. He can be reached at mrollo@archerlaw.com. Alexis Way is an associate in Archer's business litigation group. Contact Alexis at away@archerlaw.com.

Related People

Marc A. Rollo

Partner

mrollo@archerlaw.com

856.354.3061

Alexis M. Way

Associate

away@archerlaw.com

856.354.2313

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