

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRICIA DWYER, individually and on behalf of
all others similarly situated,

Plaintiff,

OPINION & ORDER

- against -

No. 21-CV-5238 (CS)

ALLBIRDS, INC.,

Defendant.

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Appearances:

Spencer Sheehan
Sheehan & Associates, P.C.
Great Neck, New York
Counsel for Plaintiff

Steven A. Zalesin
Patterson Belknap Webb & Tyler LLP
New York, New York
Counsel for Defendant

Seibel, J.

Before the Court is Defendant's motion to dismiss Plaintiff's Amended Complaint. (ECF No. 17.) For the following reasons, the motion is GRANTED.

I. BACKGROUND

For purposes of this motion, the Court accepts as true the facts, but not the conclusions, alleged by Plaintiff in the Amended Complaint. (ECF No. 14 ("AC").)

A. Facts

Defendant Allbirds, Inc. is a Delaware corporation with its principal place of business in San Francisco, California. (AC ¶ 83.) Defendant manufactures, markets, labels, and sells shoes made from wool (the "Product"), (*id.* ¶ 1), typically priced at \$95 per pair for new models, with

discounts available for older models, (*id.* ¶¶ 75, 86). Defendant sells the Product through its website and brick-and-mortar stores, and also through third-party vendors. (*Id.* ¶ 85.) Plaintiff Patricia Dwyer bought the Product, “on one or more occasions at one or more locations, including in 2021, from stores including Walmart and Walmart.com.” (*Id.* ¶ 89.)

Defendant’s advertising focuses on the Product’s environmental impact, (*id.* ¶ 5), with representations such as: “Sustainability Meets Style,” “Low Carbon Footprint,” “Environmentally Friendly,” “Made with Sustainable Wool,” “Reversing Climate Change . . .” and “Our Sustainable Practices.” (*Id.* ¶ 6.) One such example was included in the Amended Complaint:

Reversing Climate Change Through Better Business

Reducing our environmental impact has been a top priority since day one. But now, we’re taking things further. Explore our overall sustainability approach, our progress thus far, and our bold list of commitments for 2025.

OUR SUSTAINABLE PRACTICES

(*Id.*) Defendant uses a life cycle assessment (“LCA”) tool to estimate its products’ carbon footprint, which it defines as “the kg CO₂e emitted to create our products.” (*Id.* ¶¶ 8-9.)¹ Defendant also “measure[s] other greenhouse gases, like methane, and convert[s] them to CO₂.” (*Id.* ¶ 10.) Defendant states that the average carbon footprint of its products is 7.6 kg CO₂e, (*id.* ¶ 12), and provides – presumably on its website, although the Amended Complaint does not say – individual carbon footprint figures for particular products, breaking down the total CO₂e into categories for materials, manufacturing, use and “end of life,” with emissions from materials

¹ CO₂e refers to carbon dioxide equivalent emissions. (*Id.* ¶ 12.)

accounting for the most significant component. (*Id.* ¶¶ 13-14.) The calculation specifies that “Allbirds transportation emissions are calculated separately and our entire footprint is offset to zero.” (*Id.* ¶ 13.)

Plaintiff alleges that Defendant’s environmental claims are misleading, (*id.* ¶¶ 5-35), taking issue with Defendant’s use of the Higg Material Sustainability Index (“Higg MSI”), a standard developed by the Sustainable Apparel Coalition (“SAC”) to measure the environmental impact of apparel materials. (*Id.* ¶¶ 15-16.) Plaintiff criticizes the Higg MSI’s methodology as addressing only raw materials and lacking standards for comparing different materials, (*id.* ¶¶ 17-18), and alleges that unnamed independent researchers find the Higg MSI to be “unsuitable ‘for public disclosure or comparative assertions,’” (*id.* ¶ 19). The SAC allegedly recognizes these limitations and “is revamping the Higg MSI to incorporate ‘product level environmental impacts.’” (*Id.* ¶ 21.)

Plaintiff also criticizes the LCA tool Defendant uses, (*id.* ¶¶ 22-35), noting that according to People for the Ethical Treatment of Animals (“PETA”), “‘Allbirds’ [LCA] tool currently only measures the carbon footprint of each product, meaning that it doesn’t assess any other environmental impact of wool production, including on water, eutrophication, or land occupation.’” (*Id.* ¶ 22; ECF No. 19-1 at 2.)² According to Plaintiff, had Defendant calculated the carbon footprint from sheep farming overall – including items such as methane emitted by sheep and runoff of chemicals used in cleaning or pesticides – as opposed to the carbon footprint from its products, the carbon footprint figures would be significantly higher. (AC ¶¶ 23-34.)

² Eutrophication is defined in the Amended Complaint as “excessive richness of nutrients in a lake or other body of water, frequently due to runoff from the land, which causes a dense growth of plant life and death of animal life from lack of oxygen.” (AC ¶ 28.)

The LCA tool also allegedly uses data from several sources, and there are unspecified “discrepancies in industry-sourced data,” purportedly “render[ing] it unreliable.” (*Id.* ¶ 35.)

Plaintiff also claims Defendant has made misleading animal welfare claims, (*id.* ¶¶ 36-69), including “Our Sheep Live The Good Life,” (*id.* ¶ 36). This statement, which may come from Defendant’s website – again, the Amended Complaint does not say – is followed by the representation that Allbirds “work[s] with leading organizations like ZQ Merino to ensure our wool is held to high standards of farming, land management and animal welfare.” (*Id.*) Defendant runs advertisements showing sheep in pastoral settings, (*id.* ¶ 37), with quips such as, “What if every time you got a haircut they made shoes out of it? That would be pretty cool,” (*id.* ¶ 38), and “Behind every shoe is a sheep. And behind every sheep, is another sheep, probably,” (*id.* ¶ 39). Defendant has claimed – again, it is not clear where – that “its wool harvesting practices [are] sustainable [and] humane,” and that it “intends to eventually source ‘only wool from ‘regenerative’ sources.’” (*Id.* ¶ 43.) Plaintiff alleges these statements are misleading, as “[e]conomic realities dictate – and require – that all sheep bred for wool are also slaughtered and sold for their meat,” (*id.* ¶ 41), and that investigations of more than 100 large-scale wool operations have shown that “workers beat, stomped on, cut open the skin of, and slit the throats of conscious, struggling sheep,” (*id.* ¶ 45; ECF No. 19-1 at 1).³ Plaintiff further notes the existence of a painful procedure performed on sheep to discourage the nesting of parasitic

³ Plaintiff alleges that “most of [the large-scale wool operations inspected] had been promoted in the same terms used by Allbirds – as ‘sustainable’ and ‘responsible.’” (AC ¶ 45.) But the PETA blog post on which the Amended Complaint bases this allegation and from which it purports to quote says that investigators found the troubling practices at “more than 100 large operations investigators have visited – even so-called ‘sustainable’ and ‘responsible’ farms.” (ECF 19-1 at 1.) There is nothing in the post supporting the notion that “most” of the investigated farms were “so-called ‘sustainable’ and ‘responsible’ farms.”

blowflies on their bodies, (*id.* ¶¶ 47-52), and that sheep are often slaughtered for meat before they would have died naturally, (*id.* ¶¶ 54-57).

Additionally, Plaintiff alleges that Defendant “passes the buck about its wool production to ZQ Merino,” (*id.* ¶ 60); that sheep cannot “live the good life” when individual care cannot be provided to sheep raised in large numbers, (*id.* ¶ 53); and that ZQ Merino’s certification does not ensure that sheep “live the good life” because ZQ Merino audits farms only every three years, (*id.* ¶ 63), and its website states that its program “does not extend to certification beyond the farm gate, though we work with many long-term partners within the supply chain, who align with ZQ values and adhere to our Rules of Engagement agreement,” (*id.* ¶ 64). This means, according to PETA, that “slaughter and transportation – during which much abuse occurs – are not necessarily covered under the ZQ certification.” (*Id.* ¶ 65; ECF No. 19-1 at 2.) PETA also criticizes Defendant’s statement that its use of discarded crab shells is “better for the planet,” arguing that the shells come from an “inherently harmful industry” that endangers crabs and whales. (AC ¶¶ 68-69; ECF No. 19-1 at 2.)

According to Plaintiff, the value of the Product she purchased was materially less than its value as represented by Defendant, (AC ¶ 72), and Defendant sold more of the Product at a higher price than it would have “in the absence of this misconduct,” (*id.* ¶ 73). Had Plaintiff known “the truth,” she would have not bought the Product or would have paid less for it. (*Id.* ¶ 74.)

B. Procedural History

Plaintiff filed the original complaint in this action on June 13, 2021, (ECF No. 1), and Defendant answered on July 17, 2021, (ECF No. 7). On the same date, Defendant requested a

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