

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

STEPHANIE DORRIS and JOHN  
AXIOTAKIS, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

DANONE WATERS OF AMERICA,

Defendant.

Civil Action No. 7:22-cv-08717-NSR

Hon. Nelson S. Roman

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

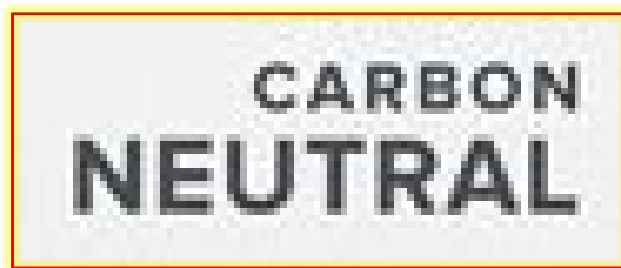
Plaintiff Stephanie Dorris and John Axiotakis (“Plaintiffs”), by and through their attorneys, make the following allegations pursuant to the investigation of their counsel and based upon information and belief—except as to allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge—against Defendant Danone Waters of America (“Defendant”).

**NATURE OF THE ACTION**

1. This is a class action lawsuit on behalf of purchasers of Defendant’s product, “Evian Natural Spring Water” bottled water (the “Product”), in the United States.
2. Defendant manufactures and sells a number of water bottles under the “Evian” label. Defendant sells this product throughout the United States, including in California.
3. Defendant holds itself out as an environmentally friendly brand.
4. One of Defendant’s products is “Evian Natural Spring Water,” which is a “wide range of convenient plastic water bottles to help hydrate and revitalize [consumers] throughout

the day.”<sup>1</sup> The Product comes in five different sizes: 300mL, 500 mL, 750 mL, 1L, and 1.5L, and the Product is sold individually, in six-packs, and in twenty-four-packs.

5. On the labels and/or packaging of all versions of the Product, Defendant represents that the Product is “carbon neutral”:



<sup>1</sup> *The Everyday Range*, EVIAN, [https://www.evian.com/en\\_us/natural-spring-water/bottled-water/](https://www.evian.com/en_us/natural-spring-water/bottled-water/) (last visited Sept. 15, 2022).

6. Under the FTC’s “Green Guides” for environmental marketing claims, the “carbon neutral” claim is an “[u]nqualified general environmental benefit claim[]” that is “difficult to interpret and likely convey[s] a wide range of meanings.”<sup>2</sup> The FTC cautions marketers against making “unqualified general benefit claims” “[b]ecause it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims.”<sup>3</sup>

7. That is precisely the case here. Based on Defendant’s “carbon neutral” representation, reasonable consumers reviewing the Product’s label and packaging would believe the manufacturing of the Product is sustainable and does not leave a carbon footprint. That representation is false: Defendant’s manufacturing of the Product still causes carbon dioxide (“CO<sub>2</sub>”) to be released into the atmosphere. Accordingly, the carbon neutral claim is false and misleading because the Product’s manufacturing process is not carbon neutral, and consumers would not have purchased the Product, or paid substantially less for it, had they known the carbon neutral claim was not true. And, because Defendant cannot substantiate this reasonable interpretation of its claim, it has likewise violated 16 C.F.R. § 260.4.

8. Defendant may contend that “carbon neutral” means that the “carbon credits” Defendant purchases theoretically “offset” the carbon emissions produced by its Product. Defendant may also contend it is “carbon neutral” as per the standards of the Carbon Trust, a third-party agency. Notwithstanding these explanations appear nowhere on the Product and reasonable consumers would not understand that to be the meaning of carbon neutral, those interpretations are also false and misleading. Nowhere on the Product’s packaging does Defendant disclose how it calculates its carbon neutrality, what the “Carbon Trust” standard means or how Defendant goes about meeting that standard, and whether the standards it uses are

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<sup>2</sup> 16 C.F.R. § 260.4(b).

<sup>3</sup> *Id.*

actually “carbon neutral” in that any pollution output is truly offset by other projects. Thus, even assuming reasonable consumers would understand “carbon neutral” to cover these offset-based interpretations, those too are false, misleading, and improperly qualified under the Green Guides.

9. Defendant’s statements are not simply a marketing gimmick. Rather, Defendant charges more for the Product based on its representation that the Product is “carbon neutral.” And, Defendant knows consumers will pay more for a Product based on representations that the Product is environmentally friendly. Thus, Plaintiffs and other consumers have suffered an economic injury as a result of Defendant’s greenwashing. Because the Product is not actually “carbon neutral” as that term is understood by reasonable consumers—or even as Defendant may understand that term—Plaintiffs and other consumers were deprived of the benefit of their bargain in that they paid a price premium for a product they believed was “carbon neutral,” but instead received a product that was not “carbon neutral.”

10. Plaintiffs are purchasers of the Product who assert claims on behalf of themselves and similarly situated purchasers of the Product for (i) violation of California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civil Code §§ 1750, *et seq.*, (ii) violation of New York General Business Law (“GBL”) § 349, (iii) violation of GBL § 350, (iv) violation of Massachusetts General Laws Chapter 93A, (v) breach of express warranty, (vi) breach of implied warranty, (vii) unjust enrichment, and (viii) fraud.

### **PARTIES**

11. Plaintiff Stephanie Dorris is a resident of Alameda County, California who has an intent to remain there, and is therefore a citizen of California. Plaintiff Dorris has purchased the Product multiple times. Most recently, on August 16, 2022, Plaintiff Dorris purchased a box of the 1-liter variant of the Product from Amazon for approximately \$19.99. Prior to her purchase of the Product, Plaintiff Dorris reviewed the Product’s labeling and packaging and saw that the

Product was labeled and marketed as “carbon neutral.” In purchasing the Product, Plaintiff Dorris relied on Defendant’s representations that the Product was carbon neutral. Plaintiff Dorris saw these representations prior to, and at the time of purchase, and understood them as representations and warranties that her Product was carbon neutral. Plaintiff Dorris understood “carbon neutral” to mean that the Product’s manufacturing did not produce CO<sub>2</sub> or otherwise cause pollution. Plaintiff Dorris relied on these representations and warranties in deciding to purchase the Product. Accordingly, those representations and warranties were part of the basis of the bargain, in that Plaintiff Dorris would not have purchased the Product on the same terms had she known those representations were not true. In making her purchase, Plaintiff Dorris paid a substantial price premium due to the false and misleading carbon neutral claim. Had Plaintiff Dorris known that the carbon neutral claim was false and misleading, Plaintiff Dorris would not have purchased the Product. Plaintiff Dorris did not receive the benefit of her bargain because the Product was not, in fact, carbon neutral in that its manufacturing produced CO<sub>2</sub> or caused pollution.

12. Plaintiff John Axiotakis is a resident of Essex County, Massachusetts who has an intent to remain there, and is therefore a citizen of Massachusetts. Plaintiff Axiotakis has purchased the Product multiple times. Most recently, in or about November 2022, Plaintiff Axiotakis purchased a bottle of the Product from a BJ’s store in Massachusetts. Prior to his purchase of the Product, Plaintiff Axiotakis reviewed the Product’s labeling and packaging and saw that the Product was labeled and marketed as “carbon neutral.” In purchasing the Product, Plaintiff Axiotakis relied on Defendant’s representations that the Product was carbon neutral. Plaintiff Axiotakis saw these representations prior to, and at the time of purchase, and understood them as representations and warranties that his Product was carbon neutral. Plaintiff Axiotakis understood “carbon neutral” to mean that the Product’s manufacturing did not produce CO<sub>2</sub> or

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