

PFAS Litigation Expands Into “Mislabeling” Class Action Arena

Per- and polyfluoroalkyl substances (PFAS) are a group of over 4,000 synthetic chemicals that have been used in industry and consumer products since the 1940s. These substances are identified by their chains of carbon-fluorine bonds, one of the strongest chemical bonds known. These strong bonds lead to incredibly stable chemicals—so stable that they're often called "forever chemicals." PFAS are known for their water- and oil-resistant properties. They have wide-ranging applications and are used in numerous consumer products, from food packaging materials, clothing, and cosmetics, to cleaning supplies, paints, and carpets.

Litigation concerning PFAS chemicals is nothing new. Over the past two decades, thousands of complaints have been filed against hundreds of companies concerning these so-called "forever chemicals." Much of this past litigation is related to environmental contamination. Now, however, an increasing number of class actions are being brought against consumer products companies, alleging false and misleading product labeling based on the presence of PFAS in their products.

Recently, plaintiffs have begun to bring consumer class actions against restaurant chains and food packaging manufacturers, alleging that the presence of PFAS in their products renders the product labeling misleading in some manner. For example:

- ***Hussain v. Burger King Corporation*, Case No. 22-cv-02258 (N.D. Cal.)**. The company's "safe" and "sustainable" representations are false and misleading due to the presence of PFAS.
- ***Clark v. McDonald's Corporation*, Case No. 22-cv-00628 (S.D. Ill.)**. Brand identity revolving around food safety is misleading due to the presence of PFAS.
- ***Little v. NatureStar North America LLC, et al.*, Case No. 22-cv-00232 (E.D. Cal.)**. The claim that disposable tableware products are "compostable" is false and misleading due to the presence of PFAS.
- ***Hamman, et al. v. Cava Group Inc.*, Case No. 22-cv-00593 (S.D. Cal.)**. The restaurant's "healthy" and "sustainable" representations are false and misleading due to the presence of PFAS.

Similar claims have been brought against apparel manufacturers:

- ***Blenis v. Thinx, Inc.*, Case No. 21-cv-11019 (D. Mass.)**. The underwear manufacturer's representation that products are "safe and effective" is misleading due to the presence of PFAS.
- ***Rivera v. Knix Wear, Inc.*, Case No. 22-cv-2137 (N.D. Cal.)**. The underwear manufacturer's representation that products are "safe, comfortable, and sustainable" is misleading due to the presence of PFAS.

Plaintiffs have also targeted the cosmetics industry:

- ***Spindel v. Burt's Bees, Inc.*, Case No. 4:22-cv-01928 (N.D. Cal.)**. The cosmetics manufacturer's representation that products are "100% Natural Origin" and "100% Natural" is deceptive due to the presence of PFAS.
- ***Brown v. Cover Girl Cosmetics*, Case No. 1:22-cv-02696 (S.D.N.Y.)**. The cosmetics manufacturer's representation that products are safe, effective, high quality, and appropriate for use on consumers' eyelashes is misleading and fraudulently advertised due to the presence of PFAS.

- ***Anderson v. Almay, Inc., Case No. 1:22-cv-02722 (S.D.N.Y.)***. The cosmetics manufacturer markets itself as a clean makeup brand that is a leader in developing products that "[do] no harm" to the skin or to the planet and is "extremely selective" about what ingredients are included in its products, using only "safe, effective ingredients and smarter formulas" which are "rigorousl[ly] tested." The marketing is misleading due to the presence of PFAS.
- ***Davenport v. L'Oreal USA, Inc., Case No. 2:22-cv-01195 (C.D. Cal.)***. The cosmetics manufacturer's representation that products are safe, effective, high quality, and appropriate for use on consumers' eyelashes is misleading due to the presence of PFAS.

Companies at all levels of the supply chain that use or come into contact with materials containing PFAS should watch these developing cases closely. It remains unsettled whether the trace amounts of PFAS allegedly present in these consumer products pose any actual health risk to the users or whether reasonable consumers would truly interpret vague marketing language such as "healthy" or "safe" to indicate the complete absence of PFAS. In the meantime, companies will need to closely evaluate their label claims and manufacturing practices to mitigate these risks.

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